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**APPENDIX A - ORDER OF THE SOUTH
CAROLINA COURT OF APPEALS**

DATED JULY 24, 2025

THE SOUTH CAROLINA COURT OF APPEALS

Appellate Case No. 2021-001169

TYRUS J. CLARK,

Respondent,

v.

AMIKA T. CLARK,

Appellant.

Dated July 24, 2025

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principal of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

/s/ [Illegible] J.

/s/ [Illegible] J.

/s/ [Illegible] J.

Columbia, South Carolina

FILED JULY 24, 2025

cc:

Gwendolynn Wamble Barrett, Esquire

Taylor Meriwether Smith, IV, Esquire

APPENDIX B - OPINION 6103
THE STATE OF SOUTH CAROLINA
COURT OF APPEALS
DATED MARCH 5, 2025

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appellate Case No. 2021-001169

TYRUS J. CLARK,

Respondent,

v.

AMIKA T. CLARK,

Petitioner.

Appeal From Greenville County
Rochelle Y. Conits, Family Court Judge

Opinion No. Op. 6103
Submitted October 1, 2024 – Filed March 5, 2025

AFFIRMED

Gregory Samuel Forman, of Gregory S. Forman, PC, of Charleston, Liza Marie Deever, of Deever Law, LLC, of Fountain Inn, both for Appellant.

Gwendolynn Wamble Barrett, of Barrett Mackenzie, LLC, of Greenville, for Respondent.

THOMAS, J.: This appeal arises from an order of the family court awarding Tyrus Clark (Father) attorney's fees, amending the Final Order and Divorce Decree, denying Amika Clark's (Mother's) Motion to Reconsider the Order of Contempt, and denying Mother's motion for attorney's fees. Mother argues the family court erred in: (1) finding Mother in contempt for "making derogatory comments about the other [parent] in any manner whereby the child might learn of same, [failing to] keep[] the child in a moral and safe environment, conduct detrimental to the child, and allowing the child access to age inappropriate material," for publishing a book depicting the parties' marriage and divorce, (2) precluding Father's eighteen-year-old daughter from testifying, and (3) finding Mother in contempt for violating a restraining order that violates Mother's right to free speech. Mother also argues if this court reverses the contempt finding against her, this court should reverse the award of attorney's fees to Father and either award Mother her fees for defending this contempt petition or remand the matter to the family court. We affirm.

FACTS

Mother and Father were divorced in 2015 after a contested three-day trial.¹ During their marriage, the parties had one child, Minor Child, in 2009. The Final Order and Decree of Divorce (the Final Divorce Order) found exceptional circumstances and granted the parties joint custody of Minor Child, with each parent having equal time. The Final Divorce Order also placed various restrictions and restraints on parental conduct as it pertained to the parents' conduct around Minor Child. Section 7, Paragraph C of the Final Divorce Order (the disparagement provision) read, "All parties are restrained against the use of profanity or making any derogatory comments about or toward the other party, or allowing anyone else to do so in front of the child, in any manner whereby the child might learn of the same."

Mother appealed the family court's decision as to custody and visitation and sought sole custody of Minor Child. In 2017, while the appeal was pending, both parties filed Contempt Complaints against one another, resulting in a Final Order on Contempt Actions in March 2017. This court affirmed the family court's shared custody determination. *Clark v. Clark*, 423 S.C. 596, 815 S.E.2d 772 (Ct. App. 2018).

Several months later, on April 27, 2019, Mother

¹ At the commencement of filing for divorce, both parties alleged physical abuse by the other party. In the Final Divorce Order, Judge Phillips found neither party met the burden of proof necessary for a fault-based divorce on the ground of physical abuse. Instead, the family court granted Father's request for a no-fault divorce based on the ground of the parties' continuous separation for one year.

published a book (The Book) depicting the circumstances surrounding the parties' marriage and divorce, as well as other aspects of Mother's life; and it has been published, marketed, and sold by national book retailers. The cover of The Book contains a photograph of Mother, made up of puzzle pieces, with a black eye drawn with makeup. Included in The Book are allegations by Mother claiming physical, mental, emotional, and sexual abuse at the hands of Father.

In addition to national book retailers, Mother promotes The Book on her personal website. Mother also testified she was an ambassador at a private 501(c)(3) non-profit that offers services to survivors of domestic abuse. Mother promotes her book through the non-profit and local speaking engagements. Mother and Minor Child are pictured on Mother's website, along with promotions for The Book and a book authored by Minor Child published on December 19, 2019.² The "About" tab on Mother's website reads, in part, "As a mother of a young daughter, Amika wants to change the narrative and cycle for her daughter and give a voice to personal, internal thoughts."

On March 30, 2020, Father filed a Contempt Complaint alleging Mother violated multiple restraining orders in the Final Divorce Order, including the disparagement provision, by writing and publishing The Book. At the hearing on the

² Minor Child's book is marketed and sold on Mother's website. The website contains a tab labeled "About [Minor Child]" which provides a brief biography and photograph of Minor Child.

motion, when asked about the specific allegations made in The Book, Mother testified the contents of The Book were truthful and accurate descriptions of the emotional, physical, and mental abuse he suffered at the hands of Father. ³ She admitted to writing Father was "full of bullshit and lies" during the marriage. Mother further admitted that she accused Father of being mentally ill. Mother was asked about a portion of The Book in which she discusses an affidavit she wrote for an expedited hearing. Father's counsel asked Mother to confirm she wrote: "My shield became impossible when her father screamed expletives and belligerent names at me during story time which she witnessed her father follow me from room to room berating me no matter how much I tried to remove myself from the situation. Mother's bond is unwaveable [sic]. . . . She hears her dad yelling and screaming at me, she comes to what she calls 'mommy's rescue.'" Mother also testified to a poem she wrote entitled "Little Dick Mother" which was "a poem written out of anger . . . givin' an analogy to someone being lower than a snake's belly . . . and it is comparing them to. . . their inability to satisfy me sexually . . . it's basically saying . . . that I'm tired and I'm movin' on." Mother also admitted to writing in The

³ Both parties cited physical abuse during the divorce proceedings. However, in the Final Divorce Order, after considering witness testimony and the existence of 9-1-1 call logs, the family court noted "[Mother] called the police to the residence numerous times during the marriage; however, [Father] was never charged with a crime. [Father] called the police to the residence in March of 2014 which resulted in [Mother] being charged with criminal domestic violence. That charge remains pending."

Book that Father is a "narcissistic, irrational, manipulative liar." When asked if she was aware she was prohibited from making disparaging comments about Father, Mother responded, "I haven't made disparaging comments to where [Minor Child] would know about it." Despite the admitted testimony, Mother further testified she had taken precautions so that Minor Child would not have access to The Book.

At the hearing, Mother sought to introduce testimony from Father's eighteen-year-old daughter (MCC) from a previous relationship. MCC lived in Arizona and did not have a relationship with Father. When asked why Mother wanted to present MCC's testimony, counsel argued MCC would testify that she had never seen The Book, and The Book had no bearing on MCC's mother's filing an Order of Protection against Father on MCC's behalf. Counsel went on to argue:

The reason for calling the daughter is Mr. Clark's given extensive testimony about how this book is going to have a terrible effect on his, on his daughters and they're, uh, they're gonna grow up to be drug addicts and everything else, I want this court to understand that his daughters and their relationship and how they turn out has to do with his behavior, not with a book that they have no knowledge of.

MCC's mother, Marita Collier, was allowed to testify regarding her and MCC's past and relationship with

Father. The court precluded MCC's testimony based on relevance and stated, "MCC's proposed testimony . . . is not going to change what's before me about whether or not your client is in contempt."

At the close of the contempt hearing, the family court requested that each party brief the First Amendment issue that came up during Mother's testimony at the hearing. Both parties complied.

On March 17, 2021, the family court issued its Order on Contempt. The family court found, inter alia, The Book violated various provisions of the parties' prior orders, including provisions against making derogatory comments about the other in any manner whereby Minor Child might learn of same, failing to keep Minor Child in a moral and safe environment, conduct detrimental to Minor Child, and allowing Minor Child access to age inappropriate material, and held Mother in criminal and civil contempt. The family court ordered Mother to cease and desist from selling and disseminating The Book in any manner whatsoever and placed other restrictions on Mother's use and handling of the material associated with The Book. The family court sanctioned Mother by sentencing her to jail, suspended upon her removal of The Book from the open market among other requirements, ordering her to pay fines totaling \$3,500.00, and ordering her to pay attorney's fees and costs of \$10,000.00 within ninety days of the order. In addressing the First Amendment issue raised by Mother at trial, the family court's order held:

Under the First Amendment, this court may regulate the content of constitutionally protected speech in order to promote a compelling state interest as long as it chooses the least restrictive means to further that interest, and the Court finds that the current disparagement clause meets that test. The court finds that if Mother's disparaging and damag[ing] speech in the form of her book is left unchecked and unfettered, as it has been since April 27, 2019 due to her egregious violation of this court's order in writing and publishing this book, the harm to the minor child is imminent and severe, and this court has a compelling state interest in limiting Mother's speech in the best interests of this child. This child is in counseling, suffering from anxiety, which Mother indicates is due to anxiety over divorce issues. Mother's actions have proven, unequivocally, that without court interference, she would continue to promote her book[,] which would be detrimental to the emotional and psychological welfare of this minor child. The court finds that Mother's book is not constitutionally protected free speech.

Mother filed a Notice of Motion and Motion to Reconsider Order on Contempt on March 31, 2021. A hearing on the motions was held on August 12, 2021,

and the family court issued its Final Order on Contempt Actions on August 27, 2021. The family court awarded Father \$5,000 in attorney's fees for having to brief the constitutional issue, and an additional \$2,433.75 in attorney's fees for his motion to reconsider. The family court further amended the parties' prior disparagement provision to read:

All parties are restrained against the use of profanity or making any derogatory comments about or toward the other party or allowing anyone to do so in front of the child/children, or in any manner whereby the child might learn of the same, except where there exists a reasonable expectation of privacy whereby the child reasonably would not, could not, or should not learn of the same.

This appeal followed.

STANDARD OF REVIEW

"On appeal from the family court, the appellate court reviews factual and legal issues de novo." *Klein v. Barrett*, 427 S.C. 74, 79, 828 S.E.2d 773, 776 (Ct. App. 2019). Despite this standard of review, we are mindful that the family court, which saw and heard the witnesses, was in a better position to evaluate the credibility of the witnesses and assign comparative weight to their testimony. *Lewis v. Lewis*, 392 S.C. 381, 385, 709 S.E.2d 650, 651-52 (2011). The appellant has the burden of showing this court the

greater weight of the evidence is against the family court's findings. *Id.* at 392, 709 S.E.2d at 655. "Stated differently, [de novo] review neither relieves an appellant of demonstrating error nor requires us to ignore the findings of the family court." *Id.* at 388-89, 709 S.E.2d at 654. Appellate courts review the family court's evidentiary or procedural rulings using an abuse of discretion standard. *Stoney v. Stoney*, 422 S.C. 593, 594 n.2, 813 S.E.2d 486, 486 n.2 (2018).

LAW/ANALYSIS

A. Finding of Contempt Based on The Book

Mother argues the family court erred in finding Mother in contempt despite the lack of evidence Minor Child had even been exposed to The Book. We disagree.

A party is guilty of contempt when he willfully disobeys a court order. *Burns v. Burns*, 323 S.C. 45, 48, 448 S.E.2d 571, 572 (Ct. App. 1994). "A finding of contempt is within the discretion of the trial court and will not be disturbed on appeal unless it is without evidentiary support." *Id.* at 48, 448 S.E.2d at 572-73. "A willful act is one 'done voluntarily and intentionally with the specific intent . . . to fail to do something the law requires to be done . . .'" *Spartanburg Cnty. Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988) (quoting Black's Law Dictionary 1434 (5th Ed. 1979)). A finding of contempt, therefore, must be reflected in a record that is "clear and specific as to the acts or conduct upon which such finding is based." *Curlee v.*

Howle, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982). "Contempt is an extreme measure; this power vested in a court is not lightly asserted." *Bigham v. Bigham*, 264 S.C. 101, 104, 212 S.E.2d 594, 596 (1975). "Prior to invoking this power, the court must necessarily consider the ability of the defendant to comply with the order." *Id.*

Mother argues the finding of contempt based on the disparagement provision of the Final Divorce Order was erroneous because there was no evidence that Minor Child knew of or read The Book. Mother asserts The Book was just a "personal diary of sorts" and there was no evidence Mother ever discussed or exposed Minor Child to The Book. Mother also argues there is no plausible way to know for certain when and how Minor Child "might learn of" The Book or any disparaging comments made towards Father. However, we find Minor Child's knowledge of The Book or its contents is not a factor important to the analysis of Mother's contempt. See *Abate v. Abate*, 377 S.C. 548, 553, 660 S.E.2d 515, 518 (Ct. App. 2008) (finding a party seeking a contempt finding for violation of a court order must show the order's existence and facts establishing the other party did not comply with the order).

Here, we find there was ample evidence to support the court's finding of contempt. The final contempt order in this case is thirty-five pages long. It explained the family court judge reviewed all of the exhibits, considered the testimony, and considered witness credibility. The order also summarizes and explains the rulings on each issue. Mother does not deny

writing or publishing The Book. Nor does she deny that The Book was based on her own personal experiences. Further, Mother does not argue that The Book is not a violation of the disparagement provision. Instead, she raises, for the first time at trial, that the disparagement provision is a prior restraint on her free speech that is not narrowly tailored to meet a compelling state interest and is therefore unconstitutional.⁴ In its contempt order, the family court cited to Mother and Minor Child both being pictured on Mother's website, both promoting their respective books on Mother's website, the fact that the mother of Father's older daughter has a copy of The Book and speaks to Minor Child regularly, and the public promotion and sale of The Book online, to account for its finding of contempt in Mother's publishing of The Book. We find the prohibition of "making derogatory comments about the other in any manner whereby the child might learn of same" was clearly violated by Mother; thus, the family court did not err in finding her in contempt; accordingly, we affirm.

B. Testimony of Father's Eighteen-Year-Old Daughter

Mother argues the family court abused its discretion in precluding MCC from testifying, particularly when the family court based its contempt finding on what MCC may have told Minor Child. We disagree.

⁴ This section will first address just the family court's finding of contempt. Section C addresses Mother's First Amendment argument in full.

"Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence which is not relevant is not admissible." Rule 402, SCRE. Resolving questions of credibility is the function of the family court judge who heard the witnesses' testimony. *Terwilliger v. Terwilliger*, 298 S.C. 144, 147, 378 S.E.2d 609, 611 (Ct. App. 1989). "Because the appellate court lacks the opportunity for direct observation of witnesses, it should accord great deference to the [family] court findings when matters of credibility are involved." *Shirley v. Shirley*, 342 S.C. 324, 329, 536 S.E.2d 427, 429 (Ct. App. 2000). "This is especially true in cases involving the welfare and best interests of children." *Aiken County Dep't. of Soc. Servs. v. Wilcox*, 304 S.C. 90, 93, 403 S.E.2d 142, 144 (Ct. App. 1991).

At the contempt hearing, the family court precluded MCC from testifying because the court found her testimony was not relevant. The court properly found MCC's testimony would not make the finding of Mother's contempt more or less probable. MCC's potential testimony regarding whether she read The Book, or whether she discussed The Book with Minor Child, had no bearing on Mother's willful contempt of the court. MCC's testimony was not relevant or necessary to establish Mother wrote The Book as Mother previously admitted to writing The Book. Similarly, MCC's testimony was not required to establish what was in The Book as The Book itself was in evidence. Further, the court allowed MCC's

mother to testify regarding her relationship with Father, her own allegations of domestic violence, and the Order of Protection she filed in Arizona. Although MCC was eighteen at the time of the hearing, the court considered MCC's age and relationship with her father when it stated, "I'm not puttin' that 18-year-old on the stand about her father, I'm not gonna do that."⁵

In this case, MCC's testimony was not essential to establish Mother's willful contempt, which we believe was sufficiently evidenced in the remainder of the record. We find the court properly excluded the testimony of MCC.

C. Finding of Contempt and Mother's Free Speech

Mother argues the family court violated her First Amendment right to free speech by finding her in contempt. We disagree.

The First Amendment commands, "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. However, the government may regulate the content of constitutionally protected speech in order to promote a compelling interest as long as it chooses the least restrictive means to further that interest. *Sable Commc'ns of California, Inc. v. FCC*, 492 U.S. 115, 126 (1989). In this case, we agree with the family court that the best interests of

⁵ Rule 23(b) of the South Carolina Family Court Rules states that children should not be offered as witnesses as to the misconduct of either parent, except, when, in the discretion of the court, it is essential to establish the facts alleged.

Minor Child are a sufficient compelling interest to warrant restricting Mother's speech; thus, there was no violation of Mother's rights under the First Amendment.

South Carolina courts have long held that "[i]n making a custody determination, the child's welfare and best interest are the paramount and controlling considerations of the court." *Lewis*, 400 S.C. at 364, 734 S.E.2d at 327. In making an award of custody, there are several factors that the family court must consider when determining what is in the best interest of the child. See S.C. Code Ann. § 63-15-240 (B). Inherent in several of those factors is a requirement of judicial consideration of parents' behavior, which includes speech, as being relevant to the child's best interest. § 63-15-240 (B)(6)-(8). The family court must also consider whether there has been domestic violence involved. Furthermore, it must consider any effort by one parent to disparage the other in front of the child as a factor in awarding custody. § 63-15-240 (B)(8). We believe it would be inconsistent for the family court to find that parents have a First Amendment right to make disparaging comments about the other parent to the child, or in a manner in which the child might learn of same, when it would not be in the child's best interest.

Mother raised, for the first time at trial, that the disparagement provision is a content and viewpoint based prior restraint on her free speech that is not narrowly tailored to meet a compelling state interest

and is therefore unconstitutional.⁶

Specifically, she claims the disparagement provision "prohibits 'making any derogatory comments about or toward the other party' but does not prohibit the same character of comments about or toward any other person, including the child, or praise concerning any party or the child." Because the disparagement provision only applies to speech deemed to be derogatory, Mother argues it is a content-based restriction that may only withstand challenge to its constitutionality based upon a showing that the restriction is "necessitated" by a compelling government interest that is narrowly tailored to serve that interest. Mother raises issues of overbreadth and vagueness within the disparagement provision and argues it was not narrowly tailored enough to withstand a constitutional challenge. However, the family court seemingly took this into account when it amended the original disparagement provision after contempt findings against Mother. The family court amended the order from reading, "All parties are restrained against the use of profanity or making any derogatory comments about or toward the other

⁶ The contempt order notes Mother did not appeal the constitutionality of the disparagement provision's restriction on speech when it was written into the Final Divorce Order. In fact, Mother never raised this defense until she testified at the second half of the contempt hearing on January 6, 2021. Even then, the court notes, Mother did not attempt to defend her actions in writing and publishing the disparaging book, she simply raised a constitutional defense against the provision as a whole. Accordingly, the court found Mother wrote and published The Book knowing fully that it was a violation of the disparagement provision in the Final Divorce Order.

party, or allowing anyone else to do so in front of the child, in any manner whereby the child might learn of the same," to:

All parties are restrained against the use of profanity or making any derogatory comments about or toward the other party or allowing anyone to do so in front of the child/children, or in any manner whereby the child might learn of the same, **except where there exists a reasonable expectation of privacy whereby the child reasonably would not, could not, or should not learn of the same.** (emphasis added).

The family court, in amending the disparagement provision, allowed for specific instances of disparaging comments to be made by Mother so long as she had a reasonable expectation of privacy at the time. According to the rewritten disparagement provision, Mother has available forums for disparaging Father.

