

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \*

KIRK ROSS HARRISON,

NO. 72880

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

---

**CHILD CUSTODY FAST TRACK STATEMENT**

**APPENDIX – VOLUME 17**

ROBERT L. EISENBERG  
Nevada Bar No. 0950  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
775-786-6868  
[rle@lge.net](mailto:rle@lge.net)

KIRK R. HARRISON  
Nevada Bar No. 0861  
1535 Sherri Lane  
Boulder City, Nevada 89005  
702-271-6000  
[kharrison@harrisonresolution.com](mailto:kharrison@harrisonresolution.com)

*ATTORNEYS FOR APPELLANT*

## CHRONO INDEX

## **CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
1.	Complaint for Divorce	03/18/11	1	1-7
2.	Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence	09/14/11	1 2	8-220 221-361
3.	Defendant's Opposition to Plaintiff's Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence; Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children; for Division of Funds for Temporary Support, and for Attorney's Fees	10/31/11	2 3	362-418 419-652
4.	Answer to Complaint for Divorce and Counterclaim for Divorce	11/22/11	3	653-659
5.	Reply to Defendant's Opposition to Plaintiffs Motion for Joint Legal Custody and Permanent Physical Custody and for Exclusive Possession of Residence AND Opposition to Defendant's Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children, for Division of Funds for Temporary Support, and for Attorney's Fees	01/04/12	4 5	660-907 908-929
6.	Court Minutes [All Pending Motions]	02/24/12	5	930-933
7.	Stipulation and Order Resolving Parent/Child Issues	07/11/12	5	934-950
8.	Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for Sanctions and Attorney's Fees	05/10/13	5	951-984

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
9.	Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief	05/28/13	5	985-994
10.	Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief	05/28/13	5	995-1009
11.	Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan; Plaintiff's Opposition to Defendant's Motion for Sanctions and Attorney's Fees	07/19/13	5	1010-1044
12.	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan and Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions and Attorney's Fees	09/09/13	5	1045-1053
13.	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion Styled Request for Reasonable Discovery and Evidentiary Hearing; Defendant's Opposition to	09/11/13	5	1054-1059



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Plaintiff's Countermotion for Equitable Relief; Defendant's Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion for Declaratory Relief			
14.	Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief	10/01/13	5	1060-1080
15.	Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues [To Delete "Teenage Discretion" Provision] and Other Equitable Relief; Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions	10/17/13	5	1081-1149
16.	Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief	10/21/13	6	1150-1171
17.	Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions	10/23/13	6	1172-1223
18.	Order for Appointment of Parenting Coordinator	10/29/13	6	1224-1232
19.	Notice of Entry of Decree of Divorce	10/31/13	6	1233-1264

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
20.	Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment (without exhibits)	11/14/13	6	1265-1281
21.	Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision	11/18/13	6	1282-1316
22.	Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees	12/06/13	6	1317-1339
23.	Plaintiff's Reply in Support of Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision AND Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees	12/13/13	6	1340-1354
24.	Order [Denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and Other Equitable Relief and Denying Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions]	12/17/13	6	1355-1356
25.	Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief	04/21/14	6 7	1357-1388 1389-1431
26.	Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions	05/09/14	7	1432-1458
27.	Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions	05/14/14	7	1459-1472

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
28.	Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions	05/20/14	7	1473-1518
29.	Order from Hearing [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision]	06/13/14	7	1519-1524
30.	Notice of Entry of Order [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision]	06/16/14	7	1525-1532
31.	Notice of Appeal	07/17/14	7	1533-1593
32.	Findings and Orders re: May 21, 2014 Hearing	09/29/14	7	1594-1601
33.	Notice of Entry of Findings and Orders re: May 21, 2014 Hearing	09/29/14	7	1602-1611
34.	Amended or Supplemental Notice of Appeal	10/16/14	7	1612-1622
35.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013	08/21/15	8	1623-1673
36.	Order to Appear and Show Cause	09/01/15	8	1674-1675
37.	Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor	09/14/15	8	1676-1692

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Child, Emma Brooke Harrison ("Brooke")			
38.	Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke")	09/18/15	8	1693-1738
39.	Notice of Entry of Order from Hearing	10/01/15	8	1739-1743
40.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	10/12/15	8	1744-1758
41.	Order to Appear and Show Cause	10/14/15	8	1759-1760
42.	Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing	10/15/15	8	1761-1851
43.	Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing	11/02/15	9	1852-1879
44.	Dr. Paglini Letter to Court	11/23/15	9	1880-1881
45.	Notice of Entry of Order from Domestic Court Minutes	12/02/15	9	1882-1886
46.	Supplement to Plaintiff's Motion for an Order to Show Cause Why	12/10/15	9	1887-1903

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015			
47.	Reply to Opposition to Motion for Clarification; Motion to Amend Findings	12/10/15	9	1904-1920
48.	Court Minutes [All Pending Motions]	12/14/15	9	1921-1922
49.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	12/16/15	9	1923-1942
50.	Notice of Entry of Order from Domestic Court Minutes	12/17/15	9	1943-1947
51.	Court Minutes [All Pending Motions]	01/26/16	9	1948-1949
52.	Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing	05/25/16	9	1950-1958
53.	Letter from John Paglini, Psy.D. to Court	05/31/16	9	1959-1961
54.	Notice of Entry of Order re John Paglini, Psy.D. Letter	06/21/16	9	1962-1963
55.	Notice of Appeal	06/27/16	9	1964-1975
56.	Plaintiff's Motion for Reunification Therapy for Minor Children and Father	07/26/16	9	1976-2076
57.	Notice of Entry of Order re: August 24, 2016 Hearing	08/19/16	9	2077-2079

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
58.	Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order	08/30/16	9	2080-2095
59.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	08/30/16	10	2096-2196
60.	Defendant's Opposition to Motion for Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015; Countermotion for Sanctions; Opposition to Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings and, Motion to Alter, Amend and Clarify Order	09/23/16	10	2197-2206
61.	Plaintiff's Motion for an Order to Nullify and Void Expert Report	09/28/16	10	2207-2292
62.	Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	09/30/16	10	2293-2316
63.	Plaintiff's Reply in Support of Motion for Reconsideration, or, in the Alternative, Motion for	09/30/16	10	2317-2321

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order and Plaintiff's Objection to those Portions of Defendant's Opposition in Violation of EDCR 5.13			
64.	Defendant's Opposition to Motion for an Order to Nullify and Void Expert Report	10/18/16	10	2322-2337
65.	Affidavit of Kirk Harrison Filed in Support of Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015, Filed August 30, 2016	10/19/16	11	2338-2358
66.	Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report	11/02/16	11	2359-2381
67.	Reply to Defendant's Opposition to Countermotion for Sanctions; Motion to Strike Reply; Motion to Strike Affidavit	11/04/16	11	2382-2423
68.	Court Minutes [All Pending Motions]	11/07/16	11	2424-2426
69.	Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	12/29/16	11	2427-2440
70.	Plaintiff's Pre-Trial Memorandum	01/17/17	11	2441-2457
71.	Prehearing Memorandum	01/17/17	11	2458-2477
72.	Court Minutes [Evidentiary Hearing]	01/18/17	11	2478-2479

///  
///

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
73.	Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions	01/31/17	11	2480-2489
74.	Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	01/31/17	11	2490-2507
75.	Plaintiff's Supplemental Exhibit in in Support of Plaintiff's Reply Regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	01/31/17	11	2508-2512
76.	Court Minutes [All Pending Motions]	02/01/17	11	2513-2514
77.	Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	02/13/17	11	2515-2537
78.	Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions	02/13/17	11	2538-2556
79.	Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees	02/15/17	11	2557-2563
80.	Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Reply to Supplemental Declaration, and; Opposition to Request for Sanctions	02/17/17	12	2564-2595



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
81.	Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees	03/06/17	12	2596-2602
82.	Defendant's Opposition to Motion to Strike; Countermotion for Sanctions	03/13/17	12	2603-2608
83.	Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing]	03/15/17	12	2609-2617
84.	Notice of Entry of Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing]	03/16/17	12	2618-2627
85.	Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 16, 2017	03/28/17	12	2628-2634
86.	Plaintiff's Response to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 15, 2017	04/10/17	12	2635-2638
87.	Notice of Appeal	04/14/17	12	2639-2649
<b><u>TRANSCRIPTS</u></b>				
88.	Transcript re: All Pending Motions	10/30/13	12	2650-2688
89.	Transcript re: All Pending Motions	05/21/14	12	2689-2744
90.	Transcript re: All Pending Motions	09/22/15	13	2745-2823
91.	Transcript re: All Pending Motions	12/14/15	13	2824-2886
92.	Transcript re: All Pending Motions	01/26/16	13	2887-2928

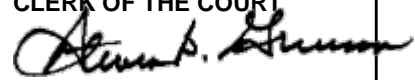
<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
93.	Transcript re: All Pending Motions	11/07/16	14	2929-3040
94.	Transcript re: Evidentiary Hearing - Vol.1	01/18/17	14	3041-3152
95.	Transcript re: Evidentiary Hearing - Vol. 2	01/18/17	14 15	3153-3178 3179-3315
	Plaintiff's Exhibit 1 – Dr. Paglini Report dated January 25, 2016 [ <i>Confidential</i> ] SEALED		15	3316-3375
	Plaintiff's Exhibit 2 – Email from Vivian Harrison to Kirk Harrison dated February 27, 2016		15	3376-3377
	Plaintiff's Exhibit 3 – Email from Brooke Harrison to Dr. Paglini dated February 27, 2016		15	3378-3380
	Plaintiff's Exhibit 4 – Dr. Paglini Letter dated May 31, 2016		15	3381-3384
	Plaintiff's Exhibit 5 – Dr. Ali Letter dated June 29, 2016 [ <i>Confidential</i> ] SEALED		15	3385-3387
	Plaintiff's Exhibit 6 – Email from Carina Deras to Kirk Harrison dated April 1, 2016		15	3388-3389
	Plaintiff's Exhibit 7 – Brooke Harrison's Nevada State High School Enrollment Form dated August 10, 2015		15	3390-3392
	Plaintiff's Exhibit 8 – Brooke Harrison's Class Schedule		15	3393-3394
	Plaintiff's Exhibit 9 – Affidavit of Kirk Harrison dated October 19, 2016		15	3395-3416
	Plaintiff's Exhibit 10 – Comparison of Agreed Time with Actual Custody Time from August 12, 2015 through December 12, 2016		15	3417-3426
96.	Transcript re: All Pending Motions	02/01/17	16	3427-3640

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
<b><u>ADDITIONAL DOCUMENTS<sup>1</sup></u></b>				
97.	Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017	07/24/17	16	3641-3647
98.	Plaintiff's Supplemental Filing	08/24/17	16	3648-3666
99.	Supplemental Notice of Appeal	08/24/17	17	3667-3676
100.	Notice of Entry of Order re: Expert Designation	10/06/15	17	3677-3682
101.	Notice of Entry of Order re: Pending Motions	01/04/17	17	3683-3693

---

<sup>1</sup>These additional documents were added to the appendix after the first 16 volumes of the appendix were complete and already numbered (3,640 pages).





1 **NOAS**  
EDWARD L. KAINEN, ESQ.  
2 Nevada Bar No. 5029  
ANDREW L. KYNASTON, ESQ.  
3 Nevada Bar No. 8147  
KAINEN LAW GROUP, PLLC  
4 3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
5 Telephone (702) 823-4900  
Facsimile (702) 823-4488  
6 Service@KainenLawGroup.com

7 THOMAS STANDISH, ESQ.  
Nevada Bar No. 1424  
8 JOLLEY URG A WIRTH WOODBURY & STANDISH  
3800 Howard Hughes Parkway, 16th Fl.  
9 Las Vegas, Nevada 89169  
Telephone (702) 699-7500  
10 Facsimile (702) 699-7555  
tjs@juwww.com

11 Co-counsel for Plaintiff

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

14 KIRK ROSS HARRISON,  
15  
16 Plaintiff,  
17 vs.  
18 VIVIAN MARIE LEE HARRISON,  
19 Defendant.

CASE NO: D-11-443611-D  
DEPT NO: Q

Date of Hearing: N/A  
Time of Hearing: N/A

20 **SUPPLEMENTAL NOTICE OF APPEAL**

21 Notice is hereby given that Plaintiff appeals to the Nevada Supreme Court  
22 from the Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017,  
23 filed on July 24, 2017 (Notice of Entry of Order was filed on July 24, 2017), a copy of  
24 which is attached hereto as **Exhibit "1"**.

25 ...

26 ...

27 ...

28 ...

**KAINEN LAW GROUP, PLLC**  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

1 In the Notice of Appeal, filed April 14, 2017, Supreme Court Case No.  
2 72880, it was noted, "There are other rulings by the District Court which are currently  
3 pending and this appeal will be supplemented as soon as a written order is entered." The  
4 above Order, filed July 24, 2017, is the written order which was referenced.

5 Dated this 24<sup>th</sup> day of August, 2017.

6 KAINEN LAW GROUP, PLLC

7  
8  
9 By: 

10 EDWARD L. KAINEN, ESQ.

11 Nevada Bar No. 5029

12 ANDREW L. KYNASTON, ESQ.

13 Nevada Bar No. 8147

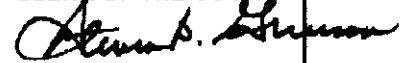
14 3303 Novat Street, Suite 200

15 Las Vegas, Nevada 89129

16 Attorney for Plaintiff  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

## **EXHIBIT “1”**

**E-SERVED**JUL 25 2017Electronically Filed  
7/24/2017 3:08 PM  
Steven D. Grierson  
CLERK OF THE COURT

NEOJ

## DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D

DEPT NO. Q

NOTICE OF ENTRY OF  
ORDER FROM EVIDENTIARY HEARINGS ON  
JANUARY 18, 2017 AND FEBRUARY 1, 2017

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017 has been entered in the above-entitled matter, a copy of which is attached hereto. I hereby certify that on the above file stamped date, I caused a copy of this Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017 to be:

☒ E-Served pursuant to NEFCR 9 on the following attorneys:

Edward Kainen, Esq.  
Thomas Standish, Esq.

Radford J. Smith, Esq.  
Gary Silverman, Esq.

/s/ Kimberly Weiss

Kimberly Weiss  
Judicial Executive Assistant  
Department Q

RYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
13 VEGAS, NEVADA 89101



Electronically Filed  
7/24/2017 12:21 PM  
Steven D. Grierson  
CLERK OF THE COURT



1  
2 ORDER

3  
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6  
7 KIRK ROSS HARRISON, )

8 Plaintiff, )

9 v. )

CASE NO. D-11-443611-D

DEPT NO. Q

10 VIVIAN MARIE LEE HARRISON, )

11 Defendant. )

Date of Hearings: 1/8/17 & 2/1/17

Time of Hearings: 10:00 a.m.

12  
13  
14 ORDER FROM EVIDENTIARY HEARINGS ON  
15 JANUARY 18, 2017 AND FEBRUARY 1, 2017

16 The following motions having come on for an Evidentiary Hearing on January  
17 18, 2017, and February 1, 2017: (1) Plaintiff's Motion for Reunification Therapy for  
18 Minor Children and Father (Jul. 26, 2016); (2) Plaintiff's Motion for Reconsideration,  
19 or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings  
20 or Make Additional Findings, and Motion to Alter, Amend, and Clarify Order (Aug.  
21 30, 2016); (3) Plaintiff's Motion for an Order to Show Cause Why Defendant Should  
22 not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the  
23 Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October  
24 1, 2015 (Aug. 30, 2016); (4) Plaintiff's Motion for an Order to Nullify and Void  
25 Expert Report (Sep. 28, 2016); and (5) Plaintiff's Motion for New Expert  
26 Recommendation in lieu of Discovery and Evidentiary Hearing (Dec. 29, 2016).  
27  
28

RYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
19 VEGAS, NEVADA 89101

1  
2 Plaintiff, Kirk Ross Harrison, appeared personally and was represented by Edward L.  
3 Kainen, Esq. Defendant, Vivian Marie Lee Harrison, appeared personally and was  
4 represented by Radford J. Smith, Esq.

5  
6 The Court having reviewed the pleadings and papers on file herein, having heard  
7 the arguments of counsel, and good cause appearing therefor, the Court finds and  
8 Orders as follows:

9  
10 THE COURT FINDS that the focus of these proceedings was the  
11 implementation of a plan to strengthen the relationship between the parties' daughter,  
12 Emma Brooke Harrison ("Brooke"), and her father, Kirk Ross Harrison. Brooke was  
13 allowed to testify during the trial notwithstanding Plaintiff's opposition to her  
14 appearance as a witness. Brooke testified that she is committed to and has returned  
15 to the regular custodial schedule. As such, the focus was not on punitive measures, but  
16 to implement a plan to assist Plaintiff and Brooke in their relationship.

17  
18 THE COURT HEREBY ORDERS that Dr. Ali and Dr. Paglini's  
19 recommendations shall be implemented. Between now and Brooke's 18th birthday on  
20 June 26, 2017, Plaintiff and Brooke will participate in a 90-minute counseling session  
21 with Dr. Ali every other week. The parties shall equally share the cost of Dr. Ali's fees  
22 for such counseling. Between now and Brooke's 18th birthday, each week they do not  
23 have a 90-minute counseling session with Dr. Ali, Plaintiff and Brooke shall spend four  
24 hours of quality time together. Defendant shall not be a passive observer in this  
25 process, and she shall be actively involved to make sure Brooke participates in the  
26 counseling, and spends the four-hour quality time allotted with Plaintiff. Whenever  
27  
28

RYCE G. DUCKWORTH  
DISTRICT JUDGE

JAMILY DIVISION, DEPT. C  
13 VEGAS, NEVADA 89101

1  
2 the 90-minute counseling sessions or the four-hour shared quality time activities take  
3 place during Defendant's custodial time with the children, Plaintiff may pick-up Brooke  
4 to transport her to attend the 90-minute counseling sessions and the four-hour shared  
5 quality time activities.  
6

7       **THE COURT FURTHER ORDERS** that Plaintiff's Motion for Reunification  
8 Therapy for Minor Children and Father (Jul. 26, 2016), wherein Brooke, Rylee and  
9 Plaintiff would jointly participate in a four-day reunification program, in which  
10 Defendant would also participate, together with the required 90-day exclusive physical  
11 custody period, is denied.  
12

13       **THE COURT FURTHER ORDERS** that Plaintiff's Motion for  
14 Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to  
15 Amend Findings or Make Additional Findings, and Motion to Alter, Amend, and  
16 Clarify Order (Aug. 30, 2016), is granted as the Court has found it did retain  
17 jurisdiction, as the issues before it are ancillary to the issues then on appeal.  
18

19       **THE COURT FURTHER ORDERS** that Plaintiff's Motion for an Order to  
20 Nullify and Void Expert Report (Sep. 28, 2016), is denied.  
21

22       **THE COURT FURTHER ORDERS** that Plaintiff's Motion for New Expert  
23 Recommendation in lieu of Discovery and Evidentiary Hearing (Dec. 29, 2016), is  
24 denied.  
25

26       **THE COURT FURTHER ORDERS** that between now and June 26, 2017,  
27 Brooke shall fully comply with the joint physical custody schedule agreed to by the  
28 parties and ordered by the Court as set forth in Paragraph 5 of the Stipulation and

RYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. OF  
LAS VEGAS, NEVADA 89101

1  
2 Order Resolving Parent/Child Issues (Jul. 11, 2012). Defendant shall not be a passive  
3 observer in this process, and she will be responsible to insure that Brooke fully complies  
4 with the custody schedule. According to the custody schedule, Plaintiff is to have  
5 custody of the children "from Wednesday after school, or Wednesday at 9:00 a.m.  
6 when the children are not in school, until Friday after school, or Friday at 9:00 a.m.  
7 when the children are not in school. The parties shall alternate weekends with the  
8 children, from Friday after school, or Friday at 9:00 a.m. when the children are not in  
9 school, until Monday after school, or Monday at 9:00 a.m. when the children are not  
10 in school."  
11  
12

13 **THE COURT FURTHER ORDERS** that Plaintiff's motion regarding teenage  
14 discretion is taken under advisement and the Court will issue a separate Order.  
15 Defendant is to submit an affidavit by February 10, 2017 in response to Plaintiff's very  
16 specific factual allegations about what happened in the past week (prior to February  
17 1, 2017) with respect to Rylee. The affidavit is to be with respect to those specific  
18 items of this past week in regards to the teenage discretion provision. *See* Order (Mar.  
19 15, 2017).  
20  
21

22 **THE COURT FURTHER ORDERS** that, as it relates to the evidentiary  
23 proceedings, each party shall bear their own attorneys' fees and costs. *See* Order (Mar.  
24 15, 2017).  
25

26 **THE COURT FURTHER ORDERS** that the parties are subject to the  
27 provision of NRS 125.510(6) for violation of the Court's Order:  
28

RYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
LAS VEGAS, NEVADA 89101

**PENALTY FOR VIOLATION OF ORDER:**

The abduction, concealment or detention of a child in violation of this Order is punishable as a category D felony as provided in NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right to the child who willfully detains, conceals or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

**THE COURT FURTHER ORDERS** that, pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, are applicable to the parties:

Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.

(b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

RYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
130 VEGAS, NEVADA 89101

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The State of Nevada is the habitual residence of the minor child herein.

DATED this 24th day of July, 2017.



BRYCE C. DUCKWORTH  
DISTRICT COURT JUDGE  
DEPARTMENT Q

BRYCE C. DUCKWORTH  
DISTRICT JUDGE

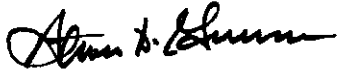
FAMILY DIVISION, DEPT. Q  
145 VEGAS, NEVADA 89101



Electronically Filed  
10/06/2015 09:31:57 AM

**E-SERVED**OCT 06 2015

NEOJ



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D  
DEPT NO. Q

NOTICE OF ENTRY OF  
ORDER RE: EXPERT DESIGNATION

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order Re: Expert Designation has been entered in the above-entitled matter, a copy of which is attached hereto. I hereby certify that on the above file stamped date, I caused a copy of this Notice of Entry of Order Re: Expert Designation to be:

☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Edward Kainen, Esq.  
Thomas Standish, Esq.

Radford J. Smith, Esq.

**RYCE C. DUCKWORTH**  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
LAS VEGAS, NEVADA 89101



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

☒ E-Served pursuant to NEFCR 9 on, or mailed postage prepaid, addressed to,  
the following attorney:

Gary Silverman, Esq.  
6140 Plumas St., #200  
Reno, NV 89519

/s/ Kimberly Weiss  
Kimberly Weiss  
Judicial Executive Assistant  
Department Q

RYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
LAS VEGAS, NEVADA 89101

Electronically Filed  
10/06/2015 08:52:56 AM

1  
2 ORDR  
3  
4

  
CLERK OF THE COURT

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 KIRK ROSS HARRISON, )

8 Plaintiff, )

9 v. )

CASE NO. D-11-443611-D

DEPT NO. Q

10 VIVIAN MARIE LEE HARRISON, )

11 Defendant. )

12  
13  
14  
15 ORDER RE: EXPERT DESIGNATION

16 This matter came before this Court on September 22, 2015 on an Order to Show  
17 Cause ordering Defendant to appear and show cause why she should not be held in  
18 contempt of court, on Plaintiff's Motion for an Order to Show Cause Why Defendant  
19 Should be Held in Contempt for Knowingly and Intentionally Violating Section 2.11  
20 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and this  
21 Court's Order of October 30, 2013 (Aug. 21, 2015) (hereinafter referred to as "Plaintiff's  
22 Motion"), and Defendant's Opposition to Plaintiff's Motion and Countermotion for  
23 Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke") (Sep. 4,  
24 2015) (hereinafter referred to as "Defendant's Countermotion"). Preliminarily, the issues  
25 addressed by this Court at the hearing were ancillary to the issues currently on appeal,  
26 including this Court's enforcement of prior Orders.  
27  
28

RYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
18 VEGAS, NEVADA 89101

1  
2 At the hearing, this Court initially expressed reluctance to further involve the  
3 minor child, Brooke (age 16), in any additional evaluative process. To this end, this  
4 Court initially denied Defendant's request to interview Brooke and also found that  
5 Defendant's request to modify custody based on Brooke's expressed preference to be  
6 legally insufficient to entertain further proceedings pursuant to *Rooney v. Rooney*, 109  
7 Nev. 540, 853 P.2d 123 (1993). After entertaining discussion and argument, however,  
8 this Court was persuaded that outsourced evaluative services would benefit the Court  
9 (and, more importantly, benefit Brooke) with respect to the issues before the Court,  
10 including Defendant's contempt. In this regard, it is undisputed that Plaintiff has had  
11 little to no custodial time with Brooke for an extended period of time in violation of this  
12 Court's orders. Although it appears Brooke's relationship with Plaintiff may have  
13 become strained over a period of time, the cessation of Brooke's custodial time with  
14 Plaintiff coincided with Defendant's direct involvement of Brooke in an insurance claim.  
15 The offers of proof included in the papers filed by the parties underscored the angst and  
16 anxiety generated by this issue, which was disproportionate to the amount of the  
17 insurance claim at issue (approximately \$300.00).  
18  
19  
20  
21

22 The purpose of evaluative services is twofold: (1) ascertain the cause of Brooke's  
23 estrangement (or alienation) from Plaintiff; and (2) determine a course of action to  
24 repair Brooke's relationship with her father. This Court recognizes that such an  
25 evaluation may have relevance to the contempt issue before the Court (as part of the  
26 "cause" for contempt). However, the salutary goal of this process is to rebuild and  
27 strengthen the joint parenting arrangement to which Plaintiff and Defendant previously  
28

1  
2 agreed was in Brooke's best interest. Each party's good faith participation in this process  
3 is essential.

4  
5 To advance this process, this Court directed each party to submit up to three  
6 names by September 25, 2015 of outsourced providers to conduct said evaluative  
7 services, which may include relevant diagnostic testing. Defendant designated Dr. John  
8 Paglini, Psy.D and Dr. Mark Chambers, Psy.D at the September 22, 2015 hearing.  
9 Plaintiff designated Claudia Schwarz, MA, LMFT, and Jacqueline Harris, MA, MFT in  
10 Plaintiff's Expert Nomination (Sep. 25, 2015). As stated at the hearing, the deadline  
11 for designating an evaluator was September 25, 2015. With regard to their respective  
12 expert designations, neither party offered this Court information about any specialized  
13 training or background of their timely designated experts pertaining specifically to  
14 parent/child estrangement or alienation issues.  
15

16  
17 Although all four experts appear qualified to provide such evaluative services, it  
18 is ORDERED that Dr. John Paglini, Psy.D, is hereby designated for evaluative services  
19 consistent with this Order. Said services may include diagnostic testing that Dr. Paglini  
20 deems appropriate. It is further ORDERED that the protocol previously discussed at the  
21 September 22, 2015 hearing should be followed by the parties, including the  
22 requirement that each party disclose to the other party any information provided to Dr.  
23 Paglini that is not part of the record. It is further ORDERED that each party shall  
24

25  
26 ...

27 ...

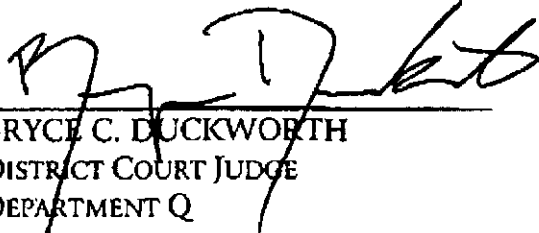
28 ...

RYCE G. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. D  
LAS VEGAS, NEVADA 89101

1  
2 contribute one-half of the cost of these outsourced services pending further proceedings  
3 in this matter. The final allocation of these costs should be deferred to future  
4  
5 proceedings.

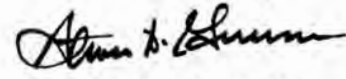
6 DATED this 6th day of October, 2015.

7  
8   
9 BRYCE C. DUCKWORTH  
10 DISTRICT COURT JUDGE  
11 DEPARTMENT Q  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BRYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
LAS VEGAS, NEVADA 89101



**E-SERVED**~~JAN 04 2017~~

CLERK OF THE COURT

NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D

DEPT NO. Q

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order has been entered in the above-entitled matter, a copy of which is attached hereto. I hereby certify that on the above file stamped date, I caused a copy of this Notice of Entry of Order to be:

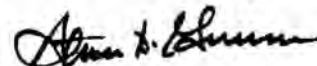
☒ E-Served pursuant to NEFCR 9 on the following attorneys:

Edward Kainen, Esq.  
Thomas Standish, Esq.

Radford J. Smith, Esq.  
Gary Silverman, Esq.

/s/ Kimberly Weiss  
Kimberly Weiss  
Judicial Executive Assistant  
Department Q

Electronically Filed  
01/03/2017 02:33:26 PM



CLERK OF THE COURT

1 ORDR  
2  
3  
4

DISTRICT COURT

CLARK COUNTY, NEVADA

6 KIRK ROSS HARRISON, )  
7 )

8 Plaintiff, )

9 v. )

CASE NO. D-11-443611-D

DEPT NO. Q

10 VIVIAN MARIE LEE HARRISON, )  
11 )

12 Defendant. )

Date of Hearing: November 7, 2016

Time of Hearing: 1:30 p.m.

13 ORDER  
14

15 This matter came before this Court on November 7, 2016 on Plaintiff's Motion  
16 for Reconsideration, or, in the Alternative, Motion for *Huneycutt* Certification; Motion  
17 to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and  
18 Clarify Order (Aug. 30, 2016) (hereinafter referred to as Plaintiff's "Motion for  
19 Reconsideration"); Plaintiff's Motion for an Order to Show Cause Why Defendant  
20 Should Not be Held in Contempt for Knowingly and Intentionally Violating Section  
21 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order  
22 of October 1, 2015 (Aug. 30, 2016) (hereinafter referred to as Plaintiff's "Contempt  
23 Motion"); Defendant's Opposition to Motion for Order to Show Cause Why  
24 Defendant Should not be Held in Contempt for Knowingly and Intentionally Violating  
25 Section 5 of the Stipulation and Order Resolving Parent/Child Issues and this Court's  
26 Order of October 1, 2015; Countermotion for Sanctions (hereinafter referred to as  
27  
28

RYCE G. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
LAS VEGAS, NEVADA 89101



1 Defendant's "Counter-motion for Sanctions"); Defendant's Opposition to Plaintiff's  
 2 Motion for Reconsideration, or, in the Alternative, Motion for *Hungrycutt* Certification;  
 3 Motion to Amend Findings or Make Additional Findings and, Motion to Alter, Amend  
 4 and Clarify Order (Sep. 23, 2016); and Plaintiff's Motion for an Order to Nullify and  
 5 Void Expert Report (Sep. 28, 2016) (hereinafter referred to as Plaintiff's "Motion to  
 6 Nullify"). Plaintiff, Kirk Ross Harrison, appeared personally and by and through his  
 7 attorney, Edward L. Kainen, Esq., and Defendant, Vivian Marie Lee Harrison, appeared  
 8 personally and by and through her attorney, Radford J. Smith, Esq.

9 This Court had the opportunity to review the papers filed by the parties and to  
 10 listen to the arguments of counsel at the November 7, 2016 hearing. The parties  
 11 expressed their mutual desire that this Court prepare and issue the findings and orders  
 12 from the hearing. In preparation of this Order, this Court has reviewed the videotape  
 13 of the entire hearing and re-read portions of the papers filed by the parties. Based on  
 14 this additional review, and upon further deliberation, this Court's findings and orders  
 15 have changed since the time of the hearing. Specifically, this Court makes the  
 16 following findings and orders:

17 On June 27, 2016, Defendant filed a Notice of Appeal (Jun. 27, 2016),  
 18 appealing this Court's Findings and Orders Re: January 26, 2016 Hearing (May 25,  
 19 2016). The Notice of Appeal (Jun. 27, 2016) generally divests this Court of  
 20 jurisdiction, except for those issues that are "collateral to and independent from the  
 21 appealed order." *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006). This  
 22 Court maintains jurisdiction to enforce its orders except to the extent a judgment or

1 order has been stayed.<sup>1</sup> Thus, with respect to Plaintiff's request that this Court enforce  
 2 prior orders, this Court maintains jurisdiction to compel compliance. Otherwise, the  
 3 Court's jurisdiction is limited to certifying issues pursuant to *Huneycutt v. Huneycutt*,  
 4 94 Nev. 79, 575 P.2d 585 (1978), that the Court would be inclined to entertain or  
 5 grant. See *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453 (2010).  
 6  
 7

8 The controlling order regarding custody in this matter is the Stipulation and  
 9 Order Resolving Parent/Child Issues (Jul. 11, 2012), which provides the parties with  
 10 joint legal and joint physical custody of their minor children. It is factually undisputed  
 11 that the relationship between Plaintiff and the parties' daughter Emma Brooke  
 12 Harrison (hereinafter referred to as "Brooke" or the "minor child") is strained. Plaintiff  
 13 submits that the strain in this relationship started at about the time of Brooke's 14<sup>th</sup>  
 14 birthday (which coincides with the beginning date of "teenage discretion"), and has  
 15 seemingly intensified since that time. Brooke is 17 years of age (born June 26, 1999).  
 16 Based on the offers of proof, it is also factually undisputed that Plaintiff has been  
 17 unable to exercise his full custodial time with Brooke (or any meaningful visitation) for  
 18 a significant period of time. Thus, Defendant has exercised *de facto* primary physical  
 19 custody for more than a year.  
 20  
 21  
 22

23 At the January 26, 2016 hearing, this Court directed the parties to pursue a path  
 24 of reunification counseling between Plaintiff and Brooke. Findings and Orders Re:  
 25 January 26, 2016 Hearing (May 25, 2016). This reunification counseling was ordered  
 26  
 27

28 <sup>1</sup>This Court is unaware of any order staying the enforcement of the Findings and Orders  
 Re: January 26, 2016 Hearing (May 25, 2016).

1 in lieu of the Court scheduling further proceedings on the issue of Defendant's alleged  
2 contempt, and upon denying Defendant's request to modify custody. Specifically, this  
3 Court found as follows:  
4

5 The papers filed herein provided this Court with a *prima facie* basis to  
6 issue an Order to Show Cause based on the undisputed fact that Father  
7 had been denied custodial time under Stipulation and Order Resolving  
8 Parent/Child Issues (Jul. 11, 2012). A finding of contempt, however,  
9 must necessarily include a finding that a party intentionally and wilfully  
10 violated the Court's Stipulation and Order Resolving Parent/Child Issues  
11 (Jul. 11, 2012). *Cunningham v. Eighth Jud. Dist. Court*, 102 Nev. 551, 729  
12 P.2d 1328 (1986). During the course of these proceedings, Dr. John  
13 Paglini, Psy.D, was designated to conduct a child interview of the parties'  
14 daughter, Brooke. Dr. Paglini was not appointed, however, to be the fact-  
finder for the Court on the issue of contempt. Rather, Dr. Paglini was  
appointed to assist in evaluating the dynamics regarding Father's  
relationship with Brooke and to establish a path by which said  
relationship could be remedied and repaired.

15 Prior to the hearing, this Court received and reviewed the Child Interview  
16 report of Dr. Paglini, dated January 25, 2016. Father offered that his  
17 preference was not to proceed immediately with the contempt relief  
18 sought by way of his Motion, Second Motion and Third Motion. Rather,  
19 Father submitted his preference to implement the recommendations of  
20 Dr. Paglini, including therapeutic counseling between Father and the  
parties' daughter Brooke with Dr. Jim Ali, PhD. Initially, Father  
requested that the contempt aspect of these proceedings be held in  
abeyance for a period of time (six months).

21 This Court makes no findings regarding the allegations of contempt  
22 against Mother. Further, although it is undisputed that Father lost  
23 custodial time with the parties' daughter, Brooke, this Court is not  
24 inclined to set further proceedings to adjudicate the issue of contempt.  
25 The continuation of further hearings regarding the allegations of  
26 contempt would be deleterious and counterproductive to Brooke's best  
27 interest. Thus, the contempt proceedings should be vacated and the  
28 parties should focus on the therapeutic aspect of Father's relationship  
with Brooke. The pace of therapy should be determined by Dr. Ali.

Pursuant to *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993) and  
NRS 125.090 and NRS 125C.0025, there is not a sufficient basis to

1 entertain further proceedings on Mother's Countermotion to modify  
2 custody. This Court finds and concludes that the preference of a minor  
3 child standing alone is insufficient to constitute a substantial change of  
4 circumstances pursuant to *Ellis v. Carrucci*, 123 Nev. 145, 161 P.3d 239  
5 (2007). Pursuant to NRS 125C.0025, it this Court's preference that  
6 Father and Mother pursue a course of therapeutic counseling to maintain  
7 joint physical custody of Brooke as declared in their Stipulation and  
8 Order Resolving Parent/Child Issues (Jul. 11, 2012).

9 Findings and Orders Re: January 26, 2016 Hearing 2-4 (May 25, 2016).

10 The litigation of these issues was effectively "tabled" in hopes that the  
11 reunification process would obviate the need for adversarial proceedings regarding both  
12 the contempt and the custody modification issues. As previously noted, it is  
13 undisputed that Plaintiff has not received his custodial time consistent with the  
14 Stipulation and Order Resolving Parent/Child Issues (Jul. 11, 2012). It is also  
15 undisputed that the reunification counseling contemplated by the Court at the January  
16 26, 2016 hearing has not taken place.

17 The parties submitted conflicting offers of proof as to why the counseling has  
18 not taken place. Plaintiff offered that Defendant has failed to facilitate Brooke's  
19 attendance at counseling sessions and that the minor child has made it clear to the  
20 appointed counselor that she would not make herself available or participate in such  
21 counseling. In this regard, Plaintiff suggests that Brooke has been empowered to make  
22 the ultimate decision regarding her participation in counseling and the level of contact  
23 she will have with Plaintiff. To this end, Plaintiff also argues that the attitude and  
24 posture of the minor child in the evaluative process with Dr. John Paglini, was  
25 markedly different from her alleged complete disinterest with participating in  
26  
27  
28



1 meaningful counseling with Dr. Ali.<sup>2</sup> In contrast, Defendant offered that the minor  
 2 child has availed herself to participate in counseling at virtually every turn and that she  
 3 has expressed to Dr. Ali her willingness and desire to participate in counseling.  
 4 Regardless of the reason, the therapeutic counseling that this Court contemplated and  
 5 ordered is not taking place.  
 6

7  
 8 This divergent factual dispute should be resolved through evidentiary  
 9 proceedings in which all participants are available for examination in open court. In  
 10 this regard, the Court recognizes the potential benefit and need to receive such  
 11 information directly from Brooke pursuant to NRCP 16.215. Considering the  
 12 seemingly incompatible arguments submitted by the parties, the testimony of Dr. Ali  
 13 similarly would benefit the Court. This Court further contemplates that Dr. Paglini  
 14 may be called to testify at the evidentiary proceedings. As set forth herein, the  
 15 function of the evidentiary hearing is to ascertain how the Findings and Orders Re:  
 16 January 26, 2016 Hearing (May 25, 2016) can be more effectively implemented and  
 17 enforced.  
 18  
 19

20 The goal and focus of both parties should be on reunifying Plaintiff and Brooke  
 21 and restoring a healthy father-daughter relationship consistent with the statutory  
 22  
 23  
 24  
 25

---

26 <sup>2</sup>The evaluative report submitted by Dr. Paglini does not provide this Court with a basis  
 27 to find that Defendant has engaged in alienating or pathogenic behaviors. Dr. Paglini reported  
 28 that Brooke desires to have a relationship with her father and that she was open to  
 participating in counseling. Plaintiff submits that Brooke's comments to Dr. Ali and her  
 conduct cast doubt on the accuracy of Dr. Paglini's conclusions.

1 mandate of NRS 125C.001.<sup>3</sup> In this regard, the point of emphasis is not the punitive  
2 contempt powers established in Chapter 22 of the Nevada Revised Statutes. Rather,  
3 all involved should endeavor to insure that Brooke and both parents "have frequent  
4 associations and continuing relationship."  
5

6 This Court scheduled the evidentiary hearing on this matter on the Court's next  
7 available dates, March 7 and March 13, 2017. In light of the fact that Brooke will turn  
8 18 in June 2017, Plaintiff expressed concern that such a delay would effectively "run  
9 out the clock" on Plaintiff's ability to repair his relationship with Brooke.<sup>4</sup>  
10 Notwithstanding Brooke's imminent emancipation, this Court has emphasized the  
11 impact of decisions made now on Plaintiff's relationship with Brooke beyond her  
12 emancipation. Thus, the efforts of all participants, including the Court, in fostering a  
13 continuing relationship between Plaintiff and Brooke should not be abandoned or  
14 viewed merely as a six month process until emancipation. Although this Court's role  
15 will effectively end in June 2017, the parties' relationship with their children continues  
16 and may be impacted by these proceedings.  
17

18 During the November 7, 2016 hearing, this Court initially indicated that there  
19 was a sufficient factual basis pursuant to *Huneycutt* and *Foster* to certify this Court's  
20  
21

---

22 <sup>3</sup>NRS 125C.001 provides that "it is the policy of this State: (1) To ensure that minor  
23 children have frequent associations and a continuing relationship with both parents after the  
24 parents have ended their relationship, become separated or dissolved their marriage; (2) To  
25 encourage such parents to share the rights and responsibilities of child rearing.  
26

27 <sup>4</sup>Since the November 7, 2016 hearing, this Court offered earlier dates (December 16,  
28 2016 and December 21, 2016) for the evidentiary hearing. Due to scheduling conflicts of the  
parties' attorneys, however, these proposed dates offered by the Court were not accepted.

1 intention to entertain or grant certain requests for relief. Ultimately, however, this  
2 Court made findings about proceeding with Plaintiff's request to enforce prior orders  
3 through the Court's contempt powers. This Court intended (and declared as much at  
4 the November 7, 2016 hearing) to issue an Order to Show Cause compelling  
5 Defendant to appear and show cause why she should not be held in contempt of Court.  
6 Defendant argued that Plaintiff's request for an order to show cause was procedurally  
7 deficient based on the lack of an affidavit specifying Defendant's alleged contemptuous  
8 conduct. *See Awad v. Wright*, 106 Nev. 407, 794 P.2d 713 (1990). Such a defect is  
9 jurisdictional in nature. The affidavit accompanying Plaintiff's Contempt Motion is  
10 in the nature of what is commonly referred to as a "verification affidavit" that merely  
11 cites to the statements contained in the underlying motion without averring specific  
12 facts within the affidavit. Upon further consideration, this Court concludes that the  
13 affidavit is insufficient and that it would be reversible error for the Court to issue an  
14 order to show cause on the verification affidavit offered by Plaintiff.  
15

16  
17 Notwithstanding the deficiency of Plaintiff's affidavit, this Court concludes that  
18 there is a sufficient basis to pursue enforcement tools independent of an order to show  
19 cause. At the hearing, Plaintiff emphasized that his motivation and desire was not to  
20 punish Defendant through the Court's contempt powers. Rather, his expressed  
21 preference was to pursue Brooke's participation in a program to restore their  
22 relationship accompanied by make-up time for the custodial days he has lost. In light  
23 of the strong preference under Nevada law for this Court to ensure "frequent  
24 associations" and a "continuing relationship" between a parent and a child, this Court  
25  
26  
27  
28

1 is inclined to receive evidence to determine the propriety of an award of compensatory  
2 time to Plaintiff as an enforcement tool consistent with the principles enunciated in  
3 NRS 125C.020.  
4

5 This Court is not inclined to entertain any relief beyond the enforcement issue  
6 specified herein. Plaintiff filed his Motion to Nullify, requesting that this Court  
7 "nullify" Dr. Paglini's prior report. This Court does not find a sufficient factual or legal  
8 basis to entertain Plaintiff's Motion to Nullify. Nevertheless, this Court recognizes  
9 that the accuracy of Dr. Paglini's findings and recommendations may be impacted by  
10 this evidentiary process.  
11  
12

13 Based on the foregoing findings of fact, and good cause appearing therefor,

14 It is hereby ORDERED that this Court will receive evidence beginning on March  
15 7, 2017 at 1:30 p.m., for the purpose of determining whether there is a basis to enter  
16 enforcement orders consistent with the Findings and Orders Re: January 26, 2016 Hearing  
17 (May 25, 2016). It is further ORDERED that such enforcement tools may include an  
18 award to Plaintiff of make-up time with the minor child and the parties' participation  
19 in a reunification program. The evidentiary hearing will continue on March 13, 2017  
20 at 1:30 p.m. The Court will continue to apprise the parties of earlier dates that become  
21 available.  
22  
23

24 It is further ORDERED that discovery is open with respect to the issues to be  
25 adjudicated as set forth herein. It is further ORDERED that discovery shall close on  
26 February 27, 2017.  
27  
28




1 It is further ORDERED that there is no basis to modify this Court's prior orders  
2 regarding therapeutic reunification between Plaintiff and Brooke through Dr. Ali. The  
3 existence (or non-existence) of counseling between the date of this hearing and the  
4 evidentiary hearing will be enlightening to the Court.  
5

6 It is further ORDERED that Defendant shall provide Plaintiff with Brooke's  
7 school schedule by Friday, November 11, 2016.  
8

9 It is further ORDERED that the parties shall eliminate any need to travel to the  
10 other party's residence during a custody exchange when said exchange is to take place  
11 at school. In this regard, any transfer of custody should not include transporting the  
12 child to the residence of the parent who does not have custody of the child at that  
13 time. The parent in possession of any personal items that the child needs is responsible  
14 to deliver those items to the parent who has custody.  
15

16 It is further ORDERED that neither parent shall discuss with Brooke the  
17 content of her testimony. To the extent that Brooke inquires about the purpose of her  
18 appearance in Court, the parties are limited to informing Brooke that the Court desires  
19 to learn from her information about the counseling sessions with Dr. Ali and her  
20 custody time with Plaintiff.  
21

22 DATED this 3rd day of January, 2017.  
23  
24

25  
26   
27 BRYCE C. DUCKWORTH  
28 DISTRICT COURT JUDGE  
DEPARTMENT Q

BRYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
35 VEGAS, NEVADA 89101

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \*

KIRK ROSS HARRISON,

NO. 72880

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

---

**CHILD CUSTODY FAST TRACK STATEMENT**

**APPENDIX – VOLUME 16**

ROBERT L. EISENBERG  
Nevada Bar No. 0950  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
775-786-6868  
[rle@lge.net](mailto:rle@lge.net)

KIRK R. HARRISON  
Nevada Bar No. 0861  
1535 Sherri Lane  
Boulder City, Nevada 89005  
702-271-6000  
[kharrison@harrisonresolution.com](mailto:kharrison@harrisonresolution.com)

*ATTORNEYS FOR APPELLANT*

## CHRONO INDEX

## **CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
1.	Complaint for Divorce	03/18/11	1	1-7
2.	Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence	09/14/11	1 2	8-220 221-361
3.	Defendant's Opposition to Plaintiff's Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence; Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children; for Division of Funds for Temporary Support, and for Attorney's Fees	10/31/11	2 3	362-418 419-652
4.	Answer to Complaint for Divorce and Counterclaim for Divorce	11/22/11	3	653-659
5.	Reply to Defendant's Opposition to Plaintiffs Motion for Joint Legal Custody and Permanent Physical Custody and for Exclusive Possession of Residence AND Opposition to Defendant's Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children, for Division of Funds for Temporary Support, and for Attorney's Fees	01/04/12	4 5	660-907 908-929
6.	Court Minutes [All Pending Motions]	02/24/12	5	930-933
7.	Stipulation and Order Resolving Parent/Child Issues	07/11/12	5	934-950
8.	Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for Sanctions and Attorney's Fees	05/10/13	5	951-984

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
9.	Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief	05/28/13	5	985-994
10.	Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief	05/28/13	5	995-1009
11.	Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan; Plaintiff's Opposition to Defendant's Motion for Sanctions and Attorney's Fees	07/19/13	5	1010-1044
12.	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan and Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions and Attorney's Fees	09/09/13	5	1045-1053
13.	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion Styled Request for Reasonable Discovery and Evidentiary Hearing; Defendant's Opposition to	09/11/13	5	1054-1059

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Plaintiff's Countermotion for Equitable Relief; Defendant's Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion for Declaratory Relief			
14.	Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief	10/01/13	5	1060-1080
15.	Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues [To Delete "Teenage Discretion" Provision] and Other Equitable Relief; Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions	10/17/13	5	1081-1149
16.	Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief	10/21/13	6	1150-1171
17.	Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions	10/23/13	6	1172-1223
18.	Order for Appointment of Parenting Coordinator	10/29/13	6	1224-1232
19.	Notice of Entry of Decree of Divorce	10/31/13	6	1233-1264

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
20.	Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment (without exhibits)	11/14/13	6	1265-1281
21.	Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision	11/18/13	6	1282-1316
22.	Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees	12/06/13	6	1317-1339
23.	Plaintiff's Reply in Support of Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision AND Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees	12/13/13	6	1340-1354
24.	Order [Denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and Other Equitable Relief and Denying Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions]	12/17/13	6	1355-1356
25.	Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief	04/21/14	6 7	1357-1388 1389-1431
26.	Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions	05/09/14	7	1432-1458
27.	Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions	05/14/14	7	1459-1472

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
28.	Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions	05/20/14	7	1473-1518
29.	Order from Hearing [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision]	06/13/14	7	1519-1524
30.	Notice of Entry of Order [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision]	06/16/14	7	1525-1532
31.	Notice of Appeal	07/17/14	7	1533-1593
32.	Findings and Orders re: May 21, 2014 Hearing	09/29/14	7	1594-1601
33.	Notice of Entry of Findings and Orders re: May 21, 2014 Hearing	09/29/14	7	1602-1611
34.	Amended or Supplemental Notice of Appeal	10/16/14	7	1612-1622
35.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013	08/21/15	8	1623-1673
36.	Order to Appear and Show Cause	09/01/15	8	1674-1675
37.	Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor	09/14/15	8	1676-1692



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Child, Emma Brooke Harrison ("Brooke")			
38.	Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke")	09/18/15	8	1693-1738
39.	Notice of Entry of Order from Hearing	10/01/15	8	1739-1743
40.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	10/12/15	8	1744-1758
41.	Order to Appear and Show Cause	10/14/15	8	1759-1760
42.	Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing	10/15/15	8	1761-1851
43.	Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing	11/02/15	9	1852-1879
44.	Dr. Paglini Letter to Court	11/23/15	9	1880-1881
45.	Notice of Entry of Order from Domestic Court Minutes	12/02/15	9	1882-1886
46.	Supplement to Plaintiff's Motion for an Order to Show Cause Why	12/10/15	9	1887-1903

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015			
47.	Reply to Opposition to Motion for Clarification; Motion to Amend Findings	12/10/15	9	1904-1920
48.	Court Minutes [All Pending Motions]	12/14/15	9	1921-1922
49.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	12/16/15	9	1923-1942
50.	Notice of Entry of Order from Domestic Court Minutes	12/17/15	9	1943-1947
51.	Court Minutes [All Pending Motions]	01/26/16	9	1948-1949
52.	Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing	05/25/16	9	1950-1958
53.	Letter from John Paglini, Psy.D. to Court	05/31/16	9	1959-1961
54.	Notice of Entry of Order re John Paglini, Psy.D. Letter	06/21/16	9	1962-1963
55.	Notice of Appeal	06/27/16	9	1964-1975
56.	Plaintiff's Motion for Reunification Therapy for Minor Children and Father	07/26/16	9	1976-2076
57.	Notice of Entry of Order re: August 24, 2016 Hearing	08/19/16	9	2077-2079

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
58.	Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order	08/30/16	9	2080-2095
59.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	08/30/16	10	2096-2196
60.	Defendant's Opposition to Motion for Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015; Countermotion for Sanctions; Opposition to Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings and, Motion to Alter, Amend and Clarify Order	09/23/16	10	2197-2206
61.	Plaintiff's Motion for an Order to Nullify and Void Expert Report	09/28/16	10	2207-2292
62.	Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	09/30/16	10	2293-2316
63.	Plaintiff's Reply in Support of Motion for Reconsideration, or, in the Alternative, Motion for	09/30/16	10	2317-2321

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order and Plaintiff's Objection to those Portions of Defendant's Opposition in Violation of EDCR 5.13			
64.	Defendant's Opposition to Motion for an Order to Nullify and Void Expert Report	10/18/16	10	2322-2337
65.	Affidavit of Kirk Harrison Filed in Support of Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015, Filed August 30, 2016	10/19/16	11	2338-2358
66.	Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report	11/02/16	11	2359-2381
67.	Reply to Defendant's Opposition to Countermotion for Sanctions; Motion to Strike Reply; Motion to Strike Affidavit	11/04/16	11	2382-2423
68.	Court Minutes [All Pending Motions]	11/07/16	11	2424-2426
69.	Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	12/29/16	11	2427-2440
70.	Plaintiff's Pre-Trial Memorandum	01/17/17	11	2441-2457
71.	Prehearing Memorandum	01/17/17	11	2458-2477
72.	Court Minutes [Evidentiary Hearing]	01/18/17	11	2478-2479

///  
///

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
73.	Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions	01/31/17	11	2480-2489
74.	Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	01/31/17	11	2490-2507
75.	Plaintiff's Supplemental Exhibit in in Support of Plaintiff's Reply Regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	01/31/17	11	2508-2512
76.	Court Minutes [All Pending Motions]	02/01/17	11	2513-2514
77.	Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	02/13/17	11	2515-2537
78.	Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions	02/13/17	11	2538-2556
79.	Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees	02/15/17	11	2557-2563
80.	Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Reply to Supplemental Declaration, and; Opposition to Request for Sanctions	02/17/17	12	2564-2595

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
81.	Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees	03/06/17	12	2596-2602
82.	Defendant's Opposition to Motion to Strike; Countermotion for Sanctions	03/13/17	12	2603-2608
83.	Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing]	03/15/17	12	2609-2617
84.	Notice of Entry of Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing]	03/16/17	12	2618-2627
85.	Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 16, 2017	03/28/17	12	2628-2634
86.	Plaintiff's Response to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 15, 2017	04/10/17	12	2635-2638
87.	Notice of Appeal	04/14/17	12	2639-2649
<b><u>TRANSCRIPTS</u></b>				
88.	Transcript re: All Pending Motions	10/30/13	12	2650-2688
89.	Transcript re: All Pending Motions	05/21/14	12	2689-2744
90.	Transcript re: All Pending Motions	09/22/15	13	2745-2823
91.	Transcript re: All Pending Motions	12/14/15	13	2824-2886
92.	Transcript re: All Pending Motions	01/26/16	13	2887-2928

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
93.	Transcript re: All Pending Motions	11/07/16	14	2929-3040
94.	Transcript re: Evidentiary Hearing - Vol.1	01/18/17	14	3041-3152
95.	Transcript re: Evidentiary Hearing - Vol. 2	01/18/17	14 15	3153-3178 3179-3315
	Plaintiff's Exhibit 1 – Dr. Paglini Report dated January 25, 2016 [ <i>Confidential</i> ] SEALED		15	3316-3375
	Plaintiff's Exhibit 2 – Email from Vivian Harrison to Kirk Harrison dated February 27, 2016		15	3376-3377
	Plaintiff's Exhibit 3 – Email from Brooke Harrison to Dr. Paglini dated February 27, 2016		15	3378-3380
	Plaintiff's Exhibit 4 – Dr. Paglini Letter dated May 31, 2016		15	3381-3384
	Plaintiff's Exhibit 5 – Dr. Ali Letter dated June 29, 2016 [ <i>Confidential</i> ] SEALED		15	3385-3387
	Plaintiff's Exhibit 6 – Email from Carina Deras to Kirk Harrison dated April 1, 2016		15	3388-3389
	Plaintiff's Exhibit 7 – Brooke Harrison's Nevada State High School Enrollment Form dated August 10, 2015		15	3390-3392
	Plaintiff's Exhibit 8 – Brooke Harrison's Class Schedule		15	3393-3394
	Plaintiff's Exhibit 9 – Affidavit of Kirk Harrison dated October 19, 2016		15	3395-3416
	Plaintiff's Exhibit 10 – Comparison of Agreed Time with Actual Custody Time from August 12, 2015 through December 12, 2016		15	3417-3426
96.	Transcript re: All Pending Motions	02/01/17	16	3427-3640

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
<b><u>ADDITIONAL DOCUMENTS<sup>1</sup></u></b>				
97.	Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017	07/24/17	16	3641-3647
98.	Plaintiff's Supplemental Filing	08/24/17	16	3648-3666
99.	Supplemental Notice of Appeal	08/24/17	17	3667-3676
100.	Notice of Entry of Order re: Expert Designation	10/06/15	17	3677-3682
101.	Notice of Entry of Order re: Pending Motions	01/04/17	17	3683-3693

---

<sup>1</sup>These additional documents were added to the appendix after the first 16 volumes of the appendix were complete and already numbered (3,640 pages).





FILE COPY

AUG 31 2017

COPY

A.App. 3427

FILED

AUG 31 2017

*John D. Johnson*  
CLERK OF COURT

TRANS

EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,  
Plaintiff,  
vs.  
VIVIAN HARRISON,  
Defendant.

CASE NO. D-11-443611-D  
DEPT. Q  
(SEALED)

BEFORE THE HONORABLE BRYCE C. DUCKWORTH  
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

WEDNESDAY, FEBRUARY 1, 2017

APPEARANCES:

The Plaintiff:  
For the Plaintiff:

KIRK ROSS HARRISON  
EDWARD KAINEN, ESQ.  
3303 Novat St., #200  
Las Vegas, Nevada 89129  
(702) 823-4900

The Defendant:  
For the Defendant:

VIVIAN MARIE LEE HARRISON  
RADFORD SMITH, ESQ.  
2470 St. Rose Pkwy., #206  
Henderson, Nevada 89074  
(702) 990-6448

D-11-443611-D HARRISON 02/01/2017 TRANSCRIPT (SEALED)  
VERBATIM REPORTING & TRANSCRIPTION, LLC (520) 303-7356

I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
---	---------------	--------------	-----------------	----------------

DR. JOHN PAGLINI	42	106	155/178	176
------------------	----	-----	---------	-----

DEFENDANT'S  
WITNESSES:

(None presented)

\* \* \* \* \*

I N D E X O F E X H I B I T S

<u>PLAINTIFF'S</u> <u>EXHIBITS:</u>	<u>ADMITTED</u>
--	-----------------

(None presented)

DEFENDANT'S  
EXHIBITS:

(None presented)

1 LAS VEGAS, NEVADA

WEDNESDAY, FEBRUARY 1, 2017

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

3 (THE PROCEEDINGS BEGAN AT 13:32:35)

4

5 THE COURT: We are on the record in the Harrison  
6 matter, case D-11-443611-D. Please confirm your appearances.

7 MR. KAINEN: Your Honor, Ed Kainen, bar number 5029,  
8 on behalf of Kirk Harrison who is present to my right with  
9 Colin Naidai (ph) from my office, my legal assistant.

10 THE COURT: Good afternoon.

11 MR. SMITH: Radford Smith, 2791, on behalf of Vivian  
12 Harrison who is to my left, Your Honor.

13 THE COURT: Good afternoon. All right. This is the  
14 -- day two of the evidentiary proceedings. We'll wrap up  
15 today on the proceedings that were started two weeks ago.

16 I know Dr. Paglini was with us last time. I don't  
17 -- is he rejoining us --

18 MR. KAINEN: Yes.

19 THE COURT: -- this afternoon? So -- so he's --  
20 he's outside or on his way?

21 MR. KAINEN: Oh, no. He's here.

22 THE COURT: Okay.

23 MR. KAINEN: He's here.

24 THE COURT: I -- let -- let me just start with a

1 prefatory comment, because at the last hearing we had some  
2 discussion at the end, the fact that the Plaintiff had filed a  
3 motion. I had not looked at, but based on the title of the  
4 motion, I was inclined -- I wasn't inclined to entertain  
5 further discussion on it, but it became apparent that it was  
6 much deeper than that.

7 I had not reviewed it at -- at the time of the  
8 evidentiary hearing, but because we had scheduled the  
9 evidentiary hearing in the meantime, just looking at the title  
10 of it, it appeared moot to me. And I know that's been some of  
11 the discussion in terms of the papers that have been filed.  
12 I've had a chance to read the opposition and -- and the reply  
13 that was submitted.

14 And part of it too begs the question of okay, why  
15 are we here today, understanding that part of the -- the  
16 genesis of that was let's get Dr. Paglini back involved. And  
17 albeit he was not involved necessarily in the capacity that  
18 was requested in the motion. Certainly from an evidentiary  
19 standpoint, he provided the Court with some information and  
20 even some what I might term recommendations as to how he would  
21 proceed with specific reference to some of the outcomes that  
22 had been discussed or argued before the Court and even  
23 recommendations about what would happen between that hearing  
24 and today.

1           So with that being said, I -- it -- it -- and  
2 understanding part of the motivation was Plaintiff's side  
3 getting Dr. Paglini re-engaged in the process, where do we  
4 stand? Are -- is there -- is there a need to proceed today?

5           MR. KAINEN: I think -- I think the Court ought to  
6 -- I mean, the motion's before the Court and I would want to  
7 have it heard on -- on the means. I mean, we -- it's -- and  
8 obviously the teenage discretion provision is -- is part and  
9 parcel because we're now starting down that road with  
10 Brooke --

11           THE COURT: With -- with Rylee.

12           MR. KAINEN: -- with her birthday less -- with  
13 Rylee, I'm sorry, with her birthday last weekend.

14           THE COURT: Right.

15           MR. KAINEN: It began. Shockingly, I know. I'm  
16 sorry. I -- I apologize. I'm -- I have -- the more I think  
17 about this, I -- I have been projecting my, I think  
18 frustration on you and I apologize for that.

19           It -- we're -- we're -- predictably Rylee we're  
20 seeing the same behavior and right in line with her 14th  
21 birthday. And so to me, the most important part about this is  
22 -- is not to go through another four years of -- of this same  
23 thing when we know sort of how it comes out. And so as  
24 applied, this teenage discretion provision, whether it was

1 agreed to and whether the supreme court said the loss of four  
2 days when they saw it, this was like a handful of days with --  
3 you know, I -- I -- we were all in the room, meaning you,  
4 myself, and Mr. Smith when a couple of weeks ago when Justice  
5 Pickering was talking about this case from an appellate point  
6 of view and talked about the fact that well, the father had  
7 only missed like four days and so that's well within the  
8 teenage discretion provision and we all sit there and know  
9 it's 200 some odd days and that wasn't what they anticipated  
10 and it's obviously gone beyond, you know, changing the custody  
11 designation. So that to me is an important part to hear.

12           Now I also am frustrated because we're being  
13 deprived again of a meaningful way to debate this, because  
14 when we left, Mr. Smith (sic) said how much time do you need  
15 Mr. Smith to file an opposition. The Court gave him until the  
16 25th.

17           We prepared anticipating what some of the arguments  
18 might be. We started preparing a reply brief and of course  
19 the opposition --

20           THE COURT: A pretty detailed reply brief.

21           MR. KAINEN: Well, because we were anticipating --  
22 well, and -- and in all fairness, we filed --

23           MR. SMITH: Which I argued, by the way.

24           MR. KAINEN: Well, in -- in all fairness, we -- we

1 -- there -- I have another brief we've also been working on  
2 which sort of actually responds to the issues, but we  
3 anticipated some of the arguments that we made and we've  
4 prepared. It was filed within, you know, a very short time  
5 after the -- the opposition was filed.

6 But the problem was again with it being filed 24  
7 hours before the hearing, you know, and we filed our -- we  
8 changed what was going to be a sup -- bluntly, we changed what  
9 was a supplement to a --

10 THE COURT: To a reply.

11 MR. KAINEN: -- reply. I mean, and so we've sort of  
12 been deprived of a meaningful way to contest this in terms of  
13 having it before the Court. The -- the real issue, the crux  
14 of this, comes down to look, you have somebody who has -- who  
15 me -- who has lost meaningful contact with one child and this  
16 is starting to happen with a second child. He is not going to  
17 stop fighting to maintain those relationships and do what he  
18 can to be able to do that.

19 We believe at the core of this, this teenage  
20 discretion provision has been -- as it was applied and not at  
21 was -- as it intended or drafted, but as it was -- has been  
22 applied in this case has been at the core of that. And so we  
23 are either going down the same road with Rylee or we're going  
24 to do something to change it.



1 THE COURT: Well, and -- and that applies --

2 MR. KAINEN: And that's the issue --

3 THE COURT: I mean --

4 MR. KAINEN: -- that needs to be heard.

5 THE COURT: -- the -- the motion really is directed  
6 at Rylee.

7 MR. KAINEN: Yeah.

8 THE COURT: I -- I guess my question is  
9 understanding really today's proceedings apart from the Court  
10 addressing the issues in the motion is focused on Brooke. And  
11 I know my understanding was Brooke was here at the last trial.  
12 I'm assuming she's here today?

13 MR. SMITH: Yes.

14 THE COURT: And I know Plaintiff having read the  
15 motion and also what was expressed to me previously,  
16 Plaintiff's position is the preference is not to involve her,  
17 not to call her as a witness. And -- and I get that and --  
18 and I -- I've been quoted in the papers that have been filed  
19 as to my feelings about involving a child and this is the  
20 first time that -- that I would have a child appear as a  
21 witness unless there are alternative methods that Counsel  
22 wanted to offer in terms of me perhaps even interviewing  
23 Brooke.

24 The -- the bottom line is for me given the nature of

1 the relief that's at issue and -- and part of this relates to  
2 makeup time, the days that have been missed, and recognizing  
3 that the period of time that we have is limited but also  
4 taking that into account and what I'm hearing from Dr.  
5 Paglini. And although some of this wasn't presented to him,  
6 it was obvious and apparent to me at least just given his  
7 reaction that appeared to be spontaneous in terms of some of  
8 the proposals what he believed would be in Brooke's best  
9 interest.

10           So with that focus, I -- again, my decisions as you  
11 know have to be based on evidence. That's why we set this in  
12 the first place. And -- and I -- as I look out -- and -- and  
13 you -- you take a step back and you look at what has happened  
14 in this case and there have only been -- just Brooke and Rylee  
15 have been the only two minor children of this case since the  
16 divorce started.

17           There has been some reference in the papers that  
18 were just recently filed to the fact that there are five total  
19 children between Plaintiff and Defendant. At -- at least the  
20 two older daughters are almost completely, if not, completely  
21 estranged from the Defendant. The concern on the Plaintiff's  
22 side is that Brooke has become estranged from the Plaintiff.

23           And I know the Plaintiff has expressed in very  
24 heartfelt and what I feel sincere terms his concerns about

1 that estrangement. And -- and you look at the family dynamics  
2 and I -- I do not want to get into the blame -- the pointing  
3 fingers here, but the fact that there's a -- there's --  
4 there's this estrangement that exists on both sides is sad.

5           When you take a step back and look -- and -- and it  
6 just makes me wonder on both sides is that -- that emotion  
7 that I see, that raw sincere emotion about losing or seeing a  
8 relationship deteriorate with Brooke is there are that same  
9 emotion for the deterioration of the relationship of Tawny  
10 (ph) and Whitney (ph) with Mom. And vice versa on Mom's side.  
11 The relationship that Dad has with Brooke, is there that same  
12 heartfelt emotion? And -- and it's sad.

13           And -- and I agree -- one point that was made, this  
14 is not a balancing game. Well, you -- you have the two oldest  
15 daughters, so let's -- that's not what this is about, but at  
16 the end of the day if I'm required to make evidentiary rulings  
17 and part of that is to make this determination because the --  
18 the allegation is that we are seeing either alienating  
19 behaviors or pathogenic patterns that have been developed, I  
20 still have to base that on evidence. And part of that, I have  
21 to rely on experts who have been involved and make  
22 determinations fundamentally on what the evidence is and  
23 recognizing that we have probably three, four months left for  
24 Brooke.

1 Dr. Paglini -- Paglini recommended essentially a  
2 different course with Brooke at the last hearing. Do we need  
3 to proceed with evidence in terms of the -- the path we're  
4 going to take, these last few months with Brooke, versus  
5 turning the focus which is somewhat shifted with the motion to  
6 okay, Rylee, we've got four years now and are we going to go  
7 through the next four years like we've gone through the past  
8 four years.

9 MR. KAINEN: To be -- to be very blunt, it -- it --  
10 it's -- my decision is largely based on whether I'm jug --  
11 juggling two -- two children or I'm juggling one. In other  
12 words, if I know that we're not facing the same issues with  
13 Rylee, and I realize I'm -- I'm begging for sort of a -- a  
14 hint here, you know what I mean? But I really -- if -- if I'm  
15 -- if we're not dealing with the same issues with Rylee, then  
16 it becomes much easier to say, you know what, let's figure out  
17 and we'll go along with it and cross our fingers and hope it  
18 happens. You know, it -- it becomes a little easier to take  
19 that kind of approach with Brooke given the short time limit.

20 Because I -- look, I realize I can knock it out of  
21 the park here and get the perfect order and it may not make  
22 any difference because it's -- it's taken us this long to get  
23 here.

24 But to me, it's like even though we're separating

1 the sort of what to do with Brooke over here and the larger  
2 teenage discretion issue as it relates to Rylee over here,  
3 they're -- they're hopelessly intertwined.

4 And it -- it's not as simple as just saying okay,  
5 well, you know --

6 THE COURT: Well, and -- and again, the bottom line  
7 is if -- if --

8 MR. KAINEN: And -- and --

9 THE COURT: -- ultimately --

10 MR. KAINEN: -- on the other --

11 THE COURT: -- I look at this and say okay, Dad, you  
12 get -- you get the next 200 days with Brooke which she's going  
13 to emancipate before that happens. But you -- you take the  
14 next 200 days. I -- I suspect if Dr. Paglini's asked that  
15 question, do you think that's in Brooke's best interest? I  
16 somewhat believe I know what he's going to tell me.

17 MR. KAINEN: Because he's -- he's committed. He's  
18 -- he's locked in on -- on that. I understand that. I do.

19 THE COURT: So -- so I -- I guess -- but I  
20 understand again this shift in saying okay, bu -- we've got  
21 this provision. I do have concerns and just in terms from a  
22 jurisdictional aspect because what I'm being asked by way of  
23 that motion and -- and I understand it's not directly on  
24 appeal, but I'm very leery, absent enforcement of orders --

1 MR. KAINEN: The only thing --

2 THE COURT: The only thing on appeal you're going to  
3 tell me is -- is the motion to modify custody --

4 MR. KAINEN: As it relates to Brooke.

5 THE COURT: -- as it relates to Brooke. And -- and  
6 I get that.

7 MR. KAINEN: And -- and here's the deal. You know  
8 what? It -- I -- I guess one of the -- the ongoing  
9 frustrations in this case is we have gone on all this well,  
10 it's a contract, it's a contract, it's a contract, unless of  
11 course it's Fernandez or Rivero or anything else, then it's  
12 not really a contract. But at the end of the day, you have  
13 jurisdiction on wha -- you have one broad based direction by  
14 our statutes which is to enter orders that are in the best  
15 interest of the children.

16 And in this case, there is no -- there -- there --  
17 outside of well, they agreed to it four years ago, there has  
18 been no meaningful like even argument as in this is in  
19 anybody's best interest. It's hey, too bad you agreed to it  
20 and we know we would be able to get this and you didn't and  
21 too bad for that and all that, but there's nothing good has  
22 come from this.

23 And at some point, I think the Court has to exercise  
24 its jurisdiction within its -- that general passage to enter

1 orders whether it's sua sponte or on its own that are in the  
2 best interest of the children. And I can tell you, I just had  
3 a case yesterday with Judge Hoskin unrelated to this or that,  
4 but his -- his argument was well, I can't change this  
5 particular issue on the visitation because this is what you  
6 agreed to, but by the way, over here you guys agreed to a  
7 three hour right of first refusal. I don't think that's  
8 really good anymore, so I'm going to change that to six and  
9 we're going to up it one hour every year or something like  
10 that. And it was like wait a minute, you -- over here, you  
11 couldn't change it because of this and now you could have over  
12 here.

13 And at the end of the day, the reason this -- this  
14 court can do things, enter orders and pick and choose their  
15 wants is through that broad grant of discretion to enter  
16 orders that are in the best interest of children, sua sponte  
17 or upon motion. And in this case, this is a case that is  
18 screaming for that.

19 THE COURT: Well --

20 MR. KAINEN: And this isn't a case where the supreme  
21 courts -- honestly, we all know the facts that the supreme  
22 court entered this and if you read that opinion, that's not  
23 where we are. This isn't, he lost four hours getting ready  
24 for prom and he's sore about that.

1           THE COURT: Well, but -- but listen, I -- I think --  
2 here's my -- my take on this and -- and I know this was  
3 brought up in the reply that talked about this most recent two  
4 hours. Now two hours is not that long. And -- and here's my  
5 concern is -- is I think with the engagement -- and -- and I  
6 understand all the dynamics and the discussion about well, she  
7 should have packed when she was with her mom earlier in the  
8 week.

9           And a lot of that makes sense. I haven't heard from  
10 Mom in that regard. And so I think -- I -- and -- and  
11 obviously that may be -- I -- something for me to hear about.  
12 But here's my concern about that. Every time this provision  
13 is used, say it's used completely legitimately for what it was  
14 intended to do. Every time it happens, Dad's going to look at  
15 that and say here we go again and -- and that provision is  
16 being eviscerated which we commented on in -- in the past.  
17 And -- and so everything is going to be dissected.

18           The irony about all of that and -- and I think when  
19 it comes back when you look at the appellate review and the  
20 appellate decision and you've practiced in front of me long  
21 enough that you probably know my position in general when it  
22 comes to rights of first refusal --

23           MR. KAINEN: I know.

24           THE COURT: -- teenage discretion, and even



1 parenting coordinators. I generally --

2 MR. KAINEN: I got it.

3 THE COURT: -- don't -- don't do that. But I think  
4 what was more fundamentally important for me, and I continue  
5 to maintain is, when parents agree to any of those provisions,  
6 I -- I believe fundamentally in parental rights to -- to  
7 negotiate and determine what you believe is in the children's  
8 best interest. That's what I believe all of that stands for.

9 MR. KAINEN: Until it doesn't work.

10 THE COURT: Well, I -- I -- you know, I -- I guess  
11 the -- it -- it would be easier for me I -- I give you because  
12 it gets into this notion of flexibility. Any of these  
13 provisions we talk about inherent in any of that is a -- is a  
14 modicum of flexibility. Judicially as I sit here in a general  
15 case, I set schedules. It's from point A to point B, certain  
16 time of day, certain days, this is your schedule. If parents  
17 go out there, tuck it in a desk drawer, never look at it,  
18 they're probably doing something right that they don't have to  
19 look at a piece of paper and to -- to tell them how they're  
20 going to raise their kids.

21 That's why I don't do rights of first refusal  
22 because you have to be flexible with each other and that's not  
23 even what this issue is about. It's easier for me when I set  
24 a schedule and that's it, boom. There's no deviation from it.

1           And -- and so sure, my life would be easier if I  
2 said here's your schedule, go out, implement it. That's it,  
3 period. No -- no changes or alterations. Ultimately, is that  
4 -- is that what these parties believe is in Brooke or Rylee's  
5 best interest? I -- I pointed out previous -- previously in  
6 the past, this teenage discretion provision was unlike any  
7 other teenage discretion I have ever seen and we've talked  
8 about that before. It was very detailed.

9           And -- and I think the opposition -- the  
10 opposition's point of view is it -- it's never been followed  
11 by --

12           MR. KAINEN: We -- no. No.

13           THE COURT: -- the Plaintiff.

14           MR. KAINEN: We've also ignored wholesale provisions  
15 of it. In other words, we've chosen to take the -- the --  
16 somehow interpret it to mean that the kids get to determine it  
17 as opposed to the suggestions of the parents. And that's been  
18 sort of like we just ignore all the language that doesn't fit  
19 in that. You go back to that original provision, it had all  
20 sorts of things about it being -- and the parent would decide  
21 and things like that. We just said well, we're going to  
22 ignore that and -- because of this one sentence over here and  
23 it's inconsistent, so we're going this way.

24           THE COURT: Right.

1 MR. KAINEN: And that's part of the problem. And  
2 you've done some things to try and fix this. Last time we  
3 were here or two times back, you said you know what, this  
4 having Kirk drive over so the kids can get their dance bag and  
5 he ends up waiting in the car for 45 minutes or whatever it is  
6 while the kids go in there and have a snack and all that,  
7 things like that, we're going to change it so now the parent  
8 has to deliver the bag.

9 You know what's happened? Now Vivian shows up, she  
10 parks out front, and now --

11 THE COURT: No, I read it.

12 MR. KAINEN: -- they're out in the car for 30  
13 minutes. It's like --

14 THE COURT: I -- I read it.

15 MR. KAINEN: I mean --

16 THE COURT: Well -- well, listen. And -- and some  
17 of it we've solved because I -- I made prior revisions to how  
18 we were going to do the transporting because that -- that  
19 wasn't functional. And -- and listen, I -- the bottom line  
20 for me in -- in a lot of this, and -- and it's a two way  
21 street, is I -- I do not believe with everything I've seen --  
22 and part of it goes into what -- what Plaintiff stated, what  
23 Dad stated to Ms. -- Dr. Paglini in -- in some of the sessions  
24 they had and -- and criticizing Mom in the session.

1           To me, neither child has permission to love the  
2 other parent. I -- it's been withdrawn. Anytime a parent  
3 makes a negative remark about the other parent, you've  
4 withdrawn that -- your permission for that child to love the  
5 other parent. It's as simple as that. When you criticize Mom  
6 in a counseling session, you just withdrew your permission to  
7 love Mom and -- and vice versa to the extent anything's  
8 happened critical, we go back to this entire insurance issue.  
9 And -- and we've debated that ad nauseam. But -- but the  
10 point is I don't believe either child in a healthy fashion has  
11 permission to love the other parent.

12           So Mr. Smith has sat here very quietly. What --

13           MR. SMITH: But -- well, to -- let me point out some  
14 of the notes, because I've argued this matter four times  
15 before your court and one time before the supreme court.

16           THE COURT: Right.

17           MR. SMITH: So I'm pretty familiar with the issue.  
18 Let's start with the notion -- and this is Mr. Kainen's gift  
19 is the strong man argument is to present our argument as if  
20 it's something that it isn't. So I'm going to have to go  
21 through the argument once again.

22           The parent be -- the reason why the teenage  
23 discretion provision is in the agreement was as a result of  
24 trying to get a system that worked for Brooke at the time.

1 Brooke was already indicating, as Dr. Paglini has -- has  
2 indicated in his report that she did not want this plan --  
3 Brooke is a very different child than Rylee. Brooke is very  
4 -- and -- and you'll meet her finally. And so you'll have a  
5 chance to --

6 THE COURT: But do I need to though?

7 MR. SMITH: Well, look, here's -- here's the problem  
8 is if you are going to limit the rights, we don't think it's  
9 in the best interest. Let's start with the -- the forest  
10 through the trees.

11 THE COURT: Right.

12 MR. SMITH: We don't think it's in the best interest  
13 to have significant -- forced upon -- significant time forced  
14 upon Brooke either in the -- the court order or in the form of  
15 a type of camp that is designed to fix a problem that's --  
16 that arises from either pathogenic parenting or alienation  
17 which is what came out at the testimony last time.

18 We just don't think it's in her best interest.  
19 That's why we're here. It would have very easy to just say  
20 you know what, take her to wherever you want, she's 18 soon  
21 and you think that's going to help, great.

22 But we think it will even make it worse. We think  
23 all the approaches that we have requested have always been  
24 designed to try to get a better relation. That's the irony of

1 this -- this whole scenario is when Vivian -- she didn't  
2 insist on going forward with a custody case. She could have.  
3 What we did was okay, we're going to have joint custody, but  
4 we're going to have this mechanism that prevents either party  
5 from putting into the head of the children that they want to  
6 change custody. In fact, before they can even do that, we --  
7 we put a second layer of -- of procedure in so that a child  
8 that wants to change custody, that's the part of the teenage  
9 discretion, the clause that they never mentioned, is they  
10 actually have to go to the counselor and talk to a counselor  
11 to talk about their feelings as to why do they feel that way,  
12 or they have to go to -- and then the -- the counselor gets to  
13 speak to the parenting coordinator and the counselor uses its  
14 discretion to make sure that there isn't any information  
15 that's revealed to the parenting coordinator that could cause  
16 the child to have a -- a fear of opening up to that counselor.

17           So that's the system we put in place, because from  
18 Mr. Harrison 's posi -- idea, it was Mrs. Harrison who was  
19 crazy and then therefore all these bad things were going to  
20 happen to the children and he wanted to have a mechanism by  
21 which that behavior could be addressed to a counselor and a  
22 parenting coordinator. That was the notion that's expressed.

23           I -- you don't have to believe me for it, because  
24 it's in the -- the correspondence that's been attached to the

1 seven or eight briefs that I filed which was essentially  
2 opposition not making aside. My opposition was just saying  
3 here's where I have addressed all of these things. It was in  
4 pointing out the obvious of what happened in court. So the --  
5 the opposition didn't need 17 pages of reply. That's -- there  
6 was nothing in there about Rylee or -- or anything else. It  
7 was just -- I've addressed this before.

8           Going back to my argument, these -- these things  
9 were designed to help Kirk. They were designed to make sure  
10 that he -- his curiosity, his obsession with Vivian's health  
11 was addressed through this procedure and that Vivian's  
12 concerned that Kirk would try to sort of bombard the counselor  
13 so that the child really didn't have that process to address  
14 any concerns, particularly Brooke because she had already  
15 expressed them, that she would have that opportunity without  
16 Kirk constantly bombarding the counselor and instead doing  
17 that through a P.C.

18           Well, I don't need to tell you what happened. It  
19 didn't -- it didn't get done because for a year they didn't  
20 provide anybody and then for -- when we did provide them --  
21 provide them -- you entered orders consistent with what we all  
22 agreed to. You appealed it. Not only appealed it to the  
23 notion of this case, but appealed it to the notion of P.C.'s  
24 in general. Had he won that appeal, we couldn't use them.

1           So in our view, this has gone so far beyond what is  
2 really about the best interest of the children. The mechanism  
3 was designed to protect exactly what's happened. And instead,  
4 Kirk has filed 14 separate motions including this one. And he  
5 doesn't believe there is nothing -- and I challenge the Court  
6 and its very good clerk to look through those motions. Find  
7 anything where there's any sense of reality in his own role in  
8 what has happened between him and Brooke. It's none. It's  
9 always focused on Vivian.

10           Even now, even after Dr. Paglini spoke to Brooke and  
11 he -- he -- she said how she felt about these things, he still  
12 won't accept that. He'll never accept that.

13           So you're saying you're going to put some -- this  
14 child with a guy who even today believes every problem he's  
15 ever had with any child is based on Vivian, and it's because  
16 he certain -- he truly believes that she has a psychological  
17 disorder. That's the construct in which we find ourselves.

18           And to say somehow just by granting him additional  
19 time that's all going to go away, what needs to happen is what  
20 I begged to happen at the time of the -- this was entered. I  
21 said look, they don't believe these psychologists we hired  
22 from Harvard and Columbia? They don't believe Dr. Tinehouse  
23 (ph). Dr. Tinehouse looked at every record in this case and  
24 found there was no -- any kind of problem with Vivian.



1           And I begged the Court and Counsel to allow Dr.  
2 Paglini to -- to complete his findings, because then if he  
3 would have found that there was a problem, we could address  
4 it, because remember, I -- I said we'll never bring it up to  
5 the Court. This will be therapeutic. The Court recognized  
6 that when it later opined on that issue. But that didn't  
7 happen either.

8           We go fast forward. Now we have any kind of  
9 exercise, even the most benign exercise of the teenage  
10 discretion clause, I want to go be with my mom on prom so that  
11 she can help my -- me and my girls put together our hair and  
12 makeup.

13           MR. HARRISON: I know you are --

14           MR. SMITH: We want to go -- we want to go to -- go  
15 shopping with my mom to buy dance shoes. I want to go --  
16 there's a weekend, two days within time that Vivian would  
17 normally have the children. The -- the -- Brooke -- so she's  
18 going to take those two days so she has a more extended time  
19 so she can be with her mother. The kind of deflation that we  
20 can give Brooke so that Brooke wouldn't then come to the  
21 position that my dad tells me everything how it's going to be.  
22 That's what we have in Dr. Paglini's report. And that could  
23 have been done in 2012. It would have been the same dynamic  
24 because Brooke as you will find, I'm sure I've never talked to

1 her other than hi.

2           So from everything I read in Dr. Paglini's report,  
3 you get a very different personality than Rylee. You get a  
4 person who's very -- you know, she wants it her way and this  
5 is the way it's going to be. The notion is is that somehow  
6 Vivian empowered her. Remember, this was in 2012 that she was  
7 expressing these notions, at a time when Kirk had her in his  
8 care four or five days per week based upon your order.

9           This notion -- these notions that somehow Vivian  
10 deserves to spend hundreds of thousands of dollars to fight  
11 for two children that she agreed upon after spending hundreds  
12 of thousands more is just debilitating. It's -- anymore it's  
13 like when I see these motions more, a 17 page reply as if that  
14 wasn't -- draft today -- Mr. Kainen didn't draft that, he did.  
15 If we're -- we are fooling ourselves if we believe these  
16 pleadings are filed by anybody but Kirk Harrison.

17           To suggest that somehow that individual who finds  
18 fault in everything, everything you've done, everything I've  
19 done, even his own attorneys have done, even things that every  
20 witness that -- that testified against him, they were all  
21 liars. Nothing can be against what Kirk Harrison says.

22           So I get that we're having a kumbayu -- ya moment  
23 here, but you -- Judge, when you sent it to Paglini, I  
24 thought, you know, finally I got you to agree to that.

1 Remember I'd ask about four or five time before, send it to  
2 the outsource and let them interview the kids to see where  
3 we're at on that. Finally when Brooke said her piece, way too  
4 late in my view, she said in a very thoughtful way how she  
5 felt about her father -- father and mother and why she had  
6 done what she had done.

7 But the Court made a specific finding that was not a  
8 fact finding. So the only way that gets into this record to  
9 protect what we think is Brooke's best interest in regard to  
10 putting her with someone who absolutely hates my client, that  
11 that person has to testify in order to those facts. We would  
12 accept those facts but Kirk doesn't accept those facts. Kirk  
13 calls his -- his daughter a liar. And the reason why he calls  
14 her a liar is because he says that she is subject to  
15 pathogenic parenting which, Judge, there is a subject that I  
16 think you know about is pathogenic parenting. If you look at  
17 the studies, and I've read them, they all start with the  
18 proposition that the parent who is committing the pathogenic  
19 parenting has a behavioral disorder.

20 That is one of the characteristics of pathogenic  
21 parenting and that's why he wants it to be found. He wants to  
22 prove to the older daughters who are blessed with the notion  
23 that their mother is now crazy. They want -- he wants to  
24 present that to them and say see, I was right. That's what

1 this is about. You don't spend this kind of money when the  
2 other attorney and the other par -- say hey, what can we do,  
3 we'll -- we'll work it out with you. We'll have a -- a  
4 parenting coordinator. We'll have a counselor that's private.  
5 We'll work it out with you. Let's do that. Let's do this  
6 before you start filing motions for contempt. What contempt?  
7 And Judge, respectfully, there was never any contempt.  
8 Nobody's ever confor -- informed that she's in contempt.

9           This insurance issue, she will likely testify  
10 exactly as she did in this. It had no effect on her. She  
11 didn't even know who paid -- when Dr. Paglini asked her, and  
12 this is on page 19 of his report, she didn't even know who  
13 paid the bills. She didn't know who paid for dance. She  
14 didn't know who paid for medical bills. That had nothing to  
15 do with this. But yet, it's the kind of thing that Mr.  
16 Harrison latches onto.

17           It becomes the little things that he just latches  
18 onto and makes huge things, like the bag. She was going to  
19 Disneyland. She wanted to take like a bra or something  
20 according to Vivian's testimony and that was what we'll have.  
21 It was like no big deal, but it's made to be this huge  
22 gigantic deal, because again, he wants to have this provision  
23 wiped out and then prove to everyone that he deals within the  
24 circle that he tells that Vivian's crazy, that see, it all was

1 bad. And it's her fancy attorney, he put that in there, and  
2 he had no idea that this thing was going to be so harmful or  
3 he did -- even worse, he did have an idea and that's how it  
4 was. It's never been followed. Our position is it should be.

5           We would have not had this had it been followed. We  
6 could have had Dr. Ali, we could have had a parenting  
7 coordinator, we could talk about these issues in a -- in a  
8 more kind of open air kind of setting. Kirk and Vivian could  
9 have talked to each other. They could have been scolded by  
10 the parenting coordinator with any behaviors that they didn't  
11 -- that the parenting coordinator thought was -- was harmful  
12 to the children.

13           The parenting coordinator could have talked to  
14 Brooke, but remember when we said that, when we said we think  
15 the parenting coordinator should actually be able to talk to  
16 Brooke, they -- they were crazy about it, no way, there's no  
17 way she can talk to -- to Brooke.

18           So the entire system that we developed that is still  
19 in the plan, works. It just has never been allowed to work.  
20 And it's not been allowed to work and I'm not -- I think  
21 there's a nefarious reason. I don't agree with this kumbaya  
22 moment that Kirk is just trying to see his daughter. So if he  
23 was just trying to see his daughter, there's any number of  
24 behaviors that would have been different. And I think the

1 only way I know that is for Brooke to repeat what she's  
2 indicated from Dr. Paglini. I don't know why she would have  
3 to do that. Again, I'm happy with the factual findings that  
4 Dr. Paglini made. I think that they were honest and -- and  
5 right.

6 He even -- I thought it was remarkable that Dr.  
7 Paglini two feet from Kirk said look, I admire you, Mr.  
8 Harrison, but you just got it wrong. And he said to -- to Mr.  
9 Harrison you know, if you keep on this path, this is what's  
10 going to happen. And sure enough, it has. And now we got  
11 Brooke sitting out there.

12 To me, if we would have just accepted these as  
13 factual findings, I don't need her. If we would have just  
14 allowed the system to work, I don't need her. But Judge, now  
15 this is six years of frustration, hundreds of thousands -- I  
16 don't even know how to justify it anymore to Vivian. I told  
17 her well, look, I just looked at a 17 page review. I just had  
18 to review it. I had to prepare for today.

19 I don't know why I have to keep doing that for two  
20 children who are remarkable. We should be celebrating these  
21 children. How many children I would ask this Court in your  
22 experience as -- as a juz (sic) have these kind of  
23 experiences, yet we're spending millions, millions of dollars  
24 to affect their care? How many -- how many cases? We have

1 kids that are really messed up that -- that really need this  
2 Court's resources. But here, we have everybody in the world  
3 surrounding these really great kids so that we can justify Mr.  
4 Harrison's anger. That's how I feel.

5           And Judge, I'm sorry if I've -- I've -- it's a  
6 diatribe, but frankly it's just starting to become unbearable.  
7 I even -- you know, one of the reasons I was late on that  
8 thing is because I wrote a different kind of -- of opposition.  
9 I wrote one frankly that was more like this argument. But I  
10 decided, you know, I've done this. I've done this too many  
11 times. I can't bill her for it. I can't do it anymore. I  
12 just threw together something that said look, here's all the  
13 places that I've argued this. And yet, today, we have 17  
14 pages of facts that weren't available to me at the time I  
15 review -- I couldn't have even addressed them if they were,  
16 facts that occurred like over the holiday or this weekend or  
17 -- or the last couple days, it's just remarkable that we allow  
18 this to occur. It can't continue to occur.

19           At some point in time, it's got to stop. It won't  
20 stop if Kirk is vindicated by the notion that he fought and  
21 fought and fought and filed all these motions even though he  
22 lost on four different occasions and the supreme court and now  
23 all he has to do is keep filing stuff and boom, it'll all go  
24 away. That should not be the result, it cannot be the result,

1 and it'll just continue to cause him to file a motion.

2           Do you think this is really going to stop? If for  
3 some reason he's -- you know, he's allowed to undo the teenage  
4 discretion part and there's no parenting coordinator? I mean,  
5 one thing that we should have in this case is someone who's a  
6 little less expensive than everybody coming to court. You  
7 think that's going to stop everything? There's no way.  
8 There's still going to be 30 page motions about everything  
9 that those kids do and if there's something that Rylee doesn't  
10 do that he doesn't like, he's going to blame Vivian for it.  
11 Nothing's going to stop unless we actually enforce those  
12 provisions.

13           THE COURT: All right. Our time is slipping away,  
14 so we either move forward with the evidentiary proceedings, my  
15 intent is to finish with Dr. Paglini and then to have Brooke  
16 testify, or if there's some alternative path with Dr.  
17 Paglini's assistance, which he offered at the last hearing and  
18 that's kind of what I started today is we are --

19           MR. SMITH: I'm a hundred percent with it.

20           THE COURT: -- is there a need to go forward with  
21 this short of -- it -- because the -- the nature of the relief  
22 that's being requested, if I'm being asked effectively to  
23 award those days, then fundamentally as part of the evidence I  
24 need includes Brooke's testimony. I know there's a reluctance



1 and a -- a request specifically in the motion not to have  
2 Brooke test -- testify. And Dr. Paglini came up with an  
3 alternative two weeks ago, and that's why I was curious if --

4 MR. KAINEN: And we don't know. There's been no  
5 communication to -- at least had -- not to us.

6 THE COURT: Is there any meeting with Dr. Paglini in  
7 the interim?

8 MR. SMITH: I know that the parties met with him at  
9 the time of the hearing and I think Kirk met with him --

10 THE COURT: Afterwards?

11 MR. SMITH: -- that day as well.

12 THE COURT: After we were finished?

13 MR. SMITH: Look, Judge. Any -- as I've indicated  
14 on many occasions and in that argument, any kind of  
15 alternative means to do this except --

16 THE COURT: Right.

17 MR. SMITH: -- in a court of law, we're okay with.  
18 And we -- and to note, there was another session scheduled.  
19 She attended that session --

20 THE COURT: With Dr. --

21 MR. SMITH: -- and to our doctor --

22 THE COURT: With Dr. Ali.

23 MR. SMITH: -- with Dr. Ali. And they haven't  
24 scheduled any others. I mean, Dr. Ali is a very busy guy.

1 But she's willing to continue to do that. I think she would  
2 tell you that today. I just -- this is not the way to solve  
3 -- well, all right.

4 THE COURT: Well --

5 MR. SMITH: Of this problem. And you're --

6 THE COURT: Listen.

7 MR. SMITH: That's basically what you're saying.

8 THE COURT: No, listen. I -- yeah, these problems  
9 aren't going to be solved in a courtroom. They're not.  
10 They're not. I -- I look at a fractured family and I said  
11 this before. There should be no joy in either party that  
12 you've got adult children who are estranged from their mom and  
13 -- and we're dealing with estrangement issues now. This is  
14 sad. It's pathetic. Take a step back and look at where --  
15 and we -- we can point fingers, there's a lot of finger  
16 pointing, but it's the old adage that -- that your -- your  
17 parents probably taught you. When you point the finger at  
18 someone else, three pointers -- three fingers are pointing  
19 right back at you. And -- and that's what I see.

20 And so it -- it doesn't -- it does no value to point  
21 the finger at the other party and -- and play the blame game.  
22 My -- and -- and to go back to what I said, my objective today  
23 is to finish the evidence today with Dr. Paglini and with  
24 Brooke to the extent you feel that's necessary so that I can

1 make a determination as to what relief is granted based on the  
2 motion that's been filed. Do I think that's -- that's not  
3 going to solve the problem. It's not going to solve  
4 relationship issues I don't believe. I think Dr. Paglini  
5 noted that at the last hearing. I -- I heard enough from him  
6 to -- to at least formulate my own opinion as to where this  
7 should go and that's why I was somewhat hopeful that I would  
8 see a stipulation before we came in today that we weren't  
9 going forward, but --

10 MR. SMITH: We're okay with that, Judge. If we want  
11 to stipulate to the continued counseling, everybody encourages  
12 Brooke to have a relation -- look, I just think -- I -- I'll  
13 just throw out there, the last thing. I don't -- I don't  
14 really think that this is going to resolve the issue and it  
15 particularly won't resolve the issue if she has to testify.  
16 But it's the only way I get the evidence in the record. And  
17 I'll -- I'll make -- my -- one of those pieces of evidence  
18 will be the role in the adult daughters in making it difficult  
19 for Brooke to have this relationship with her father.

20 So to me, that might be something that's a benefit  
21 for -- that will be beneficial for both the Court and the --  
22 and Dr. Paglini -- or maybe my client's wrong about that. I  
23 don't know. But --

24 THE COURT: All right.

1 MR. SMITH: -- the -- so --

2 THE COURT: Mr. Kainen, how -- how do you desire to  
3 proceed?

4 (COUNSEL AND CLIENT CONFER BRIEFLY)

5 MR. KAINEN: Can we have two minutes?

6 THE COURT: Yeah, you -- well, I'll step off. Just  
7 --

8 MR. SMITH: Let me -- let me just say one thing  
9 though. If Brooke is going to testify, I don't -- I don't  
10 want the parents here. I want her to be able to state freely,  
11 and Mr. Kainen will be here, I'll be here, you'll be here, but  
12 I want her to feel not intimidated by either party in the room  
13 and be able to say what she wants to say about either of them.

14 THE COURT: Well, first and --

15 MR. SMITH: Is that okay?

16 THE COURT: -- foremost, I want to see if we can  
17 avoid even having to go down --

18 MR. SMITH: Okay.

19 THE COURT: -- that path. That --

20 MR. SMITH: Okay.

21 THE COURT: That would be my preference and maybe  
22 you invite Dr. Pagli -- I'm going to step off. If you want to  
23 invite Dr. Paglini in to have his input as well, consider  
24 that. But talk with your own -- with -- with Mr. Harrison and

1 -- and with Ms. Harrison and -- and if Dr. Paglini can help,  
2 I'll -- I'll step off and give you a few minutes to chat.

3 MR. HARRISON: Your Honor, time is short. Can I  
4 just address the Court briefly on this?

5 THE COURT: It's up to your attorney.

6 MR. KAINEN: It's fine with me.

7 MR. HARRISON: The -- the issue on the teenage  
8 discretion is not going here for two hours and not -- and by  
9 the way, the record has been grossly misstated. I've always  
10 complied with the teenage discretion provision when it was  
11 reasonably possible. I've complied with it many times but the  
12 Court never even knew about it. And when the Court did know  
13 about it, it was after the fact saying yeah, it was exercised  
14 here and I ended up losing two weeks. So the -- that -- that  
15 -- that's a -- that's a red herring there. That -- there's  
16 been compliance.

17 The problem and the reason that we're here is  
18 because the damage this provision is doing to my children.  
19 The -- the damage this provision is doing to the relationship  
20 I have with my children and the real substantial likelihood of  
21 long term damage to these children.

22 The reason we want the teenage discretion nullified  
23 is not because of two hours here or two hours there. It's the  
24 real damage it's doing to these kids and the real damage it's

1 doing to my relationship with them and most importantly of all  
2 what it's going to do to them for the rest of their lives.  
3 And this isn't something that I pulled out of the air.

4           These are based upon 34 year studies with a thousand  
5 families, you know, my -- sponsored by the ABA. That's what's  
6 the issue. We're not pushing -- pushing the nullification of  
7 this provision because of a two hour here or two hour there.  
8 It's because the dynamic it's creating for these children and  
9 what --

10           MR. KAINEN: The bottom line is --

11           MR. HARRISON: -- it's doing to them.

12           MR. KAINEN: -- the -- the provision provides a  
13 vehicle for doing the -- for what he perceives is going on and  
14 what they perceive -- in other words, everything comes out of  
15 this idea that these children have been empowered, everybody  
16 -- all the doctors have said the children are over empowered.  
17 The empowerment comes from this provision that is not in their  
18 best interest and that's what it comes down to. The -- that's  
19 the tool that's being used. Now if she doesn't have that tool  
20 or if he doesn't have that tool, it can't be used as a tool to  
21 empower them and to give them the right to tell their parents  
22 what to do.

23           Now, what each person believes, there's probably a  
24 lot of truth in terms of -- I -- I sort of like -- thought it

1 was ironic as Rad went on for 20 minutes uninterrupted about  
2 what a horrible piece of garbage Kirk is, you know, because in  
3 Rad's per -- perception Kirk doesn't like Vivian, but of  
4 course he denigrated, you know, Kirk for 20 minutes on -- on  
5 that same thing.

6 My -- the point is simply that this provision  
7 provides the tools that -- whether the ne -- whatever negative  
8 things are happening come from the existence of this  
9 provision, that's the root of the empowerment and that's why  
10 there's a problem.

11 THE COURT: Well, let me -- let me just add this in  
12 conclusion and then I want you -- I want you to have that chat  
13 and perhaps invite Dr. Paglini because I -- he may provide me  
14 with some insight as -- as it relates even to this provision.

15 MR. KAINEN: Okay.

16 THE COURT: But -- but, you know, and -- and I look  
17 at Rylee who just turned 14. And anyone who has raised  
18 daughters, you -- you understand that there are changes that  
19 take place around that age, that -- that time frame, from --  
20 from being daddy's little girl at that point in time to being  
21 a little more -- a little more preoccupied with appearance and  
22 all of a sudden it becomes a lot -- and -- and I mean a lot  
23 bigger -- there's a change that occurs. If -- if you've had  
24 -- if you've raised a daughter, you see that. You -- you know

1 that. It -- it goes from where it really didn't matter and,  
2 you know, it was all about playing and having fun, and maybe  
3 even being a little tomboyish and it really didn't matter to  
4 all of a sudden there's a big -- a huge preoccupation about  
5 how do I look and -- and, you know, what boys are cute and it  
6 -- it's -- it's huge.

7           And -- and I think we can't lose sight on the fact  
8 that we're dealing with little girls who are becoming young  
9 women. That's -- and that -- and that's what -- you look at  
10 this provision and I don't know if that was thought about when  
11 you came up with this teenage discretion provision, but you're  
12 dealing with an age that is a major transition age for these  
13 girls that are becoming young women. That's something that  
14 again anyone who has raised a daughter has witnessed this.  
15 That's something I'm -- I'm going through right now as I  
16 witnessed that -- that remarkable change. And it's a  
17 beautiful thing.

18           But there -- there are also -- I -- I -- you --  
19 there are attitude changes. That can be significant as well.  
20 And -- and I don't think -- I don't lose sight of the fact  
21 that everything I've heard about your children who I haven't  
22 met seems to suggest that they're outstanding students.  
23 They're obviously very involved in activities because I know  
24 by based on the reply the regimen that was -- was in place



1 during Dad's time versus Mom's time, hey, you know what? One  
2 of the joys of parenting is going to classes, going to dance,  
3 and running left to right and here to there, schedules. You  
4 -- you don't -- it doesn't feel like you have a free moment,  
5 but you're going to games, you're going to practices. That's  
6 -- that's part of the joy of being a parent.

7           It can't be viewed as boy, that's taking time away  
8 from my -- my schedule. That's not quality time. That is  
9 quality time for a parent. What better way to enjoy parenting  
10 than to watch a child participate in an activity that he or  
11 she loves? That -- that's -- that's part of one of the  
12 beauties of being a parent.

13           And -- and you have two -- two very successful  
14 children. It appears that your older three are very  
15 successful as well. I don't know as much, but I know quite a  
16 bit given the history of this case, but certainly the model of  
17 parenting behavior sucks from -- from your children's  
18 behavior. And it goes back to what I said, I don't think they  
19 have permission -- I don't think they have Dad's permission to  
20 love Mom. I -- I think that has been withdrawn. There have  
21 been issues and concerns I've had from Mom's standpoint too  
22 about whether or not they have her permission to love Dad, but  
23 the bottom line is, this is not a great model for them to look  
24 at how their future relationships are going to unfold.

1           But I think keeping all of that in perspective as we  
2 deal with these young women, little girls who are now becoming  
3 young women, and -- and Brooke's really beyond that, have some  
4 discussion with your clients and invite Dr. Paglini in. We --  
5 we do have very limited time and really what I'm looking at if  
6 we are going to proceed with any evidentiary process, I want  
7 to finish up with Dr. Paglini and then I want to hear from  
8 Brooke. And -- but I'd rather not hear from Brooke. As much  
9 as I -- I want to meet this -- this young girl who both of you  
10 love and adore and I think is a very special young lady and  
11 I'd love to meet her because she sounds so wonderful, I really  
12 would rather her not be put in that position.

13           So have some discussion and I'll take a brief break  
14 and check back in.

15           (COURT RECESSED AT 14:17 AND RESUMED AT 14:21)

16           THE COURT: We are back on the record in the  
17 Harrison matter. Where do we stand?

18           MR. KAINEN: There was some very brief settlement  
19 discussion that was not productive. And so I guess we're  
20 going forward.

21           THE COURT: Okay. So let's have Dr. Paglini come  
22 back in.

23           (WITNESS SUMMONED)

24           THE COURT: Welcome back.

1 DR. PAGLINI: Afternoon, sir.

2 THE COURT: Good afternoon. If you would please  
3 remain standing and raise your right hand to be sworn.

4 THE CLERK: You do solemnly swear the testimony  
5 you're about to give in this action shall be the truth, the  
6 whole truth, and nothing but the truth, so help you God?

7 THE WITNESS: I do, sir.

8 THE COURT: Okay. You may be seated and --

9 DR. PAGLINI: Thank you.

10 THE COURT: -- Mr. Kainen, you may proceed.

11 DR. JOHN PAGLINI

12 called as a witness on behalf of the Plaintiff, having been  
13 first duly sworn, did testify upon his oath as follows on:

14 DIRECT EXAMINATION

15 BY MR. KAINEN:

16 Q Dr. Paglini, you performed -- you did a report in  
17 this case --

18 A Yes, sir.

19 Q -- a year and a half ago or so , or maybe it's two  
20 years ago at this point; is that correct?

21 A January of '16, one year ago.

22 Q And the -- among the provisions, you noted in your  
23 report specifically that Brooke had not been seeing Dr. Ali on  
24 a consistent basis; is that correct?

1 A Yes.

2 Q She had not seen him since August of 2015 you  
3 noticed -- you noticed -- you noted in your report; is that  
4 correct?

5 A I don't recall the last date, but it was  
6 inconsistent considering the dynamics, I thought they should  
7 be seen more.

8 Q And you recommended a -- a new dynamic as a way to  
9 fix the troubled relationship, correct?

10 A Yes, sir.

11 Q And you recommended a new role for Dr. Paglini  
12 (sic); is that correct? I'm sorry --

13 A Dr. Ali.

14 Q -- for Dr. Ali.

15 A Dr. Ali. Yes, sir.

16 Q Okay. And he was going to be sort of the  
17 reunification therapist as opposed to Brooke's individual  
18 therapist; is that correct?

19 A Correct. And still working with Brooke  
20 individually, yes.

21 Q Well, you noted in your report specifically the  
22 downside of choosing Dr. Ali is that Brooke will not have a  
23 relationship with a therapist who is there just for her,  
24 correct?

1 A Yes.

2 Q Okay.

3 A Yes.

4 Q So Dr. -- Dr. Ali's role was changing from one of an  
5 individual therapist for an individual person to somebody who  
6 is primarily responsible for reunifying a family by meeting  
7 with a father, a daughter, a mother if necessary, whatever it  
8 is that he needed to do to be able to try and mend that fence,  
9 correct?

10 A Correct.

11 Q Okay. Okay. I'm going to talk to you a little bit  
12 about some -- the -- just sort of setting up some of the --  
13 the necessary predicates in this case.

14 A Okay.

15 Q If I represent to you that between August 12th of  
16 2015 and December 12th, 2016, Kirk lost approximately 203 days  
17 with Brooke. Okay.

18 A Yeah.

19 Q I'll also represent to you that between December  
20 12th, 2016 and January 31st of this year he lost an additional  
21 18 custody days; therefore, the cumulative amount was 221  
22 days. Okay.

23 A Okay.

24 Q All right. Will you agree that since there's 50-50

1 custody, it means that during that time period Kirk didn't see  
2 Brooke for about 442 days? In other words, he didn't see  
3 Brooke on Vivian's 221 days and he didn't see Brooke on the  
4 221 that he lost; would that be fair?

5 A Oh, I see what you're saying. Yes. I --

6 Q Okay.

7 A Okay.

8 Q If I represent to you that between July 17, 2015,  
9 that was the time when Vivian had custody of Brooke from July  
10 17th through August 11th because of accommodation through  
11 custody schedule and the vacation time, so between July 17 of  
12 2015 and September 30th of 2015 Kirk had no contact with  
13 Brooke whatsoever except for seeing her briefly at an  
14 orthodontist office; do you remember the incident?

15 A Yeah.

16 Q Okay. And ignoring her presence, that was 76 days  
17 where he just didn't see her except for the one time at the  
18 orthodontist -- you are -- you were familiar with that?

19 A I'm -- I'm familiar with the orthodontist --

20 Q Okay.

21 A -- appointment, yes.

22 Q If I represent to you that from March 30th of last  
23 year, 2016, until June 16, 2017 Kirk saw Brooke for a total of  
24 one day being the mid afternoon of May 1st. So except for

1 that one day and deducting that day during that time period  
2 Kirk would -- went without seeing Brooke for 77 days.

3 A You're saying that she didn't spend time over at his  
4 house at all.

5 Q Right.

6 A Okay.

7 Q Except for seeing her that one day in the -- where  
8 is it --

9 A Therapist office?

10 Q Right. The -- the -- if I represent to you between  
11 July 18, which was when the custody was supposed to end on  
12 July 22 and start on August 24th, and September 23, 2016 Kirk  
13 had no contact with Brooke during that time period except she  
14 showed up for one afternoon at 10:00 p.m. and the night of  
15 September 14th and she left the next morning at about 9:00  
16 a.m. and didn't return until 9:40 -- right before 7:00 a.m.  
17 the next morning. So except for those two days in that gap,  
18 there was another 68 day period where there was a huge gap of  
19 no contact --

20 A Uh-huh (affirmative).

21 Q -- with the exception of those few hours coming and  
22 going to bed, getting up the next morning and leaving.

23 A Okay.

24 Q Okay. If I represent to you that between October

1 15th and December 12th except for again showing up at 10:30 at  
2 night and leaving in the next morning and not -- and returning  
3 again at 10:00 o'clock -- or 11:00 o'clock at night and  
4 leaving at early in the morning, Kirk didn't see Brooke except  
5 for the two night -- those two nights, that was another 58 day  
6 gap of contact.

7 A Okay.

8 Q All right. We would agree none of these -- those  
9 kind of gaps are not healthy I assume for maintaining the  
10 relationship during this time.

11 A Yeah, I get what you're saying.

12 Q Okay. If we talk about additional custody time with  
13 Brooke between December 12th which was just a little over a  
14 month ago, he was supposed to have custody from noon on  
15 December 25th through 7:00 p.m. on January 2nd and Brooke came  
16 in at 1:00 p.m. on Christmas Day and left at 10:00 p.m. that  
17 night, so another eight days over --

18 A Uh-huh (affirmative).

19 Q -- the entire holiday were lost.

20 A Okay.

21 Q All right. And are you aware of what the recent  
22 custody contact has been?

23 A Vaguely.

24 Q Okay.



1           A     I got -- I need to be educated on it.

2           Q     Okay. So if -- if I represent to you that Brooke  
3 has been showing up at about 11:00 or 11:30 at night --

4           A     Uh-huh (affirmative).

5           Q     -- and then being -- leaving -- leaving early the  
6 next day and being -- not showing up until 11:00 or 11:30 the  
7 following night that she's still keeping all of her clothes at  
8 Vivian's, that she goes over there after --

9           A     Uh-huh (affirmative).

10          Q     -- school, she has meals over there, she has -- she  
11 changes, she goes to dance, she does whatever, showers,  
12 dresses, all of that kind of stuff over there, that that's  
13 continued, do you believe that's -- again, in the best  
14 interest of maintaining and -- and continuing this  
15 relationship with -- repairing this relationship, that kind of  
16 effort?

17          A     Well, the -- I don't see them having any bonding  
18 moments or emotional connecting points.

19          Q     All right. And that's how we got to the 221 days  
20 that we talked about. If I represent to you that each of the  
21 leading national reunification therapy programs has a minimum  
22 of a 90 day no contact requirement, we talked about that last  
23 time, do you --

24          A     Yeah.

1 Q -- recall that? Because your experience has shown  
2 them that without the 90 day contact children will regress.  
3 Do you want -- are -- are you familiar with -- I'm sorry, are  
4 you -- are you familiar with the programs on the -- the  
5 pathogenic parenting and the like?

6 A I reviewed those dynamics during this assessment,  
7 but that was about a year ago. I have not prepared anything  
8 for this, you know, testifying here.

9 Q Okay.

10 A You know, re -- reviewing that.

11 Q I mean, is this something that you've done some  
12 definite research or something you're just passingly familiar  
13 with?

14 A I -- I didn't do in depth research, just in terms of  
15 what I did with this case as well as when I attended  
16 conferences, they -- we had presentations by some -- some  
17 places on the east coast that discussed what their success  
18 rates were and what their program was.

19 Q Okay. So you --

20 A And actually, I was at an alienation conference --

21 Q Okay.

22 A -- with AFCC.

23 Q And did you find that these -- they're -- in your  
24 look, did you find that -- what were the success rates you

1 were hearing about?

2 A I -- I -- you know what, I didn't -- we didn't --  
3 I've never had anyone go through the programs. And so I don't  
4 really have much experience --

5 Q Well, no.

6 A -- about that.

7 Q But when you went to the conference, you went there  
8 to learn --

9 A Yeah.

10 Q -- and to listen.

11 A Well, we -- we went to seminars on different topics  
12 of alienation, estrangement, how to tell the difference and  
13 then they had presentations on some of these programs that  
14 they're out there for severe parental alienation and -- and  
15 how they go about fixing things, et cetera.

16 Q Okay. So -- and again, I'm asking this because I've  
17 to the same programs and so --

18 A Yeah.

19 Q -- I'm assuming you're hearing the same thing. And  
20 what are you hearing about the success rates of these  
21 programs?

22 A Well, they -- they vary. You know, it -- it really  
23 depends -- some of them have -- like they -- they're saying  
24 they have high success rates and I'd like to see that broken

1 down.

2 Q Okay. But you're hearing the same thing that -- the  
3 90, 95, 98 percent success rate. So are you -- are -- were  
4 you --

5 A As -- as I just -- I'm not sure -- I don't recall  
6 exactly what they were but they seemed very high.

7 Q Okay.

8 A Okay.

9 Q Given how much time Kirk lost, do you agree it would  
10 be reasonable for Kirk to be able to get 45 days of the 221  
11 days that he lost back?

12 A 45 days out of the 221 days. You know, I -- there's  
13 no doubt -- I -- I wrote a letter on March 30 -- May 31st,  
14 2016 and I was somewhat dismayed based on what I was hearing  
15 from one side that there wasn't any progress. And there's no  
16 doubt in my report that I stress the importance of that this  
17 needs to take priority and I understand Brooke is extremely  
18 busy, she's intelligent, she's highly involved and -- and she  
19 has to juggle things.

20 But this relationship between her and her father is  
21 also equally important and it needs to be attended to and what  
22 you're telling me is -- is that nothing is really -- hardly  
23 anything took place up until what I think what I heard last  
24 week recently that it seemed to be more -- there's some

1 movement that's occurring.

2           And it's important to also understand that when I  
3 had my recent conversation with Dr. Ali, I don't -- I don't  
4 have -- I did not have awareness of some of this background  
5 information.

6           Q     Okay. So my question is is though given the  
7 demonstrated loss of 221 days, is Kirk's pos -- do you find  
8 that Kirk's position of saying look, I'd like to make up 45  
9 days of those to be an unreasonable position?

10          A     I think the position is very reasonable from him.

11          Q     Okay.

12          A     Because he missed out on a lot of time with his  
13 daughter.

14          Q     I'm asking you if you think it's a reasonable  
15 position.

16          A     It sounds reasonable on the surface. I haven't  
17 heard from the other side though. And so yeah.

18          Q     With respect -- well, actually, you found in your  
19 report that Brooke had rejected Kirk; is that correct? Page  
20 46 of your report --

21          A     Well --

22          Q     -- you had indicated.

23          A     -- I -- I think we would have to look at what I  
24 meant on page 46 rejected Kirk.

1 Q Talked about Brooke being primarily disengaged --

2 A What paragraph are you on, sir?

3 Q It's -- it -- on -- the second paragraph from the  
4 bottom in the middle, you talk about her being primarily  
5 disengaged -- that Brooke, and then we go on as noted he  
6 believes that Brooke's rejection of him and talk about Kirk's  
7 belief and then it goes on there is no doubt that Brooke has  
8 rejected her father, and Mr. Harrison is emotionally hurt by  
9 this rejection.

10 A Well, it -- it's a little deeper than that. Okay.  
11 So of course she has -- she has a lot of issues with her  
12 father and as outlined in my report, I didn't believe this was  
13 because of parental alienation. She has a very --

14 Q Yeah, I get that. And -- and again, Dr. Paglini,  
15 we're short on time, so I'm just --

16 A Okay.

17 Q -- trying to ask --

18 A Okay.

19 MR. SMITH: Let him --

20 Q I'm just trying --

21 MR. SMITH: Please, Your Honor, you -- he asked --

22 MR. KAINEN: No. No.

23 MR. SMITH: -- a question and he --

24 MR. KAINEN: I asked a --

1 MR. SMITH: -- should be --

2 MR. KAINEN: -- specific question.

3 MR. SMITH: -- able to complete the question.

4 MR. KAINEN: I didn't --

5 THE COURT: Right. You may proceed --

6 MR. SMITH: And he's moving --

7 THE COURT: -- Mr. Kainen.

8 MR. SMITH: -- to strike the answer, then he should  
9 do that.

10 BY MR. KAINEN:

11 Q Dr. Paglini --

12 A Go ahead.

13 Q -- did you find that it was obvious that Brooke had  
14 rejected her father?

15 A In --

16 Q There's no doubt that Brooke has rejected her  
17 father.

18 A That statement is correct, although I think it's a  
19 little more complex. But go on. Okay.

20 Q Okay. You also found that Brooke had disengaged  
21 from Kirk; is that correct?

22 A Yes, sir.

23 Q All right. And Brooke told you specifically that  
24 she learned about teenage discretion from Vivian; is that

1 correct?

2 A That's my -- that's my impression.

3 Q Okay. You noted that in your report --

4 A Yes.

5 Q -- that -- that -- specifically that Brooke had  
6 learned about the teenage discretion provision from Vivian.

7 A I think Vivian was trying to help with her --

8 Q I'm not asking you what --

9 A Okay.

10 Q -- Vivian's --

11 A Yes.

12 Q -- goal --

13 A Yes, sir.

14 Q -- was, but the -- the --

15 A Okay.

16 Q -- fact is that she didn't learn about it from Kirk,  
17 she didn't learn about it from Judge Duckworth or Mr. Smith or  
18 myself. She learned about it from Vivian, correct?

19 A I -- I think that was the impression, yes.

20 Q Okay. You heard Dr. Ali's testimony regarding  
21 wrongful empowerment of Brooke under the teenage discretion  
22 provision; is that correct?

23 A Yes.

24 Q All right. And you concluded in your report -- I'm



1 sorry, in your report that Dr. Ali's statements to you  
2 regarding the over empowerment of Brooke in the -- of the teen  
3 -- by the teenage discretion, in other words, you -- you noted  
4 in here -- it was important enough to you to note Dr. Ali's  
5 concern about the over empowerment of Brooke.

6 A Yeah, I -- it was important that I presented what he  
7 was saying accurately --

8 Q Okay.

9 A -- for the courts, yes.

10 Q According to your report, Dr. Ali's first meeting  
11 with Brooke was on February 25, 2014.

12 A What page are we on, sir?

13 Q Page 43.

14 A First session with Brooke, March 19th, 2014.

15 Q Correct. Okay.

16 (COUNSEL AND CLIENT CONFER BRIEFLY)

17 A That was the first intake.

18 Q I'm sorry. I apologize. Okay.

19 A That's all right.

20 Q All right. Brooke was born on -- on June 22, 1999.  
21 So she would have been 14 years old at that time; is that  
22 correct?

23 A That -- maybe, yeah. I'd have to look --

24 Q Okay.

1 A -- at the -- yeah, June 26, '99.

2 Q You also reported it was noteworthy to Dr. Ali that  
3 Brooke talked about teenage discretion at the beginning of  
4 that very first meeting; is that correct?

5 A I think that is correct.

6 Q All right. And you reported that Brooke told Dr.  
7 Ali that she believed that when she was 16 years old she would  
8 be more empowered regarding where she would live; is that  
9 correct?

10 A What page is that on, sir?

11 Q Page 45.

12 A Where at? Oh, I see. I found it. The second --  
13 the second paragraph.

14 Q Okay. So that's a yes?

15 A Brooke was aware when she's 16 she'll have more say.

16 Q Right. She --

17 A Yeah.

18 Q Okay. And do you have -- so do you also believe  
19 that Brooke has been overly empowered?

20 A You know, I -- I think that she is -- my -- my  
21 version is that the parents need to take a lead on things.  
22 And if we follow the lead of a 15 or 16-year-old, sometimes we  
23 can kind of go astray. I think the -- the mom as well as the  
24 dad should make appointments. They should confer with the

1 child. But we have to make sure things get done, and if we  
2 rely on an adolescent's pace, you know, sometimes it may not  
3 be consistent what we think is the right course.

4 Q Do you believe it's in either Brooke's or Rylee's  
5 best interest to continue to have -- to be empowered to tell  
6 their parents what they will do and where they will do it?

7 A I think that they could express what their -- what  
8 they feel --

9 Q Right.

10 A -- right at the end and we should respect that, but  
11 at the end it's sometimes they're parental decisions.

12 Q Okay. So -- so -- okay. You're familiar with Dr.  
13 Ali's statement -- Dr. Ali's opinion that -- I'm sorry. When  
14 -- in your report, you noted that when Brooke was 15 years  
15 old, she told Dr. Ali that when she is 16, she would be able  
16 to choose to live with only her mom and only visit with Kirk;  
17 is that correct?

18 A Where are you in my report?

19 Q Page 46.

20 A What page?

21 Q 46.

22 A What paragraph?

23 Q Give me a second. Let's see. Now I got to find it.  
24 Oh, I'm sorry. I -- I apologize. It wasn't a report -- I

1 think your report -- and I apologize. I -- I'm looking at the  
2 -- and it may be the right -- I may have the wrong reference  
3 here. I think I have -- it's in Dr. Ali's letter.

4 A Okay.

5 Q Okay. I'm sorry. Are you familiar with Dr. Ali's  
6 letter where he indicated that that was the case?

7 A I -- is that -- when was his letter written?

8 Q That was the letter that Dr. Ali wrote in last  
9 summer when it -- when you requested a letter updating what  
10 was going on and the Judge ultimately ordered it.

11 A Okay. I don't know if I saw that letter.

12 Q Okay. All right. In that letter, Dr. -- I  
13 represent to you Dr. Ali indicated it is my opinion that  
14 Brooke has been overly empowered in this situation and it  
15 appears to want to be responsible for scheduling and directing  
16 appointments including appointment length, frequency, and  
17 participance. It is my opinion that Brooke overseeing of  
18 appointments is unsuitable and counterproductive to the  
19 reunification process as we've been unsuccessful in properly  
20 commencing meetings between Brooke and her father thus for --  
21 thus far.

22 So the -- are you familiar with the fact that Dr.  
23 Ali's indication in that context certainly that Brooke has  
24 been overly empowered in this situation?

1 A It sounds consistent what he told me --

2 Q Okay.

3 A -- in an earlier time.

4 Q And I apologize, going back to page 46 of your  
5 report.

6 A Yes, sir.

7 Q You indicated at the very top first full sentencing  
8 beginning Brooke reported she believed that quote, when I turn  
9 16, there will be a drastic change in the way she visits with  
10 her father, closed quote, because 16 is a pivotal age. Brooke  
11 further stated I think I'll be able to choose to stay with mom  
12 and visit my dad then.

13 A Yes.

14 Q Okay. Do you share Dr. Ali's concerns about A,  
15 Brooke being over empowered, and B, the fact that that sort of  
16 empowerment in a child is not in that child's best interest?

17 A Well, it depends on the circumstances. And I think  
18 in -- in this case, you know, therapy has not commenced as --  
19 as the pace I would have liked and I don't think you can get  
20 the -- you -- you should leave that in the responsibility of  
21 an adolescent's hands, especially since they have conflicts  
22 with the one parent.

23 Q Okay. So --

24 A So -- so sometimes -- you know, look, she is

1 extremely busy.

2 Q Right.

3 A And also at the same time when she's going to  
4 process dynamics with her father is going to be uncomfortable.  
5 And so there may be just a, you know, tendency to avoid it.  
6 But once again, you know, I -- I kind of felt that -- I think  
7 I reflected it last time, that the parent should be involved  
8 in making the schedule and if necessary the parent should be  
9 bringing the child to the sessions --

10 Q Okay.

11 A -- to make sure they happen.

12 Q Okay. I will represent to you that the Court, Judge  
13 Duckworth, upon reviewing Dr. Ali's report as set forth in the  
14 125 -- I'm sorry, as set forth in your 125, 2016 report stated  
15 that he was alarmed by the empowerment that Brooke was given  
16 through the teenage discretion provision and the intent of the  
17 provision was eviscerated with what happened in terms of  
18 empowering Brooke. Is that a concern that you would agree  
19 with?

20 A That she has too much empowerment into making  
21 decisions in terms --

22 Q That she has --

23 A -- to when --

24 Q -- too much empowerment and that the terms of the

1 teenage discretion provision had been eviscerated with what  
2 happened in terms of empowering Brooke.

3 A I -- I can see what you're saying that, yes.

4 Q Okay. So is that something you would --

5 A Yes.

6 Q -- agree with? Okay. If I represent to you the  
7 Court also stated it concerns me in terms of the seeds that  
8 have been planted with Rylee, do you share that concern as  
9 well?

10 A I have not interviewed Rylee, so I can't say  
11 anything about Rylee.

12 Q Okay. But do you believe that the -- the model that  
13 the -- the sister that she lives with and what she's witnessed  
14 over the last several years in terms of how that empowerment  
15 has been carried out, would that -- would that dynamic cause  
16 you concern --

17 A Well, I --

18 Q -- in terms of how --

19 A -- I think that, you know, I think what -- how old's  
20 Rylee right now? 14?

21 Q Rylee just turned 14.

22 A She just turned 14. Correct. What do adolescents  
23 want? They want autonomy and freedom. And so they want more  
24 -- they want more say in their environment. So is it possible

1 that it's modeled? Yes, but I did not interview Rylee, so I  
2 have to reserve judgment on that.

3 Q Okay. Would you agree at least from what you've  
4 seen of the teenage discretion provision in this case as it's  
5 applied that the -- the intention -- the beneficial intention  
6 has been eviscerated?

7 A Well, I guess I don't have a good understanding.  
8 Was the teenage discretion, was that allowed by the Judge? I  
9 was never informed of -- of anything like that.

10 Q The -- there's a disputed order that exists  
11 regarding all sorts of provisions.

12 A Okay.

13 Q The -- the question I'm asking you more generally is  
14 in terms of the -- in terms of the children being able to  
15 determine their schedule and where they go and -- and where  
16 they'll be, do you believe in this case that it has been a  
17 benefit to Brooke or it's been a detriment --

18 MR. SMITH: But let me --

19 Q -- to Brooke?

20 MR. SMITH: -- object. Unless it's some sort of  
21 hypothetical about an order that's not in this case, it has  
22 nothing to do with the fact that there is an order, not a --

23 THE COURT: Okay.

24 MR. SMITH: -- disputed order, and that the order's



1 terms --

2 MR. KAINEN: First of all --

3 MR. SMITH: -- are very different.

4 MR. KAINEN: -- the last question had -- had nothing  
5 to do with the terms of the order.

6 MR. SMITH: But it did.

7 THE COURT: Well --

8 MR. SMITH: The premise of the question was that we  
9 have a disputed order --

10 MR. KAINEN: And this is a --

11 MR. SMITH: -- in this case --

12 MR. KAINEN: -- speaking objection which is --

13 THE COURT: What --

14 MR. KAINEN: -- the one place --

15 THE COURT: What -- what is --

16 MR. KAINEN: -- we weren't going to go.

17 THE COURT: What is the evidentiary objection?

18 MR. SMITH: The evidentiary objection is that it's  
19 an incomplete hypothetical, if it is a hypothetical. If it is  
20 not a hypothetical, which it wasn't stated as, then it is a  
21 misstatement of the -- both the record of the court and the --  
22 the facts and evidence.

23 THE COURT: The objection is overruled.

24 MR. KAINEN: Okay.

1 BY MR. KAINEN:

2 Q Has --

3 A Repeat the question.

4 Q -- Brooke's -- absolutely. Has Brooke's empowerment  
5 some -- and -- and has -- has that been a benefit to Brooke  
6 and her relationship with her parents or has it been a  
7 detriment to Brooke's relationship -- to Brooke and her  
8 relationship with her parents?

9 A Well, I think if you talk specifically about Mr.  
10 Kirk Harrison --

11 Q Okay.

12 A -- because Brooke seems like she's spending all her  
13 time at her mom's house. And if you're -- if it's accurate  
14 that what, 220 days have been missed.

15 Q 21.

16 A 221 days of whatever, that's extremely large and  
17 obviously -- especially if you look at where my -- my date was  
18 which was in January of '16, I thought by the summer we would  
19 have been rolling and everything would have been good between  
20 Brooke and her father and -- and here we are a year after my  
21 report and what you're telling me is is she's hardly spent any  
22 time at her father's house. So I would have significant  
23 concerns about that whether that's empowerment or something  
24 else.

1 Q Okay. About how -- at least how it's been carried  
2 out, that --

3 A Okay.

4 Q -- provision. Okay. As applied, if you will.

5 A Yes.

6 Q Okay. In light of what's happened with Brooke,  
7 would you have -- in other words, the loss of time and the --  
8 the damaged relationship and all of that, do you believe it's  
9 appropriate to take lessons from that and to do what's -- what  
10 can be done to prevent Rylee from going down that same path?

11 A Well, I guess -- once again, I am -- I am qualifying  
12 my statements because I don't know anything about Rylee.  
13 Okay. And -- and so I can understand what the concerns are,  
14 okay, for both sides. I would say I'm -- I would assume that  
15 the -- the Judge has a great handle on the -- the difficulties  
16 or the -- the issues between the parents and the Judge has to  
17 make a decision of what he thinks is best for what -- teenage  
18 discretion for Rylee.

19 You know, I do have concerns about what has occurred  
20 between Brooke and Mr. Harrison and -- and, you know, how  
21 their relationship has been changed in the last year and a  
22 half. And of course, I'd hate to see something like that  
23 happen to Rylee, but I can't -- I can't --

24 Q I understand.

1 A -- generalize Rylee.

2 Q You -- you -- I'm -- I'm asking you is given what's  
3 happened, is it fair to be concerned that the same dynamic in  
4 the same family with the same parents and with a child who  
5 just witness what happened to her older sister in the dynamic,  
6 is it fair to be concerned about the effect it has on Rylee  
7 and how -- what impact that might be -- have on her?

8 A As a father --

9 MR. SMITH: The -- the question is vague and  
10 ambiguous.

11 THE COURT: Overruled.

12 THE WITNESS: As a parent if this -- if I'm  
13 experiencing the same thing, of course I think it would be  
14 reasonable to have those concerns.

15 BY MR. KAINEN:

16 Q Okay. As a psychologist, is it also something that  
17 you would be concerned about looking at and addressing?

18 A Yeah, I would want to thoroughly understand why this  
19 occurred.

20 Q Okay.

21 A And I had a understanding at the time with Brooke in  
22 January of '16.

23 Q Right. When there were --

24 A Yeah. Yeah.

1 Q -- only like 30 or 40 days missed or whatever it  
2 was --

3 A Probably --

4 Q -- or something.

5 A By -- well, probably in the fifth month of it, yeah.

6 Q Okay.

7 A Okay.

8 Q So it was way at the beginning.

9 A Yes.

10 Q You didn't realize how bad it was. If you -- if you  
11 knew then what you know now, the recommendation might or might  
12 not have been the same, it might have been more aggressive or  
13 something like that; is that fair?

14 A Yeah. Well, I thought at the time we were -- I was  
15 being aggressive, okay.

16 Q Well, no.

17 A So --

18 Q But what I'm saying is --

19 A -- but yeah.

20 Q -- if it was dumped in your lap for the first time  
21 with here we are now, you might be taking a more aggressive  
22 approach at that point had you known -- had that -- the  
23 benefit of foresight. In other words -- no, not -- not  
24 foresight, it's probably the wrong word. Had the benefit of

1 -- of nostradamusly knowing what was going to come.

2 A Yeah.

3 Q Okay. Give me just a second. Would it be fair to  
4 -- in terms of the -- among the many facts set forth in your  
5 report, the 59 page report that you can conclude that Kirk has  
6 -- would you -- sorry, that Brooke has rejected Kirk.

7 A It's -- that is stated in the report. It's a little  
8 more complex than just that statement.

9 Q And we talked about the fact that Brooke has  
10 disengaged from Kirk presently.

11 A Once again, it's -- it's -- it has a lot of --

12 Q I -- I understand --

13 A -- stuff to say to it.

14 Q -- there are nuance and --

15 A I understand.

16 Q -- there's no way to go through 59 pages --

17 A Okay.

18 Q -- of every answer. So --

19 A Okay.

20 Q -- well, you have noted that Brooke treats Kirk  
21 extremely disrespectfully and poorly, correct?

22 A That has occurred in the relationship, true.

23 Q Okay. Would you agree that Brooke's behavior is --  
24 doesn't appear to be at least on its face indicative of a

1 child who wants to pursue a relationship with her father?

