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15 **IN THE SUPREME COURT OF**
16 **THE STATE OF NEVADA**

17 MITCHELL DAVID STIPP, - -
18 Appellant,
19
20 v.
21 CHRISTINA CALDERON STIPP
22 Respondent.

SUPREME COURT CASE NO.: 57876
DISTRICT COURT CASE NO.: D38920

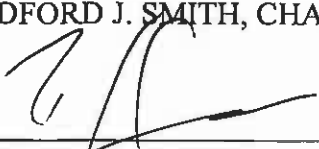
23
24 **RESPONSE TO RESPONDENT'S REPLY AND**
25 **OPPOSITION TO MOTION FOR SANCTIONS**
26

27 COMES NOW, Appellant, MITCHELL D. STIPP ("Mitchell"), by and through his attorney
28 Radford J. Smith, Esq., and hereby files the above-captioned response and opposition. This filing is

made and based upon the following points and authorities.

DATED this 2 day of June, 2011.

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I.

RESPONSE TO RESPONDENT'S REPLY

Mitchell Stipp ("Mitchell") filed his response on May 18, 2011 to the order from this Court to show cause why his appeal should not be dismissed for lack of jurisdiction. On June 1, 2011, Christina Calderon-Stipp ("Christina") filed her reply to Mitchell's response and a motion for sanctions.

Mitchell indicated in his response that he would file with this Court a copy of the written transcript from the hearing on April 12, 2011 before Judge William Potter of Department M, Eighth Judicial District Court, Clark County, State of Nevada, as soon as the transcript was available. Attached hereto as Exhibit "A" is a copy of the written transcript (the "April 12, 2011 Transcript"). Mitchell directs this Court's attention to pages 53-65 of the April 12, 2011 Transcript, which addresses the order from the hearing on December 1, 2010. The order from the hearing on December 1, 2010 is the subject of Mitchell's appeal.

Judge Potter made it clear at the hearing on April 12, 2011 the following with respect to the appealed order: (1) the order was entered by mistake (April 12, 2011 Transcript at pg. 53, lines 20-21; pg. 54, line 5); (2) Mitchell's request for sole decision-making authority over healthcare matters (or sole legal custody on such matter) was denied (April 12, 2011 Transcript at pg. 55, lines 4-11); (3)

Christina's request for an order to show cause was denied (April 12, 2011 Transcript at pg. 56, lines 5-14); (4) Mitchell was not obligated to disclose his personal tax records to Christina—only the tax records of Aquila Investments, LLC per Judge Frank Sullivan's previous orders (April 12, 2011 Transcript at pg. 57, lines 9-24; pg. 58, lines 1-10; pg. 59, lines 14-17);¹ and (5) Christina's motion to compel Mitchell to cooperate with commencing sessions with the parenting coordinator was denied (April 12, 2011 Transcript at pg. 58, lines 11-14; pg. 60, lines 1-14). Although the district court confirmed these rulings at the hearing on April 12, 2011, it recognized that it could not modify or vacate the actual order it entered because of Mitchell's current appeal; however, the district court indicated that it would address the matters (including the issue of the appointment of a parenting coordinator) pursuant to the procedure set forth in *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978). See April 12, 2011 Transcript at pgs. 60-65. Pursuant to *Huneycutt* (and NRCP 60(a)), Mitchell filed on April 20, 2011, a few short days after the hearing on April 12, 2011, an ex parte motion to correct the minutes and order from the hearing on December 1, 2010, which was attached as Exhibit "E" to Mitchell's response to this Court's order to show cause. Unfortunately, this motion still remains pending in the district court.

Mitchell has timely and properly responded to this Court's order to show cause by filing his response that clarifies for this Court that it has jurisdiction to consider Mitchell's appeal at least with respect to the district court's denial of his request to have sole decision-making authority over healthcare matters affecting the parties' minor children. For this reason alone, Mitchell's appeal should not be dismissed. However, Mitchell has respectfully requested that this Court grant him an additional 30 days to address this Court's jurisdiction with respect to the other issues he may raise on appeal (as identified

¹ Christina attaches as Exhibit "A" to her reply an order from the district court from the hearing on February 3, 2010, which confirms that Judge Sullivan did not order discovery of Mitchell's personal tax returns. Judge Sullivan reaffirmed this decision in the order from the hearing on June 22, 2010, which is attached hereto as Exhibit "B."

1 in his docketing statement) in order to provide the district court sufficient time to rule on his pending
2 motion. If this Court dismisses Mitchell's appeal, there will be harm to Mitchell (especially if the
3 district court fails to grant or even rule upon Mitchell's pending motion). However, there is no harm to
4 Christina if Mitchell's appeal remains pending while the district court considers Mitchell's motion.

5 II.

6 OPPOSITION TO MOTION FOR SANCTIONS

7
8 Christina asks this Court to sanction Mitchell under NRAP 38. NRAP 38 permits this Court to
9 impose monetary sanctions and require the "offending party" to pay such attorney fees as it deems
10 appropriate to discourage the filing of frivolous appeals. Mitchell's appeal is not frivolous. It is clear
11 from his response that his appeal may be sustained solely on the basis of the district court's denial of his
12 countermotion for sole decision-making authority over healthcare matters affecting the parties' minor
13 children. With respect to the other issues that Mitchell may raise on appeal, Mitchell believes that he
14 properly identified them in his docketing statement because the district court erred by entering the order
15 prepared by Christina's counsel (which did not accurately reflect the decisions of the district court). The
16 district court has confirmed the error on the record at the hearing on April 12, 2011; however, a motion
17 brought by Mitchell under NRCP 60(a) would not have tolled the time period for filing an appeal, and
18 there was and is no guarantee that the district court will correct the order which as currently entered
19 affects Mitchell's legal rights and obligations.
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III.

CONCLUSION

Based on the foregoing, the Nevada Supreme Court should not dismiss Mitchell's appeal for lack of jurisdiction, and Mitchell should not be sanctioned under NRAP 38.

DATED this 2 day of June, 2011.

RADFORD J. SMITH, CHARTERED



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Attorneys for Appellant Mitchell Stipp

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document described as "RESPONSE TO
RESPONDENT'S REPLY AND OPPOSITION TO MOTION FOR SANCTIONS" by mail pursuant to
NRAP 25 on this 2 day of June, 2011, to all interested parties as follows:

Patricia L. Vaccarino, Esq.
Vaccarino Law Office
8861 W. Sahara Avenue., Suite 210
Las Vegas, Nevada 89117


An employee of Radford J. Smith, Chartered

APPELLANT'S
RESPONSE/OPPOSITION
EXHIBIT "A"

1 TRANS

FILED

MAY 19 2011

COPY

2
3 EIGHTH JUDICIAL DISTRICT COURT

Alvin L. Williams
CLERK OF COURT

4 FAMILY DIVISION

5 CLARK COUNTY, NEVADA

6
7 CHRISTINA CALDERON STIPP,)

8 Plaintiff,)

9 vs.)

CASE NO. D-08-389203-Z

10 MITCHELL DAVID STIPP,)

DEPT. M

11 Defendant.)

(SEALED)

12
13 BEFORE THE HONORABLE WILLIAM POTTER
14 DISTRICT COURT JUDGE

15 TRANSCRIPT RE: MOTION

16 TUESDAY, APRIL 12, 2011

17 APPEARANCES:

18 THE PLAINTIFF:

19 FOR THE PLAINTIFF:

CHRISTINA CALDERON STIPP

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21 THE DEFENDANT:

22 FOR THE DEFENDANT:

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23
24
D-08-389203-Z STIPP v. STIPP 04/12/2011 TRANSCRIPT SEALED

VERBATIM REPORTING & TRANSCRIPTION, LLC

11115 N. La Canada, Oro Valley, Arizona 85737 (520) 861-0711

1 LAS VEGAS, NEVADA

TUESDAY, APRIL 12, 2011

2 P R O C E E D I N G S

3 (PROCEEDINGS BEGAN AT 14:47:18)

4

5 THE COURT: Okay. The parties have joint legal --

6 MS. VACCARINO: Legal --

7 THE COURT: -- custody.

8 MS. VACCARINO: -- custody.

9 THE COURT: And however that's defined is how it's
10 defined.

11 MS. VACCARINO: Okay.

12 THE COURT: Okay.

13 MS. VACCARINO: Under --

14 THE COURT: And currently under -- what's un --
15 what's on appeal I'm not going to offer --

16 MS. VACCARINO: It's on --

17 THE COURT: -- any --

18 MS. VACCARINO: -- appeal.

19 THE COURT: -- additional --

20 MS. VACCARINO: Okay. On appeal right now with our
21 Court, just for the edification, Your Honor, because I may
22 have to order this transcript and send it upstairs on my
23 motion to dismiss, or to ask that you, you know, for remand
24 under Honeycutt, whichever way you want to handle it, but

1 under -- the only issue on appeal on our case -- the biggest
2 issue on appeal on our case, Your Honor, the first appeal,
3 because two appeals --

4 THE COURT: Well, there's --

5 MS. VACCARINO: -- are pending.

6 THE COURT: -- a huge difference between only and
7 first, okay?

8 MS. VACCARINO: Okay. Your Honor, I apologize if I
9 misspoke. I'll speak more slowly. The issues pending appeal
10 are as follows. In our first appeal, the issue is whether or
11 not Judge Sullivan erred in modifying the actual time share,
12 that's physical custody issue, of the parties without an
13 evidentiary hearing in violation of McMonigle, and whether or
14 not he failed to have a mini hearing, basically, on the issue
15 under Rivero of what the actual time share was to see whether
16 or not he ever got Dad to -- you know, to 40 percent of time,
17 60 under Rivero. So those are those issues.

18 We also have that -- an issue -- a collateral issue
19 on appeal on our appeal that Christina should be awarded on
20 remand all of her fees and costs should be -- she should be
21 found as the prevailing party because Mitch on his underlying
22 motion did not prove what he alleged in his motion filed in
23 September 10 --

24 THE PETITIONER: October --

1 MS. VACCARINO: -- is --

2 THE PETITIONER: -- 29.

3 MS. VACCARINO: -- October 29 of '10, I mean of --

4 THE PETITIONER: 2009.

5 MS. VACCARINO: -- '09, he did not prove that Mom
6 was, you know, emotionally abusing or -- or harming the
7 children in any way or form.

8 A cross appeal that Mr. Stipp filed stated that he
9 -- that Judge Sullivan erred because he did not receive 50
10 percent time share. It's again a time share issue, not a
11 joint legal custody issue. And he also stated that -- that
12 the Court erred in not granting him fees and costs on his
13 motion.

14 The Supreme Court in February 2010, on the cross
15 appeal, issued an order to show cause citing that it appeared
16 that his undergoing motion, October '09, didn't request fees
17 and costs and also that he is not an aggrieved party under
18 NRAP 3A because he didn't lost time, he actually gained time,
19 so he can't appeal from that. Even if there's an error in
20 where the Court got, there's a ton of case law, as the Supreme
21 Court well knows. So that's what's going on there.