While South Carolina courts have not ruled on the issue of the constitutionality of prior restrictions on parental speech, courts in some jurisdictions have held that the state's interest in protecting the best interests of a child is a compelling interest that can justify limiting a parent's constitutional right to free speech. See, e.g., *Borra v. Borra*, 756 A.2d 647, 650 (N.J. Super. 2000) (finding an injunction against a father's efforts to contest a mother's application for country club membership was proper in light of the

state's *parens' patriae* interest in the welfare of the children, which was threatened by the parents' conflict over the membership; although the father had a First Amendment right to speak his mind freely, "New Jersey courts have consistently recognized that the 'best interests' of the children can be made paramount to other fundamental rights").

The Massachusetts Supreme Judicial Court recently addressed the issue of parental speech and prior restraints in *Shak v. Shak*.⁷ In that case, there was an order prohibiting both parents from posting disparaging remarks about each other and the ongoing litigation on social media. The Massachusetts court ruled that an order preventing a parent from posting about his child on social media violated the father's constitutional right to freedom of speech. The court in *Shak* held the State had a compelling interest in protecting children from exposure to disparaging remarks from the parents but that more was required to justify such a significant burden on free speech. We find *Shak* is distinguishable. First, the child in *Shak* was a toddler, while Minor Child is a sophisticated eleven-year-old who has written and published a book of her own. The court in *Shak* noted, "[a]s a toddler, the child is too young to be able either to read or to access social media." 144 N.E.3d at 280. Here, Minor Child is capable of accessing the Internet and is able to Google her own name, which inevitably leads to Mother's website promoting The Book. The family court further found Minor Child's mental, physical, and emotional wellbeing is unstable as evidenced by

⁷ 144 N.E.3d 274 (Mass. 2020).

Mother taking her to counseling. The court reasoned this makes Minor Child even more vulnerable to the grave harm she would experience as a result of reading The Book.

The Kentucky Court of Appeals addressed prior restraints on parental speech in *Wedding v. Harmon*.⁸ There, the father appealed an order of the Jefferson Family Court granting the mother's motion to prohibit the father from harassing her by copying and forwarding routine co-parenting emails to individuals within the parties' local community and from sending mass emails to the parties' friends, family and other members of their community regarding the parties' dissolution, custody proceedings and co-parenting. The father's sole contention on appeal was that the order was an unconstitutional infringement on his speech. 492 S.W.3d at 151.

The Kentucky court affirmed the order of the family court because: (1) the father's emails were constitutionally unprotected conduct intended to harass, annoy or alarm the mother; (2) the injunction was narrowly drawn to proscribe the father's unprotected conduct; and (3) the best interests of the children were supported by the family court's limitation on the father's speech. *Id.* at 153. Like the court in *Wedding*, we find the contents of The Book are solely aimed at disparaging, annoying, and ruining the reputation of Father.

We conclude the disparagement provision was narrowly tailored and the least restrictive means to

⁸ 492 S.W.3d 150 (Ky. Ct. App. 2016), as modified (Apr. 22, 2016).

protect the best interests of Minor Child. The disparagement provision was even altered to protect certain forums for Mother's disparaging comments. The record evidences years of contention and attempts at parental alienation by both parties. The amended disparagement provision properly restricts the parties' unprotected speech so as to protect the best interests of Minor Child. We find Mother's willful contempt of the Final Divorce Order provides further justification for the necessity of the disparagement provision and find no violation of her First Amendment right to free speech.

D. Attorney's Fees

Mother argues if this court reverses the finding of contempt, it should reverse the award of attorney's fees to Father and either award Mother her fees for defending this contempt petition or remand the matter back to the family court. Based on our affirmance of the matter on the merits, we affirm the award of attorney's fees.

Based on the foregoing, the order of the family court is

AFFIRMED.⁹

HEWITT and VINSON, JJ., concur.

⁹ We decide this case without oral argument pursuant to Rule 215, SCACR.

**APPENDIX C - ORDER – ORDER ON
PLAINTIFF’S MOTION TO RECONSIDER AND
ALTER OR AMEND JUDGMENT PURSUANT TO
SCRPC 52, SCRPC 59(e) AND SCRPC 60 AND
ORDER ON PLAINTIFF’S MOTION TO DISMISS,
DEFENDANT’S MOTION TO RECONSIDER AND
ORDER ON DEFENDANT’S MOTION TO
RECONSIDER ORDER ON CONTEMPT**

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE FAMILY COURT

DATED AUGUST 25, 2021

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE FAMILY COURT

THIRTEENTH JUDICIAL CIRCUIT

Case No. 2013-DR-23-4824

**ORDER ON PLAINTIFF’S MOTION TO
RECONSIDER AND ALTER OR AMEND
JUDGMENT PURSUANT TO SCRPC 52, SCRPC
59(e) AND SCRPC 60 AND ORDER ON
PLAINTIFF’S MOTION TO DISMISS,
DEFENDANT’S MOTION TO RECONSIDER AND
ORDER ON DEFENDANT’S MOTION TO
RECONSIDER ORDER ON CONTEMPT**

TYRUS J. CLARK,

PLAINTIFF,

v.

AMIKA T. CLARK,

DEFENDANT.

Date of Hearing: August 12, 2021

Hearing Judge: Rochelle Y. Conits

Attorney for Plaintiff: Lynn W. Barrett

Attorney for Defendant: Liza M. Deever

Court Reporter: Pamela Green

Guardian ad Litem: Not Applicable

This matter comes before me on August 12, 2021, pursuant to a Notice of Motion and Motion to Reconsider and Alter or Amend Judgment Pursuant to SCRCP 52, SCRCP 59(e) and SCRCP 60 filed by the Plaintiff with this Court on March 29, 2021, seeking that this Court reconsider its Order on Contempt signed on March 15, 2021, filed in the Family Court for Greenville County on March 17, 2021, asking that this Court reconsider the attorney's fees and costs and awarded to the Plaintiff in this contempt matter.

The Defendant was served with the Plaintiffs Notice of Motion and Motion to Reconsider and Alter or Amend Judgment Pursuant to SCRCP 52, SCRCP 59(e) and SCRCP 60 as evidenced by the Certificate of Mailing filed with this Court.

The Defendant filed a Notice of Motion and Motion to Reconsider Order on Contempt on March 31, 2021. The Plaintiff, through counsel, alleges that he was never served with the Defendant's Notice of Motion and Motion to Reconsider Order on Contempt, but rather had to get a copy from the clerk's office after it was filed. The Plaintiff filed a Return to Notice of Motion to Reconsider Order on Contempt and Motion to Dismiss on August 11, 2021, which was served upon the Defendant as evidenced by the Certificate of Service filed with this Court on August 11, 2021.

Present at the hearing was the Plaintiff, with his attorney, Lynn W. Barrett of Barrett Mackenzie, and the Defendant, with her attorney, Liza M. Deever of Deever Law, LLC.

After reviewing the Court file, the documents submitted by both parties, and after hearing the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The parties are citizens and residents of Greenville County, South Carolina, and have been so for more than three months prior to the commencement of this action.
2. The parties were formerly husband and wife, having been divorced by Amended Supplemental Final Order and Divorce Decree dated October 6,

2015, filed with this Court on October 12, 2015. During the course of the parties' marriage one (1) child was born, namely, T.E.C., a female child, born 2009.

3. The Court finds that it has continuing jurisdiction over this matter and these parties and that venue is proper in Greenville County, South Carolina.

4. The Court has considered the parties' written motions, as well as the arguments of counsel in making its decision on both Motions to Reconsider.

5. The Court awards the Plaintiff the additional sum of \$5,000.00 in attorney's fees and costs associated with the Legal Brief of Plaintiff Father Regarding the Constitutionality of Prior Restraints on Parental Speech dated February 12, 2021. The Court finds that this award is one half of the attorney's fees and costs incurred by the Plaintiff in the preparation of the Legal Brief of Plaintiff Father Regarding the Constitutionality of Prior Restraints on Parental Speech. In considering this award, the Court has considered the attorney's fees and costs incurred by the Defendant, as well.

6. The Court further awards the Plaintiff the sum of \$2,433.75 in attorney's fees and costs associated with the filing of the Notice of Motion and Motion to Reconsider and Alter or Amend Judgment Pursuant to SCRCP 52, SCRCP 59(e) and SCRCP 60 filed by the Plaintiff with this Court on March 29, 2021, and in filing the Return to Notice of Motion to Reconsider

Order on Contempt By Defendant and Motion to Dismiss filed with this Court on August 11, 2021.

7. The Court finds that, after careful consideration, it shall amend Exhibit B, Section III, Restraining Order C, of the Amended Supplemental Order to Final Order and Divorce Decree issued by this Court on October 12, 2015, as follows:

All parties are restrained against the use of profanity or making any derogatory comments about or toward the other party or allowing anyone to do so in front of the child/children, or in any manner whereby the child might learn of the same, except where there exists a reasonable expectation of privacy whereby the child reasonably_ would not, could not, or should not learn of the same.

8. The Court finds the Defendant Mother's Notice of Motion and Motion to Reconsider Order on Contempt filed with this Court on March 31, 2021 is denied in full with the exception of the "No Adverse Contact Order" the parties agreed to adopt and the restraining orders set forth in the Order on Contempt issued by this Court on March 17, 2021, which shall remain in full force and effect. All other restraining orders set forth in the parties' Amended Supplemental Order to Final Order and Divorce Decree issued by this Court on October 12, 2015, not modified herein shall remain as previously ordered.

9. The Court further finds the Defendant's request for attorney's fees and costs is denied.

10. The Court finds that counsel for the Defendant shall immediately submit a verified affidavit with this Court attesting to the date she received notice of the Order on Contempt by U.S. Mail from the Clerk's office for the purposes of calculating the SCRCP 59(e) timeframe to file the motion. The Court further finds that counsel for the Defendant shall immediately submit a verified Certificate of Service to this Court evidencing proper service on the Plaintiff of the Defendant's Notice of Motion and Motion to Reconsider Order on Contempt.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The Defendant shall pay on behalf of the Plaintiff, directly to Lynn W. Barrett, the additional sum of \$5,000.00 in attorney's fees and costs, to be paid within ninety (90) days of the issuance of this order, along with the \$10,000.00 in attorney's fees and costs awarded in the Order on Contempt filed with this court on March 17, 2021.

2. The Defendant shall pay on behalf of the Plaintiff, directly to Lynn W, Barrett, the sum \$2,433.75 in attorney's fees and costs associated with the filing of the Notice of Motion and Motion to Reconsider and in responding to the Defendant's Motion to Reconsider. This sum shall also be paid within ninety (90) days of the issuance of this order.

3. The Court hereby amends Exhibit B, Section III, Restraining Order C, of the Amended Supplemental Order to Final Order and Divorce Decree issued by this Court on October 12, 2015, as follows:

All parties are restrained against the use of profanity or making any derogatory comments about or toward the other party or allowing anyone to do so in front of the child/children, or in any manner whereby the child might learn of the same, except where there exists a reasonable expectation of privacy whereby the child reasonably would not, could not, or should not learn of the same.

4. The Defendant Mother's Notice of Motion and Motion to Reconsider Order on Contempt filed with this Court on March 31, 2021 is denied in full with the exception of the "No Adverse Contact Order" the parties agreed to adopt and the restraining orders set forth in the Order on Contempt filed with this Court on March 17, 2021, which shall remain in full force and effect. All other restraining orders set forth in the parties' Amended Supplemental Order to Final Order and Divorce Decree issued by this Court on October 12, 2015, not modified herein shall remain as previously ordered.

5. The Defendant's request for attorney's fees and costs is denied.

6. Counsel for the Defendant shall immediately submit a verified affidavit with this Court attesting to the date she received notice of the Order on Contempt by U.S. Mail from the Clerk's office for the purposes of calculating the SCRPC 59(e) timeframe to file the motion.

7. Counsel for the Defendant shall immediately submit a verified Certificate of Service to this Court evidencing proper service on the Plaintiff of the Defendant's Notice of Motion and Motion to Reconsider Order on Contempt.

8. That all matters as set forth above are the Order of this Court.

IT IS SO ORDERED.

/s/ Rochelle Y. Conits
Rochelle Y. Conits
Family Court Judge
Thirteenth Judicial Circuit

8/25/21, 2021
Greenville, South Carolina

APPENDIX D - ORDER – ORDER ON CONTEMPT
THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE FAMILY COURT
DATED MARCH 15, 2021
THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT
Case No. 2013-DR-23-4824
ORDER ON CONTEMPT

TYRUS J. CLARK,

Plaintiff,

v.

AMIKA T. CLARK,

Defendant.

Date of Hearing: October 27, 2020 and January 6,
2021

Presiding Judge: Rochelle Y. Conits

Plaintiff's Attorney: Lynn W. Barrett

Defendant's Attorney: Liza Deever

Guardian *ad Litem*: Not Applicable

COURT REPORTER: Margaret Woods

This matter comes before me pursuant to an Order and Rule to Show Cause and Contempt Complaint filed by the Plaintiff ("Father") on March 30, 2020, alleging that the Defendant ("Mother") has failed to comply with this Court's Amended Supplemental Final Order and Divorce Decree issued by the Honorable David E. Phillips on October 6, 2015, and filed with the Greenville County Family Court on October 12, 2015, and further, that the Defendant Mother has failed to comply with the Final Order on Contempt Actions issued by the Honorable Rochelle Y. Conits, and filed with the Greenville County Family Court on March 21, 2017. Specifically, Father alleges that Mother has violated Restraining Orders A, C, F, I, L, as set forth in Judge Brown's Standard Visitation, Guidelines and Restraining Orders, incorporated as part of the parties' Final Order, by writing a book, which has been published, to which the minor child has access. Father alleges that this book is filled with derogatory comments about him which are not true, as well as salacious material to which the minor child should not be exposed.

Father further alleges that Mother has willfully failed and refused to provide Father with full and complete access to all medical providers, school records, school personnel, coaches, counselors, and other professionals involved in the minor child's life and has

failed to inform him of the identity of such people and how to contact such people. Father alleges that Mother created a separate profile for the minor child on the Our Family Wizard Program App, failed to provide the Father with medication for the parties' minor child, and failed to list the Father's name, address, and phone numbers on all paperwork so that facilities and/or organizations would be able to contact the Father and provide him information on the minor child's behalf as well as to allow Father to have the ability to contact such entities and individuals.

The Father further seeks a No Adverse Contact Order ("NACO") due to the alleged harassing behaviors of the Mother, as well as attorney's fees and costs for having to file this action.

The Defendant was personally served with the Order and Rule to Show Cause and Contempt Complaint on October 3, 2020, as evidenced by the Affidavit of Service filed with this Court. There was a seven (7) month delay between filing the contempt action, the scheduling of a hearing and service on the Defendant due to the Covid-19 pandemic, which shut down court operations for six (6) months in 2020, just after this action was filed.

On October 23, 2020, the Defendant filed a Motion to Continue the scheduled hearing, arguing (in relevant part) that the Plaintiff had not scheduled sufficient time to have the Contempt heard on October 27th, 2020. The Plaintiff objected to the Defendant's Motion to Continue and the Defendant's Motion was denied by the Court. After a four (4) hour hearing on October 27, 2020, the Plaintiffs Contempt hearing was

continued for lack of sufficient time, and continued to a one-day hearing on January 6th, 2021.

The Defendant filed a Return to Rule to Show Cause on October 27, 2020, asking that the Court dismiss the Rule to Show Cause and seeking attorney's fees and costs.

Present at the hearing was the Plaintiff, with his attorney, Lynn W. Barrett of Barrett Mackenzie, LLC and the Defendant, with her attorney, Liza Deever.

After reviewing the Court file, the documents presented to the Court, and after considering the testimony provided, the arguments of counsel and the applicable law, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I BACKGROUND AND JURISDICTION

a. The Plaintiff and Defendant are citizens and residents of Greenville County, South Carolina and have been so for more than one year prior to the commencement of this action. The parties were formerly husband and wife, having been divorced by the Amended Supplemental Final Order and Divorce Decree dated October 6, 2015, filed with this Court on October 12, 2015.

b. During the course of the parties' marriage one (1) child was born, namely, T.E.C., a female child, born 2009.

c. The parties are bound by two previously issued orders, as follows:

1. The Amended Supplemental Final Order and Divorce Decree issued by the Honorable David E. Phillips on October 6, 2015, and filed with the Greenville County Family Court on October 12, 2015; and
2. The Final Order on Contempt Actions issued by the Honorable Rochelle Y. Conits and filed with the Greenville County Family Court on March 21, 2017.

d. The Court finds that it has jurisdiction over this matter and these parties and that venue is proper in Greenville County.

II. APPLICABLE LAW REGARDING CONTEMPT

"Contempt results from the willful disobedience of an order of the court." *Miller v. Miller*, 375 S.E.2d 443, 652 S.E.2d 754 (Ct.App. 2007); (quoting *Bigham v. Bigham*, 264 S.C. 101, 104, 212 S.E.2d 594, 596 (1975)); *Smith v. Smith*, 359 S.C. 393, 396, 597 S.E.2d 188, 189 (Ct.App.2004); S.C. Code Ann. § 20-7-1350 (Supp.2004) repealed, see also S.C. Code Ann. § 63-3-620 (A party may be found in contempt of court for the willful violation of a lawful court order.). "A willful act is one which is 'done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.'" *Id.* at 759; (quoting *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct.App.2001)); (quoting *Spartanburg County Dep't of Soc. Servs. v.*

Padgett, 296 S.C. 79, 82-83, 370 S.E.2d 872,874 (1988)). "Where a contemtor is unable, without fault on his part, to obey an order of the court, he is not to be held in contempt." *Id.* at 760; quoting *Smith-Cooper v. Cooper*, 344 S.C. 289, 301, 543 S.E.2d 271, 277 (Ct.App.2001).

The determination of contempt ordinarily resides in the sound discretion of the trial judge. *Miller v. Miller*, 375 S.E.2d 443,652 S.E.2d 754,760 (Ct.App. 2007); quoting *State v. Bevilacqua*, 316 S.C. 122, 129,447 S.E.2d 213, 217 (Ct.App.1994). "In a proceeding for contempt for violation of a court order, the moving party must show the existence of a court order and the facts establishing the respondent's noncompliance with the order." *Hawkins v.Mullins*, 359 S.C. 497, 501, 597 S.E.2d 897, 899 (Ct.App.2004); *Eaddy v. Oliver*, 345 S.C. 39, 42, 545 S.E.2d 830, 832 (Ct.App.2001). "[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct." *Widman*, 348 S.C. at 119, 557 S.E.2d at 705. "Once the moving party has made out a prima facie case, the burden then shifts to the respondent to establish his or her defense and inability to comply with the order." *Id.* at 120, 557 S.E.2d at 705. "It is within the trial court's discretion to punish by fine or imprisonment all contempts of authority before the court." *Id.* at 455; (quoting *Brandt v. Gooding*, 368 S.C. 618, 628, 630 S.E.2d 259, 264 (2006) (citing S.C.Code Ann. § 14-5-320 (1976))). "In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice." *Id.* at 455 (citing *State ex rel. McLeod v. Hite*, 272 S.C. 303,305, 251 S.E.2d 746, 747 (1979)). To support a

contempt finding, the order must clearly and unambiguously define the court's commands. *Welchel v. Boyter*, 260 S.C. 418, 421, 196 S.E.2d 496, 498 (1973). "[C]ontempt is an extreme measure and the power to adjudge a person in contempt is not to be lightly asserted. *State v. Bevilacqua*, 316 S.C. 122, 128, 447 S.E.2d 213,216 (Ct. App. 1994).

