

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTINA CALDERON F/K/A
CHIRSTINA CALDERON STIPP,

Appellant,

vs.

MITCHELL DAVID STIPP,

Respondent.

Supreme Court No. 81888
Electronically Filed
Sep 20 2021 06:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME XI

AARON D GRIGSBY
GRIGSBY LAW GROUP
A Professional Corporation
Nevada Bar No. 9043
2880 W. Sahara Ave.
Las Vegas, Nevada 89102
Phone: (702) 202-5235
aaron@grigsbylawgroup.com
Counsel for Appellant

RADFORD J. SMITH
Radford J. Smith, CHTD
2470 St. Rose Parkway, #206
Henderson, Nevada 89074
Counsel for Respondent

DOCUMENT	VOLUME NUMBER	BATE NO(S)
Notice of Entry of Stipulation and Order Resolving Physical Custody, Timeshare, Child Support and Parenting Matters	I	AA000001-18
Motion for Child Interview by FMC, Mediation and to Permit Children to exercise Teenage Discretion on Timeshare	I	AA000019-40
Exhibits in Support of Defendant's Motion for Child Interview by FMC, Mediation and to Permit Children to exercise Teenage Discretion on Timeshare	I	AA000041-54
Notice of Hearing	I	AA000055
Application for an Order Shortening Time	I	AA000056-109
Notice of Department Reassignment	I	AA000110-111
Notice of Appearance of Counsel for Plaintiff	I	AA000112-113
Motion for Order to Show Cause Against the Defendant for Willfully disobeying the Custody Order; A Request for Immediate Return of the Children, Make Up Visitation and Award of Attorney's Fees	I	AA000114-143
Notice of Communications between Defendant and Plaintiff's Attorney	I	AA000144-151
Notice of Hearing	I	AA000152
Ex Parte Application for an Order to Show Cause	I	AA000153-160

DOCUMENT**VOLUME
NUMBER****BATE
NO(S)**

Plaintiff's Exhibits in Support of Plaintiff's Motion for Order to Show Cause
Against the Defendant for Willfully disobeying the Custody Order; A Request for
Immediate Return of the Children, Make Up Visitation and

Award of Attorney's Fees

I AA000161-230

Plaintiff's Objection to Exhibits improperly cut and pasted within Defendant's
Motion for Child Interview by FMC, Mediation and to Permit Children to exercise
Teenage Discretion on Timeshare, and Objection to Exhibits in Support of
Defendant's Motion filed on August 26, 2019,

pursuant to NRCp 16.205(i)

I AA000231-232

Ex Parte Application for an Order

Shortening Time

I AA000233-244

Defendant's Opposition to Motion for Order to Show Cause Against the Defendant
for Willfully disobeying the Custody Order; A Request for Immediate Return of
the Children, Make Up Visitation and Award of Attorney's Fees and

Countermotion for Interview of Children by FMC and for Children to exercise

Teenage Discretion

II AA000245-272

DOCUMENT**VOLUME
NUMBER****BATE
NO(S)**

Defendant's Exhibits in Support of Defendant's Opposition to Motion for Order to Show Cause Against the Defendant for Willfully disobeying the Custody Order; A Request for Immediate Return of the Children, Make Up Visitation and Award of Attorney's Fees and Countermotion for Interview of Children by FMC and for

Children to exercise Teenage Discretion II AA000273-366

Order to Show Cause II AA000367-368

Notice of Entry of Order II AA000369-372

Declaration of Amy Stipp in Support of Defendant's Motion for Child Interview by FMC, Mediation and to Permit Children to exercise Teenage Discretion on

Timeshare II AA000373-389

Declaration of Amy Stipp in Support of Defendant's Motion for Child Interview by FMC, Mediation and to Permit Children to exercise Teenage Discretion on

Timeshare II AA000390-406

Plaintiff's Opposition to Defendant's Motion for Child Interview by FMC,

Mediation and to Permit Children to exercise Teenage Discretion on Timeshare and Countermotion for Immediate Return of Children, Make-up visitation,

Sanctions, and Award of Attorney's Fees II AA000407-419

Notice of Hearing II AA000420

DOCUMENT**VOLUME
NUMBER****BATE
NO(S)**

Plaintiff's Exhibits in Support of Plaintiff's Opposition to Defendant's Motion for Child Interview by FMC, Mediation and to Permit Children to exercise Teenage Discretion on Timeshare and Countermotion for Immediate Return of Children, Make-up visitation, Sanctions,

and Award of Attorney's Fees

II AA000421-427

Defendant's Objection to Letter by Christina Calderon's Therapist Donna Wilburn and Notice of Letter from Dr. Roy Lubit

in Support of Objection

II AA000228-481

Response to Plaintiff's Objection

Filed on August 30, 2019

II AA000482-485

Reply to Opposition to Our Motion for Order to Show Cause Against Defendant for Willfully Disobeying the Custody Order and Requested Relief and Opposition to the Countermotion filed by Defendant

III AA000286-497

Reply to Plaintiff's Opposition to Countermotion for Interview of Children by FMC, Mediation at FMC, and for

Children to Exercise Teenage Discretion

III AA000498-517

DOCUMENT**VOLUME
NUMBER****BATE
NO(S)**

Exhibits in Support of Defendant's Reply to Opposition to Our Motion for Order to Show Cause Against Defendant for Willfully Disobeying the Custody Order and Requested Relief and Opposition to the Countermotion	III	AA000518-543
Notice of Appearance	III	AA000544-546
Supplemental Exhibits in Support of Defendant's Reply to Opposition to Our Motion for Order to Show Cause Against Defendant for Willfully Disobeying the Custody Order and Requested Relief and Opposition to the Countermotion filed by Defendant	III	AA000547-550
Ex Parte Application for an Order Shortening Time	III	AA000551-564
Order for Family Mediation Center	III	AA000565
Court Order Instructions	III	AA000566-567
Request for Child Protective Services		
Appearance and Records	III	AA000568
Status Report	III	AA000569-574
Plaintiff's Objection to Defendant's Status Report filed October 7, 2019, and Request that it be stricken Pursuant to EDCR 5.508	III	AA000575-577

DOCUMENT**VOLUME
NUMBER****BATE
NO(S)**

Plaintiff's Emergency Motion for Temporary Primary Physical Custody and
Request for Writ of Attachment Order

and Attorney's Fees III AA000578-600

Notice of Hearing III AA000601

Ex Parte Application for an Order Shortening Time III AA000602-607

Opposition to Ex Parte Application for an Order Shortening Time of Plaintiff's

Motion for Primary Physical Custody III AA000608-612

Exhibits in Support of Opposition to Ex Parte Application for an Order Shortening

Time of Plaintiff's Motion for Primary Physical Custody III AA000613-634

Order Setting Case Management Conference III AA000635-637

Plaintiff's Supplement Affidavit in Support of her Emergency Motion for

Temporary Primary Physical Custody and Request for Writ of Attachment Order

and Attorney's Fees III AA000638-643

Opposition to Plaintiff's Emergency Motion for Temporary Primary Physical

Custody and Request for Writ of Attachment Order and Attorney's Fees and

Countermotion for Primary Physical Custody

and Related Relief III AA000644-666

Order Shortening Time III AA000667-668

DOCUMENT	VOLUME NUMBER	BATE NO(S)
Notice of Entry of Order	III	AA000669-672
Order for Supervised Exchange	III	AA000673-675
Notice of Change of Address	III	AA000676
Order Setting Evidentiary Hearing	III	AA000677-681
Subpoena for Gerardo Hernandez for Deposition	III	AA000682-686
Affidavit of Service	III	AA000687
Notice of Telephonic EDCR 5.602(d) Conference	III	AA000688-690
Plaintiff's Production of Documents and List of Witnesses Pursuant to NRCP 16.2	III	AA000691-700
Certificate of Mailing	III	AA000701
Plaintiff's Motion to Compel Discovery Responses, Including Answers to Interrogatories and Responses to Requests for Production of Documents; Failure to Make NRCP 16.2 Disclosures and Productions; and For an Award of Attorney's Fees and Costs	III	AA000702-722
Notice of Hearing	III	AA000723

DOCUMENT	VOLUME NUMBER	BATE NO(S)
Plaintiff's Exhibits in Support of Plaintiff's		
Motion to Compel Discovery	IV	AA000724-802
Defendant's Opposition to Motion to Compel		
and Related Relief	IV	AA000803-812
Defendant's Exhibits in Support of Defendant's Opposition to		
Motion to Compel and Related Relief	IV	AA000813-931
Ex Parte Application for an Order		
Shortening Time	IV	AA000932-935
Supplement to Opposition to Motion to		
Compel: Countermotion in Limine	IV	AA000936-944
Exhibits in Support of Defendant's		
Supplement: Countermotion in Limine	IV	AA000945-969
Order Shortening Time	IV	AA000970-971
Request for Hearing on Defendant's Countermotion		
In Limine	V	AA000972-973
Supplement to Opposition to Motion to Compel:		
Countermotion in Limine	V	AA000974-983

DOCUMENT	VOLUME NUMBER	BATE NO(S)
Exhibits in Support of Defendant's Supplement:		
Countermotion in Limine	V	AA000984-1008
Ex Parte Application for Order Setting		
Hearing/Shortening Time	V	AA001009-1012
Request for Hearing on Defendant's		
Countermotion in Limine	V	AA1013-1014
Supplement to Opposition to Motion to Compel		
Countermotion in Limine	V	AA1015-1024
Exhibits in Support of Defendant's Supplement:		
Countermotion in Limine	V	AA1025-1049
Notice of Entry of Order	V	AA1050-1053
Defendant's Pretrial Memorandum	V	AA001054-1099
Receipt of Copy	V	AA001100
Witness List	V	AA001101-1104
Receipt of Copy	V	AA001105
Witness List	V	AA001106-1109
Receipt of Copy	V	AA001110
Plaintiff's List of Witness for Evidentiary Hearing	V	AA001111-1118

DOCUMENT	VOLUME NUMBER	BATE NO(S)
Trial Subpoena	V	AA001119-1121
Trial Subpoena	V	AA001122-1124
Plaintiff's Objection to Defendant's Pre-trial Memorandum filed January 21, 2020	V	AA001125-1127
Motion to Compel Responses to Discovery and For Attorney's Fees and Costs	V	AA001128-1143
Exhibits in Support of Defendant's Motion to Compel	VI	AA001144-1279
Supplemental Declaration/Affidavit of Mitchell Stipp	VI	AA001280-1282
Notice of Hearing	VI	AA001283
Ex Parte Application for Order Setting hearing On Motion in Limine	VI	AA00184-1288
Supplement to Opposition to Motion to Compel: Countermotion in Limine	VI	AA001289-1297
Exhibits in Support of Defendant's Supplement: Countermotion in Limine	VI	AA001298-1322

DOCUMENT**VOLUME
NUMBER****BATE
NO(S)**

Plaintiff's Memorandum of Attorney's Fees and

Costs

VII AA001323-1335

Ex Parte Application for Order Shortening Time on

Defendant's Motion to Compel

VII AA001336-1497

Stipulation and Order Vacating February 7, 2020 Hearing before the Discovery

Commissioner

VII AA001498-1500

Plaintiff's Opposition to Defendant's Motion to Compel Responses to Discovery

and for Attorney's Fees and Cost; and

Counter-Motion for Attorney's Fees

VII AA001501-1517

Plaintiff's Exhibits in Support of: Plaintiff's Opposition to Defendant's Motion to

Compel Responses to Discovery and for Attorney's Fees and Cost; and

Counter-Motion for Attorney's Fees

VII AA001518-1540

Notice of Hearing

VII AA001541

Opposition to Plaintiff's Request for Attorney's

Fees and Costs

VIII AA001542-1700

Defendant's Reply to Opposition to Motion to Compel and Opposition to

Counter-motion for Attorney's Fees and Costs

VIII AA001701-1760

Notice of Hearing

VIII AA001761

DOCUMENT	VOLUME NUMBER	BATE NO(S)
Order Shortening Time	VIII	AA001762-1763
Notice of Telephone Conference Required by Discovery Commissioner to Discuss Plaintiff's Deficient Discovery Responses	IX	AA1764-1791
Application for an Order Shortening Time	IX	AA1792-1796
Plaintiff's Offers of Proof Regarding Witnesses for Evidentiary Hearing	IX	AA1797-1802
Plaintiff's Opposition to Defendant's Motion In Limine and Counter-Motion for Attorney's Fees	IX	AA001803-1820
Plaintiff's Supplemental Production of Documents And List of Witnesses Pursuant to NRCP 16.2	IX	AA001821-1830
Status Report	IX	AA001831-1844
Notice of Entry of Stipulation and Order Resolving Discovery Disputes and Trial Matter	IX	AA001845-1851
Amended Order Setting Evidentiary Hearing	IX	AA001852-1854
Order from Hearing of October 1, 2019	IX	AA001855-1862
Order from Hearing of October 22, 2019	IX	AA001863-1867
Order from Hearing of October 1, 2019	IX	AA001868-1875

DOCUMENT	VOLUME NUMBER	BATE NO(S)
Second Amended Order Setting Evidentiary Hearing	IX	AA001876-1879
Plaintiff's Emergency Motion Pursuant to NRCP Rule 43	IX	AA001880-1890
Opposition to Plaintiff's Emergency Motion Pursuant to NRCP 43	IX	AA001891-1895
Notice of Entry of Order	IX	AA001896-1904
Notice of Entry of Order	IX	AA001905-1910
Plaintiff's Renewed Emergency Motion Pursuant to NRCP Rule 43	IX	AA001911-1921
Ex Parte Application for an Order Shortening Time	IX	AA001922-1926
Opposition to Plaintiff's Renewed Emergency Motion pursuant to NRCP Rule 43	IX	AA001927-1929
Order Shortening Time	IX	AA001930-1932
Notice of Entry of Order	IX	AA001933-1937
Notice of Hearing	IX	AA001938

DOCUMENT	VOLUME NUMBER	BATE NO(S)
Plaintiff's Second Supplemental Production of Documents and List of Witnesses Pursuant to NRCP 16.2	IX	AA001939-1948
Receipt of Copy	IX	AA001949
Plaintiff's Memorandum of Points and Authorities Following Evidentiary Hearing	IX	AA1950-1969
Defendant's Closing Brief	IX	AA001979-1987
Notice of Entry of Order	IX	AA001988-2012
Transcripts: January 23, 2020	X	AA2013-2269
Transcripts: March 5, 2020	XI	AA2070-2512
Transcripts: August 27, 2020	XII	AA2513-2763

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 20th day of September, 2021,
a copy of the foregoing Appellant's Appendix XI was served as follows:

BY ELECTRONIC FILING TO

Radford J. Smith, Esq.
Radford J. Smith, CHTD
2470 St. Rose Parkway, #206
Henderson, Nevada 89074
Attorney for Respondent

/s/Aaron Grigsby _____
Employee of The Grigsby Law Group

1 TRANS

COPY

FILED

JUN 29 2021

Sharon A. Blum
CLERK OF COURT

5 EIGHTH JUDICIAL DISTRICT COURT
6 FAMILY DIVISION
7 CLARK COUNTY, NEVADA

9 IN THE MATTER OF THE JOINT)
10 PETITION FOR DIVORCE OF:) CASE NO. D-08-389203-Z
11 CHRISTINA CALDERON STIPP) DEPT. H
12 Plaintiff,) APPEAL NO. 57327
13 and) 57876
14 MITCHELL DAVID STIPP,) 62299
15 Defendant.) 81888
(SEALED)

16
17 BEFORE THE HONORABLE ARTHUR T. RICHIE, JR.
18 DISTRICT COURT JUDGE

19 TRANSCRIPT RE: CONTINUED EVIDENTIARY HEARING

20 THURSDAY, MARCH 5, 2020

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APPEARANCES:

The Plaintiff:
For the Plaintiff:

CHRISTINA CALDERON STIPP
VALARIE FUJII, ESQ.
704 S. 6th Street
Las Vegas, Nevada 89101

AARON D. GRIGSBY, ESQ.
2880 W. Sahara Avenue
Las Vegas, Nevada 89102
(702) 202-5235

The Defendant:
For the Defendant:

MITCHELL STIPP
RADFORD J. SMITH, ESQ.
2470 St. Rose Parkway, Ste. 206
Las Vegas, Nevada 89074
(702) 990-6448

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

<u>DEFENDANT'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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MITCHELL STIPP	10	124	210/226	221
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PLAINTIFF'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>
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F - 2014 STIPULATION	45
X - EMAILS	60

DEFENDANT'S
EXHIBITS:

(NONE PRESENTED)

1 LAS VEGAS, NEVADA

THURSDAY, MARCH 5, 2020

2

P R O C E E D I N G S

3

(THE PROCEEDINGS BEGAN AT 09:01:15 A.M.)

4

5 THE COURT: Welcome back. We're here on
6 post-judgment proceedings. The case number is D-08-389203.
7 Looks like we have the parties and counsel present. Would you
8 please confirm appearance.

9 MR. GRIGSBY: Good morning, Your Honor. Aaron
10 Grigsby, bar 9043, standing in for Greg Mills on behalf of the
11 Plaintiff, who's also present.

12 MR. SMITH: Radford Smith, 2791. Also present at
13 bar, Your Honor, is my paralegal, Courtney Chance, and Mr.
14 Stipp, who's had the role of co-counsel prior to the
15 proceedings of trial and of course cannot proceed as a witness
16 and counsel, so he did not have that role in the trial itself.

17 THE COURT: I mean, it doesn't keep him from filing
18 stuff.

19 MR. SMITH: I'm sorry?

20 THE COURT: Where's --

21 MR. SMITH: Yeah.

22 THE COURT: -- Ms. Fujii?

23 MR. GRIGSBY: Ms. Fujii --

24 THE COURT: She keeps filing stuff too.

1 MR. GRIGSBY: Yes, Your Honor. She --

2 THE COURT: Yeah. Is she --

3 MR. GRIGSBY: She had a nine --

4 THE COURT: -- participating in this case?

5 MR. GRIGSBY: Yes. She had a 8:30 OSC --

6 THE COURT: Okay.

7 MR. GRIGSBY: -- that was set on her --

8 THE COURT: All right. Look, other than the -- the
9 discovery issues that you guys have been dealing with since
10 the session on the 23rd, I haven't invited or authorized any
11 kind of filings ongoing during the course of trial, okay. We
12 took a little over three -- two and a half hours of testimony
13 from the minor children at the session on the 23rd.

14 The Court adjourned in the afternoon to -- primarily
15 because the parents were excluded from that testimony. I
16 wanted them to see it. Also, you had some discovery issues
17 that needed to get resolved and the stipulations on the
18 hearings that you've had with the Commissioner appears to have
19 accomplished that purpose. We're resuming the motion that was
20 filed last fall.

21 And, Mr. Smith, I assume that you're going to
22 proceed with your evidentiary, right?

23 MR. SMITH: Yes.

24 THE COURT: Okay.

1 MR. SMITH: Correct.

2 THE COURT: Okay. So the other thing is, is that
3 obviously both of you have identified witnesses that you may
4 want to call. I'm not questioning whether or not the
5 witnesses that have been identified would offer relevant
6 evidence, but I want you to pick your best witnesses. I hear
7 -- I'm going to hear from the parents, I'm sure, but you know,
8 time is -- is limited in this hearing. We're scheduled for
9 the day.

10 Obviously, Mr. Grigsby, the Court isn't putting you
11 on a clock, per se. In other words, if they take a
12 significant portion of the day, you're not going to be limited
13 in what you can present. But also under -- the Court is going
14 to be mindful that I don't want cumulative evidence on
15 uncontested matters and time is an issue. So you're not going
16 to call seven, eight, nine, 10, 11 witnesses in this
17 evidentiary proceeding unless they're like five minutes each.
18 So pick your best witnesses when it's your turn. Okay? Same
19 thing for you, Mr. Smith.

20 MR. SMITH: Thank you, Your Honor.

21 THE COURT: The -- who are you going to start with
22 today?

23 MR. SMITH: Mr. Stipp, Your Honor.

24 THE COURT: All right. As I mentioned before,

1 thankfully you're the only case on today. We'll take a break
2 at noon, probably for about an hour and 15 minutes. We have
3 time this afternoon. You know, a full day of court time is
4 about six hours of court time. And if you need a comfort
5 break or any other kind of break in the proceedings, just let
6 me know, okay.

7 Come on up.

8 (WITNESS SUMMONED)

9 MR. GRIGSBY: And, Your Honor, just -- there is one
10 quick issue so I'll just try -- I don't want to waive it. We
11 have a bit -- a bit of a unique situation here where Mr. Stipp
12 is acting as co-counsel throughout this proceeding. You know,
13 he's been represented by counsel and even discovery iss --
14 commiss -- I mean, issues in front of the discovery
15 commissioner.

16 And I know that the -- all the cases that we have
17 about a lawyer acting -- being a witness in a trial usually
18 covers and anticipates it being a non-party. And so given the
19 fact that he's acted as the attorney and I believe even made
20 objections to his own deposition, I -- I would move that the
21 Court prohibit Mr. Stipp from testifying.

22 THE COURT: Oh, don't be ridiculous.

23 MR. GRIGSBY: I'm just --

24 THE COURT: Okay?

1 MR. GRIGSBY: -- preserving the issue.

2 THE COURT: Yeah, look, there's a lot of remedies
3 that the Court --

4 MR. GRIGSBY: Yes.

5 THE COURT: -- can apply, okay. But denying the
6 parents an opportunity to talk about factual disputes related
7 to their children isn't one of them, okay. Now it's a -- it's
8 an issue. I mean, if he didn't have Mr. Smith at all he'd be
9 able to do --

10 MR. GRIGSBY: Yeah.

11 THE COURT: -- all that stuff with -- even not being
12 a lawyer, right?

13 MR. GRIGSBY: Yes, I agree with that.

14 THE COURT: I got about 60 percent of my cases that
15 are handled by people who think they could become a lawyer in
16 a month or two during the course of their cases, okay.
17 Mr. Smith actually allows us to make a better record by him
18 asking the actual questions instead of just getting narrative
19 testimony for -- with interruptions and everything else. So
20 your request to prohibit the Defendant -- I mean, the
21 Plaintiff from testifying -- or Defendant, whatever --

22 MR. GRIGSBY: Yeah.

23 THE COURT: -- it's a joint petition, post-judgment
24 matter. Mr. Stipp's going to testify. So we'll --

1 MR. GRIGSBY: Understood.

2 MR. SMITH: And just for the record, Your Honor, I
3 would note, as I did previously, that my research on this
4 issue indicates that a party cannot -- it can provide the
5 actual pretrial proceedings but as witness cannot testify.
6 That usually is only applied even so in a jury trial. Since
7 we have no -- there's no tainting of the jury or confusion
8 about the role of Mr. Stipp here, I don't even think it would
9 apply to a judicial trial. But that's the way the law applies
10 that --

11 THE COURT: Right. Well --

12 MR. SMITH: -- specific --

13 THE COURT: -- you're not like standby counsel,
14 you're actual counsel.

15 MR. SMITH: Yes.

16 THE COURT: And you're accountable. In fact, the
17 most recent filings put your name right at the top of it under
18 his.

19 MR. SMITH: Yes.

20 THE COURT: So I assume that you own everything that
21 he files.

22 MR. SMITH: I own everything that happens --

23 THE COURT: All right.

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

1 THE COURT: That's fine.

2 MR. SMITH: -- Your Honor.

3 THE COURT: Okay. Go ahead.

4 THE BAILIFF: Raise your right, please. Face the
5 clerk to respond.

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

9 THE WITNESS: I do.

10 THE CLERK: Thank you. Be seated.

11 THE BAILIFF: Have a seat and scoot all the way up.
12 There's the microphone right in front of you, sir.

13 THE WITNESS: Thank you.

14 MITCHELL STIPP

15 called as a witness on his own behalf, having been first duly
16 sworn, testified upon his oath as follows on:

17 DIRECT EXAMINATION

18 BY MR. SMITH:

19 Q Please state your name for the record.

20 A Mitchell David Stipp.

21 Q Mr. Stipp, I want to walk you through your
22 education. Can you tell me how you were educated and the
23 highest form of degree that you received?

24 A Sure. I'm local here in Las Vegas, so I graduated

1 from Cimarron-Memorial High School. I was the valedictorian
2 of my class. I was admitted to Pepperdine University where I
3 attended for four years. I received a bachelor of arts in
4 economics and a bachelor of science in business
5 administration. I graduated with high honors, receiving no
6 less than an A minus in every one of my courses. I was
7 admitted to law school at American University Washington
8 College of Law where I also graduated with honors.

9 Q You have a law degree. Is -- are you licensed to
10 practice law in the state of Nevada?

11 A I am.

12 Q And you currently have a -- a law practice, correct?

13 A I do.

14 Q Tell me about that law practice.

15 A I primarily focus on transactional work with an
16 emphasis on real estate matters. I do a number of business
17 law transactions as well, mergers, acquisitions, partnership
18 issues, joint ventures, things of that nature. As a courtesy
19 to my existing clients, I also perform commercial litigation
20 for specific matters for which I have experience and
21 background, primarily business disputes, real estate matters,
22 things of that nature. I do have a small number of family law
23 clients that I still provide services to, but I don't practice
24 or advertise for purposes of my practice to be a -- a family

1 lawyer anymore.

2 Q Okay. Do you -- in doing family law, do you focus
3 on any particular areas of family law when you do accept those
4 cases?

5 A I do. The -- the family law cases that I have or
6 that I have handled in the past primarily focused on matters
7 of interest, that those matters of interest are if it involves
8 a child with special needs. So if there is an issue where
9 there -- the subject of the action concerns minor children or
10 a minor child who have special needs and they need assistance,
11 then willing to accept those cases in the past and I have an
12 existing case now. Other cases where there's complex
13 financial matters in the dispute, where there's high net worth
14 individuals involved in a number of business transactions and
15 things of that nature, I found that my experience has been
16 helpful to family lawyers in that field.

17 Q The -- let's -- let's talk about your work with
18 children with special needs. You -- you are married, correct?

19 A I am married.

20 Q And you have two children with the Plaintiff in this
21 action, Christina Calderon, who I'll refer to as Christina for
22 purposes of the record. And those children have testified and
23 the Court's aware of their birth -- dates of birth, so I'll
24 spare that information, unless the Court directs me to so do

1 -- do so. You also have a -- a child with your current wife.

2 Who's your current wife?

3 A My wife is Amy Stipp.

4 Q Okay. Tell me about Amy's background and education.

5 A Amy is a graduate of the University of Phoenix. She
6 received a bachelor's degree in elementary education.

7 Previously she was an administrative assistant/paralegal for
8 Plise Development and Construction here in Las Vegas, Nevada.

9 Q Okay. And when did you two meet?

10 A We met when she started working for Plise
11 Development and Construction, many years ago.

12 Q And when were you married?

13 A Amy and I were married in 2008. October 8th, 2008.

14 Q Okay. And you've resided with Amy since that time
15 obviously, yes.

16 A That's correct.

17 Q The -- you've had an opportunity to view Amy's
18 interaction with your children with Christina. Can you
19 describe that interaction?

20 A I can tell you for someone who is 10 years younger
21 than I am, and also at the time without children when we got
22 married, she was more than adequate in terms of her
23 willingness to be a parent to the children; however, she never
24 forced her role onto that children. She let the relationship

1 develop naturally. She's always been very clear that I'm
2 their father and Christina is their mother. And while she's
3 their stepmother, it's never been structured in a way that,
4 you know, she calls -- the kids call her mom or things of that
5 nature. I will tell you, you know, to be quite frank, being
6 married to Amy is an absolute blessing. You know, she,
7 notwithstanding her youth and her lack of experience with
8 children, made me a better parent. She was much -- much more
9 prepared, you know, to deal with, you know, the binuclear
10 family, and the divorce, and issues related to the children
11 than I was at the time of our divorce. And she provided --

12 Q When you say our divorce, you're referring to your
13 divorce from Christina?

14 A That's correct.

15 Q Okay.

16 A And she provided a level of -- of consistency and
17 structure with respect to your family life that I think the
18 children were lacking previously. And essentially, in my
19 view, was the driving force for a lot of their early success.

20 Q You have -- you also have a child with Amy, correct?

21 A I do.

22 Q And tell me his name, date of birth, and -- and a
23 little bit about him.

24 A He's Mitchell David Stipp, Jr. He was born January

1 30th, 2011. He was a relatively healthy baby, although he was
2 in the neonatal NIC unit for a number of weeks. Happy. A
3 couple of issues, you know, with respect to jaundice and liver
4 and things like that, that ultimately we believed were
5 resolved in the first year of life. But, you know, we
6 discovered approximately around one years old that he had a
7 number of medical conditions that were previously undiagnosed.
8 Those -- those medical issues and the diagnosis of those
9 medical issues require a significant amount of time, money and
10 effort, and ultimately have, you know, strain on the family.
11 We discovered that he had a genetic deletion in his 22nd
12 chromosome. At the time he was the only child in the national
13 or world database that had that genetic deletion. He was
14 subsequently diagnosed with epilepsy, mitochondrial disease.
15 He has developmental delays, speech delays.

16 And so, you know, that -- those diagnoses were very
17 challenging and difficult, both for Amy, Mia, Ethan and
18 myself. But we have devoted an enormous amount of time, money
19 and effort to his care. Certainly Amy has taken the lead with
20 respect to managing his care and providing individual therapy
21 and working with a variety of therapists. I do the same. And
22 the kids are supportive as well.

23 Q You -- you actually changed your work structure as
24 you became aware of the amount of time commitment that Amy

1 would need in relation to young Mitchell, correct?

2 A That's correct.

3 Q In fact, you worked for my office at a time and we
4 -- you left the firm -- well, tell me why you left the firm.

5 A Well, when I returned to a -- you know, I would say
6 an employee/employer type relationship, I had reached out to
7 you soon after resolving our custodial disputes with Christina
8 in a stipulation and order in 2014.

9 Q And we'll talk about that, but let's --

10 A And -- and, you know, asked you whether or not you
11 would be interested in -- in employing my services given my
12 background and our relationship. And you indicated that you
13 did. And in fact, we reached an arrangement where you
14 employed me and worked me to death for -- for -- for
15 approximately six months to -- to nine months. Returning to
16 the work under those conditions with a child with -- with
17 special needs, with the responsibilities that I had with Mia
18 and Ethan, proved to be very challenging for me. You know, I
19 certainly enjoyed working for your firm and providing services
20 to the clients but --

21 Q You didn't have to say that.

22 A Some of the clients.

23 Q So, Mr. Stipp, the -- the point I wanted to -- to
24 get to was, did you restructure sort of --

1 A I did, yes.

2 Q -- your timeframe.

3 A Absolutely.

4 Q So what was -- what was the -- what did you go to in
5 terms of your own work status in relation to the time that you
6 now were faced with and the pressures of having a child who
7 was faced with those disabilities.

8 A It became very clear to me that I -- I couldn't have
9 or it wasn't possible to have a -- a job that required me to
10 be physically in the office for Monday through Friday with,
11 you know, a time schedule of 8:00 to 6:00 or things of that
12 nature. Also, travel and things of that nature. There were
13 cases in your office for which I had to travel, which I was
14 willing to do at the time, but it was a hardship on the
15 family. And so I made the decision that, you know, despite
16 the very generous offer of employment, that I would resign and
17 start my own practice.

18 Q How did you structure -- how do you structure your
19 practice now? What kind of time commitments do you have to
20 the clients that you've indicated?

21 A Well, my priority is my family, and so, you know,
22 while I have a lot of interest from clients and a number of
23 existing clients that I provide services to. I try to make a
24 rule that I, you know, work with clients that I enjoy. I work

1 with -- on matters that I enjoy and am interested in. I just
2 don't take any matter that comes through the door for purposes
3 of compensation because I need to be flexible. I need the
4 ability to travel with respect to Mitchell's care, Mitchell
5 Jr. I need the ability to be available to Mia and Ethan for
6 their school related activities and extracurricular activities
7 for which I participate in. It's -- you know, I consider that
8 a priority over work. Fortunately I have a number of clients
9 who understand my family situation and are supportive of -- of
10 -- of my choices. And -- and so that works. I --

11 Q You --

12 A It wouldn't work if I were employed for a third
13 party that would require things that couldn't accommodate, you
14 know, my interests, desires, wishes and family structure.

