

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2   HENRY OLIVA and ROSIE ELENA  
3   MARTINEZ,

4                   Appellants,

5                   vs.

6   IGANCIO AVILA, JR.,

7                   Respondent.

                  } S.C. DOCKET NO.: 77242

                  } D.C. Case No.: D-15-515892-1  
                                  Electronically Filed  
                                  Sep 17 2021 01:33 a.m.  
                                  Elizabeth A. Brown  
                                  Clerk of Supreme Court

8  
9                   **APPELLANTS' APPENDIX VOL. 4**

10  
11   Fred Page, Esq.  
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17

Date	Paper/Transcript	Volume	Page
12/18/2017	Affidavit of Service	2	AA000266
08/03/2018	Affidavit of Service	2	AA000339
08/30/2018	Affidavit of Service	2	AA000349
06/22/2020	Affidavit of Shell Mercer, Esq. In Support of Defendant Henry Oliva's Motion to Continue Hearing	3	AA000549- AA000557
08/04/2020	Amended Order Setting Evidentiary Hearing	3	AA000568- AA000569
01/07/2021	Answer and Counterclaim for Custody	3	AA000753- AA000759

28

09/15/2020	Appendix to Defendant Henry Oliva's First Amended Motion to Amend an Order Or in the Alternative Correct Omissions in the Order	3	AA000600-AA000631
12/20/2018	Case Appeal Statement	2	AA000370-AA000375
08/12/2015	Certificate of Mailing	1	AA000073-AA000074
10/20/2020	Certificate of Service	3	AA000685-AA000686
10/20/2020	Certificate of Service	3	AA000687-AA000688
08/15/2018	Certificate of Service	2	AA000347-AA000348
08/28/2020	Certificate of Service	3	AA000585-AA000586
09/1/2020	Certificate of Service	3	AA000588-AA000589
09/21/2020	Certificate of Service	3	AA000647-AA000648
01/31/2020	Certificate of Service	2	AA000480
02/09/2016	Certificate of Service (MOT to Withdraw)	1	AA000148-AA000150
02/25/2020	Clerk's Certificate / Judgment	3	AA000481
06/03/2015	Complaint for Custody, Visitation, and Child Support	1	AA000001-AA000004
08/14/2018	Counterdefendant Henry Oliva's Opposition to Motion to Reconsider the Order from June 20, 201; and Opposition to Plaintiff's Motion for Attorney's Fees and Costs and Counterdefendant's Motion for Attorney's Fees and Costs	2	AA000340-AA000346
11/05/2015	Court Minutes	1	AA000121-AA000123
01/19/2016	Court Minutes	1	AA000135-

			AA000136
10/26/2020	Court Minutes	3	AA000689- AA000690
10/27/2020	Court Minutes	3	AA000691- AA000692
11/25/2020	Court Minutes	3	AA000722- AA000723
04/16/2021	Court Minutes	3	AA000797- AA000798
05/26/2021	Court Minutes	3	AA000821- AA000822
01/25/2018	Court Minutes	2	AA000280- AA000282
03/29/2018	Court Minutes	2	AA000292- AA000296
09/11/2018	Court Minutes	2	AA000355- AA000356
03/20/2020	Court Minutes	3	AA000537- AA000538
04/02/2020	Court Minutes	3	AA000539- AA000540
06/23/2020	Court Minutes	3	AA000559- AA000561
07/31/2020	Court Minutes	3	AA000564- AA000565
01/08/2021	Defendant Henry Oliva's First Amended Witness List	3	AA000760- AA000764
09/14/2020	Defendant Henry Oliva's Motion to Amend an Order Or in the Alternative Correct Omissions in the Order	3	AA000590- AA000599
06/22/2020	Defendant Henry Oliva's Motion to Continue Hearing	3	AA000543- AA000548
11/14//2020	Defendant Henry Oliva's Opposition to Plaintiff's Motion for Reconsideratin of the Order Filed August 17, 2020, for Attorney's Fees and Costs, and for Other Related Relief in the Above-Entitled	3	AA000693- AA000721

	Matter and Countermotion for Attorney's Fees		
12/23/2020	Defendant Henry Oliva's Witness List	3	AA000750-AA000752
09/23/2020	Defendant Oliva's Reply to Plaintiff's Opposition to Motion to Obtain the Original Sealed Birth Certificates From the Nevada Department of Health and Human Services, Division of Public Behavioral Health, Vital Records and Plaintiff's Countermotion to Strike Intervenor's Improper Pleading From the Record, and for Plaintiff's Attorney's Fees and Costs Incurred Herein and for Related Relief	3	AA000650-AA000654
02/09/2016	Defendant's Financial Disclosure Form	1	AA000137-AA000147
01/31/2020	Defendant's Financial Disclosure Form	2	AA000472-AA000479
04/12/2021	Defendant's Pre-trial Memorandum	3	AA000785-AA000796
01/26/2017	Ex Parte Application to Amend Stipulated Decree of Custody	1	AA000204-AA000205
03/02/2020	Exhibit Appendix in Support of Opposition to Motion and Notice of Motion to Modify Child Support and/or Spousal Support and Countermotion for Modification of Custody; to Award Plaintiff Primary Physical Custody of the Minor Child Based Upon Changed Circumstances; for Joint Legal Custody to remain Status Quo; to Set Child Support; to Award Plaintiff the tax exemption; for Specific Visitation to Defendant; for Mandatory Mediation; for Attorney's Fees and Costs and for Other Related Relief		AA000505-AA000534
10/09/2020	Exhibit Appendix in Support of Plaintiff's Motion for Reconsideration of	3	AA000668-AA000679



	the Order Filed August 17, 2020, for Attorney's Fees and Costs, and for Other Related Relief		
04/29/2021	Findings of Fact, Conclusion of Law, and Order	3	AA000799-AA000807
11/01/2017	First Amended Complaint for Custody	2	AA000247-AA000253
03/01/2017	First Amended Decree of Custody	1	AA000212-AA000227
06/08/2015	Joint Preliminary Injunction	1	AA000005-AA000006
01/31/2020	Motion and Notice of Motion to Modify Child Support and/or Spousal Support	2	AA000458-AA000464
01/31/2020	Motion and Notice of Motion to Modify Child Support and/or Spousal Support	2	AA000465-AA000471
08/26/2020	Motion for Order to Obtain the Original Sealed Birth Certificates From the Nevada Department of Health and Human Services, Division of Public Behavioral Health, Vital Records	3	AA000574-AA000583
11/01/2017	Motion to Join Henry Oliva As A Defendant, For the Limited Purpose of Determining Paternity of the Minor Child, Alan Oliva	2	AA000258-AA000265
07/06/2018	Motion to Reconsider the Order Entered June 20, 2018	2	AA000323-AA000338
01/22/2018	Notice of Affidavit of Attempts for Henry Oliva	2	AA0000283-AA0000286
10/18/2018	Notice of Appeal	2	AA000367-AA000369
06/22/2020	Notice of Appearance	3	AA000541-AA000542
05/25/2021	Notice of Appearance of Counsel	3	AA000819-AA000820
07/28/2016	Notice of Change of Address	1	AA000202-AA000203