Civil contempt must be shown by clear and convincing evidence. *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998). Criminal contempt must be shown beyond a reasonable doubt. *Id.* In determining whether a contempt sanction is criminal or civil, one must identify the purpose for which the sanction is imposed. Whereas civil contempt is either coercive or remedial in nature, criminal contempt is purely punitive. *Id.* at 111, 502 S.E.2d at 88. The purpose of civil contempt is "to coerce the defendant to do the thing required by the order for the benefit of the complainant." *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418,441, 31 S.Ct. 492,498, 55 L.Ed. 797, 806 (1911). The primary purpose of criminal contempt is to preserve the court's authority and to punish for disobedience of its orders. *State v. Bevilacqua*, 316 S.C. 122, 447 S.E.2d 213 (Ct.App.1994). "If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court." *Hicks v. Feiock*, 485 U.S. at 631, 108 S.Ct. at 1429, 99 L.Ed.2d at 731 (quoting *Gompers v. Buck's Stove & Range Co.*, 221 U.S. at 441, 31 S.Ct. at 498, 55 L.Ed. at 806). *Poston v. Poston*, 502 S.E.2d 86, 331 S.C. 106 (S.C. 1998). "An unconditional penalty is criminal in nature because it is 'solely and exclusively punitive in nature.'" *Hicks v.*

Feiock, 485 U.S. at 633, 108 S.Ct. at 1430, 99 L.Ed.2d at 732 (citing *Penfield Co. v. SEC*, 330 U.S. 585,593, 67 S.Ct. 918,922, 91 L.Ed. 1117, 1124 (1947)). "The relief cannot undo or remedy what has been done nor afford any compensation and the contemnor cannot shorten the term by promising not to repeat his offense." *Hicks v. Feiock*, 485 U.S. at 633, 108 S.Ct. at 1430, 99 L.Ed.2d at 732 (citing *Gompers v. Buck's Stove & Range Co.*, 221 U.S. at 442, 31 S.Ct. at 498, 55 L.Ed. at 806). "If the relief provided is a sentence of imprisonment...it is punitive if the sentence is limited to imprisonment for a definite period." *Hicks v. Feiock*, 485 U.S. at 632, 108 S.Ct. at 1429, 99 L.Ed.2d at 731; see also *State v. Magazine*, 302 S.C. 55, 393 S.E.2d 385 (1990); *Poston v. Poston*, 502 S.E.2d 86, 331 S.C. 106 (S.C. 1998). If the sanction is a fine, it is punitive when it is paid to the court. However, a fine that is payable to the court may be remedial when the contemnor can avoid paying the fine simply by performing the affirmative act required by the court's order. *Hicks v. Feiock*, *supra*; *State v. Magazine*, *supra*.

In civil contempt cases, the sanctions are conditioned on compliance with the court's order. *Hicks v. Feiock*, *supra*; *State v. Magazine*, *supra*. "The conditional nature of the punishment renders the relief civil in nature because the contemnor 'can end the sentence and discharge himself at any moment by doing what he had previously refused to do.'" *Hicks v. Feiock*, 485 U.S. at 633, 108 S.Ct. at 1430, 99 L.Ed.2d at 732 (citing *Gompers v. Buck's Stove & Range Co.*, 221 U.S. at 442, 31 S.Ct. at 498, 55 L.Ed. at 806). "If the relief provided is a sentence of imprisonment, it is remedial if the defendant stands committed unless and until he

performs the affirmative act required by the court's order. ... " *Hicks v. Feiock*, 485 U.S. at 632, 108 S.Ct. at 1429, 99 L.Ed.2d at 731. "Those who are imprisoned until they obey the order, 'carry the keys of their prison in their own pockets,'" *Hicks v. Feiock*, 485 U.S. at 633, 108 S.Ct. at 1430, 99 L.Ed.2d at 732 (citing *Penfield Co. v. SEC*, 330 U.S. at 590, 67 S.Ct. at 921, 91 L.Ed. at 1123). If the sanction is a fine, it is remedial and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine or if the contemnor can avoid the fine by complying with the court's order. *Hicks v. Feiock*, supra; *State v. Magazine*, supra; see also *In re General Motors Corp.*, 61 F.3d 256 (4th Cir.1995), opinion after remand, 110 F.3d 1003 (4th Cir.), cert. denied, U.S., 118 S.Ct. 61, 139 L.Ed.2d 24 (1997); *Poston v. Poston*, 502 S.E.2d 86, 331 S.C. 106 (S.C. 1998).

Incarceration may be either civil or criminal. *Poston, Id.*, at 112, 502 S.E.2d at 89. The distinguishing factor is whether the incarceration is for a definite period of time, which is the hallmark of criminal contempt, or whether the contemnor may avoid or cut short the incarceration by complying with the court's directive, which indicates civil contempt. *Id.* The difference between the two is substantial because the constitutional safeguards provided in the Sixth Amendment may be triggered in criminal contempt proceedings. A contemnor has a constitutional right to a jury trial before a criminal sentence of more than six months incarceration may be imposed. *Curlee v. Howle*, 277 S.C. 377, 385, 287 S.E.2d 915, 919 (1982). *Dimarco v. Dimarco*, 393 S.C. 604, 713 S.E.2d 631 (2011).

PLAINTIFF'S ALLEGATIONS OF CONTEMPT
AGAINST DEFENDANT

III. PARENT'S ACCESS TO CHILD'S RECORDS
AND PROVIDERS

a. The Court finds that the parties are bound by this Court's Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, Exhibit B, Page 2, Paragraph C, which states as follows: "Access to Records: Both parents shall have full and complete access to all medical providers, school records, school personnel, coaches, counselors, and other professionals involved in the child's life and shall be allowed to discuss their child's circumstances and needs with these people. Each party shall inform the other party of the identity of such people and if not otherwise reasonably available, and how to contact such people. If required or requested by the provider school personnel etc. Both parents may attend. When there is any doubt as to what's important, the other parent shall be notified."

b. Father alleges as to the Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, Exhibit B, Page 2, Paragraph C cited above, that Mother failed to inform him of the minor child's mental health counseling sessions at the minor child's school. The Court finds that the Mother willfully failed to notify Father on January 8, 2019, when the minor child, T.E.C., had her first assessment and appointment with Samantha Miller, SC Department of Mental Health counselor, at her elementary school. The Court further finds Mother did not inform Father that the minor child, T.E.C.,

was receiving counseling services until February 25, 2019, when she notified Father via the Our Family Wizard Program in response to the counselor indicating to Mother that the Father's input in the minor child's counseling services was necessary. The evidenced presented to this Court indicates that the counselor conducted in-take assessments and counseling sessions with the minor child, T.E.C., on January 9, 11, 30, 2019 and February 14, 2019, before the Father was ever informed the counseling was taking place and without the Father's required and necessary input with the counselor, as requested of Mother by the counselor, Samantha Miller. The Court further finds that when Mother did finally notify Father of the counseling sessions via Our Family Wizard on February 25, 2019, Mother stated, "I have started Tyler in counseling through the school to help her with anxiety as a result of the custody split and with expressing her feelings," which is certainly pertinent information that Father should have known prior to the counseling sessions beginning.

c. The Court finds, beyond a reasonable doubt, that Mother is in willful criminal contempt of court for failing to notify Father of the minor child's mental health counseling services. Mother shall pay a fine of \$1,500.00 as Court sanctions directly to the Greenville County Family Court within ten (10) days of the filing of this Order.

IV. PARENTS TO PROVIDE PROPER MEDICAL ATTENTION/ MEDICATION

a. The Court finds that the parties are bound by this Court's Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, Exhibit B, Page 4, Paragraph H, which states as follows: "All parties are required to see that the child/children in their care receive proper medical attention and appropriately take prescribed medications or reasonably necessary medical treatments and to that end shall ensure that the child/children in their care attend any scheduled medical appointments and shall exchange medications which are to be taken, as might be reasonable and appropriate and in compliance with their religious beliefs, as a specific court order of the law."

b. Father alleges as to this Court's Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, Exhibit B, Page 4, Paragraph H, that the Mother willfully failed and refused to provide the Father with the minor child's rescue inhaler, along with the QVAR, but instead provided the rescue inhaler to the minor child's school, which Father was unable to retrieve without Mother's instruction to the school, putting the child's health in danger. The court agrees that this was willful behavior on Mother's part in violation of the parties' court order, but the Court finds that Mother has remedied this issue by providing the minor child's required rescue inhaler to the Father. Therefore, the Court will withhold sanctions. However, this Court strictly admonishes the Mother to adhere to the requirement that she exchange all medications with the Father which are taken by the minor child, during Father's placement time with the minor child.

c. The Court further finds that Mother shall immediately provide Father with a health insurance card for the minor child, and shall provide a new health insurance card for the minor child each and every calendar year whether there is a change in coverage or not. The Court finds that Father shall be provided access to the minor child's on line health records (for example, My Chart, etc.) if doing so is possible independent of access to the Mother's records. The Mother shall cooperate with Father in setting up his access to any online account for the minor child.

V. PARENTS TO COMMUNICATE VIA "OUR FAMILY WIZARD"

a. The Court finds that the parties are bound by this Court's Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, Page 18, Paragraph E, which states as follows: "Contact Between Parents: The parties shall use "Our Family Wizard" (OFW) for all communications and scheduling activities for the minor child, uploading of school calendars, appointments, extra-curricular events, out of state travel dates, and medical and school records. Any and all costs associated with the use of OFW shall be equally split between the parties, 50/50. Plaintiff and Defendant shall immediately notify the other of any emergency situation, if this can be done through Our Family Wizard.

b. Father alleges as to this Court's Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, Page 18, Paragraph E, that Mother has failed to notify him of events and activities for the minor child on Our Family Wizard, has created a separate profile for the minor child on Our Family Wizard on which she includes information, making it difficult for him to access, and that Mother provides him such delayed notice of appointments and activities for the child that he is unable to attend. The Court declines to find Mother in willful contempt at this time, but finds as follows:

1. Mother's actions in creating a profile for the minor child on the Our Family Wizard Program were designed to complicate and thwart clear and direct communication with Father. The Court further finds that inasmuch as these parties have only one (1) child, it unnecessary to create a separate profile for their minor child, and then bury information in the profile, necessitating an exhaustive search by the Father with no prompting to seek and find information.
2. The Court further finds, based upon the evidence provided by Father, that notification of the minor child's Girl Scout participation and meeting information was provided to Father only through a post to the minor child's Our Family Wizard profile with no direct communication to the Father of the child's participation in this activity. The initial Our Family Wizard post was

dated December 10, 2017, when the minor child actually started participating in Girl Scouts on September 10, 2017, some three months earlier than the notification to Father. Additionally, based upon Plaintiff's Exhibit 36, coupled with the testimony of the minor child's Girl Scout leader that she had never seen nor met Father, it is clear to this Court that Father did not have adequate notice of this activity which prohibited him from having the ability to participate. The Mother provided Defendant's Exhibits 3 and 4 purporting to be Girl Scout forms completed by Mother, which include Father's information, while Father presented evidence indicating that the Girl Scout organization did not have his relevant contact information.

3. The Court further finds that notification of the minor child's acceptance to the Greenville County School Challenge Program was posted under the minor child's Our Family Wizard profile with no direct notification to Father.
4. This Court finds that Mother shall immediately take down the minor child's Our Family Wizard profile and shall provide all information in and on the minor child's profile directly to Father. Mother shall cease and desist from this type of indirect communication with Father immediately.

VI. PARENTS RESTRICTED AGAINST
PHYSICAL AND VERBAL ALTERCATIONS

a. The Court finds that_ the parties are bound by this Court's Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, page 4 paragraph A, of Judge Brown's Standard Visitation, Guidelines and Restraining Orders which states, as follows, "All parties are restrained against having any form of physical or verbal altercation or allowing another to do so in front of the children."

b. Father alleges as to the Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, page 4 paragraph A, that Mother ordered her family members to "get the hell out" of her house on Christmas Day in the presence of the minor child. Mother admits this in her book and offers no defense. The Court finds that Mother willfully violated this Court's order by her admitted actions on Christmas Day in her home when she ordered her family members to "get the hell out" of her house in the presence of the minor child. The Court finds, beyond a reasonable doubt, that Mother is in willful criminal contempt of this Court's order and she shall be fined the sum of \$500.00, which shall be paid directly to the Greenville County Clerk of Court within five (5) days of the filing of this order.

VII. MOTHER'S BOOK DEROGATORY
COMMENTS:

a. The Court finds that the parties are bound by this Court's Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, page 4, paragraph C, of Judge Brown's Standard Visitation, Guidelines and Restraining Orders, which states as follows: *"All parties are restrained against the use of profanity or making any derogatory comments about or toward the other party or allowing anyone to do so in front of the child or in any manner whereby the child might learn of same."*

b. MORAL AND SAFE ENVIRONMENT: The Court finds that the parties are bound by this Court's Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, page 4, paragraph F, of Judge Brown's Standard Visitation, Guidelines and Restraining Orders which states as follows: *"All parties are required to keep the child in a moral and safe environment at all times."*

c. NO DETRIMENTAL CONDUCT TOWARDS CHILD: The Court finds that the parties are bound by this Court's Amended Supplemental Final Order and Divorce Decree filed on October 12, 2015, page 4, paragraph I, of Judge Brown's Standard Visitation, Guidelines and Restraining Orders, which states as follows: *"All parties are restrained against conduct detrimental to the child of any particular nature relating to the particular needs of a given child such as not smoking around a child who is asthmatic."*

d. NO AGE INAPPROPRIATE MATERIAL FOR CHILDREN: The Court finds the parties are bound by this Court's Amended Supplemental Final Order and

Divorce Decree filed on October 12, 2015, page 4, paragraph L, of Judge Brown's Standard Visitation, Guidelines and Restraining Orders as follows: *"All parties are restricted against allowing the child to see or be exposed to age-inappropriate movies, computer access or websites, games or other such material or forms of entertainment and shall take all reasonable precautions against the same. In no case shall the children be exposed to any X-rated or pornographic material or R-rated movies. The parents may use discretion as to children sixteen (16) and over as to R-rated movies but if either parents' objects, the child shall not be exposed to the R-rated movie."*

e. The Court finds that Mother wrote and published a book on April 27, 2019 entitled *Soul Pieces: Memoirs of Self-discovery After Domestic Violence and Divorce* in which Mother details the circumstances and events surrounding Mother's marriage and divorce from the Father, including Mother's claims of physical violence by Father, alleged rape by Father, alleged emotional and mental abuse by Father, and the extensive manipulation that she alleges she suffered at the hands of Father during their marriage, among other unsubstantiated salacious and derogatory allegations. Mother's book is sold on Amazon, in Target stores, and in Barnes and Noble stores, where Mother had a book signing that enabled Father to purchase an autographed copy that he entered into evidence. Mother's book is reviewed on <https://www.goodreads.com>. Mother also promotes her book on her personal website, *Piece to Peace*, at <https://amikatclark.com>, and her Facebook Page. Mother testified that she has become an ambassador

at Safe Harbor, which is a private 501(c)3 non-profit organization that offers a continuum of services for survivors of domestic violence and their children in Greenville, Anderson, Pickens and Oconee Counties, where she also promotes her book. Mother has posted several blogs on the Safe Harbor blog cite/website about being a survivor of domestic violence, at <https://www.safeharborsc.org>. Mother has been interviewed on WSPA local television regarding, "The silent victims of Covid-19 trapped in their homes," which Safe Harbor posted to their Facebook page and encouraged their followers to watch. Mother also testified that she counsels local survivors of domestic violence.

f. Mother does not argue in her defense that the book is not a violation of the nondisparagement clause contained in the parties' Final Order. Mother's only defense, asserted for the first time at trial, is that the writing and publishing of her book should be, and is, protected by her First Amendment right to freedom of speech. Specifically, Mother argues that the restraining order to which she and the Father are both bound, "All parties are restrained against the use of profanity or making any derogatory comments about or toward the other party or allowing anyone to do so in front of the child or in any manner whereby the child might learn of same," is a prior restraint on her free speech that is not narrowly tailored to meet a compelling state interest and is therefore unconstitutional.

g. Mother further asserts in her defense that the book is a "personal diary of sorts" and that Father

presented no evidence that Mother has ever discussed the book with the minor child, exposed the minor child to her book in general, or made any disparaging/derogatory comments to the minor child about Father, nor has she ever allowed any others to do so. Mother also argues that there is no plausible way to know for certain when and how this child "might learn of" this book, or any disparaging comments made therein by Mother about Father, now or in the future. This Court disagrees. Specifically, this Court finds that the parties' minor child has also written a book entitled *Cube & Rebecca and the Lost Dogs*. This book, a children's book, published on December 19, 2019, is promoted on Mother's website, Piece to Peace, along with Mother's book. The website, Piece to Peace, allows one to order either, or both, books. Mother and the parties' child are pictured together, and separately, along with their books on the website. The minor child's book is promoted and sold on Amazon, Bookshop, Walmart, Barnes and Noble, Without Books, The Book Stall, Ebay, Booktopia and on Google Books. Additionally, the Mother of one of the minor child's friends testified at the contempt trial that her daughter had been invited by Mother to the minor child's birthday party in December 2019, and that Mother had a copy of the minor child's book at the birthday party. The birthday party was not at Mother's home, so Mother, or the minor child, had to have purposefully brought the book to the party with the intention of promoting the book for sale. Upon googling the book, anyone at the party would likely also find Mother's book, as the two books are promoted together on Mother's website, Piece to Peace. Additionally, Marita Collier, the

Mother of Father's older child, M.C., testified that Mother had reached out to her and provided her with a copy of her book, which she has read. Ms. Collier testified that she keeps the book at her home, where Father's older child resides, who speaks to the minor child on a regular basis. Mother's book is dedicated to the parties' minor child and contains a poem written by the minor child. With both books being promoted so publicly, and a copy given to the minor child's sister's Mother, it is certainly plausible to this Court that the minor child could, and likely has, learned of Mother's book, seen Mother's book and possibly read Mother's book, the cover of which depicts Mother with a made-up blackened eye.

h. Under the First Amendment, the government may regulate the content of constitutionally protected speech in order to promote a compelling state interest as long as it chooses the least restrictive means to further that interest. Courts in some jurisdictions have held that the state's interest in protecting the best interests of a child is a compelling interest that can justify limiting a parent's constitutional right to free speech. Some courts have consistently recognized that the best interests of the children can be made paramount to other fundamental rights. Other courts have held that to limit a parent's constitutionally protected speech, one must show actual harm to the child. This issue has not come before the appellate courts in South Carolina.

i. The term "prior restraint" is used to describe administrative and judicial orders forbidding certain communications when issued in advance of the time

that such communications are to occur. *Alexander v. United States*, 509 U.S. 544, 550 (1993), quoting *M. Nimmer, Nimmer on Freedom of Speech* § 4.03, at 4-14 (1984). Nondisparagement orders are, by definition, a prior restraint on speech. See *Care & Protection of Edith*, 421 Mass. at 705 ("An injunction that forbids speech activities is a classic example of a prior restraint"). While not all restrictions on parental speech, or prior restraints on speech, are impermissible, they can implicate the free speech clause of the First Amendment when ordered by a judge. This is clearest when the order is an injunction forbidding or compelling certain statements. It can also be the case when a court order reduces or eliminates a parent's custody or visitation rights because of a parent's speech, or when a parent is held in contempt of court, or the threatened with punishment for contempt of court, for their speech. Because the prior restraint of speech or publication carries with it an "immediate and irreversible sanction" without the benefit of the "protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted," it is the "most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546,559 (1975) ("a free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand"). As "one of the most extraordinary remedies known to our jurisprudence," *Nebraska Press Ass'n*, 427 U.S. at 562, in order for prior restraint to be potentially permissible, the harm from the unrestrained speech

must be truly exceptional. See *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931). A prior restraint is permissible only where the harm expected from the unrestrained speech is grave, the likelihood of the harm occurring without the prior restraint in place is all but certain, and there are no alternative, less restrictive means to mitigate the harm. See *Nebraska Press Ass'n*, *supra*.