22 So none of those address joint legal custody rights
23 or issues. Now, As you know, Your Honor, or should know from
24 the file, on -- both parties submitted orders from the

1 December 1st hearing. Your December 1st hearing did not
2 change either party's status as joint legal custodians. In
3 fact, there was a -- you --

4 THE COURT: All right. Well, hold on.

5 Mr. Smith, are those the un -- the only issues that
6 are up on appeal?

7 MR. SMITH: No, Your Honor.

8 MS. VACCARINO: I didn't get to his appeal yet. I
9 was -- just did mine. Because he has one more appeal.

10 THE COURT: Well, before you start arguing your
11 motion, then --

12 MS. VACCARINO: I just --

13 THE COURT: -- let's cover what's on appeal.

14 MS. VACCARINO: The other appellate issue is he's --
15 Mr. Stipp is arguing that he needs the order corrected from
16 the January 25th, and that's a District Court issue, not a
17 Appellate Court issue, because you have to certify it as a
18 final order. Mr. Stipp filed a motion to correct that order
19 and then withdrew it and filed an appeal, and I'm arguing that
20 to the Supreme Court in a motion to dismiss.

21 The next issue we argued is that you denied him
22 certain rights by enforcing the -- the previous parenting
23 coordination order. Now, it's a red judicata issue. And even
24 -- even if you did that, Your Honor, right now you're allowed

1 to enforce the rights of joint legal custody under Mack v.
2 Manley, under Honeycutt, under Forester, under many cases that
3 state that you are with authority to enforce, just not modify,
4 the previous order you made. That is well settled Nevada
5 Supreme Court law.

6 The old law, Your Honor, back in the day when we
7 were baby attorneys, all of us, was pending appeal, don't
8 touch the case at all, you can't do anything. And that's
9 modified, and in fact, majorly so, since Mack v. Manley came
10 down, which is a 2006 decision, Your Honor. It's cited in
11 both of our pleadings.

12 Eith -- in fact, it says the District Court's
13 jurisdiction to make short-term, temporary adjustments to the
14 parties' custody arrangements on an emergency basis to protect
15 and safeguard the child's welfare and security is not impinged
16 when an appeal's pending. So even if I asked you to modify
17 the time share by what's going on, and that was pending
18 upstairs, or if you granted him sole legal custody and that
19 was pending upstairs, you could still modify and then I go
20 upstairs.

21 THE COURT: All right. Mr. --

22 MS. VACCARINO: The other issue --

23 THE COURT: -- Smith --

24 MS. VACCARINO: One other --

1 THE COURT: -- that --
2 MS. VACCARINO: -- issue --
3 THE COURT: Thank you.
4 MS. VACCARINO: -- he addressed.
5 THE COURT: Thank you. Mr. Smith.
6 MR. SMITH: Just briefly on the -- I -- I think the
7 question of the Court, and I would like to answer that, in
8 addition on Ms. -- Mrs. Stipp's appeal of the order of Judge
9 Sullivan she included, did the Court err by failing to appoint
10 a parenting coordinator. And so the issue of the parenting
11 coordinator is stric -- is before the Supreme Court.
12 On the appeal that was filed by --
13 THE COURT: Is that correct, Ms. Vaccarino?
14 MS. VACCARINO: Could I qualify? Yes, Your Honor.
15 The docketing -- no, wait, the issue is this. I didn't say
16 the Court erred. I said the Court failed to -- missed the
17 point of the parenting coordinator being recommended. We did
18 not say the Court erred in failing to order --
19 THE COURT: Well, there's a --
20 MS. VACCARINO: -- it.
21 THE COURT: -- issue as to a parenting coordinator
22 that's on appeal?
23 MS. VACCARINO: Your Honor, you --
24 THE COURT: All right.

1 MS. VACCARINO: You filed -- you know, you're --
2 you're sitting there like kind of -- if I may, Your Honor,
3 with all due respect for the record, the -- even if the issue
4 was raised on appeal, your November -- your October 6th order
5 entered in court -- November 18th entered -- ordered a
6 parenting coordinator. You are not impinged from enforcing --

7 THE COURT: Well --

8 MS. VACCARINO: -- that order.

9 THE COURT: -- hold on.

10 MS. VACCARINO: You're not.

11 THE COURT: First of all --

12 MS. VACCARINO: And if you're --

13 THE COURT: First of all --

14 MS. VACCARINO: -- going to say so, I want --

15 THE COURT: -- I have to be --

16 MS. VACCARINO: -- a finding under --

17 THE COURT: -- made aware --

18 MS. VACCARINO: -- what law --

19 THE COURT: -- of the issues that are on appeal. I
20 don't pull Supreme Court files and see what's going on.

21 MS. VACCARINO: Just so you know, Your Honor, there
22 was no motion under N.R.C.P. 5 or N.R.A. -- S.T.P. 7 or under
23 80 CR 2.20 by either of these parties that requested
24 appointment of a parenting coordinator, just so you know, Your

1 Honor, before Judge Sullivan. The issue came up when Radford
2 Smith argued it strenuously at May 6th that it would be
3 helpful, it would be beneficial, and when Dr. Paglini
4 recommended it. Judge Sullivan said at the end of the May
5 6th, '10 hearing that it would be helpful for the next year.
6 We left the courtroom.

7 I came back on September of '10 - of 10. I filed on
8 behalf of my client the first --

9 THE COURT: Okay.

10 MS. VACCARINO: -- motion --

11 THE COURT: Great.

12 MS. VACCARINO: -- requesting --

13 THE COURT: Okay.

14 MS. VACCARINO: -- a PC. So that previous appeal
15 that raises the issue that Judge Sullivan missed another boat,
16 or another issue which was he should have ordered in that
17 November decision, you ordered it later. No one --

18 THE COURT: Thank you.

19 MS. VACCARINO: -- app --

20 THE COURT: Thank you. Mr. Smith, what else?

21 MR. SMITH: In regard to the issue on appeal, it
22 specifically stated in the docketing statement by Ms. Stipp
23 that the Court failed to address the issues raised of a
24 parenting coordinator, which is recommended by the Court order

1 evaluated each party's --
2 THE COURT: Yeah.
3 MR. SMITH: -- request to be --
4 THE COURT: Yeah. I'm --
5 MR. SMITH: -- awarded fees --
6 THE COURT: -- not going to touch --
7 MR. SMITH: -- and costs.
8 THE COURT: -- parenting coordinator issue today.
9 MR. SMITH: In regard to the other issues that are
10 on appeal is we had set forth issues on the cross appeal which
11 included --
12 THE RESPONDENT: This is not the cross appeal.
13 MR. SMITH: Oh, this is not the cross appeal?
14 THE RESPONDENT: I was -- this is our --
15 MR. SMITH: This is our cross appeal.
16 THE RESPONDENT: -- this is our --
17 MR. SMITH: This is correct.
18 THE RESPONDENT: -- appeal --
19 MR. SMITH: Right.
20 THE RESPONDENT: -- of the December order.
21 MR. SMITH: Of the December order. We addressed the
22 issues of whether or not this Court could modify the orders of
23 another court. We addressed the issue of whether or not the
24 parenting coordinator was a proper way to resolve the child

1 custody --

2 THE COURT: Well, and I'm not --

3 MR. SMITH: -- matters.

4 THE COURT: -- touching the parenting coordinator --

5 MR. SMITH: Okay.

6 THE COURT: -- so --

7 MR. SMITH: I just wanted -- you asked me --

8 MS. VACCARINO: You didn't modify your --

9 MR. SMITH: -- what was before --

10 MS. VACCARINO: -- order.

11 MR. SMITH: -- the Court. And I --

12 THE COURT: Yeah.

13 MR. SMITH: Well, let me address a couple --

14 MS. VACCARINO: And it's more like --

15 MR. SMITH: -- of the things --

16 (Whispered conversation)

17 MR. SMITH: -- just so the record is not entirely

18 distorted by the statements that were made by Plaintiff since

19 she's indicated to you that this is apparently going to be

20 part of her exhibits.

21 First, the opposition that was filed in this case

22 was timely, it was served by mail on April 1st. And as this

23 Court is aware, the service by --

24 THE COURT: All right.

1 MR. SMITH: -- mail is --
2 THE COURT: All right.
3 MR. SMITH: -- as of the date. Secondly, the
4 statement that Mack v. Manley stands for the proposition that
5 this Court can address matters in regard to the care of the
6 children on an emergency basis, while correct, does not
7 address the issues that are before the Court today, and that
8 is the appointment of a parenting coordinator, the basically
9 rehearing on her motion to have the Court compel the child
10 into a therapeutic evaluation of both children. And -- and I
11 would note, Your Honor --
12 THE COURT: Okay. Well, let's -- let's go through
13 the request. There's a --
14 MR. SMITH: Yes.
15 THE COURT: -- request to confirm and enforce joint
16 legal custody. I don't think it even needs to be confirmed.
17 The parents share joint legal custody. As far as enforcing it
18 --
19 MR. SMITH: Well, there -- there's something
20 interesting about that --
21 THE COURT: No, there's --
22 MR. SMITH: -- Judge.
23 MS. VACCARINO: Will you just let him --
24 MR. SMITH: You'll note --

1 MS. VACCARINO: -- finish.

2 MR. SMITH: -- in their -- well, you haven't seen
3 their reply, but in their reply they quote the marital
4 settlement agreement, except they leave out the most important
5 part. The most important part is quoted in our brief and it
6 specifically states that the parties --

7 THE COURT: Well --

8 MR. SMITH: -- must --

9 THE COURT: -- and, Counsel, that's why I'm not
10 going to touch the joint legal custody agreement. They --
11 they filed a document that seeks to define joint legal
12 custody. If there's a violation of that --

13 MS. VACCARINO: Don't -- right.

14 THE COURT: -- then -- then it's for an order to
15 show cause. The next one is for adopting the model order for
16 appoint of special master. Okay?

17 MS. VACCARINO: Your Honor, I want to -- I just want
18 to be clear on your orders. You're saying you're not touching
19 it, that means you're -- because my understanding is the last
20 orders in place are to be enforced pending appeal. Is that
21 your order? That your last order or the last order on file
22 concerning the PC, parenting coordinator, and as far as legal
23 custody --

24 THE COURT: Counsel --

1 MS. VACCARINO: I want to be clear for the record.
2 THE COURT: But what do you want me to --
3 MS. VACCARINO: I want --
4 THE COURT: What do you --
5 MS. VACCARINO: -- you to --
6 THE COURT: -- want me to -- hey --
7 MS. VACCARINO: I want to be clear --
8 THE COURT: -- what do you want --
9 MS. VACCARINO: -- that those orders will be --
10 THE COURT: Counsel.
11 MS. VACCARINO: -- enforced.
12 THE COURT: What do you want me to enforce as far as
13 joint legal custody?
14 MS. VACCARINO: I want -- I want you to just state
15 for the record in the minutes to be placed in the order that
16 the previous orders concerning their legal custody --
17 THE COURT: Counsel
18 MS. VACCARINO: Yes? Why are you yelling at me?
19 THE COURT: Sit down. Have a seat. The parties
20 share joint legal custody as defined by their parenting
21 agreement. That's it. That's all I'm going to say.
22 MS. VACCARINO: It's not in their --
23 THE COURT: I'm not --
24 MS. VACCARINO: -- parenting agreement.