03/02/2018	Notice of Change of Address	2	AA000291-
0710/2015	Notice of Counsel	1	AA000007- AA000008
04/29/2021	Notice of Entry of Finding of Fact, Conclusion of Law, and Order	3	AA000808- AA000818
03/14/2017	Notice of Entry of First Amended Decree of Custody	1	AA000228- AA000246
12/09/2020	Notice of Entry of Order	3	AA000730- AA000736
12/18/2020	Notice of Entry of Order	3	AA000743- AA000749
06/20/2018	Notice of Entry of Order	2	AA000312- AA000322
02/13/2016	Notice of Entry of Order Amending Stipulated Decree of Custody Filed July 22, 2016	1	AA000208- AA000211
07/12/2016	Notice of Entry of Order from February 23, 2016 Hearing	1	AA000161- AA000165
12/22/2015	Notice of Entry of Order from November 5, 2015 Hearing	1	AA000128- AA000133
09/25/2018	Notice of Entry of Order on Plaintiff's Motion for Reconsideration; and Judgment for an Award of Attorney's Fees	2	AA000360- AA000366
07/25/2016	Notice of Entry of Stipulated Decree of Custody	1	AA000183- AA000201
08/25/2015	Notice of Entry of Stipulation and Order for Paternity Testing	1	AA000111 AA000116
10/12/2020	Notice of Hearing	3	AA000684
06/23/2020	Notice of Hearing	3	AA000558
08/27/2021	Notice of Hearing	3	AA000584

08/27/2021	Notice of Hearing	3	AA000587
09/18/2020	Notice of Hearing	3	AA000646
09/18/2020	Notice of Hearing	3	AA000649
09/05/2018	Notice of Non-Opposition to Plaintiff's Motion to Reconsider the Order Entered June 20, 2018	2	AA000350-AA000354
01/22/2018	Notice of Non-Opposition to Plaintiff's Verified Motion to Amend the Complaint, to Establish Joint Legal and Joint Physical Custody, to Set Aside the Custody Decree, to Modify Custody, for Child Support, and for Attorney's Fees and Costs	2	AA000278-AA000279
02/01/2021	Notice of Rescheduling of Evidentiary Hearing	3	AA000769-AA000770
03/11/2020	Notice of Rescheduling of Hearing	3	AA000535-AA000536
07/21/2020	Notice of Rescheduling of Hearing	3	AA000562-AA000563
08/04/2020	Notice of Rescheduling of Hearing	3	AA000566-AA000567
02/01/2018	Notice of Withdrawal of Attorney	2	AA000288-AA000290
04/27/2018	Notice of Withdrawal of Attorney	2	AA000297-AA000299
05/09/2018	Notice of Withdrawal of Attorney	2	AA000300-AA000302
03/02/2020	Opposition to Motion and Notice of Motion to Modify Child Support and/or Spousal Support and Countermotion for Modification of Custody; to Award Plaintiff Primary Physical Custody of the Minor Child Based Upon Changed	3	AA000487-AA000504

	Circumstances; for Joint Legal Custody to remain Status Quo; to Set Child Support; to Award Plaintiff the tax exemption; for Specific Visitation to Defendant; for Mandatory Mediation; for Attorney's Fees and Costs and for Other Related Relief		
07/23/2015	Opposition to Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to Change the Minor Child's Name, and for Attorney's Fees and Costs and Countermotion for an Order for Paternity Testing; For Mediation, for Primary Physical Custody and a Defined Visitation and for an Order for Child Support Attorney's Fees and Other Related Relief	1	AA000044-AA000065
06/15/2018	Order	2	AA000303-AA000311
08/17/2020	Order	3	AA000570-AA000573
02/08/2016	Order Amending Stipulated Decree of Custody Filed July 22, 2016	1	AA000206-AA000207
09/01/2015	Order for FMC services	1	AA00017-
11/05/2015	Order for FMC Services	1	AA000120
01/25/2018	Order for FMC Services	2	AA000287
06/28/2016	Order from February 23, 20106 Hearing	1	AA000158-AA000160
01/32/2020	Order of Reversal and Demand	3	AA000483-AA000486
01/23/2020	Order of Reversal and Remand	3	AA000680-

			AA000683
09/21/2018	Order on Plaintiff's Motion for Reconsideration; and Judgment for an Award of Attorney's Fees	2	AA000357-AA000359
12/16/2020	Order Regarding Court's November 25, 2020 Minute Order	3	AA000737-AA000742
12/09/2020	Order Regarding Court's October 26, 2020 Order	3	AA000724-AA000729
11/01/2017	Plaintiff's Exhibit Appendix	2	AA000254-AA000257
08/17/2015	Plaintiff's Financial Disclosure Form	1	AA000094-AA000110
01/19/2018	Plaintiff's Financial Disclosure Form	2	AA000267-AA000277
07/10/2015	Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to Change Minor Child's Name, and for Attorney's Fees and Costs	1	AA000009-AA000043
10/09/2020	Plaintiff's Motion for Reconsideration of the Order Filed August 17, 2020, for Attorney's Fees and Costs, and for Other Related Relief	3	AA000655-AA000667
09/16/2020	Plaintiff's Opposition to Intervenor Henry Oliva's Motion to Obtain the Original Sealed Birth Certificates From the Nevada Department of Health and Human Services, Division of Public Behavioral Health, Vital Records and Plaintiff's Countermotion to Strike Intervenor's Improper Pleading From the Record, and for Plaintiff's Attorney's Fees and Costs Incurred Herein and for Related Relief	3	AP000632-AP000645
02/17/2016	Plaintiff's Pre-trial Memorandum	1	AA000151-AA000157
04/09/2021	Plaintiff's Pre-trial Memorandum	3	AA000774-

			AA000784
08/12/2015	Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to Change the Minor Child's Name, and for Attorney's Fees and Costs and Opposition to Defendant's Countermotion for Paternity Testing, Mediation, for Primry Physical Custody and Defined Visitation, and for an Order for Child Support, Attorney's Fees and Other Related Relief	1	AA000075-AA000090
01/08/2016	Receipt of Copy	1	AA000134
12/28/2018	Receipt of Copy	2	AA000448
02/21/2020	Remittitur	3	AA000482
07/31/2015	Reply to Counterclaim	1	AA000066-AA000068
11/12/2015	Settlement Conference and/or Evidentiary Hearing and/or Trial Management Order	1	AA000124-AA000127
07/22/2016	Stipulated Decree of Custody	1	AA000166-AA000182
08/07/2015	Stipulation and Order for Paternity Testing	1	AA000069-AA000072
09/01/2015	Stipulation and Order to Continue Case Management Conference, Plaintiff's Motion and Defendant's Countermotion	1	AA000118-AA000119
08/14/2015	Substitution of Attorney	1	AA000091-AA000093
01/21/2021	Substitution of Attorney of Record for Plaintiff	3	AA000765-AA000768
03/25/2021	Substitution of Attorney of Record for Plaintiff	3	AA000771-AA000773
12/28/2018	Transcript re: All Pending Motions 1/25/2018	2	AA000376-AA000447

1	12/28/2018	Transcript re: All Pending Motions 9/11/2018	2	AA000449-
2				AA000457
3	08/24/2021	Transcript re: Evidentiary Hearing dated April 16, 2021	4	AA000823-
4				AA001052
5	08/24/2021	Transcript re: Hearing June 23, 2020	4	AA001053-
6				AA001086
7				
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FILED