j. A parents' behavior, if lawful, is an exercise of constitutional rights. Those constitutional rights extend to how a parent raises his or her child. The Fourteenth Amendment of the United States' Constitution protects against the state's taking a person's life, liberty, or property, without due process of law. This is also known as the Due Process Clause. The Supreme Court has interpreted this in the family law context to encompass "the right of the individual ... to marry, establish a home and bring up children, ... and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer vs. Nebraska*, 262 U.S. 390 (1923). And more recently, the "liberty interest. .. the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this [Supreme] Court ... It is cardinal with us that the custody, care and nurture of the child reside first in the parents ... " *Troxel v. Granville*, 530 U.S. 57 (2000) (citations omitted).¹

¹ Parvis, Lindsay) "How are Parents' constitutionally protected beliefs and behaviors weighed against children's best interests in child custody decisions?" January 23, 2020, <https://lindsayparvis.com/>.

k. This constitutional right to parent without government oversight overlaps with other constitutional interests. For example, freedom of religion and speech (First Amendment), right to travel and to live where a parent chooses (Fifth Amendment), and right to live one's life as one chooses (Fourteenth Amendment discussed above) are rights and freedoms parents have. So, a parent has constitutional rights to believe and behave as he or she chooses, provided such behaviors are legal. But these constitutional rights are not absolute and without limitation.² Parental constitutional rights take a back seat to the child's best interests if the parents' behavior itself has an adverse effect upon, or causes actual harm, to the wellbeing of the child.

l. Parents forfeit some of their First Amendment rights by divorcing, and this court has an obligation to make the best child protective decision it can, even if it means considering factors that would be constitutionally immune from penalty outside the child custody context. The best interest standard in child custody cases may generally be constitutionally adequate where the restrictions are aimed solely at protecting the other parent's rights, for instance, when a court orders a parent not to engage in nonideological badmouthing of the other parent, as in

² Parvis, Lindsay, "How are Parents' constitutionally protected beliefs and behaviors weighed against children's best interests in child custody decisions?" January 23, 2020, <https://lindsayparvis.com/>.

this case. Restricting such non-ideological speech that interferes with the children’s relationship with the other parent seems to pose little danger to free speech generally³ and restrictions on non-ideological speech (“your mother is a whore” or “your father’s new wife is a whore” or “your father is mean and abusive”) that are justified by the interest in protecting the child’s relationship with the other parent should generally be constitutional. However, a government regulation (restriction on speech) that impairs First Amendment rights must meet a higher standard of need, called a “compelling government interest,” to be constitutional. Regulation vital to the protection of public health and safety, including the regulation of violent crime, the requirements of national security and military necessity are examples of compelling governmental interests. A compelling state (or governmental) interest is an element of the strict scrutiny test by which courts exercise judicial review of legislative and executive branch enactments that affect constitutional rights, such as those found in the First Amendment. A governmental interest is compelling when it is essential or necessary rather than a matter of choice, preference, or discretion.⁴ Protecting the best interests of children, even from their own parents is an essential and necessary function of this court, and not a matter of choice, preference, or discretion.

³ Volokh, Eugene. “Parent-Child Speech and Child Custody Speech Restrictions.” *New York University Law Review* 81 (2006): 631-733, <https://www2.law.ucla.edu/volokh/custody.pdf>.

⁴ Steiner, Ronald, <https://mtsu.edu/first-amendment/article/31/compelling-state-interest>, 2009.

m. While South Carolina has not ruled on the issue of the constitutionality of prior restraints on parental speech, it appears that the most recent state court appellate case that has been decided on the issue of prior restraints on parental speech in a child custody case is the case of *Shak vs, Shak*, decided May 7, 2020 in a Massachusetts Supreme Judicial Court decision the Massachusetts court ruled out an order preventing a parent from posting about his child on social media violated the father's constitutional right to freedom of speech. In *Shak*, the parties had one child, a young toddler, and the court entered an order that prohibited both parties from posting disparaging remarks about each other and the ongoing litigation on social media. The restrictions on parental speech were as follows:

“6. Neither party shall disparage the other – nor permit any third party to do so – especially when within hearing range of the child.

“7. Neither party shall post any comments, solicitations, references or other information regarding this litigation on social media.”

The mother thereafter filed a complaint for civil contempt alleging that the father violated the order by “publish[ing] numerous [social media] posts and commentary disparaging [her] and detailing the specifics of th[e] litigation on social media.” The mother further alleged that the father had shared these posts with members of her religious community, including her rabbi and assistant rabbi, as well as

with her business clients. In the father's answer, he denied having been timely notified of the judge's order and raised the judge's lack of authority "to issue [a] prior restraint on speech."

After a second court hearing in which the Mother sought to hold Father in contempt for the above-referenced behavior, the Court declined to hold Father in contempt, found the first restrictions were unlawful prior restraints on speech in violation of father's Federal and State constitutional rights, and further refined the non-disparagement order to more narrowly tailor the restrictions to support a compelling state interest. The second set of restrictions were as follows:

"1) Until the parties have no common children under the age of [fourteen] years old, neither party shall post on any social media or other Internet medium any disparagement of the other party when such disparagement consists of comments about the party's morality, parenting of or ability to parent any minor children. Such disparagement specifically includes but is not limited to the following expressions: 'cunt', 'bitch', 'whore', 'motherfucker', and other pejoratives involving any gender. The Court acknowledges the impossibility of listing herein all of the opprobrious vitriol and their permutations within the human lexicon.

"2) While the parties have any children in common between the ages of three

and fourteen years old, neither party shall communicate, by verbal speech, written speech, or gestures any disparagement to the other party if said children are within [one hundred] feet of the communicating party or within any other farther distance where the children may be in a position to hear, read or see the disparagement."

The Massachusetts Supreme Judicial Court in *Shak*, looking only at the second set of restrictions ordered, found as follows:

Turning to the order in question, the judge properly noted that "the State has a compelling interest in protecting children from being exposed to disparagement between their parents." See *Barnes*, 461 Mass. at 656, quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607-608 (1982) (safeguarding physical and psychological well-being of minor is compelling interest). However, as important as it is to protect a child from the emotional and psychological harm that might follow from one parent's use of vulgar or disparaging words about the other, merely reciting that interest is not enough to satisfy the heavy burden of justifying a prior restraint.

Assuming for the sake of discussion that the Commonwealth's interest in protecting a child from such harm is

sufficiently weighty to justify a prior restraint in some extreme circumstances, those circumstances do not exist here. No showing was made linking communications by either parent to any grave, imminent harm to the child. The mother presented no evidence that the child has been exposed to, or would even understand, the speech that gave rise to the underlying motion for contempt. As a toddler, the child is too young to be able to either read or to access social media. The concern about potential harm that could occur if the child were to discover the speech in the future is speculative and cannot justify a prior restraint. See *Nebraska Press Ass'n*, 427 U.S. at 563. Significantly, there has been no showing of anything in this particular child's physical, mental, or emotional state that would make him especially vulnerable to experiencing the type of direct and substantial harm that might require a prior restraint if at any point he were exposed to one parent's disparaging words toward the other. Cf. *Felton v. Felton*, 383 Mass. 232, 233-234 (1981), and cases cited (reversing and remanding for further consideration probate judge's order restricting father's visitation unless he refrained from instructing children in his religion -- "harm to the child . . . should not be

simply assumed or surmised; it must be demonstrated in detail").

Because there has been no showing that any harm from the disparaging speech is either grave or certain, our analysis regarding the permissibility of the non disparagement order issued in this case ends here. We note, however, that there are measures short of prior restraint available to litigants and judges in circumstances in which disparaging speech is a concern. For example, our ruling does not impact nondisparagement agreements that parties enter into voluntarily. Depending upon the nature and severity of the speech, parents who are the target of disparaging speech may have the option of seeking a harassment prevention order pursuant to G. L. c. 258E, or filing an action seeking damages for intentional infliction of emotional distress or defamation. See *Roman v. Trustees of Tufts College*, 461 Mass. 707, 717-718 (2012), quoting *Sena v. Commonwealth*, 417 Mass. 250, 263-264 (1994) (setting forth elements of intentional infliction of emotional distress); *White v. Blue Cross & Blue Shield of Mass., Inc.*, 442 Mass. 64, 66 (2004) (setting forth elements of defamation). And certainly judges, who are guided by determining the best interests of the child, can make clear to

the parties that their behavior, including any disparaging language, will be factored into any subsequent custody determinations. See *Ardizoni v. Raymond*, 40 Mass. App. Ct. 734, 738 (1996). Of course, the best solution would be for parties in divorce and child custody matters to rise above any acrimonious feelings they may have, and, with the well-being of their children paramount in their minds, simply refrain from making disparaging remarks about one another. We recognize that the motion judge put careful thought into his orders in an effort to protect a child caught in the middle of a legal dispute who was unable to advocate for himself. However, because there was no showing of an exceptional circumstance that would justify the imposition of a prior restraint, the non-disparagement orders Issued here are unconstitutional.

n. While the Massachusetts Court in *Shak vs. Shak* vacated the nondisparagement restrictions of the trial court as being unconstitutional, this Court finds that the facts in the *Shak vs. Shak* case can be distinguished from this case. The parties' minor child is no longer a toddler, but is an intelligent, sophisticated eleven (11) year old child, who has already written her own book. The minor child is certainly capable of reading and accessing the internet where a simple "Google" search takes her directly to the Mother's website, which not only

promotes the Mother's book, but also promotes the minor child's book and image on the very same webpage. To suggest that Mother somehow does not mean for the parties' minor child to become fully aware of the book, its contents, and its vicious, cruel and unsubstantiated allegations of criminal and abusive conduct on the part of the Father, is wholly without merit. The Court finds the harm to come to the parties' minor child, when, not if, she discovers this book, is not speculative and absolutely justifies the restraining order set forth in the parties' Final Order. Further, the Court finds that the parties' minor child is experiencing mental, physical, and emotional anxiety and instability, as evidenced by Mother taking her to counseling, making her all the more vulnerable to irreparable, grave, and certain harm should the minor child discover this book, if she has not already done so. The Mother lays one hundred percent of the blame on the Father. The Mother is simply incapable of seeking the harm her ongoing actions are having on the parties' minor child.

o. Mother did not appeal the constitutionality of the restriction on speech/restraining order as to derogatory comments that the family court judge put in place in the parties' divorce order. In fact, it was never brought up by Mother in her Motion to Reconsider, or on appeal, at the time of the divorce. Mother did not assert any defense to contempt in her Return to the Contempt Complaint filed October 27, 2020. Mother did not assert a defense to her actions until she testified on January 6, 2021, and then, it was a constitutional defense, not one which excused her actions. Thus, Mother wrote and published this

book knowing full well it was a violation of the disparagement clause in the parties' divorce decree.

p. Mother testified, and asserts in her brief, that the disparagement clause as it is currently written is not the least restrictive means to achieve the compelling state interest of protecting the best interest of the minor child and thus, impermissibly infringes on her rights of free speech. In arguing this point, Mother's focus is on the part of the restraining order which states, " ... the child might learn of same." Mother argues that this clause prohibits her from ever saying anything derogatory about Father to anyone, ever, in any manner whatsoever, as the child might learn about it through snooping or through the recipient of the information. Mother then gives a hypothetical about a 16-year-old snooping in a Mother's room and finding derogatory information about Father that Mother had hidden away, arguing that the Mother would be in contempt for the child's discovery. However, in Mother's hypothetical, the Mother had an expectation of privacy that was violated by her child. That analogy simply doesn't apply here, although the typical snooping teenager illustrates why this book is so dangerous. But this child doesn't have to snoop. Mother has published a book. Mother isn't even attempting to hide this damaging and derogatory information about Father. It has been aired out in public for anyone, anywhere, including this minor child, to read. If Mother were to speak disparagingly of Father to a counselor, a pastor, a friend, a family member, a support group, or write disparagingly about Father in a diary, or an email, or

a letter, or a note, Mother would have an expectation of privacy, thus, she would not have violated the nondisparagement clause because the comments would have been made by Mother "in a manner" in which her expectations and actions were such that the minor child would not be exposed to them. By publishing a book and promoting it publicly and locally, Mother has no expectation of privacy. In fact, just the opposite is true. Mother is focusing her entire defense on "the child might learn of same," shifting blame to the actions of the minor child and to other third parties to whom Mother and the child might communicate, rather than on Mother, herself and her own actions. The appropriate focus should be on the words, "in any manner," which places the onus squarely on Mother's conduct. It was, and is, certainly foreseeable that by making disparaging and derogatory comments about Father in a published book, promoted locally alongside the minor child's book, promoted on television, on Facebook, and sold on Amazon, in Target stores and in Barnes and Noble stores, that Mother made these comments publicly, with no expectation of privacy whatsoever, and thus Mother's actions in doing so were "in a manner" in which clearly the minor child likely will learn of same, if she hasn't already.

q. Under the First Amendment, this court may regulate the content of constitutionally protected speech in order to promote a compelling state interest as long as it chooses the least restrictive means to further that interest, and the Court finds that the current disparagement clause meets that test. The court finds that if Mother's disparaging and damaging speech in the form of her book is left unchecked and

unfettered, as it has been since April 27, 2019 due to her egregious violation of this court's order in writing and publishing this book, the harm to the minor child is imminent and severe, and this court has a compelling state interest in limiting Mother's speech in the best interests of this child. This child is in counseling, suffering from anxiety, which Mother indicates is due to anxiety over divorce issues. Mother's actions have proven, unequivocally, that without court interference, she would continue to promote her book which would be detrimental to the emotional and psychological welfare of this minor child. The court finds that Mother's book is not constitutionally protected free speech.

r. The Court finds that, based upon the testimony and evidence presented by the Father and the Mother, the Mother's book, the book's cover depicting her with a blackened eye, and the contents of the book are gross violations of this Court's Order. The Court has reviewed Plaintiffs Exhibit 11, which sets forth fifty-three (53) specific excerpts from Mother's book that Father alleges violate the above provisions of the parties' Final Order, and the Court agrees that these specific provisions of the book as set out in Plaintiff's Exhibit 11 violate the restraining orders as set forth above in paragraphs VII. (a) (b) (c) and (d). Additionally, the contents of the book are exceptionally harmful to the development of the parties' minor child, T.E.C. The Court finds that Mother's book is a vicious attempt to do irreparable harm to the Father, thereby harming the parties' minor child in retaliation. The Mother's actions give this Court grave concern for the psychological safety of the minor child in Mother's care. The Court finds

the Mother to be in absolute, indisputable, willful criminal and civil contempt, beyond a reasonable doubt and by clear and convincing evidence, of this Court's Orders by her actions in writing and publishing this book.

s. Civil Contempt Sanctions: The Court finds that Mother shall be sentenced to six (6) months incarceration to commence April%, 2021. The Mother may purge herself of this incarceration by immediately taking her book, Soul Pieces: Memoirs of Self-discovery After Domestic Violence and Divorce off the market in all forms, to include, but not limited to, hard cover copies, soft cover copies, electronic, or otherwise. Mother shall cease and desist from disseminating this book in any manner whatsoever to anyone. Mother may not keep this book, rough drafts, notes, or any indicia thereof, in any form whatsoever, on the premises where the minor child resides or in any vehicle where the minor child travels. Mother shall not expose this book, or any indicia thereof, to the parties' minor child in any manner whatsoever, nor knowingly place the minor child in a position where she may learn of same. Should Mother fail to follow the Court's order in this matter, another hearing shall be held to determine whether and to what extent Mother has violated this provision, and if it is the finding of the court that she has violated this provision, she shall serve six (6) months incarceration as set forth more fully above. Should Mother become incarcerated, the minor child shall reside with Father.

t. Criminal Contempt Sanctions: As further sanctions, Mother is hereby ordered to pay a fine in

the amount of \$1,500.00, made payable to the Greenville County Clerk of Court, within ten (10) days of the issuance of this order.

VIII. NO ADVERSE CONTACT ORDER

a. Father seeks a No Adverse Restraining Order (NACO), alleging that the Mother has behaved in extremely harassing and abusive ways towards the Father. Specifically, the Father has alleged as follows:

1. On January 1, 2018 and September 6, 2018, the Mother contacted law enforcement and requested a welfare check of the Father's home after the Father was late for exchanging the minor child for visitation by less than one (1) hour.

2. The Father further alleged that he is the Vice President of 100 Black Men of Upstate SC and the "Elections of Officers for 2020" was to be held on February 20, 2020 at Michelin's Headquarters where the Mother is employed and Mother refused to lift restriction preventing the Father from coming onto Michelin property. Father testified that Mother had enabled restrictions at the time of the parties' divorce preventing him from coming on Michelin property. Based upon the testimony provided the Mother has not lifted the restrictions despite the Plaintiff requesting that she have the restrictions lifted. Father testified that

he was unable to attend the event on February 20, 2020, at Michelin Headquarters. The Court finds that Mother shall cooperate in whatever means necessary in having the Father's name removed from any restriction preventing him from coming to the Michelin campus to attend civil meetings/clubs/groups. Should the restrictions be lifted, the Father shall advise Michelin in advance of his intention to come the property and his purpose for the same.

3. The Father further alleged that that he was awarded attorney's fees and costs from the Mother pursuant to an Order from the South Carolina Court of Appeals; and as a form a harassment Mother makes a monthly payment in the amount of \$100.00 to the Father towards the attorney's fees and costs by check made payable to the Father and the Father's counsel. The Father testified that each month he must have his attorney sign the check from the Mother before he is able deposit the funds into his account. This has been ongoing since the fall of 2018. The Court finds the Mother's conduct regarding the \$100.00 payment of attorneys to the Father for the fess addressed by the Court of Appeals against her to be harassing and retaliatory in nature. The Mother's explanation that the attorney's fees

payments are made payable to both the Father and his attorney, even after requests to Mother to do otherwise, in order to have a record of payments is wholly without merit and demonstrates her passive aggressive and continued animosity towards the Father. The Defendant shall cease this behavior immediately and make all ongoing payments payable only to the Father as requested.

b. The Court finds the counsel for the Mother raised no objection to the Father's request for a NACO so long as the order was made mutual between the parties. As such, this Court hereby issues a mutual "no adverse contact order" (NACO) that shall restrain and enjoin the parties from engaging, directly or indirectly, or by conduct to third parties, in any adverse, hostile, argumentative, threatening or unpleasant conduct, or any conduct beyond or worse than that described. This NACO shall allow the parties to contact, associate and communicate with each other only so long as both parties consent to such conduct; however, either party may end any contact, association or communication if he or she deems any contact, association or communication as being adverse, hostile or unpleasant. The purpose of this NACO is to encourage positive contact and communication between the parties, and this NACO is not intended to trigger any elements of 18 USCA Section 922(g)(9) nor is it intended to rise to the level of or be considered an Order of Protection under the SC Protection from Domestic Abuse Act. Violation of

this NACO shall subject the offending party to the contempt power of the Court.

IX. RIGHT OF FIRST REFUSAL

The Court finds that Father sought a modification as to the right of first refusal set forth in the parties' Final Order and Divorce Decree filed July 15, 2015. The Court declines to modify this provision of the Final Order regarding the mutual right of first refusal; however, the inability of these parties to communicate civilly with each other renders this provision almost futile. While the minor child should be able to enjoy a few hours with the other parent while her caretaker is away, this child is robbed of the pleasure due to the ongoing hostility between the parents. The Court declines to take any action at this time other than to admonish both parties for this conduct.