1 MS. VACCARINO: -- going to further define it. I'm
2 not going to jump through hoops for you --
3 MS. VACCARINO: I'm not asking you --
4 THE COURT: -- to --
5 MS. VACCARINO: -- to do that.
6 THE COURT: -- line up some future litigation.
7 MS. VACCARINO: Your Honor, it's defined --
8 THE COURT: That's it.
9 MS. VACCARINO: -- in the -- it's defined in
10 their --
11 THE COURT: That's it.
12 MS. VACCARINO: -- MS --
13 THE COURT: The issue's done.
14 MS. VACCARINO: -- A.
15 THE COURT: Okay.
16 MS. VACCARINO: Okay. And it's being enforced --
17 THE COURT: As for --
18 MS. VACCARINO: -- by the Court.
19 THE COURT: -- an order adopting the model order for
20 appointment of special master, if the Supreme Court comes down
21 and tells me something, that's one thing, but I'm denying it.
22 I never anticipated that even when I did appoint a parenting
23 coordinator.
24 Allowing -- or something allowing Mia and Ethan to

1 receive assessments with pediatric neurologists. Did you
2 include -- is there anything that -- to show that there's a
3 med -- medical necessity or there's a issue?

4 MS. VACCARINO: Your Honor, yes. And if I may cite
5 the Court to the -- I thought, which was the best offer of
6 proof I could possibly receive is Exhibit 2 to my client's
7 motion filed on March 10, 2011.

8 ((Whispered conversation))

9 MS. VACCARINO: There's a -- a letter from
10 Healthcare Partners dated January 27, 2011, st -- Mia Stipp's
11 date of birth, 10/19/04, to whom it may concern, please be
12 advised that I have referred Mia Stipp, a patient in my
13 practice to be evaluated by Lewis M. Etcoff, Ph.D., pediatric
14 neurol -- neuropsychol -- physiologist. If you have any
15 questions regarding this matter please do not hesitate to call
16 me. There's one also there for Ethan Stipp, the same day.

17 THE COURT: Why do they need to be -- it just says
18 that they're -- is a referral. Why is there a need to be a
19 referral?

20 MS. VACCARINO: When Mia was in the office, there
21 was an email from the teachers, which I have attached as
22 Exhibit 3, Your Honor, about Ethan's conduct.

23 THE PETITIONER: Exhibit 1.

24 MS. VACCARINO: February -- I'm sorry -- Exhibit 1

1 is an email from the teachers, Ethan's teachers, dated January
2 14th, 2011. Since our last hearing, Your Honor, Ethan's been
3 doing some kind of stuff that's for a kid that the doctor
4 believed was not normal, the teachers believe are not normal,
5 so I've offered those as offers of proof.

6 Mom talked to Dad about it and said, you know, we
7 really need to look into this. Regardless of the source, our
8 kids need to maybe be treated or assessed because, Your Honor,
9 like I said before at October 6th and December 1st hearing,
10 I'm an attorney, you're an attorney, they're attorneys, she's
11 an attorney. Doctors should -- unless there's some physical
12 offer of proof that there's some fraud or problem with any of
13 these doctors' licenses, we need to accept that offer of proof
14 as that they would know what's in the best interests of these
15 children. What happened was when --

16 THE COURT: Mr. --

17 MS. VACCARINO: -- they --

18 THE COURT: -- Smith, why didn't your client they
19 should be --

20 MS. VACCARINO: There's one other one --

21 THE COURT: -- evaluated.

22 MS. VACCARINO: -- attached from --

23 THE COURT: Thanks --

24 MS. VACCARINO: -- another --

1 THE COURT: -- Counsel.
2 MS. VACCARINO: He fired --
3 THE COURT: Thanks --
4 MS. VACCARINO: -- Dr. Desimone --
5 THE COURT: -- Counsel.
6 MS. VACCARINO: -- Your Honor.
7 THE COURT: Thanks, Counsel.
8 MS. VACCARINO: Did you know that?
9 THE COURT: Counsel, thank you.
10 MS. VACCARINO: There's another referral from
11 Dr. Brooks --
12 MR. SMITH: Your Honor, I --
13 MS. VACCARINO: -- dated February 21st.
14 THE COURT: Hold it. Hold it.
15 MS. VACCARINO: Why are you mad at me? I'm trying
16 to --
17 THE COURT: Ma'am --
18 MS. VACCARINO: -- give you all the --
19 THE COURT: -- listen.
20 MS. VACCARINO: -- information --
21 THE COURT: Ma'am?
22 MS. VACCARINO: -- you need.
23 THE COURT: Next time I tell you thank you, sit
24 down, stop talking or I'm going to hold you in contempt. It's

1 going to be \$250 every time.

2 MS. VACCARINO: Thank you, Your Honor. I'm just
3 trying --

4 THE COURT: Have a seat.

5 MS. VACCARINO: I'm just trying to make a record for
6 my client and I don't mean to upset you, but I --

7 THE COURT: That's one.

8 MS. VACCARINO: -- do --

9 THE COURT: Contempt, 250. Mr. Smith.

10 MR. SMITH: Your Honor, we -- first of all the --
11 the citation to the evidence that's supposedly in the record
12 is all generated at its source by Mrs. Stipp, not by the
13 doctors themselves. For example, the evidence that they cite
14 in regard to the opinions of the teachers --

15 THE COURT: What does your client have against a --
16 a -- another doctor's trip and another assessment?

17 MR. SMITH: This would be the sixth assessment of
18 Mia, Your Honor, in about a year's time by -- by six, I
19 believe, different professionals, all of which who have not
20 found a basis for any referral to a neurological study.

21 Judge, at this -- and I think I explained this in
22 our -- both our pleadings and to you the last time, I think
23 that's what in your analysis of those pleadings, and, again,
24 these things are as thick as phone books, but your analysis of

1 those pleadings was your stated opinion that you did not
2 believe Mia needed additional care.

3 THE COURT: All right. Thank you, Mr. Smith. Why
4 do we need an updated -- why do we need a new evaluation,
5 Counsel? Hasn't this already been done before?

6 MS. VACCARINO: Your Honor, I would pose that
7 question to Mr. Smith or Mr. Stipp exactly what assessment
8 evaluation to which they're referring, because maybe they did
9 that unilaterally as well. He brought the -- the child to
10 Dr. Kalodner for many --

11 THE COURT: Well --

12 MS. VACCARINO: -- months. So --

13 THE COURT: -- first of all --

14 MS. VACCARINO: -- can you ask them to --

15 THE COURT: -- what kind of an evaluation -- what
16 are we seeking here?

17 MS. VACCARINO: This is what --

18 THE COURT: I -- a neurological --

19 MS. VACCARINO: -- happens --

20 THE COURT: -- evaluation?

21 MS. VACCARINO: This is what happens to under --
22 what I understand what was told to me by my client and shared
23 with Mr. Stipp, Your Honor. The -- Dr. Etcoff can see
24 children as -- as early as what age?

1 THE PETITIONER: Five.
2 MS. VACCARINO: Five.
3 THE COURT: What's -- what's he --
4 MS. VACCARINO: And --
5 THE COURT: -- going to --
6 MS. VACCARINO: -- what he --
7 THE COURT: -- see --
8 MS. VACCARINO: -- does is --
9 THE COURT: What -- what is --
10 MS. VACCARINO: -- they do a --
11 THE COURT: -- he --
12 MS. VACCARINO: -- brain --
13 THE COURT: -- going to --
14 (Whispered conversation)
15 THE COURT: -- diagnose or attempt to rule out?
16 MS. VACCARINO: Your Honor, can my client respond,
17 because she called and spoke to Dr. Etcoff's --
18 THE COURT: Please.
19 MS. VACCARINO: -- assistant.
20 THE PETITIONER: Your Honor --
21 MS. VACCARINO: Thank you, Your Honor.
22 THE PETITIONER: -- if I may? There's been no
23 mental health assessment of Mia conducted by any trained
24 mental health professional to my knowledge since January of

1 2009. For Mr. Smith to continue to tell you that she's been
2 evaluated since that time is untrue.

3 THE COURT: So she was evaluated in January of 2009
4 with what --

5 THE PETITIONER: That's when --

6 THE COURT: -- result?

7 THE PETITIONER: That's when Kalodner stopped
8 treating her. She developed additional OCD behaviors
9 following the May 6th hearing with Sullivan, and no one has
10 treated it because Mitch will not allow it. She developed the
11 spitting, licking behaviors, a Nevada Child Find assessed her
12 but --

13 MS. VACCARINO: Last summer.

14 THE PETITIONER: -- they're not mental health
15 professionals and they recommended that both Mitch and I seek
16 psychological help for Mia. I asked -- in addition to this --

17 THE COURT: What was the result of the -- the
18 evaluation in 2009?

19 (Whispered conversation)

20 MS. VACCARINO: Was there a final assessment --

21 THE PETITIONER: Oh, there wasn't a --

22 MS. VACCARINO: -- or report?

23 THE PETITIONER: -- diagnosis because she stopped
24 treating her.

1 MS. VACCARINO: There wasn't a final assessment
2 done, Your Honor.

3 THE PETITIONER: She never --

4 MS. VACCARINO: What happened --

5 THE PETITIONER -- assess -- she never assessed Mia's
6 OCD behaviors other than clothing, and the clothing she said
7 go to an occupational therapist. When she began the spitting,
8 licking behaviors the occupational therapist told both Mitch
9 and I get psych eval on this. And Mitch --

10 MS. VACCARINO: This was last --

11 THE PETITIONER: -- said --

12 MS. VACCARINO: -- summer.

13 THE PETITIONER: -- no. Mitch said no. And the
14 last order from the Court was no one other than the
15 occupational therapist could treat Mia. Mia, since that time,
16 not -- in all --

17 THE COURT: All right. Thank --

18 THE PETITIONER: -- in addition --

19 THE COURT: -- you.

20 THE PETITIONER: -- to spitting --

21 MS. VACCARINO: Well, and --

22 THE PETITIONER: -- and licking.

23 THE COURT: Look --

24 MS. VACCARINO: -- just so you understand --

1 THE COURT: -- Counsel --
2 MS. VACCARINO: -- Your Honor, the issue is that
3 they think that --
4 THE COURT: Look, Counsel --
5 MS. VACCARINO: -- you can't just --
6 THE COURT: Counsel --
7 MS. VACCARINO: -- treat it --
8 THE COURT: -- hold on.
9 MS. VACCARINO: -- you have to diagnose it.
10 THE COURT: The issue is your clients are putting me
11 in a position where I'm supposed to raise this child, where
12 I'm supposed to hire the doctors, where I'm supposed to
13 determine what medical treatment is necessary, and maybe I'm
14 not a very good parent, but --
15 MR. SMITH: Your Honor, you addressed this --
16 THE COURT: -- I'm not quite there --
17 MR. SMITH: -- to the --
18 THE COURT: -- yet.
19 MR. SMITH: You addressed --
20 MS. VACCARINO: Your Honor --
21 MR. SMITH: -- this in the past. And that's our
22 point. The way --
23 (Whispered conversation)
24 MR. SMITH: -- that you addressed it was the same

1 observation that you made, that in the absence of some
2 agreement between the party or some method of working this
3 issue out, that you would be required to make orders in regard
4 to the care, and you didn't want to do that. So what you did,
5 both in your order arising from the October 6th hearing --

6 THE COURT: Right.

7 MR. SMITH: -- and your order --

8 THE COURT: But obviously --

9 MR. SMITH: -- arising in December --

10 THE COURT: Obviously, Counsel, these parties can't
11 agree on whether it's night or day, or whether the -- they
12 can't agree on anything.

