IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

ERICH M. MARTIN,

Appellant,

vs.

RAINA L. MARTIN,

Respondent.

SC NO:
DC NO: D-19-590945-D

RESPONDENTS' INDEX TO APPENDIX VOLUME VII

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ERR
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Email Address: emartin2617@gmail.com
Self-Represented

DISTRICT COURT

CLARK COUNTY, NEVADA

ERICH MARTIN Plaintiff,	CASE NO:15-D-509045-D DEPT: C
vs.	DATE OF HEARING: June 16th, 2020
RAINA MARTIN Defendant	TIME OF HEARING: 10:00AM

EXHIBIT APPENDIX

ERICH MARTIN, the Plaintiff, submits the following exhibits in support of my RESPONSE TO DEFENDANT'S MOTION TO ENFORCE AND DEFENDANT'S ATTORNEY'S FEES AND NOTICE OF MOTION FOR AN ORDER TO ENFORCE AND/OR ORDER TO SHOW CAUSE REGARDING CONTEMPT AND COUNTERMOTION FOR CONTEMPT. I undersand that these are not considered substantive evidence in my case until formally admitted into evidence.

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6. **Exhibit F-** *Raina and Tony physically and sexually harming Nathan*

DATED: May 28th, 2020

Submitted By: _____

Plaintiff

CERTIFICATE OF MAILING

I, ERICH MARTIN declare under penalty of perjury under the law of the State of Nevada that on June 9th, 2020, I served this *Exhibit Appendix* by depositing a copy in the U.S. Mail in the State of Nevada, postage addressed to:

Raina Martin
3591 E. Bonanza Rd., Ste# 200
Las Vegas, NV 89110

DATED June 9th, 2020

Submitted By: _____

EXHIBIT A.

RAINA DENIES ERICH VISITATION DURING OCTOBER 2019 AND SPRING BREAK 2020

ERICH'S ORIGINAL REQUEST FOR OCTOBER 2019 VISIT

- From:Erich Martin
- To:
  - Raina Martin (First View: 09/09/2019 7:04 PM)
- Sent:09/09/2019 6:48 PM
- Subject:OCT 2019 and Thanksgiving 2019 Visit

Message:
Raina,

I would like to exercise my visitation for the following dates:

1. He has OCT 25-27off. If you would please, fly him to Denver, CO on 24OCT19, after school. I will have him back by 5:25pm on 27OCT19.

2. Nate is off from 23NOV19-01DEC19. If you would, please fly him to Austin or San Antonio, TX on 24NOV19. I will have him back by 8:10am on 30NOV19.

Since I won't likely get to visit in September, and I get Thanksgiving this year, that's why it would be this way. Duly, this should be far enough out to get decent prices on flights for Nate. Please, let me know his itinerary as soon as possible.

Thanks,
Erich

DEFENDANT IGNORES REQUEST FOR 2 WEEKS

- From:Erich Martin
- To:
  - Raina Martin (First View: 09/24/2019 9:32 PM)
- Sent:09/24/2019 8:07 PM
- Subject:Two Weeks No Reply: OCT/Thanksgiving Visitation

Message:
Raina,

I sent the following message on 09SEP19, and it is now 2 weeks and I haven't received a reply:

Raina,

I would like to exercise my visitation for the following dates:

1. He has OCT 25-27off. If you would please, fly him to Denver, CO on 24OCT19, after school. I will have him back by 27OCT19.

2. Nate is off from 23NOV19-01DEC19. If you would, please fly him to Austin or San Antonio, TX on

24NOV19. I will have him back by 8:10am on 30NOV19.

Since I won't likely get to visit in September, and I get Thanksgiving this year, that's why it would be this way. Duly, this should be far enough out to get decent prices on flights for Nate. Please, let me know his itinerary as soon as you purchase them.

Would you please let me know what you are planning to do for Nate for his visitation.

Thanks,
Erich

DEFENDANT DENIES NATHAN VISITION FOR OCTOBER 2019

- From:Erich Martin
- To:
  - Raina Martin (First View: 10/25/2019 1:07 AM)
- Sent:10/24/2019 8:15 PM
- Subject:Denied Oct 2019 Visitation

Message:
Raina,

I'm just letting you know that I am canceling Nathan's flight for Sunday since you have chosen to deny Nathan coming to visit our family. Arguing your reasons is unnecessary here, as it is contrary to claiming "a supportive relationship" for Nathan and me. If the shoe was on the other foot, I would not do that to you and you know it. Please inform me of his flight to Texas for Thanksgiving as I've requested this no less than 4 separate occasions now.

Erich

- From:Raina Martin
- To:
  - Erich Martin (First View: 10/25/2019 7:14 AM)
- Sent:10/25/2019 1:10 AM
- Subject:Re: Denied Oct 2019 Visitation

Message:
Erich,

Your visitation was never denied- you chose not to exercise your visitation, again.

We will get you his Thanksgiving flight itinerary to you as soon as it is booked.

Thanks,
Raina
On Thu, 10/24/19 at 8:15 PM, Erich Martin wrote:
To: Raina Martin
Subject: Denied Oct 2019 Visitation
Message:

Raina,

I'm just letting you know that I am canceling Nathan's flight for Sunday since you have chosen to deny Nathan coming to visit our family. Arguing your reasons is unnecessary here, as it is contrary to claiming "a supportive relationship" for Nathan and me. If the shoe was on the other foot, I would not do that to you and you know it. Please inform me of his flight to Texas for Thanksgiving as I've requested this no less than 4 separate occasions now.

Erich

HISTORY OF DEFENDANT FAILING TO COMPLY ON VISITATION:

On Wed, 05/03/17 at 1:11 AM, Erich Martin wrote:
To: Raina Martin
Subject: Nathan's visitation (non compliance)
Message:
Raina,
You are clearly having a difficult time interpreting the Decree. I am not surprised as you tend to try to manipulate it to suit yourself. Let me explain how it is written.
1. See attached photo. I am entitled to visitation every month while Nathan is in school as regular visitation. I also have a holiday and vacation plan which consists of holiday time including spring break, thanksgiving, Christmas/ winter break, and summer. The part of the decree you are confused about is where it states these holiday and vacation time happens to be on any "given month" (meaning the monthly 3 day breaks) it will be considered my "regular visitation for that month" this is saying that when there is a "holiday" in the same month as a 3 day break from school. I have to consider the holiday as my visitation. I do not get "BOTH" visits in "THAT MONTH"

It never states that the holiday, vacation, or summer schedules are included in the travel alternating monthly. These are a separate visitation schedule. My monthly visitation consists of any and all 3 day weekends and staff breaks from school. Not vacation and long holidays.

2. Judge Burton clarifies this further in the modification(see attached photo) where she states that I am entitled to visitation alternating monthly...to include all of the holidays/ breaks from school that she listed....read pg 2 of the modification order.

3. The 2nd paragraph of the modification order lists out my holiday time and the 3rd lists out summer. These are separate from my regular monthly visitation where we alternate between Las Vegas and wherever I choose. (see attached photo)
As you can see, it is quite clear in the decree that regular alternating monthly visits are all 3 day holidays and staff days etc....holidays including spring break, winter break, thanksgiving and summer are separate. His last visit here was spring break. My last regular monthly visit was in March and I was in Las Vegas. His next scheduled monthly visit is memorial day and he is to come to Colorado. His next visit after that I may choose to go to Las Vegas in June. And then he will come to Colorado for summer (see attached photo) since he will be going back to traditional schedule in order to get my full time for the summer nathan' s return visit to you in the summer will need to be 1 week instead of 2 weeks in order to get my full time. Nathan will fly to Colorado June 30 pm or July 1 in the am to have it considered a 4 day weekend and I can add this to my first week of summer. Nathan will return to you July 15th. He will then fly back to Colorado July 23 until Aug 13th instead of Aug 19th in order to give me the final 3 weeks of summer.

As you can see, this is correct. I am tired of wasting time and money in court. If you do not send Nathan I will be forced to ask Judge Burton to hold you in contempt. I feel that since this will be the second time for the same offense she will not be lenient.
As far as Nathan "wanting" to visit. Do not give him a choice! Try acting excited for him instead of

making it a chore or difficult for him. Also, please stop telling him that he has a choice to not come at all once he is 12 years old. I am documenting these things so that in the event you try fight to have him choose to not come when he is older I can show manipulation on your end. You will not win that case as long as Nathan has been manipulated by his parent. Why would you want to have him choose to not see his father? That is beyond horrible Raina. -Erich

Raina's lack of reasonable behavior for Spring Break 2020:

From: Erich Martin

To: Raina Martin (First View: 03/31/2020 2:20 PM)

Sent: 03/31/2020 1:49 PM

Subject: Re: Spring Break - Clarify

Message:

Raina,

Do not send Nathan. Since you can't guarantee make up time, I will deal with it another way. But given the stay at home orders and the issues with COVID-19, I am not risking Nate for whatever you are trying to do here. Again, this shouldn't be so difficult, and it shows in your emails.

Erich

EXHIBIT B

RAINA IS IN VIOLATION OF JOINT LEGAL CUSTODY

DEFENDANT IS DISHONEST AND MAKES UNILATERAL DECISION ON WALLIN ELEMENTARY

- ON 23JUN19, DEFENDANT CLAIMED IN JUNE AND JULY 2019 THAT SHE HADN'T "DECIDED ON NATHAN'S SCHOOL YET"

On Sun, 06/23/19 at 2:35 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Nathan's School Enrollment
Message:
Erich,

Please stop sending and writing inflammatory messages.

We were discussing the option of moving back to Henderson. It was a discussion and it may or may not be happening. We are not 100% yet because of Tony's work and Forbus lost their funding for TAGS.

When we finally decide if we will be moving, I will tell you. There is no reason to tell you something that may not happen.

Raina
On Sun, 06/23/19 at 2:02 PM, Erich Martin wrote:
To: Raina Martin
Subject: Nathan's School Enrollment
Message:
Raina,

Where is Nathan going to school next year? I was having a conversation yesterday with Nathan about his work in school and making progress with his writing and math, and I asked him if he was excited about 4th Grade in Forbuss. His response:

"My mom doesn't want me to tell you this, but I may be going to Wallin again next year?"

I'm tired of fighting with you, but the amount of secrecy with things regarding Nathan from you has been out of hand for years. He struggles with honesty as it is and it stems from the style of parenting that goes on down there with you. You can make accusations all you please against me, but I have the proof of what you are doing to damage his relationship with me and what you do in general. It's time you realize that you're hurting Nathan even more than anything.

Is Wallin even going to allow him to come back to their school?! I am well aware of why he had to leave there originally- as that was made clear during your attempt to hide it during the 504 meeting.

Seriously, just be honest about whatever it is that you are planning on having him do next year. Instead of trying to make excuses and point blame, why not work with me to make HIS FUTURE brighter! It's not about you, it's about him.

Erich

ON 25JUL19, DEFENDANT FINALLY TELLS ERICH WHICH SCHOOL NATHAN WILL ATTEND:

- From:Raina Martin
- To:
  - Erich Martin (First View: 07/25/2019 10:22 PM)
- Sent:07/25/2019 10:21 PM
- Subject:RE: Nathan's School

Message:
Erich,

As of the 2019/2020 school year, Monday August 12th, 2019- Nathan will be attending his previous school Wallin Elementary School located at 2333 Canyon Retreat Drive, Henderson, NV 89044 (702) 799-5776. His school hours are 0730 to 1401 daily. I will advise the school that you are his biological father, as we do every year. As always I will provide you with all school updates, school functions, and other information as I get them or we become aware. Wallin Elementary is a well-respected school in the community, a national blue ribbon school, a 5 out of 5 star's school and on the verge of becoming a top 100 national school. This change in his school location is a result, solely, on our moving back to our home at 2812 Josephine Dr. Henderson, NV 89044.

Thanks,
Raina
On Thu, 07/25/19 at 8:37 PM, Erich Martin wrote:
To: Raina Martin
Subject: Nathan's School
Message:
Raina,

Which school is Nathan attending this year? I am sure you know by now which school it is, and I need to know. This way I know his schedule for visitation and tracking his progress in school.

Erich

ON 16SEP19, ERICH LEARNS DEFENDANT HAS BEEN CONCEALING THE TRUTH ABOUT NATHAN'S SCHOOL SINCE MAY 2019:

Rene Keathley [Wallin ES] <keathrl@nv.ccsd.net>

16 Sep 2019, 10:34
to me

Good morning Mr. Martin,
My apologies for my delay in responding. I was out of the office Friday and this is the first email I received from you. I have updated all of your information in Infinite Campus. Please remember to log into Infinite Campus to check grades, attendance, etc. for Nathan. **Nathan's online registration was submitted on 5/13/2019. Have a great day!**

Rene' Keathley
Elementary School Clerk
Wallin Elementary School
2333 Canyon Retreat Drive
Henderson, NV 89044
WAN: 0483-4006
702-799-5776 Fax: 702-799-5752
Keathrl@nv.ccsd.net

ON 13NOV19 DEFENDANT MAKES UNILATERAL DECISIONS ON MEDICAL:

On Sun, 11/24/19 at 4:31 PM, Erich Martin wrote:
To: Raina Martin
Subject: Medical Appointments
Message:
What health issues does Nathan have that caused you to take him to the dermatologist and ENT? Also, why did you not discuss these concerns with me prior to scheduling these appointments? I would like to be involved in any and all of his health care needs. It is not enough for me be informed after the fact that he needed to see a specialist.
Please send me information on all of Nathan's providers. I would like the Name, address, phone numbers and any information/diagnosis they find relating to his health. In addition to this, please send me copies of all EOBs received from the insurance company. I also need all information related to Nathan's insurance provided by Tony.

Erich

DEFENDANT'S NON-COMPLIANCE AND UNILATERAL DECISION-MAKING ISSUES IN 2018

- From:Erich Martin
- To:
  - Raina Martin (First View: 01/24/2018 2:08 PM)
- Sent:01/24/2018 1:40 PM
- Subject:RE: Satisfaction of Judgement & Visitation

Message:
Raina,

It never ceases to amaze me your scandalous measures you live by to claim you're "looking out for Nathan."

1. **I spoke with Mr Toth at Forbuss and he NEVER "recommended" Nathan see Dr Harder for therapy.** In fact he not only did NOT know you were taking him to Dr Harder, but he said he CANNOT recommend a child to see a therapist!

2. **I called Dr Harder's office, and you not only HAVE TO TALK to me and have permission as**

per their practice, but THIS IS IN THE DECREE!! At every point that you have made claims that I "don't follow the decree" it is so you can make accusations to deflect from the fact that it is YOU who is disobeying the decree!!
So they are canceling the appointment because you haven't been honest and you don't communicate properly. Duly, I am in training for the day he is supposed to be seen. Oh by the way, you did not tell me his appointment date- I asked specifically.

3. **I called the NEW OPTOMETRIST that you have chosen to use and they didn't even know he had a prior prescription!! Not only that, they don't know what it was before since you made it seem like it was for a new issue for Nathan!! I WILL NOT PAY FOR THESE ITEMS!!** Unless it is an emergency all appointments have to be cleared with me prior to making them. If you want to get Nate new glasses you have to discuss it with me first or I am not obligated to pay for them. I would have liked the oppurtunity to discuss the need with the Dr prior to a purchase and have a say in the style and type of glasses purchased. Next time please discuss these things with me beforehand.

Seriously, what is wrong with you?!! And you want to point fingers about me not giving a zip code?? **YOU DIDNT GIVE ME NATHAN's SCHOOL INFO OR YOUR NEW HOUSE UNTIL DAYS BEFORE SCHOOL STARTED!! I asked SO MANY TIMES even beginning in April 2017, when I knew you had the Principal lie in the "504 meeting" for Nathan at Wallin Elementary.**

Nathan lies on a whim even during FaceTime! He claimed he no longer could talk the other night because he was "losing reception" when it was him covering the screen. He constantly tells me the percentage of battery is low because he is coached by you to do that and not talk to me.

This nonsense is so repetitive it's OUT OF CONTROL!! You are going to destroy his character, and ruin his confidence. We (Julie and me) ACTUALLY provide love, structure and discipline. I don't know how you think you are "looking out for him" but this is insane!!

And I will let you know when I can see Nate. Like I said, I have provided the PROPER 30 day notice and beyond. If you play games like you've done for the last 3 years of our lives and beyond to be honest, it will likely not bode well for you in court if you push it further. I am ashamed of what you are doing and you should be too!! Stop this nonsense!!

Erich

DEFENDANT'S HISTORY OF CONCEALING SCHOOL AND UNILATERAL DECISIONS ON MEDICAL IN 2017:

On Thu, 07/27/17 at 9:17 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Compliance with the decree and school
Message:
Have you ever consulted me" before" taking him to the Dr. Or day care? Not once ever. Have you involved me in the decision making? Never! You chose his Dr., his after school care, and his school which yes if moving effects his school you do have to consult me. You voluntarily moved! When I move it has no effect on his school whatsoever. So no I don't and I am in the military I have no choice and you and the Judge know that and there are laws protecting me on that. Look them up they are specific for active duty parents.
On Thu, 07/27/17 at 9:09 PM, Raina Martin wrote:

To: Erich Martin
Subject: RE: Compliance with the decree and school
Message:
Erich,

I do not have to discuss with you if I move- the school is zoned and that is not my choice. Unless you would like to put him in a private school where you can pay half of it - then we can talk. You are moving to Texas did you consult me? I have supplied you on every other piece of information - his afterschool programs his doctors all of it. Again- Constant back-and-forth.
On Thu, 07/27/17 at 9:03 PM, Erich Martin wrote:
To: Raina Martin
Subject: Compliance with the decree and school
Message:
Raina,
Since we are on the subject **the decree clearly states that you have to discuss and we both have to agree on school changes, health care providers and daycare providers. You have never consulted me on any of these matters before taking him to the Dr.** Or most importantly moving across town and changing his school. You are the one not in compliance. See attachment
Thanks,
Erich

- From:Raina Martin
- To:
  - Erich Martin (First View: 05/21/2017 9:03 PM)
- Sent:05/21/2017 9:01 PM
- Subject:RE: Moving/Nathan's school

Message:
Erich,

You don't have a say in school- I don't. It's called "zoning" look it up.

Raina
On Sun, 05/21/17 at 8:58 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Moving/Nathan's school
Message:
Raina,

I don't care where you buy the house. **But, you do have to give me a say in his school.** Are you and Tony getting a divorce?

Erich
On Sun, 05/21/17 at 8:57 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Moving/Nathan's school
Message:
Erich,

I will let you when the decision is made. You do not dictate where I buy a house in the same town.

Raina
On Sun, 05/21/17 at 8:50 PM, Erich Martin wrote:
To: Raina Martin
Subject: Moving/Nathan's school
Message:
Raina,

Where are you moving? Where is Nathan going to school? I need to know these things so that way I can plan for Nathan's upcoming visitations. **To be compliant with the decree, you need to inform me of these things. Further, WE have to agree on these things. You get in the habit, just like last summer, of making decisions on these matters when it has to be agreed upon by both of us for school and sports.** Please let me know.

Erich

HISTORICALLY, DEFENDANT MAKES UNILATERAL DECISIONS IN 2016:

On Mon, 08/08/16 at 8:17 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Passport, QDRO, & Insurance
Message:

Raina,

You paid the $100 for the QDRO filing fee before you ever sent me papers to sign. You did not pay the extra $100 because I refused to sign the papers. You indicated that when you sent me the paperwork for the first time. Your dishonesty in all things baffles me.

As far as glasses in the future goes. Nathan at age 5 or 6 or whatever age does not need top of the line designer glasses. Had you chosen a cheaper pair there may not have been any fee at all. Please send me all of his other insurance information including all policy coverages, policy holder info and DOB, whether or not it is to be billed as primary or secondary etc. This is so that I may stay informed and may be able to use it here in the case that it becomes necessary to do so. Also the receipt you sent is not complete. Please send me a copy of the EOB from both insurance companies so that I may also track this for my records. The provider you choose effects the amount I have to pay for his medical expenses I would like to track this also.
I am sorry if the other life insurance company never contacted me and that they do not keep any records in order to track application information. If they do please have them send proof that I denied their request for anything at all. Sounds like it is something you made up in court so that you could try to make me look bad. The first time I have ever received anything pertaining to an insurance policy was after I returned back from KY just a little more than a week ago. I have since signed it and sent that back to you. I will send the originals as well as passport information on Monday. As far signing the QDRO goes, I have stated several times that I will not sign it because there are some things that I wish to discuss pertaining to that in mediation. As soon as mediation is complete I will sign it as long as we have an agreement on the terms. I will not pay for his passport or sports because those are the kind of things I pay child support for.

Nathan said that he is signed up to play tackle football. I hope that it is not the case, because I will absolutely not support that at this time. He is not even close to ready for that. If he is incorrect and it is only flag football, please send me all information pertaining to his team, league, coaches name and contact information, practice and game schedule. I plan to contact the coach and have my email address added to the team distro list.

Tomorrow, 09AUG16, Nathan will be staying at the house with the kids with our babysitter, Ashley Soulier. She is 16yrs old and has babysat for us many times. Also, either tomorrow night, or Wednesday morning, we will be heading to UT to stay with Julie's brother in Bluffdale. You have the address already, and we will return Sunday evening to CO. -Erich

Raina refuses to work with Erich on Nate's therapy:

From: Erich Martin

To: Raina Martin (First View: 05/08/2020 6:12 PM)

Sent: 05/08/2020 12:32 PM

Subject: Re: Re: Re: Re: Re: Re: Therapy for Nate

Message:

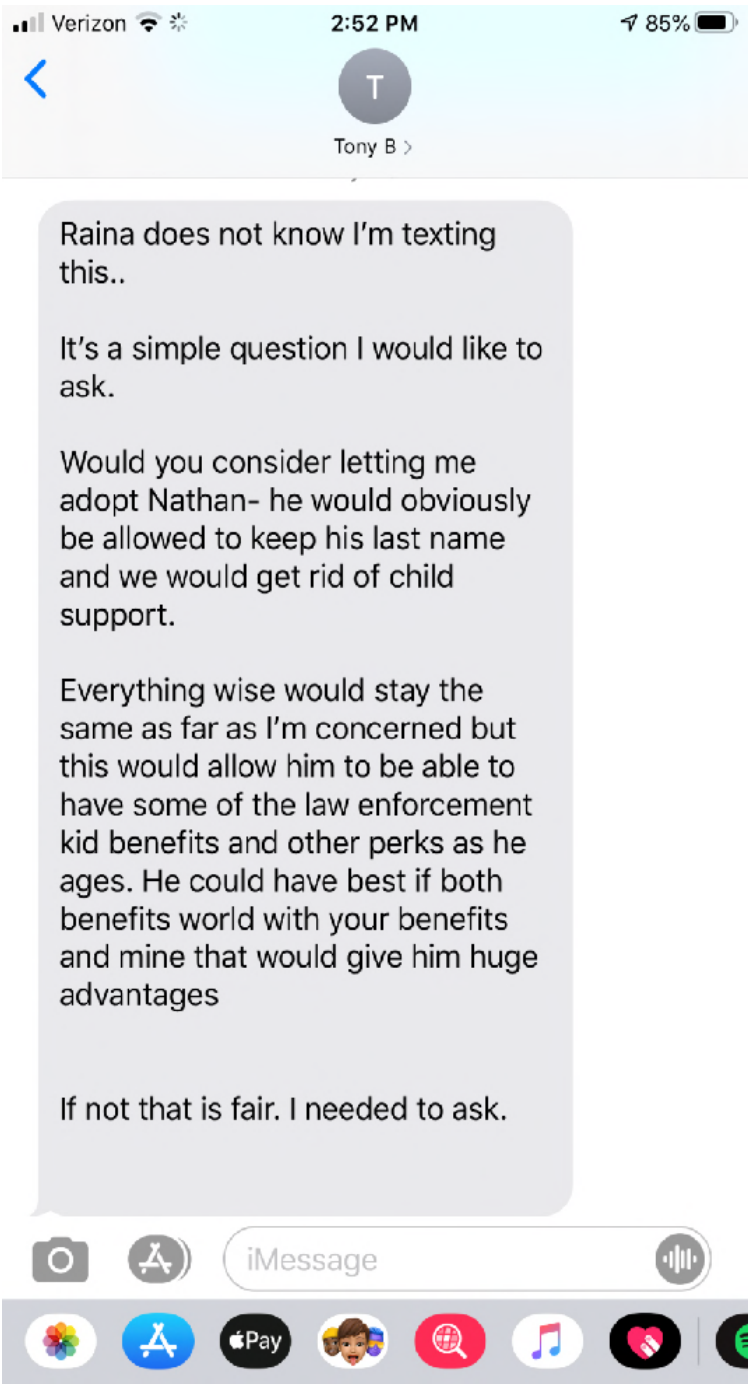
Raina,

Mr. Toth, the guidance counselor whom you claimed recommended Dr Harder, did in fact say it is ILLEGAL for him to recommend any counselor. And you know this because we have already been through that- so stop making up stories. Also, why do you keep ignoring my question of Nate's therapy here in Colorado?

Erich

EXHIBIT C

Anthony Bricker (Raina's Husband) violates Behavior Order #17 for Communication to Erich



******* THIS TEXT WAS SENT BY ANTHONY BRICKER (TONY B) ON 12JAN2020 TO ERICH MARTIN. Yet, another attempt by Raina and Anthony to ensure that Nathan's relationship with his dad is destroyed. There is no legal claim to a child that is given up after adoption. And there is no reason to believe that Raina and Anthony would honor their word as they have made it their duty to harass Erich and make co-parenting as difficult as possible. On top of that, they hid their marriage back in February 2016.***

EXHIBIT D

Proof of Venmo payment to Raina for medical expenses

From: Erich Martin

To: Raina Martin (First View: 05/02/2020 7:22 PM)

Sent: 05/02/2020 7:19 PM

Subject: Re: Re: Venmo Proof of Payment

Message:

Raina,

My wife didn't contact you. We share that account. And I have made payment here. If you choose not to accept, the Judge will see through that and that you are merely trying to be difficult.

Erich

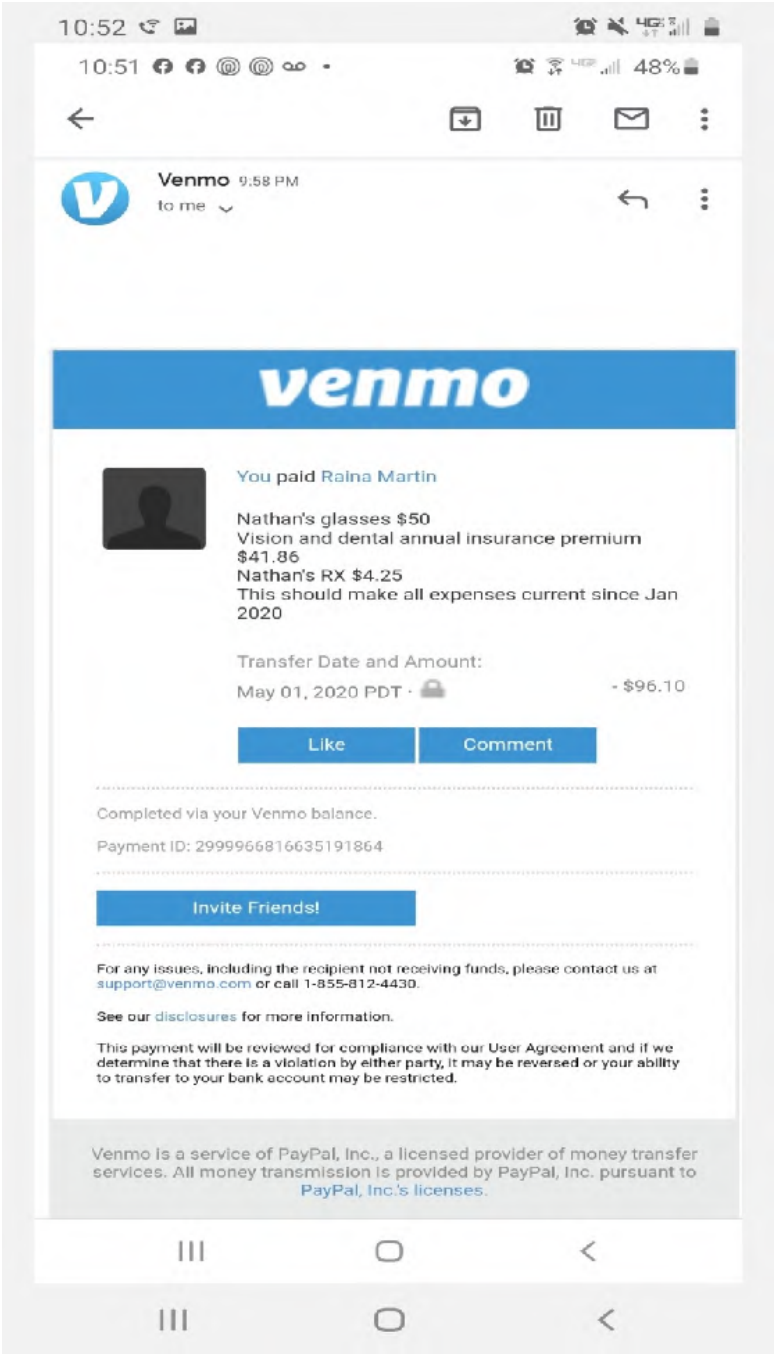
On Sat, 05/02/20 at 7:17 PM, Raina Martin wrote:
To: Erich Martin
Subject: Re: Venmo Proof of Payment
Message:
Erich,

Please do not have your wife contact me in any form. I did not authorize Venmo payment and I did not approve of the amount.

Raina

On Fri, 05/01/20 at 10:55 PM, Erich Martin wrote:
To: Raina Martin
Subject: Venmo Proof of Payment
Message:
See the attached for Venmo Proof of Payment.