AUG 24 2021

*Alanna A. Spencer*  
CLERK OF COURT

ORIGINAL

1 TRANS

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4  
5 EIGHTH JUDICIAL DISTRICT COURT  
6 FAMILY DIVISION  
7 CLARK COUNTY, NEVADA  
8

9 IGNACIO AVILA, JR., )  
10 Plaintiff, )  
11 vs. )  
12 ROSIE MARTINEZ, )  
13 Defendant. )

CASE NO. D-15-515892-C

DEPT. T

APPEAL NO. 83023

14  
15 BEFORE THE HONORABLE NADIN CUTTER  
DISTRICT COURT JUDGE

16 TRANSCRIPT RE: EVIDENTIARY HEARING

17 FRIDAY, APRIL 16, 2021  
18  
19  
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24



1 APPEARANCES:  
2 The Plaintiff: IGNACIO AVILA, JR. (Tel.)  
3 For the Plaintiff: KIMBER L. LAUX, ESQ. (Tel.)  
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8 The Defendant: ROSIE MARTINEZ (Tel.)  
9 For the Defendant: PRO SE  
10  
11 The Third Party  
12 Defendant: HENRY OLIVA (Tel.)  
13 For the Third  
14 Party Defendant: THEODORE M. MEDLYN, ESQ. (Tel.)  
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I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR</u> <u>DIRE</u>
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IGNACIO AVILA, JR.	28,155	110	123	--	--
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DEFENDANT'S  
WITNESSES:

ROSIE MARTINEZ	179	185,186	--	--	187,198
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THIRD PARTY DEFENDANT'S  
WITNESSES:

HENRY OLIVA	125	145,152	151	--	200
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\* \* \* \* \*

1	<u>I N D E X O F E X H I B I T S</u>	
2		
3	PLAINTIFF'S	<u>ADMITTED</u>
4	<u>EXHIBITS:</u>	
5	1 - DNA screenshot	79
6	2 - Labcorp document	106
7	3-5 - Various exhibits	36
8	6 - Text messages	62
9	7 - Text messages	84
10	DEFENDANT'S	
11	<u>EXHIBITS:</u>	
12	(None presented)	
13	THIRD PARTY DEFENDANT'S	
14	<u>EXHIBITS:</u>	
15	A-C, E - Various exhibits	36
16		
17		
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1 LAS VEGAS, NEVADA

FRIDAY, APRIL 16, 2021

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

3 (THE PROCEEDINGS BEGAN AT 10:11:47)

4

5 THE CLERK: We're on the record.

6 THE COURT: Good morning. Department T is now in  
7 session calling the matter of Ignacio Avila, Jr. versus Rosie  
8 Martinez and Henry Oliva, case number D-15-515892-C. Can I  
9 please get appearances from all parties and all Counsels on  
10 this matter?

11 MS. LAUX: Good morning, Judge. This is Kimber  
12 Laux, bar 15263, here on behalf of Plaintiff Ignacio who is  
13 also present in my office to the left. I also have in my  
14 office sitting to the side of the camera not in view Astasia  
15 Lucas who is a fellow attorney. She's just taking notes  
16 today.

17 THE COURT: Okay. Perfect. Hello, Ms. Lucas. Good  
18 morning. And good morning, Ms. Laux.

19 MS. LAUX: And she -- she was muted, but she said  
20 good morning.

21 THE COURT: Okay. So we've got Kimber Laux, Astasia  
22 Lucas, Michael Burton, all for Ignacio.

23 MS. LAUX: Michael Burton is not on this call this  
24 morning, Your Honor. I'm --

1 THE COURT: Okay.

2 MS. LAUX: -- taking his place. He has another

3 trial.

4 THE COURT: Okay. Perfect. Any other appearances,

5 please?

6 MR. MEDLYN: Yes, Your Honor. Theodore Medlyn, bar

7 number 15284, appearing on behalf of the Bowen Law Offices.

8 Michele Mercer, former attorney, was appointed to judge so can

9 no longer be on the matter.

10 THE COURT: Okay. And you represent --

11 MR. MEDLYN: Henry Oliva, who is with me just

12 slightly off camera.

13 THE COURT: Good morning. How are you, Counsel?

14 MR. MEDLYN: Excellent.

15 THE COURT: Any other appearances, please?

16 THE DEFENDANT: Good morning, Your Honor. This is

17 Rosa Martinez.

18 THE COURT: Hi, Rosa. Do you want me to call you

19 Rosie or Rosa? I have you listed as Rosie on the court case.

20 THE DEFENDANT: Rosie is okay.

21 THE COURT: Rosie is okay?

22 THE DEFENDANT: Uh-huh (affirmative).

23 THE COURT: Okay.

24 THE DEFENDANT: Thank you.

1 THE COURT: Before we get started today, I -- I want  
2 to just lay some parameters. Ignacio Avila, Jr. And Henry  
3 Oliva have very similar last names. I don't want any lawyer  
4 to use the last name, okay?

5 MR. MEDLYN: Yes, Your Honor.

6 THE COURT: I would like Ignacio to only be referred  
7 to only be referred to and questioned and referenced as  
8 Ignacio. And I would like Henry to only be referred to and  
9 questioned and referenced as Henry. Is that -- is that clear?

10 MS. LAUX: Yes --

11 MR. MEDLYN: Yes, Your Honor.

12 MS. LAUX: -- Judge.

13 THE COURT: Okay. When you read a case where  
14 there's two dads and the names are that similar, it's  
15 confusing. And I want to make sure that I'm not confused. So  
16 that's what I'm -- I'm hoping will assist with this matter  
17 moving forward.

18 I wanted to just get a brief update from Counsel  
19 before we got started about the remand and the reversal from  
20 the Nevada Supreme Court. So I want to hear about that first  
21 before we start with openings. Either Counsel can answer.

22 MS. LAUX: Sure, Judge. So the District -- or  
23 sorry. The Supreme Court remanded this case to -- for further  
24 findings as to paternity. The District Court had previously

1 rejected my client's -- sorry, Ignacio's request for a  
2 paternity test as to Alan. Basically the District Court held  
3 a lot of things but -- but primarily held that, you know, it  
4 was too late for Ignacio to request a paternity test and he  
5 was time barred from challenging paternity.

6 The Court of -- or sorry, the Supreme Court reversed  
7 that decision and remanded it for -- for Ignacio to take a  
8 paternity test and for this Court to proceed with paternity  
9 proceedings pursuant to NRS 126. And I don't know if you need  
10 more detail than that. I'm happy to oblige.

11 THE COURT: And then I did see that there was -- and  
12 I reviewed the actual paternity test and Ignacio is the father  
13 of both Alan and Jazlynn; is that correct?

14 MS. LAUX: That's correct, Your Honor.

15 THE COURT: Okay. Okay. Would Opposing Counsel  
16 like to add anything to that issue?

17 MR. MEDLYN: No, Your Honor. That -- that properly  
18 apprises the facts of the remand.

19 THE COURT: Okay. And, you know, when I was  
20 reviewing these pretrial memorandums, I kept thinking to  
21 myself well, gosh, if there's two lawyers on this case and  
22 there's a biological father that, you know -- I mean, this  
23 case has been pending since 2015. So it's -- it's clear that  
24 there's a lot of passion on both sides -- all three sides, I

1 suppose. Is there a chance that Counsel would be able to  
2 resolve anything now that we're all here and if I put you guys  
3 in a breakout session, like, you know, some sort of visitation  
4 arrangement with Ignacio and with Henry involving the kids or  
5 is that --

6 MR. MEDLYN: Your Honor --

7 THE COURT: -- not something that is remotely  
8 possible?

9 MR. MEDLYN: I've already sent to this Counsel, to  
10 previous Counsel, to the first Counsel who I never heard from  
11 an Excel spreadsheet color coded. And -- and while confusing,  
12 it's no more confusing that the currently (sic) custodial  
13 timeshare that they're doing. It seems that we just can't get  
14 there.