13 MR. SMITH: Well, that's not true. And what they --

14 THE COURT: No --

15 MR. SMITH: -- can --

16 THE COURT: -- that's -- is true. It's absolutely
17 true. They cannot agree on anything.

18 MR. SMITH: Well, here's what -- what I --

19 THE COURT: Let's move --

20 MR. SMITH: -- I --

21 THE COURT: -- on to something that maybe I can deal
22 with. Preschool. Okay? I will not order a child to attend
23 any private schooling ever, at all. If the parties can agree
24 that the child will attend a private school then they can --

1 they're free to do so. Otherwise, I'm not going to order it.
2 If one party insists the child go to private school and is
3 willing to foot the bill, and the other party's refusing to
4 allow that, if you want to file the appropriate motion, and
5 litigate the issue and prove to me that it's in the child's
6 best interests that the child receive a private school
7 education as opposed to a public school education, or that the
8 child attend preschool as opposed to not attend preschool,
9 I'll hear those things, but once again, I -- I mean, I'm not
10 going to take some approach that private school's always
11 better than public school. It's just not going to fly.

12 MS. VACCARINO: And --

13 THE COURT: You're going to --

14 MS. VACCARINO: -- Your Honor --

15 THE COURT: -- need to provide it through evidence.
16 So I'm not going to do anything with the preschool. I'm not
17 going to address the issues of the Temple Beth Shalom.

18 MS. VACCARINO: Your Honor, are you -- I don't --
19 I'm scared to interrupt you because I'm going to request that
20 you reconsider your sanction because Mr. Rat -- Mr. Smith
21 stood up without being sanctioned before, but my concern was
22 that I was just asking if I can make a record, but I don't
23 want to be impolite, but I believe that -- are you aware that
24 the chil -- both children for the last five years attended

1 that private school and they have a current, joint -- joint --
2 THE COURT: Counsel --
3 MS. VACCARINO: -- legal custody decision --
4 THE COURT: Counsel?
5 MS. VACCARINO: -- for this year?
6 THE COURT: Counsel?
7 MS. VACCARINO: Just for this year.
8 THE COURT: Are you aware that these parties used to
9 be married, they used to get along, and they used to raise
10 their children jointly? And are you aware that now they're
11 coming to me --
12 MS. VACCARINO: Yeah.
13 THE COURT: -- as about whether or not they can take
14 the child to a doctor, where they're going to take the child
15 to school, and every other little thing. I don't care that
16 they went there for four years. I don't care if the kid went
17 through -- is in 11th grade at a private school. I'm just
18 telling you right now --
19 MS. VACCARINO: If I may --
20 THE COURT: -- I'm not going to order it.
21 MS. VACCARINO: For the record --
22 THE COURT: Not going to --
23 MS. VACCARINO: -- if --
24 THE COURT: -- do it.

1 MS. VACCARINO: Under Mack v.
2 THE COURT: And --
3 MS. VACCARINO: Ashlock --
4 THE COURT: -- the reason that I'm trying to move
5 this along is, if I don't keep focused strictly on task, and
6 hear just what I need to hear to make my rule and move on,
7 we're going to be here forever.
8 MS. VACCARINO: I don't --
9 THE COURT: We're going to be here for a very, very
10 long time, much more time than I want to dic -- dedicate to
11 these people. And I'm not willing to do it. Okay?
12 MS. VACCARINO: May I state --
13 THE COURT: Your --
14 MS. VACCARINO: -- a case for the record?
15 THE COURT: Your -- the only reason that you're
16 having a hearing, and I didn't just issue you a minute order,
17 was because I think there was some information that I needed.
18 But if you can't confine yourselves to the information I think
19 I need, I've read everything. I haven't read your reply. So
20 if there's something in that reply that's not in here, then go
21 ahead and tell me something, but when you -- when you sit
22 there and spit back to me what I've already read, that's
23 offensive to me, okay? It wastes my time. It wastes your
24 time. Your clients don't need to hear the show. They know

1 what's going on.

2 MS. VACCARINO: Your Honor, if I may address the
3 Court? May I?

4 THE COURT: Let's move --

5 MS. VACCARINO: Can I briefly?

6 THE COURT: Well, yes, you can.

7 MS. VACCARINO: You said --

8 THE COURT: You can address the Court --

9 MS. VACCARINO: On the joint legal custody --

10 THE COURT: -- regarding --

11 MS. VACCARINO: -- issue --

12 THE COURT: -- the willful violations of the
13 parties' decree.

14 MS. VACCARINO: Okay. Under -- you said you're
15 enforcing the parties' joint legal custody definition as
16 contained in whatever documents the fi -- the last order. I
17 have cited to that specific -- that's still the same language
18 you'll see in the fi -- Family Mediation Center forms, Your
19 Honor. It talks about consultation and cooperation. It
20 doesn't say that you need consent of the other parent.

21 However, Your Honor, I have found, you know, case
22 law that it's still good. It's cited in Rivero from 2009, our
23 Supreme Court, is the vack -- the Mack v. Ashley (sic) case,
24 Your Honor. And it states from 1996 that it's -- it speaks

1 straight out, Your Honor. If the parents in a joint legal
2 custody situation reach an impasse, and are unable to agree on
3 a decision, and you're right, in this case it's been terrible
4 since -- you said you started all this crap, or we -- this --
5 but whoever started it or not, it's been bad since right after
6 the divorce when they settled it. And if the parents in a
7 joint legal custody reach an impasse and are unable to agree
8 on a decision then the parties may appear before the Court on
9 equal footing to have the Court decide what is in the best
10 interests of the child.

11 So I know you said you don't have a lot of time or
12 don't want to dedicate a lot of time to
13 these parties, but if they're in the same school for two years
14 and now one parent writes the school and they say, I'm pulling
15 this child out --

16 THE COURT: Counsel --

17 MS. VACCARINO: -- that a --

18 THE COURT: -- you're going back --

19 MS. VACCARINO: -- violation --

20 THE COURT: -- to the school --

21 MS. VACCARINO: -- of --

22 THE COURT: Counsel.

23 MS. VACCARINO: -- joint legal custody. I'm telling
24 you about the willful violations of the decree.

1 ((Whispered conversation))
2 THE COURT: You're going back --
3 MS. VACCARINO: She --
4 THE COURT: You're going --
5 MS. VACCARINO: No.
6 THE COURT: -- back to the school.
7 MS. VACCARINO: I'm going to the joint legal
8 custody. He's violated the provisions of the joint legal
9 custody order that you have just upheld. And I will -- if you
10 -- if you allow me to have a little --
11 THE COURT: When -- when did this happen?
12 MS. VACCARINO: Okay. He recently, and we attached
13 it and he attached the email himself, he told you in his own
14 paperwork at page 30, I believe it was, that he contacted Beth
15 Shalom --
16 THE COURT: When was the child --
17 MS. VACCARINO: -- to --
18 THE COURT: -- withdrawn from school?
19 MS. VACCARINO: Wasn't withdrawn, he contacted the
20 school and said I will not be enrolling this child next year.
21 Now, he has to consult and cooperate with her first, or,
22 you're right, come back, file a motion to you, and state, I
23 want a new school and this is why. And you'll say, okay, Mr.
24 -- explain, Mr. Stipp, why he was in the school and Mia was in

1 this school for so many years and you guys chose private over
2 public. Your Honor, I'm with you. As a parent, I do private
3 -- I do public over private, too. But these parents didn't --
4 (Whispered conversation)
5 MS. VACCARINO: -- do that. And under Khaldy v.
6 Khaldy -- K-h-a-l-d-y -- if the parents have a de facto
7 arrangement about a custody issue, legal or physical, this
8 Court can adopt it. So what I'm saying is --
9 THE COURT: Not going to adopt it, move on.
10 MS. VACCARINO: I -- our --
11 THE COURT: Okay. Never mind.
12 MS. VACCARINO: But he has --
13 THE COURT: Never mind.
14 (Whispered conversation)
15 MS. VACCARINO: He also contacted Dr. --
16 THE COURT: Counsel.
17 MS. VACCARINO: -- Desimone -- you asked for the
18 willful violations, you don't want to hear anymore?
19 THE COURT: Well, then --
20 MS. VACCARINO: If it looks like --
21 THE COURT: -- let's move on, because I don't want
22 to hear the schooling.
23 MS. VACCARINO: But do you agree with us that he is
24 not -- he has to consult --

1 THE COURT: Counsel, I don't agree with either one
2 of you. Okay? I don't agree with either one of you.

3 (Whispered conversation)

4 MS. VACCARINO: Dr. Desimone, do you know what he
5 did there, or do you want me --

6 THE COURT: Well, let's hear it.

7 MS. VACCARINO: Because you said you don't want me
8 to repeat anything that was in my motion. I -- I'm really
9 between a rock and a hard place here today, Your Honor,
10 because you said you'd sanction me if I repeat myself or
11 interrupt you --

12 THE COURT: Let's hear about Dr. Desimone. Tell
13 me --

14 MS. VACCARINO: Okay.

15 THE COURT: -- about the willful violation --

16 MS. VACCARINO: Dr. Desimone has been Mia's
17 pediatrician. She met her at birth. For a while they went to
18 a different doctor. She went back to Dr. Desimone at age --

19 THE PETITIONER: One or one and a half.

20 MS. VACCARINO: -- one and a half, approximately.
21 Ethan's seen Dr. Desimone since his birth. What happened was
22 as soon as Dr. Desimone issued her -- now, he doesn't go to
23 any of -- of -- well, I'm sorry, he goes to about 10 percent
24 of all the doctor points (sic) in their whole life -- so -- or

1 -- or less -- when he found out that Dr. Desimone issued a
2 referral form because she witnessed Mia spitting and licking
3 and saw the teacher's letter that a Good Parent provided to
4 her, and she was biting her nails to the quick, they were so
5 short she said this is an OCD -- maybe there's something not
6 diagnosed --

7 THE COURT: Okay. So --

8 MS. VACCARINO: So that was -- he contacted
9 Dr. Desimone, he won't give all the letters to Mom, we wrote
10 that all in our motion, which is extensive, and he -- he
11 basically -- she entaca -- she had to contact her risk
12 department for insurance malpractice and he basically fired
13 her. He -- he told -- she said that maybe it's better that
14 you don't treat my children, I agree, and he told her that she
15 wrote those --

16 THE COURT: Well --

17 MS. VACCARINO: -- referrals, Your Honor --

18 (Whispered conversation)

19 MS. VACCARINO: -- so basically he didn't consult
20 with Mom first, he just said, go ahead and find a new doctor.
21 He -- what he's doing, Your Honor --

22 THE PETITIONER: He told me --

23 MS. VACCARINO: -- is he's causing more and more
24 chaos.

1 THE COURT: So did --
2 MS. VACCARINO: These children are going to have --
3 THE COURT: Did he fire --
4 MS. VACCARINO: -- different --
5 THE COURT: -- Dr. Desimone --
6 THE PETITIONER: Yes.
7 THE COURT: -- or did --
8 MS. VACCARINO: Yes.
9 THE COURT: -- Dr. Desimone fire --
10 THE PETITIONER: No, he told --
11 THE COURT: -- you as a client?
12 THE PETITIONER: He told -- Your Honor, he told
13 Dr. Desimone that we are getting somebody new.
14 MS. VACCARINO: That -- meaning we is --
15 THE PETITIONER: And she --
16 MS. VACCARINO: -- Christina and -- and he, but he
17 never -- Christina and he never discussed that.
18 THE PETITIONER: And he could -- she --
19 THE COURT: And if I set --
20 THE PETITIONER: -- confirmed --
21 THE COURT: -- the matter --
22 THE PETITIONER: -- that.
23 THE COURT: -- for a hearing, you're going to prove
24 this?