Erich


10:52
10:51
48%
Venmo 9:58 PM
to me
venmo
You paid Raina Martin
Nathan's glasses $50
Vision and dental annual insurance premium $41.86
Nathan's RX $4.25
This should make all expenses current since Jan 2020
Transfer Date and Amount:
May 01, 2020 PDT ·
- $96.10
Like
Comment
Completed via your Venmo balance.
Payment ID: 2999966816635191864
Invite Friends!
For any issues, including the recipient not receiving funds, please contact us at support@venmo.com or call 1-855-812-4430.
See our disclosures for more information.
This payment will be reviewed for compliance with our User Agreement and if we determine that there is a violation by either party, it may be reversed or your ability to transfer to your bank account may be restricted.
Venmo is a service of PayPal, Inc., a licensed provider of money transfer services. All money transmission is provided by PayPal, Inc. pursuant to PayPal, Inc.'s licenses.

Proof of Erich working with Raina via OFW on expenses:

From: Erich Martin
To: Raina Martin (First View: 04/05/2020 10:07 AM)
Sent: 04/02/2020 9:19 PM
Subject: Nathan's Glasses

Message:

Raina,

Since you didn't consult with me about the cost of Nathan's glasses, yet again, because they exceed the $100 that Judge Burton specified in 10DEC19 case, I am not willing to pay $217 for glasses. As per the order, I will provide $50 for them, but he has broken his glasses 5x in a few months there is no justified reason to spend almost $450. I have asked you not to purchase the most expensive pair and transition lenses.

Erich

***** As a side note, this pair of glasses without insurance was $776.***
***** Also noteworthy, this was the fourth (4th) pair of glasses in only 12 months.***

Proof of Erich working with Raina on Dental/Vision coverage:

On Thu, 01/02/20 at 2:49 PM, Erich Martin wrote:
To: Raina Martin
Subject: Re: Re: Re: Dental insurance coverage
Message:
Raina,

Look at the fee schedule, that's not how it works. When you add an individual, it only goes up by a premium per the persons added, not as a total combined. Duly, you are now claiming it's just Tony ("Employee") plus 4. If that is the case the math goes like this:

32.70-31.09= $1.61 per paycheck

1.61 x 26= $41.86 for the year.

I know you're going to try to argue this, but look at the fee schedule. When you add per person, it's not divided among everyone, it's based on an additional individual. For example, when you became Tony's "domestic partner" it cost him only $2.54 to add you, and then another $1.61 to add Nate back in February 2016, when you all did this thing. Because Tony already had "Employee + 2" with his sons Dylan and Wyatt.
I'm even paying for the entire "dental and vision" just to make it simple, despite the fact I already have vision for Nate covered through Tricare. This should now be suffice for you two.

Erich

****** Please note, that Raina has known that Nathan has been covered by both Erich and Anthony Bricker. In her September 2016, court appearance, she claims that she married Anthony for insurance coverage for her and Nathan. Nathan has been covered since February 2016, as this was noted in the exhibits provided by Erich***

during that court case. The evidence was provided through an excessive expense of glasses dated July 2016, which displayed insurance coverage by Anthony Bricker.

*****Also noted is the fact that Raina has taken Erich to court during 2019 in an attempt to harass him over a total of $41.86 (please see attached breakdown for Anthony's Dental/Vision coverage for Nahan based on "Employee + 4")***

Las Vegas Metropolitan Police Department

Employee Health & Welfare Trust

2720 N. Tenaya Way
Las Vegas, NV 89128
(866) 868-1395
(702) 413-1707 -fax

December 16, 2019

Anthony Bricker
Confirmation of Coverage

This is to confirm that Anthony is covering himself plus 4 dependents. Below is the current rate structure. These rates are in effect for 2020 as well.

Employee/Dependent Contributions (January 2019-December 2019)			
Active Employees (per payroll)	**Full Coverage**	**Medical/Rx Only**	**Dental/Vision Only**
Employee Only	$0.00	$0.00	$0.00
Employee +1	$ 87.08	$ 60.84	$ 26.25
Employee +2	$ 100.29	$ 70.75	$ 29.55
Employee +3	$ 110.81	$ 79.74	$ 31.09
Employee +4	$ 123.73	$ 91.03	$ 32.70
Employee +5	$ 140.77	$ 105.96	$ 34.82
Employee +6 or more	$ 150.02	$ 114.05	$ 35.99

Should you have any questions, please call me at 702-641-2160 or email me at Kelly.Taylor@metrohealthtrust.com.

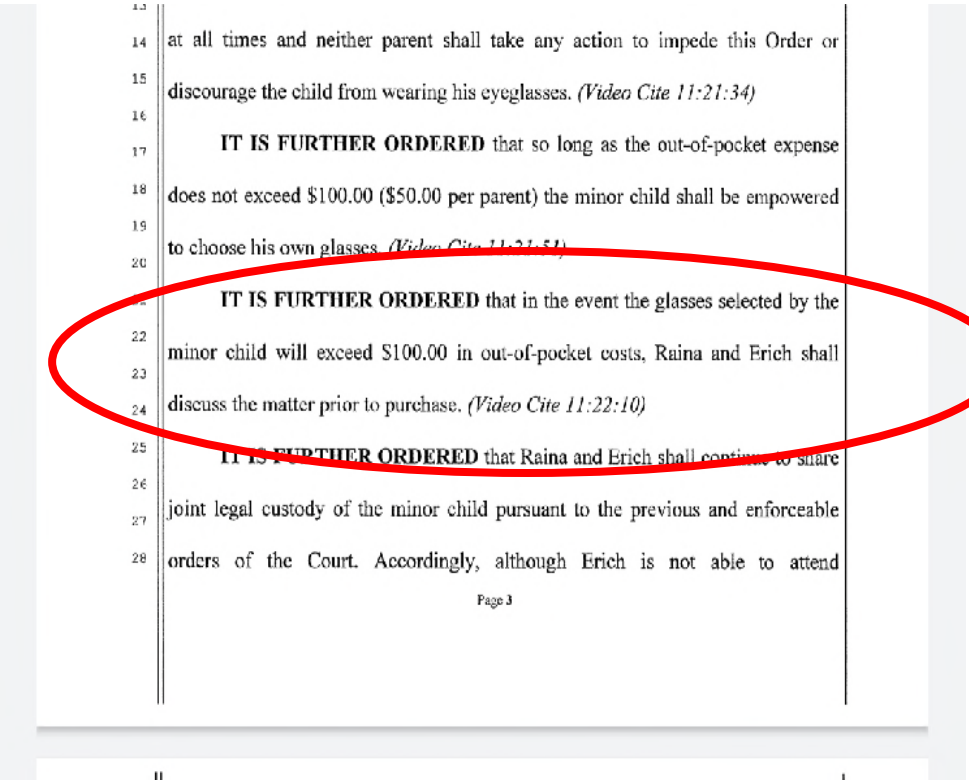
Thank you,

Kelly Taylor
Health Plan Director

UMR

(866) 868-1395
www.umr.com

Attached order from Judge Burton's 10 DEC 2019, decision referencing the cost of glasses for Nathan:



at all times and neither parent shall take any action to impede this Order or discourage the child from wearing his eyeglasses. *(Video Cite 11:21:34)*

IT IS FURTHER ORDERED that so long as the out-of-pocket expense does not exceed $100.00 ($50.00 per parent) the minor child shall be empowered to choose his own glasses. *(Video Cite 11:21:54)*

IT IS FURTHER ORDERED that in the event the glasses selected by the minor child will exceed $100.00 in out-of-pocket costs, Raina and Erich shall discuss the matter prior to purchase. *(Video Cite 11:22:10)*

IT IS FURTHER ORDERED that Raina and Erich shall continue to share joint legal custody of the minor child pursuant to the previous and enforceable orders of the Court. Accordingly, although Erich is not able to attend

Page 3

EXHIBIT E

Raina is in violation of Behavior Order #1

Raina makes disparaging remarks about Erich to their son, Nathan:

On Mon, 04/27/20 at 8:40 PM, Erich Martin wrote:
To: Raina Martin
Subject: Re: Re: Re: Re: RE: Dishonesty about Duo
Message:
Raina,

Please do not accuse me of lying because those words were Nathan's. He told me you claimed "dad got a new phone so he doesn't have to see me, and mom can't video call me with you." Which falls in line with the various emails just today about you questioning my choice in phone- so please just stop.

Erich

During Nathan's Christmas Break visit 2019-20, Nathan, the minor child claimed Raina said the following:

"You don't deserve the dad you have, you should have a better dad. He has a black heart and no soul." -Raina (30 DEC 2019)

**** Raina has been using Nate as a tool to hurt me by involving him in our court matters- immediately following the 10DEC19, hearing she told Nate that she "won" and that your Dad has a bunch of lies and only wants money and not you.***

EXHIBIT F

Raina and Tony are physically and sexually harming Nathan

I wish to make the court aware of a situation that is likely to come up during this case:

1. During Nathan's February 2020, visitation to our house, Nathan made the statement that Tony Bricker makes him get naked in front of him at times, and has showered with him frequently since the age of 4 years old until the current time. Nathan also informed us that his mom, Raina, was aware of this fact. Nathan claimed that his mom has also showered with him on occasion when he was 4 or 5. Nathan told me that both Tony and Raina have slapped him in the face multiple times. Nathan stated that during the previous week (approximately February 12, 2020), that his mother had slapped him in the face harder than she ever hit him before for spilling milk. His words were " Dad it really hurt me"

Due to the nature of these allegations, I reported these matters to the Las Vegas Child Protective Services on **February 16th, 2020**. I was informed that a case worker, Nadia Walker would be in contact with me.

2. 17FEB20: Nathan, just 20 minutes prior to boarding his plane to Vegas, said "dad, I have a little mark above my eye." Not thinking much of it, I replied to him "I see it, it's tiny, it looks like a rug burn." Nate claimed he had no idea how or when he got it.

3. 11MAR20 Nathan informed me during our nightly call that there had been an incident in school where he had hit someone at recess. This incident had happened on 19FEB20. I have asked the principal and Raina to keep me in the loop when there was something happening at school with Nathan and was concerned. By this time nearly 1 month had passed and I had not heard anything from either of them. I immediately emailed Principal Hurst and she informed me that Nathan had indeed been in a fight at school. Separately, she also informed me that the day Nathan returned to Las Vegas, **February 17, 2020**, Nathan made a statement to the Assistant Principal, and Principal Anna Hurst of Wallin Elementary. Nathan told the Principal that he got a scratch on his eye from getting removed from an altercation while on his visit with me in Colorado. He told Anna Hurst that Julie, my wife, had separated him from another kid who were rough housing, and that Julie had accidentally scratched his eye. Principal Hurst stated she had called his mom, Raina, on the same day, discussed this matter. Both Raina and Principal Hursta had agreed that this was no big deal.

4. On 12MAR20, during an email interaction with Raina, via OFW, Raina states that Julie has hit Nathan. Raina claims she is on her way to the school to meet with the Principal about the hitting incident. ***(See OFW emails between Erich and Raina)***
******This is now the third story I have heard about this scratch that Nathan did not care much about at the airport. I once again sent an email to Principal Hurst and ask why I was not***

included in the meeting about Nathan being hit. The reply from Principal Hurst was that she did not know of a hitting incident all she knew was it was a scratch.

5. 12MAR20, I finally receive a call from Nadia Walker asking me questions about the background on my call to CPS. She informs me that she will be speaking to Raina tomorrow about the incident.

6. 13MAR20, Nadia Walker calls me, and is rather aggressive in her discussion. She begins accusing me of scaring Nathan. This is rather mind-blowing, as I am the one who originated the CPS call for my son's claim of sexual, mental, and physical abuse by Tony and Raina.

I asked Nadia about the fact that Raina has hit him, and I tell her the same story that I was told by Nathan for the original CPS report, regarding the milk. Nadia says: "Sir, do you want to know what Nathan told me? That your wife was the one who hit him after spilling milk, and that is how he got that cut on his eye." *Nadia tells me that this "substantiates" physical abuse by Julie, and claims she has the pictures and the story to prove it.* However, Nadia is surprised and begins to sound nervous when I inform her that I have email proof that Principal Hurst and Raina have already had a different story for this cut. Nadia tells me that she needs to see the evidence of this discussion. (*See email forward to Nadia)* I also express that I see that Nathan is being coached to make such a statement. She sounds nervous and expresses disbelief, but when I tell her that this event was already discussed and handled by Prinicpal Hurst and Raina over 2 weeks ago (17FEB). I ask Nadia if she is going to speak to Principal Anna Hurst, she claims she will.

Then I asked Nadia if the sexual abuse of showers and inappropriate behavior by Tony Bricker with my son was discussed. Nadia claimed it NEVER came up once. I asked her if she even inquired Nathan about it. Nadia stated: *"I'm not allowed to ask leading questions like that. Nathan never mentioned anything about showers."*

In late April I received an email from Nathan's pediatrician stating that there was a test she (Dr. Tangy) wanted filled out concerning Nathan and the possibility of Nathan having ADHD. After filling out the questionnaire I asked the DR to call me because I wanted to explain some of my answers. During the phone conversation I asked if it was possible Nathan had some of these behaviors due to the fact that his stepfather was forcing Nathan to get naked and shower with him. The Dr was also concerned and stated that she would report the incident to CPS as she is a mandatory reporter.

A few days later During a FaceTime call. Nathan went into a private room and quietly told me that things were bad at his house. His mom was angry with him all of the time, Tony had slapped him in the face and that the showers were still happening.

07MAY20, I contacted CPS once again and the woman at the intake call explained that there had never been an original case filed at all. *I asked to speak with a supervisor because I felt like something was just not right.* ***I still have not received a call from the supervisor. I am completely confused at this point because here I thought I was doing the right thing for Nathan.*** *I file a report because my son tells me he is uncomfortable with what his stepdad is doing. I also mention the hit from his mom and suddenly within 3 weeks this entire thing has been turned on me and a story fabricated that my wife Julie is the only one doing anything wrong and she has punched Nathan in the face. My wife has never hit or slapped Nathan not even once. I have tried several times to contact someone to get clarification and no one will answer or*

return my calls from Las Vegas CPS. I am concerned that Tony's status as a cop has influenced someone to look the other way from himself and Raina and go after Julie and me.

25MAY20 Nathan arrives to spend the summer with me.

02JUN20 We receive mail from CPS and I am relieved that finally something will be done. Although in it there is accusations that have been substantiated against my wife for something she has never done and she is at risk for going on a central database as a person who has abused a child. My wife has worked at a pediatric dental office for over 13years and would never hurt a child and this could put her career in jeopardy. So naturally we ask Nathan what is going on. The first thing I ask him is has Julie ever hit you in the face. His answer was immediately no. This we know from Nadia Walker is not the case. I then have a long discussion with Nathan about the importance of being honest and he finally said that he made up the story of Julie punching him to get back at her for getting after him for little things. We carefully explained the consequences that such lies can have and he said that he wanted to make it right. Nathan has spoken to his mom 2 different times during a FaceTime call and Raina gets angry and refuses to listen to him. Nathan also asked to call Nadia Walker and the second she answered she instructed Nathan not to say anything to her about his stepmom as she already knew why he was calling. Nathan has been extremely frustrated because he is trying to do the right thing and set the record straight that he lied about the cause of the scratch, which he states is from a mat burn while trying to do a flip on the trampoline. As part of our discussion on the situation Nathan volunteered the following information.

1. If he speaks good about Erich while at his mom he is told to sleep on the floor. Nate says she sometimes takes my covers or pillows when doing this to him.
2. Mom (Raina) is rude to dad (Erich) because she knows he spends better quality time with me (Nathan). So in order to make it tough on Dad, she tries to start arguments in emails (OFW).
3. My Mom (Raina) wants me to help her make it so I don't have to see you anymore Dad (Erich). ***She wants me to tell her that everything is bad here so she can make sure I "stay home forever" with her. I told her this wasn't what I wanted, but she continues to pressure me.***.

Nathan has volunteered that the male investigator(name unknown) with Nadia spoke for a few minutes about the shower incidents that happened with him, and his step-brother Wyatt. Nathan has also said that Nadia and he watched the recording where he discussed the showers and being hit by Tony and Raina.

Nathan has also stated that Nadia told Tony and Raina THE SHOWERS HAVE TO STOP! This was what Raina told Nathan and Wyatt when they were driving home from the meeting with Nadia Walker.

7. Based on the information that was exchanged from Principal Hurst, and Raina, it would seem that there has been some form of chicanery during the CPS investigation. Furthermore, this entire event on behalf of Nadia Walker and Raina has been formulated to create an unnecessary "child abuse" filing against Julie. I have yet to see the full report or how it came to be that my wife is being accused of abuse, when Nathan has informed CPS of sexual and physical abuse by Raina Martin and Anthony Bricker. Furthermore, there has been a gross exaggeration of a story that

Nadia claims "substantiates" abuse charges. I have called Las Vegas CPS several times inquiring about this investigation and have never received any responses to voicemails.

8. Raina has begun threatening me to use this CPS allegation against my wife for ammo within this Court. All the while claiming that I have made false and unfounded accusations against Tony. Based on the nature of Nathan's discussion about the events, coupled by the law to report such matters, I made the call to CPS. As a parent, I do not condone such activities with any child, especially not for my son.

Emails between Erich and Principal Hurst on 11MAR20:

On Wed, Mar 11, 2020 at 7:32 PM Erich Julie <erich.n.jules@gmail.com> wrote:

Ms. Hurst and Mr. Allen,

Nathan told me yesterday, before he left that about 2 weeks ago some kid, Cameron, "choked him" during recess. Is this true? What happened and why wasn't I informed of such a matter?

I realize you both have a lot of kids to deal with, so please know I do understand. However, this is rather significant and I am doing all I can to reinforce better behavior from Nate. So please, let me know what happened and what was done to handle the situation. I am very worried about Nate and this seems to be regressing quickly. Thank you for your time.

Respectfully,

Erich Martin

On Thu, Mar 12, 2020, 7:55 AM Anna Hurst [Wallin ES] <hurstam@nv.ccsd.net> wrote:

Good morning! The event mentioned happen on 2/19. Nathan was not choked and was checked out by the nurse. However the other child did put his hands on Nathan's neck during a game. They were playing a game of chase, which is not allowed. Nathan pushed the other student and in return the child put his hands on his neck. It is inappropriate behavior and both children spoke with admin and loss recess. They are also not allowed to play together. Nathan continues to have a tough time with social interactions. We work with him on a daily basis. Our goal is to help him be successful.

Parents are called. We always call the first contact in the system. Unfortunately, we do not call both parents. I will make a note and try to call you as well, but it is a courtesy. My apologies that you were not informed of the incident. We rely on communication among parents regarding their children.

Thank you for your support!

Anna M. Hurst
Principal
Shirley & Bill Wallin Elementary School
702-799-5776

On Thu, Mar 12, 2020 at 12:56 PM Erich Julie <erich.n.jules@gmail.com> wrote:
Mrs Hurst,

Thank you for accepting my call and getting back to me on this matter.

1. I'm not sure why Raina is denying that you spoke with her about the 19FEB20 incident. But, I appreciate you taking the time to give me the details honestly.

2. I don't know why Raina is claiming that Julie ever "hit" Nathan, because that type of disciplinary action is not done in our home.

3. I know you and the Assistant Principal noted that it seemed odd that Nathan was "excited" to inform you of the alleged scratch from him being separated during a rough-housing incident. However, I assure you that wasn't the case and even Nathan told me that he didn't know where he got that rug burn above his eye. I assumed it was from him playing on the carpet in the house. It wasn't big at all and even he didn't know when it occurred.

I am sorry that Nathan has been a lot to work with this year. We are really trying to reinforce better habits and behavior. We will continue to work with him and you all to the best of our abilities. Thank you and enjoy your day.

Regards,

Erich

On Thu, Mar 12, 2020, 2:41 PM Anna Hurst [Wallin ES] <hurstam@nv.ccsd.net> wrote:

Good afternoon. As I mentioned, we are here to help Nathan academically and socially. Please do not mention your ex wife in any communication with me. I clearly stated that we called home regarding the incident and that Nathan stated he was scratched by his stepmom. I kindly ask that all communication is based on his academic & social needs only. Thank you!

Anna M. Hurst

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On Thu, Mar 12, 2020 at 3:08 PM Erich Julie <erich.n.jules@gmail.com> wrote:
Mrs Hurst,

I understand what you are saying here. However, is there a meeting that is to be held regarding your conversation about Nathan being hit at my home. If so, when and where will this take place? I should be there given the circumstances here. Thank you for your time.

Respectfully,

Erich

From: **Anna Hurst [Wallin ES]** <hurstam@nv.ccsd.net>
Date: Thu, Mar 12, 2020, 4:15 PM
Subject: Re: Nathan Martin Recess Incident?
To: Erich Julie <erich.n.jules@gmail.com>

Good afternoon. I appreciate your support. I was never made aware of a hitting allegation. He stated that he was scratched. There will be no meeting at this time. We will continue to work with him. Thank you!

Anna M. Hurst
Principal
Shirley & Bill Wallin Elementary School
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OFW Emails between Erich and Raina:

On Thu, 03/12/20 at 10:26 AM, Erich Martin wrote:
To: Raina Martin
Subject: Nathan Recess Incident 19FEB20
Message:
Raina,

Why did you fail to inform me that you received a call from principal Hurst for Nathan being violent during recess? I just spoke with Principal Hurst and she had no idea you didn't relay the message to me. This trend is not good both from you or Nathan. What happened?

Erich

On Thu, 03/12/20 at 10:27 AM, Raina Martin wrote:
To: Erich Martin
Subject: Re: Nathan Recess Incident 19FEB20
Message:
When was this? I wasn't called about anything other than being told Julie hit Nathan and left a mark on his head.

Raina

On Thu, 03/12/20 at 10:29 AM, Erich Martin wrote:
To: Raina Martin
Subject: Re: Re: Nathan Recess Incident 19FEB20
Message:
What in the world are you talking about?!! That is a lie. I have the email from Principal Hurst. And Julie has never hit Nathan. I have all this documented.

Erich

On Thu, 03/12/20 at 10:51 AM, Raina Martin wrote:
To: Erich Martin
Subject: Re: Re: Re: Nathan Recess Incident 19FEB20
Message:
Please attach a copy of the email.

Thanks

On Thu, 03/12/20 at 1:49 PM, Erich Martin wrote:
To: Raina Martin
Subject: Re: Re: Re: Re: Nathan Recess Incident 19FEB20
Message:
Raina,

So let me.get this straight, are you denying the school called you about Nathan on 19FEB20?

2. Are you also admitting the school called you on 10MAR20 and you didn't inform me?

3. Are you claiming that Julie "hit" Nathan?

4. Did you agree with Principal Hurst that the incident in question was of no concern?

Erich

On Thu, 03/12/20 at 2:09 PM, Raina Martin wrote:
To: Erich Martin
Subject: Re: Re: Re: Re: Re: Nathan Recess Incident 19FEB20
Message:
Erich,

All of this is so much bigger. I have a meeting tomorrow and will update you on Nathan being hit.

As far as the school communications, I was informed that they communicated with you when they communicated with me. I have NEVER been told that Nathan has been "violent" at recess.

I have reached to Ms. Hurst.

Raina

On Thu, 03/12/20 at 2:15 PM, Erich Martin wrote:
To: Raina Martin
Subject: Re: Re: Re: Re: Re: Re: Nathan Recess Incident 19FEB20
Message:
Raina,

She told me she spoke with you about the matter. No one at our home has now or ever hit Nathan. We don't do that and if there is a meeting about such matters between you and the school, according to the decree I am to be involved. When and what time is it being conducted and who will conference call me on for this meeting?

Erich

On Thu, 03/12/20 at 6:12 PM, Raina Martin wrote:
To: Erich Martin
Subject: Re: Re: Re: Re: Re: Re: Re: Nathan Recess Incident 19FEB20
Message:
Erich,

Please refer all communication to Nadia Walker with CPS at 7024557202

Raina

From: Erich Martin
To: Raina Martin (First View: 03/13/2020 11:30 AM)
Sent: 03/13/2020 11:23 AM
Subject: Re: Re: Re: Re: Re: Re: Re: Re: Nathan Recess Incident 19FEB20

Message:

Raina,

I didn't know this had anything to do with CPS or why. It seemed like this was about a meeting with the school based on your email.

Erich

Emails forwarded to Nadia Walker outlining that Raina already had a story on Nathan's cut as of 17FEB20:

---------- Forwarded message ---------
From: **Erich Julie** <erich.n.jules@gmail.com>
Date: Fri, Mar 13, 2020, 8:45 PM
Subject: Fwd: Nathan Martin Recess Incident?
To: <nadia.walker@clarkcountynv.gov>

Ms Walker,

Please see the chain of emails below. Also, you can confirm with Principal Hurst, but she informed me that she and Raina spoke Tuesday that "Nathan got a scratch from being separated from rough-housing." She also cleared it with Raina that this was not an issue.

Furthermore, I reiterate that Julie has never once hit or scratched Nathan and that none of this ever happened while he was at our house.

As for a telephone appointment with Julie, if you can call her after 5:30pm on Monday she should be available.

Thanks,

Erich

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Principal
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702-799-5776

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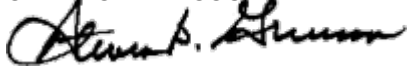
FDF
Name: Erich Martin
Address: 3815 Little Dipper Dr.
Ft. Collins, CO 80528
Phone: (970) 775-3952
Email: emartin2617@gmail.com
Attorney for Self-represented
Nevada State Bar No.

Electronically Filed
6/9/2020 8:49 AM
Steven D. Grierson
CLERK OF THE COURT



_____ Judicial District Court

_____, Nevada

Erich Martin **Plaintiff,** **vs.** Raina Martin **Defendant.**	**Case No.** D-15-509045-D **Dept.** C

GENERAL FINANCIAL DISCLOSURE FORM

A. Personal Information:

1. What is your full name? *(first, middle, last)* Erich Matthew Martin
2. How old are you? 39 3.What is your date of birth? 12/30/1980
4. What is your highest level of education? Bachelor's of Science

B. Employment Information:

1. Are you currently employed/ self-employed? *(☑check one)*
   - ☐ No
   - ☑ Yes If yes, complete the table below. Attached an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)
March 2020		Manager	M-F	8am-4pm

2. Are you disabled? *(☑check one)*
   - ☐ No
   - ☑ Yes If yes, what is your level of disability? 100%
     What agency certified you disabled? US Army
     What is the nature of your disability? Combat Related Disability

C. Prior Employment: If you are unemployed or have been working at your current job for less than 2 years, complete the following information.

Prior Employer: US Army Date of Hire: 7/13/1999 Date of Termination: 7/31/2019
Reason for Leaving: Retired from 20 years active duty service.

Monthly Personal Income Schedule

A. Year-to-date Income.

As of the pay period ending 30MAY20 my gross year to date pay is 29205.00.

B. Determine your Gross Monthly Income.

Hourly Wage

$66.37 Hourly Wage	×	40.00 Number of hours worked per week	=	$2,654.80 Weekly Income	×	52 Weeks	=	$138,049.60 Annual Income	÷	12 Months	=	$11,504.13 Gross Monthly Income

Annual Salary

 Annual Income	÷	12 Months	=	$0.00 Gross Monthly Income

C. Other Sources of Income.

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income			
Bonuses			
Car, Housing, or Other allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay			
Pension/Retirement:			
Social Security Income (SSI):			
Social Security Disability (SSD):			
Spousal Support			
Child Support			
Workman's Compensation			
Other: Disability	Monthly	$5,163.00	$61,956.00
Total Average Other Income Received			$61,956.00

Total Average Gross Monthly Income (add totals from B and C above)	**$73,460.13**

D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (automatically deducted from paycheck)	808.00
2.	Federal Health Savings Plan	
3.	Federal Income Tax	575.52
4.	Health Insurance — Amount for you: _____ For Opposing Party:_____ For your Child(ren): $220.00	220.00
5.	Life, Disability, or Other Insurance Premiums	400.00
6.	Medicare	154.88
7.	Retirement, Pension, IRA, or 401(k)	450.00
8.	Savings	
9.	Social Security	662.22
10.	Union Dues	
11.	Other: (Type of Deduction) CO State Tax	446.00
	Total Monthly Deductions (Lines 1-11)	3,716.62

Business/Self-Employment Income & Expense Schedule

A. Business Income:

What is your average gross (pre-tax) monthly income/revenue from self-employment or businesses?
$ 0.00

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising			
Car and truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and professional			
Mortgage or Rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and licenses (include est. tax payments)			
Utilities			
Other:_____			
	Total Average Business Expenses		0.00

Personal Expense Schedule (Monthly)

A. Fill in the table with the amount of money **you** spend each month on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me ✔	Other Party ✔	For Both ✔
Alimony/Spousal Support				
Auto Insurance	500.00			
Car Loan/Lease Payment	700.00			
Cell Phone	400.00			
Child Support (not deducted from pay)				
Clothing, Shoes, Etc…	1,000.00			
Credit Card Payments (minimum due)	3,000.00			
Dry Cleaning	75.00			
Electric	100.00			
Food (groceries & restaurants)	1,800.00			
Fuel	500.00			
Gas (for home)	120.00			
Health Insurance (not deducted from pay)				
HOA	75.00			
Home Insurance (if not included in mortgage)	200.00			
Home Phone				
Internet/Cable	290.00			
Lawn Care				
Membership Fees	35.00			
Mortgage/Rent/Lease	1,200.00			
Pest Control				
Pets				
Pool Service				
Property Taxes (if not included in mortgage)	383.00			
Security				
Sewer				
Student Loans				
Unreimbursed Medical Expense	300.00			
Water	150.00			
Other:_____				
Total Monthly Expenses	10,828.00			

Household Information

A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attached a separate sheet if needed.

	Child's Name	**Child's DOB**	**Whom is this child living with?**	**Is this child from this relationship?**	**Has this child been certified as special needs/disabled?**
1st	Nathan Martin	08/24/10	Raina	Yes	No
2nd	Kaylie Chambers	04/07/04	Me	No	No
3rd	Makahl Chambers	07/13/05	Me	No	No
4th	Dylan Chambers	09/08/08	Me	No	No

B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	**1st Child**	**2nd Child**	**3rd Child**	**4th Child**
Cellular Phone				
Child Care				
Clothing	100.00	250.00	250.00	250.00
Education	75.00	125.00	125.00	125.00
Entertainment	150.00	150.00	150.00	150.00
Extracurricular & Sports	50.00	835.00	210.00	85.00
Health Insurance (if not deducted from pay)				
Summer Camp/Programs	100.00			
Transportation Costs for Visitation	200.00	100.00	100.00	100.00
Unreimbursed Medical Expenses		80.00		
Vehicle		135.00		
Other:_____				
Total Monthly Expenses	**675.00**	**1,675.00**	**835.00**	**710.00**

C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of eighteen. If more than 4 adult household members attached a separate sheet.