15 Q So you -- presently do you have a physical office?

16 A I do.

17 Q Tell me about that.

18 A I -- I have a executive suite office located on Town
19 Center near Summerlin Hospital.

20 Q Do you do all your work out of that office?

21 A I do not. I generally use the office and the office
22 facilities for purposes of meeting clients to the extent that
23 I need to. I do occasionally work from the office, depending
24 on what's going on at my residence. But I do a significant

1 amount of my work from home. Fortunately, with today's
2 technology, that is possible to --

3 Q Is it --

4 A -- handle calls and --

5 Q Is it typical for you to be available for the older
6 children, Ethan and Mia, during your day if necessary?

7 A Yes.

8 Q And do you -- are you present typically when they
9 get home or is it a hit and miss type of thing or -- from
10 school, or how does that work?

11 A I'm generally home when they are home. If I'm not
12 picking them up from school or taking them to an
13 extracurricular activity, then I would see them when they come
14 home or in between their activities.

15 Q So one of the concerns that Ms. Calderon has
16 expressed in her initial pleadings and at her deposition was
17 that -- her concern about whether or not you and Amy have time
18 to provide care for the children in light of your work
19 schedule and Amy's schedule of Mitchell Jr. How would you
20 respond to that concern?

21 A I'm not sure on what basis she makes that allegation
22 because -- am I a hundred percent available all the time for
23 the kids? I want to be, but that's not always practical.
24 But, you know, they have a stepmom and we -- we do on occasion

1 rely on the assistance of other relatives, including my
2 father-in-law and mother-in-law, who are interested and happy
3 to have Mia and Ethan as their grandchildren and their --

4 Q When you say your father-in-law and mother-in-law,
5 you're referring to Amy's parents, correct?

6 A That's correct.

7 Q All right.

8 A So --

9 Q And what are their names?

10 A Jerry Hernandez and Martha Hernandez.

11 Q Okay. And tell me what role, if any, that those --
12 the grandparents of -- so to speak -- or step-grandparents,
13 have had in relation to any type of time with Ethan or -- or
14 Mia.

15 A Well, they're actively involved in -- in -- in our
16 lives. Both Amy's life, my life, and the kids' lives. And
17 so, you know, they attend baseball games and Mia's choir
18 performances. You know, occasionally my father-in-law, Jerry,
19 will transport Ethan to a game, or pick him up for a game, or
20 practice. That's not --

21 Q So one of thing -- one --

22 A That's not unusual.

23 Q One of the suggestions was that Mr. Hernandez
24 provides the bulk or a majority of all transportation for the

1 children, both to school and to their curricular --
2 extracurricular activities. Is that a fair statement based on
3 your observation?

4 A No.

5 Q Tell me more about what role, in terms of the
6 transportation. You said sporadically. Could you quantify
7 that in any way? Is that possible or --

8 A It's just --

9 Q -- does it just depend?

10 A It just depends on the number of -- like, for
11 example, if -- you know, if I, on the rare occasion, have a
12 hearing in the morning, or a meeting, or Amy has a doctor's
13 appointment that may require, you know, some additional
14 assistance -- Mitchell's care changes on a day-to-day,
15 week-to-week basis. So there's a lot of planning that goes
16 into those activities and care. But it's hard to quantify
17 because it just depends, you know.

18 Q So it may change one week for another.

19 A Sometimes it's a matter of preference. Sometimes my
20 father-in-law, which is very refreshing, wants to take, you
21 know, Ethan to school or Mia to school because he wants to
22 spend that time. You know, before Mitchell Jr., he -- my --
23 my in-laws, Jerry and Martha, didn't have grandchildren. So
24 they inherited Mia and Ethan as a result of my marriage with

1 Christina, then to -- then to Amy. So they -- they want to be
2 grandparents. The want to be involved. Both are retired.
3 You know, they moved from Texas to Las Vegas in the last
4 couple of years specifically to be involved in their
5 grandchildren's lives.

6 Q The -- in regard to the -- what have you observed in
7 the relationship between the Hernandezes and your children?

8 A I think they have an excellent relationship. I
9 think that, you know, my son enjoys being with his
10 grandfather. I think --

11 Q You consider him a grandfather.

12 A Absolutely. He considers himself a grandfather.
13 Ethan considers himself -- Ethan considers Jerry a -- a
14 grandfather. I -- I don't --

15 Q Is your father, is he still with us?

16 A He is.

17 Q Does he have any interaction with the children?

18 A He does, but it's not in the way that Jerry
19 Hernandez does. While I consider their relationship a good
20 relationship, he's not actively involved in the children's
21 lives.

22 Q Is your -- is your mother still with us?

23 A She is.

24 Q Okay. And is she actively involved? Are they

1 local?

2 A No, they're both local, but the nature of the
3 relationship hasn't been that they are as active as I would
4 like them to be in the children's lives. Having said that,
5 the kids have a good relationship with their grandparents.
6 You know, as a -- as a -- you know, as a son and -- to -- you
7 know, to my parents, you know, we always wish, you know, that
8 maybe there would be changes with regard to, you know, their
9 -- their -- their decisions and involvement. But it's not as
10 if they have a problem with, you know, me or Amy or the kids,
11 it's just that I -- I think that -- that, you know, raising
12 kids on their own and also assisting my younger brother and --
13 and younger sister with their own kids that there's a level of
14 exhaustion that existed. And -- and I think that they see me
15 as more independent and better equipped than maybe my siblings
16 were when they had kids. And so, you know, it's just the
17 nature of things.

18 Q You have -- you have a home that live in or do you
19 rent a home? Tell me about that.

20 A I live in a home.

21 Q And where is that location?

22 A It's located in the Northwest, Centennial Hills.

23 Q What's the address of the home?

24 A 9873 Serene Star Way.

1 Q And tell me about the home and the physical place
2 that you -- you provide for the children.

3 A We live approximately -- in a gated community in the
4 Northwest on approximately half an acre. The house is, you
5 know, approximately 4,000 square feet. Each of the kids have
6 their own rooms and bathrooms except Ethan and Mitchell Jr.
7 share a bathroom. I have a home office there. There's also a
8 treatment or care room designed to provide services for
9 Mitchell. So his private tutor comes during the week and
10 educates Mitchell during that time. We have a swimming pool
11 in our backyard that the kids love and enjoy. You know, the
12 kids love our neighborhood. They love the house. They love
13 being there. They're comfortable.

14 Q Do they have friends in the neighborhood?

15 A They don't have friends. The neighborhood is
16 relatively quiet. A lot of the neighbors are older and their
17 children are -- are grown.

18 Q Okay. Let's talk about little Mitch. You had
19 indicated that, you know, the -- some of the issues that he
20 has --

21 A Uh-huh (affirmative).

22 Q -- the physical issues and so forth. Describe how
23 his state is presently. What is -- what is his progress or
24 development?

1 A He's developing slowly with respect to his ability
2 to communicate. He's -- he's, in my opinion, capable of more.
3 Part of Mitchell's condition is passive resistance, which is
4 -- you know, there's -- there's a choice to some degree as to
5 the -- the desire to communicate verbally. So there is a lot
6 of work to get him to express himself more. But, you know,
7 he's clearly progressing. His behavior is good. As a -- as a
8 matter of biology, you know, he doesn't have any medical
9 issues that are posing any risk to his health at the moment,
10 so there -- the -- the typical ailments and diseases that
11 might come along with the micro deletion in his chromosome
12 have not presented themselves, like, you know, heart disease
13 and other issues. But he's frequently monitored in terms of
14 regular checkups and evaluations, you know, on a monthly and
15 annual basis.

16 Q How would you -- how would you describe your
17 observations of Mia and Ethan's relationship with Mitchell?

18 A Their relationship is -- is awesome. You know,
19 they, despite Mitchell's deficiencies in his ability to
20 communicate, they both -- they communicate, they understand
21 each other, they -- Mia and Ethan are able to glean from
22 Mitchell's cues what he wants, what he needs. And so what's
23 remarkable to me is -- is their care and concern for his
24 needs, making sure that they're -- you know, if -- if he

1 wants, you know, breakfast, that they would be more than
2 willing to pour him a bowl of cereal or assist him in and out
3 of the shower or using the restroom and things of that nature.
4 They're not -- you know, typically when you get to teenage
5 years, you know, the last thing you want to be doing is like,
6 you know, caring for another kid, but they are more than
7 willing to assist Mitchell when and if he needs.

8 Q Do they interact with him and -- and, like, do they
9 -- they --

10 A They --

11 Q -- play with him, do they --

12 A They --

13 Q -- do things with him?

14 A -- play games on an iPad. They do instructional
15 matters, and you know, what we call homework. They're willing
16 to, you know, work with him, have worked with him in the past.
17 They watch television, they'll swim. You know, all of the
18 activities that -- that, you know, Mitchell engages in, they
19 will engage with him as well. Mia was a -- you know, she
20 participated in gymnastics for a number of years. Mitchell
21 also participates in gymnastics, and so they share that --
22 that bond and -- and common interest.

23 Q Tell me about the family activities that you engage
24 in with the children as a family.

1 A Well, we try to do everything that we can together.
2 So if the kids have a specific activity, like for example,
3 Mitchell has a gymnastics competition, or Ethan has a baseball
4 game, or Mia has choir performance, we will attend those
5 together as a family. You know, I will tell you that -- that
6 Ethan probably gets more time and attention in those types of
7 activities because of his commitment to baseball. And in any
8 given weekend he could have as much as, you know, four to six
9 games, which could take up a tremendous amount of time. But
10 we try to accommodate all of their interests, and so we may
11 have to split apart and one go -- one parent go to one
12 activity and the other parent go to another activity. Or, you
13 know, my father-in-law might say I'm going to stay and watch
14 Ethan for this game so that you can go to Mia's, you know,
15 choir performance.

16 We enjoy watching movies together. We enjoy
17 vacationing. We like to travel to San Diego quite a bit. The
18 kids love the beach and the ocean. Mia -- or Mitchell's an
19 avid swimmer, so you know, he loves the ocean. And both Mia
20 and Ethan love it as well. And so they're swim together,
21 they'll body board -- boogie board together at the beach. And
22 so generally those are the types of things that they like
23 doing.

24 Q Okay. You talked about Amy bringing structure to

1 your family. What were you referring to in terms of
2 structure? Now you've already given us the -- the statements
3 about little Mitch and his -- his therapy, but what are the
4 other type of things, if any, that she's brought in terms of
5 structure to the family?

6 A I think that the biggest challenge post-divorce with
7 the children was -- was addressing Mia's anxiety and cloth --

8 Q Tell me about that.

9 A -- clothing issues.

10 Q Tell me about the anxiety and clothing issues.

11 A The -- the challenge that we had is that, you know,
12 Christina and I didn't agree as to what the source of the
13 problem --

14 Q Describe the problems for me.

15 A Mia's challenges were, you know, she had difficulty
16 wearing tight clothing. She didn't like to wear confining or
17 constricting pants. There were occasions where like she
18 didn't want to wear clothing that was size appropriate, so you
19 know, her underwear was more of an adult size than for a child
20 who's five years old. Generally she just preferred to wear
21 dresses without, you know, specific seams and the texture.
22 You know, she -- those things mattered to -- to her because it
23 would -- it would -- you know, she would just start -- make --
24 make her feel uncomfortable or hurt her skin, things of that

1 nature.

2 Q And those issues were addressed as part of the
3 proceeding before in this matter, correct?

4 A Unfortunately Christina and I did not agree as to
5 the diagnosis of those issues and the care that was required
6 for them, and so it did result in motion practice for,
7 unfortunately, you know, for a good part of a year or two.

8 Q Okay. The -- as part of that litigation there was a
9 referral to a child psychologist; do you recall that?

10 A I do.

11 Q What was the name of that psychologist?

12 A Dr. Gary Leinkeit.

13 Q Okay. And then did Dr. Leinkeit do any specific
14 analysis or a report for the -- for the parties?

15 MR. GRIGSBY: Objection, Your Honor.

16 A He did.

17 MR. GRIGSBY: Relevant.

18 THE COURT: This is just background, right?

19 MR. SMITH: It's background and --

20 THE COURT: I mean, this is years ago.

21 MR. GRIGSBY: Yeah.

22 MR. SMITH: It's years ago but we're -- it -- I
23 think that the Court will find that this is an ongoing issue
24 in terms of Mia and their relationship between the mother.

1 THE COURT: The --

2 MR. SMITH: So that's where we're going.

3 THE COURT: Well, Mia's a material witness in this
4 case and she's describing her feelings and behavior, and so it
5 may be relevant to that. The objection is overruled.

6 MR. SMITH: Thank you, Your Honor.

7 BY MR. SMITH:

8 Q Did you see -- did anyone, to your knowledge or to
9 your recollection, perform a child psychological evaluation
10 related to the problems that you've described in Mia?

11 A Yes, Dr. Leinkeit did at the approval and direction
12 of the family court.

13 Q Okay. Do you recall an -- a individual being
14 involved by the name of Lewis Etcoff?

15 THE COURT: Can you just -- I -- I don't want to
16 pull up the case. Actually, this was probably a couple of
17 years after the divorce in 2008, but --

18 MR. SMITH: That's right.

19 THE COURT: -- can you just lay the foundation for
20 the timeframe?

21 MR. SMITH: Yes.

22 THE COURT: I -- year -- years -- some sort of year
23 timeframe would be fine.

24 MR. SMITH: Yes. So, Your Honor, we actually have

1 the report of Dr. Etcoff. And I think Mr. --

2 BY MR. SMITH:

3 Q Mr. Stipp, do you recall there being a report
4 made --

5 A I do.

6 Q -- by Dr. Etcoff?

7 A And in fact, my testimony previously was Gary
8 Leinkeit -- that's incorrect. Be -- it was Dr. Etcoff.

9 Q Okay. And do you recall the timeframe for Dr.
10 Etcoff's report?

11 A When it was performed?

12 Q Yes.

13 A I believe it was 2012.

14 Q Okay. So roughly around that area. Let's -- if
15 you'll turn to Exhibit G. That's proposed Exhibit G. Do we
16 have the books there? Yeah, good.

17 (COUNSEL CONFER BRIEFLY)

18 Q Do you recognize this document?

19 A I do, yeah. It -- it does --

20 Q Does this -- does this document -- well, tell me
21 what it is.

22 A This is the child psychological evaluation that was
23 ordered to be performed by Judge Potter in this case at the
24 request of Christina.

1 Q And, Dr. Etcoff, was he -- was he paid by you
2 individually, or Christina individually, or was he paid
3 jointly?

4 A I don't recall the nature of the financial
5 arrangement, but Christina had recommended that he perform the
6 evaluation and -- and Judge Potter ultimately agreed. But I
7 don't recall the nature of the payment.

8 MR. SMITH: I would move for the admission in this
9 proceeding of Dr. Etcoff's report. I'd note to Your Honor,
10 it's already been reviewed and submitted as evidence in the
11 previous matter.

12 MR. GRIGSBY: Yeah, Your Honor, I'm going to object
13 to the -- to -- to the submission of this report. One, it
14 contains hearsay information. Two, I don't believe it was
15 previously admitted. And three, this report is eight or nine
16 years old and two judges ago. So it's information that's
17 prior to the last -- last two custodial orders.

18 MR. SMITH: Well, I -- Your Honor --

19 THE COURT: Well, hey --

20 MR. SMITH: -- if it's prior to --

21 THE COURT: -- look, let's break that down a little
22 bit, okay. Things that pre-dated the most recent custodial
23 orders or agreements aren't excluded in the blanket sense.
24 They cannot be a basis for a change of circumstance. The -- I

1 don't know how material this is. I assume it's being offered
2 to give the Court some sort of insight into the issues we had
3 dealt with back in 2011, right?

4 MR. SMITH: That's correct, Your Honor.

5 THE COURT: Or what -- because you're -- you're
6 going to be arguing to the Court, Mr. Grigsby, that the Court
7 should have some questions about the credibility of accounts
8 that Mia gave in her testimony in January, or her emotional
9 state, or any other kind of fitness issue. This is context.
10 Now, I wasn't the judge who ordered this and I didn't have --
11 I didn't manage the proceedings concerning it, but this looks
12 like an outsourced report and/or a report as a witness to the
13 Court that was submitted on request; isn't that right, Mr.
14 Smith?

15 MR. SMITH: Yes. And I would note, Your Honor, that
16 the sections of the report that I'm going to address as
17 relevant to this action, one, have our personal observations
18 of the outsourced physician. They're not things that he
19 relied on from other folks, and therefore, I believe that
20 evidence is admissible --

21 THE COURT: Well --

22 MR. SMITH: -- by itself.

23 THE COURT: -- help me understand specifically the
24 point of having this admitted. What is the --

1 MR. SMITH: In this --

2 THE COURT: -- point?

3 MR. SMITH: In this document, Your Honor, is the
4 initial stages of a difficulty in the relationship between Mia
5 and Mr. -- Ms. Calderon. I would, as an offer of proof, state
6 that in Ms. Calderon's deposition, when I asked her why she
7 wanted -- among other things, what things caused some
8 difficulty in her relationship. She cited to the kinds of
9 problems that began -- in fact, she only cited to the problems
10 that began through this observation and her readiness to
11 address some of the challenges --

12 THE COURT: All right.

13 MR. SMITH: -- that were raised.

14 THE COURT: Well, let -- let me -- let me just say
15 this. The fact that there was a custody evaluation and it was
16 an outsourced evaluation, that it exists, is something that
17 this document could document. But it's an out-of-court
18 statement. Dr. Etcoff is not here, subject to any kind of
19 examination. It wouldn't come in even if it was something
20 that I ordered that was contemporaneous with these proceedings
21 without Mr. Grigsby's approval.

22 So the Court is going to sustain the objection to
23 the extent that the document is not going to be offered and
24 admitted as substantive proof. First of all, it's remote in

1 time. It's not particularly material to the issue that we
2 have here today. But inasmuch as Dad would like the Court to
3 know, through the admission of this document, the -- some sort
4 of historical context of court management of this case, or the
5 fact that Mia was evaluated at one time in 2011, the Court
6 will allow the document to come in, but I'll be careful not to
7 refer to any of the specific content. Okay?

8 MR. SMITH: Very good, Your Honor.

9 BY MR. SMITH:

10 Q The -- so, I'm interested, Mr. Stipp, and you've heard
11 the Judge's admonition in terms of the admission of the
12 document, but I'm interested in what the effect of the --
13 of the evaluation, the psychological evaluation that was
14 done by Dr. Etcoff, in the way that you addressed Mia's
15 problems that you described at that time.

16 A Participating in the evaluation with Dr. Etcoff, he had
17 -- it was -- it was at least clear on the basis of that
18 evaluation that the type of parenting structure and
19 techniques that we were using in our house were
20 addressing Mia's clothing issues and alleged behavioral
21 issues that weren't occurring -- that were occurring in
22 Christina's house. One of the things that he identified
23 was that Christina's parenting skills were not --

24 MR. GRIGSBY: Judge, yeah --

1 A -- well honed.

2 MR. GRIGSBY: -- this is hearsay.

3 THE COURT: Yeah, the request to strike the
4 statement that's not responsive to the question is granted.

5 BY MR. SMITH:

6 Q So -- so what did you understand was the best way to
7 treat the issues that had manifested themselves in Mia?

8 A Continue doing what we were doing.

9 Q So what was it that you were doing that you --

10 A So we had a dressing plan that we had employed to -- to
11 address Mia's clothing concerns. That dressing plan was
12 -- was structured in a way that accommodated Mia's
13 anxiety and special needs as it related to the clothing.
14 We continued with the suggestions of Mia's occupational
15 therapist. And we addressed Mia's issues in that way.
16 We --

17 Q So I asked you these questions as part of my questioning
18 regarding the structure in your home. Because if I
19 understand your last answer, the structure that you had
20 provided for Mia was important in her development in
21 addressing the problems. Do I have that right?

22 A You do have it right.

23 Q And so tell me what the -- the -- what kind of structure
24 that you've imposed in your home, or that Amy helped you

1 impose, that you think is beneficial for the children in
2 the way that they interact with you and -- and Amy.
3 A Part of it was a -- a -- you know, a reward/consequence
4 type structure. Love and logic approach at the time,
5 which is -- you know, if there's a behavior, an
6 explanation as to what that behavior is, whether good or
7 bad, and having the kids take responsibility for those
8 decisions and then imposing consequences. With Mia we
9 found that, you know, she wanted structure, she wanted
10 rules. And we used her desire to be successful, you
11 know, to address her clothing issues. So a reward chart,
12 things of -- of -- of that nature.
13 Q In your interactions with Ms. Stipp -- or, excuse me, Ms.
14 Calderon, subsequent to the divorce, did you observe the
15 same type of structure in Ms. Calderon's home?
16 MR. GRIGSBY: Objection, Your Honor. Lack of
17 foundation.
18 MR. SMITH: So --
19 THE COURT: The --
20 MR. SMITH: It's okay, I'll lay some foundation,
21 Your Honor. It's fine.
22 BY MR. SMITH:
23 Q Mr. Stipp, did you have the opportunity to interact
24 with Mr. -- Ms. Calderon subsequent to the time of her

1 divorce?

2 A I did.

3 Q And did you have an opportunity to regularly speak
4 with her in regard to the care of your children?

5 A We spoke.

6 Q And did you have -- did you have email exchange and
7 -- and other types of communication in which you discussed the
8 care of the children?

9 A We did.

10 Q Did any of those communications involve structure or
11 the necessity of structure related to Mia's care?

12 A They did.

13 Q At any time -- you've outlined a reward. We've
14 started you talking about that. At any time did you discuss
15 that area with Ms. Calderon in regard to the care of the
16 children?

17 A We did.

18 Q And did you have an opportunity over time to both
19 discuss with the children and Ms. Calderon the environment
20 that they experienced in Ms. Calderon's home?

21 A Yes.

22 Q In those conversations, did you form an opinion as
23 to -- based upon the communication by Ms. Calderon, as to
24 whether or not you and Ms. Calderon's homes had the same type

1 of structure or rules?

2 A I did have an opinion on that issue.

3 Q Okay. And what -- what was the opinion that you
4 formed over time?

5 A My opinion was that she wasn't employing consistent
6 parenting techniques to address these issues. And that the
7 structure in our house, which was working, she was not
8 following in her own home, by her own admission. The -- the
9 biggest discrepancy is that Christina did not believe that Mia
10 didn't suffer from other ailments. And so, you know, my
11 belief --

12 Q I didn't understand that last segment. What -- what
13 did you mean by Christina didn't believe. Could you explain
14 to me what that means?

15 A Sure. The -- the issue was, is that while the --
16 the diagnosis was anxiety and clothing related issues,
17 Christina believed that Mia suffered from other ailments.

18 Q Did she ever describe to you what she felt Mia
19 suffered from in addition to those ailments?

20 A She listed a -- a variety of those ailments in email
21 correspondence and pleadings and things of that nature,
22 including bipolar disorder disorder and things of that nature,
23 so.

24 Q Did you -- how did you -- when she suggested that to

1 you, did you take those observations seriously?

2 A I did. And --

3 Q So what did you do in order to determine whether or
4 not you felt that her observations or claims were accurate?

5 A I participated in the evaluation with Dr. Etcoff.

6 Q Okay. Did you find, after the evaluation and you
7 read it, did you find that those were actual diagnoses that
8 were applicable to Mia?

9 A No.

10 Q So moving forward with the notion that you
11 understood concerns from Mia through both your observations
12 and your review of Dr. Etcoff's report, and your concerns
13 about whether or not Ms. Calderon would engage in behaviors
14 that would help those -- the anxiety and the -- the problems
15 that she was experiencing, what did you do, if anything, to
16 try to help or aid Ms. Calderon in that -- in that process?

17 A We -- we shared our behavioral plan and our -- the
18 parenting techniques that appeared to be working for Mia. We
19 also recommended --

20 Q Who's we?

21 A Amy and I also recommended --

22 Q Okay.

23 A -- to Christina that she seek behavioral management
24 training, which was, you know, one of the recommendations as a

1 result of the evaluation.

2 Q One of Ms. Calderon's criticisms in this case as set
3 forth in her pleadings is that all of the communication
4 between you and her was also engaged with Amy. In other
5 words, Amy would participate in that communication. Is that a
6 true statement?

7 A Not regularly. I would say for a number of years
8 post-divorce I used an email address that I had sole control
9 over, but as time went on and responsibilities grew, Amy was
10 assisting me with responses regarding Christina. We -- we use
11 a -- a similar -- we use one address for both interactions for
12 the school, for extracurricular activities, so that both she's
13 aware and I'm aware of everything that's going on.

14 Q And you said that we shared our behavioral plan and
15 other things with Christina. When did that occur? When did,
16 for example, you share your behavioral plan with Christina, if
17 you recall.

18 A Both before and after the evaluation with Dr.
19 Etcoff.

20 Q So this evaluation occurred, based on the date
21 that's at the -- the end of the page in '11, 2011. Since
22 2011, and after you shared the behavioral plan, did you
23 continue to discuss methods or strategies that were best to
24 provide care for the children based upon their own

1 circumstances, difficulties they were having, et cetera?

2 A We did, but unfortunately Christina didn't agree and
3 she rejected the conclusions of Dr. Etcoff and wanted Mia to
4 be treated by a child psychologist.

5 Q And that was an issue in the previous case, correct?

6 A Yes. And --

7 Q Okay. But ultimately you resolved the litigation,
8 which went on, I think in your pleadings, for about five
9 years. I think that's accurate from the record.

10 A Unfortunately, yes.

11 Q Okay. And so you resolved that litigation. How did
12 that resolution come about?

13 A The -- fortunately Ms. Calderon replaced her prior
14 counsel, Patricia Vaccarino, who in my view made settlement
15 very difficult of issues.

16 MR. GRIGSBY: Objection. Relevance.

17 MS. FUJII: Yeah, 2011.

18 THE COURT: Yeah, it's not -- it's neither here or
19 there.

20 BY MR. SMITH:

21 A But Mr. -- and hired Marshal Willick and Marshal --

22 MR. GRIGSBY: Objection.

23 A -- with you was --

24 MR. GRIGSBY: Once again --

1 A -- instrumental --
2 MR. GRIGSBY: -- objection. Relevance --
3 A -- in getting that settlement done.
4 MR. GRIGSBY: -- to the whole --
5 THE COURT: Again, it doesn't matter how or why they
6 resolved the matters. This -- this is not relevant. It's a
7 waste of time, okay.
8 MR. SMITH: The -- the -- well, just it's background
9 for when the -- the settlement was made.
10 THE COURT: Right. So the --
11 BY MR. SMITH:
12 Q Do you recall when the settlement --
13 THE COURT: The -- the answer of the witness is not
14 responsive to the question, okay.
15 MR. SMITH: All right.
16 BY MR. SMITH:
17 Q So when did you -- when did you resolve the matter?
18 A Approximately 2014.
19 Q Okay. And that resolution is -- is memorialized in
20 a stipulation and order that was entered by this Court,
21 correct?
22 A That's correct.
23 Q Okay. So I want to stay -- just ask a couple more
24 questions about this behavioral plan that you had. Can you

1 describe briefly for the judge, first of all, why you entered
2 a behavioral plan and what its contents were.

3 A I assume you're referring to the --

4 Q The one you shared with Christina, that you said you
5 had shared with her, that you and Amy had shared with her
6 after the time that you received the report by Dr. Etcoff.

7 A So can you rephrase your question so that I
8 understand?

9 Q So you had indicated that you had a behavioral plan.

10 A We did.

11 Q And that you shared that plan with -- with
12 Christina. What was in the plan? What was the behavioral
13 plan?

14 A The -- the biggest issues -- we -- we didn't have
15 the number of issues -- Amy and I did not have the number of
16 issues in our house that Christina reported as it related to
17 Mia. The issues that we identified were really -- primarily
18 related to clothing. The -- Mia's inability to process
19 matters related to her clothing resulted in outbursts and
20 things of that nature. There were also other issues too in
21 terms of, you know, her desire to spend more time with me
22 versus with her mom and those types of issues. But, you know,
23 the -- the goal for us in terms of the stipulation was to put
24 an end to the litigation and put -- put forth a, you know,

1 specific terms of conditions under which the children, if
2 necessary, could get care, both individually and -- and from a
3 family perspective.

4 Q Okay. So you had an opportunity to participate in
5 the -- the creation of the stipulation and order, correct?

6 A Correct.

7 Q I think I attended -- well, okay. So in that
8 stipulation and order, let's look at some of the provisions.

9 MR. SMITH: And that is for purposes of
10 identification, Your Honor. Even though it is in the record
11 and would be admitted as -- by judicial notice, I placed it as
12 Exhibit F for purposes of review of -- of the document.

13 THE COURT: Do you have a stipulation that the 2014
14 stipulation and order can be admitted as Exhibit F?

15 MS. FUJII: Yes, Your Honor.

16 THE COURT: All right. Thank you. Exhibit F is
17 admitted.

18 (DEFENDANT'S EXHIBIT F ADMITTED)

19 BY MR. SMITH:

20 Q So, first of all, tell me how this -- the process
21 for having a stipulation entered. Did you meet and confer
22 with Christina and her counsel?

23 A We -- we did. Initially I was negotiating with Mr.
24 Willick and I asked for your assistance to complete the

1 matter.

2 Q Did --

3 A And so we met in a joint settlement conference.

4 Q Did you have an opportunity to review the terms of
5 the agreement and provide input to its terms?

6 A I did.

7 Q Okay. One of the -- the -- there are terms in here
8 that are -- are -- I want to address with you. One of them
9 was the -- well, let's turn to page 6 of the document.

10 A Is that the Bates label 81?

11 Q Yes.

12 A Okay.

13 Q So there was a no right of first refusal provision.
14 Why was it that you entered into that type of time? Did you
15 have a right of first refusal in the preceding agreement?

16 A Both parties had a right of first refusal under the
17 decree of divorce and parenting plan that we entered into.

18 Q Okay. So why did you agree to eliminate that right
19 of first refusal?

20 A We had a dispute over the exercise of that right
21 when Christina returned to work at the District Attorney's
22 Office.

23 Q And what was the nature of the dispute?

24 A The nature of the dispute is that she was working

1 full time and I was not. And I wanted to exercise my right to
2 care for the kids during that time period and she refused.

3 Q That issue went before the District Court, correct?

4 A Correct.

5 Q So was this a way to resolve one of the disputed
6 issues -- although I think the Court -- the District Court
7 ruled on that issue; didn't it?

8 A The -- the Court did rule on that issue.

9 Q Okay. And I think that had to do with something
10 about her taking a lunch with the children --

11 MR. GRIGSBY: Objection, Your Honor.

12 Q -- and breaking up the eight hours.

13 MR. GRIGSBY: Relevance.

14 MR. SMITH: It's --

15 THE COURT: Again, we're -- we're really burning
16 daylight with a lot of stuff that is just background. The
17 Court reviewed the procedural posture of the case. I reviewed
18 Judge Sullivan's orders. I reviewed Judge Potter's orders. I
19 reviewed the journal entries that described the positions the
20 parties took leading up to the stipulation and order. It has
21 no relevance. I mean, it's not particularly material to the
22 dispute that is ongoing, okay.

23 MR. SMITH: Well, Your Honor, I think the dispute in
24 the counter-motion is for primary physical custody and I think

1 I have a duty to provide --

2 THE COURT: Look, I -- I am -- I'm understanding the
3 -- the reason why you're dealing with background to mean that
4 their opinions concerning behavior of their kids is nothing
5 new. That is something that's been a constant theme
6 throughout 2010. There are appeals, there are 11's, there are
7 12's, whether or not the court would open the case, not open
8 the case. There are opinions concerning what type of mental
9 health conditions the children would or wouldn't have. I
10 reviewed all that, okay.

11 MR. SMITH: No, no, and I'm certain that you have,
12 Your Honor, but I think I have a duty to present evidence --

13 THE COURT: No, no, no --

14 MR. SMITH: -- into the record.

15 THE COURT: -- I'm understanding how it goes, but
16 what I'm trying to say in the context of this is specific
17 questions about what happened in 2013 or on the eve of the
18 2014 stipulation are only marginally helpful to the Court.
19 So --

20 MR. SMITH: All right.

21 THE COURT: -- hit it and -- and forge ahead, okay?

22 MR. SMITH: Thank you, Your Honor.

23 BY MR. SMITH:

24 Q In regard to one provision I do want to talk to you

1 about is the provision in regard to canceling. You have a
2 provision related to the canceling that's located at para --
3 or page 13. Do you see that?