15 THE COURT: Okay. I'm just --

16 MS. LAUX: And --

17 THE COURT: You know, the -- the argument of, you  
18 know, parental termination and visits like it -- it's a no  
19 brainer, I think. But, you know, if you guys don't think that  
20 you can come to some sort of resolution, then I won't put you  
21 in a breakout session. But I know that when I was reviewing  
22 all of this, I don't think that one parent should have nothing  
23 and the other parent should have everything. That doesn't  
24 make sense.



1 MS. LAUX: Judge, to clarify, I -- it was my  
2 understanding and we conferred with the Court prior to this  
3 hearing that this hearing was on paternity only.

4 THE COURT: Okay.

5 MS. LAUX: And so obviously we have to establish  
6 paternity of Alan prior to discussing any sort of custody or  
7 visitation schedule. So that's what my impression was. If  
8 we're all on the same page and we agree that Ignacio is Alan's  
9 father, then perhaps -- then we can, you know, continue a  
10 hearing to have it about custody, but at this stage we need to  
11 determine who is Alan's father and firmly establish that while  
12 Ignacio may have some rights to visitation and other statutes,  
13 he does not have paternal rights under the paternity statute.

14 THE COURT: Okay.

15 MR. MEDLYN: I -- if -- if I may. Opposing Counsel  
16 is kind of new to the matter and her confusion is  
17 understandable, but when this matter was set for trial by  
18 Judge Hardcastle all the way back in June of last year, I went  
19 back and watched all the hearings; he was very insistent that  
20 that -- that while it's a paternity hearing, in his analysis  
21 of the case, paternity is legal paternity --

22 THE COURT: Right. Right.

23 MR. MEDLYN: -- not just blood test, not just --  
24 yeah. So the whole issue of legal paternity delves into the

1 best interest test of the -- of the child. And so --

2 THE COURT: I agree.

3 MR. MEDLYN: -- it's a full evidentiary hearing that  
4 should reach resolution today. If Opposing Counsel is not  
5 ready for those full arguments, we object to there not being  
6 any guardian ad litem in the case after 10 whole months and  
7 two new attorneys by the Plaintiff.

8 THE COURT: Okay.

9 MS. LAUX: And Judge, I think -- I think that if we  
10 establish le -- legal paternity and then send the parties to  
11 mediation, we'll have a lot more room to discuss custody. But  
12 right now as it stands, there are -- and I'm -- I'm sorry to  
13 getting into argument, but I just --

14 THE COURT: No.

15 MS. LAUX: -- it's necessary.

16 THE COURT: I -- I think --

17 MS. LAUX: This is a very --

18 THE COURT: -- that this case requires some, you  
19 know, lay of the land before we --

20 MS. LAUX: Right.

21 THE COURT: -- start. Like it -- there -- there's  
22 really no way you can just go to your first witness. So we're  
23 going to have this --

24 MS. LAUX: Yes.

1 THE COURT: -- conversation. Go ahead.

2 MS. LAUX: Yes. So -- so basically our position and  
3 -- and what the evidence we're going to put on to show is that  
4 there's really three ave -- avenues for Henry to be able to  
5 obtain some sort of parental or custody or visitation rights  
6 to Alan. First of all, through paternity which conclusively  
7 he is not the father. That's -- that's -- there's a 99.999  
8 percent probability that my client is Alan's father.

9 The next avenue is through custody. Now a -- a  
10 third party can request custody rights but only if it's shown  
11 first that the biological natural parent is not fit. And that  
12 not only hasn't been shown but hasn't even been alleged.

13 And then finally as -- and, you know, especially as  
14 -- as Henry's Counsel has indicated that they've been trying  
15 to settle this for visitation. There's obviously no claim  
16 that my client's not fit to have some sort of custody here.

17 The third avenue -- so -- so that avenue is out,  
18 right. The third avenue is through third party visitation  
19 which hasn't been alleged. And even in that scenario, the  
20 third party who wants to acquire visitation needs to show that  
21 the parent has been precluding that person from visiting the  
22 child. And that's not the case here. Actually my client who  
23 is the natural father has been precluded from visiting. So --

24 THE COURT: I know.

1 MS. LAUX: -- in my view, I mean, I know that  
2 Counsel would like to bundle custody and visita -- or sorry,  
3 custody and -- and paternity together under Judge Hardcastle's  
4 former rulings, but he was remanded. And the Court -- the  
5 Court -- the Supreme Court issued case -- the law of this case  
6 which says that we need to do paternity in accordance with NRS  
7 126 which is what we're here today to do.

8 And so, again, if -- if he would like to, I don't  
9 know, amend a complaint or file some sort of motion after  
10 paternity is established, that's obviously his -- his ability  
11 is there to do so. But that's not what we're here today to  
12 discuss.

13 MR. MEDLYN: I'm -- I'm confused. I don't believe  
14 it was Hardcastle who was remanded on his ruling on June. And  
15 if I misapprehend (sic) that, please correct me.

16 MS. LAUX: The -- the point stands that the Court of  
17 -- the Court of Appeals, the Supreme Court of Nevada, has  
18 remanded this case for paternity proceedings consistent with  
19 NRS 126. There is no best interest analysis under NRS 126.  
20 And the cases which Opposing Counsel cites to in his pretrial  
21 memo -- memo including Love v. Love which holds that biology  
22 is not conclusive, that doesn't apply to this case. That case  
23 was issued in 1998. The statute was revised in 2007. A  
24 simple -- you just look at the statute, you click on the

1 recent amendment. It was 2007 that a subsection was added  
2 including that there is a conclusive presumption for paternity  
3 when there's a DNA test and then amended that -- the section  
4 allowing rebuttal to only apply to subsection 1 which is those  
5 nonconclusive ones, not -- not DNA tests. So I really don't  
6 see what -- what Mr. -- sorry, what Henry's argument could  
7 possibly be today.

8 MR. MEDLYN: And that case St. Mary's vs. Damon (ph)  
9 actually has remarkably similar facts to ours in that there  
10 were -- there was a donor and a couple which created all  
11 manner of confusion in that case as well when three people are  
12 wanting visitation and parental rights and to act -- the  
13 problem of the child having too many people to love. That was  
14 ruled in 2013 and that is what -- where the best interest test  
15 comes in because there's -- there's more factors here than  
16 just biology and that's very clear from -- from even af --  
17 rulings even after the changes to the statute that Counsel  
18 points out.