Name	**Age**	**Person's Relationship to You (i.e. sister, friend, cousin, etc…)**	**Monthly Contribution**
Julie Martin	46	Wife	$ 2,800.00

Personal Asset and Debt Chart

A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

Line	Description of Asset and Debt Thereon	Gross Value		Total Amount Owed		Net Value	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		$	-	$	=	$ 0.00	
2.		$	-	$	=	$ 0.00	
3.		$	-	$	=	$ 0.00	
4.		$	-	$	=	$ 0.00	
5.		$	-	$	=	$ 0.00	
6.		$	-	$	=	$ 0.00	
7.		$	-	$	=	$ 0.00	
8.		$	-	$	=	$ 0.00	
9.		$	-	$	=	$ 0.00	
10.		$	-	$	=	$ 0.00	
11.		$	-	$	=	$ 0.00	
12.		$	-	$	=	$ 0.00	
13.		$	-	$	=	$ 0.00	
14.		$	-	$	=	$ 0.00	
15.		$	-	$	=	$ 0.00	
Total Value of Assets (add lines 1-15)		$ **0.00**	-	$ **0.00**	=	$ **0.00**	

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than 5 unsecured debts, attach a separate sheet.

Line #	Description of Credit Card or Other Unsecured Debt	Total Amount owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		$	
2.		$	
3.		$	
4.		$	
5.		$	
6.		$	
Total Unsecured Debt (add lines 1-6)		**$ 0.00**	

CERTIFICATION

Attorney Information: *Complete the following sentences:*

1. I *(have/have not)* have not retained an attorney for this case.
2. As of the date of today, the attorney has been paid a total of $_____ on my behalf.
3. I have a credit with my attorney in the amount of $_____.
4. I currently owe my attorney a total of $_____.
5. I owe my prior attorney a total of $ _____.

IMPORTANT: Read the following paragraphs carefully and initial each one.

EMM I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

EMM **I have attached a copy of my 3 most recent pay stubs to this form**.

N/A **I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed**.

N/A **I have not attached a copy of my pay stubs to this form because I am currently unemployed**.

/s/ Erich Matthew Martin
Signature

June 9th, 2020
Date

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury of the State of Nevada that the following is true and correct:

That on *(date)* June 9th, 2020, service of the General Financial Disclosure Form was made to the following interested parties in the following manner:

☐ Via 1st Class U.S. Mail, postage fully prepaid addressed as follows:

☑ Via Electronic Service, in accordance with the Master Service List, pursuant to NEFCR 9, to: Eighth Judicial District Court.

☐ Via Facsimile and/or Email Pursuant to the Consent of Service by Electronic Means on file herein to:

Executed on the 9th day of June, 2020.

/s/ Erich Matthew Martin
Signature

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Electronically Filed
6/9/2020 1:56 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

****

Erich M. Martin, Plaintiff
vs.
Raina L. Martin, Defendant.

D-15-509045-D
Department C

NOTICE OF AUDIO/VISUAL APPEARANCE

Please be advised that the **Motion and Opposition & Countermotion** to be heard by the Honorable Rebecca L. Burton at the Family Courts and Services Center, 601 N. Pecos Rd., Las Vegas, Nevada, on the **16th day of June, 2020** at the hour of **10:00 AM** in **Department C, Courtroom 08 will be conducted by audio/visual appearance.** YOUR PRESENCE IS NECESSARY.

Go to: https://www.bluejeans.com Meeting No. 459 505 689

DISTRICT JUDGE REBECCA L. BURTON

By: /s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamp date:

☒ I provided the foregoing NOTICE OF AUDIO/VISUAL APPEARANCE to:

Erich Matin
emartin2617@gmail.com

Marshal Willick, Esq.
email@willicklawgroup.com

/s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C

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RPLY

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email@willicklawgroup.com
Attorney for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERICH MARTIN, Plaintiff, vs. RAINA MARTIN, Defendant.	CASE NO: D-15-509045-D DEPT. NO: C DATE OF HEARING: TIME OF HEARING:

REPLY TO "RESPONSE TO DEFENDANT'S MOTION TO ENFORCE AND DEFENDANT'S ATTORNEY'S FEES AND NOTICE OF MOTION FOR AN ORDER TO ENFORCE AND/OR ORDER TO SHOW CAUSE REGARDING CONTEMPT" AND OPPOSITION TO "COUNTERMOTION FOR CONTEMPT"

I. INTRODUCTION

Once again, Erich is taking advantage of this Court by playing the "proper person litigant" card. He will do anything in his power to avoid paying Raina a dime of the money he agreed to pay her when the parties divorced, even lie to the court to do so.

Raina requests that this Court disregard Erich's entire *Opposition and Countermotion*, grant her *Motion* in its entirety and award her the attorney's fees and costs she has been forced to expend in an attempt to get what is rightfully hers.

POINTS AND AUTHORITIES

II. FACTS

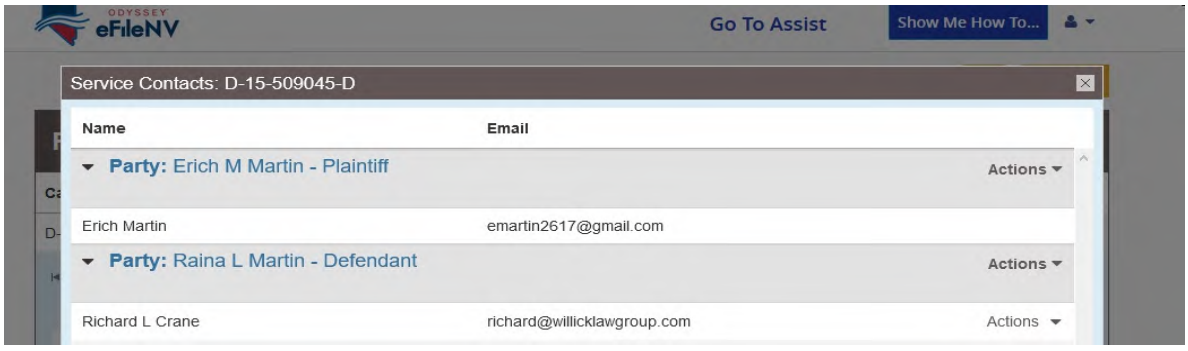
This Court, having read and reviewed the prior pleadings in this matter is fully aware of the facts of this case. Therefore, we will only present a few relevant facts here.

The parties were last in Court in December of 2019.

On March 17, 2020, Raina retained our firm based on Erich's refusal to pay for dental coverage and for his withholding of the retirement benefits.

In April 2020, Raina requested that Erich help pay for Nathan's glasses. He again refused to assist even though it was required under the terms of the *Decree*.[1]

Raina's *Motion to Enforce* was finalized and filed with the Court on May 1, 2020. Service of the *Motion* and all supporting documents was effectuated by U.S. Mail, sent to his last known address, and to the email address listed on the Court's e-service list.



Erich filed his "Request to Extend Time" on May 12, 2020. The only reason we became aware of this filing is because the Court filed and served a "Clerk's

[1] Erich did finally pay $50 toward the glasses, but only after we had filed this *Motion* and served the same on him.

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Notice of Nonconforming Document" that same day. If Erich had not incorrectly filed his draft *Order to Extend Time to Answer*, his filing would have been entirely *Ex Parte*. The reason Erich gave for his request to extend time was "based on the events surrounding COVID-19 Pandemic, which has severely limited my access to attorneys." The Court granted his request three days later, allowing Erich until June 1, 2020, to respond to Raina's *Motion*. Erich never reached out to our office to request an extension or to communicate his inability to obtain counsel.

Erich filed his *Response to Defendant's Motion to Enforce and Defendant's Attorney's Fees and Notice of Motion for an Order to Enforce and/or Order to Show Cause Regarding Contempt and Countermotion for Contempt* and the *Exhibit Appendix* thereto on May 28, 2020. He claims to have served it on Raina by mailing a copy to the Willick Law Group, as mentioned in his *Exhibit Appendix*. The documents did not arrive in our office until June 5. No documents were ever served through electronic service despite the Willick Law Group having added recipients to the e-service list and Erich having those recipients' email addresses.

This Reply follows.

III. Reply

A. PROCEDURAL ISSUES

1. Erich *has not* Served a Single Document

From the date our office was retained by Raina, Erich has filed a minimum of five documents. As far as we can tell, he has only "claimed" to have served the Exhibits to his *Opposition* as it is the only document that has a Certificate of Service.

Even though he has access to the eserve system, he has refused to use it and only mails some of the documents that he files. He does this to try to gain a tactical advantage in his case. However, what it does is demonstrate to the Court just how low he will stoop to avoid paying that which Raina is entitled.

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We usually give our opponents, especially proper person litigants, the benefit of the doubt when it comes to service. We are unable to do so in this case when he purposefully does not serve filed documents.

Based on Erich's refusal to comply with Court rules concerning service, Raina requests the Court disregard Erich's *Opposition* entirely. At the very least, his behavior should be admonished and he should be made to pay Raina's attorney's fees.

2. Extension to file Opposition

Compounding the lack of service issue is the fact that Erich never bothered to ask us for an extension to file his *Opposition*. Due to the pandemic and the Court's Administrative Orders, we would have worked with Erich on this issue. Instead, he went straight to filing his request. This shows Erich's lack of desire to work with Raina to resolve issues or to co-parent.

To further underline the point, we would like to draw the Court's attention back to Erich's request. He literally asked for a due date of June 10th to file his *Opposition*. This would have left only one day for Raina to respond. She would have either had to request the hearing be moved out or it would have skyrocketed her attorney's fees to get the last minute response on file in a timely manner. It seems multiplying filings and expenses for Raina is one of Erich's main goals.

Erich also has a propensity to lie to the Court. He indicated that he has been unable to speak to or retain an attorney and that is why he needed the extension of time to file his *Opposition*. Yet, after receiving the courtesy of the Court, he still filed his *Opposition* in Proper Person. It isn't possible that he sought the aid of an attorney or he would easily have found one as the majority of law firms in Las Vegas were and are still conducting business remotely. His only true intention was to cause more delay and expense for Raina.

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3. Erich's Exhibits

Erich's Exhibit filing does not comply with EDCR 5.205(b) which requires all exhibits to be Bates stamped. His documents don't even have simple page numbers to assist in reference. This is either simple laziness or another tactic used by Erich to distract this Court.

Another procedural issue with Erich's Exhibits are that he is the Plaintiff and his exhibits should use the numbering convention, not lettering.

B. Erich Fails To Point to Contrary Case Law Around the Country

The *Howell* decision is fairly recent and not many jurisdictions have had the opportunity to deal with the ramifications of a Supreme Court decision that retroactively defeats judgments and agreements made in domestic relations courts.[2] Nevada has not dealt with the issue since the decision in *Howell.*

Erich cites to a couple of cases that support his position. However, he ignores the other States that have found that *Howell* does not pre-empt a contractual agreement to pay benefits. We look to another community property state, Texas, to see that a contract between the parties does not run afoul of *Howell*.

In *Rudolph v. Jaimeson*,[3] the Texas Court of Appeals found:

> A property settlement agreement incorporated into a divorce decree is treated as a contract in Texas, and its meaning is governed by the law of contracts. *McGoodwin*, 671 S.W.2d at 882. Rudolph has not pleaded any theory in avoidance of the contract's provision for alternative distributions to Jamieson in the event of his waiver of retired pay or receipt of other separation compensation.

[2] See *Howell v. Howell*, No. 15-1031, U.S. Supreme Court May 15, 2017.

[3] *Rudolph v. Jamieson*, Tex: Court of Appeals, 3rd Dist. 2018.

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Here, Nevada also treats property settlement agreements as contracts.[4] As such, when a party contracts to pay a certain amount to another person, the source of those funds has no bearing on the requirement to pay.

If some other interpretation would be applied, then a disabled veteran would not be able to contract for the purchase of a car, a house, or be eligible to carry credit cards as they could claim they have no obligation to pay with their disability funds.

In *Gross v. Wilson*, the Alaska Supreme Court made a similar decision.[5] In that case, the Supreme Court affirmed the decision of the lower court which found:

> Second, the superior court found that the United States Supreme Court's decision in *Mansell v. Mansell* regarding the USFSPA and our decision in *Clauson v. Clauson* did not preclude enforcement of the retirement provision in the parties' settlement agreement. While acknowledging that those cases hold that state courts do not have any power to "equitably divide veterans' disability benefits received in place of waived retirement pay, the court reasoned that the master's recommendation simply enforced a contractual obligation requiring Gross to pay Wilson a specific amount from any of his resources. Moreover, the court concluded that, even if the payments originated from Gross's disability pay, nothing in the USFSPA or *Mansell* prevents a veteran from voluntarily contracting to pay a former spouse a sum of money that may originate from disability payments.

This is exactly the same situation as is presented to this Court. Erich contracted to pay Raina her share of the benefits.

It is important to note that Erich specifically contemplated paying Raina any amounts that were waived due to disability. Specifically, the *Decree of Divorce* which was submitted to the Court for summary disposition, states:

> Should Erich select to accept military disability payments, Erich shall reimburse Raina for any amount that her share of the pension is reduced due to the disability status.

This is a clear contractual agreement between Raina and Erich. It is unambiguous and not subject to any other interpretation. He has the obligation to make payments directly to Raina in any amount that she loses as a result of his

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[4] *Williams v. Waldman*, 108 Nev. 466, 836 P.2d 614 (1992) (quoting *Jacobson v. Sassower*, 489 N.E.2d 1283, 1284 (N.Y. 1985)).

[5] *Gross v. Wilson*, 424 P. 3d 390 - Alaska: Supreme Court 2018.

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unilateral action. Where he gets the money is immaterial to the question as to whether he is required to pay.

Since Erich provides no reason why the contract should be ignored under Nevada law, he is without an argument as to why he should not continue payments that were being made directly by DFAS.

IV. OPPOSITION

A. There is No Contempt

Erich has failed to properly make a request for an Order to Show Cause. However, to further prove that Erich is without grounds to even make such a request we shall quickly respond to each claim here.

1. Erich Forfeited His Visitation.

Raina never told Erich he could not have visitation with Nathan. Erich requested to have Nathan early for his regularly scheduled visitation because he was having a retirement party. Raina agreed.[6] Erich was then supposed to keep Nathan through the Labor Day holiday. He was unable to secure child care for Nathan and sent him back to Raina early.[7] Then when October came around, Erich refused to exercise his time.

According to the *Decree of Divorce*, since Erich lives outside Nevada, he afforded the opportunity to exercise his visitation with Nathan where he lives every other month. The months between Nathan traveling, Erich is supposed to visit with him in Las Vegas. Erich's request for Raina to send Nathan to Erich was unreasonable. It is his responsibility to visit Nathan in Nevada every other month

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[6] See Exhibit A - Our Family Wizard Messages between Erich Martin and Raina Martin dated July 25, 2019, through August 2, 2019.

[7] See Exhibit B - Our Family Wizard Messages between Erich Martin and Raina Martin dated August 28, 2019.

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and he chose to miss that visitation. As discussed at the December hearing, this counts as Erich forfeiting his time.[8]

2. Raina is *NOT* in Violation of Joint Legal Custody

Erich's claim that Raina has made unilateral decisions concerning education and medical providers is again without merit. Nathan has seen an ENT & Dermatologist for years and they were referrals from Nathan's primary care provider at the time. Nathan continues to have annual check-ups and the appointments are solely for his well-being. Erich has known about these appointments and is welcome to speak to the doctors to get any information that he desires.

Of course, that is not the case when Erich takes Nathan to the doctor. In the summer of 2019, Erich took Nathan to an optometrist appointment in Fort Collins/Denver, Colorado without discussing anything with Raina. He then refused to provide any information about the doctor and refused to discuss what occurred at the appointment.[9]

As for education, this was discussed in depth in Mediation. Erich does not live in Nevada. Raina moved residences but remained in Las Vegas.[10] As this Court is aware, you must register your child at the public school that services your neighborhood. The schools that Nathan has attended are schools that were zoned for the area where Raina resides, nothing more.

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[8] See *Order After December 10, 2019, Hearing,* page 4, line 21 through page 5, line 3.

[9] See Exhibit C, Our Family Wizard Messages between Erich Martin and Raina Martin, dated 12/5/19 and 12/30/19.

[10] Erich has always known my residence address.

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Erich then lies to the Court that no teacher had advised us to seek outside therapy for Nathan. We ask the Court to review our Exhibits that show an attempt to co-parent with Erich which he refuses to do.[11]

Again, Erich's arguments lack support and are only provided as a further distraction.

3. Erich Does Not Understand His Own Insurance

It is clear Erich does not understand how his own medical benefits work. Tricare does not cover glasses for dependents. They will cover an eye exam, but the actual purchase of the glasses must be done through a private provider.[12]

Any claim that Nathan is somehow covered by Tricare for his prescription lenses is belied by the actual coverage by the Plan.

4. Tony Has Not Violated the Behavior Order

At the time that Tony contacted Erich, it was in a good faith attempt to adopt Nathan. The contact occurred before any order was actually in place and thus is not a contemptuous act. There was no harassment. However, based on Erich's response, the Court can be assured that Tony will not ever make any such attempt to resolve issues amicably with Erich. He and Raina will use OFW and the Court for all future communications.[13]

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[11] See Exhibit D, email dated 12/7/2017 from Mr. Toth. Also see Exhibit E, the 24 pages of Our Family Wizard Messages between Erich Martin and Raina Martin, dates ranging from 9/25/16 to 6/2/20.

[12] We ask the Court to take Judicial Notice of the coverage posted at https://www.tricare.mil/CoveredServices/Vision/GlassesContacts.

[13] It is interesting to note that the text sent by Tony was actually sent on January 9, not January 12.

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On a more important point, Erich's wife Julie, has contacted Raina via Venmo and also filed a false CPS claim against Tony.[14]

We believe that Julie did this in an attempt to cover her own abuse of the child which CPS has recently substantiated. She apparently has a temper and has hit the child marking his face.[15]

We are concerned that Erich's new wife is being left alone with the minor child. Erich has refused to answer the simple question of who is caring for the child while he is at work. Rather than provide the information as required, he responds with the same question back to Raina.[16] Is this just more cover for his abusive wife?

Based on this late breaking information, we ask the Court to limit Erich's visitation with the child to only times when the new wife is not present and can't hurt the child any further.[17] Additionally, the Court should order that Erich's wife is never to be left alone with the child as she poses a clear and present danger.

Additionally, even though it has been suggested by the school, Erich has refused to allow Raina to get mental health therapy for Nathan. With this new information, we think it is imperative that he be seen by a professional as soon as possible. We ask the Court to grant Raina unilateral authority to get her son the help he needs and that has been suggested by his teachers.

B. Erich Is Attempting to Distract the Court.

Many of the issues raised in Erich's *Opposition and Countermotion* are issues of Legal Custody and could have been brought up the last time the parties were in

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[14] See Exhibit F, copy of letter from CPS disposing of the claim as unsubstantiated.

[15] We are in the process of obtaining the CPS report and will file the same with the Court once it is received.

[16] See Exhibit G, copy of text messages between Raina and Erich.

[17] Apparently, a behavioral order is not enough to protect the child from this woman and Erich is doing nothing to make sure the child is protected from his new wife's wrath.

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Court. Why did he not bring these issues up during those proceedings? The reason is quite simple. Erich is using his responsive filing and claims of contempt to distract the Court from the real issue at hand, the agreement he made to pay Raina her martial share of his retirement. Here is break down of all the reasons Erich's *Opposition* should not only be ignored by this Court, but stricken from the record completely.

1. Erich Uses Emails From 2016 to Support Claims Addressed at the 2019 Motion Hearing.

Erich tries to support his arguments by using exhibits dated prior to the December hearings and many of these issues were addressed at that hearing. Erich is using these arguments and evidence as a way to distract the Court and they should be ignored.

2. Erich Provides Incomplete or Adulterated Exhibits

In his Exhibits and *Opposition* filing, Erich goes on and on about events where Raina has refused him visitation and how she is in violation of the behavioral order. Yet, he provides no proof of her actually doing so. There is not a single text or email showing Raina telling Erich he cannot have his visitation nor anything to show her refusing to co-parent. A majority of the attached emails are even incomplete email chains and Raina's response or the email he is responding to is not provided. This takes the communications completely out of context. Not only is he trying to distract the Court, but he is also lying by way of omission.

Erich goes as far as to provide a total of how much the minor child's glasses cost but fails to provide an official statement or bill for the same. The Court doesn't even have a communication where Raina is making a demand for half of the $700 he quotes. He hopes that all the noise he is making will draw the Court's attention while providing nothing to truly support his statements.

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3. Erich Tries to Show Cooperation AFTER Raina filed her Motion.

Exhibit D of Erich's response shows he made a Venmo payment to Raina on May 1, 2020, at 9:58 pm. As Raina's *Motion* was filed at 4:25 PM that day and Erich was electronically served, he waited until after Raina had no choice but to bring her issues before the Court to attempt to make any kind of payment whatsoever. On this basis alone, Erich should not be rewarded for doing something he should have done, at the very latest, right after the hearing in December.

Raina requests the Court disregard Erich's claim that he has been making payments as it is clear that, in his mind, the rules only apply to Raina.

4. Erich Relies on Child Hearsay.

Erich's Exhibits should be stricken simply because of the child hearsay he is trying to get into the record. There is no actual proof of Raina making any comments to the minor child about his father. Erich wants the Court to rely solely on his own testimony, phrased as child hearsay.

Further, this issue wasn't raised in his actual *Opposition*. It is just a blurb stuck into his exhibits in yet another attempt to create more distractions from the primary issue and should be likewise disregarded.

5. Erich's Exhibits Are Not True and Correct Copies .

As the Court can well and truly see, Erich hand crafted each and every one of his exhibits. He might claim that he "only added his own relevant text" to "enlighten the Court." What really happened or was actually in the original messages is anyone's guess.

If the Court looks at the end of page 10 and beginning of page 11 of his Exhibit Appendix, it will see a prime example of why exhibits need to be original copies of the documents provided. Erich attempts to show an email from a Rene

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Keathly as proof that Raina is refusing to co-parent with him. Yet, who is to know what Keathly actually wrote? Erich's exhibit is, at best, him re-typing an email he received. It is clear Erich modified the document. He could easily have written anything and is trying to pass it off as a communication from someone else.

Though we doubt that any of this warrants an evidentiary hearing, we hereby object to these Exhibits as lacking any foundation as being accurate representations of the originals.[18]

Raina objects to the entire Exhibit Appendix as lacking authenticity.

C. ATTORNEY FEES AND COSTS

The request for Attorney's fees and Costs and the *Brunzell* analysis section from Raina's *Motion* filed on May 1, 2020 is incorporated here in full.

Everything Erich has done from the last hearing until today has been an attempt to avoid paying Raina anything he owes her, to cause her to spend more money in attorney's fees to chase him, and flies in the face of this Court's orders. He has told lies to garner Court sympathy and receive an extension to file his *Opposition*, all the while trying to deprive Raina of adequate time to respond. He has manufactured exhibits that we have officially challenged as to their authenticity and he completely avoids the requirements of EDCR 5.205. His goal in all of it was to cause Raina to spend more money as well as a distraction of the Court.

Erich should not be rewarded for this behavior. If the Court does not Order him to pay Raina's attorney's fees and costs, it will send him a message that it is okay to repeat this behavior.

[18] See NRCP 16.21 which refers all post-judgment discovery back to NRCp 16.2, which states: Any objection to the authenticity or genuineness of documents must made in writing within 21 days of the date the receiving party receives them. Absent such an objection the documents must be presumed authentic and genuine and may not be excluded from evidence on these grounds.

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V. CONCLUSION

Based on the above, Raina respectfully requests the Court issue the following orders:

1. That the Court strike Erich's response and exhibits from the record, or in the alternative, deny his requests entirely.
2. That within 10 days of the hearing on this matter, Erich will have become current on all medical, dental, and vision premiums and unreimbursed costs.
3. That failure to meet the 10 day requirement will result in an order to show cause with the threat of incarceration.
4. That Raina is awarded permanent alimony in the amount she would be receiving as her share of the military retirement plus any future cost of living adjustments.
5. That Erich's current wife not be present during visitation and certainly never be left alone with the minor child.
6. That Raina be allowed to seek out mental health counseling for Nathan without waiting for an agreement from Erich.
7. For an award of actual attorney's fees and costs. And,
8. For such other and further relief as the Court deems just and proper.

DATED this 10th day of June, 2020.

Respectfully Submitted By:
WILLICK LAW GROUP

// s // Richard L. Crane, Esq.

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
RICHARD L. CRANE, ESQ.
Nevada Bar No. 9536
3591 E. Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100; Fax (702) 438-5311
Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 10th day of June, 2020, I caused the foregoing document to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

[ ] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means;

[ ] by hand delivery with signed Receipt of Copy.

To the litigant(s) and attorney(s) listed below at the address, email address, and/or facsimile number indicated:

Erich M. Martin
3815 Little Dipper Dr
Fort Collins CO 80528
Plaintiff in Proper Person

/s/Justin K. Johnson
Employee of the WILLICK LAW GROUP

P:\wp19\MARTIN,R\DRAFTS\00442718.WPD/jj

WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

148

EXHS
WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Phone (702) 438-4100; Fax (702) 438-5311
email@willicklawgroup.com
Attorney for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERICH MARTIN, Plaintiff, vs. RAINA MARTIN, Defendant.	CASE NO: D-15-509045-D DEPT. NO: C DATE OF HEARING: 6/16/2020 TIME OF HEARING: 10:00 am

EXHIBITS TO REPLY TO "RESPONSE TO DEFENDANT'S MOTION TO ENFORCE AND DEFENDANT'S ATTORNEY'S FEES AND NOTICE OF MOTION FOR AN ORDER TO ENFORCE AND/OR ORDER TO SHOW CAUSE REGARDING CONTEMPT" AND OPPOSITION TO "COUNTERMOTION FOR CONTEMPT"

Defendant, Raina Martin, by and through her attorneys, the WILLICK LAW GROUP, submits the attached documents as *Exhibits* to her *Opposition to Reply to "Response to Defendant's Motion to Enforce and Defendant's Attorney's Fees and Notice of Motion for an Order to Enforce And/or Order to Show Cause Regarding Contempt" and Opposition to "Countermotion for Contempt"* filed on June 10, 2020.

Exhibit A. Our Family Wizard Messages between Erich Martin and Raina Martin dated July 25, 2019, through August 2, 2019.

Bates Stamp Number (000001RM)

Exhibit B. Our Family Wizard Messages between Erich Martin and Raina Martin dated August 28, 2019.

Bates Stamp Numbers (000002RM - 000003RM)

Exhibit C. Our Family Wizard Messages between Erich Martin and Raina Martin dated 12/5/19 and 12/30/19.

Bates Stamp Numbers (000004RM - 000005RM)

Exhibit D. Email dated 12/7/2017 from Mr. Toth

Bates Stamp Numbers (000006RM)

Exhibit E. Our Family Wizard Messages between Erich Martin and Raina Martin, dates ranging from 9/25/16 to 6/2/20.

Bates Stamp Numbers (000007RM - 000030RM)

Exhibit F. Copy of letter from CPS disposing of the claim as unsubstantiated.

Bates Stamp Numbers (000031RM)

Exhibit G. Copy of text messages between Raina and Erich.

Bates Stamp Numbers (000032RM - 000033RM)

DATED this __10th ___ day of June, 2020.

Respectfully Submitted By:

WILLICK LAW GROUP

// s // Richard L. Crane, Esq.

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
RICHARD L. CRANE, ESQ.
Nevada Bar No. 9536
3591 E. Bonanza, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100 Fax (702) 438-5311
Attorneys for Defendant

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Willick Law Group and that on this 10th day of June, 2020, I caused the above and foregoing document to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

[ ] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means;

[ ] by hand delivery with signed Receipt of Copy.

[ ] by First Class, Certified U.S. Mail.

To the person(s) listed below at the address, email address, and/or facsimile number indicated:

Erich M. Martin
3815 Little Dipper Dr
Fort Collins CO 80528
Plaintiff in Proper Person

/s/Justin K. Johnson
An Employee of the Willick Law Group

P:\wp19\MARTIN,R\DRAFTS\00444227.WPD/jj

WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

EXHIBIT “A”

EXHIBIT “A”

EXHIBIT “A”

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 12:51 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 08/02/2019 12:52 PM

From: Raina Martin

To: Erich Martin (First View: 08/02/2019 4:17 PM)

Subject: RE: Erich's Retirement/Nathan's Bday

UPDATED**

Erich,

Here is the correct flight info:

Las Vegas, NV - LAS
Denver, CO - DEN
Your New Flight: 720
Tuesday
August 27, 2019
Departing: 5:50 PM
Arriving: 8:42 PM
Duration: 1 h 52 min

On Sat, 07/27/19 at 11:41 AM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Erich's Retirement/Nathan's Bday

Raina,

I've already informed you both that I need him here by 27AUG19 and I'll send him home 28AUG19. Please send me his flight info soonest.

Erich

On Thu, 07/25/19 at 9:18 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Erich's Retirement/Nathan's Bday

Erich,

Tony and I agree and we feel it is important that Nathan see your retirement celebration and accomplishments. We will work with you on the date and time that would work best for you and Nathan. Please keep in mind it is the 2nd week of school for Nathan so we are trying to mitigate his loss time from school - as much as possible. Would you please provide me details so we can look at schedules etc. We are willing to pay, in this case, due to the significance of the event, for Nathans flight- within cost reason.

In making this happen we want you to be aware that his school starts very early and we would like to see him back as early as possible so he is not behind the curve and exhausted the following day at school. Also please consider this event will occur during school and he will incur unexcused absences from this. We would appreciate that you communicate with his teacher for homework.