4 A I do.

5 Q Of the document. What was the purpose for that
6 provision? Why did you have that, what I would suggest to you
7 is a rather unusual provision in regard to canceling?

8 A We had previously litigated over the care of the
9 children, specifically Mia. We had a disagreement over the
10 diagnosis. I was concerned that -- that therapy, to the
11 extent any therapy was provided, would be used for litigation
12 purposes. Christina wanted a resource, so you know, even
13 though I didn't think at the time that it was necessarily
14 required, I agreed that, you know, she could get counseling
15 provided that it remained confidential.

16 Q Okay. You had a -- you had a procedure that
17 actually waived any rights associated with -- that would
18 otherwise be available to you under 5.12; do you recall that?

19 A Yeah.

20 Q And --

21 A Yes.

22 Q -- what was the purpose of doing that?

23 A The -- I don't recall the specific purpose.

24 Q Okay. So -- so in the -- the document it says that

1 both parties agree the evaluation or treatment performed by or
2 provided by a licensed, qualified mental health care
3 professional in connection with family counseling shall be
4 kept strictly confidential between the parties and should not
5 be disclosed to any third parties, including and without
6 limitation the Court or District Attorney's Office under any
7 circumstances except by requir -- otherwise required by
8 NRS 432B.220; do you see that?

9 A That's correct. I -- I was thinking about the rule
10 and the changes in the numbers and whether or not that had an
11 effect, but I do see that.

12 Q Okay. So the -- the notion is, is that that would
13 have remained strictly confidential.

14 A Correct.

15 Q Why did you think that that -- that -- why did you
16 want it. What was you and Christina's design in making that
17 -- that therapy strictly confidential?

18 A To the extent that you're going to seek therapy, I
19 don't think the therapy can be used or will be productive if
20 it's going to be used for litigation purposes. Therapy should
21 be a place where all parties who participate should be open
22 and honest and without fear for if what they say or what they
23 communicate is going to end up in a letter or a pleading, you
24 know, in a court. I -- I just think that those -- that the

1 idea of therapy and litigation are 100 percent inconsistent.

2 Q So after the -- the entry of the 2014 stipulation,
3 did there come a time that you became concerned in regard to
4 Christina's care or relationship with Mia and Ethan?

5 A Right after the stipulation and order, you know,
6 Christina wanted to engage Donna Wilburn as a provider of
7 services under this provision. I met with Ms. Wilburn. It
8 appeared that, you know, based on what she represented to me,
9 that she was providing personal therapy to Christina for at
10 least a year before I met with her. She did communicate that
11 she had communicated with --

12 MR. GRIGSBY: Objection. Relevance and hearsay.

13 MR. SMITH: Judge, this goes to --

14 THE COURT: A hint. This is a witness you have on
15 your list.

16 MR. GRIGSBY: That's what I'm --

17 THE COURT: I'm going to find out what that -- what
18 this person has to do -- I mean, look, the -- it's not
19 irrelevant. I don't know and can testify about whether or not
20 -- I assume that the reason why you -- you read 13 and 14 is
21 some sort of foundation about an allegation that she breached
22 the agreement, right?

23 MR. SMITH: Well, that --

24 THE COURT: I don't -- look, go on. Overruled.

1 MR. SMITH: Not exactly.

2 THE COURT: Overruled.

3 MR. SMITH: You're -- overruled. All right. So --

4 THE COURT: Now, again, we're back in 2015 based on

5 this foundational answer.

6 MR. SMITH: I understand, Your Honor.

7 THE COURT: Okay.

8 MR. SMITH: We're getting there. We'll -- we'll

9 keep moving, I -- I promise.

10 BY MR. SMITH:

11 Q So in regard to -- so you had this experience with

12 Ms. Wilburn. Tell me about the relationship between

13 Ms. Calderon and your children, Ethan and Mia, that caused you

14 concern. What did you learn about that relationship that

15 caused you concern --

16 A Christina was --

17 Q -- if at all.

18 A -- reporting that she was having difficulty managing

19 the children's behavior at home and that she thought that

20 having a family therapist would assist in resolving those --

21 those issues.

22 Q Okay. And she initially proposed Ms. Wilburn.

23 A She did.

24 Q And what -- did you approve of Ms. Wilburn as a

1 family therapist --

2 A I did not.

3 Q -- for the children? And why was that?

4 A She was a personal therapist for Christina. I
5 thought it would be a conflict of interest for her also to
6 provide family therapy and terms and conditions of our
7 stipulation expressly prohibit a party from providing such
8 therapy if they had any involvement with the parties of the
9 case.

10 Q So what did you propose as a solution to your --
11 your objection to Ms. -- to Dr. -- to Ms. Wilburn?

12 A Provide another therapist that would be acceptable.

13 Q Were you able to agree on a therapist?

14 A We did.

15 Q And who was that?

16 A Nic Ponzo.

17 Q And did the children engage in therapy with
18 Mr. Ponzo?

19 A To the best of my knowledge, at the time they did.

20 Q Did you believe that that -- or did you receive
21 information that suggested to you that the therapy was
22 positive toward addressing the problems that Christina had
23 identified that she was having with the children?

24 A No.

1 Q So what was -- what was -- in terms of the -- the
2 problems she identified, tell me what those problems were.
3 What did she say was happening in her home that was a problem?

4 A She reported that, you know, Mia was oppositional
5 and defiant. That she was physically violent, verbally
6 abusive. All things --

7 Q When -- when did she --

8 A -- that I did not --

9 Q When did she first tell you that?

10 A I -- I don't recall specifically when she
11 communicated that to me.

12 Q Was it before or after the -- the first therapy with
13 Dr. Ponzo?

14 A It was -- it was after.

15 Q Okay. And so did the behaviors she described that
16 -- that suggested to -- that she suggested would -- would
17 justify family therapy through Ms. Wilburn, did those
18 behaviors that -- of the children change over time? In other
19 words, did they get worse or did they -- her allegations get
20 worse?

21 A To the best of my knowledge, when she had proposed
22 Donna Wilburn, I wasn't -- I wasn't expressly aware of all of
23 the specific issues that Christina was having. She wasn't
24 forthcoming with those specific concerns other than her desire

1 to have family therapy and address, you know, post-divorce
2 issues. But it only -- after she started -- after Mia saw Dr.
3 Austin, and after Mia, Ethan and Christina started therapy
4 with Nic Ponzo, she communicated a number of items --

5 Q Okay. A lot of --

6 A -- regarding Mia's behavior.

7 Q A lot of pronouns in that answer.

8 A Yeah, I know. Sorry.

9 Q I want to make sure I got it right. So -- and first
10 of all, who is Dr. Austin and how does she play into the --
11 the therapeutic care of the children?

12 A This was a child psychologist that Christina
13 recommended perform an evaluation and potentially provide
14 therapy to -- to Mia.

15 Q And to your knowledge, did she do such an analysis?

16 A She did, informally, and then withdrew.

17 Q Do -- did she advise either you or Christina why she
18 withdrew, unless --

19 A She did.

20 Q Don't -- yeah, don't tell me about it if it had
21 anything to do with what had happened in therapy.

22 A It -- it did not have anything to do specifically,
23 what happened in therapy.

24 Q So what was it that -- why did she withdraw?

1 A Because she didn't feel that Mia needed individual
2 counseling.

3 Q Okay.

4 A She thought that the best route was for --
5 MR. GRIGSBY: Objection. Hearsay.

6 A -- family therapy.

7 THE COURT: Sustained.

8 MR. SMITH: Okay.

9 BY MR. SMITH:

10 Q So in regard to the -- regard -- right after Dr.
11 Austin, what did you understand was going to happen in regard
12 to the therapeutic care of the children?

13 A I understood that -- that Mia would no longer see
14 Dr. Austin. That it wasn't necessary for Mia to receive
15 individual therapy based on her assessment. And that the
16 recommendation was for Christina to follow up with family
17 therapy, either with Donna Wilburn or Nic Ponzo.

18 Q So -- and that happened. You said that they went to
19 family therapy with Mr. -- with Mr. Ponzo, correct?

20 A To the best of my knowledge. I wasn't involved --

21 Q Okay.

22 A -- at the time in --

23 Q Were you --

24 A -- those therapies.

1 Q -- asked to be involved in the family therapy?

2 A I don't recall whether I was asked to be involved,
3 so I think the answer is probably no, but I did meet with Nic
4 Ponzo at the time for background purposes and to communicate
5 to him that I was available to address any issues that came up
6 during therapy.

7 Q And you indicated that after the time that that
8 commencement -- the commencement of that therapy, there were
9 more significant and direct statements by Ms. -- that
10 Christina -- in regard to problems she was having with the
11 children; is that correct?

12 A Correct. And the item that I remember specifically
13 was her email concerning the trip to Pepperdine.

14 Q Okay. Right. So -- so we'll come to that. In
15 regard to the -- the information that you were receiving from
16 Christina, what, if any, communication did you have with her
17 about methods to address the problems that she was
18 experiencing?

19 A The -- the challenge that -- that I had is that Mia
20 wasn't exhibiting these same behaviors in my home. So I
21 didn't know what the source of these issues were.

22 Q And what were the behaviors that you're referring to
23 in that last answer?

24 A Christina had reported that, as I communicated

1 previously, that Mia was verbally abusive and physically
2 violent and prone to outbursts.

3 Q So you -- you didn't experience that in your -- that
4 in your home.

5 A I did not.

6 Q How do you discipline the children when they do
7 something wrong?

8 A Depends on the issue.

9 Q So what is your typical -- first of all, what are
10 the types of things that the children will do that will cause
11 you to address them with some sort of disciplinary action?

12 A It's very rare that I have to discipline the kids in
13 my home. I mean, I think over the years they understand that,
14 you know, what I expect of them in terms of their behavior.
15 However, you know, I can say that what's more common than
16 anything else would be a disagreement between Mia or Ethan
17 that, you know, is related to, you know, siblings having
18 disagreements over any number of issues. It may result in --
19 in discipline to the extent that, you know, they don't listen
20 to my instruction.

21 Q Do you ever physically discipline them?

22 A I do not.

23 Q And in regard to the -- the failure to abide by your
24 instructions, what type of actions do you take to -- to punish

1 them?

2 A It -- it varies, but you know, generally in the past
3 it's been, you know, elimination of electronic device or an
4 activity, things of that nature. An event with friends. So I
5 might say that, you know, you can't go to this or you can't go
6 to that.

7 Q Okay. The -- you said that there was an email
8 related to a time in Pepperdine that caused you concern.
9 We're looking for that. If you could help us find that in the
10 book. Or is it going to be possible, and if not, I don't want
11 to take up the Court's time.

12 A You can ask the question and I can see if I can
13 locate it.

14 Q Do you know what the date was on that email?

15 A Somewhere in 2017.

16 Q All right. So let's -- let's move forward. In
17 regard to the -- the --

18 A You can look in X.

19 Q X. All right. So in regard to the -- the -- well,
20 why don't you turn to X and see if that email is there. Give
21 the Court -- to give the Court some background.

22 A Probably a hundred, but --

23 Q If you can't find it immediately --

24 A I'll see if I can do it --

1 Q -- then let's move on.

2 A -- in less than 30 seconds.

3 Q Okay. What is Exhibit X composed of, Mr. Stipp?

4 A Emails by and between Christina and myself.

5 Q And did you send these emails to the address that
6 you normally communicate with Christina?

7 A I did.

8 Q And these are responses then to your email address?

9 A And vice-versa.

10 MR. SMITH: Move for the admission of X, Your Honor.

11 THE COURT: Any objection?

12 MS. FUJII: No objection.

13 MR. GRIGSBY: No objection, Your Honor.

14 THE COURT: Thank you. X is admitted.

15 (DEFENDANT'S EXHIBIT X ADMITTED)

16 BY MR. SMITH:

17 Q So, Mr. Stipp, you have there -- Mr. Stipp, you have
18 this communication with Christina regarding concern over an
19 event that her -- her and -- that took place in Pepperdine.
20 Can you explain to me what is it you understood from that
21 email?

22 A Christina and the kids went to Pepperdine for a
23 summer camp type activity. And Christina had reported that
24 the weekend was not a good weekend and that the kids had a

1 number of behavioral issues, specifically Mia. And so
2 Defendant Number 971.

3 Q Are you looking at Exhibit X?

4 A Correct.

5 Q All right. It looks to be an email from Christina
6 dated Sunday, July 23rd, '17. Is this the email that you were
7 referring to?

8 A Correct.

9 Q Okay. And what was it about this email that caused
10 you concern?

11 A She had indicated that Mia was increasingly verbally
12 and physically abusive. She had represented that Mia was
13 physically violent. She also made statements that Mia used
14 inappropriate language, including calling Christina a whore.
15 She communicated that she wanted to die, or that she just
16 wanted, you know, someone to just kill her. You know, there's
17 also reports of Ethan participating in some of these
18 activities in terms of, you know, throwing fruit and also
19 being inappropriate.

20 Q So -- and you had said that this behavior wasn't
21 consistent with your experience with Mia. How about your
22 experience with Ethan? Was he engaged in disrespectful or
23 inappropriate behavior in your home of --

24 A No.

1 Q -- the kind that was described in this email?

2 A No, this was a shock to me when I received the
3 email. Christina did ask in the email how best to address
4 these things and I provided a response. But I discussed it
5 with -- with Amy and it was shocking behavior.

6 Q What was your response, as you recall, or if you can
7 point me to it.

8 A On Defendant Number 973 --

9 Q That's Exhibit X again.

10 A That's -- that's right. It follows in the email
11 chain. I had asked her what the problem was. I had asked if
12 Mia's anger was directed at specifically someone or everyone.
13 I indicated that I'd like to help address the circumstances
14 and situations if you could provide examples and details. I
15 indicated that Amy and I would also talk -- and then --

16 Q There -- there was a reference just in this email
17 chain to -- from Christina on the July 23rd, 2017 at 6:31,
18 again on page 973 of Exhibit X, that says I want to ta -- stop
19 taking Singulair. Can you describe to me what Christina was
20 referring to?

21 A She had indicated that she was having trouble
22 controlling her -- Mia's anger and impulses in that email and
23 that she wanted support to attend counseling. But for some
24 reason, which was odd, is that she had -- she had indicated

1 that maybe Mia's behavior was related to taking allergy
2 medication.

3 Q So Singulair is a -- that was my next question, what
4 is Singulair and what do you understand it to be for?

5 A I believe that it's either a prescription or
6 over-the-counter allergy medication.

7 Q Okay. And --

8 A I was not aware, you know, that -- that it was a
9 specific issue.

10 Q When you say it wasn't a specific issue, are you
11 talking about her allergies or are you talking about Singulair
12 having the effect of causing her anger issues?

13 A Mia has allergies, and has had allergies, but I
14 wasn't aware that -- that there was any concern that allergy
15 medications, specifically Singulair, was -- was involved in --
16 in terms of Mia's behavior.

17 Q Okay. So --

18 A I was puzzled by it. I didn't know how to respond
19 to that.

20 Q Okay. In her final -- in that chain on 974, she
21 indicates that Mia has been very disrespectful to me on this
22 -- on the trip and she's not permitted to bring her phone back
23 to my home. Did she -- did you in fact restrict her from
24 bringing the -- the phone to Christina's home?

1 A I don't recall that I did.

2 Q Okay. Has the phone been an issue between you and
3 Christina? The phone -- use of the phone by the children.

4 A It has.

5 Q And tell me about that. How -- how has that issue
6 arisen? I can see that it -- it -- the request here. But
7 what has been the discussions? How would you describe the
8 discussions between you and Christina in regard to that
9 subject?

10 A Amy and I purchased a telephone for use by the
11 children. Ultimately they received their own phones. So in
12 2015, they were sharing a phone. I communicated in email
13 correspondence in 2015 to Christina expressly that the kids
14 had control over their phone and phones and that she was free
15 to call them and communicate them -- with them, subject to,
16 you know, normal timing issues. But I made it very clear
17 that, you know, the idea of having it -- because we had a
18 prior dispute over facilitating daily telephonic
19 communication, that I wanted to provide a mechanism that she
20 can communicate with the children directly and not through me.

21 Q Well, one of the -- the questions that I think comes
22 up with the phone issue is, and correct -- and let me know if
23 it's come up in your case. One is the children's access, free
24 access to the internet and social media. Was that ever

1 discussed between you and Christina as an issue associated
2 with their phones?

3 A Yes. I think we discussed it specifically, but I
4 don't know initially if it was related to the phones or just
5 generally.

6 Q What do you recall your discussions with Christina
7 in regard to the children's access to social media and the
8 internet?

9 A I think that we are both concerned about the access
10 to the internet and social media by the children because of
11 the number of, you know, issues that may exist out there.

12 Q What are the kinds of issues, just briefly.

13 A Access to inappropriate sites, communication with
14 third parties we don't know, you know, transmission of, you
15 know, sexually explicit material. You know, just general, you
16 know, concerns that -- that, you know, when I grew up, I
17 didn't have to deal with because you didn't have that -- that
18 portal of communication.

19 Q You -- you had an opportunity to review the
20 examination by Mr. Grigsby of Mia in this case.

21 A I did.

22 Q And do recall when he brought up and cross examined
23 her in regard to explicit material that was found on her iPad?
24 Do you recall that?

1 A I do.

2 Q And did you -- were you aware of that occurrence?

3 A I was.

4 Q How do you address Mia's viewing of that type of
5 material?

6 A She doesn't view that type of material. What I
7 understood, based on the facts before reviewing the testimony,
8 was that, you know, she looked at a site that other people in
9 school were looking at as a matter of curiosity. And I don't
10 personally find that objectionable, although I don't -- I --
11 and when I say that, I think it's normal for kids to be
12 curious. I think it's normal for kids to want information.
13 But my understanding with -- after communicating with Mia is
14 that's not something she does, regularly does, and only did it
15 in that one specific instance.

16 Q And you believe her.

17 A I do believe her.

18 Q Okay.

19 A I don't agree with the way it was handled, but I --
20 I believe her.

21 Q What do you say that you -- what do you mean that
22 you don't agree with the way that it was handled?

23 A I don't agree that embarrassing Mia, not only when
24 discovering the item on the iPad, but also in court on the

1 issue, is the appropriate way to address it. One, if you
2 addressed it before, but to do it in court, I think to me is
3 bad form.

4 Q In regard to the -- the communications that you were
5 having with -- with Christina in and around -- looks like May
6 of 2017 when she was expressing to you these problems, and
7 further communication, did you ever come to the conclusion
8 that the problems between Christina and the children had
9 gotten better?

10 A It's my understanding, particularly concerning the
11 events around Mother's Day in 2017, that the -- that the
12 events were getting worse.

13 Q Okay. So at some point in time it was Christina
14 that suggested that she continue family therapy with Nic
15 Ponzo; do you recall that?

16 A I do.

17 Q If you'll return to page 976 of Exhibit X, you'll
18 see that request.

19 A I see it.

20 Q Did you have any objection to doing so?

21 A No, I just wanted to be informed of the days and
22 times of -- of the therapy appointments, and I --

23 Q Okay. You also had addressed her concerns with
24 communication with her about your thoughts and feelings about

1 how to address Mia and Ethan's problems in her care, correct?

2 A Correct.

3 Q If you'll look to page 977, would you characterize
4 that email as that type of attempt?

5 A I would characterize that.

6 Q And -- and did your communications with Christina
7 continue to address some of the problems that she raised with
8 Ethan and Mia? In other words, that even after the therapy
9 began and you were engaged in these type of communications,
10 were you willing to work with her and discuss with her various
11 methods or ways or experiences to try to get her to have a
12 better relationship with the children?

13 A Absolutely. This specific issue in the email of
14 February 10th, Christina had raised objections about
15 encouraging Mia to exercise. And I think her view was my
16 encouragement of Mia to exercise was somehow fat shaming her,
17 which in no way was accurate in terms of what I was doing and
18 what I was encouraging. I think it's absolutely appropriate
19 to encourage your kids to exercise.

20 Q Did you ever indicate to Mia that she was fat or
21 overweight and --

22 A Absolutely not.

23 Q -- should exercise to lose pounds or words to that
24 effect?

1 A No. Absolutely not. Mia is not fat. She's -- you
2 know, she's a -- she's -- she's been an athlete. But I think
3 that, you know, as she gets older, she's less inclined to
4 participate in physical activities and -- and, you know, I
5 think as a parent I'd -- I'd like her to see -- I'd like her
6 to be involved in other physical -- physical activities. So,
7 you know, recommendations for exercise I thought were
8 appropriate.

9 Q Does -- do you ever encourage Ethan to exercise?

10 A I don't need to, but I have in the past.

11 Q Okay.

12 A He's a fairly active child.

13 Q You had indicated that you're active -- or at least
14 you go to his games in regard to baseball.

15 A I do.

16 Q Do you go to practices as well?

17 A Occasionally.

18 Q Okay. And do you ever play baseball with him?

19 A I do, yeah. We -- we practice, to the extent that
20 you can play with two people in terms of pitching and hitting
21 and throwing and things of that nature.

22 Q All right. How often have you done that over the
23 years, do you say -- would you say?

24 A I'd say weekly we -- we've done those things when

1 he's been playing and in the off-season.

2 Q You throw the ball, play pick, all that kind of
3 thing?

4 A Yeah, absolutely.

5 Q All right.

6 A A lot of what Ethan likes to do is work on his --
7 you know, his batting.

8 Q Okay.

9 A Now that he's the, you know, leadoff batter in his
10 team, he wants to keep his skills sharp.

11 Q So at some period of time -- you've the -- the
12 testimony of your children and you've reviewed the report
13 associated with their interview, correct?

14 A I did.

15 Q At some period of time, did you -- did you
16 understand all of the things that the children -- and have
17 indicated in their testimony -- was occurring in Christina's
18 home? Were you aware of it?

19 A No.

20 Q So what -- what did come to your attention that
21 caused the relationship between the children and Christina to
22 really suffer?

23 A There's, you know, the -- the escalation in 2019 of
24 the disagreements to physical fighting between Mia and

1 Christina.

2 Q When did you first learn that there had been a
3 physical altercation between Mia and Christina?

4 A I first learned in 2017 at the Pepperdine trip that
5 there was the physical altercation. And then --

6 Q Did you speak to Mia about that Pepperdine trip when
7 she returned as you had indicated you would in your email?

8 A I did.

9 Q And what was her read on what had occurred -- well,
10 let me ask the question this way, because she's testified in
11 this action. Did you have a different understanding than
12 Christina had to -- regarding the events of the -- what had
13 occurred in -- in Pepperdine?

14 A I did. The kids reported a different set of facts.

15 Q All right. So then you -- you are faced in -- when
16 were you faced with this altercation between Christina and --
17 was it Mia or was it Ethan?

18 A It was Mia in 2017 at Pepperdine.

19 Q And then in 2000 -- when -- when was the next
20 altercation that you became aware of?

21 A To the best of my recollection it was in May of
22 2019.

23 Q And what did you learn at that time?

24 A About?

1 Q About the altercation. What was the -- your state
2 of mind when you were addressing the events with Christina?

3 A So we got -- Amy and I received a -- an emergency
4 call/text from Mia around 4:00 or 5:00 on the day of the
5 incident to come over because she had been attacked by her
6 mom, was the -- at least my recollection of how it was
7 communicated.

8 Q And did you reach out to Christina once you became
9 aware of that information that you received from -- from Mia?

10 A I went to Christina's house with Amy.

11 Q Okay. And did you and Christina and Amy have an
12 opportunity to speak?

13 A We did.

14 Q And what was the purpose of going to her house?

15 A Mia had indicated that she had been physically
16 attacked and that she needed assistance, and so my immediate
17 reaction was to assist her.

18 Q And when you went to the home, did you go inside the
19 home?

20 A No.

21 Q Describe what occurred after you and Amy arrived
22 after receiving the information from Mia that she had been
23 physically attacked.

24 A We arrived, exited the vehicle. I don't recall if

1 -- if Christina was coming out, but the garage door was open
2 and so as I was walking up the driveway I think she came out
3 to meet us, is -- is what I recall.

4 Q And what -- do you recall the conversation, the
5 substance of the conversation that you had with Christina?

6 A Generally, yes.

7 Q Was Amy present during that conversation as well?

8 A Part of it, yes.

9 Q And when you say part of it, what happened? Where
10 -- did she leave the area or what --

11 A My son, Mitchell Jr., was in the car.

12 Q Okay. And so she --

13 A So we didn't want to leave him in the car
14 unattended.

15 Q Okay. And so what do you recall was the substance
16 of the conversation with Christina that evening?

17 A Generally we spoke about there was a fight.
18 Christina had admitted that she was physical with Mia. She
19 also reported that Mia was physical with her. We had
20 discussed about how that isn't appropriate. We had discussed
21 about whether or not the police should be called. We had
22 discussed about whether Mia should be punished. And Christina
23 had indicated that she had consulted with some work associates
24 who recommended that she did call the police and file a

1 report. I had urged her not to do that.

2 Q Who urged her not to do that?

3 A I did.

4 Q Okay.

5 A I didn't think --

6 Q Why did you urge her not to, if you -- if your
7 understanding was that there had been physical altercation
8 between her and Mia, why did you encourage her not to file a
9 police report? It's a crime, isn't it?

10 A I don't know the exact facts and circumstances. All
11 I knew at the time is that my daughter had reported that she
12 was attacked by Christina. And what Christina reported to me
13 was that she was involved in a physical fight where both
14 parties were physical with each other. And Christina's
15 indication was that in her experience, based on her role in
16 the District Attorney's Office, that -- that -- that the
17 police will defer to the parent if they report an incident of
18 physical contact and that the child would be arrested, and I
19 didn't want that to occur.

20 Q Okay. I think it's obvious as to why, I won't ask
21 you why you didn't want her arrested. But has Mia every had
22 any kind of issues at all in which she's had interaction with
23 police to your knowledge?

24 A No. Never.

1 Q She's never been arrested?

2 A Absolutely not, no.

3 Q Detained at school, anything like that?

4 A Nothing.

5 Q Has she ever had any behavioral problems that have
6 been reported to you from the school or any other source in
7 regard to physical violence or mistreating someone through
8 language or otherwise?

9 A No. And -- and my concern with the police was that
10 the physical altercation had ended, and so I didn't know and
11 it didn't make sense to me to seek their assistance, to simply
12 report two different versions of the event. And I was hopeful
13 that Christina and I as parents could resolve the issue
14 without a third party involvement.

15 MR. SMITH: Okay. Judge, would this be a good time
16 to take a break. I need one.

17 THE COURT: It's when we usually try, but how far
18 are you from finishing your direct?

19 MR. SMITH: Probably an hour.

20 THE COURT: Okay. Step down. Be careful when you
21 walk out of there, okay.

22 THE WITNESS: Thank you.

23 THE COURT: Mr. Grigsby, 10 minutes? Five minutes?
24 Eight minutes?

1 MR. GRIGSBY: Whatever the Court's preference.

2 THE COURT: Somewhere between five and 10, okay.

3 MR. SMITH: Five minutes if fine with me, Your
4 Honor. All right. Thanks.

5 (OFF RECORD)

6 THE COURT: We are continuing with post-judgment
7 proceedings, D-08-389203. We took a short break and we're
8 going to resume the direct exam of Dad.

9 Sir, can you confirm that you understand you're
10 still under oath?

11 THE WITNESS: I confirm.

12 THE COURT: Great. Mr. Smith, whenever you're
13 ready.

14 MR. SMITH: Yes.

15 BY MR. SMITH:

16 Q We were talking about the first incident in regard
17 to the altercation that had occurred between Christina and
18 Mia. And we were talking about the -- the notion that Ms.
19 Calderon expressed to you about calling the police. Did
20 anyone call the police on that evening?

21 A Not to my knowledge.

22 Q And what happened after you had a chance to discuss
23 the issue with Christina?

24 A What I understood was, this all started over a

1 thermostat and adjusting the -- the temperature in the home,
2 which to me was like remarkable that something like that can
3 turn into a physical altercation. The -- the problem that I
4 had is that Mia's version and Christina's version differed in
5 terms of who was the aggressor and what were the facts and
6 circumstances. So I was put in the middle of trying to
7 assess, you know, essentially who was telling the truth, a
8 position that I didn't feel comfortable.

9 Q So what did you do? What did you -- what was
10 actually the outcome of the discussion and your going over on
11 that evening?

12 A While Christina and were discussing -- and we spent
13 a long time in her garage communicating, probably close to an
14 hour. And during that time Mia had packed her belongings and
15 put them into my car, and then got into the car.

16 Q Did -- did you return with Mia to your home?

17 A Yes, I did.

18 Q Was it your time to have Mia during that period?

19 A No.

20 Q Okay. So -- so did you and Christina have
21 communication about that?

22 A We did.

23 Q Did she indicate to you that she didn't want you to
24 take Mia?

1 A She did. She indicated that if Mia left she would
2 be calling the police.

3 Q So when you left and after that, did she call the
4 police?

5 A I'm not sure. I don't know.

6 Q What happened after that in regard to the time
7 share? Well, let me ask you this. Why did you think, in
8 light of her objection, that it was okay to take Mia on that
9 evening?

10 A I was concerned that they were going to get into
11 another fight and Mia had already packed her things. She was
12 leaving on a trip out of state in the morning. My time share
13 would have ordinarily began after school, or that evening.
14 And so I thought it made sense, given the volatility of the
15 situation to allow Mia and Christina a cooling off period, in
16 my view.

17 Q When did -- when -- when was Chris -- excuse me, Mia
18 scheduled to leave, the following morning?

19 A Correct.

20 Q And where did she -- where was she going?

21 A She was going to California.

22 Q And what was the purpose of her trip?

23 A It was a choir trip.

24 Q Were you going to go with her?

1 A No.

2 Q Who did go with her on that trip?

3 A Her teachers and classmates, but neither Amy or me

4 went on that trip.

5 Q And what -- how long was the trip?

6 A The week -- through the weekend --

7 Q Okay.

8 A -- if I recall.

9 Q And so your time would have been the following week?

10 A No, my time would have been the next day.

11 Q The next day, but then -- but you would also have

12 her until -- when do you make the exchange?

13 A Fridays --

14 Q So --

15 A -- in the evenings.

16 Q -- you would have returned her on Friday.

17 A The following Friday.

18 Q Did you return her on Friday?

19 A I did not.

20 Q What happened?

21 A Christina and I agreed that -- that Mia could remain

22 in my care.

23 Q How did you agree to that?

24 A Via email.

1 Q Okay. And how long did Mia remain in your care
2 pursuant to that agreement?

3 A Approximately four to six weeks.

4 Q Okay. At any time during that four to six week
5 period in roughly May and June -- is that right? Do I have
6 that --

7 A Correct.

8 Q -- timeframe correct? Did Christina ever indicate
9 to you that she wanted you to resume the -- a normal time
10 share?

11 A No. Not that I can recall.

12 Q Did you have any communication with her at all about
13 the event that had occurred and what the result would be in --
14 in regard to her relationship with Mia or Ethan?

15 A We regularly communicated. In fact, as a result of
16 that communication, we set up a meeting at Starbucks near my
17 home to discuss, you know, the events of that altercation.

18 Q What was -- what did you understand the purpose of
19 the meeting to be?

20 A The intention was -- was to get Mia to resume to a
21 normal time share in the manner that we had before. But my
22 purpose was -- was to make it clear that physical altercations
23 between a parent and a child just cannot happen. It's just --
24 it's not appropriate. While I understand, you know, parents

1 have the right to discipline their chil -- their children,
2 this was not discipline, this was a physical fight, as I
3 understand it from both parties.

4 Q The -- what was the substance, if you can recall, of
5 the conversation with Ms. Calderon at this Starbucks meeting?

6 A We -- we generally talked about family dynamics, the
7 difficulties that Christina had with managing Mia's behavior
8 in her care. We talked about Mia's relationship with her
9 boyfriend Joey. We talked about electronic devices. We
10 talked about a number of issues. In fact, I thought it was a
11 productive meeting. I thought we had an understanding in a
12 way that we hadn't had before in terms of our communication.
13 It was actually, in my view, I felt like it was refreshing and
14 productive to spend the time with her face-to-face rather than
15 exchanging emails to communicate with -- about these matters
16 openly and honestly and provide recommendations.