2 A Well, on the surface it doesn't seem that way, but  
3 Brooke does love her father.

4 Q Well, and you know that because she told you that,  
5 correct?

6 A Well, you know, I know that because she struggled  
7 with that. It wasn't just like a flippant remark just maybe  
8 to make me happy. It was -- it was -- she was ambivalent  
9 regarding the dynamics that existed with her father and she  
10 was struggling with those dynamics and I thought she was  
11 generally struggling with those dynamics after she and her  
12 father had a father/daughter recession where she walked out on  
13 because of some of the things she heard. And -- and she  
14 seemed very, very genuine processing how her dad called her  
15 afterwards and says I love you.

16 He says that, but then there's this other part of  
17 him and almost some -- it seems like there's -- I'm dealing  
18 with two different people at times and yes, I'm willing to  
19 move forward to try to make this work, but, you know, she's --  
20 she's struggling.

21 So I didn't think she hated her father. I'm sure  
22 she's expressed she's hated her father more than once, okay,  
23 but I do see her as caring for her father. She was able to  
24 cite that she had a very close relationship with him up until

1 about 12. And -- and she struggled from that point on. And I  
2 -- I think it was redeemable, you know, the relationship, but  
3 I don't think she's trying to not have a relationship with her  
4 father, although it seems like that on the surface, in terms  
5 of the lack of involvement, there's no doubt about that.

6 Q You were here for Dr. Ali's testimony that she has  
7 repeatedly told him in multiple sessions that she hates her  
8 father and doesn't want a relationship with her.

9 A But you -- you would have to understand the context  
10 of those statements --

11 Q Okay.

12 A -- because --

13 Q My point --

14 A -- I --

15 Q My point was you were here when he testified to  
16 that.

17 A Well, I was here that he really probably couldn't  
18 explain a lot of things too, so -- you know, so it's -- you  
19 hear the statements. I mean, it's kind of like if you look at  
20 snippets in someone's world, you know, in terms of how they  
21 interact, but I -- you know, listen, a -- a global dynamic is  
22 her not being involved with her father and you have to give  
23 that respect.

24 Q Just tell me whether you consider -- would consider



1 any -- in -- in a hypothetical sense any of the following acts  
2 -- any of the following as an act of -- of alienation or --

3 A Okay.

4 Q -- pathogenic parenting. A mother telling children  
5 that the divorce was their father's fault and the mother was  
6 the victim of the father's actions. Would those be sym -- a  
7 symptom?

8 A It could be potentially a --

9 Q Okay.

10 A -- an alienating act, but it --

11 Q Okay.

12 A -- and not just -- that can't just be an  
13 isolation --

14 Q No. No.

15 A -- because --

16 Q I understand.

17 A -- because we --

18 Q It's just the one thing.

19 A -- have a lot of people that say that.

20 Q I got it. I got it.

21 A Okay.

22 Q If we have --

23 A All right.

24 Q -- the --

1 A All right.

2 Q -- perfect relationship and one time and one day  
3 somebody has an episode during a -- a session where they say  
4 something that they probably shouldn't have said to their  
5 child, but there isn't a pattern of that and a history of  
6 that, that one thing in and of itself doesn't create it. I'm  
7 -- I'll -- I'll give you --

8 A Okay.

9 Q -- that for --

10 A All right.

11 Q -- purposes of what we're going to go through. I  
12 want to know if -- if the following acts, if true, speak  
13 towards a potential for alienation.

14 A Okay.

15 Q All right. So a mother telling the children that  
16 the divorce was the father's fault and the mother was the  
17 victim of the father's actions, yes?

18 A Possibly. It depends. I don't know.

19 Q I -- I understand. And -- and for --

20 A Okay. And then you're going to hear --

21 Q Okay.

22 A -- this a lot, okay? So --

23 Q All right. Well, let me put it in conte -- let me  
24 try and get the question, because I'm going to go through a --

1 a bunch --

2 A I know.

3 Q -- of them with you. Okay. What I'm trying to say  
4 is if I said to you a mother saying to the -- to the daughter  
5 hey, it's Dad's birthday, let's go out and get him a nice  
6 gift, and they buy him a nice gift and they deliver it to the  
7 dad for the birthday in order to better co-parent, the answer  
8 would be unequivocally that would not be an act of parental  
9 alienation in -- in the abstract, correct?

10 A That -- that behavior does not seem like it. Yeah,  
11 of course --

12 Q Okay.

13 A -- it doesn't seem like --

14 Q So then --

15 A -- it's an act at --

16 Q -- tell me --

17 A -- all.

18 Q -- the best way to ask the question, because I'm  
19 trying to ask if these act -- in other words, I'm going to go  
20 through certain acts with you.

21 A Yeah.

22 Q And I just want to know if they speak to the idea  
23 that it could be alienation. I realize any one of them  
24 independently on its own is not going to -- ah-ha, there it

1 is, it's alienation.

2 A Yeah.

3 Q But what is the -- what is the right terminology  
4 to --

5 A Okay.

6 Q -- ask you that question?

7 A Well, I think first of all we're looking at a  
8 pathological relationship between parent and child. Okay.  
9 And you're also looking at -- so the alienating parent would  
10 be communicating to their child how they're -- press how  
11 horrible their father are -- is, or how --

12 Q So here's --

13 A -- the father --

14 Q So here's the question.

15 A -- is abusive to you --

16 Q If I was to ask you, if a parent communicates to the  
17 child how horrible the father is, that would be an act of  
18 alienation or what would --

19 A It -- it would be -- you would have to explore it.  
20 Okay. So and to me, it would be like I -- I'm going to look  
21 at it closer, but I'm not going to say it's going to be the --  
22 it could be like --

23 Q So the -- what -- what's the right way to ask the  
24 question to you?

1 A I -- I'm -- I'm not really sure.

2 Q Well, no.

3 A I don't know --

4 Q What I'm saying is --

5 A -- what you're asking.

6 MR. SMITH: I don't think this is an appropriate  
7 question, Your Honor.

8 MR. KAINEN: Sure.

9 MR. SMITH: I don't think --

10 THE COURT: Yeah.

11 MR. SMITH: -- he can ask the witness --

12 THE COURT: Sustained.

13 MR. SMITH: -- how to aster (sic) --

14 THE COURT: Sustained.

15 BY MR. KAINEN:

16 Q Okay. The -- the flower example -- getting -- I'm  
17 sorry, the nice -- getting a nice gift for the parent, the  
18 other parent, doing positive co-parenting, is that something  
19 that speaks more towards the alienation or more against the  
20 alienation?

21 A More against.

22 Q Okay. Well, let's ask --

23 A Let's --

24 Q -- it that way.

1 A Let's try that. Okay.

2 Q Okay. Is something that a mother telling the  
3 children the divorce was their father's fault and the mother  
4 was the victim of the father's action more for or -- or  
5 against alienation?

6 A Potentially could be for --

7 Q Okay.

8 A -- alienation.

9 Q A mother telling the minor children the father is  
10 Satan because the father wants to attend the child's birthday  
11 party.

12 A That's -- that -- I would have -- I would have  
13 concerns on that so more for --

14 Q Okay. A mother telling an eight-year-old child that  
15 she's not supposed to snuggle with her father while she  
16 watches television.

17 A That could potentially be.

18 Q Okay. A mother despite agreeing and knowing there's  
19 a 50-50 custody agreement convincing a 14-year-old that she's  
20 empowered to decide to live with her mother full-time.

21 A Depends, but, you know, if it's for or against,  
22 you're going to have to explore that.

23 Q So that's --

24 A So that was --

1 Q -- would be more --

2 A -- could be for --

3 Q -- towards for.

4 A -- for --

5 Q Okay.

6 A -- possibly but you have to explore it.

7 Q A mother motivating a 14-year-old child to live with  
8 her -- her to leave her father full-time and to leave her  
9 11-year-old sister for half of the time.

10 A Say it again?

11 Q A mother motivating her 14-year-old child to leave  
12 living with her father --

13 A Yeah.

14 Q -- and leave living with her sister half of the  
15 time.

16 A You have to explore it --

17 Q During the time -- okay.

18 A -- but it's -- yeah, it's not -- it's not for  
19 co-parenting. It would be against.

20 Q Okay.

21 A But we would have to explore the dynamics.

22 Q Okay. A mother convincing her 14-year-old child  
23 that girls are supposed to live with mommies.

24 A On the surface, it wouldn't be for co-parenting. It

1 would be against.

2 Q Okay. And it would be for alienation.

3 A Maybe.

4 Q Okay.

5 A We don't know.

6 Q More -- okay. It would be more for alienation --

7 A I --

8 Q -- than it is against alienation.

9 A It's -- it's -- if we're looking at that, that would  
10 be possibly --

11 Q Okay.

12 A -- more for.

13 Q And I realize --

14 A Yeah.

15 Q -- the more we -- the more --

16 A Okay.

17 Q It is collectively. Okay. A mother convincing the  
18 minor children that the custody exchanges which were agreed to  
19 and ordered by the Court are too big a hassle for the children  
20 to go through. Is that something that speaks more towards  
21 alienation or against alienation?

22 A Depends on the dynamics if it's explored, but on the  
23 surface, maybe more towards --

24 Q Okay. A mother despite agreeing knowing there's a



1 50-50 custody order convincing a 14-year-old child that when  
2 she's 16, she'll be empowered where -- to decide where to live  
3 and that she can live with Mom full-time.

4 A Based on the forced choice format, okay --

5 Q Right.

6 A -- I -- I -- it potentially could be more, but once  
7 again, we would have to explore all those things.

8 Q Okay. Telling a 15-year-old that when she's 16,  
9 she'll be empowered to decide to live with Mommy full-time.

10 A Once again, based on -- just a forced -- the choice  
11 format maybe --

12 Q All right.

13 A -- for, again --

14 Q Telling a 16-year-old that she is empowered to  
15 decide that she can live with Mom full-time.

16 A The same thing.

17 Q Okay. What about a mother telling the children that  
18 their father's a liar?

19 A Potentially.

20 Q Okay. More towards than against.

21 A Towards.

22 Q Okay.

23 A Potentially towards.

24 Q A mother convinces children that the father hasn't

1 done things for them when in fact he has, paying for lessons,  
2 going to things historically, those kind of things, being --

3 A Potentially towards.

4 Q Okay. A mother telling her children that the only  
5 reason their father took them to -- for example, movies every  
6 year or so can be written down in a journal to prove that he  
7 had done something.

8 A Potentially towards.

9 Q Okay. A mother and her calendar which is provided  
10 to the children so they know where they're supposed to be  
11 indicating her time as Mommy and referring to the time with  
12 Dad as Kirk.

13 A Potentially towards.

14 Q Okay. The -- at the time -- if -- if there's a --  
15 when the children need to pick up something on a routine basis  
16 after school at the other parent's house, to go and grab some  
17 dance shoes or grab a computer --

18 A Uh-huh (affirmative).

19 Q -- cord or whatever it is, having the children stay  
20 inside, making them a snack, having, you know, 30 or 45 or 50  
21 minute session with the children while Dad waits in the car.

22 A Yeah, it really depends. That could be -- just  
23 being very inconsiderate. I don't know. And so --

24 Q Okay.

1 A -- yeah.

2 Q What about if she only expects to wait two or three  
3 minutes when she does the same thing, picks up the same  
4 equipment at Dad's house?

5 A Once again, it could be, you know, inconsiderate.

6 Q What about telling children that they are empowered  
7 and don't have to do anything they don't want to do while  
8 they're with the other parent?

9 A Potentially.

10 Q Okay. What about telling the children that it's  
11 wrong of the other parent to plan trips or vacations without  
12 adequately consulting them and getting their approval or  
13 permission?

14 A Well, they shouldn't have to get the permission of  
15 the other --

16 Q Well, I'm asking --

17 A -- parent at that time.

18 Q -- what if the parent is telling the other child  
19 that?

20 A Well, I -- I would want to understand it, but  
21 potentially towards.

22 Q Okay. Telling the children that historically, even  
23 though you don't remember it, Dad used to call you names and  
24 he used to bully you?

1 A Potentially towards.

2 Q Okay. What about con -- convincing the children  
3 that the father's a bully if he won't do what they want,  
4 taking them to a store when they want to go to a store,  
5 whatever it is, doing things on their schedule?

6 A Potentially towards.

7 Q All right. Convincing the -- the daughter that the  
8 -- or the -- or the -- the child that the other parent  
9 shouldn't be able to observe classes or -- or sports  
10 activities, dance classes, things like that.

11 A Potentially towards.

12 Q Convincing the child despite all the evidence that  
13 the father pays for the -- the dance classes or half of -- his  
14 half of the dance classes, that Dad doesn't pay for any of  
15 that?

16 A Potentially towards.

17 Q Telling the child that the father doesn't care  
18 enough about her to pay her medical bills.

19 A Potentially towards.

20 Q Okay. Involving the child in -- in schemes to  
21 violate the custody order.

22 A Potentially towards.

23 Q What about the idea of going for a dance lesson when  
24 the child really didn't intend to go and then parking around

1 behind the dance studio to pick up the child when the child is  
2 there for a dance lesson but to take the child away somewhere  
3 else?

4 A I guess that would be potentially towards. Once  
5 again, I would have to understand the dynamics.

6 Q Well, the --

7 A Yeah.

8 Q -- dynamic is --

9 A Yeah.

10 Q -- it's Dad's custodial time.

11 A Yeah.

12 Q Kid says I got to go to the dance lesson, we go in  
13 the front door, we go out the back door and get in Mom's car.

14 A Yeah, that's deceptive on the child's part and the  
15 mom's part.

16 Q Okay. What about arranging for driver's license  
17 exams that was on Dad's custodial time, something Dad had  
18 planned, and then going ahead and pulling the child so that  
19 they can do it with them during their time? I'm sorry, during  
20 Dad's time.

21 A Yeah, I don't know if that's going to be -- you  
22 know, yeah, I can understand that. So potentially towards,  
23 needs --

24 Q Okay.

1 A -- to be understood.

2 Q What about refusing to provide a class schedule for  
3 six months? In other words, not giving the information?

4 A It could be poor co-parenting, it could be an aspect  
5 of parental alienation. Who knows.

6 Q Okay. Registering the child without -- without  
7 listing the other parent.

8 A Poor co-parenting, potential.

9 Q Okay.

10 A Yeah.

11 Q Let's talk more objectively about the consequences  
12 of alienation in --

13 A Uh-huh (affirmative).

14 Q -- the abstract. Okay. Would you just tell me if  
15 you agree with the following statements that impacts children  
16 who suffer from --

17 A Okay.

18 Q -- alienation? There's often a powerful often  
19 damaging impact on the relationship between the children and  
20 the target parent that results from the child being involved  
21 in that process.

22 A Repeat that again?

23 Q There is often a powerful, often damaging impact on  
24 the relationship between the child and the target parent that

1 results from the child being involved in the process.

2 A Correct.

3 Q Okay. The creation of over dependency in the child  
4 on the wishes, thoughts, desires, beliefs, values, and  
5 opinions of the programmer or brainwasher; there's this  
6 creation of over dependency.

7 A Okay.

8 Q Yes?

9 A Yes.

10 Q Okay. That children struggle to express their basic  
11 need to love, see, identify with and know the target parent in  
12 the face of various degrees of types of programming and  
13 brainwashing.

14 A Yes.

15 Q Children's physical and so -- and psychological  
16 health will often be adversely affected by programming and  
17 brainwashing.

18 A Both psychological and I would say potentially  
19 physical, yeah, because there's a lot of visceral reactions  
20 towards the targeted parent.

21 Q Okay. Are you familiar with Stanley Clawar?

22 A Not off the top of my head. I've read -- I've read  
23 a lot, but I -- sometimes it's difficult to remember --

24 Q Okay.

1 A -- author's names.

2 Q Okay. Are you familiar with a study that indicates  
3 40 percent of children develop self-hatred and guilt because  
4 they were used as an ally in the war against the target  
5 parent?

6 A I can't recall statistics for you in terms of  
7 parental alienation off the top of my head --

8 Q Okay.

9 A -- but what happens is is that with these children  
10 who had been alienated against a parent, they are severely  
11 affected emotionally and there are ramifications in their  
12 future relationships.

13 Q Okay. Dr. Clawar is the -- with -- I think of the  
14 -- the text was Children Held Hostage.

15 A Yeah, I think he may have given me the book.

16 Q Okay.

17 A Yeah.

18 Q All right.

19 A So I reviewed it, but I can't recall that.

20 Q And --

21 A Yeah.

22 Q -- you understand he's the -- he's the --

23 A The premier expert.

24 Q Yeah.



1 A Okay.

2 Q And he's the guy who they bring to all the ABA  
3 conferences --

4 A Yeah.

5 Q -- around the country, et cetera. Okay. In the  
6 study -- and Dr. Clawar's study, the 50 -- are you familiar  
7 with the fact that 50 percent of the children were cut off --  
8 completely cut off from the extended families of the target  
9 parent?

10 A Okay.

11 Q Are you familiar with the fact that 30 percent of  
12 the children express fear that they'd be further hurt by the  
13 programmer or the brainwasher if it was observed they spoke  
14 about it at all?

15 A I know that. I don't know what the exact number  
16 is --

17 Q Okay.

18 A -- but they are fearful of the targeted parent as  
19 well as their family members.

20 Q All right. And by being used as allies in the  
21 parent combat, children tend -- children are coerced into  
22 learning new forms of people control that they may then employ  
23 with other children and adults. In other words, it carries  
24 on.

1 A I understand. Yes, I understand that.

2 Q So the -- what they're learning now, they project in  
3 their life.

4 A Yes.

5 Q By being used as agents of one parent against  
6 another parent, children develop damaged views of intimate  
7 relationships?

8 A Yes.

9 Q Children involved in programming or brainwashing may  
10 become purveyors of the process when they have children.

11 A They could be.

12 Q All right.

13 A Yeah.

14 Q And children -- and that's why children who have  
15 historically had come out of nasty custody fights --

16 A Uh-huh (affirmative).

17 Q -- end up in nasty custody fights.

18 A Yeah, it could --

19 Q Okay.

20 A -- potentially happen, right.

21 Q All right. And the children perceive the programmer  
22 as the abusing parent -- I'm -- I'm sorry, abusing parental  
23 power, but may feel incapable of over -- overtly reacting  
24 against that power.

1 A Yes.

2 Q Okay. And the damage caused by the programming most  
3 often has gone undetected except for radical breaches in the  
4 relationship with one parent.

5 A Say that again? I didn't follow.

6 Q But the damage that's caused by the programming most  
7 often has gone undetected except for radical breaches in the  
8 relationship with one parent.

9 A Yeah, I still didn't understand that sentence.  
10 Okay, so --

11 Q All right. In other words, but for -- a lot of  
12 times some of this doesn't -- isn't -- isn't completely  
13 obviously, but for the breakdown in an entire relationship  
14 between --

15 A I got it.

16 Q -- the child and one --

17 A Okay.

18 Q -- of the parents.

19 A Yeah.

20 Q Yes?

21 A Yeah.

22 Q Okay. The -- you would also agree that the long  
23 term consequences of -- of alienating behavior or alienation  
24 is that some children grow up with a warped consciences having

1 learned how to manipulate people as a result of their parents'  
2 behavior?

3 A Yeah. I can agree with that.

4 Q Okay. Some children grow up with enormous rage  
5 having understood how they were used as weapons.

6 A If they get it, if they -- if they feel that they  
7 were manipulated in the end, yes, it's possible.

8 Q Okay. Other children grow -- a significant number  
9 of children grow up guilty with low self esteem and recurrent  
10 depression.

11 A It could potentially happen.

12 Q Children learn that hostile obnoxious behavior is  
13 acceptable in the relationships and that deceit and  
14 manipulation are normal part of relationships.

15 A If it's modeled, that could potentially happen too.

16 Q When children are caught up in the midst of  
17 parenting conflict, they become alienated, the emotional  
18 response can be devastating to the child's development.

19 A Yes.

20 Q Okay. And in one study, 50 percent of the children  
21 who suffered from alienation -- suffered alienation from their  
22 own children.

23 A I'm not familiar with that --

24 Q Okay.

1 A -- but I could see it happening, yeah.

2 Q As adults, these children have difficulty trusting  
3 anyone and believing that anyone would ever love them.

4 A I'm sure that's a possibility, but I'm not sure. I  
5 didn't read his study on that, lately.

6 Q Okay. Do you agree with the follow statement? A  
7 child whose parent has been excluded from his life will not  
8 feel closer or yearn more strongly for him, rather, the child  
9 will forget about the parent and learn to disdain him, absence  
10 in this situation does not make the heart grow fonder, rather  
11 unfamiliarity breeds contempt?

12 A With parental alienation, yes.

13 Q Okay. If I represented to you that some of the --  
14 the acts and conduct that we've talked about started soon  
15 after the service of the motion for custody in this case,  
16 Kirk's motion for custody, they were documented in the letter  
17 from myself to Mr. Smith in 2012, February of 2012, and in  
18 affidavits filed with the Court that noted the following  
19 items. First of all, there was an incident --

20 MR. SMITH: Objection, Your Honor. This is material  
21 -- first of all, it's not -- goes to the psychological  
22 interest in this circumstance, and it's material that would  
23 proceed the custody order in this case. So it wouldn't be  
24 admissible for the purpose of changing a custodial

1 relationship at all. It also wouldn't be admissible for the  
2 purposes of -- of showing that there has been some sort of  
3 change of circumstances since that time.

4 And also, it's the fact that Mr. Kainen had sent a  
5 letter is not proof. And so I think in all those  
6 circumstances, it's not a valid question.

7 MR. KAINEN: Your Honor, I posted Dr. Paglini's  
8 conclusions. In others words, it's what we're here to talk  
9 about. It's --

10 THE COURT: Well, I -- but to the extent it's  
11 placing -- placing facts in the record that haven't been  
12 previously established, it assumes facts not in evidence.

13 MR. KAINEN: Well, it -- it --

14 THE COURT: So the objection would be sustained.

15 MR. KAINEN: So we can't talk about -- in other  
16 words, an allegation in this case -- in other words, it's --  
17 he -- he examined it. He -- he's going to be familiar with  
18 the facts we're talking about.

19 THE COURT: Well, but in the way it's being asked,  
20 I'm not saying that --

21 MR. KAINEN: Okay.

22 THE COURT: -- there might not be a way to get -- to  
23 get to that -- that part, but the way it's being asked, I --  
24 it sounded like it was being set up with several -- several

1 subpart questions to the ultimate question that --

2 MR. KAINEN: I think it will be. And I --

3 THE COURT: Well --

4 MR. KAINEN: -- and again, I'm willing to -- to  
5 indicate if -- if the following facts were true.

6 THE COURT: Well, but I'm -- I'm sustaining the  
7 objection. It needs to be rephrased.

8 MR. KAINEN: Okay.

9 BY MR. KAINEN:

10 Q If the following fact was true, okay, that on  
11 October 14th, 2011 Vivian struck Kirk in front of Rylee, but  
12 tried to convince Rylee that Kirk actually struck Vivian, that  
13 the Boulder City Police Department found that Vivian struck  
14 Kirk, and Kirk did not strike Vivian, and they did find that  
15 Vivian pricked her finger to create blood and wiped the blood  
16 on her face in an effort to feign an injury and all of that  
17 happened in front of Rylee, would -- would that be something  
18 that was a significant event in -- in terms of determining the  
19 behavior of the -- the parents in relationship to each other  
20 and could impact the issue of alienation?

21 A Well, it's a significant event that what I -- want  
22 to understand what happened. I mean, it might be pathological  
23 if someone is creating an injury for themselves.

24 Q Okay. Likewise, if Vivian called Kirk a liar in

1 front of Brooke and Rylee because he took Rylee to get a  
2 sandwich somewhere and Vivian said that the neighbors filed  
3 affidavits proving that Kirk was a liar; she told this to --  
4 to the children, would that be something that would again  
5 speak to the issue of alienation?

6 A I -- once again, I would want to understand it. It  
7 would be inappropriate explaining those things to children.

8 Q All right. Given the history in this case, would  
9 you agree that if you had interviewed Brooke prior to the  
10 divorce being filed in this case, that she might have a very  
11 different perspective on her parents' roles in her life?

12 A When was the divorce filed?

13 Q It was back in 2012?

14 MR. HARRISON: September.

15 MR. KAINEN: September 2011?

16 MR. SMITH: It was in '11.

17 MR. HARRISON: '11.

18 MR. KAINEN: To September 2011.

19 MR. SMITH: No. No. It was filed in March of 2011.

20 MR. KAINEN: Okay. All right.

21 MR. SMITH: It was served --

22 MR. KAINEN: I'm sorry.

23 MR. SMITH: -- in September --

24 MR. KAINEN: Okay. Okay.



1 MR. SMITH: -- 2011.

2 MR. KAINEN: I got it.

3 BY MR. KAINEN:

4 Q So if you had interviewed Brooke before the divorce  
5 litigation started, before service of the complaint, would you  
6 agree that her perspective on the relationships with her  
7 relative family members might well be different then than it  
8 is now, and conduct that has occurred all across the board can  
9 impact her preferences and her desires and her relationships  
10 with her parents?

11 A Yes, it would.

12 Q Would you agree that your -- your report sort of  
13 breaks down two different areas of -- two different sets of  
14 facts? One is a series of different events that you talk  
15 about, what happened, and the specific events, and then also  
16 what the statements are that Brooke has made -- and that  
17 Brooke has made to you in -- in the -- and the --  
18 collectively, those two helped you form your opinion in this  
19 case?

20 A Well, plus the interviews of the parents, yeah.

21 Q In your report, you noted Dr. Ali told you after the  
22 medical billing issue, Brooke did not want to see her father  
23 any longer --

24 A Yes.

1 Q -- is that correct? And you were here when he  
2 testified to that effect.

3 A I was here, so if he said that, yes. I don't know  
4 if it's true.

5 Q And you -- and -- I'm sorry, but you were also  
6 specifically had a discussion with him that was noted in your  
7 report.

8 A Yes.

9 Q Okay. That was a significant event.

10 A Yeah, that -- he conveyed it to me, so yes. Yeah.

11 Q And you're familiar with the fact that he -- she  
12 made it clear in -- or repeatedly stated in sessions that she  
13 didn't want to -- didn't want a relationship with Kirk.

14 A Repeatedly stated?

15 Q Yeah. Dr. Ali's testimony when you were here was  
16 that it had come up and it wasn't the first time it had come  
17 up but it had come up multiple times.

18 A Oh, you're talking about Dr. Ali --

19 Q Yes.

20 A -- right now, not me.

21 Q Yes. No, I --

22 A Oh, okay.

23 Q -- understand. No.

24 A So please repeat the question.

1 Q I'm sorry. Are you aware that Brooke made it clear  
2 to Kirk that she never wants to see him again and during the  
3 reunification therapy -- sessions with Dr. Ali and Kirk,  
4 Brooke made it clear she doesn't want a relationship with him?

5 A I -- I heard those statements. Yeah.

6 Q And Dr. -- you heard Dr. Ali indicate that that's --  
7 Brooke has said that on multiple occasions?

8 A I -- I -- okay, yes.

9 Q Yes? Now back in 2012, you noted that when you  
10 interviewed her in 2012, you noted that Brooke acknowledged  
11 her father's very involved in her life, she feels loved by  
12 him, and he disciplines her by talking to her.

13 A Page?

14 Q Page 10. So if you go back third paragraph, this is  
15 the second full one if you want.

16 A Yes.

17 Q Okay, she -- presented as a very normal sort of  
18 relationship, correct?

19 A Yes.

20 Q Okay. She also indicated that -- to you that if she  
21 needed help, she could go to Kirk and he'll be there for her,  
22 correct?

23 A And what page is that?

24 Q Page 17. I just -- if you don't remember, that's

1 fine, that's --

2 A What paragraph?

3 Q The second one from the bottom, the one that begins  
4 Brooke was asked, the middle -- third line --

5 A Okay.

6 Q -- from the bottom.

7 A All right.

8 Q When asked what else she loves about her father, she  
9 reported that her father is very intelligent, well informed,  
10 if you need help, you can go to him and he'll be there.

11 A Okay. Yes.

12 Q All right. But later Brooke indicated that her  
13 father hadn't -- this is -- you interviewed her a couple years  
14 later, her father hadn't earned the title of dad since the  
15 divorce.

16 A If it -- did she tell me that or Dr. Ali? What page  
17 is that on?

18 Q Page 45.

19 A Page 45? That would have been under Dr. Ali.

20 Q Yeah, Brooke informed Dr. Ali that he has not earned  
21 the title of dad since the divorce, as he's changed.

22 A Yes.

23 Q Okay. You also noted in your report Kirk had  
24 serious concerns about what was going on in the relationship?

1 A Yes, very much --

2 Q Okay.

3 A -- so.

4 Q That he appears to be attempting to do everything he  
5 can to maintain -- remain connected to both Brooke and Rylee?

6 A Yes.

7 Q He loves them both very much as well as the other  
8 children?

9 A Yes.

10 Q Okay. Did you hear anything from Brooke that would  
11 cause you to conclude that Kirk wasn't a good loving and  
12 caring parent?

13 A Well, look, she believes she--

14 Q No, I'm not -- I'm just -- objectively, is there  
15 anything to believe that he's -- you know, I -- all right. Go  
16 ahead.

17 A All right. No, but -- well, say -- ask the question  
18 again.

19 Q Is there anything you heard from Brooke that would  
20 cause you to conclude that Kirk isn't a good loving and caring  
21 parent?

22 A She loves her dad. She has issues with her father,  
23 about some of the things -- some of her father's behaviors.  
24 So yes, she perceives him as, you know, loving, et cetera, et

1 cetera, but she has issues with her father.

2 Q Right. You indicated at one point Brooke indicated  
3 she has no evidence of -- Brooke offered no evidence of  
4 Father's bad character.

5 A What page is that?

6 Q 51.

7 THE COURT: Well, let me just -- all right. It's  
8 not helpful for the Court just to go through the report. I  
9 think the Court's already had a chance to review given our  
10 limited our time. So -- so I don't want to simply use our  
11 time to restate what has already been provided to the Court in  
12 the report.

13 MR. KAINEN: Well, the problem I have is that -- I  
14 mean, bluntly what I'm doing is I'm going through the elements  
15 that we talked about in some of the -- in -- in your materials  
16 on pathogenic parenting and going through the different --

17 THE COURT: I get that.

18 MR. KAINEN: Okay.

19 THE COURT: The -- the bottom line for me today --

20 MR. KAINEN: Okay.

21 THE COURT: -- is whether I award makeup time. The  
22 -- and -- and again, we're going to finish -- I want to finish  
23 with Dr. Paglini and then I want to hear from Brooke. And --  
24 and so it -- it's not even about for me a determination of

1 determining alienation or pathogenic parenting. The bottom  
2 line for me is -- is if that's Dad's request to ask for  
3 certain makeup days, that's the bottom line. And then during  
4 that time he -- he wants to pursue this -- this program,  
5 that's what I'm entertaining. But to simply restate the  
6 entire -- that's what I feel like we're doing, didn't you say  
7 this in your report. I have the report. It's been provided  
8 to me. I don't know that I need anything further.

9 MR. KAINEN: Yes. I know. I understand that. Give  
10 me just a minute.

11 (COUNSEL AND CLIENT CONFER BRIEFLY)

12 MR. KAINEN: Your Honor, I think -- I -- I think the  
13 area is relevant. I mean, the Court's going to do what it's  
14 going to do. The report -- you -- you have admitted the  
15 report then for purposes of it, so I can reference anything  
16 that's there? I can argue what's in the report?

17 MR. SMITH: We agree to that. I think it was in --

18 THE COURT: I think the report's --

19 MR. SMITH: Yeah.

20 THE COURT: -- already in the record.

21 MR. KAINEN: Okay.

22 MR. SMITH: It was.

23 MR. KAINEN: I know, I think it's critical because  
24 of the connection to -- to Rylee, okay, that we don't repeat

1 this. I think we've made that clear. I think the issues  
2 obviously are broader than, you know, okay, you got your  
3 makeup time and you can do with it, obviously, by the way, we  
4 would need the collect -- we would need an order of the Court  
5 that would allow this to happen because it requires some --

6 THE COURT: Well, I -- I get that, but I want to be  
7 very clear. The evidentiary proceeding was scheduled as it  
8 relates to the issues with Brooke. The motion was scheduled  
9 for today and I understand we've had some discussion about the  
10 issues pertaining to Rylee, but that's not the purpose for  
11 scheduling the evidentiary hearing. I just want to maintain  
12 the focus of why we're here as far as the evidence is  
13 concerned.

14 MR. KAINEN: Okay.

15 (COUNSEL AND CLIENT CONFER BRIEFLY)

16 MR. KAINEN: Can I have two minutes, Your Honor?

17 THE COURT: Want to take a break?

18 MR. KAINEN: Yeah, a few -- and a very brief one. I  
19 don't want -- I want --

20 THE COURT: Okay. All right. Let's take a -- a  
21 brief re --

22 (COURT RECESSED AT 15:20 AND RESUMED AT 15:23)

23 THE COURT: All right. We are back on the record.

24 MR. KAINEN: Yeah. Okay.



1 BY MR. KAINEN:

2 Q Dr. Paglini, would you agree that even if a parent  
3 comes across to you in a positive light, it doesn't mean that  
4 that parent isn't capable of, you know, manipulating the  
5 children, engaging in alienating behaviors or any of the like?

6 A Yes, it's possible.

7 Q Okay. And even if the parent comes across in a  
8 positive light, that doesn't mean that parent is incapable of  
9 knowingly alienating one parent from the child?

10 A Say that again?

11 Q Even if the parent comes across in a positive light,  
12 cheery --

13 A Yeah.

14 Q -- able, charming, whatever it is, that doesn't mean  
15 that that parent's incapable of knowingly alienating the other  
16 parent from the children?

17 A It's possible.

18 Q I'm --

19 A Okay.

20 Q -- saying one has nothing to do with the other,  
21 right?

22 A Well --

23 Q In other words --

24 A -- you could --

1           Q     -- here's the deal. I come in and I'm -- I'm  
2 jovial, I'm appropriate, I shake your hand, I'm a good guy and  
3 everything. That doesn't mean that --

4           A     You're not alienating.

5           Q     -- when you're not around, I'm not out there  
6 being --

7           A     Sure.

8           Q     -- an alienating jerk?

9           A     That's -- that's true.

10          Q     Okay. So it --

11          A     Yes.

12          Q     -- has more to do with the actual conduct than --

13          A     Yes.

14          Q     -- the charm when --

15          A     Yes.

16          Q     -- somebody walks in and -- and looks like a good  
17 guy or a good -- a good girl.

18          A     Yes.

19          Q     Okay. And likewise, the fact that a child is an  
20 overachiever, excels in school and dance and everything else,  
21 that doesn't rule out the issue of that child suffering some  
22 of the effects either now or later from behavior that we've  
23 talked about.

24          A     You can be an overachiever or an under achiever.

1 You're -- you still be involved in a parental alienation  
2 dynamic.

3 Q Okay.

4 A Yeah.

5 MR. KAINEN: All right. All right. I pass the  
6 witness.

7 THE COURT: Cross examination?

8 CROSS EXAMINATION

9 BY MR. SMITH:

10 Q So Dr. Paglini -- you've sort of expanded your role  
11 here, so I'm going to try to keep on your -- your report. Oh,  
12 let -- first question is, have you and I ever had a private  
13 conversation about either your work and the substance of your  
14 work in 2012 or your work here in 2016?

15 A Prior to conversation?

16 Q Yeah, the -- the conversation -- you and me had a  
17 conversation about your work that you did in 2012 or in 2016.

18 A I know for sure 2016 probably not. 2012, I don't  
19 recall. I -- I wouldn't really see why we would. Why?

20 Q You didn't complete a report in 2016, correct?

21 A You mean --

22 Q Or excuse me.

23 A -- 2012?

24 Q 2012.

1           A     No. It doesn't mean -- I mean, I -- I don't -- I'd  
2 have to look at my notes, so you're talking about 2012 which  
3 is five years ago. There's no private conversations in terms  
4 of, you know, and if -- if I talk to an attorney, it's  
5 procedural. Usually I don't want to hear theories or anything  
6 like that. And if I do talk to an attorney and it's  
7 procedural, I usually record it in terms, they're not recorded  
8 on the phone, but I dictate a note on it.

9           Q     Okay. So did -- did you ever come to a conclusion  
10 in your 2012 findings, did you ever develop findings and --

11          A     I didn't -- did not write a report.

12          Q     So the -- in regard to the report that you were  
13 assigned for -- in 2015, '16, what was your understanding of  
14 your assignment?

15          A     My understanding of the assignment is interview the  
16 child and do parental interviews and determine if Brooke is  
17 alienated from her father or if there are other dynamics --  
18 explain her disengagement.

19          Q     Were your -- what were the methods that you used to  
20 prepare your report?

21          A     Review of discovery, clinical interview, interviews  
22 of the parents, interviews of Brooke. I did -- I did an  
23 interview of Dr. Ali and then I did a father/child, the  
24 father, child, and mother/child interviews.

1 Q Are the processes that you used in order to complete  
2 your assignment consistent with the processes that are used by  
3 other experts in your field?

4 A Yes, they are.

5 Q And you said that you interviewed both the child and  
6 both parties, correct?

7 A Correct.

8 Q And the findings that you felt that were relevant  
9 from those interviews are contained in your report.

10 A Correct.

11 Q One of the questions that you indicated that you  
12 were tasked to determine was whether or not there was  
13 alienation by Mrs. Harrison that would be evidenced in the  
14 relationship between Kirk and Brooke, correct?

15 A Yes.

16 Q And did you come to a conclusion in regard to that?

17 A I did.

18 Q Can you tell me what your conclusion was?

19 A I didn't think it was alienation and I outlined that  
20 on page 50 and -- and beyond. First of all, I didn't -- you  
21 know, one of the things I did when I talked to Mrs. Harrison  
22 is I requested her phone and I looked through six months of  
23 her messaging.

24 Q Okay. But let me -- let me stop you right there --

1           A     Okay.

2           Q     -- because I want to know how exactly you did that.

3     So did you say Mrs. Harrison, here -- we're on the phone  
4     together, I would like you to come bring me your phone so that  
5     I can review your phone or --

6           A     No, it was --

7           Q     -- was it something different?

8           A     We were in person. And as I'm doing my interview  
9     with her and we're talking about I'm -- I'm assessing her  
10    relationship with Brooke and it's in my head I had this idea  
11    of well, is this alienation or is this something else. So if  
12    I look at her phone and she's -- she's text messaging her  
13    daughter, if I have an alienating parent, what am I thinking  
14    I'm going to find?

15          Q     So -- so -- and just so I'm --

16          A     Yeah.

17          Q     -- understanding, you were sitting in an interview  
18    with --

19          A     Right.

20          Q     -- Vivian. She had her phone with her.

21          A     Right, like everybody else does. Okay. Yeah.

22          Q     Did you -- at anytime prior to that time indicate to  
23    her that you were going to review either her emails, phones  
24    , or other records?

1           A     No, she had no knowledge that I was going to  
2 surprise her on this.

3           Q     What was her reaction when you asked for her phone?

4           A     Very casual, give me her phone, she had no  
5 difficulties with it.

6           Q     She handed it to you.

7           A     She gave it to me. She didn't -- yeah, she was very  
8 -- she was very cooperative.

9           Q     What did you do?

10          A     Well, I asked her to put out her -- her email -- her  
11 text messages between her and her daughter.

12          Q     Okay.

13          A     And then I asked her for her permission to go back.

14          Q     And she gave you that permission.

15          A     She gave me the permission and I went back six  
16 months.

17          Q     Did she ask to review them before you looked at  
18 them?

19          A     No. No. She gave it to me and I kept going back  
20 and sometimes I asked her what would this had mean and then it  
21 -- you know, you -- every time you're clicking back it takes a  
22 little while and you have to keep --

23          Q     Right.

24          A     -- and so right, and then I kept kind of losing my

1 spot. I have to go back. And so she sat there for probably  
2 about 35, 40 minutes while I did that. And she was very  
3 patient. And what I was looking for is I wanted to see what  
4 the communication was between her and Brooke. And so six  
5 months going back is a nice sampling to see if we have  
6 negative verbiage between the mother and to the daughter.

7 Q Help me on the date of that.

8 A Well, if -- if my --

9 Q Is it in the report?

10 A Yeah, well, it's -- let's see here. I can -- I can  
11 estimate it -- it would be -- if it was November 18th when we  
12 interviewed Mrs. Harrison --

13 Q Okay. So -- so somewhere around November.

14 A Yeah, and then it would go back I think maybe to  
15 March 1st or something like that.

16 Q Okay. So before the time, as we understand it that  
17 Brooke changed the schedule that she went over to Kirk's,  
18 correct?

19 A Yes.

20 Q Okay.

21 A Yes.

22 Q And was there anything that you saw in the  
23 communication that would suggest to you that there was a  
24 design or an empowerment or any of the constructs of a parent



1 trying to alienate another child?

2       A     See, that's -- that's what I didn't see. I was -- I  
3 -- the reason why I requested that, and she could have  
4 resisted me, is because I wanted to see what was going on.  
5 And I wasn't seeing anything like, you know, she said your  
6 dad's this or your dad's that. I saw her -- I saw sometimes  
7 Brooke was struggling with her relationship with her father,  
8 you know, and I thought, you know, for the majority of time or  
9 almost all the time she was very appropriate.

10            It wasn't -- there -- there maybe have been -- you  
11 know, I mean, let's just put it this way. And so the -- the  
12 success rate was probably like 95 percent plus meaning she was  
13 appropriate and that's when I would expect a parent to do.  
14 Had a loving relationship in there. If Brooke exhibited some  
15 -- you know, Brooke was exhibiting resistance to her dad and I  
16 think as well as her mom at times and she had to deal with  
17 that.

18            And so to me, that was kind of significant because I  
19 expected that if I'm going to see some, you know, parental  
20 alienation -- she first of all, she didn't know I'm looking at  
21 this. And so if -- if she's saying your dad's this and your  
22 dad's that and you shouldn't do that with your dad or anything  
23 like that, then I'm going to be seeing that and then I'm  
24 probably going to be writing that stuff down.

1           And -- and I thought, you know, everything seemed  
2 appropriate. She was very open and honest through the  
3 process. And even --

4           Q     When you say through the process, are you talking  
5 about a text now or are you going broader than that?

6           A     Broader than that. My -- my interviews with her  
7 when she was with her daughter, I had a final interview with  
8 her where she was at the point, and I can give you a date on  
9 that. January 7, 2016, where she was like, you know, I don't  
10 know what to do with this. I almost -- I almost feel like I  
11 want to concede to Kirk on every level and just to kind of get  
12 this over with so we can move forward. You know if he feels  
13 like we could win -- if he wins, then maybe it's going to be  
14 easier on this whole process.

15                So I'm not giving -- you know, I -- I've dealt with  
16 people who are alienating their children. And sometimes it --  
17 and let me just give you another illustration of her. So  
18 there's a family -- there's a father-daughter interview on --  
19 let me get the proper -- appropriate date on this. Because I  
20 gave -- never could find it when you want it. December 29th,  
21 2015. And in that interview, Brooke got mad and she left.  
22 Okay. So now I have a -- I have a -- a 16-year-old that  
23 leaves. So I have to handle this. Right.

24           And -- and so I get the phone number for Brooke.

1 I'm -- I talk, you know, to Mr. Harrison, then I finally get  
2 -- I get on the phone with Brooke and she's good. And I even  
3 told Mr. Harrison look, I'm going to call your exwife because  
4 she has to know; she's the mother. He goes yeah, that's fine.

5           So I called Vivian, and she was calm. You know, she  
6 was very nice. She goes yes, I'm aware of it. And instead of  
7 like escalating the dynamics like, you know, that guy will  
8 never see my child again and that's horrible that she's going  
9 through this and, you know, escalating the dynamics, she was  
10 like okay, and I told her that and I'm trying to set up an  
11 appointment with Dr. Ali. She was very cooperative with me on  
12 the phone.

13           She didn't escalate the dynamics for me and nor did  
14 Brooke. So if Brooke's an alienated child, that would be a  
15 great time to stop everything to say I'm not seeing this guy  
16 again, this guy is horrible, do you see what I was telling  
17 you, doc, he's a horrible man.

18           What does she do? She comes in on December 31st two  
19 days later and she processes her conflicts with her father.  
20 She's ambivalent. Okay. She's not -- she's not  
21 pathologically rigid against her father, that her father's all  
22 evil and her mother's all good. Okay. She's -- she's  
23 struggling with some of her core issues with her father and  
24 which I've listed here. Okay.

1           And -- and to me, this wasn't -- this wasn't a girl  
2 who was alienated against her father. Now listen, there's no  
3 love between these people, right, and maybe sometimes, you  
4 know, people can get -- get passive aggressive and everything  
5 like that, but --

6           Q     But look. Just so we're clear on the record, the --  
7 the love between these people, you're referring to the parties  
8 themselves.

9           A     The -- the litigants, yes, the parents. But the  
10 reality was is that when I was -- I'm -- see, all this time  
11 I'm assessing because this is an interesting dynamic that  
12 emerged. This girl, you know, Brooke leaves. Okay. And so  
13 now I'm expecting in my head well, what would I kind of expect  
14 with a parental alienating parent, well she's going to be  
15 uncooperative, it's -- the -- the system's going to stall.  
16 And no, she was very flexible with me. She -- I heard about  
17 it. Yes, I'll talk to Brooke. I'll make sure -- you know,  
18 when she was facilitating; she wasn't obstructing. Okay. And  
19 so I was like oh, that's interesting.

20                But I -- up to that point and -- and even the -- the  
21 session between Brooke and her mom, it was very light, it was  
22 very comfortable, okay, they were joking around back and  
23 forth. Brooke was able to talk about things that she doesn't  
24 like about her mom, you know, her mom was able to talk about

1 things that she didn't like about Brooke. You know, she's in  
2 her room all the time, you know, sometimes we can't get her to  
3 go to a movie, you know, she doesn't want to pick up her  
4 clothes or whatever it is, stuff like that. And, you know,  
5 Brooke discussed, you know, how -- you know, just the -- the  
6 connecting points that she has with her mom.

7           So it wasn't this all inclusive, you know, my mother  
8 is great or my mother is this and my dad's horrible. It's  
9 just the -- the overall impression I had is that when Brooke  
10 is at her mom's house, she's comfortable. It's the family  
11 home, it's less stress. She has -- still has conflict with  
12 her mom, but it's not like -- it's not overwhelming to her.

13           Now the -- the issue with her and her dad in part  
14 and -- in the session, what happened on that day December 29th  
15 -- and -- and I have a lot of respect for Mr. Harrison. I  
16 think, you know, he's really a great guy in a lot of ways.  
17 But he came in and he read a lot of parental alienation  
18 literature and he wanted to let Brooke know -- he wanted to  
19 spell some -- some of these dynamics.

20           So he came in wanting to say certain things. He had  
21 a script in his head. So when I asked him a question about  
22 his prior relationship with his daughter before all this  
23 exploded. He started saying it was good and then he launched  
24 into what was bad about Vivian.

1 Q What did he say?

2 A He just said -- and it was in -- it's in my report,  
3 but just like how she wasn't there and -- and for the -- the  
4 children and, you know, how she -- how they had all these  
5 different issues, et cetera, et cetera. And Brooke sat there  
6 listening to this and she was kind of patient. She listened  
7 for 10 minutes. And -- and she's hearing some things  
8 I think maybe she didn't know or whatever. And finally, she  
9 said to her father, she goes you -- you never answered the  
10 question. And so then -- and I told him I said look, you  
11 know, I -- I'm asking you -- I was trying to get the bonding  
12 moments between these -- you know, the father and daughter and  
13 he said he apologized.

14 But then shortly thereafter, he's back on the same  
15 topic again. And -- and that -- and eventually the session  
16 was better. We -- we made some progress. But the points of  
17 it was is that one of the dynamics for Brooke is is that, you  
18 know, it doesn't end for her, you know, at her dad's house.  
19 She loves her dad, she cares for her dad, but she's  
20 overwhelmed at times because of this -- these dynamics. Her  
21 dad attributes the disengagement between them to the mom. I'm  
22 not saying the mom's perfect, okay, but, you know, Brooke has  
23 a lot of emotional connecting points with her mom that I  
24 didn't see as pathological. Okay. And she doesn't have as

1 many anymore with her father.

2           Now we have to kind of keep some other things in  
3 context, you know, not to throw my personal life into this,  
4 but I have two daughters, one now 17 and 25. And trying to do  
5 things with them during their adolescence, you know, I mean,  
6 when my 25-year-old is 18 a senior in high school, you know, I  
7 probably made 35 attempts to take her out to a movie or pizza  
8 or whatever and I got two quick lunches on a Sunday and that  
9 was it. So that was like, you know, my batting average was  
10 very, very low.

11           Q     Is -- in your -- in -- outside of your personal life  
12 in terms of the study that you have done and the experience  
13 you've had as a person who performs regularly child  
14 assessments, and you do perform --

15           A     Yes.

16           Q     -- regular child, has that dynamic outside of your  
17 own personal life been expressed or been consistent within the  
18 cases that you've seen?

19           A     Yeah, the dynamic is this is that adolescents are  
20 more social. Okay. They want to hang out with their friends.  
21 And Brooke felt that, you know, she had more autonomy with her  
22 mother. And it wasn't that her mother didn't put up  
23 boundaries with her because she did and they disagreed with  
24 things. But she's able to see her friends, and not that she

1 -- she couldn't at her dad's house, but it was just easier,  
2 plus that was the original home versus this.

3           So the reality is is that Brooke is growing up,  
4 she's becoming more independent. She finds life comfortable  
5 at her Mom's house. She's connected to her mom. She still  
6 loves her dad, but they get conflicts. And -- and it's -- and  
7 it's different for her. And -- and that's where therapy was  
8 designed to resolve those conflicts.

9           So when I'm looking at it, I got -- I got Brooke  
10 with her mom and it's a nice easy pace and they're talking --  
11 talking about conflicts, they're talking about what they like  
12 about each other, and there's no over idealization, there's  
13 no, you know, you're great and he's evil, you know, everything  
14 is -- is pretty calm. And then conversely when Brooke's with  
15 her dad, she wasn't starting it. She didn't get things  
16 rolling. He did. He had to bring in Mom and he brought Mom  
17 in not once, but a few times. And that upset Brooke. Okay.

18           And that's why she eventually left because it -- it  
19 got under the topic of, you know, Mrs. Harrison and -- and a  
20 physical conflict alle -- you know, with -- with her older  
21 kids and Brooke was there and Brooke heard some information,  
22 maybe it was new to her, but she was there. So -- but she  
23 left and she got upset because when she came back on the 31st,  
24 her issue was I don't know how to make sense of this. My



1 dad's like two different guys. I know he call -- he texts me  
2 he loves me and I know he loves me and I care for him, but I'm  
3 just overwhelmed with all these different dynamics.

4 She's affected by the divorce. She doesn't know how  
5 to proceed. She's super busy in her life and she doesn't know  
6 how to -- you know, she wants to -- to have a better  
7 relationship with him, but then, you know, there's times that  
8 she resists and she says things that are stupid, you know,  
9 like I hate you or -- and -- and so the -- in my professional  
10 opinion when I'm working with this young girl, I'm finding  
11 this intelligent young girl who is struggling with feelings,  
12 you know, and -- and struggling -- you know, the after effects  
13 of the divorce. And, you know, she's making -- you know,  
14 she's -- she's saying this is what I want.

15 Now could she have been somewhat influenced by her  
16 mom? Maybe, but I didn't see it as parental alienation. I  
17 didn't see the relationship as pathological and that's why my  
18 last time I was here, I was saying that, you know, if you  
19 think you're -- you're going to take this girl away from her  
20 mom for 60 or 90 days, she's going to resist. And my thinking  
21 is that when she's 18, she's probably going to hold it against  
22 her dad. Okay.

23 Q While you're on that subject, one of the things that  
24 I think that parents struggle with is what to do with a

1 teenage who won't observe the visitation between the parents  
2 that's been agreed to or been ordered by the Court, have you  
3 seen that dynamic in your practice?

4 A Yes.

5 Q And how do you -- what do you do about that? What  
6 do you do with a 16-year-old who in all other aspects of their  
7 life are doing well, what do you do with a 16-year-old that  
8 doesn't want to observe the parenting plan?

9 A Well, you have to understand it first. And, you  
10 know, you have to impress upon the -- that -- I mean, you --  
11 you want to know if it's like alienation or is it  
12 estrangement. You know, is it estrangement because, you know,  
13 the other parent that you don't want to deal with is an  
14 alcoholic or a drug user or an abuser or are there issues?  
15 Okay. And out of the child's adolescence, the perspective of  
16 this reasonable or not reasonable?

17 Well, I would expect that not everything the kid's  
18 going to tell me is going to be reasonable, because we're all  
19 about -- we all have our issues, okay, but I felt her to be  
20 genuine in this process of processing her conflicts with her  
21 father.

22 Q But what about the notion --

23 A Okay.

24 Q -- that if a 16 or 16-and-a-half or 17-year-old

1 comes to you and says you know, I don't want to go to school  
2 anymore, why is that any different than having a relationship  
3 with a parent and consistent with a court order?

4 A You know, if -- if you look at -- and I think it was  
5 Rover versus Simmons, and I'm not trying to quote things, but  
6 I think that was the juvenile death penalty and adolescent  
7 brain research and -- and frontal lobes continue to develop  
8 until the age of 25. All right.

9 So my thinking on that is is that we are -- the  
10 parents are the one that leads. So we know that if you drop  
11 out of high school, your economic power decreases  
12 significantly. It's also not appropriate to just write your  
13 father off. Okay. So despite the fact that you're 16 or 17  
14 and you think you can make an intelligent decision, just like  
15 people dropping out of high school, they can look back 10  
16 years from now and say that was a very poor decision on my  
17 part.

18 Q So are you saying that it's the same? In other  
19 words, the same process of just telling a child you have to go  
20 to school, it's --

21 A Well, we can --

22 Q -- the law --

23 A -- we can tell a child they have to go to school and  
24 -- and they may not be connected and still fail out. All

1 right. But in this case when we're talking -- when -- when a  
2 child refuses to see -- to see a parent, we want to understand  
3 why that is and then we want to correct it. And so in my  
4 report, I thought there was some dynamics that I discussed  
5 that to try to correct it, to correct the report -- you know,  
6 correct the dynamics between father and child.

7 And -- and it has to happen, because if it doesn't  
8 happen, then there could be more, you know, pro -- prolonged  
9 disengagement and I hate to see that happen.

10 Q Well, if a parent is faced with a child who now  
11 indicates that they don't want to go at 16-years-old to --

12 A Yeah.

13 Q -- their -- their regular schedule, they want to  
14 make their own schedule, would it be appropriate for that  
15 parent to then reach out to the other parent and say this  
16 child needs counseling, we need to have some sort of  
17 psychological involvement to find out what's wrong?

18 A Well, if you can't figure it out as parents, you'll  
19 -- that becomes now an option --

20 Q Well, when --

21 A -- of --

22 Q -- you have -- let's bring it back to this case.

23 You have a dynamic that I think you recognize that the parents  
24 are not in tune with each other in terms of their own sort of

1 relationship. There has been some problems through -- caused  
2 by the divorce, would you agree?

3 A Yes.

4 Q And so as a result, it would be -- if a parent is  
5 faced with that, then if -- would it be the appropriate action  
6 for a parent in that circumstance to reach out to the other  
7 parent and say we want to handle this outside the courts and  
8 we would like to have the child involved in some sort of  
9 psychological counseling?

10 A Well, anytime a parent's a co-parent for the best  
11 interest of the child, that's fantastic. That's what you want  
12 to see happen and you don't have to go to go court for that.

13 Q Okay.

14 A Yeah.

15 Q So in regard to the actual actions that a parent can  
16 take, so in this case, Vivian faced with Brooke saying I'm not  
17 going to go over there, what would be the appropriate actions  
18 on both Vivian's part and Kirk's part to cause that to occur?

19 A Well, first of all, I -- obviously it's -- it would  
20 be very difficult for Vivian and Kirk to get together and  
21 probably process that. Okay. You know, if -- if your child  
22 is --

23 Q Particularly --

24 A -- taking out her --

1 Q Let me stop --

2 A -- clothes --

3 Q Let me stop you there. Part of the difficulty is  
4 they have a very different view of what's causing that,  
5 correct? I mean --

6 A Yes.

7 Q -- you've seen that in this case.

8 A Yes.

9 Q So one parent does not believe that it's as a result  
10 of something that she's done to alienate the child. She  
11 thinks it's -- as a result of a scheduling or the  
12 hardheadedness of this particular person or the -- the  
13 difficulty of the relationship versus another parent who  
14 believes that it's alienation, that would be a circumstances  
15 that would make it difficult for them to communicate.

16 A Yes.

17 Q Would you agree?

18 A Yes.

19 Q Okay. And that's what you found in this case,  
20 correct?

21 A Well, yeah, and -- and yes. But you see, the parent  
22 that is when you have like -- if -- if your daughter is taking  
23 her clothes out and bringing it all to Mom's house, then  
24 perhaps the -- the mom should sit down with the daughter and

1 say you can't do this, you can't start rejecting your father  
2 and get together with the father and -- and say listen, let's  
3 -- let's try to work this out. Let's get her back over here.  
4 And you have to talk to your daughter and say this is not  
5 appropriate, you can't -- you can't be doing this right now.  
6 Yes, you have a busy schedule, yes, I understand it's going to  
7 be a little easier for you, but you have to maintain a  
8 relationship with your father. This is very important.

9 Q And if she indicates that to the child and even  
10 takes further measures such as taking away her -- her phone,  
11 taking away her ability to go out during the time that she's  
12 at her house and she's supposed to be at her father's house,  
13 what else could she do other than those things to ensure that  
14 that child goes to Kirk's home?

15 A Talking to the father, getting her in counseling,  
16 having consistent conversations with her, you know, sometimes  
17 maybe even -- you know, I mean, this is difficult because he's  
18 -- you know, a lot of people don't do this, but even trying to  
19 do shared activities together, they -- they kind of get the  
20 child comfortable and, you know, just, you know, the -- it's  
21 -- sometimes you can't get a kid to move. Okay. I mean, it's  
22 -- it's like trying to get a kid back to high school. And  
23 sometimes it won't take place.

24 Q In this circumstance, did you have a conversation

1 with Vivian about the measures that she was taking to try to  
2 encourage Brooke to spend time at Kirk's home?

3 A I think I did and I think that's where she took the  
4 phone away, but that may have been after court, not  
5 necessarily before court. And, you know, she said -- she was  
6 kind of trying to do the best she could. And she said she  
7 wanted him -- you know, Kirk to have a relationship with her.  
8 I didn't get the idea that -- that she was significantly  
9 overtly thwarting the relationship, especially during the --  
10 the text messages. So, you know, the six months of text  
11 messages.

12 Q So, you're aware of Brooke's schedule, you have --

13 A Yes.

14 Q -- identified that in your -- your -- you also are  
15 aware that she's not in just dance. She's been in essentially  
16 dance for her entire youth, correct?

17 A Yes.

18 Q And she has a very prominent place in her dance  
19 group, you would agree?

20 A Yes.

21 Q And that's what you understood. And between the  
22 dance and the time that she was at school, there were very few  
23 hours that she would -- she would -- I would assume do her  
24 studies since --



1           A     Yeah.

2           Q     -- she was almost a straight A student.

3           A     Right.

4           Q     Is it in your experience of doing these type of  
5 assessments, is it -- and -- and perhaps your personal  
6 experience that you shared with --

7           A     Right.

8           Q     -- us today, is it common for a teenager to be so  
9 involved in both curricular and extracurricular activities  
10 that the parents whether they live at a parent's home or not  
11 spends very little time with them?

12          A     I think that happens, I mean, because, you know, you  
13 have a young girl who -- you know, when she texted me her  
14 schedule, I think she was in theater too, if you had -- I had  
15 a daughter that was in theater and I was picking her up every  
16 day, you know, like at 7:30 at night. And -- and it was like  
17 five days a week and, you know, I mean, she was always there  
18 and then she had to come home and do her homework, till 10:00  
19 o'clock at night. So there wasn't a lot of parent-child  
20 interaction with the exception of in the kitchen, watching her  
21 study or talking to her five or 10 minutes in the car.

22          Q     And the two movies.

23          A     Yeah. You know, yeah, that was very rare. Yeah,  
24 good luck on that. But the point -- my -- my top

1 conversations with them was usually in the car for 15 or 20  
2 minutes when I kind of -- I got 'em, you know. And -- and  
3 that's where a lot of parents sometimes have their  
4 conversations is connecting with them for a short period of  
5 time. I mean, I used to play Beatles music and my daughter  
6 loved it and we would just talk about The Beatles.

7           And so the -- you're looking for any emotional  
8 connecting points. As they get older, they start -- they  
9 start to appreciate the -- the care and love of the parent and  
10 sometimes they move back and they're more considerate. She  
11 needs to be a little more considerate, no doubt about it.  
12 Okay. And, you know, she can't run the show. But I -- I can  
13 appreciate she's busy and she's overwhelmed, yet this  
14 relationship between father and daughter is very, very  
15 important and some things may have to give on a temporary  
16 basis until the relationship improves.

17           Q     Was there anything in your experience of Mrs.  
18 Harrison that suggested to you that she did not feel that the  
19 relationship between Kirk and Brooke was important?

20           A     Now there was -- I didn't get -- I mean, she -- she  
21 could -- you know, she -- she could -- you know, she -- she  
22 had this kind of interesting sense of humor when we're  
23 talking, but, you know, she can say look, you know, there's --  
24 there's no love lost between us, but, you know, the children

1 have to have a relationship with their dad and their dad is --  
2 is important in their lives. So I never got the point where  
3 I'm conversing with her that she was trying to rule Kirk out.  
4 Okay. So -- but there's a lot of hostility between -- a lot  
5 of -- a lot of unresolved issues because of the prior custody  
6 case and everything that took place. But she recognized --  
7 you know, she -- if Brooke wants to go there, she can go  
8 there, fine. I don't -- you know, everything is good. You  
9 know, sometimes she goes -- you know, I mean, I'm -- I just  
10 didn't get the feeling from her she was -- she was thwarting  
11 the relationship. She may have been not assertive enough and  
12 that could have been passive aggressive. All right.

13 But the point simply was there wasn't that -- that  
14 parental alienation dynamic of that -- that delusional quality  
15 that the hatred -- see, she doesn't hate her (sic). I mean,  
16 she says she hates her dad sometimes, but if you really talk  
17 to her and process it with her, but like I said, she's  
18 ambivalent. And that's not characteristic of an -- an  
19 alienated child, the ambivalence.

20 Q The -- you had indicated in a response to one of the  
21 Mr. Kainen's questions about the reliance on charm that  
22 someone can present with charm or with grace or -- and be  
23 somebody very different. In your experience of Mrs. Harrison,  
24 did you -- and I assume -- let -- let me start with this

1 question. As a person who does child assessments often, I  
2 assume that you've become attuned both through your education  
3 and your experience to try to ferret out the genuineness of a  
4 position of a party.

5 A Yes.

6 Q Did you form an opinion as to whether or not Ms. --  
7 Mrs. Harrison was genuine in the things and positions that she  
8 took with you in your analysis?

9 A Yeah, you know, I -- I knew Mrs. Harrison back at  
10 the child custody evaluation level, so it wasn't that I just  
11 spent time with her here. I had probably another 10 or 12  
12 hours with her before several years ago. And so I had -- you  
13 know, the same thing with Mr. Harrison. Okay. Mr. Harrison  
14 was in distress. He had a certain viewpoint. Mrs. Harrison,  
15 you know, laid things out there. I mean, could she at times  
16 have swayed it to her side like other child custody litigants  
17 do? Of course, but I didn't get the pathological component  
18 from her nor did I get the pathological component for her  
19 daughter; therefore, I did not see parental alienation.

20 I saw a young girl struggling with -- with dynamics.  
21 I may not agree with her rejection of her father, okay, but I  
22 didn't see the pathology that would normally exist when I work  
23 with these other cases of a pathological mother and a  
24 pathological child.

1           Q     Mr. Kainen asked you a -- a series of rather short  
2 questions for yes or no answers in regard to that dynamic.  
3 And one of your -- your standard answers was well, there's  
4 more to it than that, but you didn't get a chance to explain  
5 that. I think in light of the Court's comments, you did  
6 explain that. And I'm just going to report to you -- to --  
7 point to your report. You did expend in your -- explain in  
8 your interviews of Brooke Harrison, and that begins on page 12  
9 of your report and continues on for some time. You did talk  
10 about some of the things that you've talked to today in order  
11 to ferret out the dynamics of that relationship. Is -- is  
12 that a fair statement?

13           A     Yes.

14           Q     Is the methods that you used and the type of  
15 questioning you used consistent with what an expert in your  
16 field would use in order to determine a issue of parental  
17 alienation?

18           A     Yes. I mean, with child interviews, review of  
19 discovery, collateral, the therapist --

20           Q     Well, in this particular circumstance, I'm -- I'm  
21 sort of micro focusing on Brooke's interview. Was that  
22 interview conducted in a manner that's consistent with  
23 ferreting out or determining --

24           A     Well, the -- the --

1 Q -- whether the child was subject to alienation?

2 A Well, what you -- let me just put it this way.

3 You're doing a child interview or an adolescent interview.

4 Okay. So you want to assess the quality relationship that the

5 child has with mother and father. Okay. And you want to look

6 at the historical relationship that the child has. Right now

7 -- I was fortunate enough to interview Brooke in 2012 and I

8 was fortunate enough to have that interview and I put it in

9 there because I wanted to make sure that the reader, the

10 Judge, understood what I saw then. Okay.

11 Sometimes with kids who are -- who are alienated

12 from their parent and they would -- when you -- when you say I

13 would have that in there and I'd have a good relationship with

14 Dad, but I still want to live with Mom. Okay. And then

15 sometimes what you would have is -- and now the kid will say

16 if they're alienated, I never had a good relationship with

17 your fa -- my -- my father. What are you talking about? You

18 know, like no, it was always bad. Everything was bad about

19 it.

20 And then I said well, what about when you told me it

21 was good. Oh, I -- I didn't mean that because he forced me to

22 say those kind of things or, you know, there's a different

23 excuse. There is a -- there is a -- you know, they -- they

24 kind of rationalize it and, you know, and it -- it denotes

1 pathology. Okay.

2 She says I had a very close relationship with my  
3 father. She also says positive things about her father in my  
4 report which now is denoting wow, that doesn't sound like it's  
5 alienation. Okay. And then she's able to give me when she  
6 talks about her mother yeah, I'm very close to here (sic) and  
7 let me explain why. What don't you like about your mom?  
8 She's able to tell me things what she doesn't like, but she  
9 struggles with her mom.

10 When I talk to the mother, Mrs. Harrison, you know,  
11 she can laugh about what her daughter doesn't do, well, she  
12 gets frustrated with her daughter about which is different  
13 from parental alienation. Okay. It's -- and now nothing's  
14 seeming to fit for me. Okay. I have a girl who's being  
15 ambivalent about her relationship with her father.

16 Look, she could have told me after her dad said  
17 those things to her, she could have told me I hate this guy,  
18 I'm never going to see him again, I'd never liked him. She  
19 didn't tell me that. She came in two days later and struggled  
20 with what happened. Yes, I'm going to go back to my dad, yes,  
21 I'm willing to try therapy, but, you know, sometimes I'm  
22 really not sure. Okay. So, you know, the reality is is when  
23 you get in therapy, okay, if -- and I even put this in my  
24 report. If -- you know, if Mr. Harrison perceives this as

1 parental alienation and he stays on that theme, okay, of  
2 parental alienation, and doesn't build on this relationship  
3 with his daughter, then that could be negative. Okay.

4           What are your emotional connecting points from now  
5 to when she goes to college in August, that's what we need to  
6 focus in on, where we can't focus on Mrs. Vivian Harrison's  
7 pathology because that's not going to be an emotional  
8 connecting point for Brooke. It's going to make -- she's  
9 going to be estranged from her father and disengaged from her  
10 -- she doesn't want to hear this stuff.

11           She doesn't want to hear anything about -- she  
12 doesn't want to hear anything about the divorce. When she's  
13 at her mom's house, she feels it's calmer. When she's at her  
14 dad's house, she feels some stress. Now maybe that's her  
15 perception and it's not like that, but she feels -- she feels  
16 more at ease when she's at her mom's house.

17           Q     You have recognized and I think you have been  
18 present for comments association with the alignment of the two  
19 adult daughters with their father and --

20           A     Yes.

21           Q     -- the disengagement with their mother.

22           A     Yes.

23           Q     Could that dynamic have an effect on Brooke's view  
24 of her father?



1           A     I think it has an -- an effect on everything,  
2 because she -- like what Brooke explained to me in her final  
3 session on December 31st, she doesn't know what to make sense  
4 of it. Now see, I even put her at a test because I'm thinking  
5 okay, let me see if I can get her on this on parental  
6 alienation. Right.

7                     So I said to her well, what if your dad's right?  
8 What if your mom did do these things and -- and she your mom  
9 did hit your sister, and your dad's right? And she said --  
10 now an alienated kid wouldn't accept that usually, right, they  
11 say no, that didn't happen, that never happened, my mom would  
12 never do that, it's, you know, my dad's evil, et cetera, et  
13 cetera, he's making all this up. She said it would make me  
14 sad, but that's not my experience with my mother. Okay. She  
15 has a different qualitative experience than her two sisters  
16 have --

17           Q     So --

18           A     -- right or wrong.

19           Q     -- let's -- let's stop with that. What happens  
20 particularly to -- you -- you have -- have indicated to both  
21 your personal and professional experience, vastly more  
22 professional experience I --

23           A     Yeah.

24           Q     -- would imagine, that -- that children that are

1 adolescents really want to be independent. They don't want to  
2 be bothered. They want to do their thing. They want to gauge  
3 that independence. Is that a --

4 A Yeah.

5 Q -- fair statement? If a child in that category or  
6 if a -- a young adult as in that category is constantly  
7 indicated to them that what they believe, in other words,  
8 their own belief about their mother whether it's true or not,  
9 if they're constantly told either directly or indirectly that  
10 their belief is false and that their mother is not as good a  
11 person as they think, what would you anticipate to be the  
12 effect on that child?

13 A Well, it's going to create cognitive dissidence  
14 (sic), because --

15 Q And tell me what that is --

16 A Okay.

17 Q -- in psychological --

18 A So -- okay.

19 Q -- terms.

20 A So hypothetically Dad is saying Mom's a bad person.

21 Q Either indirectly or direct --

22 A Right.

23 Q -- indirect --

24 A Right.

1 Q -- or directly.

2 A And -- and the child's experiences, I have a very  
3 positive relationship with Mom, this doesn't fit. It's like  
4 hearing, you know, look, a mother was saying your dad was  
5 physically assaultive to me and he's a verbally abusive guy  
6 and -- and the kid goes, I've only known Dad to be good. And  
7 then you have to reconcile that. Okay.

8 So if -- if a parent is telling a child, you know,  
9 your -- this parent is bad, this parent wasn't there for you,  
10 this parent has a lot of issues, et cetera, et cetera, the  
11 child; in this case, Brooke, okay, has a different experience.  
12 Now Mr. Harrison may say well, that's because she changed her  
13 views because of parental alienation. Okay.

14 Q Is that typical to happen? In other words, if  
15 someone is -- I think the word that was constantly used was  
16 programming --

17 A Yeah.

18 Q -- the -- a programmer, can a -- an alienating  
19 parent, if Mrs. Harrison was an alienating parent, could she  
20 program to Brooke new memories in terms of what her  
21 relationship was with Mrs. Harrison?

22 A Well, they've done that, you know, by -- by you  
23 constantly telling a child, especially a young child,  
24 especially like around eight or something, you know, your dad

1 was never there for you or your dad was always abusive to his  
2 siblings and he's abusive to dogs, little puppies, and things  
3 like that. Then the child is thinking oh, my dad's this bad  
4 guy.

5 Q Let's bring it into this case. If Mr. Harrison had  
6 suggested to Brooke repeatedly over her objection, and I think  
7 you referenced this in the -- the session that you were in,  
8 that Mrs. Harrison was not there for her, that she -- she was  
9 absent for a period of time from her life and didn't really  
10 care about her or the impression that --

11 A Right.

12 Q -- that she didn't care about her; is that something  
13 that if she's told will cause the cognitive dissonance that  
14 will interfere with the relationship between her and Mr.  
15 Harrison?

16 A And see, Brooke has to figure that out. She has to  
17 figure out was, you know, my experience with Mom was, you  
18 know, that she was there, but, you know, maybe, you know -- I  
19 mean, and -- and she's hearing from her dad, Mom wasn't there,  
20 Mom was wrapped up in her own stuff, Mom was narcissistic, Mom  
21 was this, she was -- I was there for you. She wasn't.

22 Q This --

23 A I mean --

24 Q -- was from the session that you --

1 A Yeah.

2 Q -- were there? Okay.

3 A So, you know, you can -- you can take that and say  
4 well, was that an alienating statement, right, you can kind of  
5 like -- so if a child's hearing that, that either is true or  
6 it's an alien -- alienating statement. Okay. So Brooke has  
7 to handle all this information. She has to handle the fact  
8 that her parents divorced and don't like each other. She has  
9 to go back and forth between homes. She has to handle that  
10 her two sisters don't talk to her mother and she doesn't  
11 understand why her sisters, you know, have this bad  
12 relationship with her mother, because her experience with her  
13 mother is better. Okay. It's different. It's qualitatively  
14 different. Okay.

15 And -- and so when I discuss this with her, she  
16 genuinely, I felt, was processing this with me. She didn't  
17 have the qualitative litany of somebody who is programmed, you  
18 know, she -- she had none of that. She -- she was trying to  
19 figure out how she was going to move forward with her father  
20 and this dynamic with all this stuff that's happened. And --  
21 and I felt that to be very sincere and genuine and I tried to  
22 help her with that. I tried to set her up so she can work  
23 with Dr. Ali and she can process this and get closer to her  
24 father.

1 I was trying to help her, but look, you know your  
2 dad loves you, right, and she says I -- I recognize that, I  
3 know that. You know your dad wants to be involved with your  
4 life and I know you got this really super busy schedule and  
5 you have all of these different issues going on between you  
6 and your father. But you have to make the efforts too to make  
7 this relationship work and so does he.

8 You know, what do you need from your father to make  
9 this better? You know, some of the things might be I don't  
10 want him to say bad things about my mom, or I don't want him  
11 to, you know -- you know, tell me -- I'm kind of growing up  
12 and I want to make my own decisions, you know, and I want her  
13 -- I want him to be appreciative of that. So there's all  
14 these different things that she wanted from her father.

15 So I don't know what happened in Dr. Ali's office,  
16 because I'm sure you process issues and sometimes it can get  
17 contentious. And I'm sure they might have had some -- you  
18 know, I mean, Dr. Ali and -- and I have talked about some of  
19 these dynamics.

20 But the point was I found her to be genuinely  
21 struggling with this and it wasn't parental alienation. I'm  
22 not saying the mom did everything right, and I'm sure we could  
23 point to it, but I think they both did some things wrong. I  
24 mean, I think that when you walk into a session with your

1 daughter, and I know he was coming from the parental  
2 alienation literature where you want to confront the  
3 misconceptions, but the reality is is that, you know, what  
4 you're doing is at that moment you're probably -- your  
5 daughter -- how is she going to handle that information? All  
6 I'm asking you is what -- what were your positive things you  
7 guys did?

8 I don't and we -- we're not going down that road,  
9 okay, the point simply is is that had an effect on this child  
10 -- not child, but Brooke, adolescent, and she has to -- she  
11 has to negotiate this in her world. She cares for her dad,  
12 right, and she feels closer to her mom, and she's struggling  
13 with her father and -- and yes, you know, I'm -- I'm -- she  
14 shouldn't have been making the calls in terms of the pace on  
15 this with therapy, but I did not see her as an alienated child  
16 nor did I see her as an alienated parent and I'm not saying  
17 Brooke is right all the time nor her mother is right all the  
18 time. Everybody makes mistakes.

19 Q It -- it almost --

20 THE COURT: Let --

21 Q -- seems that --

22 THE COURT: Let me just --

23 Q -- it would be --

24 THE COURT: Let me just --

1 MR. SMITH: Yes?

2 THE COURT: -- caution Defendant just as I cautioned  
3 the Plaintiff just in the interest of time. Again, the  
4 feeling I'm getting is we're going a lot through the report  
5 that's already been submitted. The purpose of the evidentiary  
6 hearing isn't necessarily to try that report. I understand  
7 it's to counterbalance some of the testimony of direct  
8 examination, but our -- our time is limited, so I don't --

9 MR. SMITH: No, and Judge --

10 THE COURT: -- want to just --

11 MR. SMITH: -- I've --

12 THE COURT: -- restate the report.

13 MR. SMITH: I've got about five minutes. I'll note  
14 that -- that Mr. -- or Dr. Paglini -- Paglini has been on the  
15 stand for hours in the -- the direct examination. But I just  
16 have a few things. And there's -- as the Court understands as  
17 -- and I indicated in my opening statement today there is  
18 evidence or information that needs to be addressed and then I  
19 will follow that up with Brooke in terms of --

20 THE COURT: Okay.

21 MR. SMITH: -- so that's the basis --

22 THE COURT: Okay.

23 MR. SMITH: -- for the questioning.

24 BY MR. SMITH:



1           Q     In terms -- and -- and I just have a couple more  
2 questions for you, Dr. Paglini, because I -- the Court's  
3 admonition to have Brooke testify. The -- in the -- the --  
4 let's say that we have these sessions and -- and I believe  
5 that these are the -- the facts of this case. Brooke goes to  
6 these sessions with the belief that these are confidential  
7 sessions with Dr. Ali so that she can process her feelings  
8 about her father?

9           MR. KAINEN: Objection, assumes facts not in  
10 evidence. It's contrary to the evidence.

11           THE COURT: Overruled.

12 BY MR. SMITH:

13           Q     and was it -- let me ask you the question a  
14 different way to -- to meet the objection. Were -- was it  
15 your understanding that Brooke felt that the sessions with Dr.  
16 Ali that she first engaged in prior to having the family  
17 sessions were confidential?

18           A     Prior to family sessions.

19           Q     Yes.

20           A     Brooke knew that I was going to talk to Dr. Ali. I  
21 asked --

22           Q     Yes.

23           A     -- her and I told her that.

24           Q     Right.

1       A     Brooke also knew that I was asking her questions  
2 about how she felt about Dr. Ali and that the information that  
3 Dr. Ali would give me would be placed in my report.

4       Q     Okay.

5       A     Okay. So that -- so confidentiality issues were  
6 discussed with her and -- and she was okay with me talking to  
7 Dr. Ali. Now if Brooke told me, just -- I just want to finish  
8 this, if Brooke told me I do not want you to talk to Dr. Ali,  
9 that -- that then would have been problematic.

10      Q     Okay.

11      A     Okay.

12      Q     So she has a relationship with Dr. Ali that's a  
13 therapeutic relationship, correct?

14           MR. KAINEN: Objection.

15      A     Yes.

16      Q     That's your understanding?

17           MR. SMITH: I -- there's an objection. I don't know  
18 what the objection is.

19           THE COURT: Is there an objection?

20           MR. KAINEN: No, I'll -- I'll hold. Sorry. Go  
21 ahead.

22 BY MR. SMITH:

23      Q     So in regard to the -- the sessions, one -- one of  
24 the things that you expected was that the sessions would be a

1 time for healing the relationship between Mr. Harrison and the  
2 child, correct?

3 A Yes.

4 Q And one of the things that you warned in your report  
5 very clearly, and you've referenced it, was that if Mr.  
6 Harrison continued the narrative of the blame being placed on  
7 Vivian as an alienating parent, that that would cause damage  
8 to the relationship with Brooke.

9 A Yes, potential cause.

10 Q Okay.

11 A Yes.

12 Q So -- and just so what we're clear, the --

13 A Yeah.

14 Q -- the conclusions that you reached in your report  
15 are to a reasonable degree of psychological certainty,  
16 correct?

17 A Yes.

18 Q Okay. And so -- so if that happened, let's say that  
19 the hypothetical that you're asked is that instead of going  
20 into these sessions with an idea that I'm going to cr -- using  
21 your words, I'm going to direct and -- and try to see if I can  
22 find some connecting points with my daughter, I instead go in  
23 there with the agenda that I'm going to show her that what  
24 Vivian did was wrong and that Vivian was wrong, would that be

1 what you had expected to be the activities in the sessions?

2 A Well, first of all, I -- I'm not sure when Brooke  
3 made the statement if she hated her father what the context  
4 was.

5 Q Right.

6 A Okay.

7 Q We -- none of us do.

8 A So -- right. So I -- it's hard I mean, I -- I would  
9 say though that the -- I think -- this -- this is important  
10 from Mr. Harrison's perspective. Mr. Harrison's at a loss  
11 because at one point he had this really nice relationship with  
12 his daughter and now he has a daughter a few years later that  
13 is rejecting him. Okay. And he's trying to figure it out.  
14 And -- and his hyp -- his working hypothesis is that Mrs.  
15 Harrison has had an undue influence on Brooke to influence her  
16 to reject him. And now it's gotten to the point where it's  
17 pathological and it's parental alienation. That's his working  
18 hypothesis. Okay. So that's how he's looking at the world at  
19 this moment.

20 Q Yes.

21 A Okay. So I don't know what happened in the therapy  
22 sessions, okay, but Mr. Harrison from a father viewpoint, from  
23 a parent viewpoint, is struggling with the rejection he's  
24 receiving from his daughter and then if he's seeing the same

1 thing in Rylee, it's concerning him because then it's going  
2 down this same path. And he's looking for answers. And this  
3 is his answer at the moment.

4           Now post report when he called me on several  
5 occasions, okay, I felt that he was genuine. He's trying --  
6 he didn't -- he didn't agree with my report. The report was  
7 -- was not good for him, okay, and I knew that. I respected  
8 him, I -- I answered his phone -- phone calls and processed  
9 it. He told me that things were not moving. I was concerned,  
10 you know, I talked to Mrs. Harrison one time. Brooke sent me  
11 a letter, okay, I read all that stuff. I was very concerned  
12 because I wanted them to move forward in the healing process  
13 and it was months after my report in those maybe two sessions  
14 and I guess the last sessions where, you know, Mr. Harrison  
15 said -- I guess he -- she rejected him or whatever. The first  
16 session was good, the second session was bad. So I was  
17 concerned. That's why I wrote my letter and I tried to write  
18 it ethically in terms of I only heard one side.

19           Q     Well, we won't know unless Brooke is -- testifies to  
20 that today as to her understanding, her view of what was going  
21 on in those sessions, correct?

22           A     Right.

23           Q     And you haven't had any conversations with Brooke  
24 about those sessions.

1           A     No, I had a conversation with Dr. Ali because it was  
2 allowed --

3           Q     Right.

4           A     -- and we got together and we processed what was  
5 going on and we processed what the next step we think should  
6 be.

7           Q     Okay. Share it with us.

8           A     Okay. So we met -- I guess -- apparently, I -- I'm  
9 not going to go into too much, but apparently Dr. Ali had  
10 already met with them beforehand and then after our -- our --  
11 and let me just preface this. Dr. Ali met with Kirk and --  
12 and Brooke maybe about -- I don't know if it was weeks or  
13 months before that and there was a session which you did not  
14 talk about. Then we had the court case, the court date. Then  
15 I talked to Dr. Ali once I was leaving here. And he made an  
16 appointment with Brooke. Brooke came in and processed  
17 dynamics with him. And -- and I guess there has not been any  
18 joint session yet. That's supposed to be scheduled maybe  
19 Friday or whenever.

20                     So Dr. Ali talked about -- since we got together and  
21 we talked about what was going on and I don't know if I can  
22 share what Brooke was saying to him, so that -- therefore,  
23 maybe Brooke should share it. Okay.

24           Q     Well, the --

1 A So --

2 Q -- way that -- the way that this dynamic has  
3 occurred in the order of the Court is that Dr. Ali has been  
4 permitted to share that information with you, we've raised  
5 whatever objection we've raised, the Court has overruled that  
6 objection, and so you're free to talk about it.

7 A Okay. So -- and this is the part where -- okay, so  
8 we -- we think that outpatient therapy should continue and  
9 Brooke wanted it to be obviously every other week because of  
10 her schedule and she wanted 60 to 90 minutes and she processed  
11 with Dr. Ali some of the dynamics. Dr. Ali and I talked and we  
12 were talking about 90 minutes one week and then a next week  
13 when they're together, they have to have like what we call a  
14 mandatory three to four hours together meaning that if they're  
15 not being in therapy that week because their schedule was so  
16 busy, that they have to, you know, make dinner together, go to  
17 a movie, that they have to do certain things and has to -- she  
18 cannot back out of it. She --

19 Q What was Brooke's view of that?

20 A Well, I think -- I think that was the next follow up  
21 conversation. I --

22 Q But Dr. Ali --

23 A But I -- I --

24 Q -- here --

1           A     -- miss -- so here's my -- here's my impression. Dr.  
2 Ali's impression is that Brooke is receptive. And you -- you  
3 may have to hear that from Brooke, but I don't know if she  
4 knows about the three to four hour block of time yet.

5           Q     Can you do me --

6           MR. SMITH: And Your Honor, I'm going to need a two  
7 minute break just to run to the -- to the restroom.

8           Q     I'm going to stop there and I'm going to ask if I may  
9 and subject to objection, Dr. Paglini, if you can write down  
10 those concepts that you and Dr. Ali talked about it, so that we  
11 can talk about it with Brooke, do you think that would be  
12 appropriate --

13          A     Sure.

14          Q     -- in this context?

15          A     Okay. But she may not know about the -- she may have  
16 heard a three or four hour block, but --

17          Q     Do you think it would --

18          A     -- this is something --

19          Q     -- be better --

20          A     -- we just met.

21          Q     Do you think it would be better if that was brought  
22 to her by -- in a session or with you privately?

23          A     Well, I think that Dr. Ali may have processed it with  
24 her or was going to be processing it with her shortly. Dr. Ali



1 wants to meet with both of them to outline the dynamics of --  
2 of what will be occurring. Okay.

3 Q Have you and Dr. Ali talked about Kirk's request for  
4 substantially greater time with Brooke than the Court ordered  
5 schedule?

6 A No.

7 Q Have you discussed the request by Mr. Harrison that  
8 was outlined to you in your testimony in the last session to  
9 place her into a camp for --

10 A Yes.

11 Q -- whatever it was? And what was your discussion  
12 with Dr. Ali on that point?

13 A Well, we met about that and we talked about -- you  
14 know, I guess there's a four day intensive program and 60 days  
15 without Mom and he -- he didn't think that would be helpful  
16 either for her.

17 Q And is it -- can we characterize that as -- as both  
18 of you agreed that it would not be in the best interest of --  
19 of Brooke to engage in that type of program?

20 A I think that number one, if we -- if we have a  
21 difficult time getting her to sessions, okay, you're going to  
22 -- and then you're going to tell her she's going to go to a  
23 four day intensive group and then not see her mom for 60 days,  
24 that, you know, it's going to be very, very difficult. And it

1 is also sending a message of this. It's sending a message if  
2 you do something like that, that you're accepting the concept  
3 that there's parental alienation and you're accepting the  
4 concept that Mom's pathological, okay, because why are you  
5 resisting her for 60 days. Okay.

6 So -- but there's definitely -- there should be a lot  
7 more time between Father and Brooke. There's no doubt about  
8 that. I just don't think you can -- you keep Mom out for --  
9 for 60 days.

10 MR. SMITH: So I'm going to end it there, Your Honor,  
11 if I can just have two minutes. I will be right back and Dr.  
12 Paglini, if you could write down, I'll ask --

13 THE WITNESS: Okay.

14 MR. SMITH: -- those questions for Brooke if you  
15 think it's appropriate. If you --

16 THE WITNESS: All right.

17 MR. SMITH: -- think it's in a different context,  
18 we'll do it that way.

19 MR. KAINEN: I have --

20 THE COURT: Okay.

21 MR. KAINEN: -- a couple of questions. I mean, I can  
22 --

23 MR. SMITH: Okay.

24 MR. KAINEN: -- wait until Rad gets back.

1 MR. SMITH: I have to go --

2 MR. KAINEN: Yeah, no, no. I've got no problem with  
3 that.

4 MR. SMITH: Okay. Thank you.

5 THE COURT: All right. So we'll --

6 (COURT RECESSED AT 16:19 AND RESUMED AT 16:24)

7 THE COURT: Please be seated. We are back on the  
8 record in the Harrison matter. So were you --

9 MR. SMITH: I was --

10 THE COURT: -- finished?

11 MR. SMITH: I -- I was --

12 THE COURT: Okay.

13 MR. SMITH: Yes.

14 THE COURT: Okay. There was some notes that you were  
15 asking Dr. Paglini to make.

16 MR. SMITH: I was just asking him to make those so  
17 that when Brooke comes in, if you -- if Dr. Paglini --

18 THE COURT: Okay.

19 MR. SMITH: -- feels it would be appropriate for me  
20 to ask those questions to her, because I thought that -- I  
21 think the goal here, and I think the Judge has -- has indicated  
22 that is the goal is to make sure that we do what's best for  
23 Brooke in this situation and the best for the relationship  
24 between the parties.

1 THE COURT: Okay. All right. Any redirect?

2 MR. KAINEN: Yeah, just are -- are we going to see  
3 this list before something gets raised from Mr. Smith to --

4 MR. SMITH: I --

5 MR. KAINEN: -- work that?

6 MR. SMITH: I don't have to raise it.

7 THE COURT: I'd like it to be exchanged.

8 MR. SMITH: I -- I -- yeah, I --

9 MR. KAINEN: Okay.

10 MR. SMITH: -- think -- okay.

11 THE COURT: Right. I'd like -- yeah.

12 MR. KAINEN: So --

13 THE COURT: And if we need a copy made, we can do  
14 that.

15 MR. SMITH: Very good. Thank you.

16 REDIRECT EXAMINATION

17 BY MR. KAINEN:

18 Q You referred to the incident that happened on  
19 December 29th when --

20 A Yeah.

21 Q -- Kirk over shared with Brooke.

22 A Okay.

23 Q You indicated he came in having sort have been  
24 packing for bear because he -- this stuff had been building up

1 for so long and he'd read the literature and everything,  
2 correct?

3 A Uh-huh (affirmative).

4 Q Okay. Your report indicates that there had -- I'm  
5 sorry. There's nothing in your report that indicates there had  
6 ever been any sort of vomiting of information or providing of  
7 information like that prior to that time, correct?

8 A That's my understanding.

9 Q Okay. And your report doesn't indicate that there's  
10 ever been anything like that since; is that correct?

11 A Yeah, I've -- since I wouldn't know, but I would  
12 assume not.

13 Q Okay.

14 A Yeah.

15 Q So just so we're clear, so we've spent a lot of time  
16 talking --

17 A Yeah.

18 Q -- about Mr. Harrison, you know, sharing this  
19 information, everything like that, we're not talking about any  
20 -- there's no evidence in this case that there's any serial  
21 behavior like that other than this one day when he had this  
22 stuff built up and thought it was appropriate to share this  
23 incident that happened with regard to the older children.

24 A I -- yeah, I think -- let me just qualify that. He

1 -- he apologized also for maybe sharing that information, too  
2 much information in the session, probably about 15 to 20 times  
3 after it occurred because he felt bad on how it affected  
4 Brooke.

5 Q Okay.

6 A Okay. So he was very genuine with that. Brooke's  
7 contention was that sometimes she would hear negative stuff  
8 from her father prior, but I didn't think it was, you know,  
9 like alienating or anything like that. It's just probably --  
10 maybe she's -- there's offhand comments or something that --  
11 that would get her upset. Okay. But it was not -- I think  
12 that what happened recently --

13 Q But why are you going with Mom? You were just with  
14 -- why do you want to go with Mom now? You were --

15 A Well, it was --

16 Q -- just with her --

17 A -- it was --

18 Q -- last week or --

19 A -- this maybe negativity about the divorce, but she  
20 said it became more prevalent in maybe the month beforehand and  
21 that might have been corresponding to when Mr. Harrison was  
22 reading the parental alienation literature and you had to  
23 directly confront these dynamics if you're hearing this stuff.

24 Q So --

1 A So --

2 Q -- for the first time you learned that he was  
3 basically -- when -- when some falsehood would be stated like  
4 you were never there, you never paid for my dance lessons or  
5 you never came to this stuff --

6 A He was trying to address the --

7 Q -- he was correcting the record.

8 A -- dynamics, yes.

9 Q Okay.

10 A And -- and -- but then there might have been other  
11 comments that he felt was going on and then this is where  
12 Brooke would experience a probably more heightened dynamics,  
13 because she's already pulled away --

14 Q Okay.

15 A -- and then there was -- then he's trying to figure  
16 it out and then he's thinking well, maybe I need to confront  
17 this head on, otherwise, she's going to become more disengaged  
18 from me and then it's just getting worse.

19 Q All right. And the incident that he was discussing  
20 was something that you indicate in your report that Brooke was  
21 a witness to earlier on. In other words, she was there for it,  
22 from the 2012 you knew about that -- she knew about that.

23 A Yeah, she --

24 Q So it wasn't -- it -- well, this wasn't something

1 that said I'm going to tell you something about your mother  
2 that you've never heard before, this is how you know what a  
3 scoundrel she is. This was --

4 A Yes.

5 Q -- something that already existed and was already  
6 discussed previously in the counseling that Brooke acknowledged  
7 she knew about.

8 A Well, no, it wasn't discussed in the counseling --

9 Q I'm sorry, not --

10 A -- before.

11 Q -- coun -- I apologize.

12 A The -- the

13 Q It -- it --

14 A What happened --

15 Q The -- the evaluation.

16 A -- was is Brooke had seen it.

17 Q Right.

18 A And in my report in 2012, I noted that she was there  
19 and --

20 Q Right.

21 A -- then she was kind of like yeah, I think I saw it,  
22 but I'm really not sure --

23 Q Okay.

24 A -- and now the new version, when I say new version,



1 is that she didn't -- didn't see the hit or whatever. So she  
2 started -- she started thinking it differently because of how  
3 she perceives her mom.

4 Q I guess the point I'm trying to make is number one,  
5 this was a one off, correct?

6 A Yeah.

7 Q Okay. It was something that my -- that -- Kirk belie  
8 -- Kirk knew that she had already witnessed, so it wasn't  
9 something new, correct?

10 A Right.

11 Q And when he saw the effect or the reaction that  
12 either you had or Brooke had or whatever it is, he was  
13 apologizing all over himself and realized -- he processed  
14 immediately probably wasn't the right way to handle this.

15 A He -- that was after she left --

16 Q And --

17 A -- because he --

18 Q -- that would be --

19 A Yeah. Yeah.

20 Q -- and -- and not -- that would not be consistent  
21 with any of the conduct that you believe is pervasive in this  
22 case or anything --

23 A No.

24 Q -- like that?

1       A     Mr. -- Mr. Harrison's a very decent guy and he's  
2 trying to make sense of it and -- and, you know, at that point,  
3 I think, you know, it -- it took -- it -- it brought her  
4 another step back, but -- but she still had an openness to  
5 resolve the issues --

6       Q     Okay.

7       A     -- at that point.

8       Q     As I understand from your testimony for Mr. Smith and  
9 sort of following mine, was -- is that you agree the teenage  
10 discretion provision over empowered Brooke, but you don't agree  
11 Vivian was maliciously behind it; is that correct?

12       A     Yeah, I -- I didn't get the impression -- I mean,  
13 obviously when -- when Vivian's explanation was she brought it  
14 up, she kept bringing it up when she was like 14 that she wants  
15 to spend more time and -- and --

16       Q     Who brought it up?

17       A     -- I told her in the future that sometimes you'll get  
18 more say and I'm hoping things are getting better and we're not  
19 going to worry about these dynamics in the future that --

20       Q     No --

21       A     -- are things --

22       Q     -- I -- I --

23       A     Yeah.

24       Q     -- understand that, but so what we're -- there's --

1 I'm -- I'm just trying to illustrate -- the -- the thing  
2 everybody agrees on is that Brooke was over empowered by this  
3 provision. The question is -- the question of whether it's  
4 disagreement is over whether or not Vivian had done something  
5 to cause that to be the case, correct?

6 MR. SMITH: Objection, because the questions that  
7 were asked of Dr. --

8 MR. KAINEN: Yeah, this is --

9 MR. SMITH: -- Paglini --

10 MR. KAINEN: Again --

11 THE COURT: What's -- what's --

12 MR. KAINEN: -- I'm going to ask for two --

13 THE COURT: What's the --

14 MR. KAINEN: -- for --

15 THE COURT: What's the evidentiary objection?

16 MR. KAINEN: Right.

17 MR. SMITH: The evidentiary objection is it misstates  
18 the evidence in the record. There is no evidence --

19 MR. KAINEN: Okay. Again, two --

20 MR. SMITH: It -- it misstates the evidence -- or it  
21 misstates the evidence that's in the record by stating that it  
22 -- that this was a finding by either Dr. Paglini or Dr. Ali.

23 MR. KAINEN: Dr. Ali --

24 THE COURT: Your objection -- the objection is

1 overruled.

2 BY MR. KAINEN:

3 Q Okay. So do you need me to repeat it one more time?

4 A Yes, you do.

5 Q Sure.

6 A You do.

7 Q Okay. The debate here is not whether or not Brooke  
8 was over empowered by how this teenage discretion provision was  
9 carried out. The debate is over whether or not Vivian was  
10 somehow maliciously causing that. Is that a fair assessment?

11 A Okay.

12 Q Is that -- is that a yes?

13 A Yeah, I --

14 Q Okay.

15 A -- understand that.

16 Q All right. And you understand that was something  
17 that Dr. Ali and you disagree on because Dr. Ali specifically  
18 testified that he believed Vivian had over empowered her,  
19 correct? You were here for that.

20 A He did -- he did think she over empowered her and --

21 Q That's something you don't necessarily agree with.

22 A I -- you know what --

23 Q Or if you -- or if you agree with it, it doesn't --  
24 it's not -- doesn't have a malice side to it.

1           A     I -- I looked at it as not having a malice side.  
2     That's my -- my current impression.

3           Q     Okay.

4           A     Yeah.

5           Q     The idea of the text messaging going back six months  
6     is to be able to see how people are reacting in this ongoing  
7     relationship, you know, okay, you know, there's going to be  
8     this weekly engaging, is Mom talking during Dad's time and she  
9     -- what she's telling the kids, is that what the purpose of all  
10    this is?

11          A     My -- the purpose was to identify if I can see any  
12    dynamics of -- well, I want to see what the communication level  
13    was, the type of relationship, but if there's any -- if I'm --  
14    if I'm sensing any parental alienation, if she's --

15          Q     I got it.

16          A     -- overtly saying your dad's this, your --

17          Q     Okay.

18          A     -- dad's that, now of course we know that you can  
19    keep your text messages clean and then be covertly saying  
20    negative things to someone on the side.

21          Q     It's not -- okay. I agree with you --

22          A     Yeah.

23          Q     -- and it can also be that most of the engagement  
24    happens in these telephone calls behind closed doors, correct?

1 A Potentially --

2 Q Okay.

3 A -- it could happen.

4 Q And it would also be more significant in a case where  
5 the child was actually going back and forth on a weekly basis  
6 and you can engage as opposed to the child that was going 75,  
7 90 days at a time without really being at his house. So in  
8 order words, there would be no reason to be doing a lot. So  
9 there's -- would you agree that it would be less significant  
10 under these facts where there were grossly long absences of  
11 contact than it might be in a case where the kid's going back  
12 and forth on a five-two-two-five or whatever it is --

13 A Are --

14 Q -- a week on --

15 A Are you --

16 Q -- week off.

17 A -- talking about the text messages?

18 Q Yeah, I'm talking -- would that be -- would that be  
19 -- in other words, seeing how the ch -- mom -- child texts I  
20 don't want to be with Dad, how Mom reacts to that --

21 A Yeah.

22 Q -- those -- that kind of sta -- you would get more  
23 impact on a -- reviewing text messages if there was a regular  
24 back and forth going on, correct?

1       A     Yeah, it may, but at the same time with six months  
2 I'm getting a qualitative understanding of Mother and  
3 daughter's interactive style and how -- and -- and when  
4 conflicts come up how they're processing it. And -- and if  
5 there is any negativity that's going on in text messages that  
6 even over six months, this was be -- this was when they were  
7 getting along. Okay. And well, the -- let's say May and June  
8 there was still contact. And then we would -- then you would  
9 expect like you know, you -- sometimes you get like things when  
10 all of a sudden there's no contact and I'm glad you're not with  
11 that bastard or something like that.

12       Q     I -- I understand that, but I'm just saying --

13       A     And we didn't have any of that.

14       Q     I -- I got that.

15       A     Yeah.

16       Q     But I'm just saying this was not one -- there were --  
17 there -- during this period of time, that six month period,  
18 there were 75, 90 day gaps in contact. You understand that,  
19 right?

20       A     Yeah, I understand that, but --

21       Q     Okay.

22       A     -- you're -- you're still going to --

23       Q     So --

24       A     -- get -- you're going to still get --

1 Q -- all I'm asking is would you agree that it was --  
2 although it may have given you some insight, it didn't give you  
3 as much insight as it might have in another case where there  
4 was constant enmeshment.

5 A Well, the -- let me just say something. The constant  
6 enmeshment would not -- was not seen in the text messages  
7 because they were still battling with things and you would  
8 think that if she wanted to influence her daughter, maybe she  
9 was processing with her daughter what the court case was and  
10 everything --

11 Q There was no court case at that point.

12 A Well, I mean, there was -- wasn't the -- when did --  
13 when did he file?

14 Q Not till six months -- or months --

15 MR. SMITH: No.

16 Q -- later.

17 MR. SMITH: That's just not correct. The --

18 THE WITNESS: Well, actually --

19 MR. SMITH: -- record --

20 THE WITNESS: -- I got involved --

21 MR. SMITH: -- that --

22 THE COURT: No.

23 MR. SMITH: -- that misstates --

24 THE WITNESS: -- in January.



1 THE COURT: Hang on.

2 MR. SMITH: -- the facts --

3 THE COURT: State --

4 MR. SMITH: -- it was --

5 THE COURT: -- state the evidentiary objection.

6 MR. SMITH: The -- it misstates --

7 THE WITNESS: In November.

8 MR. SMITH: -- the record of the case. The -- the  
9 action was filed in August of 2015.

10 THE WITNESS: Yeah.

11 MR. KAINEN: We didn't get to court until something  
12 like November I believe it was.

13 THE WITNESS: And so I had --

14 BY MR. KAINEN:

15 Q So --

16 A I had --

17 Q -- and you were involved --

18 A I had like --

19 Q -- shortly --

20 A -- probably from April to January.

21 Q You indicated that you had from -- from January going  
22 back --

23 A Back.

24 MR. SMITH: To March --

1 A April.

2 MR. SMITH: -- actually.

3 Q To March.

4 A Well, 15 --

5 Q You said --

6 A Yeah, it may have been March. Okay. Roughly in that  
7 time, whatever six months was.

8 Q Okay.

9 A Whatever --

10 Q So that --

11 A -- six months.

12 Q -- would have been June -- June through whatever it  
13 was --

14 A Yeah.

15 Q -- which was during the period of time that there was  
16 very little contact going on between them.

17 A Okay.

18 Q I -- and any --

19 A I --

20 Q -- all I'm asking is --

21 A I got you. I understand the question.

22 Q The question is really a simple question. In other  
23 words, would it -- would that examination be more meaningful if  
24 there was regular interaction as opposed to where he just

1 wasn't the focal point of their lives, because they had gone on  
2 without them.

3 A Well, listen. Let me just say something though. The  
4 conflict if I remember --

5 Q Yeah.

6 A -- was in like it was in July, I think, right?  
7 Wasn't it in July?

8 Q July was the long absence of the vacation where --

9 A Is --

10 Q -- there was -- where there was --

11 A Right, that's -- that's --

12 Q 70 -- and let me tell you -- there was 76 days where  
13 he didn't see her.

14 A Precisely.

15 Q So there's no conflict, he's complaining, you know,  
16 to -- to his lawyer and eventually he comes to court to  
17 complain about it, but that's what happened. I mean, that's  
18 the reality. There isn't like he's like saying, you know,  
19 please, please, please, or anything like that.

20 A Right. So she rejects her father and we get -- we  
21 get --

22 Q No.

23 A -- this --

24 THE COURT: Okay.

1           A     She rejects her father. Okay. So we get the  
2 snippets then of communication between mother and daughter  
3 before the rejection and then during the rejection and after  
4 rejection. Okay. And so when I looked at that, I was not  
5 seeing like, you know, this --

6           Q     Okay. So the --

7           A     -- this --

8           Q     -- answer is it makes no difference in this case --

9           A     Well, I mean --

10          Q     -- just as insightful as it might be in any other  
11 case.

12               MR. SMITH: Can he just --

13          A     It -- it could be helpful.

14               MR. SMITH: -- answer a question --

15          A     It could be helpful.

16               MR. SMITH: -- without Mr. Kainen interrupting him?

17               THE COURT: Well, I -- I need -- we need to wrap up,  
18 because --

19               THE WITNESS: Okay.

20               THE COURT: -- the time is dwindling and I need to  
21 have Brooke come in.

22               MR. KAINEN: So are -- do I have to stop and that's

23 --

24               THE COURT: Well, do you have any -- any additional

1 questions?

2 MR. KAINEN: I do.

3 THE COURT: Time wise --

4 MR. KAINEN: And I know -- I think I've got three,  
5 five minutes, but, you know --

6 THE COURT: Well, let's -- let's finish up then.  
7 Let's wrap it up.

8 BY MR. KAINEN:

9 Q All right. In terms of what you talked about what  
10 Vivian could have done, you heard about maybe a phone and a car  
11 were taken away, is that what your -- and those were  
12 appropriate things you thought, correct?

13 A Yeah, it seemed like it -- it occurred after the  
14 court date.

15 Q Right.

16 A Yeah.

17 Q So are you aware that after the phone was taken away,  
18 a brand new iPhone was purchased for her?

19 A I don't recall --

20 Q Okay. Are you --

21 A -- that.

22 Q -- aware that after the car was taken away shortly  
23 after court, right --

24 A Uh-huh (affirmative).

1 Q -- that a brand new car was purchased for her?

2 A No.

3 Q Okay. 2015 Toyota Avalon. Beautiful car.

4 A Okay.

5 Q I mean --

6 A It's (indiscernible - simultaneous speech).

7 Q -- again, does that now -- it -- it's one thing to  
8 give -- to tell you oh, well, I took away the phone and the  
9 car, but taking away a phone for a day and then buying a new  
10 iPhone, taking away a car for two or three days and then buy a  
11 new car --

12 MR. SMITH: It -- it --

13 Q -- would it be fair to say that sometimes just giving  
14 lip service to the idea of well, I did these things and then to  
15 -- to cause you to come to a conclusion, well, look, she's  
16 exercising appropriate --

17 A Yeah.

18 Q -- you know, she's trying, that may give a -- a  
19 misimpression.

20 A It could be.

21 Q If you found out that a -- truly a 2015 Toyota Avalon  
22 was purchased during this process, might that cause you to  
23 believe she wasn't doing everything could -- could to support  
24 this?

1 A I -- I'd want to ask her questions about it, yeah.

2 Q The same thing with the iPhone?

3 A Sure.

4 Q Okay. You indicated that when you talked to Vivian,  
5 she was ambivalent about the relationship with Kirk, you know,  
6 in other words, that she needed -- Kirk needed to have a  
7 relationship, that she was ambivalent about it, she wasn't  
8 exercising or doing anything to thwart it.

9 A Right.

10 Q And that was positive to you, correct?

11 A Well, on the surface it didn't seem like she was  
12 trying to thwart it, right.

13 Q Are you aware that shortly after that she filed a  
14 motion for primary physical custody?

15 A In terms of after January?

16 Q Yeah.

17 A No.

18 Q Okay. That might have an -- an impression on -- it  
19 might have -- it might --

20 MR. SMITH: And -- and --

21 Q -- cloud --

22 MR. SMITH: -- except that --

23 Q -- cause you to have a -- a -- perhaps a different  
24 impression.

1 MR. SMITH: Except that it does -- it -- it's --

2 MR. KAINEN: I'm sorry, this is not --

3 MR. SMITH: -- procedurally --

4 MR. KAINEN: -- this is not a --

5 MR. SMITH: -- defective.

6 MR. KAINEN: This is --

7 MR. SMITH: It's --

8 MR. KAINEN: -- not a --

9 MR. SMITH: you can't --

10 MR. KAINEN: -- you've not dis -- proper --

11 MR. SMITH: -- just say anything.

12 MR. KAINEN: -- objection.

13 THE COURT: What's the --

14 MR. SMITH: The record --

15 THE COURT: What's the evidentiary objection?

16 MR. SMITH: The objection is that it misstates the  
17 record of this case. The -- the -- it just misstates the  
18 record of the case.

19 THE COURT: Overruled.

20 MR. SMITH: The date isn't January 2015.

21 THE COURT: Overruled.

22 BY MR. KAINEN:

23 Q Do you believe that Kirk's efforts to heal the  
24 relationship with Brooke are sincere or do you believe his



1 agenda is to somehow as -- as Mr. Smith suggested just to prove  
2 he's right and Brooke is simply collateral damage to it?

3 A I -- I don't think -- I don't see him as -- as having  
4 Brooke be collateral damage. I -- I saw the guy trying to  
5 genuinely trying to fix his relationship with his daughter. We  
6 may disagree on what some of the dynamics are, but I thought he  
7 was genuine. When he called me, he was -- you know, and I --  
8 you know, let me just end it that way. I thought he genuine,  
9 yeah.

10 Q Thank you.

11 A Okay.

12 MR. SMITH: The -- one question.

13 RECROSS EXAMINATION

14 BY MR. SMITH:

15 Q Are you under the impression today from the questions  
16 that were asked of you that there is an order that allows the  
17 children to change their custodial relationship with the  
18 parents at 14 or any other age?

19 A I don't think I am aware of that.

20 Q Okay. Are -- there was this mention of teenage  
21 discretion. What is your understanding of the teenage  
22 discretion that was asked of you?

23 A My understanding is -- I know what teenage discretion  
24 is. I don't think there was an order for that, but I'm not

1 sure. And -- and I heard from her, she said -- she discussed  
2 -- Ms. -- Ms. Harrison discussed her concept of how she was  
3 trying to help her daughter cope and push it down the line.

4 Q So -- so as a result of the fact, you're not really  
5 in an -- in a position as to opine as to the effect of a  
6 teenage provision that was contained in an order because you  
7 haven't seen it or --

8 A I -- if -- if I --

9 Q -- or don't remember it?

10 A -- saw it, it was a long time ago.

11 Q Okay.

12 A And --

13 Q All right.

14 A -- I don't recall it precisely.

15 MR. SMITH: Very good. Thank you.

16 THE COURT: Okay.

17 MR. SMITH: That's it.

18 THE COURT: Okay. You may step down.

19 THE WITNESS: Okay.

20 THE COURT: Thank you for your appearance, Dr.

21 Paglini.

22 THE WITNESS: Do you want --

23 THE COURT: Yes, I would -- let's have a copy.

24 THE WITNESS: A -- can I just tell you what it

1 evidence -- it's -- it's just basically a one week 90 minute  
2 father-daughter, the second week the four block. We kind of  
3 can repeat that and Mom needs to be involved and Dr. Ali wants  
4 that to happen as well as Rylee if it's necessary. And this  
5 has to be mandatory with the fu -- everything, but nothing can  
6 be shifted and I don't -- I mean, it's -- we don't think it --  
7 I mean, if -- if she's on a spring break and you want to  
8 intensify therapy, we're fine with that, because she does have  
9 spring break coming up I think in March or April.

10 But we don't think there should be any -- she doesn't  
11 have the -- she's resistant to -- to more time because of her  
12 schedule. And she wanted to do Skype therapy sessions and Dr.  
13 Ali didn't think that was a great idea and that's where he came  
14 up with a -- the second week we talked about the four hour  
15 block of time, that they were doing things together and it's  
16 mandatory process with the therapist.

17 MR. KAINEN: I'm sorry, I do have one more question.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. KAINEN:

20 Q Do you understand that the representation from  
21 Counsel and from Brooke is that this semester is her light  
22 schedule, she has nothing going on, that's why we can do all  
23 this? So there's --

24 A Yeah.

1 Q There shouldn't be -- should be very little impact in  
2 terms of her grueling schedule that should happen --

3 A Yeah, and I'm -- and I'm telling you what --

4 MR. HARRISON: Her ACT prep.

5 Q Yeah.

6 A What's that?

7 Q ACT prep is done, the testing is done.

8 A Right.

9 Q The --

10 A She should be accepted in colleges and --

11 Q Yeah.

12 A Yeah.

13 Q The --

14 A Yeah.

15 Q The class schedule is light, you know, she's got  
16 bigger than five hour gaps in a --

17 A I am -- I am all for additional therapy sessions.

18 Q Okay.

19 A Okay. So I'm -- I'm just telling you what she had  
20 processed with Dr. Ali. Okay. And -- so if you can do more  
21 intensive therapy on her Spring Break which of course she  
22 should have more time with that, I am all in favor of that.

23 THE COURT: So do you -- is it fair to characterize  
24 this as being a minimum amount that you're --

1 THE WITNESS: If -- yes, yes.

2 THE COURT: All right.

3 THE WITNESS: Okay.

4 THE COURT: Okay.

5 THE WITNESS: All right. Thank you.

6 THE COURT: I appreciate you being here.

7 THE WITNESS: All right.

8 THE COURT: Thank you, Dr. Paglini.

9 THE WITNESS: I'm going to give this to -- I'll give  
10 this to this gentleman here.

11 THE COURT: Well, lay -- yeah, let's -- if --

12 MR. SMITH: Perfect.

13 THE COURT: -- if one side's going to handle it,  
14 let's make copies for both sides.

15 MR. SMITH: That would be great.

16 THE WITNESS: Good luck reading my writing. Okay.

17 MR. SMITH: So is Dr. Paglini going to stay in the  
18 courtroom?

19 THE COURT: It's up to -- is there any objection?

20 MR. SMITH: Well, it's he -- it's -- he's their  
21 witness -- it's the Court's witness, actually.

22 MR. KAINEN: I agree with you. He's the Court's  
23 witness. I don't have any objection.

24 THE COURT: Okay.

1 THE WITNESS: Is there any purpose?

2 MR. KAINEN: And you should remember when it comes to  
3 paying for his services that he's not just ours.

4 THE COURT: Well, would -- do you see a benefit to  
5 Dr. Paglini remaining while Brooke is here?

6 MR. SMITH: I do.

7 THE COURT: Would that be a source of support and --

8 MR. SMITH: I don't -- I just think it might be  
9 helpful --

10 THE COURT: Are you --

11 MR. SMITH: -- for him --

12 THE COURT: Are you able to --

13 MR. SMITH: -- to --

14 THE COURT: I have a 5:30, so I have to --

15 MR. SMITH: Well --

16 THE COURT: -- cancel my 5:30.

17 MR. SMITH: All right. Well, that -- that's fine.

18 THE COURT: No.

19 MR. SMITH: Yeah.

20 THE COURT: Well, go --

21 THE WITNESS: It's okay?

22 THE COURT: -- go ahead.

23 THE WITNESS: Okay. All right.

24 MR. SMITH: Thank you, Doctor.

1 THE COURT: You're -- you're excused.

2 THE WITNESS: And -- I mean, I'll stay if you need  
3 me, but I have to -- I have to --

4 MR. SMITH: Thank you, Dr. Paglini

5 THE WITNESS: -- make a phone call.

6 THE COURT: That's fine. No.

7 MR. SMITH: I -- I didn't know you had a 5:30.

8 THE WITNESS: That's all right. That's all right.

9 THE COURT: And then as far as the protocol -- thank  
10 you. Thank you.

11 THE COURT: I know -- Mr. Smith, you had -- you had  
12 indicated that your preference was to have the parties excused  
13 during --

14 MR. SMITH: Yes.

15 THE COURT: -- the period of the examination. Is  
16 there any objection to that protocol being in place on  
17 Plaintiff's side?

18 MR. KAINEN: I don't know that I have an opinion one  
19 way or the other, so I guess --

20 THE COURT: That would be my preference I think to  
21 minimize the -- the stress that -- that Brooke is under. And  
22 that's -- that'll be my directive that both -- both Mom and Dad  
23 are to wait outside.

24 MR. SMITH: Very good.

1 THE COURT: And -- and I recognize it's my  
2 understandings from the discussions we've had that --

3 MR. KAINEN: Well, why don't we put them in the  
4 anterooms or whatever so that way they're not having to -- it's  
5 not clear that they're being excluded and --

6 THE COURT: That's fine.

7 MR. SMITH: That's fine.

8 THE COURT: That's fine. Did Mr. Harrison need to  
9 use the restroom?

10 MR. KAINEN: (Indiscernible - simultaneous speech)  
11 with Dr. Paglini. I was just trying --

12 THE COURT: Oh, okay.

13 MR. KAINEN: -- not to. I -- I may be wrong. Did he  
14 go out?

15 THE COURT: Did he go out?

16 MR. KAINEN: Did he go out? Okay. Then he's gone  
17 around the corner then, so I'm assuming that --

18 THE COURT: Okay.

19 MR. KAINEN: -- Brooke would come in, I'll make sure  
20 -- I'll make sure Kirk doesn't take that --

21 THE COURT: He knows that he just goes into --

22 MR. KAINEN: Just right in the anteroom.

23 THE COURT: -- the other anteroom.

24 MR. KAINEN: Just go down.



1 THE COURT: And -- and then as -- as far as the  
2 order, because I know Mr. Harrison's desire was not to even  
3 have Brooke testify.

4 MR. KAINEN: The order?

5 THE COURT: Or the -- the -- what you have indicated  
6 was that it was Mr. Harrison's desire not to have Brooke  
7 testify.

8 MR. KAINEN: Yeah.

9 THE COURT: So my understanding is this is really --  
10 Brooke is testifying as a witness for the Defendant, so I would  
11 have Mr. Smith begin.

12 MR. KAINEN: There's -- there's going to be -- he's  
13 going to begin and he's going to end.

14 THE COURT: You're not going to have any questions?

15 MR. KAINEN: I -- I will tell you this is --

16 THE COURT: Okay.

17 MR. KAINEN: As a matter of principle, I will not be  
18 a part of this. I mean, I'm here because I'm attending and I'm  
19 -- I'm his lawyer and I have to sit here. I've done this one  
20 other time. I told you Judge Bob Luke --

21 THE COURT: Right.

22 MR. KAINEN: -- called the child when he was counsel.

23 THE COURT: Right.

24 MR. KAINEN: Hardcastle ordered it that it could

1 happen and I'm not going to -- I -- I just -- I -- on --

2 THE COURT: Well --

3 MR. KAINEN: -- principle, I think it's wrong and I'm  
4 not going to be a part of it.

5 THE COURT: Well --

6 MR. SMITH: Okay. Well, if Mr. Harrison wants to  
7 agree that we're not going to send her to a camp in which there  
8 is going to be a request for a 60 day, that he's not going to  
9 request 202 days so that the remainder of the time is spent  
10 with him and he would agree to the outline of the -- Dr.  
11 Paglini's report or Dr. Paglini and Dr. Ali's recommendation,  
12 then -- then the only thing there is left to argue is  
13 attorney's fees. So if he wants to --

14 MR. KAINEN: Could we go off the record for a second?

15 THE COURT: Yeah, let's go.

16 (COURT RECESSED AT 16:46 AND RESUMED AT 17:45)

17 MR. SMITH: What, you still have a --

18 THE COURT: So let's -- let's --

19 MR. SMITH: -- pretty issue with it or --

20 THE COURT: -- bring the -- the parties back in.

21 MR. SMITH: What's that?

22 THE COURT: Let's bring the parties back in. I think  
23 -- I think John may be getting here.

24 (PAUSE)

1 THE COURT: All right. And I indicated to Counsel  
2 previously, here's what I'm inclined to do with respect to the  
3 motion in regards to the teenage discretion provision. I am  
4 going to take that under advisement and issue a -- a written  
5 decision. Our -- our time is -- is well spent and I have staff  
6 I need to -- to relieve.

7 MR. SMITH: I understand.

8 THE COURT: So my direction is -- what I'm looking  
9 for and given the fact that there are some very specific  
10 factual allegations about what happened in the past week with  
11 respect to Rylee is I want the Defe -- an affidavit submitted  
12 on Defendant's behalf with respect to those specific items of  
13 this past week in regards to the teenage discretion provision.  
14 I'm going to -- we're here on February 1st. Any problem  
15 getting to that court -- that to the Court by February 10th?

16 MR. SMITH: It shouldn't be a -- it shouldn't be a  
17 problem.

18 THE COURT: Okay.

19 MR. SMITH: Yeah.

20 THE COURT: So that's what I'm going to be looking  
21 for and then I'm going to issue a written decision, take a look  
22 at the arguments that have been raised in the papers filed by  
23 both parties and issue a written decision.

24 MR. SMITH: Are you're going to reread all the briefs

1 that we filed in regard to this issue? Because that's  
2 basically --

3 THE COURT: I'm going to review it, yeah.

4 MR. SMITH: All right.

5 THE COURT: I'm going to review the record. And it  
6 -- even -- I'm going to reread the entire teenage discretion  
7 provision.

8 MR. SMITH: Okay.

9 THE COURT: But as far as the concluding today's  
10 proceedings and the issues before the Court, Mr. Kainen, is  
11 there anything you wanted to add just to wrap up very briefly?

12 MR. KAINEN: For today you mean?

13 THE COURT: For today, yeah.

14 MR. KAINEN: For today, no, I mean, for today no.

15 THE COURT: Okay. Mr. Smith, anything you want to --

16 MR. SMITH: Technically, we haven't really had a  
17 chance to put on our case. We haven't had -- my -- my -- the  
18 testimony of my client. I'm sure there's much of what has been  
19 presented that she would dispute. And the -- the general  
20 direction of your order Your Honor -- are we on the record?

21 THE COURT: We are.

22 MR. SMITH: Okay. So the general direction of your  
23 order Your Honor was that we were going to try to find out  
24 today what had been the problem associated with the sessions

1 that you had ordered and whether or not there was a cause of  
2 that and whether we can come to that cause and what things that  
3 you can do to foster and preserve the relationship between Kirk  
4 and his daughter.

5           You also addressed the issue of the request for  
6 additional time and the request for a program to be involved  
7 in.

8           So if the Court -- I -- I'm -- there are a number of  
9 things that Mrs. Harrison would like to address in terms of the  
10 factual presentation that underlies at least the last two of  
11 those requests. And so we would like to have the opportunity  
12 to do that.

13           At the same time, our position is that if we're  
14 looking solely for the best interest of Brooke, Dr. Paglini,  
15 Dr. Ali have developed a plan. We now have a commitment by her  
16 to abide by that plan. It would be our position that that  
17 would be the best interest in terms of an order, but if the  
18 Court is contemplating those other aspects, then we would like  
19 to have the opportunity to address those aspects. That won't  
20 effect of course the -- the time frame of Brooke.

21           THE COURT: All right. Mr. Kainen?

22           MR. KAINEN: My take on this is relatively  
23 straightforward. I -- I think I'm -- I know we've communicated  
24 some off the record and --

1 THE COURT: Right.

2 MR. KAINEN: -- some on.

3 THE COURT: Right.

4 MR. KAINEN: I -- this matter isn't concluded in that  
5 Vivian hasn't testified, my client hasn't testified, and those  
6 sort of things. That said, I think a lot rides on what happens  
7 with the minute order you're getting -- or the order you're  
8 getting prepared to issue.

9 So my preference is that we implement immediately at  
10 least on a going forward basis the recommendations that we've  
11 talked about here and reschedule this matter for a point down  
12 the road after your decision on the teenage discretion issue.  
13 And maybe that will be an unnecessary hearing and we will not  
14 go forward.

15 THE COURT: Well, here's -- here's where I'm at. And  
16 -- and I -- and I understand, our -- our testimony has been --  
17 has been limited to Ms. Thorpe, Dr. Ali, Dr. Paglini and  
18 Brooke. And -- and you're right. Both parties have -- have  
19 identified the fact that I've heard from neither party. And  
20 the issues for the Court to determine were somewhat narrow in  
21 scope. And -- and I had for the first time in this case the  
22 opportunity to meet your daughter and -- and you have a  
23 wonderful talented great daughter.

24 MR. HARRISON: She is.

1           THE COURT: She's -- she's absolutely wonderful.  
2 There's a lot to be proud of. Wonderful young lady. And she  
3 does present herself as -- as mature and -- and in some aspects  
4 even though this is not the forum that I would like to meet any  
5 young person, I -- I told you at a hearing or two previously  
6 that there's something about putting a -- a face with a name.  
7 And -- and I -- in every case, I read about children all the  
8 time and you never see -- this is -- it's somewhat -- somewhat  
9 a little abstract, but actually see the child and not that --  
10 again I'm welcoming that and we -- we had lengthy discussions  
11 about putting up a stop sign and not even up to -- after 5:00  
12 o'clock saying can we -- can we really avoid this and do we  
13 really need to go down that path.

14           I -- I believe Brooke understands that both her mom  
15 and dad love her and I believe she loves both Mom and Dad. And  
16 -- and questions were asked in terms of the -- the  
17 recommendations of Dr. Ali and that is -- that is what I'm  
18 going to order in terms of having that implemented and that --  
19 that schedule in terms of week one, 90 minute session, week  
20 two, quality time, a four hour block of time with Dad doing  
21 something that they enjoy. Questions were asked about what do  
22 you enjoy and --

23           MR. SMITH: Movies and food.

24           THE COURT: Movies and food.

1 MR. SMITH: I'm just giving you a hint.

2 THE COURT: Movies and --

3 MR. SMITH: That's all.

4 THE COURT: -- food.

5 MR. SMITH: That's all.

6 THE COURT: Yeah, and -- and which is not a bad  
7 thing. And that's really what I'm inclined to do at this point  
8 in time. I'm -- I'm not -- and part of the Court's authority  
9 obviously is to control my calendar and enter -- I repeatedly  
10 said look, I -- I want to hear -- ultimately at the end of the  
11 day I -- I want to hear from Brooke and that's even more  
12 significant for me than hearing from Plaintiff or Defendant,  
13 because I -- what I didn't want to do is -- and we spent a bit  
14 of time going through Dr. Paglini's report which I was into the  
15 record -- record previously and I've had a chance to review for  
16 quite some time.

17 And -- and so I'm not here to regurgitate the past.  
18 I'm trying to look at determining what is in Brooke's best  
19 interest today in the remaining short period of time that we  
20 have for her minority. And -- and questions were posed to her  
21 about her relationship beyond 18 when I have no jurisdiction at  
22 that point. And -- and that's -- that's the concern is this  
23 moving forward and -- and trying to make sure that relationship  
24 exists.



1           And I'm going to review the teenage discretion  
2 provision. I don't know that I'm going to schedule any other  
3 proceedings, but to the extent I am inclined to do so, I'll --  
4 I'll address that in the order. But the order going forward  
5 today is that we're implementing those -- those recommendations  
6 that Dr. Paglini indicated that he had consulted with Dr. Lee  
7 -- Ali on.

8           Part of that too -- and -- and Brooke indicated that  
9 she's committed to following the schedule that had previously  
10 been ordered. I know there's been some frustration expressed  
11 about times and -- and amount -- the amount of time she's  
12 actually spending at home and -- and from her perspective she  
13 acknowledges that it may not be a lot of time at Dad's home,  
14 but she also said the same thing about the amount of time she's  
15 actually with Mom one-on-one as opposed to at an activity or in  
16 her bedroom working on homework.

17           The -- the bottom line for me is I -- I did receive  
18 at least enough of a sense that she understood what the  
19 schedule was and what was required in terms of that schedule  
20 going forward and she intended to follow that schedule, that  
21 she was open to the counseling with Dr. Ali. She has some  
22 reservations about it. I -- I think part of it is the feeling  
23 of everything being forced upon her.

24           MR. SMITH: I think one of --

1 THE COURT: But --

2 MR. SMITH: -- the things she said Your Honor that's  
3 important too for the parties to understand is that she didn't  
4 want to rehash things that had occurred or be criticized. She  
5 wanted to work on positive things toward their relationship. I  
6 think that's a fair statement --

7 THE COURT: Well, she --

8 MR. SMITH: -- which she indicated.

9 THE COURT: -- she did. You know what? And -- and  
10 listen, I -- I think whatever's happened in the past, I -- I  
11 would encourage both sides. With respect to how you move  
12 forward with Brooke, drop it. She's not interested in it.  
13 She's not. It's apparently created some friction not just in  
14 -- in her relationship with Dad, but also with Tawny and -- and  
15 perhaps even Whitney. Drop it. She -- she doesn't -- she's  
16 not interested in that. Just love her. I would encourage you  
17 to leave here today, go out and tell Brooke how much you love  
18 her. Just tell her you love her. And I expressed that to her  
19 because I know how much you love her. Tell her you love her.

20 It's not easy being here. I don't feel -- as much as  
21 I approach this with trepidation that this was overly traumatic  
22 to -- to Brooke. I didn't get that sense. She's 17. And --  
23 and I -- as much as I try and insulate children from this, I  
24 didn't feel like this was an overwhelming experience where she

1 is traumatized for life now because she appeared in -- in  
2 family court. I -- I just didn't get -- and I hope that's not  
3 the case. May -- if I'm wrong, I'm wrong, but I --

4 MR. SMITH: She won't be, Your Honor.

5 THE COURT: -- I'm just --

6 MR. SMITH: I mean, another -- nothing about our --  
7 our presentation was designed to cause her to take a position  
8 that would be contrary to her parents' interest and I think she  
9 knows that.

10 THE COURT: Well, I've -- I've made my order. So the  
11 -- that's going to stand for today. I'll issue a written order  
12 on the teenage discretion and to the extent I feel like there's  
13 -- there is the need for any additional --

14 MR. SMITH: So --

15 THE COURT: -- court proceedings, I'll let you know.

16 MR. SMITH: So you'll issue -- are you going to issue  
17 findings on all of the motions that are before you? Because  
18 there is three as I understand it. I -- well, four -- so  
19 there's three on the part of the Defendant whereas one for the  
20 program we talked about, one for the additional time. And I  
21 believe he's asked for sanctions and attorney's fees as well  
22 and we've definitely asked for sanctions and attorney's fees as  
23 part of our response.

24 THE COURT: Well, I'll address the issue of fees, but

1 I -- as -- as far as the program, I -- I -- and as far as this  
2 Court -- I'm not going to address that in the separate  
3 findings. I'm -- I'm finding today that based on the evidence  
4 that's come in including the testimony of Dr. Paglini and  
5 Brooke's testimony that it would not serve her best interest to  
6 pursue that path, that it would be preferable to pursue the  
7 path that's been outlined in the recommendations that Dr.  
8 Paglini testified about. I know he scratched some notes. I  
9 have a copy. I believe --

10 MR. SMITH: You have a copy?

11 THE COURT: -- both Counsel have a copy.

12 MR. SMITH: You have a copy?

13 THE COURT: I --

14 MR. SMITH: Okay.

15 THE COURT: Yeah, I don't -- but he -- he outlined it  
16 orally. I think that's --

17 MR. SMITH: Right.

18 THE COURT: -- probably better than what --

19 MR. SMITH: We did too.

20 THE COURT: -- he wrote down. But I -- and -- and  
21 ultimately in looking at this from making a decision of what I  
22 believe is in -- in Brooke's best interest that that's  
23 basically my finding.

24 MR. SMITH: Sometimes I forget that's why we're here.

1           THE COURT: So I'll issue a separate order. My order  
2 is going to be really limited to the issue raised by motion on  
3 the teenage discretion provision and the issue of fees.

4           MR. SMITH: Do you need an order arising --

5           THE COURT: I would.

6           MR. SMITH: -- from today's hearing?

7           THE COURT: I do.

8           MR. SMITH: Okay.

9           THE COURT: I do.

10          MR. SMITH: So are you going to direct someone to  
11 prepare that or are you --

12          THE COURT: Any --

13          MR. SMITH: -- going to --

14          THE COURT: Any --

15          MR. SMITH: -- prepare that order?

16          THE COURT: Well, you had me prepare a prior order.

17          MR. SMITH: I would like you to prepare it, but I  
18 don't want to put -- I don't want to saddle you with the burden  
19 of doing that all the time.

20          THE COURT: I'd -- I'd rather one of you prepare it.  
21 I know that's always been a challenge, but I'd rather --

22          MR. KAINEN: Yeah, honestly, I -- I think we'd both  
23 love to dump that on you because --

24          THE COURT: I know.

1 MR. KAINEN: -- we're going to --

2 THE COURT: I know.

3 MR. KAINEN: -- fight about it. And -- and candidly,  
4 I'm -- I'm not even -- I mean, as -- as I understand what  
5 you're saying is look, even though we're not done with the  
6 trial, I've heard enough so we're just calling it. I've had  
7 enough to make decisions, is that basically what --

8 THE COURT: I'm -- I'm fine -- I -- I have enough to  
9 render a decision on the issues that are before me without  
10 hearing any additional testimony. This has been set previously  
11 for a full day. It was set out in March. We -- we've now  
12 conducted it in January and February 1st.

13 MR. SMITH: Okay. So what you just indicated as part  
14 of the order the findings or recommendations of Ali are part of  
15 the order, the --

16 THE COURT: Well, Ali and Paglini together.

17 MR. SMITH: Ali and Paglini, yes. And the -- and the  
18 commitment by the -- by Brooke to keep the schedule as the  
19 presumption is part of the order, that's the order, correct?