X. ATTORNEY'S FEES AND COSTS

a. The Court has considered the request of attorney's fees and costs from both parties. Family courts may award attorney's fees under a compensatory theory in contempt actions. *Abate v. Abate*, 377 S.C. 548, 555, 660 S.E.2d 515, 519 (Ct.App.2008). *Simpson v. Simpson*, 404 S.C. 563, 746 S.E.2d 54 (S.C. App. 2013) at 555 n. 4, 660 S.E.2d at 519 n. 4. The court may award compensatory contempt damages to the moving party for the costs he or she incurs in forcing the non-complying party to obey the court's orders. See *Poston v. Poston*, 331 S.C. 106, 114, 502 S.E.2d 86, 90 (1998) ("In a civil contempt proceeding, a contemnor may be required to reimburse a complainant for the costs he incurred in

enforcing the court's prior order, including reasonable attorney's fees. The award of attorney's fees is not a punishment but an indemnification to the party who instituted the contempt proceeding."); *Lindsay v. Lindsay*, 328 S.C. 329, 345, 491 S.E.2d 583, 592 (Ct.App.1997) ("A compensatory contempt award may include attorney fees."). *Simpson v. Simpson*, 404 S.C. 563, 746 S.E.2d 54 (S.C. App. 2013).

b. The Court Has considered the nature, extent and difficulty of this matter. There are no more emotionally charged cases that come before this court than cases involving a minor child. The Court finds this litigation was necessary because of Mother's willful and gross contempt and non-compliance with parties' final joint custody order. The Court further finds that this litigation and the Order and Rule to Show Cause filed by the Father was necessary to protect the best interest and safety of the parties' minor child. Both attorneys presented excellent arguments and made thorough and complete presentations to the Court. This matter involved complicated fact patterns and took two (2) days of intense trial to complete. The Court finds that both attorneys presented excellent legal briefs on the constitutional defense raised by the mother. The Court finds that while Father certainly makes an adequate income, it is unjust and inequitable that his income should be spent consistently seeking enforcement of this Court's prior Orders. The Court further finds that Mother has been found in non-compliance before and has been admonished to change her behavior, all to no avail. The court finds the Mother's conduct in writing publishing and marketing her book to be unconscionable and

absolutely contrary to the safety, stability and continuing welfare of the parties' minor child. The Court finds the Mother is gainfully employed, highly intelligent and fully capable of paying attorney's fees.

c. The Court finds that Mother shall pay directly to attorney, Lynn W. Barrett, within ninety (90) days of the filing of this order, the sum Ten Thousand (\$10,000.00) Dollars towards the Father's attorney's fees and suit costs incurred during this contempt litigation.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. The Defendant Mother is hereby found in willful criminal contempt of court and shall pay fines totaling the sum of \$3,500.00 as criminal contempt sanctions directly to the Greenville County Family Court within ten (10) days of the issuance of this Order.

2. The Defendant Mother is hereby found in willful civil contempt and shall be sentenced to six (6) months incarceration at the Greenville County Detention Center, Greenville, SC, to commence April 15th, 2021. The Defendant Mother may purge herself of his incarceration by immediately taking her book, Soul Pieces: Memoirs of Self-discovery After Domestic Violence and Divorce off the market in all forms, to include, but not be limited to, hard cover copies, soft cover copies, electronic copies, or otherwise. The Defendant Mother shall cease and desist from disseminating, promoting, and/or advertising this book in any manner whatsoever to anyone. The Defendant Mother may not keep this book, rough drafts, notes, or any indicia thereof, in any form

whatsoever, on the premises where the minor child resides or in any vehicle where the minor child travels. The Defendant Mother shall not expose this book, or any indicia thereof, to the parties' minor child in any manner whatsoever, nor knowingly place the minor child in a position where she may learn of same. Should Mother fail to follow the Court's order in this matter and fail to purge herself of her sentence of incarceration, another hearing shall be held to determine whether and to what extent Mother has violated this provision, and, if it is the finding of the court that Mother has willfully violated this provision, she shall serve six (6) months incarceration as set forth more fully above. Should Mother become incarcerated, the minor child shall reside with Father.

3. The Defendant Mother shall ensure that she exchanges all medications with the Plaintiff Father, which are taken by the minor child, during Father's placement time with the minor child.

4. The Defendant Mother shall immediately take down the minor child's Our Family Wizard profile and shall provide all information in and on the minor child's profile directly to Plaintiff Father; and Defendant Mother shall cease and desist from this type of indirect communication with Plaintiff Father immediately.

5. The Defendant Mother shall make all ongoing payments for attorney's fees ordered by The South Carolina Court of Appeals payable directly to the Plaintiff Father only.

6. The Defendant Mother shall cooperate in whatever means necessary in having the Plaintiff Father's name removed from any restriction preventing him from coming to the Michelin campus to attend civil meetings/clubs/groups. Should the restrictions be lifted, the Plaintiff Father shall advise Michelin in advance of his intention to come the property and his purpose for the same.

7. The Plaintiff Father and Defendant Mother shall be bound to a mutual "no adverse contact order" (NACO) that shall restrain and enjoin the parties from engaging, directly or indirectly, or by conduct to third parties, in any adverse, hostile, argumentative, threatening or unpleasant conduct, or any conduct beyond or worse than that described. This NACO shall allow the parties to contact, associate and communicate with each other only so long as both parties consent to such conduct; however, either party may end any contact, association or communication if he or she deems any contact, association or communication as being adverse, hostile or unpleasant. The purpose of this NACO is to encourage positive contact and communication between the parties, and this NACO is not intended to trigger any elements of 18 USCA Section 922(g)(9) nor is it intended to rise to the level of or be considered an Order of Protection under the SC Protection from Domestic Abuse Act. Violation of this NACO shall subject the offending party to the contempt power of the Court.

8. The Defendant Mother shall pay directly to attorney, Lynn W. Barrett, within ninety (90) days of the issuance of this order, the sum often thousand

(\$10,000.00} dollars towards the Father's attorney's fees and suit costs incurred during this litigation.

IT IS SO ORDERED.

/s/ Rochelle Y. Conits
Rochelle Y. Conits
Family Court Judge

3/15/2021
Greenville, South Carolina

APPENDIX E - ORDER – FINAL ORDER ON
CONTEMPT ACTIONS

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE FAMILY COURT

DATED MARCH 20, 2017

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE FAMILY COURT

THIRTEENTH JUDICIAL CIRCUIT

Case No. 2013-DR-23-4824

FINAL ORDER ON CONTEMPT ACTIONS

TYRUS J. CLARK,

PLAINTIFF/RESPONDENT,

v.

AMIKA T. CLARK,

DEFENDANT/PETITIONER.

DATE OF HEARING: FEBRUARY 9, 2017

HEARING JUDGE: THE HON, ROCHELLE Y.
CONITS

PLAINTIFF/RESPONDENT'S ATTORNEY: LYNN
BARRETT, ESQ.

DEFENDANT/PETITIONER'S ATTORNEYS: LIZA
DEEVER, ESQ., JESSICA SALVINI, ESQ.

COURT REPORTER: CHERYL SMITH

This matter was scheduled before this Court for a RULE TO SHOW CAUSE HEARING on February 9th, 2017 at 9:30a.m., wherein Plaintiff/Respondent, Tyrus Clark, sought an ORDER of this Court holding the Defendant/Petitioner, Amika Clark, in contempt for failing to abide by the Court's FINAL ORDER in the matter of *Tyrus Clark vs. Amika Clark*, CASE No.: 2013-DR-23-4824, signed by the Honorable Judge David Phillips and entered by the Clerk of Court on July 15th, 2015. Similarly, Defendant/Petitioner, Amika Clark, sought an ORDER of this Court holding the Plaintiff/Respondent, Tyrus Clark, in contempt for failing to abide by the Court's July 15th, 2015 FINAL ORDER.

Present at the call of the case were the Plaintiff/Respondent, Tyrus Clark (hereinafter referred to as "Father"), and his counsel of record, Lynn Barrett, Esq., along with the Defendant/Petitioner, Amika Clark (hereinafter referred to as "Mother"), who appeared with her counsel of record, Liza Deever, Esq.

Based on the testimony of the parties, along with the pleadings, FINAL ORDER, and all evidence presented at trial by each party, this Court makes the

following findings of fact and conclusions of law and issues this ORDER accordingly.

ORDER

I. FATHER'S CONTEMPT ACTION AGAINST MOTHER:

1. As to the allegation that Mother willfully violated the terms and provisions of the parties' FINAL ORDER by refusing to allow Father to visit with the minor child during his scheduled visitation period on January 22, 2016, at 6:00p.m., this Court finds that Mother violated the visitation provision of the parties' FINAL ORDER, but that this violation was non-willful and therefore the Court declines to hold Mother in Contempt.

2. As to the allegation that Mother willfully violated the terms and provisions of the parties' FINAL ORDER by refusing to allow Father to contact the minor child due to serving a Trespass Notice on Father, this Court declines to hold Mother in Contempt.

3. As to the allegation that Mother willfully violated the terms and provisions of the parties' FINAL ORDER by failing to include complete information regarding Father's contact information on the minor child's medical and educational forms/applications, this Court declines to find Mother in Contempt, but finds that Mother is in willful non-compliance of her obligations to provide complete information regarding the Father's contact information on the minor child's medical and

educational forms/applications. In the future, should Mother fill out any paperwork, forms or applications on behalf of the minor child for any reason, including, but not limited to, extracurricular activities, school, medical, dental, church, and the like, Mother shall completely and thoroughly fill out any and all such paperwork, fully listing Father's name, address, phone number, email address and any other contact information the same as she would list for herself, such that the facility or organization will be able to contact Father and provide information to him on the child's behalf, and such that Father will have full access to contact such entities and individuals.

4. As to the allegation that Mother willfully violated the terms and provisions of the parties' FINAL ORDER by violating the "CONTACT BETWEEN THE PARENTS" provision of the parties' FINAL ORDER, this Court declines to hold Mother in Contempt.

5. As to the allegation that Mother willfully violated the terms and provisions of the parties' FINAL ORDER by refusing to pay for life insurance premiums for a policy owned by her for which she was ordered to pay the premiums, this Court declines to hold Mother in Contempt. The court finds, however, that the refund check issued to Mother by the life insurance company in the amount of \$267.87 shall be signed over to the Father immediately. Since the hearing in this matter, Father attempted to deposit the insurance company check signed over to him by Mother, which was returned by his bank as the date was expired. Father was charged the sum of \$12.00

by his bank. Therefore, Mother shall pay Father the total sum of \$279.87 within five (5) days of the filing of this ORDER.

II. MOTHER'S CONTEMPT ACTION AGAINST FATHER:

1. As to the allegation that Father willfully violated the terms and provisions of the parties' FINAL ORDER by failing and/or refusing to allow Mother to make contact with the minor child pursuant to the telephone contact provision of the parties' FINAL ORDER, this Court declines the hold Father in Contempt.

2. As to the allegation that Father willfully violated the terms and provisions of the parties' FINAL ORDER by failing and/or refusing to allow Mother to have reasonable and private telephone contact with the minor child, this Court declines the hold Father in Contempt.

3. As to the allegation that Father willfully violated the terms and provisions of the parties' FINAL ORDER by allowing the minor child to see and/or be exposed to age inappropriate entertainment, this Court declines the hold Father in Contempt.

4. As to the allegation that Father willfully violated the terms and provisions of the parties' FINAL ORDER by behaving in a manner that is

inconsistent with good parental judgment, this Court declines to hold Father in Contempt.

5. As to the allegation that Father has willfully violated the terms and provisions of the parties' FINAL ORDER by willfully and consistently used the "OUR FAMILY WIZARD" contact portal to harass, demean, disparage and otherwise criticize Mother, this Court declines to find Father in Contempt, but finds that Father is in willful non-compliance of his obligations to use the "OUR FAMILY WIZARD" portal in a respectful and appropriate manner when communicating with Mother.

III. ATTORNEY'S FEES:

Each party shall be solely responsible for his/her own attorney's fees associated with bringing her/her own Contempt action.

NOW, THEREFORE, BASED UPON THE FOREGOING:

IT IS ORDERED, ADJUDGED AND DECREED that Mother shall hereinafter fill out any and all medical, educational, and any other forms or applications for the minor child with both parent's complete information (i.e., name, address, telephone numbers, and all other contact information, as requested on each form) and Mother shall provide all information for Father which she provides for herself on any such forms;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Father shall immediately cease using

any derogatory, degrading, and/or harassing language towards Mother on the "OUR FAMILY WIZARD" portal and Father shall hereinafter communicate in a respectful and appropriate manner when communicating with Mother;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall participate in joint counseling sessions with Ronald H. Reames beginning no later than thirty (30) days from the date this ORDER is entered by the Clerk of Court and continuing thereafter until the parties are released by the counselor. The parties shall equally divide the costs of these joint counseling sessions, 50/50;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Mother shall pay Father the total sum of \$279.87 within five (5) days of the filing of this ORDER; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall pay for his or her own attorney's fees.

AND IT IS SO ORDERED.

/s/ Rochelle Y. Conits
The Hon Judge Rochelle Y. Conits
Family Court Judge
Thirteenth Judicial Circuit

Dated: 3/20/17
Greenville, South Carolina

**APPENDIX F - ORDER – AMENDED
SUPPLEMENTAL ORDER TO FINAL ORDER AND
DIVORCE DECREE**

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE FAMILY COURT

DATED OCTOBER 6, 2015

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE FAMILY COURT

THIRTEENTH JUDICIAL CIRCUIT

Case No. 2013-DR-23-4824

**AMENDED SUPPLEMENTAL ORDER TO FINAL
ORDER AND DIVORCE DECREE**

TYRUS J. CLARK,

Plaintiff,

v.

AMIKA T. CLARK,

Defendant.

This matter came before this Court by a request of the parties that attaches and incorporates the following three (3) documents to the FINAL ORDER

AND DIVORCE DECREE in this matter, which was signed by the Honorable David E. Phillips on July 10th, 2015 and entered by the Greenville County Clerk of Court on July 15th, 2015:

- 1) **EXHIBIT "A";**
- 2) **EXHIBIT "B";**
- 3) **CHILD SUPPORT INFORMATION SHEET**

Based upon a review of the FINAL ORDER AND DIVORCE DECREE in this matter, and the parties' desire to further clarify and make complete the parties' FINAL ORDER AND DIVORCE DECREE, this Court makes the following findings of fact and conclusions of law, and issues this AMENDED SUPPLEMENTAL ORDER accordingly.

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

1. This Court has continuing jurisdiction over the parties to this action and subject matter therein, pursuant to the FINAL ORDER AND DIVORCE DECREE in this matter, which was entered by the Greenville County Clerk of Court on July 15th, 2015.
2. The attached three (3) documents identified as Amended Exhibit "A"; Exhibit "B"; and Child Support Information Sheet, are appropriate documents to attach and incorporate into the parties' FINAL ORDER AND DIVORCE DECREE, as they further clarify and make the FINAL ORDER complete.
3. Specifically, Amended Exhibit "A" sets forth the division of the parties' marital assets and debts. Pursuant to the attachment Amended Exhibit "A" to equalize the division of the parties' marital estate the

Defendant Wife shall receive the sum of \$21,440.00. which shall be transferred from the Plaintiff Husband's IBM 401k account as of October 28, 2013, plus or minus any interest gained or lost, from October 28, 2013, until the date of transfer, which shall be transferred to the Defendant Wife by Qualified Domestic Relations Order (QDRO), if necessary, the Family Court of the Thirteenth Judicial Circuit in Greenville County, South Carolina retains jurisdiction over the parties to issue such an order.

4. The Court approves and adopts the above listed changes and documents making it the Amended Supplemental Order, and hereby reaffirms in all respects.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the attached three (3) documents: Amended Exhibit "A"; Exhibit "B"; and Child Support Information Sheet, are approved, adopted and incorporated into the parties' FINAL ORDER AND DIVORCE DECREE issued by the Greenville County Clerk of Court on July 15, 2025.

2. Pursuant to the attachment Amended Exhibit "A" the parties' marital estate shall be equalized with the Defendant Wife to receive the sum of \$21,440.00, that amount shall be transferred from the Plaintiff Husband's IBM 401 k account as of October 28, 2013, plus or minus any interest gained or lost, from October 28, 2013, until the date of transfer, which shall be transferred to the Defendant Wife by Qualified Domestic Relations Order (QDRO), if

necessary, the Family Court of the Thirteenth Judicial Circuit in Greenville County, South Carolina retains jurisdiction over the parties to issue such an order.

3. The Amended Supplemental Order is for the purpose of further clarifying and making complete the Final Order and Divorce Decree, which was entered on July 15, 2015. All provisions of the July 15, 2015 Final Order and Divorce Decree not specifically modified herein by this Amended Supplemental Order, are hereby reaffirmed in all respects.

IT IS SO ORDERED

/s/ David E. Phillips
David E. Phillips
FAMILY COURT JUDGE
Tenth Judicial Circuit

This 6th day of October 2015
Anderson, South Carolina

**APPENDIX G - ORDER – SUPPLEMENTAL
ORDER TO FINAL ORDER AND DIVORCE
DECREE**

**THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE FAMILY COURT
DATED JULY 23, 2015**

**THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT**

Case No. 2013-DR-23-4824

**SUPPLEMENTAL ORDER TO FINAL ORDER AND
DIVORCE DECREE**

TYRUS J. CLARK,

Plaintiff,

v.

AMIKA T. CLARK,

Defendant.

This matter came before this Court by a request of the parties that attaches and incorporates the following three (3) documents to the FINAL ORDER

AND DIVORCE DECREE in this matter, which was signed by the Honorable David E. Phillips on July 10th, 2015 and entered by the Greenville County Clerk of Court on July 15th, 2015:

- 1) **EXHIBIT "A";**
- 2) **EXHIBIT "B";**
- 3) **CHILD SUPPORT INFORMATION SHEET**

The Plaintiff is represented by Davida Mathis, Esq. and the Defendant is represented by Liza Deever, Esq. and Jessica Salvini, Esq.

Based on a review of the FINAL ORDER AND DIVORCE DECREE in this matter, and the parties' desire to further clarify and make complete the parties' FINAL ORDER AND DIVORCE DECREE, this Court makes the following findings of fact and conclusions of law, and issues this SUPPLEMENTAL ORDER accordingly.

This Court has continuing jurisdiction over the parties to this action and subject matter therein, pursuant to the FINAL ORDER AND DIVORCE DECREE in this matter, which was entered by the Greenville County Clerk of Court on July 15th, 2015.

The attached three (3) documents: EXHIBIT "A"; EXHIBIT "B"; and CHILD SUPPORT INFORMATION SHEET, are appropriate documents to attach and incorporate into the parties' FINAL ORDER AND DIVORCE DECREE, as they further clarify and make the FINAL ORDER complete.

This SUPPLEMENTAL ORDER is for the purpose of clarifying and making complete the FINAL ORDER

AND DIVORCE DECREE, issued in this case and entered on July 15th, 2015. All provisions of the July 15th, 2015 FINAL ORDER AND DIVORCE DECREE not specifically modified herein by this SUPPLEMENTAL ORDER, are hereby reaffirmed in all respects.

Accordingly, this Court approves and adopts the above-listed changes and documents, thereby making it the SUPPLEMENTAL ORDER of this Court. It is therefore,

ORDERED, ADJUDGED AND DECREED,

1. The attached three (3) documents: EXHIBIT "A"; EXHIBIT "B"; and CHILD SUPPORT INFORMATION SHEET, are approved, adopted and incorporated into the parties' FINAL ORDER AND DIVORCE DECREE.

2. This SUPPLEMENTAL ORDER is for the purpose of further clarifying and making complete the FINAL ORDER AND DIVORCE DECREE, which was entered on July 15th, 2015. All provisions of the July 15th, 2015 FINAL ORDER AND DIVORCE DECREE not specifically modified herein by this SUPPLEMENTAL ORDER, are hereby reaffirmed in all respects.