17 Q And so what happened after that meeting? Did things
18 -- did the time share go back to what it had been before?

19 A Ultimately, yes. What we decided to do -- and I
20 don't know if it was at that meeting or if subsequently after,
21 is we scheduled a family meeting with the kids.

22 Q And in that -- when did that family meeting occur,
23 or did it occur?

24 A It did occur. It was shortly after the Starbucks

1 meeting, so --

2 Q And --

3 A -- within a week or two.

4 Q What was the substance of the discussion in that
5 meeting?

6 A The substance of -- we had agreed that -- that we
7 wanted to communicate to the children that we were on the same
8 page, that the rules at Mom's house were going to be the rules
9 at Dad's house. Christina wanted me to communicate, and I had
10 no problem communicating, that -- that she was entitled to
11 take away the kids' telephones if there was a behavioral issue
12 and that I would support that.

13 Q Okay. Do you recall anything else about that
14 meeting?

15 A I recall that the kids' interaction with Christina
16 at that meeting was odd. They didn't want to speak to her,
17 they didn't want to be touched by her. She made attempts to
18 try to hug them and they rejected her.

19 Q Did you mention that to them or did you point it out
20 at the time of that meeting or afterwards?

21 A I did at the time indicate that -- that, you know,
22 that Christina was their mom and that she's hugging them. And
23 then, you know, to be quite frank, I was so uncomfortable that
24 -- that I -- that Amy and I allowed them personal privacy

1 because I thought maybe, you know, they -- they wanted their
2 space to communicate. So what I had recommended is that Amy
3 and I withdraw and allowed Christina to communicate with the
4 kids, you know, openly and freely without us there.

5 Q And what happened after that in relation to
6 Christina's time share with the children?

7 A Ultimately it -- it resumed, but, you know, during
8 that four to six week period of time, Ethan was also with me.
9 There was also a period where I had Ethan for an extended
10 period in Cooperstown and Mia was alone with Christina at a --
11 a trip in Arizona. So the exact dates and circumstances, I'd
12 have to look at a calendar to try to figure that out --

13 Q Okay.

14 A -- right now. But it was generally a four to six
15 week type period.

16 Q So -- so it res -- did -- did -- during the time
17 that you had the children in your care after this altercation,
18 did you do anything to promote or to discourage their
19 relationship with Christina?

20 A Promote. One of the things that I have been doing
21 when these issues became apparent was to try to provide the
22 kids perspective, which is that Christina is their mother, and
23 they may not agree with her decisions but she -- they are to
24 follow them and respect her. And if there is conflict, to

1 de-escalate. Their -- their concern is that she acts
2 irrationally, flies off the handle. And I'm not there, so the
3 best way that I could do that would be to say, look, try to
4 de-escalate the best you can. Go to your room. Withdraw from
5 the situation. You know, the goal for me was to avoid verbal
6 confrontation turning into physical confrontation.

7 Q So sometime roughly in June they recommenced the
8 normal schedule?

9 A Yes, that's correct.

10 Q So you're -- you're exchanging weekends for a period
11 of time. When does that change?

12 A It -- it changed in August, right before school
13 started, I believe.

14 Q What caused it to change?

15 A Another physical fight between Mia and Christina.

16 Q How were you made aware of that?

17 A Christina called, emailed, texted. Mia called,
18 texted at approximately 11:00 at night on -- on a weekday. I
19 was asleep. Amy was asleep. I didn't get the messages until
20 I woke up the next day.

21 Q What did you do after you received the messages?

22 A We communicated with Mia. She gave an update as to
23 what exactly occurred. I reviewed the emails and text
24 messages. I don't recall if I sent an email to Christina or

1 not at the time.

2 Q Do you recall listening to Mia's testimony in this
3 case in which she had described that event?

4 A I think so, yeah.

5 Q And was your recollection of what she had indicated
6 to you at the time that she -- the event occurred different
7 from what she described in her discussion of the event at the
8 time of this trial?

9 A I believe it was consistent, although I think there
10 may be some dispute as to who hit who first. But I don't
11 recall at the time whether or not that was clear. My concern
12 wasn't who hit who first, my concern was are you okay.

13 Q So you talked with Mia about whether or not she was
14 okay. She described the events consistent with what she
15 testified here. Then what did you do? Did you call the
16 police?

17 A I -- I did not call the police.

18 Q Why didn't you call the police?

19 A My concern, again, was Christina's statement to me,
20 based on her experience and role in the District Attorney's
21 Office, that the default rule is, is they accept the parent's
22 view and that the children would be arrested. So my concern
23 is, without knowing what happened, who hit who, and
24 Christina's position, that -- that Mia might be arrested and I

1 was concerned about that trauma. And, frankly, I wasn't
2 convinced, based on my communication with Mia, that Christina
3 didn't instigate the fight and I --

4 Q What do you mean by that?

5 A From what was communicated to me by Mia, it -- it
6 appears that for whatever reason, and I don't understand it,
7 Christina escalated the matter.

8 Q How did she escalate, to your understanding?

9 A My recollection from Mia was that --

10 MR. GRIGSBY: Objection. Objection to hearsay.

11 THE COURT: Yeah. You got to ask the question a
12 little differently, okay.

13 MR. SMITH: The --

14 THE COURT: He -- we understand that his accounts
15 are all second hand. He wasn't physically there.

16 MR. SMITH: Correct.

17 THE COURT: So your -- the foundation for his answer
18 is based on what Mia said to him or she said to him, right?

19 MR. SMITH: That's right. But --

20 THE COURT: Okay.

21 MR. SMITH: -- it goes to the actions he's taken.
22 That's the question that's going to be before the Court.

23 THE COURT: Well, you can ask that question then.

24 MR. SMITH: Okay.

1 THE COURT: Okay.

2 BY MR. SMITH:

3 Q Based upon the information that you had received
4 from Mia in regard to the altercation that you now have
5 indicated it was consistent with her testimony in this case,
6 what did you do?

7 A I -- I didn't do anything other than communicate
8 with Christina about the facts and circumstances and my
9 concern about the physical fighting in a number of emails that
10 were exchanged. We attempted to set up a meeting to discuss
11 those events. There was some scheduling conflicts. I had
12 recommended that we do it by phone. Christin --

13 Q When you say we, who is we?

14 A Christina, Amy and I.

15 Q Okay.

16 A And so we were attempting to set up another meeting
17 like we did at Starbucks, but based on scheduling, it -- my
18 preference was to do it by phone. And she -- Christina
19 indicated that she didn't want to do that.

20 Q So you immediately -- did you immediately take Mia
21 and Ethan into your care after -- when -- the day after you
22 got these texts and so forth, you've talked to Mia?

23 A No.

24 Q Why not?

1 A The difference between this event and the prior
2 event is that Mia had called and said, pick me up, I'm being
3 attacked. And then while having a conversation with
4 Christina, she got into my automobile. In this instance, she
5 had communicated what happened but indicated that she was
6 fine, going to school. And on the basis of that
7 communication, she didn't ask me to pick her up. I didn't
8 feel like it was necessary to pick her up since she was going
9 to school, and I had hoped that my communications with
10 Christina in the interim would de-escalate any -- any problem.

11 Q How long after this event was your scheduled time
12 share to have the children?

13 A It was approximately a week away.

14 Q Okay. So you allowed them to remain in her care for
15 a week.

16 A Yeah. And I have some difficulty with allow, you
17 know. The issue is, is that, you know, I didn't -- I didn't
18 see any need to intervene or remove the kids based on what Mia
19 communicated to me. And she had indicated to me that she was
20 fine at the time. So, you know, if she had said, hey, Dad,
21 come pick me up, I'm not going back, I might have done things
22 differently.

23 Q At the time that you made the decision to leave Mia
24 in Christina's care after the second altercation, were you

1 aware of some of the allegations and statements that Mia had
2 made in her testimony in this trial? For example, were you
3 aware that she was alleging that her mother had grabbed her by
4 the hair and dragged her across the room? Were you aware of
5 that?

6 A Generally I was aware of the physical confrontation.
7 I was aware of the -- the provocation through laughing and
8 taunting that Mia had represented to me that Christina was
9 doing. So I would say yes, but you know, not specifically all
10 of the physical interaction, whether it be hair pulling,
11 punching, kicking, scratching, that -- those types of things.
12 My concern was not the specific -- you know, was it a scratch,
13 a punch, a hair pull. My concern was that it was -- it was a
14 fight. It was a physical fight. Not I'm disciplining you,
15 not, you know, I'm -- not Mia beating her mom up, as -- as
16 Christina alleged. But they were, from my understanding, both
17 involved in a -- you know, in a -- in a physical altercation.

18 Q Did it become your understanding that Ethan had
19 witnessed the altercation between Christina and Mia?

20 A I don't believe he witnessed that altercation. I
21 believe he witnessed the altercation in May, but I could be
22 mistaken. I think he heard the altercation, but it was late
23 at night and generally he's asleep at that time. So I think
24 he heard but didn't see.

1 Q At any time did you form the impression that Ethan
2 had been affected by his either witnessing or learning of the
3 -- the altercation between Christina and Mia?

4 A Absolutely. And one of the things that Ethan had,
5 you know, communicated when he was with me for that extended
6 period of time after the first altercation was that how nice
7 it is to have peace.

8 Q In regard to the -- the -- you heard him repeat
9 those -- that testimony in terms of describing some of the
10 difficulties he was having at his mother's home; do you recall
11 that?

12 A I do. He seems to be, at least my view of the
13 testimony, he seemed to be pretty frustrated with the constant
14 fighting, whether it be physical or -- or verbal.

15 Q You're faced with this information in regard to two
16 altercations, the frustration they're having in regard to
17 dealing with their mother. Their mother, for a period of
18 years, has described either abusive or inappropriate behavior
19 by Mia, and additional behavior by Ethan. What did you do at
20 that point to address any or all of that?

21 A I think here was a sense -- I mean, my recollection
22 is there was a sense of like helplessness. Like what -- what
23 did it -- what can I do about resolving these issues in
24 Christina's home, you know. I wasn't there. I don't know

1 what happened. The -- the kids report something different
2 than Christina does. Whose side should I believe? Is it my
3 role to be refereeing these fights? Should I be involved in
4 Christina's inability to manage and parent the kids? Those
5 are challenges because I -- I have difficulty just accepting
6 what Christina represents to be the -- the facts and
7 circumstances, just based on my history. And I -- I think
8 that's part of the challenge.

9 Q So what did you do in regard to being faced with all
10 of this?

11 A I had indicated that the kids should remain with
12 me --

13 Q Indicated --

14 A -- via e --

15 Q -- to who?

16 A I had indicated to Christina via email that the kids
17 should remain in my care and we should work on some
18 alternative arrangement, either temporary -- to resolve these
19 issues.

20 Q Did you take any steps to try to understand the
21 situation better as to what would be appropriate action for
22 you take?

23 A We ultimately were not able to set up that meeting
24 because Christina wanted it face-to-face and wouldn't

1 participate via telephone. And so unfortunately the email
2 exchange, I don't know if it was very productive. I think her
3 sense was that I was keeping the kids from her, but you know,
4 what I had recommended was we do something very similar that
5 we did the first time and then try to figure out whether or
6 not it made sense to alter the time share in a way that worked
7 better for everyone.

8 Q Okay. And -- and that was the nature of the
9 communication with -- with Christina.

10 A It was. And ultimately, you know, the -- she had
11 indicated -- because we had -- we had agreed to deviate from
12 our -- our parenting plan. So rather than have the kids after
13 school at 3:00, we did the exchanges at 6:00 because it made
14 more sense, even though our parenting plan provided something
15 else. Christina had indicated that she was going to the kids'
16 school on Friday to pick the kids up. I thought that the kids
17 would be traumatized by that event. I didn't want, you know,
18 any further conflict. I didn't want the school necessarily to
19 be involved in those dynamics. So, you know, she ultimately
20 agreed to pick the kids up at 6:00. I communicated to both
21 kids that they were going. I had told Mia that she had to
22 pack under the circumstances because this was what her mom was
23 insisting, and that's what she did.

24 Q So that's what Mia did. She packed.

1 A Both packed.

2 Q Okay. And they both went to school.

3 A They came home from school, they packed --

4 Q Oh, I see.

5 A Correct.

6 Q And did they -- their mother come to pick them up?

7 A At 6:00 she did.

8 Q And what happened?

9 A Before -- before Christina got there, Mia had

10 indicated to Amy and me that she didn't want to go, that she

11 was refusing to go. And my recommendation to Mia was to

12 discuss the matter with her mom when she got there.

13 Q Did you at -- ever at any time indicate to her that

14 she's under a court order to go, or that she must go, or words

15 to that effect?

16 A I don't use court orders when dealing with the kids.

17 To me that doesn't make sense. What I did say is that, you

18 know, we have an agreement, this is your mom's time, this is

19 when she's regularly supposed to pick you up. So, you know,

20 her intention is to pick you up and you need to go.

21 Q Did you indicate to them that they would be punished

22 if they didn't go with their mother?

23 A I did not.

24 Q Why?

1 A I don't feel that it was my role to punish the
2 children under those circumstances for deciding not to go
3 based on what I viewed as legitimate concerns about the manner
4 in which they were treated under Christina's care.

5 Q Knowing that the order was as it was, you're a
6 lawyer, why didn't you make immediate steps to file an action
7 to modify custody based upon the events that had occurred?

8 A Well, the -- I mean, that's exactly what Christina
9 had recommended in her email to me before picking up the kids
10 a few hours earlier, was that if I wanted to change the
11 schedule then I needed to file a motion. She had -- she had
12 indicated just as you did. You're a lawyer, if you want to
13 change the schedule, file a motion. What I indicated to her
14 is we don't need to file a motion if parents agree to change
15 the schedule. That's not -- we can reach an agreement. We
16 don't have to go back to court under these circumstances. But
17 she didn't relent and ultimately -- you know, I wasn't sure
18 what would happen when Christina came at 6:00 and Mia
19 communicated to her that she wasn't going. I didn't know how
20 that was going to turn out. It -- it's very possible that
21 Christina would have done what she did the last time, which is
22 relent and say, okay, you can spend some time here and we'll
23 address this later. So, you know, before rushing and filing a
24 motion, I wanted to see how the conversation turned out.

1 Q Did you -- did you have a communication with Mia
2 about -- you had indicated, for example, that in fact you had
3 conversations with them about coping mechanisms. Did you
4 discuss with Ethan and Mia ways to cope with what had
5 occurred, you know, after the two altercations and whatever
6 other concerns they had expressed to you?

7 A My advice to the kids is -- it's been the same,
8 which is -- and, you know, I'm -- I'm proud of Mia when I
9 reviewed her testimony and I appreciate the fact that she took
10 responsibility for her role in those matters, but my concern
11 is, is that, you know, she's a young adult and Christina's a
12 parent.

13 Q The -- you had referenced communication you had with
14 Christina in or about the time of this incident. If you'll
15 turn to Exhibit X. It appears that the -- there was
16 communication that began on August 14th, 2019 and proceed --

17 A Can you give me the Bates number so I know what
18 you're --

19 Q Yeah, it would be the first page of the document
20 itself. It's -- oh, excuse me, Defendant's -- it's number
21 1000. I'm mistaken.

22 A Okay.

23 Q It's not the first page.

24 A Okay.

1 Q And it goes through Defendant's number 1010; do you
2 see that?

3 A I do.

4 Q Is that the communication, the email communication
5 you're referring to in re -- which you were suggesting to
6 Christina that you -- she follow a different path other
7 than --

8 A Yeah, this --

9 Q -- what she was following?

10 A This started with apparently the event on August the
11 13th and her emails, texts and -- and calls you can see as
12 early as 12:00 a.m. on the 14th. So I responded to those the
13 next day, but as you can see from these emails, there's a
14 number of exchanges over that week that ultimately resulted in
15 her response to me on 1007.

16 Q Okay.

17 A She had indicated that she was -- she wanted to
18 enforce the order. I had communicated to her that I had some
19 concerns given what the kids had reported. There's dialogue
20 back and forth about her parenting skills and her response. I
21 think I encouraged her to try to work with Nic Ponzio rather
22 than make this a litigation matter, but she insisted that she
23 was following the court order, it was the letter of the law,
24 and that I knew as an attorney that if I were going to change

1 it that I needed to file a motion. But I just disagree with
2 the premise because we can agree, as a matter of law, to alter
3 our schedule without a court order.

4 Q Well, and that's what you were attempting to do but
5 it became clear that she was not interested in doing so,
6 correct?

7 A Correct.

8 Q Okay. And so this communication goes through August
9 25th. The court record will reflect that on August 26th you
10 filed a motion. But that motion didn't seek to change
11 custody. Why not?

12 A I -- I didn't want to change custody. It wasn't my
13 intention to change custody. It was my intention to -- maybe
14 misguided -- attempt to provide a mechanism by which the
15 children could express their preference. And if they could
16 express their preference within the confines of a joint
17 physical custody relationship, my assumption was that some of
18 the problems could be resolved. For example, if there's a
19 fight between Mia and Christina and it requires some level of
20 cooling off or counseling or things of that nature, it would
21 be okay for her to stay with me longer than, you know, the --
22 the custodial schedule set forth in our parenting plan on a
23 50/50 basis. To me, flexibility was important. So I thought
24 if the kids could say, hey look, I can't -- I'm not getting

1 along with Mom here, we just got into another physical fight,
2 I need to spend a couple of days with Dad, that that would
3 make sense, just as long as we didn't change the custody
4 schedule. Because it was not my intention.

5 Q Okay. So we're -- we're clear under the law that
6 under Harrison the Court can impose such an agreement, but
7 wasn't your --

8 A I don't know if I agree with you, but --

9 MR. GRIGSBY: Objection, Your Honor. Not even a
10 question, it's a statement.

11 MR. SMITH: I don't -- I think it's a correct
12 statement of the law and I think I can do it as part of the --
13 the question, so I need to finish the question before Mr.
14 Grigsby knows where I was going with that.

15 BY MR. SMITH:

16 Q So assuming that the Court's stated view of Harrison
17 is how the Court views that case, if -- if you filed a motion
18 seeking that teenage discretion, at some point in time did you
19 become aware that that wasn't going to be the order of the
20 Court?

21 A Yes. In our hearing this Court communicated that
22 the remedy of the exercise of teenage discretion in the
23 confines of joint physical custody was not within the powers
24 of the Court.

1 Q Okay. So -- so in regard to that, did that cause
2 you to file a further pleading and seek different relief?

3 A Yes. In response to Christina's motion for primary
4 and I think she had indicated temporary primary physical
5 custody. And we filed a countermotion for primary physical
6 custody and to allow the kids to exercise teenage discretion.

7 Q Okay. So in regard to your -- your statement that
8 you didn't initially want to change custody, what did you want
9 to do in terms of a remedy for -- other than the -- the
10 teenage discretion that you described?

11 A My thought process was is that the kids had the
12 ability -- and I trust their judgment generally. That the
13 kids had the ability to extricate themselves from a situation
14 that was uncomfortable or harmful. That Christina would alter
15 her parenting skills faced with the idea that you have a court
16 order on a 50/50 time share and her view the kids can't leave,
17 they have to be with her during that 50/50 time share. That
18 sets up a confines and -- and dynamic that provides her a
19 hundred percent control.

20 Q So in terms of the -- the -- what other remedies did
21 you seek in terms of the motion?

22 A Counseling.

23 Q Okay.

24 A One of the things that I thought -- and I had

1 reached out to Nic after I filed, Nic Ponzio, after I filed my
2 motion. Was let -- I don't want to litigate this case. I --
3 look, I spent -- we spent five years in litigation, which is
4 extremely painful, expensive. I don't want to be in court.
5 We're capable -- or parents should be capable of resolving
6 these issues outside of court.

7 Q Did at any time you request, either directly or
8 through counsel, that the parties go to family therapy rather
9 than litigate it?

10 A Yes. In fact, I reached out to you and asked you to
11 reach out to Christina's counsel and make that request.

12 Q And -- so subsequently the Court had indicated that
13 it would grant the motion associated with the family therapy.
14 Tell me what happened in relation to that therapy afterwards.
15 Did you --

16 MR. GRIGSBY: Objection, Your Honor. Misstates the
17 -- actually the ruling, and I believe it was a stipulation for
18 joint therapy.

19 MR. SMITH: And Mr. Grigsby may be right, and that's
20 not the emphasis of the question, so I'll -- I'll rephrase it.
21 BY MR. SMITH:

22 Q In regard to the -- the stipulation for therapy, did
23 you do anything to hinder or inhibit the therapeutic process?

24 A No.

1 Q During the time of the therapeutic process, were you
2 -- did you direct or communicate with the children that they
3 should spend time with Christina?

4 A Yes.

5 Q Did you do anything in regard to how they would
6 proceed on the day that she would ultimately be entitled under
7 the previous order to -- to come get her?

8 A I was in circumstances that I had never been
9 involved with before, and so I was looking for the
10 recommendations of others, including Nic Ponzo and other
11 professionals that I was consulting.

12 Q Who were the other professionals you consulted with?

13 A Roy Lubit.

14 Q Who is Mr. Lubit -- or Dr. Lubit?

15 A He's a child -- he's a -- he's a forensic
16 psychiatrist whose background is on issues of parental
17 alienation and matters regarding those issues.

18 Q Why did you read -- reach out to Dr. Lubit?

19 A Christina had indicated in her filings that -- that
20 the kids' behavior were my fault. And I -- and that the
21 reason why the kids were reacting they way they were reacting
22 was because I alienated them from her.

23 Q Did you entertain that idea?

24 A Absolutely not.

1 Q Well, did you -- did you -- but you sought the
2 advice of someone in regard --

3 A So when you say --

4 Q -- to that area.

5 A So the idea of entertaining it, I -- I wanted -- I'm
6 not an expert in that area, it's not a field of my expertise.
7 I was generally aware of, you know, that field, but you know,
8 my concern was that -- that now I'm being accused of
9 wrongdoing, I'm the one that's being -- that is now
10 responsible for the kids' behavior, and what it is that I
11 should be doing. I mean, the Court's view was the order needs
12 to be followed, and I get that, and I appreciate it. But
13 there were healthcare professionals that were saying it's more
14 complicated.

15 Q What was the -- when you say healthcare
16 professionals, you -- you discussed these matters with Mr. --
17 or Dr. Lubitz (sic), correct?

18 A Not the facts of the case, just general treatment
19 recommendations for --

20 Q Children who weren't willing to follow the Court's
21 order.

22 MR. GRIGSBY: Objection, Your Honor.

23 THE COURT: Yeah, the --

24 MR. SMITH: I'll rephrase the question.

1 THE COURT: Yeah, it -- it wasn't really a question.

2 BY MR. SMITH:

3 Q Did you discuss with Dr. Lubitz (sic) the construct
4 or the psychological studies associated with actions that
5 would be beneficial when one -- when a child refuses to go with
6 one of the parents?

7 A Yes.

8 MR. GRIGSBY: Objection, Your Honor. Relevance.
9 This is discussion.

10 THE COURT: Yeah, again, the -- the fact that he
11 discussed this with somebody is something that can be
12 established. The substance of that dialogue would be
13 objectionable. So that hasn't been asked yet.

14 MR. SMITH: And I don't intend to go to the
15 substance.

16 THE COURT: I know, but the -- the objection is
17 premature. He didn't ask that question, okay.

18 BY MR. SMITH:

19 Q So -- so after speaking to Dr. Lubit -- and did you
20 do any study, independent study, as to regard to psychological
21 studies or other work that had been performed in this area?

22 A I reached out to you and you provided a number of
23 resources in connection with your preparation of a family law
24 seminar.

1 Q After reviewing -- after reviewing your discussion
2 with doc -- with Dr. Lubit and reviewing that material, what
3 was the course that you believed was in the best interest of
4 the children in regard to their refusal to abide by the court
5 order?

6 A Therapy and providing them an opportunity to
7 communicate their points of view and to address the issues
8 that they're having with their mom. The -- the understanding
9 I had was forcing the children to return to their care could
10 be more harmful to them on these -- on these facts.

11 Q What's your view of that? Why do you think it would
12 be more harmful? For example, the Court had at one time
13 indicated to you, well, there's one way to make Ethan go, is
14 to take away his baseball. So did you try that?

15 A Not initially, but again, my concern is, is what is
16 my role as a parent. And if the kids are reporting to me what
17 I understand to be the case, that there is significant
18 mistreatment going on while with Christina, if I'm -- I'm
19 concerned that I would be disregarding their feelings and
20 concerns by forcing them to return to an -- in my view, an
21 obviously uncomfortable and detrimental situation.

22 Q Did Christina -- you talked about these
23 altercations. Did you become aware that Christina had taken
24 other actions that caused the children to react the way that

1 they had reacted?

2 A Yes. And I communicated those issues to her during
3 our Starbucks meeting, that I did not feel it was appropriate
4 to contact third parties, including friends, teachers,
5 administrators, to help her address matters in her home.

6 Q So that Starbucks meeting was sometime in June, I
7 think you had indicated. In August there was another
8 altercation. Did Christina's actions suggest to you that she
9 agreed with your view that she shouldn't cause -- or she
10 shouldn't involve third parties in relation to problems that
11 she was having -- other than therapists -- problems that she
12 was having with the children?

13 A No. In fact, during our Starbucks meeting I don't
14 think we were in agreement on that issue either. I think she
15 felt -- or at least she communicated to me that she felt it
16 was an appropriate way to resolve issues concerning the
17 children. And I wholeheartedly disagree.

18 Q So at or about the time of the -- the second
19 altercation, did Christina reach out to anyone associated with
20 the children and involve them in the -- the situation?

21 A The second altercation I think was further cause and
22 -- and instigated by, from what I understand, Christina's
23 decision to reach out to Joey's mother.

24 Q Okay. So she reached out to Joey's mother. At any

1 time, either during any of the altercations, did Christina
2 reach out to the coach for -- for Ethan.

3 MR. GRIGSBY: Objection. Objection. Lacks foun --
4 lacks foundation for how he had knowledge.

5 MR. SMITH: Well, it was in his testimony, so I
6 don't think it lacks foundation.

7 THE COURT: Well, again -- again, this was -- the
8 real witness to this was Ethan, not your -- not this wit --
9 not this witness.

10 MR. SMITH: Well, one of the concerns -- and then,
11 Judge, maybe you can guide me on this. One of the concerns is
12 that the focus of this allegation as to why the children have
13 stopped seeing the -- or abiding by the -- the order, is Mr.
14 Stipp's behavior. So I want to --

15 THE COURT: Well, I know that, but -- but Mr. Stipp
16 isn't expected to be able to testify on everything. That's
17 why we have more than one witness in a case, because the real
18 witness to some of these things is not him.

19 MR. SMITH: Well -- but that's right. And we've
20 already had that testimony --

21 THE COURT: Right.

22 MR. SMITH: -- so it's not that I'm trying establish
23 it --

24 THE COURT: And it hasn't even been con -- it hasn't

1 even been assailed yet and you're putting on your case as if
2 it's being challenged. But I don't -- in this particular
3 instance, the -- the feelings or the -- well, I mean, maybe he
4 does know, if the coach reached out to him, maybe that's
5 answer to a question that he knows. But we have testimony
6 from the child talking about a dialogue with Mom and a
7 dialogue with his coach about whether that occurred.

8 MR. SMITH: You have precisely identified why this
9 testimony is elicited, Your Honor. We will get to the next
10 question and I think you'll find that --

11 THE COURT: Ask it then.

12 MR. SMITH: All right.

13 THE COURT: Ask it.

14 BY MR. SMITH:

15 Q So you're aware of that testimony. Mr. Stipp, did
16 you have further communication with the -- with Ethan in
17 regard to the effect that the coach had on him? And I don't
18 want you to tell me about the communication, I just want you
19 to tell me if you had such communication.

20 A Christina, the coach and I were communicating via
21 text message when she was attempting to pick up the kids
22 in --

23 MR. GRIGSBY: Objection.

24 A -- in August.

1 MR. GRIGSBY: Non-responsive.

2 MR. SMITH: Well --

3 THE COURT: Again, listen carefully to counsel's
4 question. I think this is --

5 THE WITNESS: Okay.

6 THE COURT: -- a foundational question for another
7 question, right?

8 MR. SMITH: That's right.

9 THE COURT: So ask the question again, please.

10 BY MR. SMITH:

11 Q So -- so you had -- you had -- did you have a
12 discussion with Ethan in regard to the effect of Christina
13 contacting his -- his baseball coach had on Ethan?

14 A Yes.

15 Q Why -- based upon that conversation, did you take
16 from that conversation that Ethan was adversely affected by
17 that communication between Christina and the coach?

18 A Yes.

19 Q What was your course then in terms of why didn't you
20 at that -- immediately at that time seek a motion to change
21 custody based upon the -- the -- whatever he had told you
22 about the reaction of that -- of that event?

23 A That was Friday when Christina attempted to pick up
24 the kids. And so he -- Ethan was at baseball at the time.

1 And our motion was filed the following Monday.

2 Q All right. Did you try to address with Christina
3 the damage that you felt would have been inflicted on the
4 child as a result of take -- going to his -- his baseball
5 coach in regard to incidents associated with this?

6 A I did.

7 Q Did you -- you said you had communication, direct
8 communication or texts with Christina and the coach as well?

9 A Christina sent a text message while at my house to
10 Ethan's baseball coach and copied me as part of the text
11 message, indicating that -- that there was a custodial
12 dispute, that she wanted Ethan to be turned over to her
13 father, and that if the coach didn't do that, she was calling
14 the police.

15 Q All right. So -- so was -- did Ethan ever become
16 aware of that communication, to your knowledge?

17 A It's my understanding, based on what Ethan
18 communicated to me, that he had a discussion with his coach.

19 Q In regard to the -- the -- your reaction was to file
20 the motion to change custody, correct?

21 A My reaction was to file a motion for the kids to
22 exercise teenage discretion within the confines of joint
23 physical custody on that Monday.

24 Q Okay. You were -- you were deposed in this case; do

1 you recall that?

2 A I do.

3 Q You were asked the question as to whether or not you
4 wanted a change of custody as the ultimate result in this --
5 this case. Do you recall your response?

6 A I do.

7 Q And what is it?

8 A I said I -- I'm not interested in changing custody.
9 I want the kids to be happy. I would be perfectly okay if --
10 if the kids wanted to spend more time with Christina if their
11 relationship was resolved. It's not about labels, it's not
12 about motions, it's not about who -- you know, I'm flexible.
13 I don't care what a document says in terms of who's the
14 primary physical custodian or the joint physical custodian or
15 -- I'm not counting hours. It doesn't need to be 50 percent
16 of the time with me versus her. I just want the kids to be
17 happy and I -- I don't -- I can't referee on a constant basis
18 disputes between Christina and the kids while in her care.

19 Q Well, but do we now as parents want to take the
20 position that if a child has problem with the other parent
21 that he can determine whether or not he or she spend time with
22 that parent? Is that where you're going with this?

23 A It's -- it depends, right.

24 Q It depends on what?

1 A It depends on the facts and circumstances and the
2 severity of the problem. If -- if none of these be --

3 Q What were the -- what were the facts and
4 circumstances of this case that caused you to believe that
5 instead of punishing the children to go for an order to -- by
6 the order that you would allow the -- or that you would
7 propose that they have teenage discretion and therapy?

8 A My thought process was, based on the facts that were
9 communicated to me by the kids and Christina, that Christina
10 as a parent has primary culpability for those physical
11 altercations. And while there's an allegation that -- that
12 Mia had a role, and she -- she apparently did based on her
13 testimony, I don't think that a parent in those circumstances
14 should be physically fighting with their -- with their
15 children.

16 Q So was it -- it was the nature of the altercation
17 from the evidence that caused you to -- to take the -- the
18 approach that you took or was it -- so for example, if the
19 child had come to you and said, look, you know, she keeps the
20 house too cold and she took my phone away, I want to stay with
21 you, Dad, is that going to be something that you're going to
22 say, no, you have to -- that we have to go to therapy in
23 regard to?

24 A No. I mean, look, I don't -- I don't -- those --

1 those explanations -- and the kids are aware of it based on my
2 parenting -- that that's not an acceptable basis.

3 Q Have they ever presented anything like that to you?

4 A Never.

5 Q So in this instance, you heard the children -- did
6 -- did the children contact or talk with Christina in relation
7 to their desire to spend more time with you, to your
8 knowledge, prior to the time they went to therapy?