20 THE COURT: Correct.

21 MR. SMITH: Okay.

22 THE COURT: Correct.

23 MR. SMITH: All right. And then all the other issues  
24 will be addressed by a separate order, am I right?

1 MR. KAINEN: And so this is -- I mean, I'm not trying  
2 to be obtuse here.

3 THE COURT: Right.

4 MR. KAINEN: I -- I truly don't understand what we're  
5 doing. I mean, I -- it's like --

6 MR. SMITH: Okay.

7 MR. KAINEN: I realize we're going forward with this  
8 --

9 THE COURT: Right.

10 MR. KAINEN: -- and that's kind -- and we're not  
11 coming back -- at least you're not going to --

12 THE COURT: I'm not setting anything.

13 MR. KAINEN: Right. In other words -- and -- and I'm  
14 just -- like going -- like I'll go on record, like I'm not done  
15 presenting my case. My client hasn't testified. So I -- I  
16 realize you have -- you get the black robe and you get the  
17 ability to say hey, we're done.

18 THE COURT: Right.

19 MR. KAINEN: I've heard enough --

20 THE COURT: I -- I have the authority to control my  
21 calendar.

22 MR. KAINEN: Right. I -- I know the statute. I --  
23 so --

24 THE COURT: Yeah.

1 MR. KAINEN: -- so I guess you --

2 MR. SMITH: I mean --

3 MR. KAINEN: -- can do -- what you can do -- so why  
4 don't --

5 THE COURT: Well --

6 MR. KAINEN: I think it makes sense for you to issue  
7 the order then, because I -- I don't --

8 MR. SMITH: Your Honor, if -- if Mr. Kainen is going  
9 to insist on an order, I tried to do it in a very simple way,  
10 but if we're going to argue about a --

11 MR. KAINEN: No.

12 MR. SMITH: -- argue about it --

13 MR. KAINEN: I wasn't trying to. I'm trying to -- I  
14 didn't under -- I thought you were --

15 MR. SMITH: I was just --

16 THE COURT: Well, let --

17 MR. SMITH: -- stating what I thought the order was  
18 so --

19 THE COURT: Let -- let --

20 MR. SMITH: -- that I can just write it in.

21 THE COURT: Well, let me do -- let me do this for  
22 purposes of making a record.

23 MR. KAINEN: Yeah.

24 THE COURT: What is your offer of proof or what



1 additional information that I haven't already received would  
2 come in through any additional testimony and I'll have Mr.  
3 Smith --

4 MR. KAINEN: My client --

5 THE COURT: -- state the same.

6 MR. KAINEN: I mean, I could go through my client's  
7 outline, but it would take me, you know, 10 or 15 minutes to go  
8 through the issues I think would be covered in my client's  
9 outline regarding factuals -- you know, the factual history  
10 which we've touched on at various points in questions in --  
11 that are presented in hypotheticals and things like that and  
12 there were was offering the affirmative evidence of each of  
13 those items would be primarily what my client would testify to.

14 He would also testify frankly that some of the things  
15 that came up that he hasn't heard about because he didn't hear  
16 Brooke's --

17 THE COURT: Well --

18 MR. KAINEN: -- testimony. And so I think --

19 THE COURT: What --

20 MR. KAINEN: -- some of that --

21 THE COURT: What would be the objective though of  
22 that additional testimony?

23 MR. KAINEN: And -- and the answer is -- that's why I  
24 said the answer is I don't know because first of all, I think

1 some of the --

2 THE COURT: But -- but that -- therein lies my  
3 question for both sides is why do I need it? And give -- give  
4 -- is there an objective I'm missing apart from saying I'm --  
5 I'm adopting these recommendations for Dr. Paglini and Dr. Ali?  
6 I -- I can understand if you're saying well, we disagree with  
7 those recommendations because our objective is X, Y, or Z.

8 MR. KAINEN: I think --

9 THE COURT: Tell me --

10 MR. KAINEN: And I think the difference is is that I  
11 looked at these as you know what, we might not be able to get  
12 back in to see you for another three weeks or something like  
13 that to be able to finish the case. And so I don't want to  
14 lose any valuable time. And so if this is what we start with  
15 and, you know, if we get back here in there, four, five weeks  
16 and you know, this is going swimmingly, great, we'll know that  
17 when we come back.

18 If it's been blown off like everything else we're  
19 going to know that I didn't want to abandon the relief I was  
20 requesting, but I could report back to you that hey, this  
21 worked or it didn't work and things like that, that's what I  
22 was looking at these recommendations for as a way to -- to  
23 hopefully -- and that's why I said, and then assuming you  
24 issued a -- an order on the teenage discretion issue and that

1 took care of some of the other fear and trepidation, then maybe  
2 we just say look, you know what, okay, we've had a -- we've had  
3 -- we've had enough, we don't need to go forward, this is  
4 working great, teenage discretion is -- is history, we're not  
5 going to have that problem. And so we don't need to go  
6 forward. That's my real -- my hope on where this would go, but  
7 the idea of just saying okay, well, you know, see you.

8 THE COURT: Well, no.

9 MR. KAINEN: And -- and that's the part that's --

10 THE COURT: Well --

11 MR. KAINEN: -- throwing me.

12 THE COURT: And well --

13 MR. KAINEN: So I'm not trying to be difficult --

14 THE COURT: Well --

15 MR. KAINEN: -- I'm just trying to --

16 THE COURT: -- and -- and one thing I may consider  
17 doing --

18 MR. KAINEN: Yeah.

19 THE COURT: -- and -- and maybe this is exactly what  
20 you're asking me and I'm not -- I'm not --

21 MR. KAINEN: Okay.

22 THE COURT: -- putting the two together, I'm -- I'm  
23 not inclined based on what I've heard to set another hearing to  
24 take on additional evidence, but it may make sense for this

1 Court to set some type of a status check to inquire about how  
2 the counseling is going.

3 Is -- is it being followed? Because I think part of  
4 the examination and I know one of the offers that Mr. Smith  
5 made in -- in stating that no, we do want Brooke, because we  
6 want -- we want to see if she understands what is expected of  
7 her in terms of participating in the counseling. And -- and so  
8 I -- I think that was important for her to understand this is  
9 what the doctors recommended --

10 MR. SMITH: Mrs. --

11 THE COURT: -- needs to --

12 MR. SMITH: I just want to say, Mrs. Harrison got a  
13 -- a call for the dance studio and she wants to make sure  
14 there's nothing with (indiscernible).

15 THE COURT: Oh, okay. So --

16 MR. KAINEN: And -- and I --

17 THE COURT: So I -- I think -- I think part of that  
18 somewhat perhaps my hope is reenforced with Brooke okay, this  
19 is the program and -- and this is kind of what the --

20 MR. KAINEN: And my hope --

21 THE COURT: -- expectation is.

22 MR. KAINEN: My hope is that your -- that that's  
23 exactly how it comes out. My fear is that I -- if it doesn't,  
24 then I've lost the right to put on the rest of my case if it's

1 necessary. That's my concern.

2 THE COURT: Well, and -- and to that point, I want to  
3 make sure that the order from today references the fact that  
4 that is ordered, that -- that that is to be followed, the week  
5 one 90 minute session, week two four hour block of time,  
6 interacting and doing something together, quality time. And  
7 also part of the order that Dr. Paglini emphasized and I'll  
8 reiterate is that Mom is not a passive observer in that  
9 process, that she fundamentally has a role in making sure this  
10 happens --

11 MR. SMITH: Okay.

12 THE COURT: -- and can't simply say well, you need to  
13 set that up with Brooke. She's got to be actively involved in  
14 promoting and picking that up. Now something we also talked  
15 about that I think would be beneficial is Dad picking up Brooke  
16 for these sessions --

17 MR. SMITH: Yeah, and for the --

18 THE COURT: -- and -- and --

19 MR. SMITH: -- and for the block of --

20 THE COURT: -- instead of relying on -- on Brooke  
21 either showing up or even relying on Mom.

22 MR. KAINEN: Yeah, but I think that's fine.

23 THE COURT: And -- and so I think all of that -- I do  
24 want all of that included as part of -- as part of the order,

1 so it's clear it is coming from me. This is the order of the  
2 Court. I'm not just saying well, I hope that everything goes  
3 well with Dr. Paglini and Dr. Ali. I -- I expect it to happen.  
4 So I -- I may -- I may look at this and say let -- let's come  
5 back in -- in at the end of March when we were originally set  
6 for trial, and let's do a status check.

7 MR. SMITH: I think it was March 7th was the -- the  
8 day.

9 THE COURT: Was that the first day of trial?

10 MR. SMITH: I think it was, yeah.

11 THE COURT: Okay.

12 MR. KAINEN: And -- and again, the -- the difference  
13 between where you are and where I am is simply that if  
14 everything works the way we hope it will, then your plan is  
15 fine. If everything doesn't work --

16 THE COURT: If you walk out and --

17 MR. KAINEN: -- and --

18 THE COURT: -- nothing happens --

19 MR. KAINEN: Then I -- it's like, okay, you know --

20 THE COURT: We just wait, yeah. I --

21 MR. KAINEN: I -- I'm -- I'm screwed and I mean --

22 THE COURT: Right.

23 MR. KAINEN: -- and me -- and my client. And so what  
24 -- that's the only reason I'm saying is I would rather set a

1 hearing that we don't have to use than just say well, come back  
2 if it doesn't, just file a new motion, get a new thing, get in  
3 line again, that's my fear.

4 THE COURT: All right.

5 MR. KAINEN: And I think it's -- I think -- given the  
6 history, in other words, I'm hoping against hope it doesn't  
7 happen. I mean, I'll have a heart to heart with my client and  
8 we'll talk about the things that came up. You know, I mean,  
9 obviously this wasn't -- everybody took something different  
10 away in this courtroom -- I think I took something different  
11 away than Rad did. You know, obviously I didn't interact with  
12 her and --

13 THE COURT: Right.

14 MR. KAINEN: -- and so I thought for example we were  
15 going to cover the why didn't you go to all these appointments  
16 with Dr. Ali and that never -- I mean, there were a lot of  
17 things that were -- were left out of this that weren't really  
18 there, but it -- my point is is that I think I heard the same  
19 big picture that you want whether it's wrong or right or  
20 factually based what this child is saying she needs or wants is  
21 kind of the -- probably the takeaway to some degree. And so I  
22 will communicate with that -- about that to my client. I just  
23 don't want to be without recourse if it -- if -- if something  
24 doesn't --

1 MR. SMITH: Well, what recourse? I -- well, let me  
2 just say this that, you know, the offer of proof would just be  
3 to again challenge the factual statements, many of which that  
4 were submitted today in the form of hypothetical questions have  
5 been hashed by this Court so many different times. In fact,  
6 one of the things that I could do is just identify in an  
7 exhibit all of the various places --

8 THE COURT: Well --

9 MR. SMITH: -- and various pleadings in which that  
10 same allegation has been addressed and denied --

11 MR. KAINEN: Okay. Okay.

12 MR. SMITH: -- in so many different places.

13 THE COURT: Well, listen.

14 MR. KAINEN: But this is the wrong way --

15 MR. SMITH: So I'm just saying --

16 MR. KAINEN: -- you're going.

17 MR. SMITH: -- I'm just saying --

18 MR. KAINEN: You know --

19 MR. SMITH: -- that the -- the notion that somehow  
20 we're going to keep these proceedings going is the very problem  
21 in this case.

22 THE COURT: Well, that's -- that's part of the reason  
23 --

24 MR. KAINEN: I --



1 THE COURT: -- I don't -- I don't necessarily need to  
2 hear from Mom or Dad, because I -- I think I know what I'm  
3 going to hear.

4 MR. KAINEN: I -- I know and that -- and my --

5 THE COURT: I can write --

6 MR. KAINEN: And listen.

7 THE COURT: -- it out. I can predict it.

8 MR. KAINEN: And my concern is -- bluntly is you're  
9 going to issue an order that says well, you know what, this was  
10 alleged sort of passively, but there's no support for it in the  
11 record.

12 MR. SMITH: No.

13 MR. KAINEN: And so --

14 MR. SMITH: No. No. No.

15 MR. KAINEN: -- I'm going to find X, Y, and Z.

16 THE COURT: No.

17 MR. SMITH: I will agree --

18 MR. KAINEN: And that's my concern is that I'm going  
19 to be -- I'm going to get an order that's going to come at me  
20 that says you know what, Kainen, you didn't put on your case.  
21 You know, I think Harter at one -- Judge Harter at one point  
22 said in an order that I read from -- from somebody else, I  
23 looked at the case afterwards, that, you know, they got an  
24 invitation to come to the race but they never showed up at the

1 -- the start line or whatever. They didn't present enough --

2 THE COURT: Right.

3 MR. KAINEN: -- to move the case forward and advance  
4 it. And what I don't want to do is say, you know, I didn't  
5 come with the evidence and the support.

6 THE COURT: No. No, I -- I don't -- I don't feel --  
7 and then that's my feeling about --

8 MR. SMITH: Well --

9 THE COURT: -- the presentation, so --

10 MR. SMITH: Look, in -- in regard to -- as I  
11 understood the goal for the order that you issued on January  
12 3rd, the notion was to try to fix this situation that wasn't  
13 working. And that was -- my understanding, that was the  
14 process that I used in order to examine. The only witness that  
15 we've presented, and that is Brooke, there was no point in  
16 addressing some of these other allegations because they don't  
17 advance the relationship between the parties.

18 But if I'm going to have to address this notion that  
19 my client is going to be precluded from seeing her because of  
20 some nefarious acts that she did in alienating her, then yes,  
21 we're going --

22 THE COURT: Well --

23 MR. SMITH: -- to have to have another hearing. But  
24 I don't -- you don't need to find -- make findings on that to

1 accomplish what the Court had indicated it wanted to accomplish

2 --

3 THE COURT: Right.

4 MR. SMITH: -- by its order. And I just don't think  
5 this process is aided by that. So our position would be that  
6 if the Court wants to make an order that simply says I found  
7 based upon the information from Dr. Paglini, Dr. Ali, and the  
8 statements of Brooke that these are things that would be  
9 helpful to the relationship and that was the goal of my order  
10 without making specific findings on the -- the allegations of  
11 fact that were tendered in -- I -- I suppose in part to -- to  
12 support what you've already -- this indicated you were not  
13 going to order, that is the -- the 90 day relinquishment of any  
14 term -- of time and -- in this program --

15 MR. KAINEN: I -- I --

16 MR. SMITH: -- I just don't understand what the point  
17 would be to having an additional hearing if you're not  
18 intending to make those findings.

19 MR. KAINEN: Well, because there's --

20 MR. SMITH: If you are intending --

21 MR. KAINEN: -- still an issue --

22 MR. SMITH: -- to make those findings --

23 MR. KAINEN: -- of compensatory time that's  
24 theoretically out there or some form of --

1 THE COURT: Right.

2 MR. KAINEN: -- whatever it is. And frankly, call me  
3 Nostradamus again but I suspect there's going to be some issues  
4 of attorney's fees that's going to come up in this case that  
5 we're going to have to defend. So --

6 MR. SMITH: Well, as -- as I understand --

7 THE COURT: Well, listen.

8 MR. SMITH: -- it, the Court's going to address the  
9 issue --

10 THE COURT: Yeah, I'll -- I'm --

11 MR. SMITH: -- in attorney's fees.

12 THE COURT: -- going to address that in separate --  
13 separately. But -- but listen. I -- and I -- and I -- I know  
14 the point --

15 MR. KAINEN: So --

16 THE COURT: -- you're -- I know the point you're  
17 about to make is look, I've been denied 221 days and now I'm  
18 going to have to pay attorney's fees for it. I -- I --

19 MR. SMITH: Well --

20 THE COURT: -- get that.

21 MR. SMITH: -- we don't -- we don't agree that that's  
22 the amount of time --

23 THE COURT: Well --

24 MR. SMITH: -- and --

1 THE COURT: -- no. I'm -- I'm just saying --

2 MR. SMITH: Okay.

3 THE COURT: -- that because that's -- that's what --

4 MR. SMITH: No, and I --

5 THE COURT: -- I've heard.

6 MR. SMITH: -- get it. And I understand the  
7 perspective of -- of the Plaintiff, but the question goes far  
8 beyond that. If we want to brief the issue of attorney's fees  
9 in a specific way based on the evidence that's come out or  
10 evidence that we'll be taking in additional time, and I'm happy  
11 to do that, but Judge, the -- the -- I think everything about  
12 the evidence today when you review it will suggest that we have  
13 tried to make this thing work and my client has tried to make  
14 this thing work and we've asked for Kirk to get involved to  
15 make this thing work. And now we're being told that somehow  
16 even though she didn't do these things, that she should pay for  
17 them, because now we've got tens of thousands of dollars --

18 THE COURT: All right, but listen.

19 MR. SMITH: -- motions that have been filed, motions  
20 that had been withdrawn. I mean --

21 THE COURT: I've indicated what -- what my limited  
22 order is going to entail. So that's what I'm going to do. I'm  
23 going direct Mr. Smith to prepare the order from today on the  
24 --

1 MR. SMITH: All right.

2 THE COURT: -- other aspects, submit to Mr. Kainen  
3 for --

4 MR. SMITH: It'll be --

5 THE COURT: -- signature.

6 MR. SMITH: I will direct the person preparing that  
7 order to go to that little clip, and that'll be the three  
8 things we've talked about, the things would be the -- the --  
9 Paglini and recommendations, the fact that they're going to  
10 follow the schedule, and that the fact that you'll make  
11 additional orders. That's it.

12 THE COURT: Right. Well --

13 MR. SMITH: Okay.

14 THE COURT: -- and it should also include Mom is to  
15 be --

16 MR. SMITH: And actively --

17 MR. KAINEN: Active.

18 MR. SMITH: -- involved.

19 THE COURT: -- talked about --

20 MR. KAINEN: Proactive.

21 MR. SMITH: Very good.

22 THE COURT: -- actively involved, Dad can -- can pick  
23 up and --

24 MR. KAINEN: Okay. If those are in the --

1 THE COURT: -- so --

2 MR. KAINEN: If those are all there and that's what  
3 the order is and --

4 THE COURT: Right.

5 MR. KAINEN: -- there's nothing else, then there -- I  
6 don't think we'll have a problem and you can draft and I'll  
7 sign off.

8 THE COURT: Okay.

9 MR. SMITH: Thank you.

10 THE COURT: All right.

11 MR. SMITH: I hope that's true. All right. Thank  
12 you, Your Honor.

13 THE COURT: All right. Thank you for your  
14 appearances.

15 MR. HARRISON: Your Honor --

16 (PROCEEDINGS CONCLUDED AT 18:12:24)

17 \* \* \* \* \*

18 ATTEST: I do hereby certify that I have truly and  
19 correctly transcribed the digital proceedings in the above-  
20 entitled case to the best of my ability.

21

22

23

24

*Adrian Medrano*

\_\_\_\_\_  
Adrian N. Medrano





**E-SERVED**

JUL 25 2017

A.App. 3641  
Electronically Filed  
7/24/2017 3:08 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

CASE NO. D-11-443611-D

DEPT NO. Q

NOTICE OF ENTRY OF  
ORDER FROM EVIDENTIARY HEARINGS ON  
JANUARY 18, 2017 AND FEBRUARY 1, 2017

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017 has been entered in the above-entitled matter, a copy of which is attached hereto. I hereby certify that on the above file stamped date, I caused a copy of this Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017 to be:

☒ E-Served pursuant to NEFCR 9 on the following attorneys:

Edward Kainen, Esq.  
Thomas Standish, Esq.

Radford J. Smith, Esq.  
Gary Silverman, Esq.

/s/ Kimberly Weiss

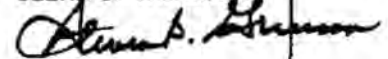
Kimberly Weiss  
Judicial Executive Assistant  
Department Q

RYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
LAS VEGAS, NEVADA 89101

A.App. 3641

Electronically Filed  
7/24/2017 12:21 PM  
Steven D. Grierson  
CLERK OF THE COURT



1  
2 ORDR

3  
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6  
7 KIRK ROSS HARRISON, )

8 Plaintiff, )

9 v. )

CASE NO. D-11-443611-D

DEPT NO. Q

10  
11 VIVIAN MARIE LEE HARRISON, )

12 Defendant. )

Date of Hearings: 1/8/17 & 2/1/17

Time of Hearings: 10:00 a.m.

13  
14 ORDER FROM EVIDENTIARY HEARINGS ON  
15 JANUARY 18, 2017 AND FEBRUARY 1, 2017

16 The following motions having come on for an Evidentiary Hearing on January  
17 18, 2017, and February 1, 2017: (1) Plaintiff's Motion for Reunification Therapy for  
18 Minor Children and Father (Jul. 26, 2016); (2) Plaintiff's Motion for Reconsideration,  
19 or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings  
20 or Make Additional Findings, and Motion to Alter, Amend, and Clarify Order (Aug.  
21 30, 2016); (3) Plaintiff's Motion for an Order to Show Cause Why Defendant Should  
22 not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the  
23 Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October  
24 1, 2015 (Aug. 30, 2016); (4) Plaintiff's Motion for an Order to Nullify and Void  
25 Expert Report (Sep. 28, 2016); and (5) Plaintiff's Motion for New Expert  
26 Recommendation in lieu of Discovery and Evidentiary Hearing (Dec. 29, 2016).  
27  
28

RYCE C. DUCHONORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
LAS VEGAS, NEVADA 89101

1  
2 Plaintiff, Kirk Ross Harrison, appeared personally and was represented by Edward L.  
3 Kainen, Esq. Defendant, Vivian Marie Lee Harrison, appeared personally and was  
4 represented by Radford J. Smith, Esq.

5  
6 The Court having reviewed the pleadings and papers on file herein, having heard  
7 the arguments of counsel, and good cause appearing therefor, the Court finds and  
8 Orders as follows:

9  
10 **THE COURT FINDS** that the focus of these proceedings was the  
11 implementation of a plan to strengthen the relationship between the parties' daughter,  
12 Emma Brooke Harrison ("Brooke"), and her father, Kirk Ross Harrison. Brooke was  
13 allowed to testify during the trial notwithstanding Plaintiff's opposition to her  
14 appearance as a witness. Brooke testified that she is committed to and has returned  
15 to the regular custodial schedule. As such, the focus was not on punitive measures, but  
16 to implement a plan to assist Plaintiff and Brooke in their relationship.

17  
18 **THE COURT HEREBY ORDERS** that Dr. Ali and Dr. Paglini's  
19 recommendations shall be implemented. Between now and Brooke's 18th birthday on  
20 June 26, 2017, Plaintiff and Brooke will participate in a 90-minute counseling session  
21 with Dr. Ali every other week. The parties shall equally share the cost of Dr. Ali's fees  
22 for such counseling. Between now and Brook's 18th birthday, each week they do not  
23 have a 90-minute counseling session with Dr. Ali, Plaintiff and Brooke shall spend four  
24 hours of quality time together. Defendant shall not be a passive observer in this  
25 process, and she shall be actively involved to make sure Brooke participates in the  
26 counseling, and spends the four-hour quality time allotted with Plaintiff. Whenever  
27  
28

1  
2 the 90-minute counseling sessions or the four-hour shared quality time activities take  
3 place during Defendant's custodial time with the children, Plaintiff may pick-up Brooke  
4 to transport her to attend the 90-minute counseling sessions and the four-hour shared  
5 quality time activities.  
6

7 **THE COURT FURTHER ORDERS** that Plaintiff's Motion for Reunification  
8 Therapy for Minor Children and Father (Jul. 26, 2016), wherein Brooke, Rylee and  
9 Plaintiff would jointly participate in a four-day reunification program, in which  
10 Defendant would also participate, together with the required 90-day exclusive physical  
11 custody period, is denied.  
12

13 **THE COURT FURTHER ORDERS** that Plaintiff's Motion for  
14 Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to  
15 Amend Findings or Make Additional Findings, and Motion to Alter, Amend, and  
16 Clarify Order (Aug. 30, 2016), is granted as the Court has found it did retain  
17 jurisdiction, as the issues before it are ancillary to the issues then on appeal.  
18

19 **THE COURT FURTHER ORDERS** that Plaintiff's Motion for an Order to  
20 Nullify and Void Expert Report (Sep. 28, 2016), is denied.  
21

22 **THE COURT FURTHER ORDERS** that Plaintiff's Motion for New Expert  
23 Recommendation in lieu of Discovery and Evidentiary Hearing (Dec. 29, 2016), is  
24 denied.  
25

26 **THE COURT FURTHER ORDERS** that between now and June 26, 2017,  
27 Brooke shall fully comply with the joint physical custody schedule agreed to by the  
28 parties and ordered by the Court as set forth in Paragraph 5 of the Stipulation and



1  
2 Order Resolving Parent/Child Issues (Jul. 11, 2012). Defendant shall not be a passive  
3 observer in this process, and she will be responsible to insure that Brooke fully complies  
4 with the custody schedule. According to the custody schedule, Plaintiff is to have  
5 custody of the children "from Wednesday after school, or Wednesday at 9:00 a.m.  
6 when the children are not in school, until Friday after school, or Friday at 9:00 a.m.  
7 when the children are not in school. The parties shall alternate weekends with the  
8 children, from Friday after school, or Friday at 9:00 a.m. when the children are not in  
9 school, until Monday after school, or Monday at 9:00 a.m. when the children are not  
10 in school."  
11

12  
13 **THE COURT FURTHER ORDERS** that Plaintiff's motion regarding teenage  
14 discretion is taken under advisement and the Court will issue a separate Order.  
15 Defendant is to submit an affidavit by February 10, 2017 in response to Plaintiff's very  
16 specific factual allegations about what happened in the past week (prior to February  
17 1, 2017) with respect to Rylee. The affidavit is to be with respect to those specific  
18 items of this past week in regards to the teenage discretion provision. *See Order* (Mar.  
19 15, 2017).  
20  
21

22 **THE COURT FURTHER ORDERS** that, as it relates to the evidentiary  
23 proceedings, each party shall bear their own attorneys' fees and costs. *See Order* (Mar.  
24 15, 2017).  
25

26 **THE COURT FURTHER ORDERS** that the parties are subject to the  
27 provision of NRS 125.510(6) for violation of the Court's Order:  
28

**PENALTY FOR VIOLATION OF ORDER:**

The abduction, concealment or detention of a child in violation of this Order is punishable as a category D felony as provided in NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right to the child who willfully detains, conceals or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

**THE COURT FURTHER ORDERS** that, pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, are applicable to the parties:

Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.

(b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

1  
2 The State of Nevada is the habitual residence of the minor child herein.

3 DATED this 24th day of July, 2017.  
4

5 

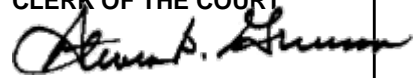
6 BRYCE C. DUCKWORTH  
7 DISTRICT COURT JUDGE  
8 DEPARTMENT Q  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BRYCE C. DUCKWORTH  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q  
LAS VEGAS, NEVADA 89101







1 **SUPP**  
2 EDWARD KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 KAINEN LAW GROUP, PLLC  
5 3303 Novat Street, Suite 200  
6 Las Vegas, Nevada 89129  
7 PH: (702) 823-4900  
8 FX: (702) 823-4488  
9 Service@KainenLawGroup.com  
10 Attorneys for Plaintiff

11 THOMAS J. STANDISH, ESQ.  
12 Nevada Bar No. 1424  
13 STANDISH NAIMI LAW GROUP  
14 1635 Village Center Circle, #180  
15 Las Vegas, Nevada 89134  
16 Telephone (702) 998-9344  
17 Facsimile (702) 998-7460  
18 tjs@standishlaw.com

19 Co-counsel for Plaintiff

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

14 KIRK ROSS HARRISON,

15 Plaintiff,

16 vs.

17 VIVIAN MARIE LEE HARRISON,

18 Defendant.

CASE NO: D-11-443611-D  
DEPT NO: Q

Date of Hearing: N/A  
Time of Hearing: N/A

20 **PLAINTIFF'S SUPPLEMENTAL FILING**

21 COMES NOW, Plaintiff, KIRK ROSS HARRISON, through his attorney,  
22 EDWARD KAINEN, ESQ., of the law firm of KAINEN LAW GROUP, PLLC., and  
23 hereby supplements the record<sup>1</sup> with the following documents to provide a complete and  
24 accurate record for appeal:

- 25 1. Original proposed Order from Evidentiary Hearings on January 18, 2017  
26 and February 1, 2017 (Exhibit 1);  
27  
28

<sup>1</sup> This procedure, of filing proposed (but rejected) Orders, was recommended by Justice James W. Hardesty, in an open forum discussion at the Ely Family Law Conference.

2. Family Court Transmittal Slip Return of Order - Requesting one revision to proposed Order (Exhibit 2) and;
3. Proposed Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017, containing the revisions requested by the Court. (Exhibit 3)

DATED this 24<sup>th</sup> day of August, 2017.

KAINEN LAW GROUP, PLLC

By: 

EDWARD L. KAINEN, ESQ.,  
Nevada Bar No. 5029  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorneys for Plaintiff

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 24<sup>th</sup> day of August, 2017, I caused to be served the *Plaintiff's Supplemental Filing* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and N.E.F.C.R. Rule 9, I caused a true copy thereof to be served via electronic mail to the following e-mail address(es):

Ksmith@radfordsmith.com

Gvarshney@radfordsmith.com

Jhoeft@radfordsmith.com

  
An Employee of  
KAINEN LAW GROUP, PLLC

## **EXHIBIT “1”**

**1 ORDR**

2 EDWARD KAINEN, ESQ.  
 3 Nevada Bar No. 5029  
 KAINEN LAW GROUP, PLLC  
 3303 Novat Street, Suite 200  
 Las Vegas, Nevada 89129  
 4 PH: (702) 823-4900  
 FX: (702) 823-4488  
 5 Service@KainenLawGroup.com  
 Attorneys for Plaintiff

6 THOMAS J. STANDISH, ESQ.  
 7 Nevada Bar No. 1424  
 STANDISH NAIMI LAW GROUP  
 8 1635 Village Center Circle, #180  
 Las Vegas, Nevada 89134  
 9 Telephone (702) 998-9344  
 Facsimile (702) 998-7460  
 10 tjs@standishlaw.com

11 Co-counsel for Plaintiff

**DISTRICT COURT  
 CLARK COUNTY, NEVADA**

**RECEIVED**

APR 21 2017

**FAMILY COURT  
 DEPARTMENT Q**

13 KIRK ROSS HARRISON,

14 Plaintiff,

16 vs.

18 VIVIAN MARIE LEE HARRISON,

19 Defendant.

**CASE NO: D-11-443611-D  
 DEPT NO: Q**

**Date of Hearing: 1/18/17 & 2/1/17  
 Time of Hearing: 10:00 a.m.**

**20 ORDER FROM EVIDENTIARY HEARINGS ON JANUARY 18, 2017 AND  
 21 FEBRUARY 1, 2017**

22 The following motions having come on for an Evidentiary Hearing on  
 23 January 18, 2017 and February 1, 2017: (1) Plaintiff's Motion for Reunification Therapy  
 24 for Minor Children and Father, filed July 26, 2016; (2) Plaintiff's Motion for  
 25 Reconsideration, or, in the alternative, Motion for Huneycut Certification; Motion to  
 26 Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify  
 27 Order, filed August 30, 2016; (3) Plaintiff's Motion for an Order to Show Cause Why  
 28 Defendant should not be Held in Contempt for Knowingly and Intentionally Violating

**KAINEN LAW GROUP, PLLC**  
 3303 Novat Street, Suite 200  
 Las Vegas, Nevada 89129  
 702.823.4900 • Fax 702.823.4488  
 www.KainenLawGroup.com



1 Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's  
 2 Order of October 1, 2015, filed August 30, 2016; (4) Plaintiff's Motion for an Order to  
 3 Nullify and Void Expert Report, filed September 28, 2016, and; (5) Plaintiff's Motion for  
 4 New Expert Recommendation in lieu of Discovery and Evidentiary Hearing, filed  
 5 December 29, 2016, Kirk Harrison being present and represented by Edward L. Kainen,  
 6 Esq. of the Kainen Law Group, PLLC, and Vivian Harrison being present and represented  
 7 by Radford J. Smith, Esq. of Radford J. Smith, Chartered.

8 The Court having reviewed the pleadings and papers on file herein, having  
 9 heard the arguments of counsel, and good cause appearing therefore, the Court finds and  
 10 orders as follows:

11 **THE COURT HEREBY ORDERS** that Dr. Ali and Dr. Paglini's  
 12 recommendations shall be implemented. Between now and the 18<sup>th</sup> birthday of Emma  
 13 Brooke Harrison ("Brooke") on June 26, 2017, Plaintiff and Brooke will participate in  
 14 a 90 minute counseling session with Dr. Ali every other week. The parties shall equally  
 15 share the cost of Dr. Ali's fees for such counseling. Between now and Brooke's 18<sup>th</sup>  
 16 birthday, each week they do not have a 90 minute counseling session with Dr. Ali,  
 17 Plaintiff and Brooke shall spend four hours of quality time together. Defendant shall not  
 18 be a passive observer in this process, and she shall be actively involved to make sure  
 19 Brooke participates in the counseling, and spends the four hour quality time allotted with  
 20 Plaintiff. Whenever the 90 minute counseling sessions or the four hour shared quality  
 21 time activities take place during Vivian's custody time with the children, Plaintiff may  
 22 pick up Brooke to transport her to attend the 90 minute counseling sessions and the four  
 23 hour shared quality time activities.

24 ...

25 ...

26 ...

27 ...

28 ...

1           **THE COURT FINDS** that Plaintiff submitted substantial evidence during  
2 the evidentiary hearing that he has lost 221 days of custody time with Brooke between  
3 August 12, 2015 and January 31, 2017. *See* Admitted Exhibit “10” entitled, “Comparison  
4 of Agreed to and Court Ordered Custody Time Periods with Actual Custody Time  
5 Periods from August 12, 2015 through December 12, 2016.” As of December 12, 2016,  
6 Plaintiff had lost 203 days of custody time with Brooke.

7           **THE COURT FURTHER FINDS** that based upon this Court’s prior  
8 rulings and orders, Defendant has been on notice for years that she is responsible for  
9 Plaintiff’s lost custody time and that the Court expects Plaintiff to have his custody time  
10 with Brooke. More specifically, during the hearing on September 22, 2015, this Court  
11 was unequivocal in its position in this regard, “This is enforcement of a court’s order that  
12 provides the parties with joint physical custody, and what has happened in the last two  
13 months is not joint physical custody, period. And Mom is ultimately responsible for that  
14 lack of time with Dad.” Hearing Transcript, 9.22.15, p. 13, l. 6-10. Further, “So that’s  
15 the issue of contempt that I have before me that there’s been essentially a complete  
16 upheaval of the custody arrangement.” *Id* at p. 14, l. 2-4. And later, “. . . there’s no  
17 question that that time has been missed, and ultimately that’s on Mom’s shoulders.” *Id*  
18 at p. 49, l. 14-15. And later, “. . . it’s Mom’s responsibility to make sure that Brooke is  
19 with Dad.” *Id* at 56, l. 21-22. Consistently, in the Minute Order for the September 22,  
20 2015 hearing, the Court ordered, “The Court expects Plaintiff to have his time and he may  
21 pick up the minor children from school. It is Defendant’s responsibility to facilitate the  
22 VISITATION.” Previously, the Court had made it very clear, and the Nevada Supreme  
23 Court later agreed, that the teenage discretion provision cannot be utilized “to cause a *de*  
24 *facto* modification of the underlying custody arrangement.” Findings and Orders, filed  
25 9.29.14, p. 3, l. 7-12. The loss of 221 custody days between August 12, 2015 and January  
26 31, 2017, has been a *de facto* modification of the custody arrangement and constitutes a  
27 violation of the custody arrangement, the Court’s Order, filed September 29, 2014, and  
28 the decision of the Nevada Supreme Court.

1           **THE COURT FURTHER ORDERS** that Plaintiff's motion for  
 2 compensatory time for the 221 days of lost custody time with Brooke between August 12,  
 3 2015 and January 31, 2017 is granted as follows:

4           **THE COURT FURTHER ORDERS** that Plaintiff's Motion for  
 5 Reunification Therapy for Minor Children and Father, filed July 26, 2016, wherein  
 6 Brooke, Rylee and Kirk would jointly participate in a four day reunification program, in  
 7 which Vivian would also participate, together with the required 90 day exclusive physical  
 8 custody period, is denied.

9           **THE COURT FURTHER ORDERS** that Plaintiff's Motion for  
 10 Reconsideration, or, in the alternative, Motion for Huneycut Certification; Motion to  
 11 Amend Findings or Make Additional Findings, and ; Motion to Alter, Amend, and Clarify  
 12 Order, filed August 30, 2016, is granted as the Court has found it did retain jurisdiction,  
 13 as the issues before it are ancillary to the issues then on appeal.

14           **THE COURT FURTHER ORDERS** that Plaintiff's Motion for an Order  
 15 to Nullify and Void Expert Report, filed September 28, 2016, is denied.

16           **THE COURT FURTHER ORDERS** that Plaintiff's Motion for New  
 17 Expert Recommendation in lieu of Discovery and Evidentiary Hearing, filed December  
 18 29, 2016 is denied.

19           **THE COURT FINDS** that Brooke testified that she is committed to and has  
 20 returned to the regular VISITATION schedule.

21           **THE COURT FURTHER ORDERS** that between now and June 26, 2017,  
 22 Brooke shall fully comply with the joint physical custody schedule agreed to by the  
 23 parties and ordered by the Court as set forth in Paragraph 5 of the Stipulation and Order  
 24 Resolving Parent/Child Issues, filed July 11, 2017. Defendant shall not be a passive  
 25 observer in this process, and she will be responsible to insure that Brooke fully complies  
 26 with the custody schedule. According to the custody schedule, Kirk is to have custody  
 27 of the children "from Wednesday after school, or Wednesday at 9:00 a.m. when the  
 28 children are not in school, until Friday after school, or Friday at 9:00 .m. when the



1 children are not in school. The parties shall alternate weekends with the children, from  
 2 Friday after school, or Friday at 9:00 a.m. when the children are not in school, until  
 3 Monday after school, or Monday at 9:00 a.m. when the children are not in school.” The  
 4 following does **not** constitute full compliance with the custody schedule: On Wednesday  
 5 after school, Brooke goes to Vivian’s house where she eats meals, changes clothes for  
 6 dance, changes clothes after dance, showers, studies, socializes, watches videos, etc. and  
 7 not until sometime after 11:30 p.m., will Brooke drive to Kirk’s house for the night.  
 8 Brooke gets up on Thursday morning, has breakfast and leaves for the day. During the  
 9 day Brooke will again go to Vivian’s house where she eat meals, changes clothes for  
 10 dance, changes clothes after dance, showers, studies, socializes, watches videos, etc. and  
 11 not until sometime after 11:30 p.m., will Brooke drive to Kirk’s house for the night. This  
 12 same pattern continues during each custody day in which Brooke is supposed to be in  
 13 Kirk’s custody, including during the weekends Brooke is supposed to be with Kirk.

14 **THE COURT FURTHER ORDERS** that Plaintiff’s motion regarding  
 15 teenage discretion is taken under advisement and the Court will issue a separate Order.  
 16 Defendant is to submit an affidavit by February 10, 2017 in response to Plaintiff’s very  
 17 specific factual allegations about what happened in the past week (prior to February 1,  
 18 2017) with respect to Rylee. The affidavit is to be with respect to those specific items of  
 19 this past week in regards to the teenage discretion provision.

20 **THE COURT FURTHER ORDERS** that it will address Defendant’s  
 21 requests for attorney’s fees and sanctions in a subsequent Order.

22 **THE COURT FURTHER ORDERS** that the parties are subject to the  
 23 provision of NRS 125.510(6) for violation of the Court’s Order:

24 **PENALTY FOR VIOLATION OF ORDER:**

25 The abduction, concealment or detention of a child in violation of this  
 26 Order is punishable as a category D felony as provided in NRS 193.130.  
 27 NRS 200.359 provides that every person having a limited right of custody  
 28 to a child or any parent having no right to the child who willfully detains,  
 conceals or removes the child from a parent, guardian or other person  
 having lawful custody or a right of visitation of the child in violation of an  
 order of this court, or removes the child from the jurisdiction of the court

without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

**THE COURT FURTHER ORDERS** that Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law are applicable to the parties:

"Section 8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the Court shall include in the Order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in Subsection 7.

(b) Upon motion of the parties, the Court may order the parent to post a bond if the Court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the Court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child."

The State of Nevada is the habitual residence of the minor child herein.

DATED this — day of March, 2017.

DISTRICT COURT JUDGE

Submitted by:

KAINEN LAW GROUP, PLLC

By:

EDWARD L. KAINEN, ESQ.  
Nevada Bar No. 5029  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
*Attorneys for Plaintiff*

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

## **EXHIBIT “2”**

**FAMILY COURT TRANSMITTAL SLIP  
RETURN OF ORDER**

TO: Edward Kainen, Esq. DATE: 5/2/17

CASE NO. DI1-443611-D NAME: Harrison HEARING DATE: 1/18/17 & 2/1/17

The Order you have prepared and submitted is being returned to you for the following reason(s):

- ☐ Original and TWO (2) copies are needed to process.
- ☐ Submitting attorney must sign and date the Order.
- ☐ Submit to opposing counsel for approval and signature as Ordered by the Court.
- ☐ Contents do not conform with Court minutes for the following reasons: (See Other).
- ☐ The issues listed below were not addressed in open court and are not part of the Court's minutes: (See Other).  
You may
  - ☐ Submit the Order to opposing counsel for approval and signature;
  - ☐ Submit a Stipulation and Order to opposing counsel for approval and signature; or
  - ☐ Re-submit the Order deleting the information.

☒ Other: Page 5, lines 4-13: The language regarding what does *not* constitute full compliance needs to be removed from the Order. I have discussed the language with the Judge and he confirmed that it should not be part of the Court's Order.

Remove the language and resubmit.

---

PLEASE MAKE THE APPROPRIATE CORRECTION(S) AS INDICATED ABOVE AND RETURN THE ORDER WITH THIS FORM ATTACHED. Attached is a copy of the minutes from that hearing date. This Transmittal is a courtesy only and may not indicate all deficiencies. It is the responsibility of the submitting party to thoroughly review documents for errors prior to resubmission.

Thank you,

**Michael Padilla**

COURT CLERK, DEPT. Q

Phone: 455- 0291

**EXHIBIT “3”**

**ORDR**

EDWARD KAINEN, ESQ.  
 Nevada Bar No. 5029  
 KAINEN LAW GROUP, PLLC  
 3303 Novat Street, Suite 200  
 Las Vegas, Nevada 89129  
 PH: (702) 823-4900  
 FX: (702) 823-4488  
 Service@KainenLawGroup.com  
 Attorneys for Plaintiff

THOMAS J. STANDISH, ESQ.  
 Nevada Bar No. 1424  
 STANDISH NAIMI LAW GROUP  
 1635 Village Center Circle, #180  
 Las Vegas, Nevada 89134  
 Telephone (702) 998-9344  
 Facsimile (702) 998-7460  
 tjs@standishlaw.com

Co-counsel for Plaintiff

**DISTRICT COURT  
 CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

**CASE NO: D-11-443611-D  
 DEPT NO: Q**

**Date of Hearing: 1/18/17 & 2/1/17  
 Time of Hearing: 10:00 a.m.**

**ORDER FROM EVIDENTIARY HEARINGS ON JANUARY 18, 2017 AND  
 FEBRUARY 1, 2017**

The following motions having come on for an Evidentiary Hearing on January 18, 2017 and February 1, 2017: (1) Plaintiff's Motion for Reunification Therapy for Minor Children and Father, filed July 26, 2016; (2) Plaintiff's Motion for Reconsideration, or, in the alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order, filed August 30, 2016; (3) Plaintiff's Motion for an Order to Show Cause Why Defendant should not be Held in Contempt for Knowingly and Intentionally Violating

**KAINEN LAW GROUP, PLLC**  
 3303 Novat Street, Suite 200  
 Las Vegas, Nevada 89129  
 702.823.4900 • Fax 702.823.4488  
 www.KainenLawGroup.com

1 Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's  
 2 Order of October 1, 2015, filed August 30, 2016; (4) Plaintiff's Motion for an Order to  
 3 Nullify and Void Expert Report, filed September 28, 2016, and; (5) Plaintiff's Motion for  
 4 New Expert Recommendation in lieu of Discovery and Evidentiary Hearing, filed  
 5 December 29, 2016, Kirk Harrison being present and represented by Edward L. Kainen,  
 6 Esq. of the Kainen Law Group, PLLC, and Vivian Harrison being present and represented  
 7 by Radford J. Smith, Esq. of Radford J. Smith, Chartered.

8 The Court having reviewed the pleadings and papers on file herein, having  
 9 heard the arguments of counsel, and good cause appearing therefore, the Court finds and  
 10 orders as follows:

11 **THE COURT HEREBY ORDERS** that Dr. Ali and Dr. Paglini's  
 12 recommendations shall be implemented. Between now and the 18<sup>th</sup> birthday of Emma  
 13 Brooke Harrison ("Brooke") on June 26, 2017, Plaintiff and Brooke will participate in  
 14 a 90 minute counseling session with Dr. Ali every other week. The parties shall equally  
 15 share the cost of Dr. Ali's fees for such counseling. Between now and Brooke's 18<sup>th</sup>  
 16 birthday, each week they do not have a 90 minute counseling session with Dr. Ali,  
 17 Plaintiff and Brooke shall spend four hours of quality time together. Defendant shall not  
 18 be a passive observer in this process, and she shall be actively involved to make sure  
 19 Brooke participates in the counseling, and spends the four hour quality time allotted with  
 20 Plaintiff. Whenever the 90 minute counseling sessions or the four hour shared quality  
 21 time activities take place during Vivian's custody time with the children, Plaintiff may  
 22 pick up Brooke to transport her to attend the 90 minute counseling sessions and the four  
 23 hour shared quality time activities.

24 . . .

25 . . .

26 . . .

27 . . .

28 . . .

1           **THE COURT FINDS** that Plaintiff submitted substantial evidence during  
 2 the evidentiary hearing that he has lost 221 days of custody time with Brooke between  
 3 August 12, 2015 and January 31, 2017. *See* Admitted Exhibit “10” entitled, “Comparison  
 4 of Agreed to and Court Ordered Custody Time Periods with Actual Custody Time  
 5 Periods from August 12, 2015 through December 12, 2016.” As of December 12, 2016,  
 6 Plaintiff had lost 203 days of custody time with Brooke.

7           **THE COURT FURTHER FINDS** that based upon this Court’s prior  
 8 rulings and orders, Defendant has been on notice for years that she is responsible for  
 9 Plaintiff’s lost custody time and that the Court expects Plaintiff to have his custody time  
 10 with Brooke. More specifically, during the hearing on September 22, 2015, this Court  
 11 was unequivocal in its position in this regard, “This is enforcement of a court’s order that  
 12 provides the parties with joint physical custody, and what has happened in the last two  
 13 months is not joint physical custody, period. And Mom is ultimately responsible for that  
 14 lack of time with Dad.” Hearing Transcript, 9.22.15, p. 13, l. 6-10. Further, “So that’s  
 15 the issue of contempt that I have before me that there’s been essentially a complete  
 16 upheaval of the custody arrangement.” *Id* at p. 14, l.2-4. And later, “. . . there’s no  
 17 question that that time has been missed, and ultimately that’s on Mom’s shoulders.” *Id*  
 18 at p. 49, l. 14-15. And later, “. . . it’s Mom’s responsibility to make sure that Brooke is  
 19 with Dad.” *Id* at 56, l. 21-22. Consistently, in the Minute Order for the September 22,  
 20 2015 hearing, the Court ordered, “The Court expects Plaintiff to have his time and he may  
 21 pick up the minor children from school. It is Defendant’s responsibility to facilitate the  
 22 VISITATION.” Previously, the Court had made it very clear, and the Nevada Supreme  
 23 Court later agreed, that the teenage discretion provision cannot be utilized “to cause a *de*  
 24 *facto* modification of the underlying custody arrangement.” Findings and Orders, filed  
 25 9.29.14, p. 3, l. 7-12. The loss of 221 custody days between August 12, 2015 and January  
 26 31, 2017, has been a *de facto* modification of the custody arrangement and constitutes a  
 27 violation of the custody arrangement, the Court’s Order, filed September 29, 2014, and  
 28 the decision of the Nevada Supreme Court.



1           **THE COURT FURTHER ORDERS** that Plaintiff's motion for  
 2 compensatory time for the 221 days of lost custody time with Brooke between August 12,  
 3 2015 and January 31, 2017 is granted as follows:

4           **THE COURT FURTHER ORDERS** that Plaintiff's Motion for  
 5 Reunification Therapy for Minor Children and Father, filed July 26, 2016, wherein  
 6 Brooke, Rylee and Kirk would jointly participate in a four day reunification program, in  
 7 which Vivian would also participate, together with the required 90 day exclusive physical  
 8 custody period, is denied.

9           **THE COURT FURTHER ORDERS** that Plaintiff's Motion for  
 10 Reconsideration, or, in the alternative, Motion for Huneycut Certification; Motion to  
 11 Amend Findings or Make Additional Findings, and ; Motion to Alter, Amend, and Clarify  
 12 Order, filed August 30, 2016, is granted as the Court has found it did retain jurisdiction,  
 13 as the issues before it are ancillary to the issues then on appeal.

14           **THE COURT FURTHER ORDERS** that Plaintiff's Motion for an Order  
 15 to Nullify and Void Expert Report, filed September 28, 2016, is denied.

16           **THE COURT FURTHER ORDERS** that Plaintiff's Motion for New  
 17 Expert Recommendation in lieu of Discovery and Evidentiary Hearing, filed December  
 18 29, 2016 is denied.

19           **THE COURT FINDS** that Brooke testified that she is committed to and has  
 20 returned to the regular VISITATION schedule.

21           **THE COURT FURTHER ORDERS** that between now and June 26, 2017,  
 22 Brooke shall fully comply with the joint physical custody schedule agreed to by the  
 23 parties and ordered by the Court as set forth in Paragraph 5 of the Stipulation and Order  
 24 Resolving Parent/Child Issues, filed July 11, 2017. Defendant shall not be a passive  
 25 observer in this process, and she will be responsible to insure that Brooke fully complies  
 26 with the custody schedule. According to the custody schedule, Kirk is to have custody  
 27 of the children "from Wednesday after school, or Wednesday at 9:00 a.m. when the  
 28 children are not in school, until Friday after school, or Friday at 9:00 .m. when the

1 children are not in school. The parties shall alternate weekends with the children, from  
 2 Friday after school, or Friday at 9:00 a.m. when the children are not in school, until  
 3 Monday after school, or Monday at 9:00 a.m. when the children are not in school.”

4 **THE COURT FURTHER ORDERS** that Plaintiff's motion regarding  
 5 teenage discretion is taken under advisement and the Court will issue a separate Order.  
 6 Defendant is to submit an affidavit by February 10, 2017 in response to Plaintiff's very  
 7 specific factual allegations about what happened in the past week (prior to February 1,  
 8 2017) with respect to Rylee. The affidavit is to be with respect to those specific items of  
 9 this past week in regards to the teenage discretion provision.

10 **THE COURT FURTHER ORDERS** that it will address Defendant's  
 11 requests for attorney's fees and sanctions in a subsequent Order.

12 **THE COURT FURTHER ORDERS** that the parties are subject to the  
 13 provision of NRS 125.510(6) for violation of the Court's Order:

14 **PENALTY FOR VIOLATION OF ORDER:**

15 The abduction, concealment or detention of a child in violation of this  
 16 Order is punishable as a category D felony as provided in NRS 193.130.  
 17 NRS 200.359 provides that every person having a limited right of custody  
 18 to a child or any parent having no right to the child who willfully detains,  
 19 conceals or removes the child from a parent, guardian or other person  
 20 having lawful custody or a right of visitation of the child in violation of an  
 21 order of this court, or removes the child from the jurisdiction of the court  
 22 without the consent of either the court or all persons who have the right to  
 23 custody or visitation is subject to being punished for a category D felony as  
 24 provided in NRS 193.130.

25 **THE COURT FURTHER ORDERS** that Pursuant to NRS 125.510(7) and  
 26 (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session  
 27 of the Hague Conference on Private International Law are applicable to the parties:

28 "Section 8. If a parent of the child lives in a foreign country or has  
 significant commitments in a foreign country:

(a) The parties may agree, and the Court shall include in the Order for  
 custody of the child, that the United States is the country of habitual  
 residence of the child for the purposes of applying the terms of the Hague  
 Convention as set forth in Subsection 7.

1 (b) Upon motion of the parties, the Court may order the parent to post  
2 a bond if the Court determines that the parent poses an imminent risk of  
3 wrongfully removing or concealing the child outside the country of habitual  
4 residence. The bond must be in an amount determined by the Court and  
5 may be used only to pay for the cost of locating the child and returning him  
6 to his habitual residence if the child is wrongfully removed from or  
7 concealed outside the country of habitual residence. The fact that a parent  
8 has significant commitments in a foreign country does not create a  
9 presumption that the parent poses an imminent risk of wrongfully removing  
10 or concealing the child."

11 The State of Nevada is the habitual residence of the minor child herein.


12 DATED this — day of May, 2017.

13 DISTRICT COURT JUDGE

14 Submitted by:

15 KAINEN LAW GROUP, PLLC

16 By:

17   
18 EDWARD L. KAINEN, ESQ.  
19 Nevada Bar No. 5029  
20 3303 Novat Street, Suite 200  
21 Las Vegas, Nevada 89129  
22 *Attorneys for Plaintiff*

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \*

KIRK ROSS HARRISON,

NO. 72880

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

---

**CHILD CUSTODY FAST TRACK STATEMENT**

**APPENDIX – VOLUME 15**

ROBERT L. EISENBERG  
Nevada Bar No. 0950  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
775-786-6868  
[rle@lge.net](mailto:rle@lge.net)

KIRK R. HARRISON  
Nevada Bar No. 0861  
1535 Sherri Lane  
Boulder City, Nevada 89005  
702-271-6000  
[kharrison@harrisonresolution.com](mailto:kharrison@harrisonresolution.com)

*ATTORNEYS FOR APPELLANT*

## CHRONO INDEX

## **CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
1.	Complaint for Divorce	03/18/11	1	1-7
2.	Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence	09/14/11	1 2	8-220 221-361
3.	Defendant's Opposition to Plaintiff's Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence; Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children; for Division of Funds for Temporary Support, and for Attorney's Fees	10/31/11	2 3	362-418 419-652
4.	Answer to Complaint for Divorce and Counterclaim for Divorce	11/22/11	3	653-659
5.	Reply to Defendant's Opposition to Plaintiffs Motion for Joint Legal Custody and Permanent Physical Custody and for Exclusive Possession of Residence AND Opposition to Defendant's Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children, for Division of Funds for Temporary Support, and for Attorney's Fees	01/04/12	4 5	660-907 908-929
6.	Court Minutes [All Pending Motions]	02/24/12	5	930-933
7.	Stipulation and Order Resolving Parent/Child Issues	07/11/12	5	934-950
8.	Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for Sanctions and Attorney's Fees	05/10/13	5	951-984

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
9.	Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief	05/28/13	5	985-994
10.	Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief	05/28/13	5	995-1009
11.	Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan; Plaintiff's Opposition to Defendant's Motion for Sanctions and Attorney's Fees	07/19/13	5	1010-1044
12.	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan and Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions and Attorney's Fees	09/09/13	5	1045-1053
13.	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion Styled Request for Reasonable Discovery and Evidentiary Hearing; Defendant's Opposition to	09/11/13	5	1054-1059

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Plaintiff's Countermotion for Equitable Relief; Defendant's Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion for Declaratory Relief			
14.	Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief	10/01/13	5	1060-1080
15.	Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues [To Delete "Teenage Discretion" Provision] and Other Equitable Relief; Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions	10/17/13	5	1081-1149
16.	Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief	10/21/13	6	1150-1171
17.	Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions	10/23/13	6	1172-1223
18.	Order for Appointment of Parenting Coordinator	10/29/13	6	1224-1232
19.	Notice of Entry of Decree of Divorce	10/31/13	6	1233-1264



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
20.	Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment (without exhibits)	11/14/13	6	1265-1281
21.	Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision	11/18/13	6	1282-1316
22.	Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees	12/06/13	6	1317-1339
23.	Plaintiff's Reply in Support of Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision AND Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees	12/13/13	6	1340-1354
24.	Order [Denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and Other Equitable Relief and Denying Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions]	12/17/13	6	1355-1356
25.	Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief	04/21/14	6 7	1357-1388 1389-1431
26.	Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions	05/09/14	7	1432-1458
27.	Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions	05/14/14	7	1459-1472

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
28.	Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions	05/20/14	7	1473-1518
29.	Order from Hearing [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision]	06/13/14	7	1519-1524
30.	Notice of Entry of Order [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision]	06/16/14	7	1525-1532
31.	Notice of Appeal	07/17/14	7	1533-1593
32.	Findings and Orders re: May 21, 2014 Hearing	09/29/14	7	1594-1601
33.	Notice of Entry of Findings and Orders re: May 21, 2014 Hearing	09/29/14	7	1602-1611
34.	Amended or Supplemental Notice of Appeal	10/16/14	7	1612-1622
35.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013	08/21/15	8	1623-1673
36.	Order to Appear and Show Cause	09/01/15	8	1674-1675
37.	Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor	09/14/15	8	1676-1692

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Child, Emma Brooke Harrison ("Brooke")			
38.	Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke")	09/18/15	8	1693-1738
39.	Notice of Entry of Order from Hearing	10/01/15	8	1739-1743
40.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	10/12/15	8	1744-1758
41.	Order to Appear and Show Cause	10/14/15	8	1759-1760
42.	Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing	10/15/15	8	1761-1851
43.	Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing	11/02/15	9	1852-1879
44.	Dr. Paglini Letter to Court	11/23/15	9	1880-1881
45.	Notice of Entry of Order from Domestic Court Minutes	12/02/15	9	1882-1886
46.	Supplement to Plaintiff's Motion for an Order to Show Cause Why	12/10/15	9	1887-1903

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015			
47.	Reply to Opposition to Motion for Clarification; Motion to Amend Findings	12/10/15	9	1904-1920
48.	Court Minutes [All Pending Motions]	12/14/15	9	1921-1922
49.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	12/16/15	9	1923-1942
50.	Notice of Entry of Order from Domestic Court Minutes	12/17/15	9	1943-1947
51.	Court Minutes [All Pending Motions]	01/26/16	9	1948-1949
52.	Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing	05/25/16	9	1950-1958
53.	Letter from John Paglini, Psy.D. to Court	05/31/16	9	1959-1961
54.	Notice of Entry of Order re John Paglini, Psy.D. Letter	06/21/16	9	1962-1963
55.	Notice of Appeal	06/27/16	9	1964-1975
56.	Plaintiff's Motion for Reunification Therapy for Minor Children and Father	07/26/16	9	1976-2076
57.	Notice of Entry of Order re: August 24, 2016 Hearing	08/19/16	9	2077-2079

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
58.	Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order	08/30/16	9	2080-2095
59.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	08/30/16	10	2096-2196
60.	Defendant's Opposition to Motion for Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015; Countermotion for Sanctions; Opposition to Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings and, Motion to Alter, Amend and Clarify Order	09/23/16	10	2197-2206
61.	Plaintiff's Motion for an Order to Nullify and Void Expert Report	09/28/16	10	2207-2292
62.	Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	09/30/16	10	2293-2316
63.	Plaintiff's Reply in Support of Motion for Reconsideration, or, in the Alternative, Motion for	09/30/16	10	2317-2321

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order and Plaintiff's Objection to those Portions of Defendant's Opposition in Violation of EDCR 5.13			
64.	Defendant's Opposition to Motion for an Order to Nullify and Void Expert Report	10/18/16	10	2322-2337
65.	Affidavit of Kirk Harrison Filed in Support of Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015, Filed August 30, 2016	10/19/16	11	2338-2358
66.	Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report	11/02/16	11	2359-2381
67.	Reply to Defendant's Opposition to Countermotion for Sanctions; Motion to Strike Reply; Motion to Strike Affidavit	11/04/16	11	2382-2423
68.	Court Minutes [All Pending Motions]	11/07/16	11	2424-2426
69.	Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	12/29/16	11	2427-2440
70.	Plaintiff's Pre-Trial Memorandum	01/17/17	11	2441-2457
71.	Prehearing Memorandum	01/17/17	11	2458-2477
72.	Court Minutes [Evidentiary Hearing]	01/18/17	11	2478-2479

///  
///

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
73.	Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions	01/31/17	11	2480-2489
74.	Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	01/31/17	11	2490-2507
75.	Plaintiff's Supplemental Exhibit in in Support of Plaintiff's Reply Regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	01/31/17	11	2508-2512
76.	Court Minutes [All Pending Motions]	02/01/17	11	2513-2514
77.	Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	02/13/17	11	2515-2537
78.	Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions	02/13/17	11	2538-2556
79.	Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees	02/15/17	11	2557-2563
80.	Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Reply to Supplemental Declaration, and; Opposition to Request for Sanctions	02/17/17	12	2564-2595

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
81.	Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees	03/06/17	12	2596-2602
82.	Defendant's Opposition to Motion to Strike; Countermotion for Sanctions	03/13/17	12	2603-2608
83.	Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing]	03/15/17	12	2609-2617
84.	Notice of Entry of Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing]	03/16/17	12	2618-2627
85.	Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 16, 2017	03/28/17	12	2628-2634
86.	Plaintiff's Response to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 15, 2017	04/10/17	12	2635-2638
87.	Notice of Appeal	04/14/17	12	2639-2649
<b><u>TRANSCRIPTS</u></b>				
88.	Transcript re: All Pending Motions	10/30/13	12	2650-2688
89.	Transcript re: All Pending Motions	05/21/14	12	2689-2744
90.	Transcript re: All Pending Motions	09/22/15	13	2745-2823
91.	Transcript re: All Pending Motions	12/14/15	13	2824-2886
92.	Transcript re: All Pending Motions	01/26/16	13	2887-2928



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
93.	Transcript re: All Pending Motions	11/07/16	14	2929-3040
94.	Transcript re: Evidentiary Hearing - Vol.1	01/18/17	14	3041-3152
95.	Transcript re: Evidentiary Hearing - Vol. 2	01/18/17	14 15	3153-3178 3179-3315
	Plaintiff's Exhibit 1 – Dr. Paglini Report dated January 25, 2016 [ <i>Confidential</i> ] SEALED		15	3316-3375
	Plaintiff's Exhibit 2 – Email from Vivian Harrison to Kirk Harrison dated February 27, 2016		15	3376-3377
	Plaintiff's Exhibit 3 – Email from Brooke Harrison to Dr. Paglini dated February 27, 2016		15	3378-3380
	Plaintiff's Exhibit 4 – Dr. Paglini Letter dated May 31, 2016		15	3381-3384
	Plaintiff's Exhibit 5 – Dr. Ali Letter dated June 29, 2016 [ <i>Confidential</i> ] SEALED		15	3385-3387
	Plaintiff's Exhibit 6 – Email from Carina Deras to Kirk Harrison dated April 1, 2016		15	3388-3389
	Plaintiff's Exhibit 7 – Brooke Harrison's Nevada State High School Enrollment Form dated August 10, 2015		15	3390-3392
	Plaintiff's Exhibit 8 – Brooke Harrison's Class Schedule		15	3393-3394
	Plaintiff's Exhibit 9 – Affidavit of Kirk Harrison dated October 19, 2016		15	3395-3416
	Plaintiff's Exhibit 10 – Comparison of Agreed Time with Actual Custody Time from August 12, 2015 through December 12, 2016		15	3417-3426
96.	Transcript re: All Pending Motions	02/01/17	16	3427-3640

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
<b><u>ADDITIONAL DOCUMENTS<sup>1</sup></u></b>				
97.	Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017	07/24/17	16	3641-3647
98.	Plaintiff's Supplemental Filing	08/24/17	16	3648-3666
99.	Supplemental Notice of Appeal	08/24/17	17	3667-3676
100.	Notice of Entry of Order re: Expert Designation	10/06/15	17	3677-3682
101.	Notice of Entry of Order re: Pending Motions	01/04/17	17	3683-3693

---

<sup>1</sup>These additional documents were added to the appendix after the first 16 volumes of the appendix were complete and already numbered (3,640 pages).

1 and this is the process, she understood, that is what she told  
2 me in meetings and I'm indicating -- that to me felt very  
3 standard, very consistent with what we typically see, you  
4 know, with teenagers. Now I -- I --

5 Q So -- so if I understand you then, one of the  
6 parents can tell you -- and you can -- it doesn't matter if  
7 both parents waive the privilege, just one of them can waive  
8 the privilege.

9 A Yes. Yeah, because --

10 Q Okay.

11 A -- the holders of -- of confidentiality.

12 Q And -- and that's your understanding of Nevada law,  
13 correct?

14 A Yes.

15 Q Okay. And that's true in -- in any family therapy  
16 sessions, correct?

17 A If -- if both parents have legal custody, then yes,  
18 I'm sure there might be some situations where maybe again if  
19 there is a threat or a concern, that would be different. But  
20 yes, it -- the way that we proceed, the standard of care is  
21 that if a parent request the records, either parent has access  
22 to them. They're the holder of confidence, not very different  
23 than in the medical world where if labs are run, a parent has  
24 access to them because it's their -- their right.

1           Q     The -- did you -- when I sent you this letter  
2 regarding the confidentiality, why didn't you write back that  
3 explanation?

4           A     Timing, but then again I had my clinical assistant  
5 contact your assistant and -- and they had a discussion about  
6 it and yes, I -- my assistant shared with me that that -- that  
7 there were --

8           MR. SMITH: Objection, hearsay. Move to strike.

9           THE WITNESS: Oh, sorry.

10          MR. KAINEN: And I don't know what we do with that  
11 one. He's objecting --

12          THE COURT: Well, he stopped answering the question.

13          MR. KAINEN: Okay.

14          THE COURT: So I don't find the need to make a  
15 ruling yet. You can --

16 BY MR. SMITH:

17          Q     In regard to the --

18          THE COURT: -- ask your next question.

19          Q     In regard to the issue of confidentiality, then  
20 because Kirk has -- has indicated to you that he doesn't have  
21 -- that he can -- has Kirk indicated to you -- or do you feel  
22 comfortable with this because Kirk has waived the  
23 confidentiality in that form that you referenced?

24          A     I'm sorry, I'm not following, Mr. Smith.

1 Q You --

2 A Can you --

3 Q -- said that you had both Vivian and Kirk sign a  
4 form that waived their -- or allowed you to talk to them about  
5 confidential therapy with Brooke, correct?

6 A In -- in the initial paperwork that we received  
7 where -- that --

8 Q Right.

9 A -- we have the client's rights that spelled out, you  
10 know, the informed consent process and -- yeah.

11 Q How did the Court's order regarding confidentiality  
12 play into your consideration and providing that type of form  
13 for them to sign?

14 MR. KAINEN: Objection. At this point, we're beyond  
15 the scope of what we're dealing with here today. I mean we  
16 can -- we've been beating this dead horse on whether or not --  
17 you haven't allowed me to get half of this in anyway --

18 THE COURT: That's not --

19 MR. KAINEN: -- despite what --

20 THE COURT: Yeah, the -- this is not useful to the  
21 Court.

22 MR. SMITH: Judge, can I have a -- is there an  
23 objection that's -- that you're going to rule on?

24 THE COURT: That's the --

1 MR. KAINEN: Relevance.

2 THE COURT: -- evidentiary objection?

3 MR. SMITH: That it's not relevant is his objection?

4 THE COURT: Well, I can't -- I can't find that it's  
5 not relevant, just -- just the fact that it -- this is no  
6 longer aiding the trier of fact doesn't necessarily make it  
7 completely irrelevant because we've had this discussion that's  
8 ongoing.

9 MR. SMITH: So --

10 THE COURT: There are -- there are much larger  
11 issues I -- I agree, but --

12 MR. SMITH: So --

13 THE COURT: -- we need to wrap up this line.

14 BY MR. SMITH:

15 Q Dr. Ali, you had indicated that it was your  
16 understanding that Brooke was refusing to come to -- to any  
17 kind of sessions, correct?

18 A Not refusing. She -- she attended sessions and --

19 Q But I think your testimony -- is that per April  
20 12th, you -- you testified --

21 A Oh, yes.

22 Q -- that it was your understanding she was refusing  
23 to come to sessions.

24 A Yes, it was.

1 Q And I assume that's from your staff, correct? You  
2 received that information from your staff?

3 A In that one session, she said --

4 Q No, I'm not asking you what she said.

5 A Oh, okay.

6 Q I'm asking the basis of your information. If it's  
7 -- if it's Brooke, I don't want to hear about it, but if --

8 A Okay.

9 Q -- your understanding of the fact that she didn't  
10 come to sessions was based upon communications with your  
11 staff, correct?

12 A My communications with my staff have always been  
13 about the difficulty that they've had being able to schedule  
14 her and --

15 Q So did you ever reached out to Brooke and say  
16 Brooke, I think -- I need you to come to these sessions, these  
17 are good for you, please come to the sessions?

18 A Yes.

19 Q And when did you do that?

20 A In nearly session that we had, we would discuss  
21 that.

22 Q So when Brooke didn't show up, you had indicated she  
23 didn't show up for about seven months, correct?

24 A Yes.

1 Q Did you reach out to her?

2 A No, I did not directly. I -- I have my -- my staff  
3 and my -- my team.

4 Q Well, did you call her and say Brooke, you need to  
5 be here?

6 A Let me think if I -- there might have been a time.  
7 No, I think -- yeah, I have --

8 Q How about emails? You would agree that -- that most  
9 teenagers these days communicate either by email or text.  
10 What about texting her? Brooke, I'm looking to seeing --  
11 forward to seeing you. Why don't you come to this session?

12 A Mr. Smith, typically, I -- I'm -- one of the things  
13 that I do as a therapist is I'm very keen on boundaries and --  
14 and being very respectful, you know, of people's, you know,  
15 free will and self determination. I think that's an  
16 incredible -- incredibly important part of the therapeutic  
17 process reaching out to her in that fashion knowing how she  
18 was in sessions and what she would say to me I think would  
19 have been kind of outside the scope of what I typically do as  
20 a therapist and what I typically find is helpful.

21 Q You said that February 12th was when she refused to  
22 come to -- after that is when she stopped coming to meetings,  
23 right?

24 MR. KAINEN: April 12th.



1 Q Excuse me, April 12th of 2015, correct?

2 MR. KAINEN: '16.

3 MR. SMITH: '16. You're right. Thank you.

4 Q So did -- did Brooke reach out to you via email and  
5 ask you if you could schedule sessions during her Spring  
6 Break?

7 A I don't recollect if she reached out to me directly.

8 Q Did she reach out to your staff to your  
9 understanding?

10 A She might have.

11 Q Were there any sessions scheduled during her Spring  
12 Break?

13 A Of this past year?

14 Q Yes.

15 A Of 20 -- of -- of 2017 you mean or --

16 Q Yes. 2016.

17 A Oh, 2016? Well, we had that April 12th session.  
18 There was March 31st. I think if we -- did we have one?

19 Q Okay. If you'll look at -- in the -- there should  
20 be a big book in front of you.

21 A Yeah.

22 Q Okay. So in Exhibit C in that book, have you ever  
23 seen that document before?

24 A No.

1 Q Did Amanda make you aware that -- that Brooke was  
2 asking for sessions during the Spring Break period?

3 A Yes.

4 Q But you didn't schedule any during that period, did  
5 you?

6 A I don't know. Well, by the date here, no, but I  
7 thought that -- if I'm not mistaken -- so the -- the March  
8 17th appointment didn't fall into that Spring Break. Which --

9 Q Can you tell me --

10 A March 14th or the 18th. Could we had it on the  
11 17th, is that -- am i missing something?

12 Q She was off all summer as well, correct?

13 A Yes.

14 Q Did you have any sessions during the summer?

15 A No. April, October, yeah.

16 Q During this -- the summer though, she did contact  
17 you, right? Brooke contacted you in August.

18 A Is that right?

19 Q Well, you tell me. She --

20 A Well --

21 Q -- had a session with you in October. You've --

22 A Oh.

23 Q -- testified about that.

24 A Yes.

1 Q Did she attempt to schedule that session in August  
2 and that's when she got in --

3 A Oh, yes.

4 Q -- was October?

5 A Yeah.

6 Q Okay. It takes about a couple months to get into  
7 your sessions?

8 A When we're very limited in terms of the schedule,  
9 yes. It can --

10 Q Okay.

11 A It can be very challenging.

12 Q And when Brooke asked you to counsel her in that  
13 session, what happened? Not the session, but what happened?  
14 What physically happened? Did you have a counseling session  
15 with her or did that not go forward?

16 A October the 6th.

17 Q Yes.

18 MR. KAINEN: Are we talking about a reunification  
19 session or are we talking about --

20 MR. SMITH: I'm talking --

21 MR. KAINEN: -- therapy session?

22 MR. SMITH: -- about her attempt --

23 Q This is 2016, correct?

24 THE COURT: October --

1 A Yeah.

2 THE COURT: -- of 2016?

3 A October --

4 MR. SMITH: Correct.

5 A -- 6th.

6 Q Her attempt to re-contact you in August to talk to  
7 you about sessions, correct?

8 A Yes.

9 MR. KAINEN: Wait a minute.

10 Q Okay. And then --

11 MR. KAINEN: Sorry, it assumes facts not in  
12 evidence. I don't know if it was about sessions or whether it  
13 was her personal therapy --

14 MR. SMITH: He just answered --

15 MR. KAINEN: -- or what --

16 MR. SMITH: -- yes, it is an --

17 THE COURT: Is that your objection, assumes facts  
18 not in evidence?

19 MR. KAINEN: Yeah, I -- I -- maybe I misunderstood  
20 the question then or misheard the question. I said -- I heard  
21 a contact and then -- and then the next question I thought had  
22 the answers to the purpose of the contact in it.

23 THE COURT: To setup a session is --

24 MR. KAINEN: Right. And that's why I was -- and the

1 question I asked was were we talking about a therapy -- an  
2 individual therapy session or were we talking about a  
3 reunification session?

4 MR. SMITH: I don't know if that's an objection.  
5 It's more of a comment. Mr. Kainen apparently --

6 MR. KAINEN: I'm trying to --

7 MR. SMITH: -- feels free --

8 MR. KAINEN: -- understand --

9 MR. SMITH: -- to do that.

10 MR. KAINEN: You know? I'm sorry. That -- that's  
11 inappropriate. I'd ask him to strike that. That's --

12 THE COURT: The objection's sustained. Lay a  
13 foundation as to the --

14 BY MR. SMITH:

15 Q So -- so Brooke contacted you in August, correct?  
16 And the reason she contacted you was to talk about the  
17 discussions.

18 MR. KAINEN: Objection, leading.

19 Q Correct?

20 THE COURT: Overruled.

21 MR. SMITH: Leading? It's cross examination.

22 THE COURT: Overruled.

23 THE WITNESS: Are -- are you think Mr. Smith in  
24 terms of the October 6th appointment?

1 BY MR. SMITH:

2 Q The October 6th --

3 A Yes.

4 Q -- and she wanted to talk about the joint sessions,  
5 correct?

6 A Yes.

7 Q And it's after that -- and you had a conference with  
8 her of sometime, correct?

9 A A meeting with her on the six --

10 Q Yes.

11 A -- steps.

12 Q Yeah. And it was after that time that you restarted  
13 the sessions?

14 A Yes.

15 Q Okay. But again, that contact was made with you --  
16 well, you have indicated in August -- the -- since that time,  
17 she's had a session in -- in October, November, December, and  
18 January, correct?

19 A Yes.

20 Q And those were all sessions that were scheduled by  
21 working out your schedule, correct? In other words, you  
22 couldn't have had more schedule -- scheduled sessions because  
23 your schedule limited it, correct?

24 A Not entirely. I -- my schedule was, you know,

1 challenging, but --

2 Q You're a popular guy.

3 A Brooke's schedule is also, you know, pretty  
4 challenging. And so it was hard to kind of -- of coordinate  
5 it. We scheduled in advance and I reference -- well, I say  
6 this regularly now, Kayla (ph) now and -- and Amanda before  
7 her are magicians with my schedule. They're able to make  
8 anything work. And so --

9 Q Right.

10 A -- some of it certainly absolutely fell in my  
11 schedule, but some of it also had to do with --

12 Q But Brooke was offered three and a half weeks during  
13 December. Was there something about her schedule during that  
14 time that prevented you from scheduling sessions?

15 A Not that I'm aware. I --

16 Q Okay. So -- so Dr. Ali, you had testified that the  
17 last session was set for February -- or excuse me, January  
18 13th. But --

19 A Yes.

20 Q -- in fact it was set for the Wednesday proceeding  
21 that your office gave notice to Brooke that she was -- had a  
22 scheduling -- schedule on the 11th, correct?

23 A Of this past -- this last couple weeks ago? Yeah.

24 Q The last week. And but Kirk couldn't make it on the

1 11th. Do you --

2 A Yes.

3 Q -- recall that?

4 A Yes.

5 Q All right.

6 A I do.

7 Q So it wouldn't be entirely truthful to say that no  
8 session was stopped by Kirk not being available, correct?

9 A Yes.

10 Q And that -- so has Brooke showed a willingness to  
11 participate in the sessions since October -- or she was able  
12 to see you on October 6th?

13 A Yes. She's attended the sessions and she -- in that  
14 October 6th meeting, we like to have it noted here --

15 Q I don't want you to tell me what --

16 A Oh.

17 Q -- she said --

18 A Okay.

19 Q -- if you're going to, yeah.

20 A Okay.

21 Q But -- but since that time, since she was able to  
22 meet with you on her own, she's attended sessions that you've  
23 asked her to be at, correct? Except for the 13th which was  
24 Friday.



1           A     Yeah, we were ordered to -- to see -- to meet weekly  
2 and she wasn't able to meet weekly but she has attended the  
3 four sessions that --

4           Q     Okay. But she was willing to meet on the 11th,  
5 correct? She had indicated that she would be there?

6           A     Yes.

7           Q     But that was when Kirk wasn't available.

8           A     Yes, I -- I don't know if she then -- if it -- if  
9 she had referenced the Friday appointment that she didn't want  
10 to attend anymore given the court case and/or if it was that  
11 Wednesday --

12          Q     Okay.

13          A     -- but as far as I knew, it was a go to meet.

14               MR. SMITH: Okay. All right. Again, Your Honor,  
15 that's all I have on that issue. In regard to the statements  
16 about her statements in the sessions, I'll --

17               THE COURT: Okay.

18               MR. SMITH: -- preserve to recall Mr. -- or Dr. Ali?

19               THE COURT: Any redirect?

20               MR. KAINEN: Yeah.

21                         REDIRECT EXAMINATION

22 BY MR. KAINEN:

23          Q     The first session -- you had an individual with both  
24 Kirk and with Vivian prior to the process of counseling with

1 Brooke, is that correct?

2 A Yeah.

3 Q And --

4 A It's sort of a -- they went together.

5 Q And -- and that wasn't just a standing in the lobby,  
6 hey, how are you doing, nice to meet you, I'm Dr. Ali, it was  
7 a sit down?

8 A Yes.

9 Q Okay. And in that session, did you invite both  
10 parents to share their concerns with you?

11 A Yes.

12 Q And what's the reason for that?

13 A What's the reason that I asked?

14 Q Yeah.

15 A Information gathering and -- and respecting of all  
16 information and gathering as much history as we can to help  
17 the clients and their progress.

18 Q The more you know about what each parent this is  
19 going on, the more it helps you in being able to understanding  
20 the dynamics and what's --

21 A Sure.

22 Q -- and -- and what's going on in Brooke's life, is  
23 that correct?

24 A Sure. Yes.

1 Q Is it your practice and did you in this case invite  
2 both parents at the conclusion of that session to continue to  
3 share any concerns they had regarding their child?

4 A Yes.

5 Q Okay. Did -- during that initial session or prior  
6 to the initial session, that's when both parents signed the  
7 informed consent, correct?

8 A Yes.

9 Q And that informed consent makes it clear that either  
10 parent can waive --

11 MR. SMITH: Objection.

12 Q -- the privilege.

13 MR. SMITH: The best evidence rule if he's actually  
14 going to quote from the document.

15 THE COURT: Overruled.

16 BY MR. KAINEN:

17 Q That informed consent as you understand it makes it  
18 clear that either parent holds the privilege for a minor's --  
19 the content of a minor's counseling, correct?

20 A I don't know if it's -- it's clearly articulated  
21 that, but that's exactly what the -- the informed consent  
22 process and policies are about, yes.

23 Q And that's consistent with what you understand to be  
24 joint legal custody, that either parent can go to the school

1 theoretically and obtain records, either parent can go to a  
2 doctor's office and -- obtain records, you don't have to get  
3 both parents to agree to that, right?

4 A Yes.

5 Q In your case, either parent can obtain information  
6 about the content of the counseling.

7 A Yes.

8 Q Okay. Prior --

9 A From --

10 Q -- to today, has either parent necessarily sought  
11 out information from you regarding what happened in individual  
12 sessions with Brooke?

13 A No.

14 Q Okay. Spring Break was March 14th -- or the week of  
15 March 13th or 14th, is that correct?

16 A That's -- yeah, that's what it says --

17 Q Okay.

18 A -- in that.

19 Q That's Spring Break for the Clark County schools as  
20 well, correct?

21 A Yes.

22 Q Is your practice still -- do you have a lot of kids  
23 in your practice that you're dealing with as your  
24 clients/patients?

1 A Yes.

2 Q About what percentage of your patients are children?

3 A 60 percent.

4 Q Okay.

5 A Maybe more.

6 Q So would it be fair to say that a lot of your  
7 patients want blocks of time during Spring Break?

8 A Yes.

9 Q Is the optimal time to get a two hour window for  
10 counseling session during Spring Break five days before Spring  
11 Break begins?

12 A No.

13 Q Okay. And despite that, you were able to -- even  
14 though she wasn't contact -- you didn't get contacted until  
15 March 8th for a Spring Break appointment, correct, by the  
16 email that Mr. Smith showed you --

17 A Yes.

18 Q -- you actually got Brooke in for a two hour  
19 appointment March 17th, didn't you?

20 A Yes.

21 Q Okay. And Brooke walked out of that appointment  
22 early, correct? Came late and walked out early.

23 A Yes.

24 Q Has Kirk ever come late to an appointment to your --

1 to you recollection?

2 A No.

3 Q Has he ever left early to your understanding?

4 A Only when Brooke has left early.

5 Q Right. In other words, when the session ended --

6 A Yes.

7 Q -- because Brooke left. He -- he hasn't gone out  
8 and said that's it, I'm done, I'm -- this, you know --

9 A No, he hasn't.

10 Q Okay. Other than perhaps not being available  
11 because of other obligations related to another child or  
12 something like that, has Kirk in any way not been cooperative  
13 in the scheduling process in order to make this process move  
14 forward expeditiously?

15 A Not that I'm aware of. My -- my staff has never  
16 said that.

17 MR. KAINEN: Okay. Nothing else, Your Honor.

18 RECROSS EXAMINATION

19 BY MR. SMITH:

20 Q Has Mr. Harrison's office -- or Harrison -- Mr.  
21 Harrison advised you that he was not available on Wednesdays?

22 A Of this week, yeah. We had an appointment --

23 Q Any other weeks? Is he generally not available on  
24 Wednesdays or is it just this week?

1           A     It just came up this -- this one time, so I'm not  
2 sure how it's gone historically.

3           Q     In regard to the Spring Break for -- where Brooke  
4 goes to school. Is it consistent with the Clark County School  
5 District to your knowledge?

6           A     Yeah, the schedule? Yes.

7           Q     Yeah.

8           A     As far --

9           Q     Her Spring Break --

10          A     -- as I know.

11          Q     -- is the same?

12          A     Yes.

13          Q     Okay. The -- in regard to the -- the question about  
14 getting Brooke in, my understanding is that Brooke had asked  
15 you for Thursday sessions, correct?

16          A     Yes.

17          Q     And you weren't able to accommodate that, correct?

18          A     Yeah.

19          Q     Yes, you were not able to.

20          A     We were not able to in the time frame that she had  
21 given us, unfortunately.

22          Q     And the time frame was in the afternoon, correct?

23          A     Yes, sir.

24          Q     Okay. And what was preventing you? Did you have --

1 A Other clients in --

2 Q Other clients.

3 A -- those --

4 Q Okay.

5 A -- spots, yeah.

6 MR. SMITH: All right. Okay. That's all I have.

7 Thank you. Well, for now until --

8 THE COURT: All right.

9 MR. SMITH: -- Brooke tells us about her privilege.

10 THE COURT: All right. You may step --

11 MR. KAINEN: Yeah, okay, I'm just -- just -- I mean,  
12 look, I don't have a problem with reserving the right to call  
13 Dr. Ali. I will -- but I just want to go on record that we --  
14 we keep on arguing this idea of, you know, subject to  
15 privilege. The privilege issue has been addressed. There --  
16 in other words, Nevada law and informed consent, so this -- I  
17 -- you know, exists. It's what we've talked about. Both  
18 parents have a right to this information.

19 So this idea that he wants to reserve the right to  
20 recall him, generally I don't have a problem with it  
21 conceptually. But this idea that somehow Brooke has to waive  
22 consent, I object to that sort of as the basis for why we're  
23 not going forward.

24 MR. SMITH: I respectfully disagree that --



1 THE COURT: Well, listen.

2 MR. SMITH: -- the privilege can be waived by one  
3 parent.

4 THE COURT: Well, listen. I -- I -- and as we've  
5 gone on it, there are certain aspects that I have just grown  
6 increasingly uncomfortable extracting from comments made in  
7 counseling that I don't need to make the decision on I've been  
8 tasked to make which I outlined at the beginning of these  
9 proceedings. And so understanding that my expectation is the  
10 counseling is to -- is to be ongoing. I -- I'm -- I'm  
11 troubled and concerned about the chilling effect that this  
12 creates moving forward.

13 MR. SMITH: I agree.

14 THE COURT: Now I allowed -- I allowed some in, but  
15 as -- as it went on and -- and more information was -- I -- I  
16 just don't --

17 MR. SMITH: I'm with you --

18 THE COURT: -- need it.

19 MR. SMITH: -- a thousand --

20 MR. KAINEN: So let me --

21 MR. SMITH: -- percent.

22 MR. KAINEN: Okay.

23 MR. SMITH: That's --

24 MR. KAINEN: Well, I --

1 MR. SMITH: -- the whole purpose --

2 MR. KAINEN: -- I got it.

3 MR. SMITH: -- of the objection.

4 MR. KAINEN: You and Rad are right in sync on that  
5 and let me just explain so you understand where I'm coming  
6 from. You said you wanted two things today. You wanted to  
7 understand about the scheduling problem and you wanted to  
8 understand what remedy going forward would be the best. We've  
9 proposed a certain remedy, but in order for you to decide  
10 whether or not that remedy is appropriate, you have to  
11 understand the depth of the problem. And so if you don't --  
12 if you're not willing to hear or you're not -- you don't think  
13 it's appropriate to hear that you've got a child who says I'm  
14 not going to do this or I'm steadfast in this and that -- the  
15 inconsistencies and those kind of things, then, I mean, I --  
16 I'm going to go -- we're going to go forward and we're going  
17 to get this done, but I'm not going to be able to deal with  
18 the issue you've asked me to which is to help you understand  
19 what the best way to fix this is in a very short window.  
20 We've got -- we've got five -- less than five months, I think,  
21 to be able to fix this. And we're proposing a remedy that  
22 would be appropriate if there's a significant problem. If  
23 everything is hunky dory --

24 THE COURT: Well, and -- and again, I -- my point is

1 I don't know that I need to go that far.

2 MR. KAINEN: I'm getting --

3 THE COURT: But that -- and that's the signal I've  
4 sent out and -- and that's where I'm at. I -- I want -- and  
5 -- and certainly I know Dr. Paglini is here and we'll hear  
6 from him, more from the evaluative side than the therapeutic  
7 side. So --

8 MR. KAINEN: Well, but the evaluative side requires  
9 some information. I mean, frankly --

10 THE COURT: I know.

11 MR. KAINEN: -- if Dr. Paglini were -- to having a  
12 discussion with Dr. Ali, there would be a very frank  
13 discussion about what was going on --

14 THE COURT: Absolutely.

15 MR. KAINEN: -- in private sessions.

16 THE COURT: Absolutely.

17 MR. KAINEN: But here we're asking him to sit here  
18 and listen and give you an evaluative, you know, discussion on  
19 what might be best but because we're sitting in a courtroom,  
20 we're saying, okay, but we're not going to tell you all the  
21 information, now tell us what you think.

22 THE COURT: Right.

23 MR. KAINEN: I mean, that's the problem. And  
24 privately on a phone call, all this stuff would be out there.

1 THE COURT: All right.

2 MR. KAINEN: And you're relying --

3 MR. SMITH: And let me --

4 MR. KAINEN: -- on the information.

5 MR. SMITH: -- let me just disagree with that notion  
6 as well. Dr. Paglini has not to my knowledge been asked to  
7 provide an assessment beyond the assessment that's been -- I  
8 have not been provided with any report. I have not been  
9 indicated what the scope of any assessment would be. Here's  
10 here today not on my request, but on the request apparently of  
11 Mr. Kainen. I don't know why he's here since he's not been  
12 asked to perform any assessment. I think it's -- it's a --  
13 he's just here and apparently we're going to try to give him  
14 information so that Kirk can accomplish what you've already  
15 denied and that is either the striking of his report or the  
16 changing of his report. And that to me is --

17 MR. KAINEN: No.

18 MR. SMITH: I -- I don't understand why Dr. Paglini  
19 is in the courtroom today.

20 THE COURT: All right. Well, you -- you may step  
21 down at this point with all of that.

22 THE WITNESS: Thanks.

23 THE COURT: Thank you for being here --

24 MR. KAINEN: It's been fun seeing you.

1 THE COURT: -- Dr. Ali.

2 THE WITNESS: Thank you.

3 MR. SMITH: Dr. Ali, you are not dismissed though,  
4 I'm sorry.

5 THE WITNESS: Oh, got you. Where do you want me to  
6 sit?

7 MR. SMITH: Yeah, you'll -- you have to stay  
8 outside. I'm sorry.

9 THE WITNESS: Okay.

10 (WITNESS EXCUSED)

11 THE COURT: All right.

12 MR. KAINEN: If the party is not paying his bill,  
13 you're tying up a lot of this time.

14 MR. SMITH: I'm just trying to do the right thing.

15 THE COURT: All right. Who do you call at this  
16 point, Dr. Paglini?

17 MR. KAINEN: Well, I want to move in some  
18 foundational documents. So Rad, do you have any objections to  
19 the admissions of 6, 7, 8, 9, and 10?

20 MR. SMITH: I don't know. Let's see. Let me --

21 THE COURT: I've got a half hour.

22 MR. SMITH: Oh, here it is.

23 THE COURT: Now -- and -- and saying that, I -- I  
24 don't know that there is going to be time to recall Dr. Ali,

1 so --

2 MR. KAINEN: Well, I've got -- I've kind of get  
3 that.

4 THE COURT: -- we've got a half hour left, so my --

5 MR. SMITH: There may not --

6 THE COURT: -- my thought is --

7 MR. SMITH: -- be time. We'll have to --

8 THE COURT: -- is we should --

9 MR. SMITH: -- reschedule his testimony.

10 THE COURT: -- just excuse him. If you'll let Dr.  
11 Ali know that if he is recalled, it won't be today.

12 MR. KAINEN: Okay.

13 MR. SMITH: Not agreeing to that, but let me just  
14 say this that if we do call him, it's because Brooke will  
15 waive the privilege or there will be information suggesting it  
16 has been waived. I just don't think I'm in a position to  
17 waive it for her or my client is, so --

18 THE COURT: All right. Well, the -- the question at  
19 hand is whether or not there's any objection --

20 MR. KAINEN: You know what --

21 THE COURT: -- to exhibits.

22 MR. KAINEN: I -- I would love to call Kirk. I -- I  
23 can't obviously call both Kirk and Dr. Paglini. I want to  
24 admit -- foundationally, I want to admit 6 through 10 because

1 I want to have it when I discuss things with --

2 THE COURT: Right.

3 MR. KAINEN: -- Dr. Paglini. So I --

4 THE COURT: Any objection to the admission of those  
5 exhibits?

6 MR. SMITH: I'm not familiar with 6 or the person  
7 that wrote it. I have seen -- I think the enrollment form is  
8 within the -- the overall documents that the school provided  
9 which are in our exhibits. Is that true, Ed? Number 7 is  
10 within the --

11 MR. KAINEN: Yeah.

12 MR. SMITH: And Number 8 as well?

13 MR. KAINEN: Yes.

14 MR. SMITH: Yeah, the -- and my objection is based  
15 on the representation that these are within the documents that  
16 have been provided by CSN, so I don't have any objection to 8  
17 or 9.

18 THE COURT: So --

19 MR. SMITH: What was the other one?

20 MR. KAINEN: 7 or 8.

21 MR. SMITH: 7, no.

22 THE COURT: Well, 8 --

23 MR. SMITH: I don't know that --

24 THE COURT: -- 8 and 9 --

1 MR. SMITH: -- person.

2 THE COURT: I just heard 8 and 9 --

3 MR. KAINEN: No, he meant 7 or 8.

4 THE COURT: Well, 7 and --

5 MR. SMITH: 7 or 8?

6 THE COURT: -- 7 and 8 --

7 MR. SMITH: Oh, okay.

8 THE COURT: -- are admitted --

9 MR. SMITH: I'm sorry. 7 or 8.

10 THE COURT: -- into the record.

11 (PLAINTIFF'S EXHIBITS 7 AND 8 ADMITTED)

12 MR. SMITH: I'm sorry, I got the tabs messed up.

13 THE COURT: 7 and 8 are admitted into the record.

14 MR. SMITH: Do you have any objection to the school  
15 records, Ed?

16 MR. KAINEN: I haven't even looked at the entirety  
17 -- I'm just trying to get what I'm -- what I got to do today  
18 right now. I may -- I may move them all in at some point, but  
19 for now I just got to -- look, if -- if you don't consent, I  
20 just got to put Kirk on for 30 seconds so I can admit these  
21 other documents and then I'm going to call Dr. Paglini,  
22 because we've got --

23 THE COURT: Well --

24 MR. KAINEN: -- limited time.



1 THE COURT: -- just for the sake of getting those.

2 MR. KAINEN: Yeah, I'm saying --

3 THE COURT: So you're saying -- which -- which ones  
4 are we --

5 MR. KAINEN: I'm talking about the email that says  
6 he can't get the information from the Nevada State High School  
7 because he's not a legal guardian. So they can't release  
8 Emma's schedule, Brooke's schedule, the email that he got. So  
9 I can admit that through him. And then I want to admit  
10 Brooke's dance schedule and the comparison of the loss -- or  
11 the statement of the loss time that he has, because he's laid  
12 out a -- a schedule of what kind of time he's lost.

13 THE COURT: Okay. So is there -- those are Exhibit  
14 6 --

15 MR. KAINEN: 6 --

16 THE COURT: -- 9 --

17 MR. KAINEN: -- 9 --

18 THE COURT: -- 9 --

19 MR. KAINEN: -- and 10.

20 THE COURT: -- and 10? Any -- any objection to the  
21 admission of Exhibits 6, 9, and 10?

22 MR. SMITH: 6, 9, and 10? 6 I just don't -- is this  
23 the person from CSN that -- that Kirk spoke to, is that who  
24 that is?

1 MR. KAINEN: From Nevada State High School.

2 MR. SMITH: From Nevada Cir -- State High School?

3 MR. KAINEN: Right. Due to your information not  
4 being in our records as a legal parent/guardian, I cannot send  
5 you Emma's schedule regarding the email.

6 MR. SMITH: Well, that would be evident in the  
7 record themselves, so I don't have any objection to that.

8 9 --

9 THE COURT: So Exhibit 6 is admitted.

10 (PLAINTIFF'S EXHIBIT 6 ADMITTED)

11 MR. SMITH: And 10, I -- is some sort of --

12 MR. KAINEN: Kirk's -- 9 is Kirk's affidavit which  
13 deals with deals with the -- the dance -- the dance issue.

14 MR. SMITH: The -- the 9 -- the 9 I don't have any  
15 objection, because the Court can take --

16 MR. KAINEN: Got it.

17 MR. SMITH: -- judicial notice of that.

18 MR. KAINEN: So 9's in. And then 10 is the  
19 statement of Kirk regarding --

20 MR. SMITH: But I'm not --

21 MR. KAINEN: -- Kirk -- this time.

22 MR. SMITH: -- admitting it for the tru -- the --  
23 like it's -- it's a -- a substitute for this testimony, if  
24 it's an aid to his testimony, then fine, but I'm not going to

1 have this constitute his testimony, this affidavit. He would  
2 have to --

3 THE COURT: Okay.

4 MR. SMITH: -- testify to these things.

5 THE COURT: Understood. So 9 is admitted. 10,  
6 there's no stipulation.

7 MR. SMITH: No. No. 9 is the affidavit. So -- so  
8 submitting an affidavit is -- it would be -- in order to  
9 either impeach or to support a prior consistent statement, but  
10 I'm not admitting it for a general purposes --

11 THE COURT: Oh, okay.

12 MR. SMITH: -- of having it substituted.

13 THE COURT: Understood.

14 MR. HARRISON: It's just as to the dance --

15 MR. KAINEN: We're talking --

16 THE COURT: Understood.

17 MR. KAINEN: -- about the dance schedule.

18 MR. SMITH: So the -- well, I'm talking about the  
19 number 9. So I just --

20 MR. KAINEN: Okay.

21 MR. SMITH: -- want to make clear --

22 MR. KAINEN: Then -- then --

23 MR. SMITH: -- of our --

24 MR. KAINEN: -- can I call him for 30 seconds --

1 THE COURT: Okay.

2 MR. KAINEN: -- just do it that way? Would you  
3 swear him in?

4 MR. SMITH: And then Number 10, I don't know what  
5 that is.

6 MR. KAINEN: We're spending more time on it than  
7 it's just easier to call him.

8 THE COURT: Yeah.

9 MR. KAINEN: And -- and you can just testify him  
10 right here, clerk, I'm sure. You -- do you care if he  
11 testifies from right there for this?

12 THE COURT: It's up to the Counsel.

13 MR. SMITH: Well --

14 THE COURT: I don't have --

15 MR. SMITH: -- I -- I think we should be on the  
16 record, so --

17 MR. KAINEN: No, he's on the record.

18 THE COURT: Well, he is.

19 MR. KAINEN: There's a microphone there.

20 THE COURT: Go -- go ahead -- let's -- let's have  
21 you take the stand. You're -- you're up anyway. Please raise  
22 your right to be sworn.

23 THE CLERK: You do solemnly swear the testimony  
24 you're about to give in this action shall be the truth, the

1 whole truth, and nothing but the truth, so help you God?

2 MR. HARRISON: I do.

3 KIRK HARRISON

4 called as a witness his own behalf, having been first duly  
5 sworn, did testify upon his oath as follows on:

6 DIRECT EXAMINATION

7 BY MR. KAINEN:

8 Q Turn to Exhibit Number 9. What do you recognize  
9 Exhibit Number 9 to be?

10 A It's my affidavit dated October 19th, 2016.

11 Q Is that a true and accurate copy of your affidavit?

12 A Yes.

13 Q Among other things, is that affidavit in paragraph  
14 22 contain Brooke's dance schedule?

15 A For that period of time, yes, for the --

16 Q Okay.

17 A -- spring of 2016.

18 Q Okay. Which is relevant in the counseling period  
19 and everything else which is why you've presented it?

20 A Yes.

21 MR. KAINEN: And Your Honor, I move for the --

22 Q And is it -- is it a true -- true and accurate  
23 statement --

24 A Yes.

1 Q -- of everything in there?

2 MR. SMITH: Okay. I move for the admission of  
3 Number 9.

4 THE COURT: Any objection?

5 MR. SMITH: And I'm reluctant -- I'm reluctant to do  
6 it, because it -- it contains much more than a dance schedule.  
7 It contains all sorts of allegations and I don't want this to  
8 be admitted --

9 MR. KAINEN: Then cross examine him.

10 MR. SMITH: -- as part of --

11 MR. KAINEN: I don't care.

12 MR. SMITH: -- his testimony.

13 MR. KAINEN: I'm just saying it doesn't stop it from  
14 coming in because Rad doesn't like what it says.

15 MR. SMITH: No. No. No.

16 THE COURT: But --

17 MR. SMITH: That's not true.

18 THE COURT: But the --

19 MR. SMITH: It --

20 THE COURT: It's offered for the purpose of the --

21 MR. KAINEN: It's offered --

22 THE COURT: -- dance schedule.

23 MR. KAINEN: -- for the truth of the matter asserted  
24 in it and the reason we're offering it in this case is because

1 of the --

2 MR. SMITH: Well, he --

3 MR. KAINEN: -- dance schedule is relevant.

4 THE COURT: Is there any -- is there any -- if -- if  
5 I strike the rest of it, is --

6 MR. KAINEN: I don't know in context how if it's --  
7 and I'm offering it for paragraph 22 which is the dance  
8 schedule. I don't know if there's something in paragraph 23  
9 or 19 that may be relevant to the dance schedule. The reason  
10 I'm offering it is because the dance schedule has been  
11 relevant.

12 MR. SMITH: for the limited purpose of -- of Kirk's  
13 assertion of the dance schedule, we have no obs -- objection,  
14 but not for --

15 THE COURT: Okay.

16 MR. SMITH: -- testimony.

17 THE COURT: Well, I'm -- I'm admitting the exhibit  
18 into the focus and the focus of the Court as -- and the weight  
19 given to it relates to Brooke's dance schedule.

20 (PLAINTIFF'S EXHIBIT 9 ADMITTED)

21 MR. KAINEN: Perfect. Okay.

22 BY MR. KAINEN:

23 Q Exhibit Number 10 is something you've prepared, is  
24 that correct?

1 A Yes.

2 Q Exhibit Number 10, what -- what is it?

3 A It compares my custody time periods, the court  
4 ordered custody time versus the actual time.

5 Q That you've had.

6 A That I had with Brooke, yes.

7 Q And that's essentially going through each of the  
8 custody order time periods and what actually happened during  
9 that.

10 A Yes.

11 Q Is it a true and accurate statement?

12 A Yes.

13 Q Is everything in there true and accurate to the best  
14 of your -- your information or --

15 A Yes.

16 Q -- knowledge? Okay. And is it offered to aid the  
17 Court in understanding each of the time periods -- over what  
18 period of time, by the way?

19 A It's from August 12th, 2015 through December 12th,  
20 2016.

21 Q And so was it offered in order to be able to lay out  
22 for the Court with -- at any point to turn to any particular  
23 date and find out what happened on that date without you  
24 having to testify one date by date by date over a two year



1 period?

2 A Yes, in the Court's January 3rd order, it wanted --

3 Q A schedule of missed time.

4 A Propriety of lost -- and stray time and that's what  
5 this is for.

6 MR. KAINEN: Your Honor, I move for the admission of  
7 10.

8 MR. SMITH: And I object because it contains more  
9 than that. There's a lot of opinions in here. There's a  
10 number of statements made by Rylee and Brooke. There's any  
11 number of statements that are unob -- objectionable. Just,  
12 for example, there is --

13 THE COURT: Well, I haven't -- I haven't seen it.  
14 To the extent it -- and am --

15 MR. KAINEN: You couldn't see it before, because --

16 THE COURT: -- am I focused on just the ledger? Is  
17 there a ledger of time missed --

18 MR. KAINEN: Yeah.

19 THE COURT: -- or --

20 MR. KAINEN: That's all -- I mean, it -- it's  
21 basic --

22 MR. SMITH: It's not a ledger. It's a -- an  
23 explanation with comments and --

24 THE COURT: Well, I -- I want -- I -- I want to --

1 MR. SMITH: It's just a ledger.

2 THE COURT: I'm inclined to admit that portion that  
3 relates to the missed time.

4 MR. KAINEN: You can use it for whatever purpose you  
5 want. You can give whatever weight you want to it. We've  
6 laid out each date that he was supposed to have time, whether  
7 she showed up, whether she didn't, if she showed up, did she  
8 show up at 11:15 at night and walk out at 8:00 in the morning,  
9 it states it in there, or if she stayed there and everything  
10 was perfect and everything so it's all laid out as --

11 THE COURT: I --

12 MR. KAINEN: -- to what the level of interaction  
13 was.

14 THE COURT: The Court is admitting Exhibit 10 for  
15 the limited purpose of analyzing the amount of missed time.

16 (PLAINTIFF'S EXHIBIT 10 ADMITTED)

17 MR. KAINEN: Thank you.

18 THE COURT: That's all I need it for.

19 MR. KAINEN: I don't have anything further with  
20 Kirk. I'd like my --

21 THE COURT: Any cross examination on those limited  
22 issues?

23 MR. SMITH: No, but we reserve the right to call  
24 Kirk in our case in chief.

1 THE COURT: Okay. All right. You may step down.

2 (WITNESS EXCUSED)

3 THE COURT: All right, Dr. Paglini.

4 (WITNESS SUMMONED)

5 THE COURT: Please raise your right hand to be  
6 sworn.

7 THE CLERK: You do solemnly swear the testimony  
8 you're about to give in this action shall be the truth, the  
9 whole truth, and nothing but the truth, so help you God?

10 DR. PAGLINI: I do.

11 THE COURT: You may be seated. Counsel, you may  
12 proceed.

13 DR. JOHN PAGLINI  
14 called as a witness on behalf of the Plaintiff, having been  
15 first duly sworn, did testify upon his oath as follows on:

16 DIRECT EXAMINATION

17 BY MR. KAINEN:

18 Q You prepared a letter to Court dated January 25,  
19 2002 -- '16, isn't that correct?

20 A Is that my report, sir?

21 Q It's your -- yeah, the report dated January 25,  
22 2016.

23 A Yes.

24 Q Okay. I'm going to show you what is a -- I'm

1 getting to that one. Just give me a copy of the report,  
2 please.

3 THE COURT: Let me have you state your full name?

4 THE WITNESS: I'm sorry?

5 THE COURT: State your full name for the record.

6 THE WITNESS: John Anthony Paglini.

7 MR. KAINEN: Do you want all his background laid out  
8 or are we --

9 MR. SMITH: We -- we stipulate to Dr. Paglini as an  
10 expert.

11 THE COURT: All right.

12 Q Is this a true and accurate copy of your report?

13 A Yes, sir.

14 MR. KAINEN: Okay. Your Honor, I move -- this is  
15 the copy of his report dated January 25, 2016. I move for the  
16 admission of Plaintiff's 1.

17 THE COURT: Any objection to the admission of  
18 Exhibit 1?

19 MR. SMITH: No, as long as it's held in the  
20 confidential file, Your Honor.

21 THE COURT: Okay.

22 MR. KAINEN: Okay.

23 THE COURT: It will be so admitted as the --

24 BY MR. KAINEN:

1 Q I'm showing you --

2 THE COURT: -- Court's direct exhibit.

3 (PLAINTIFF'S EXHIBIT 1 ADMITTED)

4 Q -- what's been marked as Plaintiff Exhibit 4. Do  
5 you recognize that? It's Exhibit 4 --

6 THE COURT: Right, the Court --

7 Q -- and it's --

8 THE COURT: Let --

9 A It's right here.

10 THE COURT: Hang on just a second. Let --

11 MR. KAINEN: I'm sorry.

12 THE WITNESS: This here?

13 THE COURT: Let me just note for the record the  
14 Court has received that report. I'm treating it as the  
15 Court's direct exhibit. It's actually not in your book --

16 MR. KAINEN: Right, that's why --

17 THE COURT: -- because it's --

18 MR. SMITH: Not in ours either.

19 THE COURT: So I'm --

20 MR. SMITH: But it's reference.

21 THE COURT: -- I'm treating that as a confidential  
22 exhibit. It's -- the Court receives it as -- as a direct  
23 exhibit.

24 MR. KAINEN: That's fine.

1 Q Plaintiff's 4 in that book, do you recognize that --

2 A Here?

3 Q -- document? Yeah, in the small book.

4 A Yes, sir.

5 Q Is that your letter dated May 31, 2016?

6 A Yes, sir.

7 Q Is that a true and accurate copy of that document?

8 A Yes, sir.

9 MR. KAINEN: Okay. Your Honor, move for the exhibit  
10 -- or Exhibit 4 to be admitted.

11 THE COURT: Any objection to the admission of  
12 Exhibit 4?

13 MR. SMITH: No objection.

14 THE COURT: Exhibit 4 is admitted.

15 (PLAINTIFF'S EXHIBIT 4 ADMITTED)

16 BY MR. KAINEN:

17 Q Would you -- there was a -- I'm going to ask you to  
18 turn to Plaintiff's 2. Is that an -- is that an email that  
19 you received from Vivian Harrison -- I'm sorry, that you  
20 received -- your off -- I'm sorry. This is the -- this is the  
21 one I'm referencing within.

22 A May I read it, please?

23 Q Hold on one second. I'm sorry. I think I --

24 (COUNSEL AND CLIENT CONFER BRIEFLY)

1 Q Okay. All right. The -- turn to Exhibit 3, please.

2 A 3?

3 Q Yeah.

4 A Thank you, sir.

5 Q And I apologize. I think I --

6 A All right.

7 Q That is an email sent to you from the underlying  
8 email is an email from Brooke to you, is that correct?

9 A Yes.

10 Q Is that a true and accurate copy of the email?

11 A Yeah, I have reviewed it recently, but that's --  
12 that seems very familiar, sir.

13 MR. KAINEN: Your Honor, I move for the admission of  
14 3.

15 THE COURT: Any objection to the -- the admission of  
16 Exhibit 3?

17 MR. SMITH: No, no objection to 3.

18 THE COURT: Exhibit 3 is admitted.

19 (PLAINTIFF'S EXHIBIT 3 ADMITTED)

20 MR. KAINEN: Just procedurally so I can get this in,  
21 this is a similar content, can I just call Kirk from his seat?  
22 I should have admitted Exhibit 2 -- I'm sorry, Exhibit 3 too  
23 through Kirk when I had him on the stand. So I just want to  
24 admit the email. It's from Vivian to him. Maybe they'll

1 stipulate to it.

2 THE COURT: Okay. Any objection?

3 MR. SMITH: We'll stipulate to it.

4 MR. KAINEN: Okay. So we have --

5 THE COURT: Exhibit 2 is admitted.

6 (PLAINTIFF'S EXHIBIT 2 ADMITTED)

7 MR. KAINEN: All right. So all of our exhibits have  
8 been admitted at this point then. Okay.

9 BY MR. KAINEN:

10 Q All right. In your letter to the Court dated May  
11 31, you indicated that Brooke's relationship with her father  
12 is extremely important and it needs to be on the forefront of  
13 issues addressed and not something that is possibly delayed or  
14 -- of avoided by Brooke.

15 A Yes.

16 Q Is -- is that still your opinion?

17 A Well, it was the opinion at the time. I don't know  
18 what's happened since then.

19 Q Well, I'm saying is there any -- is it any less  
20 important now as she's gotten closer to being -- as she's  
21 gotten closer to emancipating?

22 A Well, my opinion at this time was that I was  
23 concerned that things were not progressing fast enough.

24 Q Right.



1           A     And I'm not sure what's happened since -- with the  
2 exception of what I'm hearing here in the courtroom.

3           Q     Okay. Well, I'm asking you.

4           A     So yes, so I just -- I want things to be expediently  
5 handled so Father and daughter can resolve their issues and  
6 move forward.

7           Q     And why is that important?

8           A     Well, my whole assessment was based on that there  
9 was disengagement with Brooke towards her father. There was a  
10 difference of opinion of whether it was parental alienation or  
11 other dynamics that existed. And at that point in the  
12 relationship. Brooke was refusing to visit her father or  
13 reduced her contact considerably. And there was a lot of  
14 issues as illustrated in my report that occurred between Mr.  
15 Harrison and Brooke. And -- and I wanted them addressed  
16 because I wanted her to either increase the -- I wanted her to  
17 increase the quality of her relationship with her father  
18 whether that resulted in more time with him. That to me was  
19 secondary but in -- in terms of resolving the issues.

20          Q     Okay. You have any reason to believe based on what  
21 you've heard today those issues are resolved and everything's  
22 hunky dory?

23          A     I -- what I'm hearing is is it's ongoing. I don't  
24 know to what extent of what has happened.

1 Q Right. Is the level of therapeutic intervention  
2 that has actually occurred based on what you've heard in the  
3 courtroom today what you wanted to have occur?

4 A I was hoping that this would have been resolved by  
5 the summer of '16, that they would have been in therapy  
6 weekly, two hours, if it -- if it's three times a month, I  
7 don't care. But I want the issues to be resolved. And -- and  
8 I was dismayed obviously in May that -- that the progress was  
9 so slow at that point.

10 Q Okay. Why is it important that this relationship be  
11 repaired before Brooke emancipates?

12 A Well, I think you have to look at the context. The  
13 context was that the couple divorced. There is a severed  
14 family between, you know, two daughters with Mom and I think  
15 there's been a out -- kind of an emotional -- Brooke's been  
16 severely affected by the divorce and -- and her version of --  
17 of what she hears from her father and what goes on in her  
18 relationship with her father and mother. And I was concerned,  
19 because if -- if they didn't get to address this, Brooke was  
20 going to stay disengaged, she's going to go to college, and  
21 she may not have much of a relationship.

22 Q Right. And so what I'm saying is other than the  
23 fact that she might not have a relationship with Kirk, what's  
24 important about this 17-year-old girls -- this 17-year-old

1 girl having a relationship with her father? What are the long  
2 term consequences to her if she doesn't have a relationship  
3 with her father, just oh, too bad, so sorry, we tried, or --  
4 or are there reasons why we want children to have positive  
5 relationships with both their parents? Are there reasons we  
6 want girls -- 17-year-old girls to have positive relationships  
7 with their father as they go into adulthood?

8 A I think there's a lot of reasons if you look at the  
9 -- the history in terms of risk factors and everything else,  
10 but above and beyond that, you know, they had a great  
11 relationship up until maybe around sixth grade and then  
12 dynamics happen with the divorce and she matured and she has a  
13 very close relationship with her mother. And -- and I thought  
14 that it was based on what I was hearing in the issues and the  
15 session what was going on post divorce, issues remained, they  
16 were severe, and if they didn't get addressed, they were going  
17 to continue.

18 Q Okay. You believed that fixing them would be a  
19 matter of some intensive counseling based on the fact -- based  
20 on a number of factors, correct?

21 A Yes.

22 Q Okay. Those factors included that Brooke showed a  
23 willingness to engage in therapy to fix them, correct?

24 A Yes, part of it. Yes.

1 Q Okay. And it was in part based on the fact that  
2 Brooke said loved her father and wanted to have a relationship  
3 with him?

4 A Yes, but it was -- it was a very complicated  
5 dynamic. I mean, we had yes, she loved her dad. There was a  
6 lot of issues that she had with her father because of divorce.  
7 And she was very, very busy. And the opposition that she  
8 showed with her dad, she also showed with her mother but it  
9 was more intensified with her dad because of -- they -- they  
10 probably had less emotional connecting points.

11 Q Okay. Part of the reason that you felt that this  
12 was a fixable relationship through sit down therapy was that  
13 Brooke indicated to you that she didn't hate Kirk, correct?

14 A Yes.

15 Q That she loved him in fact, correct?

16 A Yes.

17 Q And that she wanted to have a relationship with him.

18 A Yes.

19 Q Okay. Are you aware that she has indicated to Kirk  
20 on multiple occasions that -- that she doesn't love him, she  
21 doesn't want a relationship with him, and that -- that in fact  
22 she hates him?

23 A Not really --

24 Q Okay.

1           A     -- because I haven't heard anything from Dr. Ali.  
2 And so I don't know.

3           Q     Right. And you don't --

4           A     I don't -- I don't know any of this. I mean, in  
5 terms of --

6           Q     Okay.

7           A     -- what --

8           Q     If --

9           A     -- she's thinking or --

10          Q     If she --

11          A     -- what she's feeling.

12          Q     -- was consistently saying to her father and in  
13 therapy that she hated her father, she didn't want a  
14 relationship with him, she wasn't worth -- willing to continue  
15 to engage in therapy and those kind of things, would those be  
16 significant factors that the Court should consider?

17          A     Let -- let me address something. Okay. What we  
18 have to do is look at context here. When I saw this young  
19 lady Brooke with her father, okay, they -- they engaged in a  
20 session, we were processing things, but she became very upset  
21 because of what she heard from her father. All right. There  
22 was no doubt that she loves her father, but there are dynamics  
23 that are existing between them that could easily get her upset  
24 where she backs out. So even if she says maybe I hate you, I

1 look at that as more based on my understanding of my  
2 assessment up until January of '16, I would say that's  
3 temporal meaning that it's temporary because consistently they  
4 -- they were okay, but the post divorce stress issues were so  
5 intense that at times I think like any teenager she may  
6 hypothetically say I hate you, but I still think there was --  
7 there was an openness there. I mean, she really struggled  
8 with her issues with her father.

9           And -- and so -- and that's why I thought therapy  
10 was really, really crucial. I can't tell you if she meant I  
11 hate you and it was consistently said and she never wants to  
12 be with her dad again because I can only tell you what I did  
13 up until January -- late January of '16. I don't know what's  
14 happened afterwards.

15           But I can tell you that up to that point she loved  
16 her dad, she had a lot of issues with her dad. She was damn  
17 certain which way she was going in terms of knowing she's  
18 going to make -- she's going to have her own say in everything  
19 and she's not going to comply, you know, if she doesn't want  
20 to.

21           Q     Okay.

22           A     Okay.

23           Q     Would you agree that it -- in five months --

24           A     Okay.

1 Q -- we lose the ability to compel her to do anything?

2 A In five months she has the capacity, yes, to reject  
3 and -- and not move forward with therapy and not process the  
4 issues anymore if she doesn't want to. Correct.

5 Q The reason you indicated that the prognosis was  
6 favorable in this case is because Kirk -- because Brooke loves  
7 Kirk, she has a willingness to address issues with Kirk. That  
8 was your conclusion.

9 A Yes.

10 Q Okay. Given that a year and -- almost a year, I  
11 guess. It's just going to be a -- a couple of days shy of a  
12 year had gone by and there have only been a few therapy  
13 sessions, are you as positive about the prognosis to fix this  
14 before Brooke emancipates?

15 A Well, once again, I don't know what all the dynamics  
16 are. And I was hoping that if they were engaged in intensive  
17 therapy that by the summer of '16 or the fall of '16 these  
18 issues would resolve. So my -- my confidence level has been  
19 reduced because we're here today.

20 Q Okay.

21 A Yes.

22 Q So if you had learned today that from the time you  
23 wrote your letter until the summer -- until the end of the  
24 summer of 2016, there were a total of two sessions, both of

1 them lasting well under the two hours, is that what you  
2 envisioned?

3 A Not at all.

4 Q Would it be fair to say that when Brooke -- and when  
5 -- when there was discussion of the medical reimbursement  
6 issues that Brooke presented that to you as no big deal, all  
7 she did was get on the phone, give her a name, address, and  
8 social security and that was it.

9 A That's what it seemed to me.

10 Q Okay.

11 A Yes.

12 Q And you've heard Dr. Ali's testimony that that was a  
13 big deal for her, a couple of days later she moved out, that  
14 she no longer wanted to live with Kirk and everything like  
15 that, would it be fair to say in retrospect that perhaps that  
16 was a bigger deal to Brooke than any of us surmised?

17 MR. SMITH: I move to strike the question as  
18 misstating the testimony of Dr. Paglini -- or Ali.

19 THE COURT: The objection's overruled. I note for  
20 the record Dr. Paglini was here during --

21 MR. KAINEN: Yeah.

22 THE COURT: -- Dr. Ali's examination.

23 THE WITNESS: I didn't have a good understanding of  
24 -- I remembered what the medical reimbursement dynamic when



1 she got on the phone with her mother, I explored that issue at  
2 the time -- I don't -- I didn't glean anything more from Dr.  
3 Ali because everything seemed to be limited and there was like  
4 a million objections going on. So it doesn't seem like  
5 anything was discussed in depth.

6 BY MR. KAINEN:

7 Q No doubt about that. Dr. -- you noted that Dr. Ali  
8 told you that Brooke didn't want to see her dad after the  
9 medical billing issues, is that correct?

10 A That's -- that's what I've heard, but I can't -- I  
11 can't recall if -- was that -- I think that was told me during  
12 the collateral interview. If that was in my report, then that  
13 would be accurate.

14 Q Yeah.

15 A That would have been the latter part of my report.

16 Q Yeah.

17 A Should I find it?

18 Q I'm just -- the paragraph I'm just going to take out  
19 of Page 44 was something that -- Dr. Ali then saw Brooke a few  
20 days later, Dr. Ali report that that was Brooke's last visit,  
21 she moved her items out of her father's house into her  
22 mother's house, Brooke discussed that she does not like  
23 switching houses, that it's stressful living with her father,  
24 she has a busy school schedule, she's attending Nevada State,

1 she doesn't like going back and forth. Dr. Ali reported that  
2 Brooke let Rylee know that she will be there for her.

3 A Okay. That's correct.

4 Q And you haven't spoken to Brooke about the medical  
5 issues since this report was done, correct?

6 A Correct.

7 Q Okay. You also thought it was significant in your  
8 conclusion that Mrs. Harrison wasn't seeking primary custody  
9 in this case, you thought that was a significant factor, is  
10 that correct?

11 A That she seemed -- yeah, she wasn't -- it doesn't  
12 seem like that was a motive of hers.

13 Q Are you -- are you aware that subsequent to your  
14 report and your letter, she did move for primary custody and  
15 she appealed this Court's denial of her motion for primary  
16 custody?

17 A I am not aware.

18 Q Okay. If I told you that -- that in fact there was  
19 a motion filed by Vivian subsequent to your report that she  
20 filed for primary custody and that she appealed to the Nevada  
21 Revised Statute and it's presently on appeal that denial of  
22 that, would that perhaps cause you to think that maybe there  
23 was more to what's going on here?

24 MR. SMITH: I'd like to know --

1           A       Well --

2           MR. SMITH:  -- the basis of that, Your Honor, but I  
3 think the motion was the response --

4           MR. KAINEN:  And this is --

5           MR. SMITH:  -- to the original --

6           MR. KAINEN:  If -- if the objection is --

7           THE COURT:  What's --

8           MR. KAINEN:  -- two words --

9           THE COURT:  What's the evidentiary objection?

10          MR. SMITH:  The objection is that it misstates the  
11 record of the Court.  I don't believe the motion was filed  
12 after Dr. Paglini's report.  I think it was filed before that  
13 -- I think that, but I would have to look.  I don't --

14          THE COURT:  Well --

15          MR. SMITH:  -- remember.

16          THE COURT:  -- the objection's overruled.  You may  
17 answer the question.

18          THE WITNESS:  You know, I would want to know what  
19 the context is.  I would -- I'd -- I'd ask you -- what -- what  
20 is going on, what has changed, et cetera, et cetera, so I -- I  
21 would reserve the right to talk to her about that first.

22 BY MR. KAINEN:

23          Q       Okay.  So it might alter your conclusion.  It might  
24 not, but it might alter your conclusion.

1       A     Well, I don't think -- I don't think it's going to  
2 alter my conclusions on parental alienation, but -- and -- and  
3 I don't think it's going to alter my conclusions on what this  
4 young girl was feeling, but, you know, if -- if there was  
5 ulterior motives, I probably want to know that.

6       Q     In your report, you also indicated it was  
7 significant that Mrs. Harrison wants Brooke to be in her  
8 father's life, she's not trying to eradicate Mr. Harrison from  
9 Brooke's life, there is no campaign of de -- degradation  
10 (sic), correct?

11      A     Denigration, correct.

12      Q     Denigra --

13      A     Yes.

14      Q     Degridation. It's what I got in my notes, but I can  
15 be wrong.

16      A     Okay.

17      Q     But if it said denigration --

18      A     I -- I might have it wrong. Okay.

19      Q     Okay. One of --

20      A     Yeah.

21      Q     It doesn't make --

22      A     Whatever.

23      Q     -- a difference.

24      A     Whatever.

1 Q Okay.

2 A Yeah.

3 Q I'm going to show you -- if you would turn to  
4 Exhibit 9 real quickly in the small book right there.

5 A Got it.

6 Q I'm sorry, not Exhibit 9. Sorry. Exhibit 7. If I  
7 represent to you this was a Nevada State High School  
8 enrollment form for Brooke completed by -- completed by Brooke  
9 and her mother and signed by Brooke and her mother --

10 A Okay.

11 Q -- and if you look to who the primary guardian's  
12 name is, do you see where that says that on Page 1?

13 A On Page 1, I'm sorry.

14 Q Right-hand side, second set down.

15 A The primary --

16 MR. SMITH: Well --

17 A -- guardian contact, Vivian.

18 MR. SMITH: -- I'm trying to have a --

19 A Got it. Got it.

20 MR. SMITH: Judge, I don't know what the  
21 relevance --

22 A Yeah.

23 MR. SMITH: -- of this is --

24 A Secondary guardian --

1 MR. SMITH: -- since --

2 A -- nothing.

3 MR. SMITH: -- we're talk -- you're talking about  
4 sessions with Dr. Ali. I'm not sure how this relates.

5 THE COURT: The objection is as to relevance?  
6 What --

7 MR. KAINEN: I mean, look --

8 THE COURT: What's the offer?

9 MR. KAINEN: -- we're trying to decide the -- the  
10 depth of the problem here. In other words --

11 MR. SMITH: What -- when did we decide that we're --  
12 this was about the depth of the problem? I -- I understood  
13 from this Court's order that we were here --

14 MR. KAINEN: And he's going to --

15 THE COURT: Well --

16 MR. SMITH: -- to talk about --

17 MR. KAINEN: You want his opinion on how to fix  
18 this.

19 THE COURT: Yeah, the objection's overruled.

20 BY MR. KAINEN:

21 Q And I show that the primary guardian is who?

22 A Vivian Harrison.

23 Q And if I -- and -- and who is listed as the  
24 secondary guardian?

1 A None.

2 Q Okay. If I represent to you this is the form on  
3 Page 2 that they both signed which showed the home address of  
4 Vivian's address and the guardian too, is father full name,  
5 there's nothing filled in there. And if I showed you the  
6 emergency contact was a neighbor --

7 A Yes.

8 Q -- and it was signed by Brooke and -- and Emma -- or  
9 Brooke -- I'm sorry, Brooke and Vivian, would that again go to  
10 the idea that maybe this problem, in other words, the problem  
11 that needs fixing, and I don't -- I'm -- please understand,  
12 I'm trying to take you as to --

13 A Okay.

14 Q -- I'm trying to trip you up, I'm trying to -- I'm  
15 saying --

16 A I understand.

17 Q -- we got a -- a short window to fix this problem  
18 and we have to recognize the depth of the problem. Does this  
19 lead you to believe that maybe the problem is deeper than  
20 anybody realized or is in need of a -- more of an emergency  
21 fix given the fact that when one parent fills out the form,  
22 she doesn't include the other parent?

23 MR. SMITH: Objection, this is an incomplete  
24 hypothetical. The -- the parties have a history of Mr.

1 Harrison signing up on -- by himself on -- at school. I'll --

2 MR. KAINEN: This is --

3 MR. SMITH: -- make that offer of proof. This is an  
4 incomplete hypothetical. It's dine -- designed to mislead Dr.  
5 Paglini.

6 MR. KAINEN: You know what --

7 MR. SMITH: This is why these assessments are done  
8 with all of the information being provided and Dr. Pag --

9 MR. KAINEN: I'm sorry --

10 MR. SMITH: -- Dr. Paglini --

11 MR. KAINEN: -- what two words were the objection  
12 here?

13 THE COURT: The -- the objection's overruled.

14 THE WITNESS: Okay. So please restate your  
15 question.

16 BY MR. KAINEN:

17 Q So we go back to your -- your statement earlier that  
18 there were -- Mrs. Harrison is not doing anything to eradicate  
19 Mr. -- Mr. Harrison from Brooke's life. There is no campaign  
20 of denigration or degradation --

21 A Right. Right.

22 Q -- whatever it is, failing to include the other  
23 parent in this enrollment form would be significant, correct?

24 A Well, I would -- joint legal custody would be that,



1 you know, you're going to put both people on the form.

2 Q Excellent. So when Kirk goes -- if you turn to the  
3 exhibit dated -- I'm sorry, the -- turn to Exhibit 6, if  
4 hypothetically I told you that Kirk -- we already have the  
5 email there. That Kirk requested of Vivian to provide  
6 Brooke's school schedule and Vivian refused to for months on  
7 end and never did, that would be significant, correct?

8 A That would be poor co-parenting.

9 Q Okay.

10 A Yeah.

11 Q And if in fact then when Brooke -- then when Kirk  
12 went to the school system to find out what the schedule was,  
13 if you turn to Exhibit 6, it says hello, Mr. Harrison, we  
14 previously spoke on the phone as in regarding Emma's schedule  
15 -- Emma is Brooke, you know that, unfortunately due to the  
16 information not being on our records as a legal parent or  
17 guardian, I cannot give you Emma's schedule via email. Okay.  
18 Is that a problem?

19 A On the surface, it seems like it is, yes.

20 Q Does it --

21 (COUNSEL AND CLIENT CONFER BRIEFLY)

22 Q This -- the -- the form was completed on August  
23 10th. You saw that from the date of the form, correct?

24 A 15?

1 Q Yes.

2 A Okay.

3 Q And are you aware that two days later Brooke sent a  
4 text to Kirk telling him she's not switching houses anymore?

5 A I can't recall that.

6 Q Okay.

7 A Yeah.

8 Q Would it be significant if two days before this  
9 child announces she's not coming back to his house, the other  
10 parent who's supposed to be co-parenting and doesn't have any  
11 campaign of degradation of the relationship is filling out a  
12 form that doesn't include -- or -- or specifically excludes  
13 the other parent, would that be significant and be indi --  
14 indicative of a problem?

15 A I -- I'd want to know about it, of course.

16 Q Would you agree that that kind of conduct could  
17 constitute an overt act to eradicate Kirk from Brooke's life?

18 A Well, these are two intelligent people, so they --  
19 they should know which way's up and they have been in a legal  
20 process long enough to know and I think they've even worked  
21 with a parental coordinator. So they know what joint, you  
22 know, legal custody is. So I would -- I -- I would find this  
23 to be, you know, of concern and I would have -- wanted to  
24 explore what that meant.

1 Q Okay.

2 A Okay.

3 Q Well, what I'm trying -- what I would represent to  
4 you is that Kirk was excluded from the records --

5 MR. SMITH: Objection

6 Q -- he --

7 MR. SMITH: This is not a question. This is a --

8 MR. KAINEN: This is the setup --

9 MR. SMITH: -- statement.

10 MR. KAINEN: -- of a question. It's the premise.  
11 This is following --

12 THE COURT: Well --

13 MR. SMITH: A premise?

14 BY MR. KAINEN:

15 Q Would it be significant if the evidence showed that  
16 this form was filled out which excluded Kirk from it -- from  
17 the information, that Kirk requested the information from  
18 Vivian and she ignored it for months and never complied, that  
19 I sent a letter to Mr. Smith requesting the information, my  
20 requests were ignored for months, when Kirk tried to get it  
21 directly from the school, he was rebuffed because he wasn't a  
22 joint legal custodian and it took the better -- months and  
23 months of months in order to be able to get this information,  
24 would that be a concern?

1           A     Yes.

2           Q     Okay.  Would it also be a concern that while this  
3 was going on, representations were made to Dr. Ali, to you, to  
4 this Court, that Brooke couldn't possibly accommodate this  
5 because of her school schedule, that she could not get a two  
6 hour session in with Dr. Ali, her school schedule, prohibited  
7 it, yet, when the school schedule came out, it showed that  
8 Tuesday and Thursday had five hour gaps right in the middle  
9 between ballpark 10:30 and 3:30?

10           MR. SMITH:  Is this is a hypothetical?  Because it  
11 misstates the record.  It's -- I -- mis -- mischaracterizes  
12 the record in this case.  Is it a hypothetical?  I don't know  
13 in the way the question was answered (sic).

14           THE COURT:  What's the nature of the question, Mr.  
15 Kainen?

16           MR. KAINEN:  Would it be significant?

17           THE COURT:  And are you -- are you posing it as a  
18 hypothetical?

19           MR. KAINEN:  Sure.

20           THE COURT:  Okay.

21           MR. KAINEN:  I think the evidence that was already  
22 in that supports all of those allegations.

23           MR. SMITH:  Objection --

24           MR. KAINEN:  We can debate that --

1 MR. SMITH: -- on the commentary and it --

2 THE COURT: Okay.

3 MR. SMITH: -- doesn't support it at all.

4 THE COURT: All right.

5 MR. KAINEN: I'm sorry.

6 THE COURT: So you may answer the question as a  
7 hypothetical.

8 THE WITNESS: Okay. Please respond -- answer the  
9 question again.

10 MR. KAINEN: Okay.

11 THE WITNESS: I'm sorry, just --

12 MR. KAINEN: Seriously?

13 THE WITNESS: -- brief it down, brief -- brief it,  
14 just --

15 BY MR. KAINEN:

16 Q Okay. Would it also be significant and perhaps  
17 evidence of a parent trying to eradicate one parent from the  
18 other parent's life if the following events happened? On  
19 August 10th, 2015, forms are filled out with the Nevada State  
20 High School that exclude my client as a parent. On August  
21 12th, the child indicates texting to her father I'm no longer  
22 living with you, that the parent who was not included asks the  
23 other parent, the co-parent --

24 A Uh-huh (affirmative).

1       Q    -- with whom the child is purportedly living for a  
2 copy of the schedule and that request goes ignored for months?