AND IT IS SO ORDERED

/s/ David E. Phillips

FAMILY COURT JUDGE

Dated 7/23/15
Greenville, SC

APPENDIX H - ORDER
FINAL ORDER AND DIVORCE DECREE
THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE FAMILY COURT
DATED JULY 15, 2015
THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT
Case No. 2013-DR-23-4824
FINAL ORDER AND DIVORCE DECREE

TYRUS J. CLARK,

Plaintiff,

v.

AMIKA T. CLARK,

Defendant.

DATE OF HEARING: MAY 19 – 21, 2015

HEARING JUDGE: HON. DAVID E. PHILLIPS

ATTORNEY FOR PLAINTIFF: DAVIDA MATHIS,
ESQ.

ATTORNEYS FOR DEFENDANT: LIZA DEEVER,
ESQ., JESSICA SALVINI, ESQ.

GUARDIAN *AD LITEM*: MEGAN GOODWIN
BURKE, ESQ.

COURT REPORTER: JULIE A. ASHBROOK

This matter came before the Court pursuant to Plaintiff filing a SUMMONS and VERIFIED COMPLAINT on October 28th, 2013. This case came to be heard for a Final Hearing on its merits on May 19th through May 21st, 2015.

The Plaintiff, Tyrus J. Clark, is represented by Davida Mathis, Esq. and appeared at the hearing of this matter with his counsel. The Defendant, Amika T. Clark, is represented by Liza Deever, Esq. and Jessica Salvini, Esq. and also appeared at the hearing of this matter with her counsel. The Appointed Guardian *ad Litem*, Megan Goodwin Burke, Esq., was also present.

PROCEDURAL HISTORY

The parties to this action were previously before this Court in the matter of *Tyrus J. Clark vs. Amika T. Clark*, CASE NO.: 2012-DR-23-4341, which was administratively dismissed. On October 28th, 2013, the Plaintiff filed the instant action of *Tyrus J. Clark vs. Amika T. Clark*, CASE NO.: 2013-DR-23-4824, But the plaintiff did not serve the defendant with the pleadings.

On March 24th, 2014. Defendant filed an action for DIVORCE against the Plaintiff in the matter of *Amika T. Clark vs Tyrus J. Clark*, CASE NO.: 2014-DR-23-1383. Also on March 24th, 2014, an ORDER

OF PROTECTION hearing was held in Greenville County Family Court wherein Judge James F. Fraley, Jr. presided and denied Defendant's request for an ORDER OF PROTECTION against the Plaintiff. Judge Fraley, Jr. consolidated the parties' individual actions pending before this Court under the CASE NO.: 2013-DR-23-4824. On March 25th, 2014, the Plaintiff filed an AMENDED COMPLAINT and properly served the Defendant. On March 31st, 2014, an expedited Temporary Hearing was held before the Honorable Rochelle Y. Conits and a TEMPORARY ORDER was entered by the Clerk of Court on April 21st, 2014, wherein Megan Goodwin Burke, Esq. was appointed to serve as the Guardian *ad Litem* for the minor child.

July 23rd, 2014, the Defendant filed a RULE TO SHOW CAUSE against the Plaintiff alleging that Plaintiff was in CONTEMPT for various violations of the parties' TEMPORARY ORDER. On August 27th, 2014, the Plaintiff filed a RETURN TO RULE AND COUNTER-CONTEMPT against the Defendant, alleging that Defendant was in CONTEMPT for various violations of the parties' TEMPORARY ORDER. The parties' respective RULE TO SHOW CAUSE hearings were scheduled to be heard on September 5th, 2014, but were continued at the request of both parties, in order to allow the parties to attend formal mediation and possibly reach a final agreement as to all contested issues.

On October 17th, 2014 the Guardian *ad Litem* filed an INTERIM MEDIATION REPORT and circulated the same to counsel. On October 30th, 2014, Plaintiff filed a CONSENT ORDER TO SUBSTITUTE

ATTORNEY FOR THE PLAINTIFF, thereby relieving Adam Fisher, Esq. as his attorney and substituting Davida Mathis, Esq. as Plaintiffs' attorney of record. On April 28th, 2015, the Defendant filed an ANSWER & COUNTERCLAIM TO AMENDED COMPLAINT, properly served, the Plaintiff and the Defendant waived any requirement for a responsive pleading thereto from the Plaintiff. On May 1st 2015, the Defendant filed an EXPEDITED MOTION TO COMPEL DISCOVERY and timely served the Plaintiff with the same. On May 7th, 2015, the Guardian *ad Litem* filed a FINAL REPORT and circulated the same to counsel.

At the call of the case, the parties, by and through their respective counsel advised this Court they had reached a partial agreement resolving the issue of the equitable distribution of marital assets and debts raised by the parties' respective pleadings, as well as the parties respective pending CONTEMPT actions against each other. The parties now desire this Court to review and approve their partial agreement, incorporating the terms and provisions thereof into this Court's FINAL ORDER issued herein. Further, the parties requested that this Court hold a contested hearing, a final trial, as to the six (6) remaining issues which are as follows:

- (1) Grounds for Divorce;**
- (2) Custody;**
- (3) Visitation;**
- (4) Child Support;**
- (5) Attorney's Fees ;[as to DEFENDANT'S MOTION TO COMPEL DISCOVERY]; and**

(6) Attorney's Fees [as to litigating the contested issues].

Further, the Defendant orally moved to amend her pleadings to seeking the right to resume the use of her maiden name, Amika Telesse Spears. The Plaintiff did not object and the Defendant's motion was granted. The parties also made a joint motion, that in the event this Court found that neither party met the standard of proof necessary for a fault-based DIVORCE, that the Court grant the parties a DIVORCE on the grounds of their continuous separation for more than one year, without cohabitation and/or reconciliation. The Court also granted this joint motion.

This Court has carefully reviewed and considered the pleadings and file herein. The Court has also considered the FINANCIAL DECLARATIONS filed by the parties. The Court has also considered the testimony of the parties and their respective witnesses, as well as the representations made by counsel. Finally, the Court has considered the terms of the parties' agreement, which are more fully set forth herein below. Based thereon, this Court makes the following FINDINGS OF SALIENT FACT AND CONCLUSIONS OF LAW and issues this FINAL ORDER accordingly.

JURISDICTION AND VENUE

At the time of the filing of this action, the Plaintiff and Defendant were both citizens and residents of Greenville County, South Carolina and had been for more than one (1) year prior to the commencement of this action. Further, the parties last lived together as

Wife and Husband in Greenville County, South Carolina. This is the Court of proper jurisdiction and venue.

The parties were lawfully married to one another on September 16, 2006, in Mount Pleasant, North Carolina. As a result of the parties' marriage, they had one child, a daughter, T.E.C. (born in 2009). No other children were born of this marriage and none are expected.

This action is brought pursuant to the laws of the State of South Carolina. I find that the issues raised in Plaintiff's AMENDED COMPLAINT and the Defendant's ANSWER & COUNTERCLAIM (to Plaintiff's AMENDED COMPLAINT) are within the exclusive jurisdiction of this Court. This Court has personal and subject matter jurisdiction and Greenville County Family Court is the proper venue for this action.

Both parties filed FINANCIAL DECLARATIONS pursuant to the SOUTH CAROLINA FAMILY COURT RULES. The parties' FINANCIAL DECLARATIONS reflect each party's current and reasonably anticipated income and expenses.

PARTIAL AGREEMENT

I find that the parties have reached an agreement, in part, resolving some of the issues raised by the pleadings in this action, and more specifically, the following equitable distribution/division of marital assets and debts, award of each party's separate property, treatment of life insurance policies, alimony, and the parties' respective pending CONTEMPT actions against each other. The parties

have requested that this Court review, approve, adopt and incorporate the terms of their agreement, which are more fully set forth herein below.

With respect to the parties' AGREEMENT, I find as follows:

Settlements between litigants are encouraged. In determining whether or not to approve a settlement agreement the Court must find 1.) the existence of an agreement; 2.) the agreement was entered into freely and voluntarily; 3.) the agreement is fair and equitable from a procedural and substantive standpoint; and 4.) the agreement is in the best interests of the parties' minor child(ren).

A settlement agreement (hereinafter "AGREEMENT") exists between the parties. This AGREEMENT, which was presented in detail to the Court, in the presence of the parties by the parties' counsel, and put on the record at the time of trial, is set forth below. This AGREEMENT contains the parties' entire AGREEMENT, and the parties understand that the AGREEMENT is a full and final AGREEMENT of all the issues arising out of this action, saving and excepting the issues identified herein above as contested [*i.e.*, custody, visitation, child support and attorney's fees].

There is no indication that either party was forced or under duress or coerced at the time they entered into the AGREEMENT or at the time the AGREEMENT was presented to the Court for approval. Each party represented that he or she entered into the AGREEMENT and attended the hearing free from any mind altering and/or judgment impairing

substances and each fully understood the Court proceedings. Therefore, I find that the AGREEMENT was entered into freely and voluntarily.

The parties negotiated and entered into the AGREEMENT with the benefit and advice of their independent, experienced counsel. The parties expressed satisfaction with the representation provided to him/her by his/her attorney. The parties represented to the Court familiarity with the assets, debts, income, and expenses of the order. Thus, each entered into the AGREEMENT from an informed perspective.

Substantively, the AGREEMENT reflects the resolution of legal issues, which are within the range of fairness given this Court's experience. The AGREEMENT is the product of compromise and negotiation. Upon review of the applicable case law, the parties' AGREEMENT is fair and equitable. As the parties directly affected by the AGREEMENT, the Plaintiff and Defendant are in a better position to judge the fairness of the AGREEMENT than anyone else. Therefore, I find that the AGREEMENT is fair and equitable from a procedural and substantive standpoint.

The parties' agreement, which is more fully set forth herein below, shall be and is hereby approved, adopted, incorporated into, merged with, integrated with, and made the FINAL ORDER in this action.

TERMS OF THE AGREEMENT

The terms of the parties' AGREEMENT are as follows:

1. EQUITABLE DISTRIBUTION OF THE PARTIES' ASSETS AND DEBTS:

The parties shall equally divide, 50/50, all of the assets and debts, as listed on the chart entitled "CLARK VS. CLARK COMPARATIVE ASSETS/DEBTS LIST," which lists all of the parties' assets (retirement accounts, stocks, real estate, vehicles, personal property, furnishings, bank accounts) and debts (credit cards and 401k loans), a draft of which was submitted to the Court at the time of trial. At the time of trial, the Plaintiff was ordered to provide financial statements, from the date of filing this action for 2 accounts listed on the "CLARK VS. CLARK COMPARATIVE ASSETS/DEBTS LIST," for a Wells Fargo Bank Account ending in xx-5999 and a Wells Fargo Bank Account ending in xx-9272. Plaintiff timely provided the same to Defendant's counsel, post-trial. The parties' EQUITABLE APPORTIONMENT WORKSHEET, attached hereto as **EXHIBIT A**, and incorporated herein by reference, reflects an overall difference between the Plaintiff and Defendant, in terms of an equitable distribution, in the amount of \$25,272.00. As such, the Defendant shall be entitled to a QUALIFIED DOMESTIC RELATIONS ORDER [QDRO] to effectuate the transfer of \$25,272.00 from Plaintiff's retirement account, and the parties shall equally split 50/50, the cost of preparation of the QDRO by an attorney of Defendant's choosing. The parties are required to effectuate any and all documents necessary to complete the QDRO, including but not limited to, providing any and all documentation and relevant information that may be required.

2. DIVISION OF EQUITY FROM THE SALE OF THE FORMER MARITAL RESIDENCE:

The parties shall equally split, 50/50, any and all proceeds from the sale of the former marital residence, located at 9 Roanoke Hills Court in Simpsonville, South Carolina. On the date of the FINAL ORDER is signed and entered by the Greenville County Clerk of Court, or immediately thereafter, the closing attorney to that real estate transaction, Wendell L. Hawkins, Esq., shall issue two (2) checks: one (1) check for the Plaintiff, for an amount equal to 50% of the proceeds from the sale of the former marital residence; Plaintiff's check shall be made payable to the law firm of Davida Mathis, Esq. and immediately delivered to Ms. Mathis' office, to be held in trust for the Plaintiff; and one (1) check for the Defendant, in an amount equal to 50% of the proceeds from the sale of the former marital residence; Defendant's check shall be made payable to the law firm of Salvini & Bennett, LLC and immediately delivered to Ms. Deever's office, to be held in trust for the Defendant.

3. PAYMENT BY PLAINTIFF TO DEFENDANT FOR HOUSEHOLD FURNISHINGS:

Each party shall have sole use, possession and ownership of any and all household furnishings and appliances currently in his or her possession. To "offset" the value of household furnishings and appliances in Plaintiff's possession, Plaintiff shall pay Defendant the amount of three thousand dollars (\$3,000.00) and such money shall be paid by Plaintiff in the form of a cashier's check, made out to "Amika

T. Clark,” and the cashier’s check shall be presented to Defendant’s attorney’s office within 24-hours of the FINAL ORDER being signed by the Judge and entered by the Greenville County Clerk of Court.

4. MARITAL PROPERTY – PORSCHE, GMC TERRAIN & 12-FT. COVERED TRAILER:

Plaintiff shall have sole use, possession and ownership of the 2004 Porsche Cayenne and 12-foot covered trailer, and the Plaintiff shall be solely liable for any and all expenses associated therewith, including any liens, insurance, taxes and maintenance thereon. Plaintiff shall do all things execute all documents necessary to remove the Defendant’s name from the 2004 Porsche Cayenne and 12-foot covered trailer within thirty (30) days of the date of this FINAL ORDER is signed and entered by the Clerk of Court. Defendant shall have sole use, possession and ownership of the 2012 GMC Terrain, and the Defendant shall be solely liable for any and all expenses associated therewith, including any liens, insurance, taxes and maintenance thereon.

5. EACH PARTY’S SEPARATE PROPERTY—VEHICLES:

Plaintiff has a pre-marital vehicle, a 1999 Chevy Tahoe, and Plaintiff shall be entitled to the sole use and ownership of this vehicle as his separate property. Defendant has a pre-marital vehicle, a 2000 Acura TL, and Defendant shall be entitled to the sole use and ownership of this vehicle as her separate property.

6. DEFENDANT'S SEPARATE PERSONAL PROPERTY LIST:

Defendant gave Plaintiff a list of separate personal property in Plaintiff's possession that she wanted returned to her. Plaintiff agreed to return the listed personal property to Defendant. During the course of the trial, Plaintiff returned all items listed, except for the following: Defendant's collectable black Santas, missing tiers from a metal cupcake stand and a pink baby quilt. Plaintiff agreed to search in good faith for those remaining items and immediately return the same to Defendant, if found.

7. PAYMENT OF FEDERAL AND STATE TAXES:

Plaintiff is solely liable for any and all taxes owed by him for State and Federal Taxes.

8. DISMISSAL OF CONTEMPT ACTIONS:

The parties' respective CONTEMPT ACTIONS against each other shall be dismissed with prejudice.

9. LIFE INSURANCE:

From the date the FINAL ORDER is signed by the Judge and entered by the Greenville County Clerk of Court, each party shall thereafter be solely responsible for their own life insurance policy(ies) which insure their own life; they shall each be responsible for the monthly premiums thereon (if they elect to continue their life insurance coverage); and each party shall be entitled to immediately change any and all beneficiaries listed thereon.

10. WAIVER OF ALIMONY:

Both parties hereby forever waive their right to alimony, if any.

11. ATTORNEY'S FEES AS TO THE AGREEMENT ISSUES:

As to the specific issues addressed in this AGREEMENT, each party shall pay their own attorney fees and expenses related thereto.

CONTESTED ISSUES

After considering the testimony of the parties, the Guardian *ad Litem* and the parties' witnesses, as well as the evidence, applicable case law, and the EXHIBITS presented at trial pertaining to the contested issues, this Court makes the following findings of fact and conclusions of law and issues this FINAL ORDER as follows.

1. GROUNDS FOR DIVORCE:

The parties have requested this Court make a determination as to the grounds for their DIVORCE. Both the Plaintiff and the Defendant, through their respective pleadings, sought a DIVORCE from each other based on the alleged physical abuse of the other party. The parties testified that they have been separated from one another since March of 2014, for more than one year, and that they have not cohabitated and/or reconciled since the date of their separation. Testimony was given by both parties that there has been a "NO CONTACT ORDER" in place between the parties since March of 2013, as a result of the CDV action (which is still pending) against the Defendant, and the parties have been prohibited from

contacting one another since that time. While the “NO CONTACT ORDER” was not submitted as evidence at trial, counsel for both parties, as well as the Guardian *ad Litem*, confirmed the existence thereof. I find, after due inquiry, that there is no possibility of reconciliation between the parties and that further efforts in that regard would be unavailing. I further find that while there was testimony given as to alleged physical abuse by both parties, and a police call log evidencing numerous 911 calls was introduced as evidence of frequent domestic disputes between the parties over the course of recent years, neither party has met the burden of proof necessary for a fault-based DIVORCE on the grounds of physical abuse. Based thereon, this Court grants the Plaintiff’s request for a no-fault DIVORCE from the Defendant on the grounds of the parties’ continuous separation from one another for more than one (1) year, without cohabitation and/or reconciliation.

2. CUSTODY AND PLACEMENT:

The parties have requested this Court make a determination as to custody and placement as to their minor child, T.E.C. This Court reviewed and considered the following applicable statutory and case law in making its determination as to custody and visitation in this matter. In 1996, the Legislature amended the statute governing the family court’s jurisdiction to specifically grant the family court the exclusive jurisdiction “[t]o order joint or divide custody where the court finds it is in the best interests of the child.” S.C. CODE ANN. §63-3-530(A)(42). Section 63-15-20 S.C. CODE ANN. (2012) requires

the following: (A) The court shall make the final custody determination in the best interest of the child based upon the evidence presented. (B) The court may award joint custody to both parents, or sole custody to either parent. (C) If custody is contested, or if either parent seeks an award of joint custody, the court shall consider all custody options, including, but not limited to, joint custody, and in its final order, the court shall state its determination as to custody and shall state its reasoning for that decision. (D) Notwithstanding the custody determination, the court may allocate parenting time in the best interest of the child. The controlling factor in a custody case is the best interest of the child, *e. g.*, *PATEL V. PATEL*, 347 S.C. 281,555 S.E.2d 386 (2001). Moreover, in making custody decisions [354 S.C. 125] “the totality of the circumstances peculiar to each case constitutes the only scale upon which the ultimate decision can be weighed.” *PARRIS V. PARRIS*, 319 S.C. 308, 310, 460 S.E.2d 571, 572 (1995) (*emphasis added*).