Please let us know ASAP with the details so we can start making arrangements. Again all we ask is for your help in mitigating the amount of school he will miss, considering it is the beginning of a new school year for him and for the continued school year.

EXHIBIT “B”

EXHIBIT “B”

EXHIBIT “B”

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 08:42 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 08/28/2019 7:09 PM

From: Erich Martin

To: Raina Martin (First View: 08/28/2019 7:09 PM)

Subject: RE: Nathan's visit

Nathan is on his flight. He had a fun trip.

Erich

On Wed, 08/28/19 at 6:51 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Nathan's visit

Erich,

So sorry- we will be at the airport tonight.

Raina

On Wed, 08/28/19 at 4:51 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Nathan's visit

Unfortunately, we weren't able to get childcare worked out for the next two days. So I will be taking him to the airport tonight. I truly appreciate you being willing to work with me on this matter.

Erich

On Wed, 08/28/19 at 3:57 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Nathan's visit

Erich,

If you can get him in a little earlier, that'd be great. Just let me know final flight info.

Please be sure to make arrangements with Mr. Allen for homework as it is still so early in the school year. Let me know what homework he's missing.

Thanks,
Raina

On Wed, 08/28/19 at 3:50 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Nathan's visit

On Wed, 08/28/19 at 2:33 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Nathan's visit

By chance would your plans on Sunday have you in Utah? If so, perhaps we could drop him to you. We are thinking about going to visit some family over there.

Erich

On Wed, 08/28/19 at 1:44 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Nathan's visit

Erich,

I can't say I agree with him missing 3 days of school on the third week of 4th grade. If you would like to have him, you'll need to communicate with his teacher as he wasn't prepared for a 3 day absence. We also have plans on Sunday- if you decide to keep him, please have him home Saturday night.

Thanks,
Raina

On Wed, 08/28/19 at 10:50 AM, Erich Martin wrote:
To: Raina Martin
Subject: Nathan's visit

Raina,
Life has been crazy busy and we just realized that this weekend is Labor day. I would like to have Nathan stay and send him back to you on Sunday. It would really mean alot to me to be able to let him be here with us. I will talk to his school and get the absence excused. His teacher assured me he will be just fine. I am already supposed to have him for the holiday this just gives us a couple extra days. It would be greatly appreciated if will accommodate this.
Thanks,
Erich

EXHIBIT “C”

EXHIBIT “C”

EXHIBIT “C”

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/04/20 at 06:32 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 12/05/2019 5:34 PM

From: Raina Martin

To: Erich Martin (First View: 12/05/2019 5:40 PM)

Subject: Re: Re: Re: Re: Re: Ignored Requests and Replies by Raina

Erich,

Is your friend a license optometrist? I don't understand why you can't provide me with his information.

Thanks,
Raina

On Thu, 12/05/19 at 5:34 PM, Erich Martin wrote:
To: Raina Martin
Subject: Re: Re: Re: Re: Ignored Requests and Replies by Raina

Raina,

No ma'am, that's not how it works. Our friend only did a favor for us. On top of that, I informed you we would do that- there's a HUGE difference. So please, stop harassing me with all this other stuff and answer the questions that are pertinent to what I've asked about Nathan here.

Erich

On Thu, 12/05/19 at 5:30 PM, Raina Martin wrote:
To: Erich Martin
Subject: Re: Re: Re: Ignored Requests and Replies by Raina

Erich,

So if I don't ask you for a co-pay-I don't have to tell you if I take Nathan to the doctors office?

Thanks,
Raina

On Thu, 12/05/19 at 5:24 PM, Erich Martin wrote:
To: Raina Martin
Subject: Re: Re: Ignored Requests and Replies by Raina

Raina,

There's a few things you're attempting to embellish here as was noted from your motions as well:

1. You have in fact ignored me on so many occasions as to informing me and consulting me on anything medically and dental related.

2. Who is Dr. Fahkouri? I have no idea who that is and it's not supposed to be a wild goose chase here.

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 10:50 PM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 12/30/2019 4:25 PM

From: Raina Martin

To: Erich Martin (First View: 12/30/2019 4:25 PM)

Subject: Denver Eye Doctor

Erich,

I am asking, again, for the eye doctor's information that you took Nathan to over the summer 2019, please.

Thanks,
Raina

EXHIBIT “D”

EXHIBIT “D”

EXHIBIT “D”

Gmail Raina Martin <raina.martin@gmail.com>

Fwd: Therapists

1 message

TNR Brick <teamtnr@gmail.com> Tue, Jun 2, 2020 at 5:28 PM
To: Raina Martin <raina.martin@gmail.com>

Begin forwarded message:

From: Hotmail <ra71820@hotmail.com>
Date: September 12, 2018 at 2:42:09 PM PDT
To: Jason Toth <jtoth@interact.ccsd.net>
Subject: Re: Therapists

Mr. Toth,

Are you able to call me? I am meeting with Mrs. Oney tomorrow and didn't want to talk with you first. Are you able to get emails after hours or maybe I can meet with you tomorrow before the meeting - it's scheduled for 11:15am.

Thanks,
Raina

On Dec 7, 2017, at 10:10 AM, Jason Toth <jtoth@interact.ccsd.net> wrote:

Good morning,

I just gave Nathan in an envelope information of a counseling center. I really like this counseling center and I know that there are other locaitons. The lady that I recommended see clients at 11 and up. Debbie has been at this location for a while so I put her information in if you wanted to give her a call for recommendaitons. I don't know what type of insurance you have but I do know they take most insurances. Hopefully, this helps.

Thank you,

Jason Toth

EXHIBIT “E”

EXHIBIT “E”

EXHIBIT “E”

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 12:24 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 06/02/2020 12:58 PM

From: Raina Martin

To: Erich Martin (First View: 06/02/2020 12:58 PM)

Subject: Re: Therapist

Erich,

Who referred you to her? Does she take our insurance and what will she "do" over other therapists?

I have been trying to get Nathan therapy for years, please don't account the 2 weeks to anything as I was working on trying to find his proper care for the potential of ADD testing here, again.

Why didn't you fill out and return the paperwork given by the doctor 4 weeks ago?

Raina

On Tue, 06/02/20 at 10:39 AM, Erich Martin wrote:
To: Raina Martin
Subject: Re: Therapist

Raina,

We haven't even used OFW for a total of 4 years yet, but that aside, no our kids don't see this therapist. I was referred to this lady because she is accepting new patients and works well with kids. And i'm not arguing, I have the proof because it was you who has ignored me since you wouldn't reply 2 years ago about the Dr Harder matter.

Erich

On Tue, 06/02/20 at 7:25 AM, Raina Martin wrote:
To: Erich Martin
Subject: Re: Therapist

Erich,

You have not replied to my message-I asked multiple questions- about how you were referred to this therapist-has any of Julie's family seen this therapist ?

You do not need to argue with me on here-I have five years of proof that you have refused therapy for our son and have completely stood in our way of getting Nathan help. You have asked me for two weeks if Nathan is allowed to see a therapist in Colorado-I have asked you if you would allow Nathan to continue to see Dr. Harder and you continue to ignore me and I am willing to work with you you need to work with me.

Raina

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 12:21 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 04/22/2020 7:24 AM

From: Erich Martin

To: Raina Martin (First View: 04/23/2020 7:50 AM)

Subject: Re: Doctor Appt., Therapist, Orthodontist 2020

Raina,

I wish to get a separate opinion on orthodontics. I have informed you that we can get Nathan care at no cost here if he actually needs it. As for therapy, I will work with you in selecting a provider. I would ask that he be allowed to do therapy with us during the summer too.

Erich

On Fri, 04/17/20 at 11:19 AM, Raina Martin wrote:
To: Erich Martin
Subject: Doctor Appt., Therapist, Orthodontist 2020

Erich,

Nathan and the boys have their annual check-up with our family care provider. I am including their information and date of his appointment. I will send you any papers/documentation I receive after his appt.

Appt: 4/23/20 @ 9:00am

M Care
12300 Las Vegas Blvd. South
Henderson, NV 89044
702-837-1265

THERAPIST
I am attaching a print-out of therapists for Nathan, that take our insurance. Please review the list and tell me who you would like him to see. There are 6 options for him to see. I did some research and feel that The Empowerment Centre, Paula Baskette, Linda Wolfe, & Joseph Belingheri fall on the top of the selections - please know that I/we still would prefer Dr. Harder - he is established and Nathan has requested to see him again - multiple times and he is covered under our insurance.

ORTHODONTIST
We will be starting Nathan's orthodontics this year per his referral from his dentist(s) (Dr. Jonathan, Brad, & Greg Welch). These 3 dentists agreed it was in his best interest to start his first phase of 2 phase ortho. They referred us to Zach Truman. He does not have an appointment yet and will keep you posted as it comes about.

Their address is:
10855 S Eastern Ave.
Henderson, NV 89052
702-221-2272

Raina

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 08:53 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 03/31/2020 2:51 PM

From: Raina Martin

To: Erich Martin (First View: 03/31/2020 2:52 PM)

Subject: Re: Re: Spring Break - Clarify

Erich,

I think that's a good decision Erich; that he stay home. I will cancel his flight this evening. I will do my best to help with extra visitation over the summer.

Raina

On Tue, 03/31/20 at 12:49 PM, Erich Martin wrote:
To: Raina Martin
Subject: Re: Spring Break - Clarify

Raina,

Do not send Nathan. Since you can't guarantee make up time, I will deal with it another way. But given the stay at home orders and the issues with COVID-19, I am not risking Nate for whatever you are trying to do here. Again, this shouldn't be so difficult, and it shows in your emails.

Erich

On Mon, 03/30/20 at 8:23 AM, Raina Martin wrote:
To: Erich Martin
Subject: Spring Break - Clarify

Erich,

To clarify, am I sending Nathan on Saturday or not and we will figure out make-up over the summer?

Raina

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/04/20 at 06:30 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 11/26/2019 11:16 AM

From: Erich Martin

To: Raina Martin (First View: 11/26/2019 12:19 PM)

Subject: Re: Re: Medical Appointments

Raina,

9 year olds do not need annual dermatology appointments. I am not asking you for a receipt I am asking you for the actual EOB. Nathan has double coverage and I would like all information including which insurance was used. There should be 2 with Tony's insurance and I want to see that it was also utilized and if they covered the remaining amount from the primary insurance.

I would also like to see information about the results of the exam are there actually any health concerns. What did the ENT say about Nathan's ears? I would like something written up about his ears from them. I should get copies of everything that you get concerning Nathan's health and appointments.

I have communicated that I want this information for almost 4 years now. I would like to know before he goes to a non emergency appointment that he is going and who his Dr. will be. You still refuse to abide by the Decree in this matter. The optometrist we saw was a friend of ours and was only for a second opinion after Nathan told us he could see better without his glasses. I told you that we were going to do so beforehand as well. There was no charge at all for this visit.

So, yet again I am asking you for the doctors' information, the EOBs from both insurances, ALL of Nathan's insurance providers information, and any information from the outcome of the visit so that I know if there was a concern at all. If there are no concerns Nathan does not need to be taken annually to these appointments.

Erich

On Sun, 11/24/19 at 4:11 PM, Raina Martin wrote:
To: Erich Martin
Subject: Re: Medical Appointments

Erich,

Nathan has an annual dermatology appointment to have and exam. Also, Nathan has also had hearing complications and is also checked.

I sent you the breakdown from the dermatologist showing what tx was done and what insurance paid. I do not have the EOB from the ENT, yet.

If this is how you plan on communicating to me about his regular appointments, why didn't you ever provide me with the eye doctors information that you took Nathan to over the summer?

Thanks,
Raina

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 12:48 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 10/25/2019 12:10 AM

From: Raina Martin

To: Erich Martin (First View: 10/25/2019 6:14 AM)

Subject: Re: Denied Oct 2019 Visitation

Erich,

Your visitation was never denied- you chose not to exercise your visitation, again.

We will get you his Thanksgiving flight itinerary to you as soon as it is booked.

Thanks,
Raina

On Thu, 10/24/19 at 7:15 PM, Erich Martin wrote:
To: Raina Martin
Subject: Denied Oct 2019 Visitation

Raina,

I'm just letting you know that I am canceling Nathan's flight for Sunday since you have chosen to deny Nathan coming to visit our family. Arguing your reasons is unnecessary here, as it is contrary to claiming "a supportive relationship" for Nathan and me. If the shoe was on the other foot, I would not do that to you and you know it. Please inform me of his flight to Texas for Thanksgiving as I've requested this no less than 4 separate occasions now.

Erich

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 12:49 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 09/29/2019 10:52 PM

From: Raina Martin

To: Erich Martin (First View: 09/29/2019 10:57 PM)

Subject: Visitation

Erich,

Following the every-other-month schedule, Nathan won't be flying out in October. You are always welcome here.

We will have him fly into San Antonio on November 24th. I'll message you his flight info as soon as we book it.

Thanks,
Raina

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 08:42 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 08/28/2019 7:09 PM

From: Erich Martin

To: Raina Martin (First View: 08/28/2019 7:09 PM)

Subject: RE: Nathan's visit

Nathan is on his flight. He had a fun trip.

Erich

On Wed, 08/28/19 at 6:51 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Nathan's visit

Erich,

So sorry- we will be at the airport tonight.

Raina

On Wed, 08/28/19 at 4:51 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Nathan's visit

Unfortunately, we weren't able to get childcare worked out for the next two days. So I will be taking him to the airport tonight. I truly appreciate you being willing to work with me on this matter.

Erich

On Wed, 08/28/19 at 3:57 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Nathan's visit

Erich,

If you can get him in a little earlier, that'd be great. Just let me know final flight info.

Please be sure to make arrangements with Mr. Allen for homework as it is still so early in the school year. Let me know what homework he's missing.

Thanks,
Raina

On Wed, 08/28/19 at 3:50 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Nathan's visit

On Wed, 08/28/19 at 2:33 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Nathan's visit

By chance would your plans on Sunday have you in Utah? If so, perhaps we could drop him to you. We are thinking about going to visit some family over there.

Erich

On Wed, 08/28/19 at 1:44 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Nathan's visit

Erich,

I can't say I agree with him missing 3 days of school on the third week of 4th grade. If you would like to have him, you'll need to communicate with his teacher as he wasn't prepared for a 3 day absence. We also have plans on Sunday- if you decide to keep him, please have him home Saturday night.

Thanks,
Raina

On Wed, 08/28/19 at 10:50 AM, Erich Martin wrote:
To: Raina Martin
Subject: Nathan's visit

Raina,
Life has been crazy busy and we just realized that this weekend is Labor day. I would like to have Nathan stay and send him back to you on Sunday. It would really mean alot to me to be able to let him be here with us. I will talk to his school and get the absence excused. His teacher assured me he will be just fine. I am already supposed to have him for the holiday this just gives us a couple extra days. It would be greatly appreciated if will accommodate this.
Thanks,
Erich

Message Report

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Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 12:49 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 09/29/2019 10:52 PM

From: Raina Martin

To: Erich Martin (First View: 09/29/2019 10:57 PM)

Subject: Visitation

Erich,

Following the every-other-month schedule, Nathan won't be flying out in October. You are always welcome here.

We will have him fly into San Antonio on November 24th. I'll message you his flight info as soon as we book it.

Thanks,
Raina

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 12:44 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 03/18/2019 10:36 PM

From: Erich Martin

To: Raina Martin (First View: 03/18/2019 10:36 PM)

Subject: RE: Summer 2019

Raena,

So you want me to cooperate 100% with you and what you want. When will you cooperate with me? You ask for that which you refuse to give. We have joint legal custody he has a home in Colorado with free access to the best of the best for providers. You are foolish to pay for anything. What we are asking for is not unrealistic or unreasonable. Let us take care of this. Why do you need to have control over everything. The court has record of and recognizes Nathan's home in Colorado.

I have asked multiple times to allow Nathan to go to family counseling with me here in Fort Collins CO. Are you going to deny us the opportunity to have that which you say we need? I'm still waiting for a reply. You asked for a quick reply to your demands and I replied. Why can't you cooperate and do the same?
Erich

On Mon, 03/18/19 at 10:28 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Summer 2019

Erich,

We are not coming to any agreements and it should not be a fight.

Nathan's home of residence is in Nevada and so are his regular medical and dental treatments. You have stated that you are not going to pay for braces (just as you haven't paid for anything else from glasses to sports or any activities). I will pay for and get him a consultation here and will have treatment here - I sent suggestions and gave you names. It's teamwork and all you do is yell and belittle me and if it's not free or done by one of your "friends" you won't help get him care- that's not coparenting at all. If you don't want to help pay- don't - but having his provider out-of-state is not realistic or useful.

Raina

On Mon, 03/18/19 at 10:03 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Summer 2019

Please Rayna!!! We are begging you to take your own advice!!! Stop demeaning me to Nate and start encouraging him to have a relationship with me by allowing him to visit me. You started all of this by trying to act like your degree makes you smarter than we are. Read your messages they are no different. If Nathan actually needs phase 1 Ortho we will be open to having him treated in fort Collins. Where there is little to no cost. There isn't a better benefit plan out there. Not everything has to be under your control.

Julie/Erich

On Tue, 03/13/18 at 11:19 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: March 15-18

Raina,
You are the one out of touch with reality. Do you realize you use that same line about me not being in touch with reality every single time you get caught in a lie? You put words into Nathan's mouth Raina. How would he know if I were coming for soccer or something else? You don't even know why I'm coming! I don't arrive in Vegas until late Thursday what would be the point of getting him late when he has school Friday? I leave early Sunday so 10pm is better than early am. He can sleep in his own bed. I will bring him to you Saturday at 10pm but only to you. I will not leave him with anyone else so make sure you are home and available for him when he returns. When Nathan plays sports and travels to Colorado or Texas to play I will be glad to take the entire family out to watch every single minute of him playing. We have come to Vegas twice for the girls soccer and many more times just to see Nathan. And the entire family didn't travel. Do you realize what it would cost for me to bring 7 people to Vegas get 2 hotel rooms and rent a van. Not to mention food and entertainment for them just to watch Nathan do TKD for 30 min? You are not being realistic. The girls are on travel teams and the team pays for their travel. The dont travel with us, stay with us or eat with us they do everything with their team. And we travel to the same city Nathan lives in. When they travel other places we don't go. They go alone with their teams. We only go because we can see Nathan! And Nathan gets to see them! Why don't you make that clear with Nathan so he can understand. If Nathan were not in Vegas we wouldn't be there either. It is entirely for him! Get that through your head explain it to Nathan and make it positive!

You say he is scared of me. You are wrong. You make him think he has a reason to be scared. You program him to worry and teach him not to tell the truth. You are doing this to him Raina not me. He actually gets attention, good values, healthy food, and good parenting at my house. You are threatened by that and scare him and make him believe the way we do things is wrong. You make everything I do negative to him. What kind of parent does that to their own child? If you were supportive and positive he wouldn't need coping skills and therepy. He would not lie, he would be well adjusted, transition well and be equally happy in both homes.

I have never denied Nathan therepy. I only said I want to be involved in the decision making. I want to know what he is going for and who he is going to see before he goes. I want to be involved in deciding who he sees. I want to be copied on all correspondence between all doctors, teachers, counselors anyone you communicate with about Nathan. That is part of joint legal custody. Joint decision making on any and all medical needs. Sports, schools, daycare providers. You are legally required to consult me PRIOR to him doing any of those things! I am to be listed as parent. Not Tony!!
Let me know that YOU will be available to get our son back at 10pm on Saturday night.
Erich

On Tue, 03/13/18 at 10:19 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: March 15-18

Erich,

As always, completely out of touch with reality. Those are his words- I ALWAYS encourage him. Your actions are his feelings, not my words- you should learn to listen. You have been out here more for Julie's kids than you have your own son Erich. He doesn't understand why they don't watch him and why they don't travel to see him- a family treats all the kids the same and they support each other. He lies to you because he's terrified of you Erich, when will you see that? You also refuse counseling for him for some odd reason- I have nothing to hide and want him to learn healthy coping skills, why don't you? This is not an argument- you're always attacking- please work with me and learn to listen to our son and not assume.

So you only want to see him Friday night? I am sorry but you are more than welcome to drop him off on Saturday night at 10pm- I am not able to pick him up at 10pm at Saturday night. I can meet you somewhere Sunday morning if you'd like.

Raina

On Tue, 03/13/18 at 9:44 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: March 15-18

Raina,
The Baker to Vegas race is 120 miles and it spans an entire night starting in baker which is 1.5 hours away. Will Nate be out on the road with you all night or staying home with someone else?

Message Report

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Raina Martin generated this report on 06/03/20 at 12:26 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 03/17/2019 9:58 PM

From: Raina Martin

To: Erich Martin (First View: 03/18/2019 4:44 AM)

Subject: Summer 2019

Erich,

I have asked a few times and you still haven't gotten back to me about Nathan's summer. Will he be staying in Colorado or Texas? I would like to help coordinate sports with you. I can start looking into things and helping arrange anything I can. Soccer, baseball, basketball, or even TKD. Please let me know so it's not crunch time and he's left not doing anything like last year. I am willing to modify his visitation if it will help accommodate a sport and I'll even contact coaches if he is still in school the first week to arrange time and communicate with them and/or work with Nathan before he goes with and drills or workouts they are having.

You will be retiring in July 2019 and wanted to find out where you will be living and also Nathan's medical/vision insurance going forward? I am also waiting on Nathan's dental insurance information - since it was cancelled in 2017 and I was never informed until this month.

I will be taking Nathan to an orthodontist here in town. Dr. Truman, Dr. Chenin, or Dr. Hamilton - I won't decide until I find out price and recommended treatment. He will be having consultations soon, as his #7 is being effected by #6. You have already informed me you won't help pay for any of it and I am more concerned about his future oral health at this point- and not wanting to arguing over money for our child's health.

Lastly, I still haven't heard anything about counseling and recommendations for a counselor for Nathan. I feel that he was making a connection with Dr. Harder and feel that he was a great option. You never had to pay a penny and you never had to worry about taking him to his appointments. Dr. Harder had no problem with talking to you if you paid for his time.

Please don't tell me you'll do something and not follow through or not communicate about it.

Raina

Do your homework. Talk to an attorney! Stop asking for mediation as it makes you sound ridiculous and unintelligent. Come up with a settlement that we both can agree upon, live with what we have or let the judge decide for us. Remember to change the decree without an agreement to do so there has to be EXTENUATING CIRCUMSTANCES or we don't even get permission to mediate it.

Thanks,
Erich

On Mon, 03/18/19 at 6:51 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Summer 2019

That email was not written by Erich and feel that if there's so much to discuss and that you disagree with- I feel that mediation is a better option.

I am not going to sit here and argue about our son's healthcare and what you feel and how he should be treated so you get it for "free "is not how a child should be looked at.

Raina

On Mon, 03/18/19 at 6:10 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Summer 2019

Raina,
Nathan's summer:
Nathan will not have any further visits to Texas unless I plan on a vacation to visit Papa. He will spend the summer in Fort Collins.

Sports this summer:
Soccer: for competitive soccer tryouts are at the end of May for season that begins end of August and goes year-round with one month off in the winter and one month off in the summer. This is clearly not going to happen for Nathan. For recreational soccer their season ends mid-may and starts in September this is also not going to happen for Nathan.

Baseball:
tryouts for baseball were months ago teams have long been formed games start in April. This is not going to happen for Nathan.

Basketball:
This is a winter sport

Tkd: I still do not support based on Nathan's history of hitting kids at school. I don't know why you keep ignoring this fact. I think it's a waste of time and money because I've watched a few of his practices in person and notice he doesn't pay attention to instruction. Furthermore, if you aren't going to encourage fitness outside of TKD, he's not going to gain anything.

Swimming:
If Nathan is interested in being on the swim team I will sign him up for the neighborhood swim team. He will have to wake up everyday at 6:00 a.m. and swim until 8:30 a m. It starts memorial weekend and goes all summer. If Nathan cannot behave himself during swimming he could lose the privilege of being on a team.

My retirement:
Anything pertaining to my retirement is none of your business. Use some common-sense Reina. Where do you think I will live once I retire? I had every intention of living in my home with my amazing wife and family.

Medical benefits:
Nathan will continue to have medical and vision through the military and he will have dental covered for free through your work and Julie's work. Right now you work for a dentist your job is to clean teeth. Nathan goes to you for his dental needs. If something is not covered there it is covered here in Fort Collins at Julie's dental office. There is no need for Nathan to have dental insurance. Nathan can see an orthodontist for free here in Fort Collins. Has Nathan had a CT scan of # 7 to see if it's actually being affected? I can have that confirmed here if needed.

Counseling:

Rayna I have responded about counseling. I told you 2 months ago if you would agree to him seeing a counselor here in Fort Collins with me and his family. He can see whoever you would like him to see in Vegas with you. And for the record, Dr H did refuse to talk to me even when I offered to pay.

Denied visitation:
Let me make this clear unless I am taking a vacation with my entire family to visit Las Vegas I have no intention of making my visitation be in Las Vegas. That was a manipulated stipulation of yours to place in the decree.I will not segregate Nathan from this family with visitations of only me going to Las Vegas. Repeatedly I have told you I cannot afford to go to Las Vegas get a hotel room and a rental car pay and for every bit of entertainment and food while I'm there. I don't make you pay $1,000.00 to see him for just a weekend, which is what it would cost for me just to see him for 36hrs when all is said and done. Why would you ask me to go support him in taekwondo when you don't even show up to watch him? I do not believe it is appropriate for me to go watch a guitar lesson- it's called a private lesson for a reason. However, What is appropriate is for him to bring his guitar and play it for me. As far as Nathan visiting me four times in four months let me explain. His travel to me that alternates is on non regular visitation. You do NOT count spring break which would be April and you do NOT count summer which is May as those are not 3 day weekends from school visitations. I think that since I am missing part of Nathan's spring break due to work it would be an acceptable trade for Nathan to come and visit me in March. This is not a hardship for him. Like I said before it is about control for you.
You preach that you want us to have a relationship and yet you deny it at every turn. The relationship that I am interested in fostering is not just with me it is with my amazing wife and our children here here in Fort Collins. Due to the change in circumstances of me being married and having a family it is no longer feasible for me to go to Las Vegas for visitation. I don't make you separate yours and Tony's family. So I would hope that you would be willing to stipulate this as a change to the decree without attorneys and court but if you are not then please let me know so that I can file a motion.

Thanks,
Erich

On Sun, 03/17/19 at 9:58 PM, Raina Martin wrote:
To: Erich Martin
Subject: Summer 2019

Erich,

I have asked a few times and you still haven't gotten back to me about Nathan's summer. Will he be staying in Colorado or Texas? I would like to help coordinate sports with you. I can start looking into things and helping arrange anything I can. Soccer, baseball, basketball, or even TKD. Please let me know so it's not crunch time and he's left not doing anything like last year. I am willing to modify his visitation if it will help accommodate a sport and I'll even contact coaches if he is still in school the first week to arrange time and communicate with them and/or work with Nathan before he goes with and drills or workouts they are having.

You will be retiring in July 2019 and wanted to find out where you will be living and also Nathan's medical/vision insurance going forward? I am also waiting on Nathan's dental insurance information - since it was cancelled in 2017 and I was never informed until this month.

I will be taking Nathan to an orthodontist here in town. Dr. Truman, Dr. Chenin, or Dr. Hamilton - I won't decide until I find out price and recommended treatment. He will be having consultations soon, as his #7 is being effected by #6. You have already informed me you won't help pay for any of it and I am more concerned about his future oral health at this point- and not wanting to arguing over money for our child's health.

Lastly, I still haven't heard anything about counseling and recommendations for a counselor for Nathan. I feel that he was making a connection with Dr. Harder and feel that he was a great option. You never had to pay a penny and you never had to worry about taking him to his appointments. Dr. Harder had no problem with talking to you if you paid for his time.

Please don't tell me you'll do something and not follow through or not communicate about it.

Raina

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Raina Martin generated this report on 06/03/20 at 12:43 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 02/19/2019 10:20 PM

From: Erich Martin

To: Raina Martin (First View: 02/20/2019 9:28 AM)

Subject: RE: Flight 2/18/19

There's no need for mediation unless you are wanting to modify something in the decree. Is there something you are wanting to modify? If we can reach an agreement we can have an attorney draft a stipulation and submit it to the court. A mediator is only if we do not agree. And since you haven't told me what you want to modify, how do you know we don't agree? You need to be honest and upfront about what you want to discuss in mediation before you try to schedule it. For the court to award mediation you have to ask the court for modifications and they have to award the modifications or send us to mediation. Mediation doesn't mean an agreement if we don't agree there the court decides. Nothing said in mediation can even be used in court. I'm not sure you understand the process of mediation.

Nathan doesn't have dental insurance and doesn't need it. He can get any dental treatment needed through Julie and her pediatric dental office. And, you are a dental Hygienist I'm sure he can continue getting free cleanings and exams from you at your office. As far as Ortho goes it is elective and we will require a second opinion before agreeing to treatment and it can also be done here in Fort Collins.

Nathan doesn't want to see Dr Harder. I asked him if he did and he said he did not care. He has never expressed a desire to see him. You want him to see that therapist so you can try and blame me for Nathan's poor behavior. On top of that, you make negligible and flagrant claims of how his "scared of me," which he's not.

Dr Harder has a poor reputation and I am not comfortable with Nathan seeing him. I would like for him to see a therapist here in Colorado when he is with me? We can find someone different in Las Vegas and he will see someone in both places as it should be family counseling. If not, then we will figure out his therapy later, as I am not going to have him see a therapist that you are the only person the therapist will talk to. Again, I know you would not agree to such practices.

Despite your rude claims, I participate in Nathan's life. So you can stop saying that- everyone reading this and who knows me, to include your own parents, know that I am highly involved in Nathan's life despite the distance.

Erich

On Tue, 02/19/19 at 9:19 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Flight 2/18/19

Erich,

We can address that at mediation as it should still be continued.

Thank you for the decree outline. It's time we update it.

While you're at "clarifying" things- would you please, provide me with Nathan's dental insurance and a therapist. Nathan would like to continue seeing Dr. Harder.