3       A    Right.

4       Q    That the lawyer representing that parent sends in a  
5 -- a letter to the other lawyer requesting the schedule? And  
6 that goes on for months and the school district when we tried  
7 to get the information directly from the school district  
8 refuses to give the information because he's not a legal  
9 guardian, would that perhaps be an indication of eradicating  
10 -- or attempt to eradicate a parent from the life and perhaps  
11 be an indication of a bigger problem?

12       A    It would obviously indicate that there's not  
13 parental compliance if that was the case. I'd want to know  
14 about it, because the parents should be working together on,  
15 you know, school and et cetera, et cetera, sharing  
16 information, as well as, you know, my belief, and this is once  
17 again hypothetical, but I would expect a parent to be the  
18 spearhead of making the appointments for therapy sessions and  
19 everything else. So I would have -- I would want -- I would  
20 expect the parent to be rising above and making sure that  
21 they're fostering the relationship between both parents.

22       Q    Did you hear the testimony -- were you in -- when  
23 Amanda testified that Vivian refused to get involved in the  
24 scheduling?

1 A Yes.

2 Q Okay. Does that concern you?

3 A Yes. If, you know --

4 MR. SMITH: Again mischaracterizes the testimony,  
5 Your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: Overruled?

8 THE COURT: You may answer.

9 THE WITNESS: Yeah, it would -- it would concern me,  
10 because I would expect especially in a situation like this  
11 that the parent is spearheading this to make sure that the --  
12 the child is in therapy.

13 BY MR. KAINEN:

14 Q Did you hear anything today during all the time that  
15 you listened to the evidence today, anything at all that  
16 indicated that Vivian had done anything to advance healing the  
17 relationship between Brooke and Kirk?

18 A Well, I haven't heard Vivian's perspective of this.

19 Q No, I'm just asking --

20 A Yeah.

21 Q -- from the testimony you --

22 A Yeah.

23 Q -- heard from Dr. Ali, from Amanda, you know --

24 A I haven't -- well, I haven't heard anything yet, but

1 maybe I'll hear something different, but, you know, right now  
2 I haven't heard anything.

3 (COUNSEL AND CLIENT CONFER BRIEFLY)

4 Q Oh. Oh, sure. Oh, I'm sorry. And the fact that if  
5 -- if those records when they were finally obtained show that  
6 there was a five hour block in the middle of both her --  
7 Brooke's Tuesday and her Thursday schedule contrary to what  
8 she had been representing to Amanda and Dr. Ali --

9 A This is Brooke.

10 Q This is Brooke.

11 A Right.

12 Q Is that again an indication that Brooke may not have  
13 been fully candid with everybody about the des -- her desire  
14 to go forward voluntarily and fix the problem?

15 A Let me just say something about this. There is no  
16 doubt that this is emotionally charged for Brooke. Okay. And  
17 when she was in a session with her dad, she became upset and  
18 left. But, you know, you have to understand her, there's a --  
19 there's a lot of -- there's a lot of issues.

20 And Mr. Har -- I think Mr. Harrison is a great guy,  
21 okay, but when he came in that session, he had a concept of  
22 parental alienation. And when he was processing dynamics with  
23 -- with Brooke and I was asking him about the pre-separation  
24 relationship, he took that as an opportunity to talk about the



1 mom. And Brooke listened patiently for awhile and then after  
2 about 10 to 15 minutes, he said you didn't -- even -- you  
3 know, you barely answered the question and then when I told,  
4 you know, Mr. Harrison hey, look, you have to, you know, focus  
5 on this part. He went back to it.

6 And then so for -- for Brooke, this is so  
7 emotionally charged she has two sisters that don't speak to  
8 her mom. She's dealing with a lot of post-divorce stress.  
9 She's saying, you know, I want to live at my Mom's house on a  
10 primary basis because there's less tension there. They're her  
11 perceptions. I'm not saying there is.

12 And -- and she's struggling with this. And so I can  
13 understand in some respects that there is a hesitancy to be in  
14 therapy, but she needs to be in therapy to address the issues.  
15 But there's -- she has a lot of -- this -- she's confused.  
16 She doesn't know -- she loves her dad and at the same time  
17 she's overwhelmed with the dynamics and she doesn't know how  
18 to resolve it. And -- and she has -- she sees all this  
19 conflict between her parents and her family. And she's trying  
20 to move on with her life and her point is I want stability and  
21 this is where I'm at.

22 And I think what she's probably experiencing at this  
23 time going into the therapy with Dr. Ali is, you know, I want  
24 this to be kind of -- I want to have a say in this regardless

1 of what Mom thinks and what Dad thinks. And so I think at  
2 times there is -- she -- she's ready to go in and she backs  
3 off. She's ready to go and then backs off. And -- and what I  
4 mean by that is just -- it's just ambivalence.

5 Q Well, no, I got that, but I'm saying we're giving a  
6 little too much credit to -- ready to go in and backs off.  
7 She -- it took two month -- three months to get the first  
8 session. We had two sessions in -- inside the following two  
9 months and then took seven months off. That's not like an ebb  
10 and a flow.

11 A I -- I see. I -- she needs to be in therapy.  
12 There's --

13 Q Okay.

14 A -- no doubt about it.

15 Q So my --

16 A This --

17 Q -- my question is --

18 A -- issues needs --

19 Q -- does --

20 A -- to be resolved.

21 Q -- this fix itself in the next four months, whatever  
22 it is, by saying oh, by the way, what I said a year -- a year  
23 ago, I really mean it this time?

24 A No, she needs to be in therapy. It's not being

1 fixed by itself. At least --

2 Q Does it --

3 A At least what I've known back then.

4 Q No, but what I'm saying is does it fix itself by  
5 just -- this Judge just saying hey, what Paglini said a year  
6 ago, I really mean it. Or does it need something more intense  
7 given the fact that we have pretty short leash to fix this?

8 A Well, there's no doubt there needs to be intense  
9 therapy. Okay. And then that -- and that was true in Spring  
10 of '16. I don't think you -- you would put her in some kind  
11 of program because that sends the wrong message to her. I  
12 don't think -- I -- I just think it does. I mean, it just --  
13 it pathologizes everything. And -- and I think she'll --  
14 she'll reject her father. And I don't -- I want her to -- to  
15 have a close relationship with her father.

16 And I know we're all at a loss here to a certain  
17 degree, because this is a 17-year-old young girl who's bright  
18 and stubborn. I mean, she's very stubborn. But I -- I don't  
19 think you can send her to some type of program out -- out of  
20 time.

21 Q I'm not talking about sending her to --

22 A Okay.

23 Q -- a program.

24 A Okay.

1 Q I'm talking about sending her and Brooke -- I'm  
2 sorry, Brooke and her father and her mother --

3 A To --

4 Q -- to an expert, for example, in pathogenic  
5 parenting, without blaming one parent or another, I'm just  
6 saying look, we got a problem, we need to fix it collectively  
7 as a family, give them the four days or so of like intensive  
8 family therapy where everybody's supposed to be on board with  
9 that and hope that it can be fixed. Is that a reasonable  
10 approach or is that going to just label her and she, you know  
11 --

12 A You know, this -- this kid has dealt with so much  
13 divorce stress, okay, and this is what the context is. She's  
14 -- she's avoiding this. She's avoiding the conflict.

15 Q She's running --

16 A And --

17 Q -- out the clock, isn't she?

18 A No. It -- that's a hypothesis. It -- it looks like  
19 that in a certain way.

20 Q And seeing with the -- all the -- every bit of  
21 empiricle evidence would lead you --

22 A Yeah.

23 Q -- to that conclusion, wouldn't it?

24 A It -- it seems like that on the surface, but --

1 Q Okay.

2 A -- but --

3 Q So if -- if now this story is hey --

4 MR. SMITH: I don't think he was finished --

5 Q -- my --

6 MR. SMITH: -- with his answer. Can we please --

7 Q If --

8 MR. SMITH: -- allow --

9 Q -- now the story is --

10 MR. SMITH: -- him to finish his answer, Your Honor?

11 THE COURT: Well, it -- it -- you can ask the follow  
12 up question during your examination, but I -- I do have to  
13 wrap things up and I'm assuming Mr. Smith has some questions,  
14 but the bottom line for me is -- is we're getting into an area  
15 that is helpful for me because I need to know whether  
16 participating in some type of an intense program like that,  
17 what -- what would be the -- the detriment to Brooke at this  
18 point. And we all understand the time line. We -- I've got  
19 five months to fix this.

20 THE WITNESS: I --

21 THE COURT: And that's my concern. But that  
22 ultimately is the question is what -- what would -- if -- if  
23 there was some intense program --

24 THE WITNESS: What -- what's the program?

1 THE COURT: Well, you --

2 MR. KAINEN: Can I ask my client just to -- to spell  
3 it out for the --

4 THE COURT: Yes. Okay.

5 MR. KAINEN: Okay. So spell it out to him what the  
6 program would be so that way he can -- then he can answer  
7 questions and discuss it with you, Judge.

8 MR. HARRISON: Yeah, Your Honor, I don't know if  
9 you've had a chance to look at it or not --

10 THE COURT: No, I -- I just want you to --

11 MR. KAINEN: Just tell --

12 THE COURT: -- tell him what the --

13 MR. KAINEN: -- tell --

14 THE COURT: -- program is.

15 MR. KAINEN: -- Dr. Paglini what the program is, who  
16 the players are --

17 MR. HARRISON: I -- and I'm going to -- just let me  
18 say one thing. We filed a motion for new recommendation from  
19 Dr. Paglini that goes into this that talks about this for all  
20 this stuff.

21 MR. KAINEN: I got it.

22 MR. HARRISON: So I just want --

23 MR. KAINEN: Just --

24 MR. HARRISON: -- to let --

1 MR. KAINEN: Just --

2 MR. HARRISON: -- I don't know if the Court had a  
3 chance to read it.

4 MR. KAINEN: And it is -- it's there, it's there,  
5 but tell Dr. Paglini. He doesn't know about it.

6 MR. HARRISON: It -- her name is Linda Gotley (ph).  
7 Her mentor was Salvador Menuchin (ph) who --

8 THE WITNESS: I know who he is --

9 MR. HARRISON: -- who founded structured family  
10 therapy --

11 THE WITNESS: Right.

12 MR. HARRISON: -- coined the phrase enmeshment. She  
13 has a program that she claims is a hundred percent effective.  
14 It's all positive. The one parent that the child is siding  
15 with puts together a letter to the child saying this is why  
16 it's a good idea for you to be reconnected with the other  
17 parent. The children and the parents all go to this four day  
18 program. There's no finger pointing, there's no who's the bad  
19 parent, who's the good parent, none of that stuff, and focuses  
20 on the positive and they're able to reunify the children with  
21 the alienated parent.

22 And the -- there's -- there's a number of programs  
23 across the country. There's -- there's one in Canada, Richard  
24 Worchak (ph), has one called Family Bridges.

1 THE WITNESS: All right.

2 MR. HARRISON: And the common denominator of all of  
3 them is a four day program and 90 days no contact with the one  
4 parent. That's -- the -- the -- and they won't even take your  
5 money if they don't have the 90 days no contact, because the  
6 problem is is that the kids regress every time.

7 THE WITNESS: But the premise is parental  
8 alienation.

9 MR. HARRISON: No.

10 THE WITNESS: Yeah, no? That's the -- the -- that's  
11 what I'm probably hearing --

12 THE COURT: Well, but --

13 THE WITNESS: -- your --

14 MR. KAINEN: He used the --

15 THE COURT: -- he used the -- he used the --

16 MR. KAINEN: He's used the wrong word.

17 THE COURT: He said the word the alienated parent.

18 MR. KAINEN: He said the alienated parent. He used  
19 the wrong word. I -- I -- and the only reason --

20 MR. SMITH: Wait. Wait. Wait.

21 MR. KAINEN: -- we've done --

22 MR. SMITH: This now becomes testimony by Mr.

23 Kainen. Can we have a question and answer --

24 THE COURT: Yeah.



1 MR. SMITH: -- session, please --

2 THE COURT: Let --

3 MR. SMITH: -- Your Honor?

4 THE COURT: Let's -- let's --

5 MR. KAINEN: Okay.

6 THE COURT: -- back to --

7 MR. KAINEN: And the reason I'm -- look, I'm saying  
8 this, you know this because you just --

9 MR. SMITH: Judge, this is --

10 MR. KAINEN: -- you just gazed --

11 MR. SMITH: -- closing argument.

12 MR. KAINEN: Okay.

13 MR. SMITH: If he wants --

14 MR. KAINEN: Hold on a second.

15 MR. SMITH: -- to ask questions --

16 MR. KAINEN: Let me finish the thought. I'm saying  
17 I'm conceding because you know it and I know the wrong word  
18 was used. You just gave a CLE on this topic.

19 THE COURT: Well --

20 MR. KAINEN: So I know the wrong word was used.

21 THE COURT: Well, but -- but let -- to the point of  
22 the -- the point of the question is you knowing -- and you've  
23 actually met Brooke. I have not.

24 THE WITNESS: Yeah.

1           THE COURT: What do you see the impact of this Court  
2 ordering that, in -- in these last four or five months that we  
3 have?

4           THE WITNESS: 90 days without talking to her mom?

5           THE COURT: Right.

6           THE WITNESS: I don't mean -- I mean, I -- I don't  
7 -- I don't see that being productive. Okay. I'm sorry. But  
8 it's -- it's like look, I -- I guess I'm not -- I'm not  
9 explaining this well. Okay. Let me see if I can kind of  
10 think this through here. You have a young girl who  
11 experiences not just a divorce, but a fractured family. Okay.  
12 Her two sisters that, you know, she cared for deeply at one  
13 point don't talk to her mom. She has different experiences of  
14 her mom than her -- her dad has.

15           And she has a lot of emotional connecting points  
16 with her mom. And -- and she loves her mom and she loves her  
17 dad, yet at one point she got to the point in saying I'm not  
18 doing this 50-50 thing anymore. Okay. I'm -- I'm beyond  
19 this. All right.

20           Now there's one contention is parental alienation.  
21 But in order to have parental alienation and when I was  
22 looking at this, it -- it just didn't fit. I mean, I went  
23 through six months of Mrs. Harrison's, you know, text  
24 messages. On -- on the spontaneous basis, it seems she was

1 denigrating Mr. Harrison. I was -- you know, I had -- I'm --  
2 I'm talking to a girl who says I love my dad and sometimes I  
3 really don't love my dad, you know, when I'm with my mom, it's  
4 not stressful, when I'm with my dad, sometimes it is, because  
5 I'm hearing certain things and I don't like this. And I'm at  
6 my mom's house and that's the original house and she makes my  
7 -- my life comfortable.

8           And -- and so I'm not hearing her say Mom is this  
9 perfect person, Dad is this evil person, because she can say  
10 negative things about her mom. She can say positive things  
11 about her dad. So I don't understand if -- if we -- for --  
12 from a perspective that if we take her mother away who is a  
13 support system for 90 days, you know, how that's going to  
14 change things.

15           What needs to takes place part of it is -- you know,  
16 and I'm assuming this. This is an assumption. Mom needs to  
17 step up and get involved in this and make sure certain things  
18 happen. This kid can't run the program, okay, because it's --  
19 BY MR. KAINEN:

20           Q     So after --

21           A     This --

22           Q     -- four years, should we expect that to happen in  
23 the last four months?

24           A     Well, you know what, I mean, listen, this is part of

1 the pathology of the family and this is part of what Brooke is  
2 telling you. Brooke is saying I'm out of this. Okay. She  
3 doesn't want to deal with this stuff anymore. Okay. And so  
4 she is, you know, biding her time to a certain degree. She  
5 loves -- she loves both of her parents, but she has issues  
6 with her dad, but she loves her dad. Okay.

7 Now she may say she hates her dad on a temporary  
8 basis, but I -- I was with this -- I was with her like six  
9 hours. Okay.

10 Q I get it.

11 A And, you know, and we went back, she came to my  
12 office after the blowup with her dad. She processed where  
13 she's at and she's like, you know, sometimes I feel like I  
14 can't forgive this. And -- and I go, you know, look, what if  
15 your dad's right on these things. What if your dad's right  
16 about this issue and this issue with your mom?

17 And Brooke had an openness to her versus, you know,  
18 if she was a -- an alienated kid, she wouldn't buy any of it.  
19 But she's like well, it would sadden me if Mom did these  
20 things, but she goes I know Mom is kind of really good in my  
21 life. And -- and so it doesn't fit, but it might be true, but  
22 it doesn't fit for me.

23 And so for Brooke, she's -- you know, I -- I don't  
24 see that if we took her away 90 days from her mom, her support

1 system, that that's going to beneficial. She'll resist.  
2 Here's my concern. If you do something like that, you already  
3 know that Brooke is strong and independent, right? What if --  
4 what happens if she doesn't buy it and after that 90 days  
5 where she has to go without seeing her mom that she then  
6 eradicates her relationship with her father?

7 Q Then he'll have known he did everything he possibly  
8 could before the clock ran out --

9 A I -- you know what?

10 Q -- to work it and it's a risk he's willing to take.

11 A Look, I -- I think you -- you have a -- Mr. Harrison  
12 -- I have a lot of respect for him. Okay. I have a  
13 tremendous amount of respect for him. We just disagree on  
14 this dynamic. Okay. And we have to do something different,  
15 but I think that is too major, okay. I -- I -- I mean, I --  
16 that -- that's my professional opinion. I think that it's  
17 going to -- she's going to resist it and it's going to be more  
18 detrimental in the long run, but we still have to fix it. We  
19 still have to fix it.

20 Q Well, that -- that's all well and good to say, but  
21 you got a situation where this child has been empowered to  
22 believe she can move when she wants, to go where she wants, to  
23 participate if she wants, do all of these things, you've got a  
24 parent who has tried everything to get us to the point and

1 you've got a parent who sat on her hands and either obstructed  
2 or certainly done nothing to --

3 MR. SMITH: Objection.

4 Q -- move the ball forward.

5 MR. SMITH: Argumentative. This is not a question.

6 THE COURT: Sustained. You need to -- let's get  
7 back to where we're -- and -- and I need --

8 MR. KAINEN: These --

9 THE COURT: -- to wrap up, so --

10 MR. HARRISON: Your -- Your Honor --

11 THE COURT: Do we -- do we -- at -- at this point, I  
12 -- I need to set -- we need to talk about another day.

13 MR. HARRISON: Your -- Your Honor, in the interest  
14 of moving forward from this point, can we -- I don't care if  
15 we go off the record, can we just have an informal discussion  
16 about this and we can have a little bit of discussion only  
17 --very briefly with Dr. Paglini and let me just say a few  
18 words.

19 MR. SMITH: Well, not with the Court present, but I  
20 would be willing to allow the Court -- the Court's suggestion  
21 and that is that these folks all get together, that you order  
22 these two to meet with Dr. Paglini, with -- with Brooke, with  
23 Dr. Ali, and try to come up with a plan that works for  
24 everybody. That's what should be done -- that's what we

1 suggested at the beginning of all of this, but nobody wants to  
2 -- to do that.

3 MR. HARRISON: Your Honor -- Your Honor, here's the  
4 -- the problem.

5 MR. SMITH: Well, Judge, if we're going to have te  
6 -- testimony, I want to have cross examination, so no.

7 MR. HARRISON: That's fine.

8 MR. SMITH: It's

9 THE COURT: Well, listen. And -- and I said at the  
10 outset of this I wanted to -- to solve problems. I appreciate  
11 Dr. Paglini I know you've been here all afternoon and -- and I  
12 appreciate your insight, because we are dealing with -- and  
13 I've got a precious teenage daughter sitting out there  
14 wondering what -- what the adults are all talking about in  
15 here.

16 MR. SMITH: Well, and I -- I don't think that --

17 (COUNSEL AND CLIENT CONFER BRIEFLY)

18 MR. SMITH: So Judge, if you wanted to, we -- we  
19 would be happy to have you interview her under any parameters  
20 that Mr. Kainen wants to set. Somebody needs to talk to  
21 Brooke though, because I think that -- I don't think that your  
22 impression would be any different than Dr. Paglini's.

23 THE COURT: Well --

24 MR. SMITH: And again, I've met her --

1 THE COURT: Well --

2 MR. SMITH: -- so I don't know.

3 THE COURT: -- this -- this -- and -- and it gets  
4 back to the point -- and I -- and I started our day off  
5 talking about the limited occasions in which I've actually met  
6 with the -- the individual involved and the trauma that's  
7 created just in Brooke thinking about having to come in to  
8 testify with Mom and Dad perhaps sitting here. We hadn't  
9 really got into the protocols. We might have excused them,  
10 but we're -- it's not happening today obviously just because  
11 of time.

12 But I -- I think part of this -- the frustration I  
13 know on the Plaintiff's side is I can sit here and say okay,  
14 the -- just as he was examining you, now it really has to  
15 happen because we've only got five months left. And I think  
16 the concern is we are somewhat running out the clock. These  
17 proceedings originally were set for March. And I -- I know  
18 the -- the original motion was followed -- filed back in the  
19 end of the summer in the fall.

20 At the same time, I've -- I've stated many times,  
21 and I don't know if you were here when I had this discussion  
22 with -- with the parties and Counsel about how far you push a  
23 teenage daughter and you knowing her better than I do how far  
24 you push, that's going to create more of a distance when she's



1 19 and beyond.

2           So we can sit here and say yeah -- and -- and  
3 obviously as we dismiss and look for a new date to -- to come  
4 back a second day, I'm -- I'm -- the counseling -- the order  
5 is -- remains the same. The counseling should continue and --  
6 and Mom needs to be proactive and -- and I -- I agree --

7           MR. KAINEN: Okay. Oh, although that -- that'll  
8 make all the difference in the world --

9           THE COURT: I know.

10          MR. KAINEN: -- now that you've said that. I mean,  
11 what does --

12          THE COURT: No, I've said that --

13          MR. KAINEN: -- it matter at this point?

14          THE COURT: -- all along. No, you're right.

15          MR. KAINEN: No. No. I know you've said it.

16          THE COURT: Yeah.

17          MR. SMITH: Let me -- wait, I don't -- I don't know  
18 why he's --

19          MR. KAINEN: Big deal --

20          MR. SMITH: -- raising his voice.

21          MR. KAINEN: -- is the problem that hasn't resulted  
22 in one lifted finger.

23          MR. SMITH: Judge, I think if --

24          MR. KAINEN: And so we can say it now and -- and you

1 know what, we'll move forward and I know I'm frustrated and  
2 I --

3 THE WITNESS: Wait. Wait. Wait.

4 MR. KAINEN: -- apologize for the --

5 THE WITNESS: Wait.

6 MR. KAINEN: -- end of the long day.

7 THE WITNESS: May I say something?

8 MR. KAINEN: But you know what, as a -- let's take  
9 the hail mary at this point.

10 MR. SMITH: Look, as an offer of proof, Your Honor,  
11 Ms. -- we believe that Brooke will testify, and I know Brooke  
12 has told this to Mrs. Harrison that her father indicated that  
13 she had to make the schedule, that she had to be responsible  
14 for the schedule. This is the first I'm hearing that  
15 somehow --

16 THE COURT: Well --

17 MR. SMITH: -- Vivian's responsible for --

18 THE COURT: And -- and --

19 MR. SMITH: -- the schedule.

20 THE COURT: Well, again, and --

21 MR. KAINEN: If that's consistent --

22 THE COURT: -- Dr. Paglini --

23 MR. KAINEN: -- with everything --

24 THE COURT: -- you wanted to offer something?

1 MR. KAINEN: -- you heard today.

2 THE WITNESS: Wait. Wait. May I say something?

3 MR. KAINEN: Sure.

4 THE WITNESS: Okay. So I know -- I don't know if  
5 I'm coming back or not, I assume I am, but I'm not sure, okay,  
6 but let me just throw something out at you. We have to move  
7 with haste. Okay. So why don't -- why don't we have Vivian  
8 take her daughter to Dr. Ali, okay, and she can't leave. And  
9 -- and the parameters aren't necessarily at this point 50-50  
10 custody. The parameter should be working on the relationship  
11 and building emotional connecting points.

12 MR. KAINEN: Yeah.

13 THE WITNESS: Is that correct? Yes or no?

14 MR. KAINEN: It's fixing the -- it's fixing the  
15 relationship. The --

16 THE WITNESS: Yeah.

17 MR. KAINEN: -- where she --

18 THE WITNESS: Right.

19 MR. KAINEN: -- lives at this --

20 THE WITNESS: So it's not --

21 MR. KAINEN: -- point --

22 THE WITNESS: -- a matter --

23 MR. KAINEN: -- is largely irrelevant.

24 THE WITNESS: -- and -- and --

1 MR. HARRISON: But I've got to spend time with her.

2 THE WITNESS: Exactly.

3 MR. HARRISON: And don't -- don't you think that the  
4 child has some concept that there's a court order, this is  
5 what her parents agreed to, this is something --

6 MR. SMITH: Are we on the record?

7 MR. HARRISON: -- I should do as opposed to  
8 continuing to blow this off? I'm off -- out about 220 custody  
9 days at this point.

10 THE WITNESS: I -- I understand. Sir --

11 MR. SMITH: You know, how much time has she missed  
12 with Tawny? Really? He's out --

13 THE COURT: Listen.

14 MR. SMITH: -- 220 days. How about years of not  
15 seeing her other daughter. This idea that it's all Vivian  
16 Harrison that's caused the problems in this family, we have 14  
17 separate motions that have been filed in this court subsequent  
18 to him making agreement about things he now --

19 THE COURT: Well, listen.

20 MR. SMITH: -- appealed and denied.

21 THE COURT: No.

22 MR. KAINEN: Everyone of them trying to get --

23 THE COURT: Well --

24 MR. SMITH: It's just --

1 MR. KAINEN: -- the agreement enforced.

2 THE COURT: Stop. Stop.

3 MR. KAINEN: Everyone of them --

4 THE COURT: I -- I want to --

5 MR. KAINEN: -- trying to get the agreement.

6 MR. SMITH: No.

7 THE COURT: I want to finish hearing Dr. Paglini out  
8 as what --

9 THE WITNESS: Yeah.

10 THE COURT: -- what's he's --

11 THE WITNESS: Look. Look.

12 THE COURT: -- recommending.

13 THE WITNESS: Yeah, look. What -- what you got here  
14 is there's so much unresolved issues among these litigants,  
15 okay, that we already have two daughters that won't talk to  
16 Mom. Now are we going to end up having one daughter not talk  
17 to her father and eventually two daughters? Okay.

18 The -- the reality is is this is taking a toll on  
19 everyone in this family. All right. So let's -- maybe what  
20 needs to take place is -- look, I think it's great that this  
21 girl, she's -- she's so intelligent, she's in Nevada State  
22 College, she's in dance. But you know what? I hate to say  
23 this and I think -- dance -- dance is secondary at this point  
24 to resolving the issue. If she misses a day of dance, and I

1 know she's in an upper echelon level, okay, but it's not going  
2 to like deteriorate her dancing skills at such a level where  
3 it's -- it -- things aren't going to work. Now she may resist  
4 that, but find a Saturday to go or do something to make --  
5 this has to be a priority for her.

6           However, the focal point of therapy needs to be,  
7 okay, I'm not rehashing issues of what other people have done,  
8 like Mom or what is missing, but building connecting points.  
9 And this means that she should spend time with her dad alone,  
10 go to a movie, get a pizza, some things I said in my  
11 recommendations beforehand. But it has to happen.

12           This relationship between parent and child is  
13 important. We don't have much time on it. We're not asking  
14 her to say -- to -- to be away from her mom for 90 days.  
15 We're asking her she needs to invest. Okay. And Mom needs to  
16 invest. Mom -- everyone needs to be on the same page to make  
17 this happen. We don't want another child in this family to  
18 have the division that's already existed with two -- to two  
19 daughters. All right. This has been too much of a toll here.

20           So everyone has to be working together on the same  
21 page. So if Mom has to bring the child, Mom can make the  
22 appointments, and it has to happen, it's not lip service, it's  
23 not passive aggressive behavior, it has to take place, we have  
24 a limited amount of time, this is important.

1           Now I mean, I -- you know, I don't know what else to  
2 say, Your Honor. I mean, it's just --

3           THE COURT: Well, and -- and I -- but I -- I do  
4 appreciate that. I -- I mean, obviously, I -- I -- the -- the  
5 decision I have to make is recognizing that Dad has lost  
6 certain custodial days. That's the nature of the issue that's  
7 before me is --

8           THE WITNESS: Right.

9           THE COURT: -- whether or not in these five months I  
10 essentially compensate Dad for the lost time. But ultimately  
11 every decision I -- I make has to be couched in terms of what  
12 is in Brooke's best interest. That's --

13          THE WITNESS: Right.

14          THE COURT: -- how -- that's -- that's the prism I  
15 have to look at this in. And -- and I think the -- the  
16 reference has been made is -- is this the last hurrah that we  
17 can make and that's why this program comes into focus. We --

18          MR. KAINEN: I --

19          THE COURT: We have exhausted our time today.

20          MR. KAINEN: I understand. The other critical part  
21 about all this is is what we do here -- Rylee turns 14 this  
22 month.

23          THE COURT: I know.

24          MR. KAINEN: Magically, she's packed a bag, she's

1 carrying now a large thing that she -- she's 14 now. She's  
2 carrying her clothes back and forth. Well, like large --

3 MS. MOLNAR: Because she's a --

4 MR. KAINEN: -- amount of her clothes --

5 MS. HARRISON: -- teenager.

6 MR. KAINEN: -- back and forth. No, I'm not talking  
7 about -- I'm not talking about her dance bag with her shoes  
8 and everything. I'm talking a -- a large duffel now with all  
9 of her folded laundry and everything is now -- I mean, it's --  
10 it's happening now, it's exactly on the same thing, and we're  
11 going to deal with this --

12 MS. HARRISON: She wears --

13 MR. KAINEN: -- with Rylee --

14 MS. HARRISON: -- a nightcap --

15 MR. KAINEN: -- as we go --

16 MS. HARRISON: -- and she brushes --

17 MR. KAINEN: -- forward

18 MS. HARRISON: -- her hair and she does her hair  
19 now.

20 MR. SMITH: So Your Honor, I need to ask --

21 MR. KAINEN: I'm not talking

22 THE COURT: Well --

23 MR. KAINEN: -- about --

24 MS. HARRISON: She's not eight years old anymore.



1           MR. SMITH: And this is an interesting fireside, but  
2 I am -- I need some direction on the motion that was filed by  
3 -- and I think I referenced this in my pretrial memorandum,  
4 certain parts of it were moot. I didn't know whether the  
5 Court intended to proceed forward on the issue of the request  
6 to vacate the teenage discretion provision. If so, I'll need  
7 to file an opposition. But it was my understanding that the  
8 -- the motion was vacated by the -- this evidentiary hearing.

9           THE COURT: But expediting the evidentiary hearing.  
10 I'm not inclined to entertain that at this time. My focus  
11 wants to be on -- on --

12           MR. HARRISON: But why would we let --

13           THE COURT: -- fixing --

14           MR. HARRISON: -- Rylee --

15           THE COURT: -- this issue -- so we can come back.

16           MR. KAINEN: So we're going to --

17           THE COURT: I -- I have time available next week if  
18 you want to come back on Tuesday or Wednesday --

19           MR. SMITH: Okay. Well, I'll --

20           THE COURT: -- if you want to --

21           MR. SMITH: -- have to look at

22           THE COURT: -- check your calendars.

23           (COUNSEL AND CLIENT CONFER BRIEFLY)

24           MR. KAINEN: There's -- I'm -- I'm out --

1 MS. HARRISON: Tue -- Tuesday's

2 MR. KAINEN: I leave --

3 MS. HARRISON: -- my daughter's birthday, so that's  
4 not going to be good for me. And --

5 THE COURT: Yeah, I don't want to do it on a  
6 birthday

7 MS. HARRISON: And then -- and then the end of next  
8 week I'm out of town.

9 THE COURT: So Wednesday -- Wednesday?

10 MS. HARRISON: Uh-huh (affirmative). Wednesday's  
11 fine with me.

12 MR. KAINEN: Okay. I'm out of town.

13 MR. SMITH: Wednesday the -- you're out of town?

14 MR. KAINEN: I leave on -- I have a flight Wednesday  
15 at noon, so --

16 THE COURT: What about February 1st?

17 MR. KAINEN: February 1st is fine.

18 THE COURT: How does that work for -- and Mr. Smith,  
19 that --

20 MR. SMITH: I'm checking, Judge, sorry. I couldn't  
21 -- I can't -- this is the danger of being not very good at the  
22 computer. My -- my office -- I usually just call my office  
23 but they're not there now. It will just take a second.

24 MR. KAINEN: While we're --

1 MS. HARRISON: Your Honor --

2 MR. KAINEN: While he's looking --

3 MS. HARRISON: -- I have -- I have an issue with  
4 this confidentiality thing. I -- you know, I -- but with  
5 contingent therapy, I'm not for it if it's no confidentiality.

6 MR. KAINEN: While we're -- I mean --

7 MR. SMITH: Perhaps we can hear from Dr. Paglini on  
8 that as to the effect --

9 MS. HARRISON: And -- and I --

10 MR. SMITH: -- of --

11 MS. HARRISON: -- and I would like --

12 MR. SMITH: -- telling Brooke that anything she says  
13 in -- in her sessions can be repeated by Kirk in pleadings and  
14 filings with this Court.

15 MS. HARRISON: Okay. In fact, I would like for her  
16 to have --

17 THE COURT: Well --

18 MS. HARRISON: -- sessions with --

19 THE COURT: -- listen.

20 MS. HARRISON: -- Dr. Paglini.

21 MR. KAINEN: Okay.

22 THE COURT: Well, listen. I -- I would encourage  
23 you, this is not a court order, but I certainly would  
24 encourage what was referenced before in having Mom and Dad

1 meet with Dr. Paglini, meet with Dr. Ali, have Brooke involved  
2 as well, to see if there's some way to -- because the  
3 counseling is ongoing. We're coming back in two weeks  
4 presumably if Mr. Smith's available. So I expect there's  
5 going to be a counseling session before we come back.

6 MS. HARRISON: And I would be happy --

7 THE COURT: And I --

8 MS. HARRISON: -- if she would --

9 THE COURT: -- think --

10 MS. HARRISON: -- go with Paglini.

11 THE COURT: -- everyone should be involved and --  
12 and goes to the language that I've heard from Dr. Paglini that  
13 I've used before with both of you. You've got to be -- both  
14 of you have to be invested in this process. It's incumbent  
15 upon both sides. And ult -- ultimately if -- if when we come  
16 back, again, that Brooke may be called as a witness, depending  
17 on what protocols that both sides desire to invoke and that  
18 may be something you also discuss with Dr. Paglini.

19 Dr. Paglini knows Brooke better than I do. I've  
20 read a lot about Brooke and I know she's a special daughter,  
21 but I haven't had a -- the chance to meet her.

22 THE WITNESS: Okay. I have a -- I have a question.  
23 Let me make sure I understand the parameters here. Are -- is  
24 this something we're thinking of doing or not doing? And I --

1 do I meet with the parents and Brooke or Dr. Ali? Do I talk  
2 to Dr. Ali? Because, you know, I'm listening to all these  
3 issues of confidentiality and what Dr. Ali went through and do  
4 I want to go through this?

5 MR. SMITH: Well, you don't --

6 THE WITNESS: You know --

7 MR. SMITH: -- you don't --

8 THE WITNESS: So --

9 MR. SMITH: -- have -- but Dr. -- our position is  
10 that Dr. Paglini is not in the same position as Dr. Ali.

11 THE COURT: He's not. No, you're right.

12 MR. SMITH: Dr. Paglini --

13 THE COURT: He's an evaluator.

14 MR. SMITH: -- is -- is an evaluator. Dr. Pagl --

15 THE COURT: Right.

16 MR. SMITH: Dr. Ali is a therapist.

17 THE COURT: Well, I -- I guess -- but the question  
18 posed is -- is -- are both parties interested in pursuing that  
19 with Dr. Paglini and Dr. Ali?

20 MS. HARRISON: I -- I'm not interested in pursuing  
21 it unless it's confidential. That's the -- I was complete  
22 taken back on this confidentiality.

23 MR. HARRISON: Look, we can --

24 MS. HARRISON: I always told Brooke that --

1 THE COURT: Well, listen.

2 MS. HARRISON: -- her -- everything she said was  
3 confidential --

4 THE COURT: And -- and --

5 MS. HARRISON: -- and she can trust --

6 THE COURT: -- at this point --

7 MS. HARRISON: -- the therapist --

8 THE COURT: And then --

9 MR. KAINEN: Well, then maybe she shouldn't --

10 MS. HARRISON: -- and that's not the case.

11 MR. KAINEN: -- have gotten advice from -- I mean,  
12 the law is pretty clear. It doesn't apply --

13 THE COURT: I --

14 MR. KAINEN: -- with a minor. It's -- it's not like  
15 all of a sudden --

16 MS. HARRISON: And even on parenting plan --

17 MR. KAINEN: -- a -- a --

18 MS. HARRISON: -- parenting --

19 MR. KAINEN: -- pediatrician --

20 MS. HARRISON: -- plan --

21 MR. KAINEN: -- a pediatrician can't be called and  
22 have a parent stand up and say no, no, my child believed --

23 MS. HARRISON: Our parenting plan --

24 MR. KAINEN: -- when --

1 MS. HARRISON: -- said that it was supposed to be  
2 therapeutic and that nothing was supposed to be --

3 MR. KAINEN: We're not doing this.

4 MR. SMITH: What --

5 MS. HARRISON: -- brought --

6 MR. SMITH: I'm -- I'm just --

7 MR. KAINEN: Okay.

8 MR. SMITH: I'm interested to know so I can  
9 understand --

10 MR. KAINEN: I'm sorry.

11 MR. SMITH: -- this issue, what --

12 MR. KAINEN: Yes.

13 MR. SMITH: -- law is --

14 MR. KAINEN: I'm --

15 MR. SMITH: -- Mr. Kainen --

16 MR. KAINEN: We're interested in --

17 MR. SMITH: -- citing?

18 MR. KAINEN: -- in doing whatever it takes --  
19 whatever we can do between now and when we come back to move  
20 the ball forward in terms of doing -- in terms of doing  
21 something. So that --

22 THE COURT: Ev -- even to the point of me declaring  
23 that it is a confidential process and I don't expect anything  
24 from what happens --

1 MS. HARRISON: If it's confidential --

2 THE COURT: -- after --

3 MS. HARRISON: -- then I'm fine.

4 THE COURT: -- today to be raised in any papers  
5 filed with the Court.

6 MR. KAINEN: It --

7 MS. HARRISON: A hundred percent.

8 UNIDENTIFIED VOICE: Hello?

9 MR. SMITH: Hey, are you at work?

10 MS. HARRISON: And --

11 THE COURT: Any objection to that?

12 MR. SMITH: Oh, shoot.

13 MR. KAINEN: Yeah, but here's the problem I've got.

14 MR. SMITH: I need --

15 MR. KAINEN: It's what --

16 MR. SMITH: -- my schedule --

17 MR. KAINEN: -- happens --

18 MR. SMITH: -- and I can't log onto my PC for some  
19 reason.

20 MR. KAINEN: -- what has happens repeatedly which is  
21 she gets in there and says screw all of you --

22 MR. SMITH: No. No. No. Yeah, I know that.

23 MR. KAINEN: -- I ain't doing it --

24 MS. HARRISON: I want --



1 MR. KAINEN: -- suddenly --  
2 MR. SMITH: -- but I'm trying to pull it out --  
3 MS. HARRISON: -- her to be able to say that --  
4 MR. KAINEN: -- I can't tell you that.  
5 MS. HARRISON: -- if that's what she feels --  
6 MR. SMITH: -- and I have to figure out --  
7 MS. HARRISON: -- and that's what she thinks --  
8 MR. SMITH: -- whether we're available at certain  
9 times.  
10 MR. SMITH: Can you long into --  
11 MS. HARRISON: -- and not --  
12 MR. KAINEN: Right.  
13 MS. HARRISON: -- have to --  
14 MR. KAINEN: But we're going to --  
15 MR. SMITH: -- my PC?  
16 MS. HARRISON: -- worry about it.  
17 MR. KAINEN: -- keep it a secret from you and then  
18 you're going to make yet one more decision without  
19 information.  
20 MR. SMITH: Okay. Yeah. All right.  
21 MR. KAINEN: We're going to limit --  
22 MR. SMITH: All right.  
23 MS. HARRISON: -- what comes in --  
24 MR. SMITH: Thanks. Bye.

1 MR. KAINEN: -- through Dr. Ali even though there's  
2 no privilege there and the law is crystal clear on that that  
3 that the parents hold it, you know, there -- I mean, we can  
4 pretend --

5 THE COURT: Well --

6 MR. KAINEN: -- we can talk about --

7 THE COURT: No, but listen.

8 MR. KAINEN: -- what feels --

9 THE COURT: Listen.

10 MR. KAINEN: -- good.

11 THE COURT: No, I'm -- I'm talking -- the -- and  
12 really these are two separate components. You've got --  
13 you've got a potential evidentiary hearing --

14 MR. SMITH: Are you at work?

15 THE COURT: -- that -- that our conclusion we're  
16 going to wrap up when we come back on the 1st. Again, if we  
17 can confirm --

18 MR. SMITH: Yeah.

19 THE COURT: -- with Mr. Smith.

20 MR. SMITH: I need you to go back into the office  
21 and tell me what my schedule looks like if you can, I'm sorry.

22 THE WITNESS: Okay.

23 THE COURT: But this -- this is something that's --

24 MR. SMITH: Possibly --

1 THE COURT: -- completely --  
2 MR. SMITH: -- because at this point --  
3 THE COURT: -- separate and distinct --  
4 MR. SMITH: -- the Court's waiting at me.  
5 THE COURT: -- that really has nothing --  
6 MR. KAINEN: Yes.  
7 MR. SMITH: No. No. No.  
8 THE COURT: -- to do --  
9 MR. KAINEN: And I'm willing to --  
10 MR. SMITH: I'm talking about --  
11 MR. KAINEN: -- certainly -- reason I'm wanting to  
12 try it. My point is is that you have to be aware if -- if we  
13 get done and --  
14 MR. SMITH: Yeah.  
15 MR. KAINEN: -- Vivian walks in there and says --  
16 MR. SMITH: No. No. No.  
17 MR. KAINEN: -- you know what --  
18 MR. SMITH: I'll --  
19 MR. KAINEN: -- I'm going to continue --  
20 MR. SMITH: -- just stay on the line --  
21 MR. KAINEN: -- to sabotage this thing --  
22 MR. SMITH: -- until you get there.  
23 MR. KAINEN: -- all I want. I can't have my hands  
24 tied and say okay, well, we can't tell Duckworth that because

1 you know what had happened --

2 THE COURT: Well, but -- but if someone -- if -- I'm  
3 -- and to that point, if -- if I --

4 MS. HARRISON: I refuse to go.

5 THE COURT: -- had someone --

6 MS. HARRISON: That's different.

7 THE COURT: -- walking in and I'm hearing on the  
8 record that yes, I'm all for it and then either party walks in  
9 and says screw that, I'm -- I'm done with it, that would be  
10 bad faith and -- and I --

11 MR. KAINEN: But it's not like that hasn't happened  
12 and -- and not like there's --

13 THE COURT: Well --

14 MR. KAINEN: -- this has been a case filled with oh,  
15 everybody's got daisies and roses and we're all acting --

16 THE COURT: Well --

17 MR. KAINEN: -- in good faith here. I mean, it's  
18 been -- how many years were we dealing with this kind of  
19 stuff? It's -- where you're getting -- you -- you get told  
20 one thing and something else happens and by the way, we're all  
21 going to keep a secret, and not tell you the other stuff --

22 THE COURT: Well, listen.

23 MR. KAINEN: -- and expect you to make a reasonable  
24 decision with, you know, 10 percent of the information.

1 THE COURT: Listen, I'm -- I'm trying to solve  
2 problems here and I think that's an option if both parties are  
3 interested in buying into it. And that's all I'm saying.  
4 This is independent of me saying we're going to come back.  
5 Brooke may or may not testify. That's up to the you -- well,  
6 up to the both sides what protocol you want to invoke, whether  
7 or not it becomes a child interview versus her testifying on  
8 the stand between attorneys or -- or having parents involved  
9 as well.

10 I -- and that impact in and of itself, the trauma  
11 that that --

12 MR. SMITH: I --

13 THE COURT: -- creates for Brooke going forward in  
14 terms of the --

15 MR. SMITH: Okay.

16 THE COURT: -- relationship.

17 MR. SMITH: Okay. February 1st.

18 THE COURT: I know Dad doesn't want that to happen.

19 MR. KAINEN: I know.

20 THE COURT: But quite frankly, given the type of  
21 facts that are before me, I said you know what, she's 17, you  
22 can have her come in and testify or have her sit down with me,  
23 use some type of alternative means that you have available  
24 under 16.215.

1 MR. SMITH: But again, Ms. Harrison has no objection  
2 to you interviewing the child, Your Honor.

3 THE COURT: Understood.

4 MR. SMITH: Okay. Wednesday the 1st? Okay. Great.  
5 The 1st is fine.

6 THE COURT: Okay. So the 1st --

7 MR. SMITH: But -- but --

8 THE COURT: -- at 1:30.

9 MR. SMITH: So in the -- it's the afternoon, Your  
10 Honor?

11 THE COURT: 1:30.

12 MR. SMITH: So 1:30 through 5:00, just mark me out.

13 UNIDENTIFIED VOICE: Okay.

14 MR. SMITH: Thank you. Bye.

15 MR. KAINEN: One other thing that you did -- so I'm  
16 sorry, what are doing? Are we going to try just to do  
17 something in the next two weeks, is that the plan?

18 THE COURT: Well, if -- I have that date set and so  
19 you're going to come back and -- and I'm --

20 MR. KAINEN: But --

21 THE COURT: -- going to hear the remaining --

22 MR. KAINEN: I have --

23 THE COURT: -- testimony at that point.

24 MR. KAINEN: -- no objection to Dr. Paglini talking

1 with Dr. Ali and the two of them coming up with like the  
2 greatest plan since the D-Day invasion to solve this problem  
3 and we'll do whatever we can between now and then to do --

4 MR. HARRISON: Yes.

5 MR. KAINEN: -- whatever we're supposed to.

6 MR. SMITH: Okay.

7 THE COURT: And if it means that if -- if --

8 MR. SMITH: If it means its' --

9 THE COURT: If you feel like there's progress being  
10 made --

11 MR. SMITH: And --

12 THE COURT: And ultimately, Dad's going to be -- Mr.  
13 Harrison's going to be in the position to know whether he  
14 feels like there is any movement or whether he feels like this  
15 is just running out the clock that's been repeatedly stated.  
16 I -- I -- and -- and if he feels like this is just running out  
17 the clock and nothing is really going to happen, then we come  
18 back on that date, we -- we hear additional testimony. I  
19 imagine -- I -- I don't know if you still have examination you  
20 want to conduct of Dr. Paglini. I cut things off to a certain  
21 extent just because we're out of time, but Mr. Smith needs to  
22 be able to examine Dr. Paglini as well.

23 MR. SMITH: So I -- I take it everybody's rejected  
24 my notion of getting people together and trying to work this

1 situation out.

2 THE COURT: No, I -- no, I think --

3 MR. KAINEN: No, I think --

4 THE COURT: I -- no, I think --

5 MR. KAINEN: -- we said all that.

6 THE COURT: -- we're still all on board.

7 MR. SMITH: Okay.

8 THE WITNESS: Well, wait a minute. I -- I need  
9 clarification though, okay, because once again, I am an  
10 evaluator. Okay. So if -- if I -- if -- if my role is --

11 THE COURT: Well --

12 THE WITNESS: -- to talk to Dr. Ali and try to kind  
13 of figure out a plan that if I talk to Brooke and if I talk to  
14 the parents --

15 THE COURT: And I'm assuming you have not spoken to  
16 Brooke since --

17 THE WITNESS: I --

18 THE COURT: -- you --

19 THE WITNESS: I saw her --

20 THE COURT: -- completed the report.

21 THE WITNESS: -- out there. I just asked her what  
22 college what she was going to and that was it. I didn't ask  
23 her --

24 THE COURT: Okay.



1 THE WITNESS: -- anything about the case or  
2 anything --

3 THE COURT: Okay.

4 THE WITNESS: -- and just say hey, where are you  
5 going, 'you know --

6 THE COURT: Right.

7 THE WITNESS: -- because -- you know, I was  
8 interested. But I guess my question is is that do I -- if --  
9 if I am allowed, if I talk on that role as kind of an  
10 evaluator and assisting, okay, do I have the -- do the parents  
11 allow me to talk to Dr. Ali? Are you giving my consent --

12 MR. SMITH: Yes.

13 THE WITNESS: -- to talk to Dr. Ali? Because I  
14 don't have it in writing here. Okay.

15 THE COURT: Okay. But we're on --

16 THE WITNESS: And --

17 THE COURT: -- the record.

18 THE WITNESS: Right. And do I have the ability to  
19 share with Dr. Ali my report in terms of my contents, because  
20 that's very important. He needs --

21 MR. KAINEN: Yes.

22 THE WITNESS: -- to understand that.

23 MR. KAINEN: Yes.

24 THE WITNESS: Okay. And --

1 THE COURT: Do you have any objection to any of  
2 that?

3 MR. SMITH: Yes. I think the goal here is to make  
4 sure that Brooke feels comfortable in a -- in some sort of --  
5 of contact communication with Dr. Ali and some sort of -- of  
6 anything else -- that -- that -- I don't want everything  
7 trotted up. Look, for example, what happens in these sessions  
8 I believe is going to be consistent with what happened in the  
9 session that it was before Dr. Paglini? It's Mr. Harrison and  
10 what he does in every circumstance, and that is denigrate Mrs.  
11 Harrison, I don't want that going --

12 MR. KAINEN: Well --

13 MR. SMITH: -- and that to be the subject --

14 MR. KAINEN: Since Rad hasn't been --

15 MR. SMITH: -- of discussion sometime in the report.

16 MR. KAINEN: -- a part of any of this and -- so --

17 so to make the overt statement that --

18 THE COURT: Well --

19 MR. KAINEN: -- oh, yeah, from the --

20 THE COURT: -- let me -- let me --

21 MR. HARRISON: I wish Dr. Ali was here.

22 THE COURT: -- start with this.

23 MR. HARRISON: I never said --

24 MR. KAINEN: Right.

1 THE COURT: Is there --

2 MR. HARRISON: -- one word.

3 THE COURT: Is there any objection to Dr. Paglini  
4 speaking with Dr. Ali?

5 MR. HARRISON: I think you've already --

6 MR. SMITH: If -- if we're talking about --

7 MR. HARRISON: -- issued a court order --

8 MR. SMITH: -- doing a separate --

9 MR. HARRISON: -- to that effect.

10 MR. SMITH: -- report and then having a separate  
11 hearing on that report --

12 THE COURT: No, I'm -- I'm --

13 MR. SMITH: No.

14 THE COURT: -- talking --

15 MR. SMITH: No.

16 THE COURT: -- really about this --

17 MR. SMITH: If -- if we're talking about --

18 THE COURT: -- process that we're talking.

19 MR. SMITH: -- a therapeutic process that's just  
20 designed to help Brooke, that's a therapeutic process. That  
21 process needs to be confidential. I -- in that context, if  
22 Dr. Ali wants to talk to Dr. Paglini and they come up with a  
23 solution, great. If they don't come up with a solution, I  
24 don't want the testimony about what everybody said and what

1 their views are without reports in the four and a half months  
2 we have left.

3 Brooke needs to have some pressure left off her. I  
4 believe it's -- it is -- poor girl that she's out there  
5 because I -- I believe she wanted to be able to address these  
6 things today and -- and --

7 MR. KAINEN: Which is why I said --

8 MR. SMITH: -- we haven't --

9 MR. KAINEN: -- let's begin with if you're going to  
10 call her.

11 THE COURT: Well, but -- but -- if -- if this  
12 process that we're talking about engaging in independent of  
13 these proceedings --

14 MR. SMITH: Correct.

15 THE COURT: -- and I'm not involved in, that it  
16 would -- it would entail Dr. Paglini and Dr. Ali, Mom, Dad,  
17 and Brooke that I would --

18 MR. SMITH: As long as that process --

19 THE COURT: -- treat as a --

20 MR. SMITH: -- is confidential --

21 THE COURT: -- a confidential process, is --

22 MR. SMITH: -- we're okay.

23 THE COURT: -- there any problem with --

24 MR. SMITH: We're okay with that, right?

1 THE COURT: -- with Dr. Paglini communicating with  
2 Dr. Ali with sharing the reports and trying to come up with a  
3 plan? Understanding that as Dr. Paglini has indicated, the  
4 expectation is both parties are invested in this process and --  
5 are going to make sure that -- that the counseling proceeds?

6 MS. HARRISON: I don't have a problem with that, but  
7 what I do have a problem with is that out of the  
8 characterization of me during today's four hours that I have  
9 not done anything, that I have not been responsive, that I  
10 have -- didn't -- didn't -- completely kept him out because he  
11 was supposed to go in and fill in a -- out of form that he  
12 didn't fill out and he's done at every other school and all of  
13 these things, I don't want -- that's what he's left with,  
14 that's what Ali heard, and that's not -- that -- none of that  
15 was true.

16 THE COURT: Well, but listen. I think --

17 MS. HARRISON: And so --

18 THE COURT: And I think --

19 MS. HARRISON: -- it appears as though that I'm not  
20 trying to facilitate -- Brooke, I've even paid her money to go  
21 to these sessions. It's like -- it's -- it's -- I have done  
22 everything that I can to get her to --

23 THE COURT: Well, let --

24 MS. HARRISON: -- go and if I -- if you want me to

1 drive her to The D to the meetings that he sets up, I'll drive  
2 her.

3 THE COURT: Now, that's what --

4 MS. HARRISON: I don't have --

5 THE COURT: -- Dr. Paglini's --

6 MS. HARRISON: -- an issue with that.

7 THE COURT: -- indicated. Look, listen.

8 MS. HARRISON: I don't have a --

9 THE COURT: I -- and I think --

10 MS. HARRISON: -- problem with that.

11 THE COURT: -- Dr. Paglini was very careful in  
12 noting, but he hasn't heard he understands that he hasn't  
13 heard everything and his testimony has been very -- the  
14 testimony has been very limited. But in that context, is  
15 there a desire for both sides to participate in that during  
16 this intervening time?

17 MR. KAINEN: Yes.

18 THE WITNESS: May I ask a question?

19 THE COURT: Is that -- and Mr. Smith, on behalf  
20 of --

21 MR. SMITH: The -- if Ms. Harrison has indicated  
22 that she's okay with that --

23 THE COURT: You're okay with that.

24 MR. SMITH: -- process, but she just wants to make

1 sure that her voice is heard, I guess.

2 MS. HARRISON: Uh-huh (affirmative).

3 THE COURT: Under -- well, you're part of it.

4 MS. HARRISON: Well, I -- I don't -- I -- I don't  
5 have a problem with her continuing obviously her sessions with  
6 -- with Ali. My -- but the problem is is that it is an hour  
7 drive both ways or just under an hour both ways and it's --  
8 and it's difficult for her to do that. If we can do one hour  
9 every week, I know she can fit that in her schedule. She's  
10 told them she can do it on certain days.

11 THE COURT: Rather than two --

12 MS. HARRISON: And I will --

13 THE COURT: -- hours --

14 MS. HARRISON: -- take her.

15 THE COURT: -- every two weeks.

16 MS. HARRISON: Yeah, because that turns into a four  
17 hour deal and then that ends up -- it's -- it's a -- it's a  
18 block of time that's really --

19 MR. SMITH: It's a three hour deal, yeah.

20 MS. HARRISON: -- dif -- difficult to her.

21 MR. SMITH: It's still tough.

22 MR. KAINEN: The --

23 MS. HARRISON: It's hard --

24 MR. KAINEN: She's got a really --

1 MS. HARRISON: -- but I don't --

2 MR. KAINEN: -- light schedule this semester, now  
3 she's back and everything's perfect, so she's --

4 MR. HARRISON: The --

5 MR. KAINEN: -- got all the time in the world.

6 MR. HARRISON: The reason --

7 MS. HARRISON: No, she doesn't --

8 MR. SMITH: Perfect?

9 MS. HARRISON: -- have all this time --

10 MR. SMITH: All this --

11 MS. HARRISON: -- in the world.

12 MR. SMITH: -- sarcasm is -- is what's really the  
13 problem.

14 MR. KAINEN: Yeah, that's --

15 MR. SMITH: It's --

16 MS. HARRISON: And they think --

17 MR. SMITH: -- the problem --

18 MS. HARRISON: -- it doesn't what's --

19 MR. SMITH: -- it -- it's always --

20 MS. HARRISON: -- important to her.

21 MR. SMITH: -- the sarcasm. Look, she wants --  
22 she's -- she's willing to -- to abide by the schedule. She's  
23 willing to go --

24 MS. HARRISON: She goes to --



1 MR. SMITH: You know why?

2 MS. HARRISON: -- (indiscernible) every week.

3 MR. SMITH: It's -- it's my opinion. I haven't  
4 talked to her, but she just wants this to stop. It was music  
5 to my ears to hear Dr. Paglini say you know, she just doesn't  
6 want to be part of this anymore. You guys want to be part of  
7 it and we know the lawyers are making a lot of money, but that  
8 little girl is -- would be part of it. She just wants to get  
9 straight As and go to college.

10 And so all of these motions, all of these plans, all  
11 these things about her not being okay, about her hating her  
12 dad, she wants none of it. I guarantee that's what she's  
13 going to say when she walks in this room, I guarantee it,  
14 because I've seen teenagers before. It's not the first time  
15 we've been around teenagers. All of us have experience with  
16 them.

17 You try to involve them in your problems, they're  
18 going to reject it. Dr. Paglini warned us about that. He  
19 specifically said in his report very prescient that if you  
20 kept her under pressure, she would reject the whole process.  
21 She is rejecting the process.

22 We're now going to say you're going to go somewhere  
23 for 90 days? We can't even get her to go somewhere for a  
24 couple days. I -- my client has made yeoman's effort. She

1 even told Dr. Paglini, Dr. Paglini, I'm taking away her car,  
2 I'm taking away her phone, I'm taking away her keys. What  
3 else do I do?

4 MR. KAINEN: Don't buy her a new car.

5 MS. HARRISON: I started --

6 MR. KAINEN: Don't buy her a new phone.

7 MR. SMITH: He -- she bought everybody a new car.  
8 Every kid has got a new car. That's nothing car.

9 MR. KAINEN: So then maybe taking --

10 THE COURT: Okay.

11 MR. KAINEN: -- away her car should have been  
12 followed --

13 THE WITNESS: Wait. Wait. Wait.=

14 MR. KAINEN: -- by buying her --

15 THE WITNESS: Wait. And I --

16 MR. KAINEN: -- a brand new one.

17 THE COURT: Okay.

18 THE WITNESS: I apologize for interrupting, okay --

19 MS. HARRISON: That's my call.

20 THE WITNESS: -- because we have -- time -- time's  
21 limited and I just got to make sure if I make a move here, I  
22 know what I'm doing, okay? Do I have access to talk to  
23 Brooke? Okay.

24 MR. SMITH: Yes.

1 MS. HARRISON: You can talk --

2 THE WITNESS: Now --

3 MS. HARRISON: -- to her --

4 THE WITNESS: And I'll --

5 MS. HARRISON: -- anytime you want.

6 THE WITNESS: And I'll --

7 MS. HARRISON: I've always --

8 THE WITNESS: And I'll --

9 MS. HARRISON: -- let her --

10 THE WITNESS: -- say this. And I'll say this.

11 MS. HARRISON: -- talk to you.

12 THE WITNESS: So if I have to testify in two weeks,

13 I don't have to discuss what Brooke told me, because that

14 could be between Brooke and her therapist and -- but I just

15 want to see where Brooke is at. Okay.

16 MR. SMITH: We're --

17 MS. HARRISON: I would --

18 THE WITNESS: So --

19 MR. SMITH: -- okay with that.

20 MS. HARRISON: -- appreciate that.

21 THE WITNESS: All right.

22 MS. HARRISON: I --

23 MR. SMITH: We would --

24 MS. HARRISON: -- appreciate that.

1 MR. SMITH: -- like that to be the process.

2 THE WITNESS: Okay.

3 MR. SMITH: We just don't want it to be part of the  
4 litigation --

5 THE WITNESS: Okay.

6 MR. SMITH: -- process.

7 THE WITNESS: And I understand that.

8 MR. SMITH: Because here's the thing.

9 THE WITNESS: But here's --

10 MR. SMITH: Okay.

11 THE WITNESS: -- what I don't want. Okay. And this  
12 is -- which is important. I don't want the parents litigating  
13 with me about the process. Okay.

14 MS. HARRISON: It's --

15 THE WITNESS: I -- I understand.

16 MS. HARRISON: (indiscernible) hearing anything from  
17 me.

18 THE WITNESS: I'm not --

19 MR. SMITH: Hundred percent.

20 THE WITNESS: I'm not pointing at you.

21 MR. SMITH: We'll agree.

22 THE WITNESS: I'm just saying everyone.

23 MS. HARRISON: A hundred percent --

24 THE WITNESS: Okay.

1 MS. HARRISON: -- anything.

2 THE WITNESS: What I'm saying is I just want to talk  
3 to Dr. Ali, I want to talk to your daughter, I want to process  
4 it with Dr. Ali and I -- it seems like I have permission to  
5 share my report with him.

6 THE COURT: Yes.

7 THE WITNESS: Okay. So he can read it if he wants  
8 with --

9 THE COURT: Right.

10 THE WITNESS: -- me there, he's not going to keep a  
11 copy of it. Okay. Because the issues are important that he  
12 understands what goes on between Mom and Brooke and Dad and  
13 Brooke. I want to understand from Brooke what she's looking  
14 for at this point for the next -- and -- and what's going to  
15 happen from this point on and what is a reasonable expectation  
16 of her relationship with her father, how that gets improved.  
17 All right. I want to see if there's an impasse or if there's  
18 -- if there's a possibility that -- that this can work.

19 But it's important I think for you to hear. I'm not  
20 saying that you've done anything. I'm just throwing this out.  
21 It has to be -- if -- if we're suggesting therapy on such and  
22 such a day and if she's missing out on something, it has to  
23 happen at this point. We have to get her in, we have to  
24 figure it out, you know, we have to improve the quality of

1 relationship and this has to be a -- a concerted effort.

2           And if that means you come into the sessions with  
3 Dr. Ali and communicate that to her and -- and make sure it  
4 happens, that's what needs to happen, okay, because it -- and  
5 we have to give her -- I have to figure out where her  
6 resistance is. I don't know. Okay. I knew where she was in  
7 January of -- of '16 and I know what my recommendations were,  
8 but I don't know what her resistance is now. It can be  
9 completely different than what I'm thinking.

10           So what I'm going to do is -- I mean, I don't -- I  
11 don't know -- I mean, I -- we -- we're going to have to  
12 probably have to schedule something really quick. I have to  
13 talk to Dr. Ali, get him on board, and I'm still in kind of an  
14 evaluation mode here and I'm just facilitating Dr. Ali. But  
15 between now and two weeks, it means she has to be seen. She  
16 can't like wait until see what happens until she talks to the  
17 Judge. That doesn't make any sense to me. Does that make  
18 sense to everyone? I mean, we --

19           MR. KAINEN: Okay.

20           THE WITNESS: Ma'am, do you understand that?

21           MR. SMITH: We don't have any objection and I think  
22 Ms. Harrison, and correct me if I'm wrong, has offered to take  
23 her consistent with her recommendations. So if we can get Dr.  
24 Ali to schedule something --

1 THE WITNESS: I'm -- I'm going to be on the phone  
2 with him in -- in about 45 minutes --

3 MR. SMITH: Okay.

4 THE WITNESS: -- and then we'll -- we'll --

5 MR. SMITH: Call --

6 THE WITNESS: -- sit down together --

7 MR. SMITH: You have -- you have Vivian's number,  
8 right?

9 THE WITNESS: Yeah, I think we --

10 MR. SMITH: Call her and --

11 THE WITNESS: -- still have it. Just make sure you  
12 email me your number or just make sure I'm updated. I just  
13 want to make sure I have consent from both parents because I  
14 don't have anything in writing right now, okay.

15 MR. SMITH: To talk to Brooke?

16 THE WITNESS: I may not have it in writing --

17 MR. HARRISON: Yes.

18 THE WITNESS: -- but just to get everything taken  
19 care of and let Dr. Ali know that everything's fine, because  
20 after today, you know, shellacking for him, he might be a  
21 little gun shy. Okay. So I mean, to me I'm at an age -- he  
22 -- he's probably like a little -- you know, he's probably  
23 thinking why am I here, you know, doing this.

24 THE COURT: Okay.

1 THE WITNESS: And so we have to -- we have to get  
2 him on board. Okay. Does that make sense?

3 THE COURT: Well, it does. And I -- and -- and I  
4 have no problem with that.

5 THE WITNESS: Okay.

6 THE COURT: Again, trying to solve problems.

7 THE WITNESS: I hear -- so --

8 THE COURT: But --

9 THE WITNESS: -- same here.

10 THE COURT: -- recognizing there's frustration out  
11 there --

12 THE WITNESS: Okay.

13 THE COURT: -- I get that, and -- and you know what?  
14 I could have sat back and just said we'll wait til March to  
15 see you, but I was proactive. You know -- both sides know I  
16 was trying to schedule this in December. Once I had -- had  
17 the hearing, I -- I offered two dates in December to both  
18 offices and there were conflicts on both dates.

19 MR. SMITH: Oh, really? Okay.

20 THE COURT: So I -- I want to try and get it solved.

21 THE WITNESS: Okay.

22 THE COURT: Okay. So we're done for today. Go out  
23 -- go out --

24 MR. KAINEN: I have -- and one -- one issue that you



1 took -- and just sort of a quick swipe was oh, by the way, we  
2 have a motion that was pending that was set for the teenage  
3 discretion issue is because it was starting to happen with  
4 Rylee and everything and you just kind of summarily said oh,  
5 by the way, even though Rad hasn't filed an opposition, I'm  
6 not considering that like it's done. And it's like -- I -- I  
7 think -- I -- I don't know how to say this, diplomatic --  
8 diplomatically, I think you have an obligation to consider  
9 something if it's in the --

10 THE COURT: Well --

11 MR. KAINEN: -- child's best interest.

12 THE COURT: -- let -- let me just say this and I  
13 have not reviewed the motion, but the -- the -- so I -- I get  
14 the fact that there's some -- that it may be premature except  
15 that to the extent it has impact on these proceedings as it  
16 relates to redoing an evaluation for example which was -- it  
17 appeared to be the nature of it. I -- I don't need that. If  
18 -- if there is -- and because I haven't seen it, if it is --  
19 does relate to eliminating a provision in the parenting  
20 agreement like the teenage discretion provision, that's what  
21 you're saying that it includes?

22 MR. KAINEN: Yes, that's exactly right.

23 THE COURT: And I haven't looked at it.

24 MR. KAINEN: Okay.

1           THE COURT: And so to be fair, you're right. I -- I  
2 -- it -- I do need to look at that. I'm not inclined to have  
3 the hearing on the 31st given the fact that we're here on  
4 February --

5           MR. SMITH: 1st.

6           THE COURT: For -- for sake of judicial economy,  
7 I'll take a look at that before we come back, but the scope is  
8 going to be limited if -- if -- is that the only other issue  
9 is --

10          MR. SMITH: No.

11          MR. KAINEN: The --

12          MR. SMITH: We are --

13          MR. KAINEN: -- only thing that it -- the motion  
14 includes a request to sort of get some input from Dr. Ali and  
15 Dr. Paglini on the benefits or detriments of the teenage  
16 discretion provision as it's been carried out on this -- in  
17 this case on the children particularly at this point Rylee  
18 who's now up and coming and turning --

19          THE COURT: But no.

20          MR. KAINEN: -- 14 as well.

21          THE COURT: What I'm saying is -- is the discussion  
22 that we're going to have as it relates to the motion limited  
23 to the teenage discretion provision.

24          MR. KAINEN: It's part of a large motion that the

1 Court didn't set on an OST, so it's set -- I don't care if we  
2 move it necessarily. I don't want it vacated I guess is what  
3 I'm getting at.

4 THE COURT: Okay.

5 MR. KAINEN: And I want an opposition. I want to  
6 address -- what?

7 THE COURT: Well, I'm -- I'm --

8 MR. HARRISON: Can I be heard real quick, Your  
9 Honor?

10 THE COURT: I -- I won't vacate it --

11 MR. KAINEN: Right.

12 THE COURT: -- except to the extent that it --  
13 there's any crossover between the issues we're resolving --

14 MR. HARRISON: I --

15 THE COURT: -- by these present proceedings.

16 MR. HARRISON: Ironically, the motion -- the  
17 gravamen of the motion is the same thing how we got here  
18 today. It asked for a new recommendation from Dr. Paglini  
19 with input and working together with Dr. Ali as to --

20 THE COURT: And that's already been --

21 MR. HARRISON: -- how do we --

22 THE COURT: -- achieved.

23 MR. HARRISON: -- solve -- and how do we solve the  
24 problem --

1 THE COURT: So that's --

2 MR. HARRISON: -- for Brooke --

3 THE COURT: -- to a certain extent --

4 MR. HARRISON: -- and what do we do to protect  
5 Rylee --

6 MR. KAINEN: Right.

7 MR. HARRISON: -- from this happening to her?

8 MR. KAINEN: In other words, is this teenage  
9 discretion -- because we -- we understand we agreed to it. We  
10 understand the supreme court thought we just missed a makeup  
11 day, you know, for -- to put on makeup for a prom and all  
12 that, but the bottom line is we now know how it -- the impact.  
13 In other words, as applied what happened, the question is now  
14 is it in Rylee's best interest to go down that road --

15 MR. SMITH: Okay.

16 MR. KAINEN: -- right now?

17 MR. SMITH: So --

18 THE COURT: The bottom line is I'm not going to  
19 vacate.

20 MR. KAINEN: Thank you.

21 THE COURT: I'm -- I'm going to move the hearing --

22 MR. KAINEN: I don't have a problem moving it.

23 THE COURT: -- until the 1st, but -- and -- and so  
24 an opposition would need to be submitted as it relates to the

1 teenage discretion provision.

2 MR. SMITH: Just the teenage discretion, because --

3 THE COURT: Right.

4 MR. SMITH: -- there's a motion -- here's the mo --

5 the motion is for a new expert recommendation in lieu of

6 discovery and evidentiary hearing. So I assume that's moot.

7 That's the motion that's stated.

8 MR. KAINEN: And --

9 MR. SMITH: I don't know --

10 MR. KAINEN: -- the -- I --

11 MR. SMITH: And then within this motion --

12 THE COURT: And that's perhaps where I saw the title

13 and --

14 MR. KAINEN: Right. In other words, what we -- what

15 we ask where we said look, you know, if -- if we can --

16 THE COURT: If we can do what we just finished

17 with --

18 MS. HARRISON: Sort of. And then eliminate going

19 down this road with Rylee so that we don't have this to fight

20 over. We don't have this issue which has been -- which has --

21 which has created the problems that we're dealing with.

22 But --

23 THE COURT: Well

24 MR. KAINEN: -- no -- no right or wrong, no Kirk

1   blew it, Vivian did it, I'm just saying as applied, it hasn't  
2   worked and it's created problems and the question is we are  
3   now starting that with Rylee. So the idea was to seek some  
4   input from Dr. Ali and Dr. Paglini as to whether having that  
5   provision, understanding what's happened in the last four  
6   years, is in Rylee's best interest.

7           MR. SMITH: Oh.

8           MR. KAINEN: That's the gist of it.

9           MR. SMITH: That I didn't understand to be the  
10   motion. It doesn't read that way. So I'm at a loss now. Are  
11   they seeking by paperwork to have the -- again, for the fourth  
12   time after the appeal, denying it, that they take --

13          MR. KAINEN: Or the three --

14          MR. SMITH: -- discretion --

15          MR. KAINEN: -- decision based on four  
16   misstatings --

17          MR. SMITH: The -- the discreen --

18          MR. KAINEN: -- since the allegation, not 200.

19          MR. SMITH: The discrete -- the teenage discretion  
20   position should be vacated again and --

21          THE COURT: Well --

22          MR. SMITH: -- again?

23          THE COURT: -- and again, I haven't --

24          MR. SMITH: Or are they asking for a recommendation

1 from Dr. Paglini? I mean, what is asked for?

2 THE COURT: Well, listen. I -- I want to be clear,  
3 because I don't want to confuse the -- confuse the issues.  
4 That's not the task of Dr. Paglini.

5 MR. KAINEN: So administratively you'll move my  
6 hearing on opposition --

7 THE COURT: I'm moving it.

8 MR. KAINEN: -- to still do --

9 THE COURT: Yeah.

10 MR. KAINEN: Great.

11 THE COURT: And -- and then I'll -- I'll take a look  
12 at that. Look, listen. I --

13 MR. SMITH: In fact --

14 THE COURT: I don't think --

15 MR. SMITH: -- I don't even know what this motion  
16 says --

17 THE COURT: I -- I don't think --

18 MR. SMITH: -- other than the --

19 THE COURT: I don't think --

20 MR. SMITH: -- same things --

21 THE COURT: -- either --

22 MR. SMITH: -- that we --

23 THE COURT: -- party --

24 MR. SMITH: Okay.

1 THE COURT: -- wants to go through what you've gone  
2 through in the past four years. And I don't want to go  
3 through that for the --

4 MR. KAINEN: Okay.

5 THE COURT: -- next four years. But that being  
6 said, I -- it's premature for me to rule on any of those  
7 issues.

8 MR. KAINEN: I'll look for an opposition from Rad.  
9 I'll look for a new haring date from you. And we'll --

10 MR. SMITH: Okay. Your Honor --

11 MR. KAINEN: -- be back on the 1st.

12 MR. SMITH: -- the opposition was technically due  
13 yesterday. I believe the -- the --

14 MR. KAINEN: I won't zoom it tomorrow.

15 MR. SMITH: The statements contained in our  
16 pre-hearing memoranda address some of the issues, but I'll  
17 file an -- an opposition --

18 THE COURT: Okay.

19 MR. SMITH: -- in -- to the extent --

20 THE COURT: Well, I'm --

21 MR. SMITH: -- I can consider --

22 THE COURT: -- I'm moving it to the February --

23 MR. SMITH: -- hearing it.

24 THE COURT: I'm -- I'm putting --



1 MR. SMITH: Okay.

2 THE COURT: -- consolidate it to the February  
3 date --

4 MR. SMITH: So an opposition --

5 THE COURT: -- when we come back.

6 MR. SMITH: -- today is --

7 MR. KAINEN: So do we want it --

8 MR. SMITH: -- what?

9 MR. KAINEN: So we're going to do it at the same  
10 time as --

11 THE COURT: Yeah.

12 MR. KAINEN: -- February 1st? Okay.

13 THE COURT: Yeah.

14 MR. KAINEN: Thank you.

15 MR. SMITH: My problem is I'm going to be out of  
16 town Thursday, Friday -- well, maybe Friday depending on  
17 whether a trial settles --

18 THE COURT: This week?

19 MR. SMITH: -- Saturday, Sunday, yeah, this week.  
20 So it's probably not going to be until Tuesday of next week,  
21 does that work?

22 MR. KAINEN: Yeah. And I -- look, he's not --

23 THE COURT: Okay.

24 MR. KAINEN: -- granting my motion in the --

1 THE COURT: Yeah, I'm not --  
2 MR. KAINEN: -- absence of --  
3 THE COURT: Yeah.  
4 MR. KAINEN: -- it beforehand.  
5 MR. SMITH: Tuesday of next week.  
6 MR. KAINEN: So I'm kind of --  
7 THE WITNESS: Am I excused, Your Honor?  
8 MR. SMITH: Thank you, Your Honor.  
9 THE COURT: Yeah.  
10 MR. KAINEN: Whatever it is, it is.  
11 THE COURT: I'm -- I'm sorry, Dr. Paglini.  
12 THE WITNESS: No worries.  
13 THE COURT: Thank you for --  
14 THE WITNESS: Thank you.  
15 THE COURT: -- being here.  
16 THE WITNESS: Nice --  
17 THE COURT: All right.  
18 THE WITNESS: -- seeing you again.  
19 THE COURT: Good to see you.  
20 (WITNESS EXCUSED)  
21 MR. KAINEN: Here you go, Colin. Take this --  
22 MR. HARRISON: Can I talk to you for a minute?  
23 (PROCEEDINGS CONCLUDED AT 17:50:25)  
24 \* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.

Adrian Medhono

Adrian N. Medrano

SEALED FROM  
A.APP. 3316-3375

# EXHIBIT 2

# EXHIBIT 2

**Kirk Harrison**

---

**From:** Vivian Harrison [vivianharrison@aol.com]  
**Sent:** Saturday, February 27, 2016 7:12 PM  
**To:** kharrison@harrisonresolution.com  
**Subject:** Brooke & Dr Ali appointment scheduling

Kirk,

Dr Paglini telephoned me today. He said you had called him with concerns. Dr Paglini asked me to write you a quick email with the following information.

Dr Ali's office called me two weeks ago. They informed me that Brooke had sent them her normal weekly schedule as they requested. They called her to book an appointment for last Friday. Brooke told them she couldn't meet because she had a 3 day State DECA conference that she was scheduled to attend for Boulder City High School. Brooke didn't list that conference on that schedule since it wasn't her "normal weekly schedule". She did extremely well in that competition and took 3rd in the State. She also had a place finish in another category I'm telling you this because now that she finished 3rd in the state she now will move on to attend the International conference which I'm told is in April. I have not been given any additional info on the International Conference. She hasn't received permission to attend this conference from Nevada State High School and her college professors yet.

I informed Dr Ali's office that given her school schedule and college entrance exam test preparation, scheduled ACT/SAT college entrance exams and her last week DECA conference with Boulder City High School that Spring Break seems to be a good time to have a block of sessions. I had the impression Dr Ali's assistant agreed but couldn't commit without speaking to Dr Ali and getting his input and checking his calendar. That conversation ended on Thursday and she said she would get back to us. I've heard no further response from them since that last call.

I know her first Scheduled ACT test she has been preparing with Dr Coakley for is this Tuesday. Today she took a 2 hour pre-test. I believe she is scheduled for a minimum of 4 or 5 more college entrance exams (dates I don't know), additional pre-tests, study sessions along with completing assigned packets and reading. I know she has 6 college courses. As you might remember 4 is considered full-time and she attends two high school classes, one at Boulder City High School the other at Nevada State High School and then an additional transitional course for 6 hours monthly on Friday at UNLV.

I also know she has her normal dance schedule, which she is currently required to attend rehearsals for her upcoming lead role in "Annie". Then her rehearsals will begin for her Spring dance recital where she is a primary dancer in April.

Brooke sent her "normal weekly" schedule to Dr Ali over 2 weeks ago and sent an additional email to Dr Paglini and Dr Ali last week. I've asked her to forward that email to you today.

Vivian

# EXHIBIT 3

# EXHIBIT 3

**Kirk Harrison**

---

**From:** Emma Harrison [ebrookeharrison@gmail.com]  
**Sent:** Saturday, February 27, 2016 10:39 PM  
**To:** khamison@harrisonresolution.com  
**Subject:** Fwd: Dr. Ali Therapy

----- Forwarded message -----

**From:** Emma Harrison <ebrookeharrison@gmail.com>  
**Date:** Thu, Feb 25, 2016 at 11:23 AM  
**Subject:** Dr. Ali Therapy  
**To:** [paglini.office@gmail.com](mailto:paglini.office@gmail.com)

Dr. Paglini,

I am currently having difficulty scheduling a weekly two hour session with my dad and Ali in Vegas. As a Junior in high school, I need to study and sit for college entrance exams in addition to my normal schedule.

I am currently taking 6 college classes 5 days a week and they are as follows:

Chemistry  
Chemistry Lab  
Pre-Calculus  
World History  
World Literature  
Psychology

In addition to taking over a full-time college schedule, I'm required to attend a transitions course at UNLV for high school credit. I attend a DECA class weekly at BCHS where I'm required to make a weekly presentation for the DECA champions league and participate in an hour bi-weekly conference call. I'm also taking an SAT/ACT preparatory course for 2 hours twice a week. I'm scheduled to sit for 5 ACT/SAT college entrance exams. Nevada State High School also requires a 20 volunteer hour minimum per semester along with attending school functions and events as a part of my grade.

In addition to the above schedule I need to attend a 3 day state DECA conference where I'm required to present an 11 page essay on an entrepreneurial business plan, take exams, participate in interviews, etc to compete for the upcoming international convention in April for a week. I'm also one of the leads in an upcoming production of Annie where there are mandatory rehearsals and dance classes that exceed 18 hrs per week and recitals in April and May.

The schedule above does not include any homework, studying, class prep, required reading, or project time that each class and/or activity requires.

Dr. Ali's office is a 45-50 minute drive each way and scheduling a 4 hr block of time is impossible given my schedule. I needed to alter my living arrangements to accommodate this schedule and make my life more manageable, and less stressful so I could concentrate on my college and high school classes and college entrance exams. This is such a crucial time for my future and academics.



I have been transferring to my Dad's house every other week as I have previously stated. My dad has just recently asked me why I even bother to go over to his house if all I do is stay in my room. That is where I have to study and keep up with my schedule. I don't have time to even go out with my friends anymore.

Dr. Paglini, is it possible to alter your recommended schedule to one hour every other week?

# EXHIBIT 4

# EXHIBIT 4



*John Paglini, Psy.D.*

Licensed Psychologist  
9163 West Flamingo, Suite 120  
Las Vegas, Nevada 89147

Phone: (702) 869-9188

Fax: (702) 869-9203

May 31, 2016

The Honorable Judge Bryce Duckworth  
Department Q  
Eighth Judicial District Court, Family Division,  
601 North Pecos,  
Las Vegas, Nevada, 89101

RE: HARRISON VERSUS HARRISON  
CASE # D-11-443611-D

Dear Judge Duckworth:

During the last several months, likely commencing in February 2016, Mr. Kirk Harrison has consistently contacted me regarding dynamics pertaining to reunification therapy with his daughter. There was one telephone contact with Mr. Harrison on February 23, 2016. Mr. Harrison processed concerns he had with reunification therapy not occurring fast enough of often enough. Mr. Harrison also called on February 27, 2016. Mr. Harrison sought my assistance because he and Brooke have not been in reunification therapy on a consistent basis. This evaluator also had received an email from Brooke indicating her difficulties scheduling a two hour session with her father and Dr. Ali due to her caseload and commitments. Brooke wanted this evaluator to possibly recommend a schedule of one hour every other week. I then talked to Ms. Vivian Harrison to elicit her cooperation. She appeared flexible on the phone.

Mr. Harrison then called on March 30, 2016. By this point there has only been one meeting between he and Brooke. He reported the previous session was positive, but everything is moving extremely slow. He is extremely frustrated with the lack of progress. Mr. Harrison would like to address the issues and share more time with his daughter.

Mr. Harrison then called again on May 10, 2016, and May 16, 2016. By this time, Mr. Harrison reported there have only been two meetings between he and Brooke with Dr. Ali. Mr. Harrison reported Brooke appears oppositional to meet further. Mr. Harrison has contacted my office in good faith based on my recommendations to the family court.

In my recommendations, I noted "What this evaluator would recommend is that Mr. Kirk Harrison and his daughter be involved in intense frequent therapy to resolve their issues." This evaluator recommended Dr. Ali because he is familiar with the family dynamics. I had noted in my earlier recommendations that Brooke had not seen Dr. Ali on a consistent basis, that Brooke should have attended therapy consistently during the previous timeframe when she had problems with her father. Also in my recommendations, it is noted "Brooke cannot dictate the pace in this

**HARRISON VERSUS HARRISON  
CASE # D-11-443611-D**

Page 2

case." Additionally, it is noted in my report "Hence, although Brooke has a busy schedule, she and her father need to be seen for double sessions on a weekly basis to begin to repair the relationship."

This letter is written on behalf of Mr. Kirk Harrison. However, the courts should note I am dismayed at the alleged lack of sessions/progress that have occurred. Although Mr. Harrison was likely unhappy with my report, he attempted to follow the recommendations. Brooke and her father need to be involved in continuous/frequent treatment and address their issues. This evaluator had hoped that by now Brooke and her father would have resolved their issues, and that they would be sharing much more time together. This evaluator is very dismayed that only two known sessions have occurred in family reunification therapy between Brooke and Mr. Harrison. I have been in contact with Dr. Ali, but have informed Dr. Ali until he has current consent forms signed by both parents on his behalf it is not advisable to process this case.

As noted, this evaluator is concerned if it is true that rare reunification therapy occurred between Mr. Harrison and Brooke. As stressed in my report, Brooke should not be in charge of the pace of reunification therapy. Although I appreciate Brooke's dedication to her academics and other activities, her relationship with her father is extremely important and needs to be on the forefront of issues addressed and not something that is possibly delayed/avoided by Brooke. I appreciate that I may have heard one side of the story (Mr. Harrison) and that should be weighed accordingly with additional evidence.

It is recommended that the courts consider a detailed letter from Dr. Ali regarding his reunification attempts/treatment of the Harrison family. I hope the courts address this possible concern to help Mr. Harrison and Brooke resolve their issues and begin to share quality time together.

Respectfully submitted,



John Paglini, Psy.D.  
Licensed Psychologist  
JPag: 05/31/16

cc: Attorney Edward Kainen (Fax: 702-823-4488)  
Attorney Radford Smith (Fax: 702-990-6456)

## **Fax Cover Sheet**

**John Paglini, Psy.D.  
9163 West Flamingo, Suite 120  
Las Vegas, NV 89147**

**Phone: 702 -869-9188**

**Fax: 702-869-9203**

**Date: May 31, 2016**

**TO: Attorney Edward Kainen**

**FROM: John Paglini, Psy. D.**

**RE: Harrison versus Harrison  
Case#D-11-443611-D**

**FAX NO: 702-823-4488**

**NUMBER OF PAGES: 3  
(Includes cover sheet)**

**COMMENT:**

---

**This is a confidential Fax:**

Please call the phone number listed above immediately if you have received this fax in error, or there are any problems with the transmission. The information contained in this facsimile is privileged and confidential information, intended for the use of the addressee listed above. If you are neither the intended recipient, nor the employee or agent responsible for delivering the information to the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking action in reliance on the content of this telecopied information is strictly prohibited. If you have received this fax in error, please notify us immediately by telephone, and destroy the documents sent. Thank you.

SEALED FROM  
A.APP. 3385-3387

# EXHIBIT 6

# EXHIBIT 6

**Kirk Harrison**

---

**From:** Carina Deras [cderas@earlycollegenv.com]  
**Sent:** Friday, April 01, 2016 2:17 PM  
**To:** kharrison@harrisonresolution.com  
**Subject:** Emma's Schedule

Hello Mr. Harrison,

We previously spoke on the phone this afternoon regarding Emma's schedule. Unfortunately, due to your information not being in our records as a legal parent/guardian I cannot send you Emma's schedule via email. I apologize for any confusion.

Regards,

*Carina Deras*

Office Aide/Registration Advocate  
Nevada State High School  
Phone: (702) 953-2600  
Fax: (702) 953-2608  
[www.earlycollegenv.com](http://www.earlycollegenv.com)  
[cderas@earlycollegenv.com](mailto:cderas@earlycollegenv.com)



# EXHIBIT 7

# EXHIBIT 7

# Nevada State High School Enrollment Form



Nevada State High School  
233 N. Stephanie St.  
Henderson, NV 89074  
850 S. Durango Dr. Ste. 100  
Las Vegas, NV 89145  
Phone: 702-953-2600 // Fax: 702-953-2608  
www.earlycollegeNV.com

## Official Enrollment Form:

Congratulations on completing the registration process  
to enroll at Nevada State High School (NSHS).  
This is the student's official enrollment form.

### Student Information

Student Legal First Name: Emma  
Student Middle Name: Brooke  
Student Legal Last Name: Harrison  
Student 15/16 Grade Level: 11  
Ethnicity: C  
Race: White  
Gender: Female  
Date of Birth (DOB): 6/26/1999  
Date entered US or DOB (if born in US): 6/26/1999  
County of Residence: Clark  
NSHS#: 5003431057  
Student Email: Emmabharrison@aol.com  
Student Cell Phone: 7022757655

### Student Residence

Street: 1514 Sunrise Circle  
City: Boulder City State: NV Zip: 89005

### Student Mailing Address

Street/Box: 1514 Sunrise Circle  
City: Boulder City State: NV Zip: 89005

Student NSHS Base Campus: Henderson

2nd Year at NSHS: No

### Primary Guardian Contact:

Guardian Name: Vivian Lee Harrison  
Guardian Email: vivianlharrison@aol.com  
Guardian Cell Phone: 7022750000  
Guardian Home Phone: 7022946000  
Guardian Work Phone: None

### Secondary Guardian Contact:

Guardian Name:  
Guardian Email:  
Guardian Cell Phone:  
Guardian Work Phone:

### Emergency Contact:

### Previous Education Information:

Prev. School: Boulder City High School  
Previous Student ID: 522410  
Incoming GPA: 3.8279999999999998

Note: You are now officially enrolled with NSHS and are no longer enrolled in any other public, private, or home school for the 2015-16 school year. NSHS will contact the previous school listed on this form to request your education records and notify them you are attending NSHS. After today, if you choose to withdraw, you will need to complete a withdrawal form in person with a parent/guardian. See the Student/Parent Handbook for specifics at [www.earlycollegeNV.com](http://www.earlycollegeNV.com).

Student Signature: E. B. H.

NSHS Administrator Signature: [Signature]

Date: 8/10 /2015

Emma: Thank you for registering with Nevada State High School (NSHS), an early college high school accredited with AdvancED. Personally deliver this form Mondays - Thursdays (2pm-5pm) to either NSHS Henderson at 233 North Stephanie Street Henderson, NV 89074 or NSHS Summerlin at 850 South Durango Drive Suite 100, Las Vegas, NV 89145 within two weeks of receiving this email to register for Fall 2015.

Social Security Number:	_____	(write number here).
Student Email:	_____	<u>Emabhbharrison@aol.com</u>
Legal Name:	_____	Emma Brooke Harrison
Student Cell and Home Phone:	_____	7022757655      7022946000
Date of Birth, USA Entry, and Place:	_____	Jun 26, 1999, Jun 26, 1999,
US United States Boulder City NV		
Gender:	_____	Female
Ethnicity, Race:	_____	Not Hispanic/Latino, White
Home Address:	1514 Sunrise Circle	Boulder City, NV 89005
Mail Address:	1514 Sunrise Circle	Boulder City, NV 89005
NV County of Residence:	_____	Clark
Guardian1 Mother Full Name and Cell:	_____	Vivian Lee Harrison
7022750000		
Guardian1 Mother Email:	_____	<u>vivianlharrison@aol.com</u>
Guardian2 Father Full Name and Cell:	_____	
Emergency Contact Full Name and Cell:	_____	Heather Atkinson
7022964118		
Previous School Name and ID#:	_____	Boulder City High School
522410		
Grade Level for Fall 2015 and GPA:	_____	Grade 11      3.828
History of any health issue(s) and explanation:	_____	No
Preferred Campus:	_____	Henderson
EVER received expulsion from any school:	_____	No
EVER received special education (IEP):	_____	No
EVER received 504 services from any school:	_____	No
Any falsification or withholding information may prohibit enrollment. You have verified that this form is accurate and complete: Agree		

Student and parent need to sign and personally deliver this form with other documents (listed here: <http://www.earlycollegany.com/thank-you/>) within two weeks of receiving this email. Enrollment is not guaranteed and is subject to openings available.

Student Signature: Emma B Harrison

Parent Signature: Vivian Lee Harrison

# EXHIBIT 8

# EXHIBIT 8



**Safari** File Edit View History Bookmarks Window Help  
Thurs 2:35 PM Brooke Harrison Q  
por.sfr.nevada.edu Student Center Change My Password Home Sign out NSHSportal: Textbook Form Spring 2016 Emma's Student Center

**Emma's Student Center**

Search Plan Enroll My Academics other academic...  
**This Week's Schedule**  
Class Schedule  
CHEM 105-4001 MoWe 12:30PM - 1:50PM Henderson Bldg C 106  
LEC (31563)  
CHEM 106-4002 No 2:30PM - 5:30PM Henderson Bldg C 207  
LEC (31572)  
ENG 231-4001 MoWe 9:30AM - 10:50AM Henderson Bldg B 202  
LEC (33907)  
HIST 102-4003 TuTh 9:30AM - 10:50AM Henderson Bldg B 207  
LEC (36107)  
MATH 127-4002 MoWe 11:00AM - 12:20PM Henderson Bldg B 210  
LEC (34330)  
PSY 101-4005 TuTh 8:00AM - 9:20AM Henderson Bldg C 108  
LEC (34998)

**Academics**  
Deadlines URL  
other financial...  
Personal Information

**Communication Center**  
Go To Communication Center

**Holds**  
No Holds.

**To Do List**  
No To Do's.

**Enrollment Dates**  
Open Enrollment Dates

**Advisor**  
Program Advisor  
None Assigned

**Third Party Release**  
Manage Third Party Releases

**My Account**  
Account Inquiry  
Enroll In Direct Deposit  
Class Refund Dates  
Financial Aid  
View Financial Aid  
Accept/Denial Awards  
Report Other Financial Aid  
other financial...  
make a payment ▶

**You have no outstanding charges at this time.**

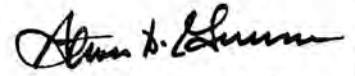
**Weekly schedule ▶ enrollment shopping cart ▶**

**View as Analog**  
**✓ View as Digital**  
**Open Date & Time Preferences...**

Tuesday, January 28, 2016

# EXHIBIT 9

# EXHIBIT 9

  
CLERK OF THE COURT

**AFF**  
EDWARD KAINEN, ESQ.  
Nevada Bar No. 5029  
KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
PH: (702) 823-4900  
FX: (702) 823-4488  
Service@KainenLawGroup.com  
Attorneys for Plaintiff

THOMAS J. STANDISH, ESQ.  
Nevada Bar No. 1424  
STANDISH NAIMI LAW GROUP  
1635 Village Center Circle, #180  
Las Vegas, Nevada 89134  
Telephone (702) 998-9344  
Facsimile (702) 998-7460  
tjs@standishlaw.com

Co-counsel for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant.

**CASE NO: D-11-443611-D  
DEPT NO: Q**

**Date of Hearing: October 24, 2016  
Time of Hearing: 10:00 a.m.**

**AFFIDAVIT OF KIRK HARRISON FILED IN SUPPORT OF PLAINTIFF'S  
MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD  
NOT BE HELD IN CONTEMPT FOR KNOWINGLY AND INTENTIONALLY  
VIOLATING SECTION 5 OF THE STIPULATION AND ORDER RESOLVING  
PARENT/CHILD ISSUES AND THIS COURT'S ORDER OF OCTOBER 1, 2015,  
FILED AUGUST 30, 2016**

STATE OF NEVADA        )  
                                  )       ss.  
COUNTY OF CLARK       )

KIRK R. HARRISON, declares and says:

1. The matters stated in this Affidavit are based upon my personal knowledge (or upon information and belief if so stated). If called upon to testify, I could and would competently testify to the facts set forth herein.

**KAINEN LAW GROUP, PLLC**  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

KAINEN LAW C<sub>LLC</sub> JP, PLLC  
 3303 Novat Street, Suite 200  
 Las Vegas, Nevada 89129  
 702.823.4900 • Fax 702.823.4488  
 www.KainenLawGroup.com

2. The facts set forth in Plaintiff's Motion for an Order to Show Cause, filed August 30, 2016, are true of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

3. During my discussions with Dr. Paglini, prior to his report of January 25, 2016, I told Dr. Paglini of Brooke's strong hatred of me. However, Dr. Paglini assured me that Brooke did not hate me. Dr. Paglini told me what Brooke had told him regarding her feelings towards me and why she was violating the custody order: Brooke does not hate me. Brooke does not think I am a bad person. Brooke does not think I am mean. Brooke wants to have a relationship with me. Brooke's knowingly violating the Custody Order, which provides that Brooke is to spend 50% of her time with me on a bi-weekly basis, to spending almost no time with me and, consequently, spending about one-half as much time with her younger sister, Rylee, was motivated by convenience and the demands of Brooke's college class schedule and dance schedule. Brooke also complained that it was simply too hard on Brooke to pack clothes for each custody transfer. Brooke also told Dr. Paglini that the medical reimbursement issue was of no consequence in her decision to stop honoring the Custody Order.

4. The issue of having to pack clothes for custody transfers was created by Vivian and Brooke. For years, Brooke had ample clothing at both homes and there was no need to "pack" clothes for custody transfers. I would simply pick up Brooke from school and then take Brooke to Vivian's house to pick up her dance bag, a small make-up bag, and a lap top computer. Only since Brooke took all of her clothes to Vivian's house shortly after the medical reimbursement issue, does Brooke need to "pack" any clothes during the extremely rare and brief times she stays at my home.

5. In Dr. Paglini's discussions with me, Dr. Paglini readily acknowledged the parental alienation by Vivian. However, Dr. Paglini did not believe the alienation to be severe because Brooke made it clear to Dr. Paglini that she did not hate me and wanted a relationship with me. I told Dr. Paglini that was surprising, as Brooke had previously told me that she hated me and did not want to spend any time with me. Dr. Paglini was focused on what he was led to believe was Brooke's state of mind, and based upon that conclusion, deduced the parental



1 alienation was not severe because it had failed to completely alienate me from Brooke. It was  
 2 apparent to me that Dr. Paglini chose to ignore Vivian's acts of parental alienation during the  
 3 last four years and focused only upon what he was led to believe to be Brooke's state of mind.

4 6. The discussions Dr. Paglini and I had regarding the degree of the parental  
 5 alienation was in the context of Demosthenes Lorandos et al, *Parental Alienation – The*  
 6 *Handbook for Mental Health and Legal Professionals* (Charles C. Thomas 2013), wherein the  
 7 authors categorize the level of parental alienation as being mild, moderate, or severe.

8 7. Dr. Paglini also told me that Brooke had no problem with me attending Parent  
 9 Observation with the other parents and that Brooke only wanted me to not attend her hip hop  
 10 class because it was too suggestive. However, not long after Brooke told Dr. Paglini she had  
 11 no problem with me attending all of her other dance classes, I went to Parent Observation to  
 12 attend Brooke's dance classes. On February 1, 2016, I went to Dance Etc to attend Parent  
 13 Observation from 6 p.m. to 9 p.m. that night and also planned to also attend from 3:30 p.m.  
 14 to 9:30 p.m. the next night. When I first walked in the lobby area, Brooke saw me and avoided  
 15 me. Later, when they opened the door for Studio B where the jazz class was to take place, I  
 16 approached Brooke and said hello. Brooke responded by telling me she did not want me there  
 17 and told me she wanted me to leave. I explained to Brooke that I was told she did not want me  
 18 to attend only her hip hop class. Brooke emphatically said she did not want me to attend any  
 19 of her dance classes and to please leave. I left.

20 8. Dr. Paglini strongly recommended that Brooke and I meet with Dr. Ali for a two  
 21 hour session each week. The Court ordered that Dr. Ali determine the pace of therapy. Dr. Ali  
 22 determined the pace of therapy to be a two hour session each week and attempted to schedule  
 23 a two hour session each week with Brooke and I.

24 ...

25 ...

26 ...

27 ...

28 ...

1           9. Brooke refused to meet with Dr. Ali and I each week for two hours. I was  
2 informed by Dr. Ali's office that Brooke claimed that her "college" class schedule did not permit  
3 her to meet each week for two hours. Brooke would only agree to meet for 1.5 hours each week.  
4 However, when Dr. Ali's office scheduled those appointments, Brooke refused to honor those  
5 appointments. On more than one occasion, Brooke cancelled an appointment the same day  
6 as the appointment.

7           10. On Thursday, March 31, 2016, a session was scheduled from 11:30 a.m. until 1:00  
8 p.m. At about 9:45 a.m. that morning, Brooke telephoned Dr. Ali's office and cancelled the  
9 appointment stating she had an important math test the following week and the only time the  
10 math tutor could meet with her was during the time of the session. When Dr. Ali's office  
11 advised me of Brooke telling them that she had to cancel the session because the only time the  
12 tutor could meet with her was during the time of the session, I knew it was not true. Although  
13 he did not teach school last year, Brooke's math tutor teaches school this year during the day.  
14 Therefore, he is not available for tutoring until 2:30 p.m. each day of the school week. I  
15 telephoned Brooke's math tutor to determine what actually happened. Apparently, unaware  
16 her math tutor was not available until 2:30 p.m. for tutoring, Brooke tried to knowingly create  
17 a schedule conflict by scheduling her tutoring session at the same time as her already  
18 scheduled session with Dr. Ali and I. Brooke sent a text to her math tutor providing she was  
19 available for tutoring at either 11:00 a.m. or 12:00 noon on Thursday, March 31, 2016. He  
20 responded that he would be in school until 2:30 p.m. Brooke met with the tutor from  
21 approximately 2:30 p.m. until 5:30 p.m. on Thursday, March 31, 2016. Vivian and Brooke have  
22 represented to Dr. Paglini and Dr. Ali that Brooke cannot schedule a session with Dr. Ali and  
23 I when a dance class is scheduled, as she, purportedly, cannot miss a dance class. However,  
24 Brooke chose to miss two dance classes for the math tutoring session on Thursday, March 31,  
25 2016. This is despite the fact that Brooke likely could have met with her math tutor the next  
26 day, as Brooke has no school or dance classes on Fridays. Brooke also likely could have met  
27 with her math tutor on Saturday, when she also has no school or dance classes.

28 ...

KAINEN LAW GROUP, PLLC  
 3303 Novat St. Suite 200  
 Las Vegas, Nevada 89129  
 702.823.4900 • Fax 702.823.4488  
 www.KainenLawGroup.com

11. Between the date of the hearing on January 26, 2016 and Dr. Paglini's letter to the Court, on May 31, 2016, Brooke, Dr. Ali, and I should reasonably have had fifteen or sixteen two hour weekly sessions. There have only been two sessions. Despite Dr. Ali's office's diligent efforts, Brooke did not agree to the first session until March 17, 2016. The second and last session was on April 12, 2016.

12. During the April 12, 2016 session, Brooke, who doesn't wear a baseball cap, showed up with a baseball cap pulled low upon her face. The stress upon Brooke of having the responsibility of continuing Vivian's ruse that the Custody Order was being violated because of the demands of her "college" schedule, convenience, and packing clothes for custody transfers was obvious to me. Brooke is not naturally a liar. Brooke, initially, tried to continue with Vivian's false narrative. However, I asked Brooke to simply be honest and Brooke soon admitted to Dr. Ali and I that she did not stop complying with the Custody Order because of her "college" schedule, convenience, or the stress of the custody transfers, which is what Vivian has been representing to the Court. Brooke made it very clear that she stopped complying with the Custody Order when she did because of her hatred of me. Brooke said that she hates me and that I am a mean person and a bad person. Brooke said she does not want to spend any time with me at all, and said she would not attend anymore appointments.

13. It was very evident during this second session that Brooke hates me and believes that I am a bad and mean person, in large part, because of the false medical payment issue, which was created by Vivian and used by Vivian to incite Brooke. Vivian's sensational and false claims and Vivian's inexcusable involvement of Brooke in the insurance claims process have created this level of hatred and false belief that I am a bad and mean person: **"Brooke and I just spoke to supervisor Kim C. At Sierra."** And later, **"Brooke and I Are working directly with them for reimbursement."** Vivian also was soon, baselessly attacking Becky Palmer and I, writing, "GET ABSOLUTELY NO HELP, SUPPORT OR ASSISTANCE FROM KIRK OR YOU (No calls on my behalf to repair credit. . . no help in paying bill, No attempt to resubmit invoices for payment no phone calls to hospital or collections agency-NADA, NOTHING— (Heck not even important enough for the policy holder to telephone member



1 services to ask them directly as to why his daughters claims haven't been paid) Vivian also  
 2 wrote, "**Kirk just can't quite understand why he should have to pay any part of his**  
 3 **daughters medical bills.**"

4 14. Dr. Paglini was appointed as an independent expert by this Court and Dr. Paglini  
 5 had strongly recommended the two hour sessions each week. Therefore, I contacted Dr.  
 6 Paglini and advised him of Brooke's unwillingness to participate in the Court ordered sessions.  
 7 Dr. Paglini recommended that Dr. Ali send a letter to the Court advising the Court of the efforts  
 8 his office had made to schedule the weekly double sessions and the current status to the Court.  
 9 Dr. Ali agreed to send such a letter. However, several weeks passed and, although prepared,  
 10 the letter was never sent. Dr. Ali's office finally advised me the letter had never been sent  
 11 because Vivian refused to give her permission for the letter to be sent to the Court. Upon  
 12 receiving this information, I again contacted Dr. Paglini and advised him of that fact. After  
 13 several more weeks, Dr. Paglini sent his letter to the Court, dated May 31, 2016. Pursuant to  
 14 this Court's order, dated June 21, 2016, the Court directed, "Dr. Ali to provide the court with  
 15 information about the history and status of reunification attempts and treatment associated  
 16 with the parties' daughter, Brooke." Thereafter, in response to the Court's order, Dr. Ali  
 17 provided a letter to the Court, which was received by the Court on July 5, 2016.

18 15. On or about September 1, 2015, I asked Vivian for a copy of Brooke's class  
 19 schedule for Nevada State High School. Vivian told me to ask Brooke. I asked Brooke for a  
 20 copy of Brooke's class schedule at Nevada State High School later that same day. Neither  
 21 would provide me with Brooke's class schedule. I later again asked Brooke for a copy of her  
 22 class schedule. The schedule was still not provided. Then on December 14, 2016, my attorneys  
 23 sent a letter to Radford Smith, noting both Vivian's and Brooke's unwillingness to provide the  
 24 class schedule and requesting that Mr. Smith provide the class schedule. Mr. Smith has never  
 25 responded to this letter.

26 16. After months of attempting to get Brooke's class schedule from Brooke, Vivian,  
 27 and Vivian's attorneys, I called Nevada State High School, Henderson Campus, in an effort to  
 28 get her schedule. I spoke with Carina Deras. I told Ms. Deras that I am Brooke's father and

1 asked Ms. Deras if she could email me Brooke's class schedule. She said she would and I gave  
 2 her my email address. The email I later received was disturbing. Ms. Deras could not send  
 3 Brooke's class schedule "due to your information not being in our records as a legal  
 4 parent/guardian. . ." The email from Ms. Deras is dated April 1, 2016 and is attached as  
 5 Exhibit "4" to the Motion for Order to Show Cause, filed 8.30.16.

6 17. I then contacted Dr. John Hawk, the Executive Director of Nevada State High  
 7 School. On April 4, 2016, Dr. Hawk emailed to me the document which established why I was  
 8 never identified as a legal parent to Brooke. As Brooke's legal parent, Vivian signed and  
 9 submitted this document. On the first page of the Nevada State High School Enrollment Form  
 10 there is a place to set forth the information for the Primary Guardian. Vivian filled out all of  
 11 the information identifying Vivian and her contact information. There was also a place for the  
 12 Secondary Guardian including identifying the Secondary Guardian and his contact  
 13 information. Vivian left this section blank. On the second page of the form there is a place to  
 14 identify, "Guardian 1 Mother Full Name and Cell." Vivian provided her name and her cell  
 15 phone number. There is then a place to identify, "Guardian 2 **Father** Full Name and Cell."  
 16 (emphasis added). Vivian left this section blank as well. The next section requests,  
 17 "Emergency Contact Name and Cell." Vivian wrote, "Heather Atkinson" and her cell number.  
 18 A true and correct copy of the Nevada State High School Enrollment Form, dated August 10,  
 19 2015, is attached hereto as Exhibit "5" to the Motion for Order to Show Cause, filed 8.30.16.  
 20 Vivian – not Brooke – made the conscious decision to exclude me, Brooke's father, from  
 21 Brooke's academic records.

22 18. Vivian made the conscious decision to exclude me, Brooke's Dad, from Brooke's  
 23 schooling by representing to Nevada State High School that Brooke does not have a father.  
 24 Vivian's continuing refusal to simply provide me with a copy of Brooke's class schedule is a  
 25 further continuing attempt to exclude me from any involvement or even knowledge of Brooke's  
 26 life. This truly reveals how Vivian is intentionally and overtly excluding me from Brooke's life.  
 27 The Enrollment Form confirms Vivian's intimate involvement and overt efforts to exclude me  
 28 from Brooke's life. The date of this form of August 10, 2015, was the same time Vivian was

KAINEN LAW GROUP, PLLC  
 3303 Novat Str., Ste 200  
 Las Vegas, Nevada 89129  
 702.823.4900 • Fax 702.823.4488  
 www.KainenLawGroup.com

1 making other efforts to alienate me from Brooke. On July 24, 2015, Vivian sent the email  
 2 providing, "Kirk just can't quite understand why he should have to pay any part of his  
 3 daughters medical bills." On August 2, 2015, I returned from my trip with Joseph, to find that,  
 4 while in Vivian's custody, Brooke had come to our home and cleaned out her closet and  
 5 drawers. On August 12, 2015, Brooke sent me a text advising me that she is not switching  
 6 houses anymore because it is too hard because she is attending college classes. Vivian is clearly  
 7 orchestrating all of this. The Enrollment Form completed by Vivian is dated, August 10, 2015.  
 8 It was shortly after this date that Vivian was representing to the Court that she had nothing to  
 9 do with Brooke's decision to knowingly violate the Custody Order.

10 19. I am extremely concerned because as a consequence of Vivian's affirmative  
 11 actions, we now have a scenario that if Brooke is seriously injured or becomes seriously ill while  
 12 at CSN and is rushed to the hospital, Vivian would be contacted. Heather Atkinson would be  
 13 contacted. I, Brooke's father, would not be contacted. I, who, by order of this Court, has  
 14 shared legal custody of Brooke and joint physical custody of Brooke for 50% of the time on a  
 15 bi-weekly basis, would first learn of the incident when I received the medical bills or saw the  
 16 funeral notice in the newspaper.

17 20. As a consequence of how Vivian completed the Enrollment Form, Dr. Hawk also  
 18 refused to provide me with a copy of Brooke's class schedule. However, I continued my effort's  
 19 with Dr. Hawk to get a copy of Brooke's class schedule and finally, on May 26, 2016, Dr. Hawk  
 20 texted to me a copy of Brooke's Spring Class schedule. A true and correct copy of Brooke's  
 21 class schedule is attached to the Motion for Order to Show Cause, filed 8.30.16, as Exhibit "6."

22 21. Brooke's Student Identification Number is 5003931057. Brooke takes all of her  
 23 classes at the CSN Henderson Campus. Her weekly schedule is as follows:

24 **English 231**  
     M & W           9:30 a.m. to 10:50 a.m.  
 25 **Math 127**  
     M & W           11:00 a.m. to 12:20 p.m.  
 26 **Chemistry 105**  
     M & W           12:30 a.m. to 1:50 p.m.  
 27 **Chemistry Lab 106**  
     M               2:30 p.m. to 5:30 p.m.  
 28 **Psychology 101**

1 T & Th 8:00 a.m. to 9:20 a.m.  
 2 **History 102**  
 3 T & Th 9:30 a.m. to 10:50 a.m.

4 Brooke's total class time each week is therefore 15 hours. Brooke must also take a  
 5 Transition course at UNLV on one Friday each month.

6 22. Brooke's dance classes do not start until 3:30 p.m. on Tuesday and until 3:45 p.m.  
 7 on Thursday. Brooke's dance schedule is as follows:

8 **Monday**

Jazz 6:30 to 8:00 p.m.  
 Hip Hop 8:00 p.m. to 9:00 p.m.

9 **Tuesday**

Contemporary 3:30 p.m. to 4:45 p.m.  
 Tap 5:00 p.m. to 5:45 p.m.  
 Ballet 6:00 p.m. to 7:15 p.m.  
 Musical Theater 8:15 p.m. to 9:30 p.m.

12 **Thursday**

Jazz 3:45 p.m. to 5:00 p.m.  
 Ballet 5:00 p.m. to 6:30 p.m.  
 Couples 8:00 p.m. to 9:00 p.m.

14 Brooke will also, on occasion, attend Musical Theater on Wednesday nights from 8:15  
 15 p.m. to 9:30 p.m. Brooke usually takes her ACT prep course on Wednesday nights from 4:00  
 16 p.m. to 6:00 p.m.

17 23. In light of Brooke's actual schedule (as opposed to what Vivian and Brooke  
 18 represented in their emails to Dr. Paglini), it is difficult to understand why Brooke could not  
 19 have a 2 hour session once a week on either Tuesday or Thursday when her last class at school  
 20 ends by 10:50 and her first dance class does not begin until 3:30 p.m. on Tuesday and 3:45  
 21 p.m. on Thursday. According to Google Maps, it should take Brooke only 29 minutes to drive  
 22 from the Henderson Campus, located at 700 College Drive, to Dr. Ali's office, located at 7221  
 23 West Charleston.

24 24. The Court has specifically found that Vivian is responsible for Brooke's failure to  
 25 comply with the Custody Order of the Court. This fact has been reaffirmed by the Court to  
 26 Vivian on several occasions. Therefore, the cost of the effort to cause Brooke to comply with  
 27 the Court's Custody Order should logically and equitably be borne by Vivian. One of the  
 28 primary purposes of the sessions with Dr. Ali was to cause Brooke to comply with the Custody



KAINEN LAW GROUP, PLLC  
 3303 Novat Suite 200  
 Las Vegas, Nevada 89129  
 702.823.4900 • Fax 702.823.4488  
 www.KainenLawGroup.com

1 Order. Despite this fact, I offered to pay one-half of Dr. Ali's fees in this regard. Dr. Ali's office  
 2 has requested Vivian to pay the other one-half of those fees on several occasions. Vivian has  
 3 refused and continues to refuses to just pay one half of those fees. As a consequence, I paid  
 4 100% of the fees.

5 25. Pursuant to this Court's Custody Order, between August 12, 2015 and August 26,  
 6 2016, Brooke was supposed to be with me a total of 192 days. Despite the explicit terms of the  
 7 Custody Order and this Court's repeated statements to Vivian that it is her responsibility to  
 8 insure the minor children comply with the terms of the Custody Order, of the total of 192 days  
 9 Brooke was to be with me pursuant to this Court's Custody Order, Brooke was only with me a  
 10 total of 38 days. Therefore, just between August 12, 2015 and August 26, 2016, I lost 154 days  
 11 with Brooke, which is 80% of my custody time. Between August 27, 2016 and September 23,  
 12 2016, I lost an additional 13 days of custodial time with Brooke. Therefore, between August  
 13 12, 2015 and September 23, 2016, I have lost a total of 167 lost custodial days.

14 26. During the time period the Court ordered the double sessions with Dr. Ali, the  
 15 continuing violation of this Court's Custody Order has been even worse. Between April 8, 2016  
 16 and June 16, 2016 – over a two month period, Brooke spent less than one day in my physical  
 17 custody. Dr. Paglini's letter to the Court was on May 31, 2016. Without any prior notice  
 18 whatsoever, Brooke showed up at our home at 9:45 p.m. on June 16, 2016, stating she was  
 19 going to spend some vacation time with me. That did not last long.

20 27. I have previously represented to the Court what an incredibly wonderful and  
 21 caring child Brooke has been. There has never been a big sister who was more caring, loving,  
 22 and considerate of her little sister. Whenever Rylee would ask Brooke to help her with her  
 23 homework, without hesitations, Brooke would always help her, and do so, with a positive  
 24 attitude. Brooke was always respectful of others, incredibly close to all her sisters and her  
 25 brother, very witty with a great sense of humor, a loyal friend, humble, and honest in every  
 26 way. Brooke was always a joy to be with and to share experiences. It is very difficult for me  
 27 to see the damage that has been done to Brooke as a consequence of Brooke being incited to  
 28 severely alienate me and now to alienate her older sisters, and as a consequence of the



1 empowerment of Brooke to such an extent the teenage discretion provision has been totally  
2 eviscerated. I never would have believed it possible that Brooke could have been motivated to  
3 leave Rylee for 167 days since August 12, 2015.

4       28. Tahnee, Brooke's oldest sister, drove to Boulder City from California to watch  
5 Brooke's dance performance on Saturday, April 30, 2016. Brooke did not show up until 2:24  
6 p.m. the afternoon of May 1, 2016 and left at 9:00 a.m. on May 2, 2016. This was despite the  
7 fact that I sent Brooke a text on Friday morning, April 29, 2016, advising her that Tahnee was  
8 arriving that afternoon to see her dance performance that weekend. Since Brooke has no  
9 classes on Friday, Brooke could have come over Friday afternoon for several hours before she  
10 had to get ready for dance. Brooke could have stayed home on Friday night after the  
11 performance and Saturday morning, as the next dance show was not until 1:00 p.m. on  
12 Saturday. Brooke went to Prom after the 6:30 show, but could have come home after Prom,  
13 staying home Saturday night and being home all day on Sunday.

14       29. Brooke has always been close to Tahnee and Whitney. Brooke has been especially  
15 close to Tahnee, as they share many of the same interests. As just noted, Tahnee drove home  
16 for the purpose of seeing Brooke's dance performance. Despite Brooke knowing that Tahnee  
17 was here for several days when Brooke was supposed to be with me, Brooke did not come to  
18 our home until 2:45 p.m. that Sunday. Before that visit, Tahnee came home for Christmas.  
19 Although Brooke knew Tahnee was here and Brooke was to be with me under the custody  
20 schedule, Brooke stayed away for most of the time. More specifically, Tahnee came home for  
21 Christmas on December 21, 2015. Brooke was supposed to be with me from after school on  
22 December 16, 2015 until noon on December 25, 2015. However, Brooke did not come to our  
23 home until about 6:30 p.m. the night of December 23, 2015.

24       30. Brooke is also not complying with the Custody Order, when Whitney is home as  
25 well. Whitney was home from October 15, 201 through October 18, 2015. Brooke was  
26 supposed to be at our home from after school on October 14, 2015 through after school on  
27 October 19, 2015. However, Brooke did not come to our home until 11:00 p.m. the night of  
28 October 16, 2015. Whitney was again home from February 14, 2016 until February 21, 2016.

1 Brooke was supposed to be with me from after school on February 17, 2016 until after school  
 2 on February 22, 2016. However, despite knowing that Whitney was home, Brooke did not  
 3 show up until about 10:45 p.m. on February 17, 2016 and despite knowing that Whitney was  
 4 staying home until the following Sunday, Brooke left the morning of February 19, 2016.

5 31. This situation has deteriorated even further. I sent a text to Brooke on May 9,  
 6 2016 advising her that Whitney was home and would be home through Sunday, May 15, 2016.  
 7 Whitney also sent a text to Brooke advising her that she was home and wanted to see Brooke.  
 8 Whitney was in town for medical and dental appointments. Whitney has a serious medical  
 9 condition, which will require a three hour surgery with two surgeons working simultaneously.  
 10 I was to have custody of Brooke for five days from after school on May 11, 2016 until after  
 11 school on May 16, 2016. Brooke was absent during this entire custody time. This is especially  
 12 alarming as Whitney had traveled home all the way from Texas. This was especially  
 13 disappointing for Whitney, as Whitney was home and dealing with a serious medical issue.  
 14 Despite a close relationship their entire lives, Brooke did not respond to my or Whitney's texts  
 15 and made no effort, whatsoever, to see Whitney, despite being in Boulder City.

16 32. Until the Vivian created medical reimbursement issue last Summer, Vivian  
 17 would not have been able to convince Brooke to not only knowingly violate the Custody Order,  
 18 but she would not have been able to prevent Brooke from spending as much time as possible  
 19 with her older sisters. This is a source of serious concern. At this point, Brooke's entire world  
 20 is pleasing Vivian, who Brooke falsely believes to be a victim. Brooke now hates and has  
 21 disdain for me, without any basis whatsoever. Brooke is now also being alienated and  
 22 separated from her older sisters. Vivian has motivated Brooke to violate the Custody Order,  
 23 which is separating Brooke from Rylee, who is just 13 years old, for almost one-half the time.  
 24 I am very alarmed with all of this as Vivian is isolating Brooke from those who truly love and  
 25 care for Brooke and, importantly, have the ability to place Brooke's best interests, above any  
 26 personal agenda.

27 ...

28 ...



33. Vivian is rewarding Brooke for her loyalty to Vivian and her alienation of me and her sisters. Vivian just bought Brooke a new 2015 Toyota Avalon XLE. This replaces the 2011 Toyota Avalon that Vivian had given to Brooke for her sixteenth birthday.

34. I strongly believe that Brooke's overwhelming need to please Vivian is stifling the development of Brooke's own sense of self identity and personal growth. Vivian's intentional actions of poisoning Brooke's mind and instilling hatred in Brooke toward me, her father, is very serious. I do not want Brooke to go through life incapable of having trusting loving relationships with other people. If Brooke later marries and has children, I do not want Brooke alienating her children from their father. Brooke is so enmeshed in Vivian's agenda she has lost herself. Brooke was a loving, caring, happy, witty, and honest person. In the past, Brooke did not lie and she was not deceitful.

35. Before Vivian's evisceration of the teenage discretion provision, wrongful empowerment of Brooke, and Vivian's severe alienation of me from Brooke: (1) Brooke would not have chosen to leave Rylee for one-half the time and me, basically, all of the time; (2) Brooke did not know how to hate someone – and certainly not me, her own Dad; (3) Brooke had not been enmeshed in an agenda of revenge and alienation; (4) Brooke would not have shown so little respect for and knowingly violated Court orders; (5) Brooke would not have lied to Dr. Paglini about why she stopped obeying the Custody Order; (6) Brooke would have not lied about her "college class schedule" prohibiting her from scheduling the Court ordered double sessions with Dr. Ali; (7) Brooke would not have learned how to manipulate other people; (8) Brooke would not have gained an inordinate amount of distrust of other people, including me and her older sisters, who love and care about her, and; (9) Brooke loved and trusted me and knew that I loved and cared for her.

36. Each summer, I plan vacations and time together for all four daughters. Joseph's professional golf schedule during the summer usually prevents him from participating in this vacation time. Each summer I, take all four girls to see the plays at Tuacahn in St. George, Utah. Each summer, I plan at least a one week vacation with all four girls. However, my ability to schedule vacation time is restricted each summer by Vivian's right each year to choose 10

1 days of her vacation time before I get to choose any of my vacation time. In addition, Brooke  
 2 and Rylee have historically had two weeks of intensive dance classes each summer. Last  
 3 summer, despite it being my year to choose "first," because of these restrictions I was, for  
 4 practical purposes, relegated to choosing my three weeks of vacation time, during the first half  
 5 of the summer. Summer classes at CSN can be taken starting either the first week of June or  
 6 the first week of July. After I made my selection for vacation time, Vivian had Brooke, who  
 7 was 15 years old at the time, take one class beginning the first week of June. This prevented  
 8 me from utilizing any of the three one week periods of vacation time, when all four girls could  
 9 spend time together.

10 37. Vivian has chosen vacation time first this year. This year, Vivian has blocked her  
 11 vacation time with Brooke and Rylee from July 22, 2016 through August 23, 2016. Predictably,  
 12 Brooke later announced that she is taking two classes beginning the first week of June this  
 13 summer, once again eliminating my ability to schedule a one week vacation or longer for all of  
 14 the four girls together. Brooke and Rylee take intensive dance for one or two weeks each  
 15 summer. This year those weeks are July 11 through July 14 and July 18 through July 21. I  
 16 picked my third week of vacation from July 14 through July 20, hoping that Brooke and Rylee  
 17 would take intensive dance from July 11 through July 14, and I could take Brooke and Rylee on  
 18 a vacation with Tahnee. Brooke, however, is taking dance from July 18 through July 21.

19 38. It is very evident that Vivian is trying to control Rylee while she is with me and  
 20 Vivian is also trying to damage the relationships Rylee enjoys with Tahnee and Whitney as well.  
 21 Just as Vivian previously convinced Brooke that she is empowered to solely determine what  
 22 she does or does not do while with me, Vivian is now trying to do the same to Rylee. I do not  
 23 question Rylee as to what she does when she is with Vivian and I certainly do not try to control  
 24 what Rylee does when Rylee is with Vivian. The same is not true with respect to Vivian.

25 39. Vivian and I alternate custody during Spring Break each year, with me having  
 26 custody during the even numbered years. According to the Custody Order, custody was to  
 27 transfer to Vivian after Spring Break at 7:00 p.m. on Sunday evening, March 27, 2016. When  
 28 ...



1 Vivian failed to pick up Rylee, I sent a "Courtesy Custody Reminder" email to Vivian (Vivian  
2 receives her emails on her telephone and computer) at 7:49 p.m.:

3 Vivian,

4 I think you were supposed to pick up Rylee at 7:00 p.m. this evening. If you are  
5 out of town, I am happy for Rylee to stay with me and I will take her to school in  
6 the morning. If you are in the middle of something and want to come over later  
this evening, that works as well. If I have interpreted the provision incorrectly,  
kindly let me know. Thanks.

7 Kirk

8 Vivian did not respond until **4:33 a.m.** the next morning:

9 Thank you for the unnecessary reminder. No I'm not out of town, and no I'm not  
10 in the middle of something.

11 Rylee told me before spring break that she told you and Whitney she wanted to  
12 stay in town and not go to Whitney's house for the break. Rylee was sent to  
13 Tahnees in California and then to Whitney's in Texas for her Spring break. She  
14 texted me today and said was on her way back to Boulder. I wanted Rylee to have  
time to get settled in before going back to school tomorrow. Having Rylee pack  
yet again the day she returns to come to my house and then pack again for your  
house this weekend is not in her best interest. She gets hauled back and forth to  
[sic] much as it is.

15 Sent from my iPhone

16 Vivian was, apparently, still not home at 4:33 a.m. for, as noted in her email, her response was  
17 sent from her iPhone and not from her home computer. I responded to Vivian's email when  
18 I got up the next morning at 6:45 a.m.:

19 Your email is made up nonsense. Rylee does not pack for custody transfers. She  
20 has lots of clothes at both homes. That used to be the case for Brooke as well until  
21 you convinced Brooke to move all of her clothes to your house. The issue of  
22 packing with Brooke was self-created. Rylee wanted to spend time with both  
23 Tahnee and Whitney. Rylee wanted to go visit Tahnee. Rylee said she had a good  
24 time with Tahnee. Rylee, initially, said she would prefer that Whitney travels  
here to spend time with her. However, when I explained to her that Sean could  
not get the time off, Rylee was happy to go see Whitney and Sean. I talked to  
Rylee on the way back and she said she had a very good time.

25 If you were not in the middle of something, why did you not respond until 4:33  
a.m.?

26 All three emails are attached as Exhibit "7" to the Motion for an Order to Show Cause, filed  
27 8.30.16.

28 ...

40. Vivian is well aware of the fact that each Spring Break that I have custody of the Brooke and Rylee, I schedule time so Brooke and Rylee can spend time with Tahnee and Whitney. The last time I had Brooke and Rylee for Spring Break was in 2014 and I took all four girls on a cruise. It is very evident in reading Vivian's email, that she is upset that her efforts to keep Rylee from spending time with Tahnee and Whitney were unsuccessful. Vivian falsely alleges that Rylee was "sent to Tahnees in California and then to Whitneys in Texas for her Spring Break." I drove Rylee to Victorville where we met Tahnee and I picked Rylee up in the same way, by meeting Tahnee approximately half way. Rylee and I flew to Texas together to spend time with Whitney and Sean. Vivian would have preferred that Rylee spent the entire Spring Break in her bedroom on her phone watching videos. Vivian does not care what is best for Rylee. Vivian does not care if Rylee has fun during her Spring Break. Vivian does not want Rylee spending quality time with Tahnee, Whitney, or me.

41. Vivian is so blinded by seeking revenge against me, she does not care about the damage she is doing to Brooke and Rylee or what is best for Brooke and Rylee. Vivian's view is very simplistic. Tahnee and Whitney remain close to me. Therefore, Vivian does not want either Brooke or Rylee to have a relationship with Tahnee and Whitney and Vivian is doing everything within her power to interfere with Tahnee's and Whitney's continued relationships with Brooke and Rylee.

42. Just as Vivian has callously convinced Brooke, Vivian is now attempting to indoctrinate Rylee into believing that joint physical custody is too much of an inconvenience, writing, "She gets hauled back and forth to [sic] much as it is."

43. Vivian has chosen the ruse, which she and Brooke have implemented, that Brooke is dishonoring the Custody Order simply because she is too busy and the weekly transfers between the two houses are too inconvenient. A child does not choose to leave a parent because she has a busy schedule. A child chooses to leave a parent when she hates the parent, has disdain for the parent, and has been falsely led to believe that parent has victimized the other parent. The truth is that Vivian's four years of alienating me from Brooke, culminating in the medical reimbursement issue, has caused Brooke to now hate me, erroneously believes

1 I victimized Vivian, and with Vivian's guidance and encouragement, Brooke is trying to remove  
 2 me from her life. Any assertion there is no parental alienation, flies in the face of undisputed  
 3 facts of four years of parental alienation by Vivian.

4       44. I was recently told that one of the reasons that Brooke hates me is that, according  
 5 to Brooke, I have never supported her in dance and that I refused to pay any part of Brooke's  
 6 dance tuition for an entire year. There is no truth to either one of these assertions. While  
 7 Vivian and I were still married, Vivian registered Brooke to take the intensive dance program  
 8 at Dance Etc. The intensive dance program entails approximately 14 or 15 hours of weekly class  
 9 time during the academic school year. Sometime thereafter, Brooke approached me stating she  
 10 wasn't sure she wanted to take the intensive program because of the time commitment during  
 11 school. I responded that Brooke is a very good dancer and that I fully supported her taking  
 12 dance. I also stated that although Tahnee and Whitney took dance, they also played team  
 13 sports such as volley ball, soft ball, basketball, and golf. I said that although it was Brooke's  
 14 decision, I wished she had the time to also participate in team sports. I then advised Brooke  
 15 to talk to Vivian before she made a final decision, as Vivian had already signed her up for the  
 16 intensive program. Several days later, Brooke came to me and asked me to drive her to Dance  
 17 Etc. so she could change her dance schedule. I asked Brooke if she had talked to Vivian about  
 18 her decision. Brooke said that Vivian told her it was Brooke's decision. I drove Brooke to the  
 19 dance studio and Brooke changed the schedule to a less intensive schedule. Sometime within  
 20 the next two days, Brooke came to me crying uncontrollably. Brooke said that Vivian told her  
 21 that by reducing the number of classes, Brooke "had ruined her life" and by not taking  
 22 intensive, Brooke would never get a lead role in any of the dance productions.

23       45. Both during the marriage and after the divorce, I have attended every dance  
 24 production in which Brooke or Rylee has danced. During the marriage, although I always  
 25 drove Brooke and Rylee to and from their dance classes, Vivian had the dance studio bill her  
 26 credit card for the lessons. I would then pay Vivian's credit card bill each month. After the  
 27 divorce, I have always paid each and every bill I have received for Brooke and Rylee's extra-  
 28 curricular activities, such as dance lessons, piano lessons, and voice lessons. Vivian has made

1 the arrangements for payments with the dance studio, the piano teachers, and the voice  
 2 teacher. I received a bill for two months of dance lessons during 2013, which I promptly paid.  
 3 Sometime in August of 2014, the office manager of the dance studio informed me that Vivian  
 4 told her that since she had paid for dance the prior year, then I should pay 100% of the dance  
 5 charges for the year then beginning. Despite paying for the two months I was billed the prior  
 6 year, I did not argue and paid for all the dance classes for Brooke and Rylee for that year.  
 7 When I received a bill for Brooke's and Rylee's dance classes in August of 2015, I called the  
 8 dance studio office manager to advise her it was Vivian's year to pay. I was advised that Vivian  
 9 now wanted me to pay one-half and Vivian to pay one-half. It is my understanding that is how  
 10 the dance bills have been billed and paid since that time. I, therefore, believe that since the  
 11 divorce, I have paid more money than Vivian for Brooke's and Rylee's dance lessons. I believe  
 12 I paid for all of the Brooke and Rylee's piano lessons during 2013. I believe I paid for all of the  
 13 girls piano and voice lessons during 2014. To this day, I continue to pay what I understand  
 14 to be at least one-half of the total charges for Brooke's and Rylee's dance classes and voice  
 15 lessons. Neither Brooke nor Rylee is currently taking piano lessons. Despite the foregoing, it  
 16 is my understanding now that Vivian has convinced Brooke that I have never supported Brooke  
 17 in taking dance classes and that I refused to pay for any part of her dance lessons for an entire  
 18 year.

19 46. Vivian has made a concerted effort to alienate Brooke and Rylee from me  
 20 beginning after the filing of the Motion for Temporary Custody on September 14, 2011. Vivian's  
 21 overt acts to alienate me from Brooke and Rylee have been well documented throughout this  
 22 litigation. At the first opportunity after Brooke's 14<sup>th</sup> birthday, Vivian convinced Brooke that  
 23 upon her 14<sup>th</sup> birthday, Brooke would be empowered to determine her own custody and could  
 24 decide to live with Vivian full-time. Brooke's 14<sup>th</sup> birthday was on June 26, 2013. I had *never*  
 25 even broached the subject of the "teenage discretion" provision with Brooke. In fact,  
 26 subparagraph 6.2 prohibits a parent from prompting or suggesting the child spend more time  
 27 with them. Vivian had uninterrupted custody of Brooke and Rylee from June 26, 2013 through  
 28 July 16, 2013. Despite the prohibition, Vivian did not waste a moment of time in informing



1 Brooke about her “rights” under the provision. The very day Brooke was returned to me, on  
 2 July 17, 2013, Brooke told both her older sister, Whitney, and I that “*since I am now 14 years*  
 3 *old, I am independent, and can decide where I live.*” Because of the way the summer vacation  
 4 schedule fell, I only had custody of Brooke and Rylee for those two days – July 17 & 18, 2013  
 5 – before Vivian again had Brooke and Rylee from July 19, 2013 until August 1, 2013. In fact,  
 6 because of the summer vacation schedule, Vivian had custody for all but two of 38 days during  
 7 that period. Right after Brooke’s return, on August 3, 2013, crying and emotionally distraught,  
 8 Brooke announced to me that she was going to live with Vivian full time. Brooke told me that  
 9 she had not yet told Rylee that she wanted to live with Vivian full time, which would mean she  
 10 would live without Rylee for one-half the time. I asked Brooke why she wanted to live with  
 11 Vivian full-time. Brooke initially responded that “girls are supposed to live with their  
 12 mommies.”