Numerous South Carolina appellate court opinions have addressed joint or divided custody. Each of these cases predate the Legislature’s enactment of §63-15-230 S.C. CODE ANN. (2012). The South Carolina Supreme Court has stated that “[d]ivided custody is usually harmful to and not conducive to the best interest and welfare of the children.” *MIXSON V. MIXSON*, 253 S.C. 436, 446, 171 S.E.2d 581M 586 (1969). Therefore, only under “exceptional circumstances” should joint custody be ordered. *Id.* At 447, 171 S.E.2d at 586; see also *COURIE V. COURIE*, 288 S.C. 163, 168, 341 S.E.2d 646, 649 (Ct. App. 1986)

“Divided custody is avoided if at all possible, and will be approved only under exceptional circumstances.”). The South Carolina Supreme Court has held that §63-3-530(A)(42) [formally codified as §20-7-420(42)] did not change the law in this State that, generally, joint custody is disfavored. *SCOTT V. SCOTT*, 354 S.C. 118, 579 S.E.2d 620. In *SCOTT V. SCOTT*, the South Carolina Supreme Court noted that although joint custody is generally disfavored, the focus nevertheless remains on the best interest of the child. *Id.* at 354 S.C. 125. In *SCOTT*, the Supreme Court approved joint custody under the circumstances of that case and noted that the family court fashioned its ruling such that the child would change placement approximately every four weeks. The South Carolina Court of Appeals has recently recited that our courts generally disfavor joint custody since, ordinarily, it is not conducive to the best interest and welfare of a child to be shuttled back and forth in alternate brief periods between parents. Further, our courts are particularly reluctant to award joint custody between estranged and quarrelsome parents. *LEWIS V. LEWIS*, 400 S.C. 354, 734 S.E.2d 322, 328-329 (Ct.App.2012). In *LEWIS*, the Court of Appeals quoted the following language from precedent, “Absent exceptional circumstances, the law regards joint custody as typically harmful to the children and not in their best interests.” *SPREEUW V. BARKER*, 385 S.C. 45,61 682 S.E.2d 843, 851 (Ct.App.2009). In *STANTON V. STANTON*, 326 S.C. 566, 484 S.E.2d 875 (Ct. App. 1997), the Court of Appeals reversed the family court’s order granting week-to-week visitation for a special needs child.

After consideration of all of the witnesses' testimony, filed pleadings, and evidence presented by the parties at trial, this Court finds the following: Plaintiff and Defendant have had week to week placement of T.E.C. under the terms of a TEMPORARY ORDER of this Court for approximately fourteen (14) months, at the time of trial. Plaintiff, Defendant, the Guardian *ad Litem*, and Linda Hutton (the child's counselor), all opined that the child was doing well under the current placement schedule. Two of the child's teachers at PARK PLACE testified. Each teacher testified that T.E.C. is a wonderful, bright, and happy child who is doing well in school there. Each teacher further testified that both parents have regularly visited T.E.C. at the school over the last year.

Linda Hutton, the child's counselor, testified as an expert witness at the trial. She declared that she has no concerns with the parenting of either parent and that each of their parenting styles were within normal limits. Ms. Hutton opined that T.E.C. is doing so well at this time that she does not need ongoing therapy; however, Ms. Hutton testified that she did not know how a change in the custody arrangement would affect T.E.C.

Both Plaintiff and Defendant are very involved with T.E.C. It is clear to this Court that each of them loves T.E.C. and that T.E.C. loves and is bonded with each of them. The parties live a relatively short distance from one another, as of the date of trial.

Both Plaintiff and Defendant submitted to psychological evaluations by Dr. Luther Diehl, which

identified each of them as having narcissistic personality features.

Plaintiff and Defendant focused much of their testimony on allegations of domestic disputes and alleged domestic violence that occurred during the course of their marriage. Defendant called the police to the residence numerous times during the marriage; however, Plaintiff was never charged with a crime. Plaintiff called the police to the residence in March of 2014 which resulted in Defendant being charged with criminal domestic violence. That charge remains pending at the date of this final hearing. I have considered the voluminous testimony offered on these matters and find on the whole that Plaintiff and Defendant have each exaggerated and overstated the misconduct on the part of the other in these instances and understated his/her own responsibility for causing these events to take place. Neither Plaintiff nor Defendant has any concern that T.E.C. would be unsafe or at an increased risk of harm while in the care of the other parent. What is clear from the testimony about these domestic disputes is that, during much of the marriage, Plaintiff and Defendant have failed to engage in meaningful two-way communication where they not only talk but also listen to each other.

Defendant has concerns about Plaintiff leaving T.E.C. in the care of Plaintiff's mother Joyce Clark. Joyce Clark suffers from schizophrenia and receives shots every two weeks for this mental illness. There was some controversy as to whether and to what extent Joyce Clark had cared for T.E.C. alone during the

pendency of this action. Regardless, I find T.E.C. should not be left in the care of Joyce Clark without Plaintiff's direct supervision.

Plaintiff testified he is able to control his work-related travel on his current job such that he can arrange to travel during times when he does not have placement of T.E.C. Defendant testified that travel is not a major requirement of her job and that she adjusted her work schedule on alternating Fridays, to be able to spend more time with T.E.C. immediately prior to T.E.C. returning to the care of the Plaintiff for "his" week.

The parties disputed which of them served as the primary caregiver for T.E.C. during the course of the parties' marriage prior to their separation. I find based upon the record before me that Defendant provided most of the "hands on" care for T.E.C. during the course of the marriage. It is clear that Plaintiff's job with IBM required substantially more travel than Defendant's job. Additionally, Plaintiff was required to spend a significant amount of time on work-related matters when he was at home. Plaintiff no longer works for IBM, and works from home on his new job. Plaintiff was clearly familiar with T.E.C.'s teachers at PARK PLACE; however, he was unable to provide the name of T.E.C.'s dentist. Despite being unable to provide this information when questioned on cross-examination, I find Plaintiff has been very involved with T.E.C. both before this action and during its pendency, but not quite as much so as the Defendant.

The greatest concern this Court has with the parenting of Plaintiff and Defendant is that they are unable to meaningfully communicate with one another. The testimony offered by both sides in this case indicates that the parties are bound by some form of “NO CONTACT ORDER” related to the criminal domestic violence charge pending against the Defendant. (The actual bond order was not introduced in evidence, but both sides clearly acknowledge being bound by this provision.) The parties communicated during the course of this case through their attorneys and the *Guardia ad Litem*. The testimony further leads this Court to conclude that even if the parties directly communicated with one another, it is unlikely they would ever agree on many important decisions.

The totality of the record in this case causes me to conclude that exceptional circumstances exist in this case warranting joint physical custody of the parties’ minor child to continue and finding the same to be in T.E.C.’s best interest. Notable, T.E.C. is now five (5) years old and is well-adjusted to the current week-to-week placement schedule under which she has lived for the last fourteen (14) months. In spite of her parents’ inability and/or unwillingness to communicate meaningfully regarding their child, T.E.C. has flourished to such an extent that, according to her counselor, she no longer needs counseling. Additionally, the record is devoid of any evidence upon which this Court could base a finding to a reasonable degree of certainty as to how T.E.C. *might* respond, either positively or negatively, to a change in the current placement schedule. T.E.C.

attends full-time school/daycare program at PARK PLACE and will attend a different school/after-school daycare program in the fall, as she goes into kindergarten. This Court has great concern about how adjusting to a different placement schedule and a different school at nearly the same time might affect a child who is thriving under a schedule to which she has grown accustomed over the course of the last fourteen (14) months.

The totality of the record in this case causes me to conclude that although exceptional circumstances exist in this case warranting joint physical custody of T.E.C., the Defendant shall have the rights and responsibilities for major decisions concerning the child, including, but not limited to, the child's education, medical and dental care, extracurricular activities, and religious training. I find both plaintiff and Defendant to be will-intentioned, well-educated parents who have performed relatively well as parents while T.E.C. was in his/her care; however, I find that the parties' inability and/or unwillingness to meaningfully communicate with one another, make joint decision making virtually impossible. In deciding that Defendant should be the primary decision-maker for T.E.C., this Court was persuaded by the fact that Defendant has been the primary caregiver for the minor child during her life prior to the parties' separation. Additionally, Defendant was more aware of important details concerning T.E.C.'s medical and dental care than Plaintiff and at least equally involved in the other aspects of T.E.C.'s life.

a. **Regular Placement Schedule:** Based on the above facts and considerations, it is therefore ordered that Plaintiff and Defendant shall have Joint Custody of the minor child and continue to alternate placement week-to-week. Placement shall change at 6:00 p.m. each Friday, or when the minor child is released from school/daycare that day. The parties shall pick-up/drop-off the minor child at daycare (or at school, after school lets out). In the event school or daycare is closed on the day that pick-up/drop-off is scheduled to take place, the parties shall exchange the minor child at the nearest public library.

b. **Holiday Placement Schedule:** It is further ordered that the parties shall alternate holidays and other special occasions with the minor child as set forth in JUDGE BROWN'S STANDARD VISITATION SCHEDULE, PART 1 [except SECTION 1(A) and SECTION 1(C) shall not apply], which is attached hereto as **EXHIBIT B** [SECTIONS 1(A), 1(C) have been redacted] and incorporated herein by reference. At the end of these holidays and other special occasion placement periods, the minor child will return to the other parent, and placement will thereafter alternate on the following Friday, even if it means the parent only has a partial week (or even one day) before alternating placement, again. [Where JUDGE BROWN'S STANDARD VISITATION SCHEDULE, **EXHIBIT B**, which has been added to and incorporated herein as part of this FINAL ORDER, refers to either parent as "custodial" or "visiting," Plaintiff shall be substituted for "visiting" and Defendant shall be substituted for "custodial."]

c. **Summer Placement Schedule: Plaintiff** and Defendant shall alternate placement of T.E.C. during the summers, such that Plaintiff shall have placement during the month of June in odd-numbered years [*i.e.* 2017, 2019, 2021, etc.], and Defendant shall have placement during the month of July in odd-numbered years. In the even-numbered years [*i.e.* 2016, 2018, 2020, etc.], Defendant shall have placement during the month of June, and Plaintiff shall have placement during the month of July. Placement shall change at 6:00 p.m., on the last day of each month [*i.e.*, May 31st, June 30th, and July 31st]. Placement will thereafter alternate on the following Friday, even if it means the parent only has a partial week, or even one day, before alternating placement, again.

For the summer of 2015 only, Plaintiff and Defendant shall maintain the alternating week-to-week placement schedule through the month of June. The parties shall divide placement for the month of July 2015, such that T.E.C. shall be with Mother from July 1st through July 15th and T.E.C. shall be with Father from July 16th through July 31st.

d. **Contact with Minor Child:** Each party may initiate telephone contact with the minor child while the child is in the care of the other parent on the following days: Sunday, Tuesday, and Thursday from 7:00 p.m. to 7:15 p.m. This provision shall not be construed to prevent the minor child from asking to call the other parent at any other time and for a reasonable duration. The parties are encouraged, but not required, to allow the minor child to use a form of

electronic communication that allows for video and audio communication, such as FACETIME OR SKYPE, for this contact with the other parent.

e. Contact Between Parents: The parties shall use “OUR FAMILY WIZARD” [OFW] for all communications and scheduling activities for the minor child, uploading of school calendars, appointments, extracurricular events, out-of-state travel dates, and medical and school records. Any and all costs associated with the use of OFW shall be equally split between the parties, 50/50. Plaintiff and Defendant shall immediately notify the other of any emergency situation, if this can be done through OUR FAMILY WIZARD.

f. Mutual First Right of Refusal [2+ hour time period]: Both parents shall have the first right of refusal; if either parent is unable to care for the child for a period of longer than two (2) hours and said inability to care for the child during a time in which the child is not in work-related day care, the other parent shall have the right of first refusal to care for the child during that time.

g. Mutual First Right of Refusal [Work-Related Travel, Etc.]: If Plaintiff or Defendant travels for business, or any other reason, and cannot take the child physically with them on any such trip, the other parent shall be given notice and shall have the right to care for the child during the time of the other parent’s travel. Such travel shall not alter the alternating week-to-week (or holiday, summer, etc.) visitation and placement schedule.

h. Scheduling Healthcare-Related Appointments:

Defendant shall be responsible for scheduling medical, dental, vision, orthodontic, counseling and like appointments for the minor child. Defendant shall reasonably attempt to schedule those appointments in a manner that is fair and respectful of Plaintiff's time with the minor child.

i. Limits on School/Daycare Visits: Plaintiff and Defendant shall limit their visits with the minor child at the child's daycare/school [during weeks when the minor child is placed with the other parent] to two (2) visits per week.

j. Transparenting Class Ordered: Plaintiff and Defendant shall both attend a TRANSPARENTING CLASS at COMPASS OF CAROLINA within three (3) months of the FINAL ORDER being signed and entered by the Greenville County Clerk of Court. Each party shall be solely responsible for his/her own costs/expenses associated with these classes.

3. CHILD SUPPORT:

The parties have requested this Court make a determination as to child support for their minor child, T.E.C. The parties stipulated that the SOUTH CAROLINA CHILD SUPPORT GUIDELINES apply to this case. Both parties filed FINANCIAL DECLARATIONS pursuant to the SOUTH CAROLINA FAMILY COURT RULES, with the Plaintiff filing a corrected FINANCIAL DECLARATION post-trial.

Plaintiff's gross monthly income is \$13,750.00. Plaintiff shall receive credit for monthly child support he pays for his older child in the amount of \$750.00. Defendant's gross monthly income is \$6,501.88. Defendant shall receive credit for health insurance premiums paid to cover the minor child, in the amount of \$143.33 per month. Defendant shall also receive credit for paying for work-related daycare for the minor child in the amount of \$396.00 per month beginning in August 2015 when the child goes to kindergarten. One child is to be supported in this action. Neither Plaintiff nor Defendant has any other children in his/her home. Child support shall be calculated using the shared custody calculation on "WORKSHEET C." Defendant shall receive credit for 183 overnights and the Plaintiff shall receive credit for 182 overnights.

Based thereon, Plaintiff shall pay child support to the Defendant in the amount of \$690.00 per month. The first payment shall be due on or before July 1, 2015, and on or before the first of each month thereafter, until the minor child reaches the age of eighteen (18) or graduates from high school, whichever occurs later, or by further ORDER of this Court. Payments shall be made directly to the Defendant via direct deposit into her bank account; however, if the Plaintiff is ever more than five (5) days late with any payment of support, Defendant may, at her election, file an AFFIDAVIT with the Clerk of Court and all future child support payments shall be payable through the office of the Greenville County Clerk of Court with the appropriate Court collection costs and/or fees added thereto.

4. UNCOVERED (“OUT-OF-POCKET”) HEALTHCARE-RELATED EXPENSES FOR THE MINOR CHILD:

Uncovered medical dental, vision, orthodontic, counseling, and similar expenses for the minor child shall be divided *pro rata* in accordance with the SOUTH CAROLINA CHILD SUPPORT GUIDELINES. The applicable *pro rata* percentages are 66.7% for Plaintiff and 33.3% for Defendant. Defendant shall be responsible for the first \$250.00 of such uncovered expenses annually. For purposes of defining “annually,” the annual period shall correspond with the annual policy period under the insurance policy covering the minor child maintained by the Defendant. The party that pays for any such out-of-pocket healthcare-related expense for the minor child shall submit a receipt for the same, within thirty (30) days of making any such payment, to the other party via OUR FAMILY WIZARD. The other party shall have thirty (30) days from the receipt of the same (from the date it is sent to the other party via OFW) to reimburse the paying party for their respective portion of that expense.

5. CLAIMING THE MINOR CHILD ON STATE & FEDERAL TAXES:

Plaintiff and Defendant shall alternate claiming the minor child for tax purposes such that the Plaintiff shall claim the child as a dependent for tax purposes in even-numbered tax years (2016, 2018, etc.), and Defendant shall claim the child as a dependent for tax purposes in odd-numbered tax years (2017, 2019, etc.).

6. OTHER PARENTAL GUIDELINES, RIGHTS, & INSTRUCTIONS:

The following parental guidelines, rights, and instructions shall govern the parties' conduct regarding their minor child:

- A. **Telephone Contact:** Both parents shall have reasonable and at all times private telephone contact with the child and the child shall be allowed to have reasonable private contact with either parent.
- B. **Important Events:** Both parties shall timely notify the other party of any reasonably important event occurring while the child is in their care, such as, but not limited to baptisms, bar mitzvahs, sporting events, dance recitals, school plays, etc. Both parents may attend. When in doubt, the other parent shall be noticed.
- C. **Access to Records:** Both parents shall have full and complete access to all medical providers, school records, school personnel, coaches, counselors and other professionals involved the child's life and shall be allowed to discuss their child's circumstances and needs with these people. Each party shall inform the other party of the identity of such people and if not otherwise reasonably available, and how to contact such people.
- D. **Medical Emergencies:** In a medical emergency, the visiting parent may make appropriate decisions and is hereby granted authority to and shall sign appropriate documents to protect the health and welfare of the visiting child. This is

not to undermine the custodian's legal authority to make appropriate decisions. The visiting parent shall make reasonable efforts to contact the custodian but shall have the authority to act and shall not delay in protecting the child from imminent danger. Each person shall provide and sign such information and forms as required and not otherwise reasonably available to reasonably allow for the fulfillment of this ORDER. This includes, but is not limited to, such items as: insurance cards, school schedules, flight schedules, medical appointments, work schedules, prescription medications, releases of information, etc.

- E. **Failure to Pay Child Support / Denial of Visitation:** The failure to pay child support does not alter this visitation and the denial of this visitation does not alter one's duty to pay child support. (Remedies such as CONTEMPT may apply.)
- F. **Pick-up and Return of Child:** Unless otherwise specified hereinabove, the visiting parent shall pick-up and return the child to and from the custodian's residence for all periods of visitation. The custodian may not thwart/deny visitation by moving away and if the custodian moves greater than fifteen (15) miles from the location where the child lived and were being picked up, the custodian shall have the child at the old location until a Court ORDER or written agreement is obtained altering this location. (This is not a ruling as to the right or prohibition of one's right to move or relocate.)

G. **Altering Visitation:** The parents may by agreement alter visitation. However, absent a written agreement to deviate a rebuttable presumption exists that the deviation was not with the agreement of the other party.

7. RESTRAINING ORDERS:

The following parental RESTRAINING ORDERS shall govern the parties conduct regarding their minor child.

- A. All parties are restrained against having any form of physical or verbal confrontation or allowing another to do so in front of the child.
- B. All parties are restrained against excessively consuming or being under the influence of alcohol (defined the same as might apply to driving under the influence), the consumption of any illegal drug or the abuse of any prescription drug or allowing another to do so while the child is under his/her care.
- C. All parties are restrained against the use of profanity or making any derogatory comments about or toward the other party, or allowing anyone else to do so in front of the child, in any manner whereby the child might learn of the same.
- D. All parties are restrained from having the child on an overnight basis in the presence of an adult party of the opposite sex (or the same sex if the party or guest is bi-sexual or homosexual) to whom the parties are not related by blood or marriage, or any lover/paramour. Neither party shall expose the child to conditions which

imply a relationship such as a boyfriend or girlfriend, paramour/lover or some type of improper relationship while the party is still married to another person. While the parties are still engaged in marital litigation, the restriction shall be against the mere presence of any alleged paramour or one who under the circumstances may reasonably be construed as a paramour and not merely against overnight visitation. ***This RESTRAINING ORDER is preventive in nature and issued to avoid one being able to assert the other adult present, although of the opposite sexual attraction, is only a friend. To do otherwise would make it impossible to protect the child from the inappropriate conduct.***

- E. All parties are required to keep the child in a moral and safe environment at all times.
- F. All parties are required to see that the child in their care properly attend school and are not out of school in violation of any educational requirement of this State.
- G. All parties are required to see that the child in their care receive proper medical attention and appropriately take prescribed medications or reasonably necessary medical treatments and to that end shall ensure that the child in their care attend any scheduled medical appointments and shall exchange medications which are to be taken, all as might be reasonable and appropriate and in compliance with their religious beliefs, a specific court order or the law.

- H. All parties are restrained against conduct detrimental to the child of any particular nature relating to the particular needs of a given child such as not smoking around a child who is asthmatic.
- I. One party shall not schedule nor allow others to schedule elective matters to do with the child on or during the other party's time.
- J. At all times the child shall be properly supervised and not left with babysitters who are not appropriate in any manner by way of age, conduct, past history or otherwise of which parent or custodian or visiting party has knowledge, should have knowledge or may with reasonable efforts have gained knowledge.
- K. All parties are restrained against showing the child to see or be exposed to age inappropriate movies, games or other material or forms of entertainment and shall take all reasonable precautions against the same. In no case shall the child be exposed to any X-rated or pornographic material or R-rated movies. The parents may use discretion as to a child sixteen (16) and over as to R-rated movies but if either parent objects, the child shall not be exposed to the R-rated movie.