1 THE PETITIONER: Yeah, it's right here in our
2 exhibit, the letter from Dr. Desimone to Mitch, copy to me --
3 THE COURT: What --
4 THE PETITIONER: -- via --
5 THE COURT: What exhibit?
6 THE PETITIONER: -- certified mail.
7 MS. VACCARINO: It's our exhibit --
8 THE PETITIONER: It's in my motion --
9 MS. VACCARINO: Bear -- Court's indulgence.
10 THE PETITIONER: It's Exhibit 13, the first
11 paragraph, she says --
12 THE COURT: Hold on.
13 THE PETITIONER: -- second sentence --
14 THE COURT: You got a lot of exhibits back there.
15 And mine's an electronic --
16 (Whispered conversation)
17 THE COURT: -- filing.
18 (Whispered conversation)
19 THE COURT: All right.
20 THE PETITIONER: Strategically he never -- he never
21 submits to the Court or he won't provide to me the February
22 10th letter that Dr. Desimone references in which she says, in
23 the most recent letter I received it was confirmed you intend
24 to establish care with another provider.

1 THE COURT: Okay.

2 THE PETITIONER: He fired --

3 MR. SMITH: And, Your Honor --

4 THE PETITIONER: -- her. And she --

5 MS. VACCARINO: After the --

6 THE PETITIONER: -- says --

7 MS. VACCARINO: -- referral. He should have gone --

8 he could have --

9 THE COURT: All right.

10 MS. VACCARINO: -- gotten a second opinion.

11 THE COURT: So you got Desimone, you got a school

12 issue.

13 MS. VACCARINO: And, you know, you have children,

14 Your Honor. If --

15 THE COURT: Counsel.

16 MS. VACCARINO: -- someone -- all right.

17 THE COURT: What else?

18 MS. VACCARINO: He just continues to --

19 THE PETITIONER: I just want to get --

20 MS. VACCARINO: He --

21 THE PETITIONER: -- the kids the help that the

22 teachers and the doctors --

23 (Whispered conversation)

24 THE PETITIONER: -- agree --

1 THE COURT: Well, so --
2 MS. VACCARINO: This --
3 THE PETITIONER: -- they all need.
4 THE COURT: -- there's no other violations?
5 MS. VACCARINO: It's the --
6 THE COURT: That's it? It's --
7 MS. VACCARINO: It's joint --
8 THE COURT: -- those two?
9 THE PETITIONER: Firing Desimone and --
10 MS. VACCARINO: Failing to co-parent, Your Honor,
11 which is also in --
12 THE COURT: Well --
13 MS. VACCARINO: -- provided in the joint legal
14 custody. But, Your Honor, if you don't -- you say, well, but
15 if you don't issue order to show cause and say, Dad, you do
16 need to -- this is the -- the issues left --
17 THE COURT: Counsel.
18 MS. VACCARINO: -- in this --
19 THE COURT: Are there --
20 MS. VACCARINO: -- case.
21 THE COURT: -- any other violations?
22 THE PETITIONER: Well, he won't agree on a doctor
23 for Ethan and Ethan is -- doesn't even have a healthcare
24 provider because --

1 MS. VACCARINO: Is Dr. Brooks.
2 THE PETITIONER: -- because his method of co-
3 parenting --
4 (Whispered conversation)
5 THE PETITIONER: -- is --
6 THE COURT: Okay.
7 THE PETITIONER: -- to -- to have me file a motion
8 and have it get delayed and then --
9 MS. VACCARINO: And we --
10 THE PETITIONER: -- so we're --
11 MS. VACCARINO: -- did file the motion on the
12 school, Your Honor, you see we added the school in, we added
13 the healthcare issue in because --
14 THE COURT: All right.
15 MS. VACCARINO: -- you're right, you did tell us on
16 October 6th, Your Honor, you go, listen, you guys are going to
17 a parenting coordinator.
18 THE COURT: All right. Thank you.
19 MS. VACCARINO: And then you --
20 THE COURT: And they --
21 MS. VACCARINO: And you --
22 THE COURT: Yeah.
23 MS. VACCARINO: -- said, if --
24 THE COURT: And --

1 MS. VACCARINO: -- you don't pick the doctor --
2 (Whispered conversation)
3 MS. VACCARINO: -- I will at the next hearing.
4 It's --
5 THE COURT: I'm going to.
6 MS. VACCARINO: - six months.
7 THE COURT: I'm going to.
8 MS. VACCARINO: And, Your Honor, we would suggest
9 that you call Dr. Lenkeit and say who -- who he --
10 THE COURT: Counsel.
11 MS. VACCARINO: -- prefers for Ethan, because Dr. --
12 THE COURT: Thank you.
13 MS. VACCARINO: -- Et --
14 THE COURT: Thank --
15 MS. VACCARINO: Thank you --
16 THE COURT: -- you --
17 MS. VACCARINO: -- Your Honor.
18 THE COURT: -- Counsel. All right. And so then
19 Dad's requested that I deny Mom's motion in its entirety and I
20 award fees and costs. That's right, Counsel?
21 MR. SMITH: Yes, but would you like me to address
22 her claims in regard to the violation of the --
23 THE COURT: Yeah.
24 MR. SMITH: -- joint legal custody --

1 THE COURT: I want you to --

2 MR. SMITH: -- provisions?

3 THE COURT: -- address the Dr. Desimone issue,
4 please.

5 MR. SMITH: If I may have Mr. Stipp address that
6 specifically. But in general, Your Honor, no, Mr. Stipp did
7 not fire Dr. Desimone. And there was adequate reason for
8 Mitch to be concerned.

9 This notion that Dr. Desimone examined Mia before
10 making the referral that was requested by Ms. Stipp is not
11 evidenced in any of the information or -- or exhibits that
12 were presented by Mrs. Stipp. And, in fact, Dr. Desimone
13 admits in her correspondence, which is attached to our motion,
14 that she never even saw Ethan in regard to this alleged
15 referral to the doctor who doesn't see children his age.

16 So when you receive a letter, at the prompting of
17 the mother for the child, Ethan, who is -- she continues to
18 allege has been sexually abused, as forming the basis of the
19 need to see ni -- neurological treatment, even though it has
20 been unsubstantiated by an investigation of the LNP -- NPD and
21 CPS, even though she continues to allege that, she asked
22 Dr. Desimone -- and Dr. Desimone, without even seeing the
23 child, issued her letter that is now attached, which doesn't
24 offer any explanation as to why she's referring to a doctor

1 who doesn't even see children of his age, at that point Mr.
2 Stipp contacted Dr. Desimone.

3 And I'd like Mr. Stipp to address the specifics of
4 that, although I note there is about four and a half pages in
5 our -- our opposition that addressed this specific issue. So
6 if the Court wants to confine itself to that, we're happy to
7 do so.

8 But it's clear from the evidence and statements that
9 are attached to our opposition that Mitch did not fire
10 Dr. Desimone. Dr. Desimone went to her risk management
11 department and made the decision that she could no longer
12 proceed as the child's pediatrician. And I think that stems
13 out of Mrs. Stipp's insistence that Dr. Desimone, even without
14 examining Ethan --

15 THE COURT: All right.

16 MR. SMITH: -- become involved in this --

17 THE COURT: Thank you.

18 MR. SMITH: -- opinion.

19 MS. VACCARINO: I'd just object --

20 THE COURT: Tell me --

21 MS. VACCARINO: -- to --

22 THE COURT: Tell me --

23 MS. VACCARINO: -- something.

24 THE COURT: -- Counsel --

1 MS. VACCARINO: Okay.

2 THE COURT: Explain your position that joint legal
3 custody requires the parents agree on who the child's doctor's
4 going to be and what treatments are going to be sought and
5 agree on everything else.

6 MR. SMITH: I assume that's addressed to me, Your
7 Honor?

8 THE COURT: That's address to you.

9 MR. SMITH: If you look at --

10 THE COURT: You're the one that made --

11 MR. SMITH: -- the --

12 THE COURT: -- assertion.

13 MR. SMITH: -- the MSA at section 1.1, Your Honor,
14 and it reads, and I quote, all healthcare providers and
15 counselings (sic) shall be selected jointly by the parties --

16 MS. VACCARINO: No, wait.

17 MR. SMITH: -- end quote.

18 THE COURT: All right. Well --

19 MR. SMITH: I note that --

20 (Whispered conversation)

21 MR. SMITH: -- she cites that in her reply, but
22 fails to note the part, by the parties. She cites at page 18
23 of her reply, all schools, healthcare providers, daycare
24 providers and counselors shall be jointly selected but then

1 leaves out by the parties, which is contained in the MSA.

2 MS. VACCARINO: It's the same meaning, Your Honor.
3 Jointly selected. It doesn't mean they have to agree, consent
4 in writing. It's consult and cooperation. You can't get
5 that. Plus, they agreed on Dr. Desimone --

6 THE PETITIONER: Yes.

7 MS. VACCARINO: -- and continue to agree until he
8 thought the doctor was wrong in her referral. He's not a
9 doctor. He's a lawyer. So, Your Honor, Dr. Desimone, you're
10 right, the risk -- her risk company, she loves this family,
11 but she had to let it go, because her risk management company
12 said to her -- if you don't believe this doctor, that she
13 wrote a letter back to him saying it -- in the most recent
14 letter --

15 THE COURT: All right.

16 MS. VACCARINO: -- it was --

17 THE COURT: Thank --

18 MS. VACCARINO: -- confirm --

19 THE COURT: -- you.

20 MS. VACCARINO: She won't give us the letter. Can
21 you order them to produce his February 10th letter, Your
22 Honor, and file it in the record?

23 THE COURT: All right.

24 MS. VACCARINO: Because --

1 THE COURT: So as to the re -- request, the request
2 more specifically defined joint -- define or enforce joint
3 legal custody is -- is denied. I mean joint legal custody is
4 what it is. As for adopting a model order for appointment of
5 a special master, the Court's going to deny that request. If
6 -- if -- and who did -- I don't remember who we gave the
7 referral --

8 MS. VACCARINO: Dr. Lenkeit.

9 THE COURT: -- to -- isn't willing to do it,
10 otherwise, then -- then that's fine.

11 We have an issue of -- of the parenting quarter
12 (sic) under appeal. I'm not going to take any further actions
13 on that. As for the pediatric neurologist, the -- as for Mia
14 -- the -- well, and the regular -- I guess she needs a regular
15 pediatrician now, too, right?