13 47. Contrary to Vivian’s allegation, I have never told Brooke that “Vivian filed the  
 14 divorce action.” The treatises on parental alienation strongly advise that the alienated parent  
 15 must attempt to defend himself or herself. Vivian has been alienating me from Brooke and  
 16 Rylee since the filing of the Motion for Temporary Custody in September of 2011, including  
 17 telling Brooke and Rylee that the divorce was all my fault. After Brooke stopped complying  
 18 with the Custody Order, I finally tried to defend myself by simply telling Brooke that the  
 19 divorce was not my fault. That is all I said.

20 48. I have consistently advised Brooke and Rylee to love and be respectful of Vivian.  
 21 When Vivian would bring Brooke and Rylee to pick up their stuff from my home to get their  
 22 things when custody was transferred, I have consistently told them to have their stuff ready so  
 23 Vivian did not have to wait in the car. As a consequence, the vast majority of time, Vivian waits  
 24 less than 5 minutes and most times, waits less than 2 or 3 minutes. The only time that I have  
 25 been critical of Vivian to Brooke and Rylee is when custody is being transferred to me, and  
 26 Vivian keeps me waiting in the car for 20 to 45 minutes, while Vivian visits with Brooke and  
 27 Rylee, despite the fact they have been in Vivian’s custody until that time and they are picking  
 28 up the identical items.

KAINEN LAW ■■■ UP, PLLC  
 3303 Novat St. ■■■■ 200  
 Las Vegas, Nevada 89129  
 702.823.4900 • Fax 702.823.4488  
 www.KainenLawGroup.com

49. Between July 17, 2016 and September 14, 2016, Brooke spent no time whatsoever at my home. Without any prior notification, Brooke showed up at 10:12 p.m. the night of September 14, 2016 and said she was staying that Wednesday and Thursday. However, Brooke has no dance classes on Wednesdays, but chose not to show up until after 10:00 p.m. The next morning, September 15, 2016, Brooke got up, had a bowl of cereal and left around 9:10 a.m. Brooke did not return home until sometime after 9:40 p.m. The next morning, September 16, 2016, at 7:07 a.m., I heard the front door open and Brooke say goodbye. Therefore, between June 17, 2016 and September 28, 2016, Brooke came to our home late one night, stayed away the entire next day and evening, slept there a second night, and then left shortly after 7:00 a.m. the next morning. Vivian's assertion to the Court that, "Brooke spends alternating weekends and one night per week at Kirk's home" is simply not true.

50. Vivian represented to the Court, "[Brooke] recently spent three weeks at his home." This is simply not true. My three week vacation schedule with Brooke and Rylee this summer was supposed to be Monday, June 13 through Sunday, June 19; Monday, June 27 through Tuesday, July 3, and; Thursday, July 14 through Wednesday, July 20. Except for the part of the day Brooke came to see Tahnee on May 1, 2016 beginning at around 2:25 p.m. and leaving the next morning at 9:00 a.m., Brooke had not been to our home since April 8, 2016 – about nine weeks. Without any prior notice whatsoever, Brooke showed up at about 9:45 p.m. the evening of June 16, 2016, stating she was there for the vacation period. The vacation period began on June 13, 2016 – not June 16, 2016. Brooke left at 9:00 a.m. on June 20, 2016. Therefore, Brooke was there only three of the seven vacation days. The next vacation period was June 27, 2016 through July 3, 2016. This year was also my turn to have Brooke for the 4<sup>th</sup> of July. However, of the total of eight days, Brooke only spent five days with Tahnee or I. For the three days she was home, Brooke would leave around 9:00 a.m. and not return until around 9:00 p.m. or later. Brooke spent from June 30, 2016 until July 3, 2016 visiting Tahnee in California. I dropped Brooke off at Vivian's house on July 3, 2016 to pick up her car. However, Brooke did not pick up her car and return to my home. Brooke never returned to our home during this custody period, including the 4<sup>th</sup> of July. The last vacation period was from

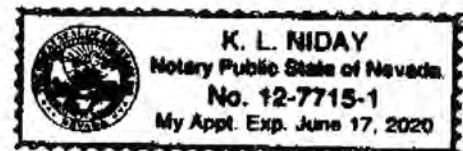
KAINEN LAW UP, PLLC  
 3303 Novat St Suite 200  
 Las Vegas, Nevada 89129  
 702.823.4900 • Fax 702.823.4488  
 www.KainenLawGroup.com

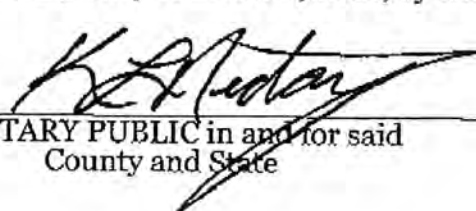
1 July 14, 2016 to July 20, 2016. I was to have custody of Brooke for nine days from 9:00 a.m.  
 2 on July 13, 2016 until 9:00 a.m. on July 22, 2016 (seven days of vacation time and two days of  
 3 regularly scheduled custody time). However, Brooke did not show up until 10:30 p.m. the  
 4 night of July 14, 2016 with no explanation as to why she didn't come the morning of the day  
 5 before. On July 15, 2016, Brooke left shortly after 10:00 a.m. to spend the day with a friend  
 6 and did not return until about 11:30 p.m. that night. On July 16, 2016, Brooke slept in until  
 7 around noon, left at 2:45 p.m. and did not return until after 9:30 p.m. On July 17, 2016,  
 8 although Brooke spent most of the day at home, it was in her bedroom with the door shut. She  
 9 left for Vivian's that night and did not return. Therefore, Brooke only spent about two days  
 10 of the nine days she was supposed to spend with me. Although this was the most time Brooke  
 11 has spent with me in over a year, Brooke only spent a small fraction of the three weeks of  
 12 vacation time she was supposed to spend with me.

13 FURTHER AFFIANT SAYETH NAUGHT.

14  
 15   
 16 KIRK HARRISON

17 SUBSCRIBED AND SWORN to before me  
 18 this 19th day of October, 2016, by Kirk Harrison.



19  
 20   
 21 NOTARY PUBLIC in and for said  
 22 County and State  
 23  
 24  
 25  
 26  
 27  
 28

# EXHIBIT 10

# EXHIBIT 10



**Comparison of Agreed to and Court Ordered Custody Time Periods with Actual Custody Time Periods from August 12, 2015 through December 12, 2016**

Kirk was to have custody of Brooke for two days, from 9:00 a.m. on August 12, 2015 until 9:00 a.m. on August 14, 2015. Brooke was absent during entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days, from 9:00 a.m. on August 19, 2015 until after school on August 24, 2015. Brooke was absent during entire custody time. (Start of school was Monday, August 24, 2015) **5 vs. 0**

Kirk was to have custody of Brooke for two days, from after school on August 26, 2015 until after school on August 28, 2015. Brooke was absent during entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for two days, from after school on September 2, 2015 until after school on September 4, 2015. Brooke was absent during entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days, from after school on September 9, 2015 until after school on September 14, 2015. Brooke was absent during entire custody time. **5 vs. 0**

Kirk was to have custody of Brooke for five days, from after school on September 16 until after school on September 21, 2015. Brooke was absent during entire custody time. **5 vs. 0**

Kirk was to have custody of Brooke for two days, from after school on September 23, 2015 until after school on September 25, 2015. Brooke was absent during entire time. Kirk was lead to believe that Brooke normally arrived home around 4:30 p.m. from her classes on Wednesday. When Brooke still had not arrived by 7:00 p.m., Kirk sent a text to Vivian inquiring of Brooke's whereabouts. Vivian did not respond. Kirk then sent another text to Vivian reminding her of the Court's orders just the day before and Vivian's obligation to facilitate the visitation. Again, ignoring even her basic obligation to cooperatively co-parent and communicate regarding their minor children, Vivian did not respond. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on September 30, 2015 until after school on October 5, 2015. Brooke showed up at Kirk's house shortly after 9:00 p.m. the night of September 30, 2015 and went directly to her bedroom. When Kirk said to Brooke that it was his understanding that she normally got home from class around 4:30 p.m., Brooke responded that Kirk could call the police. Kirk made several attempts to talk with Brooke. Each attempt was rebuffed by Brooke with a curt "OK" and a request to leave Brooke's bedroom. Brooke only had school classes for two hours on October 1, 2015 from 10:00 a.m. until 12:00 noon and dance classes for two hours and 45 minutes from 3:45 p.m. until 6:30 p.m. However, other than coming home to change clothes for a few minutes shortly after 5:00 p.m., Brooke was gone from shortly after 9:00 a.m. until shortly after 10:00 p.m. The next morning, Brooke slept in and stayed in her bedroom. Shortly after 1:00 p.m. on Friday, October 2, 2015,

Kirk heard the garage door open. Brooke was leaving with all of her bags. Kirk told her she needed to stay until Monday morning. She did not respond and drove off.

Kirk requested Vivian to provide him with Brooke's class schedule. Vivian's response was that he needed to get it from Brooke. Having no other choice, Kirk asked Brooke for her class schedule. Brooke said she would get it to him later. Kirk has never received it. Vivian again has failed in her obligation to share information and co-parent. Kirk's counsel sent a letter, via fax, to Vivian's counsel on December 14, 2015 requesting Brooke's class schedule. There has never been a response. During the brief time Brooke was with Kirk, she declined Kirk's offers to cook her meals and refused to eat any meals with Kirk and Rylee. When she came home after 10:00 p.m. the night of October 1, 2015, Brooke had "take out" food with her that she had purchased from a local restaurant.

As noted, Brooke was supposed to still be with Kirk through the weekend until after school on Monday, October 5, 2015. Despite the fact that Brooke had left at 1:00 p.m. the day before, on Saturday, October 3, 2015 (while Brooke was supposed to be still in Kirk's custody), at around 11:00 a.m., Rylee was heading out the door with Brooke's computer charging cord. Brooke was in her car in front of the house, and unbelievably, Vivian was in Brooke's car with her. In other words, during Kirk's custodial time, while Vivian continues to tell this Court that she has no control over Brooke's actions, she joins Brooke in interfering with Kirk's custodial time and also enlists Rylee in facilitating same. **5 vs. 2**

Kirk was to have custody of Brooke for two days from after school on October 7, 2015 until after school on October 9, 2015. Brooke was absent during entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on October 14, 2015 until after school on October 19, 2015. Brooke's older sister, Whitney, was visiting and staying at Kirk's home. Brooke showed up after 11:00 p.m. the evening of October 16, 2015 and left the morning of October 19, 2015. The only time Brooke spent with Kirk during this entire time period was when Brooke was spending time with Whitney and Kirk was in the same room. **5 vs. 2**

Kirk was to have custody of Brooke for two days from after school on October 21, 2015 until after school on October 23, 2015. Brooke was absent during entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for six days from after school on October 28, 2015 until the morning of November 3, 2015. Brooke showed up shortly after 9:45 p.m. on October 28, 2015 and went directly to her bedroom and shut the door. Brooke is still not talking to Kirk. Brooke was gone most of the next day. At about 6:45 p.m. on October 29, 2015, Brooke asked if she could spend the night at a friend's house. Brooke was supposed to spend six days with Kirk. Kirk naively thought Brooke was going to spend the rest of the weekend with him. When Brooke left at 7:00 p.m. she announced she was not coming back. **6 vs. 1**

Kirk was to have custody of Brooke for two days from after school on November 4, 2015 until after school on November 6, 2015. Brooke was absent during entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke from 9:00 a.m. on November 11, 2015 until after school on November 16, 2015. Brooke showed up shortly after 11:47 p.m. on November 13, 2015 and went directly to her bedroom and shut the door. Kirk knocked on the door and went in her room. Kirk told Brooke that he missed her. She responded the same way she has responded to anything Kirk says since she left, by simply saying, "OK." Brooke left the morning of November 16, 2015 without spending any time with Kirk. **5 vs. 2**

Kirk was to have custody of Brooke for two days from after school on November 18, 2015 until after school on November 20, 2015. Brooke was absent during entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for two days from after school on December 2, 2015 until after school on December 4, 2015. Brooke was absent during entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on December 9, 2015 until after school on December 14, 2015. Brooke did not show up until about 10:55 p.m. on December 11, 2015. On December 12, 2015, Kirk took Brooke and Rylee to J C Penney to meet Hank. The four of them had dinner at the Macaroni Grille. Kirk had the best time with Brooke that day since before the service of the Motion for Temporary Custody in September of 2011. Kirk had wonderful conversations with Brooke, just like they used to have. No more just "OK" when Kirk said something. However, the very next day, and all times since, Brooke was back to just responding "OK" to everything Kirk said. Brooke left the morning of December 14, 2015. **5 vs. 2**

Kirk was to have custody of Brooke from after school on December 16, 2015 until noon on December 25, 2015. Brooke did not show up until about 6:30 p.m. on December 23, 2015. This was despite Brooke knowing that Tahnee had arrived at Kirk's house on December 21, 2015. Brooke left at about noon on December 25, 2016. **10 vs. 2**

Kirk was to have custody of Brooke for five days from after school on January 6, 2016 until after school on January 11, 2016. Brooke did not show up until about 8:30 p.m. on January 8, 2016. Brooke left the morning of January 11, 2016. **5 vs. 2**

Kirk was to have custody of Brooke for two days from after school on January 13, 2016 until after school on January 15, 2016. Brooke was absent during entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on January 20, 2016 until after school on January 25, 2016. Brooke did not show up until after 9:00 p.m. on January 20, 2016. Brooke left the morning of January 22, 2016. Rylee's thirteenth birthday was on January 24, 2016. Despite numerous texts from Kirk, Brooke refused to go to Rylee's birthday

dinner or attend Rylee's family birthday party on January 24, 2016. **5 vs. 1**

Kirk was to have custody of Brooke for two days from after school on January 27, 2016 until after school on January 29, 2016. Brooke was absent during entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on February 3, 2016 until after school on February 8, 2016. Brooke did not show up until 6:45 p.m. on February 5, 2016. Brooke left the morning of February 8, 2016. **5 vs. 2**

Kirk was to have custody of Brooke for two days from after school on February 10, 2016 until after school on February 12, 2016. Brooke was absent during the entire custody time **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on February 17, 2016 until after school on February 22, 2016. Despite knowing that her older sister Whitney was home, Brooke did not show up until about 10:45 p.m. on February 17, 2016 and despite knowing that Whitney was staying home until the following Sunday, Brooke left the morning of February 19, 2016. In response to Whitney asking Brooke why she could not stay longer, Brooke responded the Parenting Coordinator told her that she must stick to "her schedule" of just two days every other week. This is also very troubling, because Brooke had no school on Friday, February 19, 2016. **5 vs. 1**

Kirk was to have custody of Brooke for two days from after school on February 24, 2016 until after school on February 26, 2016. Brooke was absent during the entire custody time **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on March 2, 2016 until after school on March 7, 2016. Brooke did not show up until 11:00 p.m. on March 4, 2016. On March 5, 2016, Brooke was gone the entire day for dance classes and an ACT preparatory course. Brooke was home for only about an hour before telling Rylee she had to run an errand at Vivian's house and left around 6:00 p.m. Brooke did not return until shortly before 10:00 p.m. At about 4:45 p.m. on March 6, 2016, Brooke announced she was going to Starbucks to study. Kirk told Brooke that he got to see so little of her and did not want her to go. Brooke left anyway and was gone for about two hours. Brooke left the morning of March 7, 2016. **5 vs. 2**

Kirk was to have custody of Brooke for two days from after school on March 9, 2016 until after school on March 11, 2016. Brooke was absent during the entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for two days from after school on March 16, 2016 until after school on March 18, 2016 and then for Spring Break from after school on March 18, 2016 until 7:00 p.m. on March 27, 2016. Brooke did not show up until about 10:30 p.m. the night of March 16, 2016 and left around 6:30 p.m. on March 22, 2016. Brooke spent very little time at home during this period. For example, Brooke spent the entire evening of March 18, 2016 at Vivian's house. Not knowing whether Brooke would even show up for any part of Spring Break, Kirk had previously made plans to take Rylee to see Whitney and her husband in Texas



for the latter part of the week. Brooke was still in school. However, Brooke was leaving the evening of March 22, 2016, whether Rylee was here or not. **12 vs. 4**

Kirk was to have custody of Brooke for five days from after school on March 30, 2016 until after school on April 4, 2016. Brooke was absent during the entire custody time. **5 vs. 0**

Kirk was to have custody of Brooke for two days from after school on April 6, 2016 until after school on April 8, 2016. Brooke did not show up until sometime after 10:30 p.m. the night of April 6, 2016. Brooke left the morning of April 8, 2016, despite not having any school that day. **2 vs. 1**

Kirk was to have custody of Brooke for five days from after school on April 13, 2016 until after school on April 18, 2016. Brooke was absent during the entire custody time. **5 vs. 0**

Kirk was to have custody of Brooke for two days from after school on April 20, 2016 until after school on April 22, 2016. Brooke was absent during the entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on April 27, 2016 until after school on May 2, 2016. Brooke did not show up until 2:24 p.m. the afternoon of May 1, 2016. This was despite the fact that Kirk sent Brooke a text on Friday morning, April 29, 2016, advising her that Tahnee was arriving that afternoon to see her dance performance this weekend. Brooke could have come over Friday afternoon for a couple of hours before she had to get ready for dance. Brooke could have stayed home on Friday night after the performance and Saturday morning, as the next dance show was not until 1:00 p.m. Brooke went to Prom after the 6:30 show, but could have come home after Prom, staying home Saturday night and being here all day on Sunday. Brooke left at 9:00 a.m. on May 2, 2016. **5 vs. 1**

Kirk was to have custody of Brooke for two days from after school on May 4, 2016 until after school on May 6, 2016. Brooke was absent during the entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on May 11, 2016 until after school on May 16, 2016. Brooke was absent during this entire custody time. This was despite the fact that Kirk sent Brooke a text Monday evening, May 6, 2016, advising Brooke that Whitney was home until Sunday, May 15, 2016. This is especially alarming as Whitney had traveled home all the way from Texas. This was especially disappointing for Whitney as Whitney was home to get a second medical opinion, which confirmed that, at only 29 years of age, her thyroid is three times normal size, still growing, and must be surgically removed. Despite a close relationship their entire lives, Brooke did not respond to any of Whitney's texts and made no effort, whatsoever, to see her, despite being in Boulder City. **5 vs. 0**

Kirk was to have custody of Brooke for two days from after school on May 18, 2016 until after school on May 20, 2016. Brooke was absent during this entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for two days from after school on May 25, 2016 until 9:00 a.m. on May 27, 2016. Brooke was absent during this entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on June 1, 2016 until 9:00 a.m. on June 6, 2016. Brooke was absent during this entire custody time **5 vs. 0**

Kirk was to have custody of Brooke for five days from 9:00 a.m. on June 8, 2016 until 9:00 a.m. on June 13, 2016. Brooke was absent during this entire custody time **5 vs. 0**

Kirk was to have custody of Brooke for seven days (vacation) from 9:00 a.m. on June 13, 2016 until 9:00 a.m. on June 20, 2016. Without any prior notice whatsoever, Brooke showed up at about 9:45 p.m. the evening of June 16, 2016. Kirk asked Brooke why she decided to come to their home (except for the part of the day she came to see Tahnee on May 1, 2016 beginning at around 2:25 p.m. and leaving the next morning at 9:00 a.m., Brooke had not been to their home since April 8, 2016). Brooke said that she was there for vacation. Brooke said that she had come on Monday, but no one was home. Kirk asked why she didn't call or text that she was planning on staying with him during the vacation days. Brooke would not respond. Brooke left at 9:00 a.m. on June 20, 2016. **7 vs. 3**

Kirk was to have custody of Brooke for five days from 9:00 a.m. on June 22, 2016 until 9:00 a.m. on June 27, 2016. Despite Whitney being home the entire time, Brooke did not come home until the morning of June 24, 2016, just in time to get into the car to drive to St. George, Utah to see the plays at Tuacahn with Tahnee, Whitney, Rylee and Kirk. They drove home on Sunday, June 26, 2016, which is Brooke's birthday. It is Kirk's year to have custody of Brooke on her birthday. Brooke said she needed to go to Vivian's house to pick up some things. However, Brooke did not return until the next day. **5 vs. 3**

Kirk was to have custody of Brooke for eight days from 9:00 a.m. on June 27, 2016 until 10:00 a.m. on July 5, 2016 (seven days of vacation time and Kirk's year to have Brooke for Independence Day). When Brooke suddenly appeared on June 16, 2016, Brooke told Kirk she was going to spend the vacation time this summer with him. Brooke returned home late morning on June 27, 2016. However, after Brooke went to class in the morning on June 28, 2016, she did not return until about 9:00 p.m. that night. Brooke did the same thing on June 29, 2016. She left for class before 9:00 a.m. and did not return until about 9:00 p.m. Brooke then said she was going to visit a friend and left around 9:45 p.m. and did not return until after 11:00 p.m. On June 30, 2016, Kirk drove Brooke to Victorville, California and met Tahnee so Brooke could spend some alone time with Tahnee, which they have both really enjoyed. However, on the drive back to Victorville, Tahnee and Brooke talked about the divorce. Both were very emotional and upset when Kirk met them in Victorville. Kirk picked Brooke up from Tahnee in Victorville on July 3, 2016. Upon their return to Boulder City, Kirk dropped Brooke off at Vivian's house to get her car. Despite saying she was going to spend the vacation time with Kirk, Brooke did not return at any time during the remainder of this custody period. **8 vs. 5**

Kirk was to have custody of Brooke for five days from 9:00 a.m. on July 6, 2016 until 9:00 a.m. on July 11, 2016. Brooke was absent during this entire custody time. **5 vs. 0**

Kirk was to have custody of Brooke for nine days from 9:00 a.m. on July 13, 2016 until 9:00 a.m. on July 22, 2016 (seven days of vacation time and two days of regularly scheduled custody time). However, Brooke did not show up until 10:30 p.m. the night of July 14, 2016 with no explanation as to why she didn't come the morning of the day before. On July 15, 2016, Brooke left shortly after 10:00 a.m. to spend the day with a friend and did not return until about 11:30 p.m. that night. On June 16, 2016, Brooke slept in until around noon, left at 2:45 p.m. and did not return until after 9:30 p.m. On July 17, 2016, although Brooke spent most of the day at home, it was in her bedroom with the door shut. She left for Vivian's that night and did not return. Brooke chose to take her intensive dance classes during the only time Kirk could take she and Rylee to Disneyland. **9 vs. 2**

Kirk was to have custody of Brooke for two days from 9:00 a.m. on August 24, 2016 until 9:00 a.m. on August 26, 2016. Brooke was absent during this entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for two days from after school on August 31, 2016 until after school on Friday, September 2, 2016. Brooke was absent during this entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on September 7, 2016 until after school on September 12, 2016. Brooke was absent during this entire custody time. **5 vs. 0**

Kirk was to have custody of Brooke for five days from after school on September 14, 2016 until after school on September 19, 2016. Without any prior notification, Brooke showed up at 10:12 p.m. the night of September 14, 2016 and said she is staying this Wednesday and Thursday. Brooke has no dance classes on Wednesdays, however she did not show up until 10:12 p.m. The next morning, September 15, 2016, Brooke got up, had a bowl of cereal and left around 9:10 a.m. Brooke did not return home until sometime after 9:40 p.m. The next morning, September 16, 2016, at 7:07 a.m., Kirk heard the front door open and Brooke say goodbye. No breakfast. Just left. Brooke did not return during this custody period. **5 vs. 1**

Kirk was to have custody of Brooke for two days from after school on September 21, 2016 until after school on September 23, 2016. Brooke was absent during this entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on September 28, 2016 until after school on October 3, 2016. Brooke showed up after 11:00 p.m. the night of September 30, 2016. Brooke stayed in her bedroom until she abruptly left at about 11:25 a.m. on October 1, 2016. On her way out, Kirk asked her if she was coming back this weekend. She said she would come back the next morning after she got up. She did not eat breakfast. Despite

saying she would come back when she got up the next day, she did not return until after 5:45 p.m. on October 2, 2016. Brooke went directly to her bedroom. Kirk asked if she wanted dinner and she responded that she had already eaten. She left early the next morning. **5 vs. 2**

Kirk was to have custody of Brooke for two days from after school on October 5, 2016 until after school on October 7, 2016. Brooke was absent during this entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on October 12, 2016 until after school on October 17, 2016. Brooke showed up at 10:01 p.m. on the night of October 12, 2016. On October 13, 2016, Brooke left right after breakfast and did not return until 10:32 p.m. that night. Brooke did not leave her room from when she got home at 10:32 p.m. that night until she came to the kitchen to eat her breakfast the next morning. Brooke ate her breakfast, went to her bedroom to get her stuff, and left at 8:54 a.m. on October 14, 2016 and did not return. **5 vs. 2**

Kirk was to have custody of Brooke for two days from after school on October 19, 2016 until after school on October 21, 2016. Brooke was absent during this entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on October 26, 2016 until after school on October 31, 2016. Took Rylee to Disneyland from October 28, 2016 through October 30, 2016. Brooke refused to go. Brooke was absent during this entire custody time. **5 vs. 0**

Kirk was to have custody of Brooke for two days from after school on November 2, 2016 until after school on November 4, 2016. Brooke was absent during this entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for one day on November 8, 2016 for staff development day. Brooke was absent during this entire custody time. **1 vs. 0**

Kirk was to have custody of Brooke for five days from after school on November 9, 2016 until after school on November 14, 2016. Brooke was absent during this entire custody time. **5 vs. 0**

Kirk was to have custody of Brooke for two days from after school on November 16, 2016 until after school on November 18, 2016. On November 16, 2016, Brooke showed up at around 10:30 p.m. and went straight to her bedroom and shut the door. On November 17, 2016, Brooke left after breakfast at 9:24 a.m. and did not return home until 10:58 p.m. Brooke left the morning of November 18, 2016. **2 vs. 1**

Kirk was to have custody of Brooke for five days from after school on November 23, 2016 until 7:00 p.m. the evening of November 27, 2016. This was Thanksgiving. Brooke was



absent during this entire custody time. **5 vs. 0**

Kirk was to have custody of Brooke for two days from after school on November 30, 2016 until after school on December 2, 2016. Brooke was absent during this entire custody time. **2 vs. 0**

Kirk was to have custody of Brooke for five days from after school on December 7, 2016 until after school on December 12, 2016. Brooke was absent during this entire custody time. **5 vs. 0**

In summary, pursuant to the agreement between the parties and this Court's Order, between August 12, 2015 and December 12, 2016, Brooke was supposed to be with Kirk a total of **247 days**. However, during this time period, Brooke was only "with Kirk" a total of **44 days**. Therefore, as of December 12, 2016, Kirk has lost **203 days** with Brooke since August 12, 2015. This calculation gives credit for Brooke being with Kirk on those days, on Thursdays for example, when Brooke gets out of class at 10:50 a.m. and does not have a dance class until 3:45 p.m., but spends the entire intervening time at Vivian's house, and not returning to Kirk's house until sometime after 10:00 p.m. This also does not account for the fact that when Brooke was "with Kirk" she was in her bedroom with the door closed the vast majority of the time.

It is noteworthy that Brooke's behavior while she is "with Kirk," as documented herein, is consistent with her behavior "with Kirk" that Brooke reported to Dr. Paglini. *See* 1.25.16 Report, p. 17, 24, 46, 50, & 52-53. More specifically, Dr. Paglini noted that when Brooke is at Kirk's home, she remains in her bedroom and is primarily disengaged from Kirk. (46) Brooke acknowledged she has virtually no contact with Kirk when she is in his home. (17) Brooke acknowledged she does not eat any meals with Kirk. (24) Dr. Paglini noted his disagreement with how poorly Brooke treats Kirk. (52) Dr. Paglini specifically found that Brooke has rejected Kirk and is disengaged from him. (46; 50)

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \*

KIRK ROSS HARRISON,

NO. 72880

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

---

**CHILD CUSTODY FAST TRACK STATEMENT**

**APPENDIX – VOLUME 14**

ROBERT L. EISENBERG  
Nevada Bar No. 0950  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
775-786-6868  
[rle@lge.net](mailto:rle@lge.net)

KIRK R. HARRISON  
Nevada Bar No. 0861  
1535 Sherri Lane  
Boulder City, Nevada 89005  
702-271-6000  
[kharrison@harrisonresolution.com](mailto:kharrison@harrisonresolution.com)

*ATTORNEYS FOR APPELLANT*

## CHRONO INDEX

## **CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
1.	Complaint for Divorce	03/18/11	1	1-7
2.	Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence	09/14/11	1 2	8-220 221-361
3.	Defendant's Opposition to Plaintiff's Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence; Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children; for Division of Funds for Temporary Support, and for Attorney's Fees	10/31/11	2 3	362-418 419-652
4.	Answer to Complaint for Divorce and Counterclaim for Divorce	11/22/11	3	653-659
5.	Reply to Defendant's Opposition to Plaintiffs Motion for Joint Legal Custody and Permanent Physical Custody and for Exclusive Possession of Residence AND Opposition to Defendant's Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children, for Division of Funds for Temporary Support, and for Attorney's Fees	01/04/12	4 5	660-907 908-929
6.	Court Minutes [All Pending Motions]	02/24/12	5	930-933
7.	Stipulation and Order Resolving Parent/Child Issues	07/11/12	5	934-950
8.	Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for Sanctions and Attorney's Fees	05/10/13	5	951-984



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
9.	Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief	05/28/13	5	985-994
10.	Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief	05/28/13	5	995-1009
11.	Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan; Plaintiff's Opposition to Defendant's Motion for Sanctions and Attorney's Fees	07/19/13	5	1010-1044
12.	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan and Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions and Attorney's Fees	09/09/13	5	1045-1053
13.	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion Styled Request for Reasonable Discovery and Evidentiary Hearing; Defendant's Opposition to	09/11/13	5	1054-1059

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Plaintiff's Countermotion for Equitable Relief; Defendant's Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion for Declaratory Relief			
14.	Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief	10/01/13	5	1060-1080
15.	Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues [To Delete "Teenage Discretion" Provision] and Other Equitable Relief; Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions	10/17/13	5	1081-1149
16.	Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief	10/21/13	6	1150-1171
17.	Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions	10/23/13	6	1172-1223
18.	Order for Appointment of Parenting Coordinator	10/29/13	6	1224-1232
19.	Notice of Entry of Decree of Divorce	10/31/13	6	1233-1264

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
20.	Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment (without exhibits)	11/14/13	6	1265-1281
21.	Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision	11/18/13	6	1282-1316
22.	Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees	12/06/13	6	1317-1339
23.	Plaintiff's Reply in Support of Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision AND Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees	12/13/13	6	1340-1354
24.	Order [Denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and Other Equitable Relief and Denying Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions]	12/17/13	6	1355-1356
25.	Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief	04/21/14	6 7	1357-1388 1389-1431
26.	Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions	05/09/14	7	1432-1458
27.	Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions	05/14/14	7	1459-1472

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
28.	Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions	05/20/14	7	1473-1518
29.	Order from Hearing [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision]	06/13/14	7	1519-1524
30.	Notice of Entry of Order [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision]	06/16/14	7	1525-1532
31.	Notice of Appeal	07/17/14	7	1533-1593
32.	Findings and Orders re: May 21, 2014 Hearing	09/29/14	7	1594-1601
33.	Notice of Entry of Findings and Orders re: May 21, 2014 Hearing	09/29/14	7	1602-1611
34.	Amended or Supplemental Notice of Appeal	10/16/14	7	1612-1622
35.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013	08/21/15	8	1623-1673
36.	Order to Appear and Show Cause	09/01/15	8	1674-1675
37.	Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor	09/14/15	8	1676-1692

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Child, Emma Brooke Harrison ("Brooke")			
38.	Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke")	09/18/15	8	1693-1738
39.	Notice of Entry of Order from Hearing	10/01/15	8	1739-1743
40.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	10/12/15	8	1744-1758
41.	Order to Appear and Show Cause	10/14/15	8	1759-1760
42.	Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing	10/15/15	8	1761-1851
43.	Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing	11/02/15	9	1852-1879
44.	Dr. Paglini Letter to Court	11/23/15	9	1880-1881
45.	Notice of Entry of Order from Domestic Court Minutes	12/02/15	9	1882-1886
46.	Supplement to Plaintiff's Motion for an Order to Show Cause Why	12/10/15	9	1887-1903

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015			
47.	Reply to Opposition to Motion for Clarification; Motion to Amend Findings	12/10/15	9	1904-1920
48.	Court Minutes [All Pending Motions]	12/14/15	9	1921-1922
49.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	12/16/15	9	1923-1942
50.	Notice of Entry of Order from Domestic Court Minutes	12/17/15	9	1943-1947
51.	Court Minutes [All Pending Motions]	01/26/16	9	1948-1949
52.	Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing	05/25/16	9	1950-1958
53.	Letter from John Paglini, Psy.D. to Court	05/31/16	9	1959-1961
54.	Notice of Entry of Order re John Paglini, Psy.D. Letter	06/21/16	9	1962-1963
55.	Notice of Appeal	06/27/16	9	1964-1975
56.	Plaintiff's Motion for Reunification Therapy for Minor Children and Father	07/26/16	9	1976-2076
57.	Notice of Entry of Order re: August 24, 2016 Hearing	08/19/16	9	2077-2079

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
58.	Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order	08/30/16	9	2080-2095
59.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	08/30/16	10	2096-2196
60.	Defendant's Opposition to Motion for Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015; Countermotion for Sanctions; Opposition to Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings and, Motion to Alter, Amend and Clarify Order	09/23/16	10	2197-2206
61.	Plaintiff's Motion for an Order to Nullify and Void Expert Report	09/28/16	10	2207-2292
62.	Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	09/30/16	10	2293-2316
63.	Plaintiff's Reply in Support of Motion for Reconsideration, or, in the Alternative, Motion for	09/30/16	10	2317-2321

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order and Plaintiff's Objection to those Portions of Defendant's Opposition in Violation of EDCR 5.13			
64.	Defendant's Opposition to Motion for an Order to Nullify and Void Expert Report	10/18/16	10	2322-2337
65.	Affidavit of Kirk Harrison Filed in Support of Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015, Filed August 30, 2016	10/19/16	11	2338-2358
66.	Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report	11/02/16	11	2359-2381
67.	Reply to Defendant's Opposition to Countermotion for Sanctions; Motion to Strike Reply; Motion to Strike Affidavit	11/04/16	11	2382-2423
68.	Court Minutes [All Pending Motions]	11/07/16	11	2424-2426
69.	Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	12/29/16	11	2427-2440
70.	Plaintiff's Pre-Trial Memorandum	01/17/17	11	2441-2457
71.	Prehearing Memorandum	01/17/17	11	2458-2477
72.	Court Minutes [Evidentiary Hearing]	01/18/17	11	2478-2479

///  
///



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
73.	Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions	01/31/17	11	2480-2489
74.	Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	01/31/17	11	2490-2507
75.	Plaintiff's Supplemental Exhibit in in Support of Plaintiff's Reply Regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	01/31/17	11	2508-2512
76.	Court Minutes [All Pending Motions]	02/01/17	11	2513-2514
77.	Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	02/13/17	11	2515-2537
78.	Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions	02/13/17	11	2538-2556
79.	Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees	02/15/17	11	2557-2563
80.	Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Reply to Supplemental Declaration, and; Opposition to Request for Sanctions	02/17/17	12	2564-2595

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
81.	Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees	03/06/17	12	2596-2602
82.	Defendant's Opposition to Motion to Strike; Countermotion for Sanctions	03/13/17	12	2603-2608
83.	Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing]	03/15/17	12	2609-2617
84.	Notice of Entry of Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing]	03/16/17	12	2618-2627
85.	Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 16, 2017	03/28/17	12	2628-2634
86.	Plaintiff's Response to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 15, 2017	04/10/17	12	2635-2638
87.	Notice of Appeal	04/14/17	12	2639-2649
<b><u>TRANSCRIPTS</u></b>				
88.	Transcript re: All Pending Motions	10/30/13	12	2650-2688
89.	Transcript re: All Pending Motions	05/21/14	12	2689-2744
90.	Transcript re: All Pending Motions	09/22/15	13	2745-2823
91.	Transcript re: All Pending Motions	12/14/15	13	2824-2886
92.	Transcript re: All Pending Motions	01/26/16	13	2887-2928

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
93.	Transcript re: All Pending Motions	11/07/16	14	2929-3040
94.	Transcript re: Evidentiary Hearing - Vol.1	01/18/17	14	3041-3152
95.	Transcript re: Evidentiary Hearing - Vol. 2	01/18/17	14 15	3153-3178 3179-3315
	Plaintiff's Exhibit 1 – Dr. Paglini Report dated January 25, 2016 [ <i>Confidential</i> ] SEALED		15	3316-3375
	Plaintiff's Exhibit 2 – Email from Vivian Harrison to Kirk Harrison dated February 27, 2016		15	3376-3377
	Plaintiff's Exhibit 3 – Email from Brooke Harrison to Dr. Paglini dated February 27, 2016		15	3378-3380
	Plaintiff's Exhibit 4 – Dr. Paglini Letter dated May 31, 2016		15	3381-3384
	Plaintiff's Exhibit 5 – Dr. Ali Letter dated June 29, 2016 [ <i>Confidential</i> ] SEALED		15	3385-3387
	Plaintiff's Exhibit 6 – Email from Carina Deras to Kirk Harrison dated April 1, 2016		15	3388-3389
	Plaintiff's Exhibit 7 – Brooke Harrison's Nevada State High School Enrollment Form dated August 10, 2015		15	3390-3392
	Plaintiff's Exhibit 8 – Brooke Harrison's Class Schedule		15	3393-3394
	Plaintiff's Exhibit 9 – Affidavit of Kirk Harrison dated October 19, 2016		15	3395-3416
	Plaintiff's Exhibit 10 – Comparison of Agreed Time with Actual Custody Time from August 12, 2015 through December 12, 2016		15	3417-3426
96.	Transcript re: All Pending Motions	02/01/17	16	3427-3640

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
<b><u>ADDITIONAL DOCUMENTS<sup>1</sup></u></b>				
97.	Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017	07/24/17	16	3641-3647
98.	Plaintiff's Supplemental Filing	08/24/17	16	3648-3666
99.	Supplemental Notice of Appeal	08/24/17	17	3667-3676
100.	Notice of Entry of Order re: Expert Designation	10/06/15	17	3677-3682
101.	Notice of Entry of Order re: Pending Motions	01/04/17	17	3683-3693

---

<sup>1</sup>These additional documents were added to the appendix after the first 16 volumes of the appendix were complete and already numbered (3,640 pages).



**FILE COPY**  
AUG 31 2017

A.App. 2929

**COPY**

**FILED**

AUG 31 2017

*Alma L. Johnson*  
CLERK OF COURT

1 **TRANS**

2  
3  
4 **EIGHTH JUDICIAL DISTRICT COURT**  
5 **FAMILY DIVISION**  
6 **CLARK COUNTY, NEVADA**  
7

8 KIRK ROSS HARRISON, )  
9 Plaintiff, ) CASE NO. D-11-443611-D  
10 vs. ) DEPT. Q  
11 VIVIAN HARRISON, ) **(SEALED)**  
12 Defendant. )  
13

14 BEFORE THE HONORABLE BRYCE C. DUCKWORTH  
15 DISTRICT COURT JUDGE

16 TRANSCRIPT RE: ALL PENDING MOTIONS

17 MONDAY, NOVEMBER 7, 2016

18 **APPEARANCES:**

19 The Plaintiff: KIRK ROSS HARRISON  
20 For the Plaintiff: EDWARD KAINEN, ESQ.  
3303 Novat St., #200  
Las Vegas, Nevada 89129  
(702) 823-4900

21 The Defendant: VIVIAN MARIE LEE HARRISON  
22 For the Defendant: RADFORD SMITH, ESQ.  
2470 St. Rose Pkwy., #206  
Henderson, Nevada 89074  
(702) 990-6448

1 LAS VEGAS, NEVADA

MONDAY, NOVEMBER 7, 2016

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

3 (THE PROCEEDINGS BEGAN AT 13:32:33)

4  
5 THE COURT: We are on the record in the Harrison  
6 matter, case D-11-443611-D. Please confirm your appearances.

7 MR. KAINEN: Your Honor, Ed Kainen, bar number 5029,  
8 with Kirk Harrison to my right --

9 THE COURT: Good afternoon.

10 MR. KAINEN: -- who's actually present.

11 MR. SMITH: Radford Smith, 2791, on behalf of Vivian  
12 Harrison, who is to my left.

13 THE COURT: Good afternoon. This is the time set  
14 for hearing on Plaintiff's motion for reconsideration or in  
15 the alternative motion for Huneycutt certification motion to  
16 amend findings or make additional findings and motion to  
17 alter, amend, and clarify order and Plaintiff's motion for  
18 order to show cause, why Defendant should not be held in  
19 contempt for knowingly, intentionally violating Section 5 of  
20 the stipulation order resolving parent child issues in this  
21 Court's order of October 1, 2015 and Plaintiff's motion for an  
22 order to nullify and void expert report and then the  
23 opposition -- Defendant's opposition and countermotion for  
24 sanctions as it relates to interplaying filings, I've received

1 replies that have been filed on both parties. Have any issues  
2 been resolved?

3 MR. KAINEN: No.

4 THE COURT: Let me just start with kind of where I'm  
5 at. Understanding also that I do need to make findings  
6 jurisdictionally because there is a pending an appeal. And  
7 this -- yes. Yes, you may. And -- and so there's a  
8 jurisdictional component to this as to what I am authorized to  
9 do. I do have the authority to -- to enforce the Court's  
10 orders even during the pendency of an appeal. And ultimately,  
11 it's a determination as it relates to the issues before the  
12 Court.

13 And that's part of the motion for reconsideration  
14 because I had issued an order when the motion was first filed  
15 given the fact that there is a pending appeal before the  
16 Nevada Supreme Court. So I either have to make a  
17 determination as to whether or not the issues raised by way of  
18 the motion are ancillary in nature or alternatively, and  
19 that's been offered in the underlying motions that the Court  
20 certify pursuant to Huneycutt the issues that have been raised  
21 by -- by way of the -- the motions.

22 My -- my focus and attention today really is on --  
23 relates to the motion for reconsideration and -- and motion to  
24 -- for -- for orders to show cause. And again, recognizing



1 that -- that a lot of this stems back to our prior  
2 proceedings. When we reach that point after Dr. Paglini had  
3 issued his report and decided at that point to go down the  
4 path of reunification whether than -- rather than pursue the  
5 contempt issues, I denied the request for a modification of  
6 custody. And the idea in mind was to work on reunification  
7 with Dr. Paglini's report and Dr. Ali's assistance.

8           It's -- it's apparent to me from what I've read -- I  
9 don't think it's in dispute legitimately that there really  
10 hasn't been much going on in terms of reunification. Now  
11 there are -- both -- both sides have different reasons as to  
12 why that has or hasn't happened and why progress hasn't been  
13 made. And -- and to a large extent, that may be evidentiary  
14 in nature and that's somewhat where I'm at.

15           I've -- I've avoided throughout many of these post  
16 adjudicatory proceedings setting this matter for evidentiary  
17 proceedings, denying requests to modify custody. And in large  
18 part, that -- that goes back to giving ultimate deference to  
19 what the parties had stipulated to in that original stipulated  
20 parenting agreement and not being inclined to start meddling  
21 on my behalf judicially and interfering with what you had  
22 agreed to.

23           And -- and that was -- and I know those -- those  
24 provisions have been challenged and -- and taken up to the --

1 the Nevada Supreme Court. And -- and to be clear, going back  
2 to those provisions -- that has always been my prevailing  
3 position is that the two of you as parents reach an agreement.  
4 And I'm not going to interfere with the terms of that  
5 agreement unless it -- it rises to that level where I deem  
6 it's absolutely necessary and in the -- in the best interest  
7 of your children that something needs to be changed.

8           And some of those provisions the -- speci --  
9 specific provisions that were the subject of the -- the  
10 custody appeal were provisions that you had worked out that I  
11 typically would not even order if it had been contested, the  
12 provisions regarding teenage discretion and provisions  
13 regarding the parent coordinator. I routinely sign off on  
14 those stipulations because, again, as parents, you're  
15 empowered to make those decisions fundamentally and you did  
16 so.

17           But absent a stipulation, I don't do parent  
18 coordinators unless both parties stipulate to it and you did.  
19 And so I took that and ran with it because that was your  
20 agreement. And same thing with the teenage discretion which  
21 somewhat gets us into the position we're at today in terms of  
22 everything that's happened with Brooke and -- and the -- where  
23 she's at age wise and the reunification issues.

24           At the outset, having reviewed the papers, and

1 there's been extensive briefing offered to the Court by way of  
2 three separate motions, oppositions and countermotions and  
3 replies, I don't find that there's a legal basis for the Court  
4 to entertain a motion to nullify the -- the expert report. So  
5 I don't want to spend really much time at all on that. I've  
6 read the papers. I did not see, in terms of the actual  
7 motion, any specific authority cited for this Court's -- for  
8 that particular motion in -- in nullifying an expert report.  
9 It's -- it's not something that I routinely see a motion to  
10 nullify an expert report. It's probably the first time I've  
11 seen it.

12           And -- and so I don't find that there's any  
13 statutory authority that allows me to -- and there was nothing  
14 cited as I recall in reviewing the motion that -- that allows  
15 the Court to even entertain that relief. So I'm -- I'm  
16 denying that relief.

17           The issue before me as I look at it is there is a  
18 sufficient basis that I would entertain, under a Huneycutt  
19 certification, proceedings as it relates to the reunification  
20 process. I know there's been a lot of discussion about the  
21 contempt issues and -- and I'm inclined to -- and -- and a lot  
22 of it has related to whether or not there's been a sufficient  
23 affidavit, a sufficient -- sufficient notice given as it  
24 relates to what specifically -- what specific behavior

1 constitutes the contempt. And -- and I'm satisfied under the  
2 AWAD (ph) decision that there's been a sufficient showing.

3 But all of that being said and part of looking at  
4 this from the standpoint of where we're at in reunification,  
5 which really is nonexistent, is there are different -- I'm  
6 hearing different versions as to what has happened with that  
7 and -- and even offers of proof of what Brooke has  
8 communicated with Dr. Ali in terms of setting up an  
9 appointment. And I'm hearing on both sides that there hasn't  
10 been anything since April of -- of this year, which clearly  
11 was not the Court's intent.

12 And -- and so, when I look at this, I'm -- I'm  
13 looking at setting evidentiary proceedings. At Brooke's age  
14 and given some of the offers of proof that are being made, I  
15 would be inclined to have her. I -- I would not prohibit her  
16 from being called as a witness so that I can ultimately get  
17 these facts that aren't necessarily hearsay in nature. That's  
18 what I'm looking at doing at this point given the factual  
19 averments that have been posited to the Court and in making  
20 determinations as to what path the Court should take,  
21 including the reunification that -- that Dad is pursuing  
22 through the -- the -- those -- the therapeutic program that  
23 he's offered and -- and including whether or not the Court  
24 needs to make that -- that change in custody at least on a

1 temporary basis.

2 So that's where I'm at having reviewed all of the  
3 papers that have been filed. And -- but that -- that  
4 evidentiary hearing wouldn't be set until sometime during the  
5 next year. So that's where I'm at. Any questions?

6 MR. SMITH: I presume, Your Honor, you're going to  
7 issue an order to show cause in regard to the behavior that  
8 constitutes the acts of contempt?

9 THE COURT: Correct, and that -- that relates to the  
10 specific contempt issues that have been identified previously  
11 and ba -- basically had not been pursued when we decided to  
12 pursue the reunification and -- and the continued loss of time  
13 by the Plaintiff.

14 MR. SMITH: You had previously ruled -- and -- and  
15 I'm -- I'm a little confused about whether or not this is a  
16 Huneycutt order granting a statement of intention that would  
17 then need to be addressed to the Supreme Court and remanded to  
18 the Supre -- to another court -- is that the nature?

19 THE COURT: Well the -- the contempt issues I -- I  
20 don't need -- I don't need to certify the contempt issues for  
21 Huneycutt purposes.

22 MR. SMITH: Okay.

23 THE COURT: I -- I have the -- the ability to  
24 enforce that. And so I can proceed in setting additional

1 proceedings on -- on those issues but as far as the --

2 MR. SMITH: Well, one -- one of the things you  
3 mentioned though was a consideration of a relief in a contempt  
4 citation for a modification of the custodial care of the  
5 children, which --

6 THE COURT: That --

7 MR. SMITH: -- is an issue that's before the Court.

8 THE COURT: Well, that's -- that's not necessarily  
9 attendant to the contempt issues. That's really more the  
10 motion for reconsideration that was filed. I -- I view that  
11 as part of the relief as -- as to that motion for  
12 reconsideration or in the alternative, the Huneycutt  
13 certification. So on that particular issue, I'm inclined to  
14 certify that issue pursuant to Huneycutt because the order is  
15 the subject of an appeal.

16 MR. SMITH: Would that solely go to the request by  
17 Mr. Harrison for additional time or would that also go to the  
18 request by Mrs. Harrison for modification of custody?

19 THE COURT: The certification?

20 MR. SMITH: Yes.

21 THE COURT: I -- at that point in time I don't -- my  
22 intent would -- especially if this is going to be by way of  
23 evidentiary proceedings, my intent would be to certify both  
24 issues before the Supreme Court recognizing that we're

1 probably looking at a March trial date.

2 MR. KAINEN: Accomplish what exactly? Because the  
3 child turns 18 in June.

4 THE COURT: I -- I get that.

5 MR. KAINEN: So what we've done is we're going to  
6 run out the clock and just say --

7 THE COURT: Well, and if it's viewed that way, it's  
8 viewed that way, Mr. Kainen. I -- I understand --

9 MR. KAINEN: But we've been begging for help for  
10 years at this point. And I -- I'm sorry that the frustration  
11 is coming out at this point. We're talking about a four day  
12 program. We're saying give him four days to the year he's  
13 lost. That's what we're talking about.

14 THE COURT: Well, no, but -- but hang on. I --  
15 listen, that -- that four day program, I have no problem with  
16 that, but part of that is also a 45 day temporary modification  
17 of custody that --

18 MR. KAINEN: Which we know he's lost a hell of a lot  
19 more than that.

20 THE COURT: I get that.

21 MR. KAINEN: I -- and I'm sor -- I -- I apologize.  
22 I --

23 THE COURT: I -- I -- no -- no, listen, I -- I  
24 understand that. And -- and I don't know if -- if the

1 Plaintiff is looking at -- at those as -- as perhaps -- the  
2 way I viewed the request was that those were -- those were  
3 connected, that you needed one with the other. If he's -- if  
4 -- if I'm hearing that look, let's do the four day program, it  
5 -- it -- it's the concern I have with the 45 days of granting  
6 that without any type of -- any -- I'm basically operating on  
7 offers of proof. And -- and I'm hearing on one side -- I'm  
8 hearing on Dad's -- the bottom line is there's been no  
9 reunification therapy since -- since April, but I'm hearing  
10 divergent stories on to whose -- whose fault it is.

11 MR. KAINEN: But -- but wait a minute. If -- if  
12 their concern was that Kirk wasn't participating and Dr. Ali  
13 wasn't participating, Dr. Paglini wasn't participating and  
14 that was a plausible story, why didn't you hear from over the  
15 last year? But you've been hearing from us saying Judge,  
16 we're having problems, Judge, we can't get this scheduled,  
17 Judge, we -- we can't get this done. They're not doing it.  
18 They've got an excuse. It was the -- the school schedule.  
19 And then it was this and then she says outright I'm not  
20 coming. And then we came to you and we got kicked out for  
21 another two months. And then we got an OST that brought it  
22 back and then we got kicked out even further. We're begging  
23 for help and we've been begging for help for years at this  
24 point.



1           We -- you -- you can't look at this and just simply  
2 say -- it's sort of like what you see in politics nowadays.  
3 It's like, you know, you -- just because there are two  
4 different stories doesn't mean they both deserve equal  
5 credibility. I mean, the fact that it hasn't happened and the  
6 fact that they've given you excuse after excuse and now they  
7 turn around and say by the way, Brooke has been willing all  
8 along. They fought about this. They didn't want it. Then  
9 they said they would -- well, they didn't say they would do  
10 it, you said they would do it. And then we got all the  
11 passive aggressive we couldn't get started, couldn't get it  
12 started, couldn't get started. Then once it was supposedly  
13 started, they say we're not going back. Then it was  
14 scheduling difficulties, this, that, and the other thing.

15           We're coming to you the -- the -- and asking for  
16 help throughout that period and they're just -- and now it's  
17 going to be like because they file an affidavit the Friday  
18 before hearing this -- oh by the way, no, this is all Dr.  
19 Ali's fault, it's his schedule, we've been available all  
20 along. We never had a busy class schedule. The fact that we  
21 wouldn't give Kirk my class schedule defite -- despite the  
22 fact we've asked you now for a couple of years to order that  
23 we get a class schedule -- well, now it turns out the reason  
24 he was running into brick walls was because he wasn't listed

1 as a parent and that's why he couldn't get this stuff.

2           So we've been be -- you've been told for a year or  
3 two that the reason this isn't hap -- is because she's got a  
4 very busy class schedule. That's also why she wanted to live  
5 with Vivian and all this stuff. All of this stuff and it  
6 comes home to us, and it goes back to the -- to the damn thing  
7 with the nullification. I -- look, there's case law in there  
8 that supports nullification, but really the nullification is  
9 not the issue.

10           The issue is you've gotten different stories when  
11 it's convenient to get different stories. When you got this  
12 thing in front of you initially, the idea was well, we just  
13 want to get some information, you know, so we have something  
14 for the -- the thing. We're as curious as they are. We'd  
15 like to know how the story ends. You know? We said look,  
16 something doesn't smell right and you ended up not doing it.

17           Well, now it turns out -- because their story then  
18 was they didn't know anything. Now their story is well, of  
19 course we knew how -- what the conclusion was, we spoke to --  
20 we all knew what the -- the end was. But if you go back to  
21 that, that wasn't what they said at the time. And the facts  
22 we've alleged to playing fast and loose -- there's nothing  
23 there that's innuendo or anything, it's all facts. It's the  
24 billing statements. It's the statements in open court. It's

1 the fact that there was one story then and there's another  
2 story now. And the problem is what is -- how does that stuff  
3 get used. Do you go back to your order on fees which has been  
4 affirmed by the Supreme Court? If you go back and you read  
5 that footnote, Your Honor -- footnote what? Do you remember?

6 MR. HARRISON: 19.

7 MR. KAINEN: Footnote 19. It tore him apart for not  
8 agreeing -- the -- the primary basis for your award of \$95,000  
9 in fees was that he wouldn't agree to that reevaluation  
10 despite the fact that you denied it before because they came  
11 up with a different story midway through that process.

12 And at the end of the day, now they've come in here  
13 and said oh, yeah, of course we knew all along Dr. -- Dr. Ali  
14 was going to -- or Dr. Paglini was going to decide this way,  
15 so did they by the way. I mean, you can't just explain this  
16 away.

17 And the problem we're getting into is what we're  
18 asking for is help. He wants to have a relationship with his  
19 child. We've told you for years this is happening. And now  
20 it's going beyond Brooke, who's going to be at this point --  
21 if we're going to take a year to figure it out, she's going to  
22 be 18 in June. Okay. There's really not going to be a lot if  
23 we have to wait for the Supreme Court, wait until maybe March  
24 for an evidentiary hearing. There's no real time to

1 accomplish this unless we do something at this point despite  
2 the fact we've been begging for a while. And now it's  
3 starting with Rylee. It's the same thing.

4 Even if there was 45 days involved, we've documented  
5 he's lost over a year of time. Would it matter about 45 days?  
6 What would that be the difference? I mean, I don't know how  
7 else to ask for help. And I realize the Court has to follow,  
8 you know, the law and things like that, but you know what?  
9 And I'm not saying don't follow it but I'm saying it's a  
10 matter of how you view it.

11 THE COURT: I -- I get that.

12 MR. KAINEN: You can sit there and -- this falls  
13 squarely within McManley. You can do this under McManley.  
14 Now you may choose to say you know what, I want to -- I want  
15 to be overly cautious and I want to do it through Huneycutt  
16 and I have to wait for the Supreme Court but McManley says  
17 specifically the District Court has the power to enforce a  
18 custody provision pending appeal that issues collateral to the  
19 issues before this Court on appeal from the decree of divorce.  
20 You have the right to order reunification. If you order  
21 reunification -- and the funny part is this -- this program  
22 isn't about assigning blame.

23 THE COURT: But -- but are you telling me -- again,  
24 this is what I get back to --

1 MR. KAINEN: Yeah.

2 THE COURT: -- earlier. Are you -- are you saying  
3 that Plaintiff's request for that reunification program --  
4 that includes a four day course --

5 MR. KAINEN: Right.

6 THE COURT: But also part of that was this request,  
7 and I didn't know if it was part of the curriculum --

8 MR. KAINEN: It is -- it is sugge --

9 THE COURT: -- of this course that there's a 45  
10 day --

11 MR. KAINEN: Yes, it is --

12 THE COURT: And -- and --

13 MR. KAINEN: It is recommended. What it's supposed  
14 to do -- it's supposed to get both parents on board. It's  
15 supposed to re-teach some of the empathy to recognize that  
16 both parents are there and they love you and all this kind of  
17 stuff like that. And -- and a time to heal the -- the wounds  
18 between the -- the parent who's been excised from the child's  
19 life.

20 THE COURT: It is --

21 MR. KAINEN: And so it is -- it's a total of 49 days  
22 if we view it that way.

23 THE COURT: Is there any value to separating that  
24 and saying look, I -- I don't have a problem with

1 participating in that course, but I'm not comfortable without  
2 -- without evidence and -- or really what we're -- what this  
3 boils down to is a matter of due process in some of the -- in  
4 some respects but that's -- that's the hangup with that  
5 provision. I agree with you. If I -- if I order today --

6 MR. KAINEN: What if we just -- so then what -- what  
7 if we just -- what if we said can we have a four day program  
8 and can we have 60 days of com -- compensatory time for time  
9 that we've lost? That would be well within your -- your order  
10 to do in an enforcement provision, right? You can do that. I  
11 mean, no, this -- unfortunately the -- the program says look,  
12 this is going to be most effective -- they have 95 or 98  
13 percent effectiveness rate in these programs. And -- and the  
14 reality is it's based on the combination of both the therapy  
15 and the four day program and the followup period. And that's  
16 where it's -- where it's got its most success. I can't tell  
17 you what the success is if it's just the four day program. I  
18 don't think there's anything on that because that's part of  
19 how they recommend it be. But the bottom line is, if we're  
20 talking about 50 days, we've lost better the year -- I -- I  
21 mean, we -- the -- we --

22 MR. HARRISON: A hundred and sixty-seven days.

23 MR. KAINEN: What's that?

24 MR. HARRISON: A hundred and sixty-seven days.

1 MR. KAINEN: Okay. So we've got six months time  
2 that's lost. So getting back a hundred and sixty-seven days  
3 when we're asking for 50 of them -- or 49 of them is squarely  
4 within your authority under McManley to be able to enforce and  
5 to give compensatory time to enforce that. So we're not  
6 asking for anything special there that would require any  
7 special dispensation from the Supreme Court.

8 What we are -- our problem is we're on a clock. And  
9 we've been begging for a couple years now for the help. And I  
10 realize you -- and -- and I'm not throwing this in your --  
11 throwing this -- this molotov cocktail in your lap. I  
12 recognize that what I think was a collaborative effort on our  
13 -- our side saying, look, we'll drop the contempt, we don't  
14 want to pursue it and all that. You say yes, pursue this but  
15 we ran into a brick wall. And from that point, we've just  
16 been saying how can we do this. The appeal that's pending is  
17 for a denial of a -- this -- it's -- it's to run out the  
18 clock.

19 THE COURT: No, I understand the argument. Yeah.

20 MR. KAINEN: We know what's going on. I mean, come  
21 on, we're not stupid. Okay. I get it, but there's a limited  
22 time to fix this problem. Otherwise we just write this kid  
23 off and then we start the clock on the next kid.

24 THE COURT: Well, listen -- and --

1 MR. KAINEN: She has no relationship with her  
2 sisters. She has no relationship with her father. She sees  
3 her little sister half of the time now. This -- this --  
4 there's -- there's virtually no time to fix this.

5 THE COURT: Well, and -- and I -- I get the fact.  
6 And listen, as I prepared for today -- I know how old Brooke  
7 is. I -- I know what we're dealing with. And I've had that  
8 discussion with both sides before about where Brooke is at in  
9 her life and -- and we -- we had that discussion before about  
10 how hard you push and the impact this will have on -- on Dad's  
11 relationship specifically with Brooke beyond these  
12 proceedings, beyond -- beyond her -- her turning 18 years of  
13 age. And what I see is I see -- and I'm troubled by virtue of  
14 the fact of where the relationship is. And we've had  
15 proceedings about --

16 MR. KAINEN: But the -- here's what clear though is  
17 -- what's clear is she went in with a programmed list of what  
18 to say to Dr. Paglini in order to get the -- the expected  
19 result. Oh no, I love my dad, he's not -- you know, this is  
20 just a thing, I just want my schedule and my this, that, and  
21 the other thing. But as soon as we got -- I mean, literally  
22 one session or two -- second session in this process, when she  
23 ended it, it's I hate him, Mom's a 10, he's a zero, he's been  
24 nothing. He's Kirk by the way. Mom and Kirk. I mean, it was



1 everything that was not told to Dr. Paglini but no it was  
2 because Dr. Paglini -- if he had seen what she had been  
3 saying, okay, he would have been -- come to a very different  
4 conclusion but of course that wasn't the goal. They knew  
5 where Dr. Paglini was and they knew what they had to say to  
6 him because they had the inside track.

7 And by the way, just so we're clear on this, I don't  
8 think -- this is my two cents added in here. Anyone of us  
9 could have gotten the inside track when a custody case was  
10 over by saying hey, where would you really come down, you  
11 know, now that it's over, just, you know, give me the inside  
12 track, what's going on. The question is what you do with that  
13 afterwards and whether you -- whether you -- you represent it  
14 accurately to the Court or you try and capitalize on that.  
15 And that's really the problem.

16 THE COURT: Well, but -- but what you're asking me  
17 to do is, from an evidentiary standpoint, make that finding by  
18 issuing temporary orders that there has been some level of  
19 parental alienation. There have been alienating behaviors.

20 MR. KAINEN: No, I don't even need that. He's lost  
21 time.

22 THE COURT: Yeah.

23 MR. KAINEN: He wants it back.

24 THE COURT: Well, I -- I get that, but Dr. Paglini's

1 report provided the Court with some value to find out because  
2 for me, it was always odd that there was such an estrangement  
3 in the relationship, that it had all those sign points --  
4 posts of alienating behavior. Dr. Paglini's report did not  
5 portray that. And I know you're -- you --

6 MR. KAINEN: Because they knew what to tell him.

7 THE COURT: Well, but listen, listen. I --

8 MR. KAINEN: They played right into what they  
9 already knew.

10 THE COURT: Yeah, but -- but what I gleaned from  
11 that process in having Brooke involved and not having her  
12 called in to testify as a witness, but in terms of that  
13 report, what I gleaned from it is -- and what I was trying to  
14 ascertain is from Brooke's standpoint, why? Why -- where are  
15 you at? Is -- is there some logical, reasonable explanation  
16 as to why there was such estrangement between her and Dad  
17 that --

18 MR. KAINEN: I can tell --

19 THE COURT: -- that could be -- and -- and there was  
20 enough information in there for me to at least draw a  
21 conclusion that look, this -- the resolution of this is not  
22 going to be as simple as saying deeming Mom to have engaged in  
23 alienating behavior and -- and basically closing the door on  
24 that. And instead, let's go down the reunification path.

1           MR. KAINEN: Do you understand? I don't wa -- I  
2 don't need Vivian punished for this. I really don't. I don't  
3 care. I -- I genuinely don't care -- I don't care if you  
4 throw out the report. I don't care if you punish her. I  
5 don't care if you hold her in contempt. None of that's really  
6 important here. It's simply the tools that are available to  
7 get us in front of you. What we need to do is be able to get  
8 in and be able to fix this.

9           The straw that broke the camel's back, to answer  
10 your question, goes back to this whole thing because it became  
11 very clear in the -- in -- in the second of only two sessions  
12 with Dr. Ali was she had bought into everything but damn, he's  
13 made her -- he wouldn't pay her medical bills on that -- that  
14 whole thing when she had to get on the phone. That's what it  
15 came down to. She blew up in front of Dr. Ali, in front of my  
16 client. It became clear that was the straw that broke the  
17 camel's back and it was done at that point.

18           So the song and dance that Dr. Pa -- when we came in  
19 and said to you look, this is what's going on. And then you  
20 got Dr. Paglini involved and she gave it the oh no, I'm just  
21 busy I love Dad, I love -- you know, this whole thing. That  
22 was all the song and dance. It came back when she blew up in  
23 that session that this was about him not loving her enough to  
24 pay her medical bills. And she had to get involved and be an

1 advocate for herself.

2 THE COURT: All right.

3 MR. SMITH: I am going to have a chance to address  
4 this, right?

5 THE COURT: Yeah, you may go ahead.

6 MR. SMITH: Whenever you -- where -- whenever the  
7 Court turns to me. Judge, let me just first note that -- that  
8 Mr. Kainen's argument shows the basis for the current motion  
9 and that is placing statements in the mouth of the child in  
10 therapeutic se -- sessions that were designed to be  
11 confidential.

12 MR. KAINEN: No, it was -- it was a session with my  
13 client present.

14 THE COURT: Don't -- don't interrupt. Don't  
15 interrupt.

16 MR. SMITH: Should I go?

17 THE COURT: Yes.

18 MR. SMITH: All right. So they were designed to be  
19 confidential. And in fact, in the original order, as you  
20 recalled, we set up a -- a system of where we would have a  
21 parenting conor -- coordinator. We would have the right to  
22 make small changes, the minor changes in the order, but no  
23 chance to make major changes. And for that specifically,  
24 within the parenting plan, there was a way to deal with that.

1 We would go to the therapist, the therapist would then go to  
2 the parenting coordinator, and the parenting coordinator would  
3 work with the parents to address the behaviors that would  
4 suggest to the child that he -- she should feel one way or the  
5 other about being with parents.

6 That was the -- the plan. That was what we came up  
7 with after negotiation with very good attorneys, primarily Mr.  
8 Standish, who doesn't appear anymore, but he was the -- the  
9 person that -- that we really talked about this theory for --  
10 because Brooke at that point, as you recall, was already  
11 indicating that she didn't want to be in a joint custody  
12 relationship, which is why I found it so odd that we then went  
13 to this provision regarding insurance as the basis for that  
14 change. That change had been something that she had had --  
15 had stated. And that's evidenced by Dr. Paglini's report, I'm  
16 not making that up, that she had stated for, you know, four  
17 years before that or five years before that.

18 There was a reason stated by Dr. Paglini as for  
19 that, there was a closeness with Mrs. Harrison that just  
20 wasn't present with Mr. Harrison. There was a number of  
21 circumstances that had occurred, some of which had brought --  
22 had been brought to the attention of the Court, including  
23 experiences that Brooke had written about in the form of a  
24 letter that she had sent -- or ema -- or a text that she had

1 sent that we have provided to the Court as part of one our  
2 motions to modify the custodial care.

3           The Court denied that motion and then found that  
4 there was a basis for contempt because Brooke wasn't complying  
5 with the Court's order. And I want to emphasize that all of  
6 the focus has been on Brooke's behavior. Brooke has not  
7 complied. Ms. Harrison immediately began to punish Brooke by  
8 first by limiting her ability to go various places, by  
9 limiting her use of the car only to school and -- and other  
10 functions, by limiting her ability to have her phone, the kind  
11 of basic things that a parent does to punish a child.

12           I came before the Court when the original motions --  
13 and demonstrated that Mrs. Harrison's first approach to  
14 Brooke's behavior was to suggest through email to Mr. Kainen  
15 that we go into a therapeutic mode immediately and that we  
16 discuss that before filing any of the motions. And I was  
17 served with a motion the next time I saw Mr. Kainen -- was  
18 when he was at my office for another matter.

19           That began the -- the proceedings in the -- the  
20 previous case. And then there were a series of motions that  
21 were filed for contempt, which I believe were the motions the  
22 Court saying that it would set for evidentiary hearing or I --  
23 I -- not sure whether it's the present motion -- so that was  
24 the -- the behavioral construct there. We had longstanding

1 desire to not have the go back and forth. And we had  
2 continued success by Brooke, success in school, success in  
3 dance, success with friends. She continued to abide by the  
4 plan until the summer of 2015 in which she stopped.

5 And we came to the Court and said what do you want  
6 us to do, what is it that we can do. So we -- we engaged in  
7 all those behavioral patterns. We -- you suggested that this  
8 is a matter -- and we suggested this is a matter that really  
9 should be done in a therapeutic matter. They originally --  
10 and the record will demonstrate they originally rejected that  
11 notion.

12 And then when the Court finally became clear that  
13 the Court was going to -- to go that way, they suggested okay,  
14 we can go into a therapeutic setting because you asked the  
15 question, did you really think a -- or words to the effect, do  
16 you really think a hearing on an order to show cause is to get  
17 a closer relationship with Brooke or words to that effect.

18 And so we went through the -- the process first of  
19 seeing what the issue was by the analysis of Dr. Pag --  
20 Paglini -- Paglini. And Dr. Paglini found in bold letters  
21 that this was not a case of alienation. So in order to revive  
22 his orders to show cause, Kirk has stated that Brooke said  
23 various things, and those are repeated today in some form  
24 although slightly different than some of the allegations that

1 were made in the affidavit, but those were statements that  
2 were made that all center upon Brooke's statements, Brooke's  
3 behavior, Brooke's contact. They don't address my client's  
4 behavior.

5           The notion that was -- was suggested in the order is  
6 that there's this issue of empowerment of Brooke. And again,  
7 I might understand this if this was a context where a child  
8 was being damaged in some way, there were specific behaviors  
9 by an individual that encouraged her not to go to a particular  
10 thing, but we see that Brooke herself was contacting Dr. Pa --  
11 Paglini and Dr. Ali about scheduling times during a certain  
12 period that were less but during other periods more.

13           So for example, in her email to Dr. Paglini, she  
14 said I'm free all of -- of spring break. Do you know how many  
15 sessions were scheduled during spring break? Zero. Why? Why  
16 weren't there? In fact, we have a complete calendar of what  
17 happened in terms of -- of how those sessions were and it --  
18 it strongly differs from the way that Kirk has presented it.  
19 But the only way that we can present that evidence is through  
20 Brooke. And it's improper for us to speak to Brooke. I've  
21 been very careful about advising Ms. Harrison she cannot talk  
22 to Brooke about these issues.

23           Nevertheless, Mr. -- not only does Mr. Harrison feel  
24 free to talk about these issues that again, under the Court's



1 order, the therapy that was designed by Dr. Ali was  
2 specifically not to be -- was supposed -- supposed to be  
3 absolutely confidential. There is to be no communication of  
4 that information so that the par -- the children felt that  
5 they had an open place to talk and discuss and could work  
6 through any issues they had, but that was completely violated  
7 by what's happened in this most recent proceedings and again  
8 in this motion.

9 But Mr. Harrison feels free to contact these folks,  
10 Dr. Ali, Dr. Paglini, even though he acts as his own attorney  
11 in the -- the appellate context and even though I submit to  
12 this Court, he continues to write his own briefs in this  
13 matter.

14 So we have this fantasy that we have one party who  
15 has no ability to contact these folks and deal with them, no  
16 ability to know what goes on in the sessions, and no ability  
17 to speak to the person in the session to defend her from the  
18 claims of being a liar, someone who is no longer the  
19 personality that she used to be, who doesn't care about her  
20 sister. We have no ability to present that. So it's actually  
21 refreshing today to hear the Court say that he will hear from  
22 Brooke because really it's Brooke that we should be talking to  
23 about these things.

24 So for example, I would -- and -- and I don't want

1 to speak out of turn but I think if Brooke said, you know, to  
2 the -- the ju -- I -- I think it would be great to go on a  
3 four day program, we wouldn't have any objection to that, but  
4 right now there's so many things being told about Brooke that  
5 we don't know. We don't know what happened in that session.  
6 We know that there were certain circumstances where Brooke  
7 came crying to -- to Mrs. Harrison about what was going on not  
8 only with Mr. Harrison but with the older sisters when they  
9 had contact with her but we weren't allowed to ask questions  
10 about that.

11           So we're having here two hands behind our back and  
12 being told that it's all her fault. Even the allegation  
13 regarding the school -- we believe that if we're allowed to do  
14 discovery we'll show that each party signed up. And does it  
15 really make sense to you that skilled lawyers like these would  
16 think that they couldn't give the order to the Cour -- to the  
17 school and get the information? You think they had to wait  
18 for eight months as they've requested? It's preposterous.  
19 They're making a claim. That was my reaction when I got this  
20 letter. You've got to be kidding me, he can't get his own  
21 child's records? All he has to do is show the order of joint  
22 custody.

23           In fact, the school cannot, under the current  
24 existing law, take the position without a court order that any

1 parent doesn't have joint custody. So the way that -- that  
2 this came down was simply a manufactured issue. He didn't  
3 ask, nobody asked. There was no letters to my office.

4 MR. KAINEN: Abs --

5 MR. SMITH: There was nothing.

6 MR. KAINEN: Look, I can't sit here and listen to  
7 this. There are letters --

8 THE COURT: No.

9 MR. KAINEN: -- that exist --

10 THE COURT: No.

11 MR. KAINEN: -- requesting the specific --

12 THE COURT: You --

13 MR. KAINEN: -- information.

14 THE COURT: Don't -- you can't interrupt.

15 MR. KAINEN: How long can you sit there and just --

16 MR. SMITH: That wasn't --

17 THE COURT: Listen, it's argument. It's argument.

18 MR. SMITH: By the way. I want --

19 MR. KAINEN: But I know, but they're lies.

20 MR. SMITH: Wait, wait, wait, wait, wait. It's --

21 MR. KAINEN: This isn't argument. It doesn't give  
22 you licence to misrepresent facts. There -- I can produce  
23 letters --

24 MR. SMITH: So --

1 MR. KAINEN: -- that say Rad, send us the schedule,  
2 we can't get it from school, school --

3 MR. SMITH: That was -- I -- see, he's mis -- this  
4 is what happens in this case is Mr. Kainen likes to mince a  
5 particular word in and take it off in a direction that wasn't  
6 intended. So on this instance, I've indicated to you that we  
7 received a letter from Mr. Kainen. I indicated to you that I  
8 was flabbergasted at that letter because it made no sense. It  
9 was clearly tactical. They could have gotten that information  
10 at any time by simply presenting the order to the peo -- the  
11 school officials. And that had been the course of the parties  
12 is to sign up themselves. And that's what Mrs. Harrison will  
13 say the evidence will -- will produce at the time of -- of any  
14 evidentiary hearing, that the parties had signed up themselves  
15 to the various schools su -- subsequent to the time of them  
16 being together. So that evidence is -- is what the Court  
17 should look at before we just believe out of hand what Mr.  
18 Harrison says is the way things are.

19 The second point I was making, which Mr. Kainen felt  
20 needlessly to insult me and the Court frankly was to indicate  
21 that the -- Brooke sent letter after letter and they were no  
22 -- to -- or she sent email to email to Dr. Paglini and Dr.  
23 Ali. And then there was no response. Nothing then happened.  
24 Kirk said that Brooke claimed she wasn't going to go. I'd

1 like to hear from Brooke on that.

2 And secondly, where are the letters there? So  
3 perhaps Mr. Kainen could get up and stand up like he did and  
4 explain to me where are the letters that say we want to  
5 schedule a session with Dr. Paglini or Dr. Ali on a particular  
6 day. There was not a single letter to that effect from April  
7 or March forward.

8 And Dr. Pa -- when Mrs. -- and there was an absolute  
9 lie told you. You talk about lies, Mr. Harrison in a sworn  
10 affidavit as an attorney suggests to you that Mrs. Harrison  
11 precluded Dr. Ali from contacting the Court. That was his  
12 statement in his affidavit. That just never happened. Dr.  
13 Ali -- the request was that Dr. Ali be able to talk to Dr.  
14 Paglini. We have the emails that Ms. Harrison presented to  
15 Dr. Paglini saying why do you need to speak to him because I  
16 thought this was confidential and what's the basis, what has  
17 been told to you that makes you believe that you need to have  
18 this conversation.

19 We never received a response after a certain point.  
20 She -- on a -- on May 9th, she sent an email, never received a  
21 response from Dr. Ali's cham -- or office. Brooke -- what's  
22 not told to you is contained in -- it's the original statement  
23 of Ms. Harrison. Brooke finally went to Dr. Ali's office and  
24 said I'd like a session with you because something has

1 happened, I -- we think it had to do with the sisters that I  
2 need to meet with you and talk to you. She made that  
3 appointment in August, she got the appointment in October.

4           So Ms. Harrison, in response to these motions, went  
5 to Dr. Ali's office and said hey, can we get something to the  
6 effect that said that she made this in -- in August and, you  
7 know, got it in October. They said well we can't release that  
8 information due to HIPAA concerns. And then when she went to  
9 get the letter, it simply said she has an Oct -- October  
10 appointment. When she makes that appointment, Dr. Ali calls  
11 Kirk and has a conversation with Kirk about the appointment.

12           I mean, Judge, this notion that this child has  
13 caused this needs to be addressed by this child. And frankly,  
14 she should have a lawyer, because we have a lawyer sitting in  
15 every session with her talking to the therapist, now speaking  
16 through Mr. Kainen to the Court while we're -- we can't even  
17 speak to any of these folks. It's just not fair.

18           And for -- and again, I think Dr. Paglini's  
19 statement that is the most telling was that if Kirk continues  
20 on his course of believing that this is all as a result of  
21 alienation of the child by Vivian, he will further cause  
22 problems between him and Brooke. And we believe that the  
23 evidence showed at evidentiary hearing would show that.

24           We believe -- we agree with Mr. Kainen, we think

1 these motions and any subsequent motion are simply going to  
2 eat up a lot of cost with no positive benefit. What should  
3 have happened is Mr. Kainen should have come to me and said  
4 hey, Rad, what's going on here, how can we make this better,  
5 do you think if we have a therapist that's closer to Boulder  
6 City, that may meet her schedule or do we schedule it during a  
7 particular period of time, how about summer, when she said,  
8 yeah, on summer I won't have this schedule, how about summer  
9 we schedule a number of sessions. But none of that happened.  
10 Instead, they were intent on filing these motions and  
11 prosecuting my client because in Kirk's world, every problem  
12 that ever happens to him with any child or anything is Ms.  
13 Harrison. And again, Your Honor, we're -- we're expending  
14 tens of thousands of dollars to hear motions about well, maybe  
15 she's empowering Brooke, maybe she's doing this, maybe she's  
16 doing that.

17           The final thing I'd like to address is this notion  
18 that somehow I had improper contact with Dr. Paglini. It is  
19 farcical. And you know how they -- we know that? Because  
20 they didn't go to Dr. Paglini. Why don't we just pick up the  
21 phone with me and say hey, let's get on the phone to Dr.  
22 Paglini, I want to ask him something and we'll talk to Dr.  
23 Paglini and ask if he had our contact. I never had contact  
24 with him about any substantive thing at all. And they know

1 that but they want to -- on every turn they want to disparage  
2 and bash Mrs. Harrison and my office because they can't get  
3 what they want legally. So they -- instead they attack.

4 In regard to -- to that conduct, we made it -- the  
5 assessment was that was the primary assessment that Dr.  
6 Paglini was performing. And if you look back to the way this  
7 order came down, the primary assessment was the psychological  
8 assessment because there was no evidence of behaviors that  
9 were going to lead to a determination of custody in our view.  
10 And we hired expert after -- after expert to show that all of  
11 those peripheral allegations were false. So the primary  
12 assessment was that psychological assessment.

13 What we don't see from Kirk is any acknowledgment  
14 that in fact he had a session with Dr. Paglini, which Dr.  
15 Paglini talked about his psychological assessment because he  
16 had to. That is the nature of an MMPI. You -- and as this  
17 Court well knows, I'm sure -- its years of practice and years  
18 of sitting on the bench, An MMPI is worth nothing if not  
19 having an interview and discussion between the par -- between  
20 the -- the testing party and the psychologist to determine  
21 whether or not there are any additional factors.

22 A good example, we had an MMPI of a case that had a  
23 huge score for -- for paranoia. And then it turned out that  
24 the client who's -- had that huge score had just received a



1 hundred and fifty million dollar judgment against him the day  
2 and that the testing materials -- the question was do you not  
3 trust the system that is being -- you're being faced with in  
4 divorce action. That was the -- the actual question that was  
5 in the MMPI. Those things have to have questions about -- and  
6 that was the assessment.

7           And when he -- he only cited a portion of it. He  
8 loves to parse sections out. The only cited portion of the  
9 briefs were in 2013, I addressed this issue. And that  
10 assessment that was being talked about then was precisely with  
11 the issue of the psychological treatment of -- of her. And it  
12 was with the argument that why did they do that. Why did they  
13 continue to file these motions if he was going to say that I  
14 don't want this assessment.

15           And then the final fallacy, get this, they're trying  
16 to convince you that I had some specialized knowledge. So  
17 what -- what are they claiming I did with that specialized  
18 knowledge? I came to Your Honor and said I want him to  
19 complete the -- the program -- or the assessment but I don't  
20 want it to ever be seen by you. I don't want it to ever be  
21 seen by anyone except these parties. And those parties should  
22 use that assessment to work on any issues. How could that  
23 possibly be deemed an attempt to do something nefarious to --  
24 to Mr. Harrison? If nothing else, it would have prevented

1 exactly what has happened.

2           This is now the 12th motion that has been filed  
3 since the time that -- by Mr. Harrison in regard to the  
4 custodial relationship of the children since the time of the  
5 filing of this parenting plan. A parenting plan that was  
6 specifically designed in a structure to avoid this very thing.  
7 The 12th motion.

8           And now we're at the end of the fence. With now an  
9 evidentiary hearing, which my client, two hands behind her  
10 back, is going to have to explain how she somehow didn't  
11 empower Brooke to do the things that she did. It's just not  
12 fair that we continue to have to address these baseless and  
13 technically deficient motions.

14           And Your Honor, I -- I understand the Court has  
15 ruled that somehow this was okay. That affidavit -- I don't  
16 believe that affidavit is -- was okay. And I just -- for the  
17 record, I don't believe filing an affidavit a month later is  
18 okay. I think that you have to file an affidavit with the  
19 motion to show the acts of contempt.

20           And moreover, as we pointed out in the -- in the  
21 reply, 90 percent of what he said was either opinion, which is  
22 not per -- permitted under 56, or hearsay. Those aren't  
23 offers of proof, those are statements of hearsay. And I don't  
24 know how we get to an evidentiary hearing to hold a quasi

1 criminal hearing to hold my client in contempt based upon  
2 matters that are clearly deficient under rule 56.

3 THE COURT: One -- one question. What -- what would  
4 -- would there be any harm in having Brooke participate in  
5 this four day program?

6 MR. SMITH: I can't answer -- I -- I -- the answer  
7 is I don't see it. As long we can work it on a schedule, it  
8 doesn't cause Brooke harm.

9 THE COURT: Right.

10 MR. SMITH: In terms of her schedule, I think Mr. --  
11 Ms. Harrison's indication to me was that, you know, if we can  
12 -- I mean, she's got all these class -- I think she's got six  
13 classes this time and all the other things going but if we can  
14 work it out -- but Your Honor, I think what they're saying is  
15 -- is that in order to have that four day, you got to have 45  
16 days of -- I'm --

17 THE COURT: Right, and that was -- but that -- those  
18 were the questions I was posing.

19 MR. SMITH: But again, those are things that we  
20 could ask Brooke. I don't -- I don't need to have it next  
21 March. I really -- Brooke can talk to about these things  
22 because really this is just nonsense. Brooke is the person  
23 that's doing these things and Mr. -- Mr. Harrison is the  
24 person that's saying that there needs to be some sort of --

1 of, you know, actions by -- by the child.

2 I mean, she has -- a straight A student. She has  
3 now completed almost an associate's degree in college. She is  
4 president of DECA president, correct?

5 MS. HARRISON: No, she's in the DECA, but she's  
6 not --

7 MR. SMITH: She's

8 MS. HARRISON: -- the president.

9 MR. SMITH: All right. So she attended -- one of  
10 the -- the sessions she missed they said that she refused to  
11 come. She was in Reno attending a DECA conference. In regard  
12 to -- she was I believe one of the leads in a play during this  
13 period of time. She's in intensive dance. Mrs. Harrison  
14 during the school year sees her briefly when she's coming and  
15 going. That's the nature of that relationship.

16 So I think she should have the opportunity and she  
17 should have counsel. I don't think that Mr. Harrison should  
18 be calling her a liar and someone who doesn't care about her  
19 sister and all these various things in pleadings without her  
20 having the opportunity to defend herself.

21 THE COURT: All right. Mr. Kainen?

22 MR. KAINEN: I'll just try and tick off what we got  
23 here. The -- this meeting with Kirk -- I'm just going to sort  
24 of go backwards through this. This meeting with Kirk that Dr.

1 Ali -- Dr. Paglini supposedly had never happened because the  
2 progra -- the -- the evaluation wasn't completed.

3 As the Court knows, we had a 25 page memo which  
4 detailed everything which would have been inflammatory. You  
5 had an order that existed at the time that said anything that  
6 goes to Dr. Paglini had to go to the other side. We had an  
7 entire memo that we have been holding because the discovery --  
8 because the settlement negotiations were going on. And the  
9 problem was if we had sent that in the middle of the  
10 settlement disco -- discussions, they would have -- it would  
11 have blown everything up.

12 So the process wasn't completed. This idea that if  
13 they got inside information, we must have gotten inside  
14 information just wasn't accurate because there was no such  
15 meeting with Dr. Paglini. In fact, the process with Kirk was  
16 barely partway through it because we had this information  
17 we've been holding back and Dr. Paglini knew that.

18 As far as this idea that we are doing everything we  
19 can possible to purs -- prosecute his client, that's sort of  
20 ironic since in the last several hearings, I've stood up and  
21 I've said to you I don't care about holding her in contempt.  
22 I don't necessarily want her to be punished. No, I don't see  
23 anything productive about having her go to jail and all of  
24 those things.

1           The problem is the only way to get into court is to  
2 say to you that look, the -- these orders are being violated,  
3 we want something done about it. It doesn't ne -- we've never  
4 said to you send her to jail. Okay. We've never said to you  
5 that would be a really good idea. We've said we're frustrated  
6 and we can't figure out how to make it happen. And we've come  
7 to you with solutions each time.

8           But we haven't asked for her to be put in jail. We  
9 haven't argued that. In fact, each time you've looked at me  
10 and I've said no, I really don't, I want to fix the problem.  
11 That's what we've been -- that's what we've been here about.  
12 So this idea that we're trying to continue to prosecute Vivian  
13 and make everything, you know, that way is just not accurate.

14           To go back to the underlying part of virtually all  
15 of Rad's argument was this complete misrepresentation about  
16 the confidentiality of Dr. Pagli -- Dr. Ali's process here.  
17 What he's talking about is two different things. In the  
18 custody agreement, there was an agreement that Dr. Ali would  
19 serve as the children's confidential counselor. What happened  
20 is later on, because that had not happened, the Court then --  
21 that's back in the underlying custody agreement that we did  
22 way back when. Later on, a couple of years later, because he  
23 really hadn't been utilized in that fashion, when it came time  
24 to use a therapist --

1 MR. SMITH: Judge, I'll object.

2 MR. KAINEN: Excuse me.

3 MR. SMITH: I'll -- I'll object because that's not  
4 supported by the evidence in the record. She did actually go  
5 to Dr. Pagli -- or Dr. Ali on many occasions.

6 THE COURT: Listen, these are -- these are  
7 arguments.

8 MR. SMITH: All right.

9 THE COURT: No -- no interruptions.

10 MR. KAINEN: Later on, years later, when it came  
11 back, there was a collective agreement between all parties,  
12 including Dr. Paglini, the Court, and everybody else that Dr.  
13 Ali would then serve as the person to perform the  
14 reunification counseling. So then to say that the same person  
15 we talked about a couple years earlier is performing  
16 confidential counseling with the child was going to then be  
17 somehow that, you know, it couldn't discuss with this  
18 reunification thing going on or what happened there is a total  
19 misrepresentation. The doctor -- there was a change in roles  
20 that the Court was privy to and the Court was party to.

21 As far as the idea that Vivian hasn't enabled this,  
22 I'm trying to decide whether they're talking about that she  
23 took away the old car she got her or the brand new one that  
24 she bought her. When -- which car was it when she was

1 punishing her? I didn't -- I didn't know if they were talking  
2 about the new one that she bought her apparently as a reward  
3 or the phones and things like that. That stuff didn't happen.  
4 And when it didn't hap -- when it didn't happen, she was  
5 rewarded with newer and better cars. I mean, the idea that oh  
6 I took away this old -- Cam -- was it Camry initially or an  
7 Avalon?

8 MR. HARRISON: It's an Avalon.

9 MR. KAINEN: It was an Avalon and it was replaced  
10 with --

11 MR. HARRISON: '11 with a '15.

12 MR. KAINEN: She replaced -- that's right, she took  
13 away the 2011 Avalon. That was the punishment. Of course,  
14 she replaced it with a 2015 Avalon. So you know, you got to  
15 -- you got to teach her, you know, this -- if you do this,  
16 you're going to just get a four year newer car.

17 As far as what the damage is, there is damage that's  
18 being suffered by Brooke. You know what? She's got a great  
19 pedigree or whatever -- resume, whatever we want to call it.  
20 She's great in dance and she's a great student and all this  
21 other stuff, but the problem is is what's going on -- the  
22 damage goes into this idea that she is a child right now who  
23 doesn't necessarily have the ability to empathize, who doesn't  
24 have the ability to deal with these things because of this



1 fractured relationship. That's the underlying part of this.  
2 We could go through, you know, the -- the diagnostic checklist  
3 that the doctors use for pathogenic parenting and you can see  
4 the various things that they talk about. It is like a  
5 checklist that would match this --

6 MR. SMITH: Judge, if this is not in the motion --

7 MR. KAINEN: -- case line by line --

8 MR. SMITH: -- I object.

9 MR. KAINEN: -- by line in terms --

10 THE COURT: I'm not -- I'm not going to look at it.

11 MR. KAINEN: -- of each of the -- in terms of each  
12 of the things that they tick off. In other words, you know,  
13 the grandiosity, the believing that Brooke can do whatever she  
14 wants and ignore the court orders and all of those things in  
15 talking here referring to her father as Kirk in that, the  
16 absence of empathy and we can tick off all the things and the  
17 entitlement, you know, all of that goes through.

18 That's what this is about. It's -- in other words,  
19 this is -- this isn't going to just go away. This isn't  
20 limited to okay, she's done great in dance and she's done  
21 great in all of this. It goes to repeating the pattern that  
22 goes into Vivian's history in terms of the absence of a  
23 relationship with the parents and the inability to empathize  
24 and the ability to separate the children out and have them not

1 have relationships and all of that.

2           The idea is to fix that so they can maintain a  
3 relationship with both parents. And that's the beauty of this  
4 program is it doesn't -- it isn't about blame. It isn't about  
5 saying Vivian's wrong, she's the alienating parent, shame on  
6 her, she should be in trouble or all of this kind of stuff.

7           It's about building something for the future.  
8 That's what the program focuses on is simply going forward.  
9 And it wants to harness the reality of both parents. It talks  
10 about in the description, which I had, program doesn't blame  
11 either parent for the conflict. They reestablish in the  
12 children their ability for empathy and compassion. It goes  
13 through the idea that it's supposed to build on the future,  
14 not focus on the blame and the history and all of that. You  
15 know --

16           THE COURT: Was there communication between Counsel?  
17 This -- when -- understanding that the last reunification  
18 session was in April, was there communication between Counsel  
19 to address the lack of -- of reunification sessions?

20           MR. KAINEN: Between Rad and I?

21           THE COURT: Yeah.

22           MR. KAINEN: Anecdotally at best. In other words,  
23 we're sitting there, you know, well, she's busy, you know, we  
24 would have -- what's going on, well, she's really busy, she's

1 got these things going on, you guys should just agree to a  
2 change in custody, you guy --

3 MR. SMITH: Oh no, no, no, no, no. There was never  
4 any communication.

5 THE COURT: Okay. Stop.

6 MR. SMITH: Never -- well, this not --

7 THE COURT: Address the Court. Listen, I --

8 MR. SMITH: This notion that there was any  
9 communication -- there was none.

10 MR. KAINEN: Rad, we talked --

11 MR. SMITH: We --

12 MR. KAINEN: -- about it two weeks --

13 MR. SMITH: There was none.

14 MR. KAINEN: -- three weeks -- three weeks ago.

15 MR. SMITH: Yeah, two weeks ago after the motions  
16 were all filed.

17 MR. KAINEN: And we talked about it before then.

18 THE COURT: No, I'm -- I'm saying during the summer.

19 MR. SMITH: And I said do you think we need --

20 MR. KAINEN: I don't know --

21 MR. SMITH: -- a different counselor because maybe  
22 then she'll go.

23 THE COURT: Here's -- here's my point because the --  
24 the last thing I have from Dr. Ali -- Ali is a letter dated

1 June 29th.

2 MR. KAINEN: Right.

3 THE COURT: Now, the -- the tone of the letter from  
4 him is a sense of exasperation that -- look, I -- he -- he  
5 makes the comment that I've done everything in our power to  
6 comply with the court order of weekly two hour reunification  
7 sessions, unfortunately our attempts have proven to be  
8 ineffective, it is my opinion that Brooke has been overly  
9 empowered in this situation, Brooke appears to want to be  
10 responsible for scheduling and directing appointments, Brooke  
11 stated that she felt the ordered reunification sessions were  
12 unjust and unfair and that she had a right to live with --  
13 with her mother if she chose to do so.

14 So the sense I'm getting from Dr. Ali is look, I --  
15 it's pointless for me to even try anymore. There's a sense of  
16 exasperation. So I guess what I'm looking for is okay, from  
17 that point, what efforts were made to communicate to say hey,  
18 thi -- this is just not working, we need to get some sessions  
19 scheduled.

20 MR. KAINEN: The only discussions I recall -- the  
21 only discussions I re -- to answer your question, the only  
22 discussions I recall having were -- with Rad were incidental  
23 to other conversations in other cases. And they were the  
24 typical well, she's busy, she's doing this but Kirk's a bad

1 guy because of this. And my thing well, I think Vivian's  
2 doing this, is she stopping it, all of that and the typical  
3 pattern that we go back into in the discussion of this case,  
4 which usually ends by Rad -- or me saying Rad, you're not  
5 going to convince me that Kirk's the bad guy and Rad saying  
6 you're not going to convince me that Vivian's the bad guy and  
7 all that. So no.

8 THE COURT: Well but the -- the point being is there  
9 were no --

10 MR. SMITH: The conversation --

11 THE COURT: -- letters exchanged, no emails saying  
12 hey --

13 MR. SMITH: Okay. I just want -- yes, the answer is  
14 yes. There were nothing.

15 MR. KAINEN: No, what we were doing is we were  
16 reaching out to the Court at that point saying are you going  
17 to -- through your -- your JEA to say look, are you going to  
18 take any action based on this letter.

19 MR. SMITH: Brooke had already indicated to Dr. Ali  
20 that she was available during her -- her session. In her  
21 email, which is attached to her reply, she says to him look,  
22 these next three months are really rough for me but I'll be  
23 free during the summer and I'm free during my spring break,  
24 why don't we schedule times then. And she also says I'm

1 available for Thursday afternoon sessions but Thursday -- she  
2 also points out that it takes her about -- with a two hour  
3 session it's about a four hour commitment between getting  
4 ready, driving over, coming back, driving back.

5 I just -- this notion that somehow -- and then  
6 again, I think that there are other factors that led to  
7 disenchantment by Brooke that I think the Court should hear  
8 from, but we can't ask her about those things. She'll come  
9 crying to -- to Vivian. She'll say look, everything will be  
10 okay, just don't worry about it, just -- that's all right.

11 So in regard to this, I think you need to hear from  
12 Brooke before we make any orders about what her schedule is,  
13 what her time is, what's happened, what -- who's empowered  
14 her, who said what to her. I think those things are important  
15 to know. And I think that -- that if -- if -- again, if  
16 Brooke thinks that a four day session is fine, then -- and --  
17 and it can be scheduled, great but I think you need to hear  
18 from her before we make any determinations as to whether or  
19 not any of the claims that Kirk has made is true -- are true.

20 MR. KAINEN: Somehow I think --

21 MR. HARRISON: Your -- Your Honor.

22 MR. KAINEN: -- if Brooke won't go to a two hour  
23 session with her father, that going to a four day session is  
24 --

1 MR. SMITH: She will.

2 MR. HARRISON: And Your Honor, can I address this?

3 MR. SMITH: She will.

4 THE COURT: It's up to your attorney.

5 MR. SMITH: Is this an evidentiary hearing?

6 MR. KAINEN: Yes.

7 THE COURT: Okay.

8 MR. HARRISON: At the last -- Dr. Ali office was  
9 having problems from the get go to schedule. They relayed it  
10 to me because obviously they were trying to coordinate with me  
11 and I was any -- I'm available anytime. And so they were  
12 going back and forth. I contacted Dr. Paglini because he had  
13 recommended -- I said can you get involved with this. And it  
14 just continued and she wouldn't show up.

15 So they had every Tuesday scheduled for the months  
16 of April, May, June, July, and August. And then she said  
17 well, I want Thursday. They -- they went to the Thursday  
18 thing and then she was cancelling those. In the last session,  
19 and you can confirm with this Dr. Ali, she said looking at me,  
20 I hate you, you're a bad person, you're a mean person, I never  
21 want to see you again, and I'm not attending anymore of these  
22 sessions, I refuse to attend anymore of the sessions. And  
23 that was the way it was left. Dr. Ali will confirm that.

24 So for them to come in and say well in August, you

1 know, she contacted him because she wanted to see Dr. Ali just  
2 one-on-one -- what does that have to do with anything? She  
3 refused. She made it -- she put her feet right in the ground  
4 and said, I never want to see you again and I'm not going to  
5 do anymore of these sessions. So then to come in and blame  
6 Dr. Ali or blame Dr. Paglini or blame me because we didn't  
7 have anymore sessions is ludicrous.

8 MR. KAINEN: And the contact they made with you  
9 today -- the contact they made with Kirk in August -- or  
10 October, I'm sorry, when -- when Brooke showed up at the  
11 office was simply a matter of would you -- are you willing to  
12 pay for half of this session or whatever it is. And the  
13 concern we had very bluntly -- because Kirk said wait a  
14 minute, I need to talk to Ed, he called me -- could -- didn't  
15 reach right -- it probably took a half hour, 45 minutes for  
16 you to get a hold of me.

17 Basically the concern we had was they were trying to  
18 conflict Dr. Ali out. In other words, to put him back in the  
19 previous role where anything he did would be confidential by  
20 having the -- the one-on-one meeting, the counseling with  
21 Brooke and then suddenly remove him from being able to testify  
22 about what had happened or what -- the fact that Brooke hadn't  
23 been willing to participate in all this. And so very -- to be  
24 blunt, that was the suspicion.



1           And so the response that Kirk made to -- we talked  
2 about it and the response that Kirk made to Dr. Ali within an  
3 hour or so was simply yes, I'll pay for half of it as long as  
4 we're not going to lose your ability to serve in the role as  
5 -- in your -- in the role the Judge appointed you to, which  
6 was to serve as the -- the Court's facilitator in this. So as  
7 long as that role wasn't compromised, he didn't really care  
8 but that was the contact. So this idea that Dr. Ali like --  
9 oh, he contacted Kirk right away because Brooke wanted to talk  
10 to him, it was about the finances. And Kirk's response was  
11 simply about the role not being compromised.

12           MR. HARRISON: Your Honor, can I speak?

13           THE COURT: It's up to your attorney.

14           MR. KAINEN: Yes.

15           THE COURT: All right.

16           MR. HARRISON: If you look at Dr. Paglini's report,  
17 Dr. Paglini drew his conclusion of no alienation based upon  
18 Brooke's representation to him that she loved me, didn't hate  
19 me, and wanted to have a relationship but there's two parts to  
20 that report in terms if you categorize what's in the report.  
21 And that's one category. The other category is what Brooke's  
22 behavior was towards me and what Brooke's view was towards me.

23           And I urge the Court to look at what Mr. Kainen just  
24 handed to you because what is at stake -- and I apologize, but

1 what is at stake has nothing to do with custody today. It has  
2 to do with child protection. And my -- these two little girls  
3 are at serious, serious risk.

4 We've taken these tender hearted little girls and  
5 made them so they don't have any empathy, they don't have any  
6 compassion. And it's a crisis, because if they continue down  
7 that road -- if you look at that -- what was handed to you in  
8 detail, just every checkmark that's important on that can be  
9 checked off in this case.

10 And as a parent, I'm not asking you to change  
11 custody. I'm asking you to help my children. And my children  
12 are being emotionally destroyed right now. It's not something  
13 that's fantasy to me or something that I read out of a book.  
14 I can see it, I know it, I feel it. And these little girls  
15 need the Court's help.

16 I've researched these four day programs. They all  
17 have a requirement of a 90 day no contact. And the reason for  
18 that is the alienating parent -- its study has shown -- if you  
19 look at the -- the seminal work on this -- on parental  
20 alienation, they all say the alienating parent can undo what  
21 these four day programs can -- can accomplish.

22 I went online. I said okay, are there any  
23 criticisms to these four day programs. And I found this Dr.  
24 Dr. Childerson (ph) in Claremont, California. And he said you

1 know, I don't know that this is technically therapy because  
2 under the academic, scientific categorization of therapy, it's  
3 one, two, three, and four.

4           And so I called him and I said, you know, what don't  
5 you like about it. He went on to that. And I said well, what  
6 about the success of these programs. And he said it's an  
7 outright miracle what they can do. The program that I've  
8 recommended to you is this Linda Gotley (ph). Her mentor was  
9 Salvador Minuchin. He is the founder of structured family  
10 therapy. Articles by him -- been printed in Harvard  
11 University Press. He's a noteworthy guy. This is a real  
12 deal. There's not one part of this program that says Vivian's  
13 bad. That message doesn't go to these little girls. Doesn't  
14 say that there's anything wrong with Vivian, doesn't focus on  
15 the past. It focuses on the future. It gets Vivian involved  
16 with the program, me involved with the program. She gets  
17 counseling. And so our -- these little girls can have a  
18 chance.

19           Right now, if we don't take action now, Brooke will  
20 not have a chance and Rylee's going down the same road. I  
21 don't understand -- or I'm not trying to gain an advantage in  
22 custody, I'm just trying to save our girls. Why there's --  
23 I'm -- I'm out 167 days. I'm saying forget that, just give me  
24 45 of them. Just 45 -- and -- and 167 was a month ago. I'm

1 not -- the issue here is not custody. The priority here is  
2 not whether I get 167 days. The priority is saving these  
3 little girls. And I don't understand why there's a hesitancy  
4 to save them because it can be done, it's easy.

5           These four day programs -- I've talked to Linda  
6 Gotley. She says it's -- I have a hundred -- hundred percent  
7 success rate. I can take a girl that hates her father -- my  
8 30-year-old daughter just -- just went through major surgery.  
9 We're waiting for the pathology now. The last few times she's  
10 been in town, Brooke's refused to see her. She loves Brooke.  
11 This -- this is wrong. It shouldn't be allowed to continue.  
12 The Court should have zero tolerance to it. I'm not trying to  
13 get one second of custody changed, I'm just trying to save  
14 these girls. And it's -- and if you don't do it, they're not  
15 -- they're not going to have a life that's worth living.

16           MR. KAINEN: And what's happened really when -- I'm  
17 not joking when I say it's going over to Rylee. The la -- in  
18 the last week, the last two times he's dropped Rylee off  
19 afterwards to grab her dance and books and things like that  
20 because they do that thing where they -- you know, they grab  
21 the stuff, she went in both ti -- for one time it was 34  
22 minutes, the other time it was 50 minutes because she didn't  
23 want to be rude and not have the snack that Mom prepared for  
24 her after school and do all that. So Dad sat out in the car

1 for 34 and 50 minutes respectively while that went on.

2 And that's exactly where this thing started with  
3 Brooke when it started this. The inc -- the -- the lack of  
4 consideration, the -- the ab -- inability to prioritize what  
5 -- where Dad is and his importance versus Mom's importance and  
6 all that. And we're going down the same thing.

7 I mean, it's just -- it's getting ready to happen.  
8 All the signs -- the things that started with Brooke are now  
9 starting with Rylee because Rylee's getting -- remember 14's a  
10 magic age. Remember, we had that whole thing? We're coming  
11 up on that now. Okay. I'm just saying, this is where we're  
12 going with this. We're just -- I don't know how many ways we  
13 can ask for help but that's all we got.

14 MR. SMITH: Okay. So do we get to address this?

15 THE COURT: Briefly. I need to wrap things up.

16 MR. SMITH: Just briefly, Your Honor. Judge, the  
17 presumption underlying this and everything that's happened in  
18 this case since 2011 is that somehow Vivian has alienated the  
19 children or is psychologically wrong. It's never been shown  
20 by any expert who's ever met her, who's analyzed her, who's  
21 read all the materials that -- that Kirk has submitted. All  
22 the predictions that Kirk had for the doom of these children  
23 if -- if Vivian was allowed to have unsupervised care of them,  
24 none of those have come true.

1           What's happened is -- here's what's happened. The  
2 -- the true thing is that the two older daughters don't speak  
3 to Vivian and they speak to Kirk. And so Kirk involves them  
4 in this nonsense. And I think if you talk to Brooke, you're  
5 going to find that the relationship between those two  
6 daughters and Brooke has been harmed by Kirk's absolute  
7 thrusting them as surrogates for him to explain why Brooke is  
8 a bad person for doing what she's doing.

9           And I just think that she needs an opportunity to  
10 address this with the Court. I think that frankly if they're  
11 going to throw Rylee into this, Rylee needs to be interviewed  
12 or has the opportu -- I certainly can ask for her to be  
13 interviewed.

14           I don't think it's the best thing in the world to  
15 have children testify in these things but I don't think it's  
16 the best thing for parents to believe that their children are  
17 somehow harmed or damaged when they're straight A students who  
18 don't commit any kind of wrongful acts, who have good  
19 relationships with everyone except apparently him.

20           The -- this notion that somehow this is all Vivian's  
21 fault has not been proven by anything except hearsay. Now  
22 he's even going to quote psychologists and testify as to what  
23 those people said. We have not had a fair presentation of the  
24 evidence and we don't believe that there's a basis for an

1 order to show cause but we welcome any kind of evidence --  
2 evidentiary hearing if the Court finds that there's a basis  
3 for an order to show cause. The Court has already found that  
4 there's no basis for the nullifying of Dr. Paglini's report.

5           Again, I would ask the Court -- there is absolutely  
6 no basis in that order. We shouldn't have to keep coming here  
7 to face baseless requests. There is -- excuse me, in that  
8 request -- he doesn't cite -- as you said, he doesn't cite any  
9 -- any authority for that, but even if he had, he'd waive that  
10 lo -- authority long ago by accepting the findings.

11           And there's this notion that he loves to keep saying  
12 things as if they're true. We did not agree to Dr. Paglini  
13 providing the -- the ser -- because I told you at the time of  
14 that hearing, please review the transcript, Ms. -- Mrs.  
15 Harrison didn't even have a chance to review the -- the  
16 findings by Dr. Paglini. And I told you I couldn't take a  
17 position on that issue until we had an opportunity to -- to  
18 address them through the findings. What I did say is I wanted  
19 an evidentiary hearing and that I didn't want to have these  
20 things just thrown away when the reason why we were there and  
21 the reason we had expended tens of thousands of dollars of  
22 fees was because he filed motions for order to show cause. I  
23 disagree wholeheartedly with Mr. Kainen.

24           There are other ways to get matters before the Court

1 other than filing a request for OSC. And I strongly disagree  
2 with his notion that they never asked for any kind of  
3 sanction, including jail time because in -- they cite the  
4 statute which allows the Court to order jail time in the  
5 pleadings that they filed. All of them including the most  
6 recent pleadings.

7           So the ar -- the idea that somehow I can seek an  
8 order to show cause but I only want certain things to happen  
9 is just not something that's permitted under law. It's within  
10 the discretion of the Court in that context to order a  
11 criminal -- quasi criminal penalty. And as a result, you need  
12 to meet the requirements, including evidence that's actually  
13 supported under rule 56.

14           I -- look, I think that there are other ways for  
15 Kirk to have a better relationship with his children. One  
16 would be to stop disparaging Vivian to them. Now that would  
17 be a start. And then I think it would be easier to have  
18 someone that was a little closer to Boulder City so then if  
19 there were any sessions that were involved, they could be  
20 right there. And it would be easier.

21           But I -- you -- you want to hear from Brooke. I'm  
22 telling you I -- I -- from every report that I receive from  
23 Vivian I believe -- and I've never had any substantive  
24 conversation with Brooke at all. I've seen her in the office



1 and said hi. She will testify that -- that was consistent  
2 with -- with the notion that it's not anything to do with  
3 hatred of her father that caused her to miss these sessions.

4 And as you've pointed out and you asked about, there  
5 was no effort after April to really schedule these. I'm  
6 anxious to have Dr. Ali testify because once his office -- and  
7 I've always had great respect for Dr. Ali, but once his office  
8 played a game with Vivian where she said well look, can I get  
9 a letter that says we tried to schedule one in August and we  
10 got one in October and then we said can you just put that in a  
11 letter so do -- so Judge understands how la -- and then they  
12 refused to do it under HIPAA, made her travel 45 minutes to an  
13 hour out there to get the letter. And when they got the  
14 letter, it just said that she has an appointment in October.  
15 That, to me, was game playing.

16 And I think that once we find -- I would not be  
17 surprised truly, based on the way this case has gone, that  
18 that letter that Dr. Ali -- wasn't first drafted by Kirk. And  
19 I'm interested to see Do -- if Dr. Ali says that.

20 MR. KAINEN: I -- I'm sorry, I -- I --

21 THE COURT: Well listen --

22 MR. HARRISON: Unbelie --

23 THE COURT: I know I -- I -- listen, I -- I don't  
24 need anything further. Here's -- here's where I'm at.

1 MR. KAINEN: Your Honor, I just want to -- I want to  
2 give you the cite on the case because I've cited authority for  
3 the -- for the nullifying report. I just want you to be aware  
4 it's in the motion. It's at page 12 of 17. The citation is  
5 GK Las Vegas Limited Partnership v. Simon Property Group Inc.  
6 671 F.2nd 1203 Nevada 2009. So that cite is in the record for  
7 the nullification report. I know you said there's no  
8 authority --

9 THE COURT: And that -- right, and that stands for  
10 the proposition of --

11 MR. KAINEN: It stand -- it says the Court ordered  
12 an independent expert to conduct a forensic examination. The  
13 issue before the Court was whether the sides -- one side's  
14 attorney's ex parte communication with the court appointed  
15 independent expert compromised the ability of the independent  
16 expert to function as a truly independent expert. The Court  
17 concluded the ex parte communication by one party's attorney  
18 with the court appointed independent expert was improper and  
19 the Court could no longer rely upon the independent analysis  
20 by the quote independent expert. Court ultimately found the  
21 expert has now been compromised.

22 THE COURT: Well --

23 MR. SMITH: Yeah, but the expert --

24 MR. KAINEN: And that was --

1 MR. SMITH: The facts of that case were --

2 MR. KAINEN: Okay. Excuse me, I'm in the --

3 MR. SMITH: -- they invited him over for a party --

4 MR. KAINEN: Excuse me.

5 MR. SMITH: -- at the -- at the ex -- at the

6 client's place.

7 MR. KAINEN: Excuse -- I guess -- I guess, again --

8 THE COURT: No, I don't need anything further. Now  
9 I -- here's where I -- I'm not -- I'm not inclined to  
10 entertain a motion. The bottom line isn't --

11 MS. HARRISON: Judge, can I just say one quiet  
12 thing?

13 THE COURT: Brief -- briefly.

14 MS. HARRISON: But I -- can I just say something? I  
15 know, it's super brief. I just -- my daughters are very  
16 compassionate. The -- they have a lot of empathy. They are  
17 -- they love each other, they love their brother, they love  
18 Kirk, they love me, they do good at school, they do good with  
19 -- with all their friends. The -- I mean, they have a  
20 multitude of friends. They're very social.

21 They're very -- I mean, they're just -- I mean, Kirk  
22 has for the last five years, as you have seen all the  
23 pleadings, just completely totally disparages me in every  
24 sense of the word. We even caps -- capsulated just a

1 paragraph of all the negative things that he says about me,  
2 being the lowest person in existence, in human existence and  
3 -- and a narcissist, but now he's -- somehow he's now saying  
4 that they have some sort of disorder or that Brooke is now  
5 trying to say -- frame that she's a narcissist or has things  
6 that -- personality disorders and thing -- and none of -- and  
7 I just -- I just wanted to make sure that the -- the --

8 THE COURT: Well, listen.

9 MS. HARRISON: -- there -- there is nothing wrong  
10 with them, I can tell you that right now.

11 THE COURT: Well, and -- and it goes back to  
12 somewhat where I started. And -- and my expressions of the  
13 deference that I have given to the agreement that the two of  
14 you reached several years ago, because as -- and -- and if --  
15 in any other case, I routinely tell parents you know your  
16 children better than I ever will. I've never met your  
17 children. Well, actually, I've met your two older children  
18 because they testified in court, but that's the extent of my  
19 knowledge. I -- I had them by the video of my Skype or  
20 FaceTime or whatever means we use.

21 But beyond that, I tell parents every day in court  
22 you know your children better than I ever will and -- and for  
23 that reason there is a certain amount of deference given to  
24 two parents who reach a stipulated agreement regarding terms

1 of custody that is incorporated into an order signed by me.  
2 And as a general matter and -- and unless something is -- is  
3 against public policy or -- or somehow just frightens my  
4 conscience so to speak in terms of stipulated terms, I'm going  
5 to agree to it.

6           There are certain aspects and Counsel are very  
7 familiar with. Some of my practices as it relates to some  
8 specific issues that you might never get that particular order  
9 from me because I don't -- I just don't know -- don't go down  
10 that path, right of first refusal, for example. Those who  
11 have appeared in front of me enough know me -- know that I  
12 just don't do that. But if two parents agree to that  
13 provision, I -- I -- I'm not going to stand in my way -- stand  
14 in their way and say look, because I have personal differences  
15 with that, I'm not going to -- going to sign off on your  
16 order.

17           There is that certain deference given to the two of  
18 you as parents understanding that I haven't met Brooke. I  
19 haven't met Rylee. I've gotten to know Brooke at least a  
20 little bit through the -- through the involvement of other  
21 individuals like Dr. Paglini has given me some insight and I  
22 believe has given me a greater understanding perhaps of where  
23 Brooke is and -- and I don't think either party disputes the  
24 fact that -- that Brooke has been very successful in school.

1 She's excelled and she does have that great resume that --  
2 that Mr. Kainen was referring to and -- and she's done  
3 extremely well. She's involved in extracurricular activities.

4           There's concern raised that just because -- that  
5 doesn't necessarily translate to being healthy emotionally and  
6 -- and I get that point that what -- what you see on the  
7 exterior perhaps' could be different. But I -- I don't know  
8 that. And I'm not in a position to make those findings as to  
9 whether or not there are -- I'm hearing that Brooke has issues  
10 on one side and -- and Mom's saying she's great, she's -- she  
11 does have that -- that empathy and -- and some of those --  
12 those human characteristics that are going to be important for  
13 her not just as it relates to her relationship with both of  
14 you, but any future relationship that she has.

15           And really, the only way I can get to know Brooke  
16 even more than we've done up to this point in time is to have  
17 her come in as a witness or to have me personally sit down  
18 with her. And it's rare that I -- that I ever do that in any  
19 case. I can count on one hand probably one finger the times  
20 that I've actually met a child who I read a lot about. And  
21 that's one thing that is -- is a challenge for me and also  
22 recognizing that I have certain responsibilities just from a  
23 -- a due process standpoint. There is a process to everything  
24 I do. And -- and it's -- and it's required to be that way

1 because ultimately any findings I make have to be based on  
2 evidence, especially when I have such starkly contrasting  
3 versions of what is going on and how healthy your -- your  
4 children are.

5           And -- and one mechanism for me to find out exactly  
6 where Brooke is at given that every other option has been  
7 exhausted at this point in terms of have -- having Dr. Paglini  
8 involved is to actually meet with Brooke and get to know that  
9 person personally that I have read about for years now. And  
10 -- and I've gotten to know both Brooke and Rylee just from  
11 what I've read.

12           It's very different though for me, I will say that,  
13 to know someone when I see them personally, physically, and  
14 hear them. There are concerns that -- there are red flags  
15 that have been raised. The letter from Dr. Ali was  
16 disconcerting just in terms of the fact that he expressed a  
17 certain sense of exasperation of setting up any appointments,  
18 but I'm hearing from Mom that Brooke is willing to set up  
19 those appointments.

20           From a juris -- jurisdictional standpoint moving  
21 forward, I do have authority to enforce the orders, that  
22 includes setting matters for contempt. I have already made --  
23 stated that and I know there -- there have been records --  
24 there has been a record made in -- in terms of whether or not

1 that the -- there has been a satisfactory showing, a  
2 satisfactory affidavit pursuant to AWAD (ph). I find from --  
3 as a matter of due process that there -- that it is  
4 satisfactory in terms of providing the person alleged to have  
5 committed the contempt notice of exactly what provisions have  
6 been violated.

7           So I'm -- I'm not changing that. I'm inclined to  
8 set the matter for further proceedings on the issue of  
9 contempt which is the nature of the request and that's the  
10 process I have to go through. I'm not deviating from that  
11 process.

12           As it relates to enforcement provisions as well,  
13 we've got into the notion that I can enforce -- the prior  
14 order contemplated the fact Brooke would be participating in  
15 reunification counseling. I'm not changing that. That order  
16 remains in place and for purposes of carrying out the terms of  
17 that order, I don't have a pre -- problem specifying the pace  
18 of that reunification counseling.

19           And -- and I also would order to the extent the  
20 Plaintiff believes it would be beneficial that there -- that  
21 there be participation in this four day program. And -- and  
22 -- but I'm not -- I'm not inclined today to go so far as to  
23 make some -- a temporary modification or not even a  
24 modification as Mr. Kainen pointed out. I could simply award



1 makeup days. I'm -- I'm just not prepared to do that without  
2 additional evidence and testimony and I would anticipate that  
3 Brooke would be called for that purpose.

4 I -- in fact, I don't know that I really need much  
5 from anyone else in terms of testimony. The -- perhaps a bit  
6 from the parties.

7 MR. SMITH: And you need to hear from Dr. Paglini  
8 and Dr. Ali.

9 THE COURT: Well, and that may be -- and that may be  
10 true. I'm not saying that that wouldn't be helpful, but  
11 because part of it comes down to this issue of -- of  
12 scheduling where I'm hearing on one side that she's happy and  
13 looking forward and -- and be open to counseling sessions  
14 whereas Dr. Ali is telling me that a -- he -- he's -- he can't  
15 -- he can't sched -- get a schedule done and Brooke has made  
16 it very clear she doesn't want to even -- even go.

17 MR. SMITH: Okay.

18 THE COURT: So --

19 MR. SMITH: Your Honor, there's also the mention of  
20 Rylee. In other words, now we're imputing all of this to  
21 Rylee as well. I think we should have the opportunity to  
22 present Rylee's testimony as well. Just -- we -- we just  
23 don't think that you're going to see the dire condition of  
24 these children that has been expressed to you today.

1 THE COURT: Well, listen. I -- and -- and I -- I --  
2 and I'm hearing Rylee's name and -- look, I --

3 MS. HARRISON: Five years left for her.

4 THE COURT: I -- there's a lot of time.

5 MS. HARRISON: And I get -- I'll -- I'll be bankrupt  
6 in two.

7 THE COURT: And -- and part of my concern is, and --  
8 and this dovetails into this entire conversation about this --  
9 this teenage discretion provision that I said early on look,  
10 you guys agreed to it, it's -- it's the most detailed teenage  
11 discretion provision that I think has -- has -- that I've  
12 signed off on judicially. It -- the whole thing worries about  
13 me, it worries me.

14 MR. KAINEN: So why are we still -- nevermind.

15 THE COURT: Well, listen. I -- I --

16 MR. KAINEN: I get it.

17 THE COURT: -- don't know that that --

18 MR. KAINEN: Nobody's obeying by it -- nobody's  
19 abiding by it, but it's still there.

20 THE COURT: I -- I --

21 MR. SMITH: Well, that's not true. It's never been  
22 invoked in this circumstance, that the idea that somehow --

23 THE COURT: Well --

24 MR. SMITH: -- she's invoking --

1 THE COURT: No, but I --

2 MR. SMITH: -- the teenage discretion provision --

3 MR. HARRISON: Dr. Ali --

4 MR. SMITH: -- is just not true.

5 THE COURT: But I -- but I think --

6 MR. HARRISON: Dr. Ali said that's the whole -- when  
7 he first --

8 THE COURT: Well --

9 MR. HARRISON: -- interviewed Brooke, that's the  
10 whole thing.

11 THE COURT: Well, Dr. Ali's --

12 MR. SMITH: Dr. Paglini indicated that that was not  
13 the whole thing.

14 THE COURT: Well, but -- but certainly Dr. Ali's  
15 letter suggests that Brooke is under the perception that she  
16 can decide who she lives with.

17 MR. SMITH: I'm anxious to get Dr. -- I assume  
18 there's going to be some discovery proven. I'm anxious to get  
19 Dr. Paglini -- or Dr. Ali's records in terms of his attempts  
20 to schedule these times --

21 THE COURT: Well --

22 MR. SMITH: -- and the communications. And I would  
23 assume this will allow us if Brooke is going to be a witness,  
24 that it'll allow my office to contact this witness and

1 actually talk to her about her testimony in this hearing,  
2 because I think it's grossly unfair that Mr. -- Mr. Harrison  
3 can just characterize her statements and put words into her  
4 mouth, but I can't actually contact her to prepare a witness  
5 for -- for a hearing or to find out what she's going to  
6 testimony to.

7 THE COURT: Well, I -- I'm -- I'm not going to  
8 expose her to anything beyond saying that she can be called as  
9 a witness.

10 MR. SMITH: Then the -- the -- I think under the  
11 rule I probably have to make a request for both Rylee and then  
12 you have to decide the procedure by which we present that  
13 testimony?

14 THE COURT: Well, you're talking about 16.215.

15 MR. SMITH: That's right.

16 THE COURT: Well, and -- and part of that deal is  
17 with alternative means. I'm saying that -- I'm not -- I'm not  
18 going to preclude her from being called as a witness.

19 MR. SMITH: And what about Rylee?

20 THE COURT: Rylee, I'm not -- I mean, that's  
21 something that you may want to pursue through --

22 MR. SMITH: Right.

23 THE COURT: I'm -- I'm not prepared to have Rylee  
24 as --

1 MR. SMITH: Okay.

2 THE COURT: -- part of these proceedings.

3 MR. SMITH: But you're not -- you're not precluding  
4 me from filing a motion in that regard, right?

5 THE COURT: Correct. Correct.

6 MR. SMITH: And you're going to issue a specific  
7 order to show cause outlining the behavior and the violations?

8 THE COURT: Well, I will -- and an order to show  
9 cause needs to be issued.

10 MR. SMITH: But I --

11 THE COURT: So --

12 MR. SMITH: -- think the order to show cause in  
13 order to be valid has to have an identification --

14 THE COURT: It does.

15 MR. SMITH: -- of the --

16 THE COURT: It does.

17 MR. SMITH: -- behavior and the --

18 THE COURT: And so I'll --

19 MR. SMITH: -- the order that was --

20 THE COURT: -- I'll direct Plaintiff to submit the  
21 order to show cause.

22 MR. KAINEN: That's fine.

23 THE COURT: I'm looking at setting this for back to  
24 back afternoons in -- on March 13th.

1 MR. HARRISON: And Your Honor, can I be heard?

2 MR. KAINEN: It -- it's too late at that point. It  
3 has -- how do we fix it in -- in March?

4 MR. HARRISON: And can I -- can I be heard just for  
5 a second? The Court's indulgence, please.

6 THE COURT: Okay.

7 MR. HARRISON: What there needs to be is a  
8 determination under that three page document that was just  
9 handed to you. And that determination should be made by a  
10 psychologist or a psy -- psychiatrist. And I -- and I think  
11 with all due deference to the Court, I don't think you  
12 listening to Brooke's testimony, you're going to look at that  
13 document where it says checkmark or no checkmark. It -- it  
14 should be a psychologist that makes that determination.

15 And the point I was getting earlier -- and I don't  
16 -- and I -- I appreciate the Courts indulgence, but the point  
17 I was making earlier is if you look at Dr. Paglini's report  
18 and not focus on what she told him in terms of professing love  
19 for me and didn't hate me and wants to have a relationship and  
20 focus upon what she said the relationship is and her conduct,  
21 you can check almost everyone of those boxes and I've -- I've  
22 gone through here under each one of those subcategories and  
23 you can see that.

24 And if you go further in the last page of that for

1 example, you'll see enhancing child empowerment to reject the  
2 other parent. Child should decide on visitation. Advocating  
3 for child testimony, allied parent disregards court orders and  
4 authority. Child disregards court orders and authority. I'm  
5 telling you, it fits on all fours. But the determination for  
6 that really needs to be a psychologist and not a judge.

7           And so even though Dr. Paglini -- and we believe was  
8 predisposed going into this, once -- if -- if he's allowed to  
9 talk to Dr. Ali and say okay, what did Brooke say to you, and  
10 if he's allowed to understand that Brooke kind of took him  
11 down a path and -- and when the truth came out in front of Dr.  
12 -- Dr. Ali, the whole premise for his no alienation conclusion  
13 is gone. That premise was -- and -- and it -- and if you look  
14 at the brief, we put in the brief the umpteenth million times  
15 where Dr. Paglini said it's important that Brooke told me she  
16 loves her dad. She doesn't hate her dad. She wants a  
17 relationship with her dad. It's over and over and over again  
18 in every interview he has with her. And yet, that whole  
19 notion was dispelled in that second session with Dr. Ali.

20           So if -- if Dr. Paglini -- I think the more  
21 efficient or expeditious way to do this is -- is to let Dr.  
22 Paglini talk to Dr. Ali, get that three page document in front  
23 of Dr. Paglini, because I can go through it with the Court  
24 right --

1 THE COURT: Well --

2 MR. HARRISON: -- now --

3 THE COURT: I -- and I don't --

4 MR. HARRISON: -- and you can check off every box.

5 THE COURT: I --

6 MR. SMITH: Yea, I --

7 THE COURT: Listen, I --

8 MR. SMITH: I --

9 THE COURT: I don't --

10 MR. SMITH: I just --

11 MR. HARRISON: And that -- and that's what's

12 scaring --

13 MR. SMITH: How is this --

14 MR. SMITH: -- scaring --

15 MR. SMITH: How is it --

16 MR. HARRISON: If I can just finish, please. That's

17 -- as a parent, that's why I'm so concerned. There is a huge

18 problem here, a huge problem. And -- and I apologize for the

19 fact that all of these four day programs say you've got to

20 have 90 days no contact but their -- their experience is if

21 you don't have that 90 days no contact, the children regress.

22 They will walk out of that four day program compassionate and

23 with empathy and -- and rebonded.

24 THE COURT: Well --



1 MR. HARRISON: But -- but it will soon be undone --

2 MR. SMITH: It's --

3 MR. HARRISON: -- if you don't have the 90 days  
4 of --

5 THE COURT: Well --

6 MR. HARRISON: -- no contact.

7 THE COURT: -- but -- but here's -- here's my -- and  
8 all -- all of this has to be based on -- on evidence,  
9 ultimately. I'm -- I am the trier of fact, but that being  
10 said, Dr. Paglini has been on board, he's issued a report. I  
11 have no problem and I would -- would expect, and -- and I know  
12 Mr. Smith raised his name as a potential witness, I would  
13 expect that I would hear from Dr. Paglini.

14 THE COURT: And -- and so I don't have a problem  
15 with Dr. Paglini effectively receiving the information from --  
16 from Dr. Ali -- Ali in terms of Brooke's participation. I  
17 would expect that he's going to testify as to -- as to --

18 MR. KAINEN: Can we have something sooner than March  
19 then? Can we get something in December?

20 THE COURT: I don't have -- I -- I can't  
21 accommodate.

22 MR. KAINEN: The -- the you understand --

23 THE COURT: It's -- it's -- I will say this. There  
24 is a possibility that there may be some changes that might

1 open things up in my calendar and I'm -- I'm happy to -- to  
2 advance it, but I -- I --

3 MR. KAINEN: I mean, the -- the problem we get into  
4 is okay, so we have a trial in December. Let's assume you  
5 make -- or in -- in March. Let's assume you make a decision  
6 right there. I mean, the -- the clock's basically run out.

7 THE COURT: Listen. I -- and -- and I understand  
8 that, but I still don't think -- even in March, I still don't  
9 think that -- that necessarily if -- if I make orders on that  
10 day based on the evidence and -- and listening to the  
11 witnesses, that -- that those -- those orders can't be  
12 implemented to have some effect at that point in time.

13 MR. SMITH: Would it -- well, Judge, just --

14 MR. HARRISON: For a semester and --

15 MR. SMITH: And I'm not saying this is even a  
16 possibility because again, I -- but right now we have a court  
17 order and she hasn't followed it. And what's to say that if  
18 you enter an order, let's say she's supposed to be with her  
19 father for 90 days, what -- what are we going to do to keep  
20 her there? Because I don't want my client accused of somehow  
21 svengaling (ph) her out of that care of the father, because  
22 then it's -- you -- we've never identified what my client is  
23 supposed to do to cause her compliance with the parenting  
24 plan. Tell me.

1 THE COURT: Well, we've had this discussion before.  
2 Because I -- I -- yeah, you've -- you've raised that point  
3 before. I -- and you know, and we get into taking cars away,  
4 taking your -- all your devices away and now I'm hearing --  
5 yeah, they took -- the car was taken away, but she's --

6 MR. SMITH: Yeah, except --

7 THE COURT: -- got a newer car now.

8 MR. SMITH: -- except you know what was left --

9 MS. HARRISON: In July.

10 MR. SMITH: -- out of that?

11 MS. HARRISON: In July?

12 MR. SMITH: Dr. Paglini indicated to her it wasn't  
13 working to penalize her, don't do it.

14 THE COURT: Don't do it.

15 MR. SMITH: He'll testify to that.

16 THE COURT: And -- and you know what, I -- listen.  
17 I -- I 've said on numerous occasions in this case and -- and  
18 I've had the whole discussion about okay, you -- you know,  
19 you're -- the -- the basic -- if -- if she doesn't want to go  
20 to school and -- and she -- does she get to decide that. And  
21 it's not about that. But I've -- I've made the comment that I  
22 wish her success in school was valued the same way -- or her  
23 -- or her relationship with her fath -- her father was valued  
24 the same way as her success in school.

1 MR. SMITH: Well, and I think you are going to have  
2 to hear, and I think you're absolutely correct, the evidence  
3 will have to determine -- you know, have to determine --

4 THE COURT: I -- I --

5 MR. SMITH: -- whether or not -- and I strongly  
6 disagree with this notion that you have to have some  
7 psychologist and a checklist to determine whether somebody has  
8 been, you know, acting in a way that's designed to prevent a  
9 child from having a relationship from -- from the parent. I  
10 -- I strongly disagree with that.

11 THE COURT: Well --

12 MR. SMITH: But if they want to hire some expert to  
13 come in and -- and opine to these various things that Kirk --  
14 because you know what we're facing now, Judge? Let's think  
15 back to 2011. I was faced with a motion that --

16 THE COURT: I don't want to --

17 MR. SMITH: -- had a complete --

18 THE COURT: -- go back that far.

19 MR. SMITH: Well, but it had a complete diagnosis --

20 THE COURT: I --

21 MR. SMITH: -- based upon application of the  
22 elements.

23 THE COURT: I don't need that.

24 MR. SMITH: And I think that's exactly what's

1 happening here.

2 THE COURT: Okay.

3 MR. SMITH: I want you to look at this element and  
4 gee, I think it -- she fits that element. It's just nonsense.  
5 Have an expert --

6 THE COURT: Well, listen.

7 MR. SMITH: -- do whatever --

8 THE COURT: I -- I --

9 MR. SMITH: -- the experts do.

10 THE COURT: I -- I don't need any other expert  
11 beyond Dr. Paglini who can -- who can perform this same  
12 function.