19 MS. LAUX: Okay. And -- and to -- to Counsel's  
20 point on St. Mary, this case also, not analogous here. That  
21 -- that case involved two lesbian mothers who both had DNA --  
22 a share of the child's DNA because of surrogacy. They had a  
23 surrogacy agreement and they had a co-parenting agreement  
24 which was entered prior to the child's birth. It's not

1 analogous here. There was no co-parenting agreement. There  
2 was no sort of DNA contribution by Henry. Henry is not this  
3 child's father. And in fact, the evidence presented today  
4 will show that Rosie and Henry have -- have been aware that  
5 Alan might not be Henry's child and they have consistently  
6 lied to my client about whether that's a possibility. And so  
7 again I'm -- I'm asking this Court to find that this is a very  
8 simple issue of paternity and the -- the law is what it is on  
9 these issues.

10 THE COURT: Okay.

11 MR. MEDLYN: Go ahead, Judge. Sorry.

12 THE COURT: Okay. I -- I just said okay. And --  
13 but I figured you were going to speak up. So go ahead.

14 MR. MEDLYN: There has been a de facto parenting  
15 agreement. The Defendants work very well together in  
16 exchanges that occur regularly every week. And conflict only  
17 seems to come from the two fathers where evidence will be put  
18 on as to who I believe is responsible for that. But that's  
19 for the Court to decide who leads to the conflict. But the --  
20 the only conflict is that tit for tat between the dads of  
21 well, he took him to this event or he didn't let me see him  
22 this day. And it's just nonstop back and forth bickering.  
23 And while my father didn't contribute any genetic material as  
24 in that case, he certainly has contributed financially,

1 developmentally, scholastically, and has been -- has been  
2 holding himself as the dad regardless of these allegations and  
3 the trouble and trauma that it has created to the whole  
4 family. So he -- he has just as much claim to be dad as -- as  
5 a biological father.

6 MS. LAUX: Judge, if I may. One last piece. I -- I  
7 really am irked by Opposing Counsel's disingenuous suggestion  
8 that there was a de facto co-parenting agreement here when my  
9 client didn't know until 2017 that he was this child's father.  
10 So maybe -- maybe his client and Mom had some sort of  
11 agreement that he would this child out as his own. My client  
12 could not possibly have participated in that agreement because  
13 he did not know that Alan was his child until he took his own  
14 DNA test. And in fact, Dad submitted false DNA tests to my  
15 client -- I'm sorry, not Dad.

16 THE COURT: Henry.

17 MS. LAUX: Henry.

18 THE COURT: We're going to --

19 MS. LAUX: Yes.

20 THE COURT: -- only refer --

21 MS. LAUX: Yes.

22 THE COURT: -- to both gentlemen as either Ignacio  
23 or Henry and no other words.

24 MS. LAUX: Yes, Judge.

1 THE COURT: Okay.

2 MS. LAUX: I'm sorry, yes. The -- Henry submitted a  
3 false paternity test to my client demonstrating that he was  
4 the father. So to say that there was some sort of de facto  
5 parenting agreement just because these two got along is  
6 completely off base and without legal basis.

7 THE COURT: Okay.

8 MR. MEDLYN: Even accepting Opposing Counsel's date  
9 of 2017, what's happened since then? The parties are -- have  
10 admittedly rocket -- rockily still allowing visitation to go  
11 back and forth with both -- with both children. My client  
12 Henry sees the littlest daughter from time-to-time thanks to  
13 Defendant -- the other Defendant's intervention. And my  
14 client also permits Alan who is primarily in his custody for  
15 now to go back and forth in the hopes that the kid -- my  
16 client -- and even unless Henry, Jr. go back and forth and  
17 occasionally be seen by the Plaintiff.

18 There -- there's clearly ground to be worked on  
19 here.

20 MS. LAUX: That -- that's not --

21 THE COURT: Did you --

22 MS. LAUX: -- true.

23 THE COURT: Do you mean the Plaintiff or do you mean  
24 Rosie?



1 MR. MEDLYN: The -- the Plaintiff through Rosie,  
2 perhaps. He relinquishes custody to Rosie and doesn't draw  
3 problems when Rosie shares with Ignacio.

4 THE COURT: Okay. Okay. I think, at this point, we  
5 should proceed with opening arguments. Are Counsel ready?

6 MS. LAUX: Yes, Your Honor.

7 THE COURT: Okay. Let's have the original moving  
8 party go first. Please proceed.

9 MS. LAUX: Good morning, Your Honor. To understand  
10 the sole issue presented at today's evidentiary hearing, it's  
11 necessary to briefly review the rele -- relevant procedural  
12 history of this case.

13 THE COURT: Indeed.

14 THE DEFENDANT:

15 MS. LAUX: On November -- on November 1, 2017, the  
16 Plaintiff, Ignacio, filed an amended complaint for custody  
17 based on household income belief that the minor child at  
18 issue, Alan Sergio Oliva, who is -- who we'll call Alan, might  
19 be his child. After a hearing, the Court entered an order  
20 joining Henry as a necessary party to this case denying  
21 Ignacio's request for a paternity test for Alan, finding that  
22 Alan's birth certificate is prima facie evidence of Henry's  
23 paternity of Alan and finding that -- sorry, finding that  
24 Ignacio's challenge of paternity was time barred because Alan

1 was then six-and-a-half years old and finding no clear and  
2 convincing evidence of fraud by Rosie and Henry.

3 Ignacio appealed this decision and on January 23rd,  
4 2020, the Nevada Supreme Court entered an order finding that  
5 the District Court had erred by denying Ignacio's request for  
6 a DNA case and remanding the case to the District Court for  
7 further proceedings consistent with NRS 126, the  
8 chapter governing paternity and parentage.

9 This evidentiary hearing concerns one issue which is  
10 Ignacio Avila's paternity of the minor child Alan. Evidence  
11 presented today will show that, first; Ignacio is indisputably  
12 Alan's father. Second, Alan's mother, Rosie and Rosie's on  
13 again, off again partner and former roommate Henry have lied  
14 to Ignacio about the possibility of his being Alan's father  
15 for at least four years and possibly longer before that. And  
16 third, Rosie and Henry, a non-parent third party, had withheld  
17 custody of Alan -- from Alan's own father.

18 On information and belief, Henry does not dispute  
19 that Ignacio is Alan's biological father as there's a DNA test  
20 showing within 99.99 percent probability that that's true.  
21 Instead, Henry disputes that genetic test is conclusive with  
22 respect to a Court's determination of paternity.

23 This is a legal issue which is for the Court to  
24 decide. It is anticipated that Henry will present evidence

1 that he has held Alan out as -- as his own, he has a  
2 relationship with Alan, and Ignacio has failed to obtain a  
3 guardian ad litem for the children; however, none of this is  
4 relevant to a determination of paternity under NRS 126 which  
5 provides a conclusive presumption when there is DNA testing  
6 completed. The only relevant evidence presented today will  
7 show that Henry does not have any parental rights under the  
8 law to Alan. Thank you, Judge.

9 THE COURT: I have a question for you -- for both  
10 Counsel. There's two babies that are biologically Ignacio's,  
11 yet Counsel --

12 MS. LAUX: That's correct.

13 THE COURT: -- in their pretrial memos and even in  
14 argument kind of isolate Alan as far as for today. And it's  
15 confusing --

16 MS. LAUX: The parties --

17 THE COURT: -- because I don't understand why.

18 MS. LAUX: The parties have stipulated already that  
19 Jazlynn is Ignacio's biological child. They -- they've had a  
20 stipulation and order to that effect. I'm not sure the date;  
21 I can pull that up.