16 MS. VACCARINO: She --

17 THE PETITIONER: Sunshine Valley.

18 MS. VACCARINO: She's at Sunshine Valley Pediatrics,
19 which Mom -- he told her to select a new one after he got rid
20 of Desimone and said we're going to set up new care. So, she
21 went to Sunshine --

22 THE COURT: No, I --

23 MS. VACCARINO: -- Valley --

24 THE COURT: I'm sure --

1 MS. VACCARINO: -- so --
2 THE COURT: -- he doesn't want anything to do with
3 Sunshine --
4 MS. VACCARINO: No.
5 THE COURT: -- Valley --
6 MS. VACCARINO: It's a --
7 THE COURT: -- Pediatrics --
8 MS. VACCARINO: -- big --
9 MR. SMITH: No, no, no.
10 THE COURT: -- right?
11 MS. VACCARINO: It's a --
12 MR. SMITH: Your Honor --
13 MS. VACCARINO: -- Summerland (ph) -- hop --
14 MR. SMITH: -- it --
15 MS. VACCARINO: My kids are --
16 MR. SMITH: -- as --
17 THE COURT: I --
18 MR. SMITH: It wasn't the issue. The issue was
19 whether or not it was going to be --
20 THE COURT: Well --
21 MR. SMITH: -- jointly --
22 THE COURT: Well --
23 MR. SMITH: -- selected.
24 THE COURT: -- and because he wasn't joint in it, he

1 doesn't want that one, right? He wants some place different?
2 MS. VACCARINO: He hasn't suggested --
3 THE COURT: He's okay --
4 MS. VACCARINO: -- one.
5 THE COURT: -- with Sunshine Valley?
6 MS. VACCARINO: Pediatrics.
7 THE RESPONDENT: Your Honor, if I can address that
8 issue, I would be happy to do so.
9 THE COURT: And all I want to know is --
10 THE RESPONDENT: I don't have a problem --
11 THE COURT: -- are you okay with those --
12 THE RESPONDENT: I don't have a problem --
13 THE COURT: -- with them being --
14 THE RESPONDENT: -- with --
15 THE COURT: -- the --
16 THE RESPONDENT: -- Dr. --
17 THE COURT: -- pediatrician?
18 THE RESPONDENT: -- Books -- Dr. Brooks, Your Honor,
19 even though Christina did not consult me before --
20 THE COURT: Okay.
21 THE RESPONDENT: -- she took --
22 THE COURT: Thank you.
23 THE RESPONDENT: -- Mia -- I have no problem with
24 Dr. Brooks.

1 THE COURT: Brooks is the pediatrician. If Brooks
2 determines after a evaluation that either child needs a
3 specialist, then the child needs a specialist and should go
4 see a specialist. I'm sure as soon as Dr. Brooks becomes
5 aware of all the litigation that's going on and then every
6 doctor going to be subject to it --

7 (Whispered conversation)

8 THE COURT: -- he's not going to do anything that's
9 not well documented and required.

10 MS. VACCARINO: It's actually a female, Your Honor,
11 just so you know. And she did actually on February 24th, '11,
12 a month after he -- what we call fired Dr. Desimone, it's
13 attached as our Exhibit 2, Your Honor, she saw Mia and did the
14 same referral for Mia within 30 days, Dr. Etcoff, psychology.
15 And it's attached --

16 THE PETITIONER: It's Exhibit --

17 MS. VACCARINO: -- and if you want us to bring Ethan
18 into Dr. Brooks, we can do that as well.

19 THE PETITIONER: It's Exhibit 2, page 3.

20 MS. VACCARINO: Yeah. And that's the one I was
21 trying to get to --

22 THE PETITIONER: She referred --

23 MS. VACCARINO: -- after.

24 THE RESPONDENT: If you're going to schedule --

1 THE PETITIONER: She already --
2 THE RESPONDENT: -- appointments, then I would
3 suggest that I be allowed to attend, Your Honor.
4 MS. VACCARINO: Is he going to be --
5 THE RESPONDENT: Christina has not --
6 MS. VACCARINO: -- held --
7 THE RESPONDENT: -- previously --
8 MS. VACCARINO: -- in contempt?
9 THE PETITIONER: She already --
10 THE RESPONDENT: -- included me.
11 THE PETITIONER: She already referred --
12 MS. VACCARINO: Your Honor --
13 THE RESPONDENT: Chris --
14 THE PETITIONER: -- him.
15 MS. VACCARINO: -- excuse me. He's now speaking
16 over people which -- that's why I'm going to --
17 THE RESPONDENT: Christina has --
18 MS. VACCARINO: -- have to --
19 THE RESPONDENT: -- not previously informed me --
20 THE COURT: Counsel --
21 THE RESPONDENT: -- of the -- of the appointments
22 for the children.
23 (Whispered conversation)
24 THE RESPONDENT: I'd like to participate in the

1 process.

2 (Whispered conversation)

3 THE RESPONDENT: The referrals that she got from

4 Dr. Desimone and Dr. Brooks are specifically at her --

5 MS. VACCARINO: Your Honor, I'm --

6 THE RESPONDENT: -- request.

7 MS. VACCARINO: -- going to object and ask you --

8 you didn't ask him to speak, again, and --

9 THE COURT: And I'm --

10 MS. VACCARINO: -- if --

11 THE COURT: -- listening to anything --

12 MS. VACCARINO: Thank you.

13 THE COURT: -- he says.

14 THE RESPONDENT: That makes you happy?

15 THE COURT: Sir -- all right, your 250 offsets her

16 250. How's that? Or do we -- everybody go and make

17 contributions to legal aide.

18 MR. SMITH: I -- I hope you're --

19 THE COURT: Don't --

20 MR. SMITH: -- not speaking --

21 THE COURT: Don't --

22 MR. SMITH: -- to me, Your Honor.

23 THE COURT: -- not you. Your -- your co-counsel,

24 client.

1 ((Whispered conversation)

2 THE COURT: All right. The child's going to have a
3 return with Dr. Brooks where both parents will be allowed to
4 be present. Dad can explain that we're in heavy litigation
5 and maybe Dr. Brooks will wish to reexamine and -- and decide
6 whether or not it's just at the request of Mom that he issued
7 the -- the -- the referral, or whether it's medically
8 necessitated. And then we'll get -- because the parties
9 aren't going to agree anyway. And then we'll get his written
10 report back. And if it says medically necessitated, and you
11 have to come to ter -- court over the matter, somebody's going
12 to pay attorneys' fees.

13 Any referral to any specialist, you're going to have
14 to get something in writing that says medically necessitated.
15 You get that, and it comes to -- it comes to me for future
16 follow up. And I will not be happy. And there will be
17 attorneys' fees and additional sanctions. So no pediatric
18 neurologist at this time. If you go back to Brooks and Brooks
19 is willing to put it on paper that -- that it's medically
20 indicated, that it's medically necessary, something of that
21 nature, then -- then we'll go forward with that.

22 MS. VACCARINO: So, Your Honor, if it's medically
23 necessitated, then the parties are directed to cooperate with
24 who the referrals to for either child, correct.

1 THE COURT: Well, they're both still able to voice
2 their objections and, heck, how do I know that Dr. Brooks
3 isn't some kind of crackpot that's going to refer the kid to
4 some weird, experimental, masseuse, chiropractor, aura reader,
5 how -- you know, I don't know.

6 MS. VACCARINO: So will you --

7 THE COURT: So I'm not going to say -- I'm not going
8 to say it's absolutely mandatory. What I'm saying is if the
9 doctor says go for the evaluation, you better have a damn good
10 reason to object to it before you show up in here.

11 MS. VACCARINO: Okay, Your Honor.

12 THE COURT: All right. That --

13 (Whispered conversation)

14 THE COURT: -- is it.

15 MS. VACCARINO: Your Honor --

16 MR. SMITH: Judge, if I may?

17 MS. VACCARINO: -- oh, yeah -- okay. But,
18 Mr. Smith. Okay.

19 MR. SMITH: My counter motion we requested
20 attorneys' fees and costs. The -- as you know, the marital
21 settlement agreement contains a provision that indicates that
22 the prevailing party shall receive attorneys' fees and costs.
23 The three underlying motions that were contained in the -- the
24 request were that the Court essentially redefine joint legal

1 custody to allow her to make unilateral decisions, that the
2 Court adopt the model referred --

3 THE COURT: Counsel, let me --

4 MR. SMITH: -- parenting --

5 THE COURT: Let me --

6 MR. SMITH: -- coordinator.

7 THE COURT: -- stop you right there. Neither one of
8 them's prevailing party. Neither one of them. We're here
9 because neither one of them has enough common sense or enough
10 parenting skill or ability to figure out how to raise the kid
11 without my involvement.

12 MS. VACCARINO: So the order will state the re --
13 the mutual request for attorneys' fees --

14 THE COURT: Oh --

15 MS. VACCARINO: -- are denied?

16 THE COURT: -- and while we're here, the order that
17 was entered from the was it December 1st hearing --

18 THE CLERK: I believe so.

19 THE COURT: -- the December hirst -- 1st hearing is
20 vacated. That was entered in order (sic). It was a clerical
21 error. The Court had required that that order contain
22 signatures from both Counsel. It did not. And so it is -- it
23 is stricken, vacated. I need an order, Ms. Vaccarino, that
24 contains both signatures.

1 MS. VACCARINO: Okay. Your Honor, are you aware
2 that he submitted a competing order to mine and your clerk
3 held on to both orders for three months? Not three months,
4 I'm sorry, for a month and a half. Are you aware of that?

5 THE COURT: I'm aware that it was signed in error.

6 MS. VACCARINO: All right. I --

7 THE COURT: And so, we --

8 MS. VACCARINO: And, Your Honor --

9 THE COURT: -- need -- we need it signed by both
10 parties.

11 MS. VACCARINO: If --

12 THE COURT: If you can't agree --

13 MS. VACCARINO: There's three issues --

14 THE COURT: -- then --

15 MS. VACCARINO: -- that maybe you can help us with.

16 THE COURT: -- and send them in.

17 MS. VACCARINO: He said that -- he -- I guess we can
18 include in there his -- he says that you denied his counter
19 motion for sole legal custody and you denied the request for
20 an order to show cause, but the fact that an OSC didn't issue
21 doesn't really need to be in the order. It's repetitive.

22 The one other issue was some technical version of
23 the -- the wording of the tax records, but what my point is,
24 what if we can't reach an accord on the wording.