8. ATTORNEYS FEES [DEFENDANT'S EXPEDITED MOTION TO COMPEL DISCOVERY]:

The Defendant requested that this Court make a determination as to the award of attorney's fees on her EXPEDITED MOTION TO COMPEL DISCOVERY against Plaintiff. As a result of Defendant's EXPEDITED MOTION TO COMPEL

DISCOVERY against Plaintiff, Plaintiff shall pay the Defendant \$350.00 in attorney's fees within thirty (30) calendar days of the FINAL ORDER being signed and entered by the Greenville County Clerk of Court. A check from the Plaintiff for these attorney's fees shall be made payable to the law firm of Salvini & Bennett, LLC and delivered to Ms. Deever's office, to be held in trust for the Defendant.

9. ATTORNEY'S FEES & EXPENSES [CASE LITIGATION / CONTESTED ISSUES]:

The parties requested that this Court make a determination as to the award of attorney's fees as to the contested issues in this case. Plaintiff and Defendant are hereby ordered to pay his/her own attorney's fees and costs associated with this action. Both Plaintiff and Defendant are able to pay his/her own attorney's fees and costs. Additionally, the parties each obtained similarly beneficial results from the litigation of this case.

10. GUARDIAN *AD LITEM'S* FEES & EXPENSES:

The parties shall pay the Guardian *ad Litem's* fees equally, with each party being responsible for 50% of the Guardian *ad Litem's* fees incurred herein. Plaintiff owes the Guardian *ad Litem* \$2,208.00 and the Defendant owes the Guardian *ad Litem* \$2,501.00. Each party shall pay the balance owed by them directly to Megan Goodwin Burke, Esq. and such payment shall be paid within thirty (30) days of the FINAL ORDER being signed and entered by the Greenville County Clerk of Court.

11. CONTEMPT ACTIONS AND COMPLIANCE WITH FINAL ORDER PROVISIONS:

The parties acknowledge and understand that each and every provision of the FINAL ORDER is enforceable against them. The parties also acknowledge and understand that any violation of any provision of this FINAL ORDER could subject the violating party to CONTEMPT sanctions, which include: up to one (1) year in jail to coerce compliance, or six (6) months in jail to punish, up to a one thousand five hundred (\$1,500.00) dollar fine, and up to three hundred (300) hours community service. The parties acknowledge and understand that the violating party may also be required to pay the attorney's fees and costs of the party who brings the action to enforce this FINAL ORDER.

12. DEFENDANT'S RIGHT TO RESUME USE OF HER MAIDEN NAME:

The Defendant seeks an ORDER granting her the right to resume the use of her maiden name of Amika Telesse Spears. After due inquiry, this Court finds the Defendant seeks an ORDER granting her the right to resume the use of her maiden name as a result of the breakdown of her marriage and for no improper purpose. The Defendant is not on any sex offender registries nor is she listed on the DEPARTMENT OF SOCIAL SERVICES REGISTRY for abuse or neglect of a child or adult. The Defendant is not on any anti-terrorist watch lists nor has she filed for bankruptcy. The Defendant is currently charged with criminal domestic violence in South Carolina, and that case is still pending, but the Defendant has agreed to notify the solicitor of her

name change when it become effective. The Defendant is not engaging in any evasion of any party having a legal right to know of her whereabouts. Further, the Defendant is unaware of any legal actions against her, other than the CDV charge, in the name of "Amika Telesse Clark." Based thereon, this Court grants Defendant's request for an ORDER entitling her to resume the use of her maiden name: Amika Telesse Spears.

NOW, THEREFORE, BASED UPON THE FOREGOING:

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff is granted a no-fault DIVORCE on the grounds of the parties living separate and apart from one another for a period in excess of one (1) year, without cohabitation and/or reconciliation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the terms and conditions of the parties' negotiated partial AGREEMENT, which are set forth in detail herein above within the section entitled "TERMS OF AGREEMENT" and the attached **EQUITABLE APPORTIONMENT WORKSHEET [EXHIBIT A]** as set forth in detail herein above in PARAGRAPH #1, is hereby, approved, adopted, incorporated into, merged with, integrated with and made the FINAL ORDER of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall have Joint Custody of the minor child and the parties shall follow the

placement schedule and other parental requirements, which are set forth in detail herein above in **PARAGRAPH #2**, along with **EXHIBIT B** [SECTIONS 1(A), 1(C) have been redacted], is hereby, approved, adopted, incorporated into, merged with, integrated with and made the FINAL ORDER of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff shall pay child support to the Defendant in the amount of \$690.00 per month, pursuant to the requirements set forth in detail herein above in **PARAGRAPH #3**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the uncovered medical, dental, vision, orthodontic, counseling, and similar expenses for the minor child shall be divided *pro rata* in accordance with the SOUTH CAROLINA CHILD SUPPORT GUIDELINES, pursuant to the requirements set forth in detail herein above in **PARAGRAPH #4**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff and Defendant shall alternate claiming the minor child for tax purposes each year, pursuant to the requirements set forth in detail herein above in **PARAGRAPH #5**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that both parties shall abide by specific parental guidelines, rights, and instructions governing their conduct regarding their minor child,

as set forth in detail herein above in **PARAGRAPH #6.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that both parties shall abide by specific parental **RESTRAINING ORDERS** governing their conduct regarding their minor child, as set forth in detail herein above in **PARAGRAPH #7.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff shall pay attorney's fees to the Defendant as a result of her **EXPEDITED MOTION TO COMPEL DISCOVERY**, as set forth in detail herein above in **PARAGRAPH #8.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties are ordered to pay his/her own attorney's fees and costs associated with this action, as set forth in detail herein above in **PARAGRAPH #9.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall pay the Guardian *ad Litem's* fees equally, with each party being responsible for 50% of the Guardian *ad Litem's* fees incurred in this action, with the Plaintiff owing the Guardian *ad Litem* \$2,208.00 and the Defendant owing the Guardian *ad Litem* \$2,501.00, to be paid by the parties as set forth in detail herein above in **PARAGRAPH #10.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties acknowledge and understand that any violation of any provision of this

FINAL ORDER could subject the violating party to CONTEMPT sanctions, as set forth in detail herein above in **PARAGRAPH #11**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant shall have the right to resume the use of her maiden name: Amika Telesse Spears, as set forth in detail herein above in **PARAGRAPH #12**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court retains jurisdiction for purposes of enforcement of the parties' partial AGREEMENT, as well as enforcement of any and all provisions set forth in this FINAL ORDER. The parties' partial AGREEMENT and all provisions set forth in this FINAL ORDER shall be enforced by the CONTEMPT powers of the Greenville Family Court.

AND IT IS SO ORDERED.

/s/ David E. Phillips
Honorable David E. Phillips
Family Court Judge
Thirteenth Judicial Circuit

July 10, 2015
Greenville, South Carolina

APPENDIX I - ORDER – TEMPORARY ORDER
THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE FAMILY COURT
DATED APRIL 21, 2014
THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT
Case No. 2013-DR-23-4824
TEMPORARY ORDER

TYRUS J. CLARK,

Plaintiff,

v.

AMIKA T. CLARK,

Defendant.

DATE OF HEARING: MARCH 31, 2014

HEARING JUDGE: ROCHELLE Y. CONITS

ATTORNEY FOR PLAINTIFF: ADAM FISHER, JR.,
ESQ.

ATTORNEYS FOR DEFENDANT: LIZA DEEVER,
ESQ.

GUARDIAN *AD LITEM*: N/A

COURT REPORTER:

This matter is before the Court pursuant to an Order of Judge James F. Fraley, Jr. issued Friday, March 28, 2014.

Present in the Courtroom today are the Plaintiff and his attorney, Adam Fisher, Jr., Esquire, along with the Defendant and her attorney, Liza Deever, Esquire. The Court has received numerous documents from each side and has heard comments from the parties and their attorneys.

The issues before the Court today are as follows:

PLAINTIFF-FATHER'S ISSUES - from Temporary Motion filed under 2013-DR-23-4824

1. An Order granting him Primary custody of the minor child.
2. An Order granting Judge Brown's • Standard Visitation, Guidelines, and Restrictions for mother.
3. An Order for child support to be paid by mother.
4. An Order appointing a Guardian ad Litem in the event custody is contested.
5. An Order for the sale of the marital home with the proceeds of the sale being divided between the parties.

6. An Order issuing a Restraining Order preventing mother from bothering harassing, or interfering with him in anyway.
7. An Order issuing a Restraining Order preventing mother from disposing of any marital property during this litigation.
8. An Order granting Discovery in accordance with the SC Rules of Civil Procedure.
9. An Order granting him attorney's fees from mother.

PLAINTIFF-MOTHER'S ISSUES -from Expedited Motion filed under 2014-DR-23-1383

1. An Order granting her custody.
2. An Order granting father visitation.
3. An Order granting Judge Brown's parental guidelines and restraining orders.
4. An Order appointing a Guardian ad Litem if custody is contested.
5. An order for child support from father.
6. An Order allowing mother to terminate father's health insurance or to have him pay her back the cost of same.
7. An Order dividing extraordinary medicals for the minor child.
8. An Order granting mother use and possession of the marital home and its contents with father paying all costs associated with same.

9. An Order granting her use and possession of assets in her possession including her two cars.

10. An Order granting her support from father.

11. An Order requiring all life insurance policies to be maintained naming mother as beneficiary.

10. An Order granting a restraining order preventing father from bothering harassing, or interfering with her in anyway including her place of employment.

11. An Order issuing a Restraining Order preventing father from disposing of any marital property during this litigation.

12. An Order issuing a Restraining Order preventing father from incurring any debt in mother's name or jointly in both names.

13. An Order issuing a Restraining Order preventing father from making any disparaging or derogatory comments about mother to the minor child or allowing third parties to do so.

14. An Order allowing discovery.

15. An Order for attorney's fees from father.

Based on the above and a review of the file and documents submitted, I make the following findings and conclusions.

1. This court has proper jurisdiction over the parties and subject matter of these actions.

2. Both parties live in Greenville, South Carolina.

3. The parties were married on: September 16, 2006.

4. The parties are the parents of one minor child, namely: Tylar Clark, DOB: December 19, 2009, age 4.
5. That Plaintiff is also the father of one additional child, namely: Madisyn Collier-Clark, DOB: November 28, 2002, age 11, who lives in the custody of her mother in Mariposa County, Arizona.
6. That the parties separated on March 17, 2014 and have lived separate and apart since that time.
7. That the parties were before the Court on March 25, 2014 wherein Defendant-mother sought relief under a Protection from Domestic Abuse action which was dismissed and an Order issued on March 28, 2014 for further relief.
8. That this Order is a Temporary Order only.
9. That the parties are to share joint custody of the minor child.
10. That the Plaintiff-father shall return the minor child to her daycare, Park Place Children's Center on April 1, 2014.
11. That the parties will share parenting time with the minor child on a week to week basis. The week to week parenting time is to begin on Friday, April 4, 2014 when the Defendant-mother shall pickup the minor child from the day care facility where she is currently enrolled and will be responsible for her during the following week. On Friday, April 11, 2014 the Plaintiff-father will pick up the minor child from the day care facility where she is currently enrolled and will be responsible for her during that following week. This alternating weekly, or week to week,

exchange and visitation schedule shall continue until further Order of this Court.

12. That the parties are to negotiate and make special arrangements for only Thanksgiving, Christmas, and the child's birthday to ensure equal time with both parents.

13. That the Plaintiff-father is to pay for the minor child's day care tuition at Park Place Children's Center. The current amount is \$1,157.00 per month.

14. That a Guardian ad Litem is appropriate in this case. The Court appoints Megan Goodwin, Esquire to serve in this capacity. Each party is to contact her and pay her \$1,000.00 within 7 days of the date of this hearing. She is to submit to the Court for signing, a standard Supplemental Order of Guardian ad Litem listing her qualifications and duties.

15. If the Guardian ad Litem finds that counseling is appropriate and/or necessary for the minor child, the parties shall use Linda Hutton for that purpose and the parties shall equally split any and all such expenses related to the minor child's counseling sessions.

16. That Defendant-mother will maintain the current health insurance on Plaintiff-father through her employer and Plaintiff-father will reimburse her \$155.00 per month for the cost of same on or before the 1st day of each month, effective immediately. No changes shall be made to Plaintiff-father's coverage by Defendant-mother.

17. That neither party will pay child support at this time.

18. Each parent will be responsible for the ordinary expenses of the minor child when she is in their care.

19. That alimony is held in abeyance.

20. That Plaintiff-father shall have possession of the marital home and shall immediately list the property, with a reputable agent, for sale.

21. That Plaintiff-father shall be responsible for the mortgage and necessary expenses on the upkeep of the marital home and shall have it in "showing condition" and available to be shown by the realtor, at all times.

22. That both parties will cooperate in the sale process.

23. That all proceeds, after normal and required distributions, shall be held in an attorney's trust account until either a written agreement is approved or further order of this court is issued.

24. That each party will maintain and be responsible for all costs of the vehicles in their possession.

25. That both parties will maintain any current life insurance policies in effect and will make no changes to same. Plaintiff-father will be responsible for the costs of said policies currently in effect.

26. That both parties are mutually restrained from bothering, harassing, or interfering with the other party in any way.

27. That both parties are mutually restrained from disposing of any marital property during this litigation.

28. That both parties are mutually restrained from incurring any debt in other's name or jointly in both names.

29. That both parties are mutually restrained from making any disparaging or derogatory comments about the other to the minor child or allowing third parties to do so.

30. That both parties are mutually restrained from discussing any aspect of the current litigation with the minor child or in her presence.

31. All parties are restrained from having the child/children on an overnight basis in the presence of an adult party of the opposite sex (or the same sex if the party or guest is bi-sexual or homosexual) to whom the parties are not related by blood or marriage, or any lover/paramour. Neither party shall expose the child/children to conditions which imply a relationship such as a boyfriend or girlfriend, paramour /lover or some type of improper relationship while the party is still married to another person. While the parties are still engaged in marital litigation, the restriction shall be against the mere presence of any alleged paramour or one who under the circumstances may reasonably be construed-as a paramour and not merely against overnight visitation.

32. That both parties are allowed to engage in discovery according to the South Carolina Rules of Civil Procedure.

33. That both parties are to submit to forensic psychological testing and evaluation by Dr. Luther Diehl and are to contact his office for scheduling same

within 10 days of the date of this Order. Each party is to be responsible for the cost of their own testing. Dr. Diehl shall release a copy of both parties report to their attorneys and the Guardian ad Litem, but only upon completion of both evaluations.

34. That attorney's fees are held in abeyance.

35. That any other issues not herein addressed are held in abeyance.

**IT IS THEREFORE, HEREBY ORDERED
ADJUDGED AND DECREED that:**

1. The parties will share joint custody of the minor child.

2. The parties will share parenting time with the minor child on a week to week basis.

3. Plaintiff-father shall return the minor child to her daycare, Park Place Children's Center on April 1, 2014.

4. The week to week parenting time is to begin on Friday, April 4, 2014 when the Defendant-mother shall pickup the minor child from the day care facility where she is currently enrolled and will be responsible for her during the following week. On Friday, April 11, 2014 the Plaintiff-father will pick up the minor child from the day care facility where she is currently enrolled and will be responsible for her during that following week.

5. This alternating weekly, or week to week, exchange and visitation schedule shall continue until further Order of this Court.

6. The parties are to negotiate and make special arrangements for only Thanksgiving, Christmas, and the child's birthday to ensure equal time with both parents.

7. Plaintiff-father is to pay for the minor child's day care tuition at Park Place Children's Center. The current amount is \$1,157.00 per month.

8. A Guardian ad Litem is appropriate in this case. The Court appoints Megan Goodwin, Esquire to serve in this capacity.

9. Each party is to contact her and pay her \$1,000.00 within 7 days of the date of this hearing.

10. She is to submit to the Court for signing, a standard Supplemental Order of Guardian ad Litem listing her qualifications and duties.

11. If the Guardian ad Litem finds that counseling is appropriate and/or necessary for the minor child, the parties shall use Linda Hutton for that purpose and the parties shall equally split any and all such expenses related to the minor child's counseling sessions.

12. Defendant-mother will maintain the current health insurance on Plaintiff-father through her employer and Plaintiff-father will reimburse her \$155.00 per month for the cost of same on or before the 1st day of each month, effective immediately. No changes shall be made to Plaintiff-father's coverage by Defendant-mother.

13. Neither party will pay child support at this time.

14. Each parent will be responsible for the ordinary expenses of the minor child when she is in their care.

15. Alimony is held in abeyance.

16. Plaintiff-father shall have possession of the marital home and shall immediately list the property, with a reputable agent, for sale.

17. Plaintiff-father shall be responsible for the mortgage and necessary expenses on the upkeep of the marital home and shall have it in "showing condition" and available to be shown by the realtor, at all times.

18. Both parties will cooperate in the sale process.

19. All proceeds, after normal and required distributions, shall be held in an attorney's trust account until either a written agreement is approved or further order of this court is issued.

20. Each party will maintain and be responsible for all costs of the vehicles in their possession.

21. Both parties will maintain any current life insurance policies in effect and will make no changes to same. Plaintiff-father will be responsible for the costs of said policies currently in effect.

22. Both parties are mutually restrained from bothering, harassing, or interfering with the other party in any way.

23. Both parties are mutually restrained from making any disparaging or derogatory comments about the other to the minor child or allowing third parties to do so.

24. That both parties are mutually restrained from discussing any aspect of the current litigation with the minor child or in her presence.

25. All parties are restrained from having the child/children on an overnight basis in the presence of an adult party of the opposite sex (or the same sex if the party or guest is bi-sexual or homosexual) to whom the parties are not related by blood or marriage, or any lover/paramour. Neither party shall expose the child/children to conditions which imply a relationship such as a boyfriend or girlfriend, paramour /lover or some type of improper relationship while the party is still married to another person. While the parties are still engaged in marital litigation, the restriction shall be against the mere presence of any alleged paramour or one who under the circumstances may reasonably be construed-as a paramour and not merely against overnight visitation.

26. Both parties are mutually restrained from disposing of any marital property during this litigation.

27. Both parties are mutually restrained from incurring any debt in other's name or jointly in both names.

28. Both parties are mutually restrained from making any disparaging or derogatory comments about the other to the minor child or allowing third parties to do so.

29. Both parties are to submit to forensic psychological testing and evaluation by Dr. Luther

Diehl and are to contact his office for scheduling same within 10 days of the date of this Order.

30. Each party is to be responsible for the cost of their own testing.

31. Dr. Diehl shall simultaneously release a copy of both parties report to their attorneys and the Guardian ad Litem upon completion of both evaluations.

32. Both parties are allowed to engage in discovery according to the South Carolina Rules of Civil Procedure.

33. Attorney's fees are held in abeyance.

34. Any other issues not herein addressed are held in abeyance.

IT IS SO ORDERED.

/s/ Rochelle Y. Conits
Judge Rochelle Y. Conits
Family Court Judge

This 21 day of April 2014
Greenville, South Carolina

APPENDIX J - ORDER
THE SUPREME COURT OF SOUTH CAROLINA
DATED DECEMBER 16, 2025
THE SUPREME COURT OF SOUTH CAROLINA

Appellate Case No. 2025-001692

TYRUS J. CLARK,

Respondent,

v.

AMIKA T. CLARK,

Petitioner.

Dated December 16, 2025

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY /s/ Patricia Howard
CLERK

Columbia, South Carolina
December 16, 2025

cc:

Taylor M. Smith IV

Gwendolynn W. Barrett

The Honorable Jenny Abbott Kitchings