22 THE COURT: The parties meaning Rosie and Ignacio  
23 have a stipulation or the parties as in --

24 MS. LAUX: Yes.

1 THE COURT: -- Rosie, Ignacio, and Henry?

2 MS. LAUX: No, just -- just my client and Rosie.

3 Ignacio and Rosie have a stipulation --

4 THE COURT: A sti --

5 MS. LAUX: -- that Jazlynn is his child. She  
6 admitted the same to him in 2015 when they were intoxicated  
7 one night.

8 THE COURT: Okay. So does Ignacio have parenting  
9 time with Jazlynn?

10 MS. LAUX: Yes, he does, Judge.

11 THE COURT: Okay.

12 MR. MEDLYN: And -- and Your Honor, I suppose we  
13 focus on the split only because children grow up and children  
14 have to be provided for in the meantime. And the current  
15 arrangement has the baby Jazlynn with Mom through a majority  
16 of the time and Ignacio I think every other weekend and some  
17 Tuesday, Thursdays. I am not fully privy. And my client sees  
18 her a couple of times a month at most, like once, twice,  
19 sometimes three.

20 Contrast that with Alan who resides primarily with  
21 my clients four days out of the week and then sees Mom three  
22 to four. They're actually terribly flexible with it. And it  
23 was confusing even to me. But it's Saturday evening,  
24 sometimes Sunday mornings to Tuesday evenings usually. And

1 then one or two days throughout the week depending on the  
2 kids' schedule. But they're sharing 50 percent physical  
3 custody in the absence of the Court's ruling. And I suppose  
4 like the actual contentious point is how much time my client  
5 can get with the daughter and how much my client is giving to  
6 Ignacio.

7 THE COURT: Okay. Do you have a traditional opening  
8 statement aside from the parenting time?

9 MR. MEDLYN: No, I think it's fairly well contained  
10 in my opening brief other than it's not just one issue as  
11 Opposing Counsel claims. We have presumptions of paternity  
12 and multiples of them for a reason because we're not bound by  
13 black and white letters when it comes to child custody. The  
14 Court has shown intense focus on fact base best interest tests  
15 anytime children get involved. And you can stick a needle in  
16 anybody and prove 99 percent but there's still what's actually  
17 going on in the kids' lives that needs to factor into any  
18 custodial determination of any variety. Thank you.

19 THE COURT: Rosie, I know that the lawyers have done  
20 most of the talking about the legal debate and what happened  
21 with the Nevada Supreme Court. You are a Defendant. And as  
22 part of an opening statement, what you typically tell the  
23 Court about are the kinds of facts the Court will hear about,  
24 the types of witnesses the Court is going to hear about, and

1 you don't really -- don't really do the argument about and the  
2 legal argument in the opening, but if you want to make a brief  
3 opening, you can go ahead, Rosie, okay?

4 THE DEFENDANT: Okay. I'm okay. I'll -- I'm just  
5 listening.

6 THE COURT: Okay. I want you to tell me what you  
7 want, Rosie. Go ahead.

8 THE DEFENDANT: What I want, I mean, I just -- I  
9 want everything like, you know, to be like settled. I don't  
10 know. Maybe -- because my -- my son really doesn't want to go  
11 with him because he doesn't really like --

12 THE COURT: I don't know.

13 THE DEFENDANT: -- because everything --

14 THE COURT: I -- I don't -- I don't know who him is.  
15 You need to say --

16 THE DEFENDANT: Oh, Ignacio.

17 THE COURT: -- Ignacio or Henry.

18 THE DEFENDANT: Ignacio.

19 THE COURT: Okay.

20 THE DEFENDANT: Ignacio because every time he goes  
21 he starts asking him like a lot of questions, did he go with  
22 Henry. And then one time he told him that Henry wasn't his  
23 dad and Alan started crying and he's like he doesn't want to  
24 go back there because he just told him out of nowhere that

1 Henry wasn't his dad. And we never -- he didn't even ask me  
2 or Henry if he was -- he had the right to tell him. And Alan  
3 was very disappointed and he was very sad. And that was like  
4 maybe two weeks ago, three weeks, or maybe -- yeah, maybe a  
5 month ago.

6 THE COURT: Okay. What kind of time do you think  
7 Alan should share between Ignacio and Henry?

8 THE DEFENDANT: I have to think about it. I have to  
9 talk with Henry about it.

10 THE COURT: Well, this case has been pending since  
11 2015.

12 THE DEFENDANT: Uh-huh (affirmative).

13 THE COURT: So time is a --

14 THE DEFENDANT: I know, but they never wanted me --  
15 they never agreed -- they always -- the last court they told  
16 me that I could just let him see him whenever I -- we had time  
17 or whenever he wanted to go or whatever. We never agreed to  
18 anything. That's why I never -- I --

19 THE COURT: Okay.

20 THE DEFENDANT: -- thought it was --

21 THE COURT: You saying -- you saying you don't agree  
22 doesn't answer my question. Tell me what kind of time you  
23 think Ignacio and Henry should have with Alan. I want you to  
24 answer it in your opening so I kind of know where you're at as

1 the biological mother of Alan. I need to know. I don't have  
2 a pretrial memorandum from you, you don't have a lawyer, and  
3 you are directed to answer that question.

4 THE DEFENDANT: Uh-huh (affirmative). I just want  
5 like everything to stay the same the way it is right now.

6 THE COURT: Which is what?

7 THE DEFENDANT: Just go with him whenever Alan --  
8 because Alan goes to karate. He goes to a lot of class -- we  
9 have -- I have to see that. I have to figure that out.

10 THE COURT: What do you mean by everything should  
11 stay the same?

12 THE DEFENDANT: Like the way it is right now.

13 THE COURT: Which is how?

14 THE DEFENDANT: He goes with him like --

15 THE COURT: Who is him?

16 THE DEFENDANT: -- you know -- with Ignacio.

17 THE COURT: Okay.

18 THE DEFENDANT: Like --

19 THE COURT: So Alan goes with Ignacio on --

20 THE DEFENDANT: Tues -- I think it's Tuesdays,  
21 sometimes Tuesdays.

22 THE COURT: You think it's Tuesdays --

23 THE DEFENDANT: But then we don't have --

24 THE COURT: -- sometimes Tuesdays.



1           THE DEFENDANT: We didn't have a -- we don't have a  
2 schedule. We don't have a schedule.

3           THE COURT: Okay. Well, you're his mom and you know  
4 where he goes. So --

5           THE DEFENDANT: Yeah. Yeah. Yeah.

6           THE COURT: -- tell me what typically happens if you  
7 want things to stay the same.

8           THE DEFENDANT: Oh, okay. Maybe Tuesdays -- maybe  
9 one weekend with one -- one week -- one weekend.

10          THE COURT: When you say maybe, that sounds like  
11 something that's not happening. So what is actually  
12 happening?

13          THE DEFENDANT: Oh, no. What's happening right now,  
14 like even when he's -- when I drop off my daughter or when on  
15 -- on Tuesdays he'll take him for a -- a little bit, that's  
16 it. It's not a lot because my -- my son, he doesn't really  
17 want to go. And I'm not going to force him to go.