13 MR. HARRISON: You know --

14 THE COURT: So I would expect that he would be  
15 involved at that in that --

16 MR. KAINEN: So he's going to do it --

17 THE COURT: -- capacity.

18 MR. KAINEN: -- on the fly during testimony and sit  
19 and listen to --

20 THE COURT: Well, I --

21 MR. KAINEN: -- her testimony?

22 THE COURT: -- I would anticipate that -- well, I --

23 MR. KAINEN: He's going to have no new data. What  
24 you're -- you're proposing is that he do nothing else and

1 that --

2 THE COURT: I would expect that he would communicate  
3 with Dr. Ali.

4 MR. KAINEN: Well, but Dr. Ali's going to give him  
5 the information that he's not -- nevermind. It doesn't --

6 THE COURT: I -- I --

7 MR. HARRISON: Your -- Your Honor --

8 THE COURT: I mean, when you say no new data, I --  
9 I --

10 MR. KAINEN: Okay.

11 THE COURT: I -- I would certainly expect there  
12 would be at least some dialogue and communication there.

13 MR. SMITH: Judge, may I speak --

14 THE COURT: And I --

15 MR. SMITH: -- to Dr. Ali and Dr. Paglini the way  
16 that Mr. Harrison does? Because Mr. Harrison, a trained  
17 lawyer, is advocating his position to these folks. I don't  
18 have the opportunity to speak to these folks.

19 MR. HARRISON: That -- that's simply not true, Your  
20 Honor.

21 THE COURT: Well --

22 MR. SMITH: It's not true?

23 THE COURT: Listen.

24 MR. SMITH: His --

1 THE COURT: The -- the -- any -- any communication  
2 with any of the experts should be joint on -- on both sides.

3 MR. HARRISON: I had -- I had -- other than when I  
4 met with him in 2012 and I -- he wanted me to meet, that's  
5 fine. I had no phone calls with him. Recently the only phone  
6 calls I had with him is when Brooke was refusing to meet and I  
7 asked his assistance to see what he could do because he had  
8 the connection with the Court in terms of his recommendation.  
9 That was it.

10 But one thing I would ask --

11 MR. KAINEN: And you got a phone call when they  
12 wanted you to pay half of the --

13 MR. HARRISON: Right. That was from Dr. Ali.

14 MR. KAINEN: Yeah, that's what I thought --

15 MR. HARRISON: But --

16 MR. KAINEN: That's what I thought --

17 MR. HARRISON: But --

18 MR. KAINEN: -- that's what you were talking about.

19 MR. HARRISON: Can I -- can we -- can I have some  
20 release on this weekly custody exchange where I'm left sitting  
21 in the car for 40 and 50 minutes? Can we -- can -- and we  
22 just simply have a thing where I pick up her at school and if  
23 -- and if she wants to bring her diet food or a book or  
24 whatever, she can bring it to my house and I'm not left

1 sitting in the car for 30 and 45 minutes every week?

2 THE COURT: Why -- why are we doing -- and -- and I  
3 know we've talked about this before, but these -- these  
4 exchanges at home --

5 MR. KAINEN: Because --

6 MR. HARRISON: It's going on.

7 MR. KAINEN: Because the kids --

8 THE COURT: -- I -- I know. I --

9 MR. KAINEN: Mom has these things that they need and  
10 they don't -- it's too much trouble --

11 THE COURT: And --

12 MR. KAINEN: -- to take them to school --

13 THE COURT: -- can -- can we just bypass going home?

14 MR. HARRISON: I would like to do that.

15 THE COURT: Is there any reason we --

16 MR. HARRISON: If they want her --

17 THE COURT: -- on the Defendant's side?

18 MR. HARRISON: If they -- she wants Rylee to have  
19 diet food, she can just bring it over, drop it off, and leave.

20 MR. SMITH: Again, the presumption is that these  
21 things happened. So do you have any objection to her -- him  
22 picking up Rylee from school?

23 MS. HARRISON: I think Rylee should tell him what  
24 happens during these exchanges. I mean, I'm -- I'm going to



1 have five -- another five years of this stuff that he makes  
2 all these things --

3 THE COURT: Well --

4 MS. HARRISON: -- that aren't true.

5 THE COURT: Well, no. But -- but listen. Here's --  
6 in a typical --

7 MS. HARRISON: She needs to be able to tell you.  
8 You -- I swear, if you sat and just talked to these two girls  
9 and they would tell you what happens in the exchanges, what --  
10 what's going on, if it's true, if it's not true, what happened  
11 during the sessions, what made Brooke angry, you know, is she  
12 really trying -- I mean, I think --

13 MR. KAINEN: This is all the stuff that --

14 MS. HARRISON: -- if you just talk --

15 MR. KAINEN: -- Vivian is not talking to them about,  
16 right?

17 THE COURT: Well, listen.

18 MR. SMITH: Well --

19 MS. HARRISON: No, I'm --

20 MR. SMITH: -- I mean --

21 MS. HARRISON: -- talk -- no, I'm saying --

22 MR. SMITH: I would suggest to you --

23 MS. HARRISON: -- he needs to talk to him.

24 MR. SMITH: -- that we already had that done --

1 THE COURT: Listen.

2 MR. SMITH: -- and we had a girl who testified who  
3 stated to Dr. Paglini that she wasn't alienated --

4 MR. HARRISON: I --

5 MR. SMITH: -- yet, we're still here.

6 MR. HARRISON: I just want --

7 THE COURT: Listen.

8 MR. HARRISON: -- relief on this weekly thing, if  
9 we're not doing anything else.

10 THE COURT: Well -- well, that's what I'm trying to  
11 figure out. If there is a -- because in -- in most cases --

12 MS. HARRISON: I don't think Kirk's there for an  
13 hour. I -- I don't --

14 MR. KAINEN: Okay.

15 MS. HARRISON: Some --

16 THE COURT: No, listen.

17 MR. KAINEN: We can just not --

18 MS. HARRISON: Many times --

19 MR. KAINEN: -- have here there at all.

20 MS. HARRISON: -- I'm not even there. Many times  
21 I'm not even there when she comes to get --

22 THE COURT: Listen.

23 MS. HARRISON: -- her stuff --

24 THE COURT: My -- my point is that most --

1 MS. HARRISON: -- Judge.

2 THE COURT: -- cases -- in most cases, I'm trying to  
3 set up an arrangement where -- where there's no -- there's no  
4 cross communication on either side. I have one parent pick up  
5 the child from school and -- and we're done. And I do it at  
6 school for that very purpose so that there --

7 MR. KAINEN: It's three items.

8 THE COURT: -- aren't any issues.

9 MR. KAINEN: There's three items that they -- it's a  
10 geometry book that's at Mom's house. It is a --

11 MR. HARRISON: And they're moving --

12 MR. KAINEN: -- dance bag --

13 MR. HARRISON: -- moving it going forth.

14 MR. KAINEN: And if she wants her to have the Jenny,  
15 whatever it is, the Jenny Craig diet food or whatever it is.

16 THE COURT: I -- but -- but I go back to my  
17 question. Is there -- is there any --

18 MR. SMITH: Is there a reason --

19 MS. HARRISON: Which I --

20 THE COURT: I -- I don't --

21 MR. SMITH: -- why they have the exchanges  
22 (indiscernible - simultaneous speech)?

23 THE COURT: I don't want any --

24 MS. HARRISON: No. No. I'll -- I'll --

1 MR. SMITH: -- at your house?

2 MS. HARRISON: I -- I can -- if I -- if I can just  
3 tell you, this is what I do in their exchanges. I say do you  
4 want me to pick you up at a certain time, what time do you  
5 want me to come and get you, are you ready, text me when  
6 you're ready, I'll be there.

7 I don't have -- I don't dictate -- or and have these  
8 -- these things that Kirk has, these issues with them,  
9 because --

10 MR. HARRISON: That doesn't make sense. We pick  
11 them up from school.

12 THE COURT: Well, I --

13 MS. HARRISON: No, I know, but I drop off and I say  
14 -- I say do you -- how much time do you need, do you need me  
15 to come back, is there something -- and I never have issues,  
16 never once had an issue with them on --

17 THE COURT: But do you --

18 MS. HARRISON: -- any exchanges.

19 THE COURT: -- have any -- do you have any problem  
20 if there's something that needs to be -- all I want to see  
21 happen is Dad picks up --

22 MR. SMITH: Let's do exchange at schools.

23 THE COURT: -- from school and that's it. There's  
24 -- there's no going to anyone's house. The -- I -- I don't

1 want any -- is there any reason to even have that occur?

2 MS. HARRISON: Well, I --

3 THE COURT: Can we get a second geometry book?

4 MR. HARRISON: She's got -- she doesn't come with  
5 that. She's got them in the car. She waits two or three  
6 minutes. I wait 40 to 50 minutes --

7 THE COURT: Well, it -- it's --

8 MR. HARRISON: -- for the same geometry --

9 THE COURT: Well --

10 MR. HARRISON: -- book and the same dance bag.

11 THE COURT: Can we get a second --

12 MR. KAINEN: Can we get him --

13 THE COURT: -- geometry book?

14 MR. KAINEN: Right. I've already said that. Can we  
15 get a second -- is this -- is this a special -- with like all  
16 the notes are in one of them or not?

17 MR. HARRISON: No, it's a --

18 MR. KAINEN: Okay. So we'll --

19 THE COURT: It's a textbook.

20 MR. KAINEN: Okay. We can get a second geometry  
21 book.

22 THE COURT: So let's get a second --

23 MR. HARRISON: I -- I --

24 THE COURT: -- geometry book.

1 MR. HARRISON: -- she needs her dance bag. That has  
2 to go back and forth. She can't take that to school.

3 MR. KAINEN: The big thing and with all their stuff  
4 in it. So that --

5 MR. HARRISON: But I'm willing to just -- on the  
6 exchange on the day that Vivian's getting custody, I'll take  
7 the dance bag over, put it on the front door, she can do the  
8 same thing.

9 THE COURT: Deliver -- have the -- have the --

10 MR. HARRISON: Not wait --

11 THE COURT: -- and the other parent --

12 MR. KAINEN: Vivian delivers --

13 THE COURT: -- deliver --

14 MR. KAINEN: -- the dance bag --

15 THE COURT: -- deliver --

16 MR. KAINEN: -- to Kirk.

17 THE COURT: -- the dance bag and if there's any --

18 MR. HARRISON: Or -- and the geometry book. We'll  
19 just do the dance bag and --

20 THE COURT: Well, you can --

21 MR. HARRISON: -- the geometry book.

22 THE COURT: Yeah, I -- I mean, I -- I'm just looking  
23 for solutions that we can't --

24 MR. HARRISON: Please.

1 THE COURT: -- duplicate the dance bag.

2 MR. HARRISON: It's -- it's a source of friction and  
3 it has been for a long time.

4 THE COURT: Well, and that's why usually when I use  
5 school --

6 MS. HARRISON: But --

7 THE COURT: -- as a transition --

8 MS. HARRISON: -- I -- I don't --

9 THE COURT: -- point, I --

10 MS. HARRISON: -- have a friction. That's the  
11 problem is that -- and the -- and the issue -- the -- the --  
12 is that this is -- it -- it scares me to -- to start limiting  
13 the rights of the girls to be able to go back and forth to  
14 their homes. I -- I've always wanted an issue -- I've always  
15 wanted an issue in -- in our house to where it's like I lived  
16 on the first floor and they lived on the second, that they  
17 didn't feel that they had to have these problems back and  
18 forth I -- of going from one parent to another parent. I  
19 wanted them to feel like their houses, they go freely, and  
20 that -- there wasn't all these court things and that they  
21 would have -- they -- they were -- there would just be --

22 THE COURT: Well, that -- that's the ideal world and  
23 we don't live in it.

24 MS. HARRISON: Well, I don't know. It seems to work

1 in --

2 MR. SMITH: We are --

3 MS. HARRISON: -- my case.

4 MR. SMITH: We are definitely --

5 MS. HARRISON: I don't have issues.

6 MR. SMITH: -- not in the ideal world --

7 THE COURT: We're not.

8 MR. SMITH: -- world.

9 THE COURT: No, listen. You're -- you're divorced  
10 and -- and the bottom line is when I'm dealing with divorcing  
11 parents, especially in -- in high conflict situations and  
12 we've already talked about --

13 MS. HARRISON: The high conflict --

14 THE COURT: -- the number of motions --

15 MS. HARRISON: -- is one-sided, Judge.

16 THE COURT: Well, but --

17 MS. HARRISON: I'm telling you.

18 THE COURT: But --

19 MS. HARRISON: I don't know --

20 THE COURT: -- even if --

21 MS. HARRISON: -- what else to say.

22 THE COURT: -- even -- even if that's the case, even  
23 if I expect -- accept your proposition that it's one-side --

24 MS. HARRISON: Uh-huh (affirmative).



1 THE COURT: -- it has to be fixed. I mean, even if  
2 it's -- if it's --

3 MR. HARRISON: It is one-sided --

4 THE COURT: -- Dad's fault.

5 MR. HARRISON: -- because I don't let the girls --

6 THE COURT: Listen.

7 MR. HARRISON: -- this is going to have to stop.

8 THE COURT: This is exactly --

9 MR. KAINEN: Stop.

10 THE COURT: -- my point.

11 MS. HARRISON: Stop.

12 THE COURT: If -- if you -- the two of you  
13 co-parented --

14 MS. HARRISON: Uh-huh (affirmative).

15 THE COURT: -- you wouldn't be here today.

16 MS. HARRISON: But --

17 THE COURT: I wouldn't have seen you on -- on all  
18 the --

19 MS. HARRISON: Right. Yeah, I -- I can't --

20 THE COURT: But the bottom line is --

21 MS. HARRISON: -- tell you not to do it, Judge, but  
22 I'll say if he's going to start saying you can't go, I'm not  
23 taking you to your mom's house anymore, you can't go, you  
24 can't do this, you're not allow there's, it's my time, you

1 can't do this. I -- you know, when you start doing that to  
2 kids, you're going to end up issues that he's having with  
3 Brooke right now. I really think that's part of the  
4 problems --

5 MR. HARRISON: It's nothing --

6 MS. HARRISON: -- that he has --

7 THE COURT: Well --

8 MS. HARRISON: -- with her.

9 THE COURT: -- no, but -- but it's not a matter of  
10 telling a child you can. There is no need to even bring it  
11 up. We're going home. I've got your stuff and -- and if  
12 Brooke -- is Rylee asks, well, I -- I need my -- my bag -- oh,  
13 your --

14 MS. HARRISON: Uh-huh (affirmative).

15 THE COURT: -- mom's going to be bringing that over  
16 later, we're -- we're good. She's going to bring all your  
17 stuff. We've already made that arrangement. You -- you don't  
18 say well, the Court ordered Mom to bring that over or -- or  
19 the Court -- the Court ordered me to take that over to your  
20 dad's, neither of you should -- that's -- that's as simple as  
21 it should be.

22 MS. HARRISON: Okay.

23 THE COURT: Dad -- Dad picks Rylee up from school.  
24 And -- and the first time Rylee may wonder okay, well, wait a

1 second, we're supposed to go to -- to Mom's house, and it  
2 works vice versa as well. I'm trying to dispense with that  
3 need. And -- and if -- if Rylee asks out of curiosity, okay,  
4 well, oh, we've -- we've handled that, your mom and I we're  
5 taking care of it, and -- and she's going to bring over your  
6 stuff, so we're -- we've got it all handled. She's going to  
7 bring over your geometry book. That's -- that's insulating  
8 the child from all of this that's going on and it can be done  
9 without alarming Rylee or making her think that some -- well,  
10 something's askew.

11 But the bottom line is at the end of the day where  
12 there's conflict, I'm -- I'm trying to keep things as separate  
13 as possible. You're right. In the ideal situation, the girls  
14 would go back and forth between both homes, but that does not  
15 exist. So --

16 MR. SMITH: So Your Honor, two things. If I  
17 understand your order, what you're basically saying is that  
18 the parties will pick up from school and if there's any other  
19 materials, that's up to the them to make arrangements to  
20 exchange --

21 THE COURT: Right.

22 MR. SMITH: -- those materials.

23 MR. KAINEN: Well --

24 THE COURT: Okay.

1 MR. KAINEN: -- they're saying --

2 THE COURT: The parent who has possession of --

3 MR. KAINEN: The --

4 THE COURT: -- those items will deliver those items.

5 MR. KAINEN: Right, the parent --

6 MR. SMITH: Okay.

7 MR. KAINEN: -- who has the -- the geometry book,  
8 the dance bag, and any --

9 THE COURT: If there are any dietary issues.

10 MR. KAINEN: -- special food. Right.

11 THE COURT: All right.

12 MR. KAINEN: Will

13 deliver it --

14 THE COURT: Right.

15 MR. KAINEN: -- to the other parent timely.

16 Tomorrow is an unusual day because Kirk picks up at 9:00

17 o'clock because it's his staff development day, but otherwise

18 that'll be the procedure on each school day where they do the

19 exchanges.

20 MR. SMITH: And Judge, let me ask you if you would  
21 consider writing the order to show cause. There has not been  
22 a single order I think in this case in which Mr. Kainen and I  
23 have agreed on the terms --

24 THE COURT: And I've crafted it.

1 MR. SMITH: -- of that order. And this is a very  
2 specific order that you're writing because you have to  
3 identify and I think it's within you discretion to identify  
4 those specific things that Ms. Harrison has done, because  
5 again, I've asked over and over again what exactly --

6 MR. KAINEN: I -- I don't --

7 MR. SMITH: -- should be done.

8 MR. KAINEN: -- have to hear the argument. I'm good  
9 with it.

10 MR. SMITH: So you're good with --

11 MR. KAINEN: If you -- if you want to take on the  
12 responsibility --

13 THE COURT: Okay.

14 MR. KAINEN: -- I'm okay with it.

15 THE COURT: Okay. I -- I will draft.

16 MR. SMITH: Thank you.

17 THE COURT: And for the record's purposes, I'm --  
18 I'm treating the proceedings that are before me as enforcement  
19 related. I know I talked previously about Huneycutt  
20 proceedings, but I'm -- I'm really looking at it from the  
21 standpoint and -- and understanding that because Brooke may --  
22 may testify, I -- I somewhat expect that, I'm going -- I'm  
23 going to meet your daughter.

24 MR. SMITH: And -- and how about discovery? What's

1 the -- what's your position on discovery? Because I would  
2 like to get some information from --

3 THE COURT: Well, I'll --

4 MR. SMITH: -- Dr. Ali.

5 THE COURT: -- open discovery as to -- as it relates  
6 to those issues, but what --

7 MR. SMITH: Okay.

8 THE COURT: -- at the end of the day, what this  
9 comes down to is based on that testimony, this program that's  
10 been offered, and whether or not I essentially use as an  
11 enforcement tool awarding Dad makeup days for purposes of --  
12 of effectuating this -- this plan.

13 MR. SMITH: The other thing is is --

14 THE COURT: 13th and 14th.

15 MR. SMITH: If --

16 THE COURT: Oh.

17 MR. SMITH: -- Brooke --

18 THE COURT: We didn't? Oh, okay.

19 MR. KAINEN: Did you say -- oh, was that October  
20 13th and 14th, was that --

21 THE COURT: Right.

22 MR. KAINEN: I'm sorry.

23 MR. SMITH: If Brooke is --

24 MR. KAINEN: March.

1 MR. SMITH: I'm -- I'm sorry, what was the dates?

2 THE COURT: 13th --

3 MR. KAINEN: Did you say March --

4 THE COURT: -- and 14th.

5 MR. KAINEN: -- 13th and 14th?

6 THE COURT: 1:30 on each day.

7 MR. KAINEN: Not a lot of time. Okay.

8 MR. HARRISON: And --

9 THE COURT: As I said, I -- I might move that  
10 hearing up, but discovery is -- is open. That'll remain open  
11 until --

12 MR. KAINEN: Great.

13 MR. SMITH: Okay.

14 THE COURT: Not good?

15 MR. KAINEN: No, the -- the 13th is fine. The 14th  
16 I have to be at the academy meeting in Scottsdale that  
17 afternoon. I have to -- I have a noon meeting in Scottsdale  
18 on the 14th. Is there something -- is there anything earlier  
19 than that?

20 THE COURT: Well, I have the 7th.

21 MR. KAINEN: Could we do the 7th and the 14th -- the  
22 7th and the 13th then?

23 THE COURT: I can do the 7th and the 13th --

24 MR. SMITH: Let me --

1 THE COURT: -- if that works.

2 MS. HARRISON: Can I defer to the CCSD spring

3 break --

4 THE COURT: It's not --

5 MS. HARRISON: -- calendar?

6 THE COURT: -- a spring break.

7 MS. HARRISON: Huh?

8 THE COURT: If it is --

9 MS. HARRISON: Because it --

10 THE COURT: -- Clark County School District --

11 MS. HARRISON: I -- I know it's --

12 THE COURT: -- it's --

13 MS. HARRISON: -- spring break is some time. I'm

14 not sure when it is.

15 MR. SMITH: It's usually later in March.

16 MS. HARRISON: No, it was -- it was March this last

17 year. It was March 18th --

18 MR. SMITH: Now, was it?

19 MS. HARRISON: -- this last year and Kirk had them

20 for spring break.

21 THE COURT: Spring break I believe is the week of

22 April 9th -- April 9th being a Sunday.

23 MR. SMITH: Do you mind if I make a phone call, Your

24 Honor?



1 THE COURT: That's fine.

2 (COUNSEL AND CLIENT CONFER BRIEFLY)

3 MR. KAINEN: I assume.

4 MR. HARRISON: Your -- Your Honor --

5 THE COURT: Discovery will close on February 27th.

6 MR. HARRISON: In terms of discovery -- what are --

7 what --

8 THE COURT: I'm -- I'm not anticipating much in

9 terms of discovery other than --

10 MR. SMITH: Hi.

11 THE COURT: -- I expect --

12 MR. SMITH: Can you look at my calendar on March

13 7th --

14 MR. HARRISON: Are you talking about depositions

15 of --

16 MR. SMITH: -- and March 13th in the afternoon?

17 MR. HARRISON: Dr. Paglini and Dr. Ali?

18 THE COURT: That would -- that would be all I would

19 anticipate is Paglini -- the witnesses I anticipate would be

20 at this point Brooke --

21 MR. KAINEN: What I'm saying is are you -- are --

22 are you saying we just want to get records or you're saying

23 we're going to have full blown depositions of the experts

24 and --

1 THE COURT: I'm not saying you -- I'm --  
2 MR. KAINEN: No. No. I'm sorry. Are you --  
3 MR. SMITH: Yes.  
4 MR. KAINEN: -- allowing -- in other words --  
5 THE COURT: Yeah, oh, okay. I don't have --  
6 MR. SMITH: Okay.  
7 THE COURT: -- a problem with that unless --  
8 MR. SMITH: Thank you.  
9 THE COURT: -- you feel --  
10 MR. SMITH: So on the afternoons --  
11 THE COURT: -- is there a reason that --  
12 MR. SMITH: -- could you block me out?  
13 THE COURT: -- should be limited?  
14 MR. HARRISON: It -- it -- my sense is his only  
15 concern is that I --  
16 MR. SMITH: And then on --  
17 MR. HARRISON: -- drafted a letter --  
18 MR. SMITH: -- on --  
19 MR. HARRISON: -- of Dr. Ali. I didn't --  
20 MR. SMITH: -- February 26th --  
21 MR. HARRISON: -- but we can accomplish --  
22 MR. SMITH: -- is the close of --  
23 MR. HARRISON: -- that with --  
24 MR. SMITH: -- discovery.

1 MR. HARRISON: -- on a phone call --

2 THE COURT: Well, let --

3 MR. HARRISON: -- or without --

4 THE COURT: Let me find out if --

5 MR. HARRISON: -- a lot of expense is what I'm  
6 trying to avoid.

7 MR. SMITH: Okay. That's it. All right. Yeah.  
8 Thanks. All right. Bye. Okay. Those dates are good for me,  
9 7th --

10 MR. KAINEN: 7 and --

11 MR. SMITH: -- and 13th.

12 MR. KAINEN: -- 13 of March.

13 MR. SMITH: So --

14 THE COURT: The -- the question that is being posed  
15 is whether or not there is a need for discovery.

16 MR. SMITH: Judge, you've -- again, the -- the order  
17 to show cause is for a quasi criminal --

18 THE COURT: Right.

19 MR. SMITH: -- contempt. I should -- my client  
20 should have the right to perform any discovery necessary to  
21 meet those charges of contempt. I don't know that I  
22 anticipate much more than you do, but I don't think my client  
23 should be foreclosed facing those type of allegations.

24 THE COURT: Okay.

1 MR. SMITH: And again, I would state Your Honor that  
2 the type of remedy you're -- you're addressing is a remedy  
3 that's outside the motion for contempt that's been filed.  
4 That may be part of some other motion that wasn't filed, but  
5 it's not part of the motion that was filed. I'm just saying  
6 that for the record as you might --

7 THE COURT: Okay.

8 MR. SMITH: -- understand it.

9 THE COURT: Well --

10 MR. SMITH: And -- and so Your Honor, in terms of  
11 the discovery, I don't know that I'll depose Dr. Paglini and  
12 Dr. Ali, but I certainly should have the right to do so. I  
13 should have the right -- you -- you've already made it clear  
14 that under 16.215 you'll allow Brooke to testify and she'll  
15 testify like any other witness. I assume you haven't  
16 identified any --

17 THE COURT: Right.

18 MR. SMITH: -- any --

19 THE COURT: Right.

20 MR. SMITH: -- prohibitions, but that we're not to  
21 have any discovery related to Brooke at all.

22 THE COURT: Correct.

23 MR. SMITH: I assume then 5.03 is -- is still  
24 applicable in regard to the discussion with her of any

1 specific issues.

2 THE COURT: Correct.

3 MR. SMITH: What do we tell her about coming to  
4 testify on March 7th or March 13th?

5 THE COURT: It should be limited to just -- well, I  
6 don't -- I don't know that there's much that needs to be said.

7 MR. SMITH: Well, she has to come and she's going to  
8 be curious. She's not --

9 THE COURT: Okay.

10 MR. SMITH: -- 15, 14 --

11 THE COURT: I --

12 MR. SMITH: -- 13.

13 THE COURT: -- understand.

14 MR. SMITH: She's almost 17-and-a-half. By then,  
15 she'll be almost 18.

16 THE COURT: But -- but I -- I don't want anything  
17 said to her that's going to be suggestive in nature.

18 MR. SMITH: Yeah, but a parti -- a particular  
19 statement in the order as to directing us as to what the  
20 information we provide to her and that's the only information  
21 we provide is exactly what's contained in your order --

22 THE COURT: Well --

23 MR. SMITH: -- no other discussion of the issues.  
24 Now the disadvantage to my client of course if because we're

1 continuing this therapy, there will be ongoing discussions  
2 between this individual who is the witness in this case  
3 against my client and the -- the litigant who is also an  
4 attorney. I just want to make that for the record, because I  
5 think that if he has an opportunity to continuously speak to  
6 her and speak to her about these issues in the context of  
7 therapy, I should have the right to speak with her about these  
8 issues. It's just not a fair playing field.

9 THE COURT: Well, I --

10 MR. KAINEN: So -- so we're now going back -- we're  
11 now actually going back to -- Brooke is now willing to go back  
12 to therapy with Dr. Ali?

13 THE COURT: Well, listen.

14 MR. SMITH: She --

15 THE COURT: I'm ordering it.

16 MR. SMITH: Look.

17 THE COURT: That's to continue.

18 MS. HARRISON: She always has been.

19 MR. SMITH: And she always has been. And I -- I  
20 just don't want that --

21 MS. HARRISON: She always has been.

22 MR. SMITH: -- to be unclear under the record.

23 MR. HARRISON: And -- and joint with me there?

24 THE COURT: Listen.

1 MR. SMITH: Yes.

2 THE COURT: My -- my order is that that counseling  
3 should continue.

4 MR. HARRISON: Okay.

5 THE COURT: And obviously what happens between today  
6 and the time of the evidentiary hearing may -- may be  
7 important in terms of how I -- I view things.

8 MR. HARRISON: Now when --

9 MR. SMITH: Judge, would you consider --

10 MR. HARRISON: -- when she went to see him --

11 MR. SMITH: -- if --

12 MR. HARRISON: -- once by herself and there was no  
13 indication --

14 THE COURT: No, listen.

15 MR. SMITH: Listen.

16 THE COURT: Listen.

17 MR. HARRISON: -- that's what she wanted to do.

18 THE COURT: My --

19 MR. SMITH: Would you -- would you consider --

20 THE COURT: My -- my point is --

21 MR. SMITH: -- Your Honor --

22 MR. HARRISON: Okay.

23 THE COURT: -- I'm hearing on one side that she's  
24 refusing --

1 MR. HARRISON: She's --

2 MR. KAINEN: She's been moving all along. She never  
3 said that stuff to you.

4 THE COURT: -- to participate and on the other side  
5 that she's open to it. I want to see what happens in the  
6 next --

7 MR. HARRISON: Okay.

8 MR. SMITH: Would --

9 THE COURT: -- the next period of time.

10 MR. SMITH: Would you consider if there are any  
11 scheduling problems with Dr. Ali's office, either Your Honor  
12 which -- or a third party to address those scheduling issues  
13 so that my client doesn't get blamed for something that's not  
14 her fault. In other words, if there's problems with Dr. Ali's  
15 office and they can't schedule it around what Brooke is doing,  
16 I don't want it pinned on my client between --

17 THE COURT: Where's --

18 MR. SMITH: -- now and March 13th --

19 THE COURT: Where's our parenting --

20 MR. SMITH: -- March 7th.

21 THE COURT: -- coordinator?

22 MR. SMITH: Exactly.

23 THE COURT: We don't -- I don't think we have one.

24 MR. SMITH: We don't have one. So --



1 THE COURT: Because Ms. Pickard --

2 MS. HARRISON: Never got one.

3 MR. SMITH: So Your Honor, if you would appoint  
4 someone for that singular purpose, I don't think that --

5 MR. HARRISON: The -- the --

6 MR. SMITH: -- at this point the parenting  
7 coordinator is going to --

8 MR. HARRISON: -- money is just flowing out. I  
9 mean --

10 MR. KAINEN: First of all -- appointing a parenting  
11 coordinator --

12 MR. SMITH: I didn't file these motions.

13 MR. KAINEN: Appoint -- a parenting coordinator to  
14 coordinate appointments is about as silly as it gets.

15 MR. SMITH: Wait, they haven't been able to. That's  
16 as silly as --

17 THE COURT: Listen.

18 MR. SMITH: -- it gets.

19 MR. KAINEN: All right. Here's what we do. We do a  
20 joint letter to Dr. Ali today that says the Court has ordered  
21 the therapy to continue on two hours every week, you know,  
22 you'll -- plea -- this is Brooke's number, this is Kirk's  
23 number.

24 THE COURT: Okay.

1 MR. SMITH: I'm -- I'm telling -- Judge, if --  
2 I'll --

3 THE COURT: I think the --

4 MR. SMITH: -- file a motion before I'll have my  
5 client held in contempt for something that's not her fault.

6 MR. HARRISON: Can we have a current --

7 MR. SMITH: It's just not fair.

8 MR. HARRISON: -- class schedule then?

9 MR. SMITH: This is just such a --

10 MR. KAINEN: She's an adult.

11 MR. SMITH: -- a red herring.

12 MR. KAINEN: They want -- here's what happens. He  
13 called CCSD. They're --

14 MR. SMITH: She's not an adult.

15 MR. KAINEN: No, but CCSD -- I'm sorry, not CCSD.  
16 The university system is used to dealing with adults. They  
17 took the same position that I had with my daughter was at  
18 Tulane. It was like your function is to write us a check.

19 MR. SMITH: Now he's testifying --

20 MR. KAINEN: We can't get anything --

21 MR. SMITH: -- about his own experience. That's  
22 lovely. Look, at the --

23 THE COURT: Listen.

24 MR. SMITH: -- end of the day --

1 MR. KAINEN: You know what, don't --

2 MR. SMITH: -- Kirk can get --

3 MR. KAINEN: -- be a patronizing --

4 MR. SMITH: -- but we'll be happily -- we'll happily  
5 give the schedule to Mr. Kainen and we'll --

6 MS. HARRISON: I don't even have it.

7 MR. SMITH: -- have it to him -- what's that?

8 MS. HARRISON: I don't --

9 MR. KAINEN: Perfect.

10 MS. HARRISON: I -- I don't even have her schedule.

11 MR. SMITH: Okay.

12 MS. HARRISON: But --

13 MR. SMITH: So --

14 MS. HARRISON: -- the high school does and Nevada  
15 State High School has it.

16 THE COURT: Okay.

17 MR. SMITH: It's through the Nevada State High  
18 School. We'll do what we can to get that schedule by  
19 contacting the high school and asking for the schedule.  
20 Hopefully they'll --

21 THE COURT: And have --

22 MR. SMITH: -- speak to us --

23 THE COURT: -- have that given to the Plaintiff by  
24 Friday.

1 MR. SMITH: Okay.

2 MR. KAINEN: Thank you.

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

4 THE COURT: All right. Thank you for your  
5 appearances.

6 MR. KAINEN: Okay. Okay. Are you drafting the  
7 entire order from this hearing --

8 MR. SMITH: And Your Honor --

9 MR. KAINEN: -- or just --

10 MR. SMITH: -- again, I'm not limited to the  
11 witnesses that you have identified.

12 MR. KAINEN: No, I was --

13 MR. SMITH: I can bring --

14 MR. KAINEN: -- in the middle of saying --

15 MR. SMITH: -- other witnesses --

16 MR. KAINEN: -- something. Was it --

17 MR. SMITH: -- correct?

18 THE COURT: Right. And -- and I'm not --

19 MR. SMITH: Okay.

20 THE COURT: To that extent, I'm not -- discovery is  
21 open.

22 MR. SMITH: Thank you.

23 MR. KAINEN: All right. So -- so we're not limited  
24 to witnesses, we're not limited to -- I got it. Are -- are

1 you drafting just the OSC order I'll draft the -- the order  
2 from the hearing and we'll try and get that entered?

3 MR. SMITH: Please draft the entirety of the order.

4 MR. KAINEN: That's fine with me. I don't -- I'm  
5 just asking --

6 MR. SMITH: Good.

7 MR. KAINEN: -- the question.

8 MR. SMITH: Thank you.

9 THE COURT: I will draft the --

10 MR. SMITH: Thank you, Your Honor.

11 THE COURT: -- entire order.

12 MR. KAINEN: Thank you.

13 (PROCEEDINGS CONCLUDED AT 15:16:43)

14 \* \* \* \* \*

15 ATTEST: I do hereby certify that I have truly and  
16 correctly transcribed the digital proceedings in the above-  
17 entitled case to the best of my ability.

18

19



20

21

Adrian N. Medrano

22

23

24



FILED

AUG 31 2017

*Ann L. Johnson*  
CLERK OF COURT

**COPY**

1 TRANS

2  
3  
4  
5 EIGHTH JUDICIAL DISTRICT COURT  
6 FAMILY DIVISION  
7 CLARK COUNTY, NEVADA  
8

9 KIRK ROSS HARRISON, )  
10 Plaintiff, ) CASE NO. D-11-443611-D  
11 vs. ) DEPT. Q  
12 VIVIAN HARRISON, ) (SEALED)  
13 Defendant. )  
14

15 BEFORE THE HONORABLE BRYCE C. DUCKWORTH  
16 DISTRICT COURT JUDGE

17 TRANSCRIPT RE: EVIDENTIARY HEARING - VOL. I

18 WEDNESDAY, JANUARY 18, 2017

19 APPEARANCES:

20 The Plaintiff: KIRK ROSS HARRISON  
21 For the Plaintiff: EDWARD KAINEN, ESQ.  
22 3303 Novat St., #200  
23 Las Vegas, Nevada 89129  
24 (702) 823-4900  
  
25 The Defendant: VIVIAN MARIE LEE HARRISON  
26 For the Defendant: RADFORD SMITH, ESQ.  
27 2470 St. Rose Pkwy., #206  
28 Henderson, Nevada 89074  
29 (702) 990-6448

PLAINTIFF'S  
WITNESSES:

CROSS

RECROSS

35

56

61 / 63

61 / 64

65/100

118

153

158

173

—



—

179

—

— —

— —

DEFENDANT'S  
WITNESSES:

(None presented)

★ ★ ★ ★ ★



I N D E X O F E X H I B I T SPLAINTIFF'S  
EXHIBITS:ADMITTED

1 - Dr. Paglini report	181
2 - Mr. and Mrs. Harrison email	184
3 - Dr. Paglini email	183
4 - Dr. Paglini letter	182
5 - Dr. Ali letter	67
6 - Nevada State High School email	170
7 - Nevada State High School form	168
8 - Nevada State High School document	168
9 - Mr. Harrison affidavit	175
10 - Mr. Harrison custody time	178

DEFENDANT'S  
EXHIBITS:

(None presented)

1 LAS VEGAS, NEVADA

WEDNESDAY, JANUARY 18, 2017

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

3 (THE PROCEEDINGS BEGAN AT 13:40:46)

4

5 THE COURT: We are on the record in the Harrison  
6 matter, case D-11-443611-D. Please confirm your appearances.

7 MR. KAINEN: Your Honor, Ed Kainen, 5029, Kirk  
8 Harrison who is to my immediate my right, and Colin Naidai  
9 (ph) who is my legal assistant.

10 THE COURT: Good afternoon.

11 MR. SMITH: Radford Smith, 2791, on behalf of Vivian  
12 Harrison who is to my left, Your Honor.

13 THE COURT: Good afternoon.

14 MS. HARRISON: Good afternoon.

15 THE COURT: This is the time set for evidentiary  
16 proceedings. The -- when we were last in court as I indicated  
17 I would do if -- if there were openings that came up, I would  
18 endeavor to expedite the process because I know the -- the  
19 original date that this -- dates I should say, there are two  
20 half days that have been reserved and I recognize this is just  
21 one of those half days and to the extent more time is  
22 necessary, I can look. I have had a couple dates that have  
23 opened up, so it just depends on Counsel's availability if we  
24 need to come back for additional testimony. But I know there

1 were some dates that came up in December that I -- I attempted  
2 to reach out to Counsel as well. So today seems to work out  
3 for both sides, and so I set at least the first today for  
4 today to take testimony.

5 I did have a chance in preparation for today to  
6 watch most, an hour and twenty minutes of the hearing before  
7 the discovery hearing master, so I didn't finish --

8 MR. KAINEN: That was fun.

9 THE COURT: -- the last 10 minutes. But one thing I  
10 did want to ask as we commence the proceedings today, because  
11 it -- it is -- my -- my function as I view these proceedings  
12 and as clarified in my order after I gave it some additional  
13 thought as to the -- as to the direction I wanted to proceed  
14 taking into account Brooke's age and where things were at was  
15 really this notion of during these final months what I could  
16 do to assist in strengthening or repairing the relationship  
17 between Dad and daughter. And that includes the potential  
18 reliance on awarding makeup time where there has been some  
19 reference to this program that the Plaintiff advocated at a  
20 prior proceeding.

21 That's really the -- the focal point of where I'm  
22 at. And so we had talked previously about having Brooke  
23 available to testify and I want to talk about the protocol.  
24 It's my understanding she is here.

1 MR. SMITH: Yes.

2 THE COURT: -- as how to handle that. There's also  
3 been discussion about Dr. Ali and Dr. Paglini testifying. And  
4 I want to be clear as it relates to Dr. Ali, I view his  
5 testimony as strictly factual in nature in regards to the --  
6 setting up of appointments and participation in counseling.  
7 I'm not looking for him to provide me with any type of  
8 assessment of Brooke psychologically. I know that concern has  
9 been raised in -- in what's been filed with the court. It is  
10 strictly factual in nature.

11 And so that's -- that's what I anticipate. There --  
12 there had been some -- at least some reference in the  
13 discussions you had before Hearing Master Roshel (ph) of about  
14 participation and ongoing counseling.

15 MR. KAINEN: It would have been -- it would have  
16 been really helpful if you did the discovery hearing.

17 THE COURT: I usually defer those out as --

18 MR. KAINEN: Yeah.

19 THE COURT: -- you know. I -- I -- is -- and -- and  
20 the sense I'm getting from what I'm reading and seeing is that  
21 there has been counseling?

22 MR. KAINEN: There has been I think one more  
23 sessions since we were in court last if I'm mistaken. I --  
24 there's a December session and there was a Janu -- one January

1 session. I'm not sure --

2 THE COURT: Okay.

3 MR. KAINEN: -- of the dates. So I'm not -- I'm not  
4 sure when we were here last.

5 THE COURT: Is there any -- is -- is there any  
6 appetite for -- well, continuing -- is there -- is -- is  
7 something that's productive, positive?

8 MR. KAINEN: I -- I think keeping Dr. Ali as a  
9 resource is important, whether that -- I -- I don't know that  
10 that works as being the only resource --

11 THE COURT: Okay.

12 MR. KAINEN: -- but I think he is a productive part  
13 -- or has the potential to be a productive part.

14 THE COURT: Right.

15 MR. KAINEN: And so -- well, what -- who's going to  
16 do what primarily I think is what we're going to get to  
17 through this process.

18 THE COURT: Okay.

19 MR. KAINEN: I don't want to -- in other words, I --  
20 I don't -- I'm not coming in here to advocate, you know, we  
21 cut him loose and we don't need him anymore.

22 THE COURT: Okay. But as far as you still -- you're  
23 still -- you desire to pursue this aspect of the possibility  
24 of what I'm inclined to do is -- is looking at whether or not

1 makeup time should be awarded --

2 MR. KAINEN: Yeah.

3 THE COURT: -- and ordering participation in this  
4 program.

5 MR. KAINEN: Yeah. Yeah.

6 THE COURT: Okay.

7 MR. KAINEN: Absolutely.

8 THE COURT: All right. Mr. Smith, anything you  
9 wanted to add?

10 MR. SMITH: Okay. I -- I don't really have  
11 anything. I -- if you heard the -- the proceeding, I -- you  
12 know, we didn't have any objection. I -- we -- I thought it  
13 might be better to have somebody closer to home like --  
14 because about 45 minutes to an hour depending on traffic to  
15 get to Ali's, so that's two hours plus the two hour session.  
16 So I thought if somebody was going to -- closer to Boulder  
17 City, that might be better.

18 So but that's about it. We don't -- my  
19 understanding is she's -- she's attended a session in  
20 November, December, and January and those are the only ones  
21 that had been scheduled.

22 MS. HARRISON: No, there's one last week and it was  
23 cancelled by Kirk.

24 MR. SMITH: Oh, well, Vivian says there was one last

1 week, but it was cancelled by Kirk and I don't know.

2 MR. KAINEN: Well --

3 MR. SMITH: I -- it doesn't matter. We don't have  
4 any objection to those sessions.

5 (COUNSEL AND CLIENT CONFER BRIEFLY)

6 MR. SMITH: So --

7 MR. HARRISON: No. No. No.

8 MR. KAINEN: Brooke cancelled it because she didn't  
9 want to do that, right?

10 MS. HARRISON: No, that's not true.

11 MR. KAINEN: Yeah. Okay. We'll -- I'll tell you  
12 what, we'll -- we'll deal with it in trial.

13 THE COURT: That's where I need Dr. Ali --

14 MR. KAINEN: Right.

15 THE COURT: -- in.

16 MR. KAINEN: Okay. That will be fine.

17 THE COURT: I -- I guess if -- if -- and if -- in --  
18 in terms of witnesses, who -- who do you intend to call?

19 MR. KAINEN: I -- I think we got Amanda Thorpe who  
20 is the reception person at Dr. Ali's office, Dr. Ali, and Dr.  
21 Paglini. We have agreed in advance that Amanda Thorpe can  
22 testify telephonically, so we got her on standby waiting  
23 for --

24 THE COURT: Okay.

1 MR. KAINEN: -- a -- a go ahead. We've got Dr.  
2 Paglini and Dr. Ali who are both outside and then they want to  
3 call -- and they want to call Brooke.

4 THE COURT: Okay.

5 MR. KAINEN: And then the parties, I mean, to the  
6 extent that we need them, but --

7 THE COURT: Right. Well, let's -- let's go ahead  
8 and proceed then. Did you want to do Ms. -- is it Ms. Thorpe?

9 MR. KAINEN: Yeah, I don't -- I'm trying -- I mean,  
10 frankly, one of the discussions Rad and I had, we didn't know  
11 who was leading here. My -- my inclination honestly is to not  
12 have Brooke there while people were marching in and out and  
13 everything like that to get that done if we're going to do  
14 that. I still think it's not -- and I mean, I'm just going to  
15 make my record. I don't think it's in Brooke's best interest  
16 to testify and to be in here and to do all that, but I made  
17 that clear before and it is what it is.

18 And I can tell you point blank I'm not going to  
19 cross examine her. So if that saves time, it doesn't matter.  
20 If she's called, I'm -- I'm going to sit here quietly and I'm  
21 going to have no questions.

22 THE COURT: Well, let -- let me ask you in that  
23 regard. And -- and this is the -- the first time since I've  
24 been on the bench that I will have a minor child in court.



1 MR. KAINEN: And -- and so the --

2 THE COURT: Other than --

3 MR. KAINEN: -- second time -- second time in 20  
4 years that -- in this court that I've done that.

5 THE COURT: Yeah, and so it's -- it's very  
6 infrequent. I have interviewed children twice, but I do it in  
7 the -- like I come down off the bench and -- so I -- I --  
8 certainly I wanted to -- to discuss what the protocol's going  
9 to be to the extent. Now I'm happy to entertain if there are  
10 alternative methods that you want to employ for that purpose  
11 including whether or not we just have attorneys present so  
12 that -- I don't know if it's more or less comfortable for  
13 Brooke quite frankly as I think about it.

14 But I'm -- I -- you know -- and -- and I'm happy to  
15 meet with Brooke. I mean, I -- I've heard a lot about Brooke  
16 and sometimes I have -- I will say this. As much as I -- I am  
17 extremely reluctant, and I always have been, and this -- this  
18 is part of my own personal baggage if you will in terms of  
19 being dragged into proceedings involve -- involving parents.  
20 I'm -- I'm very reluctant.

21 So I -- I get the fact that we're -- we're walking  
22 down a path that does not typically happen. But I will say  
23 this that there have been only two times that I have done a  
24 child interview. One time I did it with counsel present. The

1 other time it was just me and -- and staff. And I know it's  
2 -- it's a source of anxiety for a child and to -- to be put in  
3 that position.

4 But I will say from a judicial standpoint you read  
5 about children all the time in every case. In this case, I  
6 obviously have learned a lot about Brooke about your daughter  
7 and -- and -- but I've never met her. And -- and those  
8 instances where I did meet the child and putting the name with  
9 the face was somewhat enlightening for me.

10 And -- and it brought a reality to it that you don't  
11 have when you're just looking at pieces of paper with names on  
12 it. Good or bad, that -- that's the reality of -- of actually  
13 having someone -- someone like Brooke come in. Now I've never  
14 had a child testify from the witness stand. This is a first.  
15 So I'm -- I'm open if you want --

16 MR. KAINEN: I mean, I can tell you I've only had it  
17 happen one other time. Judge Luke when he was a litigator  
18 called the witness. Judge Hardcastle allowed it.

19 THE COURT: Right.

20 MR. KAINEN: I did the same thing I did before,  
21 because I feel kind of strongly about this. I waived any  
22 questions, I listened, everybody cried when it happened and  
23 we --

24 THE COURT: Right.

1 MR. KAINEN: -- send it on the way -- sent the child  
2 on the way.

3 THE COURT: Right.

4 MR. KAINEN: I -- I'd like -- I think my client  
5 wants to be heard on this, because frankly if --

6 THE COURT: Right.

7 MR. KAINEN: -- if you'll entertain just his  
8 thoughts on it, that would be okay with me.

9 MR. HARRISON: Your Honor, if you give me just a few  
10 minutes. I'm really opposed to her testifying. The problem  
11 that we've had in the joint sessions and I -- again, this is  
12 my view of the world and I -- there's a different view on the  
13 other side. But Brooke told Dr. Ali -- told Dr. Paglini that  
14 she loves me, doesn't hate me, wants a relationship with me.

15 We start out with these joint sessions and I said  
16 Brooke, you need to be honest because we're -- we're not going  
17 to work through our problems unless you're honest. And she  
18 said what -- as she's told me before, I hate you, I don't want  
19 a relationship with you, and I'm not going to do this anymore,  
20 got up and left.

21 I -- it's been touched upon a couple of subsequent  
22 things. The problem I have, and this is why I feel so  
23 strongly about it, my parents taught me that the core of your  
24 existence, the core of yourself -- that means the core of

1 everything you do in life is honesty. And with Brooke, if  
2 it's just in a session with Dr. Ali and I or, you know, that  
3 -- that can be a bump in her own -- in the road in her scheme  
4 of her whole life.

5 I do not want her in a courtroom. I mean, we've  
6 been in a courtroom before. You know, it's a chair, it's  
7 this. To a 17-year-old child, and she's still a child, I do  
8 not want her to be in a position of saying something that I  
9 know is not true and she knows in her heart is not true. I do  
10 not want her unable to identify herself, her self image, as an  
11 honest person to the core, because she was in this big  
12 courtroom and she testified and said something that she knows  
13 in her hearts of hearts wasn't true. And I don't want her to  
14 live with that the rest of her life.

15 I think it is a much more traumatic event and I  
16 think we will stipulate that Brooke will -- if she testified,  
17 she would say this or say that. I don't care about that. I  
18 don't want her to have what I will believe can potentially  
19 harm her for the rest of her life, because I think it will be  
20 a much more traumatic event than any of us realize because we  
21 have a completely different perspective of testifying in court  
22 and what goes on in a court than a 17-year-old. And I don't  
23 want her to be inhibited in her self image and in terms of I'm  
24 an honest person through and through and knowing that she lied

1 in a -- in a courtroom with all that's going on. I --

2 THE COURT: Well --

3 MR. HARRISON: I feel really strongly. I -- I just  
4 would urge the Court not to let her testify.

5 MR. SMITH: Can I address it?

6 THE COURT: Yeah. Yes, you may.

7 MR. SMITH: First of all, and I -- and I think I  
8 made clear for the record in the form of the pretrial  
9 memorandum that Mr. Harrison's penchant for quoting  
10 information that came in the confidential therapy is improper,  
11 it should be stricken, and there should be sanctions imposed  
12 for him doing so.

13 The very core of that type of therapy is to assure  
14 the individuals in that therapy that what they have said  
15 whether it's at the spur of the moment, out of a hit of anger,  
16 out of something that's a discourse in that is never going to  
17 be revealed. So they can mend, so they can have those  
18 sessions.

19 As we've all seen from this practice, we have people  
20 who are absolutely adamantly opposed and hate each other and  
21 by the end of the case they're shaking hands and going out to  
22 dinner at the end. I mean, it boggles all of our minds, but  
23 that's what happens in these sessions. That's what happens in  
24 therapy. That can happen, but the idea that you would come to

1 court and call someone a liar about something they've said in  
2 a particular confidential session is troubling to the core,  
3 because it undermines all of these sessions every time this  
4 Court or any other Court suggest -- and this one was not just  
5 your recommendation. It was an -- an agreement by the parties  
6 that the therapy and all the information coming out of therapy  
7 would be confidential and the information conducted -- or the  
8 person that conducted the therapist would not be a witness.

9 All of that was stated to allow now someone to come  
10 up and say their view based upon what revealing that  
11 information is both improper and really not helpful to the  
12 process as a whole.

13 THE COURT: Well --

14 MR. SMITH: In regard -- well, go ahead.

15 THE COURT: Well, I just wanted to ask you do you --  
16 do you -- are there protocols that you would advocate to be in  
17 place when we reach that time that Brooke is called in?

18 MR. SMITH: Again, I would need to know the course  
19 of this case. You indicated I think in response to the  
20 statements that I -- I have in the pretrial memorandum that  
21 you wouldn't see it appropriate for Dr. Ali to reveal  
22 information from the therapeutic sessions. You haven't made a  
23 ruling on that issue, so I don't know the basis for that  
24 statement, but I can only assume it's because both the law and

1 the ethical guidelines and the protection of Brooke's legal  
2 interest as well and the inability of -- of feuding parents to  
3 grant a waiver of -- of privileges or an imposition of  
4 privileges. It just can't be done. There is no -- I can find  
5 no case in which that was suggested to be appropriate.

6           So here, Your Honor, I -- I think that the notion  
7 that I had of this proceeding was we were going to meet with  
8 -- with Kirk and -- and Brooke and Dr. Ali and basically kind  
9 of mend it up, you know, say hey, what can we do to get this  
10 schedule working and Dr. Ali, you feel like these two sessions  
11 because you had ordered that Dr. Ali would set the course of  
12 -- so Dr. Ali, what do you think the session should be. Okay.  
13 And Kirk, you -- can you make those days and Brooke, can you  
14 make those days, can we have this work. And Brooke, what do  
15 you feel about going over to your dad's house and what's going  
16 on with that and are you going to conduct yourself differently  
17 in the future.

18           That's the kind of thing that -- that I thought was  
19 going to happen today. For that, I don't think Brooke's going  
20 to be traumatized at all. I think she'll tell you about her  
21 schedule. I think she'll be proud to tell you about her  
22 accomplishments. And I think that there is no real issue here  
23 other than for her at 17 and a half years old, it's a pain to  
24 take four hours out of her day to go and talk to her dad when

1 she can talk to her dad any other time.

2           So to me, if Kirk believes that there is something  
3 that needs to be addressed or that there's something that is  
4 positive about (indiscernible), Ms. Harrison has no objection  
5 to that, but I think the practical side of it is that I think  
6 you're going to find that -- that Brooke doesn't have the kind  
7 of energy that Kirk has about her. Kirk has -- has generated  
8 all this stuff. He's the one that's telling she's a liar and  
9 needs to be fixed and there's a problem with her. All she did  
10 and I think what she'll tell you is that look, she spent some  
11 time focusing on school and that was -- what that was about.

12           So I -- I don't think that she has any intent  
13 according to what my client has told me that she has told her  
14 doing anything but abiding by this schedule for this semester  
15 not because of any like or hate she's developed in her father,  
16 but because it makes sense for her to do that because now she  
17 doesn't have the pressures that she had in her course load.

18           So I don't see this as a dramatic event if it's left  
19 to that. If however the goal here is to convince you that  
20 there is something wrong with Brooke and something wrong with  
21 Ms. Harrison, we see that rearing its ugly head again and the  
22 brief that -- the pretrial memorandum, then that's a -- that's  
23 a different kind of -- of proceeding altogether.

24           THE COURT: Well, and -- and again, my --



1 MR. SMITH: So --

2 THE COURT: -- my focus is time evaporates. It's --  
3 my -- my -- this is an adversarial process. And that --  
4 that's what -- and -- and ultimately for me to make the type  
5 of orders that are being request, I felt that it was incumbent  
6 to take evidence, to have testimony, so that I could make  
7 findings and orders.

8 But -- but in a much bigger picture, I believe this  
9 is a problem solving process recognizing that in just a few  
10 months Brooke will emancipate. And I know when I first  
11 scheduled this for March there was a sense of exasperation on  
12 Dad's side because then we're only a month -- two months away  
13 from that date.

14 And that's one reason I wanted to see if I can  
15 expedite this to -- to solve a problem, because I -- I think  
16 we all agree there is a problem that exists and there is -- we  
17 -- we can do a fair amount of finger pointing. My objective  
18 is what can I do today on January 18th, and if we need more  
19 time, hopefully we don't, I'd like to resolve it today, to --  
20 to tell -- perhaps solve that issue. I don't know that it's  
21 going to go away. And we've had -- I've told you my feelings  
22 before from the bench in -- in terms of, you know, how far you  
23 push and if you push, does that create more distance and  
24 resistance and is that going to effect the relationship 19 and

1 beyond when I -- I have no control at that point.

2 Is -- is it a matter of coming together as Mr.  
3 Smith talked about with Dr. Lee's -- Ali's involvement and --  
4 and trying to -- trying to pursue the counseling with perhaps  
5 a -- a more rigid schedule involved with Brooke's  
6 participation and -- and going down that path, is that a  
7 possible -- a possible avenue? I'm -- I'm not sure.

8 I -- I set this in part because I did want to find  
9 out why hasn't the counseling taken place and that's why it's  
10 the factual aspect of hearing from Dr. Ali and -- and perhaps  
11 someone from his office I'm hearing and Dr. Paglini for that  
12 matter and Brooke to find out why isn't it taking place and  
13 whether or not a remedy may be to say okay, here is X number  
14 of days compensatory time, whatever it is. I -- I know that  
15 it's a large number out there and that was brought up at the  
16 discovery hearing as well and it's been argued here. It's not  
17 lost on me and go participate in this three, four day program.

18 And -- and so that's the purpose of the process  
19 today is to try and solve a problem that -- that without a  
20 doubt exists and whether or not I can do something that will  
21 help that relationship in -- in years to come. And to the  
22 extent it's an adversarial process, get the fact that having  
23 Brooke called in to testify is -- is not an easy thing. And  
24 -- and I -- but I mentioned at the last hearing look, at -- at

1 her age at this point with the factual issues in dispute and  
2 that the -- the contrasting allegations between Brooke  
3 indicating a willingness to participate to hearing from the  
4 other side that -- that basically what she told Dr. Paglini  
5 was completely different than what she was conveying to Dr.  
6 Ali and -- and that there really was no interest and therefore  
7 Dr. Paglini's findings were -- were somewhat erroneous.

8           So I -- I want to solve problems. That's -- that's  
9 my goal. And -- and I'm -- I'm always open and happy to  
10 entertain any means possible to do that short of the  
11 adversarial process, but at the end of the day, that's what  
12 we're set for.

13           MR. SMITH: So Your Honor, what -- we -- you asked  
14 about a protocol. So what I would suggest is that we go  
15 through the proceeding. It doesn't like the Plaintiff is  
16 going to call her as part of their case. We'll make that  
17 determination --

18           THE COURT: Okay.

19           MR. SMITH: -- based upon the intent of the  
20 proceeding. And -- and I have told you that if there is going  
21 to be allowed discussion about the sessions, I won't have her  
22 testify because I don't want her subject to cross examination  
23 about therapeutic sessions and I'll take it on a writ. I'm  
24 not going to allow someone who's been told that she's been in

1 -- under confidential therapy that her statements in therapy  
2 can now come back to bite her. That's -- that's not going to  
3 happen from my side of the table.

4 And I just feel that -- that if the proceeding is to  
5 design to encourage this relationship, we can do that by  
6 setting counseling, by setting -- maybe even talking about  
7 that program. Maybe Brooke might have something to say about  
8 whether she wants to spend more time or less time. But that's  
9 the way to make a solution, by interfering by her very right  
10 of confidentiality, I think she needs counseling.

11 THE COURT: Well -- well, let -- well, let me ask  
12 you. Is -- is -- has there been any discussion about -- we  
13 talked about at the last hearing about participating in this  
14 program.

15 MS. HARRISON: I don't know anything about the  
16 program.

17 MR. SMITH: I don't either. I -- I've never been  
18 told --

19 THE COURT: Well, it was --

20 MR. SMITH: -- what the program is.

21 THE COURT: -- brought up at the last hearing,  
22 but --

23 MR. KAINEN: It's been brought up and we put the --  
24

1 MR. SMITH: It -- it's --

2 MR. KAINEN: -- we put the information before the  
3 Court and we certainly haven't had any discussions with her  
4 about it.

5 THE COURT: Okay. But -- and between Counsel I'm  
6 assuming. You haven't -- we haven't discussed it since we  
7 were last in court.

8 MR. KAINEN: There has been no formal settlement  
9 negotiations, is that a fair assessment?

10 MR. SMITH: No formal ones. We've mentioned the  
11 idea a little bit, but no formal ones. They -- let -- let's  
12 say -- again, Your Honor, we're willing to do what I think  
13 would be the idea of getting Kirk and -- and feeling like his  
14 relationship with Brooke is better.

15 That's not the issue here. The issue is -- and I  
16 understand the nature of the adversarial claim is that Brooke  
17 is broken and needs fixing. And frankly, that is  
18 inappropriate.

19 THE COURT: Well, but -- but I -- I want it  
20 understood and -- and I know --

21 MR. KAINEN: I -- I am --

22 THE COURT: -- Mr. Kainen's --

23 MR. KAINEN: -- not alleging --

24 THE COURT: -- ready to chime in. I -- I'm not

1 viewing it that way. I'm -- I'm viewing a relationship is  
2 broken that I -- that I want to fix.

3 MR. KAINEN: And there's a hundred percent unanimity  
4 in this courtroom.

5 MR. SMITH: And not necessar -- well, there is a  
6 hundred percent unanimity that -- that I think Kirk's  
7 relationship with his daughter should --

8 THE COURT: Is --

9 MR. SMITH: -- be good. I agree with that.

10 THE COURT: Right.

11 THE COURT: But I don't believe based on the  
12 evidence I've seen that one, there is sufficient evidence to  
13 hold a hearing on Brooke's mental state. And --

14 MR. HARRISON: We're --

15 MR. SMITH: -- secondly --

16 THE COURT: No. No. No.

17 MR. HARRISON: They haven't asked her.

18 MR. KAINEN: It's okay.

19 THE COURT: I'm -- I'm not looking in --

20 MR. SMITH: I understand.

21 THE COURT: I'm -- I'm -- that's --

22 MR. SMITH: But the allegation is is that she's  
23 lied, she hates her father, she's going to suffer from this  
24 proceeding. These are all opinions about her mental state.

1           THE COURT: Well, no. but -- but here's -- here's  
2 -- and -- and this is what I'm looking at. With the evidence  
3 that comes in, should I order Brooke to participate in this  
4 program that Plaintiff is advocating and should I allocate  
5 compensatory days as part of that process?

6 Now I don't know -- and -- and I view that second part as  
7 probably more problematic and there's more -- there's going to  
8 be more of an adversarial nature.

9           I'm -- I'm still not sure or convinced that -- that  
10 we're -- that there's not -- well, I'm not convinced that  
11 there's an opposition necessarily participating in this  
12 program. I -- I'm not sure that it's really been broached or  
13 -- or figured it out with Dr. Ali's involvement.

14           So is there -- and you said Dr. Ali is here?

15           MR. KAINEN: Yeah.

16           THE COURT: Is there any --

17           MR. KAINEN: Dr. Ali and Dr. Paglini are both  
18 outside.

19           THE COURT: Is there any appetite to have some  
20 discussion with them involved and Brooke involved right now  
21 before we --

22           MR. SMITH: I'm certain --

23           THE COURT: -- start taking testimony?

24           MR. SMITH: Are you --

1 MS. HARRISON: I -- I -- well, I don't think there's  
2 anything wrong with Brooke.

3 MR. SMITH: Okay. But -- but do you --

4 MS. HARRISON: And I (indiscernible).

5 MR. SMITH: -- have --

6 THE COURT: I'm not --

7 MR. SMITH: -- any problem -- what about the idea of  
8 having a conversation --

9 MS. HARRISON: And I don't know -- I don't --

10 MR. SMITH: -- with those folks?

11 MS. HARRISON: Well, I don't -- I have no problem  
12 with having the other -- their opinions on something. I don't  
13 think --

14 MR. SMITH: Let me -- let me just say this. I don't  
15 mind the parents --

16 MS. HARRISON: And I don't want her to go to the --

17 MR. SMITH: -- and the professionals and Brooke  
18 having that conversation, I think it's no place for the  
19 Counsel. That's what I would say.

20 THE COURT: Okay.

21 MR. SMITH: I -- I just don't think it's -- it's a  
22 place to throw in what looks like an adversarial role. I  
23 think those folks should go off and have a conversation to see  
24 how this -- this thing can be -- made better. That to me is a



1 perfect solution. I'm willing to advise my client to -- to do  
2 that, but if she or Kirk has no interest in that, then we  
3 proceed. I --

4 THE COURT: Okay.

5 MR. KAINEN: We have a different -- we have a  
6 different interest in doing it. In other words, yes, I think  
7 we would all like to do this and -- and theoretically everyone  
8 would like to fix the problem. The problem is part of the --  
9 one of the part and parcel of this -- this program is you got  
10 the weekend program and then you got a period of intense --

11 THE COURT: I understand.

12 MR. KAINEN: -- reunification where --

13 THE COURT: Right.

14 MR. KAINEN: -- they're together. And -- and  
15 there's not contact with the other parent for a period of  
16 time, okay, to fix this, it's part of that program.

17 The -- what we got right now is a situation where  
18 there are diametrically opposed positions as to what's  
19 happened and why it's happening. And everybody has little  
20 segments with the idea that this adversarial process is what  
21 it sort out would actually happened and all this.

22 So when I hear things like Kirk cancelled Friday's  
23 thing or she's back to doing the schedule and she's been  
24 living at Kirk's house and everything's okay, you know, the

1 problem is is that that sounds really good, if you're taking  
2 it at face value, that's great. I don't know if carrying out  
3 the schedule means I come home at 11:15 at night and I leave  
4 at 8:30 in the morning means -- and I don't see you again  
5 until 11:15 at night when I come -- and shut my door means  
6 that she's carrying out the schedule. And so -- and she  
7 spends all day at Vivian's house and that kind of stuff. So  
8 that's the kind of stuff where I think we are never going to  
9 get without some sort of proceeding the underlying factual  
10 basis.

11 I believe and firmly believe that the strategy that  
12 we're running into is to run out the clock. The idea that --  
13 well, it's happening -- well, everything's better, the  
14 schedule is -- you know, what -- to be told on the one hand  
15 that everything is better now, this semester's schedule is  
16 great, so everything is back to normal and we're back to the  
17 old schedule and there's really no problem and see, there  
18 never has been a problem, is not the -- what he's experienced  
19 -- experiencing presently.

20 So I -- my fear is that we spend a couple hours  
21 bounding this around and it goes nowhere and we --

22 THE COURT: Well, you're right. And the clock runs  
23 out.

24 MR. KAINEN: Yeah.

1 THE COURT: I -- listen, I -- I get that, and --  
2 but --

3 MR. KAINEN: And so -- look, I'm happy. If they  
4 don't want to call Brooke, great, if they call Brooke, great.

5 THE COURT: All right. Let's -- let's go ahead and  
6 have you call your -- I -- I do treat this as coming forward  
7 on Plaintiff's motion.

8 MR. KAINEN: That's fine.

9 THE COURT: So we'll have you proceed first. Who  
10 would you be -- who would be your first witness?

11 MR. KAINEN: Amanda, she's telephonically, Amanda  
12 Thorpe. And I have a phone number for her. Excuse me. Her  
13 phone number is -- sorry, let me find it. Her phone number is  
14 620-215-2790.

15 THE CLERK: 2790?

16 MR. KAINEN: Yes. And this is -- I -- can -- now do  
17 we want Dr. Ali in here? This is his scheduling assistant.  
18 Dr. Paglini frankly should be here since he's going to be  
19 asked to offer an opinion.

20 THE COURT: Yes, Dr. Paglini should be here. Any --  
21 any objection to Dr. Ali being present?

22 MR. SMITH: Dr. Ali is a percipient witness about  
23 scheduling. How --

24 MR. KAINEN: Well, he's a --

1 MR. SMITH: -- is he -- if he's here as an expert,  
2 then I object to him being here at all, and that would be the  
3 only way he could participate and with another witness  
4 present --

5 THE COURT: Okay.

6 MR. SMITH: -- we would invoke the Exclusionary  
7 Rule.

8 MR. KAINEN: Yeah, I -- I don't care either. He's  
9 -- he's sort of a hybrid to be very blunt. In other words,  
10 here's the deal. He's not going to be offered as an expert to  
11 offer opinion about --

12 THE COURT: Right.

13 MR. KAINEN: -- diagnosis or anything, but he  
14 certainly is allowed to offer his impressions as an expert as  
15 to what's going on, what the dynamic is, whether it's working,  
16 whether it's something -- whether -- whether Kirk is motivated  
17 to do this, whether Brooke is motivated, those kind of things,  
18 those are all opinions that are within his --

19 THE COURT: Well --

20 MR. KAINEN: -- so he's --

21 MR. SMITH: I --

22 MR. KAINEN: I -- I will tell you as an officer of  
23 the court, I don't intend to call him as a diagnostic forensic  
24 expert to offer, you know -- you know, the wholesale opinions

1 that I assume the Court's looking for from Dr. Paglini. So I  
2 think it's appropriate for him to be here to be able to hear  
3 everything in context, but it's -- your -- you get the black  
4 -- you -- you wear the black robe.

5 MR. SMITH: I think you know where I'm going with  
6 this. Any discussion of any therapeutic impression, design,  
7 notion, all comes from the confidential information he learned  
8 through therapy. There is still an existing order that this  
9 Court has not overturned by its -- its present order that  
10 stands for confidentiality.

11 That information cannot be revealed by any party to  
12 this action under that order, particularly Dr. Ali, nor can he  
13 be called as a witness for that purpose. So we object as a  
14 whole heart, but we're -- we're not there yet because he's not  
15 been called --

16 THE COURT: All right.

17 MR. SMITH: -- to ask --

18 THE COURT: Well, I --

19 MR. KAINEN: So let -- let me --

20 THE COURT: Dr. --

21 MR. KAINEN: -- address this because this has been  
22 said three or four times and it's been done without objection  
23 here and I don't want it to be. The original order in the  
24 underlying custody was that they would go to counseling with

1 Dr. Ali, it was going to be confidential and all of that.  
2 That never happened. Subsequent, we agreed to use Dr. Ali as  
3 a reunification counselor. His role changed because he never  
4 got used the way he was designed to be in the first place. I  
5 believe he would offer testimony that says both his counseling  
6 with Brooke and his joint counseling with Kirk and Brooke were  
7 without confidentiality and he told them both that that it was  
8 for that purpose.

9 That said in either case, I don't know how much I  
10 would delve into anything to do with sessions between Dr. Ali  
11 and Brooke, it -- but it would certainly be things that may  
12 have occurred between Dr. Ali and Brooke that were discussed  
13 in open settings with the three of them and it's certainly  
14 appropriate for things that were discussed with Kirk in the  
15 room. Okay.

16 THE COURT: Well, let --

17 MR. KAINEN: That's what's gone on. So this --

18 THE COURT: Let --

19 MR. KAINEN: -- idea --

20 MR. SMITH: There is no --

21 MR. KAINEN: And then the last thing I'm going to  
22 tell you is this case law that was cited has nothing to do  
23 with anything. It says basically that if -- when the case --  
24 you had a case in New York -- I forgot where it was, New York,

1 and -- and some lower court level that it went -- that there  
2 was some counseling that went on that the non-custodial parent  
3 who wasn't a part of it was trying to get into that  
4 therapeutic counseling. That has nothing to do with the  
5 situation where Kirk's a participant in the counseling.

6           So I sat quietly through these -- what I consider to  
7 be misrepresentations of the record and misrepresentations of  
8 the law, but you will deal with it when you come to it and  
9 you'll find out that I don't intend to really go very deep and  
10 I don't intend to pry, because frankly, I'd like to preserve  
11 the relationship where I can.

12           MR. SMITH: Judge, I think Mr. Kainen has a  
13 misconception of Nevada Law in regard to family therapy. It  
14 doesn't matter who's the participant and it specifically says  
15 so in that statute that I've cited. So I -- I think that --  
16 that's just a misstatement if you will.

17           THE COURT: All right. Well, Dr. -- let's have Dr.  
18 Paglini come in, but --

19           MR. KAINEN: That's fine.

20           THE COURT: -- I'm going to have Dr. Ali remain  
21 outside until he's called.

22           MR. KAINEN: He's in the white shirt.

23           THE MARSHAL: Do you want him on the witness stand?

24           MR. KAINEN: No. No. No.

1 THE COURT: No.

2 MR. KAINEN: Just to hear and sit and listen.

3 THE COURT: He'll just -- to observe.

4 MR. KAINEN: And so do we have Amanda on the phone

5 or --

6 THE CLERK: She's on the phone.

7 MR. KAINEN: Oh.

8 THE COURT: She's on the phone.

9 MR. KAINEN: Okay.

10 THE COURT: All right.

11 MR. KAINEN: So I'll just wait for Dr. -- Dr.

12 Paglini to come in and then we can go.

13 THE COURT: All right. Ms. Thorpe, can you hear us?

14 MS. THORPE: Yes, I'm here.

15 THE COURT: Okay. All right. And we have -- and --

16 and let me do this first. Let me have you raise your right

17 hand to be sworn even though I can't see you.

18 MS. THORPE: Okay.

19 THE CLERK: You do solemnly swear the testimony

20 you're about to give in this action shall be the truth, the

21 whole truth, and nothing but the truth, so help you God?

22 MS. THORPE: Yes.

23 THE COURT: Okay. Counsel, you may proceed.

24 MR. KAINEN: Okay. I was just going to get Dr.



1 Paglini to be able to --

2 THE COURT: Okay. That's fine.

3 MR. KAINEN: And where -- where is going to be the  
4 best place? I --

5 AMANDA THORPE

6 called as a witness on behalf of the Plaintiff, having been  
7 first duly sworn, did testify telephonically upon her oath as  
8 follows on:

9 DIRECT EXAMINATION

10 BY MR. KAINEN:

11 Q Amanda, can you hear me presently?

12 A Yes, I can hear you.

13 Q Okay. Perfect. Then I just didn't know -- didn't  
14 mean to crow around over here.

15 MR. KAINEN: Wrong one.

16 THE MARSHAL: Wrong one. Sorry.

17 MR. KAINEN: The other guy with the Psy.D.

18 MR. SMITH: The other one that answers to doctor.

19 MR. KAINEN: Right. I said the one with the white  
20 shirt.

21 MR. SMITH: It was close to white.

22 MR. KAINEN: So Amanda is not left in mystery, Dr.  
23 Ali came in and not Dr. Paglini. That's what we're waiting  
24 for is Dr. Paglini.

1 THE WITNESS: Okay.

2 MR. KAINEN: That's the right side for you.

3 Dr. PAGLINI: How you doing?

4 MR. KAINEN: Good. It doesn't matter what side you  
5 sit on. You're not choosing sides, we know it. Okay.

6 THE COURT: All right.

7 BY MR. KAINEN:

8 Q Would you state your full name, please?

9 A Amanda Louise Thorpe.

10 Q Okay. And you are employed with Dr. Ali, is that  
11 correct?

12 A Yes, I was.

13 Q Was one of your duties during your employment with  
14 Dr. Ali during 2016 to schedule appointments for Dr. Ali?

15 A Yes.

16 Q Was one of your duties also to collect payment for  
17 appointments?

18 A Yes.

19 Q Okay. Were you provided copies of Vivian's email  
20 and Brooke's email to Dr. Paglini regarding their asserted  
21 reasons why Brooke could not attend the sessions?

22 A Yes.

23 Q Okay. Did you have any discussion with Vivian  
24 concerning scheduling of sessions?

1           A     I'm sorry, can you repeat that?

2           Q     Did you have any discussion with Vivian Harrison  
3 regarding scheduling of sessions for Brooke or between Brooke  
4 and Kirk?

5           A     I -- once or twice. I called her one time and she  
6 informed me that she was not to do any of the scheduling, that  
7 I needed to go through Brooke.

8           Q     Okay. All right. Separately, did you ever ask  
9 Vivian to even pay for any of the sessions?

10          A     One time and she informed me that I needed to  
11 receive payment in full from Kirk.

12          Q     Okay. Did you ever approach her at Kirk's request  
13 about paying for half of the sessions?

14          A     Yes, I did.

15          Q     And same response?

16          A     Yes.

17          Q     Okay. Separately, did Clerk -- did Kirk make  
18 himself available for scheduling of sessions?

19          A     Yes, he did.

20          Q     Okay. Did Kirk ever express to you his -- or did  
21 Kirk routinely express to you his desire to have the sessions  
22 each for two hours long?

23          A     Yes, he wanted that.

24          Q     Did he pay the entire cost of each of the sessions

1 that did take place?

2 A Yes, he did.

3 Q Did -- did he also paid for the ones that were  
4 cancelled the last minute?

5 A Yes.

6 Q Okay. Did Kirk cooperate fully with you in your  
7 attempts to schedule the sessions?

8 A Yes.

9 Q Did -- what did Brooke tell you if anything about  
10 her inability to meet for two hours each week?

11 MR. SMITH: Objection.

12 A She said that --

13 MR. SMITH: Hearsay, Your Honor.

14 A -- the schedule was --

15 THE COURT: Okay. Hang on.

16 A -- very busy --

17 MR. KAINEN: Hold on one second, Amanda.

18 THE COURT: Hold on.

19 A Okay.

20 MR. KAINEN: There's an -- there's an objection.

21 THE COURT: The objection as hearsay. That would  
22 qualify as hearsay.

23 MR. KAINEN: Well, it's not offered for the truth of  
24 the matter asserted. It's offered for whether the statement

1 was made to her in terms of cooperation.

2 MR. SMITH: Well, I --

3 MR. KAINEN: In other words, the true --

4 MR. SMITH: -- think --

5 MR. KAINEN: in other words, here's the deal.

6 Suppose that Brooke's statement was I'm sorry, I'm on the  
7 space shuttle. I'm not offering to prove that she was on the  
8 space shuttle. I'm offering to prove she was either willing  
9 and cooperative or she was not which is not to the truth of  
10 the matter of the statement that Brooke offered.

11 THE COURT: Well, and --

12 MR. SMITH: That's --

13 THE COURT: -- and what -- state your question  
14 again.

15 BY MR. KAINEN:

16 Q My question was did Brooke ever give you any --  
17 where is it. Did Brooke ever discuss with you about her  
18 inability to meet for two hours each week? Did she make any  
19 statements to you regarding her inability or ability --

20 MR. SMITH: Objection.

21 Q -- to meet?

22 MR. SMITH: Hearsay. It's a very specific question.  
23 It goes to the reasons why she may have been unable to have  
24 the sessions.

1 THE COURT: But as to that question --

2 MR. KAINEN: It's not offered --

3 THE COURT: -- I don't find that --

4 MR. KAINEN: -- for the truth.

5 THE COURT: I -- I don't find that it -- it -- it's  
6 hearsay. So the --

7 MR. KAINEN: Okay.

8 THE COURT: -- objection's overruled.

9 MR. KAINEN: Okay.

10 BY MR. KAINEN:

11 Q Did Brooke ever discuss with you anything about her  
12 inability to meet for two hours each week?

13 A Yes, she did.

14 Q And what did she indicate to you?

15 MR. SMITH: Objection, hearsay.

16 MR. KAINEN: Go ahead.

17 THE COURT: Well, I mean --

18 MR. KAINEN: I'm sorry. Sorry. I thought you  
19 already ruled on it.

20 THE COURT: Well, no, because the prior question --

21 MR. SMITH: Because it was --

22 THE COURT: -- didn't --

23 MR. SMITH: -- did she.

24 THE COURT: -- ask for that, so it wasn't -- it

1 wasn't --

2 MR. KAINEN: All right.

3 THE COURT: -- hearsay. But that --

4 MR. KAINEN: Again, it's not offered for the truth  
5 of the matter asserted. In other words, if I were trying to  
6 get in to prove that the reason she couldn't come in was she  
7 was way too busy, she was on the space shuttle, she was in  
8 India on some mission or whatever it is, that would be hearsay  
9 because I was then offering it for the truth of the matter  
10 asserted.

11 I'm offering it here to be able to say these were  
12 the excuses or these were the reasons that were offered which  
13 lays the foundation for the other testimony as to whether it's  
14 true or not, we don't believe it was. So given the fact that  
15 I intend to be able to show that these reasons aren't  
16 accurate, it couldn't possibly be offered for the truth of the  
17 matter asserted.

18 MR. SMITH: But it -- it -- well, that's -- of  
19 course, this -- that's any question that you ask of somebody  
20 in cross examination is designed to get them to take a  
21 position on the statement they made and then seek to have that  
22 statement show to be false, that doesn't make it any less  
23 hearsay.

24 The question is did she say things to this

1 individual about a particular subject. That's the --

2 MR. KAINEN: That's not hearsay.

3 MR. SMITH: -- clear -- that -- that is --

4 MR. KAINEN: That is an --

5 MR. SMITH: -- hearsay.

6 MR. KAINEN: -- out of court statement. The  
7 difference is is hearsay is two parts. It's --

8 THE COURT: But right.

9 MR. KAINEN: -- number one an out of --

10 THE COURT: No, you're right --

11 MR. KAINEN: -- court statement.

12 THE COURT: -- but it's still being offered for the  
13 truth of the --

14 MR. KAINEN: No.

15 THE COURT: -- matter asserted.

16 MR. KAINEN: It can't -- Judge, here's the deal.  
17 Supposed her -- her testimony had been that she had been on a  
18 space shuttle, I'm sorry, I'm in another universe -- or I  
19 guess a different -- same universe, I'm off the planet  
20 presently and so I can't be there.

21 Now we all know that isn't true. So if I'm asking  
22 if that was the reason she told you she couldn't be there,  
23 then it couldn't possibly be offered for the truth of the  
24 matter asserted. It is simply an out of court statement made



1 by somebody who is a party -- or not a party to the case.

2 It's just an out of course statement. That's all it is.

3 MR. SMITH: Well --

4 MR. KAINEN: It -- it --

5 MR. SMITH: -- and --

6 MR. KAINEN: -- is not offered for the truth of the  
7 matter asserted

8 MR. SMITH: It is offered for the truth because the  
9 notion is is that Brooke gave false statements to the  
10 individuals and that shows her lack of desire or participation  
11 and that somehow is linked to Mrs. Harrison and then justify  
12 as the award of makeup time or a finding that she hates her  
13 father.

14 Look, this is all designed to show that Brooke lied.  
15 That's the very nature of saying that this session -- this  
16 statement was made to this individual and therefore I'm going  
17 to prove it false.

18 MR. KAINEN: How --

19 MR. SMITH: Brooke is present. You can ask her.

20 MR. KAINEN: Right. And so Brooke said it and  
21 Brooke's going to come -- okay. Judge, hearsay is two parts.

22 THE COURT: I --

23 MR. KAINEN: How is this --

24 THE COURT: I get that --

1 MR. KAINEN: -- the --

2 THE COURT: -- but it --

3 MR. KAINEN: -- truth --

4 THE COURT: -- I --

5 MR. KAINEN: -- of the matter asserted if -- if  
6 again, take the space shuttle example. It's not -- it's --  
7 it's -- I -- I am -- we know it's not true and we know I'm  
8 certainly not asserting it's true. I'm trying to find out if  
9 that excuse was made and stated to a witness.

10 THE COURT: Well --

11 MR. SMITH: Brooke is not a party to this action.

12 MR. KAINEN: It doesn't matter if she's a party.

13 THE COURT: Well --

14 MR. SMITH: It does.

15 THE COURT: Well, yeah. That -- that's not -- well,  
16 from a hearsay standpoint, she's --

17 MR. SMITH: Yes.

18 THE COURT: -- not -- it -- it becomes important --

19 MR. KAINEN: Through --

20 THE COURT: -- because it's not --

21 MR. KAINEN: -- each witness -- we established  
22 through witnesses what the truth is. In this case, I'm not  
23 looking to be able to backdoor in some statement of Brooke  
24 that I can't get in through Brooke. What I'm looking is to be

1 able to offer -- to basically refute what Vivian has said  
2 which is hey, Brooke was there, she wanted to do it, Amanda  
3 was too damn busy to be able to schedule her or Amanda didn't  
4 do this --

5 MR. SMITH: We've -- we've --

6 MR. KAINEN: -- or Dr. Ali wouldn't do that --

7 MR. SMITH: See, this is --

8 MR. KAINEN: -- or all of these other things.

9 MR. SMITH: Now this is following the area of  
10 grossly improper, because the statement that Mr. -- Mr. Kainen  
11 just attributed to Ms. Harrison was designed to influence this  
12 witness. Ms. Harrison never said anything of this sort and in  
13 fact, she's repeatedly indicated that it was her understanding  
14 that Brooke was attempting to make these statements.

15 THE COURT: Listen, I --

16 MR. SMITH: She never said anything --

17 THE COURT: Listen, I --

18 MR. SMITH: -- about Amanda.

19 THE COURT: I -- I think it -- it directly is the  
20 matter asserted that you're probing, because the -- of the  
21 nature of the claim that's being made.

22 MR. KAINEN: I understand that. I am absolutely  
23 discussing the nature of the matter asserted, but I am not  
24 offering it to prove the truth of the statement that's being

1 offered. That's what definitionally hearsay is. In other  
2 words, I can't --

3 THE COURT: I don't see --

4 MR. KAINEN: -- prove --

5 THE COURT: -- how you're not doing that.

6 MR. SMITH: The --

7 MR. KAINEN: Judge --

8 MR. SMITH: And Your Honor --

9 MR. KAINEN: -- if I were -- if -- if the statement  
10 she was offering was my class schedule is to busy, okay, I am  
11 not trying to prove that Brooke's class schedule was too busy  
12 through this information. I am trying --

13 THE COURT: You're trying to prove --

14 MR. KAINEN: -- to prove --

15 THE COURT: -- that she said that.

16 MR. KAINEN: -- that the statement was made the same  
17 way a witness --

18 MR. SMITH: And then it was --

19 MR. KAINEN: -- at a car accident --

20 MR. SMITH: That's right. And that it was false.

21 MR. KAINEN: -- the same way if Brooke got up at a  
22 car accident and said I -- I ran the red light or I didn't run  
23 the red light or whatever it is, it would -- if -- if I was  
24 offering it to prove the admission, then that would be

1 hearsay. Okay. If I was offering it to prove an inconsistent  
2 statement or something like that, then it would not be hearsay  
3 because it's not offered for the truth of the statement. I  
4 mean, this is -- I -- this is basic hearsay --

5 THE COURT: Listen, I -- I understand, but I -- I  
6 still am caught on the fact that this is exactly the matter  
7 that you are trying to assert.

8 MR. KAINEN: It is the matter -- you're a hundred  
9 percent right. It is the matter I'm trying to assert. It's  
10 not the truth of the matter which is what hearsay is about.  
11 Hearsay deals with whether I am trying to prove up a fact --

12 THE COURT: Right.

13 MR. KAINEN: -- by the statement. In this case, I'm  
14 not trying to prove the fact. I'm trying to prove the  
15 statement was made. And --

16 MR. SMITH: But --

17 MR. KAINEN: -- but definitionally, we're telling  
18 you that we don't believe it was true and therefore we have to  
19 prove that the statement was made --

20 THE COURT: Was made in the first place.

21 MR. KAINEN: Right.

22 THE COURT: Right.

23 MR. SMITH: Well, except that this statement goes to  
24 the core of their case. They're trying to say that Brooke

1 lied to this individual. She's not a party. You can't  
2 impeach this individual without having her first testify as to  
3 the statement she's made.

4 MR. KAINEN: That's not true. That's not what the  
5 paperwork states.

6 MR. SMITH: And this witness has -- is a witness as  
7 Brooke is a witness. You can't have a witness saying well,  
8 you know, she told me a lot of things and that was all true  
9 and that, you know, that was all false and she told me all  
10 these things. That's the opinion of the individual who  
11 doesn't have actual knowledge of the facts that are contained  
12 in the statement and the statement is just refre -- was  
13 statement -- stated in court for the purpose of showing it's  
14 false. That's the nature of hearsay.

15 THE COURT: All right. The objection's overruled.  
16 I'll allow the -- the witness to answer the question.

17 BY MR. KAINEN:

18 Q Amanda, what did -- what did Brooke tell you about  
19 her inability to meet for two hours each week?

20 A She told me that her school schedule and her dance  
21 schedule were very busy and she did not have time.

22 Q Okay. As a consequence of Brooke telling you that,  
23 did you offer other accommodations? Did you make some changes  
24 in scheduling and offered different scheduling?

1 A Yes.

2 Q What did you -- what kind of accommodation did you  
3 make in scheduling?

4 A Well, Dr. Ali's schedule was very full, so I tried  
5 to accommodate as best I could to Kirk and Brooke's schedules  
6 together. So I would have to move other patients around to  
7 fit them in.

8 Q Okay. Did you offer and setup one and a half hour  
9 sessions every Tuesday from 11:30 to 1:00 and schedule them  
10 for five months out?

11 A Yes.

12 MR. SMITH: And again --

13 Q Okay.

14 MR. SMITH: -- hearsay, Your Honor.

15 Q More specifically, did you schedule --

16 THE COURT: Pardon? Pardon?

17 MR. SMITH: This -- this specific question, you'll  
18 have to have it read back or you'll -- he'll have to read it  
19 back.

20 THE COURT: What was the question, Counsel?

21 BY MR. KAINEN:

22 Q I said did you offer one-and-a-half hour sessions on  
23 Tuesdays from 11:30 to noon for five months?

24 MR. HARRISON: 11:30 to 1:00.

1 THE COURT: And the --

2 Q Or I'm sorry, from 11:30 to 1:00 for five months.

3 THE COURT: And the objection --

4 MR. SMITH: I -- I'll withdraw the objection.

5 THE COURT: Okay.

6 Q Okay. And those schedule -- that -- those sessions  
7 were scheduled for, I'm just going to read them into the  
8 record, April 12, 19, and 26, May 3, 10, 17, and 24 and 31,  
9 June 7, 14, 21 and 28, July 5, 12, 19 and 26, and August 2, 9,  
10 16, 23 and 30 for a total of 21 appointments, is that correct?

11 A Yes.

12 Q Okay. Other than April 12th, did Brooke attend any  
13 of those scheduled 21 appointments that were scheduled?

14 A No.

15 Q Okay. Did she indicate to you why not?

16 MR. SMITH: Same objection, Your Honor. I -- I can  
17 have a continuing objection then.

18 THE COURT: Continuing objection. So noted.

19 BY MR. KAINEN:

20 Q Did she indicate --

21 THE COURT: Overruled.

22 Q -- to you why not?

23 A She told me she was too -- she was busy, things  
24 would come up.



1 Q Okay. Did she indicate to you anything about a math  
2 tutor?

3 A Yes, she did.

4 Q What did she indicate to you about a math tutor?

5 A That was an appointment that I had scheduled and she  
6 called me I believe it was the same day of the appointment and  
7 she said she had an important math test and that she had to  
8 schedule an appointment with her math tutor last minute.

9 Q Okay. Were you ever advised that during the April  
10 12 appointment which was the last of those 21 appointments --

11 MR. HARRISON: First.

12 Q I'm sorry, the first -- well, it was the last too.  
13 It was the first and last of those 21 appointments that Brooke  
14 told Dr. Ali and Kirk that she would not attend any further  
15 reunification sessions --

16 MR. SMITH: Hearsay, Your Honor.

17 Q -- where she advised of it.

18 MR. SMITH: This one doesn't even tell who the  
19 declarant is.

20 MR. KAINEN: I -- I know. I'm -- did she have that  
21 knowledge. That's the question is did you become aware --

22 THE COURT: That's more a foundational --

23 MR. KAINEN: Yeah.

24 THE COURT: -- objection, so I'm sustaining the

1 objection. You need to rephrase the question.

2 BY MR. KAINEN:

3 Q Did you ever become aware that after the April 12  
4 session -- or during the April 12 session that there was an  
5 indication that Brooke would not attend any further sessions?

6 MR. SMITH: Foundation.

7 Q Did that piece of information come to you?

8 MR. SMITH: Foundation.

9 THE COURT: Sustained.

10 BY MR. KAINEN:

11 Q Did you have a discussion --

12 A Can I answer?

13 Q -- with Dr. Ali or Kirk or anybody about whether or  
14 not Brooke was going to be coming back to sessions after April  
15 12th?

16 MR. SMITH: Objection, one, it's privileged, and  
17 two, it's hearsay.

18 MR. KAINEN: I'm sorry, is that the  
19 patient-receptionist privilege?

20 THE COURT: Overruled.

21 BY MR. KAINEN:

22 Q Okay. Did you ever have a discussion with anybody  
23 about whether Brooke was going to be coming back for sessions  
24 after April 12th?

1           A     Yes, I did.

2           Q     And with whom did you have a discussion with about  
3 that?

4           A     Dr. Ali and Kirk.

5           Q     Okay. And from that discussion, did you -- did you  
6 -- were you -- did you become -- did you form a belief that  
7 Brooke would not be coming back after April 12th for anymore  
8 sessions?

9           MR. SMITH: Objection, this is just a clever way of  
10 getting a hearsay statement and these statements would --

11          THE COURT: What --

12          MR. SMITH: -- only have come --

13          THE COURT: What's the evidentiary objection?

14          MR. SMITH: Hearsay and the -- and privileged.

15          THE COURT: Overruled.

16 BY MR. KAINEN:

17          Q     Did you form an opinion afterwards that -- or that  
18 -- that Brooke was not going to be coming back for any of the  
19 remaining 21 -- other 20 sessions that were scheduled?

20          A     I -- I thought maybe she would come, but I wasn't  
21 sure if she would or not.

22          Q     Did those sessions stay on the books after April  
23 12th? In other words, did each of the remaining 20  
24 appointments stay on the book?

1 A Yes.

2 Q Okay. And in light of what you were told regarding  
3 Brooke's unavailability, would you be surprised to learn that  
4 when Brooke's schedule was obtained, she had a five hour block  
5 of time from 10:50 a.m. to 3:30 p.m. on Tuesdays and on  
6 Thursdays she also had a five hour block of time between 10:50  
7 a.m. and 3:45 p.m.?

8 A I would be very surprised to hear that, yes.

9 Q Was that consistent with what Brooke had previously  
10 indicated to you?

11 A No.

12 Q Okay. Did Brooke cancel other appointments  
13 sometimes just a couple hours before the session was to begin?

14 A Yes.

15 Q Did you schedule sessions on other days of the week  
16 in order to accommodate Brooke's schedules or demands?

17 A Yes.

18 Q Do you recall Brooke agreeing to a session on March  
19 31 from 11:30 until 1:00 p.m.?

20 A Yes, I do.

21 Q Do you recall her calling about 9:45 that morning to  
22 cancel the appointment?

23 A Yes.

24 Q Did she tell you she had an important math test

1 following -- the following week and the only time the tutor  
2 can meet with her was during the time of the session?

3 A Yes, I remember that. Yes.

4 Q Okay. And that was prior to the April 12th session.  
5 We're talking about March 31, correct?

6 A Right.

7 Q Okay. When you left your -- when you left your  
8 employment with Dr. Ali, it was -- that was in August of 2016,  
9 is that correct?

10 A Correct.

11 Q Is it true that only two sessions had taken place  
12 between Brooke and Kirk, March 17 and April 12?

13 A Right.

14 Q Okay. Are you familiar with Dr. Ali's letter to the  
15 court regarding the lack of re -- the reunification sessions?

16 A Yes, I am.

17 Q Okay. Did there come a time when Kirk told you that  
18 Dr. Paglini wanted Dr. Ali to send a letter to the Court  
19 regarding the two hour sessions not taking place each week as  
20 recommended by Dr. Paglini and -- and subsequently ordered by  
21 the Court?

22 A Yes.

23 Q Did you or Dr. Ali speak with Dr. Paglini regarding  
24 what type of information you wanted in the letter?

1 A Yes.

2 Q Okay. And did you -- did -- was a letter  
3 subsequently prepared?

4 A Yes.

5 Q Did you ask Vivian Harrison for permission to send  
6 that letter to the Court?

7 A Yes.

8 Q What did Vivian indicate to you?

9 A She did not give permission.

10 Q So she refused to offer permission for it to go to  
11 the Court?

12 A Right.

13 Q Did Vivian tell you why she refused to give  
14 permission to send that request letter to the Court?

15 A I'm sorry, I don't remember.

16 MR. KAINEN: Okay. I have -- I pass the witness.

17 THE COURT: Cross examination --

18 MR. KAINEN: Rad -- Vivian's lawyer may have a few  
19 questions for you, Amanda.

20 THE WITNESS: Okay. Okay.

21 CROSS EXAMINATION

22 BY MR. SMITH:

23 Q Hi, Amanda. Just a few questions. You indicated  
24 that there were certain appointments scheduled after April

1 12th, correct?

2 A Yes.

3 Q Who did you give that schedule to?

4 A Who did I give the schedule to?

5 Q Right. You said that you had -- you had scheduled  
6 all these appointments. Who -- who was -- who did you provide  
7 that schedule to?

8 A To Kirk and Brooke.

9 Q Okay. How did you provide it to Brooke?

10 A I believe I told her over the phone that they were  
11 scheduled every Tuesday for the next several months from 11:30  
12 to 1:00 every Tuesday.

13 Q But you didn't provide -- there's no writing to  
14 support that, correct?

15 A I might have sent her an email, but I'm sorry, I  
16 don't remember if I did.

17 Q Well, did anybody ask you to look through your  
18 emails to determine whether or not you had ever advised Brooke  
19 that she had scheduled sessions every Tuesday for several  
20 months after April 12th?

21 A No one's asked me to check my email. I'm sure my  
22 email is not active anymore anyways since I'm no longer  
23 employed with Dr. Ali.

24 Q Was it your custom and habit to provide notice to

1 clients other than by phone? Ma'am, did you hear me?

2 THE COURT: Hello?

3 (PHONE DISCONNECTS)

4 MR. SMITH: Why do these technical issues all seem  
5 to happen during cross examination?

6 (PAUSE)

7 (PHONE RINGS)

8 THE WITNESS: Hello?

9 THE CLERK: Hi.

10 THE COURT: We lost you. We're back on the record.  
11 I don't know if you heard that last question.

12 THE WITNESS: I did not.

13 BY MR. SMITH:

14 Q Hi, Amanda. Again, it's Radford Smith. So my  
15 question was what was your custom and habit of advising  
16 clients about their appointments?

17 A What was -- I'm sorry?

18 Q When you were with Dr. Ali, what was your custom and  
19 practice for advising clients about their appointments?

20 A It -- it was either verbally, over the phone, or  
21 through email. And then we would always do reminder calls the  
22 night before as well.

23 Q Okay. And did you do reminder calls every week  
24 after April 12th to Brooke?



1           A     I was actually on maternity leave after that, so I  
2 don't know if those were done or not.

3           Q     How long were on maternity leave, Amanda?

4           A     I was on maternity leave -- I had my baby April 23rd  
5 and I was back to work with Dr. Ali on July 5th.

6           Q     Okay. Do you -- do you know whether anyone else  
7 from your knowledge of when you came back had contacted Brooke  
8 about her -- the sessions that she was missing?

9           A     I'm sure they did reminder calls while I was gone  
10 and it would have been done by the front desk receptionist.

11          Q     Okay. And you -- that's based upon your -- your  
12 practice of making reminder calls, correct?

13          A     Correct.

14          Q     So it's your belief that -- that because it was that  
15 practice, somebody from Dr. Ali's office would have called  
16 Brooke every week to remind her about a session, correct?

17          A     Yes, I remember that there was a note in the session  
18 time on the calendar to call Brooke and Kirk both.

19          Q     Okay. And you would call Brooke on her cell phone,  
20 correct?

21          A     Yes.

22          Q     Okay. Once Brooke didn't appear at some of the  
23 sessions, did you call Mrs. Harrison, her mother, to ask why  
24 she wasn't appearing?

1           A     It's -- I'm trying to remember if I ever did. Maybe  
2 for one or two --

3           Q     But you don't --

4           A     -- but I might have, yeah.

5           Q     But you don't remember?

6           A     I don't -- I don't remember. No, I'm sorry.

7           Q     So the -- when you indicated that Ms. Harrison  
8 refused to approve the letter from Dr. Ali, didn't she send  
9 you a -- an email indicating that she understood that all of  
10 the -- the sessions of Dr. Ali were confidential and that she  
11 was concerned about the contents of any letter?

12          A     Okay. Yeah, that's ringing a bell.

13          Q     The -- in regard to the sessions, did -- did you  
14 ever ask for Ms. Harrison's help and say hey, look, Brooke  
15 isn't coming, you need to help me get her to these sessions or  
16 words to that effect? Did you ever have that conversation  
17 with her?

18          A     I did reach out to Vivian when I had a difficult  
19 time getting a hold of Brooke --

20          Q     When was --

21          A     -- over the phone to schedule.

22          Q     Okay. And she -- did -- did you then subsequently  
23 -- you were able to speak to Brooke, correct?

24          A     I eventually got a hold of her, yes.

1 Q Okay. Well, didn't Brooke get a hold of you in that  
2 occasion because Ms. Harrison had told her to call you?

3 A Yes.

4 Q And that was the only time that you can remember  
5 reaching out to Ms. Harrison to have you aid her in -- excuse  
6 me, have you aid you in helping get Brooke to the sessions,  
7 correct?

8 A Right.

9 MR. SMITH: Pass the witness, Your Honor.

10 THE COURT: Any redirect?

11 MR. KAINEN: Yeah, just --

12 REDIRECT EXAMINATION

13 BY MR. KAINEN:

14 Q The other time that you reached out to Vivian, she  
15 told you that she would not be involved in the scheduling and  
16 it had to be dealt with with Brooke, is that correct?

17 A Yeah, she did tell me that one time as well.

18 MR. KAINEN: Okay. All right. I don't have any  
19 further questions.

20 MR. SMITH: I have another question.

21 RECROSS EXAMINATION

22 BY MR. SMITH:

23 Q Ms. Amanda, in you -- in that conversation, didn't  
24 Ms. Harrison tell you that she thought it would be easier for

1 you to schedule the sessions with Brooke and that Brooke would  
2 schedule those sessions?

3 A She did say that, yes.

4 Q In regard to the -- the -- you said -- and -- and  
5 I'm trying to clarify something you had indicated about the  
6 sessions. You indicated that the sessions that you setup were  
7 on Tuesdays. Didn't -- didn't Brooke ask for Thursdays?

8 A She did, but Dr. Ali's schedule would not allow that  
9 every week.

10 Q Weren't -- didn't you tell --

11 A They --

12 Q -- Brooke that you were going to call her and let  
13 her know if you can setup those Thursday schedules?

14 A I'm sure I did.

15 Q But you never did call her about that, did you?

16 A I -- I would think I did.

17 Q But you don't --

18 A I was very good at following up with people.

19 Q Of course, but you don't have any specific  
20 recollection of following up with her to tell her whether or  
21 not her desire to have the sessions on Thursdays could happen,  
22 correct?

23 A No, I told her that they would not be able to happen  
24 every week and I would keep her updated on when we would be

1 able to have them on Thursdays.

2 Q Then you never called her after that, isn't that  
3 true, Amanda?

4 A No.

5 Q No, it's not --

6 A I --

7 Q -- true that you did call her and tell her there  
8 were Thursday sessions available? It's amazing.

9 A Well, we did that Thursday on March 31st. That was  
10 a Thursday appointment where I would have called her about  
11 that one.

12 Q March 31st, but that was before April 12th. So  
13 after April 12th, did you ever tell her or call her that she  
14 was -- that she could come on the Thursday sessions that she  
15 would request -- that she requested?

16 A No, I was on maternity leave.

17 MR. SMITH: Pass the witness.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. KAINEN:

20 Q Okay. And the April 12th session was the one where  
21 coming out of that you became aware that Brooke wasn't going  
22 to be coming to any more sessions, isn't that true?

23 A Correct.

24 MR. KAINEN: Okay. Your Honor, I don't have any

1 further questions.

2 THE COURT: Okay.

3 MR. SMITH: One other question.

4 FURTHER RECROSS EXAMINATION

5 BY MR. SMITH:

6 Q Didn't Brooke send you an email after that time  
7 requesting Thursdays?

8 MR. KAINEN: She was at --

9 A I don't remember.

10 MR. KAINEN: Nothing further. Or I'm sorry.

11 THE COURT: Okay. All right. Thank you for your  
12 appearance, Ms. Thorpe.

13 MR. SMITH: Thank you, Judge.

14 THE COURT: That concludes our --

15 MR. SMITH: See, you need to be up there.

16 THE COURT: -- your participation.

17 MR. KAINEN: Thank you --

18 THE WITNESS: Okay.

19 MR. KAINEN: -- Amanda.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you.

22 THE WITNESS: You're welcome.

23 (PHONE DISCONNECTS)

24 THE COURT: Your next witness?

1 MR. KAINEN: Dr. Ali.

2 THE COURT: All right.

3 (WITNESS SUMMONED)

4 MR. KAINEN: The -- the other Psy.D.

5 MR. SMITH: You can just say doctor and they'll --

6 THE COURT: Good afternoon. Right up here. And  
7 please remain standing and raise your right hand to be sworn.

8 THE CLERK: You do solemnly swear the testimony  
9 you're about to give in this action shall be the truth, the  
10 whole truth, and nothing but the truth, so help you God?

11 DR. ALI: Yes, I do.

12 THE COURT: Okay. And you may be seated. And  
13 Counsel, you may proceed.

14 DR. JAMIL ALI  
15 called as a witness on behalf of the Plaintiff, having been  
16 first duly sworn, did testify upon his oath as follows on:

17 DIRECT EXAMINATION

18 BY MR. KAINEN:

19 Q State your full name, please.

20 A Sure. Jamil Ali.

21 Q Okay. And what is your profession?

22 A Psychologist.

23 Q Okay. And how long have you been practicing in  
24 Clark County?

1 A 20 plus years.

2 Q Okay. And the 30 second version of your bio and  
3 background.

4 A I'm a licensed psychologist, doctorate of a  
5 psychology degree, so Psy.D, clinical practice for 20 and a  
6 half years. I have a private practice. I'm a clinical  
7 director for two different programs within that private  
8 practice as well.

9 Q Okay. And are you familiar with Vivian Harrison,  
10 Kirk Harrison, and Brooke Harrison?

11 A Sure. Yes, I am.

12 Q Okay. I'm going to ask you to turn in the book  
13 that's in front of you, that smaller binder --

14 A Uh-huh (affirmative).

15 Q -- to tab number five. Do you recognize that  
16 letter?

17 A Yes, I do.

18 Q Okay. Is that a true and accurate copy of your  
19 letter to the Court dated June 29, 2016?

20 A Yes, sir.

21 MR. KAINEN: Your Honor, I move for the admission of  
22 Plaintiff's 5.

23 THE COURT: Any objection to the objection of  
24 Exhibit 5?



1 MR. SMITH: No objection, Your Honor.

2 THE COURT: Exhibit 5 is admitted.

3 (PLAINTIFF'S EXHIBIT 5 ADMITTED)

4 THE COURT: Well, we don't -- we don't have Exhibit  
5 5.

6 MR. KAINEN: I have extra copies of it.

7 MR. SMITH: This was the letter that was sent by Dr.  
8 Ali to --

9 MR. KAINEN: Yes. And then I got Dr. Paglini's  
10 report as well.

11 THE COURT: Okay. All right.

12 MR. KAINEN: You got a copy of it Kirk -- or Rad, I  
13 assume?

14 MR. SMITH: What's that?

15 MR. KAINEN: you got a copy of this?

16 MR. SMITH: I do.

17 THE WITNESS: Thank you.

18 BY MR. KAINEN:

19 Q Is it your understanding that Dr. Paglini requested  
20 you send this letter to the Court?

21 A Yes, it is.

22 Q Did you talk to Dr. Paglini subject matter of what  
23 he wanted in the letter?

24 A A -- a little bit. It was -- what we discussed was

1 the importance of the -- the court hearing, kind of what was  
2 happening.

3 Q The status update?

4 A Yes.

5 Q Okay.

6 A Yes, sir.

7 Q Did you indicate in your letter that the  
8 reunification counseling had been challenging to implement?

9 A Yes, sir.

10 Q Did you indicate in your letter that Brooke had  
11 presented resistance saying her class schedule and her dance  
12 schedule didn't allow her time for any -- for any such  
13 appointments?

14 A Yes, sir.

15 Q Did you indicate that despite your office's attempts  
16 to schedule appointments which did not conflict with Brooke's  
17 previous engage, Brooke continued to reject the majority of  
18 appointment offers?

19 A Yes, sir.

20 Q Did you indicate that on several occasions when  
21 Brooke accepted appointments she only -- she was later only  
22 note -- to notify your assistant shortly before the  
23 appointment and date and time that you would not be attending?

24 A Yes, sir.

1 Q Did you indicate that as of the date of the session,  
2 I'm sorry, the date of the letter, that Brooke and Kirk had  
3 only attended two sessions? In other words, between the time  
4 of the order and I think it was late 2015 or maybe January of  
5 2016 that as of July -- sorry, June 29, there had only been a  
6 total of two sessions and that neither session was completed  
7 in full and that during one sessions Brooke drafted -- I'm  
8 sorry, departed after one hour following which -- what was  
9 judged to be a panic attack and Brooke stated she would not  
10 participate in the remainder of the sessions and she left the  
11 office?

12 A That's right.

13 Q Okay. And that -- that was the April 12th  
14 appointment, correct?

15 A Yes, sir. Let me just be clear about that.

16 Q I'll -- I'll come back to that in a second. Okay.  
17 Is it true that you indicated that during your last session on  
18 April 12th was also prematurely concluded after one hour and  
19 it was during this session that Brooke stated that she would  
20 no longer schedule or attend any sessions despite any  
21 consequences of the Court -- that the Court might place on  
22 her?

23 MR. SMITH: Objection. This was in the session.  
24 Objection, privileged. It's confidential by order and by law.

1 MR. KAINEN: Okay. I'm asking if he stated it in  
2 his letter.

3 THE COURT: Well, the -- the letter's in the  
4 record --

5 MR. KAINEN: Right.

6 THE COURT: -- so --

7 MR. KAINEN: It's so it's admitted.

8 THE COURT: -- he can just read it from his letter.

9 So --

10 MR. KAINEN: Okay.

11 THE COURT: -- the objection is overruled to the  
12 extent it's something referred to it and the letter is already  
13 into the record.

14 MR. KAINEN: Thank you.

15 BY MR. KAINEN:

16 Q Did you indicate to the Court that Brooke stated she  
17 felt the ordered reunification sessions were unjust and unfair  
18 and she had a right to live with her mother if she chooses to?

19 A Yes.

20 Q Did you indicate your staff and Mr. Harrison and you  
21 and done everything within your power to comply with the court  
22 order of weekly two hours sessions?

23 A Yes, sir.

24 Q And that indi -- and did you indicate that

1 unfortunately your attempts are proving to be ineffective?

2 A Yes.

3 Q Did you further indicate that it was your opinion  
4 that Brooke had been overly empowered in this situation?

5 A Yes.

6 Q Did you indicate Brooke appears to want to be  
7 responsible for scheduling and directing appointments  
8 including the appointment length, frequency and participance?

9 A Yes.

10 Q Did you indicate it your opinion that Brooke's  
11 overseeing appointments is an unsuitable and counterproductive  
12 to the reunification process and you guys have been  
13 unsuccessful in commencing meetings between Brooke and her  
14 father?

15 A Yes.

16 Q And did you indicate that it's unclear of how much  
17 Brooke's mother Vivian had participated in this process that  
18 it may have been beneficial for Vivian to take a more active  
19 role in honoring the court order issued not done so already by  
20 supporting, encouraging, and enforcing Brooke's participation  
21 if necessary?

22 A Yes.

23 Q Who is it you believe that was overpowering Brooke  
24 in her refusal to comply with the court ordered appointments?

1 MR. SMITH: Objection, foundation.

2 THE COURT: Overruled.

3 THE WITNESS: I -- I can't -- I didn't determine or  
4 come to any conclusions about that. I -- my sense was that  
5 ultimately she just was acting very different than the  
6 majority of teenagers that we work with who are often times  
7 not empowered to schedule their own -- own appointments.  
8 So --

9 BY MR. KAINEN:

10 Q So normally you have a parent in that role.

11 A Yes.

12 Q Okay.

13 A That's right.

14 Q And in this case, you had one parent who was  
15 actively trying to make that happen, correct?

16 A t

17 Q And who was that?

18 A Kirk.

19 Q And you had one parent who was not a participant in  
20 that process, correct?

21 A As far as I know, yes.

22 Q And who was that?

23 A Vivian.

24 Q So the extent Brooke was feeling over empowered by

1 one of her parents, which parent would we be talking about?

2 A Well --

3 MR. SMITH: Objection, this calls for opinion  
4 testimony. And -- and --

5 MR. KAINEN: I'm asking in his letter.

6 THE COURT: Well, listen. But I -- yeah, but I  
7 don't know that I need that testimony, so I'm --

8 MR. KAINEN: Okay.

9 THE COURT: -- sustaining the objection.

10 BY MR. KAINEN:

11 Q The -- did you and Amanda communicate regarding  
12 efforts to set appointments with Brooke and Kirk?

13 A Yes.

14 Q Did Amanda tell you about her efforts regarding  
15 trying to schedule appointments?

16 A Yes.

17 Q Did she express any frustration to you regarding her  
18 efforts?

19 A Yes.

20 Q Were you ever told -- or did you ever learn that  
21 Brooke and Amanda -- I'm sorry, did you ever learn at any time  
22 that Brooke had indicated that her class and dance schedules  
23 prevented her from having a two hour session at any time?

24 MR. SMITH: Objection, hearsay. This -- this is not

1 even the person who heard the alleged --

2 MR. KAINEN: Well, I don't know.

3 MR. SMITH: -- statement

4 MR. KAINEN: He haven't even answered the question  
5 yet. I'm asking him if --

6 MR. SMITH: No. No. No. You said have you ever  
7 heard of a statement made to another.

8 MR. KAINEN: No, Brooke ever -- has Brooke ever  
9 indicated to --

10 THE COURT: To Amanda.

11 MR. SMITH: To Amanda.

12 MR. KAINEN: Oh, I'm sorry. I didn't -- then I -- I  
13 -- then I misstated the question. I'm sorry.

14 BY MR. KAINEN:

15 Q Were you ever told that Brooke -- that Brooke's  
16 class schedule and her dance schedule has prevented her from  
17 having two hour sessions --

18 MR. SMITH: Objection.

19 Q -- at any time?

20 MR. SMITH: Objection, hearsay unless he's saying  
21 well, did Brooke ever tell you.

22 THE COURT: The objection is sustained.

23 BY MR. KAINEN:

24 Q Okay. Did you ever -- did you ever become aware of



1 an allegation that was being made by anybody in the universe  
2 that Brooke could not ever attend two hour sessions because of  
3 her class and dance schedule?

4 MR. SMITH: Objection, hearsay, foundation.

5 MR. KAINEN: Okay. You have to have the  
6 foundational question to be able to establish it --

7 THE COURT: I --

8 MR. KAINEN: -- if that's anybody in the universe.  
9 Then the next question is how did you learn it. Now if  
10 there's going to be an objection, we can cross that one, but  
11 you can't take the foundational question out.

12 THE COURT: No, I -- I --

13 MR. KAINEN: Yeah.

14 THE COURT: And it's not as to foundation. I would  
15 overrule as to foundation.

16 MR. KAINEN: Right.

17 THE COURT: But now you're asking for this witness  
18 to -- to testify about a statement made by Brooke to another  
19 party --

20 MR. KAINEN: No, I'm not. I'm just -- I'm going to  
21 -- the next question is how did you learn that. And I think  
22 he's going to say that Brooke told him that he -- she couldn't  
23 do this. It was impossible. That's what I think is going to  
24 happen. I don't know.

1 MR. SMITH: Why don't we just ask him --

2 THE COURT: Then not ask --

3 MR. SMITH: -- the direct question?

4 THE COURT: -- that question?

5 MR. SMITH: Right.

6 MR. KAINEN: Well, I was trying, but somebody kept  
7 on objecting.

8 MR. SMITH: No.

9 THE COURT: Then let's --

10 MR. SMITH: I objected to --

11 THE COURT: Yeah, I'm --

12 MR. SMITH: -- that question.

13 THE COURT: Then -- then I'm -- I'm sustained the  
14 objection. So state it the way --

15 BY MR. KAINEN:

16 Q Did Brooke ever tell you she couldn't possibly ever  
17 attend two hour sessions because of her dance and class  
18 schedule?

19 A Yes.

20 THE COURT: Thank you.

21 MR. KAINEN: That was the question I started the  
22 whole thing with.

23 THE COURT: I don't think that was.

24 MR. SMITH: I don't think it was either.

1 MR. KAINEN: All right.

2 Q Were you aware that in an attempt to accommodate  
3 those purported limitations of her schedule that there was an  
4 adjustment made to one and a half hour sessions every week  
5 from 11:30 to 1:00 p.m. every --

6 A Yes.

7 Q -- Tuesday?

8 A Yes.

9 Q And were you aware that appointments were set up for  
10 five months straight?

11 A Yes.

12 Q Okay. Are you aware that once Brooke's class  
13 schedule was produced, it was revealed that Brooke had about a  
14 five hour block of open time between 10:30 and about 3:00  
15 o'clock on both Tuesdays and Thursdays?

16 A Yes.

17 Q Would that be consistent with what you were being  
18 told?

19 A No.

20 Q Okay. On the March 17th session, okay, that's the  
21 one I talked to you about, that was a session between Brooke  
22 and Kirk and you, is that correct?

23 A Yes, sir.

24 Q And that --

1 A March -- yes.

2 Q And that was a -- scheduled to be a two hour  
3 session, is that correct?

4 A Yes, sir.

5 Q How long did the session last?

6 A Approximately an hour.

7 Q Okay. And why did it end early?

8 A Brooke began experiencing anxiety which I thought  
9 was akin to a panic attack --

10 Q Okay.

11 A -- and left the office.

12 Q All right. The April 12th session, the -- did that  
13 session last two hours?

14 A No.

15 Q Okay. By way of background, you -- are you familiar  
16 with Dr. Paglini's report to the Court?

17 A A little bit, yes.

18 Q Okay. Are you aware of the fact that Brooke had  
19 indicated to Dr. Paglini in his report as recited by him on  
20 multiple occasions that she doesn't hate Kirk --

21 MR. SMITH: Objection, Your Honor. This report is  
22 confidential. It's confidential to everyone. It's not to be  
23 release to anyone, not without an order of the court. And I  
24 haven't had a chance to address that. And I don't know if

1 it's ever been released to review by Dr. Ali. We would first  
2 have to establish that.

3 But the information again Your Honor is --

4 THE COURT: What --

5 MR. SMITH: -- I started --

6 THE COURT: What's the -- what's the evidentiary  
7 objection?

8 MR. SMITH: The objection is that it's privileged  
9 under Rule 15 and I don't know that there was any order  
10 releasing it to Dr. Ali under EDCR 15 -- or -- yeah, EDCR  
11 5.13.

12 THE COURT: Okay. But I -- I don't know that the  
13 question was completed .

14 MR. KAINEN: I'm just asking if he's -- --

15 THE COURT: So I don't know that it applies.

16 MR. KAINEN: -- familiar with one of the allegations  
17 that was in there. That's all. It doesn't -- look, let's  
18 take it out in the universe, okay? Forget this. I -- I don't  
19 think it's a valid objection, but that's neither here nor  
20 there.

21 BY MR. KAINEN:

22 Q The --

23 MR. SMITH: Judge --

24 Q Are you aware --

1 MR. SMITH: -- interjecting the --

2 Q -- of Brooke --

3 MR. SMITH: -- commentary is --

4 Q -- stating to --

5 MR. SMITH: -- not appropriate.

6 Q -- Dr. Paglini that she doesn't hate Kirk, she loves  
7 Kirk, and she wants to have a relationship with Kirk?

8 A Yes, that came up in sessions

9 MR. SMITH: Objection, Your Honor. Move to strike.  
10 This is confidential information shared in sessions.

11 MR. KAINEN: I'm sorry, Brooke indicated her name is  
12 Emma Brooke. It occurred in a session with Dr. Paglini during  
13 the evaluation. It doesn't make it confidential for the whole  
14 universe. Just because something --

15 MR. SMITH: No, it --

16 MR. KAINEN: -- is stated there --

17 MR. SMITH: This is the foundation for trying to  
18 influence Dr. Ali --

19 MR. KAINEN: Absolutely --

20 MR. SMITH: -- in a particular (indiscernible).

21 MR. KAINEN: -- it is foundation.

22 MR. SMITH: The foundation to try to influence about  
23 a particular report and influence Dr. Paglini's here. Those  
24 reports are to be done by Dr. Paglini, shared by the Court and

1 the parties for the purpose of assessment of a psychological  
2 condition. That's not what -- why Dr. Ali is here today. He  
3 is a treating therapist who is limited by Nevada law and the  
4 American Psychological Association guidelines in regard to  
5 turning from role of therapist to --

6 MR. KAINEN: Okay.

7 MR. SMITH: -- forensic psychiatry.

8 MR. KAINEN: That is a misrepresentation and  
9 that's --

10 MR. SMITH: It isn't.

11 MR. KAINEN: -- designed to influence the witness.

12 MR. SMITH: It isn't.

13 THE COURT: Well, listen. But I'm -- I'm sustained  
14 the objection. I'm not going to go down that path with this  
15 witness.

16 MR. KAINEN: Okay.

17 BY MR. KAINEN:

18 Q Did Brooke make statements to you that were  
19 inconsistent with the idea that she doesn't hate Kirk, that  
20 she loves Kirk, and that she wants to have a relationship with  
21 Kirk?

22 MR. SMITH: Objection. And -- and this is designed  
23 to elicit testimony that we've talked about, Your Honor . And  
24 I would appreciate an order that identifies whether or not Dr.

1 Ali is here to render opinions or to talk about the  
2 confidential sessions. And it's --

3 MR. KAINEN: There's a difference between offering  
4 an opinion and offering as a fact witness what happened. The  
5 foundation for this case is that Brooke told Dr. Paglini one  
6 thing --

7 MR. SMITH: This is a speaking objection.

8 MR. KAINEN: -- Dr. -- over --

9 MR. SMITH: If there is a response to all I've  
10 objected to --

11 MR. KAINEN: Okay. Okay. --

12 MR. SMITH: -- is a --

13 MR. KAINEN: I'm -- I'm sorry.

14 MR. SMITH: -- it's privileged.

15 MR. KAINEN: I -- I listened and I sat quietly.  
16 It's my turn.

17 THE COURT: Listen.

18 MR. SMITH: I sat quietly as well.

19 THE COURT: What -- what is your --

20 MR. SMITH: So I don't need -- think I need --

21 THE COURT: What is your --

22 MR. SMITH: -- to hear this.

23 THE COURT: -- evidentiary objection?

24 MR. SMITH: My evidentiary objection is that the



1 request is that both -- there is an order regarding the  
2 confidentiality of the statements that are made by Brooke or  
3 others in the sessions and NRS 49 and I think I -- it's 025  
4 indicates that there is an absolute privilege that between the  
5 therapist and the individual even if others are present during  
6 family counseling, there is no distinction but the fact that  
7 another may be present for family counseling.

8           The doctor has no ability to reveal that privilege  
9 and I believe, and I think the law states consistent with  
10 other states that I've cited in the brief, that the parents  
11 cannot waive that privilege. That is -- especially where --  
12 parents that are involved in conflict.

13           THE COURT: All right.

14           MR. KAINEN: But what he's --

15           THE COURT: Mr. Kainen --

16           MR. KAINEN: -- what he's talking about is when the  
17 child attends therapy in a confidential setting, the parent  
18 can't then waive it. In this case, the -- both the parties  
19 were told at the beginning of both the sessions I believe, and  
20 I'll ask the question, that this was not privileged  
21 counseling, that a report could be made to the Court, and I'll  
22 ask foundation to that one.

23           THE COURT: I -- I'd rather establish that --

24           MR. KAINEN: Great.

1 THE COURT: -- because you've referenced that, yeah.

2 BY MR. KAINEN:

3 Q Did you have discussions with Brooke and Brooke and  
4 Kirk regarding whether or not the process you were engaging in  
5 was confidential or whether it could be disclosed to the Court  
6 and the lawyers?

7 A Yes, I did.

8 Q And what was the nature of that discussion?

9 A That ultimately it's not confidential if we have the  
10 parents involved and they're both in agreement that  
11 confidential -- confidentiality in sessions is held by the  
12 parents and not the minor. So ultimately when we started the  
13 process and therapy has begun, both Mom had Dad had  
14 confidentiality rights to the information and session and then  
15 ultimately when we came back and we did the reunification  
16 therapy, we revisited the issue of confidentiality and the  
17 same was shared that ultimately because both parents --

18 Q Had consented to this process that you can be called  
19 as a witness and answer questions of the Court or the lawyers  
20 if you were so called, is that correct?

21 A Yes. Yes.

22 MR. SMITH: May I voir dire the witness Your Honor  
23 on this issue?

24 MR. KAINEN: How about I finish asking the

1 questions?

2 MR. SMITH: Well, no.

3 THE COURT: Well, it's --

4 MR. SMITH: But this is a critical issue on the  
5 issue of --

6 MR. KAINEN: Great.

7 MR. SMITH: -- privilege.

8 MR. KAINEN: Then I'm not --

9 THE COURT: Well, are -- are you finished with --

10 MR. KAINEN: No.

11 THE COURT: -- asking questions about the  
12 confidentiality aspect?

13 MR. KAINEN: No.

14 THE COURT: Because I am going to allow Mr. Smith --

15 MR. KAINEN: I'm -- I'm --

16 THE COURT: -- to voir dire.

17 MR. KAINEN: -- not done with that.

18 THE COURT: Okay. All right.

19 BY MR. KAINEN:

20 Q So the discussion was had with both Brooke  
21 individually that you -- that what was going on was not  
22 confidential and she could be called -- and you could be  
23 called as a witness, correct?

24 A Well, together. They were both there.

1 Q Okay.

2 A Yeah.

3 Q All right. So this was with Brooke and Kirk.

4 A Yes.

5 Q Okay. And have you received -- and that  
6 communication by the way occurred going back as far as 2014,  
7 is that correct?

8 A Well, that -- that -- regarding the -- the regular  
9 therapy and then in terms of the reunification that occurred,  
10 I think I have it noted here, on March 17th.

11 Q Well, I'm saying -- and so it occurred both at the  
12 beginning.

13 A Yes.

14 Q It occurred when you met with individually with  
15 Vivian, correct?

16 A Yes.

17 Q It occurred when you met individually with Kirk,  
18 correct?

19 A Yes.

20 Q And it occurred when you met with Brooke --

21 A Yeah.

22 Q -- individually.

23 A Yes, and it's in our paperwork to the consent forms  
24 that we have to the -- her parents sign. It's spelled out in

1 there as well.

2 Q And then the fourth time it occurred is when you met  
3 with Kirk and Brooke together.

4 A Yes.

5 MR. KAINEN: And now with that foundation, I guess  
6 if Rad wants to voir dire the witness on those issues without  
7 taking over the -- the examination, I'll --

8 THE COURT: Okay. I'll -- I'll permit voir dire.

9 VOIR DIRE EXAMINATION

10 BY MR. SMITH:

11 Q So Dr. Ali, were you aware that there was a  
12 parenting plan in this case?

13 A Yes.

14 Q And you reviewed that parenting plan as part of your  
15 work, correct? It was provided to you. And in that parenting  
16 plan, was there any communication --

17 MR. KAINEN: I have an objection to this -- to this  
18 line of questioning, because this is where we get into the  
19 fact, and Dr. Ali was not familiar with how his role  
20 changed --

21 THE COURT: So what --

22 MR. KAINEN: -- in the eyes of this Court.

23 THE COURT: What's your evidentiary objection?

24 MR. KAINEN: That the -- the found -- that -- what

1 he's getting ready to this Court is --

2 MR. SMITH: This -- this is not an evidentiary --  
3 this is an speaking objection designed to influence the --

4 THE COURT: Yeah, I --

5 MR. SMITH: -- witnesses.

6 THE COURT: -- I need evidentiary objections on both  
7 -- both of you have engaged in this, should be one or two  
8 words.

9 MR. KAINEN: I'm sorry, the last one was 10 minutes  
10 on --

11 THE COURT: I know, but listen.

12 MR. KAINEN: -- on the argument.

13 THE COURT: Both -- both sides have engaged in this  
14 and I -- I need to get this back to where it needs to be.

15 MR. KAINEN: We discussed this. Dr. Ali's role  
16 changed. And so the idea that he's going to present him in  
17 this --

18 MR. SMITH: What's the evidentiary objection?

19 THE COURT: Listen. Yeah. Yeah.

20 MR. SMITH: I think you've just --

21 THE COURT: Ask --

22 MR. SMITH: -- indicated --

23 THE COURT: Ask --

24 MR. KAINEN: It's leading and it misrepresents the

1 record.

2 THE COURT: Overruled.

3 MR. SMITH: What?

4 MR. KAINEN: And it's -- all right. Then it's not  
5 relevant to what's going on here. In other words, there's --  
6 there's your objection. It's not relevant, because this deals  
7 with a role that was assigned --

8 THE COURT: Overruled.

9 MR. KAINEN: -- and done in 2013 that was never  
10 implemented.

11 BY MR. SMITH:

12 Q So --

13 THE COURT: The objection's overruled.

14 Q So Dr. Ali, the -- were you aware that in the  
15 parenting plan there was a confidentiality provision?

16 MR. KAINEN: Objection, this calls for a legal  
17 conclusion. This is -- in other words, but what's in the  
18 parenting plan is of no import to Dr. Ali. It's up to you to  
19 decide whether or not that carries any weight.

20 THE COURT: And ultimately that is my call, but he  
21 has -- still ask the witness the question. So it's overruled.  
22 The -- the objection is overruled.

23 THE WITNESS: I'm sorry, I don't recollect that.

24 BY MR. SMITH:

1 Q Do you have any recollection of your -- of looking  
2 at the agreement and -- and understanding what your role was  
3 to be in the case of the parenting plan?

4 A Yes.

5 Q Okay. I'd like to read to you a portion of the  
6 parenting plan and tell me if you recall whether or not that  
7 -- that rings a bell.

8 MR. SMITH: The Court's indulgence.

9 (COUNSEL AND CLIENT CONFER BRIEFLY)

10 Q Dr. Ali, were you familiar with the parenting plan's  
11 prohibition on you ever testifying as part of this case?

12 A No.

13 Q Were you aware that your information was not the  
14 information that you gleaned in counseling with Brooke,  
15 individual counseling, was not to be shared with anyone?

16 MR. KAINEN: Objection, this is -- that is -- first  
17 of all, we're now into cross examination. We're dealing with  
18 a legal issue that you have to make a judgment call on.  
19 You're familiar with the record.

20 THE COURT: Yeah, the --

21 MR. SMITH: I don't think Mr. --

22 THE COURT: Listen. The voir dire needs to be  
23 limited to this issue of confidentiality.

24 MR. SMITH: It is this issue. If he -- if he's



1 simply not aware that -- that he was under a duty of  
2 confidentiality, I'm wondering how he met his duty under the  
3 order and how he had put --

4 BY MR. SMITH:

5 Q Were you under -- under the impression Dr. Ali that  
6 your sessions weren't confidential with Brooke?

7 A The second round and --

8 Q First round.

9 A First round, I'm not following the question.

10 Q Were your sessions with Brooke confidential as --  
11 THE COURT: The first round --

12 A Kind --

13 THE COURT: -- of sessions.

14 A Kind --

15 Q The first round.

16 A As far as the --

17 Q The first sessions that you had with Brooke.

18 A As far as the Court's concerned?

19 Q As far as your concern --

20 A Yes.

21 Q -- did you believe that they were confidential?

22 A Of -- of course, but again the parents hold  
23 privilege. And so in terms of confidentiality, you know,  
24 ultimately if the parents -- either one of the parents who has

1 a legal custody with the client or the child can access the  
2 information at their will. And so yes, in terms of  
3 confidentiality with Brooke, there is a, you know, level of  
4 protection that we as therapists for teenagers because there's  
5 information that often times they might not want to share with  
6 their parents and as long as they're safe and nobody's in  
7 harm's way, then often times it's something that's respected,  
8 you know, in treatment.

9 But at any given time, it -- parents have every  
10 right to the information that their children in treatment  
11 discuss or any documentation that we put together. So --

12 Q Even if there's no agreement among the parents as to  
13 their confidentiality? In other words, the -- if only one  
14 parent can tell you that the information is not confidential,  
15 that was your understanding?

16 A Yeah, because both parents have legal, you know,  
17 custody of the child so then technically their information is  
18 available to them, the -- the child's information. And so we  
19 -- you know, obviously we're not able to disclose that  
20 information to outside parties without parental consent.

21 Q Okay. So your statement is that you received  
22 parental consent to make those sessions and talking about now  
23 the sessions with --

24 MR. KAINEN: Objection, relevance. At this point,

1 we're not dealing with the 2012, 2013 counseling. We're not  
2 going to discuss it, I'm not bringing it up, and I realize  
3 this is a nice trip down memory lane, but it's not relevant to  
4 what happened in joint counseling between Kirk and Brooke two  
5 and a half years later.

6 THE COURT: Objection --

7 MR. SMITH: Well --

8 MR. KAINEN: And --

9 THE COURT: The object --

10 MR. SMITH: Well --

11 MR. KAINEN: -- we're beyond -- we're beyond the  
12 scope of what -- what wouldn't be a normal voir dire.

13 THE COURT: The objection's overruled.

14 BY MR. SMITH:

15 Q So is it your understanding and was it your  
16 understanding that if -- that both parties agreed to waive  
17 confidentiality with sessions associated with just Brooke,  
18 that's your understanding?

19 MR. KAINEN: Objection, it misrepresents his prior  
20 statement.

21 THE WITNESS: And -- and --

22 MR. SMITH: I'm asking him.

23 THE WITNESS: Yeah.

24 THE COURT: Overruled.

1 THE WITNESS: Mr. Smith, I -- do you mean for the  
2 purposes today you mean or in past or --

3 BY MR. SMITH:

4 Q As for any purpose. So you had sessions with just  
5 Brooke after approximately 2012, correct?

6 A Yes.

7 Q And you had several of those.

8 A Yeah.

9 Q And you established a relationship with her.

10 A Yes.

11 Q And you advised her in those sessions that those  
12 sessions were confidential.

13 A I advised her like I do with all my clients that  
14 their information is protected outside of the family. And  
15 with the information that is discussed can always be shared  
16 with the parents and given that they're the holders of  
17 confidence. And so in Brooke's case like in all the other  
18 cases that I work with with children or adolescents, minors, I  
19 know I share with them the parameters and the limits of  
20 confidentiality and -- and I did with that Brooke as well.