Thanks,
Raina

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Raina Martin generated this report on 06/03/20 at 12:20 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 01/26/2019 4:48 PM

From: Erich Martin

To: Raina Martin (First View: 01/26/2019 4:49 PM)

Subject: RE: Weekly Report 1/25/19

Why is the AR at "zero?" Did he choose not to take tests?

Listen, I spoke with Mrs Oney yesterday about Nate's behavior in class this week. He has got to stop back-talking and even lying. We have got to show him there are actual consequences to these actions. I am not even yelling at you or pointing blame- but this stuff has got to end with him.

Nate is on his what, 5th episode of detention in just this year? Every year he gets more out of control with his behavior. I know that you have to see that too.

I am willing to come to an agreement on what the measures are that he needs, but it needs to be a joint effort. I am researching other counseling methods, so please stop saying that I am "denying him" because I know you would NOT accept me taking him to a counselor that would never make time for you. Plus, it wasn't and hasn't been making a difference to much of a degree. I am all for therapy for Nate, but it is not going to be a one-sided event. I wouldn't do that to you anyways. I never have either.

I'm surprised that Mrs Oney put a "3" for behavior considering the fact she told me that Nathan was really making things bad in class Thursday. On top of that, Nate lied to me about why he got detention. He got it for blatantly disobeying Mrs Oney's request to look up "how to disprove their science project" on Wednesday. His poor behavior on Thursday was just the icing on the cake to his situation.

Please work with me here on this matter. Pointing fingers is not going to solve this situation. I want to see Nate thrive. So help me help him.

Erich

On Sat, 01/26/19 at 4:37 PM, Raina Martin wrote:
To: Erich Martin
Subject: Weekly Report 1/25/19

Erich,

Here's a copy of Nathan's weekly report.

Raina

Message Report

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Raina Martin generated this report on 06/03/20 at 12:19 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 11/04/2018 8:01 PM

From: Erich Martin

To: Raina Martin (First View: 11/05/2018 6:14 AM)

Subject: RE: Dr. Harder cont.

Your email is so full of lies. It's like you are writing it trying to lie to the court. Like I said before just because you write it doesn't make it truth. We all know the court included that you have been caught in lies on every occasion.

I am employed by the US Army how in the world could I promise all those years ago to move there when I don't retire until 2019 and the Army tells me where I can live. You manipulated a situation while I was being deployed to move there so you could be with Tony. You used, manipulated, and lied to me. If you have emails and proof please show me differently. Prove it Raina.

The only thing Nathan doesn't like about coming here is the fact that he has rules and structure. He is expected to behave and tell the truth. You provide nothing but justifying and enabling his poor behavior. He is so starved for attention that he acts out. The stress with transition is the hours he tell me you spend yes interrogating him when he gets home. It was so bad one time he wet the bed. That was from you trying to get him to say things are bad here and tell you things that aren't true so that you will be happy.

The point for visitation in Vegas was he was 4 years old. I was single and didn't have responsibilities to a wife and family. The lie here is the judge didn't say this at all. I have all of the court transcripts and it was not discussed in court. This was decided in mediation after hours of you bullying me. He is 8 he has a family here it is time that changes. I do go to Vegas on occasion but, every other month is an expense I can't afford and dealing with you is far too cumbersome.

As far as therapy goes I am formally asking you if it is okay to have Nathan see somebody here in Fort Collins with me and our family. Are you opposed to that? I believe in the past you have said The more help we can get Nathan the more positive things brought to his life but better. I can't imagine you would disagree with him having more help.

Raina, I no longer agree with nightly calls he is 8 years old not 4. It only hurts our time with Nathan and interrupts our visit and I have hundreds of examples and emails of how and why. I have such little time with him it needs to be uninterrupted. I am confident the court will see it this way. If we cannot come to an agreement on nightly calls and visitation I am prepared to go back to court. The unfortunate consequence of divorce is that millions of children around the world have to learn to adjust to living two separate lives. Had I wanted you to be involved in my daily life I would have stayed married to you. But yes I am remarried and yes I have responsibilities as the head of household with a blended family. Nathan is part of that family and you are not. I'm sorry if that is not okay with you but I also want no part of of your life with Tony and his children.
Erich

On Fri, 11/02/18 at 6:33 AM, Raina Martin wrote:
To: Erich Martin
Subject: Dr. Harder cont.

Erich,

Again, your perception is not reality. You live in a world that constantly concerns you. No one is "bad mouthing" you- no one says anything about you other than the truths and facts that have occurred. Life happens, things happen, and people move on. You're Nathan's father and you are talked about in a positive manner.

Erich, I never moved Nathan away and this is a constant statement from you. I have emails and plenty of forms of communication between

On Sun, 01/21/18 at 1:03 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Satisfaction of Judgement & Visitation

Erich,

I have "copied and pasted" your email so that I may respond accordingly. Also, you still continue to avoid the question about the satisfaction of judgement - I need to know because I will have to move forward with legal action if is has not been signed off - if you have signed off on it and it is just being processed / in limbo, I will not move forward - that is why I am asking and trying to have you actually help make my life easier like I have for you and your payroll issues. I am not fighting against you and just trying to move forward and raise our son with a little drama as possible for his sake.

1. Why is Nathan seeing a therapist? What type of therepist(*therapist)...speach(*speech), physical?

---He is a psychologist. (he does see a speech therapist at school weekly and is doing amazingly well).

Has he seen this man before?

---No

Why have you not discussed this prior to now?

--- His school counselor recommended professional therapy for Nathan and on the advisement from his school counselor and recommendations from his school counselor (Mr. Toth), I have made him an appointment and advised you of the date and name.

2. I will not be traveling to Vegas in February due to work matters. However, I have plans to make that up in March prior to spring break.

---What plans are those?

3. I will handle Spring Break with you soon. Yes I am aware that Easter is that Sunday.

---I would like to know by when(an actual date of when "soon" is, please) so I can make plans as well and book flights.

4. I am NOT paying for new glasses again already. I informed you of this matter last year and you continue to do things on your own accord. Nathan doesn't need new glasses every 6 months. Last year I spoke to the optometrist and he was not in need of an exam yet and you insisted on having one. So, don't count on money for glasses more than what is allowed by insurance. Not unless it is discussed with me first and I have spoken to his optometrist and approve them beforehand. If he broke them then it is his second pair being broken in 6 months and if that is going to happen he needs the cheapest pair available. I want to be included in deciding what to buy him if I am going to pay for them.

---His "glasses" 6 months ago were actually a NEW Rx for his lenses - not new frames! They were necessary per his optometrist. We had to take him to a specialist (which I did not submit a reimbursement request (financially) because you continue to refuse to pay for anything for him and claim your "child support" covers it. I will be submitting EVERY penny I have had to pay and will pay in the future so you truly see what it actually takes to care for our child. So please know he did NOT get new glasses 6 months ago, he got new (necessary) lenses 8 months ago. He will be getting new glasses and lenses (last ones were over 12 months ago) and he is need of new ones because he has grown so much Erich and his Rx has changed (as they said it would for quite sometime) and will continue to change as he is going to begin VT(visual therapy) in a few weeks to help with his vision in his right eye since it is 20/40 and his left 20/25. I purchased these glasses to also accommodate sports and hope to be able to use them for both daily activities and sports activities without having to buy him 2 pairs (which is normal when there is sports involved).

5. I pay you $806.00 per month in child support. YOU MAKE MORE THAN ME. I'm certain that you can place a portion of that child support towards his karate instead of yours and Tony's pockets.

---You and I both know all of this isn't true Erich.

6. What do you need to send me that is "about Nathan?" Why are you ALWAYS so ambiguous about EVERYTHING "for him?" I am not dumb to your schemes. If this is you trying to go to court or do mediation SAVE IT!! We have a divorce decree and a parenting plan in place. It doesn't matter if I'm in CO or TX. The verbiage does NOT change. It states that when I get Nathan, I get to choose so long as I give you notice.

---Erich, if I was sending you court papers, why wouldn't I just send them to Julie's address, since I have that ? I am not like you and I don't play games to hurt people. I sent them to the address in Texas you gave me and I had to use google to find the zip - I sent it certified mail so I

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Message: 1 of 1

Date: 04/16/2018 9:48 PM

From: Erich Martin

To: Raina Martin (First View: 04/16/2018 10:33 PM)

Subject: RE: Second Official Request

Raina,
Please send this one as well if you feel the need to. It is NOT unbecoming of a SF soldier to want my ex wife to butt out of my life. I am following the decree, I am fulfilling my responsibilities. I don't answer to you, I answer to myself and what it is I want to do with my son and my family. You don't get to control me or my time with Nathan. I don't harass your day to day with Nathan. Leave us alone please! You are the only one complicating things.
Therapy:
Nathan is 7 he does not need a therapist. Unless you can give me specific things you feel he needs then I don't agree with therapy. If he needs someone to talk to I can take him to a therapist near me if you approve but ongoing treatment is not necessary for a 7yr old.
Travel:
If I knew where I will be on May 25th I would tell you. I don't know and as soon as I have plans I will let you know. As far as 6 weeks for your work. You know the date 25 May 2018 take the day off now. The destination is not relevant. I doubt your boss needs a flight number to approve a day off. Besides judge Burton agreed with me- Nathan can fly unaccompanied!! So there is no need for you to take time off to fly with him. Just send him on a southwest flight. He does great!
You have NEVER worked "with me" you have harassed me, tried to control me, you demand things, you demean me to Nathan, you helicopter our relationship to death. But work with me has yet to happen even one time. You don't get to control me or my time with Nate it is time to get used to it.
Like I said never email me asking if I'm ok. It is none of your business and if it were serious I or someone would contact you.
My relationship with my mom is my business stay out of it. Stop using her to get information about me and stop manipulating her. You don't care for her and never have. Leave her alone. You have done enough damage there. Btw I love and care about Nathan too! How can you not see that?
I will email when I have information for you.
Thanks,
Erich

On Mon, 04/16/18 at 9:00 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Second Official Request

Erich,

I will be forwarding a copy of this to your XO.

Your behavior is not becoming of a Special Forces "leader" of students and your direct intent to make things as complicated as possible is not the standard you teach or preach.

You did not inform me about the satisfaction of judgment.

Nathan's therapy has been a process for months that you continue avoid and ignore- why would you want there to be parameters? Why isn't he just allowed to talk with someone who isn't a family member?

Why wouldn't you provide me with where he is flying into? If you know, why wouldn't you allow me to purchase his tickets and make

Thanks,
Erich

On Sun, 04/15/18 at 11:46 PM, Raina Martin wrote:
To: Erich Martin
Subject: Second Official Request

Erich,

I sent the following message (see below) to you over a week ago and haven't had any response. I am asking you to respond by Wednesday April 18th.

I am also asking for summer break information as you have still not replied to me about that. Where will we be flying Nathan into? Where will he be staying during his 8 week break? Are you going to enroll him in Tae Kwon Do or a sport while he's there? We would like to fly out and visit him one weekend about midway through- if so, where will he be and what pre-arrangements would you like? We are trying to make plans and this is our first 8 week stretch and want to make sure we are all on the same page.

Erich, if I don't get answers back by Wednesday, I will have to contact your XO as he has informed me to do so from here-on-out.

"I am officially asking you, if you have signed off on the satisfaction of judgement against me that should be closed (by law) that has been paid in full and I have documents showing the balance paid in full and a zero balance?

I am also officially asking you, if you can provide me with your recommendation for a therapist for Nathan, since it has been well over 2 months since you cancelled his appt and refused therapy for our son and well past the 2 weeks I asked you specifically to provide me with your wants for a therapist under our insurance.

Please reply by the weekend so I can make arrangements next week."

Thanks,
Raina

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/03/20 at 12:09 AM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 03/14/2018 6:50 AM

From: Erich Martin

To: Raina Martin (First View: 03/14/2018 11:36 AM)

Subject: RE: March 15-18

Neither are all of your lies to my son and your lack of actual reality. You make visitation time with Nathan beyond difficult. Every time it's like having to go through hell just to deal with you and all the nonsense. You try to talk like you're "helping me out" somehow but it is a facade. We are the ones driving down, having to get a place to stay, pay for food, etc. Yet, it's somehow impossible for you to come pick Nate up from me?!! Furthermore, get off your high horse about therapy and everything else here!! If you ACTUALLY abide by the decree you would communicate prior and actually do follow up. You do this "ask for forgiveness over ask for permission" method because you hope to get away with avoiding the standards of the decree.
So don't talk to me about what is "unbecoming"seeing as I have dealt with your BS for so long as far as name calling and degrading comments about my character and my marriage. At least I actually am honest about my marriage and my family. You and Tony attempted to hide your "domestic partnership" and then continue to make up lies about insurance and whatever else you can conjure in your head. Any co-patent can see you attempt to manipulate and make visitation a struggle EVERY time. And Nate is SCARED OF YOU BECAUSE YOU INTERROGATE HIM!! He isn't scare of me- I don't tell him how he has to feel. I don't make disparaging comments about you to him and I don't ignore him at all. All of these things, however, you do immediately when he returns from seeing me or on FaceTime when he is with me. So quit making up lies about him being scared of me because that is more of your sordid reality. You're the one who could use a counselor so you can get straight how life is and how to behave like a decent human being. You want to judge me by my past, things from well over 5 years ago, things I repented and changed and have so much improved- but you're not willing to realize you are the root of your own problems and lies. Get over yourself and grow up.

Erich

On Wed, 03/14/18 at 6:30 AM, Raina Martin wrote:
To: Erich Martin
Subject: RE: March 15-18

Erich,

Back to name calling? It's not becoming.

Raina

On Wed, 03/14/18 at 6:25 AM, Erich Martin wrote:
To: Raina Martin
Subject: RE: March 15-18

Raina,
How stupid can you be? That is exactly what I am doing? I am coming to Vegas on a budget to see our son? Not like it is feasible to do this every other month Reina! I was unable to see Nathan last month due to work so I am driving out to see my son this month. Driving out during the winter would be too difficult. I also have to make time to see my wife. Nathan is not the only person in this family ! You act as if all I have to do is hop in a car at any time. You're insane and how dare you judge me. Get off my back about the therapy it's been a couple of months it's not like he needs emergency counseling he's 7 years old for crying out loud if he had a decent mom he would be resilient enough to not need it at all.

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/02/20 at 10:44 PM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 10/30/2016 8:16 PM

From: Erich Martin

To: Raina Martin (First View: 10/30/2016 8:17 PM)

Subject: RE: Punishment

I have been and I always will be involved in raising Nathan. Are you open to any suggestions?

On Sun, 10/30/16 at 8:14 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Punishment

Erich,

Your perception is not reality. Know your facts and stop calling me a liar. You can either help raise Nathan or stand on the sidelines blaming everyone- your choice.

Raina

On Sun, 10/30/16 at 8:11 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Punishment

Raina it is not typical for a 6 yr old to be monitored on the playground or see a counselor weekly. Or to be called a bully or ask to have him removed from his classroom. Odd but that is not the majority of 6 yr olds. Nathan is not ready for tackle football! I communicated that long before the deadline because I called NYS. Again you lie! Stop this!

On Sun, 10/30/16 at 7:45 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Punishment

Erich,

If you want to do the blame game- look in the mirror. He lacks impulse control- you had an affair while married and are facing your second DUI in court. Point the finger all you want but some things come down to pure genetics.

As far as all the things you're accusing me of- you have no clue. You have zero communication with me- zero! You refuse to allow Nathan to play football this year and in turn missed the cut-off for any other sport. He had been enrolled in sports since he was 2! He had friends and in an amazing little kid 90% of the time and the other 10% he is a typical 6 year old with impulse control issues (odd).

You can either work with me or against me- but you should look in the mirror before you start badgering our son. Don't hate him because I'm his mother. He's his own person and deserves that. You were absent for 4 years by choice Erich. Don't act like your innocent in any of this. I never claim to be a perfect mother but he is my priority every day and you have no clue what happens here because you don't ask and are not apart of his daily life.

Raina

Message Report

The OurFamilyWizard® website
230 13th Ave NE
Minneapolis, MN 55413
https://www.OurFamilyWizard.com
Info@OurFamilyWizard.com

Raina Martin generated this report on 06/02/20 at 10:41 PM. All times are listed in America/Los_Angeles timezone.

Message: 1 of 1

Date: 10/30/2016 8:36 PM

From: Raina Martin

To: Erich Martin (First View: 10/30/2016 8:37 PM)

Subject: RE: Punishment

Erich,

I think we need to all get together and catch-up. We need to tell you what has worked and what the future holds.

Nathan had a lot to transition to in the past 2 years with you coming fully into his life and the added new family. We need to work better together and make him feel loved and confident.

You keep talking about making him confident, he needs to have a place in your family and not just a tag-along (I am not saying anything bad so please
don't get angry-hear me out). Julie's kids are highly involved in sports and Nathan only gets to attend them and never feels important- since we missed the cutoff for here, he's had to do the same here. He seeks attention because he has none. He needs to feel important and learn "teamwork". We have him enrolled in baseball for January but again, he's never the center like all the other kids are. He is now the youngest of 8 kids. He is starving for one-on-one time. He acts like a baby because all the kids treat him like a baby and never has to interact with kids his age other than school and the little sports he's been exposed to.

There's a lot you don't know- you and I had similar beliefs at one point and need to put him first for a little while. Let me know your thoughts.

Raina

On Sun, 10/30/16 at 8:16 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Punishment

I have been and I always will be involved in raising Nathan. Are you open to any suggestions?

On Sun, 10/30/16 at 8:14 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Punishment

Erich,

Your perception is not reality. Know your facts and stop calling me a liar. You can either help raise Nathan or stand on the sidelines blaming everyone- your choice.

Raina

On Sun, 09/25/16 at 8:29 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Ignoring me

Erich,

As for the meeting at school- they are putting Nathan in weekly counseling and they will be monitoring his behavior daily. If and when they give me paperwork, I will send you copies.

Raina

On Sun, 09/25/16 at 8:23 PM, Erich Martin wrote:
To: Raina Martin
Subject: RE: Ignoring me

Raina,

You did in fact ignore me- the proof is in the fact you wouldn't open this email until tonight, even though you decided to write an email last night about how you wouldn't FaceTime. Further, you have ignored letting me know information on what happened with Nathan at school. On top of all this, you supervised and instructed Nathan tonight during FaceTime, telling him not to talk to me about what happened. You are not allowed to do this and you know that what you are doing is wrong.

Speaking of wrong, alimony has ZERO to do with your schooling and was never in the decree as such. I don't even know how you can make your lies make sense, seeing as how I paid for ALL of your schooling and you graduated in May 2015. So, the only one of us who needs to stop is you- stop lying. You try to hide the fact that you're in a partnership, and lie about the fact that it's "for the kids." You can get on base with Nathan's military ID card, b/c you had me get you a power of attorney over 2yrs ago for such a reason. Further, your driver's license or even Tony's will get you on base, you just have to submit to have your car searched occasionally if the FPCON is elevated.
I am still in utter awe that you even try to blame us for Nathan's actions at school. You know that was wrong, but you are just trying to make an excuse and us look like the bad guy. Even worse, in court you lied as to what time Nathan got into Las Vegas. His flight was in there, even despite delay, by 7:50pm. Why you and your attorney claim 9:30pm is beyond me.

In court, you continually act as if I don't want to co-parent with you. However, I have all the evidence of your lies and your deceit. You keep trying to make mine and Nathan's relationship with his family here tough, but it's not going away. I am his dad, and I love him so much! We love him. What you're doing is just down right mean, and you're the reason we keep having to go to court.

Erich

On Sun, 09/25/16 at 6:49 PM, Raina Martin wrote:
To: Erich Martin
Subject: RE: Ignoring me

Erich,

I was not ignoring and never have.

I have not lied nor do I. I am asking again that you stop.

You and I both know that alimony was modified so that it covered my schooling.

I am not going no to waste time arguing and I will let our attorneys handle these matters.

Raina

EXHIBIT “F”

EXHIBIT “F”

EXHIBIT “F”

DEPARTMENT OF FAMILY SERVICES CLARK COUNTY

CLARK COUNTY
DEPARTMENT OF FAMILY SERVICES
121 South Martin Luther King Blvd.
Las Vegas, Nevada 89106
(702) 455-7200

CLARK COUNTY NEVADA

Notice of Child Protective Services Report Disposition

Date: May 27, 2020

Name: MARTIN, RAINA & ANTHONY BRICKER
Address: 2812 JOSEPHINE
HENDERSON NV 89044

Case No. *1437183* Report No. 1876806

Child(ren): MARTIN, NATHAN

Dear Mr. Bricker & Ms. Martin,

The above-named family or child was referred to our agency for Child Protective Services response and intervention. The purpose of this letter is to inform you of this agency's disposition involving the above-named minor child(ren). The Protective Services report was closed on May 27, 2020 with a disposition of Unsubstantiated.

If you have further questions, please contact the Child Protective Services *Investigator,* Nadia Walker, who was assigned to your case.

Sincerely,

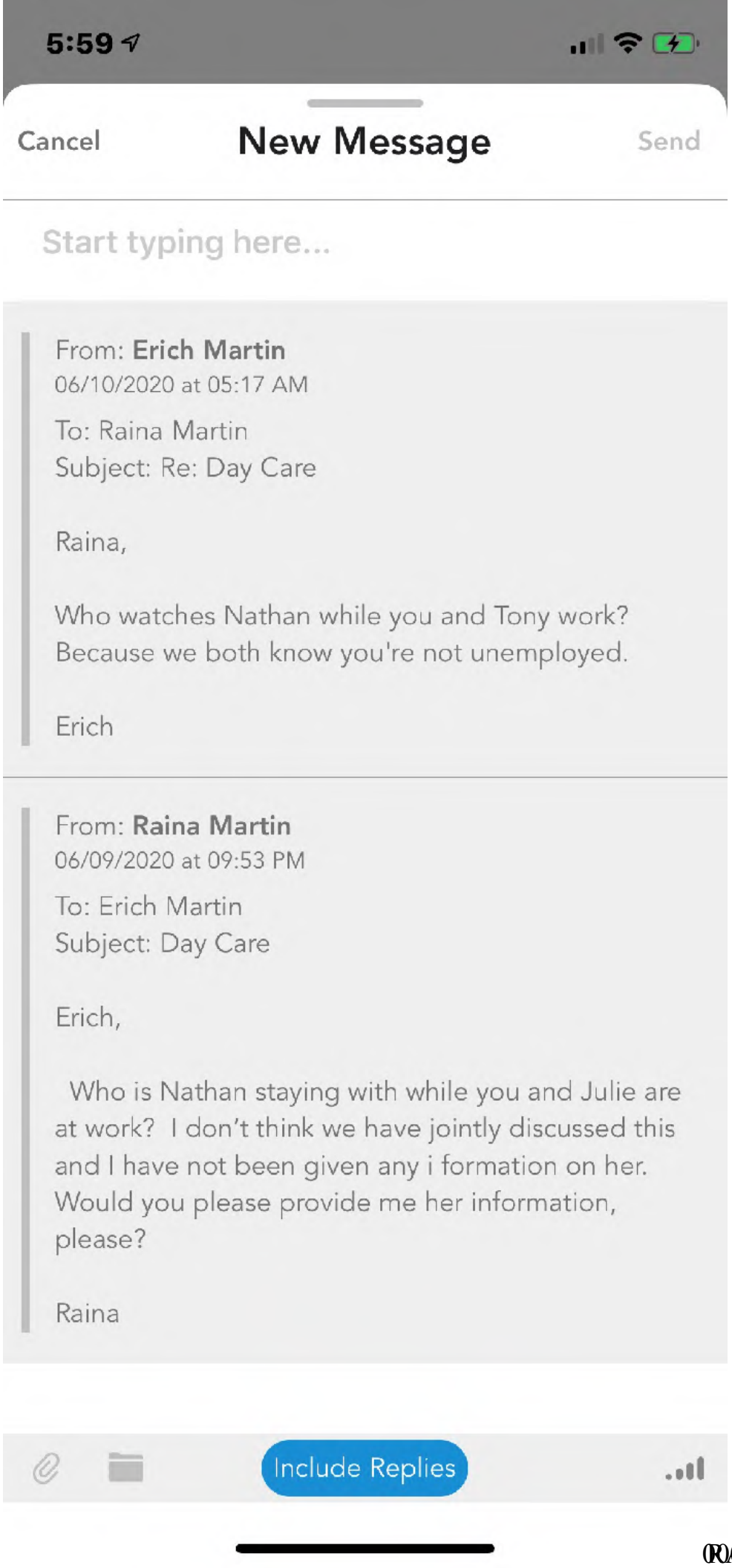
Nadia Walker

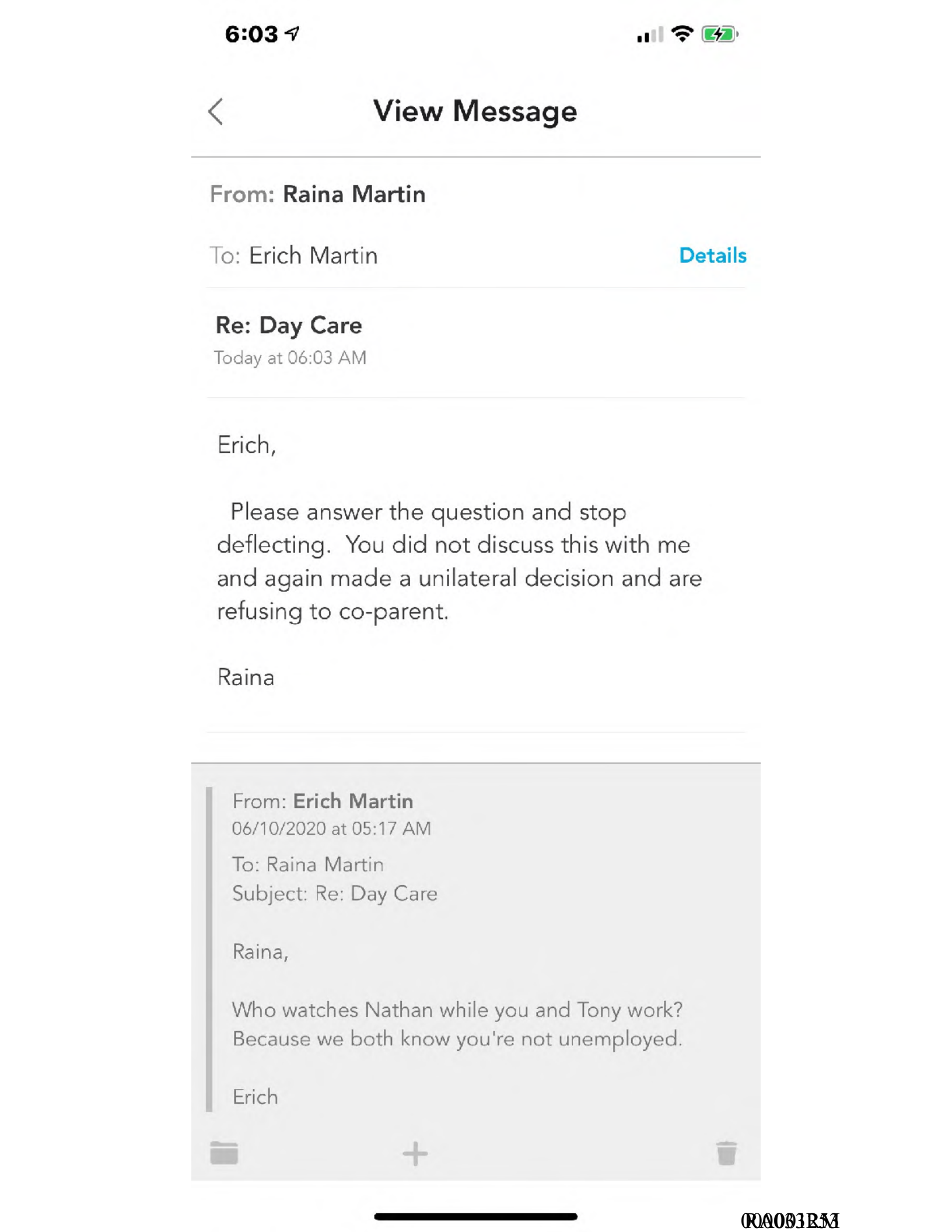
Nadia Walker
Department of Family Services

EXHIBIT “G”

EXHIBIT “G”

EXHIBIT “G”


5:59
Cancel
New Message
Send
Start typing here...
From: Erich Martin
06/10/2020 at 05:17 AM
To: Raina Martin
Subject: Re: Day Care
Raina,
Who watches Nathan while you and Tony work? Because we both know you're not unemployed.
Erich
From: Raina Martin
06/09/2020 at 09:53 PM
To: Erich Martin
Subject: Day Care
Erich,
Who is Nathan staying with while you and Julie are at work? I don't think we have jointly discussed this and I have not been given any i formation on her. Would you please provide me her information, please?
Raina
Include Replies


6:03
View Message
From: Raina Martin
To: Erich Martin
Details
Re: Day Care
Today at 06:03 AM
Erich,
Please answer the question and stop deflecting. You did not discuss this with me and again made a unilateral decision and are refusing to co-parent.
Raina
From: Erich Martin
06/10/2020 at 05:17 AM
To: Raina Martin
Subject: Re: Day Care
Raina,
Who watches Nathan while you and Tony work? Because we both know you're not unemployed.
Erich

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NOTA
JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
KELLEHER & KELLEHER, LLC
40 South Stephanie Street, Suite #201
Henderson, Nevada 89012
Telephone (702) 384-7494
Fax (702-384-7545
Email: kelleherjt@aol.com
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

ERICH M. MARTIN,

Plaintiff,

v.

RAINA L. MARTIN,

Defendant.

CASE NO.: D-15-509045-D
DEPT. NO.: C

NOTICE OF APPEARANCE OF COUNSEL

TO: RAINA MARTIN, Defendant, and

TO: MARSHAL S. WILLICK, ESQ., her attorney:

PLEASE TAKE NOTICE that the law offices of Kelleher & Kelleher, LLC has been retained to represent the Plaintiff, Erich M. Martin, in the above-entitled matter. All future correspondence, communications and pleadings shall be directed to counsel herein.

DATED this 12 day of June, 2020.

KELLEHER & KELLEHER, LLC.