18          THE COURT: Okay. So that's what you would like to  
19 continue. Tuesday --

20          THE DEFENDANT: Uh-huh (affirmative).

21          THE COURT: -- sometimes maybe and a weekend  
22 sometimes maybe.

23          THE DEFENDANT: Yeah.

24          THE COURT: Okay. Is there anything you want to

1 add?

2 THE DEFENDANT: No.

3 THE COURT: No? Okay. Any -- any statements  
4 regarding facts or witnesses that you might be presenting,  
5 Mom?

6 THE DEFENDANT: No.

7 THE COURT: Okay. Okay. Are Counsel ready to call  
8 their first witness?

9 MS. LAUX: Yes, Judge. I'm ready to call my first  
10 witness who is Ignacio.

11 THE COURT: Okay. Please proceed.

12 (WITNESS SUMMONED)

13 THE COURT: We're going to have to swear Ignacio in.  
14 And please, only refer to him as Ignacio just for -- to say it  
15 again.

16 THE CLERK: You and each of you do solemnly swear  
17 the testimony you're about to give in this action shall be the  
18 truth, the whole truth, and nothing but the truth, so help you  
19 God?

20 THE PLAINTIFF: I do.

21 THE COURT: I cannot hear him at all.

22 MS. LAUX: Your Honor --

23 THE PLAINTIFF: I do.

24 MS. LAUX: -- can he take his mask off?

1 THE COURT: Sure. If it's okay with you, Ms. Laux.  
2 MS. LAUX: Yeah, I'm --  
3 THE COURT: Okay.  
4 THE PLAINTIFF: I do.  
5 THE COURT: Okay.  
6 MS. LAUX: Did you hear that okay?  
7 THE COURT: I -- that -- that's better. Yes.  
8 MS. LAUX: Okay. So scoot up towards the table a  
9 little bit. And when I ask you a question, raise you a voice  
10 because the --  
11 THE WITNESS: Okay.  
12 MS. LAUX: -- microphone is right here. So it needs  
13 to go into that so the Judge can hear you.  
14 IGNACIO AVILA, JR.  
15 called as a witness on his own behalf, having been first duly  
16 sworn, testified upon his oath as follows on:  
17 DIRECT EXAMINATION  
18 BY MS. LAUX:  
19 Q Can you please state your name?  
20 A My name is Ignacio Avila, Jr.  
21 Q And what is your address?  
22 A 1214 Emerald Stone Avenue, North Las Vegas, Nevada  
23 89081.  
24 Q Are you the Plaintiff in this case?

1           A     Yes.

2           Q     What is your relationship to the Defendant, Rosie?

3           A     Friends.

4           Q     Okay. Did you and Rosie ever become romantically

5 involved?

6           A     Yes, since 2008.

7           Q     Is that when you met Rosie?

8           A     That's when I met Rosie and then ever since then we

9 were on and off for 2019.

10          Q     Until 2019?

11          A     Correct.

12          Q     Okay. And is that when you and Rosie officially

13 broke up?

14          A     Well, not broke up, but it was not even a

15 relationship. It was for like we just --

16          Q     Speak up, okay?

17          A     It was more like it got more intense with -- because

18 of Alan's situation.

19          Q     Did you and Rosie ever live together?

20          A     No.

21          Q     Were you ever married to Rosie?

22          A     No.

23          Q     Okay. Do you have any children with Rosie?

24          A     Yes, Jazlynn Rose Martinez-Avila and Alan Oliva.

1 Q Okay. And what -- what are their ages?  
2 A Jazlynn's seven, Alan, nine.  
3 Q And do you call either of them by nicknames?  
4 A Jazlynn Roslynn and Alan.  
5 Q Okay. So you call Jazlynn Roslynn?  
6 A Roslynn, yes --  
7 Q Why -- why --  
8 A -- because --  
9 Q -- do you call her that?  
10 A Because she has a middle name. And Jazlynn, my  
11 niece -- my niece's name is Jazlynn. So by not confusing I  
12 call her Roslynn by her middle -- middle name. And like the  
13 way Jazlynn the last four letters of Lynn.  
14 Q So you refer to your daughter Jazlynn as Roslynn.  
15 A Roslynn, yes.  
16 Q Okay. And just -- just so you're aware, when I  
17 refer to Jazlynn, I'll try to say Roslynn. I'll -- but if I  
18 say Jazlynn, I'm not referring --  
19 A Okay.  
20 Q -- to your niece. I'm talking about your daughter.  
21 What is your relationship like with Jazlynn?  
22 A Best friends. We do everything together. 2000 and  
23 -- 2015 when I -- 2014 when we took a DNA, we -- we had  
24 visitations, Mom and I, which we were abiding at that time

1 until we went to court. And then I did do a -- a separate DNA  
2 in 2014. And in 2015 we went to court which also Henry Oliva  
3 attended 2 -- 2015 on that hearing. But he was behind Rosie.  
4 And we were discussing the paternity as to Jazlynn only.

5 Q Okay. So I'm just asking what your --  
6 A Okay.  
7 Q -- relationship --  
8 A No, I --  
9 Q -- is like --  
10 A Okay.  
11 Q -- with her --  
12 A Okay. Well, I --  
13 Q -- okay? So try to -- try to keep your --  
14 A Okay.  
15 Q There's a lot of issues --  
16 A But we have a --  
17 Q -- in this case.  
18 A Okay.  
19 Q Try to --  
20 A Sorry.  
21 Q -- keep it focused to the question.  
22 A But we have a -- a good relationship. We always do  
23 things together with the family as well and her cousins,  
24 Jazlynn, Josiah (ph), and Genesis (ph). And we also do jump

1 rope. We go to the arcades. She was in ballet, gymnastics,  
2 and basketball. We always do outdoors. She likes to do  
3 anything, play Roblox, gaming, dancing. She's very good at  
4 dancing. You know, we always do things together. And, you  
5 know, I pick her up from school. I do a lot of things with  
6 her and --

7 Q Okay. How long have you shared physical custody of  
8 Jazlynn?

9 A What do you mean?

10 Q So -- so since when have you had legal custody -- or  
11 sorry, legal physical custody of Jazlynn?

12 A 2015.

13 Q Okay. Did you ever see Jazlynn before that court  
14 order?

15 A Yes.

16 Q How --

17 A I've been really --

18 Q How often?

19 A -- involved -- be -- when -- when I served her with  
20 paperwork, she didn't let me see my daughter for either a few  
21 weeks to -- to a month or two.

22 Q Okay. And how often did you see her prior to the  
23 court order?

24 A I would see her almost every day.

1 Q Okay. You kind of alluded to some of these things,  
2 but before you obtained physical custody through the court of  
3 Jazlynn, you guys would go to arcades and -- and things like  
4 that?

5 A When she was a --

6 Q Is that right?

7 A When -- yeah. I -- I mean, during this time, that  
8 -- that's what we do now. But like before I would always, you  
9 know, just take care of her, play with her, you know, mostly  
10 like outdoors and indoors. We do our board games. I taught  
11 her how to read too, tie her shoe.