9 A When?

10 Q In August of 2019.

11 A I -- I don't recall when, if ever, that occurred. I
12 don't know the answer to -- I don't recall Mia communicating
13 that to Christina. And I don't know whether that occurred. I
14 -- I don't know.

15 Q Okay. So the children did go to therapy for some
16 period of time. At one point in time the Court ordered that
17 the exchanges of the child go through family -- or, excuse me,
18 Donna's House. Describe for me what you did to comply with
19 the Court's order?

20 A I explained to the kids that this is where the
21 custodial exchange was going to occur, but not using those
22 words. That I was going to be dropping the kids off at family
23 court and that their mom was going to pick them up.

24 Q Did they have their bags packed?

1 A Bags packed. All equipment for the weekend.
2 Everything that they needed. Under normal circumstances when
3 they would make the transition previously.

4 Q Okay. And did you take them to Donna's House?

5 A I did.

6 Q And did you -- you registered and did the things you
7 needed to do to avail yourself of that program?

8 A I signed -- at the -- the -- at the time, the front
9 entrance to the family court was under construction. They had
10 a construction trailer there. I entered the construction
11 trailer right before security, signed a form, paid a fee, and
12 left the kids.

13 Q And where did you go?

14 A Home. I was driving home.

15 Q Okay. And what happened as you were driving home?

16 A I received a call approximately 20 to 25 minutes
17 later from a representative at Donna's House indicating that
18 the children were refusing to go with Christina and that I
19 need to come pick them up. And then in the future, if the
20 kids don't want to go, tell the security officer up front so
21 they don't go through the whole process of going through
22 security and waiting.

23 Q So what happened at that point? Did you go pick
24 them up?

1 A I did.

2 Q And you took them home?

3 A To the best of my recollection, yes.

4 Q Did you have any communication with Christina in
5 regard to this incident after it occurred?

6 A I don't believe we had any communication that day.
7 We may have had communication the next day. I did explore the
8 idea of -- I don't want to use the word punishment, but you
9 know, properly incentivising them to -- to -- to go by
10 restricting Mia's access to her phone for 24 hours and
11 declining Ethan's coach's in -- invitation to play on a
12 weekend that he would have not normally played, but the offer
13 was there. And even under those circumstances, it didn't make
14 a difference when we returned to Donna's House the following
15 week.

16 Q When you returned to Donna's the following week,
17 what happened?

18 A I went through the same procedure, except that the
19 kids communicated to the security that they weren't going.
20 And at that point the representatives from Donna's House
21 turned the kids away.

22 Q Did you communicate that fact to Christina?

23 A I don't recall whether I communicated, but she was
24 there, so she knew.

1 Q Okay. Christina was present when the children were
2 engaging with this officer?

3 A No, the way that they work this is that she's in a
4 separate area.

5 Q Okay.

6 A So, you know, when the kids decline then the
7 information is communicated to her, presumably.

8 Q So one of the things that -- that happened after
9 that, that there was more therapy -- correct -- with Nic
10 Ponzio.

11 A Yes.

12 Q And again, did you -- how did you facilitate that
13 therapeutic process?

14 A I met with Mr. Ponzio on my own.

15 Q Did he ask for your input?

16 A He did.

17 Q Okay. So you did that.

18 A I did.

19 Q And you -- I assume he tried to give you guidance as
20 to the process and what could be helpful, correct? I don't
21 want you to tell me what that was.

22 A Generally, yes, but the theme was to, you know,
23 coordinate appointments for Christina to meet with him and the
24 kids.

1 Q Okay. And so did you do that?

2 A I did.

3 Q Did you at any time refuse to take the children to
4 therapy when requested by Christina or Mr. Ponzo?

5 A I never refused, but there were scheduling
6 conflicts.

7 Q In what sense?

8 A In the sense that, you know, there may have been an
9 extracurricular activity that conflicted with the time that
10 Christina wanted to have therapy. We had a lot of issues
11 regarding Christina's preference for who attended therapy, how
12 many times they attended therapy, who took the kids to therapy
13 and picked them up, what they did before, what they did after.
14 All of which, in my view, should have been handled by
15 Mr. Ponzo. But because I wasn't in those sessions and I don't
16 know everything he was recommending, I did the best that I
17 could to accommodate not only the kids' schedules, my
18 schedule, but Christina's schedule as well.

19 Q What -- what effect, in your experience, has the
20 litigation had on the children?

21 A I think their relationship with their mother is
22 worse as a result of it.

23 Q What portion of -- have they -- why -- why do you
24 say that? What's the basis on that -- that --

1 A I don't -- I don't think the kids responded very
2 well to being cross examined in court. I don't think --

3 Q Is that because you talked with them about their
4 testimony?

5 A It's just what they communicated, that they were
6 unhappy.

7 Q And when they said they were unhappy, was it
8 generally or just -- did they give specifics?

9 A I think -- we didn't -- we didn't discuss
10 specifically what they testified to, but the general concern
11 was, you know, they felt like they were being accused of not
12 telling the truth.

13 Q The -- they've now had that therapy. Have you seen
14 any improvement in their willingness to spend time and
15 interact with Christina?

16 A No. I think that we were making some progress, even
17 though slow, before the first day of trial. But after the
18 first day of trial, I think the kids were affected
19 significantly from the -- you know, providing testimony and
20 then also being cross examined. And -- and then the kids have
21 separate issues regarding Christina's response to that
22 testimony and the other events in therapy.

23 Q In regard to the -- the path forward, have you done
24 anything to try to encourage additional contact with the

1 children and Christina?

2 A I encourage the kids every day to call or text their
3 mother. I try to arrange time for them to spend time with
4 each other. I've attempted to accommodate Christina's
5 requests for -- for time. The kids have regularly seen
6 Christina weekly. The -- the challenge that I have in this
7 situation is, you know, I'm not -- I'm not involved in the
8 therapy sessions and Christina doesn't allow me to be. So I
9 don't know what occurs in those sessions. I don't know what
10 Nic is recommending, and I don't know what -- what is
11 occurring other than what the kids report.

12 Q Okay. By Nic, you're referring to Nic Ponzo.

13 A Correct.

14 Q What's the solution going forward in your view?

15 A I -- I don't think litigation and therapy works. I
16 think that the -- as I reviewed the kids' testimony, their --
17 one of the obstacles that they have in terms of repairing the
18 relationship is the failure of Christina to take
19 responsibility for the alleged bad acts and that, their view,
20 that she doesn't tell the truth. And I think that that may --
21 you know, my -- my assessment is, is that if you're in therapy
22 and you're litigating -- and while there may be privileges
23 associated with that therapy, but the idea that, you know, Mr.
24 Ponzo may testify or may not testify, makes it unlikely for

1 Christina to honestly address the kids' concern and take that
2 responsibility, because I think she's fearful of what might
3 happen in court.

4 MR. SMITH: I'm going to pass the witness.

5 THE COURT: Okay.

6 MR. GRIGSBY: Given the time, probably -- you say
7 we're going to have lunch about noon?

8 THE COURT: We can come back at 1:00 and adjourn
9 now.

10 MR. GRIGSBY: Yeah, I figured that, so I was asking.

11 THE COURT: You can step down. Just be careful of
12 the step down.

13 THE WITNESS: Thank you.

14 MR. SMITH: Let the record note that I finished in
15 the hour I indicated.

16 THE COURT: Almost on the dot.

17 MS. FUJII: Good job, Counselor.

18 THE COURT: The -- the -- you know, this -- this
19 process, I guess I heard it in -- like in October and the
20 filings were in August. And we've had -- you know, we're in
21 March and we've had, you know, court proceedings in January
22 and today. And, you know, what you guys do offline is fine.
23 The general notion that you always control over the custodial
24 matters is, you know, axiomatic. It's your fundamental rights

1 as parents. But, look, we have orders and agreements in this
2 case. And if there are orders and agreements related to
3 custody, related to the fundamental rights of parents, and the
4 children are refusing to follow the orders, and there's
5 conflicts with parents and leveraging changes in custody, it's
6 the Court's responsibility to insist on a timely presentation
7 of evidence to justify that, to justify the taking of physical
8 and legal rights, to make findings and conclusions. That's
9 why we're boring ahead with trying to get to a resolution.

10 It's not the Court's position that litigating these
11 issues is best for your kids. It's the Court's position that
12 this litigation is necessary to address the fundamental rights
13 that both parents have. I can't help when I handle cases like
14 this to be thinking about what the root issues are. And I
15 think that where the rubber meets the road in this case is
16 that we have essentially a -- you know, a traumatic event, an
17 argument over a thermostat, an argument over a cell phone on a
18 weeknight, talking to a boyfriend, that escalates into
19 physical battery and altercations and the fallout from that.

20 So, you know, ultimately the Court has a
21 responsibility to make sure all the evidence is presented and
22 to issue orders, walking through the -- the remedies that are
23 available in a court proceeding. But, you know, I'm -- I --
24 it's clear, I guess, just because of the way that the case has

1 to be organized by you -- this is your last witness, right?

2 MR. SMITH: I'm going to ask the Court about that.

3 If you're going to --

4 THE COURT: Okay. But let's -- for the purpose of
5 my comments before we adjourn, it doesn't matter. I'm just
6 saying the Defense hasn't been able to offer any evidence yet
7 and now we're in -- we're burning out the second session that
8 was two Thursdays set aside. I mean, the litigation, the
9 grind of this case, this -- the disputes that are here, in my
10 mind, don't warrant multiple days of litigation, okay. And it
11 -- the amount of resources that you're dedicating to this,
12 which are sort of a tangent to the -- or a necessary tangent
13 to the real issue, which is to how to manage the time that the
14 children spend with the parents, you know, I don't -- I'm
15 concerned about it. I'm concerned about it not just for the
16 management of this case, because we're going to come back at
17 1:00, we'll have at least three hours plus, but you're going
18 to be examining him and then they may call another witness.
19 They might even call one of your witnesses today, right?

20 MR. GRIGSBY: Correct.

21 THE COURT: And that -- that's a huge problem
22 because, logistically speaking, I mean, I have like 22 trials
23 and evidentiary hearings scheduled in the next four to five
24 days, okay. I'm back-filling these hearings. I picked a

1 Thursday for two purposes. One, to give you a full
2 opportunity to digest the testimony you didn't see and to
3 allow the discovery issues to resolve, but also so you're not
4 constantly gearing up for sessions, half-day sessions or day
5 sessions or whatever. Because it's a tremendous amount of
6 work for you and for me to review the testimony from the
7 previous hearings and make notes and getting up to speed on
8 it. And, you know, I don't have a full day in the next month,
9 okay. I literally --

10 MR. SMITH: So -- so, Judge, let me address that,
11 and I think I can help. You had asked if I have additional
12 witnesses. If I can make -- the only other witness would be
13 Amy Stipp and I could make an offer of proof that she would
14 testify consistent --

15 THE COURT: Again, that's -- that's what we would
16 do. It's cumulative. I certainly don't think it's
17 irrelevant. But what would happen is, is that I would say,
18 look, in the interest of time, you don't call her. Now if
19 they bring up material issues concerning her role in parenting
20 or --

21 MR. SMITH: Yeah.

22 THE COURT: -- the relationship between the kids --

23 MR. SMITH: Right.

24 THE COURT: -- and others, you roll her out to

1 refute that --

2 MR. SMITH: Yes.

3 THE COURT: -- contested matter.

4 MR. SMITH: And that's the exactly the way I would
5 suggest --

6 THE COURT: Yeah.

7 MR. SMITH: -- that we proceed, Your Honor. Because
8 I've now had the exact half of the time that we've provided
9 for this hearing. He'll have half the time to provide it.
10 The children and the parties I believe are the most important
11 witnesses, the Court has said as much.

12 THE COURT: I understand that, but look, they --
13 they will -- you know, the Court is going to be looking and
14 tracking the time. It's not just about equal time, but it's
15 also about themes that you want to advance that --

16 MR. SMITH: Sure.

17 THE COURT: -- benefit your claims or defenses. And
18 the Court is not going to have an arbitrary approach to it.
19 I'll be asking you -- I mean, obviously your client is
20 testifying -- but I'll be asking you, who do you got in mind
21 and why do you think this witness is more important or should
22 be testifying. And you've got a long list of folks who might
23 testify in the case. Some of them will, some of them won't.

24 But, and you know, I'm not going to deny either one

1 of you an opportunity to make a record about what you intend
2 to produce in -- I mean, provide in this case. Because if the
3 Court disagrees, excludes relevant testimony in the interest
4 of time or on another basis, that it's cumulative, et cetera,
5 you're at least going to have a record about it, okay.

6 So let's take an hour or so for lunch. We'll come
7 back at 1:00. You can plan on at least 1:00 to 4:00. Yeah,
8 we'll probab -- you know, I usually break -- it takes about
9 40 minutes to wrap up a session, and Kathy's been here since
10 7:30 and you know we got -- in order to get out by 5:00 or
11 5:30 or so, you got to quit at 4:30, 4:15, okay.

12 MR. SMITH: All right.

13 THE COURT: All right.

14 MR. SMITH: Thank you, Your Honor.

15 THE COURT: Thank you.

16 THE BAILIFF: Court's in recess.

17 (OFF RECORD)

18 THE COURT: All right. We're back on the record.

19 This is post-judgment proceedings. This is D-389203. I
20 appreciate you being on time. The -- the witness is reminded
21 he's still under oath. Mr. Grigsby, your witness.

22 MR. GRIGSBY: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. GRIGSBY:

1 Q Mr. Stipp, you're a licensed attorney in Nevada; is
2 that correct?

3 A Yes.

4 Q And how long have you been a licensed attorney in
5 this state?

6 A I was licensed in 2000.

7 Q Okay. So you understand the obligation to follow
8 court orders; is that correct?

9 A I do.

10 Q Okay. And I believe you practiced -- occasionally
11 practiced family law; is that correct?

12 A That's correct.

13 Q Okay. So you understand how to file motions in
14 family court.

15 A I understand how the process works.

16 Q Yes. And you have knowledge of how to get a matter
17 before a court in an expedited matter.

18 A I'm sorry, I didn't hear you.

19 Q Do you know how to get a matter before a court in a
20 family law case in an expedited matter -- manner?

21 A I know how to file an ex parte application for order
22 shortening time.

23 Q Okay. And did you understand that you had to get
24 Ms. Calderon's consent or obtain an order to -- order of the

1 Court to modify custody?

2 A Can you rephrase?

3 Q Sure. Did you --

4 A Or just repeat.

5 Q Were you aware of the fact that you either had to
6 obtain Ms. Calderon's consent or get an order of this Court to
7 modify child custody?

8 A I think that's generally right.

9 Q Okay. And at any time in August of 2019 did Ms.
10 Calderon agree to modify the custody schedule?

11 A I don't remember her specifically agreeing to modify
12 the custodial schedule, however, we did exchange emails on the
13 week before I filed the motion wherein she changed the
14 agreement to pick the kids up at 3:00. And then we later
15 agreed to return our -- our post-stipulation email agreement
16 for 6:00.

17 Q So when you said that she changed the agreement, are
18 you referring to her saying that she wanted to follow the last
19 custodial order?

20 A No, what I'm referring to is that after our
21 stipulation and order was entered in 2014, and as the kids got
22 older and the practical considerations of the kids going back
23 and forth with book bags and things of that nature -- our
24 custodial order requires us to exchange time share, exchange

1 the kids after school or at 3:00 p.m. And we agreed via email
2 to make that exchange at 6:00.

3 Q And that -- in August of 2019, at one point did she
4 not tell you -- did she not indicate that she wanted to go
5 back to the last -- to the language of the last custodial
6 order?

7 A She did indicate that via email, that she was going
8 to pick the kids up at 3:00 and wasn't going to honor the
9 post-stipulation agreement to modify.

10 Q Now that post-stipulation agreement would have --
11 had that been reduced to a court order?

12 A It has not been reduced to a court order, nor is it
13 required.

14 Q So that agreement is only in effect as long of the
15 two of you agree on it; is that correct?

16 A I disagree.

17 Q Okay. And would it be -- would you agree with the
18 proposition that when the parties do not agree, the order is
19 the default position?

20 A The parties do not agree, the default position?

21 Q Is whatever is contained in the last -- most recent
22 custodial order.

23 A I'm not sure I understand the full parameter of your
24 question, but I think what you're getting at, if I'm -- if I'm

1 -- it's taken correctly, is that we entered into an agreement
2 via email, you're suggesting that if one party decides that
3 they don't want to honor that agreement anymore then the
4 default is the stipulation; is that what you're asking?

5 Q What I'm asking is, is -- you understand that
6 whenever parties do not agree on matters that are spelled out
7 in the most recent custodial order, that the default position
8 is whatever is in that order.

9 A I don't agree with that.

10 Q Okay. So then how does it wor -- in your mind, how
11 does it work -- how are parties able to make changes to
12 custodial orders?

13 A It depends on what the custodial order provides. I
14 mean, it sounds like we're talking theoretical. So it -- you
15 may have a custodial order and it doesn't cover all of the
16 issues. And so if there's an order that doesn't cover all of
17 the issues, which many orders don't, then the -- the goal
18 would be to try to reach an -- an agreement with respect to
19 the other party, depending on the nature of the custodial
20 relationship. But overarching, the -- the idea here is that
21 you should always do what's in the best interest --

22 Q Yes.

23 A -- of the kids.

24 Q But if this -- if there's a -- in your opinion -- in

1 your opinion, if there's a provision spelled out in a custody
2 order, do the parties have to be in agreement to change that
3 provision absent an order of the court?

4 A Generally, I -- I think the answer to that is yes.

5 Q Okay. And you said generally. So is there -- is
6 there a situation in your mind where the parties can modify
7 that order without being in agreement?

8 A Yes.

9 Q Without getting an order of the court. And what are
10 those -- under what situations or circumstances can the
11 parties modify the order without being in agreement or
12 obtaining an order of the court?

13 A Emergency or exigent circumstances that may endanger
14 the health, welfare of the children.

15 Q Okay. So absent those emergency or exigent
16 circumstances, then generally you have to obtain consent or
17 get an order of the court to modify an existing custody order.

18 A My -- my view of things --

19 Q Ye --

20 A -- is you have -- you have --

21 Q Is that correct? Yes or no?

22 A I'm sorry. Can you repeat the question?

23 Q Yes. Yes. Absent an agreement between the parties,
24 it's necessary -- well, outside of exigent circumstances, the

1 parties either must come to an agreement or you must obtain an
2 order of the court to change provisions in a custodial order.

3 A So exigent circumstances, emergency circumstances,
4 things that are out of -- out of the ordinary, I think
5 generally that's right.

6 Q Okay. Now -- now isn't it true in August 2019 you
7 told Christina that you were going to keep the kids in your
8 care until you -- until the two of you could negotiate
9 alternative arrangements or the Court makes a -- an order?

10 A I didn't tell her that. I sent an email to her.
11 There was a number of emails that were exchanged over a two
12 week period of time. So there are facts and circumstance that
13 qualify that statement.

14 Q Okay.

15 A The -- the idea was is that Christina and I could
16 work on a alteration to the stipulation and order without
17 court involvement. Maybe I should have chosen my words more
18 carefully.

19 Q Now, isn't it true that in August 2019 Christina
20 indicated that she was not -- Ms. Calderon indicated that she
21 was not willing to modify the custodial order?

22 A I think the answer to that is no because she
23 modified the custodial order that we amended via the email.

24 Q Okay. Okay. So -- so you're saying that -- okay.

1 Was there a time in August 2019 where you became aware that
2 Ms. Calderon was not going to be willing to modify any
3 provisions of the custodial agreement?

4 A As it relates to a 50/50 time share arrangement, the
5 answer to that question is yes.

6 Q When did you first become aware that she was not
7 going to be modifying those provisions?

8 A I don't recall specifically, but what I would say
9 is, what comes to mind today, would have been the email
10 exchange before the planned exchange on the Friday before I
11 filed the motion, anywhere between 12 noon and 6:00 where she
12 advised that if there's going to be any changes, I needed to
13 file a motion.

14 Q Now what day was the -- Christina's custodial time
15 supposed to resume in August 2019?

16 A I'm not sure I understand your question.

17 Q Sorry. Yes. There was an incident on August 13,
18 2019 that precipitated you withholding the children; is that
19 correct?

20 A That's not correct.

21 Q Okay.

22 A I mean, I disagree with your terminology.

23 Q Okay. Then let's -- let's start at the beginning.

24 Okay. On -- did you become aware of an incident on August

1 2013 (sic) between Mia and Christina?

2 A An incident? Sure.

3 Q Okay. Now -- and during the -- sorry. And have you
4 had an opportunity to review Mia's testimony from the January
5 23rd, 2020 hearing?

6 A I have.

7 Q Okay. Now were you able to review the portion of
8 her testimony where she discusses the August 13, 2019 event?

9 A To the best of my recollection, that was included in
10 her testimony and I reviewed the entirety.

11 Q Okay. Now was her reco -- as her testimony in court
12 substantially similar to how she related -- regarding those
13 incidences on August 13, 2019 substantially similar to how she
14 related the events to you in August of 2019.

15 A I'm having difficulty following your question, but I
16 think what you're asking is --

17 Q Well, I'll restate the question then.

18 A Okay.

19 Q Is the testimony you reviewed from January 23rd,
20 2020 in which Mia talks about the incident on August 2019, was
21 her testimony in January of 2020 substantially similar to what
22 she told you happened in August 2019?

23 A If we're talking about the physical fight between
24 Christina and Mia on August the 13th, I think the answer to

1 that question is, yes, the events are substantially similar.

2 Q Okay. Now -- okay, now on -- the events that
3 happened on August 13th, 2019, did you find anything
4 inappropriate about Ms. Calderon requesting that Mia get off
5 the phone?

6 A Based on what I understood the facts as -- as
7 Christina represents them, no.

8 Q Okay. Now based on reviewing Mia's testimony on
9 January 23rd, did you find anything inappropriate about Ms.
10 Calderon asking Mia to get off the phone based on Mia's
11 testimony from January?

12 A I don't have a problem with Christina asking Mia to
13 get off the telephone.

14 Q Okay.

15 A Including during the events in question on August
16 the 13th.

17 Q Okay. And I believe that in your direct examination
18 you testified about a Starbucks conversation with the kids
19 where you told them that you want them to follow Christina's
20 directions in their home; is that correct?

21 A That's not correct.

22 Q Okay. Did you have a conversation with the kids
23 sometime around this Starbucks incident that you -- in June of
24 2019?

1 A What's the Starbuck incident? Are you referring to
2 the communication --

3 Q I mean, you said you had a --

4 A -- that Christina and I had at the Starbucks after
5 the fight on Aug --

6 Q Yeah.

7 A Okay.

8 Q I believe you testified in direct examination that
9 around that time you also talked to the kids and told them
10 about following Christina's instructions and de-escalating
11 situations. Do you recall --

12 A If I re --

13 Q -- that testimony?

14 A If I recall my testimony accurately, we had a family
15 meeting, which included Christina, Amy, myself and the kids.
16 And I did tell the kids that Christina has authority to take
17 away their telephones.

18 Q Okay. Did you test --

19 A Is that what you're asking?

20 Q Did you testify earlier that you told them to follow
21 Christina's directions?

22 A I don't -- I -- I don't know if I testified using
23 those exact words.

24 Q Okay.

1 A But what --

2 Q Okay. Did you testify earlier this morning
3 regarding instructing the kids on de-escalation while at
4 Christina's home?

5 A Absolutely. And as a general --

6 Q Okay.

7 A -- matter, just to be clear --

8 Q Okay. Now --

9 A -- she should fol -- the kids --

10 Q Okay.

11 A -- should follow Christina's directions.

12 Q Okay. Now in your opinion -- in your opinion, did
13 Mia comply or follow Christina's directions on August 13th,
14 2019 when she refused to get off the phone?

15 A I don't know how much time elapsed between her --
16 Christina's request and Mia ending the phone call, but the --
17 the short answer is, she complied because she ended the call.

18 Q Okay.

19 A The issue is, is whether she did it in the time that
20 Christina wanted her to do it.

21 Q Now I believe -- do you recall Mia's testimony from
22 January 23rd, 2020 that Christina made multiple requests for
23 her to get off the phone?

24 A I -- I believe she -- she made that represent --

1 representation.

2 Q Yes. Now generally, do you expect your children to
3 do what you tell them do when you tell them to do it?

4 A Generally, yes.

5 Q And if you requested Mia to get off the phone, how
6 many requests do you think -- would you normally have to make
7 before she would get off the phone?

8 A Normally I don't have to make that request, but if I
9 did make the request, I would not expect to make a second or a
10 third request.

11 Q Okay. And -- and if you had to make multiple
12 requests that Mia get off the phone, would there be some kind
13 of sanction or punishment coming from you?

14 A Depends on who she's talking to.

15 Q Okay. So it more depends on who she's talking to as
16 opposed to her not following your instructions before you'd
17 institute some kind of --

18 A Well --

19 Q -- punishment; is that correct?

20 A -- if she was talking to her mom on the phone and I
21 asked her to get off the phone, I -- I think that Christina
22 would disagree if I required her to disconnect the call in the
23 middle of the conversation.

24 Q Now if you had to make multiple requests for Mia to

1 get off the phone, would there be a punishment or a sanction
2 coming from you from having to make multiple requests?

3 A Depends on the circumstances.

4 Q Okay. What circumstances would cause you to
5 institute a punishment or sanction for Mia not -- not
6 complying with your request to get off the phone?

7 A I mean, it's never -- it's never really happened,
8 but I mean, I guess I can create a scenario for you, if that's
9 what you're asking.

10 Q I'm asking you, as you -- as your part -- your
11 parenting style, what -- you know --

12 A As a general -- as a general rule on those issues,
13 it's not often that I have to ask Mia to get off the
14 telephone. In fact, I don't necessarily have a problem with
15 Mia talking on the telephone, using her discretion.

16 Q Okay. So if Mia -- what the question -- if you have
17 to make multiple requests for Mia to do anything and she's not
18 following your instructions, do you normally issue some kind
19 of punishment or sanction or --

20 A It -- it depends on the circumstances.

21 Q Okay.

22 A But that doesn't happen very often. I mean, Mia
23 generally --

24 Q Okay.

1 A -- follows my instructions. She knows what our
2 house rules are. It's not complicated where we live.

3 Q Okay.

4 A You know --

5 Q Is -- is that --

6 A -- she's a --

7 Q -- is that --

8 A -- good student. Go ahead.

9 Q Is that a situation you find complicated, a parent
10 asking a child to get off the phone and the child refusing to
11 do that? Is that a complicated situation to you?

12 A It's a complicated situation if the request is made
13 and the dy -- the dynamics are such that the -- the child is
14 expected to end the telephone call immediately. And I can
15 imagine that under those circumstances a child might want to
16 finish his or her thought and wrap it up. Like --

17 Q Okay.

18 A And I don't think that's unreasonable to give
19 someone, you know, basic respect to end a telephone call
20 within a reasonable period of time and hang up.

21 Q Okay. And if there were multiple requests being
22 made, at that point, do you think that the -- if you have to
23 make multiple requests to get your child to comply with a
24 simple instruction, do you think a punishment or a sanction

1 should issue?

2 A If I'm issuing multiple -- if I make multiple
3 requests to my children to do something and they don't do
4 something, then there might be consequences. But I --

5 Q Okay.

6 A -- I --

7 Q Now --

8 A -- only make those types of requests if -- if it's
9 rational.

10 Q Okay. And so do you find it not to be rational to
11 ask your child to get off the phone late at night?

12 A Just depends on the circumstances. Depends on the
13 child, it depends on the --

14 Q Is -- is it -- would it be an irrational request to
15 -- for a parent to ask a child to get off the phone pretty
16 much at any time?

17 A Irrational? I mean, it's -- for me, I like -- I
18 like to examine each set of facts and circumstances
19 individually and -- and also with respect to the child. I
20 don't impose rules or make requests that don't have a rational
21 basis. And so why would I want -- can you give me an example
22 as to why I would want the child off the phone?

23 Q How about this. Is it normal for parents to request
24 or tell the kids to get off the phone? Do you find that to be

1 unusual?

2 A I don't think it's unusual for parents to tell their
3 children to get off --

4 Q Okay.

5 A -- the phone.

6 Q Now is it -- would it be unusual for a parent to
7 tell a child to -- you're on the phone too late, get off,
8 because -- on a school night?

9 A That's not unusual for -- for most --

10 Q Okay.

11 A -- parents with regard to their kids. It's not
12 unusual.

13 Q Now -- now I believe you -- do you recall Mia's
14 testimony that after she got off the phone she went down the
15 hall to confront her mother?

16 A I don't remember the specific order of events and
17 whether or not she communicated her intention was to confront
18 her mom, but I -- I do know that, if I recall correctly, she
19 left her room after being told to get off the phone.

20 Q Okay. Do you recall her testifying that she was
21 upset and she went to go find her mother in the, I believe the
22 laundry -- upstairs laundry room?

23 A Well, they live in a single story, so there wouldn't
24 be --

1 Q Okay.

2 A -- it's not upstairs. But what I recall is that --
3 and I could be mistaken, but I don't think that I am -- was
4 that -- is that Mia didn't respond to Christina's request to
5 get off the phone bec -- and -- and that was anger. I think
6 what she was angry about was Christina's threat to call or
7 contact Joey's parents in order to get her off the phone.

8 Q Okay.

9 A That's what I recall.

10 Q And so do -- is that something you find unusual, for
11 the parents of teenagers who are dating to be in contact and
12 try to coordinate issues regarding the dating teenagers?

13 A I don't think it's unusual for parents of kids to
14 communicate with other parents of kids. But if you don't have
15 any relationship with the -- those parents, I find it
16 personally unusual for a parent to reach out at 11:00 at night
17 seeking the assistance of that party to address a -- a
18 parenting matter in your home. To me, that's unusual.

19 Q So it would be unusual to call someone and say --
20 another parent and say, hey, I don't want your kid on the
21 phone calling my house at 11:00 at night?

22 A But I don't -- I don't think that's the issue
23 though, right?

24 Q Would it be -- well, that's not the question. Would

1 it be unusual or inappropriate to call another parent and say,
2 hey, I don't want your child on the phone with my child this
3 late at night?

4 A It would be inappropriate to do that if your child
5 didn't call at 11:00 at night. So if you call the parent and
6 say I don't want your child calling at 11:00 at night and the
7 child didn't call at 11:00 at night, that would be unusual.

8 Q Okay. Or to say I don't want your child on the
9 phone with my child this late at time, have your child get off
10 the phone.

11 A Let me see if I -- I can -- I can answer your
12 question. It's not unusual for parents to coordinate with
13 other parents as to their children's interaction. It is
14 unusual to me for a parent to reach out to another parent that
15 they don't really know.

16 Q Excuse me -- oh, sorry. And are you privy to Ms.
17 Calderon's relationship with Joey's parents?

18 A I am.

19 Q And how do you know about her relationship with
20 Joey's parents?

21 A Christina's communicated it to me.

22 Q Okay. And do you know whether she had ever talked
23 to Joey's parents prior to August 2019?

24 A I don't know the answer to that. I don't -- it's

1 possible she did.

2 Q Okay. So on what level are you privy to the
3 relationship between Ms. Calderon and Joey's parents?

4 A To the extent that Christina has communicated that
5 she doesn't know their family very well.

6 Q Okay.

7 A And I think she put that in an email if -- if my
8 recollection is right, that she didn't know the family very
9 well and she was concerned about, you know, potential dating
10 issues.

11 Q Now was that -- would that email be part of your
12 packet, Exhibit X?

13 A I think it's part of yours.

14 Q Actually, look -- actually, that was a part of your
15 packet exhibit.

16 A I'd have to look at every page to tell you that. I
17 can, if you'd like, but I -- I don't --

18 Q You don't --

19 A -- recall.

20 Q Okay. Now do you recall from reviewing Mia's
21 testimony from January 2020 who initiated the physical
22 contact?

23 A I'm -- which time?

24 Q In, I'm sorry, August 2019.

1 A Okay. So --

2 Q I'll ask the question, do you recall, after
3 reviewing Mia's testimony, do you recall her statements on who
4 initiated the contact, physical contact between her and her
5 mother on August 13th, 2019?

6 A If -- if my recollection is right, I think she
7 indicated during her testimony that -- that she may have had
8 physical contact with Christina first.