1 THE COURT: Well --
2 MS. VACCARINO: That's exactly what happens. Your
3 clerk --
4 THE COURT: His request for sole legal custody was
5 denied.
6 MS. VACCARINO: Denied, yeah, but --
7 THE COURT: And --
8 MS. VACCARINO: -- it wasn't specific in the --
9 THE COURT: Well it's --
10 MS. VACCARINO: -- yeah --
11 THE COURT: -- should be specific now. The other --
12 MS. VACCARINO: All right.
13 THE COURT: The other one was?
14 MS. VACCARINO: I know exactly what the issues are.
15 I'll try to get --
16 THE COURT: And what was the other --
17 MS. VACCARINO: -- I'll --
18 THE COURT: What were the other --
19 MS. VACCARINO: This is the --
20 THE COURT: -- issues?
21 MS. VACCARINO: -- issue. I -- it doesn't
22 specifically state request for order to show cause by us
23 denied. But you never issued an order to show cause, and it's
24 in the minutes, so it's really a moot --

1 THE COURT: Yeah.

2 MS. VACCARINO: -- issue.

3 THE COURT: All right. Well --

4 MS. VACCARINO: The next issue is it says that we --

5 THE COURT: -- that request for an order to show
6 cause is denied.

7 MS. VACCARINO: I know it was denied, but it --

8 THE COURT: All right.

9 MS. VACCARINO: -- doesn't have to be --

10 THE COURT: Well --

11 MS. VACCARINO: -- in the minutes, really.

12 THE COURT: -- stick it --

13 MS. VACCARINO: In the order.

14 THE COURT: Stick it in there.

15 MS. VACCARINO: All right. So I'll do that. But,
16 the re -- okay, I'll put the -- and one other thing was that
17 it technically said that we could access Mitch's returns
18 according to the previous orders, which reference Aquila's
19 returns, but he wanted us to put the word Aqu -- it was really
20 a lot of semantics. It wasn't that the orders content was
21 wrong. So he wanted me to --

22 (Whispered conversation)

23 MS. VACCARINO: -- put -- and that's why he's
24 laughing now when I'm telling you what I think's wrong with

1 it. I'm --

2 THE COURT: Well, tell --

3 MS. VACCARINO: -- going to submit it --

4 THE COURT: -- me --

5 MS. VACCARINO: -- to him --

6 THE COURT: Tell me --

7 MS. VACCARINO: -- and we'll never --

8 THE COURT: Tell me. Tell me.

9 MS. VACCARINO: Mr. Smith, what's exactly wrong with

10 the Aquila provision?

11 MR. SMITH: The -- the Aquila provision specifically

12 states, and Ms. Vaccarino is very well -- aware of this, that

13 it is Mitch who needs to turn over his tax returns. What the

14 Court did was simply mirror the order of Judge Sullivan which

15 requires the turn over of the Aquila tax returns. We made

16 this very clear to Ms. Vaccarino in a letter that was

17 submitted after she submitted her draft order. She ignored

18 that.

19 The second thing she --

20 (Whispered conversation)

21 MR. SMITH: -- did was she -- the Court's order

22 specifically --

23 THE COURT: So what does her order say?

24 MR. SMITH: Is that Mitch needs to turn over his tax

1 returns --

2 THE COURT: Okay.

3 MR. SMITH: -- when the Court's order was that he
4 turn over the Aquila tax returns, or more specifically, that
5 the Aquila tax returns that were submitted to Judge Sullivan
6 that Ms. Stipp be allowed to review them with a CPA as ordered
7 by Judge Sullivan and then if they weren't available to Judge
8 Sullivan that Mr. Stipp would make sure that those were
9 available for the redo -- review that was permitted under the
10 previous order. That was the order of the Court.

11 The second order that Ms. Vaccarino failed to
12 address was your order directing him to cooperate with a
13 parenting coordinator. That order was denied. It
14 specifically states in the minutes of the Court, which --

15 (Whispered conversation)

16 MR. SMITH: -- I found out from Ms. Estes (ph),
17 she's often very -- even correct over the lawyers in terms of
18 what contained in those minutes, and her minutes were
19 precisely accurate in regard to the denial of that motion and
20 the denial of the motion that now -- or the order that
21 Ms. Vaccarino --

22 (Whispered conversation)

23 MR. SMITH: -- now agrees was not contained in the
24 order. So those minutes were accurate in that regard. And in

1 regard to the -- they should have been in the order, and we
2 should never have had to file the 60A motion since
3 Ms. Vaccarino is now admitting that she was aware --
4 MS. VACCARINO: I didn't admit --
5 MR. SMITH: -- that that --
6 MS. VACCARINO: -- it.
7 MR. SMITH: -- information --
8 THE COURT: All right. So --
9 MR. SMITH: -- was not --
10 MS. VACCARINO: Your Honor, if I --
11 MR. SMITH: -- contained in the --
12 MS. VACCARINO: -- may?
13 MR. SMITH: -- order.
14 THE COURT: So with her order, what needs to be
15 changed is he's required to turn over Aquila returns, not his
16 returns.
17 MS. VACCARINO: We know that.
18 MR. SMITH: Along the lines that I just discussed --
19 MS. VACCARINO: It refers --
20 MR. SMITH: -- Your Honor.
21 MS. VACCARINO: -- back to the old order being
22 enforced. They're just --
23 THE COURT: And -- and it needs to -- right -- and
24 so what's -- and what's the other issue? That --

1 MS. VACCARINO: Your Honor, he's saying that he was
2 never ordered to go back to the parenting coordinator, but
3 it's a conflict and it says that you denied the request for us
4 to --

5 (Whispered conversation)

6 MS. VACCARINO: -- get back into parenting
7 coordination when you really granted it. So there as an error
8 in the minute -- it might have said that was denied, because
9 at one point you said that's denied, that's denied, that's
10 denied, and then we kept talking about it, and you
11 specifically stated in the pleadings, you said, oh, yes, you
12 won one, which was the one of going back to the parenting
13 coordinator --

14 THE COURT: No.

15 MS. VACCARINO: -- wait -- going back to the
16 parenting coordinator. You -- you're also vacating an order
17 that's on appeal right now, the one he appealed from.

18 THE COURT: Well, that's -- yeah --

19 MS. VACCARINO: And I --

20 THE COURT: -- that's --

21 MS. VACCARINO: -- don't know --

22 THE COURT: -- right, isn't it?

23 MS. VACCARINO: -- if you're saying you can't --

24 THE COURT: No, you're --

1 MS. VACCARINO: -- I --
2 THE COURT: -- right.
3 MS. VACCARINO: -- mean that's going to make his
4 whole appeal moot, which I guess I'll write that in my motion
5 that I, you know, I'm going to finish by tomorrow hopefully.
6 So I --
7 THE COURT: Yeah, that's --
8 MS. VACCARINO: -- don't what we're --
9 THE COURT: -- right.
10 MS. VACCARINO: -- doing here.
11 THE COURT: So --
12 MS. VACCARINO: I mean, if he really --
13 THE COURT: Well --
14 MS. VACCARINO: -- thinks that those --
15 THE COURT: No, you're right. It's on --
16 MS. VACCARINO: I don't know --
17 THE COURT: -- appeal.
18 MS. VACCARINO: -- what's -- I --
19 MR. SMITH: If I may --
20 THE COURT: The --
21 MR. SMITH: -- Your Honor? In regard to the --
22 MS. VACCARINO: I'll amend it. It doesn't matter.
23 It still isn't substantially appealable under 3A. I --
24 MR. SMITH: In regard to that order, Your Honor, you

1 had specifically made specific orders in regard to the
2 referral to Dr. Lenkeit. Today I heard you say something a
3 little bit different and I wanted the Court, if it would, to
4 clarify --

5 (Whispered conversation)

6 MR. SMITH: -- what the ruling is in regard to any
7 order associated with Dr. Lenkeit.

8 MS. VACCARINO: Your Honor --

9 THE COURT: Well, that order's on appeal now, isn't
10 it?

11 MR. SMITH: Okay. So --

12 THE COURT: So --

13 MR. SMITH: -- the order is that the Court doesn't
14 believe it has jurisdiction to --

15 THE COURT: I don't know if I can further clarify
16 the order if it's --

17 MR. SMITH: I --

18 THE COURT: I mean if it's under appeal, I don't
19 know that it's appropriate -- proper for me to say anything
20 about it.

21 MR. SMITH: Judge, if I understand, the -- the --
22 the finding of the Court would be then that it does not at the
23 present time have jurisdiction to address that matter because
24 it's up on appeal?

1 THE COURT: Yeah --
2 MR. SMITH: Am I --
3 THE COURT: --that's --
4 MR. SMITH: -- correct?
5 THE COURT: That's it.
6 MR. SMITH: All right.
7 MS. VACCARINO: You don't have jurisdiction to
8 modify the order, and my understanding is you have
9 jurisdiction to enforce a proper order. Now, again, I wanted
10 to be clear because I have to finish this motion with the
11 Supreme Court and you really -- we do -- we'll get sanctioned
12 up there if you misstate the record. Are you vacating the
13 order stemming from the December 1st hearing, or are you
14 asking parties to stipulate to amend --
15 THE COURT: Yeah, I --
16 MS. VACCARINO: -- a portion --
17 THE COURT: -- forgot that that was the -- that it
18 had been appealed. I'm not -- no, I'm not vacating it. I'm
19 not -- if --
20 MS. VACCARINO: Well, pending the appeal --
21 THE COURT: -- if --
22 MS. VACCARINO: -- they're looking at that issue of
23 whether it should have been.
24 THE COURT: If you want to -- I -- I mean, all I can

1 state is that, you know, for Honeycutt purposes, if they
2 wanted to send it back down I'll certainly address the issue
3 -- I mean, the issue on appeal is the parenting coordinator.
4 I'm more than happy to review and reconsider the issue on the
5 parenting coordinator and make myself much, much more clear --
6 MS. VACCARINO: Okay.
7 THE COURT: -- as to what the scope and -- scope is
8 and what each party's responsibilities are.
9 MS. VACCARINO: So you're not vacating the January
10 25 --
11 THE COURT: No.
12 MS. VACCARINO: -- order?
13 THE COURT: You're --
14 MS. VACCARINO: But --
15 THE COURT: You're right.
16 MS. VACCARINO: -- you would --
17 THE COURT: I don't think --
18 MS. VACCARINO: -- under --
19 THE COURT: -- I can --
20 MS. VACCARINO: -- Honey --
21 THE CLERK: December 1st.
22 THE COURT: December --
23 MS. VACCARINO: Yeah, the Sep --
24 MR. SMITH: You were --

1 MS. VACCARINO: -- the order --
2 MR. SMITH: Arising from --
3 MS. VACCARINO: -- stemming from --
4 MR. SMITH: -- the --
5 MS. VACCARINO: -- it was filed January --
6 THE COURT: Right.
7 MS. VACCARINO: -- 25th. And -- but you would
8 reconsider a remand under Honeycutt to address those issues?
9 THE COURT: Yeah.
10 MS. VACCARINO: Thank you, Your Honor.
11 THE COURT: Yeah.
12 MR. SMITH: Okay. Your Honor, in regard to the
13 ruling on the -- as I understand it on the sanction and fees,
14 you don't find either party to be the prevailing party at
15 today's --
16 THE COURT: Let --
17 MR. SMITH: -- proceeding?
18 THE COURT: Yes. Neither party's a prevailing
19 party.
20 (Whispered conversation)
21 THE COURT: And as for -- as for sanctions for
22 today, we're just going to chalk it up to an offset each way.
23 Look, we're going to be doing this for a long time. We're
24 going to be back here every month for -- I mean, we got a kid

1 that's what, three, so we got 15 years that we're going to be
2 doing this.

3 THE RESPONDENT: 25.

4 THE COURT: Okay?

5 THE RESPONDENT: 26.

6 THE COURT: You guys do a very good job with your
7 pleadings. All right? Every once in a while I have a problem
8 remembering everything because they're so voluminous. So when
9 I'm -- when I've heard enough, you've refreshed my memory, and
10 I'm ready to move on and I tell you stop, let's move on, you
11 need to stop. Okay?