21 That shifted, of course, you know, when the  
22 information -- well, when we had treatment with -- with Kirk  
23 and -- and Brooke together.

24 Q What was the shift? What caused --

1 A Well, the --

2 Q -- the shift?

3 A I -- I think that's when it became, you know, under  
4 the Court's direction and we were beginning to do  
5 reunification treatment as opposed to the individual therapy  
6 for Brooke and certainly I'm not here to testify on anything  
7 that she discussed in treatment.

8 Q Okay. Well, what I'm concerned about is you're  
9 being asked a question regarding what she said in treatment.  
10 So I want to know what your understanding is --

11 MR. KAINEN: Objection, that misrepresents the  
12 record. I'm --

13 MR. SMITH: It doesn't.

14 MR. KAINEN: -- talking about -- I'm not asking for  
15 a --

16 THE COURT: Well --

17 MR. KAINEN: -- statement that was made --

18 THE COURT: -- listen.

19 MR. KAINEN: -- in treatment.

20 THE COURT: It was not in the form of a question, so  
21 it's stricken.

22 BY MR. SMITH:

23 Q Okay. So -- so Dr. Ali, is it your understanding  
24 now that the information that Kirk and -- and Brooke share

1 with you in the sessions, the family reunification therapy,  
2 that that is not subject to privilege?

3 A That is not subject to privilege. The information,  
4 yes, because we have a subpoena unfortunately that -- that  
5 supercedes that. So ultimately even if --

6 Q What subpoena?

7 A Today's subpoena, me being here today.

8 Q So you believe by being subpoenaed to court, it  
9 renders all of the communication between you -- being, Kirk,  
10 you, and Brooke non-confidential?

11 A Not all the information, just what -- what his honor  
12 requests.

13 Q Okay. What subpoena are you referring to?

14 A The -- the one that brought me today?

15 Q Yes.

16 A Well, yeah, that -- that subpoena.

17 Q Which subpoena, from my office?

18 A Both -- both of your offices.

19 Q Okay.

20 A Yeah.

21 Q The scope of my subpoena was solely limited --  
22 MR. KAINEN: Objective.

23 Q -- to --

24 MR. KAINEN: Argumentative.

1 THE COURT: Sustained. That's not in the form of a  
2 question

3 BY MR. SMITH:

4 Q Wasn't the scope of my -- the subpoena from our  
5 office solely related to the documents in your file regarding  
6 scheduling?

7 A Yes.

8 Q Okay.

9 A Yeah.

10 Q So -- so the subpoena that you're referring to that  
11 grants you this right to release confidential information is a  
12 subpoena by Mr. Kainen's office?

13 A No, I'm not -- I'm not prepared to release  
14 confidential information. I -- I'm -- I'm here to -- as far  
15 as I understand it from both parties to kind of just comment  
16 on the scheduling challenges, but not to talk about anything  
17 that came up in session.

18 Q Is it your understanding under Nevada law that  
19 sessions between individuals regardless of their age are  
20 confidential unless in -- in both parents for a child under 18  
21 release that confidentiality?

22 A I'm not exactly clear about the Nevada law in that  
23 regard. I know ethically speaking which is also kind of our  
24 guiding principle as well that information that is again

1 considered or deemed potentially helpful to a child -- a  
2 child's cause, their well-being, their safety, needs to be  
3 shared with the parents. And so ultimately --

4 Q Are you talking about mandatory reporting time?

5 A Exactly.

6 Q Okay.

7 A Yeah.

8 Q In the absence of just mandatory reporting, is the  
9 information shared to you by a child confidential in the  
10 absence of a consensus of the parents with legal custody  
11 granting you the right to release that information?

12 A Again, as far as I -- as far as I know in -- in my  
13 years of practice, it's that -- the parents hold  
14 confidentiality privilege and that the information that  
15 children share is available to the parents. I'm -- I'm not  
16 aware of any law that limits that for children.

17 MR. KAINEN: At this point, again, the voir dire has  
18 lasted longer than my cross examination and we're -- like  
19 we're parsing -- I mean --

20 THE COURT: Well, listen. Listen. The ultimate  
21 question for me is did you advise Brooke that your sessions as  
22 it related to the reunification process were not confidential?

23 THE WITNESS: Yes.

24 Q Did -- did you receive a letter from my office



1 indicating that -- that from our perspective and Vivian's  
2 perspective --

3 MR. KAINEN: Objection, relevance. I mean --

4 MR. SMITH: Those statements --

5 MR. KAINEN: -- what does it matter what Rad --

6 MR. SMITH: -- there confidential.

7 MR. KAINEN: What does it --

8 THE WITNESS: Yes.

9 THE COURT: Overruled.

10 BY MR. SMITH:

11 Q And did you respond --

12 MR. KAINEN: Okay. Okay.

13 Q -- to that letter?

14 MR. KAINEN: But now we're going further down that  
15 and you've overruled. I'm sorry, I'm sorry.

16 THE COURT: Yeah.

17 Q Did you restall -- did you respond to that -- that  
18 letter?

19 A I was advised by a clinical assistant to contact  
20 your office and she spoke to somebody there about the process,  
21 she clarified.

22 Q So the answer is you've never answered that letter  
23 directly, correct? You've never sent a letter to me --

24 A No.

1           Q     -- indicating what your beliefs were about the  
2 privilege that was exerted in that document.

3           A     Right.

4           THE COURT: All right. Mr. Kainen.

5           MR. KAINEN: Okay.

6                         DIRECT EXAMINATION CONTINUED

7 BY MR. KAINEN:

8           Q     The last question we asked was has Brooke during the  
9 sessions with Kirk and her and you openly stated things that  
10 are inconsistent with her prior statements to Dr. Paglini that  
11 she doesn't hate Kirk, she loves him, and she wants to have a  
12 relationship with him?

13           MR. SMITH: Objection, it's privileged.

14           MR. KAINEN: Okay. Can -- can -- I have no problem  
15 with the standing objection, but honestly if we're going to do  
16 this all day --

17           MR. SMITH: This one I don't want a standing  
18 objection on. This is a really --

19           MR. KAINEN: Okay. Then --

20           MR. SMITH: -- important --

21           MR. KAINEN: Then we discussed it --

22           MR. SMITH: -- issue.

23           THE COURT: Let me ask you, Mr. Kainen, because I --  
24 can't this information come in through Dr. Paglini?

1 MR. KAINEN: No, because Dr. Paglini wasn't there.

2 THE COURT: I -- I understand that, but you've  
3 already established a record in terms of the -- the  
4 nonexistence of the sessions and the challenges and --

5 MR. KAINEN: What I'm talking about is not -- in  
6 other words, yes. I --

7 THE COURT: I understand.

8 MR. KAINEN: -- can ask Dr. Paglini what he  
9 determined. And what I'm trying to find out now is -- or what  
10 I'm trying to make a record of is the fact that what was  
11 stated to Dr. Ali in sessions with my client and in front of  
12 my client was inconsistent with what Dr. Paglini was told. In  
13 other words, Dr. Paglini was told I love my dad, I want a  
14 relationship with him, I don't hate him. Dr. -- Dr. Ali was  
15 told the exact opposite.

16 MR. SMITH: This is grossly --

17 MR. KAINEN: The only way --

18 MR. SMITH: -- inappropriate. Now Mr. Kainen is  
19 guilty of doing it. These are privileged matters. And to  
20 reveal them --

21 MR. KAINEN: And -- and don't --

22 MR. SMITH: -- in this context is a violation of  
23 law --

24 THE COURT: I'm -- I'm --

1 MR. SMITH: -- and that's --

2 MR. KAINEN: No, it's not.

3 MR. SMITH: -- my objection.

4 THE COURT: Well, listen. I'm sustained the  
5 objection.

6 MR. KAINEN: What -- what question can I ask at this  
7 point? Because --

8 THE COURT: I don't know if I need anything further.  
9 It's up to you.

10 MR. KAINEN: Okay.

11 BY MR. KAINEN:

12 Q In front of Kirk, did Brooke ever indicate she  
13 didn't like Kirk and didn't want a relationship with him?

14 MR. SMITH: Objection, it's privileged.

15 MR. KAINEN: It can't -- okay, we just -- we've  
16 spent a half hour doing foundation where the discussion was  
17 there was no privilege, Brooke was warned, she was told there  
18 was no privilege, my client was there, he's the holder of the  
19 priv -- privilege even if there was one and this was the  
20 statement made to him by his daughter.

21 MR. SMITH: Look, neither --

22 MR. KAINEN: And -- and we have established by -- by  
23 the witness that there was no privilege.

24 MR. SMITH: Neither --

1           MR. KAINEN: So is that like not -- I mean, how is  
2 that --

3           MR. SMITH: May I respond, Your Honor? Neither the  
4 doctor nor Kirk holds this privilege.

5           MR. KAINEN: Well, that's great.

6           MR. SMITH: Brooke holds this --

7           MR. KAINEN: But that's not --

8           MR. SMITH: -- privilege.

9           MR. KAINEN: -- what the voir dire said and that's  
10 not what the testimony says and that's not what the evidence  
11 actually says.

12          THE COURT: I'm sustaining the objection.

13 BY MR. KAINEN:

14          Q Did Brooke ever indicate to you she wasn't coming  
15 back for anymore sessions?

16          MR. SMITH: Objection, privileged.

17          THE COURT: Overruled.

18          THE WITNESS: Yes.

19 BY MR. KAINEN:

20          Q Why did she indicate she wasn't coming back for more  
21 sessions?

22          MR. SMITH: Objection, privileged.

23          THE COURT: Overruled.

24          THE WITNESS: She didn't think that reunification

1 was helpful and needed and that she disliked her dad and that  
2 wasn't going to change with therapy.

3 BY MR. KAINEN:

4 Q Okay. Was -- were those statements consistent, the  
5 ones you just related, or were those one offs?

6 MR. SMITH: Objection, privileged.

7 MR. KAINEN: Well, is that -- is that --

8 MR. SMITH: And -- and I don't understand the  
9 question. It's vague and ambiguous.

10 THE COURT: Sustained.

11 BY MR. KAINEN:

12 Q I'm sorry, was that an anomaly that that was just a  
13 one time thing that was said that she didn't think that this  
14 was worthwhile, she didn't want to participate, she didn't  
15 like her dad, she didn't have to attend, whatever it is, was  
16 this just a one time thing out of frustration that came up or  
17 was this something that had been a pattern that had existed  
18 for some time?

19 MR. SMITH: Objection, privileged.

20 THE COURT: Overruled.

21 THE WITNESS: That was not a one time thing.

22 BY MR. KAINEN:

23 Q Okay.

24 A And again, to be clear, we're talking about during

1 the time --

2 Q Yeah, I'm with you.

3 A -- that Kirk and Brooke were together.

4 Q Was Brooke's statement that she wouldn't participate  
5 in anymore sessions clear and emphatic?

6 MR. SMITH: Objection, privileged.

7 THE COURT: Overruled.

8 THE WITNESS: Emphatic.

9 BY MR. KAINEN:

10 Q Okay. Was the April session cut short by Brooke as  
11 well?

12 A April --

13 Q The April 12th session, was that -- we previously  
14 spoken about the March --

15 A Yes.

16 Q -- session and now we're talking about the April --  
17 it was cut short by Brooke as well?

18 A Yes.

19 Q Okay. Okay. October 6th, you had a subsequent with  
20 just Brooke, is that correct?

21 A Yes.

22 Q Okay. As a result of that meeting, did you and Kirk  
23 meeting -- you, Brooke, and Kirk start -- tired -- tried  
24 meetings again?

1 A Yes.

2 Q Okay. And did you meet on November 18th?

3 A Yes.

4 Q That was the first session after it started again?

5 A Yes.

6 Q And that had been -- November 18th would have been  
7 the first session after April 12th, correct?

8 A Say that again?

9 Q For -- November 18th would have been the next  
10 reunification session after April 12th. In other words, there  
11 had been a lapse of about seven months.

12 A Yes.

13 Q Okay. Did that -- that was a -- a two hour meeting  
14 that was scheduled to be, right?

15 A Yes.

16 Q And how long did it last?

17 A I don't have the -- the time frame, but she -- she  
18 arrived late and that's also when we discussed the  
19 confidentiality and her status as a minor.

20 Q Okay. And did she leave early as well?

21 A I don't know. I don't --

22 Q Okay.

23 A I don't have that document.

24 Q All right. The session didn't last two hours?



1 A Yes.

2 Q Kirk was there to participate and participate -- was  
3 there for two hours?

4 A Yes.

5 Q Okay. He didn't end it early or -- or arrive late?

6 A No.

7 Q Okay. There was a December 2nd session, is that  
8 correct?

9 A Yes.

10 Q And that was a two hour session, is that correct?

11 A Yes.

12 Q during that session, did that go the full distance?

13 A Yes. Well, she arrived 25 minutes late to that  
14 appointment.

15 Q Okay. So it was about an hour se -- it was a little  
16 over an hour session.

17 A Yeah.

18 Q Okay. And -- yeah, that session -- did Brooke  
19 demand that that sessions be cut short as well?

20 A Yes.

21 Q Okay. So she was late coming in and she left early,  
22 correct?

23 A Yes.

24 Q Okay. Do you know about how long you actually met

1 in that session?

2 A I don't have that here --

3 Q Okay.

4 A -- with me.

5 Q That -- okay, let's skip that one. On January 6th,  
6 is that the next session?

7 A Yes.

8 Q And that -- did that session last for approximately  
9 one hour?

10 A About an hour, yes. She --

11 Q It was scheduled to be a two hour session, correct?

12 A Yeah, she arrived 20 minutes later.

13 Q And left early.

14 A Yes.

15 Q Okay.

16 MR. KAINEN: Yeah, no, I'm getting there.

17 Q Was the next scheduled session was Friday -- last  
18 Friday the 13th, correct?

19 A Yes.

20 Q And did that session take place?

21 A No.

22 Q Why not?

23 A Brooke said that she wanted to wait until after  
24 today's meeting --

1 Q Okay.

2 A -- to -- or after today's court date to -- to pick  
3 up.

4 Q All right. So if a representation was made to this  
5 Court that the reason it didn't go forward was because Kirk  
6 didn't want to do it, would that a truthful representation?

7 A Not as far as, you know, I'm aware.

8 Q Okay. Did you find consistent cooperation from Kirk  
9 in the scheduling of the sessions and the willingness to  
10 participate and to make himself available?

11 A Yes.

12 Q did you find consistent cooperation from Brooke in  
13 the scheduling of appointments and willingness to make her  
14 available?

15 A Unfortunately not, no.

16 Q Did you find support -- consistent support and  
17 participation and help in making Brooke available through  
18 Vivian?

19 A I -- I'm -- I'm not responsible for the -- for the  
20 scheduling, so I don't know what Vivian's part in the  
21 scheduling was, but I know for Brooke it was -- it was very  
22 difficult to pinpoint sessions and have this process be a  
23 priority over school and dance.

24 Q Okay. Are you aware of the fact that after your --

1 you're familiar with the medical reimbursement issue dispute  
2 that occurred in this case?

3 A Yes.

4 Q Okay.

5 MR. SMITH: Objection, foundation, privileged.

6 MR. KAINEN: It's foundational to the next question.  
7 I'm trying to get a point and time. It's all I'm doing.

8 THE COURT: The objection's pretty much --  
9 overruled.

10 BY MR. KAINEN:

11 Q Okay. Did there -- are you aware of any significant  
12 actions that immediately followed the medical reimbursement  
13 issue in terms of moving forward with the relationship between  
14 Kirk and Brooke?

15 MR. SMITH: Objection. Because I don't know the  
16 foundation of it, I have to object as to privilege. I can  
17 only assume that information came within the family therapy  
18 sessions.

19 THE COURT: Then -- then what's the evidentiary  
20 objection?

21 MR. SMITH: Both foundation and privileged.

22 THE COURT: Sustained. As to foundation.

23 MR. KAINEN: Okay. Let me rephrase this.

24 BY MR. KAINEN:

1 Q Did there come a point in time when you became aware  
2 that Brooke had removed all of her clothing from Kirk's house?

3 MR. SMITH: Objection, foundation, privilege.

4 THE COURT: Sustained.

5 MR. SMITH: I don't know why we can't just ask a  
6 direct question.

7 THE COURT: Sustained.

8 BY MR. KAINEN:

9 Q Did Brooke remove all of her clothing from Kirk's  
10 house within two days after she was participating in a -- or  
11 she was asked to participate in a telephone call regarding  
12 medical reimbursement?

13 MR. SMITH: Objection, foundation.

14 THE COURT: Sustained.

15 BY MR. KAINEN:

16 Q Did Brooke openly indicate in session between you  
17 and Kirk and her that her father didn't want to pay anything  
18 to support her medically?

19 MR. SMITH: Objection, privileged.

20 THE COURT: Sustained.

21 MR. KAINEN: What -- on what basis, Your Honor? The  
22 privilege be -- while my client was in the room?

23 THE COURT: Yes, sustained.

24 MR. KAINEN: All right. So is the Court going to

1 treat as privileged anything that happened even when my client  
2 was in the room and it's stated in front of him?

3 THE COURT: Sustained.

4 MR. KAINEN: No, I mean, I'm -- I'm trying to ask so  
5 I don't waste the --

6 MR. SMITH: Judge --

7 MR. KAINEN: -- the time.

8 MR. SMITH: -- can we --

9 THE COURT: Let's -- let's move on.

10 MR. SMITH: -- can we simply go forward? Thank you.

11 THE COURT: Yeah, let's move on. Let's take a  
12 break.

13 MR. SMITH: Thank you.

14 (COURT RECESSED AT 15:17 AND RESUMED AT 15:39;  
15 REMAINDER OF PROCEEDINGS CONTAINED IN VOLUME II)

16 \* \* \* \* \*

17 ATTEST: I do hereby certify that I have truly and  
18 correctly transcribed the digital proceedings in the above-  
19 entitled case to the best of my ability.

20

21

22

23

24

*Adrian Medrano*

\_\_\_\_\_  
Adrian N. Medrano



FILE COPY

AUG 31 2017

COPY

A.App. 3153

FILED

AUG 31 2017

*John D. Harrison*  
CLERK OF COURT

1 TRANS

2  
3  
4  
5 EIGHTH JUDICIAL DISTRICT COURT

6 FAMILY DIVISION

7 CLARK COUNTY, NEVADA

8  
9 KIRK ROSS HARRISON, )

10 Plaintiff, )

11 vs. )

12 VIVIAN HARRISON, )

13 Defendant. )

CASE NO. D-11-443611-D

DEPT. Q

(SEALED)

14  
15 BEFORE THE HONORABLE BRYCE C. DUCKWORTH  
DISTRICT COURT JUDGE

16 TRANSCRIPT RE: EVIDENTIARY HEARING - VOL. II

17 WEDNESDAY, JANUARY 18, 2017

18 APPEARANCES:

19 The Plaintiff:

20 For the Plaintiff:

KIRK ROSS HARRISON

EDWARD KAINEN, ESQ.

3303 Novat St., #200

Las Vegas, Nevada 89129

(702) 823-4900

22 The Defendant:

23 For the Defendant:

VIVIAN MARIE LEE HARRISON

RADFORD SMITH, ESQ.

2470 St. Rose Pkwy., #206

Henderson, Nevada 89074

(702) 990-6448



I N D E X   O F   W I T N E S S E S

PLAINTIFF'S  
WITNESSES:

DIRECTCROSSREDIRECTRECROSS

AMANDA THORPE (telephonic)	35	56	61/63	61/64
DR. JAMIL ALI	65/100	118	153	158
KIRK HARRISON	173	--	--	--
DR. JOHN PAGLINI	179	--	--	--

DEFENDANT'S  
WITNESSES:

(None presented)

\* \* \* \* \*

I N D E X   O F   E X H I B I T S

PLAINTIFF'S  
EXHIBITS:

ADMITTED

1 - Dr. Paglini report	181
2 - Mr. and Mrs. Harrison email	184
3 - Dr. Paglini email	183
4 - Dr. Paglini letter	182
5 - Dr. Ali letter	67
6 - Nevada State High School email	170
7 - Nevada State High School form	168
8 - Nevada State High School document	168
9 - Mr. Harrison affidavit	175
10 - Mr. Harrison custody time	178

DEFENDANT'S  
EXHIBITS:

(None presented)

1 LAS VEGAS, NEVADA

WEDNESDAY, JANUARY 18, 2017

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

3 (COURT RECESSED AT 15:17 AND RESUMED AT 15:39)

4  
5 THE COURT: -- regarding the -- we're back on the  
6 record in the Harrison matter. We'll continue with the direct  
7 examination of Dr. Ali.

8 MR. KAINEN: Okay.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. KAINEN:

11 Q Moving onto your discussions with Dr. Paglini, okay,  
12 did you report to Dr. Paglini that since the medical billing  
13 issue Kirk has -- I'm sorry, Brooke has not wanted to see her  
14 father?

15 A When we had our discussion about the case?

16 Q When you and -- when you and Dr. Paglini spoke, did  
17 you report to him that since the medical billing issue Kirk --  
18 or Brooke took her belongings from Kirk's house and hasn't --  
19 didn't want to see him afterwards?

20 A I don't recollect if -- if I made that specific  
21 connection, but I know I shared with him that she was not --  
22 that she had moved her belongings, yes.

23 Q Okay. And you shared that the medical billing issue  
24 for whatever reason was a significant event for her.

1           A     I'm not -- I don't recollect if I had said that  
2 specifically to him.

3           Q     Okay. Is it your belief that it was a significant  
4 event?

5           A     Yes.

6           Q     Okay.

7           MR. SMITH: Objection, move to strike.

8           Q     According to Dr. --

9           MR. SMITH: Calls for opinion testimony.

10          THE COURT: Overruled.

11 BY MR. KAINEN:

12          Q     According to what you told Dr. Paglini, your first  
13 meeting with Brooke occurred on February 25, 2014, correct?

14          A     Yes.

15          Q     Okay. And at that point she was 14 years old, is  
16 that correct?

17          A     Yes.

18          Q     And it was noteworthy you reported to Dr. Paglini  
19 that teenage discretion came up at the beginning of that very  
20 first meeting, correct?

21          A     Yes.

22          Q     Okay.

23          A     That it was discussed during that meeting.

24          Q     Okay. Okay. You also reported to him that at that

1 meeting Brooke reported that she believed when she was 16  
2 years old she would be more empowered regarding where she  
3 would live, is that correct?

4 A Yes.

5 Q Okay. And in fact, you indicated to Dr. Paglini  
6 that when Brooke was 15 years old she indicated that when she  
7 was 16 years old she was allowed to decide who she wanted to  
8 live with and that she would only want to live with her mom  
9 and only visit Kirk, correct?

10 A Yes.

11 Q Okay. Has the teenage discretion provision as  
12 carried out in this case as implemented, as you've seen it,  
13 been counterproductive to a positive parent-child  
14 relationship?

15 A Yes.

16 MR. SMITH: Objection.

17 MR. KAINEN: No further questions.

18 MR. SMITH: Move to strike, calls for opinion  
19 testimony.

20 THE COURT: Sustained. Okay. Cross examination?

21 CROSS EXAMINATION

22 BY MR. SMITH:

23 Q So Dr. Paglini (sic), there is a provision in --  
24 excuse me, Dr. Ali, in the -- the parties' parenting plan that

1 you said you read. So I'd like to read that provision --  
2 well, first of all, did you ever -- when was the first time  
3 you ever met Kirk Harrison?

4 A I -- I don't have the exact date, but it was right  
5 around that same time that I had met Brooke.

6 Q Okay. And that was in approximately when?

7 A 2014.

8 Q Okay. And did you ever have a -- a session with  
9 just Kirk?

10 A Yes.

11 Q When was that?

12 A I had sessions with both -- with Kirk privately as  
13 well as Vivian privately -- and that was shortly after the  
14 process started.

15 Q Did you ever have another private session with Kirk  
16 other than that one?

17 A At the beginning of the process or --

18 Q At any time.

19 A Yes, we had a session on -- it was scheduled for the  
20 both of them to be there, but Brooke didn't come on the 24th  
21 or 5th -- 20 -- August 24th of 2015.

22 Q Okay. So other than August in 2015, at anytime did  
23 you have a single session with Mr. Harrison? Did you ever see  
24 him on his own?

1 A I don't recollect.

2 Q You don't remember or you just didn't --

3 A I don't remember.

4 Q Did you ever contact Mr. Harrison and indicate you  
5 wanted to meet with him?

6 A No.

7 Q Did Mr. Harrison ever contact you and indicated he  
8 wanted to meet with you?

9 A Yes.

10 Q And when was that?

11 A I don't recollect. I know over the course of time  
12 for over the course of training --

13 Q Let me give you a couple of time frames and that  
14 will make it easier.

15 A Yeah.

16 Q I'm going to limit the time frames to the time that  
17 you were only having single sessions with Brooke and then the  
18 time that you began to engage in joint sessions, okay, with  
19 Brooke and Kirk.

20 A Sure.

21 Q So prior to the time you engaged in joint sessions  
22 with Brooke and Kirk, do you ever call other than -- recall  
23 other than the introductory meeting -- meeting with Kirk?

24 A I don't recollect. I'm sorry, I didn't -- I didn't

1 prepare for that -- that piece or else I would have that  
2 information with me.

3 Q Okay. I'm just asking you your best recollection.

4 A Yeah. I wouldn't want to misstate what happened,  
5 but I can certainly, you know, check and --

6 Q Okay. I'm just asking you for your best  
7 recollection today. You've had a meeting you claim in -- at  
8 the beginning, right, with Kirk and --

9 A Yes.

10 Q -- Vivian, just an introductory hi, I'm Dr. Ali,  
11 sort of thing, right?

12 A Yes.

13 Q And then you, right, your recollection the next  
14 meeting with Kirk was in August of 2015 after the -- the  
15 single sessions with Brooke ended, correct?

16 A Actually, I -- I might have some information here.  
17 Is it okay if I --

18 Q Of course.

19 A -- look through the records? And I didn't bring  
20 that with me unfortunately.

21 Q So you don't remember?

22 A I don't --

23 Q Okay.

24 A -- unfortunately.



1 Q Do you recall whether Kirk ever contacted you by  
2 telephone --

3 A Yes.

4 Q -- during the time that you were solely doing  
5 sessions with Brooke?

6 A Yes.

7 Q And during that time, what was the substance of your  
8 conversations with Mr. Harrison?

9 A I don't recollect. I -- I don't have that. I trust  
10 that it was probably associated with the process and --

11 Q Were they scheduling discussions or were they actual  
12 substantive discussions about Brooke's therapy?

13 A Scheduling and -- and process, not about the  
14 therapy.

15 Q Okay. Did -- did you relate to Mr. Harrison any of  
16 the information that you later related to Dr. Paglini?

17 A Not that I can recall.

18 Q In regard to the -- the communications with Mr.  
19 Harrison, did he ever provide you any written material?

20 A Yes.

21 Q And when did you do that -- first do that?

22 A I don't remember.

23 Q Was it when you were having single sessions with  
24 Brooke or after?

1           A     Probably in between, like it's probably -- so  
2     probably before.

3           Q     So between the single sessions and the dual  
4     sessions, that's what your --

5           A     Quite possibly.

6           Q     -- recollection is? Okay. And is it possible or  
7     that's your recollection?

8           A     It's possible.

9           Q     Okay. So you do recall him giving you documents,  
10    correct?

11          A     Yes.

12          Q     And you discussed those documents with him, correct?

13          A     Briefly.

14          Q     Okay. And -- and that was between the time that you  
15    had sessions with Brooke individually and the joint sessions  
16    between --

17          A     I think so. I'm not exactly sure, but --

18          Q     And that information was composed in part of  
19    information associated with various psychological disorders,  
20    correct?

21          A     It -- can you clarify, Mr. Smith? I'm not sure.

22          Q     Well, maybe I should ask the question directly.  
23    What was -- what was the composition of those documents?

24          A     It was just information about -- my recollection is

1 that it was information about -- I'm not sure.

2 Q You don't recall what it was at all?

3 A The -- my recollection is that it was alienation  
4 information or information about the process, but --

5 Q Because he was contending to you at that time that  
6 Vivian was alienating Brooke, right?

7 A That's his concern.

8 Q And that's because you had conversations with him  
9 about things that Brooke had said during the sessions that she  
10 -- that she desired to be with Vivian and the like, correct?

11 MR. KAINEN: Wait a minute. Objection here. So --

12 THE COURT: What's the evidentiary objection?

13 MR. KAINEN: I -- actually, you know what, no, no --  
14 no problem.

15 BY MR. SMITH:

16 Q Right?

17 A I'm not sure why he had done that, but --

18 Q But is there any other reason that you would have  
19 had a discussion with him about alienation materials that you  
20 can think of? Did you ask him to prove you those materials  
21 for example?

22 A No, but I -- I think Kirk's been concerned about  
23 that from the beginning of the process. And so I -- I --

24 Q How were you aware of that? What process were you

1 referring to?

2 A The therapeutic process --

3 Q Okay. The therapeutic process --

4 A -- you know, from --

5 Q -- would include the therapeutic process that was  
6 just Brooke, correct?

7 A Yeah, at the beginning.

8 Q And Kirk expressed to you in some form, and I'll get  
9 to what form, that he was concerned about alienation, correct?  
10

11 A Yes.

12 Q And did he do that over the telephone or in  
13 meetings?

14 A Well, he -- again, he handed me the -- the packet.  
15 So that obviously was a meeting, but I don't recollect it was  
16 a -- a true session or if he had come by the office and -- and  
17 handed it to me --

18 Q Okay.

19 A -- or if it was at -- if it was --

20 Q Did you subsequently discuss that with him? I mean,  
21 it -- it seems -- well, did you subsequently discuss it with  
22 him?

23 A Not at length, no, I -- I had the information and --

24 Q So in the parenting plan that -- that you were

1 provided, it indicates -- I'm sorry, I'm getting there.

2 Indicates, and I quote, from --

3 MR. SMITH: Your Honor, you can take judicial notice  
4 of this. It's quoted in my -- my pretrial memorandum and it's  
5 also paragraph -- in the parenting plan. It says therapists  
6 for minor children.

7 MR. KAINEN: Objection, Your Honor. I'm -- this is  
8 -- again, this is argument. If we want to do it outside Dr.  
9 Ali's presence, I'm happy to, but in this case he's testified  
10 he met with both parents. He asked them if they had any  
11 concerns and that Kirk expressed concerns, he asked the same  
12 thing to Vivian and now Mr. Smith is going to read a provision  
13 that's going to suggest it was improper for contact between  
14 the parents and try and meld those two. That's where this is  
15 going.

16 Q Okay. What's the question?

17 MR. SMITH: I haven't asked the question yet.

18 MR. KAINEN: That's where this is going --

19 THE COURT: All right.

20 MR. KAINEN: -- because the provision he's going to  
21 read.

22 THE COURT: Well, I need a question asked before --

23 MR. SMITH: Objection to the --

24 THE COURT: -- I can rule on the objection.

1 MR. SMITH: -- that was this is going. All right.

2 BY MR. SMITH:

3 Q So in the -- the parenting plan that you indicate  
4 you read -- well, let me first -- because I want to address  
5 the -- the sort of argument that Mr. Kainen just made. The --  
6 the session that Kirk provided you alienation information, was  
7 that a session you had at the beginning of the case? Is that  
8 the nature of the case that you asked the parties about in --  
9 problems that they had with Brooke?

10 MR. KAINEN: Objection, that mischaracterizes both  
11 my statement and what happened.

12 THE COURT: Overruled.

13 BY MR. SMITH:

14 Q You can answer.

15 A Yeah, it -- I don't know if it was a session, Mr.  
16 Smith. I know that -- that it happened after those initial  
17 meetings.

18 Q Right. So that was something that was not related  
19 to the initial meetings, the --

20 A Not --

21 Q -- provision of the alienation.

22 A Not the beginning, no.

23 Q All right. So in the -- the agreement that  
24 ultimately became the order of this Court that you're

1 provided, it says --

2 MR. KAINEN: Objection, this isn't a question.

3 MR. SMITH: I'm getting there, Your Honor. I -- I  
4 need to tell him what it says and asked him if he was aware of  
5 that fact.

6 MR. KAINEN: It's irrelevant whether he was aware of  
7 it.

8 MR. SMITH: Well I don't think so.

9 MR. KAINEN: If he's going to allege -- if he's  
10 going to allege a violation or some contempt, let him file a  
11 motion. This witness -- the facts --

12 MR. SMITH: See, that is --

13 MR. KAINEN: -- are what the facts are.

14 MR. SMITH: This is what I'm getting all day is this  
15 kind of ques --

16 THE COURT: State --

17 MR. SMITH: -- to the client.

18 THE COURT: State the question.

19 BY MR. SMITH:

20 Q The question is were you aware that the court order  
21 indicated that neither party shall directly contact the  
22 therapy and the absence of a written agreement to that effect.

23 A I think -- I remember that being discussed. I -- I  
24 don't -- I -- my recollection is yes.

1           Q     So you had indicated at the beginning of those  
2 sessions with Brooke you gave her this information that she  
3 could -- that you could share the information with the  
4 parents.

5           A     Yes.

6           Q     Correct? Okay. You didn't do that in writing, did  
7 you?

8           A     Not in writing, no.

9           Q     No?

10          A     That's not standard to do it in writing.

11          Q     Okay. And --

12          A     But I mean, with -- with the minors.

13          Q     With minors, it's not.

14          A     Right. Okay.

15          Q     Okay. And did the parties signed anything that they  
16 waived the privilege associated with their children -- of  
17 their child or children?

18          A     Both parents signed the -- our informed consent  
19 packet at the beginning of the --

20          Q     Where is that?

21          A     In my file in the office.

22          Q     Okay. All right. In regard to the -- the order, it  
23 indicates the therapist shall not be called as a witness in  
24 this case absence an issue requiring mandatory reporting under



1 NRS 432B.220. Is there any issue in this case that would  
2 require you to be a mandatory reporter?

3 A No, not that I'm aware of.

4 Q And it says in the absence of such mandatory  
5 reporting as the sher -- therapist shall be immune from  
6 processing this matter and shall not be called to testify.  
7 Were you aware of that?

8 A That's, yeah, what I had hoped for and kind of what  
9 I had maybe even asked for at the beginning of the process,  
10 honestly. I --

11 Q Especially today.

12 A Especially today.

13 MR. KAINEN: And yet, Mr. Subpoena -- Mr. Smith  
14 subpoenaed him for today. I mean, how --

15 MR. SMITH: Solely related.

16 MR. KAINEN: -- objection, relevance.

17 MR. SMITH: You --

18 THE COURT: Overruled.

19 MR. SMITH: -- subpoenaed him for testimony. I said  
20 -- because I wanted his file on the -- on the --

21 BY MR. SMITH:

22 Q All I have asked for, and -- and you'll confirm Dr.  
23 Ali the only thing that was asked for in the subpoena today  
24 was that you bring your file's information regarding

1 scheduling the sessions, right? That was all that was asked  
2 in my subpoena, correct?

3 A Yes.

4 Q All right. Do you have that information? Do you  
5 have those records that are only associated with the  
6 scheduling? Did you bring those today?

7 A In terms of records as in just --

8 Q Mails, letters --

9 A Yes, we have.

10 Q -- phone call records, anything?

11 A Absolutely. We have a lot of --

12 Q Awesome.

13 A Yeah.

14 Q May I see it?

15 A Of course.

16 Q All right. Great. Thanks.

17 MR. SMITH: Permission to approach, Your Honor?

18 THE COURT: Yes, you may.

19 MR. SMITH: Thank you.

20 A My -- Mr. Smith, are you asking for just contact  
21 information about the kid's schedule and the --

22 Q Just whatever you have in regard to information  
23 regarding --

24 A Yeah.

1 Q -- some schedule.

2 A What I had my team do was kind of put together just  
3 all the contact notes and information in which the scheduling  
4 process and any contact that they had with either party.

5 Q Okay.

6 A And so here is another list -- a list of those. And  
7 then ultimately here's --

8 MS. HARRISON: Sir, is that?

9 THE WITNESS: I'm sorry, that was just one set.

10 MR. SMITH: Just one set?

11 THE WITNESS: I wasn't aware that we needed --

12 MR. SMITH: Let me take a look at it then --

13 MR. KAINEN: Just print a copy. All right. We're  
14 looking to break?

15 MR. SMITH: Yes, some of these context. And Judge,  
16 may I make a rather new request? In regard to the scheduling  
17 issues I'm prepared to talk to Dr. Ali, in regard to the  
18 information that he gave and regard to the privilege of  
19 Brooke, I don't believe it's -- it's legal or ethical for me  
20 to talk to him about that information until Brooke waives that  
21 privilege. And I -- I think she should have counsel to  
22 instruct her on the privilege so that she understands it.

23 I don't think she waived that privilege. I don't  
24 think that there is anything I writing which is -- is -- there

1 is nothing and I don't believe she's going to testify she  
2 waived it. If she did, she did. If she says I waived it, I  
3 -- I knew that it was not going to be -- but I believe Dr. --  
4 and -- and if may make a -- a quick question, your --

5 MR. KAINEN: What -- I'm sorry, what are we doing  
6 here? Is this --

7 THE COURT: Yeah.

8 MR. KAINEN: Like this is a discussion, I'll throw  
9 some questions in --

10 MR. SMITH: No.

11 MR. KAINEN: -- by the way, I'm going to warn you --  
12 I'm going to tell the witness that I'm thinking he's comit --  
13 committing an ethical violation, get it all out there and then  
14 like --

15 MR. SMITH: I said it was unethical --

16 MR. KAINEN: -- now I'm going to ask him more --

17 MR. SMITH: -- of me --

18 MR. KAINEN: -- questions?

19 MR. SMITH: -- to ask --

20 THE COURT: Listen.

21 MR. SMITH: -- questions about the issue.

22 THE COURT: I -- I strike the commentary. I feel --

23 MR. SMITH: Okay. So --

24 THE COURT: -- that that should be stricken from the

1 record.

2 MR. SMITH: Okay.

3 THE COURT: Let's --

4 MR. SMITH: I'm asking --

5 THE COURT: -- questions --

6 MR. SMITH: -- that the witness be -- that I allow  
7 to be -- take this witness on only after we hear from Brooke  
8 in regard to her privilege. I'm -- I'm going to ask him about  
9 scheduling issues, that's not privilege, but I can't ask him  
10 -- and if Brooke said she waived the privilege, then I will  
11 ask him about it. But it's not --

12 THE COURT: Okay.

13 MR. SMITH: -- fair to me to put me in a position  
14 where I can't talk to the witness, I can't have her --

15 THE COURT: Okay. Yeah, I --

16 MR. SMITH: Okay.

17 THE COURT: I don't need anything further.

18 MR. SMITH: Thank you.

19 THE COURT: Let's move along.

20 MR. SMITH: So you're not granting that request  
21 to --

22 THE COURT: To recall the witness?

23 MR. SMITH: To recall the witness.

24 THE COURT: I don't have a problem with that.

1 MR. SMITH: Okay. Thank you.

2 BY MR. SMITH:

3 Q In regard to --

4 MR. SMITH: Your Honor, can we get a copy of these  
5 contact notes? Is it possible? We don't have to.

6 THE COURT: Are those two different sets?

7 MR. SMITH: Two different sets, but they're not two  
8 -- they're 16 and 17.

9 THE COURT: Okay. We can have a copy. We'll need  
10 three copies made.

11 MR. SMITH: Thank you, Your Honor.

12 THE WITNESS: Mr. Smith, can I ask you a question  
13 about just --

14 MR. SMITH: Sure.

15 THE WITNESS: -- the legal issue about -- when --  
16 when you referenced -- I think you said -- I think -- I think  
17 I might know why there may -- may be a disconnect here.

18 BY MR. SMITH:

19 Q Yes.

20 A You referenced the Nevada statute about the  
21 privilege and the confidentiality.

22 Q Yes.

23 A Can you repeat that -- that code? Was that the --

24 Q Okay.

1 A -- 29.209?

2 Q Yes. Let me -- I'll ask you a question and then  
3 we'll do it that way, okay?

4 A Of course.

5 Q Okay. So -- so were you aware that Kirk Harrison  
6 has a privilege? Were you aware of that?

7 MR. KAINEN: Objection, it assumes --

8 A Well --

9 MR. KAINEN: Calls for a legal conclusion.

10 THE COURT: Sustained.

11 BY MR. SMITH:

12 Q Dr. Ali, do you -- you had indicated that the first  
13 time I -- I think in testimony you just gave that the first  
14 time you talked to her about confidentiality was in October of  
15 this year -- or last year, '16, wasn't it?

16 A That was when we got back together again with -- for  
17 the --

18 Q Right.

19 A -- reunification. The initial confidentiality  
20 discussion occurred when I first met with her in 2014.

21 Q Okay. And your recollection is is that she  
22 understood and you told her that your information would not be  
23 confidential?

24 A Well, yes, except -- there's a difference between

1 what we call ascent versus consent. I think the  
2 misunderstanding here is that the Nevada statute is -- I think  
3 the one that you kind of referenced in your letter, Mr. Smith,  
4 if it's the same one that you're referencing --

5 Q Yes.

6 A -- applies to adults and not to minor children  
7 adults in -- in our field can make proper informed consent.  
8 Minors typically are unable to have what we call informed  
9 consent which is the ability to be able to really kind of  
10 understand the process associated with confidentiality, what  
11 it is that is required of, you know, certain decisions or --  
12 or the factors associated with certain decisions.

13 So, you know, as I read that -- that statute and  
14 according to the standards that we kind of -- what we always  
15 go by, it's -- never refers to adults. As a minor, she's  
16 unable to provide informed consent according to ethics as well  
17 as the law as far as I'm aware and that's how it -- I've  
18 always practiced.

19 And so I think what's happening here is that, you  
20 know, what I was referencing, and again, I just had a chance  
21 to think about this as we were on break, what I discussed, you  
22 know, with Brooke as well as every other minor including, you  
23 know, Rylee, when she came in is the difference between ascent  
24 versus consent. Ascent is the support of the process, the



1 approval, are -- are you, you know, are you okay with being  
2 here or in terms of kind of just are you aware of the reason  
3 why we're here and kind of moving forward. The parents are  
4 the ones that hold consent. They're the ones that dictate how  
5 confidentiality is upheld and who it's shared with.

6           And so again, Brooke doesn't hold that privilege  
7 either ethically or legally as -- as a minor. That would be  
8 different if she was in danger. If there was a situation  
9 where her life was in danger, god forbid, there was, you know,  
10 a time in which either one of the parents were coming after  
11 her and she needed to -- to have something happen or to -- to  
12 talk to somebody, then that's when we would then override that  
13 privilege so to speak and then protect her information.

14           But I -- I think what we're -- we're kind of just  
15 missing, you know, each other on is the idea that, you know,  
16 she has ascent, she has -- well, she can tell us, you know,  
17 that she doesn't want to be -- have this information shared  
18 and -- and -- but again, the holder of consent is the parents.  
19 And that's what they signed. You know that's what's clearly  
20 indicated in the initial paperwork and that's what I talked to  
21 her about and that's what I talked to her about again with  
22 Kirk when we had our meeting for reunification. She was upset  
23 that information was shared and I revisited that with her. I  
24 assured with her that, you know, this is kind of how it goes

1 THE COURT: And that may be the case.

2 MR. KAINEN: And the language of 8.1 clarifies that  
3 there's a distinctsh -- Your Honor, I mean, it's -- so, I mean  
4 --

5 THE PLAINTIFF: Well --

6 MR. KAINEN: It's okay. It -- honestly at this point I'm  
7 --

8 THE COURT: Listen. That issue is more of a side issue.

9 MR. KAINEN: How do you do this though, when he says, do  
10 you know what, where do you make the choice? He says, don't  
11 come to my house at nine a.m. It's going to -- she's getting  
12 ready to go into surgery, I'll meet you there -- and, by the  
13 way, I'm going to let her go home from surgery with you  
14 because I think it makes -- it's stupid for us to change  
15 custody and wait till two eleven in the afternoon. So just  
16 meet me at the surgery center or at the dentist or whatever it  
17 is, the thing. Were going to -- we're going to ha -- I'm  
18 going to bring her there, everything will be calm, we're going  
19 to change early and everything, no reason to upset her, don't  
20 come to my house.

21 Now which one of these parents is making choices for  
22 the kid?

23 THE COURT: Yeah. Well, listen. There -- it's  
24

1 impossible for me --

2 MR. SMITH: Do I get a chance to address all that?

3 THE COURT: No. I -- let's not -- this is really a  
4 separate issue. But for me to make a finding that there  
5 should be an Order to Show Cause issued, I can't do that.  
6 Because I -- and that's not to say there isn't legitimacy to  
7 that argument in terms of what the parties have -- how they've  
8 conducted themselves.

9 You look at the language, there's some internal  
10 inconsistency in that language. It states on the one hand  
11 that Dad's time goes until Friday after school, which suggests  
12 until -- he has until the school day ends or nine a.m. when  
13 the children are not in school.

14 MR. KAINEN: Your Honor, can I have thirty seconds? Just  
15 -- respectfully, can I just --

16 THE COURT: Okay.

17 MR. KAINEN: I don't want to miss --

18 MS. VARSHNEY: Your Honor, if I may --

19 MR. KAINEN: -- what The Court's saying and this is  
20 important.

21 MS. VARSHNEY: -- I have to leave for another hearing, if  
22 that's okay?

23 THE COURT: That's fine.

24

1 MS. VARSHNEY: Okay. Thank you.

2 MR. SMITH: Thank you, Your Honor. It's my hearing.  
3 She's covering.

4 THE COURT: Here's where I'm at. As I indicated before,  
5 and I don't know -- I look at the issues before The Court and  
6 I've indicated exactly where I'm at in terms of the contempt  
7 issues. I've issued an Order to Show Cause. I've granted the  
8 request for an additional Order to Show Cause to be issued  
9 against the defendant.

10 I don't find a basis to open discovery at this  
11 point. Certainly you can have discussions between yourselves  
12 as to the exchange of information. But until I have that  
13 report from Dr. Paglini, I don't know what type of discovery I  
14 am going to allow.

15 This entire notion about compliance with The Court's  
16 Orders, I think it's important to take a step back and  
17 recognize that legally, from my standpoint -- because both  
18 sides to a certain extent are asking me to do things without  
19 any evidentiary proceedings, and maybe we're headed that  
20 direction. As much as I've resisted, maybe that's the proper  
21 place for this to land once I have that report from Dr.  
22 Paglini.

23 But fundamentally, the presumption before me right  
24

1 now is that the parties should have joint physical custody,  
2 period. I have no reason to ex-parte or even non-ex-parte on  
3 the papers that have been filed. There's no basis for This  
4 Court to make a modification of custody. It's just not there.  
5 Especially with the AB 263 changes, for me to make a finding  
6 that either parent is incapable of providing for the care of a  
7 child for the minimum amount of time to qualify for joint  
8 physical custody. It's just not there, even on the papers  
9 that are on file with the court.

10 I think it is important to get the information, get  
11 a report from Dr. Paglini so I have a better understanding as  
12 to where Brooke is, a better understanding as to whether or  
13 not there are alienating behaviors that have contributed to  
14 where Brooke is at, and whether drastic changes are warranted.

15 But I do need that report. So I am going to set  
16 another hearing. And I'm not changing my Orders. We've had  
17 this discussion before. What do you do as a parent, what can  
18 Mom do, what can Dad do? Brooke is sixteen years old and I  
19 feel like we've turned everything over to her. The power's in  
20 her hands. And that shouldn't be the case.

21 This whole discussion is foreign to me, not only  
22 sitting here judicially, but also as a parent, that you make  
23 the rules. The rules are Court Orders, period. And the child  
24

1 does not dictate how those rules are going to be enforced.  
2 That's not how this works. You're still parents, and that  
3 does mean consequences come into play when a child is not  
4 behaving the way the child is supposed to. Taking away  
5 privileges, absolutely. And I know there was some discussion  
6 in the reply about privileges -- something happening on the  
7 cusp of filing paperwork with This Court to make it look like  
8 perhaps that there'd been some compliance with The Court's  
9 Orders.

10 But the bottom line is, the two of you have Orders  
11 that remain in place. You're joint physical custodians.  
12 Those Orders should be followed. And if it means taking away  
13 the car, take away the car, take away privileges. Brooke does  
14 not run the show.

15 And, ultimately, once I get that report, I'll  
16 determine exactly the scope of evidentiary proceedings on the  
17 Order to Show Cause and what steps need to be taken to address  
18 some of these unification issues. So I'm looking at coming  
19 back on either January 27th or February 3rd at eleven.

20 MR. SMITH: May I make a quick phone call, Your Honor?

21 THE COURT: Yes, you may.

22 MR. KAINEN: You're going out that far? I mean, we're  
23 only at December 15th --  
24

1 THE COURT: Well --

2 MR. KAINEN: -- today and the --

3 UNIDENTIFIED SPEAKER: He -- he had --

4 THE COURT: And I did find Dr. Paglini's letter. He said  
5 one month. I was looking for a letter with thirty days. He  
6 said one month. That puts us in --

7 MR. KAINEN: Into January or beginning --

8 THE COURT: -- mid January --

9 MR. KAINEN: -- (indiscernible).

10 THE COURT: -- and that's why I -- a couple weekly way.  
11 That's why I'm looking at January 27th.

12 MR. KAINEN: I have a one thirty trial that day but  
13 that's -- shouldn't interfere with an eleven o'clock hearing,  
14 so.

15 MR. SMITH: Sorry, what was the date?

16 THE CLERK: The twenty-seventh at eleven.

17 THE COURT: Twenty-seventh at eleven.

18 MR. SMITH: (Speaks converses on telephone.)

19 MR. KAINEN: What about something earlier?

20 I mean, if we went the week of the eighteenth that  
21 would still be thirty-five days or something like that.

22 THE COURT: I just don't want to be in a position where  
23 we get close to that hearing and I -- Dr. Paglini says I need  
24

1 more time.

2 MR. SMITH: Let me -- I'm having surgery in the week of  
3 the eighteenth and I'll be out the entire week. In fact --  
4 yeah, I'll be out the entire week.

5 THE COURT: How about the morning of the twenty-sixth?

6 MR. KAINEN: Wait, you can't be out the entire week. You  
7 booked a mediation with me on the twentieth.

8 MR. SMITH: No, there's no mediation on the twentieth.

9 MR. KAINEN: Okay.

10 MR. SMITH: This -- I'm looking at my calendar and I'm  
11 out the entire week.

12 MR. KAINEN: Mediation in the Clark case. Ed being  
13 mediator for Rad and somebody else?

14 MR. SMITH: Oh, the Clark case?

15 MR. KAINEN: That's what you told me.

16 MR. SMITH: Oh, that's -- well, one, we're probably not  
17 going to be ready for mediation at that point anyway. But --

18 MR. KAINEN: All right.

19 MR. SMITH: -- you're the mediator, right?

20 MR. KAINEN: Yeah.

21 MR. SMITH: Yeah. Okay. No, we're going to have to  
22 continue that.

23 THE COURT: All right.

24



1 MR. SMITH: I just went to the doctor on Friday. I got  
2 to have a hip --

3 MR. KAINEN: Okay.

4 MR. SMITH: -- replacement, so.

5 THE COURT: How about the twenty-sixth at eight thirty?

6 MR. KAINEN: That's fine.

7 MR. SMITH: The twenty-sixth at eight thirty, did you  
8 say, Your Honor?

9 THE COURT: Yes.

10 MR. SMITH: Yeah, that's fine.

11 THE COURT: Okay. Twenty-sixth at eight thirty.

12 So Plaintiff needs to submit an Order to Show Cause.

13 MR. KAINEN: Okay.

14 THE COURT: Regarding the -- any missed visitation time.

15 As I indicated, I'm not opening discovery at this  
16 point. Have those discussions. I am striking the supplement,  
17 because it's not something I reviewed and it was not -- it's  
18 not something that I'm finding, absent permission of The Court  
19 to file, I'm allowing at this point.

20 UNIDENTIFIED SPEAKER: Okay.

21 THE COURT: I don't know that I need it. It sounds --  
22 and I haven't reviewed it because it -- I did view it as  
23 something that was not consistent with the rules.

24

1 MR. KAINEN: Your Honor, it was my judgment call. My  
2 client had been (indiscernible) -- we --

3 THE COURT: You had a discussion about that?

4 MR. KAINEN: Well, no, we had the motion -- we had a  
5 motion ready. And I just said, look, let's not get another  
6 motion on calendar and clutter up the calendar, let's just  
7 file it as a supplement. And so --

8 THE COURT: Well, if you want to re-file it as a motion  
9 and set it for that date. I don't want it set --

10 MR. KAINEN: So it's set for the twenty-sixth?

11 THE COURT: -- for a new hearing date.

12 MR. KAINEN: Okay.

13 THE COURT: Set it for the twenty-sixth.

14 I don't have a problem with that. But --

15 MR. KAINEN: Okay.

16 THE COURT: -- when it come -- when something comes in as  
17 a supplement in a case where I am receiving voluminous  
18 documents that have been submitted --

19 MR. KAINEN: Well, they really haven't been --

20 THE COURT: -- to The Court.

21 MR. KAINEN: -- voluminous, you know. There was no  
22 opposition, so it's --

23 THE COURT: I understand.

24

1 MR. SMITH: Twenty-seven pages is not voluminous anymore.

2 Your Honor, if I may, the -- I don't mean to be  
3 facetious by their quest that --

4 MR. KAINEN: Why did you call that a twenty-seven page?  
5 It's like a ten-page thing. It's like --

6 MR. SMITH: No, no, no.

7 THE COURT: Yeah.

8 MR. SMITH: The first initial motion, it was more than  
9 ten pages. I'll bet you lunch on that one.

10 The -- I mean, the motion that you filed, I know  
11 it's more than ten pages. Do you want to bet lunch on that?

12 MR. KAINEN: (No audible response.)

13 MR. SMITH: All right. Anyway, the -- in regard to the  
14 -- I'm not being facetious when I say why isn't Kirk in  
15 contempt because -- I don't understand. If we're supposed to  
16 control her behavior --

17 MR. KAINEN: Including Kirk's affidavit, ten pages.

18 MR. SMITH: -- if we're supposed to hold her --

19 MR. KAINEN: There it is. Motion. Including Kirk's  
20 affidavit, ten pages.

21 THE COURT: That's the --

22 MR. SMITH: It's --

23 THE COURT: -- a motion for --

24

1 MR. KAINEN: The underlying motion.

2 MR. SMITH: Eleven pages.

3 MR. KAINEN: No.

4 THE COURT: (Laugh.)

5 MR. SMITH: The record will say it was eleven pages.

6 The -- in regard to the -- in regard to the  
7 (indiscernible), I just don't understand --

8 MR. KAINEN: If you count the signature page --

9 MR. SMITH: -- if we're --

10 MR. KAINEN: -- you're right.

11 MR. SMITH: -- if we're required to control her behavior  
12 in the manner that was suggested by The Court, why isn't Kirk  
13 required to --

14 THE COURT: Well, listen. I --

15 MR. SMITH: -- quote, control that behavior?

16 THE COURT: -- in --

17 MR. SMITH: Isn't he violating the Order by not forcing  
18 her to stay at his home? And if -- the only -- the car thing  
19 is an issue. The only reason she's allowed to use the car is  
20 because she uses that car to go to school. If, on a weekend,  
21 you -- I suppose that's different. If you want us to drop her  
22 off --

23 UNIDENTIFIED SPEAKER: Okay.

24

1 MR. SMITH: -- without the car, we can drop her off  
2 without the car so she remains at Kirk's home.

3 MR. KAINEN: Kirk remembers where the school is.

4 MR. SMITH: But then Kirk would be res --

5 MR. KAINEN: He can get her to and from.

6 MR. SMITH: Okay. That's up to Kirk. If that's what he  
7 wants, he wants us to drop this off without the car, he can  
8 transport --

9 THE COURT: Well, listen.

10 MR. SMITH: -- his --

11 THE COURT: Listen. I --

12 MR. KAINEN: Well, hold on a second. His --

13 THE COURT: Listen. I view -- let me just back up here.  
14 The notion of a teenager having a car is a nice luxury, not  
15 only for the teenager, but I get it, it's a nice luxury  
16 sometimes for the parents as well.

17 But, again, we're talking about controlling the  
18 behavior of a teenager. And if it means that Mom and Dad have  
19 to get engaged in taking a child to school again, well --

20 MR. KAINEN: Well, but -- but here --

21 THE COURT: -- do you know what --

22 MR. KAINEN: Just so you know, I'm going to play  
23 noshadowaws (phonetic) for a minute. The car is going to be  
24

1 lost during Dad's time. So Mom will be the hero that will  
2 say, you can have a car when you're with me but you're not  
3 allowed to have it when you're with Dad because that's his  
4 rule. That's where this is -- that's the next step in this --  
5 in the way this goes.

6 THE COURT: Well, listen.

7 MR. SMITH: Okay. Well, wait.

8 THE DEFENDANT: What do I do?

9 THE COURT: But getting -- getting --

10 MR. KAINEN: You take --

11 THE COURT: -- but get --

12 MR. KAINEN: -- away the car.

13 THE DEFENDANT: I did. I have.

14 THE COURT: Listen. Getting back to the point --

15 MR. KAINEN: And she stalled it --

16 THE COURT: -- where --

17 MR. KAINEN: -- every time she --

18 THE COURT: -- where --

19 MR. KAINEN: -- comes over.

20 THE COURT: -- where Brooke is with Dad.

21 THE DEFENDANT: That's not true.

22 THE COURT: Fundamentally, if Brooke is with Dad and she  
23 leaves, I recognize that in part that's on Dad's shoulders at  
24

1     that point.

2             MR. SMITH:   Correct.

3             THE COURT:   If she's with Dad and she leaves, I'm not  
4     necessarily -- I may not have a basis to make findings of  
5     contempt against Mom.   A lot may --

6             MR. SMITH:   But --

7             THE COURT:   -- go into that.   But understand --

8             MR. SMITH:   -- but (indiscernible) finding of contempt  
9     against Dad.   It's a violation of This Court's Order.   It's  
10    contrary to the parenting plan that's contained in the Order.

11            THE COURT:   I don't know that I would go to that stretch,  
12    because essentially it's a loss of time for the individual.   I  
13    don't think there's any harm or damage caused to the plaintiff  
14    -- or the defendant or to -- in This Court's eyes --

15            MR. SMITH:   By him losing time?

16            THE COURT:   -- by him losing time during time in which he  
17    has the time and it's lost.

18                    A lot of this fundamentally comes down to what?   I  
19    want to find out where Brooke's at.   We had some discussion.  
20    Things kind of turned and went a different direction last --  
21    at the last hearing when we talked about having someone  
22    involved in terms of reunification.   I ultimately appointed  
23    Dr. Paglini.   I want to find out where Brooke's at and why  
24

1 she's engaged in this -- why she's -- appears to be alienated  
2 from her father.

3 MR. SMITH: The next hearing is not an Evidentiary  
4 Hearing, correct?

5 THE COURT: It is not.

6 MR. SMITH: Okay.

7 THE COURT: It is not.

8 MR. SMITH: All right.

9 MR. KAINEN: We -- and I apologize. Were you saying  
10 there's no harm to him if he loses time during his custodial  
11 periods or --

12 THE COURT: No, no, no.

13 MR. KAINEN: -- have I misunderstood?

14 THE COURT: That --

15 MR. KAINEN: Okay. I misunderstood.

16 THE COURT: No, what I'm saying is, that the argument  
17 being made by Mr. Smith is that Dad should be held in contempt  
18 --

19 UNIDENTIFIED SPEAKER: Yeah, I get that.

20 THE COURT: -- if Brooke is with Dad and Brooke allows  
21 Brooke to leave --

22 UNIDENTIFIED SPEAKER: (Indiscernible.)

23 THE COURT: -- and go return to Mom. And my point being  
24



1 is, in a situation like that, if Dad voluntarily acquiesces --

2 MR. KAINEN: I'm with you.

3 THE COURT: -- and allows Brooke to go back --

4 MR. KAINEN: Okay.

5 THE COURT: -- there's no har -- I'm not finding that Dad  
6 can argue that there's a harm to him or that --

7 MR. KAINEN: Got it.

8 THE COURT: -- that I feel that The Court Orders have  
9 been harmed or violated in any way.

10 MR. KAINEN: You're saying if Dad says, go stay with Mom  
11 for the next five days, he hasn't got a basis to hold Vivian  
12 in contempt for that.

13 THE COURT: That -- that's --

14 MR. KAINEN: But Vivian -- if the child leaves in the car  
15 that Vivian provides and goes stays with Vivian during that  
16 time, that's a different circumstance?

17 THE COURT: Well, it may be. It --

18 MR. SMITH: What if she leaves by any other means?

19 THE COURT: -- it --

20 MR. KAINEN: Okay.

21 THE COURT: -- it depends on -- it depends -- there are a  
22 lot --

23 MR. KAINEN: Right.

24

1 THE COURT: -- of factors in that.

2 MR. KAINEN: Got it. Okay.

3 THE COURT: But I think Mr. Smith's point is, don't let  
4 her have the car, don't let her leave, physically don't allow  
5 her to leave, and why should Mom be held in contempt if Dad  
6 actually allows Brooke to engage in that behavior.

7 MR. KAINEN: So that we agree, the child loses the car,  
8 Vivian takes the keys?

9 MR. SMITH: Why -- look, at the end of the day --

10 MR. KAINEN: I'll take that as a no.

11 MR. SMITH: -- it seems to me that the persons who should  
12 address this is Dr. Paglini as to whether or not there's an  
13 adequate basis to punish Brooke for her behavior. It's in  
14 violation of The Court's Order. But the ultimate question of  
15 This Court is whether or not the -- what is occurring is or is  
16 not in her best interest. The -- Dr. Paglini will weigh-in on  
17 that issue.

18 The question that surrounds the procedural aspects  
19 is whether or not there is a content, a wilful violation of  
20 This Court's Order. And the point I make, Your Honor, and I  
21 think The Court understands, is that the same behaviors that  
22 you're expecting Mrs. Harrison to engage in are the very same  
23 behaviors that Mr. Harrison would need to engage in in order  
24

1 to keep Brooke present.

2 Now the idea is that if she has a car she's  
3 perfectly free to leave. Well, doesn't that go to the whole  
4 notion of parents, you can't take away her keys, you can't  
5 tell her that she's not coming, you can't go over to the house  
6 where you know she's at and tell her she needs to get back in  
7 the car and go over? He's done none of that. Where --

8 THE COURT: Well --

9 MR. SMITH: -- does his responsibility --

10 THE COURT: -- but --

11 MR. SMITH: -- lie as a parent?

12 THE COURT: -- but, again, I think the notion that Mr.  
13 Kainen has raised. That if it is viewed ultimately that the  
14 loss of vehicle privileges is Dad's fault, and that she has  
15 complete access to a vehicle while she's in Mom's care, that  
16 is sending a message to Brooke of good versus bad parent. And  
17 it's going to further entrench any type of alienation.

18 So if there is --

19 MR. SMITH: Let --

20 THE COURT: -- if there are privileges -- I think the  
21 point being made is, if there are privileges that are going to  
22 be taken away, it should be across the board in both parties'  
23 homes. Brooke, if you're not going to do as you're expected,  
24

1 then those privileges are lost when -- and this is part of a  
2 team approach.

3 MR. SMITH: Okay.

4 THE COURT: And there's an expectation that both parties  
5 are supporting the relationship of the other parent. It does  
6 not support Dad's relationship with Brooke. If she has all  
7 the freedoms and all the luxuries while she's with Mom, and  
8 the perception is that she loses all of that with -- when  
9 she's with Dad. She doesn't have the car so that she can  
10 drive back to Mom's house.

11 Again, that just further entrenches alienating  
12 behaviors. If she -- as soon as she gets back to Mom, there's  
13 the car and she's out doing whatever she wants to.

14 MR. SMITH: Well, but that's --

15 THE COURT: That is not the most healthy approach to try  
16 and build this relationship and Mom fostering Dad's  
17 relationship with Brooke. It's counter-productive.

18 MR. SMITH: So the message to Brooke is, even though she  
19 may have a legitimate issue with her father, she must be  
20 punished until she, what, we can't get her interviewed, other  
21 than what -- through Dr. Paglini. We've filed the appropriate  
22 motion. The Court has not found a ground for that. Now The  
23 Court has found -- cited under AB (indiscernible), which is a  
24

1 very interesting argument, the notion that somehow the child's  
2 preference that's a factor under 125.480 has been effected by  
3 the notion of how you perform a custodial analysis under 263.  
4 I think it actually is a legitimate question for The Courts.

5 But I would just say that it's very -- the point I'm  
6 making -- not as that The Court's doing anything wrong -- the  
7 point I'm making is that the messages to Brooke are so  
8 inconsistent about who she is as a person. Does she have any  
9 choice? In other words, if she has absolutely no choice in  
10 her life to make determinations that are in her own best  
11 interests, request those choices, not only does no one hear  
12 those choices, but now we're going to punish her for those  
13 choices.

14 I just think, look, there are stages of raising  
15 children. We demand young children do what they need to do.  
16 We instruct other children. And if they don't do, we allow  
17 them some leeway up till about eleven, twelve, thirteen,  
18 fourteen. But at fourteen we guide them, we don't demand and  
19 tell them this is exactly what you're going to do. And the  
20 parents that do have disastrous results, in my experience.  
21 And then, of course, after they're eighteen we all pray.

22 THE COURT: Well, listen, this --

23 MR. SMITH: So (chuckle).  
24

1 THE COURT: -- we're talking in circles here, though,  
2 because -- and it goes back to some of the discussion we had  
3 at the last hearing. And I made the point to Dad, I said,  
4 look -- because Mom is arguing Brooke has legitimate issues  
5 with Dad, Dad is arguing that Mom is engaged in alienating  
6 behaviors. I don't know which.

7 MR. SMITH: Right.

8 THE COURT: I mean, they're two --

9 MR. SMITH: Right.

10 THE COURT: -- and both sides are asking me to make a  
11 finding that one or the other is happening. That's exactly  
12 where Dr. Paglini comes into play.

13 MR. SMITH: Right.

14 THE COURT: Are there legitimate issues that Mom is  
15 arguing, which you're right, then maybe this case goes a  
16 different direction, or are there alienating behaviors?  
17 That's what I need from Dr. Paglini to help educate me on  
18 whether or not alienating behaviors are contributing to this  
19 or whether they're legitimate issues with Dad.

20 MR. SMITH: We --

21 THE COURT: But the bottom line is, and I made the point  
22 to Dad, look -- because if there are legitimate issues, then  
23 Dad has to approach this from the standpoint that he's not  
24

1 only effecting these next two years of Brooke's life, but his  
2 relationship with Brooke for the rest of your lives.

3 MR. SMITH: Right.

4 THE COURT: I mean -- and if they're legitimate issues,  
5 the more you push, the more resistant you're going to get.

6 MR. SMITH: Correct.

7 THE COURT: And you're absolutely right that -- that I --  
8 this may cause long, long-term damage to the relationship. If  
9 there are legitimate issues, then at some point maybe it's  
10 wise to say, okay, back up. Those are parental choices.

11 MR. SMITH: Yes.

12 THE COURT: Those are. And I'm not going to be able to  
13 solve many of those issues for you. If it's alienating  
14 behaviors, which is what Dad is telling me, this is what's  
15 going on, it's alienating behaviors, then I have to take a  
16 different approach.

17 MR. SMITH: Judge, you've indicated what I wanted to  
18 hear, because it is a fine line with teen -- children of this  
19 age. And that is that we don't know what -- whether push back  
20 and demand is going to work or whether coddling and getting her  
21 to get over whatever issues she has. We just don't know. And  
22 as parents we don't know that. And for now, for the courts to  
23 weigh on it -- the parents to weigh on it, very difficult. Do  
24

1 we gain something by punishing her? I don't think anyone in  
2 this room can say in every circumstances you gain something by  
3 punishing a teenager. I just think that the real focus of  
4 this should have been on the therapeutic relationship between  
5 Kirk and the child, and that's what needs to happen.

6 Look, Mrs. Harrison has not had the opportunity,  
7 because of The Court's Order, to ask Brooke everything she  
8 needs to ask her about what is the problem. She can't. She  
9 can't have those discussions. So she's taken her to Dr. Ali  
10 many times, and now she's taking her to Dr. Paglini. But  
11 you're putting her in a position where she has to be a bad  
12 person because the daughter is indicating she has a problem  
13 with -- now if this was a daughter who had all kinds of  
14 problems, this is a different circumstance. If she's running  
15 around with her --

16 THE COURT: Well --

17 MR. SMITH: -- friends, she's doing drugs. But this is a  
18 daughter who's, again, an ultimate achiever. She's what we  
19 want our daughters to be.

20 THE COURT: Well, and again, I've heard -- we've had this  
21 discussion before.

22 MR. KAINEN: I got it. But, you know, the problem is is  
23 that the message comes from the top down. And the top down  
24



1 is, like on the one hand we're going to tell you what we're  
2 doing the -- we're doing the thing we can to support it, but,  
3 at the same time, by the way, we think she's totally right in  
4 what she's doing. First of all --

5 THE COURT: Is --

6 MR. KAINEN: -- no one has ever --

7 MR. SMITH: We don't know.

8 MR. KAINEN: -- said anything that's been done that -- in  
9 other words, in terms of the behavior and what's -- whatever  
10 is alleged to have been done, whatever is going on right now  
11 is grossly disproportionate if they're right that there's some  
12 behavior on his part that's caused this. In other words,  
13 there's not anything that's like sort of dramatic that's  
14 happened in this case that would warrant the kind of  
15 disproportionate response. And the problem is, is if we're  
16 right and the behavior is alienating behavior that's going on,  
17 then the longer we wait it may be too late to fix it.

18 THE COURT: Well, you're right. I --

19 MR. KAINEN: And that's the problem. And so we -- so  
20 when you look at the circumstances, this isn't a case where  
21 there's some alleged sexual abuse or there's some physical  
22 thing or any of those kind of things that have gone on that  
23 you would look to to say, oh, my God, why would this child be  
24

1 pulling back, and all those kind of things. Well, when you  
2 start eliminating some of those, the more common ones come in.  
3 And the fact is, they're sitting there looking at you and  
4 saying, well, we really don't think there's a real problem, so  
5 we don't want to punish her because, you know, this is a  
6 sixteen-year-old who's making reasonable choices and she has  
7 good grades, and so -- they're not punishing her. They're not  
8 taking away their -- I mean, they've told you they're taking  
9 away the car but they haven't. The car is still there  
10 consistently, and all of those kind of things. And it's going  
11 to be done in such a way that comes out of this thing.

12 And do you know what? He's supposed to get the kids  
13 on Wednesday, have them through Christmas and everything like  
14 that. The odds of that happening at this point -- I mean, you  
15 know, there's going to be some excuse. By the way, he gets  
16 them Wednesday after school, unless someone has the sniffles,  
17 in which case apparently he gets them at nine a.m. So --

18 MR. SMITH: Well, again --

19 MR. KAINEN: -- I'm sorry. I --

20 MR. SMITH: They --

21 MR. KAINEN: -- I apolo --

22 MR. SMITH: It wasn't a matter --

23 MR. KAINEN: I'm sorry. I apologize. That was --

24

1 MR. SMITH: -- it wasn't a matter --

2 MR. KAINEN: -- I was out of line.

3 MR. SMITH: -- it wasn't a matter of sniffles. It was a  
4 matter of what makes sense in this particular circumstance.  
5 Rylee actually requested, because she was going to come out of  
6 surgery, to immediately go to her mother's. She didn't want  
7 to go ha -- have to go back to Kirk's to get her stuff. She  
8 just wanted it to be that way because it was most comfortable.

9 MR. KAINEN: If she didn't have to go back --

10 MR. SMITH: A girl --

11 MR. KAINEN: -- then she --

12 MR. SMITH: -- a girl that was afraid of having surgery.  
13 And so she asked her mother to be there. Under normal  
14 circumstances, as parents who cooperate together, it wouldn't  
15 have been an issue. It became an issue because everything in  
16 this case becomes litigation.

17 MR. KAINEN: And strangely --

18 MR. SMITH: And that's --

19 MR. KAINEN: -- it happened right after a phone call from  
20 Vivian. And strangely, if she wanted to go with her mom  
21 afterwards --

22 THE COURT: Listen.

23 MR. KAINEN: -- then she could have, at ten o'clock, had  
24

1 that exchange the way my client offered. But it had to be at  
2 his house at nine o'clock on the drive over there, so they  
3 just both drove over there separately. Kirk followed along  
4 while Rylee's in the car in front. I mean, it's...

5 THE COURT: Listen, I've made my Orders.

6 MR. KAINEN: Got it.

7 THE COURT: So we'll be back in January.

8 MR. SMITH: Thank you, Your Honor.

9 THE COURT: All right?

10 Thank you for your appearances.

11 MR. SMITH: Thank you.

12 THE COURT: So, Mr. Kainen, you'll prepare the Order to  
13 Show Cause.

14 MR. KAINEN: You're not ordering the car to be taken  
15 away, are you?

16 THE COURT: I'm not. At this point I'm not.

17 Listen, I want to hear from Dr. Paglini.

18 MR. KAINEN: I know.

19 THE COURT: I want to know fundamentally where Brooke's  
20 at and why she has these feelings. And I'm not going to make  
21 any further Orders --

22 MR. SMITH: Okay. So the record is clear --

23 THE COURT: -- at this point.

24

1 MR. SMITH: -- she is not being able to use the car if  
2 she violates the Order? That's been the case. The only place  
3 she can go is to and from school. I want the record to be  
4 clear on that. That's Mrs. Harrison's policy. That's been  
5 the policy they to -- that's addressed in her affidavit.

6 THE DEFENDANT: School and dance.

7 MR. SMITH: I don't how --

8 THE DEFENDANT: And dance.

9 MR. SMITH: -- school -- and I don't know how that's  
10 detrimental to the child.

11 THE COURT: Okay.

12 MR. SMITH: All right.

13 MR. KAINEN: She shows up at midnight in this car,  
14 apparently just coming from school at midnight or leaving --  
15 you know, I mean, it's just -- look, it's going to be eight  
16 months by the time we get back that this is going -- seven, I  
17 guess seven months, by the time we get back that this is going  
18 on. And at some point it's not going to be fixable,  
19 regardless of what the grounds are, regardless of what's going  
20 on. And so without some decisive action that where --

21 THE COURT: Well, I need to know where Brooke's at.

22 MR. SMITH: But --

23 THE COURT: I need to know if it's alienation or if  
24

1 there's some valid basis as to why Brooke's having --

2 MR. KAINEN: Has somebody --

3 THE COURT: -- these feelings. I don't know.

4 MR. KAINEN: -- alleged some basis? I mean --

5 THE COURT: You're right. There's nothing --

6 MR. SMITH: Well, wait.

7 THE COURT: -- in the paperwork --

8 MR. SMITH: Okay. Wait.

9 THE COURT: -- that --

10 MR. SMITH: There is.

11 We had alleged a number of different things that  
12 Brooke had said. There was actually a letter from Brooke at  
13 one point --

14 MR. KAINEN: He didn't consult --

15 MR. SMITH: -- that was --

16 MR. KAINEN: -- on vacations. He didn't sufficiently  
17 disclo --

18 THE COURT: Listen.

19 MR. KAINEN: -- or --

20 MR. SMITH: Well, I don't know --

21 MR. KAINEN: -- discuss --

22 THE COURT: Listen.

23 MR. KAINEN: -- with her what the vacation thing --

24

1 THE COURT: Listen. I --

2 MR. SMITH: -- why the mind --

3 MR. KAINEN: I understand it now.

4 MR. SMITH: -- of a sixteen-year-old girl --

5 MR. KAINEN: Now I get it.

6 THE COURT: Listen, I've --

7 MR. KAINEN: There was -- no.

8 THE COURT: -- I've said -- I said earlier in this  
9 hearing, I would be hard-pressed to make -- be in a position  
10 to make a finding that would overcome the presumption of joint  
11 physical custody. It's not there.

12 MR. KAINEN: Okay.

13 MR. SMITH: Okay.

14 THE COURT: So --

15 MR. SMITH: Thank you, Your Honor.

16 THE COURT: Okay? All right.

17 Thank you for your appearances.

18 THE PLAINTIFF: Your Honor, can I be heard, briefly?

19 MR. SMITH: More arguing?

20 THE COURT: Briefly. I --

21 MR. SMITH: And after you've indicated --

22 THE PLAINTIFF: I --

23 MR. SMITH: -- that you've entered your rulings? Why is  
24

1 this case --

2 THE COURT: Well, let me just hear --

3 MR. SMITH: -- different than others?

4 THE COURT: -- a statement from...

5 THE PLAINTIFF: I literally, since July, I've had her for  
6 minutes and hours, not days. She's coming at midnight, she's  
7 leaving -- out of five days she'll be there a day, maybe, or  
8 not show up at all if I'm supposed to have her, too. I'm  
9 supposed to have her from Wednesday afternoon until Christmas.

10 Can -- can't we have an Order that if she doesn't  
11 comply that she's -- the car's taken away from her twenty-four  
12 hours a day?

13 THE COURT: Well, it's my understanding that Defendant  
14 has stipulated that the only use of the vehicle is for Brooke  
15 to go to and from school. You're saying you want to take it a  
16 step further, that there's --

17 THE PLAINTIFF: I don't have the ability, if she's at my  
18 house, to say you can't leave in the car your mother gave you.  
19 Because she'd say, I got that -- this car's my mom's or my mom  
20 made -- gave this to me, you can't do this to me.

21 Now you're putting me in a very difficult position.  
22 If she hasn't got the car, she can't leave.

23 THE COURT: Okay.

24



1 Is there any objection to stipulating to that?

2 MR. SMITH: Look, if he wants to take away her keys while  
3 she's there to keep her there, he's a parent.

4 THE PLAINTIFF: Oh.

5 MR. KAINEN: It's okay. It's alright. They -- he gets  
6 it.

7 THE COURT: No, but this has to be a unified approach.  
8 This can't be -- Dad is --

9 THE DEFENDANT: Your Honor, (indiscernible) --

10 THE COURT: -- you know, and even in intact relationships  
11 --

12 MR. SMITH: All right. Look --

13 THE COURT: -- we have good and bad parents. We have one  
14 parent that is sometimes viewed as the disciplinarian, the  
15 other parent is the fun parent. That's not uncommon. But the  
16 last thing I want to do is put Dad in a position where Dad's  
17 the -- Dad's the key-taking party to this.

18 How is that going to enhance his relationship with  
19 Brooke?

20 MR. SMITH: How is he going to --

21 THE COURT: Dad, you take the keys away.

22 MR. SMITH: -- how is it going to enhance his  
23 relationship in any (indiscernible) force Brooke to do  
24

1 anything? It's going to not -- Brooke's going to react to it.  
2 She's not going to react all that well. But, as you said,  
3 we're parents. So if he's a parent, how come he doesn't have  
4 to do anything? Why doesn't he come over to her house, make a  
5 scene, tell her to get in the car and go over. If he fails,  
6 that's the best interest of the child. Why doesn't he have to  
7 do anything? Why is it only my client --

8 MR. KAINEN: Because he wouldn't get any support --

9 MR. SMITH: -- that has to do anything?

10 MR. KAINEN: -- from the other parent.

11 THE COURT: Yeah. It -- I've made my Orders.

12 MR. KAINEN: You can get them to come out after school,  
13 because they sit in the window and have coffee or whatever it  
14 is, when he's waiting there per --

15 MR. SMITH: This is just not true. These things --

16 THE COURT: All right. I've made my Orders.

17 MR. SMITH: Thank you.

18 THE COURT: All right. Thank you.

19 MR. SMITH: Thank you, Your Honor.

20 (THE RECORDING ENDED AT 10:07:27.)

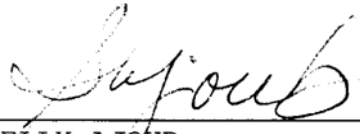
21 \* \* \* \* \*

22 /

23 /

24

1        ATTEST: I do hereby certify that I have truly and  
2 correctly transcribed the digital proceedings in the above-  
entitled case to the best of my ability.

3  
4   
5 \_\_\_\_\_  
SHELLY AJOUB,  
Transcriber II



COPY

FILED

FEB 10 2016

  
 CLERK OF COURT

1 TRANS

2  
3  
4  
5 EIGHTH JUDICIAL DISTRICT COURT  
6 FAMILY DIVISION  
7 CLARK COUNTY, NEVADA  
8

9 KIRK HARRISON, )  
 10 Plaintiff, ) CASE NO. D-11-443611-D  
 11 vs. ) DEPT. Q  
 12 VIVIAN HARRISON, ) (SEALED)  
 13 Defendant. )  
 14

15 BEFORE THE HONORABLE BRYCE C. DUCKWORTH  
 DISTRICT COURT JUDGE

16 TRANSCRIPT RE: ALL PENDING MOTIONS

17 TUESDAY, JANUARY 26, 2016

18 APPEARANCES:

19 The Plaintiff: KIRK HARRISON  
 20 For the Plaintiff: EDWARD KAINEN, ESQ.  
 21 10091 Park Run Dr., #110  
 Las Vegas, Nevada 89145  
 (702) 823-4900  
 22 The Defendant: VIVIAN HARRISON  
 23 For the Defendant: RADFORD SMITH, ESQ.  
 24 64 N. Pecos Rd., #700  
 Las Vegas, Nevada 89074  
 (702) 990-6448

1 LAS VEGAS, NEVADA

TUESDAY, JANUARY 26, 2016

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

3 (THE PROCEEDINGS BEGAN AT 08:43:05)

4  
5 THE COURT: We are on the record in the Harrison  
6 matter, case D-11-443611-D. Please confirm your appearances.

7 MR. KAINEN: Ed Kainen, bar number 5029, with Kirk  
8 Harrison to my right.

9 MR. SMITH: Radford Smith --

10 THE COURT: Good morning.

11 MR. SMITH: -- 2791, with Vivian Harrison, who is to  
12 my left, Your Honor.

13 THE COURT: Good morning. This is the time set for  
14 a show cause hearing and on the underlying motions that had  
15 been filed. I did receive Dr. Paglini's report yesterday  
16 afternoon and -- and was up until early this morning reading  
17 through that trying to digest it. So I -- it's my  
18 understanding both sides have received a copy of that as well.

19 MR. KAINEN: We have.

20 THE COURT: Okay. Have there been any discussions  
21 in terms of any resolution of the issues?

22 MR. SMITH: I'm -- I would just note I -- Vivian has  
23 not had an opportunity to review the -- the report.

24 THE COURT: The report.

1 MR. SMITH: We just got it late last night. And so  
2 I've had a chance to review it and read it, but Ms. Harrison  
3 has not.

4 THE COURT: Okay.

5 MR. KAINEN: I mean, to be very blunt, I'm more  
6 focused, I think I told you last time I'd like to be focusing  
7 on a solution and this is -- so I'd be content to sort of --  
8 I'm assuming the Court's going to follow the directive of Dr.  
9 Paglini. I mean, I have some reservations, but that's neither  
10 here nor there. The idea of having Dr. Ali perform some  
11 intensive co-therapy --

12 THE COURT: Right.

13 MR. KAINEN: -- for lack of a better word between  
14 Brooke and Kirk is something that we welcome. And so candidly  
15 I would be very content to not deal with anything other than  
16 just moving the --

17 THE COURT: Okay.

18 MR. KAINEN: -- reparative side of this case forward  
19 and --

20 THE COURT: Okay.

21 MR. KAINEN: -- shoveling the rest of it further.

22 THE COURT: Well, and I -- and I appreciate that, I  
23 do, because the purpose of today's hearing in part or in large  
24 part is the order to show cause. And -- and I agree and I --

1 and I appreciate that stand point and I -- it sound -- and I'm  
2 assuming Dad has had a chance to read it.

3 MR. KAINEN: He has.

4 THE COURT: But Mom has not. I appreciate the  
5 approach in taking this and at least trying to be proactive in  
6 -- in solving the problems. I -- I think the more time we  
7 spend here, I think the less productive quite frankly it is.  
8 I think the solutions are going to be outside of this  
9 courtroom ultimately and I -- and I think with Dr. Ali's  
10 assistance and that's in part the recommendation and having  
11 him involved I -- I think would be a positive step and a step  
12 in the right direction.

13 And I'd rather see this proceed from the standpoint  
14 of let's work on repair and maintenance and developing a  
15 positive relationship. I've said before, at -- at Brooke's  
16 age, she's going to be emancipated in -- in a short time. And  
17 so I think it's important to approach this more in a positive  
18 light than -- than -- and -- and we can talk about show cause  
19 hearings, but I don't know that that's going to be productive  
20 to this process. I -- I think it's going to be better solved  
21 outside of court. I -- and I -- I glean that from in part the  
22 recommendations. Mr. Smith, what's your position?

23 MR. SMITH: I -- you know, we -- I want to take a  
24 position at this point, Your Honor, because my client hasn't



1 had an opportunity to review Dr. Paglini's --

2 THE COURT: Right.

3 MR. SMITH: -- report. We're here if there wants to  
4 be a show cause hearing, our request would be the same and we  
5 would like to have Dr. Paglini testify. We would like to have  
6 Brooke testify. I don't think that's productive, never have.

7 THE COURT: I don't -- I don't think so either.

8 MR. SMITH: I always have indicated that there was  
9 no contempt here. I think the findings of Dr. Paglini suggest  
10 that there was never contempt here, that the initial  
11 determinations that this all arose out of some sort of  
12 insurance issue.

13 Not only was that dispelled, but the whole motion  
14 that somehow Vivian had wrongfully involved Brooke in the  
15 insurance issue was dispelled. Brooke specifically testified  
16 -- or stated to Dr. Paglini that the only involvement was she  
17 got on the phone and said here's my name and my birth date and  
18 then knew nothing more about it.

19 The -- I'm -- you know, I -- again, I want to take a  
20 position without Ms. Harrison having reviewed the report, but  
21 I'm concerned, seriously concerned about Mr. Harrison's  
22 actions. I think that it's clear now for many years he has  
23 been disparaging Mrs. Harrison to the children. That has to  
24 stop, hopefully with, you know, additional therapy for him and

1 with him and Brooke that will.

2 I think Dr. Paglini made a clear message that it was  
3 damaging to the relationship. And Brooke I think showed great  
4 intelligence, maturity, recognized very clearly that this was  
5 the problem, that -- that this was the problem with her  
6 relationship with Mr. Harrison.

7 If Mr. Harrison wants to go forward with the show  
8 cause, we're present and we'll --

9 THE COURT: Well --

10 MR. SMITH: -- do so.

11 THE COURT: Well --

12 MR. SMITH: If he has the opportunity to dismiss  
13 those motions, I would suggest he do so. If not, we can  
14 continue the time with the order to show cause and he can go  
15 through whatever the Court recommends in terms of the therapy  
16 result.

17 But Judge, there are an -- a mountain of admissions  
18 here that he has continuously purposefully violated 5.03. And  
19 it -- it doesn't start in 2016.

20 THE COURT: Well, but listen. I -- I want to stop  
21 it right there, because it -- again, this is not -- this is  
22 not productive. I -- and I agree with the notion that -- and  
23 -- and really as I looked at this and thought okay, do I set  
24 an evidentiary hearing on an order to show cause. And that's

1 why I appreciate the position that's being taken by the  
2 Plaintiff in saying, you know, well, we could -- we could do  
3 that. We could put on -- on evidence and call the parties and  
4 even entertain under 16.215 having Brooke called. But in --  
5 at the end of the day, is that truly productive for Brooke?

6 And -- and I think what I gleaned from the report  
7 and it -- and it's going to be easy on both sides to pick  
8 points out and I understand where you're -- I read the report.  
9 I was up until early this morning reading it. And there are  
10 parts you can pick out on both sides. I tell you, I look at  
11 -- I look at -- and -- and some of it -- and -- and Plaintiff  
12 was apologetic at points during the report and -- and there  
13 was a dialogue between Dr. Paglini and -- and Mr. Harrison in  
14 that regard.

15 And so I think fundamentally a lot of it comes down  
16 to an -- an acknowledgment that there's a problem, there's an  
17 issue that needs to be dealt with. And the best forum to  
18 solve that problem is not in this courtroom.

19 MR. SMITH: But -- but what is abundantly clear --

20 THE COURT: Well --

21 MR. SMITH: -- about this --

22 THE COURT: -- no --

23 MR. SMITH: -- it's not Ms. Harrison's problem.

24 THE COURT: Well, no, no. Listen. And -- and

1 again, that's -- that's where I think there's a fundamental  
2 breakdown, because one thing that I did glean and I go back  
3 and -- and one -- one thing that concerned me about this  
4 entire process. I'm not -- and I'm not here to change any  
5 orders. My controlling orders are what they are. We get into  
6 this whole teenage discretion issue.

7           And -- and I -- as a general rule and I've said this  
8 before in this case, as a general rule, I -- I don't just  
9 generally invoke teenage discretion provisions. But the  
10 parties agreed to a very specific detailed teenage discretion  
11 provision that is now the subject of an appeal.

12           And so that's not before me and I'm not here to  
13 meddle in that. But there were very specific provisions. And  
14 I've said -- I basically said hands off, I'm not -- I'm not  
15 changing what you agreed to. You agreed that was in the  
16 children's best interest.

17           But one thing that alarmed me was the empowerment  
18 that Brooke was given through that teenage dis -- and it --  
19 and -- and the way I interpret Dr. Paglini's report is the  
20 intent of that provision was eviscerated with what happened in  
21 terms of empowering Brooke.

22           And I can't -- I'm not here to change that. It  
23 concerns me in terms of if the same seeds have been planted  
24 with Rylee. And -- and so I'm -- I'm just telling you to

1 approach this from the standpoint in saying it's all his fault  
2 or it's all her fault is -- is not appropriate. There were  
3 things that I did glean that I -- I was pleased from Mom's  
4 standpoint. Some of the disciplinary measures, there was  
5 discussion in there about taking away iPhones and taking away  
6 cars.

7 But the -- the moment we -- we approach this from  
8 this adversarial fashion and -- and try pinning the blame of  
9 everything on the other party and not take some responsibility  
10 or ownership of where we're at today, I -- I agree there's a  
11 lot of work to be done, but I -- I think I agree with Dr.  
12 Paglini that this should be performed by Dr. Ali. It appears  
13 that Brooke is comfortable with Dr. Ali. And I'd rather see  
14 this go down that path of -- of some type of ther -- a  
15 therapeutic approach to repair this relationship.

16 MR. SMITH: See, that's what we approached -- we  
17 said at the beginning before any motions were ever filed was  
18 let's sit down and talk about what we can do. I sent that  
19 email to Mr. Kainen and then he came to my office and served  
20 me with a motion. We've been served with two others, three  
21 separate --

22 THE COURT: I get that.

23 MR. SMITH: -- motions for order to show cause, all  
24 of which had been completely and utterly dispelled in their

1 content by Dr. Paglini's --

2 THE COURT: Listen.

3 MR. SMITH: -- report. It is really disturbing to  
4 hear him say and hear Brooke say that for years she has been  
5 told all of the evils of her mother. For Dr. Paglini to find  
6 specifically with underlines there has been no alienation on  
7 the part of this individual.

8 To him to go through 60 pages of facts and findings  
9 that suggest there has been no alienation and for the Court to  
10 indicate now that somehow Mrs. Harrison is responsible. Mrs.  
11 Harrison has done nothing --

12 THE COURT: No, Mr. Smith, stop right now. That's  
13 absurd. And I take offense to your representation that this  
14 Court is somehow pointing the -- the entire blame at Mom.

15 MR. SMITH: I didn't say --

16 THE COURT: That's --

17 MR. SMITH: -- entire blame.

18 THE COURT: That's exactly what you're inferring.

19 MR. SMITH: No, that's not what I'm inferring.

20 THE COURT: And knock it off. I don't appreciate  
21 that, because that is not the case and it's offensive that you  
22 would make those suggestions to this Court. I am offended by  
23 that.

24 MR. SMITH: Judge, I have --

1 THE COURT: That is not --

2 MR. SMITH: -- not made those --

3 THE COURT: That is not my position. My position is  
4 let's move forward for Brooke's sake. There's a lot -- and --  
5 and you want to go through and nitpick this report, we can go  
6 page by page. But I'm not going to do that this morning. And  
7 -- and I appreciate the point.

8 The -- the bottom line is I am here to enforce my  
9 orders. There were violations of these orders. Dr. Paglini's  
10 purpose was not -- not to make findings of whether or not  
11 contempt had -- had been committed. It is undisputed -- it is  
12 undisputed that there were times that Dad did not have  
13 visitation, that vi -- that orders were violated. Ultimately,  
14 would that lead to findings of contempt? I don't know. There  
15 was a prior position taken that look, you need to set  
16 evidentiary proceedings.

17 And that's really where -- that -- that's -- that's  
18 the decision I was contemplating today, would I set this for  
19 evidentiary proceedings. I appreciate -- and -- and maybe in  
20 -- in retrospect it would -- we would have had time better  
21 spent in looking at this from the standpoint of some type of  
22 therapeutic reunification, if you will. And I'd rather see  
23 that take place.

24 I don't think the problems are going to be solved

1 here and I think it is counterin -- counterproductive to -- to  
2 have evidentiary proceedings and further ensnare Brooke into  
3 this. I think a lot of -- there's some dynamics that Dr.  
4 Paglini has talked about. And -- and so my intent would be to  
5 approach that from that standpoint and -- and at -- at a  
6 minimum, delay or defer these proceedings.

7 MR. SMITH: Defer the proceedings? We want a  
8 hearing. There is no reason -- there is no basis for an order  
9 to show cause against my client. There's never been a basis  
10 for a finding of contempt. If that's going to be pending, in  
11 other words, if Mr. Harrison insists that these motions  
12 continue to be deferred or pending, we want an evidentiary  
13 hearing.

14 This is -- this is the way this case has gone. We  
15 have never got our time in court to address all of these  
16 allegations that Mr. Harrison has made.

17 THE COURT: Well, what's -- what's the Plaintiff's  
18 position in regards to -- how -- how -- I -- because I -- you  
19 -- you started by saying look, I -- I want --

20 MR. KAINEN: And I'm -- and I'm trying not to take  
21 the bait here, because it's -- it -- it is very -- I have some  
22 real concerns. In other words, I think given some history in  
23 this case which probably today is not the time to go through,  
24 what Dr. Paglini was going to decide in this case was a



1 foregone conclusion once Dr. Paglini was the expert and was  
2 chosen in my mind.

3           Now that said, okay, what -- what I found relieving  
4 frankly, sometimes I disagree in -- on some of the underlying  
5 things and how we got there, but at the end of the day, the --  
6 the positive thing that came out of it was I happen to have a  
7 lot of faith in Dr. Ali. He's somebody I think is positive  
8 and is somebody I think can -- can move forward. And the fact  
9 is that it's a solution, that it's something that moves this  
10 case in the right direction.

11           So without going into all of the underlying things  
12 and how we got there and the disagreements because that's just  
13 going to wind this thing up more than it already has been this  
14 morning, I'm choosing to focus on what can be done to move  
15 this forward. With respect to the order to show cause, if Mr.  
16 Smith wants his hearing, set it six months or eight months  
17 out. I don't really care. Okay. I think it's  
18 counterproductive at this point.

19           At the and of the day I've told you every time I've  
20 come in here I was not concerned with the punishment. I  
21 needed the problem fixed. That's what I've said every single  
22 time I've been here. In other words, that I wasn't -- I  
23 didn't want her to go to jail, I didn't want punishment. I  
24 wanted the problem fixed. I wanted you to enforce the orders

1 and everything and those kind of things. That's been my  
2 concern was to move this case forward.

3 Now do I disagree with some of the underlying  
4 conclusions that Dr. Paglini made? Absolutely. Okay. But at  
5 the end of the day, the recommendation he made in terms of  
6 involving Dr. Ali is a positive. Now I think he got something  
7 wrong.

8 I'll tell you now, because Kirk advocated a  
9 particular program, a Florida program that was discussed  
10 there. Dr. Paglini frankly just misunderstood it. He said  
11 it's a 90 day program. It's -- it's not. It's a one week  
12 program where he would fly down -- you know, Brooke and he and  
13 Rylee would fly down and they would participate in this one  
14 week program as a family and they would come back. It's not a  
15 90 day program. It -- Dr. Paglini just got that wrong.

16 But that's neither here nor there. Dr. Ali is an  
17 excellent professional and I have a lot of faith in the guy.  
18 And so if they can get in and see him two hours a week which  
19 is what Dr. Paglini is recommending, Kirk accepts that and he  
20 has some faith in Dr. Ali. We're --

21 THE COURT: But --

22 MR. KAINEN: -- hopeful on that one.

23 THE COURT: But to Mr. Smith's point, because I  
24 think to the extent that there are any proceedings pending

1 before me it's that dark cloud that's going to hang over  
2 this --

3 MR. KAINEN: Then vac --

4 THE COURT: -- and I think that in and of --

5 MR. KAINEN: Then vacate the --

6 THE COURT: -- itself may be --

7 MR. KAINEN: -- order to show cause.

8 THE COURT: Okay.

9 MR. KAINEN: And if I find a real problem that this  
10 isn't rectified, I'll renotice it. But I don't think that's  
11 going to be necessary is what I hope. So what I'm saying is  
12 am I willing to sit there and say no, this was wrong? I think  
13 there's a problem.

14 Ed Kainen as a lawyer thinks there's a problem when  
15 there's a time when my client has visitation time and during  
16 his time Mom pulls up outside, picks up the child and takes  
17 the child over his objection. Okay.

18 Yeah, I have a problem with that. I think that  
19 constitutes contempt. I think when you harbor the child, when  
20 you provide her with money and a car and all of those things,  
21 I think those present problems and they are contemptible  
22 issues. At the end of the day, it doesn't further the  
23 situation any, because if I'm right, okay, or if -- if we're  
24 right and at the end of the day Mom does have a lot more

1 control than I think even Dr. Paglini sees, then furthering  
2 this only furthers the alienation or furthers the -- let me  
3 choose -- choose the -- I apologize. Furthers the distance  
4 that gets created between my client and Brooke.

5 And at the end of what we do here, what he wants is  
6 to repair that relationship. And if it means eating the rest  
7 of this, so be it. So that's why I'm saying put it on a  
8 shelf, vacate the hearing, do whatever.

9 I think if there's a problem, we'll deal with it  
10 down the road. But my focus would -- will be where it has  
11 been each time I've told you that I've -- each time we've been  
12 in here on every hearing over the last six or eight months  
13 that we've been here which is let's fix the problem, let's do  
14 something.

15 The Court wanted to have the insight from Dr.  
16 Paglini before it did that, you've got that. Even with our  
17 little asterisk about, you know, we have some concerns about  
18 some of the underlying issues or whatever it was, at the end  
19 of the day, the -- the recommendation in terms of how to move  
20 forward fixing it is not the -- the -- as significant a  
21 recommendation as we would have liked, but it's a positive  
22 dire -- it's a positive suggestion in -- in the -- in the  
23 right direction. And so we would like to move forward with  
24 that. And I think that's the best use of our time and effort.

1 MR. SMITH: Judge, the -- the last time that --  
2 during the process Mr. Harrison took advantage of the process  
3 by relating what he could not have otherwise related to Brooke  
4 through 5.03. All of the things that were contained -- in --  
5 in fact, he even misrepresented the record by saying to her  
6 repeatedly through Dr. Paglini's interview with both of them  
7 that it was his mother who had filed a motion in September of  
8 2011 to seek custody of her. And that's when everything  
9 changed. That -- that's just a flat out misrepresentation of  
10 this record.

11 And that's the kind of -- the big lie theory that  
12 he's used. Let me note that back in 2010 he indicated that he  
13 had stopped -- the same thing he indicates in Paglini's report  
14 that he's just stopped doing in the last three months, he  
15 indicated then that he would stop correcting bad things that  
16 were said about Vivian to the children because at some point  
17 in time you need to have them -- them understanding the truth.  
18 That was in his affidavit that he first filed in 2011.

19 My concern is this process has become not something  
20 that's designed to therapeutically fix relationships, but has  
21 been designed and I think it's a fair statement from all of  
22 the pleadings filed in this action in the supreme court and  
23 now in the context of these motions that the entirety of Mr.  
24 Harrison's focus is that it's all caused by Mrs. Harrison.

1 I think Dr. Paglini's report made very clear and  
2 very insightfully that this is not the case, that the problem  
3 is that Mr. Harrison can't let go of what has happened in his  
4 divorce and in regard to the relationship with his children.  
5 He has already alienated the two older daughters. If we allow  
6 him to continually file these motions and process, continue  
7 with this big lie notion, that he will try to do the same  
8 things with these daughters.

9 My concern now based upon what he did -- I mean, how  
10 outrageous was it from a lawyer to sit in an office with a  
11 therapist and specifically tell his daughter things he had to  
12 know were improper to relate to the daughter and then have the  
13 daughter say, you know, I've heard these things for two or  
14 three years, that -- but he -- he couched it in a way that he  
15 thought this straight A student brilliant girl wouldn't  
16 understand that somebody is telling you these things.

17 So Your Honor, my concern is I'm fine with the  
18 therapeutic process. But there has to be limits. This idea  
19 that there is a viable motion for an order to show cause is  
20 what causes me to say let's have a hearing on this. I  
21 actually agree with him. I have agreed with him from the  
22 beginning. That's why I sent an email to Mr. Kainen before  
23 any motion was filed saying let's sit down and talk about  
24 this.

1 But that was not their course. Mr. Kainen says that  
2 every time he's come to court -- we've only been to court  
3 twice in this matter. Every time he's come to court he only  
4 got to that conclusion when the Court said to Mr. Harrison  
5 insightfully that Mr. Harrison, do you think that holding a  
6 contempt citation is going to make any difference with your  
7 daughter, perhaps we should have Dr. Paglini do an analysis,  
8 because as you recall, he was unwilling to do any analysis.

9 And you will also recall at the very first hearing I  
10 said we don't care if Mr. Harrison has any kind of therapeutic  
11 relationship with Brooke. And he can go through therapy. In  
12 fact, he -- he expressed this great surprise well, I thought I  
13 couldn't have that therapy. And we said no, that's fine.

14 So here's what's happened. Again, Mrs. Harrison has  
15 been forced to spend significant amounts of money. I've tried  
16 to keep that money down by waiting until today because I had a  
17 hundred percent confidence that whether it was Dr. Paglini and  
18 that should have been the judge that the Court appointed  
19 expert would be attacked as biased. But I would have -- that  
20 -- that Dr. Paglini, anyone looking at this situation would  
21 come to the same conclusions he has come to. There was never  
22 any attempt by Mrs. Harrison in regard to this insurance issue  
23 to create a problem. That problem had been identified in  
24 multiple pleadings that proceeded.

1           For the Court -- and -- and I understand the Court  
2 may have taken offense by -- and I certainly didn't intend  
3 them to be in pensive, but Judge, when I finally get a report,  
4 when we finally have the interview that we've been requesting  
5 now for many years, we requested that Paglini's report been --  
6 be reported so that we'd stop Mr. Harrison from having this  
7 notion that he could continually tell everybody that he could  
8 talk to that there were problems with Vivian.

9           We wanted the child interviewed shortly after when  
10 the first teenage discretion issue was brought up in about  
11 this comment that, you know, mommy's -- you know, we --  
12 children should live with their mommies and that sort of  
13 thing. To dispel those notions, those turned out to be  
14 nowhere to be found in Dr. Paglini's report. And we wanted an  
15 interview again.

16           So on three separate occasions we've asked for an  
17 interview, it was only in the last proceedings when Mr.  
18 Harrison filed a motion of contempt that that interview was --  
19 was granted and the interview resulted in Pag -- Dr. Paglini's  
20 report.

21           So this is a million dollars worth of frustration  
22 that is coming out today. And again, when we offer a  
23 solution, we're held in contempt. When now the report  
24 indicates that very clearly the solution -- and the problem is



1 not Mrs. Harrison -- and the solution is the therapy that we  
2 first identified. Now there's some sort of conciliatory  
3 measures towards Mr. Harrison after he's some -- done  
4 something as plain as violate 5.03 in a very clear manner, in  
5 a very intentional manner to try to influence this daughter.

6 I'm concerned that that's the exact same thing he'll  
7 do in therapy. And in fact, that concern was shared by Dr.  
8 Paglini. He indicated very clearly that the limits on the  
9 therapy, what he doesn't want is something going in and  
10 advocating their case against Ms. Harrison and that the focus  
11 should be on therapy.

12 THE COURT: Do you accept the recommendations of Dr.  
13 Paglini?

14 MR. SMITH: I -- I can't -- it's difficult for me to  
15 accept anything at this point when my client hasn't reviewed  
16 the report. So I'd like to have at least a couple of days to  
17 report back to the Court. I strongly predict that that will  
18 be okay as long as we have reasonable limitations on what Mr.  
19 Harrison can -- can state to his daughter about this case.  
20 It's inappropriate. It's the same thing that happened with  
21 the older daughters. He didn't have that limit. And those  
22 older daughters now don't speak to Mrs. Harrison because they  
23 believe that she has narcissistic personality disorder.

24 THE COURT: Does -- does the Plaintiff accept the

1 recommendations of Dr. Paglini?

2 MR. KAINEN: We think it's a good first step, yes.

3 THE COURT: But here's -- here's what I'm inclined  
4 to do. I -- I do find the report valuable to the process.  
5 The -- the purpose of today's hearing -- it was set as a show  
6 cause hearing. And for sake of clarity for the record and --  
7 and to clarify perhaps prior proceedings in regards to the  
8 issue of contempt. The Court had issued an order to show  
9 cause because there was a prima facie showing that there had  
10 been a violation of the Court's order, that time had been  
11 denied under the Court ordered schedule.

12 And so there was a basis to issue the order to show  
13 cause. To actually make -- actually make a finding of  
14 contempt, ultimately I have to make a finding that a party in  
15 -- in this instance the Defendant willfully and intentionally  
16 violated the Court's order. That would be the subject of  
17 ultimately the show cause hearing to adduce that information  
18 whether it was evidentiary in nature. And that's been part of  
19 the discussion as well for me to make that finding as to  
20 willful -- whether it was willful intent -- willful -- willful  
21 and intentional.

22 Dr. Paglini's purpose was not -- not to become the  
23 -- the fact finder for contempt, but when -- when we had  
24 discussions at our prior hearings and it -- and it became a

1 discussion about finding out where Brooke is at and -- and  
2 what were the dynamics that were causing the failure in the  
3 relationship or the deterioration in the relationship. And  
4 ultimately, I -- I selected Dr. Paglini and I have the report  
5 and that -- I do find it valuable. And I don't know that it  
6 would be productive to have a show cause hearing to make  
7 findings of whether or not the Defendant's conduct was willful  
8 and intentional.

9           And to that point, that's where Dr. Paglini's report  
10 does come into play. And I appreciate the discussion in terms  
11 of having these proceedings looming as -- as you go forward.  
12 And with that discussion, I -- I am inclined to -- to vacate  
13 the -- the show cause proceedings and turn the focus of this  
14 to a therapeutic focus with Dr. Ali's assistance and guidance  
15 consistent with those recommendations.

16           Now I know Mr. Smith indicated that Ms. Harrison  
17 hasn't had the opportunity to read the report. I -- I don't  
18 know that she would find those recommendations objectionable,  
19 but that's ultimately her -- her right to review the report.  
20 And unfortunately for all of us it came in yesterday  
21 afternoon. And -- and it is voluminous and it takes some --  
22 some time to process. But I'm inclined to go down that path  
23 and follow those recommendations that Dr. Paglini instituted  
24 for purposes of pursuing that repair to the relationship in

1 the limited time that -- that remains in -- in Brooke's  
2 minority.

3           So I am inclined notwithstanding the fact that --  
4 that Ms. Harrison has not had a chance to review it. I know  
5 both Counsel have -- I -- I don't find anything specifically  
6 objectionable to his recommendations. And so we'd dispense at  
7 this point in time with the order to -- or orders to show  
8 cause, close the file and have the parties proceed with their  
9 -- the reunification process with Dr. Ali.

10           MR. KAINEN: So the order would be that Brooke would  
11 participate, both parents would facilitate Brooke participate  
12 in counseling two hours per week with Dr. Ali which is the  
13 recommendation, double session. Now Dr. -- as I understand.

14           THE COURT: But I -- I don't want it to become so  
15 arbitrary that Dr. Ali is -- is going to be integral in  
16 determining --

17           MR. KAINEN: Right.

18           THE COURT: -- the pace, the involvement, the  
19 frequency.

20           MR. KAINEN: I'm just saying the recommendation was  
21 a double session and not necessarily two one hour sessions,  
22 but one double session per week or something.

23           THE COURT: I -- I -- and I know Dr. Paglini spoke  
24 with Dr. Ali about that --

1 MR. KAINEN: Right.

2 THE COURT: -- and -- and his availability to  
3 conduct that. And Dr. Ali said he -- he'd be fine with doing  
4 that. But I'm -- I'm not -- and -- and so I -- I recognize  
5 that's part of the recommendations. But again, I don't want  
6 it to become so arbitrary that it -- it -- if it's a -- a  
7 round peg, it has to fit in a square box. I -- I want Dr. Ali  
8 because of his background and familiarity with -- with Brooke  
9 and with the parties for that matter to a more limited extense  
10 (sic). I -- he's going to have some involvement in  
11 determining what the pace is and what's appropriate for  
12 Brooke.

13 MR. KAINEN: Would you be willing just to set a  
14 status check six or eight weeks out that we can vacate  
15 assuming things are going -- I -- I just don't want to have to  
16 file another motion if nothing's happening, if there's no  
17 movement. And so all I'm saying is that look, if -- if it's  
18 started and it's moving forward and something's happening in a  
19 positive direction, no problem. We'll vacate. I just don't  
20 want to have to file a motion and get accused of like, you  
21 know, all the things that go with it just to see what's going  
22 on. And so it can be something we can vacate. I just want to  
23 know that something actually gets started.

24 THE COURT: Well, I -- I don't know that I'm

1 inclined to set anything.

2 MR. SMITH: I just need to know where we are  
3 procedurally. There are three --

4 MR. KAINEN: Procedurally my hearing -- my motions  
5 have been vacated.

6 MR. SMITH: Okay. If the motions have been vacated,  
7 in other words, they've been denied --

8 MR. KAINEN: No.

9 MR. SMITH: -- or vacated, you've --

10 THE COURT: Vacated.

11 MR. SMITH: -- withdrawn them? What is the  
12 procedural status of today's motion -- of today's hearing?  
13 Because I need to know.

14 THE COURT: Based on the report --

15 MR. SMITH: Yes.

16 THE COURT: -- I'm -- I'm not inclined to set  
17 further proceedings on the issue of contempt to obtain  
18 information to -- to make a determination as to whether or not  
19 the Defendant acted in a willful and intentional matter --  
20 manner to violate the Court's orders. I find that it would be  
21 more productive and it would be in Brooke's best interest that  
22 the course of this process be altered consistent with Dr.  
23 Paglini's recommendations and that we proceed therapeutically  
24 rather than setting further hearings and that it would be

1 counterproductive to Brooke's best interest to set further  
2 show cause proceedings in this.

3 MR. SMITH: And I understand those findings. Again,  
4 my question is procedurally. The request is for not only for  
5 an order to show cause, but for a change of custody, for  
6 sanctions, for attorney's fees. I need to know or understand  
7 the disposition or whether or not those motions are still  
8 pending. We have also countermoved for sanctions and  
9 attorney's fees in the initial motion.

10 So I need to know what the Court is doing  
11 procedurally so that I can instruct my client. And let me  
12 again note that my client cannot take a position on the  
13 Court's order, because she hasn't had an opportunity to review  
14 this report.

15 THE COURT: Understood.

16 MR. KAINEN: Just so we're clear, we haven't moved  
17 for a change in custody, so --

18 THE COURT: What --

19 MR. SMITH: The --

20 THE COURT: Pardon me?

21 MR. KAINEN: -- suggestion that we -- we moved to  
22 change custody was sort of like one of those things thrown in  
23 on all the things we've done. They become part of the record,  
24 it'll be quoted back years from now and it's subsequent to

1 appeal. And look, the record was --

2 THE COURT: But you're -- it was not a change --

3 MR. KAINEN: No.

4 THE COURT: -- in -- I know that --

5 MR. SMITH: The remedy requested was a substantial  
6 period of time and that the child be in his care exclusively  
7 to address or remedy the -- the alleged alienation. You can  
8 call it whatever you like, but that remedy is a request for a  
9 modification of custody. And we also -- one other procedural  
10 matter --

11 MR. KAINEN: It's called compensatory time in Las  
12 Vegas.

13 MR. SMITH: One other procedural matter is that we  
14 have the child who has no intent of -- of abiding by the  
15 Court's order. We have done all the punitive measures that we  
16 think are reasonable under the circumstances. Those punitive  
17 as indicated by Dr. Paglini are starting to cause a rift in a  
18 relationship between Mrs. Harrison and Brooke.

19 That shouldn't happen. This is not as found by Dr.  
20 Paglini something that Mrs. Harrison is contributing to. She  
21 is trying to stop Brooke. She is encouraging Brooke. She's  
22 not the one that is still invested in the divorce action. I  
23 don't know what the status of that is procedurally. If we  
24 have a de facto change of custody, are we simply ignoring



1 that?

2 THE COURT: Well, there's no basis to be clear. I  
3 don't -- do not find that there's a basis to modify custody.  
4 The -- the preference under the law is that the parties having  
5 stipulated to joint physical custody the preference is that  
6 they maintain joint physical custody. I don't find that there  
7 is a basis and I've never relied on the -- the express  
8 preference of a child as a basis standing alone to modify  
9 custody.

10 Now a lot can be read into Dr. Paglini's report in  
11 that regard, but I don't -- I don't find that there is a --  
12 been a sufficient showing to modify custody under these facts.  
13 I -- as I indicated before, I view -- there -- there is a lot  
14 in that report and -- and my intent is not to simply brush  
15 over all of the details of -- of a very detailed report that  
16 includes in part again, not totality, but in part a child who  
17 is very empowered.

18 Dr. Paglini talks about the fact that Brooke is very  
19 opinionated. She appears to be very articulate. She  
20 describes herself as somewhat obsessive compulsive --  
21 compulsive. She's very clean, tidy, organized. And she has a  
22 design on exactly what direction she's headed.

23 But in part, she has been empowered throughout this  
24 process. And I do not find that there is a basis to make an

1 award of any fees or sanctions on either side. So those  
2 requests are denied. Although there -- there was a basis and  
3 there is a basis for this Court to entertain contempt  
4 proceedings, to -- to make that factual determination because  
5 there have been no evidentiary proceedings which the Defendant  
6 demanded ultimately if I was to make that -- those findings of  
7 contempt.

8 I'm not inclined to pursue the issue of contempt at  
9 this point notwithstanding the fact that time has been denied  
10 to the Plaintiff. The -- the parties still have a  
11 responsibility to support the relationship, Brooke with the  
12 other parent. And that goes both ways. And there's a lot to  
13 be said that comes from the report. That was very alarming  
14 and concerning about things that are said about Mom.

15 We -- and we've had a lot of discussions in the past  
16 in this case about what do you do with a teenager at that age  
17 who simply does not want to go. And we've talked about these  
18 remedies in terms of restrictions, taking away phones, which  
19 all appear to have occurred. And still, there are some  
20 fracture dynamics to -- to the relationship. And -- and the  
21 value of Brooke's relationship with the other parent should be  
22 just as important as how well Brooke performs in school. It  
23 should be elevated to that level.

24 And that should continue to be the case on both

1 sides. And you should both act in -- in accordance in a way  
2 that if you were receiving a failing grade what would you do  
3 as a parent to rectify that situation. It should be that same  
4 approach in fostering that relationship.

5 And that may necessitate some changes in terms of  
6 how you approach this. Brooke clearly -- she's indicated she  
7 loves both of you. And there are some identifying emotional  
8 characteristics or patterns that she has in her relationship  
9 with Mom. Dance was a prevalent issue that was woven  
10 throughout the -- the report.

11 And you know what, as parents, we can't instill or  
12 mandate the passions of our children in whatever course or  
13 activity. And I'm keenly, keenly aware of that. And the  
14 moment we start trying to put our imprint on a child's passion  
15 because sometimes as parents I think we -- we feel like we  
16 kind of -- kind of understand the future and -- and that's --  
17 we have a certain path that we want our children to follow.  
18 We have to be very careful in terms of how that's going to  
19 affect our relationship to the extent that we're trying to  
20 impose our passions or our -- our view of how things will turn  
21 out on our children where they may have a different passion to  
22 participate -- whether to participating in a sport, changing a  
23 sport midstream.

24 I -- I know exactly what that feels like and how

1 that can create a rift in relationships. And so there are  
2 changes that have to be made. But to the point of  
3 procedurally where we're at, there were -- time was missed by  
4 Dad. There were violations of the Court's orders. I don't  
5 have a sufficient basis right now to make a finding that the  
6 Defendant willfully and -- and intentionally violated the  
7 order. So I'm not making findings of contempt and denying the  
8 request for sanction and fees on both sides.

9 MR. KAINEN: Your Honor, does the Court -- and --  
10 and this is really just looking for guidance. Do you have any  
11 guidance for us really into what might be a good methodology  
12 in dispelling with Brooke the idea that at 16 or whatever age  
13 she determines appropriate that she doesn't have the right to  
14 make the decisions. And I'm -- I'm really genuinely looking  
15 for guidance.

16 THE COURT: Well, I -- I -- and I'm not sure where  
17 that came from, but clearly she has that in her mind set that  
18 at six -- and that wasn't even the teenage discretion age.  
19 That's why I'm -- I'm not sure -- and you know what, these  
20 seeds could get planted who knows from --

21 MR. KAINEN: Anywhere.

22 THE COURT: -- from school, from classmates who --

23 MR. KAINEN: I'm just -- no, no. I -- and that's  
24 what -- I'm -- I'm not looking -- and -- and again, I'm -- I

1 -- I asked the question in a deliberate way. I'm -- I -- it  
2 wasn't a way to be accusatory. It was a way to say how do we  
3 -- do you have guidance as to what would be the best  
4 methodology to fix that misperception.

5 THE COURT: I -- I don't know other than both  
6 parents stating that there is no such -- there is -- it -- it  
7 is so much -- no such control exercise by -- by a 16-year-old.  
8 I -- I think part of that has to be reenforced in these  
9 therapeutic sessions with Dr. Ali.

10 MR. KAINEN: Is there an order with respect to the  
11 implementation of the recommendation? In other words -- or is  
12 it more of a laissez faire kind of go forth and let me know if  
13 there's a problem?

14 THE COURT: Well, it -- it -- to a certain extent it  
15 is. I mean, I -- I appreciate again the recommendations that  
16 were made by Dr. Paglini. I -- I do find that they are  
17 valuable. But I said before that I don't want it -- I -- I  
18 don't believe we're dealing with something that is necessarily  
19 a detailed blueprint of this is how -- this is how it's going  
20 to function. I think Dr. Ali needs to have some ability to  
21 make determinations as how -- how is the best way to proceed  
22 on a week by week basis.

23 And that's why I think to arbitrarily define exactly  
24 how that's going to look, I think it's better off that it is

1 somewhat of a laissez faire approach because I think it's  
2 going to be more productive outside of this Court and allowing  
3 a professional like Dr. Paglini to chart that course than for  
4 me to dictate this is step one, step two, step three within  
5 the general parameters of what Dr. Paglini is recommending.

6 MR. KAINEN: Yeah. I think you want Dr. Ali to  
7 chart the course.

8 THE COURT: Yes. Yes.

9 MR. SMITH: In regard to the restriction on Mr.  
10 Harrison's continued disparagement of Mrs. Harrison and his  
11 continued use and introduction of things that were in the  
12 pleadings in these matters to Brooke, what do we do about  
13 that?

14 THE COURT: Well, it is -- it is worth restating  
15 that -- and including as part of an order from today that  
16 neither parent is to disparage the other parent in front of  
17 the children. That includes Rylee, not just Brooke. We've  
18 been talking about Brooke, one of the dynamics about this is  
19 -- and I touched on this a little bit previously,  
20 notwithstanding the issues that Brooke has, she was asked do  
21 -- do you love your father. And -- and her response was yes,  
22 she does. And she loves her -- her mother.

23 I think anytime a parent says something negative  
24 about the other parent. And -- and I talk about this in other

1 cases quite a bit where -- and -- and it doesn't even have to  
2 be something said. If -- if a child has something positive  
3 report -- positive to report about the other parent and they  
4 receive a glance or a stare, it -- it can be nonverbal  
5 behavior that -- that creates problems in these relationships.

6 Children are going to be inherently be loyal to --  
7 to both of you because you're dad and you're mom. That's --  
8 that's part of it. And -- and the moment that a child feels  
9 like he or she, and in this case, Brooke, feels like she can't  
10 say positive things about her mom because Dad doesn't like her  
11 mom and Dad's going to make a snide comment or -- or make some  
12 type of reaction, that inhibits Brooke's ability to freely  
13 express that love.

14 And I -- I don't find that that's healthy. She --  
15 she should -- and I -- I may have said that in -- in this case  
16 before. You need to grant Brooke permission to love the other  
17 parent. As corny as that sounds and -- and Dad needs to grant  
18 permission for Brooke to love her mom. And parts of that  
19 report suggests that Brooke doesn't have Dad's permission to  
20 love her mom. He does -- she doesn't have permission to come  
21 into Dad's home and say wonderful things about Mom or Dad's  
22 going to start saying negative things.

23 And so the order is that neither parent -- and this  
24 is -- this is important to Brooke's emotional well-being.

1 Neither parent should say anything that would cast a negative  
2 light on the other parent. Brooke doesn't need that. She  
3 doesn't want it. She's made that clear. And I think the more  
4 she feels that freedom, that's going to enhance Dad's  
5 relationship with Brooke down the road because she loves her  
6 mom. She doesn't want to hear anything negative about her  
7 mom. And I think the more -- when she hears something  
8 negative, that's going to close her up and that's going to  
9 impact Dad's relationship. And -- and so that would be my  
10 order from today in terms of --

11 MR. KAINEN: So all right.

12 THE COURT: -- disparaging comments.

13 MR. KAINEN: Your Honor, I -- I would --

14 MR. SMITH: So no disparagement --

15 MR. KAINEN: -- I need to be clear --

16 MR. SMITH: -- no release or information material  
17 even in a therapeutic process of information from this case,  
18 because that was clearly done -- and in fact, it was  
19 misrepresented to Brooke things about this case.

20 THE COURT: Well, Dr. Paglini noted what had  
21 happened there.

22 MR. KAINEN: I -- I will include that in -- in a  
23 post order and I will send to Mr. Smith for signature. And I  
24 will let the Court know if we have a problem --



1 THE COURT: Okay.

2 MR. KAINEN: -- with going. Thank you.

3 THE COURT: If -- if there is an issue, I'm -- I'm  
4 not going to set another hearing. I would just say renote a  
5 hearing on the underlying motions.

6 MR. KAINEN: That would be fine.

7 THE COURT: Okay.

8 MR. KAINEN: Thank you.

9 THE COURT: All right. Thank you for your  
10 appearances.

11 MR. HARRISON: Thank you, Your Honor.

12 MR. KAINEN: Okay. So --

13 MR. SMITH: So --

14 MR. KAINEN: -- in other words, we don't have to  
15 renote it on -- on one of the orders to show cause. Just  
16 renote it like -- renote a status check or something like  
17 that?

18 THE COURT: That would be fine.

19 MR. KAINEN: Okay.

20 THE COURT: That would be fine.

21 MR. KAINEN: Thank you.

22 MR. SMITH: And in regard to the therapeutic  
23 process, is this a true therapeutic process? Because in the  
24 design that we had in the original parenting plan, the

1 therapist would never report directly to the Court that the  
2 therapist would only report directly to the parenting  
3 coordinator so as to avoid the kind of lobbying that happens  
4 in therapeutic processes when -- when somebody mistakes them  
5 for an assessment. So what are the rules in regard to the  
6 information --

7 THE COURT: This --

8 MR. SMITH: -- the -- the anonymity, the  
9 confidentiality associated with this process?

10 THE COURT: Well, Dr. Ali is -- this is a  
11 therapeutic approach. It's not evaluative. I'm not expecting  
12 nor will I be requesting any reports or input from Dr. Ali.  
13 And I say that hoping that we're -- we don't have any further  
14 proceedings.

15 But I -- I don't -- I don't -- I view this strictly  
16 he's wearing a therapeutic hat and I -- I do not want reports  
17 from Dr. Ali. And in this context it was not -- I -- I did  
18 glean information from Dr. Ali, but it was through Dr.  
19 Paglini. I don't view Dr. Ali as being a reporting source to  
20 this Court in -- in that regard. I do want the focus to be  
21 completely therapeutic.

22 MR. SMITH: But still with the -- the -- that -- to  
23 have the un -- anonymity, the confidentiality allows the  
24 parties to speak freely but still with the restriction that

1 Mr. Harrison is not to repeat in this therapeutic process  
2 matters that are -- are in this litigation or statements that  
3 are based upon the evidence in this litigation which is what  
4 he's done.

5 THE COURT: Well, listen. And -- and I would hope  
6 reading Dr. Paglini's report and I know there was that  
7 exchange in the office in the joint session; lessons should be  
8 learned from that. I mean, you just -- Brooke doesn't want to  
9 hear about that. She -- she doesn't. And -- and I -- and I  
10 think -- I think Plaintiff understands that.

11 MR. SMITH: No, I get that. I mean, I just want to  
12 make sure it's clear in the order, that's all --

13 MR. KAINEN: The --

14 MR. SMITH: -- because this is --

15 MR. KAINEN: And the order is --

16 MR. SMITH: -- this is a person --

17 MR. KAINEN: -- that both parties are not to  
18 disparage the other party. I -- I got that. My question is  
19 --

20 MR. SMITH: But it's more than that. It's --

21 MR. KAINEN: -- is the Court --

22 MR. SMITH: It's --

23 MR. KAINEN: -- what Mr. Smith is looking for is  
24 some language that says anything that has to do with this

1 family and the divorce can't be brought up in therapy. And  
2 that's not what therapy is about. Did my client -- and  
3 there's -- to be -- I hate to do this. I just -- because I  
4 don't want -- you know what, when you read all the literature  
5 on this, it says basically the parent who bites their tongue  
6 long enough, you know, gets run over. And so at one point he  
7 blew it. And it was the wrong time and it was the wrong way  
8 to do it. And he understood that. And he immediately  
9 recognized it and discussed it with Dr. Paglini. There is a  
10 question regarding the history.

11           The bottom line is I understand your order. I will  
12 prepare an order that indicates the non-disparagement that  
13 both parties are admonished not to -- not to disparage the  
14 other party or say anything negative or hold the other -- cast  
15 the other party in a fault -- in a -- I'm sorry, in a negative  
16 light. And I will include that language.

17           I think what Mr. Smith is going to is some sort of  
18 gag order as to what can be discussed in a therapeutic  
19 environment. And frankly, Dr. Ali has to be the one to be  
20 able to say what's appropriate and what's not inside --

21           THE COURT: Well --

22           MR. KAINEN: -- his --

23           MR. SMITH: The -- the --

24           MR. KAINEN: -- office.

1 MR. SMITH: -- evidence is different than what --  
2 the evidence that we had before us is that Brooke when faced  
3 with the disparagement was so inclined to hear it that she  
4 heard it so many times before, that she didn't even react  
5 initially. It was only when he started mentioning things  
6 about things that she was actually present at that were  
7 falsified that she finally said that enough is enough.

8 But let me -- let me point out, I'm not requesting a  
9 gag order. I'm requesting an order that the parties comply  
10 with 5.03 even in the context of therapy. He cannot start  
11 misstating to Brooke in the context of therapy. Brooke and  
12 Mr. -- Dr. Ali do not know what happened in this lawsuit. So  
13 for him to say things like this all occurred when his mother  
14 filed a motion for custody in September 2011, that's  
15 inappropriate. And -- and Brooke stated very clearly that  
16 this has been going on for --

17 THE COURT: Listen. I'm --

18 MR. SMITH: -- years.

19 THE COURT: I'm not -- I'm not inclined to make any  
20 further orders in that regard. And I'm not -- I'm not here to  
21 waive the -- waive any rules that are in existence, but I'm --  
22 I'm not going to make anymore -- more detailed orders. Okay.

23 MR. KAINEN: I'll send it to him.

24 THE COURT: All right.

1 MR. KAINEN: All right.

2 THE COURT: Thank you for your appearances.

3 MR. HARRISON: Thanks, Your Honor.

4 (PROCEEDINGS CONCLUDED AT 09:30:32)

5 \* \* \* \* \*

6 ATTEST: I do hereby certify that I have truly and  
7 correctly transcribed the digital proceedings in the  
8 above-entitled case to the best of my ability.

9

10

*Adrian Medrano*

11

Adrian N. Medrano

12

13

14

15

16

17

18

19

20

21

22

23

24

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \*

KIRK ROSS HARRISON,  
Appellant,

vs.

VIVIAN MARIE LEE HARRISON,  
Respondent.