By: _____
JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
40 South Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Plaintiff

LAW OFFICES
KELLEHER & KELLEHER LLC
40 SOUTH STEPHANIE STREET, SUITE #201
HENDERSON, NEVADA 89012
(702) 384-7494 Facsimile (702) 384-7545

CERTIFICATE OF MAILING

I hereby certify that on the 12 day of June 2020, I deposited a true and correct copy of the above and foregoing NOTICE OF APPEARANCE OF COUNSEL was served electronically via E-Service Master List of Wiznet and addressed as follows:

Marshal S. Willick, Esq.
WILLICK LAW GROUP
marshal@willicklawgroup.com
email@willicklawgroup.com
Attorney for Defendant

An employee of KELLEHER & KELLEHER, LLC

LAW OFFICES
KELLEHER & KELLEHER LLC
40 SOUTH STEPHANIE STREET, SUITE #201
HENDERSON, NEVADA 89012
(702) 384-7494 Facsimile (702) 384-7545

150

SUPP
JOHN T. KELLEHER, ESQ.
Nevada State Bar No. 6012
KELLEHER & KELLEHER, LLC
40 South Stephanie Street, Suite 201
Henderson, Nevada 89012
Telephone (702) 384-7494
Facsimile (702) 384-7545
kelleherjt@aol.com
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ERICH M. MARTIN, Plaintiff, v. RAINA L. MARTIN, Defendant.	CASE NO. D-15-509045-D DEPT. NO. C Hearing Date: 06/16/2020 Hearing Time: 10:00 a.m. Oral Argument Hearing Requested: ☒ Yes ☐ No

SUPPLEMENT TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO ENFORCE AND COUNTERMOTION FOR AN ORDER TO SHOW CAUSE FOR CONTEMPT

COMES NOW Plaintiff, Erich Martin, by and through his attorney, John T. Kelleher, Esq., of the law firm of KELLEHER & KELLEHER LLC, and hereby files his Supplement to Opposition to Defendant's Motion to Enforce and Countermotion for Attorney's Costs and Fees.

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KELLEHER & KELLEHER LLC
40 SOUTH STEPHANIE STREET, SUITE #201
HENDERSON, NEVADA 89012
(702) 384-7494
Facsimile (702) 384-7545

This Opposition and Countermotion are made and based upon the pleadings on file herein, any exhibits attached hereto, and the oral argument of counsel at the time of the hearing.

DATED this 15 day of June, 2020

KELLEHER & KELLEHER, LLC.

By: _____

JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
40 South Stephanie Street, Suite 201
Henderson, Nevada 89012
Attorney for Plaintiff

POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

The parties herein, Plaintiff Erich Martin ("Erich") and Defendant Raina Martin ("Defendant") were divorced November 10, 2015, having reached a global resolution after several months of contentious litigation. Since the time of the parties' divorce, the parties have struggled to cooperate, in large part due to Defendant's ongoing insistence that she receive financial benefits to which she is not entitled.

Just six months after the parties' divorce, the parties returned to Court, due to Defendant's refusal to allow Erich his parenting time, as well as her many other violations of the parties' parenting agreement (including her refusal to pay for costs for Nathan's travel for visitation.)

In November 2016, the parties returned to Court again, after Erich discovered that Defendant had continued to collect alimony payments after entering a domestic partnership with her significant other, ("Anthony"). Not only did Defendant withhold this information from Erich, but she believed that she was entitled to all of the legal benefits from her relationship with Anthony, *as well as* the spousal support payments from Erich. This issue ultimately went before the Court, with the Court

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finding that Defendant was not entitled to benefits from both her ex-husband and domestic partner. Defendant was ordered to reimburse Erich for the months of her partnership during which she received spousal support, and was ordered to pay $7,000.00 in attorney's costs and fees.

Additionally, at the time of the hearing in November 2016, the Honorable Court instructed Erich to execute the Qualified Domestic Relations Order prepared by Willick Law Group. Erich executed the QDRO at the request of the Court, not after he "approved and consented" as alleged.

During that round of litigation, Defendant also advised the Court that she had entered into a domestic partnership in order to obtain better health insurance coverage for Nathan, the parties' then seven year old son. Specifically, Defendant advised the Court that "the only benefit Raina receives from the Domestic Partnership is health insurance for Nathan." (See *Defendant's Opposition dated December 28, 2016,* Exhibit 1, Page 4, Line 19-20.)

In December 2019 the parties returned to Court again, addressing additional issues related to the parties' communication, the child's dental insurance, and Defendant's failure to cooperate in providing Erich medical information. At that time the parties agreed that Erich would contribute towards the monthly cost of Nathan's dental insurance, which he has done. Specifically, Erich has paid the premium for dental and vision insurance for 2020 in one lump sum.

The Court also addressed the ongoing dispute related to the child's eyeglasses, specifically Ordering that as "in the event the glasses selected by the minor child will exceed $100.00 in out-of-pocket costs, Raina and Erich shall discuss the matter *prior* to purchase." (See Order from December 2019 Hearing, Exhibit 2, Page 3, Line 21-24.). Defendant has refused to comply with this Order, having purchased four pairs of glasses for Nathan over the past twelve months and failing to discuss those purchases with Erich before doing so.

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II.

LEGAL ARGUMENT

A. DEFENDANT'S MOTION AND REPLY DISREGARD THE LAW REGARDING COMBAT INJURY PAY AND FEDERAL BENEFITS.

Now at issue is Defendant's adamance that she be awarded a portion of Erich's injury pay, despite the fact that federal law prohibits her from doing so. At the time of the parties' divorce, the parties entered a marital settlement agreement, during which they agreed that Defendant would receive her interest in the community portion of Erich's retirement pay, regardless of how it was paid to Erich (be it through disability pay, retirement pay, etc.)

At the time of the parties' divorce in 2015, Erich continued to serve as a Green Beret with the US Army. He has had over a dozen deployments, and has suffered significant injuries in combat over the years, including traumatic brain injuries from concussions, ACL replacements, foot injuries, tendon injuries, back injuries, tinnitus, and migraines. While there are more minor injuries as well, those are the primary issues Erich deals with on a regular basis.

The public policy issues addressed by the US Supreme Court in *Howell* address the issue of injury pay and community interest directly. Specifically, the Supreme Court found that "federal law completely preempts the States from treating waived military retirement pay as divisible community property." *Howell v. Howel*l, 137 S. Ct. 1400, 1405, 197 L. Ed. 2d 781 (2017). The Supreme Court goes further, noting that a State's efforts to enforce a post-decree waiver or indemnification violates federal law, is a matter of "semantics and nothing more", and any such Order by a State would be preempted.[1]

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[1] Neither can the State avoid Mansell by describing the family court order as an order requiring John to "reimburse" or to "indemnify" Sandra, rather than an order that divides property. The difference is semantic and nothing more. The principal reason the state courts have given for ordering reimbursement or indemnification is that they wish to restore the amount previously awarded as community property, i.e., to restore that portion of retirement pay lost due to the postdivorce waiver. And we note that here, the amount of indemnification mirrors the waived retirement pay, dollar for dollar. Regardless of their form, such reimbursement and indemnification orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. All such orders are thus pre-empted.

Howell v. Howell, 137 S. Ct. 1400, 1406, 197 L. Ed. 2d 781 (2017)

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While Defendant's counsel is correct that the Nevada Supreme Court has not issued a published decision since the ruling in *Howell,* the suggestion that the law is somehow unsettled is inaccurate. Not only has the Supreme Court issued a clear decision on this matter, but that the Nevada Supreme Court has recognized that a state action preempted by a federal law constitutes an invalid contract. *Boulter v. Boulter*, 113 Nev. 74, 930 P.2d 112 (1997)

In *Boulter,* the Court found that a Decree of Divorce, incorporating a voluntarily contracted property settlement agreement, could not include provisions which violated federal provisions regarding the transfer of benefits. In that case, the parties had contracted allowing Wife to collect federal benefits in violation of the Social Security Act. The Nevada Supreme Court found that such a contract was not enforceable, and that the District Court "was without jurisdiction to enforce an award" regardless of the fact that "the agreement was the product of the voluntary negotiations of the parties, the enforcement of the contested paragraph is nevertheless prohibited by the federal statute." *Boulter v. Boulter*, 113 Nev. 74, 80, 930 P.2d 112, 115 (1997).

Here, the facts are analogous to those present in *Boulter.* Both cases involved parties whom shared lengthy marriages, and entered contracts indemnifying Wife's community interest in retirement payments through other federal benefits. In *Boulter,* the Court found that those contractual terms could not be enforced due to the contradiction in federal law. Here, the Court should also find that the contractual terms are no longer valid due to the contradiction in federal law (as noted in *Howell).*

(The Court should note that this finding was again supported by the Nevada Supreme Court in *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996), in which the Court determined that certain federal benefits could not be divided in a property settlement agreement when preempted by federal law.)

In her Reply, Defendant cites the Texas Court of Appeals, advising that since Nevada treats property settlements as enforceable contracts, the parties can contract

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away Erich's federal benefits. Again, this is in direct contradiction to the rulings issued by the Nevada Supreme Court in *Boulter,* as well as the US Supreme Court's findings in *Howell.* In fact, the judiciaries in both *Howell* and *Boulter* state that such a contract is not enforceable.

While Defendant has cited a slew of cases from various states and counties, she has painstakingly avoided addressing the Nevada case directly on point, which glaringly refutes her belief that the Courts should enforce any contract parties' elect to enter. Throughout her pleadings Defendant suggests that after years of marriage, she somehow walked away empty handed, which is far from true. Defendant has received approximately $110,000.00 in GI and VA Education benefits, which allowed her to obtain employment as a dental hygienist. (Further, had the Court not intervened, Defendant would continue to collect spousal support, despite receiving benefits through her relationship with Anthony Bricker.)

Defendant argues that a "contract is a contract is a contract", however this statement should read that a "legal and valid contract *is* a contract." By way of Defendant's reasoning, an employer could contract to pay an employee below minimum wage or a hitman could sue to enforce a "contracted" payment. The fact is that contracts which are not legally valid are not enforceable. While parties can enter binding, valid agreements, these contracts must be enforceable and valid under state and federal law. Pursuant to *Howell,* as well as the relevant Nevada law, Defendant is not entitled to any payments related to Erich's combat injury pay.

B. <u>ERICH SHOULD BE AFFORDED MAKE-UP VISITATION FOR THE PERIOD LOST DUE TO THE COVID-9 TRAVEL RESTRICTIONS.</u>

Under the current custodial schedule, Erich was entitled to visitation for the "Spring Break" period for the 2020 year. Pursuant to the Clark County School District Calendar, spring break began April 3 upon dismissal from school and concluded with the return to school April 13. The parties agreed that given the viral outbreak and ongoing discouragement regarding travel (particularly intrastate travel), Erich would forego his visitation with make-up time afforded during the

summer. (See Defendant's Exhibit E, 000009RM.)

Given the parties' high-level of conflict, Erich is requesting that the Court address the issue of make-up visitation and provide specific dates, as it is unclear if the parties will be able to resolve the issue absent the Court's direction.

C. DEFENDANT'S ALLEGATION OF ARREARS IS NOT SUPPORTED BY A SCHEDULE OF ARREARS OR ANY DOCUMENTATION WHATSOEVER.

Defendant has alleged in her underlying motion that Erich owes a slew of medical arrears, including costs allegedly related to dental coverage and possibly eyeglasses. In congruence with EDCR 5.507, Defendant must file a schedule of arrears for any requested past due medical amount. By doing so, Erich can adequately address each claim presented. In this case, no such schedule has been filed and Defendant's request should be denied.

D. DEFENDANT SHOULD BE ADMONISHED FOR USING THIRD PARTIES TO CONTACT ERICH.

While Defendant argues her husband reached out to Erich "in good faith" it is evident that it is not the case. Erich is an active, involved, loving father and has never made any suggestion that he would relinquish his relationship with Nathan. Erich's position for the past four years of litigation has been that Defendant is attempting to alienate the relationship, and such a text message only solidifies that belief. It is clear that Defendant's husband's request to "adopt" Nathan was made for the sole purpose of instigating a fight and causing additional strife, and Defendant should be admonished for her violation of the behavioral order.

E. PURSUANT TO JOINT LEGAL CUSTODY, BOTH PARTIES SHOULD BE PROVIDED INFORMATION RELATED TO ALL MEDICAL PROVIDERS WITHIN TEN DAYS OF THIS HEARING.

Unfortunately, Defendant has taken that position that in conjunction with being the primary physical custodian she is permitted to unilaterally obtain medical care for Nathan. At this time, both parties should produce a list of medical providers whom Nathan is seeing for care, as well as a calendar of any future appointments which have been set. Defendant should be admonished not to take Nathan for any

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non-emergency medical care unless first discussed with Erich. While this is a basic tenet of joint legal custody it appears there is an ongoing failure to provide this information.

F. THE EXHIBITS PRODUCED HAVE NOT BEEN "ADULTERATED" AS ALLEGED.

The exhibits produced by Erich clearly evidence and support Erich's arguments in this case. In contrast, Defendant has included a slew of exhibits, including messages from 2016, 2017, 2018, and 2019, as well as a minimal amount of information from 2020. These exhibits are entirely irrelevant, as the parties returned to Court as recently as December 2019.

G. THE SUBSTANTIATION BY CHILD PROTECTIVE SERVICES IS CURRENTLY ON APPEAL, AND THE COURT SHOULD ORDER A CHILD INTERVIEW TO BE CONDUCTED.

As a matter of procedure, the Court should note that Defendant is barred from bringing forth new allegations in her reply. *State v. Bennett*, 119 Nev. 589, 608, 81 P.3d 1, 13 (2003). Here, neither Defendant's motion nor Plaintiff's opposition request or discuses a modification of custody and as such, the Court should not entertain such argument. If the matter is pressing, Defendant should file an appropriate motion so that the matter may be addressed.

Most recently, in February 2020 Erich was forced to initiate an investigation with Child Protective Services, after 9 year old Nathan stated that he had been showering with his step-father, Anthony. Between February and March 2020, Antony was contacted by CPS investigator Nadia Walker in order to investigate the incident. Upon investigation by Child Protective Services, it was determined that Defendant knew about her son and his step-father taking showers together and had not felt it was anything out of the ordinary. For whatever reason, Child Protective Services also determined that it was not cause for concern for a nine year old boy to be showering alone with his step-father. **At this time, despite the fact that Ms. Walker advised the step-father he should not take showers with Nathan, he has continued to do so.**

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Rather than pursue the concerns of sexual abuse, Ms. Walker initiated an investigation into Erich's wife, Julie, after she allegedly hit Nathan. Despite not speaking with Erich or Julie about the allegations, and relying solely on the statements of Defendant, her husband, and Nathan (who was interviewed while in Defendant's care), CPS substantiated the allegation against Julie. At this time, the substantiation is being appealed, however more concerning to Erich is the dismissal of the fact that grossly inappropriate conduct is occurring in Defendant's home. Erich is willing to ensure that until the appeal is granted, his wife is not left alone with Nathan.

Over the course of the last year, Nathan has had more than 30 detentions and his grades consist primary of C's and D's. He has had multiple behavioral issues, and has trouble sleeping at night. It is clear that Nathan is suffering and it is imperative that this Court intervene in order to protect him.

Erich agrees that Nathan is in need of therapy, however it should be with a therapist the parties mutually agree on and both parties should be able to regularly participate. During Erich's parenting time, Nathan should continue his therapeutic sessions via teleconferencing (as most facilities are now making available.) Additionally, given the high-conflict nature of the parties' communication and the ongoing allegations regarding abuse, a child custody evaluation should be completed by a Court approved provider, such as Dr. Stephanie Holland or Dr. Nicholas Ponzo.

H. ATTORNEY'S FEES SHOULD BE AWARDED PURSUANT TO NRS 18.010.

NRS 18.010 Award of attorney's fees.

1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When the prevailing party has not recovered more than $20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the

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> opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.
>
> 3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.
>
> 4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

Unfortunately, Defendant filed her Motion to Enforce Decree after wilfully disregarding the case law which directly contradicts her position. It is unreasonable to request the Court to enforce provisions of a contract which are preempted by federal law. Moreover, Defendant comes before the Court arguing that she is entitled to medical arrears, and having failed to file a financial disclosure form. Since the time of the parties divorce, Defendant has been adamant that she be awarded financial benefits to which she is not entitled. Rather than simply moving forward and working to ensure Nathan's best interests are served, Defendant has cost both parties thousands of dollars in unnecessary litigation. Erich should be afforded the opportunity to file a Memorandum of Costs and Fees and should be awarded the entirety of fees incurred.

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III.

CONCLUSION

For the foregoing reasons, Plaintiff, Erich Martin, respectfully requests the Court deny Defendant's Motion in its entirety.

DATED this 15 day of June, 2020

KELLEHER & KELLEHER, LLC

By: _____

JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
40 South Stephanie Street, Suite 201
Henderson, Nevada 89012
Attorney for Plaintiff

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AFFIDAVIT OF ERICH M. MARTIN

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

ERICH M. MARTIN, being first duly sworn, deposes and states:

1. That I am a competent witness to testify to the matters contained herein and do so of my own personal knowledge, except as to those items on information and belief, and as to those matters I believe the same to be true.

2. I am the Plaintiff in this action and have read the above and foregoing Opposition, and all factual statements set forth therein are true and correct to the best of my knowledge;

3. And that I incorporate all factual statements therein as though restated in their entirety, in this affidavit pursuant to NRCP 10.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 15th day of June, 2020.

/s/ Eric M. Martin

ERICH M. MARTIN

SUBSCRIBED AND SWORN to before me this
_____ day of _____, 2020.

_____

NOTARY PUBLIC in and for said County and State

From: emartin2617@gmail.com,
To: kelleherjt@aol.com,
Subject: Re: Supplement to Opposition
Date: Sun, Jun 14, 2020 5:21 pm

John,

I have read the supplemental brief and I agree with my lawyers and authorize you to file it. Would you please send it? I appreciate the help and detail here.

Respectfully,

Erich

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of June, 2020, a true and correct copy of the above and foregoing SUPPLEMENT TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO ENFORCE AND COUNTERMOTION FOR AN ORDER TO SHOW CAUSE FOR CONTEMPT was served electronically via E-Service Master List of Odyssey and addressed as follows:

Marshal S. Willick, Esq.
WILLICK LAW GROUP
richard@willicklawgroup.com
justin@willicklawgroup.com
email@willicklawgroup.com
Attorney for Defendant

An employee of Kelleher & Kelleher, LLC

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DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Complaint **COURT MINUTES** June 16, 2020

D-15-509045-D Erich M Martin, Plaintiff
vs.
Raina L Martin, Defendant.

June 16, 2020 **10:00 AM** **All Pending Motions**

HEARD BY: Burton, Rebecca L. **COURTROOM:** Courtroom 08

COURT CLERK: Diane Ford

PARTIES:

Erich Martin, Plaintiff, Counter Defendant, not present	John Kelleher, Attorney, not present
Nathan Martin, Subject Minor, not present	
Raina Martin, Defendant, Counter Claimant, not present	Marshal Willick, Attorney, not present

JOURNAL ENTRIES

DEFENDANT'S MOTION TO ENFORCE OPPOSITION & COUNTERMOTION: RESPONSE TO DEFENDANT'S MOTION TO ENFORCE AND DEFENDANT'S ATTORNEY'S FEES AND NOTICE OF MOTION FOR AN ORDER TO ENFORCE AND/OR ORDER TO SHOW CAUSE REGARDING CONTEMPT AND COUNTERMOTION FOR CONTEMPT HEARING: DEFENDANT'S REPLY TO DEFENDANT'S MOTION TO ENFORCE AND DEFENDANT'S ATTORNEY'S FEES AND NOTICE OF MOTION FOR AN ORDER TO ENFORCE AND/OR ORDER TO SHOW CAUSE REGARDING CONTEMPT AND OPPOSITION TO COUNTERMOTION FOR CONTEMPT

COURT CLERK: Minute Order prepared via JAVS by Annette Duncan (not present).

Judge Rebecca Burton appeared via video conference.

Attorney John Kelleher, Bar #6012, present via video conference, on behalf of Plaintiff (Dad).

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

Attorney Richard Crane, Bar #9536, present via video conference on behalf of Defendant (Mom)

Parties present via video conference.

Court reviewed the Papers and Pleadings on file.

COURT FINDS that it has subject matter jurisdiction over this case, personal jurisdiction over the parties, and child custody subject matter jurisdiction over the minor child.

Court reminded Dad that if he intends to represent himself in the future, he is expected to follow the same rules.

Court noted Mom's Motion regarding the issue of unresolved Military Retirement Pay that is unresolved arises out of the Howell case. Upon Court's inquiry, Attorney Kelleher advised they are satisfied with the briefing in this case.
Attorney Crane objected to the late filing of the Dad's Supplement to Dad's Opposition and Countermotion by Attorney Kelleher on 6-15-2020 and requested to have the document set aside pursuant to EDCR 5.509.

Arguments by Attorney Crane regarding the Child Protective Services (CPS) report (provided to the Court's Law Clerk and Attorney Kelleher) that substantiated abuse of the Minor Child by Dad's wife and request to have Dad's visitation take place in Nevada based on that report. Attorney Crane requested to allow the Minor Child to go to a therapist and argued when Mom has had the Minor Child in therapy before, Dad has stopped the therapy. In addition, Dad did put the Minor Child in therapy one time, however, refused to share any information with Mom. Arguments and discussion regarding the CPS Report. Attorney Crane further argued that at the last hearing, a Behavior Order was issued against Dad's Wife.
Attorney Crane requested to submit three names of therapists to Attorney Kelleher and have him select one name from the three as a therapist for the Minor Child.

COURT NOTED, Dad admitted to the substantiated CPS report and advised the Minor Child would not be left alone with his wife.

Attorney Kelleher argued that the CPS Report findings were being investigated by Attorney Posen. Attorney Kelleher argued the Minor Child has significant behavioral issues and requested to have the Minor Child interviewed by Dr. Paglini or Dr. Holland. Attorney Kelleher indicated Dr. Holland has offices in Nevada and in Colorado within driving distance of Dad's residence. Upon Court's inquiry, Dad is willing to make sure visitation is supervised when he is working.
Discussion between Court and Counsel regarding the type of therapy the Parties are requesting for

the Minor Child. Counsel AGREED the therapy is to be non-forensic in nature and is strictly for the Minor Child.

Discussion between Court and Counsels regarding Court obtaining the CPS reports, and counseling for the Minor Child. Upon Court's inquiry, Dad advised a neighbor, Sherry Soulier, would be watching the Minor Child while he was working.

Further argument by Attorney Kelleher, request for Dad to have compensation time for Spring Break due to COVID-19 and request to use Dr. Holland who is a Court-appointed therapist with a Ph.D.

COURT REMINDED Dad that he cannot have make-up time for visitation time that he forfeited.

COURT FINDS, the Parties significant others are not a party to this case and the Court cannot hold them in contempt of Court. However, COURT ADMONISHED both the Parties and their significant others for behaving in a manner that they know would cause animosity between the Parties and the Parties for their knowledge of said actions. Significant others are to STOP reaching out to the Parties in this case.

COURT ORDERED,

Counsel shall discuss and CHOOSE a THERAPIST for the Minor Child by the next hearing date.

Attorney Crane's Reply shall be submitted by 6-30-2020.

Mom shall file a Schedule of Arrears.

Mom and Dad shall work together regarding make-up time for DAD's Spring Break timeshare (9 days) due to COVID-19 and shall have a decision by Friday, (6-18-2020) 5:00 P.M.

Each Party shall have until Friday (6-18-2020) at 5:00 p.m. to provide the other Party with a list on Our Family Wizard of the Minor Child's Health Care Providers (Optometrist, Dental, ENT, School, etc.), along with the dates and times of the Minor Child's upcoming appointments.

The following language shall be added to the Parties JOINT LEGAL CUSTODY LANGUAGE: " Neither Party shall take the Minor child to a non-emergency health care appointment without advance notice to the other Party". Court defined "advanced notice" as follows: As soon as an appointment is made, the Parties shall go on Our Family Wizard to let the other Parent know about the appointment, including the date and time, in the event the other Parent is available to participate.

In addition, only the Parents are to attend and/or participate in the appointments; significant others shall not participate.

Dad's Motion for Contempt of Court is DENIED.

Mom shall tell Dad of any school zone changes IMMEDIATELY as Dad has the legal right weigh in on the school change or to explore alternative schools.

Dad's Motion to reverse the Sealed Case is DENIED.

Mom's Motion for no Contact with Step-Mom is CONTINUED until Court has read the CPS reports and Court will advise Counsel at the upcoming Status Check on 6-18-2020.

Court is satisfied with the NO UNSUPERVISED CONTACT between the Minor Child and Dad's wife until the Court is able to review the un-redacted CPS reports.

Should step-mom take an age-appropriate class equivalent to ABC's of Parenting or Triple P (Positive Parenting Program), the visitation can resume.

STEP-DAD showering with the Minor Child is NOT APPROPRIATE and if it is happening, it shall STOP IMMEDIATELY.

Each Party shall bear their own Fees and Costs.

CPS Records shall be Ordered by the Court's Department.

STATUS CHECK RE: THERAPIST and CPS REPORTS SET on 6-18-2020 at 9:00 a.m.

STATUS CHECK RE: OUTSTANDING ISSUES SET 7-16-2020 AT 10:00 a.m.

Attorney Crane shall prepare the Order within two (2) weeks and Attorney Kelleher shall sign off within two (2) weeks thereafter.

INTERIM CONDITIONS:

FUTURE HEARINGS:

June 18, 2020 9:00 AM Status Check
Courtroom 08

Burton, Rebecca L.
Ford, Diane

July 01, 2020 2:15 PM Status Check
Courtroom 08
Burton, Rebecca L.

July 16, 2020 10:00 AM Status Check
Courtroom 08
Burton, Rebecca L.

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RCPS

DISTRICT COURT

Family Division

CLARK COUNTY, NEVADA

FILED IN OPEN COURT

_____, 20____

STEVEN D. GRIERSON
CLERK OF THE COURT

BY: Diane Ford
DIANE FORD **DEPUTY**

_____
Plaintiff,

-vs-

_____
Defendant.

CASE NO: _____

DEPT. _____

REQUEST FOR CHILD PROTECTION SERVICES APPEARANCE AND RECORDS

Mother _____ Father _____
(Mother's name) (Father's name)

Child(ren)'s Name _____ _____
(Child's name) (Child's name)

_____ _____
(Child's name) (Child's name)

NOTICE TO APPEAR:

❑ **NOTICE** to Appear to Caseworker _____
(Caseworker's name)

❑ **NOTICE** to Appear to CPS Representative

This Notice is to be submitted to CPS at least 72 hours prior to court hearing, except in emergency situations.

❑ **NOTICE** to Appear at Court Hearing:

Date _____ Time _____ Dept _____

Type of Hearing _____ Bring Records ❑ Yes ❑ No

❑ **NOTICE** to Provide Records Only by _____, 20____
(Date)

Records to be delivered to: _____

Other Information _____

_____

DATED this ____day _____20____.

_____
FAMILY COURT JUDGE/HEARING MASTER

White: Clerk **Canary: Fax to CPS 384-4859** **Pink: Plaintiff** **Goldenrod: Defendant**

REV 01/11 CPS-Notice-NCR wpd

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Electronically Filed
6/17/2020 6:33 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

****

Erich M Martin, Plaintiff
vs.
Raina L Martin, Defendant.

D-15-509045-D
Department C

NOTICE OF AUDIO/VISUAL APPEARANCE

Please be advised that the **Status Check** to be heard by the Honorable Rebecca L. Burton at the Family Courts and Services Center, 601 N. Pecos Rd., Las Vegas, Nevada, on the **18th day of June, 2020** at the hour of **9:00 AM** in **Department C, Courtroom 08 will be conducted by audio/visual appearance.** YOUR PRESENCE IS NECESSARY.

Go to: https://www.bluejeans.com Meeting No. 459 505 689

DISTRICT JUDGE REBECCA L. BURTON

By: /s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamp date:

☒ I provided the foregoing NOTICE OF AUDIO/VISUAL APPEARANCE to:

John T. Kelleher , Esq.
kelleherjt@aol.com

Marshal Shawn Willick, Esq.
email@willicklawgroup.com

/s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C

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D-15-509045-D Erich M Martin, Plaintiff
vs.
Raina L Martin, Defendant.

June 18, 2020 09:00 AM Status Check

HEARD BY: Burton, Rebecca L. COURTROOM: Courtroom 08

COURT CLERK: Ford, Diane

PARTIES PRESENT:

Erich M Martin, Counter Defendant, Plaintiff, Not Present

John T. Kelleher, ESQ, Attorney, Not Present

Raina L Martin, Counter Claimant, Defendant, Not Present

Marshal Shawn Willick, Attorney, Not Present

Nathan L Martin, Subject Minor, Not Present

JOURNAL ENTRIES

STATUS CHECK RE: NAME OF THERAPIST AND CPS RECORDS

Judge Rebecca Burton appeared via video conference.

Attorney John Kelleher, Bar No. 6012, appeared via video conference for Plaintiff (Dad).

Attorney Richard Crane, Bar No. 9563, appeared via video conference for Defendant (Mom).

Dad appeared by phone via video conference.

Court noted the only Child Protective Services (CPS) reports it was able to review was the one submitted to the court by Counsel as the court is unable to get any updated records for about two weeks.

Court inquired if the parties had been able to pick a therapist, and Attorney Kelleher stated they have not and why.

Argument by Counsel regarding having a therapist with a Doctor of Philosophy (PHD) degree or using one who is a Marriage and Family Therapist (MFT).

COURT ORDERED the following:

1. Dad shall pick two PHD therapist's names along with Dr. Holland's name, and then Mom shall choose between them. Once the Parties have agreed on a therapist, they should make contact with the therapist together or individually before the minor child meets with the therapist. Dad shall pay any expenses not covered by the health insurance.

2. Counsel shall submit a Stipulation and Order of the name of the therapist.

3. Dad shall give Mom the name and phone number of the caregiver. Mom shall contact the caregiver once to introduce herself and give the caregiver her information.

4. Parties STIPULATED that Dad will have an additional nine days of make-up time for the missed

Spring Break due to COVID-19.