12 You guys are like an old Chevy I used to drive.
13 Every time I'd shut the motor off, the thing would sputter and
14 go on for another five minutes. You know, like the car was
15 telling me -- asking me if I was sure I'd had enough. I'm --
16 I'm the driver. I know when I've had enough. Okay? You need
17 to -- you need to refresh my memory because you got a lot of
18 stuff crammed in here. But once I'm up on it, that's all I
19 need.

20 And the only reason -- like I said, the only reason
21 I'm setting you guys hearings at all because I would certainly
22 love to avoid it and just throw something out there, give you
23 an order without having you come in, is because you got so
24 much -- you're over complicating things to the point where I

1 need to get additional information sometimes. So that's --
2 MR. SMITH: The Defen --
3 THE COURT: -- it. As for --
4 MR. SMITH: The --
5 THE COURT: -- nobody's -- nobody's --
6 (Whispered conversation)
7 THE COURT: -- being sanctioned for today. But,
8 look, we -- we've go to -- we've got to keep the -- the courts
9 moving and we got to keep things going.
10 MS. VACCARINO: So, just let me clear --
11 MR. SMITH: If I may --
12 MS. VACCARINO: -- you're reversing the sanctions
13 you had stated during the --
14 THE COURT: Yeah.
15 MS. VACCARINO: -- record that -- thank you --
16 THE COURT: Yeah.
17 MS. VACCARINO: -- Your Honor. Appreciate your
18 indulgence and I --
19 MR. SMITH: If I may prepare today's order and
20 provide that to Ms. Vaccarino for her signature, Your Honor?
21 THE COURT: Yep.
22 MR. SMITH: Okay.
23 THE COURT: And --
24 MR. SMITH: Thank you.

1 THE COURT: -- both --

2 MS. VACCARINO: That's fine, Your Honor.

3 THE COURT: Both parties' signatures.

4 MS. VACCARINO: One other thing, Your Honor. Under
5 the prevailing party issue, because I hear -- I just don't --
6 this could be appealed, I'm -- you're going to certify this is
7 a final order under N.R.C.P. 54(b)? Because I need that --
8 it's a final judgment after post awards thing, because my
9 concern is I just want to make sure -- because we're not
10 looking to appeal it over that amount of money, but they
11 might.

12 But -- with what's been incurred -- because you
13 don't think you need a hearing or anything on prevailing
14 party, I believe under this motion hearing you can make that
15 finding under the law without a full hearing as to -- just by
16 what you've read and what you've ordered today.

17 THE COURT: It's a final order.

18 MS. VACCARINO: Okay. Thank you, Your Honor.

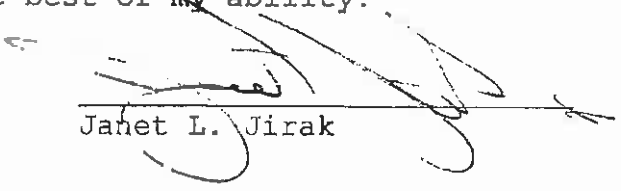
19 MR. SMITH: Very good. Thank you, Your Honor.

20 MS. VACCARINO: Thank you for you indulgence, Your
21 Honor.

22 THE COURT: Good luck.

23 (THE PROCEEDINGS CONCLUDED AT 15:34:58)

24 * * * * *

1 ATTEST: I do hereby certify that I have truly and
2 correctly transcribed the digital proceedings in the
3 above-entitled case to the best of my ability.
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6 Janet L. Jirak
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APPELLANT'S
RESPONSE/OPPOSITION
EXHIBIT "B"



CLERK OF THE COURT

1 **ORDR**
2 RADFORD J. SMITH, CHARTERED
3 RADFORD J. SMITH, ESQ.
4 Nevada Bar No. 002791
5 64 N. Pecos Road, Suite 700
6 Henderson, Nevada 89074
7 Office: (702) 990-6448
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9 rsmith@radfordsmith.com
10 Attorney for Defendant, Mitchell Stipp

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 CHRISTINA STIPP,

14 Plaintiff.

15 v.

16 MITCHELL STIPP,

17 Defendant.

CASE NO.: D-08-389203-Z
DEPT NO.: O

FAMILY DIVISION

18 **ORDER RE: PLAINTIFF'S MOTION TO REHEAR/RECONSIDER THE HEARING OF**
19 **FEBRUARY 3, 2010; AND/OR TO CLARIFY THE COURT'S RULINGS FROM THAT**
20 **HEARING; FOR PLAINTIFF'S ATTORNEY'S FEES; AND RELATED RELIEF AND**
21 **DEFENDANT'S COUNTERMOTION FOR SANCTIONS UNDER E.D.C.R. 7.60**

22 DATE OF HEARING: June 22, 2010
23 TIME OF HEARING: 10:00 a.m.

24 This matter coming on for hearing on Plaintiff's Motions and Defendant's Countermotion
25 referenced above; Plaintiff CHRISTINA STIPP ("Christina"), being present and represented by DONN
26 W. PROKOPIUS, ESQ., and Defendant, MITCHELL STIPP ("Mitchell"), being present and
27 represented by RADFORD J. SMITH, ESQ., of RADFORD J. SMITH, CHARTERED; the Court,
28 having reviewed the pleadings on file, having heard the arguments of counsel, and being fully advised in
the premises, and good cause appearing therefor, FINDS AND ORDERS AS FOLLOWS:

1 1. Christina has moved to rehear or clarify the Court's order of April 13, 2010 arising from
2 the hearing of February 3, 2010. In that order, the Court indicated its denial of Christina's
3 Countermotions filed November 30, 2009, requesting both discovery and the partition of alleged omitted
4 assets, but permitted Christina to view, subject to a Confidentiality Agreement, the tax returns of Aquila
5 Investments, LLC ("Aquila Investments") that had been submitted *in camera* by Mitchell. Christina
6 argues, in sum, that the order issued by the Court on April 13, 2010, does not accurately reflect the
7 Court's ruling at the time of the February 3, 2010 hearing regarding her Countermotions, and that new
8 "evidence" suggests that Mitchell concealed assets during the time of the parties' divorce. For the
9 reasons stated below, the Court denies those motions, denies Mitchell's countermotions for sanctions
10 pursuant to EDCR 7.60, but grants Mitchell's request for attorney's fees pursuant to the terms of the
11 Marital Settlement Agreement incorporated into the Court's Decree of Divorce.

14 2. Christina's November 30, 2009, Countermotion sought a partition of omitted assets under
15 *Amie v. Amie*, 106 Nev. 541, 796 P.2d 233 (1990) and the terms of the parties Decree of Divorce. In
16 her countermotion, she identified three factors justifying her motion: 1) that Mitchell had purchased a
17 home for his parents subsequent to the parties' divorce; 2) had stated he was "retired" after the divorce,
18 though the funds he received in the parties' March 6, 2008 divorce did not justify such retirement; and
19 3) that public records suggested that Aquila Investments, a company in which Stipp Investments, LLC,
20 an asset granted to Mitchell in the divorce, held a profits interest, distributed \$6.9 million to Mitchell
21 before or shortly after the divorce that Mitchell failed to disclose. Only the third of these claims alleged
22 that an asset held during the marriage had been undivided (the claimed distribution from Aquila
23 Investments to Mitchell). In his Opposition to Christina's original Countermotion to Partition Assets,
24 Mitchell explained the information in the public records that Christina had attached to her
25 Countermotion, and further provided the tax returns of Aquila Investments for the years 2007 and 2008
26 demonstrating that Aquila Investments had not made any distributions to Mitchell or Stipp Investments
27
28

1 during those years. (See, Supplement to filed December 18, 2009). The Court held a hearing on
2 Plaintiff's Countermotion on February 3, 2010, and subsequently entered its written Order on April 13,
3 2010.

4
5 3. Christina's current motion seeks to "clarify" the Court's order of April 13, 2010. The
6 Court has reviewed its order and finds no need for clarification. At the time of the February 3, 2010
7 hearing and in its order, the Court found that Christina had not stated a basis for a claim of "omitted
8 assets," but instead she must demonstrate "fraud upon the court" in order to sustain her claim to
9 readdress the division of assets under the fraud theory she advocated in her motion. Specifically the
10 Court stated in its April 13, 2010 order, page 2-3:

11
12 4. The Court does not intend to re-litigate the financial issues between the parties,
13 and is inclined to deny Christina's Motion to partition omitted assets. The Court is not
14 willing to re-open the litigation unless it can be shown that a fraud was committed upon
15 the Court. Christina has provided no evidence of such fraud. Christina's motion to open
16 discovery is based upon her allegations relating to Aquila Investments, LLC. The court
17 notes that Christina was aware of the Aquila Investments, LLC, and its assets prior to the
18 parties' divorce. She had sufficient opportunity to explore and investigate that asset
19 during any discovery process prior to divorce. Her failure to do so does not constitute a
20 fraud committed upon the Court by Mitchell.

21
22 5. Mitchell has provided the court with tax returns from Aquila Investments for the
23 years 2007 and 2008. Christina's counsel may review those tax returns in chambers, and
24 he alone shall be provided access to the returns upon the parties' entry into a mutually
25 acceptable Confidentiality Agreement drafted by Mitchell's counsel.

26
27 Contrary to Christina's present argument, the text of the Order prepared by counsel for Mitchell is
28 accurate and properly sets forth the findings and order of the Court. The order will stand as written, and
Christina's motion for clarification is denied.

4. Christina further argues that the Court should reconsider its April 13, 2010 order based upon a
comment attributed to Mitchell by Dr. John Paglini during an interview associated with Dr. Paglini's
child custody assessment. The meaning and import of the comment is in dispute, and the Court does not
find the alleged statement to be adequate grounds to reopen discovery or find an omitted asset. Christina

1 claims again that Mitchell's "retirement" suggests that he hid assets during the divorce, and thus she is
2 justified in seeking discovery. The Court never took the reference to "retirement" to mean that Mitchell
3 had retired for life, but only that he was not working based upon the employment opportunities he
4 currently faces. The Court does not find these, or any other grounds stated by Christina in her pleadings
5 supporting her motion, to be adequate evidence to justify either rehearing of the Court's April 13, 2010
6 order, nor an adequate basis for the opening of discovery relating to Christina's claim for partition of
7 omitted assets. The Court thus denies Christina's present motions.
8

9 5. Mitchell has countermoved for sanctions. The Court does not find that Christina has brought
10 her motion in bad faith, and thus denies that request. Mitchell, however, is entitled to an award of fees
11 as the prevailing party in this litigation. (See Marital Settlement Agreement, incorporated into the
12 Court's March 6, 2008 Decree of Divorce, at page 10, ¶7). Mitchell's counsel shall file a statement of
13 fees and costs incurred in relation to Christina's Motion for Reconsideration and related countermotions
14 to the Court within ten (10) days of hearing.
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6. Counsel for Christina has requested that the Court permit an accounting expert (a CPA) to review the tax returns of Aquila Investments submitted by Mitchell to the Court, and Mitchell has no objection to that request. Consequently, the Court shall permit either counsel for Christina and/or her accounting expert to examine the Aquila Investment's tax returns in a manner consistent with the terms of the Court's April 13, 2010 order.

IT IS SO ORDERED this 6 day of October, 2010.

DISTRICT COURT JUDGE

FRANK P. SULLIVAN

Submitted by:

RADFORD J. SMITH, CHARTERED

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