---

NO. 72880 Electronically Filed  
Oct 24 2017 04:24 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**CHILD CUSTODY FAST TRACK STATEMENT**

**APPENDIX – VOLUME 13**

ROBERT L. EISENBERG  
Nevada Bar No. 0950  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
775-786-6868  
[rle@lge.net](mailto:rle@lge.net)

KIRK R. HARRISON  
Nevada Bar No. 0861  
1535 Sherri Lane  
Boulder City, Nevada 89005  
702-271-6000  
[kharrison@harrisonresolution.com](mailto:kharrison@harrisonresolution.com)

*ATTORNEYS FOR APPELLANT*

## CHRONO INDEX



## **CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
1.	Complaint for Divorce	03/18/11	1	1-7
2.	Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence	09/14/11	1 2	8-220 221-361
3.	Defendant's Opposition to Plaintiff's Motion for Joint Legal and Primary Physical Custody and Exclusive Possession of Marital Residence; Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children; for Division of Funds for Temporary Support, and for Attorney's Fees	10/31/11	2 3	362-418 419-652
4.	Answer to Complaint for Divorce and Counterclaim for Divorce	11/22/11	3	653-659
5.	Reply to Defendant's Opposition to Plaintiffs Motion for Joint Legal Custody and Permanent Physical Custody and for Exclusive Possession of Residence AND Opposition to Defendant's Countermotions for Exclusive Possession of Marital Residence, for Primary Physical Custody of Minor Children, for Division of Funds for Temporary Support, and for Attorney's Fees	01/04/12	4 5	660-907 908-929
6.	Court Minutes [All Pending Motions]	02/24/12	5	930-933
7.	Stipulation and Order Resolving Parent/Child Issues	07/11/12	5	934-950
8.	Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by the Court Ordered Parenting Plan; Motion for Sanctions and Attorney's Fees	05/10/13	5	951-984

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
9.	Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief	05/28/13	5	985-994
10.	Exhibits to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Plaintiff's Request for Reasonable Discovery and Evidentiary Hearing; Plaintiff's Countermotion for Equitable Relief; Plaintiff's Countermotion for Attorneys' Fees and Sanctions; and Plaintiff's Countermotion for Declaratory Relief	05/28/13	5	995-1009
11.	Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan; Plaintiff's Opposition to Defendant's Motion for Sanctions and Attorney's Fees	07/19/13	5	1010-1044
12.	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for an Order Appointing a Parenting Coordinator and Therapist for the Minor Children as Required by Court Ordered Parenting Plan and Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions and Attorney's Fees	09/09/13	5	1045-1053
13.	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion Styled Request for Reasonable Discovery and Evidentiary Hearing; Defendant's Opposition to	09/11/13	5	1054-1059

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Plaintiff's Countermotion for Equitable Relief; Defendant's Opposition to Plaintiff's Countermotion for Attorneys' Fees and Sanctions; Defendant's Opposition to Plaintiff's Countermotion for Declaratory Relief			
14.	Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief	10/01/13	5	1060-1080
15.	Defendant's Amended Opposition to Plaintiff's Motion to Modify Order Resolving Parent-Child Issues [To Delete "Teenage Discretion" Provision] and Other Equitable Relief; Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions	10/17/13	5	1081-1149
16.	Plaintiff's Reply Brief in Support of Plaintiff's Countermotions for Reasonable Discovery and Evidentiary Hearing, Equitable Relief, Attorneys' Fees and Sanctions, and Declaratory Relief	10/21/13	6	1150-1171
17.	Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Plaintiff's Opposition to Defendant's Countermotions to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions	10/23/13	6	1172-1223
18.	Order for Appointment of Parenting Coordinator	10/29/13	6	1224-1232
19.	Notice of Entry of Decree of Divorce	10/31/13	6	1233-1264

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
20.	Plaintiff's Motion to Alter, Amend, Correct and Clarify Judgment (without exhibits)	11/14/13	6	1265-1281
21.	Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision	11/18/13	6	1282-1316
22.	Defendant's Opposition to Motion for Judicial Determination of the Teenage Discretion Provision; Countermotion for Attorney's Fees	12/06/13	6	1317-1339
23.	Plaintiff's Reply in Support of Plaintiff's Motion for a Judicial Determination of the Teenage Discretion Provision AND Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees	12/13/13	6	1340-1354
24.	Order [Denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and Other Equitable Relief and Denying Defendant's Countermotion to Resolve Parent/Child Issues, to Continue Hearing on Custody Issues, for an Interview of the Minor Children, and for Attorney's Fees and Sanctions]	12/17/13	6	1355-1356
25.	Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief	04/21/14	6 7	1357-1388 1389-1431
26.	Defendant's Opposition to Plaintiff's Motion to Modify Order Resolving Parent/Child Issues, etc.; Countermotion for Attorney's Fees and Sanctions	05/09/14	7	1432-1458
27.	Plaintiff's Reply in Support of Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and for Other Equitable Relief AND Opposition to Defendant's Countermotion for Attorney's Fees and Sanctions	05/14/14	7	1459-1472

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
28.	Defendant's Reply to Plaintiff's Opposition to Countermotion for Attorney's Fees and Sanctions	05/20/14	7	1473-1518
29.	Order from Hearing [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision]	06/13/14	7	1519-1524
30.	Notice of Entry of Order [Denying Plaintiff's Motion for Judicial Determination for the Teenage Discretion Provision]	06/16/14	7	1525-1532
31.	Notice of Appeal	07/17/14	7	1533-1593
32.	Findings and Orders re: May 21, 2014 Hearing	09/29/14	7	1594-1601
33.	Notice of Entry of Findings and Orders re: May 21, 2014 Hearing	09/29/14	7	1602-1611
34.	Amended or Supplemental Notice of Appeal	10/16/14	7	1612-1622
35.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013	08/21/15	8	1623-1673
36.	Order to Appear and Show Cause	09/01/15	8	1674-1675
37.	Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor	09/14/15	8	1676-1692

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Child, Emma Brooke Harrison ("Brooke")			
38.	Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 2.11 and Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 30, 2013 and Countermotion for Modification of Custody of Minor Child, Emma Brooke Harrison ("Brooke")	09/18/15	8	1693-1738
39.	Notice of Entry of Order from Hearing	10/01/15	8	1739-1743
40.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	10/12/15	8	1744-1758
41.	Order to Appear and Show Cause	10/14/15	8	1759-1760
42.	Motion for Clarification; Motion to Amend Findings; Opposition to Ex Parte Motion for Expedited Hearing	10/15/15	8	1761-1851
43.	Plaintiff's Opposition to Defendant's Motion for Clarification; Motion to Amend Findings, and; Plaintiff's Reply to Defendant's Opposition to Ex Parte Motion for Expedited Hearing	11/02/15	9	1852-1879
44.	Dr. Paglini Letter to Court	11/23/15	9	1880-1881
45.	Notice of Entry of Order from Domestic Court Minutes	12/02/15	9	1882-1886
46.	Supplement to Plaintiff's Motion for an Order to Show Cause Why	12/10/15	9	1887-1903

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015			
47.	Reply to Opposition to Motion for Clarification; Motion to Amend Findings	12/10/15	9	1904-1920
48.	Court Minutes [All Pending Motions]	12/14/15	9	1921-1922
49.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Continuing to Knowingly and Intentionally Violate Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	12/16/15	9	1923-1942
50.	Notice of Entry of Order from Domestic Court Minutes	12/17/15	9	1943-1947
51.	Court Minutes [All Pending Motions]	01/26/16	9	1948-1949
52.	Notice of Entry of Findings and Orders Re: January 26, 2016 Hearing	05/25/16	9	1950-1958
53.	Letter from John Paglini, Psy.D. to Court	05/31/16	9	1959-1961
54.	Notice of Entry of Order re John Paglini, Psy.D. Letter	06/21/16	9	1962-1963
55.	Notice of Appeal	06/27/16	9	1964-1975
56.	Plaintiff's Motion for Reunification Therapy for Minor Children and Father	07/26/16	9	1976-2076
57.	Notice of Entry of Order re: August 24, 2016 Hearing	08/19/16	9	2077-2079

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
58.	Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order	08/30/16	9	2080-2095
59.	Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	08/30/16	10	2096-2196
60.	Defendant's Opposition to Motion for Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015; Countermotion for Sanctions; Opposition to Plaintiff's Motion for Reconsideration, or, in the Alternative, Motion for Huneycut Certification; Motion to Amend Findings or Make Additional Findings and, Motion to Alter, Amend and Clarify Order	09/23/16	10	2197-2206
61.	Plaintiff's Motion for an Order to Nullify and Void Expert Report	09/28/16	10	2207-2292
62.	Plaintiff's Reply in Support of Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015	09/30/16	10	2293-2316
63.	Plaintiff's Reply in Support of Motion for Reconsideration, or, in the Alternative, Motion for	09/30/16	10	2317-2321



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
	Huneycut Certification; Motion to Amend Findings or Make Additional Findings, and; Motion to Alter, Amend, and Clarify Order and Plaintiff's Objection to those Portions of Defendant's Opposition in Violation of EDCR 5.13			
64.	Defendant's Opposition to Motion for an Order to Nullify and Void Expert Report	10/18/16	10	2322-2337
65.	Affidavit of Kirk Harrison Filed in Support of Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not be Held in Contempt for Knowingly and Intentionally Violating Section 5 of the Stipulation and Order Resolving Parent/Child Issues and This Court's Order of October 1, 2015, Filed August 30, 2016	10/19/16	11	2338-2358
66.	Plaintiff's Reply in Support of Motion for an Order to Nullify and Void Expert Report	11/02/16	11	2359-2381
67.	Reply to Defendant's Opposition to Countermotion for Sanctions; Motion to Strike Reply; Motion to Strike Affidavit	11/04/16	11	2382-2423
68.	Court Minutes [All Pending Motions]	11/07/16	11	2424-2426
69.	Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	12/29/16	11	2427-2440
70.	Plaintiff's Pre-Trial Memorandum	01/17/17	11	2441-2457
71.	Prehearing Memorandum	01/17/17	11	2458-2477
72.	Court Minutes [Evidentiary Hearing]	01/18/17	11	2478-2479

///  
///

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
73.	Defendant's Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions	01/31/17	11	2480-2489
74.	Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	01/31/17	11	2490-2507
75.	Plaintiff's Supplemental Exhibit in in Support of Plaintiff's Reply Regarding Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	01/31/17	11	2508-2512
76.	Court Minutes [All Pending Motions]	02/01/17	11	2513-2514
77.	Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing	02/13/17	11	2515-2537
78.	Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Request for Sanctions	02/13/17	11	2538-2556
79.	Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees	02/15/17	11	2557-2563
80.	Plaintiff's Motion to Strike Defendant's Supplemental Declaration in Opposition to Plaintiff's Motions Filed December 29, 2016; Reply to Supplemental Declaration, and; Opposition to Request for Sanctions	02/17/17	12	2564-2595

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
81.	Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Pleading Titled "Plaintiff's Supplement to Plaintiff's Reply Regarding Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing" and Motion for Sanctions and Fees	03/06/17	12	2596-2602
82.	Defendant's Opposition to Motion to Strike; Countermotion for Sanctions	03/13/17	12	2603-2608
83.	Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing]	03/15/17	12	2609-2617
84.	Notice of Entry of Order [Denying Plaintiff's Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing]	03/16/17	12	2618-2627
85.	Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 16, 2017	03/28/17	12	2628-2634
86.	Plaintiff's Response to Defendant's Memorandum of Attorney's Fees and Costs Pursuant to Order Entered on March 15, 2017	04/10/17	12	2635-2638
87.	Notice of Appeal	04/14/17	12	2639-2649
<b><u>TRANSCRIPTS</u></b>				
88.	Transcript re: All Pending Motions	10/30/13	12	2650-2688
89.	Transcript re: All Pending Motions	05/21/14	12	2689-2744
90.	Transcript re: All Pending Motions	09/22/15	13	2745-2823
91.	Transcript re: All Pending Motions	12/14/15	13	2824-2886
92.	Transcript re: All Pending Motions	01/26/16	13	2887-2928

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
93.	Transcript re: All Pending Motions	11/07/16	14	2929-3040
94.	Transcript re: Evidentiary Hearing - Vol.1	01/18/17	14	3041-3152
95.	Transcript re: Evidentiary Hearing - Vol. 2	01/18/17	14 15	3153-3178 3179-3315
	Plaintiff's Exhibit 1 – Dr. Paglini Report dated January 25, 2016 [ <i>Confidential</i> ] SEALED		15	3316-3375
	Plaintiff's Exhibit 2 – Email from Vivian Harrison to Kirk Harrison dated February 27, 2016		15	3376-3377
	Plaintiff's Exhibit 3 – Email from Brooke Harrison to Dr. Paglini dated February 27, 2016		15	3378-3380
	Plaintiff's Exhibit 4 – Dr. Paglini Letter dated May 31, 2016		15	3381-3384
	Plaintiff's Exhibit 5 – Dr. Ali Letter dated June 29, 2016 [ <i>Confidential</i> ] SEALED		15	3385-3387
	Plaintiff's Exhibit 6 – Email from Carina Deras to Kirk Harrison dated April 1, 2016		15	3388-3389
	Plaintiff's Exhibit 7 – Brooke Harrison's Nevada State High School Enrollment Form dated August 10, 2015		15	3390-3392
	Plaintiff's Exhibit 8 – Brooke Harrison's Class Schedule		15	3393-3394
	Plaintiff's Exhibit 9 – Affidavit of Kirk Harrison dated October 19, 2016		15	3395-3416
	Plaintiff's Exhibit 10 – Comparison of Agreed Time with Actual Custody Time from August 12, 2015 through December 12, 2016		15	3417-3426
96.	Transcript re: All Pending Motions	02/01/17	16	3427-3640

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
<b><u>ADDITIONAL DOCUMENTS<sup>1</sup></u></b>				
97.	Notice of Entry of Order from Evidentiary Hearings on January 18, 2017 and February 1, 2017	07/24/17	16	3641-3647
98.	Plaintiff's Supplemental Filing	08/24/17	16	3648-3666
99.	Supplemental Notice of Appeal	08/24/17	17	3667-3676
100.	Notice of Entry of Order re: Expert Designation	10/06/15	17	3677-3682
101.	Notice of Entry of Order re: Pending Motions	01/04/17	17	3683-3693

---

<sup>1</sup>These additional documents were added to the appendix after the first 16 volumes of the appendix were complete and already numbered (3,640 pages).

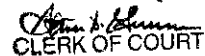


TRANS

FILED

COPY

OCT - 7 2015

  
 CLERK OF COURT

## EIGHTH JUDICIAL DISTRICT COURT

## FAMILY DIVISION

## CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

v.

VIVIAN MARIE LEE HARRISON,

Defendant.

Case No. D-11-443611-D

Dept. Q

 BEFORE THE HONORABLE BRYCE C. DUCKWORTH  
 DISTRICT COURT JUDGE
TRANSCRIPT RE: ALL PENDING MOTIONS

TUESDAY, SEPTEMBER 22, 2015

## APPEARANCES:

 FOR THE PLAINTIFF,  
 Kirk Harrison:

 EDWARD KAINEN, ESQ.  
 3303 Novat Street, Suite 200  
 Las Vegas, Nevada 89129  
 (702) 823-4900

 FOR THE DEFENDANT,  
 Vivian Harrison:

 RADFORD SMITH, ESQ.  
 2470 St. Rose Parkway, Suite 206  
 Henderson, Nevada 89074  
 (702) 990-6648

1 LAS VEGAS, NEVADA

TUESDAY, SEPTEMBER 22, 2015

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

3 (THE PROCEEDINGS BEGAN AT 10:11:39)

4

5 THE COURT: We are on the record in the Harrison  
6 matter, Case D-11-443611-D. Please confirm your appearances.

7 MR. KAINEN: Ed Kainen, Bar Number 5029, with Kirk  
8 Harrison.

9 THE COURT: Good morning.

10 MR. SMITH: Radford Smith, 2791, on behalf of Vivian  
11 Harrison, to my left, Your Honor.

12 THE COURT: Good morning. This is the time set for  
13 a hearing on Plaintiff's motion for an order to show cause and  
14 the order to show cause that was granted, the opposition and  
15 counter-motion in the reply that's been filed, and I've had a  
16 chance to read all the papers. Have any issues been resolved?

17 MR. KAINEN: No I -- nothing has been resolved, Your  
18 Honor. There's been a little bit of communications and really  
19 just very brief discussions between myself and Mr. Smith. But  
20 no, nothing has been resolved.

21 THE COURT: Okay. Let me just note at the outset,  
22 just from a jurisdictional standpoint as well, there are  
23 pending appeals in this matter. I do find that the issues  
24 raised by way of the papers before the Court are ancillary to



1 the issues that are on appeal. It is my understanding that  
2 the appellate issues -- there's an appeal related to the  
3 attorney's fees order from this Court and then an appeal  
4 related to the teenage discretion, which I understand somewhat  
5 ties into some of the discussion here, but I'm certainly not  
6 -- I'm not going to get into the issue of teenage discretion  
7 today. I don't think the papers call on the Court to weigh in  
8 on that issue, and so I believe the requests, including the  
9 request for a modification of custody, are ancillary to the  
10 issues on appeal.

11 MR. SMITH: I believe the appeal also includes an  
12 appeal of the order --

13 THE COURT: The PC order as well.

14 MR. SMITH: Yeah, the order --

15 THE COURT: The parent --

16 MR. SMITH: -- parenting PC.

17 THE COURT: Right. And I'm -- even though that's  
18 been referenced in the paperwork, I'm not going to address  
19 that either. And I did note that the -- that Ms. Pickard  
20 filed a notice of withdrawal because she's accepted a new  
21 position with the courts, so she's unable to fulfill that  
22 capacity. And I know there's been some discussion about what  
23 has or hasn't happened. I don't even need to get into that  
24 today. It's not germane to the discussion.

1 I did have one question because my understanding in  
2 general has been that since about July when this flared up, so  
3 to speak, that Dad has had no contact with Brooke, at least no  
4 visitation.

5 MR. KAINEN: Zero. Zero contact.

6 THE COURT: Okay.

7 MR. KAINEN: Well, let me -- I'll tell you, we -- as  
8 we wrote the reply brief, it was zero contact until, I think,  
9 it was the day we filed the reply brief, or maybe the day  
10 before. And there was an orthodontist appointment set for the  
11 children. He got a text that morning -- he was taking Riley  
12 because it was his custodial period for both children, but he  
13 had Riley. And he received a text about 9:00 in the morning  
14 from Mrs. Harrison indicating that Brooke's appointment was  
15 going to be rescheduled, she was going to go on standby,  
16 whatever it was, and so that Brooke would not be at that  
17 appointment.

18 Riley's appointment, actually they were running  
19 behind, so Riley didn't get seen until 15 or 30 minutes later  
20 than what she normally would have, and the 30-minute  
21 appointment took a little longer. About the time that Riley  
22 was wrapping up, Brooke came in. And so that was the first  
23 time that he'd seen her in about two months because he --  
24 there are no responses to the texts. There are no responses

1 to emails. No responses to phone call -- I mean, there's just  
2 zero, zero contact. And this was the first time he'd seen her  
3 in two months. He went up to her to, you know, greet her,  
4 tell her he loved her. She said, okay; sat down and ignored  
5 him. That was it. That's the only contact he's had in two  
6 months.

7 Our concern, without going into -- I mean, I -- this  
8 is one of those times where I know you've read everything, so  
9 I'm not --

10 THE COURT: Right.

11 MR. KAINEN: -- really concerned about that. My  
12 concern, that is if the argument itself in this case is that  
13 there's no -- this isn't an alienated child and there's no  
14 behavior that goes on that level that has been disparaging him  
15 and it's strictly coincidence that this happened both times  
16 after long absences and vacations at seminal ages, and the  
17 only reason for this is that Brooke is suddenly mature, has a  
18 car, is taking advanced classes, and doesn't like disruptions  
19 during the week, that doesn't explain why she would, first of  
20 all, a week or within days after this dispute where Vivian  
21 writes to the insurance company and to Kirk about him not  
22 caring about his children and covering their expenses, that  
23 within a few days, while he's out of town, Brooke goes to his  
24 home, removes all of her belongings, cuts off all contact, and

1 then has zero contact with him for two months, and then when  
2 she does see him by coincidence, ignores him.

3           If she just want -- if she's just mature -- I mean,  
4 how would she even know about this litigation? He couldn't  
5 have told her about it, so it couldn't be that she's upset  
6 about litigation that she's heard from him or anything because  
7 he couldn't have told her anything. There's been no contact.

8           So if this is just a child who is mature, has a car,  
9 is taking advanced classes, and doesn't like disruptions  
10 during the week, that doesn't explain why she would cut off  
11 all contact. When she sees him for the first time in two  
12 months, she basically ignores him or blows him off. You know,  
13 it just -- the conduct is disproportionate to whatever the  
14 allegations are, because Vivian's position is this is nothing  
15 more than a child who just wants to have a little  
16 independence. But that doesn't make sense given the conduct.

17           THE COURT: Well, let me just -- I want to make a  
18 few observations and findings at the outset because the matter  
19 at -- is not uncommon in this case, it's been extensively  
20 briefed, and I have had a chance to review the papers.

21           MR. SMITH: On that issues, Your Honor, I received  
22 the reply and the opposition to the counter-motion Friday  
23 afternoon, and I was in trial on Monday. So I haven't had a  
24 chance to file the reply to the counter-motion.

1 THE COURT: Okay. Are you asking for time to  
2 submit a reply?

3 MR. SMITH: You know, after reviewing it, I'm not  
4 even sure it's necessary. It really is the same stuff that's  
5 been sort of in this courtroom for a long time.

6 THE COURT: Is there anything you wanted to add?

7 MR. SMITH: Well, I assume there is, but I want to  
8 hear from the Court as well.

9 THE COURT: Well, let me tell you where I'm at  
10 having -- and we can have some limited discussion after that.  
11 But -- and part of this may be going to what Mr. Smith would  
12 like to offer as it relates to the counter-motion to modify  
13 custody because I'm not -- the controlling order in this case  
14 provides the parents with joint legal and joint physical  
15 custody. That stipulated agreement raises the presumption of  
16 N.R.S. 125.490, which presumes that joint custody is in the  
17 children's best interest, and in this specific instance, in  
18 Brooke's best interest based on that agreement.

19 And I don't find that pursuant to Rooney, based upon  
20 the papers that have been filed, that there is a basis for the  
21 Court to --

22 (Phone ringing)

23 MR. KAINEN: I apologize, Your Honor.

24 THE COURT: -- set further proceedings on the

1 modification of custody to overcome that presumption. I -- as  
2 I look at this entire scenario, and a lot of this essentially  
3 spins back to basically a few hundred dollars on an insurance  
4 claim. And the issue has mushroomed to something much larger  
5 than a few hundred dollars, but that's basically the  
6 initiating event, so to speak, and why we're here.

7           There are aspects to the order to show cause request  
8 -- for example, there's not a basis -- there were three bases  
9 upon which the contempt was sought; disparaging Dad to Brooke  
10 in violation of Section 2.11 of the stipulation and order  
11 resolving parent-child issues; number two, convincing Brooke  
12 she is empowered to determine her own custody and enraging  
13 Brooke to exercise that false power in violation of Section 5  
14 of stipulation and order; and, number three, convincing Brooke  
15 she is empowered to determine her own custody and enraging  
16 Brooke to exercise the false power in violation of the Court's  
17 ruling during the October 30, 2013 hearing.

18           The third basis, there's really not a legal basis  
19 for the Court to make findings of contempt because it's  
20 referring to rulings that the Court made. I don't believe  
21 that there's a written order that the Court could look to in  
22 terms of making findings of contempt as it relates to the  
23 third point. So I'm really looking at the first two points in  
24 the papers that have been filed.

1           The -- and I'll also note, at the outset -- because  
2 there has been discussion also about this -- about the Court  
3 possibly interviewing both children or having the children  
4 interviewed. And as I thought about that, and I've read and  
5 there's been discussion about how well Brooke is doing, seems  
6 to be an exceptional young lady, and I thought to myself, you  
7 know, I'd love to meet Brooke, but not in this capacity.

8           I mean, she sounds like a special, extraordinary,  
9 like I said, daughter and young lady. And she's 16 years of  
10 age and who wouldn't want to sit down with her and chat with  
11 her and -- but not in the capacity as the judge in this case.

12           I -- and we've had a long history in this case about  
13 who's responsible for where your children are at, and it's not  
14 just Brooke. You've got exceptional children, older and  
15 younger, with Riley. And it's not prerogative today, nor has  
16 it been, to champion one parent over the other and attribute  
17 the successes of your children to one parent over the other.  
18 Typically, it is a joint venture, and at least up until the  
19 July -- the summer time frame, it had been a joint physical  
20 custody arrangement, and so there was dual responsibility and  
21 I know that was touched on in the papers filed by the  
22 Plaintiff.

23           As I've looked through the papers and examined some  
24 of the emails, in regards to the first contempt issue, the dis

1 -- Mom disparaging Dad to Brooke, I look at the totality of  
2 the information that's come in. There's nothing that -- I  
3 will note that as I look at what has transpired, it was -- it  
4 struck me as being odd in the first instance that Brooke was  
5 involved in this telephone call with the insurance company.  
6 And the explanation offered by the Defendant was that for some  
7 reason the insurance company needed Brooke's authorization to  
8 deal with an insurance issue.

9 I've never heard of that, and just drawing on  
10 personal experience, that's never come up where a minor child  
11 has ever had to have been put on the phone to say, hey, yeah,  
12 you can talk to my mom or you can talk to my dad, which sounds  
13 like it would be a very simple discussion, be five seconds,  
14 yeah, you can talk to my mom, bye, and that's it. But it's  
15 very peculiar that she would even be put in that position.  
16 And I saw the email from the insurance agent who said she's  
17 never had that before.

18 I do recognize it appears that everything that has  
19 happened in terms of Brooke cutting off the relationship  
20 coincides with the timing of that event, which is also  
21 striking.

22 And I also note that in the emails that there is a  
23 level of frustration that's exhibited by the Defendant in  
24 dealing with this issue. And I don't need to get into exactly



1 what happened with the insurance company. It certainly has  
2 raised a number of questions about the timing of things and  
3 why things were done months later, and the insurance company  
4 seemed to be pointing some fingers internally at who did what  
5 and where it was reported. That really is not relevant.  
6 Again, I go back to what I said earlier, we're talking about a  
7 few hundred dollars in an estate that's worth millions.

8           And so there's certainly a fair amount of finger  
9 pointing, but there's no question that the anger and  
10 frustration that the Defendant was feeling is palpable in the  
11 emails, and I can't imagine that Brooke did not feel that  
12 anger and emotion. It wasn't necessarily a matter -- even if  
13 Mom didn't say to Brooke, your dad -- your blankety blank dad  
14 didn't -- won't pay your insurance bill, which is somewhat the  
15 suggestion -- and there's no direct evidence that any of that  
16 occurred -- certainly, the child can feel the anger and  
17 emotion that exists, which was apparent just in looking at the  
18 emails. When I see emails that have all caps and it's -- the  
19 sense is that there's -- that's yelling in email protocol, so  
20 to speak.

21           And so as I look at that, it's -- to me, it's  
22 obvious that there's a high level of frustration, and I don't  
23 have any doubt in my mind that Brooke felt at least the  
24 frustration that Mom expressed. Even if Mom didn't say a word

1 negative about Dad to Brooke, Brooke still felt it and there's  
2 no doubt in my mind. But I don't have any direct evidence  
3 that Mom has said anything to Brooke. Everything does line up  
4 and fall into shape, so I do -- it does appear, when we look  
5 at the fact that Dad gets the email and essentially he's --  
6 Brooke's written Dad off, and she comes in and cleans her  
7 closet out while Dad is gone, all of this coincides with  
8 Brooke being on the phone.

9           And the email certainly suggests -- Mom's email to  
10 Ms. Palmer and Dad, Brooke and I are working directly with  
11 them for reimbursement. Well, working with them -- and that  
12 they'll issue Brooke a check for benefits, which suggests that  
13 Brooke paid the claim, which I find laughable. And the  
14 suggestion that Brooke is working on it goes well beyond. It  
15 would be naive of me to simply say, oh, that was just a simple  
16 telephone call. Hey, you can talk to my mom, goodbye; that's  
17 all they needed. I do believe there's more to it, but there's  
18 no direct evidence of contempt.

19           Where there is concern about contempt is the  
20 complete lack of any time with Dad, and that's blatant. That  
21 goes beyond just an exercise of teenage discretion. And  
22 again, I'm not going to get into the teenage discretion issue,  
23 that's on appeal. But there fundamentally has been a denial  
24 of time with Dad. And I don't know if the time -- the number

1 of days have been tallied up and that's some -- that's one of  
2 the questions I had because ultimately, Mom's responsible for  
3 fostering that relationship and making sure that that exists  
4 independent of this whole side issue of the teenage  
5 discretion.

6           This is not an issue of teenage discretion. This is  
7 enforcement of a court's order that provides the parties with  
8 joint physical custody, and what has happened in the last two  
9 months is not joint physical custody, period. And Mom is  
10 ultimately responsible for that lack of time with Dad. That's  
11 the issue of contempt that's before me that I find that there  
12 has been a violation of the Court's order and it's incumbent  
13 on Mom to show cause why she shouldn't be held in contempt for  
14 that denial.

15           And I understand, we can get into this issue of,  
16 well, it's a 16-year-old child, how are you going to force a  
17 16-year-old to do it, and it's the old adage that you've  
18 heard, counsel, before, you know, at 16, she doesn't run the  
19 show. As great as she is, and she sounds outstanding, if we  
20 just turn custody, not teenage discretion, but turn custody  
21 over to children at whatever age, we may as well not even have  
22 the orders apply to 16-year-olds or beyond. Just whatever  
23 they say, let them do what they want. If they don't want to  
24 go to school, don't make them go to school. They know

1 everything, they're teen -- they're 16-year-olds.

2           So that's the issue of contempt that I have before  
3 me that there's been essentially a complete upheaval of the  
4 custody arrangement. And the feel I have, with everything  
5 that's gone on and with Brooke being involved and even placing  
6 that call, is that Brooke -- that these behaviors, as subtle  
7 as they may, may be alienating behaviors. Nothing to do with  
8 the alienation syndrome, I don't buy into that, but these are  
9 alienating behaviors. And Brooke sees her mom's frustration  
10 on what is a small issue and she takes it out on Dad.

11           So that's where I'm at. I'll hear from counsel and  
12 in terms of the show cause for contempt because I -- the show  
13 cause was issued and so it is Defendant's burden to show cause  
14 why she shouldn't be held in contempt.

15           MR. SMITH: Well, Your Honor, this requires an  
16 evidentiary hearing.

17           THE COURT: No, it doesn't.

18           MR. SMITH: We disagree.

19           THE COURT: Well, I --

20           MR. SMITH: It requires an evidentiary hearing, we  
21 have a right --

22           THE COURT: I'm not --

23           MR. SMITH: -- to present witnesses.

24           THE COURT: -- considering incarceration, I want to

1 be clear about that. I can --

2 MR. SMITH: I want to be clear that I believe that  
3 an order to show cause requires an evidentiary hearing. You  
4 may feel differently. Let me say --

5 THE COURT: Well, let me swear the Defendant in  
6 right now.

7 MR. SMITH: Your Honor, we haven't had notice --

8 THE COURT: No.

9 MR. SMITH: -- of the --

10 THE COURT: If we're going to go down that path, I'm  
11 -- listen, the last thing these parties need is more  
12 litigation.

13 MR. SMITH: I want to call witnesses. One of the  
14 witnesses I want to call is Brooke Harrison. Brooke has the  
15 only knowledge that you've imputed to her by your analysis of  
16 the statements that are contained in anal -- you have imputed  
17 to her her feelings that she's been alienated by the --

18 THE COURT: That has nothing to do with it.  
19 Counsel, you didn't hear me.

20 MR. SMITH: Judge, I --

21 THE COURT: I'm not finding contempt --

22 MR. SMITH: I'm sorry, I thought I had an  
23 opportunity to speak. I --

24 THE COURT: No -- you -- but you're ignoring what I

1 said, Mr. Smith, and that's my frustration with this. Brooke  
2 may come in and she may have this frustration, and the last  
3 thing I'm going to do is draw Brooke into court. You want to  
4 traumatize her and Mom's going to tell me she wants to come to  
5 court.

6 MR. SMITH: I don't want to traumatize and that's  
7 not what we're going to say. And, Your Honor, you've taken  
8 this position that somehow Brooke should not be interviewed,  
9 even though the law is very clear that the wishes of a child  
10 as mature and intelligent should be considered by the Court  
11 when addressing the best interest of the child. We have  
12 raised the counter-motion in regard to the best interest, yet  
13 you've found without interviewing her that there is no  
14 adequate cause for hearing on the issue of custody.

15 We don't -- we haven't, and our client has gone out  
16 of her way not to discuss matters with Brooke because of the  
17 litigation that's been filed repeatedly in this action. We  
18 have complied with the procedure that's outlined in the  
19 decree.

20 In the decree, there's a procedure by which Brooke  
21 speaks to a counselor. There was supposed to be a PC set up.  
22 There was all kinds of difficulty setting that up, and then  
23 there was an appeal of that order in regard to the PC, even  
24 though agreed to by the parties. That order was appealed; was

1 not only appealed to the PC order in particular, but to the  
2 entirety of the process as a whole.

3 We then -- she went to Dr. Ali. She has -- the  
4 history of this case is that she has repeatedly, from the  
5 beginning, as we stated in many, many hearings, from the  
6 beginning, Brooke has indicated she did not want to have equal  
7 time with her father.

8 We had accommodated her by setting up this process  
9 of teenage discretion and the parenting coordinator and the  
10 therapist in order to prevent exactly what's happened now, and  
11 that is her adamant refusal to spend time with her father. We  
12 have not -- we -- she had an opportunity to speak to Dr.  
13 Paglini, but those notions never got out because the report  
14 was never issued.

15 We have, nevertheless, substantial statements by Mr.  
16 Harrison about all the things that were supposed to be  
17 addressed in the Paglini report, particularly the mental  
18 competency of the parties. We have no evidence since the time  
19 of the Court's order that anything bad has happened. All the  
20 predictions that Mr. Harrison had about these children all  
21 have turned out to be false, even his statements in his  
22 current reply that somehow Riley is short. She's 5'8". She's  
23 12 years old. Somehow she's short?

24 In regard to the hearing before you, the evidence --

1 the evidence that's before is a couple of emails without any  
2 kind of concentration on Brooke as to why she did what she did  
3 what she did. No interview? That's a denial of due process.  
4 That is not an ability to present an action so that Brooke can  
5 be -- at least be interviewed. She could be interviewed by  
6 Dr. Paglini. Dr. Paglini, who has interviewed her before, can  
7 address the issues, the same issues she had, not new, not as a  
8 result of a 300-dollar payment, but issues she's expressed to  
9 this Court on numerous occasions.

10           There was a motion in which we filed that had a  
11 statement from her to Mrs. Harrison that outlined all the  
12 problems she was having with her father. To say that this is  
13 something new simply ignores the record of this case.

14           And now my client is being asked, sort of sua  
15 sponte, to explain why Brooke is acting the way Brooke is  
16 acting. We don't know. That's why she needs to be  
17 interviewed. We don't know if it's a serious problem,  
18 something significant that should be addressed. We don't know  
19 if it's just simply her being -- trying to state her  
20 independence. We don't know what the basis is.

21           But here's what we do know. This is an intelligent,  
22 accomplished, brilliant child who's made decisions on what she  
23 thinks is reasonable under the circumstances. We need to know  
24 why. We have asked for a change because of this very



1 instance. We don't know what to do. Do we drag her out the  
2 door? Do we slap her? Do we punish a girl that has done this  
3 well? Do we -- it may be after the interview we all decide  
4 that this is not an adequate basis for her to what she's  
5 doing, and Kirk would be entitled to make-up time. But we at  
6 least need to have her talked to.

7           The idea that we wouldn't talk to a child that acts  
8 in this manner after all that time -- I would note to you that  
9 she has told Vivian and told Dr. John -- Ali that she doesn't  
10 want to spend equal time with her father. I think that Kirk  
11 was so concerned about that, that he actually went, in  
12 violation of the agreement, and spoke to Dr. Ali. This notion  
13 that he just went because both parties were meeting -- no.  
14 This was a separate meeting that he set up, together with  
15 emails to Dr. Ali, the very type of thing that we wanted to  
16 insulate the therapist from having.

17           He had that meeting and that was designed to stave  
18 off what had been clear to everybody, and that was Brooke was  
19 not happy in this relationship. But now it's portrayed as,  
20 gee, it must have been over this. We don't know that. We're  
21 projecting that to Brooke, and you're assuming that it is  
22 because it seems like maybe it could be because the timing is  
23 right. But the only way we're going to know that is if we  
24 talk to Brooke.

1 I -- it's mind boggling to me that we wouldn't spend  
2 the time to find out what her bases for her actions are. I  
3 don't -- I mean, I would have to hear from you, Your Honor,  
4 what actions we believe should have been taken by my client?  
5 Should she punish her? Should she physically punish her?  
6 Should she take away all kinds of privilege? What she do, we  
7 just don't know.

8 And it is a problem with 16-year-olds. And we don't  
9 make a determination. We ask that 16-year-olds be interviewed  
10 to see if there's an adequate basis for change, but we don't  
11 just ignore it.

12 THE COURT: All right. Counsel, anything in  
13 response?

14 MR. KAINEN: I don't know that I can respond to any  
15 of this. I can tell you I don't believe, and we have  
16 maintained from the beginning, that enmeshing a child in this  
17 process simply empowers that child and leads to frustration  
18 because if you put a child in a position where they believe  
19 they have the authority to do this, which is the impression  
20 that will be given, that that makes matters worse. And I  
21 think when you force a child to -- and we dealt with this at  
22 Ely for years and Tonopah before that, and heard from the  
23 lawyers we know that testified as children in their parents'  
24 divorces and this idea that they had to choose between their

1 parents. I just think when you deal with a minor child on  
2 that level, it's unacceptable. And so I thought we were going  
3 down a different direction. I don't know where we're going  
4 necessarily. I don't believe there's any benefit to enmeshing  
5 a child.

6 This is very simple. What could Mom have done? Mom  
7 could have taken away the car. Mom could have encouraged it.  
8 Mom could have done any of the things that I assume about in  
9 an order to show cause.

10 Our primary concern is less about punishment than --  
11 and more about fixing the problem. I mean, he hasn't seen his  
12 daughter in over two months, and it's all of a sudden, just  
13 like that. And there's no other event that happened. So  
14 something happened. Whether it was she came of age and became  
15 16 and one more time we're dealing with the 14 thing and now  
16 it's 16 and whatever it is, or it's the episode with the  
17 insurance company, or whatever it is, all of a sudden -- this  
18 isn't -- and again, Mom hasn't offered any of these reasons.  
19 Mom's reason that she's offered has been very simply that  
20 Brooke has expressed that she's mature, has a car, has taken  
21 advanced classes, doesn't like disruption during her weekly  
22 schedule. That doesn't explain the actual conduct that we're  
23 dealing with.

24 And the fact is that up until this point, there had

1 been no rift in the relationship with Dad. There had been no  
2 problems with Dad. Their discussion that came, either it was  
3 weeks or months before, was that Brooke said something about,  
4 you know, when I turn 18, I may want to live with Mom, you  
5 know, full time, or live more with Mom. And the discussion  
6 was, you know, when you turn 18, that's going to be your  
7 decision because you're an adult at that point. That's the  
8 end of it.

9           So I don't know what happened because none of us  
10 were there. But something happened. And you know what? We  
11 don't have eavesdropping equipment in everybody's home to see  
12 what's going on, so we look to other circumstances and we say  
13 what else is going on. In this case, it seems very clear.  
14 You have a long period of time with limited contact. You have  
15 the same kind of episode that happened two years ago. You  
16 have this thing over the insurance company.

17           You have an entirely illogical explanation of the 45  
18 (indiscernible) -- I know you've gone into that, but it's just  
19 this idea that, you know, she's writing in infuriated fashion  
20 to Becky Palmer. She's writing to Kirk. Writing to a third  
21 party about I don't know why their father thinks he doesn't  
22 have any responsibility for the financial well being or  
23 whatever it is of the children, when this is the person who  
24 pays exclusively for the insurance. And frankly, when he was

1 notified about this problem, within, you know, a few hours had  
2 already communicated back to her about what he had done to  
3 start rectifying it.

4 I mean, he has been responsive to all these things,  
5 but this became the perceived infraction. And so all of a  
6 sudden, we have this, you know, culmination of events that  
7 goes from what is zero or, you know, a 1 or 2 on the Richter  
8 scale, to off the charts, all of a sudden, like that. And  
9 there's no -- I mean, that's what I think we've got to deal  
10 with.

11 He wants it fixed and he's without tools to do it.  
12 Now, what were Mom's powers to do it? Take away the car. You  
13 know? I mean, how do we -- how about that? I mean, how about  
14 you -- she counsels her to say this is what you have to do?  
15 There's been nothing on that side that says, you know what,  
16 we've worked with you -- you know, we've tried to get her in  
17 to see, you know, so-and-so and Mom has counseled her in order  
18 to be able to do this, and there's this episode in the car  
19 when Mom was putting her in the car and told her she had to  
20 go, or on the day when school was over, when it was Dad's turn  
21 to pick her up, you know, she communicated with Kirk to say,  
22 hey, Kirk, why don't you go pick her up today and I'm not  
23 going to be there.

24 You know, whatever -- I don't know what the tools

1 are. I'm just trying to say is that there are a myriad of  
2 things that could be done to fulfill her obligation as a joint  
3 physical custodian, or any physical custodian. When you're a  
4 primary physical custodian, you have an obligation to ensure  
5 the other parent's visitation. If you're a joint physical  
6 custodian, you have obligation to ensure the other parent's  
7 contact (indiscernible).

8           She has obligations, none of which there's been any  
9 evidence of any efforts to meet whatsoever. And I think  
10 that's why we're here. At the end of the day, we want the  
11 problem fixed. We want this to go forward. We want to  
12 restore things to where they were and deal with it so that  
13 this relationship goes on and this child understands that she  
14 doesn't have the power to say, frankly, what's going to  
15 happen.

16           And that -- in this case, although I understand  
17 there's no direct evidence, nobody's eavesdropped on their  
18 conversation, and I doubt that Mom and Brooke are going to  
19 come in and say, oh, yeah, Mom told me I could do this, and  
20 such and such, and all of this, and Mom's going to stand up  
21 and say, oh, yeah, I've been telling her for months, you know,  
22 boy, you can do this and if -- you know, girls should be --  
23 Mommy should be -- or girls should be with their mommies and  
24 this is the way it is and this is what's going on, you're

1 never going to have that. So you have to look to the other  
2 evidence in this case.

3 That's all -- I don't know if there's anything else  
4 you wanted from me in terms of --

5 THE COURT: Well, how many days has Dad missed?

6 MR. KAINEN: You have -- we could -- it probably  
7 wouldn't take us very long to put it together, but I assume  
8 equal time from (indiscernible) you should have gotten in the  
9 back around what?

10 THE PLAINTIFF: August 12th.

11 MR. KAINEN: August 12th, so it's at least equal  
12 time since August 12th because August 12th would have been the  
13 end of the vacation period, right?

14 THE PLAINTIFF: Correct.

15 MR. KAINEN: So if we look to August 12th, we're  
16 deal about 40 days or something like that, from August 12th,  
17 42 days. So somewhere in the neighborhood of 21 days. I  
18 mean, the time before that, the July 27th to that period was  
19 part of vacation. It was -- so that part -- it was when she  
20 was supposed to come back and they -- their vacations were  
21 over.

22 THE COURT: But August 12th was the beginning of --

23 MR. KAINEN: That was when everything --

24 THE COURT: -- the regular schedule.

1 MR. KAINEN: -- would have resumed, correct.

2 THE COURT: Okay. So that ultimately is the  
3 question as it relates to the show cause is -- and again, I  
4 made it clear -- and to repeat that -- I'm not finding that  
5 there's a basis to make findings of contempt against the  
6 Defendant as it relates to any alleged communication that Mom  
7 may have had with Brooke.

8 Inference can be drawn by what has occurred and the  
9 timing of everything. And I'll note for the record, the  
10 counter-motion to modify custody was a counter-motion in  
11 response to the motion filed by Dad. There was never any  
12 indication, at least in what I read, that there was a motion  
13 being drafted to modify custody.

14 MR. SMITH: Wait, wait. We made efforts to contact  
15 Mr. Kainen's office and discuss this matter before ever filing  
16 a motion. Mr. Kainen came to my office on another matter and  
17 served us with a motion. So the notion that we weren't  
18 contemplating and -- well, I mean, if we need to have Ms.  
19 Harrison testify, I'd like to do it on a day when I can  
20 actually prepare for a hearing.

21 But, Your Honor, she has repeatedly encouraged  
22 Brooke to spend time with her father, but she doesn't think  
23 Brooke should be punished in a -- because it's not going to  
24 help.



1 THE COURT: How is this punishment?

2 MR. SMITH: How is it going to help? How -- are we  
3 that naive to think that by forcing a 16-year-old in a  
4 situation where she's never got an opportunity to talk to  
5 anybody -- Dr. Ali -- and we're not even going to ask Dr. Ali  
6 to provide a report, we're not going to ask Dr. Paglini to  
7 provide a report, and she's just going to say, oh, okay,  
8 that's perfectly okay? She's going to act out. That's the  
9 fear here.

10 Here's a daughter that has really a perfect record.  
11 She hasn't done anything. She's make -- she's not com -- been  
12 in compliance with this order. There will be an office of  
13 proof that -- Vivian will testify, she tells her, you've got  
14 to comply with this order. I'm not going to do that.

15 So we take away her car so she can't go to school?  
16 So she can't go to dance class? I mean, it's just naive to  
17 think that -- the request that I was going to make is why  
18 don't we have Brooke seen by somebody so that we can actually  
19 find out what's going on? But instead, we got a motion and  
20 we're here, and we get this 30-page tome of hatred.

21 And how about we draw the inference that from this  
22 30-page tome of hatred, and from the 60 or so pages of hatred  
23 that are sent up before the Supreme Court, and about the 1,014  
24 pages of hatred that were submitted by Mr. Harrison prior to

1 that time, that maybe the problem could be that he's not  
2 handling how she -- how he deals with his -- with the mother  
3 correctly?

4 And, in fact, we have evidence of that in the  
5 record. We have a statement from Brooke that was given to  
6 Vivian that says Dad is telling me this, Dad is telling some  
7 wrong person is telling me to do this, et cetera. So we have  
8 all kind of evidence of that.

9 Here, we have some insurance issue over \$600 and  
10 that forms the basis of an order to show cause and I can't  
11 have Brooke interviewed. It is really -- truly, Judge, I  
12 don't understand it. I don't understand why we would -- what  
13 would be the danger of having Brooke interviewed? We're not  
14 saying she has a choice. We're saying we just want to know  
15 what you're doing this. If you're doing this for a reason  
16 that's not adequate, we'll tell you. But --

17 THE COURT: Why doesn't that come through Dr. Ali?

18 MR. SMITH: Because Dr. Ali is there as a therapist  
19 only. He is prohibited under the Court's order from talking  
20 to anyone. The only person he can talk to is the PC that has  
21 never been put in place, and it's the PC that has the  
22 opportunity, under the agreement, to interview the child and  
23 then determine whether or not there's a way to resolve it  
24 between the parties. That was the provision that we put into

1 place. That was what should have happened in this process.

2 But we don't have a PC.

3 MR. KAINEN: Hold on for a second. There's no --

4 THE COURT: Well, hang on. Mr. Smith --

5 MR. KAINEN: But that's an inaccurate  
6 representation. The PC does not have a right to interview the  
7 child. That's subject to prior litigation. Doctor --

8 MR. SMITH: It does. It does. And the prior  
9 litigation was misrepresented in your pleadings.

10 MR. KAINEN: That was one of the primary issues that  
11 we dealt with, and your order was very clear that -- and we  
12 were willing to sign a PC order. We have a letter that we  
13 sent to Mr. Smith back in January of 2015 saying, hey, we'll  
14 sign any order that complies with Judge Duckworth's order,  
15 just prepare it and we'll sign it. We've made that very  
16 clear. I mean, I'm frankly glad we made the record of it,  
17 that it was there.

18 As far as Dr. Ali goes, Dr. Ali met with both  
19 parents and told the parents if they have any issues of  
20 concern, he wants to know about it, and he wants to know what  
21 their obstacles are. So Dr. Ali invited contact. There's  
22 been minimal contact with Dr. Ali. But just so you  
23 understand --

24 THE COURT: When was the last time Brooke saw Dr.

1 Ali?

2 MR. KAINEN: I have no idea.

3 THE PLAINTIFF: Within the last --

4 THE DEFENDANT: Brooke -- I took Brooke to see Dr.  
5 Ali about a month ago and then she's supposed to see him again  
6 next Friday. But she's been -- she saw Dr. Ali before this  
7 insurance incident and has consistently talked to him, telling  
8 her that -- telling him that she's wanted to change custody.  
9 And if you would speak to Dr. Ali, that he would --

10 THE COURT: Well, but --

11 THE DEFENDANT: -- that would be fine.

12 THE COURT: And Mr. Smith --

13 THE DEFENDANT: But she met him --

14 THE COURT: -- makes a good point.

15 THE DEFENDANT: But she said that at the beginning  
16 of Au -- beginning of June that she was going to plan to make  
17 a move at the end when she started school, when she started  
18 going to college classes. She told him that way very back  
19 then.

20 MR. KAINEN: Was Mrs. Harrison in sessions with her?

21 THE DEFENDANT: No, but that's what she told me.

22 THE COURT: All right. Well --

23 THE DEFENDANT: She told me that she was planning to  
24 move. She told me she was planning to stay with me full time,

1 but she also -- but also, this last two months that she hasn't  
2 been with Kirk, she'll also tell you that two weekends ago,  
3 she was supposed to go to stay with Kirk and I told her that  
4 she needed to go with Kirk. And there was a football game and  
5 she didn't get home until af -- until late that and she said  
6 -- she was supposed to stay the whole weekend while Riley was  
7 there, and she just came home at the end. And I said, why  
8 aren't you over at your dad's house? You need to be over at  
9 your dad's house. My brother was there, who is a police  
10 officer. He would testify that that is absolutely true. I  
11 tried to get her to go that weekend. I kept saying, you've  
12 got to go, you've to go, you need to go, Brooke. And she  
13 says, I don't want to, I don't want to, and she went up to her  
14 room.

15           And these -- I mean, I have -- and then last  
16 weekend, she was supposed to as well, and she comes though and  
17 says, Mom, do I have to go? And I go, Brooke, you need to go.  
18 And she goes, I don't want to go. This just happened just  
19 last weekend, too. And I'm -- I mean, I'll -- I swear -- I  
20 swear on oath that that's exactly the two things that  
21 happened. My brother was there during one of the  
22 conversations. She says she does not want to go over there.

23           THE COURT: What happened in July when --

24           THE DEFENDANT: She says she wanted to change -- she

1 said she told -- she's always wanted to stay with me more than  
2 50/50. Always.

3 THE COURT: Well, but --

4 THE DEFENDANT: But that's what --

5 MR. KAINEN: I'm not raising --

6 THE DEFENDANT: I understand that.

7 MR. KAINEN: -- my hand. I'm asking that she be put  
8 under oath.

9 THE DEFENDANT: Well, I --

10 MR. SMITH: If we're going to have --

11 THE DEFENDANT: I am under oath.

12 MR. SMITH: -- an evidentiary hearing, I want ab --  
13 I want to be able to call witnesses and I want to be able to  
14 present my case. I'm not going to be -- it just seems so  
15 grossly unfair that we're just going to say, okay, well, you  
16 didn't a chance to present witnesses, but let's have the  
17 person say under oath and testify --

18 THE DEFENDANT: Brooke has even told her dad that  
19 she's wanted to live with me full time, more than on one  
20 occasion. And she tried to talk to him, (indiscernible) --  
21 she sent him a text message to try to alter the modification  
22 of the plan. I talked -- he was supposed to talk to them  
23 before, and then all of a sudden we get hit. I mean, this has  
24 been ongoing, Judge Duckworth, for years, since she was 12

1 years old. And Dr. Ali will know that and be able to tell you  
2 that because he's talked to her, and it's not --

3 MR. SMITH: How long has she been going to Ali?

4 THE DEFENDANT: Two years.

5 MR. SMITH: Two years.

6 THE DEFENDANT: She has -- she has not -- this is  
7 not something that just hit over this insurance claim. I  
8 assure you, that's not the case.

9 THE COURT: Okay. But the timing sugge -- this is  
10 when she basically told Dad, I'm not going to see you anymore  
11 and she --

12 THE DEFENDANT: Well, she told --

13 THE COURT: -- came and cleaned her closet.

14 THE DEFENDANT: -- Ali she was going to make the  
15 move in the beginning of June, way before this happened. She  
16 told him as soon as classes started, she was going to stay

17 full time or longer with me. And she said that to him in  
18 June.

19 THE PLAINTIFF: Your Honor, can I respond?

20 THE DEFENDANT: In fact, she wanted to do it before  
21 June and I told her to wait --

22 THE COURT: I've let Mom speak --

23 THE DEFENDANT: -- until after the summer.

24 THE COURT: -- so I'm going to let Dad speak.

1 THE PLAINTIFF: Yeah. Sixty to 90 days before we  
2 filed the motion, after being with Vivian, Brooke came to me  
3 and said, Dad, after I turn 18, I think I want to live with  
4 Mom full time. And I said, if that's what you want to do when  
5 you're 18, that's certainly something you can do. That was  
6 just 60 to 90 days before all this happened.

7 The other thing that's problematic for me is I've  
8 nev -- Brooke has never said to me, well, Dad -- I mean, other  
9 than things that are just blown out of proportion like  
10 planning trips or tending parent observation, Brooke has never  
11 said to me saying, well, Dad, I don't want to be with you  
12 because you've done this wrong or that wrong. Other than  
13 planning vacations and going to parent observation, that's it.

14 What is going on here is -- started when she was 12  
15 years old, started after we filed the complaint. And there's  
16 evidence in there of the alienation. In front of the kids,  
17 Vivian would tell the kids, you know, I'm going to file for  
18 divorce and it's his fault. She's telling these kids  
19 everything -- the divorce as my fault. And I -- what I  
20 thought was taking the high road -- and I didn't say anything.  
21 And I consistently just told them, respect your mother -- if  
22 she's waiting in the car, hey, you need to hurry, your  
23 mother's waiting in the car, be respectful. That's all I say.

24 And as pointed out in the brief we filed, my



1 mistake. My -- I should have been defending myself. But  
2 Brooke has never articulated to me any problem with me other  
3 than -- that I can think of. I think there was a third thing,  
4 but it was like planning vacations, I didn't consult her  
5 enough, and attending parent observation where all the other  
6 dads and moms were attending the dance class. And she asked  
7 me to leave.

8 THE DEFENDANT: Then why did he have to go see Ali  
9 if that's true?

10 THE COURT: No, listen, let me --

11 THE PLAINTIFF: The reason -- I -- let me answer  
12 that. The reason I went to see Dr. Ali is when he met with me  
13 and I met with him after Vivian met with him. He said, do you  
14 have any present concerns? And I talked to him about what I  
15 was concerned about, and he said, if you have any further  
16 concerns, contact me. So I was planning a vacation and Brooke  
17 was just digging in her heels and said, I don't want to go on  
18 a trip with you. Well, why not? Well, because you have --  
19 because we -- when we went to Lagoon, you didn't ask me, and I  
20 didn't want to go. And so I contacted Dr. Ali, say this is  
21 inexplicable to me, I don't understand why something that's so  
22 insignificant, she's digging her heels in. That's why I  
23 contacted him. And I did it after he said contact me if you  
24 have any concerns.

1 THE COURT: Let me ask you because -- I'm looking at  
2 Brooke's age, 16 years of age, do you have any concern that  
3 the more you push, the more resistance you may get from  
4 Brooke? Just in terms of your own relationship with her.  
5 Obviously, there's a strain there that exists because you've  
6 gone without contact for some period of time. And Brooke has  
7 announced that to you. She's declared that to Mom. It sounds  
8 like she's stated that to Dr. Ali. And just as a father,  
9 looking at it from that perspective -- and I've already made  
10 my findings in terms of the issue of physical custody and  
11 where I'm at legally -- but just from your perspective as her  
12 father -- and I'm here to enforce rights, that's what I do,  
13 this is a contempt and so it's an enforcement hearing -- do  
14 you think about the fact that the more you push on this issue,  
15 the more resistance you're going to get?

16 Brooke -- and we're talking about two short years  
17 and she's 18, and what happens today --

18 THE PLAINTIFF: Right.

19 THE COURT: -- impact your relationship with Brooke  
20 when she is 18.

21 THE PLAINTIFF: It's -- we addressed it in the brief  
22 and this -- and it's where you have a situation like this  
23 where there has been clear pattern of parental alienation  
24 since she was 12 years old and where she's hypercritical. And

1 you go from adored dad to despised dad and you didn't do  
2 anything, and all you've been is a consistent loving and  
3 caring parent from day one and there's no explanation. When  
4 the alienation is taking place, all the authorities,  
5 everything I've researched, everything I've read said you've  
6 got to hang in there.

7           And I'm -- and I understand the difficulty and I'm  
8 totally sensitive to what you're saying. It's not going to be  
9 a bed of roses when Brooke comes back, I'm going to have to  
10 work through this. But what they're saying is you have to get  
11 a third-party evaluator in there. Number -- I made a mistake  
12 not defending myself, what all the authorities say. I should  
13 have said --

14           THE COURT: But isn't that exactly what Mom is  
15 asking for, is get someone else in there --

16           THE PLAINTIFF: But it --

17           THE COURT: -- because Dr. Ali, it is therapeutic.

18           THE PLAINTIFF: But it is --

19           THE COURT: And I'm not going to call on him, but --

20           THE PLAINTIFF: Right. Well --

21           THE COURT: -- that's the nature of the request --

22           THE PLAINTIFF: -- also, let --

23           THE COURT: -- is let's get someone in there to find  
24 out --

1           THE PLAINTIFF: Also, what the authorities say is if  
2 the child's therapist is the last person you want to do the  
3 evaluation because they align with the child, whatever the  
4 child's are. And so if there's these alienating factors, they  
5 reinforce them because they're based on feelings. What you  
6 need to have is an evaluator that -- there's this 14-step  
7 process in children held hostage that they go through, and  
8 they've had an amazing success with that. But they have to  
9 find out what the sources of the alienation are and work  
10 through them because what is in Brooke's best interest is to  
11 get to the point where I'm a good dad, Vivian's a good mom.  
12 That's the goal.

13           If it goes forward and one parent is alienated, the  
14 target parent is alienated, and that's a bad parent going  
15 forward and there's -- and Vivian is a good parent going  
16 forward, that is a disaster. And the long-term damage is  
17 evident. It's been -- in the study sponsored by the Family  
18 Law Section of the American Bar Association, 34-year study  
19 confirmed that time after time after time, that's the disaster  
20 scenario.

21           I understand what I'm up against trying to find out  
22 why Brooke -- because what they say is if you come in and say,  
23 well, you know, this is crazy that you view me in a poor light  
24 because I haven't done anything wrong, that -- it's going to

1 your point exactly, Your Honor. That's going to cause more  
2 friction. I can't do that. It -- there needs to be somebody  
3 experienced in making this evaluation to get this child where  
4 everything -- her perceptions right now are so distorted --

5 THE COURT: Why not use someone --

6 MR. SMITH: But --

7 THE DEFENDANT: How do you know that?

8 THE COURT: -- like Dr. Paglini for that purpose? I  
9 agree, Dr. Ali is not the one who should conduct an  
10 evaluation.

11 MR. SMITH: We agree, Your Honor.

12 THE COURT: And Mr. Smith has acknow --

13 THE PLAINTIFF: I don't --

14 THE COURT: He's therapeutic. But why not --

15 THE PLAINTIFF: Well, I don't --

16 THE COURT: Why not use Dr. Paglini to come in.

17 THE PLAINTIFF: Well, I'm not comfortable with Dr.  
18 Paglini because of what happened the last time. He never said  
19 anything to me about, you know, what he wanted to do. He  
20 obviously had talked to them. And I don't -- I'm not  
21 comfortable in a situation where had talked to them and  
22 apparently given them some preliminary --

23 MR. KAINEN: They've repeated -- what we're  
24 referring to is they've repeatedly said, you know, Dr. Ali's

1 report was going to say X, Y, and Z. Well, we had no insight  
2 to --

3 THE PLAINTIFF: He never said anything to me.

4 MR. SMITH: (Indiscernible).

5 MR. KAINEN: We had no insight whatsoever as to  
6 where Dr. Paglini was going and what the outcome was going to  
7 be. But at the end of the last set of hearings, it was we  
8 want this report out there because Dr. Paglini was going to  
9 say this, and they argued he was going to say this and he was  
10 going to say that, he was going to say this. Well, we don't  
11 have any of that kind of insight.

12 Now, I happen to like Dr. Paglini, but I've never  
13 been in a situation where the other side had real insight into  
14 exactly what was going to be in a report and we had nothing.  
15 So that's my concern.

16 THE PLAINTIFF: (Indiscernible - simultaneous  
17 speech) --

18 THE COURT: Well, why not use -- I mean, is there  
19 someone else?

20 MR. KAINEN: I don't -- the answer is I don't know.  
21 What I was trying to do before we got in there was to see if  
22 there was someone who actually had an expertise in -- and I'm  
23 not using PAS in terms of the Gardner thing.

24 THE COURT: Right.

1 MR. KAINEN: In dealing with alienated children  
2 because without assignment -- I was back lecturing in law  
3 school this last week in Kansas and I had -- one of the more  
4 foremost experts in the country is Linda Elrod, who I think  
5 the Court has met. She's a former chair of the ABA section.  
6 And she's saying the new terminology is really alienated child  
7 because it doesn't necessarily assign fault. You've got a  
8 child that's alienated from a parent and the idea is to figure  
9 out what's going on and what the root of that necessarily is.

10 So when we've got -- we need someone who has an  
11 expertise in dealing with that issue. I don't have somebody  
12 to be able to say to you, you know, Lenkeit, Mortillaro,  
13 Holland, or whatever it is. I haven't done that little bit of  
14 homework. Now, if you gave me a couple of days to figure that  
15 out, I'd be happy to do that. And yes, we think that kind of  
16 examination is appropriate.

17 The problem is we want to move with some due haste  
18 in order to be able to get this process underway because we  
19 want to fix the problem. And the prob -- believe me, Kirk and  
20 I have spent a lot of time talking about this idea of exactly  
21 what you raised. Do you like just back off and let it happen  
22 or do you just throw in the towel and figure when she turns  
23 18, you'll fix it and, you know.

24 There's no simple answer other than the literature,

1 and I'm familiar with what he's talking about because I've  
2 dealt with it through the ABA, is that you've got to be able  
3 to go through the -- is it Clawar, I think it was. That's the  
4 definitive study in terms of how you deal with these -- the  
5 symptoms that have gone on, not necessarily with assigning  
6 fault. We all have our beliefs as to what the root of the  
7 problem is, but whatever it is, there is a problem now that  
8 needs to be fixed.

9           And that's why I said to you earlier, our primary  
10 concern is less about finding fault. You know, that was --  
11 and to be very blunt, the reason the motion was drafted the  
12 way it does [sic], is I was not prepared to cross the line to  
13 say whether this was independent or collateral to -- from the  
14 appeal. And so my -- I thought m lone remedy was to be able  
15 to say, hey, contempt, that's basically to enforce an order  
16 rather than to modify an order. I didn't know where the Court  
17 would come on that and I didn't want to cross that bridge.  
18 So --

19           THE COURT: But the sense I'm getting, Defendant's  
20 argument, which I've been pushing against and resistant to, is  
21 let's have some additional process, let's have a child  
22 interview. I think what we're looking at is something more  
23 deeper than a child -- just a --

24           MR. KAINEN: I'm not talking about --



1 THE COURT: -- simple child interview.

2 MR. KAINEN: -- child interview. I'm talking about  
3 an examination --

4 THE COURT: But the point being is, let's --

5 MR. KAINEN: I'm not --

6 THE COURT: -- do something to involve Brooke beyond  
7 just the counseling with Dr. Ali with someone.

8 MR. KAINEN: I'm not opposed to a further process  
9 because I think the further process is going to be necessary  
10 to fix the problem. So this is one of the unusual area -- but  
11 here's what I don't want to do. I don't want to give it to  
12 just, well, we'll just pick a name off the court-appointed  
13 list and, you know, go down the same old road we've been down  
14 before. I want some -- I want to be able to say does somebody  
15 have an expertise in actually doing this. And very candidly,  
16 we don't see it that often. You know, we all throw it around  
17 and it gets, you know, used.

18 In this case, we've got a situation where I just  
19 want to make sure whoever we go to can give us some good  
20 insight and it's a worthwhile process. So whether we come  
21 back in three days and give us a chance to do a little bit of  
22 homework and figure out what resources are out there and who's  
23 out there, I don't know. I don't have a simple answer.

24 THE COURT: Mr. Smith.

1 MR. SMITH: Well, I -- this might be the first time  
2 in the history of my practice, but I don't disagree with  
3 anything that Mr. Kainen said. I believe that that's exactly  
4 what we've requested by our counter-motion. The counter-  
5 motion, like Mr. Kainen explained, that the motion was  
6 designed in a particular way because of the ongoing appeals.  
7 The counter-motion was address this notion of contempt because  
8 there's nothing that Vivian thought was in the best interest  
9 of Brooke that would come of punishing her under these  
10 circumstances. That's why we first went to Mr. Kainen and  
11 said, you know, let's talk about a therapeutic process.  
12 That's why we first, in our --

13 MR. KAINEN: No, no, no, no, no. Hold on a second.  
14 You -- I came to you with a motion in hand --

15 MR. SMITH: No, no, no. I called you prior to that  
16 time. You acknowledged that when you handed me the motion.

17 MR. KAINEN: Okay. But we hadn't spoken or anything  
18 like that. We spoke on the day I was at your office and you  
19 just said would you agree to a change in custody. It wasn't  
20 -- nobody -- there was no therapeutic process.

21 MR. SMITH: See, now you're putting words in my  
22 mouth. What I --

23 THE COURT: Okay. Well --

24 MR. SMITH: -- indicated at that time was I'd like

1 to sit down and discuss with you -- I called you, I'd like to  
2 sit down and discuss with you what's going on with Brooke.  
3 And then you said, well, I've got a motion prepared and I'm  
4 going to give that to you today. That's what happened.

5 In regard to the -- Brooke's situation, I agree with  
6 Kirk, not in what he thinks is the problem here, but what the  
7 idea of the resolution would be. I'm on both sides of the  
8 issue.

9 THE COURT: Problem -- trying to solve the problem.

10 MR. SMITH: Yeah. And I'm both sides of this issue.  
11 The idea -- I think it's surprising to me that Mr. Kainen said  
12 I don't see this very often. I think it's exactly because now  
13 we have a presumption of joint custody, it's coming into play  
14 on October 1st. I think it's precisely because of joint  
15 custody we see two things very often now. We see move cases  
16 and we see alienation cases.

17 It's because there are certain people who can't get  
18 used to the notion, or certain children who can't get used to  
19 the notion that they are going to be forced into these type of  
20 relationships as a result of law, as opposed to without being  
21 heard, without having any choice in the matter because now  
22 everybody says, oh, it's going to be joint custody and don't  
23 even worry about it.

24 So in this circumstance, I think Kirk is right in

1 that there needs to be an understanding from Brooke and Kirk's  
2 relationship to fix that relationship. I'm not here to say  
3 that Kirk's relationship needs to be severed, that's not our  
4 point. My point of the counter-motion was to simply say that  
5 we have tiptoed on this issue. And I know a lot about  
6 parental alienation because we have a lot of cases. We've  
7 used some very fine experts that I'd be happy to talk to Ed  
8 about.

9 But in those cases, there are certain patterns of  
10 behavior. One of the patterns of behavior is constant  
11 discussion with the child about the other parent and so forth.  
12 So I have counseled Vivian and she's done everything she can  
13 to stop doing that so that she can -- there can be no  
14 allegation, and nevertheless there is the allegation that she  
15 has influenced Brooke. The only way to know that is to talk  
16 to Brooke.

17 So I agree with Ed that there should be something  
18 that addresses this situation. I think we need something more  
19 than a child interview. And I think a child interview is  
20 certainly part of that process to just get a basic  
21 understanding where Brooke's at.

22 The second thing is that the mending of the  
23 relationship between Kirk and Brooke, that should have a  
24 therapeutic role. That's exactly what we said in our motion.

1 That was exactly what we tried to do when we set up the  
2 teenage discretion, the parenting coordinator, the counselor  
3 that could talk. It was all designed to help Kirk's  
4 relationship with Brooke that was -- it was -- even at 12  
5 years old, it was not good.

6 He's saying basically, I don't have any  
7 responsibility in that relationship, that I've done everything  
8 right, I've never done anything wrong, and that Brooke's  
9 reaction has to be totally based on things that are told her  
10 by Vivian. That, I think, is really dismissing Brooke's own  
11 intelligence, her own feelings, and whole notion. And it may  
12 be that dismissal of her feelings and her intelligence, that  
13 may be the root of the problem. It could be that after a few  
14 therapy sessions, Brooke says, you know, I -- Dad is starting  
15 to listen to me now and maybe things are getting better.

16 But we -- and that's what we've asked for. So I  
17 don't see how my client is all of a sudden -- we come to --  
18 first of all to Mr. Kainen, we get a motion. We come to the  
19 Court and say we think there's a therapeutic process that  
20 could be followed, we should be -- have interview of Brooke,  
21 and now we're -- all of a sudden we're facing contempt charges  
22 with what she thought was right as a parent. It's very  
23 difficult.

24 THE COURT: Well, here -- listen, here --

1 MR. KAINEN: She's still advocating her role as  
2 (indiscernible).

3 THE COURT: Well, listen here's where I'm at. I  
4 mean, it's still -- ultimately, the responsibility for abiding  
5 by the Court's orders falls on the parties that are part of  
6 this litigation, and that's Plaintiff and Defendant, no one  
7 else. It doesn't fall on the shoulders of a child or any  
8 other third party. The contempt powers of the Court relate  
9 only to the two of you, Mom and Dad, and the orders of the  
10 Court spell out exactly what your rights and responsibilities  
11 are as parent. And in part, that's defined as it relates to  
12 the specific custody schedule.

13 So there's -- there is, as I've indicated before,  
14 there's been a violation of the Court's order based on the  
15 fact that Dad has missed approximately 20 days. We've take --

16 MR. SMITH: What efforts --

17 THE COURT: Hey --

18 MR. SMITH: -- does Dad make? Has he ever come over  
19 to pick up the child?

20 THE COURT: Well --

21 MR. SMITH: Ask him.

22 MR. KAINEN: What?

23 MR. SMITH: Has he ever come over to pick up the  
24 child and Brooke says, no, I'm not going with you? Has that

1 ever happened?

2 THE PLAINTIFF: I can show the Court all my texts to  
3 her.

4 THE COURT: To Brooke.

5 THE PLAINTIFF: Yes.

6 MR. SMITH: So you texted her. But you haven't come  
7 to the house to actually pick her up?

8 THE COURT: Well, listen --

9 THE PLAINTIFF: And cause a confrontation? Yeah,  
10 great idea.

11 MR. SMITH: Well, that -- you're right. It's a  
12 terrible idea and that's why we have tried to avoid that.

13 THE COURT: Well, here's what I'm inclined to do.  
14 There -- that time -- there's no question that that time has  
15 been missed, and ultimately that's on Mom's shoulders. That's  
16 her responsibility to facilitate that time with Dad. That  
17 being said, the last part of this hearing we've used to really  
18 look at the issue and the problem. As disparate as the  
19 positions of the parties are as -- in regards to where Brooke  
20 is at, the consensus that I think has evolved through this  
21 hearing is that we need to do something about it.

22 And I appreciate the fact that it was brought  
23 essentially as an enforcement hearing, recognizing that there  
24 are some appellate issues. And again, I don't have

1 jurisdiction to get into the teenage discretion and PC  
2 matters. But I do find it would be beneficial for Brooke to  
3 have some type of evaluative process to find out exactly what  
4 is going on. If it's a matter of coincidence that this all  
5 happened when this insurance issue came bubbling out and that  
6 the timing just seems to line up, or if it's a much larger  
7 issue on either side.

8           And that's why I started asking Dad questions about  
9 his relationship and that's why I think it needs to be  
10 explored because fundamentally, I think sometimes the more you  
11 push, the more damage you may ultimately cause, especially  
12 when we're dealing with a 16-year-old.

13           So what I'm inclined to do, based on that  
14 discussion, is to have someone designated for that purpose. I  
15 don't have a problem setting -- we could come back next week.

16           MR. SMITH: Well, why not Dr. Paglini? He already  
17 knows these parties. He has a -- he already knows, has  
18 interviewed both children. He has a file full of information.  
19 He could use that information to talk to Brooke about what she  
20 was feeling then, what she's feeling now. Why would that be a  
21 problem? It seems to make the most sense to me. He's a  
22 qualified expert. He was the expert that this Court chose.

23           THE COURT: Right.

24           MR. KAINEN: I happen to really like John Paglini,



1 okay, but in this case, he's not the right person given the  
2 fact that there is a very clear perception that there was some  
3 insight into where he was going and that has been repeated  
4 again and again. And I just can't walk into that situation.  
5 I won't agree -- I mean, I can't agree to that.

6 THE COURT: Well, here's what I'm --

7 MR. KAINEN: I want a fresh --

8 THE COURT: -- going to do.

9 MR. KAINEN: -- look at this. I want a fresh look  
10 at this.

11 MR. SMITH: I think that insight is absolutely  
12 important because one of the things that you continue to see,  
13 even in the 30-page response that we received Friday, is a  
14 blasting of the ability of Ms. Harrison to actually be a  
15 parent, and it's based upon these tried and dismissed notions  
16 that were contained in the previous pleadings in this case.  
17 Dr. Paglini addressed all of that, and I think that his  
18 insight into that would be --

19 MR. KAINEN: I don't know --

20 MR. SMITH: -- very helpful.

21 MR. KAINEN: -- what Dr. Paglini addressed because I  
22 didn't see a report and I didn't get an oral representation  
23 from him as to what was going to be in there.

24 THE COURT: Well, listen, to be clear -- and the

1 reason there was no report is, ultimately, I ordered that  
2 there was no report on Plaintiff's request.

3 MR. SMITH: Exactly.

4 THE COURT: We had the hearing and there -- we had  
5 that entire discussion about should we finalize his report,  
6 the value it might provide for further counseling, and I heard  
7 -- we -- you argued about that at length. And I ultimately  
8 said, you know what, we won't do the report. And --

9 MR. SMITH: You know what would be helpful to this  
10 family? And I don't mean to interrupt, I'm sorry, Your Honor.  
11 But it would be helpful to this family if they had the report,  
12 to put to bed these notions. Frankly, at this point, Vivian  
13 just wants to know what the findings were. And, Judge, Dr.  
14 Paglini had all of that information. We want to stop Kirk  
15 from continually telling people that she is a drug addict,  
16 that she suffers from NPD, that he just did this to save his  
17 children. I mean, all of that is just nonsense. We believe  
18 that Dr. Paglini's report will put that bed -- that issue to  
19 rest. So I --

20 MR. KAINEN: That isn't what --

21 THE COURT: Here's what I'm --

22 MR. KAINEN: -- we're doing.

23 THE COURT: -- going to do. Listen, I'm going to  
24 set this for a very brief hearing, in contrast to today's

1 proceedings, for a week from -- well, I'm looking at the 30th,  
2 September 30th at 11:00. And I'm not dismissing Dr. Paglini.  
3 There's a certain attraction for me to use him, but I'm not  
4 going to make that call today. I'd like both sides to submit  
5 names and I'd like you to communicate and collaborate and see  
6 if you can come to an agreement as to a specific name. And  
7 maybe it's someone who has a level of experience dealing with  
8 that specific issues.

9           And when we talk about it -- and I think Mr.  
10 Kainen's raised a point. When we talk about alien -- a child  
11 that's alienated, getting far away from the whole theory, the  
12 sense I get from the literature is we're talking about an  
13 alienated child that could be alienated by Dad's conduct or  
14 Mom's conduct. It's not simply looking at Mom, but someone  
15 who deals specifically in that area that can, with some  
16 evaluative process, provide some assistance to ultimately lead  
17 to better counseling, a better understanding of where Brooke  
18 is at. And I believe it would entail some type of a child  
19 interview.

20           I'm not going to select that person today. I'm  
21 looking at that date, and I want you to submit your names  
22 before then. If you haven't agreed to a name, submit three  
23 names, it could include Dr. Paglini, and I'll -- I'm going to  
24 make the call and -- next Wednesday as to who it's going to be

1 if you haven't agreed to it.

2 MR. KAINEN: The only indication we had from Dr.  
3 Paglini was that he needs to do more work, and that was the  
4 last thing we heard from him. And they were saying, look,  
5 he's already decided this and he's done that, and he's going  
6 to say this and this is what the report --

7 MR. SMITH: No, we didn't do that. That's a  
8 misrepresentation. What we said --

9 MR. KAINEN: They represented countless times in  
10 this litigation --

11 MR. SMITH: Well, let's look --

12 MR. KAINEN: -- that Dr. Paglini --

13 MR. SMITH: -- at the pleadings.

14 THE COURT: Well, no. No, I don't want to  
15 re-argue --

16 MR. SMITH: The representation was that --

17 THE COURT: Listen, I don't want to re-argue that  
18 issue because I do recall the argument that, look, if he was  
19 going to finish the report, that there was more that Plaintiff  
20 wanted to provide to him. And ultimately, listen, I made that  
21 call. Good or bad, I made that call and I'm not going to  
22 revisit that. But that doesn't mean I write off Dr. Paglini.  
23 I mean, there is a -- there may be some value because there is  
24 some knowledge that he comes in with. Do -- is it better for

1 me to wipe the slate clean and bring someone else in? I'm not  
2 going to make that decision today. But you know what? This  
3 process has helped me this morning and it has evolved for me  
4 because I view this -- although it is an enforcement  
5 proceeding, and I'm going to defer rulings on the specific  
6 issue of contempt, I've made findings that I do believe there  
7 -- contempt has been committed. But to me, there's a more  
8 important issue that's before all of us, and so I'm engaged to  
9 go down that path.

10           And through my discussions -- and I appreciate the  
11 fact that both parties have had the opportunity -- it's given  
12 me some insight as to where you're both at in some of these  
13 questions. And I'm familiar with, as a child, those feelings  
14 of estrangement with a particular parent from my own siblings  
15 and the process that we went through. And so I see that and  
16 that's one reason I posed the question about the whole pushing  
17 issue because I've seen it and I've seen the results of not  
18 pushing and how relationships evolved and developed and -- in  
19 adulthood.

20           And so it's not -- I mean, it's something that is  
21 somewhat personal to me because I've witnessed that myself and  
22 that's why I ask these questions. And I think there would be  
23 some value, not only for the next two years of Brooke's  
24 minority, but I think there's value to go through this for her

1 adulthood, as well.

2 THE PLAINTIFF: Well, we have Riley, too.

3 THE COURT: And, no -- and I know we haven't really  
4 talked about Riley. I recognize Riley is there as well, and I  
5 know that, you know, there's been suggestion that she's going  
6 to fall into the same thing. And I -- listen, I -- right now  
7 the focus is on Brooke, though. And I know, I'm not  
8 dismissing Riley, she's not insignificant to this, but  
9 Brooke's the focal point. So we'll come back --

10 MR. KAINEN: I'd ask to --

11 MR. SMITH: And if you could give us some guidance  
12 as to what we should do. In other words --

13 THE COURT: In terms of names?

14 MR. SMITH: No. In terms of how Vivian should  
15 behave toward Brooke. Should we now punish her; in other  
16 words, tell her that what she's doing is absolutely wrong,  
17 stay in your room, don't come out, the only time you leave is  
18 when you go to school. Is that it? Is that going to help the  
19 situation, do you think?

20 THE COURT: Well, again, I go -- from an enforcement  
21 standpoint, it's Mom's responsibility to make sure that Brooke  
22 is with Dad.

23 MR. SMITH: He doesn't come over. He doesn't come  
24 to get her.

1 THE COURT: Well, when is the --

2 MR. SMITH: Make him come to get her.

3 THE COURT: -- exchange time? When is --

4 THE PLAINTIFF: I've spent four years listening to  
5 this stuff, Your Honor, and I've had it. I've got a text  
6 right here where I went over there with Riley. I sent I text  
7 where I said, will you please come out and see me. To say  
8 that I don't come over -- when I go over on these exchanges, I  
9 sit in the car 30, 40, 50 minutes while she's sitting there  
10 talking to the girls while I'm sitting in a hot car.

11 THE COURT: When's your next -- when's the next  
12 exchange date?

13 THE PLAINTIFF: Tomorrow afternoon after school.

14 THE COURT: Okay. Do you pick them up, though, from  
15 Mom's or from school?

16 THE PLAINTIFF: I pick them up from --

17 THE COURT: Well, Brooke drives, so.

18 THE PLAINTIFF: Yeah, she drives now. I pick them  
19 up from school. Because of the dance bags, we go to Mom's to  
20 get their dance stuff. When that transfer is made from my  
21 house to her, she waits for two minutes. I wait anywhere from  
22 20 to 45 minutes when it's a hundred degrees.

23 MR. KAINEN: For the kids to run inside, grab a  
24 dance bag.

1 THE PLAINTIFF: To grab a dance bag.

2 THE DEFENDANT: That's a mischaracterization, and  
3 again, you need to talk to Brooke and Riley to get that --  
4 that's --

5 THE COURT: Well --

6 THE DEFENDANT: -- just not true.

7 THE COURT: -- again, I expect, Dad, you pick them  
8 up from school as you normally would and --

9 MR. KAINEN: Well, the problem is he only picks up  
10 Riley because Brooke drives now.

11 THE COURT: And so he takes Riley to the home and  
12 picks up dance bags or whatever it is, or they exchange that,  
13 and I would presume Brooke is home at that point.

14 THE DEFENDANT: No, she has a -- she doesn't get  
15 home from school until 4:30 from -- she's at the college. She  
16 goes to the college now and then she comes home, gets a bite,  
17 and then she goes to the dance studio. She's -- I -- you  
18 know, it's funny, I don't even see her during the day, Brooke.  
19 Any -- I mean, she's -- I don't see her at all during the day.  
20 She leaves in the morning and she's gone for six hours at the  
21 college, comes home, grabs a bite to eat, and goes to dance  
22 until 9:00. It's -- you know, I don't see her that much  
23 during the day. What's Brooke's issues are --

24 THE COURT: Well, I want Dad to --



1 THE DEFENDANT: -- is she --

2 THE COURT: -- be able to pick her up.

3 THE PLAINTIFF: Your Honor, I have been trying to  
4 see my daughter for two months. And for him to stand there, I  
5 don't care enough about her to drive over there to see her?  
6 Enough.

7 MR. SMITH: Please.

8 THE PLAINTIFF: Okay? I didn't do anything wrong.  
9 I have been attentive. I quit my practice to take care of  
10 these kids.

11 THE DEFENDANT: No, that's not true.

12 THE PLAINTIFF: I have not said anything bad --

13 MR. KAINEN: Okay.

14 THE PLAINTIFF: -- about her to them, and I have  
15 heard it coming the other way. She has alienated me. I have  
16 not done anything --

17 THE COURT: Well, again --

18 THE PLAINTIFF: -- to justify the behavior that they  
19 have towards me.

20 MR. KAINEN: My suggestion -- answer to --

21 MR. SMITH: That's true.

22 MR. KAINEN: -- Mr. Smith's question was --

23 THE DEFENDANT: Why are they still going --

24 MR. KAINEN: My suggestion --

1 THE DEFENDANT: -- back and forth having --

2 MR. KAINEN: -- answer Mr. Smiths' question --

3 THE DEFENDANT: -- no issues. It's Brooke.

4 MR. KAINEN: -- was that if she doesn't have a -- if  
5 Brooke doesn't have a car and the message is, very bluntly,  
6 that until you're responsible enough to be able to carry out  
7 your obligations, which include going back and forth to visit  
8 both of your parents, that a car really isn't appropriate.

9 THE COURT: Listen, I'm not changing the orders.  
10 The orders are what they are. I'm not modifying --

11 MR. KAINEN: No, no, but he --

12 THE COURT: -- the order --

13 MR. KAINEN: -- wants a suggestion.

14 THE COURT: -- and ultimately it's Mom's  
15 responsibility --

16 THE DEFENDANT: How?

17 THE COURT: -- to make sure --

18 MR. KAINEN: Well, my suggestion --

19 MR. SMITH: How?

20 MR. KAINEN: My suggestion is --

21 MR. SMITH: That's what I'm saying.

22 MR. KAINEN: -- that Dad will go to pick --

23 MR. SMITH: How do we avoid being held in contempt?

24 MR. KAINEN: Dad will go pick --

1 MR. SMITH: Because she's 16 years old. You cannot  
2 pick her up and take her somewhere, you can't, without  
3 physically forcing her. So absent that, what does Mom do so  
4 she's not held in contempt?

5 THE COURT: What would Mom do if Brooke came to Mom  
6 and said I'm not going to go to school?

7 MR. SMITH: She would say that that's a law, that  
8 she's going to be in violation of a law, that you have  
9 penalties.

10 THE COURT: Well, there's an order. This -- the law  
11 of the case is that Dad has time.

12 MR. SMITH: So you take away her car, so how does  
13 she get to school? Mom drives her to school.

14 THE COURT: Dad picks her up on his time.

15 MR. SMITH: Great. So we'll take --

16 THE COURT: You be parents.

17 MR. SMITH: -- her to school. Dad can pick her up  
18 from school.

19 THE COURT: Okay.

20 MR. SMITH: Okay?

21 THE COURT: Okay.

22 MR. SMITH: Great.

23 MR. KAINEN: Would you please communicate with us  
24 when you're doing this so we can actually coordinate

1 something, so we know?

2 MR. SMITH: We're going -- we're communicating with  
3 you right now. That's what will be told to Brooke because I'm  
4 understanding from the Court that if we do that, you're not  
5 going to hold our client in contempt. So she'll take Brooke  
6 to school, Dad will pick her up from school. Right?

7 THE COURT: Whatever Mom needs to do to make sure  
8 that Brooke sees her father.

9 MR. SMITH: Again, Your Honor, it's not that simple.  
10 I don't think it's what's in the best interest of the child to  
11 force her into this kind of confrontation. But if the Court  
12 feels it is, that's what we'll do.

13 THE COURT: Well, listen. The party -- the  
14 presumption is that the parties have joint physical custody.  
15 I do believe it's in Brooke's best interest to have a  
16 relationship with her father. And for me to sit her and say,  
17 you know what, Dad, I'm cutting off all your time, sorry --

18 THE DEFENDANT: I don't think that's --

19 THE COURT: -- Brooke doesn't want to see you --

20 THE DEFENDANT: -- she said.

21 THE COURT: -- you're not going to see her again  
22 until we go through this evaluation --

23 THE DEFENDANT: Judge, that's not what she said.  
24 She's not said that.

1 THE COURT: But that's what you're asking me to  
2 endorse.

3 THE DEFENDANT: No, that is not --

4 THE COURT: That's fundamentally what --

5 THE DEFENDANT: I did not say that, she's going to  
6 not --

7 THE COURT: -- you're asking me to endorse.

8 MR. SMITH: It's not what Brooke has said.

9 THE DEFENDANT: She's never said she'll never see  
10 her dad.

11 THE COURT: But do you believe -- say we go through  
12 this 90-day process, if I simply said, well, Brooke can do  
13 what she wants, do you seriously believe she's going to spend  
14 any time with her dad --

15 THE DEFENDANT: I do seriously believe she might --

16 THE COURT: -- in the next 90 days?

17 THE DEFENDANT: Yes, I do.

18 MR. SMITH: I think that was the basis for the child  
19 interview was to find out --

20 THE COURT: Well --

21 MR. SMITH: -- where Brooke's at and what she wants  
22 and have the Court consider that.

23 THE COURT: Well, listen --

24 MR. SMITH: The Court may say, I'm not interested in

1 what she wants.

2 THE COURT: And I've at least --

3 MR. SMITH: But at least have her interviewed.

4 THE COURT: And I've at least gotten to the point to  
5 taking this matter on a little different direction by going  
6 through an evaluative process. I was resistant -- and you  
7 know, I made that clear at the beginning. I was resistant to  
8 that. Dad has acknowledged some issues, and so I'm on board  
9 with that. But it doesn't -- I'm not to the level where I'm  
10 -- I find it's appropriate to modify the orders, I'm just not,  
11 so.

12 MR. KAINEN: Two things. I would just --

13 THE COURT: We'll come back on --

14 MR. KAINEN: No, I --

15 THE COURT: Is that date okay?

16 MR. KAINEN: No, it's not, that's what I'm saying.  
17 I have two hearings that will both go long. They're both at  
18 10:00, one here and one at the RJC. The RJC hearing, I will  
19 definitely need to be at, and someone will probably cover the  
20 one here that morning. So I would need a different -- either,  
21 you know, maybe an 8 -- an 8:00 a.m. that morning would  
22 probably work or, you know, or the afternoon might work. But  
23 that 10:00 to noon block is --

24 THE DEFENDANT: What day is it?

1 MR. KAINEN: That's Wednesday the 30th.

2 THE COURT: Well, what about the 28th?

3 MR. KAINEN: Monday the 28th, I have a --

4 THE COURT: At 8:00 in the morning.

5 MR. KAINEN: -- 9:00 hearing in this building, so  
6 that would --

7 MR. SMITH: The 28th, I cannot.

8 MR. KAINEN: Oh, sorry.

9 MR. SMITH: I know that I'm going to be in a  
10 deposition all day.

11 THE COURT: October 5th at 8:30.

12 MR. SMITH: October 5th, I'm in an evidentiary  
13 hearing.

14 MR. KAINEN: And we're out two weeks and so -- I  
15 mean --

16 THE COURT: I could do the 6th at 8:30 or the 7th at  
17 8:30.

18 MR. SMITH: October 6th at 8:30 a.m.

19 MR. KAINEN: Now we're talking -- now we're two  
20 weeks out to even get started.

21 MR. SMITH: One remedy would be to simply appoint  
22 Dr. Paglini and start now, have Dr. Paglini interview Brooke  
23 before we have this meltdown.

24 THE COURT: Well, here's what I'm going to ask you

1 to do, and I won't set a hearing. I want you to each submit  
2 three names. My hope is that you would still communicate, and  
3 it may include Dr. Paglini. And I'll issue a minute order.  
4 So if you can have those two me -- I don't need to wait a  
5 week. How soon do you believe you could have those names to  
6 me? Could you have them to me by this Friday?

7 MR. SMITH: I don't know three people that would be  
8 qualified. I definitely know two and I can give those names  
9 now. John Paglini and Dr. Mark Chambers.

10 THE COURT: Okay.

11 MR. SMITH: I don't know a third party that does --

12 THE COURT: Well, you had mentioned that you --

13 MR. SMITH: The only other person is Dr. Lenkeit and  
14 we found out that Kirk had seen Dr. Lenkeit surreptitiously.

15 MR. KAINEN: Surreptitiously? I hired him --

16 THE COURT: Stop. I don't need that.

17 MR. KAINEN: -- as an expert at the beginning of the  
18 case and we disclosed that when he suggested him. We didn't  
19 do anything surreptitiously.

20 MR. SMITH: No, you disclosed it when you submitted  
21 your attorney's --

22 THE COURT: Stop.

23 MR. SMITH: -- fees bills.

24 THE COURT: Why throw that out? Why? What are we



1 accomplishing? I don't need that.

2 MR. SMITH: What are we accomplishing by 30 pages of  
3 insults to my client?

4 THE COURT: Well, listen, I don't need that behavior  
5 in court. Then submit two names. Plaintiff --

6 MR. SMITH: Those are the two names, Mark Chambers  
7 and Dr. Paglini.

8 THE COURT: Okay. How long does --

9 MR. KAINEN: I'll get something by Friday to you.

10 THE COURT: Okay. Friday, and then I'll issue an  
11 order. And what I'm going to look at doing is setting this  
12 out. I'm looking at setting it out 90 days. Let's look at a  
13 date.

14 THE DEFENDANT: Your Honor, may I speak again?

15 THE COURT: What did you want to say?

16 THE DEFENDANT: What I'm hoping for is to solve the  
17 problem. And in the work that was cited in the brief,  
18 Children Held Hostage, Dr. Clawar, this 14-step evaluation is  
19 really what I urgently ask the Court to order, and that's  
20 what's needed, because that is the pathway for Brooke to get a  
21 balance perspective of Vivian and me, and so that we're both  
22 good parents and we can all go forward in a positive way.  
23 Simply interviewing Brooke from a therapist's point of view,  
24 what this -- what Children Held Hostage says is that simply

1 reinforces the belief. It's a feelings thing. And what you  
2 really need is a person that's trained in this 14-step  
3 process.

4 MR. KAINEN: The point we're getting at is that we  
5 are -- my fear as I listen to this is that their approach is  
6 to find somebody to listen and mirror back the behavior, that  
7 says, hey, this is okay, there's a justification for it, and,  
8 therefore, we should allow whatever it is. And our approach  
9 is (indiscernible) --

10 THE COURT: Again --

11 MR. KAINEN: -- we want to fix the problem.

12 THE COURT: Well, and that's -- again, listen. I --  
13 submit your three names by Friday and I'll issue an order.  
14 We'll come back --

15 THE CLERK: December 14th at 9:00 a.m.

16 MR. SMITH: Two or three names?

17 THE COURT: Well, up to three names. Defendant had  
18 two names.

19 MR. SMITH: Okay. If I find another one, I'll  
20 submit it another -- I'll submit it.

21 THE COURT: If you -- yeah, if there's another name.  
22 I thought you had mentioned you had several names.

23 MR. SMITH: Let me just note on that point. Dr.  
24 Paglini is a well-known expert, Dr. Chambers. These people

1 regularly testify and they regularly testify on the issues of  
2 alienation. I think they have served as an expert, too. I  
3 mean, Dr. Chambers is a Stanford Northwestern trained doctor  
4 who's done hundreds of these and is well trained to determine  
5 whether or not this is something that needs to be addressed by  
6 whatever therapeutic ways that are beneficial. I just -- the  
7 idea that we're going to tell a therapist how to do his work  
8 is --

9 THE COURT: Well, listen --

10 MR. KAINEN: Part of this is it's cutting-edge stuff  
11 going on that's changing the way -- that's why I've tried not  
12 -- in other words, you haven't heard me in this hearing say  
13 parental alienation in terms of an accusatory fashion. I've  
14 just said we have an alienated child that needs to be -- and  
15 we need to fix the problems.

16 THE COURT: Well, and let me just pose that one  
17 final question. Is there any -- does either party disagree  
18 that Brooke is an alienated child? Does Mom disagree, not  
19 ascribing blame for that, but does -- is there any  
20 disagreement that Brooke is alienated from her father?

21 THE DEFENDANT: Judge --

22 MR. SMITH: That term is so loaded. I would say  
23 this --

24 THE COURT: I know it is and I'm not talking about

1 the syndrome.

2 MR. SMITH: I would say this, that Brooke wants to  
3 spend more time with Vivian, and I think she's been pushed  
4 into the situation where it's become extreme. Now she's  
5 probably just embarrassed by it because she's spent so much  
6 time away from her father. I don't think it's as serious as,  
7 you know, saying that this child needs psychological help. I  
8 think there are problems between the relationship with Kirk  
9 and the child that have existed for some time. If we have the  
10 opportunity to have a therapist, maybe the therapist will say  
11 there's something that Ms. Harrison is doing that's not  
12 helping, or something that Mr. Harrison is not doing. But do  
13 I say now that she's an alienated child? We've made real  
14 effort not to talk to her about these things. She's talked to  
15 Dr. Ali about these things.

16 THE COURT: Okay.

17 MR. SMITH: And then she's behaved (indiscernible).

18 THE COURT: All right. I don't need anything  
19 further. I just -- I wanted to pose that question, and  
20 certainly that's something that can be explored through  
21 whoever is designated. But I'll -- the intent will be for the  
22 Court to issue a minute order that following week, next week,  
23 and appoint one of the individuals that's been submitted by  
24 the parties, and then we'll be back. You have the return

1 hearing date.

2 MR. SMITH: One thing is what is the --

3 THE COURT: And the issue relating to contempt are  
4 deferred to that time.

5 MR. SMITH: What is the protocol for communicating  
6 with the therapist? We can -- I would prefer that it --  
7 anything that's provided to the therapist would also be  
8 provided to the opposing party so that we understand what's  
9 being provided.

10 THE COURT: The evaluator?

11 MR. SMITH: Yes.

12 THE COURT: That would be my order is there -- if  
13 there's anything submitted. Let me just offer this. If it's  
14 been filed with the Court, so any of the papers that have been  
15 filed with the Court, I would somewhat expect that you are  
16 going to provide that information to whoever is appointed; so  
17 the motion, the opposition and counter-motion, the reply. If  
18 there is something that is not part of the record, the order  
19 -- and you're supplying that to the evaluator, the order is  
20 that is to be disclosed to the other party. Whatever  
21 information is supplied, it should be transparent in terms of  
22 any information that's supplied to the evaluator.

23 MR. SMITH: We would like to have the opportunity to  
24 file the reply to the existing opposition that in. And so

1 it's our intent to do that. Did you have something?

2 THE DEFENDANT: Yeah, I'm just -- I -- all of this  
3 stuff -- again, I guess I'm just confused because all of the  
4 stuff went to Paglini. All of this stuff to Margaret Pickard.  
5 All of this stuff hap -- also went to Dr. Ali. There's a huge  
6 expense in doing this stuff over and over and over again. And  
7 I know you're saying we have a six million dollar thing or  
8 whatever, but it's really more than just --

9 THE COURT: I didn't put a number on it. I said  
10 millions.

11 THE DEFENDANT: -- more than just financial expense.  
12 It's emotional. It's really hard. And so now we're going to  
13 do the same thing again, give them all the same stuff where  
14 Kirk tells them that I'm a drug addict, tells them that I'm --  
15 you know, this whole stuff is all going to be surfaced again.  
16 You know, my question is, Judge, is that if in this last four  
17 years Kirk has felt that she's been alienated, I don't  
18 understand why he hasn't gotten counseling with her and -- he  
19 and her or both in a family counseling type of venue. That's  
20 not happened over the four years.

21 MR. KAINEN: Because we've been told we're not  
22 allowed to do that.

23 THE PLAINTIFF: I would love to do that.

24 THE DEFENDANT: No, you were told -- no, that's --

1 THE COURT: Okay.

2 THE DEFENDANT: -- not true.

3 THE COURT: Okay, listen --

4 THE DEFENDANT: He can't see Ali, but he can  
5 certainly see a doctor, and Brooke. They can go to some  
6 counseling.

7 THE PLAINTIFF: I was told I couldn't.

8 MR. SMITH: By who?

9 THE DEFENDANT: No, who told you you could never go  
10 to see a doctor?

11 MR. KAINEN: By the order, Rad, that you negotiated  
12 that says we're only allowed to see --

13 MR. SMITH: That's not true.

14 MR. KAINEN: -- this counselor, we're not going to  
15 do this kind of stuff.

16 MR. SMITH: That is not true.

17 THE DEFENDANT: That's not true. He could have  
18 always gone to see a ther -- or a counselor --

19 MR. SMITH: Read the order.

20 THE DEFENDANT: -- and have some family counseling.  
21 But now what I understand -- what -- if he has issues with  
22 Brooke, I have no problem with him and Brooke going to a  
23 counselor and trying to work those things out. But doing this  
24 all again with this -- I just -- I'm just -- you know, we keep

1 doing the same thing over and over again, and if they don't  
2 like the report or don't want to hear it or don't want the  
3 interview, it just gets thrown out. That's my --

4 THE COURT: I'll -- listen, I'll make my -- I'll  
5 issue my decision next week.

6 MR. SMITH: Thank you.

7 MR. KAINEN: I don't want to see another brief in  
8 this case because, see, now we've had the insight of listening  
9 to you for an hour, knowing exactly where you're going,  
10 anticipating that, listening to what your preliminary findings  
11 are and all of that, and now we're going to write a brief  
12 that's not directed to you because you could give a darn  
13 what's said after the hearing, but is written for a therapist  
14 that's going to be appointed? That's wrong.

15 MR. SMITH: I understand there's going to be a  
16 subsequent hearing in which the Court is going to address the  
17 issues that have been deferred today. I think I have a right  
18 to file a reply.

19 THE COURT: Well --

20 MR. KAINEN: You were given -- at the beginning of  
21 the hearing, you said you want to defer this and file that  
22 brief. And the answer was, no, I think I've said it.

23 THE COURT: Well, at this point, I don't need the  
24 need for -- I don't have the need for any additional filings



1 at this point. To the extent that that becomes necessary  
2 after we go through this evaluative process, I'll -- I may  
3 reconsider that. But --

4 MR. SMITH: Okay. So you're not -- you're going to  
5 issue your own order from today's hearing?

6 THE COURT: Well, do we need an order prepared or  
7 are the -- would the min -- are the minutes sufficient?

8 MR. SMITH: The minutes are sufficient, Your Honor.

9 MR. KAINEN: I assume the minutes are sufficient,  
10 and we're okay with my -- there's no problem with my client  
11 going with Brooke to a therapist? Is that what we're really  
12 saying?

13 THE COURT: Is there any opposition to that? Dad  
14 going to --

15 MR. KAINEN: We'll take -- we'll do that in a  
16 second.

17 MR. SMITH: Well, why don't we just attach the  
18 minutes to an order so it's an order.

19 THE COURT: Well, that's typically what I do, issue  
20 an order based on the minutes. I mean, these are temporary.  
21 I haven't made any final adjudication, so --

22 MR. SMITH: Yeah.

23 THE COURT: -- the issues of contempt are deferred.  
24 But is there any objection on Mom's side, Dad pursuing some

1 counseling with Brooke?

2 MR. SMITH: I don't have a problem with that. I  
3 haven't talked to Vivian about that.

4 THE PLAINTIFF: She just said she didn't have a  
5 problem.

6 MR. SMITH: Yeah, as long as it's part of some  
7 evaluative process and that's what --

8 THE COURT: No, I'm talking therapeutic only --

9 MR. SMITH: Yeah, I don't have a --

10 THE COURT: -- to work on the relationship.

11 MR. SMITH: I don't think I have a problem with  
12 that. So let me --

13 THE PLAINTIFF: I was told I couldn't do it.

14 THE DEFENDANT: As long as I don't have to force her  
15 to go and it's now I'll be held in contempt if she says I  
16 don't want to do this. I just want to make sure that's clear  
17 because I will tell her that she needs to go and that she  
18 should go to counseling with her dad --

19 THE COURT: I'd like to see --

20 THE DEFENDANT: -- but I don't want to --

21 THE COURT: -- the counseling happen.

22 THE DEFENDANT: -- be in contempt.

23 THE COURT: I'd like to see the counseling happen,  
24 but I -- listen, let's see if we can work on that. I'd rather

1 be problem solving -- as much as this has been a contempt  
2 hearing, I'd rather work on these issues because we're talking  
3 about many years to come. So all right.

4 THE PLAINTIFF: Your Honor --

5 THE COURT: The Court will issue an order based  
6 on --

7 THE PLAINTIFF: Can I just --

8 THE COURT: -- the minutes.

9 THE PLAINTIFF: -- say one more thing? And I know  
10 I've said this --

11 THE COURT: I've got to get going.

12 MR. KAINEN: May -- just ask. If you're going to do  
13 anything affirmative in terms of saying, okay, taking the car  
14 or Dad's picking you up, can you give us just an advance  
15 warning where we know -- where we're working together to make  
16 that decision?

17 MR. SMITH: I don't -- look, my understanding --

18 MR. KAINEN: I just don't want to be --

19 MR. SMITH: -- tell me if I'm wrong, is that what --  
20 I think what Ms. Harrison is obligated to do is to go to  
21 Brooke and say, Brooke, you're going to -- you either -- your  
22 father's going to pick you up from school and that's the rule,  
23 that's it, and you've got to spend your time with your father.  
24 Is that right? Do I understand it?

1 THE PLAINTIFF: I think if Brooke is told that it's  
2 the law, that she can keep the car and Brooke will abide by  
3 the order and drive herself. But if she digs her feet in and  
4 says she won't, then I --

5 MR. SMITH: What do you want us to do? Tell us.

6 THE PLAINTIFF: Well, I want her to --

7 MR. SMITH: Because I'm just unclear.

8 THE PLAINTIFF: -- abide by the custody order.

9 MR. SMITH: But how? What do you want us to do?

10 THE COURT: No, but I think what he's -- what do you  
11 want Mom to tell Brooke?

12 THE DEFENDANT: She wants to amend this  
13 (indiscernible) --

14 THE PLAINTIFF: (Indiscernible - simultaneous  
15 speech) --

16 MR. KAINEN: I want Mom to go home and say, we went  
17 to court, the order is we're going to go through whatever it  
18 is that we're -- the judge is going to handle this, we're  
19 going to go through some process, but meanwhile, you are  
20 obligated to go and to abide by the visitation order.

21 MR. SMITH: Okay. So what else do we need to do if  
22 she doesn't do that?

23 MR. KAINEN: Well, I think then the judge is going  
24 to have -- I think the very clear message, Judge is going to

1 have a real hard time taking her -- what she wants seriously.

2 MR. SMITH: But what do we do?

3 THE COURT: Listen --

4 MR. KAINEN: I think you be a parent.

5 THE COURT: Go be parents.

6 MR. SMITH: Thanks.

7 THE COURT: Go be parents.

8 THE PLAINTIFF: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (THE PROCEEDINGS CONCLUDED AT 11:33:01)

11 \*\*\*\*\*

12 ATTEST: I do hereby certify that I have truly and  
13 correctly transcribed the digital proceedings in the above-  
14 mentioned case.

15

16 /s/ Kimberly C. McCright  
17 Kimberly C. McCright, CET  
18 Certified Electronic Transcriber

19

20

21

22

23

24



**FILED**

AUG - 5 2016

*Ann L. Blum*  
CLERK OF COURT

1 TRANS

**ORIGINAL****EIGHTH JUDICIAL DISTRICT COURT****FAMILY DIVISION****CLARK COUNTY, NEVADA**

7 KIRK ROSS HARRISON )

8 Plaintiff, )

9 v )

10 VIVIAN MARIE LEE HARRISON )

11 Defendant. )  
\_\_\_\_\_ )

CASE NO. D-11-443611-D

DEPT. Q

13 BEFORE THE HONORABLE BRYCE C. DUCKWORTH,  
14 DISTRICT COURT JUDGE15 TRANSCRIPT RE: ALL PENDING MOTIONS

16 MONDAY, DECEMBER 14, 2015

17 APPEARANCES:

18 The Plaintiff:

For the Plaintiff:

KIRK ROSS HARRISON

EDWARD L. KAINEN, ESQ.

Kainen Law Group

3303 Novat Street #200

Las Vegas, Nevada 89129

21 The Defendant:

For the Defendant:

VIVIAN MARIE LEE HARRISON

RADFORD J. SMITH, ESQ.

GARIMA VARSHNEY, ESQ.

Smith Chartered

2470 St. Rose Parkway #206

Las Vegas, Nevada 89074

1 LAS VEGAS, NEVADA

MONDAY, DECEMBER 14, 2015

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

3 (THE PROCEEDING BEGAN AT 09:11:40.)

4 THE COURT: We are on the record in the Harrison matter,  
5 Case D-11-443611-D.

6 Please confirm your appearances.

7 MR. KAINEN: Your Honor, Ed Kainen, Bar No. 5029, with  
8 Kirk Harrison, he's to my right.

9 THE COURT: Good morning.

10 MR. SMITH: Radford Smith, 2791. Vivian Harrison is to  
11 my left.

12 MS. VARSHNEY: Garima Varshney, Your Honor, Bar No.  
13 11878.

14 THE COURT: Good morning.

15 MS. VARSHNEY: Good morning.

16 THE COURT: This had been the time regularly scheduled  
17 for a hearing on competing motions filed by the parties.  
18 There was an opposition. And I did receive correspondence  
19 from Dr. Paglini indicating that he needed some additional  
20 time for purposes of completing his evaluative services. To  
21 my understanding that he's -- at this point he's meeting with  
22 Brooke.

23 And so, as I recall, I think it was a matter of  
24



1 about thirty days. Is that the length of time he was looking  
2 for?

3 MR. KAINEN: Yes.

4 THE COURT: Okay.

5 Have any issues been resolved, at least on a  
6 temporary basis?

7 MR. KAINEN: No.

8 THE COURT: The -- in looking at the letter, it was a  
9 letter dated November 23rd. Actually, it's the letter after  
10 that. And the letter doesn't indicate a specific amount of  
11 time.

12 But is it thirty days, do you know?

13 MR. KAINEN: I'm going by recollection. Personally, yes.

14 MS. VARSHNEY: Your Honor, I think there was a letter we  
15 got just recently, I think on Thursday or Friday. Actually,  
16 Thursday, and that asked for one month.

17 THE COURT: Okay. Yeah.

18 Okay. So that's what I'm looking at doing. I know  
19 this -- so we're obviously going to have another hearing.

20 Here's where I am at in terms of the papers, because  
21 it's --

22 MR. KAINEN: May I inquire of The Court just briefly?

23 The Court said -- first of all, did you receive the  
24

1 reply briefs that were fi -- the reply brief --

2 THE COURT: I did.

3 MR. KAINEN: -- that was filed, Your Honor?

4 THE COURT: I did.

5 MR. KAINEN: Okay.

6 THE COURT: I had a chance to review the -- there was an  
7 opposition, there was a reply.

8 MR. KAINEN: But wha --

9 THE COURT: There was a supplement filed --

10 MR. KAINEN: -- wha --

11 THE COURT: -- which isn't allowed by rule. So I'm going  
12 to --

13 MR. KAINEN: Well, but there was no op --

14 THE COURT: -- strike that.

15 MR. KAINEN: -- there was no opposition to our motion,  
16 which is what --

17 THE COURT: To the motion.

18 MR. KAINEN: Our underlying motion --

19 THE COURT: Correct.

20 MR. KAINEN: -- was never opposed. So the only way to  
21 get the information before you was in a supplement, because it  
22 was really a reply brief that could be filed. They never  
23 opposed our motion.

24

1           THE COURT: Correct. It's -- I did note that there was  
2 no opposition on file. There is a basis for The Court to  
3 grant an Order to Show Cause based on those allegations in  
4 regards to the additional missed visits that were represented  
5 in the original motion that was filed.

6           The -- in looking at the posture of the case -- so  
7 an Order to Show Cause should be prepared and issued, and I'll  
8 -- we'll set new dates. But -- and I also agree that to the  
9 extent there are alienating behaviors that exist, immediate  
10 changes may be warranted. But I need Dr. Paglini's assistance  
11 before I can do anything.

12           Let me just point out -- I mean, the -- because I do  
13 -- any drastic change -- and it's a dramatic change, and I get  
14 that -- is something that usually is viewed as a last resort.  
15 There's been one occasion, and it happened within the last few  
16 weeks, in which I have actually done that. But it's been  
17 based upon the assistance of an outsourced evaluation, just  
18 like the one that's being conducted by Dr. Paglini, where I  
19 made a complete shift and excluded the -- one party from the  
20 child because of concerns about alienating behaviors. That's  
21 the only time that I've ever been presented with that through  
22 that type of information.

23           It was after an evidentiary hearing that I scheduled  
24

1 one week after I received a letter from the outsourced  
2 evaluator in that particular case. But I'm just not --  
3 without the assistance of the evaluator, I'm not in a position  
4 to pull the trigger on that.

5 MR. KAINEN: And look --

6 THE COURT: I'm just not.

7 MR. KAINEN: -- maybe I'm arguing this the wrong way.

8 I'm not asking for something dramatic as we sit  
9 here. What I'm asking for is simply for your Order to be  
10 enforced. And, unfortunately, the perception of This Court,  
11 being unwilling to take any action till Dr. Paglini has  
12 rendered an opinion, has emboldened the other side.

13 In other words, since July, the amount of time my  
14 client has had with Brooke can be measured in hours. Since --  
15 and what's happened since the last time we were here, it has  
16 now moved on to Rylee. Okay?

17 Friday -- you know, it was like this thing on  
18 Friday. You saw the supplement in terms of what happened with  
19 Rylee, who is now twelve, and the same thing. And he says --  
20 you know, he says to her, look I don't agree to the his  
21 change, I'm not making this change, this is what the parenting  
22 -- the Order says, do not come to my house tomorrow at nine  
23 a.m. She show's up. She's outside. Because the fact is that

24

1 she knows that he's not going to physically restrain the  
2 child, the children know that. And so the idea is by not  
3 being that person he's getting run over. And now it's moved  
4 to the twelve-year-old.

5 And so the -- so I appreciate -- and I've shared  
6 with him that This Court is going to be reluctant to do  
7 anything until you have a PhD sign off and say, you know, hey,  
8 this is really going on. But the fact is that that -- despite  
9 -- and you've given what I thought were pretty clear  
10 telegraphs, hey, I expect my Orders to be complied with or  
11 there's going to be consequences for it, and all of those kind  
12 of things, which in most cases would lead someone to believe,  
13 hey, I better, you know, do something. And, in fact, it's  
14 just emboldened the situation and it's gotten worse and worse  
15 and worse.

16 And so we're reaching out for help because the  
17 problem we've got is that...there's a point when it may be too  
18 late to do anything. In other words, we -- and that's really  
19 our fear in this case, is that unless something firm happens  
20 -- and I am not suggesting today you say, okay, you have  
21 custody of both children, Mom doesn't see them at this point,  
22 and everything like that -- I'm not suggesting something like  
23 that be done today. But there has to be a way to say your  
24

1 Order is going to be complied with. And, meanwhile, we're  
2 just waiting to see if, you know, maybe she'll show up, maybe  
3 she won't, maybe she'll stay overnight and she'll show up at  
4 eleven thirty at night, be out the door at six in the morning  
5 and that's all he's going to see her for the five days that he  
6 has her and things like that.

7 I mean, you know -- and then the funny part is, is  
8 that when she leaves Mom's parked outside, you know. He  
9 learned of it. Mom's there. Be -- you know, I'm here. Those  
10 -- I mean, it's just -- it's --

11 MR. SMITH: Well --

12 MR. KAINEN: -- it's a kind of craziness that goes on in  
13 this case. And we're being the patient ones. We're being the  
14 good ones. We're not like -- the behavior that's been  
15 demonstrated is so grossly disproportionate. And now it's --  
16 without excuse -- now it used to be the idea, well, we have  
17 this teenage provision, it gives us discretion provision that  
18 Brooke is protected by, but now it's bled over to Rylee, who's  
19 twelve, you know. And so I --

20 MR. SMITH: (Indiscernible.)

21 MR. KAINEN: -- we're just at our wits' end on what to do  
22 about this, other than just wait.

23 THE COURT: All right. Mr. Smith.

24

1 MR. SMITH: Okay. The only reason I understood that we  
2 were here is that we had sought a Motion for Clarification in  
3 regard to contempt. We were advised that, and we assumed that  
4 the secondary motion would be part of the first, all addressed  
5 in what I thought was in a therapeutic way by The Court to  
6 address whatever problems exist between Brooke and Dad.

7 We didn't understand that these were essentially new  
8 motions for new a behavior, but just part of the same types of  
9 allegations. We had already addressed the behaviors we had  
10 engaged in, Mrs. Harrison had engaged in, after the hearing.  
11 Because one of the things that I requested from Your Honor was  
12 guidance as to the things that she could do to encourage  
13 Brooke and remain out of what is now already a contempt  
14 finding, and that was part of the Motion for Clarification.

15 So we have restricted her use of the car, restricted  
16 her use of the telephone, not allowed her to go out of the  
17 house.

18 I think Mr. Kainen must have misspoke or just made  
19 something up. This idea that our client is outside the home  
20 waiting for Brooke when she leaves is false. Brooke has a  
21 car.

22 MR. KAINEN: No, no, I'm sorry.

23 MR. SMITH: She is --

24

1 MR. KAINEN: That was -- that was Rylee. I apologize.

2 Brooke has her own car and has consistently.

3 THE COURT: Okay.

4 MR. KAINEN: Rylee is who she was there Friday morning to  
5 pick up at nine o'clock in the morning.

6 MR. SMITH: Okay. Did --

7 MR. KAINEN: Despite my client saying, no, no, don't come  
8 to my house.

9 MR. SMITH: -- did she violate the Order?

10 MR. KAINEN: Yeah.

11 MR. SMITH: What is the Order when the child is not in  
12 school and ill?

13 THE PLAINTIFF: There aren't any.

14 MR. KAINEN: First of all, the Order says when the  
15 children --

16 MR. SMITH: Oh --

17 MR. KAINEN: -- are not --

18 MR. SMITH: Judge, it --

19 MR. KAINEN: -- what the Order is --

20 MR. SMITH: -- I thought it was --

21 THE COURT: Well --

22 MR. SMITH: -- my turn to --

23 THE COURT: -- well, yeah. No, one at --

24



1 MR. SMITH: -- to argue.

2 THE COURT: -- a time. I'm not going to engage in this,  
3 but the Order of The Court is whoever is -- whose ever time is  
4 defined by the schedule, if the child is sick, that's still  
5 their time.

6 MR. SMITH: It's this -- the Order doesn't say that. The  
7 Order says when they're out of school. So what is --

8 MR. KAINEN: It's referring to summer and holidays.

9 MR. SMITH: Well, it doesn't --

10 MR. KAINEN: (Indiscernible.)

11 MR. SMITH: -- refer to hummer --

12 THE COURT: By --

13 MR. SMITH: -- summer and holidays.

14 THE COURT: I don't know.

15 MR. SMITH: It just says when they're out of school.

16 THE COURT: And if --

17 MR. KAINEN: It said -- by the way --

18 THE COURT: Listen.

19 MR. KAINEN: -- what it said --

20 THE COURT: Stop.

21 MR. KAINEN: -- it doesn't say when --

22 THE COURT: No.

23 MR. KAINEN: -- they're out of school.

24

1 THE COURT: No.

2 MR. KAINEN: It says --

3 THE COURT: No.

4 MR. KAINEN: -- when school is not --

5 THE COURT: No. Don't interrupt.

6 MR. KAINEN: -- in session.

7 THE COURT: No. I'm not going to do --

8 MR. SMITH: No, it doesn't say --

9 THE COURT: -- I'm not going to do this.

10 MR. SMITH: -- when school is not in session.

11 Let's look --

12 THE COURT: Listen.

13 MR. SMITH: -- at the Order. That's why I wanted to look  
14 at the Order.

15 Can we look at the Order? Because my client again  
16 is being accused of violating an Order. She's doing  
17 everything she can to encourage Brooke in every way she knows  
18 as a parent.

19 You asked me the last time she was here, what would  
20 you do if she said she wouldn't go to school. You'd do the  
21 very same things. You'd take her to a counselor, you'd have  
22 her examined -- which of both things are happening, you would  
23 ala -- you would take away privileges, you would tell her she  
24

1 needs to go. All of that is supported by both the affidavit  
2 of Mrs. Harrison and the affidavit of her brother, who has  
3 filed as part of the reply.

4 There is absolutely no evidence that in her  
5 household -- or to her there's ever any suggestion by Mrs.  
6 Harrison that she doesn't have to go to Kirk's home.

7 There -- if you look at the initial motion in this  
8 case, the motion was filed after losing I think was four or  
9 five days worth of time. The notion that he lost months of  
10 time is just not so, if you look at the calendar that we've  
11 provided with The Court. He filed this motion before any  
12 efforts to resolve the motion. Yet, my client, without  
13 hearing, was held in contempt. And we've asked for The  
14 Court's --

15 THE COURT: Well --

16 MR. SMITH: -- clarification --

17 THE COURT: -- she wasn't held in contempt.

18 MR. SMITH: Well, you said that this isn't -- these are  
19 acts --

20 THE COURT: No. Listen.

21 MR. SMITH: -- of contempt, that that's your --

22 THE COURT: Well, listen.

23 MR. SMITH: -- your Order.  
24

1 THE COURT: There's no question that Plaintiff has been  
2 denied allocated time under the scheduled with Brooke. So the  
3 Orders have not been followed. I don't think that's in  
4 dispute.

5 MR. SMITH: But the word denied --

6 THE COURT: And so there's been --

7 MR. SMITH: -- (indiscernible) dispute.

8 THE COURT: -- a prima facie showing that there's been a  
9 violation of The Court's Order, and a basis for The Court to  
10 issue an Order to Show Cause, ordering the defendant to appear  
11 and show cause why she should not be held in contempt.

12 MR. SMITH: Okay. So --

13 THE COURT: But you are correct. For me to ultimately  
14 make those conclusions and hold the defendant in contempt, I  
15 am required to have a Show Cause Hearing.

16 MR. SMITH: Right. Well --

17 THE COURT: So to that extent --

18 MR. SMITH: -- the notion --

19 THE COURT: -- there's -- I don't believe it's a stretch  
20 for me to find that there's been a violation of that time.  
21 But the defendant should have the opportunity to show cause  
22 why she shouldn't be held in contempt of court. And the very  
23 services being provided by Dr. Paglini will assist me in  
24

1 making a determination as to whether or not this has been  
2 contemptible conduct. Whether the dad's time that has been  
3 lost is attributed to the defendant and is ultimately a basis  
4 for The Court to make findings of contempt --

5 MR. SMITH: Okay. So --

6 THE COURT: I indicated at the last hearing that the  
7 issue of contempt was deferred to further proceedings.

8 MR. SMITH: Well, actually, in the Order you found that  
9 there was an act of contempt. Contempt is a finding that  
10 somebody has wilfully violated a Court Order. That finding  
11 cannot be made until there's an evidentiary hearing and the  
12 alleged contender has an opportunity to present evidence.

13 Here we have the most, what I would say, thin  
14 suggestion that she was involved over a insurance claim.  
15 Which, by the way, Your Honor, as I've indicated in the reply,  
16 I need to have some discovery available so I can get the  
17 insurance company's policy. They won't give it to us  
18 voluntarily because, for the same reason they wouldn't speak  
19 to Ms. Harrison, she is not the holder of the insurance  
20 policy.

21 So I need to subpoena their records or subpoena an  
22 individual to testify that, yes, in fact, they required  
23 Brooke's approval for Vivian to deal with the insurance  
24

1 problem. So I would ask that The Court enter that Order under  
2 16.2 when allowing me to perform that limited amount of  
3 discovery.

4 To hold someone in contempt, you must find that she  
5 was wilfully in disobedience of This Court's Order. And I  
6 would suggest to you, Your Honor, the only thing -- you showed  
7 a prima facie case that the Order isn't followed, but the  
8 reason for that Order not being followed is in substantial  
9 dispute. It's because Brooke won't go. So the remedy that's  
10 proposed to you, and, again, a remedy before any hearing  
11 that's proposed to you, again, today is that Brooke and Rylee  
12 be placed in Mr. Harrison's care almost exclusively, I think  
13 is the notion, although there hasn't really been any  
14 proposition of a schedule.

15 How will he retain Brooke in his care? He doesn't  
16 retain Brooke in his care now. So I'm curious, why is he not  
17 in contempt? Because Brooke goes to his home and then he  
18 allows her to leave. He would, under the same duty you've  
19 given Mrs. Harrison to retain her in a home or to force her to  
20 go to a home, that same duty should be applied to Mr.  
21 Harrison. He should have the duty to control her behavior in  
22 the same way The Court expects Mrs. Harrison to control her  
23 behavior.

24

1 I would submit to you, as we've indicated from the  
2 beginning of this case, that it is difficult, if not  
3 impossible, for the parent to control the behavior in the way  
4 it's envisioned by Mr. Harrison.

5 I note that this second motion -- and we've  
6 addressed that motion in a reply to the original motion -- is  
7 really something that has nothing to do with facts associated  
8 with events that occurred after the original motion. These  
9 are many things that Mr. Harrison has placed into a pleading  
10 that was designed to suggest that Ms. Harrison somehow now is  
11 not allowing her to go back and forth.

12 These things are all in the past. These are things  
13 that he wrote in his pleading. He now wants that pleading to  
14 go to Dr. Paglini. And now, Dr. Paglini, taking that cue, is  
15 apparently asking Mrs. Harrison a number of questions about  
16 events that are contained in this pleading. So it's done its  
17 job.

18 Judge, this situation is so grossly overblown. If  
19 we have a rule that says that every sixteen-year-old --  
20 sixteen-year-old who doesn't disobey the Order, not Mrs.  
21 Harrison -- but every sixteen-year-old that doesn't disobey a  
22 order, now has the parent hold in contempt, we're going to  
23 have a very difficult time with parents. In fact, it will  
24

1 cause behaviors that may be counter-productive to our  
2 children, such as holding them physically, locking them out of  
3 homes. Because, really, that's the only thing that now we can  
4 do. With Brooke, who is a bright, independent, strongly-  
5 spoken individual, the only way to get her out of that home  
6 during times that she's otherwise scheduled to go to Dr. -- to  
7 Mr. Harrison's home, is to physically lock her out of the  
8 home. If that's what The Court believes at this point should  
9 be done, we'll do it. But we don't, do not, unequivocally do  
10 not believe that's in the best interest of Brooke.

11           The problem here arose many years ago. It had --  
12 the relationship between Mr. Harrison and Brooke has been  
13 poor. That was the reason we placed this methods with the  
14 therapist, the parenting coordinator, the teenage discretion.  
15 All of that was designed to help prove the -- or improve the  
16 relationship between Mr. Harrison and Brooke. It hasn't. And  
17 this result is not unpredictable. It was predictable. So,  
18 Your Honor, to hold my client in contempt for those things I  
19 think is both unfair and it's impossible for her to comply  
20 with the Order.

21           So, again, first I would ask The Court enter an  
22 Order that allows me to perform the discovery necessary to  
23 address the one issue The Court did find that somehow she'd  
24



1 involved Brooke in this un -- inappropriately in the insurance  
2 issue.

3 Two. That The Court clarify its Order to find that  
4 there has not been any holding in contempt, but, instead, that  
5 The Court has find a prima facie basis to issue an Order to  
6 Show Cause. And I note, Your Honor, you've -- I think, unless  
7 I just saw the paperwork wrong, I thought you had issued two  
8 Orders to Show Cause already. And I think that second Order  
9 to Show Cause -- maybe I misread it and it was just a copy of  
10 the first -- but I thought that there was a second Order to  
11 Show Cause, so I didn't think any need to file an opposition.

12 But in any event, the third issue is, I'd like again  
13 The Court's guidance. What can we do? We've done just about  
14 everything we can do.

15 And on the fourth issue. I need The Court to  
16 clarify its Order regarding these days when the child is ill.  
17 So if The Court's Order is that, that when ill the child must  
18 not transport until two eleven in the afternoon, which, in  
19 many instances, makes no sense whatsoever when a child is ill  
20 or attending an appointment and then would be transferring  
21 back to the other parent.

22 And let me note that Mr. Harrison's outline in the  
23 reply -- in the supplement, which I believe is a fugitive  
24

1 document, should be stricken and should be the form of a  
2 different motion -- but in that document, we contest whether  
3 or not the parties have always followed that rule. We believe  
4 that on numerous occasions the parties have made the transfer  
5 before two eleven in regard -- when the children are either  
6 ill or have appointments that day. Because Ms. Harrison has  
7 understood that to mean when the children are not in school,  
8 that they're not in school for any reason. But if The Court  
9 wants to clarify its Order, we welcome that.

10 THE COURT: All right.

11 Mr. Kainen.

12 MR. KAINEN: Okay. First of all, the motion was based on  
13 absolutely new facts as was the reply or supplemental brief.  
14 I can file a new motion. Frankly, there just wasn't time to  
15 get it on and there was no opposition that was filed to the  
16 motion. This idea that they could file an opposition on a  
17 motion before it was actually filed is sort of new to me.

18 As far as their question, which I assume to be a  
19 rhetorical question, what can they do. They can actually take  
20 away the car. Every time she has come for the last several  
21 months she's come in a car that she has driven. She's parked  
22 it in his driveway. She's been there. The car hasn't been  
23 taken away. No, may have been taken away for ten minutes  
24

1 while she was with Ms. Harrison. But the car is still in her  
2 possession, still actively used by her. She drives it over  
3 everyday, she gets in it, she parks it in his driveway, she  
4 gets in it and she drives away. So this idea that they have  
5 done everything they could possibly do or think of in order to  
6 foster this relationship to prevent this problem is garbage.

7 As far as the Order to Show Cause. My recollection  
8 is you've issued one. I will prepare a new one which has the  
9 facts coming up-to-date regarding the various missed  
10 visitations through the supplemental brief, if that's  
11 acceptable to The Court. And I'll prepare that -- a global  
12 Order to Show Cause -- or a Supplemental Order to Show Cause.

13 THE COURT: For those missed times --

14 MR. KAINEN: For the missed times --

15 THE COURT: -- yes.

16 MR. KAINEN: -- right. Through today, I guess it would  
17 be.

18 As far as discovery goes. Discovery, it's  
19 appropriate to ask us for something. It's the first time  
20 we're hearing that he wants some information. I'm guessing  
21 Kirk has access to it. I don't think it's appropriate to open  
22 discovery. If you open it, then it opens both ways.

23 THE PLAINTIFF: I have no problems.  
24

1 MR. KAINEN: Excuse me.

2 THE PLAINTIFF: I know.

3 MR. KAINEN: A little bit later.

4 All right. And then the last thing. This -- if the  
5 kids-are-out-of-school provision.

6 First of all, there is no reasonable way to  
7 interpret, if the kids are out of school, then if school is  
8 not in session. Your Honor, I mean, it doesn't make a lot of  
9 sense to, oh, if you're going to stay home on your day there's  
10 a switch, but on my day it's -- I mean, it doesn't make a  
11 whole lot of sense. And in this case it's going to be, I'm  
12 going to stay home for a doctor's appointment. So now all of  
13 a sudden it switches.

14 The fact is, they also have a course of dealing  
15 which they can say, well, we have questions about it. In  
16 three years -- and we've laid out the dates, on November 26th,  
17 2012; March 6th, 2013; May 22, 2013; October 4th, 2013;  
18 December 11th, 2013; March 7, 2014; April 21st, 2014; March  
19 25th, 2015, and April 10th, 2015. With the exception of my  
20 recollection is one day, when Vivian had some plans where she  
21 said, I have something, Kirk, would you mind taking them on  
22 this day. That has been the undeniable course of conduct.

23 So to do this -- and, by the way, this is where this  
24

1 whole, well, we're doing our best, there's just, you know --  
2 this wasn't something new that we filed in a supplemental  
3 brief. This is what he gave her before this -- this is the  
4 day or two before this when she's saying, I'm going to come  
5 and -- Rylee wants to go with me, I'm going to be at your  
6 house at nine o'clock. He says, no, no, no, this is my day,  
7 don't come over. She says, well, this is the way we've always  
8 done it. He responds to her and gives her all these dates,  
9 no, it's not true this is the way we've always done it, here  
10 are all the dates that show we haven't already done it, do not  
11 come to my house because it will create a problem, you know,  
12 don't come to my house at nine a.m. tomorrow morning. Nine  
13 a.m. tomorrow morning, beep beep, you know, she's out front,  
14 in front of his house.

15 So to sit there and say she's doing anything else  
16 than fanning these flames and causing this problem is just  
17 such a gross misrepresentation of the history in this case and  
18 the facts. And we are -- you know, Rad can say, oh, we're  
19 looking for this dramatic change. All we're looking for is to  
20 have the current Order enforced until there's a reason to do  
21 different.

22 Now, I don't know what's going to happen, what Dr.  
23 Paglini is going to say, whatever. We have concerns about  
24

1 what he's asking for. It seems to us he's going back in time  
2 and trying to finish this report, which is what they've asked  
3 for and The Court rejected. I don't know if that's the case  
4 or not. Okay? Because my thought is he was supposed to be  
5 addressing this particular issue. And it seems to occur that  
6 he's doing a whole lot more than that in terms of historical  
7 issues. I don't know what he's been told by Vivian as to what  
8 happened. I know he has the papers. I haven't spoken to him  
9 once at all. And I think there was a joint letter maybe that  
10 went over -- I'm not positive if we did it jointly or -- but  
11 the pleadings went over. But I haven't communicated with him  
12 in any way.

13 And so we also have concerns, but we're going to  
14 obviously wait for that. But to sit there and say that we're  
15 not doing anything, we're just trying to like make sure  
16 everything's okay and keep everything copesettic is just not  
17 the case. You can't do that when the -- like there was an  
18 email in, you know, the all caps in the email, all caps, do  
19 not come to my house at nine a.m. tomorrow. Here's the  
20 history, what you've represented in this, you know, well, we-  
21 have-always-done-it thing isn't true and here are the specific  
22 examples of why it's not true. Well, my lawyer told me I can  
23 do it, that's the response. So she's there, beep beep. Rylee

24

1 goes out the door, because he's not going to stand in the way  
2 and block the door because you're going to surgery an hour  
3 later. I mean, it's just not reasonable.

4 THE COURT: Let me ask you -- and I don't know how this  
5 impacts the entire issue regarding Rylee. And let me start  
6 with Rylee, even though the focus really of most of our  
7 discussion has been Brooke. And it's at page five of the  
8 stipulated parenting agreement, which is really the initial  
9 Order that governs this.

10 I don't know how this impacts this dispute, and  
11 maybe this will shed some light on it, but to me it's fairly  
12 clear what's expected on both sides. Weekly division of time.  
13 The parties shall share joint physical of the minor children.

14 Vivian shall have the children in her care each  
15 Monday from after school, or Monday at nine a.m. when the  
16 children are not in school -- which to me is obvious on its  
17 face that that includes if the child's sick -- if the child's  
18 not in school, subject to the provision of Paragraph 7.6,  
19 until Wednesday after school or Wednesday at nine a.m. when  
20 the children are not in school.

21 Kirk shall have the children in his care from  
22 Wednesday after school, or Wednesday at nine a.m. when the  
23 children are not in school, until Friday after school, or  
24

1 Friday at nine a.m. when the children are not in school.

2 And then the parties --

3 MR. KAINEN: Would you look at --

4 THE COURT: -- alternate weekends.

5 MR. KAINEN: -- Paragraph 8.1, please?

6 THE COURT: What's that?

7 MR. KAINEN: Paragraph 8.1.

8 THE COURT: (Reading out loud) Miscellaneous provisions  
9 regarding care of children, 8.1, while the parties recognize  
10 that the majority of the exchanges shall be effectuated by  
11 dropping off and picking up the children at school when  
12 schools is not in session, the parents agree that in  
13 effectuating and implementing the aforementioned custody  
14 arrangements, the parent to whom the physical custody of the  
15 children is to be transferred at any such time that the  
16 physical custody of the children is to be changed from one  
17 parent to the other shall be responsible for picking up the  
18 children at the other parent's residence.

19 I.e., when Kirk is to have the actual physical  
20 custody of the children, Kirk shall be responsible for picking  
21 up the children at Vivian's residence, and, conversely, when  
22 Vivian is to have the physical custody of the children, Vivian  
23 shall be responsible for picking up the children at Kirk's  
24



1 residence.

2 We also, at the May 21, 2014 hearing, Paragraph 4 of  
3 the minutes reflect that, (reading out loud) Pursuant to The  
4 Court's Order, when school is in session, all child exchanges  
5 are to take place at school and there should be no exchanges  
6 at either party's residence, The issue of the minor children  
7 needing to be -- needing to pick up items from the non-  
8 custodial parent's residence after school can be dealt with by  
9 the parenting coordinator.

10 So I -- and I don't recall what day we're referring  
11 to in terms of --

12 MR. KAINEN: We're referring to a Friday, which will be a  
13 custody-exchange day where Kirk had custody on that day --

14 THE COURT: So his day --

15 MR. KAINEN: -- until two eleven --

16 THE COURT: -- his --

17 MR. KAINEN: It's his day, two eleven, we're talking  
18 about --

19 THE COURT: Well, Thursday was --

20 MR. KAINEN: Well, no, this was on a --

21 THE COURT: I know it was a Friday. But coming into  
22 Friday --

23 MR. KAINEN: Coming into Friday it was his time, and so  
24

1 his time continued until two eleven that Friday. This was  
2 Friday morning when the child had a doctor's appointment,  
3 during his time, where the custody exchange would be at two  
4 eleven that afternoon, where Vivian would have acquired  
5 custody at two eleven that afternoon.

6 THE COURT: Okay. Was it -- so it was Mom's weekend?

7 MR. KAINEN: It was Mom's weekend.

8 THE COURT: So pursuant to Section 5, wouldn't that be --

9 MR. KAINEN: Okay.

10 THE COURT: I mean, you're focused on Section 8.1.

11 MR. KAINEN: Well, I'm focusing on --

12 THE COURT: But why --

13 MR. KAINEN: -- the ideas --

14 THE COURT: -- why is Section 5 not applicable?

15 MR. KAINEN: I don't see any other way that could be  
16 interpreted than to say like -- so if the child like -- what  
17 happens if the child gets sick at, you know -- I mean, I have  
18 a course of dealing of three years of exactly what they've  
19 done and how they've treated that. They have treated that as  
20 when school is in session and not in session. The Paragraph  
21 8.1 talks about the exchanges being in one place when school  
22 is in session if not -- why didn't they have to meet at nine  
23 o'clock at the school then, because school was clearly in  
24

1 session. So there shouldn't have been any reason for the  
2 child -- for Vivian to be at his home when school isn't in  
3 session.

4 THE COURT: Well, listen --

5 MR. KAINEN: The Court's initial react --

6 THE COURT: -- well, but listen.

7 MR. KAINEN: Okay.

8 THE COURT: The Friday -- until Friday -- basically what  
9 you're -- what you're asking me to do is make findings of  
10 contempt for what happened on that particular Friday. And I  
11 think just the very discussion that we're having, and looking  
12 at the literal language of -- and to me 5 -- Section 5, until  
13 -- so Dad's time has -- he has Wednesday at nine a.m. until  
14 Friday after school or at nine a.m. when the children are not  
15 in school. The parties shall alternate weekends with the  
16 children from Friday --

17 MR. KAINEN: And I --

18 THE COURT: -- after school or Friday at nine a.m. when  
19 the children are not in school until Monday.

20 MR. KAINEN: -- and I would suggest when children are not  
21 in school, it means the summers versus the school year. And  
22 everything else that they have done for three years shows that  
23 that's what they both believed.

24