9 Q Okay.

10 A Only to prevent --

11 Q Okay. Now --

12 A -- being struck by --

13 Q -- do you believe --

14 A -- by Christina because she raised her hand.

15 Q So --

16 A Does that sound familiar?

17 Q So you said that -- so your recollection, that Mia
18 admitted that she was the one that initiated physical contact;
19 yes or no?

20 A I think she said I -- I pushed --

21 Q Yes or no --

22 A -- her away.

23 Q -- sir. Is it your recollection that Mia admitted
24 that she was the one who initiated physical contact with her

1 mother on August 13th, 2019.

2 A She did admit that.

3 Q Okay. Now after reviewing Mia's testimony from
4 August -- about the August 13, 2019 incident, did she put into
5 practice what you talked to her about de-escalation?

6 A I'm not sure I understand your question.

7 Q Okay. At some point in 2019, you talked to Mia
8 about ways to de-escalate situations.

9 A I've been talking to Mia and Ethan about
10 de-escalation for --

11 Q Yes --

12 A -- several years.

13 Q Yes or no. In 2019, you had a conversation with Mia
14 regarding de-escalation.

15 A I'm sure I did.

16 Q And you testified to that earlier today; is that
17 correct?

18 A That I've had that conversation with Mia in --

19 Q In 2000 --

20 A -- 2019? I don't remember if I specified a date in
21 my testimony, but I'll tell you, just for the record, I've
22 generally communicated that to the kids in the last several
23 years.

24 Q I believe we talked about that just a few minutes

1 ago, about the family meeting, at some time in a family
2 meeting you -- and that occurred, I believe, in June of 2019.
3 May or June of 2019 at Starbucks, you had conversation with
4 the children regarding de-escalation.

5 A Okay. We -- the children weren't present at the
6 meeting at Starbucks, so I didn't have --

7 Q So --

8 A -- a conversation with them at the --

9 Q Okay.

10 A -- Starbucks meeting with the children. We had a
11 separate family meeting. And I don't recall during that
12 meeting having a conversation about de-escalation in front of
13 Christina. I think the --

14 Q I didn't ask you whether you had one in front of
15 Christina, I asked did you have one with the children
16 regarding de-escalation; yes or no.

17 A When and where? And I'm not trying to be --

18 Q In 2 --

19 A -- difficult, I'm try --

20 Q In 2019. Anytime in 2019, have you had a
21 conversation with the children regarding de-escalation?

22 A Yes. I'm sure I have.

23 Q So -- and after reviewing Mia's testimony from the
24 August 2000 -- August 2019 incident, was that an example of

1 de-escalation in your opinion?

2 A No.

3 Q Okay. Did Mia behave, on August 13th, 2019, in a
4 way that you find to be appropriate?

5 A It's difficult to answer. It think there are
6 aspects of what she did --

7 Q Yes or no.

8 A -- that were --

9 Q Yes or no. Was her -- her behavior, as she
10 testified to in January of 2 -- in January of this year, was
11 the behavior she testified to, behavior that you personally
12 deemed to be appropriate?

13 A I -- I don't condone physical violence at all.

14 Q Okay. And even outside of the physical vi --
15 aspects of it, was the rest of her behavior, behavior -- in
16 August of 2019 -- behavior that you would find appropriate for
17 Mia?

18 A I don't agree with Mia pouring soap down the sink,
19 if that's what you're referring to.

20 Q No, I'm -- I'm talk -- we haven't got to that yet.
21 I'm talking about --

22 A Okay.

23 Q -- the events of August 13th, 2019.

24 A Okay.

1 Q Her testimony about how she behaved on that day. Do
2 you find, even outside the physical aspects of it, do you find
3 the rest of her behavior on that day appropriate?

4 A It's a tough one. I mean, if you have a parent
5 who's provoking you, even though I've advised de-escalation,
6 I'm not in the moment. So if you have a parent that's
7 laughing at you and threatening you, that person may respond
8 in a way that -- that -- that isn't consistent with --

9 Q So --

10 A -- de-escalation.

11 Q And in Mia's testimony about -- regarding August
12 13th, 2019 incident, did she testify that she was laughed at
13 during that -- that Ms. Calderon laughed at her at any time
14 during the incident?

15 A I'm not sure anybody asked her that question, but
16 it's what --

17 Q Yes or no. Did she testify at anytime during the
18 incident Ms. Calderon laughed at her?

19 A I don't know. I'd have to look at the -- the
20 transcript.

21 Q Do -- do you recall whether she testified during
22 that August 13th, 2019 incident that Ms. Calderon in any way
23 taunted her?

24 A I don't recall if she testified to that at all.

1 Q Okay. But you said her testimony was -- and her
2 testimony on August 20th -- I mean on January 23rd of this
3 year was substantially similar to what she told you in August
4 of 2019, correct?

5 A I think that's right, yeah.

6 Q Okay.

7 A I mean, if we --

8 Q Now --

9 A -- if we carve out things like laughing and things
10 like that, I don't -- if it's material or not material --

11 Q Sir -- sir, wait till the questions are posed.

12 A Sure.

13 Q So given the girl's testimony, her testimony then
14 and what she told you are substantially similar.

15 A In my opinion.

16 Q Yes. So do -- do you find Ms. Calderon's actions in
17 telling Mia to get off the phone multiple times as provoking?

18 A Depends how she did it.

19 Q So what -- in what way would it make it provoking
20 for a parent to tell their child to get off the phone multiple
21 times?

22 A So, let me see if I can explain. I'm going to
23 answer that question. So if you ask a child to get off the
24 phone, the general rule is they should get off the phone. I

1 think that you should give the child an opportunity to finish
2 the call unless there's some type of an emergency. If the
3 child doesn't get off the phone, then I think it's perfectly
4 appropriate for the parent to tell the child that you need to
5 get off the phone. And if the child still doesn't after a
6 period of time, you know, maybe there's some consequence,
7 right.

8 Q So how many times did you have to tell a child to
9 get off the phone before they actually get off the phone,
10 before you institute consequences?

11 A That doesn't happen in my house.

12 Q I'm you theoretically. How many times do you
13 believe that a parent should have to tell a child to get off
14 the phone.

15 MR. SMITH: I don't think this is an appropriate
16 question. It calls for his opinion about something that
17 he's --

18 THE COURT: Look --

19 MR. SMITH: -- already testified --

20 THE COURT: -- they're going to be arguing that his
21 decision making wasn't reasonable. Okay. So his perspective
22 is -- is part of the picture, okay. And so he can answer the
23 question one way or another. It's really -- it's -- it really
24 doesn't go to whether or not the Court is going to find that

1 Mom's actions are -- were reasonable or not reasonable.
2 Because it doesn't -- I mean, it's his perception. Okay. I'm
3 going to allow him to answer the question.

4 Do you remember the question?

5 THE WITNESS: If you could just read --

6 THE COURT: Just then he asked you how many times
7 you think would be a reasonable amount to tell a child to get
8 off the phone, right?

9 MR. GRIGSBY: Yeah.

10 THE WITNESS: Three to five times.

11 MR. GRIGSBY: Okay.

12 THE WITNESS: Depending on the circumstances.

13 BY MR. GRIGSBY:

14 Q Okay. Now if that incident happened in your home,
15 the way Mia related it in court, would she have been punished?

16 A It never would have happened in my house.

17 Q I'm asking the question, if that incident happened
18 the way she testified to it in court, would she have been
19 punished; yes or no?

20 A It wouldn't have happened. I -- the premise or
21 assumption upon which the question is based --

22 Q Yes -- do you -- if it happened that way in your
23 home, would she have been punished; yes or no?

24 A I mean, if -- if I called --

1 MR. SMITH: Objection as to vague and ambiguous as
2 to that way.

3 THE COURT: Yeah, it's -- it's also irrelevant. I
4 mean really the question is, if it happened in this house,
5 would they punch each other and scratch each other and scream
6 at each other and --

7 MR. GRIGSBY: I just want to know --

8 THE COURT: -- have the same -- okay. So, look, it
9 doesn't matter. It's irrelevant, okay.

10 MR. GRIGSBY: Okay.

11 THE COURT: The objection is sustained.

12 MR. GRIGSBY: Okay.

13 BY MR. GRIGSBY:

14 Q So subsequent to -- the next day you -- you spoke to
15 Mia about what happened on August 13th, 2019; is that correct?

16 A Did I speak to Mia af -- after the event, so --

17 Q Yeah, the next day.

18 A Yeah, I did.

19 Q And did you feel that she was in danger of physical
20 harm when you spoke to her on August 14th, 2019?

21 A No, she represented that she was fine remaining in
22 Christina's care and continuing going to school.

23 Q Okay. Now did -- I believe a few days later she
24 returned -- she went to your house a couple days later; is

1 that correct?

2 A I don't know if it was a couple of days, but
3 whenever the exchange --

4 Q So you --

5 A -- was scheduled to occur she --

6 Q After that event, you followed the normal custodial
7 schedule, the time share; is that correct?

8 A That's correct.

9 Q Okay. Now -- so when -- when she was at your house,
10 did anything happen to cause you to believe that Mia or Ethan
11 would be in danger, be in danger of their physical state,
12 would be in peril if they returned to Ms. Calderon's home?

13 A Yes.

14 Q What happened after August 2014 to make you believe
15 that these children would be in some kind of danger if they
16 returned to Ms. Calderon's home?

17 A Mia reported that there were two physical
18 altercations, one in May and one in August.

19 Q But didn't you know about -- you knew about both --
20 both of those alleged incidents; is that correct?

21 A I did, but you're asking what hap --

22 Q You knew about those -- you knew about --

23 A That's correct.

24 Q -- on August 14, 2019.

1 A I did.

2 Q So those wouldn't be new things that would have
3 caused you to believe that the children would be in danger or
4 in peril; is that correct?

5 A Those instances are examples of matters which would
6 cause me to believe that the -- the children could be or are
7 in harm.

8 Q But you said -- I believe you just answered my
9 question -- was after August 14th, 2019, did you learn of
10 anything that made you believe the children -- their safety
11 would be in peril or they'd be in danger returning to Ms.
12 Calderon's home and you said yes. Do you recall that?

13 A I do. And it -- and -- and --

14 Q So what new things --

15 A -- her communicat --

16 Q What new thing did you learn subsequent to
17 August 14th, 2019 that caused you to believe these children
18 would be in danger if they returned to her home?

19 A Communication by Mia that they were in two physical
20 fights and my -- my conclusion on the basis of that
21 communication that there could be others --

22 Q So --

23 A -- in the future.

24 Q -- those -- those were the -- but those were the --

1 that's not -- that's not a new thing you learned. Those are
2 the two physical fights you al -- alleged fights that you
3 already knew about, correct?

4 A Well, it's new that -- that Mia would -- after the
5 first instance --

6 Q But --

7 A I was --

8 Q But Au --

9 A -- assured by both Christina and Mia that there
10 wouldn't be anymore physical --

11 Q But --

12 A -- confrontation.

13 Q But August 14th, 2019, you knew about both of those
14 instances; is that correct? Yes or no.

15 A I learned about them from Mia and -- and Christina,
16 so there was a period of time where I had to figure out the
17 specific facts and circumstances.

18 Q By that date, by August -- okay, so by August 15th,
19 2019, you knew about both those incidents; is that correct?

20 A As a general matter, yeah.

21 Q Okay. And at that time, on August 15th, the
22 children were still in Ms. Calderon's care; is that correct?

23 A I -- I don't -- I don't have a calendar in front of
24 me, but if you tell me that that's correct, I -- I don't have

1 any reason to doubt that.

2 Q And at that time you didn't have any fears for their
3 physical safety in Ms. Calderon's care; is that correct?

4 A Both kids reported to me that they were okay.

5 Q Okay. So what -- did you learn anything after
6 August 15th, any new information after August 15th, 2019, that
7 caused you to believe that the children would be in physical
8 danger if they returned to Ms. Calderon's care?

9 A Yes.

10 Q What new thing did you learn?

11 A I -- I learned that after two fights there may be
12 others.

13 Q So -- and how did you learn that there may be
14 others?

15 A Well, two happened, and the first one shouldn't have
16 happened. The second one happened after the first one
17 shouldn't have happened. And on the basis of those
18 disagreements, there could be others --

19 Q Okay. So --

20 A -- going forward.

21 Q So you -- so it was your believe that the children
22 were in danger if they returned to Ms. Calderon's care?

23 A They -- they --

24 Q Some --

1 A -- they --

2 Q Sometime -- sometime after August 15th, 2019,

3 correct?

4 A They could be.

5 Q Okay. And did you make a report to CPS that these

6 children would be in danger?

7 A I did not make a report to CPS.

8 Q You are a mandated reporter, are you not, as -- as

9 an attorney and an officer of the court?

10 A As Christina is as well.

11 Q Yeah, I'm not asking about Ms. Calderon, I'm asking

12 about you. Are you a mandated reporter?

13 A I am.

14 Q Okay. And if you personally felt these children

15 were in danger, didn't you have a legal obligation to report

16 this?

17 A I mean, I guess that's possible --

18 Q Okay.

19 A -- that there was an obligation but I -- I don't

20 know what the consequence of deciding not to.

21 Q Well, okay.

22 A I mean, I think that's a --

23 Q Didn't ask about --

24 A -- parents decision.

1 Q Didn't ask you about the consequences, just asked
2 you about your legal obligation. (Indiscernible).

3 A I wasn't thinking about what my legal obligations
4 were at the time. I was thinking about what I would do as a
5 parent.

6 Q Now as a parent and as an attorney, you also knew at
7 that time that if you want to -- you know, if there was ex --
8 if you wanted to change custody, you'd have to get Ms.
9 Calderon's consent or obtain an order of the Court; is that
10 correct?

11 A Well, generally, that's right.

12 Q Yeah. Now did you believe those exigent
13 circumstances existed subsequent to August 15th of 2019 that
14 would allow you to disobey a court order?

15 A In addition to the concern of future fighting --

16 Q Yes or no. Did you believe?

17 A -- the kids expressed an -- let me finish my --

18 Q Yes or no. Did you believe those exigent
19 circumstances existed subsequent to August 15, 2019 that would
20 allow you -- authorize you to disobey a court order?

21 A I disagree with the word disobey, but yes, I do
22 believe those existed. Those --

23 Q Okay.

24 A -- exigent emergency --

1 Q Okay.

2 A -- type circumstances. I do --

3 Q And when --

4 A -- believe they existed.

5 Q And when did you come to the opinion or belief that

6 those exigent circumstance existed? What date did you come to

7 those -- that opinion?

8 A I -- I can't pin it on a date, but I would say right

9 after learning of the details of the second fight.

10 Q Which would be sometime around on August 16th/17th

11 of 2019, correct?

12 A Somewhere after the 14th.

13 Q Somewhere after the 14th. Good. And did you --

14 upon learning of those and coming to the opinion that your

15 children's safety was in peril, did you file a motion with

16 this Court to modify custody or to prevent the children from

17 going back to their mom?

18 A No, I -- I deferred to the kids who indicated that

19 they weren't --

20 Q Okay.

21 A -- in immediate harm, but that doesn't mean that

22 they weren't in --

23 Q Okay.

24 A -- harm.

1 Q So but you -- so you didn't file a motion. Did
2 anything prevent you from filing a motion with this Court
3 requesting a modification of the custodial order?

4 A Nothing prevented me from filing a motion.

5 Q Okay.

6 A Other than the desire --

7 Q And --

8 A -- not to litigate.

9 Q And at some point in August 2019 you learned that --
10 actually, strike the question. Did you call law enforcement
11 after coming to the conclusion that the children would be in
12 danger if returned to Ms. Calderon's care?

13 A I did not call law enforcement.

14 Q Okay. And I believe you testified that you believed
15 Ms. Calderon was primarily culpable for the events on August
16 13th, 2019; is that correct?

17 A I -- I think as a parent she's primarily culpable
18 for both --

19 Q Okay.

20 A -- instances.

21 Q So -- so with that belief that she's primarily
22 culpable, that didn't cause you to call law enforcement?

23 A It's not my practice as a father to rely on third
24 parties to resolve these issues.

1 Q Okay. Now, so you didn't call law enforcement, you
2 didn't -- and you didn't file a motion. So but you did try to
3 obtain Ms. Calderon's consent to modify the custodial
4 schedule, correct?

5 A I suggested that we meet and try to work something
6 out.

7 Q Oh. Now I'm looking at I guess your Exhibit X, be
8 number 001006. In that you have an email I believe that you
9 sent on August 21st, 2019. I'll direct you to the end of that
10 where you say let me know if you're willing to speak rather
11 than meet. From now on, I intend to keep the kids in my care
12 until we negotiate alternative agran -- arrangements or the
13 Court orders otherwise. Now, do you recall sending that
14 email?

15 A I do recall sending that email in the context of the
16 two weeks --

17 Q Okay.

18 A -- of correspondence that were exchanged.

19 Q Now -- so at least at that point, on August 21st,
20 you had made -- at that point you had made a decision that you
21 were not going to return the kids to Ms. Calderon; is that
22 correct?

23 A That's not correct.

24 Q I believe what you said, that you're going -- you

1 intend to keep the kids in your care unless, you know, until
2 you guys negotiate something else. Does that mean -- does --
3 on the plain language of that, does that not mean that you
4 were not going to return the kids to Ms. Calderon unless she
5 negotiates something different -- alternative arrangements
6 with you?

7 A Christina and I spoke after that and decided that we
8 would make the exchange at 6:00 --

9 Q I'm -- I'm asking --

10 A -- on that Friday.

11 Q -- about the plain language of this.

12 A I understand what the email says.

13 Q Okay. Now --

14 A But that wasn't --

15 Q Now --

16 A -- a final decision.

17 Q Please -- now at -- at some point Ms. Calderon
18 appeared at your home, I believe on August 23rd, to pick up
19 the children; is that correct?

20 A That's correct.

21 Q And you testified the children refused to go with
22 her.

23 A That's correct.

24 Q At any point did you tell the children they had to

1 go with Ms. Calderon that evening?

2 A I did.

3 Q Did you tell them that they cannot stay at your home
4 until your next custodial period?

5 A Didn't use those words, but words to those effect.

6 Q Okay. And -- but somehow they still ended up
7 staying at your home, even though you told them they couldn't
8 stay; is that correct?

9 A That's correct.

10 Q Now do your children generally listen to you when
11 you tell them something?

12 A Generally, yes.

13 Q So how did they end up at -- staying at your home?
14 You told them, hey, you guys can't stay here till my next
15 custodial period.

16 A How -- how did they do that?

17 Q Yeah, how did they end up staying at your home?
18 You told them they can't stay.

19 A Well, I -- my assumption of what -- what occurred in
20 their thought process was that --

21 Q Were you -- were you there at the time?

22 A I was.

23 Q So you know what actually happened, right?

24 A Uh-huh (affirmative).

1 Q You witnessed it first hand.
2 A That's right.
3 Q And you -- you --
4 A With respect to Mia --
5 Q You just said --
6 A -- anyway.
7 Q You just said you told the children you -- they
8 can't stay, you guys can't stay here --
9 A That's right.
10 Q -- at my house until my next custodial period.
11 A I didn't use those words, but I indicate that they
12 needed to go.
13 Q Somehow you indicated that they couldn't stay
14 there --
15 A That's right.
16 Q -- they had to go.
17 A That's right.
18 Q But somehow they ended up still staying with you.
19 A Correct.
20 Q And what I'm asking is how that happened, after you
21 told them you can't stay here, that they ended up still
22 staying there.
23 A They decided to stay and I didn't do anything
24 further than ask them to go.

1 Q Okay.

2 A That's how they ended up --

3 Q That was it.

4 A -- staying.

5 Q In your opinion, was there anything further you

6 could have done to get them to go?

7 A I don't know the answer to that.

8 Q Is there a reason why you didn't make any -- try

9 anything else to get them to go?

10 A Well, I mean, I encouraged them to go. I asked that

11 they, you know, pack their things. We packed their things,

12 they packed their things, they were -- they were ready to go.

13 I don't know what more I could have done in that moment. I

14 mean --

15 Q Could you --

16 A -- all of this was very new for me.

17 Q Could you have told them at that -- hey, you guys

18 aren't staying here, go. Get in Mom's car, I'm walking you

19 guys out, get in the car, you're not staying here.

20 A But I did communicate that to the kids.

21 Q Okay. Now such -- since August 2019, how many

22 overnights has Christina had with Mia?

23 A I don't believe she's had any overnights with Mia.

24 Q Since August two thousand nine -- 13th, 2019 --

1 sorry, since August 2019, since that custody change, how many
2 overnights has she had with Ethan?

3 A I don't believe any.

4 Q Okay. And let's move to that May 2019 incident you
5 talked about. Did you review Mia's testimony regarding that
6 -- that even -- those events?

7 A Yeah.

8 Q Okay. Now was her testimony that she related to you
9 in May 2019 substantially similar to what she testified to in
10 court in January two thou --

11 A I believe so, yeah, in my opinion.

12 Q Okay. Now I believe when you testified earlier --
13 this is -- this whole incident started over Mia's request to
14 change the temperature on a thermostat; is that correct?

15 A I don't think it's -- it's just that but --

16 Q Is that -- is that what started the incident? Is
17 that her testimony?

18 A Yeah. I think there was a disagreement over
19 lowering the temperature.

20 Q Okay. I believe -- do you recall Mia's testimony
21 where she said she got angry because Ms. Calderon refused to
22 give her an explanation for why she was not going to be
23 permitted to change the temperature?

24 A Something to that effect. I think that was her --

1 Q Yes.

2 A -- testimony.

3 Q Now, do you recall Mia's testimony when she said
4 that she believed her mother owed her an explanation?

5 A I don't think she used those words.

6 Q I believe -- do you recall that testimony; yes or
7 no? She said her mom owed her an explanation because she --
8 said she asked nicely.

9 A I don't recall that specific --

10 Q Okay. That's fine. Do you think Chris --
11 Ms. Calderon owed Mia an explanation as to why she was not
12 letting her change the temperature?

13 A Did she owe it? No. Should she have provided it?
14 Yes.

15 Q And why should she provide an explanation to -- why
16 should any parent provide an explanation for why they're not
17 willing to alter the temperature in their home?

18 A Well, Mia has a predisposition to, you know -- you
19 know, hot temperatures. So like she doesn't do well when it's
20 -- it's really hot. She's the type of child that she runs the
21 air conditioner during the -- the winter. And so like if it's
22 hot you could -- like she's not -- she's not comfortable,
23 she's not --

24 Q So --

1 A -- happy. It's --

2 Q -- let me make the question clear. My question is
3 why would any parent owe any child an explanation as to why
4 they're not willing to alter the temperature in their home.

5 A If you understand that your child has an issue with
6 respect to the temperature and it affects them negatively, I
7 don't think it's unreasonable to provide that explanation.

8 Q Okay. Now did you recall Mia's testimony where she
9 testifies her response to not getting an explanation was to
10 start dumping soap down the drain?

11 A I don't know what -- if that was an immediate
12 response.

13 Q Okay. But you recall that that's what she started
14 doing, dumping soap down the drain, her testimony?

15 A I -- I re -- I recall that during the incident she
16 had dumped soap down the drain.

17 Q Okay. Now do you think it was inappropriate for
18 Ms. Calderon to try to stop Mia from dumping soap down the
19 drain?

20 A Did she? I -- I don't know if she did or she
21 didn't. It wouldn't be --

22 Q Do you recall the te -- do you recall the testimony,
23 Mia's testimony, regarding Ms. Calderon's attempts to stop her
24 from dumping the soap down the drain?

1 A I don't recall that testimony.

2 Q Do you recall her testimony regarding Ms. Calderon
3 taking her cell phone?

4 A Not specifically.

5 Q Okay. Now if those event did happen, if Ms.
6 Calderon did try to stop her from dumping soap down the drain,
7 do you find those actions to be inappropriate?

8 A I think in theory, separate and apart from the
9 dynamics, you wouldn't accept your child pouring soap down the
10 drain.

11 Q Okay. Do you think it's appropriate for a parent to
12 take the child's cell phone when they're not behaving up to
13 their standards?

14 A I think that it's inappropriate to punish a child if
15 you know your child has a predisposition to temperature
16 issues, given her anxiety and sensory processing disorders, to
17 not adjust the temperature --

18 Q I'm --

19 A -- so that she's comfortable --

20 Q Sorry, sir --

21 A -- and then --

22 Q -- that wasn't the question.

23 A -- punish her. I don't --

24 Q Question is about --

1 A -- agree with that.

2 Q The question is about punishment and taking the cell
3 phone being an appropriate punishment.

4 A Under those circumstances, I don't think that's
5 appropriate.

6 Q Now has there ever been a time when Ms. Calderon
7 requested you not to send the children's cell phones to her
8 home?

9 A She has.

10 Q Okay. And has this happened more than once when
11 she's requested you not to not to send the kids' cell phones
12 to her home?

13 A I think so.

14 Q Yeah. And did you comply with those requests?

15 A I think she later relented and agreed to allow --

16 Q My question --

17 A -- the kids to come home.

18 Q My question was did you comply with those requests
19 and not send the cell phones?

20 A No, because she agreed to allow the kids to take the
21 phones.

22 Q Okay. Now the kids' cell phone --

23 A She always made an immediate reaction to --

24 Q Kids' -- sorry, sir --

1 A -- not take the --
2 Q -- there's no question posed.
3 A Understood.
4 Q The kids's cell phones are in your name; is that
5 correct?
6 A I believe they're in Amy's name, my wife.
7 Q Your -- okay. Does Christina has access to the
8 kids' cell phones accounts?
9 A The billing accounts?
10 Q Is she -- sorry. Is she authorized to make changes
11 to the kids' accounts?
12 A The billing accounts?
13 Q No, the -- the kids' cell phones accounts where she
14 can start and stop service.
15 A She doesn't have authorization to do that.
16 Q Has she ever requested authorization for you to
17 exert greater control over the kids' cell phones?
18 A Yes.
19 Q And did you grant her that ability?
20 A No.
21 Q Is there a reason why you refused to comply with
22 that request?
23 A I don't have the ability to, or do I feel
24 comfortable, adding her as an authorized user to my wife's

1 cell phone account.

2 Q Now I believe you also testified earlier -- so do
3 you monitor the kids' social media accounts?

4 A Amy does, but I don't personally.

5 Q Okay. Do you have the passwords to the kids' social
6 media accounts?

7 A I can get them, but I don't have them.

8 Q So it would be no, you don't have -- you don't the
9 passwords.

10 A Not -- not with me, no.

11 Q Do you -- do you know them?

12 A I couldn't tell you what they are if you ask me
13 right now, no.

14 Q Okay. When was the last time you logged in to check
15 the kids' social media accounts?

16 A I don't. Amy generally monitors those things.

17 Q Okay. So do you know when the last time Amy logged
18 in to monitor the kids' social media accounts?

19 A Amy's only going to bring a matter to my attention
20 if there's a problem, so --

21 Q So does that mean --

22 A -- I don't know the answer to that.

23 Q So that means, no, you don't know.

24 A She would only bring it up if there was a problem.

1 Q Do you know if she's ever logged in to monitor their
2 social media accounts?

3 A Don't know for a fact, but it's --

4 Q Okay.

5 A -- my understanding that she does.

6 Q Do -- do you personally check the kids' internet
7 logs, their internet usage?

8 A Where?

9 Q Do you. Do you check it?

10 A I don't check their access to the internet on their
11 school iPads or phones or computers. I don't do that.

12 Q Okay. Do you check their text messages on these
13 cell phones?

14 A I have no reason to.

15 Q So that would be a no, you don't check them; is that
16 correct?

17 A Not generally, no.

18 Q Okay.

19 A If I had a concern, I could.

20 Q Now -- please wait till the questions are posed,
21 sir. Now have you monitored -- have you monitored or checked
22 the children's iPads?

23 A No.

24 Q Okay. Now do you recall your -- do you recall your

1 testimony from this morning regarding the videos that Mia were
2 -- was -- the explicit videos that Mia viewed on her iPad.

3 A I do recall that testimony.

4 Q Okay. And I believe you said that you don't believe
5 that Ms. Calderon had handled the incident appropriately; is
6 that correct?

7 A From what I understand.

8 Q Now what about her handling of the incident was not
9 appropriate at the time it occurred?

10 A What I understood is that Christina embarrassed her.

11 Q Okay. And how did -- how specifically did
12 Ms. Calderon embarrass her?

13 A I don't know the facts and circumstance because I
14 wasn't there --

15 Q So --

16 A -- but what Mia represented is that her mom
17 embarrassed her.

18 Q Okay. Now, so is that all you know about the
19 incident, that Mia was embarrassed?

20 A That specific instance, but I'm aware of other
21 instances.

22 Q Now it would -- is -- in your opinion, is it normal
23 for a child to be embarrassed when they're caught viewing
24 those type of images?

1 A Probably.

2 Q Or video.

3 A And don't know if she was caught viewing it or
4 whether or not Christina accessed her iPad and saw history. I
5 don't know the -- the details --

6 Q Okay.

7 A -- so I can't tell you.

8 Q Now are you aware whether -- as to whether Mia
9 engages in any other inappropriate sexual type conduct on her
10 iPad?

11 A I'm not aware of that.

12 Q Okay. Have you ever checked her Facetime logs or
13 Snapchat?

14 A No. In fact --

15 Q Okay.

16 A -- I didn't eve -- I wasn't even aware of the
17 specific issue concerning the -- the iPad. It wasn't
18 communicated to me by Christina until I reviewed the
19 testimony.

20 Q Okay. Now if -- but if you had actually followed up
21 and checked any of these things, you would have known about
22 whatever's going on.

23 A I don't think that that's accurate.

24 Q So if you had checked the iPad, the log -- the

1 viewing logs from the iPad, would you have known possibly the
2 videos that she was viewing?

3 A It's -- I mean, you can clear your -- you can clear
4 your search history, you can -- I just -- I don't know, you're
5 asking me whether or not if I had done that, whether I would
6 have seen that, and I don't think that's true. It's not --
7 it's not possible.

8 Q So do you have any parental control set up on the
9 kids' cell phones?

10 A Not on their cell phones.

11 Q Do you have any parental control set up on their
12 iPads?

13 A I do not.

14 Q Do you have any parental control set up on their
15 computers?

16 A I do not.

17 Q So you actually have no way of monitoring the kids'
18 online usage; is that correct?

19 A That's -- that's not accurate.

20 Q Okay. So how do you personally monitor the kids'
21 online usage?

22 A I don't, but Amy does.

23 Q Okay.

24 A And so if --

1 Q And did --
2 A -- I wanted to, I could, but I don't.
3 Q Okay. Sorry. So you -- you personally have no way
4 of doing it and you have -- you don't monitor their online
5 use; is that correct?
6 A Your -- your statement's inaccurate. You're --
7 you're conflating two issues.
8 Q So --
9 A I have the ability --
10 Q Just so --
11 A -- to; I don't. So you're saying I don't have the
12 ability to. I do have the ability --
13 Q So --
14 A -- if I want to, I just --
15 Q Sure. Let's go to that.
16 A -- I don't.
17 Q So how -- how do you have the -- because you -- if
18 you don't have any parental controls and you don't check the
19 -- the devices, how do you have the ability to monitor their
20 usage?
21 A Well -- well, Amy's following their social media.
22 Q I'm asking about you, not what Amy does.
23 A Okay.
24 Q I'm asking about you. How do you personally have

1 the ability to monitor their usage of their devices and their
2 time online if you don't haven't any parental controls and you
3 don't check the devices?

4 A If I left court today and went home and asked Mia or
5 Ethan to give me their phone and give me their password with
6 respect to social media and immediately went to, you know,
7 either their communication or search history then I would
8 know.

9 Q Okay. And --

10 A I could do that; I don't. I -- I don't have any
11 reason to do that. There -- there isn't --

12 Q So --

13 A -- an issue. These kids are good kids. A/B
14 students.

15 Q So --

16 A There's no reason.

17 Q So it's your opinion, just -- and give -- given the
18 current times that -- parents -- that parents should not
19 always at least monitor their kids' internet usage and social
20 media?

21 A Depends on the kids, but I think that the kids have
22 some level to a right to privacy on those issues. If I became
23 concerned about a specific event or a circumstance, I might
24 revisit my approach.

1 Q Okay.

2 A If a parent had contact with me and said, hey look,
3 he's a nude picture of your son or your daughter, then I might
4 say my plan isn't working. But to date, that hasn't happened.
5 Nobody has communicated to me --

6 Q So --

7 A -- that either children have communicated
8 inappropriately via social media, et cetera. No third
9 parties. Not the school, not parents, not anybody.