5. Status Check re: Name of the Therapist SET for July 1, 2020 at 2:15 p.m.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Jul 01, 2020 2:15PM Status Check
Courtroom 08 Burton, Rebecca L.

Jul 16, 2020 10:00AM Status Check
Courtroom 08 Burton, Rebecca L.

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RPLY
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email@willicklawgroup.com
Attorney for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERICH MARTIN, Plaintiff, vs. RAINA MARTIN, Defendant.	CASE NO: D-15-509045-D DEPT. NO: C DATE OF HEARING: TIME OF HEARING:

REPLY TO PLAINTIFF'S "SUPPLEMENT TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO ENFORCE AND COUNTERMOTION FOR AN ORDER TO SHOW CAUSE FOR CONTEMPT"

I. INTRODUCTION

This Court granted Raina the opportunity to file a *Reply to the Supplement* filed one day before the hearing held on June 16, which included new argument concerning Erich's refusal to pay Raina the amounts he stipulated to in the Marital Settlement Agreement (MSA) filed concurrently with the *Decree of Divorce*.

In particular, Mr. Kelleher cited to three cases in the *Supplement* that he contends are relevant to the case currently before the Court. We will address each of these in turn.

II. Reply

A. *Howell*[1]

The question posed in *Howell*, was:

> Can the State subsequently increase, pro rata, the amount the divorced spouse receives each month from the veteran's retirement pay in order to indemnify the divorced spouse for the loss caused by the veteran's waiver?

This is a very narrow question of law that addresses the Court's ability to order indemnification based on the military member's unilateral decision to accept VA disability benefits in lieu of waived retirement benefits. The quick answer to this specific question is "no," but that does not alter the result here.

That is not the situation that is currently before this Court. In *Howell*, the parties were divorced in Arizona in 1991 and they signed a property settlement that simply awarded the wife 50% of the retirement benefits from the husband. In accordance with the parties' agreement, the judge ordered that Mrs. Howell was to receive fifty percent of her husband's military retired pay.

Mr. Howell retired from the Air Force in 1992. About thirteen years later, Mr. Howell applied for VA disability compensation. His VA rating was twenty percent, meaning that he would receive about $250 a month from the VA as disability compensation. This also meant, based on the VA waiver, that he would forfeit the same amount of his pension to get the tax-free VA funds.

Mr. Howell's VA waiver was done without the permission of the court and without his ex-wife's consent, and was not contemplated in any agreement or order. His actions resulted in Mrs. Howell receiving about $125 a month less of the

[1] See *Howell v. Howell*, No. 15-1031, U.S. Supreme Court May 15, 2017.

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pension. Mrs. Howell filed a petition to enforce the original order and require Mr. Howell to make the payments regardless of the loss from the VA waiver. The trial court agreed, ordering pay-back by Mr. Howell, and this was upheld by the Supreme Court of Arizona. Mr. Howell petitioned for review to the U.S. Supreme Court.

The Supreme Court reversed the Arizona decision. It held that, under the United States Former Spouse Protection Act (USFSPA), the judge may not order reimbursement to a former spouse because the military retiree has elected a VA waiver, thus losing an equal amount of retired pay. The Court pointed to the language in the USFSPA stating that only "disposable retired pay" may be divided between the parties upon divorce. The amount of military retired pay which is waived by taking VA disability compensation is not disposable retired pay, so it is not allocable under the USFSPA.

Analysis of VA waivers after *Howell* requires understanding the context of the Court's ruling. In *Howell*, there was no agreement by the parties for the husband to pay back any waived money. Based on this, the Court's ruling was very narrow. The decision made no ruling and issued no dicta on the issue of contractual indemnification regarding VA waivers.

To understand where the court can go wrong, it is important to first understand what the "contractual" concept means.

Indemnity is "a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person."[2] Contractual indemnification never came up in the *Howell* case because ***there was no*** agreement to indemnify involved, just a property settlement for a 50/50 division of the pension, approved by the court.

[2] Restatement (SECOND) of Judgments § 1 (1982).

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The distinction is important. In *Mansell*,[3] cited in the *Howell* case, the husband had argued that federal law did not allow for agreement by the parties to divide those benefits, but the Court did not consider the husband's arguments, leaving such agreements open for later decision. On remand, the spouse was ordered to continue receiving the contracted-for portion of the disability pay.[4]

In other words, the Supreme Court has left open the ability of parties to contract for indemnification of the spouse with an agreement to pay the spouse a portion of the VA disability compensation or the waived retired pay. In fact, *Howell* itself instructs attorneys and courts to take that consideration into effect and build that possibility into decrees of divorce

Specifically, the *Howell* Court held that:

> Family courts remain free to take account of the contingency that some military retirement pay might be waived or take account of reductions in value when calculating or recalculating the need for spousal support.

Thus, *Howell* does allow parties and courts leeway when considering the potential loss of the military retirement benefits and to take remedial action. This is completely compatible with Nevada law, which has expressly embraced the contract theory in military disability indemnification cases.[5]

---

[3] *Mansell*, 490 U.S. at 582-84.

[4] As explained in our CLE materials:

> Ultimately, the matter was remanded to State court. Ironically, that court ruled that the previously-ordered flow of payments from the member to the spouse, put into place prior to the appellate *Mansell* decision, was *res judicata* and could not be terminated. *In re Marriage of Mansell*, 265 Cal. Rptr. 227 (Ct. App. 1989), *on remand from* 490 U.S. 581, 109 S. Ct. 2023 (1989). In other words, the United States Supreme Court opinion had ***no effect*** on the order to divide the entirety of retirement and disability payments in the final, un-appealed divorce decree in the *Mansell* case itself.

Marshal Willick, *Divorcing the Military: How to Attack; How to Defend*, posted at http://www.willicklawgroup.com/military_retirement_benefits, at 13.

[5] *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507, 511 (Nev. 2003).

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Here, Raina and Erich ***did*** expressly contemplate the possibility of Erich taking some disability at the time he was to retire, and created a contract that provided for the direct indemnification by Erich to Raina if the contingency actually arose. In other words, they planned for this contingency at the time of divorce.[6]

Specifically, their agreement and decree includes the specific contract that, "Should Erich select to accept military disability payments, Erich shall reimburse Raina for any amount that her share of the pension is reduced due to the disability status." This is the contractual agreement that did not exist in the decree at issue in *Howell*.

This issue has been studied in depth by members of the American Academy of Matrimonial Lawyers (AAML) and the issue of contractual agreement was thoroughly analyzed in a recent volume of its Journal, in which the *Howell* decision was dissected and determined to be a very narrow interpretation of the law which applies only to cases in which there is no underlying agreement and leaves open the possibility of contractual agreements.[7] In other words, *Howell* does not apply to the case at bar.

As to the *specific* remedy for this situation (alimony) that the United States Supreme Court suggested be used on the face of the *Howell* opinion, the Court in ***this*** case retained jurisdiction to make such an award in the OID that the parties signed in November 2016.[8] Nevada law has long held that reservation of

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[6] This paragraph taken from the holding in *Howell* also indicates that the Court can impose a spousal support award but the Court can't "just" impose a dollar for dollar alimony. While the opinion is not very specific, some other courts have held that a court would have to take into account all of the required alimony factors and determine what alimony amount would be fair and equitable, resulting in an alimony award that is greater or less than the amount lost due to the waiver of retired pay. *See*, *e.g.*,

[7] See *Military Pension Division Cases Post-Howell: Missing the Mark, or Hitting the Target?* Journal of the American Academy of Matrimonial Lawyers, Vol. 31, Mar 13, 2019, pg 513.

[8] See OID filed November 14, 2016, page 6, paragraph 10.

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compensatory permanent alimony to make up for loss of military retirement is perfectly acceptable and such alimony awards are unaffected by the remarriage of the recipient.[9] Both of those rulings are the same, post-*Howell*, in California[10] and elsewhere.[11]

B. *Boulter*[12]

Boulter is a social security case involving a federal entitlement program not comparable to the case at bar.

In that case, the Nevada Supreme Court held that under 42 U.S.C. 407(a) (1983), any state action is preempted by a conflicting federal law, such as the Social Security Act, under the Supremacy Clause (Article IV, Clause 2) of the United States Constitution.

Citing various cases from around the country indicating that Social Security payments are "immune to adjustment" by state courts dividing property at divorce, and noting that certain spousal benefits are entitlements for the spouse built in to the social security law itself, the Court noted the holding of the United States Supreme

---

[9] See *Waltz v. Waltz*, 110 Nev. 605, 877 P.2d 501 (1994); where the Supreme Court held that NRS 125.150(5) requiring termination of alimony payments in the event of the death of either party or remarriage of the payee did not apply to awards of permanent alimony. The alimony payments were also found to be property settlement payments in exchange for wife's interest in husband's military pension.

[10] *See*, *e.g.*, *Marriage of Cassinelli*, 20 Cal. App. 5th 1267 (2018), 229 Cal. Rptr. 3d 801 (Ct. App. 2018) (husband who waived retirement benefit to collect combat-related special compensation ordered to pay wife amount she would have received in retirement pay under terms of marital settlement agreement).

[11] *See*, *e.g.*, *Jennings v. Jennings*, 2017 Ohio 8974 [2017 Ohio App. Lexis 5406] (2017) (post-*Howell*, a trial court can take the military spouse's disability benefits into account in awarding support to the civilian spouse).

[12] *Boulter v. Boulter*, 113 Nev. 74, 930 P.2d 112 (1997).

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Court that section 407(a) imposes "a broad bar against the use of any legal process to reach all social security benefits"[13]

Hisquierdo was on point in a social security case because it dealt with *Tier 1 Railroad Retirement Benefits* which are entitlements that are not divisible as they are determined in the exact same method as social security benefits.

It is interesting to note that one of the main reasons that the Nevada Supreme Court and other courts from around the country found that social security is not divisible is because the program had a built in spousal survivor benefit. This is not so for military retirement (which are ***not*** entitlement benefits).

In *Metz*[14] – another social security benefits case – the Nevada Supreme Court held "that under 42 U.S.C. § 407(a), Congress has expressly exempted supplemental security income (SSI) from child support payments. Thus, a district court is prohibited from utilizing a noncustodial parent's supplemental security income in setting a child support obligation. Congress, however, has waived the exemption with respect to social security disability (SSD) benefits. Consequently, a district court may consider these benefits in its child support determination."

The analysis start with recognition that the question of whether retirement benefits are divisible and, if so, how they should be divided, is overwhelmingly a matter of ***State*** law. As the United States Supreme Court put it: "We have consistently recognized that 'the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.'"[15]

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[13] Citing *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 417 (1973), and noting the holding of *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 575-76 (1979) (a railroad retirement case also involving federal entitledments), superseded in part by 45 U.S.C. 231m (1986).

[14] *Metz v. Metz*, 120 Nev. 786, 101 P.3d 779 (2004).

[15] *Rose v. Rose*, 481 U.S. 619, 625, 107 S. Ct. 2029, 95 L. Ed.2d 599 (1987).

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Generally, therefore, States are free to distribute property as they see fit, and every variety of retirement benefit is a property interest, and therefore at issue upon divorce. Sometimes, however, Congress wishes to "occupy the field" in a particular question of law, and generally, it has the power to do so, even when it results in unintended consequences of unjust enrichment and inequity.[16]

Much more often, federal law is only seen where principles such as due process and equal protection bear on the divisibility of retirement benefits, or it is necessary to comply with the technical requirements of a federal agency administering retirement benefits. Preemption is explained, again by the United States Supreme Court, as necessary for a federal system, but to be very strictly limited because of the obvious opportunity for abuse and inequity:

> Because domestic relations are preeminently matters of state law, we have consistently recognized that Congress, when it passes general legislation, rarely intends to displace state authority in this area. Thus we have held that we will not find preemption absent evidence that it is "positively required by direct enactment."[17]
>
> On the rare occasion when state family law has come into conflict with a federal statute, this Court has limited review under the Supremacy Clause to a determination whether Congress has "positively required by direct enactment" that state law be pre-empted. . . . Before a state law governing domestic relations will be overridden, it "must do 'major damage' to 'clear and substantial' federal interests."[18]

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[16] *See Carmona v. Carmona*, 603 F.3d 1041 (9th Cir. 2010) (revised op'n on rehearing) (permitting a former spouse who had bargained away certain benefits for value to nevertheless make a claim to them despite her agreement, the order of the divorce court, and the wishes of the employee, due to the happenstance of the timing of divorce and retirement, and the specific requirements of the preemptive scope of ERISA).

[17] *Mansell v. Mansell*, 490 U.S. 581, 587, 109 S. Ct. 2023, 2028 (1989), *quoting Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581, 99 S. Ct. 802, 808, 59 L. Ed. 2d 1 (1979) (*quoting Wetmore v. Markoe*, 196 U.S. 68, 77, 25 S. Ct. 172, 176, 49 L. Ed. 390 (1904)).

[18] *Rose v. Rose*, 481 U.S. 619, 625, 107 S. Ct. 2029, 95 L. Ed.2d 599 (1987).

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It is for this reason that State divorce courts can, for example, order that a spouse of a military member is entitled to 100% of the retirement benefits, although disposable retired pay is defined by federal law as not more than 50% of such benefits.[19] It is why a court can order a retiree who has waived military retirement benefits for disability, as allowed under the federal retirement scheme, to nevertheless personally pay to the former spouse the amount that is not directly payable by the federal pay center.[20]

Thus, unless there is a specific statute or case that explicitly makes funds exempt from being considered in making equitable rulings, they are not. Social Security are a statutorily exempt entitlement that can never be community property; military retirement benefits are divisible deferred compensation that is ***definitionally*** community property. CRSC benefits *may* be contractually indemnified (*Shelton*) and there is nothing special about CRSC benefits that leads to any different result (*Cassinelli*). Arguments about Social Security entitlement benefits are a false analogy to a completely irrelevant area of law, and are improperly presented in this military retirement case.

C. *Wolff*[21]

There are a number of factual errors in *Wolff* that have yet to be addressed by the Supreme Court concerning the division of pension benefits and the inequity of a life insurance policy to protect the former spouse. We need not address those

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[19] *See*, *e.g.*, *Ex parte Smallwood*, 811 So. 2d 537 (Ala. 2001), *cert. denied*, 534 U.S. 1066 (2001); *Grier v. Grier*, 731 S.W.2d 931 (Tex. 1987) (USFSPA did not limit the amount of retirement benefits that could be apportioned under Texas community property law, but only the percentage subject to direct payment); *Deliduka v. Deliduka*, 347 N.W.2d 52 (Minn. Ct. App. 1984).

[20] *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507, 511 (Nev. 2003); *see also Krapf v. Krapf*, 786 N.E.2d 318, 326 (Mass. 2003); *Hisgen v. Hisgen*, 554 N.W.2d 494, 498 (S.D. 1996); *Resare v. Resare*, 908 A.2d 1006 (R.I. 2006).

[21] *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996).

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errors in this analysis, as the holding correctly states that a Social Security entitlement is not divisible as community property. Specifically, the Supreme Court held:

> "Social security benefits to be received following the dissolution of marriage have been held not to be a form of deferred compensation, and therefore not to be community property subject to division between the spouses." Charles C. Marvel, *Annotation, Pension or Retirement Benefits as Subject to Award or Division by Court in Settlement of Property Rights Between Spouses*, 94 A.L.R.3d 176 (1979); see also *Flemming v. Nestor*, 363 U.S. 603, 611, 80 S.Ct. 1367, 1372-73, 4 L.Ed.2d 1435 (1960) (finding that the Social Security Act did not create either property or contractual rights); *In re Marriage of Nizenkoff*, 65 Cal.App.3d 136, 135 Cal.Rptr. 189, 190 (1976) (finding that social security retirement benefits are the separate property of the spouse receiving them); *In re Marriage of Kelley*, 64 Cal.App.3d 82, 134 Cal.Rptr. 259, 267 (1976) (finding that social security retirement benefits are not deferred compensation and that its federal statutory scheme is in conflict with a state court exercising jurisdiction to award these benefits as community property). Accordingly, social security benefits, or the payments used to derive those benefits, cannot be divided in a property settlement agreement.

Again, that case does not in any way imply that the parties can't contract to pay a certain amount as indemnification to the other party. It only holds that the Court can't consider social security benefits as community property. We have never said that the Court should, and again the argument is irrelevant to this case.

We are not asking the Court to consider Erich's disability payments as divisible community property either. Erich and Raina knew he was going to seek a disability retirement and the two of them contracted to make sure that any money that Raina was to receive if no disability existed would be restored to her from any funds available to Erich if he did seek a disability waiver. Nothing in state or federal case or statutory law prohibited them from doing so, as the Nevada and United States Supreme Courts have repeatedly held in the cases detailed above.

Wolff does not say or even imply that the parties can't contract for the payment of funds from one spouse to another. The case is inapplicable to the case at bar.

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III. CONCLUSION

The cases cited to by Mr. Kelleher are irrelevant to the case at bar and in no way impair the ability of the parties to contract. In fact, the *Howell* case requires that the parties find a way to work around the division of the military retirement to protect against exactly what occurred in this case (the waiver of the retirement to accept disability) and encouraged the use of alimony for that purpose.

Howell allows this Court to review and alter the property distribution or to award alimony as a result of the lost benefits as long as the Court does not do a dollar for dollar indemnification. However, what the Court might do in the absence of an express agreement is not relevant here because in ***this*** case the parties anticipated the issue and entered into a contract specifying exactly how to protect Raina's interest.

Erich's argument should be seen for what it is – evasive excuse-making citing irrelevant law in an effort to avoid paying Raina her rightful share of the benefits and to renege on an express contract. As such, we ask the Court to enforce that contract and require Erich to immediately pay Raina the benefits contracted plus any arrears that have accrued since Erich stopped making payments.

DATED this 26th day of June, 2020.

Respectfully Submitted By:
WILLICK LAW GROUP

/s/ Richard L. Crane, Esq.

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Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 26th day of June, 2020, I caused the foregoing document to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

[ ] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means;

[ ] by hand delivery with signed Receipt of Copy.

To the litigant(s) and attorney(s) listed below at the address, email address, and/or facsimile number indicated:

John T. Kelleher, Esq.
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Henderson, Nevada 89012
Attorney for Plaintiff

/s/Justin K. Johnson
Employee of the WILLICK LAW GROUP

P:\wp19\MARTIN,R\DRAFTS\00445788.WPD/jj

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

****

Erich M. Martin, Plaintiff
vs.
Raina L. Martin, Defendant.

D-15-509045-D
Department C

NOTICE OF AUDIO/VISUAL APPEARANCE

Please be advised that the **Status Check** to be heard by the Honorable Rebecca L. Burton at the Family Courts and Services Center, 601 N. Pecos Rd., Las Vegas, Nevada, on the **16th day of July, 2020** at the hour of **10:00 AM** in **Department C, Courtroom 08 will be conducted by audio/visual appearance.** YOUR PRESENCE IS NECESSARY.

Go to: https://www.bluejeans.com Meeting No. 912 202 672

DISTRICT JUDGE REBECCA L. BURTON

By: /s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C

CERTIFICATE OF SERVICE

☒ I provided the foregoing NOTICE OF AUDIO/VISUAL APPEARANCE to:

John Kelleher, Esq.
kelleherjt@aol.com

Marshal Willick, Esq.
email@willicklawgroup.com

/s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
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Attorney for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERICH MARTIN, Plaintiff, vs. RAINA MARTIN, Defendant.	CASE NO: D-15-509045-D DEPT. NO: C DATE OF HEARING: 7/16/20 TIME OF HEARING: 10:00 a.m.

STIPULATION AND ORDER TO CONTINUE HEARING

Defendant, Raina Martin, by and through her attorney, Richard L. Crane, Esq., of the WILLICK LAW GROUP, and Plaintiff, Erich Martin, by and through his attorney, John T. Kelleher, Esq., of KELLEHER & KELLEHER., stipulate and agree as follows:

IT IS HEREBY STIPULATED AND AGREED that the hearing currently set for July 16, 2020, at 10:00 a.m., shall be continued for a period of at least 45 days to allow the parties to complete settlement discussions.

*****

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IT IS FURTHER STIPULATED AND AGREED that this request is made in good faith and not meant to delay adjudication of any matters pending before the Court.

Dated this 15 day of July, 2020
Respectfully Submitted By:

WILLICK LAW GROUP

/s/Richard L. Crane, Esq.

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Attorneys for Defendant

Dated this 15 day of July, 2020
Approved as to Form and Content By:

KELLEHER AND KELLEHER

JOHN T. KELLEHER, ESQ.
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807 South Seventh Street
Las Vegas, Nevada 89101
(702) 384-7494
Attorney for Plaintiff

ORDER

Upon stipulation of the parties, and good cause appearing, the terms of the above *Stipulation and Order* is hereby entered as an *Order* of this Court.

IT IS FURTHER ORDERED that the hearing currently set for July 16, 2020, at 10:00 a.m., be rescheduled for 3rd day of September, 2020, at the hour of 11:00 a.m.

IT IS SO ORDERED on this ____ day of July, 2020.

Dated this 15th day of July, 2020

Rebecca L. Burton

DISTRICT COURT JUDGE

109 E2B 0E8B C8C7
Rebecca L. Burton
District Court Judge

Respectfully Submitted by:
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/s/Richard L. Crane, Esq.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Erich M Martin, Plaintiff	CASE NO: D-15-509045-D
vs.	DEPT. NO. Department C
Raina L Martin, Defendant.	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Stipulation and Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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Attorney for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERICH MARTIN,

Plaintiff,

vs.

RAINA MARTIN,

Defendant.

CASE NO: D-15-509045-D
DEPT. NO: C

DATE OF HEARING: 6/16/2020
TIME OF HEARING: 10:00 am

ORDER FROM THE JUNE 16, 2020, HEARING

This matter came on for a hearing at the above date and time before the Honorable Rebecca Burton, District Court Judge, Family Division. Defendant, Raina Martin, was present by video and was represented by and through her attorney, Richard L. Crane, Esq., of the WILLICK LAW GROUP, and Plaintiff, Erich Martin, was present by video and represented by and through his attorney, John T. Kelleher of Kelleher & Kelleher.

The Court, having reviewed the pleadings and papers filed herein, and made the following findings and orders as follows:

THE COURT HEREBY FINDS:

1. As Dad filed a late Supplement and the Court wants further briefing on the Military benefit issue,[1] the Court is going to allow Mom to respond to Dad's Supplement.[2]
2. The Court is going to allow counsel to discuss therapists with their clients and decide on a name.
3. The Court is not at all impressed by Defendant's domestic partner making contact with the other side, in this case where there has been so much litigation, to make contact and make an offer to terminate parental rights. The Court can think of no other reason to reach out and make that offer except to inflame the other side.[3]
4. As to Dad's request to unseal the case, the Court finds that Dad is a party to this matter and is entitled to all the documents he needs and should have access.[4]
5. The Court is going to review the CPS records.[5]
6. The Court is satisfied that step-mom is not going to be left alone with the minor child until this matter is resolved.[6]
7. Dad withdrew his request for a child custody evaluation.[7]

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[1]Time Stamp (10:55:19 - 10:55:24)

[2]Time Stamp (10:55: 18 - 10:55:43)

[3]Time Stamp (11:06:41- 11:07:07)

[4]Time Stamp (11:09:01 - 11:08:10)

[5]Time Stamp (11:08:21 - 00:08:23)

[6]Time Stamp (11:08:29 - 11:08:40)

[7]Time Stamp (11:09:35 - 11:09:43)

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8. If Step-dad is showering with the minor child, it is inappropriate and needs to stop.[8]

9. There were no arguments made in bad faith and none of the positions taken were frivolous.[9]

IT IS HEREBY ORDERED:

1. Counsel for Mom shall have until June 30, 2020, to file a responsive brief to Dad's Supplement.[10]

2. There will be a status check hearing between the Court and Counsel only to discuss the choice of therapist on Thursday, June 18, 2020, at 9:00 am.[11]

3. The parties will have until Friday, June 19, 2020, to decide what Father's makeup time shall be.[12]

4. The parties shall have until Friday at 5:00 pm to send each other a list of all healthcare providers seeing the child and any dates and times of up coming appointments.[13]

5. Both parties are required to provide the other side advanced notice[14] of any non-emergency healthcare appointments.[15]

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[8]Time Stamp (11:09:46 - 11:09:55)

[9]Time Stamp (11:10:04 - 11:10:11)

[10]Time Stamp (10:55: 18 - 10:55:43)

[11]Time Stamp (10:52:50 - 10:53:02)

[12]Time Stamp (11:04:18 11:04:43)

[13]Time Stamp (11:04:43 - 11:04:57)

[14]The Court defines advanced notice in this case to mean "as soon as you make that appointment, the next thing you do is go onto Our Family Wizard and tell the other parent about the appointment so that if they can, they have the opportunity to attend and participate." Time Stamp (11:05:07 - 11:05:20)

[15]Time Stamp (11:04:57 - 11:05:07)

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6. Significant others of the parties shall not attend non-emergency healthcare appointments.[16]

7. If the child's school zone changes, for whatever reason, Mom must immediately tell Dad.[17]

8. The Court is not going to reverse the sealing of this case.[18]

9. If Step-mom takes the parenting class, whichever is age appropriate for this child, it would be appropriate for her to resume unsupervised contact with the minor child.[19]

10. Each party is to bear their own attorney's fees and costs.[20]

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[16]Time Stamp (11:05:36 - 11:05:45)

[17]Time Stamp (11:05:47 - 11:05:56)

[18]Time Stamp 11:09:01 - 11:08:10)

[19]Time Stamp (11:08:53 - 11:09:35)

[20]Time Stamp (11:10:04 - 11:10:11)

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11. Mr. Crane has two weeks to draft the order and Mr. Kelleher has two weeks review and sign off.[21]

Dated this 20th day of July, 2020

DATED this ____ day of _____, 2020.

Rebecca L Burton

54B C59 FAF7 AF20
Rebecca L. Burton
District Court Judge

DISTRICT COURT JUDGE

Dated this 17 day of July, 2020
Respectfully Submitted By:

WILLICK LAW GROUP

/s/Richard L. Crane. Esq.
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Attorneys for Defendant

Dated this ___ day of _____, 2020
Approved as to Form and Content By:

KELLEHER AND KELLEHER

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Attorney for Plaintiff

[21]Time Stamp (11:15:38 - 11:15:46)

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DISTRICT COURT
CLARK COUNTY, NEVADA

Erich M Martin, Plaintiff	CASE NO: D-15-509045-D
vs.	DEPT. NO. Department C
Raina L Martin, Defendant.	

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FAMILY DIVISION
CLARK COUNTY, NEVADA

ERICH MARTIN, Plaintiff, vs. RAINA MARTIN, Defendant.	CASE NO: D-15-509045-D DEPT. NO: C DATE OF HEARING: 6/16/20 TIME OF HEARING: 10:00 a.m.

NOTICE OF ENTRY OF ORDER FROM THE JUNE 16, 2020, HEARING

TO: ERICH MARTIN, Plaintiff.

TO: JOHN T. KELLEHER, ESQ., Attorney for Plaintiff.

PLEASE TAKE NOTICE that an *Order from the June 16, 2020, Hearing* was duly entered in the above action on the 15th day of July, 2020, a true and correct copy

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of which is attached herein.

DATED this 20th day of July, 2020.

WILLICK LAW GROUP

// s // Richard L. Crane, Esq.

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
RICHARD L. CRANE, ESQ.
Nevada Bar No. 9536
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 22nd day of July, 2020, I caused the above and foregoing document to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system.

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada.

[ ] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

[ ] by hand delivery with signed Receipt of Copy.

[ ] by First Class, Certified U.S. Mail.

To the person(s) listed below at the address, email address, and/or facsimile number indicated:

John T. Kelleher, Esq.
40 South Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Plaintiff

/s/Justin K. Johnson

An Employee of the WILLICK LAW GROUP

P:\wp19\MARTIN,R\DRAFTS\00449677.WPD/jj

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Attorney for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERICH MARTIN,

Plaintiff,

vs.

RAINA MARTIN,

Defendant.

CASE NO: D-15-509045-D
DEPT. NO: C

DATE OF HEARING: 6/16/2020
TIME OF HEARING: 10:00 am

ORDER FROM THE JUNE 16, 2020, HEARING

This matter came on for a hearing at the above date and time before the Honorable Rebecca Burton, District Court Judge, Family Division. Defendant, Raina Martin, was present by video and was represented by and through her attorney, Richard L. Crane, Esq., of the WILLICK LAW GROUP, and Plaintiff, Erich Martin, was present by video and represented by and through his attorney, John T. Kelleher of Kelleher & Kelleher.