10 Q And so you would expect other people to communicate
11 this information to you instead of you --

12 A No.

13 Q -- monitoring it --

14 A I don't --

15 Q -- yourself; is that correct?

16 A -- expect them to, but if they had a concern about
17 my child acting inappropriately and they reach out to me, then
18 I might be aware of it.

19 Q Okay. Now when did you first become aware that
20 Chris -- that Mia was dating Joey?

21 A Sometime in 2019.

22 Q Okay. And how did you become aware of that?

23 A Mia told me.

24 Q Okay. And --

1 MR. GRIGSBY: Court's indulgence for a second.

2 (COUNSEL CONFER BRIEFLY)

3 MR. GRIGSBY: Okay.

4 THE WITNESS: Excuse me, Judge. Judge, would -- do
5 you have any water or --

6 THE COURT: Yeah, I -- I --

7 THE WITNESS: I'm sorry to ask. That's okay.

8 THE COURT: No, I'm sorry, I -- we don't.

9 THE WITNESS: No problem. Fair. Usually they have
10 the cups in the other courtroom.

11 THE COURT: Yeah, I know. It's called a blunt
12 instrument. They tell us not to put those out in the
13 courtrooms anymore.

14 THE WITNESS: Oh. I forgot we're in family court.
15 Sorry. Sorry.

16 THE COURT: All right. Go on.

17 MR. GRIGSBY: Okay. Your Honor, I'm sorry.

18 THE WITNESS: Okay.

19 BY MR. GRIGSBY:

20 Q Let's get back to the -- the May 2019 incident. I
21 believe you said Mia called you and you -- Mia called you and
22 you came over to Christina's house; is that correct?

23 A She -- she called and texted both Amy and I. We
24 were at a restaurant and we immediately went to Christina's

1 house.

2 Q Okay. Now I believe your testimony earlier is that
3 you took Mia with you over Ms. Calderon's objections; is that
4 correct?

5 A Mia got into the car. She indicated she didn't want
6 me to go, but I left over Christina's objection.

7 Q Okay. Did you tell Mia to get out of the car?

8 A I did not.

9 Q So at that time, what authorized you to take Mia
10 over Christina's objection?

11 A Nothing authorized me to do it other than concern
12 that they might have an additional fight. I didn't think that
13 -- I didn't think that removing Mia from the car at the same
14 time I was investigating what happened in terms of the
15 physical altercation was in Mia's best interest.

16 Q Okay. Now do you -- in your opinion, could your
17 actions that day had the effect of underi -- undermining
18 Ms. Calderon's authority when you took Mia out of there
19 despite Ms. -- over Ms. Calderon's objections?

20 A I don't think so.

21 Q Okay. Now I believe the next day you said --

22 A I mean, Mia wasn't present when Christina --

23 Q I believe the next day --

24 A -- communicating to me that --

1 Q Sorry. Wait for the question, sir.

2 A -- she couldn't go.

3 Q The question is, do you believe that -- so, the next
4 day I believe you stated that -- testified that Mia had a trip
5 scheduled for the next day; is that correct?

6 A That's my recollection.

7 Q And I believe -- was that a trip to Disneyland?

8 A It was a choir trip.

9 Q Okay.

10 A I think Disneyland was part of it, because they may
11 have been performing there.

12 Q Okay. And now was Mia allowed to go on that -- that
13 trip?

14 A She was.

15 Q Okay. Now --

16 A She had both Christina's and my consent to go.

17 Q Okay. Now did Mia suffer any kind of punishment or
18 sanctions for her actions on -- in May of 2019?

19 A Yes.

20 Q What kind of sanction did she -- what kind of
21 sanctions did you impose upon Mia for her actions?

22 A I mean, look where we are, right?

23 Q So this the sa -- this is the sanction that you
24 opposed upon Mia for her actions in May of 2019?

1 A I didn't feel comfortable punishing Mia given those
2 facts and circumstances.

3 Q So --

4 A It's -- it's --

5 Q So allow -- allowing Mia to go to Disneyland the
6 next -- the very next day after the behavior she exhibited, do
7 you feel that was rewarding negative behavior?

8 A Christina and I both agreed to allow Mia to go.

9 Q You bo -- was this -- did you agree subsequent to
10 that incident in May or was it before?

11 A She didn't object. She didn't withdraw her consent.
12 She knew that she was leaving and going on the trip. She
13 didn't tell me not to let Mia go.

14 Q Would it have mattered? You took Mia over her
15 objection anyway. So would it have mattered if she told you
16 Mia can't go?

17 MR. SMITH: Objection. Calls for speculation.

18 THE COURT: Sustained.

19 MR. SMITH: Argumentative.

20 THE COURT: Sustained.

21 BY MR. GRIGSBY:

22 Q Okay. Was there a time in 2019 where -- where
23 Ms. Calderon reached out to either -- to you -- to -- to you
24 or -- or your wife and asked for assistance in getting Mia's

1 cell phone or stopping the service?

2 A I'm sure that happened.

3 Q Okay. And did you assist Ms. Calderon in stopping
4 the cell phone service or getting the cell phone?

5 A I don't recall the specifics but if it was a -- a --
6 like a general instruction, whether it was a specific incident
7 that she was requiring our -- our assistance. If you could
8 tell me more specifically --

9 Q Well, how about this.

10 A -- I might be able to help you.

11 Q At any time -- during any time in 2019, did you
12 receive a request from Ms. Calderon reca -- requesting
13 assistance with Mia's cell phone in -- in getting it and
14 stopping the service?

15 A I'm sure I did.

16 Q And at any time in 2019 did you comply with that
17 request and help her either get the cell phone or stop the
18 service?

19 A Christina and I have discussed these issues --

20 Q Yes or no. At any time in 2019 did you comply with
21 the request and help Ms. Calderon either retrieve Mia's cell
22 phone or stop the service?

23 MR. SMITH: Objection. Foundation as to time.

24 THE COURT: He -- anytime in 2019.

1 BY MR. GRIGSBY:

2 Q 2019.

3 A The issue is, is that she may have --

4 Q Yes or not. Did she. Yes or no.

5 A Can you say it again?

6 Q Yes or no, at any time in 2019 did you comply with
7 Ms. Calderon's request to either help her retrieve Mia's cell
8 phone or stop the service on Mia's cell phone?

9 A I mean, I think I would answer that question yes in
10 terms of helping because, you know --

11 Q Okay.

12 A -- while I've agreed to help her on those issues --

13 Q So --

14 A -- she's later indicated it was okay --

15 Q So can you -- can you --

16 A -- for Mia to return with her phone.

17 Q Can you relate to me a specific time that you recall
18 in 2019 where you helped Ms. Calderon either get Mia's cell
19 phone or stop the service?

20 A Yeah, absolutely. So my general recollection of
21 these facts and circumstance go like this. There's a fight at
22 the house. Mia -- Christina in the last year is unable to
23 retrieve the cell phone.

24 Q So I'm asking about a specific incident --

1 A I know --
2 Q -- that you helped.
3 A -- and I'm telling you. So --
4 Q Let's just try -- try this. When was the incident
5 that you recall? When did it occur?
6 A It's happened multiple times.
7 Q Where you helped Ms. Calderon get the cell phone,
8 correct?
9 A I -- I --
10 Q So when was the first one that you remember in 2019?
11 A So -- okay. So you're asking a lot of questions.
12 Q So the current question is --
13 A Yeah.
14 Q -- when was the first incident that you remember in
15 2019 where you helped Ms. Calderon retrieve Mia's cell phone
16 or stop the service?
17 A Each and every time that she's asked me, I've
18 assisted her.
19 Q So tell -- tell me the first one that you recall?
20 A I don't.
21 Q How many --
22 A It's a --
23 Q How many times --
24 A It's a general rule --

1 Q -- did it happen, do you recall, assisting
2 Ms. Calderon in 2019?

3 A Each and every time that's she's asked for
4 assistance, I've assisted her.

5 Q Okay. So how many times do you -- do you recall how
6 many times she asked for assistance?

7 A Probably half a dozen, maybe. Maybe more.

8 Q And so you re -- you complied all -- every time she
9 asked for assistance?

10 A I always assisted her with regard to those issues.

11 Q Okay. And -- but can you remember the specific
12 dates or approximate dates of any one time that you --

13 A It's happened so frequently, given that it's six to
14 maybe a dozen times where she's asked me to -- to intervene.

15 Q Yes or no.

16 A And I've always communicated I'm happy to assist her
17 and address those issues.

18 Q Okay. So -- and at the time did you -- and how did
19 you assist her? Did you take the cell phone or stop the
20 service?

21 A Under what circumstance?

22 Q When she's requested you to take the cell phone or
23 stop the service, have you done those things?

24 A I didn't need to under those circumstances.

1 Q Okay. So out of those six to 12 instances you
2 mentioned that when she requested that assistance, how many of
3 those have you actually given the assistance requested and
4 taken the cell phone or stopped the service?

5 A The -- the assistance that she requests is
6 immediate, you know, termination of service or removal of the
7 cell phone, and I'm not -- the kids are in her care. So as a
8 practical matter, it's difficult for me, either in the middle
9 of the night or in the morning or at night to drive to her
10 house, enter her house, and remove the cell phone.

11 Q Do you have the ability to like log on the internet
12 to the cell phone provider and stop the service to that phone?

13 A I'm sure there's a way that you can do that. I'm
14 sure you can call and terminate the service, or cancel the
15 account, or terminate the phone. I'm sure there's a variety
16 of ways to do that. But I can tell you, each and --

17 Q Have you --

18 A -- every time that she's asked, she's changed her
19 mind and said Mia could keep the phone. Every time.

20 Q Okay. Okay. So now it was your request that Ms. --
21 that Ms. Calderon entered family therapy with Mr. Ponzo; is
22 that correct?

23 A It's not my request.

24 Q Did you request this Court that family therapy be

1 instituted in this --

2 A Oh, I think the issue is time. She -- she wanted
3 Nic to be the family therapist in 2015 and I agreed.

4 Q So, I mean, you're right. Let me rephrase this
5 question. In 2019, did you come to this Court and -- with a
6 request that Ms. Calderon engage in family therapy with Nic
7 Ponzo?

8 A I didn't make the specific request as a matter of an
9 order, to my recollection, but I did suggest in the filings
10 that we work together and cooperate and resolve these issues
11 through family therapy.

12 Q Yes. So you don't recall a time --

13 A I don't asking the Court for --

14 Q In the first --

15 A -- an order.

16 Q -- the first hearing in this matter, where you made
17 a direct request to this Court that Ms. Calderon engage in
18 family therapy with the kids and Mr. Ponzo.

19 A My recollection was, without looking at the
20 pleadings, is that my co-counsel, lead counsel, Mr. Smith,
21 made that oral request at the hearing and that your client
22 stipulated that that was acceptable. That was my
23 recollection.

24 Q Okay.

1 A I don't recall a specific request for relief asking
2 the Court to order that. I -- I don't --

3 Q Okay.

4 A -- recall that detail.

5 Q Okay. So -- but --

6 A But that was --

7 Q -- that's just -- let me try this.

8 A -- my preference.

9 Q So even though you didn't specifically make the --
10 verbally make a request, the request that Mr. -- was the
11 request that Mr. Smith made consistent -- for ther -- for
12 family therapy with Mr. Ponzo consistent with your wishes?

13 A Absolutely.

14 Q Okay. Now how many family therapy sessions has Mia
15 engaged in with Ms. Calderon subsequent to the January 23rd,
16 2020 court date?

17 A I don't know the -- the specific number, but the
18 kids have weekly seen Nic Ponzo subject to some minor
19 exceptions.

20 Q So has the -- since the January 23rd, 2020 court
21 date, have the kids engaged in more -- has Mia engaged in more
22 than three sessions with Mr. Ponzo and Ms. Calderon?

23 A I don't know the answer to that specifically.

24 Q Has she engaged in more than two sessions since the

1 January 23rd, 2020 court date with Mr. Ponzo and Ms. Calderon?

2 A It's possible. The -- the issue is, is with the
3 schedule and the changes that are made to that schedule --
4 look, not keeping track of who's in session, whether it's a
5 joint session or a partial session, whether Mia exited early
6 and Ethan came in. I'm not keeping track of all that.

7 Q I'm -- I'm -- let's start this -- so you -- it's
8 your testimony that you don't know whether Mia is engaged in
9 even two sessions with Mr. Ponzo and Ms. Calderon --

10 A No, I --

11 Q -- subsequent to January 23rd, 2020.

12 A I know that she attended a therapy session that I
13 took her to. I know -- I don't attend the therapy sessions,
14 so I don't know if she's in the session and Christina's
15 outside the session, or whether they're in the session
16 together, or whether the kids are in the session. I'm -- I'm
17 not involved in those specifics at the request of Christina.

18 Q Okay. So how many sessions subsequent to
19 January 20, 2000 -- sorry, January 23rd, 2020, have you
20 personally taken Mia to?

21 A I mean, my recollection is at least a couple.

22 Q Would it --

23 A I know Amy's --

24 Q Would it surprise you --

1 A -- Amy's taken her --

2 Q -- to know that you --

3 A -- to a -- to a few sessions as well.

4 Q Would it surprise you -- would it surprise you to
5 know that Mia's only been taken to -- had one session
6 Ms. Calderon subsequent to January 23rd, 2020?

7 MR. SMITH: Objection. Assumes facts not in
8 evidence.

9 THE COURT: He -- he answered the question. He
10 obviously doesn't know how many, okay. Isn't the real witness
11 your client? She's going to testify how many times she had
12 sessions with her daughter?

13 MR. GRIGSBY: Yes, well, he --

14 THE COURT: He already answered your question five
15 different ways. Doesn't know exactly the dynamics of how
16 often your client saw Mia in a counseling session.

17 MR. GRIGSBY: Okay.

18 THE COURT: Okay.

19 MR. GRIGSBY: I will --

20 BY MR. GRIGSBY:

21 Q And I believe you testified earlier today that the
22 counseling sessions -- there was trouble setting the
23 counseling sessions because the kids' schedules and your
24 schedule often don't line up with Ms. Calderon's schedule; is

1 that correct?

2 A That's -- that's not correct. The -- the issue is,
3 is that Christina dictates the times that she's available
4 after work at 5:30 and then we have to check with Nic's
5 availability, Nic Ponzo's availability, based on his schedule,
6 and then also coordinate with mine and the children's
7 schedules. So there's a lot going on.

8 Q Okay. So isn't it more important for the kids to
9 have the sessions with Ms. Calderon than to attend their
10 extracurricular activities?

11 A If they're productive, I think it is important.

12 Q Okay. So you're qualifying that with if they're
13 productive. Who decides if those sessions are productive?

14 A Nic Ponzo.

15 Q So when -- and has there been any indication that
16 the sessions have not been productive?

17 MR. SMITH: Objection. Foundation --

18 THE COURT: Yeah, and he --

19 MR. SMITH: -- and privilege.

20 THE COURT: Look, it calls for speculation. There's
21 no way for him to answer that question. He doesn't have any
22 knowledge. Now if you're asking him whether or not he
23 observed anything in the children that he sees as to some sort
24 of relationship between how they're doing and the counseling,

1 you can ask him that.

2 MR. GRIGSBY: Actually, what I'm trying to get at
3 is, he said that -- that her -- it would only be important
4 than the extra -- than the extracurricular activities, if the
5 sessions were productive.

6 THE COURT: Well, I -- you know, yeah, I -- that's
7 -- I -- I mean, you can point out that he qualified it, but he
8 basically said we have his schedule, we have Mom's schedule,
9 we have the kids' schedule, and we have Ponzo's schedule that
10 need to be coordinated in order to get a session.

11 MR. GRIGSBY: Okay.

12 THE COURT: Right?

13 MR. GRIGSBY: Yeah. So how about this.

14 THE COURT: Yeah.

15 BY MR. GRIGSBY:

16 Q If they -- if Mom's schedule and Ponzo's schedule
17 line up, do you think it's in the kids' best interest to miss
18 basketball or an extracurricular activity to make it to a
19 session with Mom?

20 A If that's the only time that she can meet and that's
21 the only time that Nic can meet, then I think I should work
22 with the kids to try to accommodate that.

23 Q Now since January of 2020, how many times have the
24 kids have missed extracurricular activities so they could meet

1 with Ms. Calderon and Mr. Ponzo?

2 A We've generally accommodated those, so either they
3 left an activity earlier, or we came directly from an
4 activity, or the kids switched their sessions. So if it was
5 scheduled for Mia and Mia had choir rehearsal but Ethan is
6 available, then we didn't cancel therapy, then Ethan went to
7 the therapy appointment. So, you know, we try to do
8 everything that we can to make it work.

9 Q Okay. Have there ever been any times where you
10 conditioned Ms. Calderon -- attempted to condition
11 Ms. Calderon seeing the children on her giving you a -- some
12 type of legal concession?

13 A Not that I recall.

14 Q For example, did you at one time request that you
15 -- state that you would allow Ms. Calderon to take Mia to get
16 her nails done if she gave some other concession?

17 A No, I did not.

18 Q Okay. Now since the kids have been refusing to go
19 to their mother's house, have they been allowed to continue to
20 engage in their extracurricular activities?

21 A Generally, yes.

22 Q Okay. Would prevent -- would precluding them from
23 engaging in their extracurricular activities -- sorry, have
24 you -- have you precluded them from engaging in any

1 extracurricular activities due to their refusal to see their
2 mother?

3 A If -- if -- I testified this morning that in -- I
4 think after the first Donna's House incident I tested the
5 theory of, you know, taking away the cell phone and not
6 allowing Ethan to play that weekend --

7 Q Okay.

8 A -- but it didn't make a -- a difference.

9 Q So how long did you take away the cell phone for?

10 A Twenty-four hours.

11 Q Okay. Now did you -- sorry. Did Mia go to
12 homecoming this year?

13 A Yes, she did.

14 Q Sorry, sorry. I meant 2019. This school year, I
15 guess.

16 A Yes.

17 Q When was the homecoming?

18 A In October.

19 Q Approximately. Yeah.

20 A October, I think.

21 Q Okay.

22 A That's when they generally are. I don't remember
23 the date.

24 Q Okay. Now did you allow her to actually attend the

1 homecoming?

2 A Yes.

3 Q Did you -- now do you think it may have been
4 effective to take that -- take that away from her as a
5 sanction for not following your directions to go see their
6 mother?

7 A No.

8 Q And why not?

9 A I don't think it's appropriate to punish the kids on
10 these facts.

11 Q So it's your -- you don't think it's appropriate to
12 punish the children for not doing what you're telling them to
13 do?

14 A That's not what I said.

15 Q So are you -- are you telling them to go visit their
16 mom?

17 A I am.

18 Q Okay. And are they refusing to visit your (sic)
19 mom?

20 A They are not --

21 Q Sorry, their mom.

22 A -- refusing --

23 Q Sorry, not your mom. Their mom.

24 A They're not refusing to visit their mom. They see

1 their mom weekly.

2 Q Are you telling them to go on -- you know, when it's
3 Christina's custodial time, are you telling the kids to go?

4 A We haven't made an effort to follow the custodial
5 schedule since the -- the commencement of the case. I think
6 initially we were moving to -- in that direction --

7 Q So --

8 A -- but as a -- as a practical matter, like Christina
9 doesn't come to my house to pick the kids up.

10 Q So you said -- so you said you -- just for
11 clarification -- you said you haven't made an effort to follow
12 the custodial schedule since the commencement of this case; is
13 that correct?

14 A I said both of us.

15 Q Okay.

16 A Christina and I -- like Christina doesn't come to my
17 house to --

18 Q Sure.

19 A -- pick the kids up as she's required to do every
20 other week at 6:00.

21 Q Yeah.

22 A She's not there.

23 Q Yes. Now these are --

24 A I don't expect her to be there, but she's not there.

1 Q Now --

2 A And she doesn't request weekly to have the kids
3 available at 6:00. We've exchanged some emails when she's
4 indicated she wanted to suddenly start enforcing the order,
5 but that was maybe once or twice during the -- the pendency of
6 the proceedings.

7 Q Now during the first court appearance, did this
8 Court not order you to resume the normal visitation schedule?

9 A I think the Court ordered us to resume the normal
10 visitation schedule which requires --

11 Q Okay.

12 A -- Christina also to do her part.

13 Q Yes. And did Ms. Calderon show up to pick up the
14 children at what would have been her next custodial time?

15 A I -- I don't recall.

16 Q Okay. Do you recall her coming to your residence or
17 showing up anytime subsequent to the start of this case to
18 pick up the children?

19 A Once or twice.

20 Q Okay.

21 A But she hasn't done that --

22 Q So when --

23 A -- since then.

24 Q When was the last time you recall Ms. Calderon

1 showing up to pick up the children at her custodial time?

2 A Sometime in September.

3 Q Okay. And did you tell the children to go at that
4 time?

5 A Absolutely.

6 Q And did they obey your instructions?

7 A They did not.

8 Q And what was the punishment or sanction you imposed
9 for them not following your instructions?

10 A I think they're suffering the punishment right now.

11 Q So --

12 A I don't think taking away their cell phones,
13 prohibiting them from extracurricular activities, or otherwise
14 restricting, you know, normal childhood activities and
15 participation in events is the appropriate answer in this
16 case. I just --

17 Q So --

18 A -- I don't.

19 Q So would it fair to say you impose no sanction on
20 the children for disobeying your direct instructions?

21 A No, that's not -- that's not true, because I -- I
22 just --

23 Q So what --

24 A -- testified that in --

1 Q What was the sanction that you imposed for them
2 disobeying your direct instructions?

3 A I took away Mia's phone for 24 hours and I didn't
4 allow Ethan the opportunity to play baseball one weekend.

5 Q But that --

6 A And it had no material effect.

7 Q But that was for the Donna's House incident that
8 occurred later.

9 A Yeah, but that's an example, right?

10 Q That -- so that was the only time that you -- so was
11 that the only time that you sanctioned the children for not
12 following your instructions to go with their mother?

13 A Bef -- but when I filed the --

14 Q Yes or no. Was that the only time that you imposed
15 a sanction on the children for not following your instructions
16 to go with their mom?

17 A I think that's probably right.

18 Q And, just to be clear, that -- that occurred during
19 the Donna's House -- one of the Donna's House visitations; is
20 that correct?

21 A I believe that's the only time that I imposed a
22 punishment.

23 Q Now --

24 A And while I still felt uncomfortable and awkward

1 about it, it seems as though, based on the -- the direction
2 from the Court, that that was an avenue that I should explore.

3 Q Okay. So prior to -- prior to that, how many sa --
4 how many times or -- have the children refused to go on the
5 parenting time with their mother that you had not imposed a
6 punishment?

7 A Well, after Donna's House, Christina did --

8 Q No, prior to Donna's House.

9 A Oh, okay. I'm sorry. I misunderstood. Go ahead.

10 Q Yeah, prior to the -- the incident at Donna's House,
11 how many times had the kids refused your direct instructions
12 to go to their mother's house without you imposing a
13 punishment?

14 A I didn't impose any punishment.

15 Q Yes, how many times did that happen without you
16 imposing a punishment prior to Donna's House.

17 A Multiple times while we were trying to coordinate
18 that exchange during the pendency of the action.

19 Q Would it be more than five?

20 A I don't know. I mean, if you -- if you give me a
21 calendar and I can look and tell you, but I -- on the
22 custodial time that is set forth in the stipulation and order,
23 during the times scheduled for the exchange, in the weeks
24 leading up and including the day of, I encouraged the children

1 to go.

2 Q Okay. Now --

3 A I did not --

4 Q Now do you --

5 A -- punish them.

6 Q Now do you also -- do you recall Mia's testimony
7 that she called her mother by her first name?

8 A I recall that she's testified that she recently
9 called her by her first name.

10 Q Okay. Had you ever witnessed Mia do this?

11 A I witnessed Mia doing that a couple of weeks ago.

12 Q Okay.

13 A When I was picking the kids up from Christina's
14 house.

15 Q After viewing that testimony, did you go to Mia and
16 tell her it was inappropriate to call her mother by her first
17 name?

18 A Absolutely.

19 Q Did you impose any sanction?

20 A No.

21 Q Did you let her know if she did it again in the
22 future that there would be a sanction?

23 A I -- I told Mia that she should always refer to her
24 mother by -- as her mother.

1 Q Okay.

2 A I -- I don't -- I don't -- I don't know if it's my
3 role to punish her if she doesn't. But I did tell her that
4 it's not appropriate, I don't agree with it, and -- and
5 that --

6 Q So --

7 A -- she -- but the issue is, is that --

8 Q So you don't know if it's your role to punish your
9 daughter for disobeying your instructions; is that correct?

10 A That's not what I said.

11 Q Well, you said that you instructed her to call her
12 mother by her -- Mom, refer to her as Mother.

13 A That's right.

14 Q And then you testified that a few weeks ago you
15 heard her call her Christina.

16 A No, what I testified to is that the incident that I
17 remembered was -- that happened two week -- happened two weeks
18 ago, and after she referred to her mom as Christina I talked
19 to Mia and I told her that I don't agree with it. But I
20 haven't observed that --

21 Q Okay.

22 A -- previously.

23 Q I thought you said that you talked to her after
24 reviewing the video of the last hearing in January of 2020.

1 A I did talk to her.

2 Q So you talked to her about that after reviewing the
3 video.

4 A No, I didn't talk to her specifically about that
5 incident in the video.

6 Q Okay.

7 A What I said is that I reviewed the testimony and she
8 talked to me about her experience. I didn't --

9 Q Oh, so you --

10 A And I said I didn't talk to her specifically about
11 the content of her testimony.

12 Q So you didn't talk to her after reviewing the video?
13 I just want to make sure I'm clear about --

14 A I did talk to her.

15 Q -- about calling her mother by her first name.

16 A No, I didn't talk to her about her --

17 Q Okay.

18 A -- testimony.

19 Q And it's your testimony you don't feel it's your
20 place to basically punish her for doing something like that.

21 A Is it your client's position that after --

22 Q I'm asking you --

23 A -- reviewing the testimony I should --

24 Q Sir --

1 A -- punish her?

2 Q -- I get to ask the questions, not you; don't I?

3 THE COURT: Yeah, look, you know how this works.

4 This is cross examination. If you -- it will go a lot quicker
5 if you'll just answer the question instead of trying to
6 explain every answer that you give.

7 THE WITNESS: Understood.

8 THE COURT: Ask your question again, please.

9 BY MR. GRIGSBY:

10 Q Okay. So is -- so is it your position that as a
11 parent you should not -- it's not your responsibility to
12 punish Mia for disrespectful -- disrespectful actions towards
13 her mother?

14 A No, I -- I would -- I would punish Mia if I had
15 observed her being disrespectful to her mother.

16 Q Okay. Now do you find Mia calling Chris --
17 Ms. Calderon by her first name to be disrespectful?

18 A I do.

19 Q Okay. And you said that you observed -- recently
20 observed Mia doing this; is that correct?

21 A That's correct.

22 Q And --

23 THE COURT: This has all been asked and answered.
24 His corrective action of counseling his child is a form of

1 discipline.

2 MR. GRIGSBY: Yeah.

3 THE COURT: It's a form of addressing it. His
4 answer should be no when you say are you intending to do any
5 other discipline.

6 MR. GRIGSBY: Yeah.

7 THE COURT: Did you do any other discipline. It
8 should be no, clearly no, correct?

9 THE WITNESS: Correct.

10 THE COURT: Thank you. That's how it works. You
11 ask the question, you get an answer, and you go. He did
12 already describe what you're running around and asking him
13 again as to what he did. He's already described the manner of
14 discipline. He thinks that's sufficient. All right. So
15 don't ask the question again. Ask another question.

16 MR. GRIGSBY: Sure.

17 BY MR. GRIGSBY:

18 Q What other steps have you taken -- what other steps
19 have you personally taken to facilitate the -- and encourage
20 the children to visit Ms. Calderon since the last hearing?

21 A I regularly communicate with the children to spend
22 time with their mom. I coordinate and have scheduled events,
23 including dinner with Christina, breakfast with Christina.
24 I've made the children available every weekday beginning at

1 5:30 at my house if she wants to come by and see the kids.
2 Whether she takes them or doesn't take them, she's welcome to
3 come. I have coordinated the therapy appointments. You know,
4 I've done what I --

5 Q Okay.

6 A -- what I believe is the most under the
7 circumstances that I can do in terms of, you know, making the
8 kids generally available at 5:30 and scheduling those
9 appointments. When she -- when she wants to see the kids and
10 she wants to schedule it, I've accommodated that. I've picked
11 up and dropped off the kids. I've not picked up and dropped
12 off the kids based on her direction. Things change quite a
13 bit --

14 Q So --

15 A -- so I'm doing the best I can.

16 Q Okay. Now was there a recent incident where Mia
17 removed items from Ms. Calderon's home over her objection?

18 A Well, I would view that as -- as Mia's home too.
19 But I would say -- I would say that I -- I went to pick Mia
20 up. Mia got into the car with some bags and Christina
21 followed Mia from the house to the car.

22 Q Did Ms. Calderon indicate that she did not want Mia
23 to take those bags?

24 A She did indicate that to me.

1 Q And did you support Ms. Calderon by telling Mia to
2 take those bags back in the house?

3 A I did support. We actually had a discussion about
4 the issue. I advised Christina that we should go through what
5 items are there that she has concerns about. If they're not
6 appropriate for her to take, then I instructed Mia to return
7 them. We went through a complete inventory, including all the
8 pictures. Christina kept what she wanted and agreed that Mia
9 could take the rest. My advice to Christina was why are we
10 having this dispute over things that I now saw as buttons for
11 a boy band, a pair of jeans that Christina said that she
12 bought for her use at her house. I just don't find all of
13 that like material. And I told Christina that. I said,
14 Christina, this is not material. Why are we arguing about
15 what these things are.

16 Q So wouldn't -- you know, wouldn't a better and
17 easier solution just be to say if your mom doesn't want you to
18 take those items, don't take them from her house.

19 A What if they're hers?

20 Q So -- and what do you define as -- as her -- as
21 Mia's? Things that --

22 A I mean, I think what we were talking about is a pair
23 of jeans, which could easily have been removed, but Christina
24 said it was okay for her to take. And buttons from a boy

1 band. You know, I just don't see those things as worth, you
2 know, arguing with your children about. I mean, why does it
3 matter?

4 Q So but do you -- do you --

5 A I told Christina --

6 Q Do you see the --

7 A -- Christina, if you --

8 Q So here's the question --

9 A -- if it was -- if this was your laptop in here,
10 that laptop would be going back in your house.

11 Q Do you see the point though? Do you not see it as
12 undermining Ms. Calderon when you allow the children to do
13 things over her objection?

14 A I didn't undermine. We had a family meeting right
15 there in my car. We discussed what issues should stay and
16 remain. And Christina consented to allow everything to go
17 except for a picture of, I think, of me posing with her mother
18 that was taken 15 years ago.

19 MR. GRIGSBY: Okay. And I'll pass the witness.

20 REDIRECT EXAMINATION

21 BY MR. SMITH:

22 Q So you've indicated that Christina does not come to
23 pick up the children now.

24 A She does not.

1 Q And the times that she did come to the children, did
2 she take any physical action to try to put the children in the
3 car?

4 A No.

5 Q Did you take any physical action to try to place the
6 children into the vehicle?

7 A No.

8 Q Did Carin -- did Christina make any efforts to
9 prevent either Mia or Ethan from playing sports during that
10 period of time?

11 A No.

12 Q Did she pay any portion of the costs associated with
13 her -- Mia's singing or with Ethan's baseball during that
14 period of time?

15 A She -- she canceled Mia's music lessons, but they
16 were -- we re-instituted them and then she indicated that she
17 was not going to pay for them any -- any further.

18 Q Has she indicated she would not pay for any other
19 items further as a result of punishment to the children?

20 A As a -- as a result of the kids' testimony in the
21 trial, the day after I received an email from her indicating
22 that she was no longer paying for the kids to go to Faith
23 Lutheran next year.

24 Q Did -- was there ever any incident at Faith Lutheran

1 in regard to her retrieving the children from Faith Lutheran?

2 A There was -- there was an attempt by Christina to --
3 to remove the children during the school day, during which she
4 characterized as her custodial time.

5 Q What did -- what happened on that day, to your
6 knowledge? Were you present?

7 A I was called by the school administration and also
8 by the children and I -- I went to the school.

9 Q Were -- were the police involved in that incident?

10 A Not that I recall. There's wasn't police present.

11 Q Did the school officials, were they involved in that
12 incident?

13 A They were. There was a separate meeting with the
14 principal and Christina. And I met separately with the
15 principal, and I also met with the school counselor. Ethan
16 and Mia also separately met with the school counselor. And
17 Mia and Ethan separately met with Christina and the school
18 principal.

19 Q And what was the result of all those meetings?

20 A The result of the meetings were the -- the -- the
21 school released the kids subject to -- the school released the
22 kids from school, or withdrew the kids from school that day,
23 but indicated to Christina they weren't enforcing the order
24 and the kids could go with whatever parent they elected.

1 Q Did you tell the school officials that they should
2 not enforce the order?

3 A I did not. In fact, the -- the school principal
4 advised me that -- that -- that he was required to allow a
5 parent to withdraw the kids, but in these circumstances,
6 because they've had these events before, that the kids are
7 free to go and that his advice would be to -- if the kids want
8 to go, then to pick them up on the corner of the -- of the
9 school property.

10 Q And to your knowledge, has Christina gone to the
11 school again to retrieve the children during her custodial
12 time pursuant to the Court's order allowing her to do so?

13 A She's threatened to, but I don't know --

14 Q No, no, no.

15 A -- if she's ever gone.

16 Q I'm saying did she go. I understand --

17 A I don't know.

18 Q -- she's threatened because --

19 A I don't know if --

20 Q -- you testified --

21 A -- she's gone.

22 Q -- to that.

23 A I'm not aware.

24 Q Have you done anything to inhibit her ability to go

1 to the school and retrieve the children outside what you've
2 testified?

3 A I haven't done anything to prevent her from
4 withdrawing the kids and taking the kids at school.

5 Q Do you know if Christina has taken any action with
6 the police to retrieve the children at any time? Has she
7 called the police to retrieve the children?

8 A She did, on the first day that the custodial
9 exchange did not occur, she called the -- the police
10 department.

11 Q And were -- did the police direct the children to go
12 with Christina?

13 A No, they did not. They -- they appe -- they came to
14 my house, they interviewed Mia, they spoke with Ethan over the
15 telephone, because he was at baseball or leaving baseball, and
16 concluded that the kids expressed a preference, that they --
17 it was not their job to enforce court orders, and to the
18 extent that Christina had a difference of opinion, then she
19 needed to address it in the family court.

20 Q You and Christina continue to speak about the --
21 whether or not the children -- you would modify the schedule,
22 correct? I want to turn you to Exhibit X, Defendant 0011 --
23 11006. This was the -- the reference that was made to -- by
24 Ms. Grig -- Mr. Grigsby about your --

1 A Can you give me the number again?

2 Q 0 -- 1006.

3 A 1006. Okay.

4 Q So at the end of the sentence that was quoted by
5 Mr. Grigsby in about the middle of the page, let me know, et
6 cetera, you indicate thought. What did you -- what were you
7 expressing by that, the thought question mark?

8 A I was encouraging her to respond in a way that I
9 thought would be appropriate, had some flexibility.
10 Previously I had the kids four to six weeks when there was the
11 first fight. I thought -- and I wasn't seeking to change
12 custody -- that -- that a cooling off period and a -- a
13 revisit of these issues made sense. So when I say, hey, I --
14 I'm keeping the kids unless we work something out, I wasn't
15 saying forever.

16 Q So she didn't immediately respond to this email, did
17 she?

18 A I don't -- I don't recall because we exchanged so
19 many emails during that period of time.

20 Q Well, this is an email string; is it not?

21 A I think so. Yes, it is.

22 Q Okay. So the next writing that happens after the
23 7:50, August 21st email that was quoted by Mr. Grigsby, is you
24 wrote on August 22nd; do you see that?

1 A I do.

2 Q Is that the next communication that you had with
3 Christina?

4 A I believe it is.

5 Q And then you wrote again on that afternoon, having
6 apparently not received a response. That's what you say
7 anyway.

8 A That's correct. I didn't receive a response to the
9 email.

10 Q Okay. And then on August 22nd at 8:40, you receive
11 a response from Christina, and I think you referenced this
12 earlier about abide by the express terms of the custody pick
13 up time and place specified in the court order. Do you see
14 that?

15 A Yeah, this is where she changed the -- the pick up
16 to the school rather than our homes at 6:00.

17 Q Okay. And then your response within about 50
18 minutes was that wasn't in accordance to our -- our agreement;
19 you see that?

20 A Yep.

21 Q And then please do not try to pick up at school. I
22 do not want to involve the school in our personal family
23 matters; do you --

24 A Correct.

1 Q -- see that? And then you wrote again at 10:40. I
2 guess again without no response.

3 A I tried to call her.

4 Q Right. And then you're putting it in a difficult
5 situation, electing not to speak, et cetera. And then you
6 indicated about -- think about your family therapist and et
7 cetera. And then let me know by 9:00 a.m. tomorrow how you
8 want to proceed. And then Christina wrote back the following
9 day. She says I'm picking up the children pursuant to the
10 order, that's the letter of the law. And then you wrote --
11 and then apparently you guys did have a phone call because --

12 A Correct.

13 Q -- Christina wrote, about a couple hours later,
14 saying that you called and that you have agreed that she would
15 pick up the kids at 6:00.

16 A Correct.

17 Q So if anything, your statement in your email of
18 August 21st, last -- lasted for about, I don't know, 40 hours,
19 right? During the time you tried to negotiate and call her
20 and try to work something out.

21 A Yes.

22 Q And ultimately agreed she could come pick up the
23 children. Do I have that right?

24 A That's correct.

1 Q All right. There is a -- in your email string
2 there's a reference to a Metro Police Department, and actually
3 a picture of the Metro Police Department card. Is this the
4 card that you were referring to, or the message that you were
5 referring to in regard to you previous answer about what the
6 police had indicated?

7 A Yes. And they gave me that event card because they
8 represented to me that Christina intended to call the police
9 tomorrow or the next day at Ethan's baseball game. And they
10 said just, you know, provide this card and reference number.

11 Q Did you try to explain to -- before filing your
12 motion -- to Christina why you -- you thought it was
13 appropriate to change the time period?

14 A We didn't get into the specifics of a permanent
15 change. Initially I was just looking for some breathing room
16 to figure out everything that happened and to try to address
17 the dynamics. But, you know, the decision by Christina not to
18 cooperate and -- and insist on, you know, the strict terms of
19 the custody order put me in a difficult spot.

20 Q Defendant's 1010 in Exhibit X. You sent her an
21 email. This was the night before you filed your motion. Can
22 you tell me what you tried to impress upon Christina by
23 sending that email? That's your August 25th, 7:37 email at
24 the bottom of the page.

1 A To focus on what's in the best interest of the kids,
2 to consider their preferences and the matters related to the
3 problems in their home and -- and not to involve third parties
4 like the school and Ethan's baseball coach. That -- that, you
5 know, if -- if -- if the police are looking at the situation,
6 and they've interviewed Mia and interviewed me and have
7 indicated Mia, at least in their view, is -- is perfectly
8 happy, this is her expressed preference, she's, you know,
9 expressed concerns about the physical altercations at her
10 mother's house, that it's not their position to remove the --
11 the children, my suggestion to Christina was, well, why
12 shouldn't we try to work this out.

13 Q The -- there was a series of questions asked by
14 Mr. Grigsby that began with this phrase, what sanction did you
15 impose on the children. Do you think it's appropriate to
16 essentially punish your children into submission when they --
17 under these circumstances as presented in this case?

18 A No. I mean, I'm really concerned about their
19 welfare. I'm also concerned about my relationship with them.
20 I mean, I couldn't imagine, on the basis of Christina's
21 request, punishing the children, particularly if she played a
22 substantial or even a partial role in the physical conflict.
23 What -- what does that say as me as their father, as their
24 protector, as a person who's supposed to be looking out for

1 their best interest.

2 Q Well, the children themselves have testified and
3 indicated that -- both of them indicated that they -- they --
4 one indicated was struck by their mother on two occasions.
5 The other indicated that he witnessed the child -- the fight
6 between the mother. Yet Christina in this action, through her
7 deposition and affidavits that have been presented to the
8 Court, has suggested -- and I think using her words -- she's
9 never laid a finger on the children. Did that play into your
10 consideration as to how you went about either encouraging them
11 to go or punishing them for not going?

12 A After the first instance when the parties were
13 involved in that physical con -- confrontation and Christina
14 and I met in her garage, she admitted that she was physical
15 with Mia. She admitted that she hit Mia. She admitted that
16 she was involved in -- in that incident. So the fact that
17 that occurred had substantial consideration for me. I'm just
18 not -- I'm not used to -- I'm just not used to parents, you
19 know, fighting physically with their kids.

20 Q Final question for this round, Mr. Stipp. Did at
21 any time, to your understanding, from the -- well, is the --
22 is your intent here to allow the children to do whatever they
23 want, to undermine the chil -- the care of Christina?

24 A No, I -- I want the kids to have a good relationship

1 with Christina. I would love nothing more for the kids to
2 resume a normal time share; however, it doesn't seem like
3 that's possible given the circumstances, given what I
4 understand Christina's position is on these events in terms of
5 denial. And, you know, I'm not -- I can't -- it's impossible
6 for me to -- to do what Christina's asking, which is to be the
7 person who imposes punishment in her home because she can't.

8 Q She's had the children in her care in home, correct?

9 A She has.

10 Q During the time that she would otherwise be under
11 the order allowed to -- to have them.

12 A Correct.

13 Q And she's not kept them in any way, she hasn't
14 forced them to stay?

15 A She hasn't -- she has not forced them to stay. In
16 fact, she's either brought them back or asked me to come and
17 get them.

18 MR. SMITH: Thank you. Pass the witness.

19 THE COURT: Mr. Grigsby.

20 MR. GRIGSBY: Yes, Your Honor.

21 RE CROSS EXAMINATION

22 BY MR. GRIGSBY:

23 Q Do you think it's been in the children's best
24 interest to not have significant parenting time with their

1 mother over the last eight months?

2 A It's not in their best interest.

3 Q Okay. And if this Court makes an order that, you
4 know, Ms. Calderon gets makeup time for the time she missed,
5 do you intend to comply with that order?

6 A I don't have another choice but to comply with the
7 order.

8 Q Okay. And do you have a solution on how this
9 relationship with Ms. Calderon -- between Ms. Calderon and the
10 children can be improved?

11 A I do.

12 Q Okay. What would you like this Court to implement?
13 What do you think this Court should implement to improve the
14 relationship and to restore normal parenting with Ms.
15 Calderon?

16 A I don't -- I don't know if the Court has the power
17 or authority to make those changes. The issue is, is that you
18 have a parent who I believe has, for whatever reason,
19 difficulty implementing parenting strategies that -- that --
20 that are conducive with respect to the kids. And I think that
21 -- that the decision to engage in physical confrontation, the
22 decision to exchange name calling is a -- is a bad decision.
23 I think -- I think Christina has to make the decision to
24 change. She has to make the decision to -- to change her

1 parenting style --

2 Q I guess --

3 A -- and take responsibility for the bad acts.

4 MR. GRIGSBY: I guess I would object as
5 non-responsive and move on.

6 A No, but that --

7 Q I asked about what should the Court implement. But
8 moving on.

9 A Well, the Court should allow --

10 Q Moving on.

11 A -- the kids to exercise teenage discretion. That's
12 what the Court should do.

13 Q And by teenage discretion, you mean no formal
14 custody order and the kids deciding where they want to go,
15 when they want to do it? Is that what you think would be in
16 their best interest?

17 A No, that's not what I said.

18 Q Okay. Do you feel it's in this -- these children's
19 best interest to put them in the middle of this by allowing
20 them to make these decisions on whether they want to visit
21 their mother or not?

22 A I'm not putting them in the middle.

23 Q Okay.

24 A They've put themselves in the middle in terms of

1 exercising their -- their preference.

2 Q So do you not believe it's putting the children in
3 the middle when you give an -- an option outside of going to
4 their mother's house?

5 A I -- I've never been confronted with these facts and
6 circumstances before. I -- I don't know --

7 Q Ye --

8 A -- what the protocol is --

9 Q Yes or no. Do you think --

10 A -- to address that issue.

11 Q Yes or not. Do you feel it's putting the children
12 in the middle to give them an option, an out, so they don't
13 have to go to their mother's house when required by the -- by
14 the order?

15 A What was your question?

16 Q Do you feel that it's putting the children in -- in
17 the middle and overly empowering them to give them an option
18 so that they can avoid complying with the -- Mom's parenting
19 time?

20 A No.

21 Q Okay. And do you think that -- do you think that
22 your children in this case have been overly empowered by the
23 ability to refuse to go to their mother's house?

24 A I do not.

1 Q Okay. And do you think the current custodial state
2 has been in the children's best interest?

3 A I do not.

4 Q And do you think it's in the children's best
5 interest to resume a normal custodial relationship with their
6 mother?

7 A If it were possible, yes. But it's not possible.

8 Q And how do you know that it's not possible?

9 A The kids haven't changed their view, and in fact,
10 are more resistant to spending time with their mom because of
11 the events of litigation.

12 Q So -- so the events that happened since August 2019
13 have made the children more resistant to going to their
14 mother's house, correct?

15 A Yes.

16 Q So clearly what you've done now hasn't worked. This
17 has not worked, keeping the kids away from Mom.

18 A I'm not keeping the kids away from Mom.

19 Q So maybe it -- maybe it would be possible -- do you
20 feel it would be possible if we tried giving the kids more
21 time with Mom, that it may improve their relationship.

22 A I'm not determining their time share, but I think
23 what could help is if Christina acknowledged their feelings,
24 acknowledged the -- the bad acts, whether she agrees with them

1 or not. I think giving them a voice and understanding their
2 perspective will go a long way. I think telling them that
3 they're lying and I think --

4 Q So have you ever witnessed Ms. Calderon tell the
5 children that they're lying?

6 A No, but that's what the kids report to me.

7 Q Okay. So you don't know that she said -- called --
8 what she told the children.

9 A I don't know for a fact. I'm not in the therapy
10 sessions. She doesn't want me there. I'm not in her -- at
11 her house when she's --

12 Q So -- so that -- so you -- so you have no basis for
13 saying that, you know, she's told the children that they're
14 lying.

15 A Other than I believe Mia and Ethan and I don't see
16 that they --

17 Q Yeah.

18 A -- have any reason to lie.

19 MR. GRIGSBY: Okay. No further questions, Your
20 Honor.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. SMITH:

23 Q Should you lock them out of your house, Mr. Stipp?

24 A Should I lock them out?

1 Q Yeah. Would that be appropriate? You got a court
2 order. Lock them out of your house. Don't let them stay
3 there.

4 A No, I don't think that would be appropriate.

5 MR. SMITH: No further questions.

6 THE COURT: Anything else?

7 MR. GRIGSBY: No. No, Your Honor.

8 THE COURT: Okay. The -- you can step down. Be
9 careful.

10 THE WITNESS: Thank you.

11 (WITNESS EXCUSED)

12 THE COURT: Do you need a recess? It's about 2:48.

13 MR. STIPP: I may quickly get water.

14 THE COURT: Yeah, I know. Actually, you're going to
15 find people aren't going to put any kind of food and drink and
16 other things out for a while, believe me.

17 MR. SMITH: Well, that's a good point.

18 THE COURT: You can't even go to Starbucks with your
19 own cup anymore and get yourself a cup -- cup of coffee.

20 MR. SMITH: Wow.

21 MS. FUJII: You can't find water anymore.

22 THE COURT: Well, it's --

23 MS. FUJII: I found that. I went to --

24 THE COURT: Anyway, look, that's not why. The

1 pitchers are a dangerous --

2 MR. GRIGSBY: Yes.

3 THE COURT: -- item in the courtroom. But --

4 MR. SMITH: I want to hear the story --

5 THE COURT: -- usually it's more dangerous --

6 MR. SMITH: -- that led to that determination.

7 THE COURT: -- for you than it is for me. They have
8 a longer reach to reach me. But we'll take a -- about a
9 seven, eight minute --

10 MR. SMITH: That's all right.

11 THE COURT: -- recess.

12 (COURT AND COUNSEL CONFER)

13 (OFF RECORD)

14 THE COURT: -- D-08-38903. Got an hour or so left
15 this afternoon. Based on the evidence presented so far, what
16 do you think, Mr. Smith, about calling Amy Stipp? Are you
17 going to call her?

18 MR. SMITH: I -- I can, Your Honor, but I would
19 prefer to just provide an offer of proof so we can try to get
20 through more of the trial by saying that she'll testify that
21 she has a good relationship with the children, that she's
22 there in the ways that have been described by Mr. Stipp, that
23 she has -- she would confirm the statements that was made by
24 Mr. Stipp in relation to the meeting that were held between

1 the parties at Starbucks and the family meetings to try to
2 support the -- you know, the progress with -- between Ms.
3 Calderon and the children, and generally talk about what has
4 occurred with the children consistent with what Mr. Stipp has
5 observed.

6 If the Court feels that testimony is necessary and
7 not cumulative, then I will present her for -- as a direct
8 witness. I would -- if -- even if the Court off -- would
9 advise me of that, that it would be cumulative, I would
10 reserve the right to call her that -- in the case that some of
11 those subjects are disputed by Ms. Calderon or her witnesses
12 in the case.

13 THE COURT: Yeah, I -- I don't know. I mean, I --
14 all of those offers of proof or all those lines have not been
15 contradicted at all by either one of the kids or by your
16 client. Now if they are going to be trying to lay the
17 foundation for some sort of parental neglect because Dad
18 delegates monitoring their electronic use to -- to his wife,
19 then she's the real witness for that. And I don't know
20 whether you want to call her just to talk about that issue.
21 But you're not required to call her, but if we were looking at
22 whether or not that information was relevant, that the --

23 MR. SMITH: Well, I'll --

24 THE COURT: -- topics of her relationship and

1 everything are relevant, but they haven't -- I mean, there
2 isn't a possible way for me to make a finding on the evidence
3 presented today or last session that would undermine those
4 offers of proof as far as what you mentioned.

5 MR. SMITH: Well, I would say this, Your Honor.
6 Then with that acceptance of the offer of proof, in the one
7 area that the Court had indicated that -- that -- in regard to
8 the monitoring of social media, I could have her testimony for
9 just a brief few minutes.

10 THE COURT: Well, you -- you took the parties'
11 deposition, right?

12 MR. SMITH: I did.

13 THE COURT: Is there any evidence at all of any kind
14 of chronic problems either at school or with the child
15 concerning accessing improper sites or this one anecdote that
16 Mia talked about as far as her iPad?

17 MR. SMITH: That is the only anecdote that came out
18 at either of the depositions or other evidence that's been
19 presented that I've reviewed.

20 THE COURT: Well, then it's not a big deal. I mean,
21 in some cases, that's the issue.

22 MR. SMITH: Judge, if --

23 THE COURT: I --

24 MR. SMITH: -- if you believe that that's not

1 necessary, I will --

2 THE COURT: Well, I mean --

3 MR. SMITH: -- I will do this.

4 THE COURT: -- maybe I should --

5 MR. SMITH: I would --

6 THE COURT: Maybe I should ask Mr. Grigsby. Are you
7 -- are you going to advancing some sort of argument that Dad
8 delegating a review of social media is a neglect, act of
9 neglect for him?

10 MR. GRIGSBY: No. I guess my argument that I'll be
11 asking about that is more of a best interest argument. It's
12 contrary to the best interest not to view those things in this
13 -- in this modern age.

14 THE COURT: Well, I mean, I don't know. I mean,
15 okay, I suppose. But --

16 MR. SMITH: Can --

17 THE COURT: -- you know, the thing is, is that he's
18 not -- we're focusing so much on -- on how we can preserve a
19 joint custody arrangement or whether we change the joint
20 custody arrangement. I mean, we still have her case hanging
21 out there, which is actually a request to change custody,
22 which is -- you know, that's going to be funny. But the -- I
23 mean, look, the -- the way that the Court looks at this is
24 that but for -- if at any time after the May incident, the

1 August incident, the court hearings in October, November,
2 January, whatever, the children had expressed to the Court any
3 intention to resume the current arrangement, we wouldn't be
4 sitting here, okay.

5 So the -- you know, the path -- the path to a change
6 of custody where Mom would have custody would be a finding
7 that Dad orchestrated all of this stuff, disregarding the
8 testimony of both kids, disregarding his testimony, finding
9 that Mom was completely justified in all of her actions
10 concerning the kids, and determining that the preference,
11 which is the best interest consideration related to 15 and
12 almost a 13 year old right now, would be disregarded by the
13 Court. Okay.

14 So I'm like sitting here going what is the -- what
15 am I missing. So that's why I'm asking questions about
16 whether not these other avenues are -- are really part of the
17 case, because I haven't heard your case yet.

18 So I don't think that Amy Stipp needs to testify in
19 your case, but you may need -- you need to have her, before
20 the evidence closes, in case they put on a case that -- that
21 emphasizes that.

22 MR. SMITH: Very good, Your Honor. We'll accept and
23 we'll reserve our right to --

24 THE COURT: All right.

1 MR. SMITH: -- call her in rebuttal.

2 THE COURT: All right. So we have -- are you
3 resting then with that caveat?

4 MR. SMITH: Yes, Your Honor.

5 THE COURT: All right. So, Mr. Grigsby, do you have
6 someone that you would like to start with, knowing that you
7 just have an hour?

8 MR. GRIGSBY: And I guess that would be my issue,
9 Your Honor. I mean, I think in terms of a half day, I know I
10 can but I don't want to start -- you know, start with my
11 client and be able to finish because we only have an hour
12 left. Because I know you said you want to wrap this up around
13 4:00.

14 THE COURT: Then I'll -- I mean, because of the way
15 the day went, you didn't really -- you don't want to have
16 somebody sitting outside all day.

17 MR. GRIGSBY: Yes. I kind of had a feeling the day
18 would go like this and --

19 THE COURT: All right. Well, let me -- can I -- I
20 mean, because I think what you're saying is maybe we adjourn
21 an hour early and set this over, but --

22 MR. GRIGSBY: Sure, yeah.

23 THE COURT: -- I want to talk to you about a recent
24 filing that you guys made and try to get an understanding.

1 Because it's probably a reservation of rights or just a notice
2 issue, but I need you to help me understand what I'm dealing
3 with as far as the case is concerned now that you've heard
4 their case. Let me pull it up. The computer's going so slow
5 today. All right. You guys have been updating things and the
6 -- the notice -- where is it. Right here. Son of a gun.
7 Okay. All right. This was filed the day before yesterday.
8 Obviously we have Mom and we have Dad and his wife as a
9 possible witness. Gerardo Hernandez is not going to testify.
10 That was the grandfather. Martha Hernandez, the grand -- the
11 father of his wife is not going to testify, right?
12 MR. SMITH: The -- Ms. Hernandez is Ms. Amy Stipp's
13 mother and she wrote --
14 THE COURT: I understand. They're the
15 grandparent --
16 MR. SMITH: They were met -- that's right.
17 THE COURT: We'll call them grandparents.
18 MR. SMITH: Yeah, no, no. I just wanted --
19 THE COURT: They're Mitchell Jr.'s --
20 MR. SMITH: -- to -- so the record didn't confused.
21 THE COURT: Mitchell Jr.'s grandparents.
22 MR. SMITH: Yes, yes. And --
23 THE COURT: All right.
24 MR. SMITH: -- and I don't want those to be --

1 THE COURT: All right. Mia and Ethan have already
2 testified.

3 MR. SMITH: Yes.

4 THE COURT: Donna Wilburn, she's got her own unique
5 problems in that, you know, maybe as a fact witness, but then
6 again, we have to look at the order and see how that works in.
7 Elena (ph) Calderon is --

8 MS. FUJII: Christina's sister.

9 THE COURT: Right. I mean, a relation of hers
10 talking about observations in character, right. And then
11 Nicholas Petsas (ph), another character witness. He can
12 discuss observations concerning the relationship between Mom
13 and kids. And Peter, another -- I mean, these are folks who
14 are all in the same class of witnesses.

15 MR. GRIGSBY: Yes.

16 THE COURT: People who are related to the Plaintiff
17 but can testify concerning Mom's relationship and the kids.

18 MR. GRIGSBY: Yes, they -- they're all the same
19 testimonies.

20 THE COURT: Antonia. This would -- this would go
21 back to my comments I made at the beginning of the day, which
22 is pick your best ones.

23 MR. GRIGSBY: Yeah, but that's what I intend --

24 THE COURT: Because you can't have all those folks

1 testify.

2 MR. GRIGSBY: That -- and that's what I intended on
3 doing. It was more --

4 THE COURT: Okay.

5 MR. GRIGSBY: -- of a reservation because we are --
6 I didn't think we'd get done today. We don't know when the
7 next day will be set, so I picked the best one who's actually
8 available --

9 THE COURT: All right.

10 MR. GRIGSBY: -- in the next day that's set.

11 THE COURT: Now this is a loaded question because
12 you got 15 people here and about six of them or eight of them
13 are not controversial.

14 MS. FUJII: We filed a --

15 THE COURT: I'm just saying, is this the first time,
16 two days ago, that some of these people have been identified
17 or --

18 MS. FUJII: No.

19 MR. GRIGSBY: No.

20 THE COURT: -- do you know about these guys already?

21 MR. SMITH: I knew about them on the last day of
22 discovery, Your Honor.

23 MR. GRIGSBY: Right.

24 THE COURT: All right. So -- and -- and --

1 MR. SMITH: What's that?

2 THE COURT: -- the general discussion about fact
3 witnesses talking about relationships with the kids and Mom is
4 fine. That's all expected, sort of, you know. As far as --
5 so you expect to call your client and then whatever handful of
6 witnesses --

7 MR. GRIGSBY: Yes.

8 THE COURT: -- in this class that you can get.

9 MR. GRIGSBY: One or two other witnesses, yes.

10 THE COURT: Okay. So you really think you can do a
11 three-hour?

12 MS. FUJII: Yes.

13 THE COURT: Okay. Then let's -- let's take a look.
14 I don't have any heartburn about, you know, taking a breath
15 after five hours of court testimony and having your client
16 prepared to go straight through like he did.

17 MR. GRIGSBY: Yes.

18 THE COURT: And -- and so that's fine. Boy. The --
19 the options I have are Friday morning, the 20th. It looks
20 like I have that available at 9:00 for a half day. That would
21 be 10 days.

22 MR. SMITH: Friday morning the 20th.

23 THE COURT: Now, Kathy, I don't have anything in
24 that day, will you just double-check because that was the -- I

1 gave a block for a settlement conference --

2 THE CLERK: Settlement, yeah.

3 THE COURT: -- in another case and I think that
4 either went away or it's not being used.

5 THE CLERK: Okay.

6 MR. GRIGSBY: Sorry, we --

7 THE COURT: Did she have a trial?

8 MR. GRIGSBY: We both have trials that day.

9 THE COURT: Yeah, you're doing TPR's all day on
10 Fridays.

11 MR. GRIGSBY: And unfortunately her trial -- her
12 trial is with my wife, so I can't get my wife to cover my
13 trial.

14 THE COURT: Well, I -- you know, I know -- I mean,
15 you guys have different duties and I do know that those
16 juvenile guys like to put their TPR trials on the Fridays --

17 MS. FUJII: On Fridays.

18 THE COURT: -- because it's the --

19 MS. CALDERON: Yeah.

20 THE COURT: -- least problem. So maybe we -- we
21 look at something else there. I -- I -- you know --

22 MS. FUJII: Not every Friday.

23 THE COURT: -- let's deal with it. The next
24 opportunity that I have -- well, I guess I could put -- the

1 18th in the afternoon? That's a Wednesday. That would mean
2 I'd have a -- a trial every morning and every afternoon that
3 week.

4 MR. GRIGSBY: Court's indulgence.

5 THE COURT: That would be like a 1:30.

6 (COUNSEL CONFER BRIEFLY)

7 THE COURT: All right. If that one is problematic
8 then we could look at the afternoon of the 26th, which is a --

9 MR. GRIGSBY: I can -- I can do it.

10 THE COURT: -- a Thursday afternoon. I have a trial
11 that morning and I could do this at 1:30 that day.

12 MR. GRIGSBY: I can do that.

13 MS. FUJII: I can do that too. That's best for me.

14 MR. SMITH: Afternoon of the 26th works for us.

15 THE COURT: That's 1:15 for you.

16 MR. SMITH: Okay.

17 THE COURT: The -- we -- if we start at 1:30, we can
18 get three hours in for sure, okay.

19 MR. SMITH: All right. At 1:15 I'll be here.

20 THE COURT: No, no, no, 1:30. 1:30 is fine. You
21 just got to be ready to go.

22 MR. SMITH: All right.

23 THE COURT: Hold on.

24 MR. SMITH: The --

1 THE CLERK: March 26th.

2 THE COURT: All right.

3 THE CLERK: 1:30.

4 MR. SMITH: Your Honor, is -- do we get to know who
5 the witness is that they're going to call in the case.

6 THE COURT: You know, not really. I mean, we're --
7 you're going to know that they're starting out with Mom. And,
8 you know, they're -- we're limited in time. I would -- the
9 way I -- what I would say, I'm going to fire up 48.035. These
10 witnesses might offer relevant testimony, what do we got time
11 for, what's not a needless -- I mean, I'm going to challenge,
12 if we get tight on time, why it's not cumulative or needless.
13 Why do we have to have it. If they persuade me that it's
14 essential to her case, then I'd have to deal with it, okay.
15 If -- I mean, her testimony could easily eat up most of the
16 afternoon. Could, okay.

17 MR. SMITH: It could --

18 THE COURT: Yeah.

19 MR. SMITH: -- but my concern is that these
20 witnesses were first named on the last day --

21 THE COURT: Then -- then --

22 MR. SMITH: -- of discovery.

23 THE COURT: Then the process is this. I got -- we
24 -- we're not -- we're not making rulings like this. If you --

1 if they call them, then you make your record. You object, you
2 tell me why it's not appropriate for the Court to allow the
3 testimony, and the Court will either disagree with you or
4 grant your request to -- or objection to the witness. Okay.

5 Now we -- what we do when we have a disclosure on
6 the -- and it's made within the discovery period but on the
7 eve of the evidentiary proceeding, we're -- we're balancing
8 the prejudice.

9 MR. GRIGSBY: Yeah.

10 THE COURT: Is there really and prejudice to you.

11 MR. SMITH: Well, there -- there --

12 THE COURT: You can't follow up on -- on, you know,
13 taking their deposition or anything else, but --

14 MR. SMITH: But it may be prejudicial to the kids.
15 Two of the witnesses named are the baseball coach and Joey's
16 mom. And frankly I don't know what --

17 THE COURT: They call him at their peril.

18 MR. SMITH: Okay.

19 THE COURT: I think -- I think that you -- you know,
20 that's -- they're a possible fact witness. I mean, I don't
21 know. I mean you can stand up and you can say it was
22 completely irresponsible for Mom to threaten to call her (sic)
23 coach -- call the coach -- call the coach and that traumatized
24 him and did this --

1 MR. SMITH: (Indiscernible) --
2 THE COURT: -- and did that --
3 MR. SMITH: -- to have him down here.
4 THE COURT: No, no --
5 MR. SMITH: But that's okay.
6 THE COURT: -- no. But what I'm -- what I'm saying
7 is that -- is that the -- the -- you know, it could be as
8 simple as the coach coming and saying I was mortified to even
9 talk to the kid. I told him I'm really sorry for you and
10 don't worry about it, and that's the end of it. Okay.
11 MR. SMITH: Okay.
12 THE COURT: So I believe you have --
13 MR. SMITH: Okay.
14 THE COURT: I'm -- I'm channeling myself in dealing
15 with this kind of baloney for 30 years, okay.
16 MR. GRIGSBY: If that was going to be the testimony,
17 I would not call the witness.
18 THE COURT: No, I'm just saying, okay. All right.
19 You guys, I'll see you on the 26th.
20 MR. SMITH: Thank you, Your Honor.

21 (PROCEEDINGS CONCLUDED AT 04:34:17 P.M.)

22 * * * * *

1 ATTEST: I do hereby certify that I have truly and
2 correctly transcribed the digital proceedings in the above-
3 entitled case to the best of my ability.

4
5
6 /s/ Kathleen Amand

7 Kathleen Amand
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