The Court, having reviewed the pleadings and papers filed herein, and made the following findings and orders as follows:

THE COURT HEREBY FINDS:

1. As Dad filed a late Supplement and the Court wants further briefing on the Military benefit issue,[1] the Court is going to allow Mom to respond to Dad's Supplement.[2]
2. The Court is going to allow counsel to discuss therapists with their clients and decide on a name.
3. The Court is not at all impressed by Defendant's domestic partner making contact with the other side, in this case where there has been so much litigation, to make contact and make an offer to terminate parental rights. The Court can think of no other reason to reach out and make that offer except to inflame the other side.[3]
4. As to Dad's request to unseal the case, the Court finds that Dad is a party to this matter and is entitled to all the documents he needs and should have access.[4]
5. The Court is going to review the CPS records.[5]
6. The Court is satisfied that step-mom is not going to be left alone with the minor child until this matter is resolved.[6]
7. Dad withdrew his request for a child custody evaluation.[7]

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[1]Time Stamp (10:55:19 - 10:55:24)

[2]Time Stamp (10:55: 18 - 10:55:43)

[3]Time Stamp (11:06:41- 11:07:07)

[4]Time Stamp (11:09:01 - 11:08:10)

[5]Time Stamp (11:08:21 - 00:08:23)

[6]Time Stamp (11:08:29 - 11:08:40)

[7]Time Stamp (11:09:35 - 11:09:43)

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8. If Step-dad is showering with the minor child, it is inappropriate and needs to stop.[8]

9. There were no arguments made in bad faith and none of the positions taken were frivolous.[9]

IT IS HEREBY ORDERED:

1. Counsel for Mom shall have until June 30, 2020, to file a responsive brief to Dad's Supplement.[10]

2. There will be a status check hearing between the Court and Counsel only to discuss the choice of therapist on Thursday, June 18, 2020, at 9:00 am.[11]

3. The parties will have until Friday, June 19, 2020, to decide what Father's makeup time shall be.[12]

4. The parties shall have until Friday at 5:00 pm to send each other a list of all healthcare providers seeing the child and any dates and times of up coming appointments.[13]

5. Both parties are required to provide the other side advanced notice[14] of any non-emergency healthcare appointments.[15]

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[8]Time Stamp (11:09:46 - 11:09:55)

[9]Time Stamp (11:10:04 - 11:10:11)

[10]Time Stamp (10:55: 18 - 10:55:43)

[11]Time Stamp (10:52:50 - 10:53:02)

[12]Time Stamp (11:04:18 11:04:43)

[13]Time Stamp (11:04:43 - 11:04:57)

[14]The Court defines advanced notice in this case to mean "as soon as you make that appointment, the next thing you do is go onto Our Family Wizard and tell the other parent about the appointment so that if they can, they have the opportunity to attend and participate." Time Stamp (11:05:07 - 11:05:20)

[15]Time Stamp (11:04:57 - 11:05:07)

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6. Significant others of the parties shall not attend non-emergency healthcare appointments.[16]

7. If the child's school zone changes, for whatever reason, Mom must immediately tell Dad.[17]

8. The Court is not going to reverse the sealing of this case.[18]

9. If Step-mom takes the parenting class, whichever is age appropriate for this child, it would be appropriate for her to resume unsupervised contact with the minor child.[19]

10. Each party is to bear their own attorney's fees and costs.[20]

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[16]Time Stamp (11:05:36 - 11:05:45)

[17]Time Stamp (11:05:47 - 11:05:56)

[18]Time Stamp 11:09:01 - 11:08:10)

[19]Time Stamp (11:08:53 - 11:09:35)

[20]Time Stamp (11:10:04 - 11:10:11)

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11. Mr. Crane has two weeks to draft the order and Mr. Kelleher has two weeks review and sign off.[21]

Dated this 20th day of July, 2020

DATED this ____ day of _____, 2020.

Rebecca L Burton

54B C59 FAF7 AF20
Rebecca L. Burton
District Court Judge

DISTRICT COURT JUDGE

Dated this 17 day of July, 2020
Respectfully Submitted By:

WILLICK LAW GROUP

/s/Richard L. Crane. Esq.
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
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(702) 438-4100; Fax (702) 438-5311
Attorneys for Defendant

Dated this ___ day of _____, 2020
Approved as to Form and Content By:

KELLEHER AND KELLEHER

JOHN T. KELLEHER, ESQ.
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(702) 384-7494
Attorney for Plaintiff

[21]Time Stamp (11:15:38 - 11:15:46)

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DISTRICT COURT
CLARK COUNTY, NEVADA

Erich M Martin, Plaintiff	CASE NO: D-15-509045-D
vs.	DEPT. NO. Department C
Raina L Martin, Defendant.	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/20/2020

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ELECTRONICALLY SERVED
8/11/2020 7:55 AM

Electronically Filed
08/11/2020 7:55 AM
CLERK OF THE COURT

ORDR

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

ERICH M. MARTIN, Plaintiff, vs. RAINA L. MARTIN, Defendant.	CASE NO. D-15-509045-D DEPT NO. C Under Submission

ORDER REGARDING ENFORCEMENT OF MILITARY RETIREMENT BENEFITS

THIS MATTER having come before the Court on Defendant, Raina L. Martin ("Raina")'s *Motion to Enforce* filed and served electronically on May 1, 2020, and on Plaintiff, Erich M. Martin ("Erich")'s *Defendant's Opposition* filed and served by e-mail and mail on June 5, 2020; Erich is represented by Attorney John T. Kelleher of Kelleher and Kelleher, LLC, and Raina is represented by Attorneys Marshal S. Willick and Richard L. Crane of Willick Law Group, the Court having reviewed the pleadings and papers on file herein, and good cause appearing therefor

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REBECCA L. BURTON
DISTRICT JUDGE
FAMILY DIVISION, DEPT. C
LAS VEGAS, NV 89101-2408

Facts

On November 5, 2015, a *Decree of Divorce* reached by agreement between the parties was entered by the Court containing the following provision:

> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Raina shall be awarded the following as her sole and separate property:
>
> 4. One-half (1/2) of the marital interest in the Erich's military retirement, pursuant to the time rule established in Nevada Supreme Court cases *Gemma v. Gemma,* 105 Nev. 458, 778 P.2d 429 (1989) and *Fondi v. Fondi,* 106 Nev. 856, 802 P.2d 1264 (1990). The parties shall use Marshal S. Willick, Esq. to prepare a Qualified Domestic Relations Order (hereinafter "QDRO"), or similar instrument to divide the pension. The parties shall equally divide the costs of preparing such an instrument. ***Should Erich select to accept military disability payments, Erich shall reimburse Raina for any amount that her share of the pension is reduced due to the disability status.***

[Emphasis added.]

On November 10, 2015, *Notice of Entry of Decree of Divorce* was filed and served.

On November 14, 2016, an *Order Incident to Decree of Divorce* was entered and submitted to the military to effectuate the parties' *Decree of Divorce*. The *Order Incident to Decree of Divorce* provides in particular that Raina's share of Erich's military retired pay "also includes all amount of retired pay Erich actually or constructively waives or forfeits in any

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manner and for any reason or purpose, including but not limited to any post-divorce waiver made in order to qualify for Veterans Administration benefits;" that it is "intended to qualify under the Uniformed Services Former Spouses Protection Act, 10 U.S.C. Sec. 1408 et seq.;" that if Erich obtained a disability waiver, "he shall make payments to Raina directly in an amount sufficient to neutralize, as to Raina, the effects of the action taken by Erich;" and that the Court shall retain jurisdiction to enforce the award to Raina of military retirement benefits by making an award of alimony.

Erich argues that he did not sign the *Order Incident to Decree of Divorce* voluntarily but was forced to do so by the Court. The Court reviewed a hearing held September 22, 2016 during which Raina orally raised the issue that Erich had not yet signed and returned the prepared document. When the Court asked Erich for status, he did not protest the language, but had not signed due to other unrelated unresolved matters between the parties. Accordingly, the Court ordered Erich to return the signed document and he did. The *Order Incident to Decree of Divorce* was entered by the Court, but there is no *Notice of Entry of Order*.

Nevertheless, Raina received payments from DFAS in November and December 2019 ($844.08 per month) and January 2020 ($845.43). In late

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January 2020, DFAS notified Raina that they would no longer be sending payments to Raina. Upon further inquiry in February 2020, Raina learned that Erich opted for full disability as Combat Related Special Compensation ("CRSC") and would be receiving a tax free payment from the Veterans Administration. Raina would no longer receive any payments from DFAS.

Raina asked Erich to continue to pay her directly as they agreed in their *Decree of Divorce*. Citing the U.S. Supreme Court's recent decision in *Howell v. Howell,* 137 S.Ct. 1400, 1402, 197 L.Ed.2d 781 (2017), Erich refused to do so. Accordingly, Raina brought this action to enforce the provisions of the *Decree of Divorce* and the *Order Incident to Decree* for reimbursement and spousal support ("indemnification provisions"). It is Erich's position that the indemnification provisions are unenforceable under *Howell.*

History

To best understand the issue, it is important to provide a short history of federal law.

In 1981, the U.S. Supreme Court decided *McCarty v. McCarty,* 453 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981) which held that the federal statutes governing military retired pay preempted the state courts from treating military retired pay as community property on the basis that

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Congress intended to protect veterans' benefits to ensure that they reach veterans, with the goal of incentivizing participation in the military and maintaining a strong national defense. Acknowledging the hardship the decision may cause to military spouses, the U.S. Supreme Court pointed out that Congress was free to change the statutory law.

In 1982, in direct response to *McCarty,* Congress enacted the Uniformed Services Former Spouses' Protection Act ("USFSPA"), 10 U.S.C. § 1408(c)(1), which allowed state courts to treat military retired pay as community property, but expressly excluded military retired pay waived in order to receive military disability benefits.

In 1989, USFSPA was interpreted by the U.S. Supreme Court in *Mansell v. Mansell,* 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989). In their opinion, the U.S. Supreme Court explained federal law provides that veterans who became disabled as a result of military service are eligible for disability benefits. Those benefits are calculated according to the seriousness of the disability and the degree to which the veteran's ability to earn a living has been impaired. In order to prevent double dipping, a military retiree may receive veteran's disability benefits in exchange for waiving a corresponding amount of his military retirement pay. Because disability benefits are exempt from taxation, the disabled veteran's income

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is increased. *Id.* 490 U.S. 583-84, 109 S.Ct. 2026, 104 L.Ed.2d. The result to the former spouse, however, is a loss of benefits which have been converted from military retired pay, which may be considered by the state as marital property, to veteran's disability benefits, which may not be considered by the state as marital property.

The *Mansell* divorce occurred prior to *McCarty* and prior to enactment of USFSPA. At that time, the veteran had already waived a portion of his military retired pay for veteran's disability benefits and was receiving both military retired pay and veteran's disability benefits. To settle the divorce, the veteran agreed to pay to his former spouse 50% of both his military retired pay and his veteran's disability benefits. Years later, after enactment of USFSPA, the veteran asked a California court to remove from the decree of divorce the provision requiring him to pay 50% of his veteran's disability benefits to his former spouse. The veteran's request was denied, and he appealed without success. Eventually, the matter was heard by the U.S. Supreme Court which reversed the California court by holding that USFSPA grants state courts the authority to divide military retired pay as community property, but it did not grant state courts the authority to divide the military retired pay waived in order to receive veterans' disability benefits. The Court recognized that USFSPA was "one

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of those rare instances where Congress has directly and specifically legislated in the area of domestic relations." *Id.* 490 U.S. at 587, 109 S.Ct. at 2028.

But, the *Mansell* story did not end at the U.S. Supreme Court. On remand, the California court still refused to change the result based, not on the principles of community property law and the federal preemption of state law characterization of veteran's disability benefits as decided by the U.S. Supreme Court, but on the principles of *res judicata*. In a footnote, the U.S. Supreme Court expressly acknowledged that the issue of *res judicata* is a matter of state law "over which we have no jurisdiction." 490 U.S. at 586 n.5. The California court reasoned that because the veteran consented to the otherwise incorrect result when he signed the property settlement agreement, "he is therefore barred from complaining." *In re Marriage of Mansell,* 217 Cal.App.3d 219, 230, 265 Cal.Rptr. 227, 233 (Ct. App. 1989) on remand from 490 U.S. 581, 109 S.Ct. 2023 (1989). The U.S. Supreme Court denied certiorari allowing the California court's order to stand. *Mansell v. Mansell,* 498 U.S. 806, 111 S.Ct. 237, 112 L.Ed.2d 197 (1990). Moreover, although *Mansell* concerned an agreement, the agreement did not contain a contractual indemnification provision, leaving enforceability of such a provision unresolved.

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In 2016, after *McCarty*, USFSPA, and *Mansell*, Erich and Raina contemplated the probability that Erich would eventually waive his military retired pay for veteran's disability benefits. Therefore, through their *Decree of Divorce,* Erich and Raina chose indemnification as a resolution which had become a common and prudent means of addressing the issue whereby Erich agreed to reimburse Raina if he chose to waive his military retired pay in favor of veteran's disability benefits. Through their *Order Incident to Decree,* the parties further agreed that the reimbursement would be in the form of spousal support.

In 2017, 28 years after *Mansell*, the U.S. Supreme Court addressed indemnification by state courts in the case of *Howell v. Howell,* 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017). In *Howell,* an Arizona court awarded the former spouse 50% of the military member's retired pay. About 13 years later, the veteran waived a portion of his military retired pay in exchange for veteran's disability benefits resulting in substantial reduction of the former spouse's share. The Arizona court restored the full 50% to the spouse, but was reversed by the U.S. Supreme Court which held that a state court does not have jurisdiction to order the division of veteran's disability benefits on the basis that "federal law ... [has] completely pre-empted the

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application of state community property law to military retirement pay." *Id.* 137 S.Ct. at 1403, 197 L.Ed.2d at 786. Finding that the purpose of a reimbursement or indemnification order was to restore a community property right in the original military retirement, the U.S. Supreme Court reasoned that all such state orders are preempted. Moreover, it does not matter whether the disability election was taken before the decree was entered (*Mansell*) or after the decree was entered (*Howell*), because "[s]tate courts cannot "vest" that which (under governing federal law) they lack the authority to give." *Id.* 1405. Recognizing that their interpretation may impose hardship to the former spouse, the U.S. Supreme Court offered:

> [A] family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or, as the petitioner himself recognizes, take account of reductions in value when it calculates or recalculates the need for spousal support.

Id. at 1406.

Notably, *Howell* did not concern an indemnification agreement between the parties, but a court created indemnification remedy after the waiver was taken. Although *Howell* was silent regarding the enforceability of a contractual indemnification provision, such an agreement by the

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parties is not inconsistent with the U.S. Supreme Court's suggestion to take precautions.

Post-Howell Decisions

Citing their new decision in *Howell,* the U.S. Supreme Court quickly vacated two state court orders forcing veterans to reimburse former spouses in divorce proceedings if they had waived retirement pay in order to receive veteran's disability benefits. *Merrill v. Merrill,* 137 S.Ct. 2156, 198 L.Ed.2d 228 (2017) (post-decree indemnification order reversed); and *Cassinelli v. Cassinelli,* 138 S.Ct. 69, 199 L.Ed.2d 2 (2017), (compensation in the form of a dollar-for-dollar alimony award reversed). Notably, both of these cases concerned court remedies and neither involved contractual indemnification.

Some state courts have broadly treated military retirement pay waived in favor of veteran's disability benefits to be off limits and will not allow a remedy in any form if the purpose of that remedy is to replace in full the lost military retired pay. In *Hurt v. Jones-Hurt,* 233 Md. App. 610, 168 A.3d 992 (Court of Special Appeals of Maryland), Maryland reversed the amendment of a property award as a remedy to a waiver. In *Mattson v. Mattson,* 903 N.W.2d 233 (Court of Appeals of Minnesota), Minnesota recognized that prior to *Howell*, "principles of contract and *res judicata*

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could render a stipulated decree indemnifying an ex-spouse as enforceable, even if it ran afoul of *Mansell*, because 'parties are free to bind themselves to obligations that a court could not impose,'" *Id*. at 240 then held after *Howell* that contractual principals could not rescue the former spouse's ability to receive the military retired pay waived for veteran's disability benefits. In *Vlach v. Vlach,* 556 S.2.3d 219 (Court of Appeals of Tennessee 2017), Tennessee held that an agreement for partial indemnification of veteran's disability benefits was unenforceable. In *Tozer v. Tozer,* 410 P.3d 835 (Colorado Court of Appeals, Division IV 2017), Colorado held that retention of jurisdiction in the event of a future waiver is preempted. In *Brown v. Brown,* 260 So.3d 851 (Court of Civil Appeals of Alabama 2018), Alabama held that a contractual indemnification provision was completely preempted. These cases have been criticized by legal scholars.[1]

More states, however, have taken the suggestion of the U.S. Supreme Court by becoming creative in their remedies after *Howell* or finding alternative theories to avoid an unfair result. In *Lesh v. Lesh,* 257 N.C.App.

[1] The Minnesota decision has been criticized as an unnecessarily overbroad reading of *Howell. A Change in Military Pension Division: The End of Court-Adjudicated Indemnification -- Howell v. Howell,* 44 Mitchell Hamline Law Review (2018); *Military Pension Division Cases Post-Howell: Missing the Mark, or Hitting the Target?,* Journal of the American Academy of Matrimonial Lawyers, Vol. 31, March 13, 2019, page 513 which also criticizes as going too far the decisions in *Hurt v. Jones-Hurt, Vlach v. Vlach,* and *Brown, v. Brown*.

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471, 809 S.E.2d 890 (Court of Appeals of North Carolina 2018), North Carolina found that *Howell* reaffirms and clarifies *Mansell*, but it has no effect on the *Rose*[2] line of cases therefore the court's order taking into consideration veteran's disability benefits as income for the purposes of making a property settlement payment was not preempted. *In re Marriage of Cassinelli,* 20 Cal.App.5th 1267, 229 Cal.Rptr.3d 801 (2018), California, after remand from the U.S. Supreme Court, reversed the spousal support award finding it to be a dollar for dollar replacement for the lost military retired pay. But the case did not end upon that ruling as inferred by Erich, because California remanded the matter for a new trial on the former spouse's request for modification of spousal support indicating that modification of spousal support was not prohibited. In *Gross v. Wilson,* 424 P.3d 390 (Supreme Court of Alaska 2018), Alaska held that a settlement agreement dividing veteran's disability benefits is enforceable based on principles of *res judicata* and contract because "nothing in the USFSPA or *Mansell* prevents a veteran from voluntarily contracting to pay a former spouse a sum of money that may originate from disability payments" *Id.* at 394. In the *Matter of Marriage of Babin,* 56 Kan.App.2d, 709, 437 P.3d 985 (Court of Appeals of Kansas 2019), Kansas held that the

[2] *Rose v. Rose,* 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987).

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parties' agreement did not allow escape from federal preemption which divested the court of jurisdiction to enforce division of the veteran's disability benefits, but as again ignored by Erich, this case was also remanded to allow spousal support to be reconsidered. In *Fattore v. Fattore,* 458 N.J. Super. 75, 203 A.3d 151 (2019) New Jersey recognized that other courts were employing res judicata, upholding contractual indemnification provisions, vacating and reallocating assets, and awarding alimony as remedies. In *Edwards v. Edwards,* 132 N.E.3d 391 (2019), Indiana held that although a court's order requiring a veteran to reimburse a former spouse for loss of military retired pay after waiver for CRSC would be incorrect under *Howell*, the court had subject matter jurisdiction to make the order which was enforceable retroactively (but not prospectively under equitable principles) on the basis of *res judicata* because the veteran did not appeal it. In *In re Marriage of Jensen,* Court of Appeals of Iowa, 939 N.W.2d 112 (2019), Iowa held that *Howell* did not prevent the Iowa court from awarding to the former spouse all of her retirement accounts because the military spouse was receiving veteran's disability benefits. In *Russ v. Russ,* 456 P.3d 1100 (Court of Appeal of New Mexico 2019), New Mexico held that *Howell,* decided in the middle of the appeal, does not

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apply retroactively to invalidate the parties' agreement to divide military retired pay even after waiver for veteran's benefits).

Just three months ago on April 29, 2020, Michigan's highest court decided *Foster v. Foster,* ___ Mich. ___, ___ N.W.2d ___ (Supreme Court of Michigan 2020) which shared facts similar with the Martin case concerning enforcement of a consent decree containing an indemnification provision requiring the veteran to pay to his former spouse a sum equivalent to 50% of his military retired pay even though he later elected CRSC benefits. The case was in the process of appeals that originally were favorable to the former spouse. Once the *Howell* case was decided, Michigan reversed itself and, citing the Supremacy Clause of the United States Constitution, ruled that federal preemption prohibited enforcement of the parties' indemnification agreement. The Supremacy Clause of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Footnote 14, U.S. Constitution, Article VI, Clause 2. Notably, Raina admits that "[s]ometimes, however, Congress wishes to 'occupy the field' in a particular question of law, and generally, it has the power to do so, even

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when it results in unintended consequences of unjust enrichment and inequity." Raina's *Reply* filed June 10, 2020 on page 8. Yet, the *Foster* saga is still not over, because Michigan remanded the case for the court to consider whether the veteran's action is an impermissible collateral attack against a decree that is *res judicata* even if the decree contained a provision based on a subsequently overruled legal principle. The concurring opinion of this case includes an enlightening discussion of the difference between lack of subject matter jurisdiction (the inability to rule at all resulting in a void order) and the incorrect exercise of subject matter jurisdiction (the ability to make a ruling that, even if incorrect, is subject to *res judicata* if not timely challenged).

Finally, just one month ago, Louisiana decided *Boutte v. Boutte,* Court of Appeal of Louisiana, Third Circuit, ___ So.3d ___ (July 8, 2020) WL 3818141 and upheld the parties' indemnification agreement based on principles of *res judicata*.

Contract

The *Decree of Divorce* reached by agreement between Erich and Raina is a contract, *Grisham v. Grisham,* 128 Nev. 679, 289 P.2d 230 (2012); *Anderson v. Sanchez,* 132 Nev. 357, 373 P.3d 860 (2016), the terms of which are not ambiguous. *Mizrachi v. Mizrachi,* 132 Nev. 666, 385 P.3d

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982 (2016). "Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy." *Harrison v. Harrison,* 132 Nev. 564, 567 (2016), 376 P.3d 173, 175 (2016) citing *Rivero v. Rivero,* 125 Nev. 410, 429, 216 P.3d 213, 226 (2009). After *McCarty*, USFSPA, and *Mansell,* Erich and Raina themselves took precautions before *Howell* and created an indemnification provision for the anticipated waiver by Erich.

Because *Howell* does not concern adjudication of contractual indemnification created by the parties, this Court is not persuaded that *Howell* intended to divest the parties of their right to contract. Indeed, *Howell* is silent on the issue but urges courts to consider and address the possibility of waiver which is exactly what Erich and Raina did prior to *Howell*. Erich's argument that the written settlement agreement between the parties did not contain a term requiring indemnification is not correct, because the *Decree of Divorce* expressly provides that "[s]hould Erich select to accept military disability payments, Erich shall reimburse Raina for any amount that her share of the pension is reduced due to the disability status." For all practical purposes, "reimbursement" is the same as "indemnification," and no case the Court reviewed drew a distinction.

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Erich argues that his indemnification agreement is unenforceable. In support of his argument, Erich cites *Boulter v. Boulter,* 113 Nev. 74, 930 P.2d 112 (1997) which held that the parties' voluntary agreement to equally divide with each other their federal Social Security benefits was unenforceable, and the district court "was without jurisdiction to enforce an award" regardless of the fact that the agreement was the product of the voluntary negotiations of the parties, because the agreement it was prohibited by the federal statute. *Id.* 80, 115. Erich concludes that the parties' contract is likewise not valid under federal law. This Court agrees that federal social security benefits are not community property divisible by this Court. *See also Wolff v. Wolff,* 112 Nev. 1355, 929 P.2d 916 (1996). *Boulter* and *Wolff*, however, both dealt with a different federal law than at issue before this Court. *Boulter* and *Wolff* concerned social security payments which are not community property - not military retired pay (community property) that was waived for veteran's disability benefits (not community property).

The case of *Shelton v. Shelton,* 119 Nev. 492, 78 P.3d 507, 511 (2003) is controlling, because it expressly embraced the contract theory in military disability indemnification cases. The parties in *Shelton* agreed through the summary joint petition process that the military member would pay to his

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former spouse a specific sum representing one-half of both the military retired pay and the veteran's disability benefit he was already receiving. Several years later, the military member was reevaluated and elected to waive 100% of his military retired pay for veteran's disability benefits and then stopped paying his former spouse who brought the matter to court. Citing *Mansell I*, the district court denied relief to the former spouse, but was reversed by the Nevada Supreme Court which held that the military member was contractually obligated by the divorce agreement to pay his former spouse an agreed sum. The opinion stated:

> We conclude that although courts are prohibited by federal law from determining veterans' disability pay to be community property, state law of contracts is not preempted by federal law. Thus, respondent must satisfy his contractual obligations to his former spouse, and the district court erred in denying former spouse's motion solely on the basis that federal law does not permit disability pay to be divided as community property. *Id.* at 493, 508.

See also Hisgen v. Hisgen, 554 N.W.2d 494, 498 (S.D. 1996) (parties' property settlement agreement dividing military retirement benefits enforced); and *Resare v. Resare,* 908 A.2d 1006 (R.I. 2006) (parties' property settlement agreement dividing military retirement benefits enforced).

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Res Judicata

Shelton raises the additional issue of *res judicata*. *Res judicata* was the very same reason the California court in *Mansell II* refused to change the result after remand from the U.S. Supreme Court and for which the U.S. Supreme Court denied certiorari. In its decision, the Nevada Supreme Court stated that "[a]lthough states cannot divide disability payments as community property, states are not preempted from enforcing orders that are *res judicata* or from enforcing contracts or from reconsidering divorce decrees, even when disability pay is involved." *Id.* at 509. As in *Mansell II,* the U.S. Supreme Court denied certiorari, *Shelton v. Shelton,* 541 U.S. 960, 124 S.Ct. 1716, 158 L.Ed.2d 401 (2004).

"Generally, the doctrine of *res judicata* precludes parties or those in privity with them from relitigating a cause of action or an issue which has been finally determined by a court of competent jurisdiction." *Kuptz-Blinkinsop v. Blinkinsop,* 136 Nev. Adv. Op. 40 (July 9, 2020) citing *University of Nev. v. Tarkanian,* 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). *Res judicata* or issue preclusion applies when "(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been

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a party … in the prior litigation; and (4) the issue was actually necessarily litigated." *Five Star Capital Corp. v. Ruby,* 124 Nev. 1048, 1055, 194, P.3d 709, 713.

In the Martin matter: (1) the issue decided in the prior litigation, resolution of Erich's military retired pay including waiver for veteran's disability benefits, is the same in the divorce matter as in the current motion; (2) the initial ruling represented by the *Decree of Divorce* was on the merits and final without appeal; (3) the party against whom the judgment is asserted, Erich, must have been a party … in the prior litigation, and he was; and (4) the issue was actually necessarily litigated. "Furthermore, a judgment entered by the court on consent of the parties after settlement or by stipulation of the parties is as valid and binding a judgment between the parties as if the matter had been fully tried." *Willerton v. Bassham*, 111 Nev. at 16, 889 P.2d at 826, cited by *Bradley S. v. Sherry N.,* 121 Nev. 1348, Unpublished Disposition (2015).

Finally, the U.S. Supreme Court in *Mansell* expressly acknowledged that the issue of *res judicata* is a matter of state law "over which we have no jurisdiction." 490 U.S. at 586 n.5. Accordingly, even if Raina's contract theory for enforcement of the reimbursement provision of the *Decree of Divorce* is ultimately not correct under *Howell,* it is nevertheless binding

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on Erich pursuant to the doctrine of *res judicata*. It is a "well settled rule that a judgment, not set aside on appeal or otherwise, is equally effective as an estoppel upon the points decided, whether the decision be right or wrong." *Reed v. Allen,* 286 U.S. 191, 201, 52 S.Ct. 532, 76 L.Ed. 1054 (1932) *Id.*

Conclusion

The Court is aware of the feeling of great unfairness on both sides. On the one hand, veteran's disability benefits, especially combat related benefits, undoubtedly are a form of compensation to our injured veterans. It is undisputed that Erich suffers from injuries in combat over the years, including traumatic brain injuries from concussions, ACL replacements, foot injuries, tendon injuries, back injuries, tinnitus, migraines, and other health related issues for which he is justly entitled to his veteran's disability benefits.[3] On the other hand, it is unfair to Raina to take away the precaution she negotiated and leave her without the ability to negotiate a substitute when it much too late to do so.

Howell makes very clear that this Court is without jurisdiction to order indemnification. But, it was not this Court which ordered the indemnification provision. The reimbursement or indemnification

[3] Despite his injuries, Erich (age 39) is gainfully employed earning $11,504 per month -- not including his CRSC.

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provision was created voluntarily by Erich and Raina. This Court is not persuaded that *Howell* takes away the parties' right to freely contract, including for indemnification. Indeed, *Howell* is silent as to enforcement of such a contractual agreement and it cautions that parties should be aware that a waiver of disability payments may occur and it is their responsibility to "take account of the contingency." The parties negotiated the contingency. Erich knowingly entered into the agreement ending his marriage to Raina through which he expressly agreed to give up a portion of his military retired pay waived for veteran's disability benefits to settle the divorce case. Accordingly, it is fair and appropriate to enforce the agreement the parties' entered with their eyes wide open.

Spousal Support

> **Rule 58(e) Notice of Entry of Judgment.**
> (1) Within 14 days after entry of a judgment or an order, a party designated by the court under Rule 58(b)(2) must serve written notice of such entry, together with a copy of the judgment or order, upon each party who is not in default for failure to appear and must file the notice of entry with the clerk of the court. Any other party, or the court in family law cases, may also serve and file a written notice of such entry. Service must be made as provided in Rule 5(b).
> (2) Failure to serve written notice of entry does not affect the validity of the judgment, but the judgment may not be executed upon until notice of its entry is served.
> [Amended; effective March 1, 2019.]

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Erich has not been served with *Notice of Entry of the Order Incident to Decree*. The *Decree of Divorce* contains the reimbursement provisions upon which the Court may immediately enforce. Raina's request to obtain spousal support, however, may not be acted upon due to the lack of *Notice of Entry of the Order Incident to Decree*.

Attorney Fees

In light of the continuing development of case law around the United States as well as the acknowledgment that, notwithstanding the assistance of *Shelton*, this issue has not been resolved by the Nevada Supreme Court, this Court cannot find that the position of either party is frivolous or unreasonable.

NOW, THEREFORE, IT IS HEREBY ORDERED that Raina's *Motion to Enforce* the reimbursement provision of the *Decree of Divorce* is granted.

IT IS FURTHER ORDERED that the sum of $5,918.01 representing $845.43 x seven months for the period from February through August 2020 shall be reduced to judgment in favor of Raina against Erich to be satisfied by any and all legal means. Erich shall commence timely direct payments to Raina in the amount of $845.43 commencing September 1, 2020 to include any cost of living adjustments.

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IT IS FURTHER ORDERED that Raina's request for spousal support is denied without prejudice.

IT IS FURTHER ORDERED that each party shall assume their own attorney fees and costs.

Dated this 11th day of August, 2020

Rebecca L Burton

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Rebecca L. Burton
District Court Judge

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DISTRICT COURT
CLARK COUNTY, NEVADA

Erich M Martin, Plaintiff	CASE NO: D-15-509045-D
vs.	DEPT. NO. Department C
Raina L Martin, Defendant.	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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