12 Q Okay. And was there anyone else with you when you  
13 had these visits with Jazlynn?

14 A Sometimes Rosie. And then Alan.

15 Q So Alan --

16 A Alan --

17 Q -- Alan went with you when you had visits with  
18 Jazlynn?

19 A He didn't -- he didn't go to school during -- he was  
20 four years old, John Tartan. And I wouldn't -- he wouldn't go  
21 to school on Fridays which at that -- that's when the time I  
22 started seeing some resemblance as well and asking questions.  
23 And --

24 Q Okay.



1           A     -- but I -- last time that I -- Alan would sometimes  
2 visit.  
3           Q     Okay. So Alan would sometimes visit with you.  
4           A     Uh-huh (affirmative).  
5           Q     I would like you to open this number -- the binder  
6 number one. Okay. I'll put your things here. I want to go  
7 to Exhibit 5. See the tab on the right?  
8           THE COURT: And Counsel, I don't have a binder from  
9 you. I have one from Bowen Law Offices. Did you submit  
10 exhibits to the vault?  
11           MS. LAUX: I apologize, Judge. I thought that we  
12 only were submitting them electronically for virtual hearings.  
13           THE COURT: Okay. Well, let me just make sure I  
14 have something.  
15           (COURT AND CLERK CONFER BRIEFLY)  
16           THE COURT: Okay. I have 1 through 12.  
17           MS. LAUX: Yes, those are -- those are all the  
18 exhibits that we have, Judge.  
19           THE COURT: Okay.  
20           MS. LAUX: Okay. So turning to Exhibit 5. Can you  
21 tell me -- obviously, there's a lot --  
22           THE COURT: Before you commence, is there any  
23 stipulation --  
24           MS. LAUX: Sure.

1 THE COURT: -- as to any exhibits, Counsels?

2 MS. LAUX: I stipulated to all of Henry's exhibits  
3 except D. D as in dog is the only exhibit I did not stipulate  
4 to. I have not heard anything about stipulations to my  
5 exhibits.

6 THE COURT: Okay.

7 MR. MEDLYN: My apologies, Your Honor. I forgot to  
8 call her back. We have some issues with 1 and 2 that will be  
9 brought up at those times. 6 through 12, just general  
10 completeness and out of order. But we'll stipulate to their  
11 entries trusting that Your Honor can read around any  
12 evidentiary problems therein --

13 THE COURT: So I want to mark --

14 MR. MEDLYN: -- and pre --

15 THE COURT: -- objections for the exhibits. And you  
16 went a little fast. So I -- I had to flip the page. So you  
17 have objections to Exhibits 1 and 2. What are the other  
18 exhibits you have objections to?

19 MR. MEDLYN: 6 through 12. They're all text  
20 messages in nature. They just have some out of order  
21 problems, some completeness problems. But we will stipulate  
22 to their entry --

23 THE COURT: I mean --

24 MR. MEDLYN: -- if Your Honor --

1 THE COURT: -- typically --

2 MR. MEDLYN: -- dis --

3 THE COURT: -- communications between the parties  
4 are fair game in just about every trial I've ever seen. So  
5 Counsel?

6 MR. MEDLYN: And then -- and then we have no  
7 problems with 3, 4, or 5. They can come in.

8 THE COURT: Okay. So let the record reflect that  
9 Exhibits 3, 4, and 5 are officially admitted as well as  
10 Exhibits A, B, C, and E. And there are objections to the  
11 remainder which are D -- where did my page go. Which are D  
12 and the other ones that are not admitted are 1, 2, 6, 7, 8, 9,  
13 10, 11, and 12.

14 (PLAINTIFF'S EXHIBITS 3-5 ADMITTED)

15 (THIRD PARTY DEFENDANT'S EXHIBITS A-C, E ADMITTED)

16 THE COURT: Okay. Which one are you on, Counsel?  
17 Now, that there has been a stipulation as to admissions, I can  
18 look at it.

19 MS. LAUX: I -- we are on Exhibit 5, Your Honor.

20 THE COURT: Okay.

21 BY MS. LAUX:

22 Q So Ignacio, flipping through these, I know that  
23 there's a lot of pages here. Can you tell me what these are?

24 A A picture of Jazlynn -- I mean, Roslynn.

1 Q I -- I don't want for you to go page-by-page --  
2 A Okay.  
3 Q -- because there's so many, but looking through  
4 these, give me a general overview of what we're looking at  
5 here --  
6 A This is the --  
7 Q -- so the Court knows.  
8 A -- the pictures of my daughter Jaz -- I mean,  
9 Roslynn and Alan on 2015 all the way up until -- no, just  
10 family pictures between fam -- Roslynn, Alan, and my family.  
11 And some are with Rosie too.  
12 Q And who took these photos?  
13 A I did and some of my family members as well.  
14 Q Okay. We're going to be looking at several photos  
15 in particular. So for each of the photos that I list, I'd  
16 like for you to tell me who's in the photo, when it was taken,  
17 and who took the photo.  
18 A Okay.  
19 Q Okay. So first, can we turn to page 55, please?  
20 Can you tell me who is in this photo, when it was taken, and  
21 who took it?  
22 A I took this photo in 2015 of Roslynn and Alan. 2015  
23 or 2016. I apologize, but --  
24 Q And where are you in this photo?

1           A     McDonald's. Rosie, at that time, she was going to  
2 Subway because she was hungry. She didn't want McDonald's so  
3 I took care of Alan and Roslynn.  
4           Q     Okay. So this was a visit with --  
5           A     Visit with Alan and --  
6           Q     But Rosie --  
7           A     -- Roslynn.  
8           Q     -- was with you during that visit?  
9           A     Yes, but --  
10          Q     Okay.  
11          A     -- she went to -- to Subway.  
12          Q     Okay. Can you turn to page 58?  
13                THE COURT: And when you say 58, you mean the Bates  
14 Number 58, is that correct?  
15                MS. LAUX: Yes, I'm sorry, Judge. I -- I'm going to  
16 be referring to it as -- instead of saying MLG0058 for --  
17                THE COURT: That's fine.  
18                MS. LAUX: -- for -- while we're --  
19                THE COURT: No problem.  
20                MS. LAUX: -- in the same exhibit, I'll just move to  
21 go page numbers.  
22          Q     So 58, are you on that page?  
23          A     Yes.  
24          Q     And who's in this photo?

1           A     Alan.

2           Q     And what's going on at this time?

3           A     We went -- Rosie went to go shopping at the  
4 groceries at Smith's up in Craig and, I mean, Losee and  
5 Centennial -- or trop -- tropical. She went groceries  
6 shopping while I was visiting Alan and Roslynn together.

7           Q     And you -- who took this photo?

8           A     I took this photo too.

9           Q     Okay. Go -- and sorry, did you say when this was  
10 approximately?

11          A     Yes, 2015 or 2016. I don't -- don't remember the  
12 exact dates of those.

13          Q     Okay. Make sure you keep your --

14          A     I'm sorry.

15          Q     -- volume sustained.

16          A     I'm sorry.

17          Q     Turning to page 61, can you tell me who's in this  
18 photo?

19          A     Roslynn and Alan.

20          Q     And who took this photo?

21          A     I took this photo.

22          Q     And what are you doing? What were you doing at the  
23 time this photo was taken?

24          A     Visitations with Alan and Jazlynn 2015 or 2016.

1 Q Okay. And then how about page 80? So what is this?  
2 A This is Alan's birthday which I wasn't there. But  
3 that was in 2016.  
4 Q What birthday was that for him?  
5 A That was his birthday. And Rosie put it on Snapchat  
6 and I took a picture of him.  
7 Q Okay. So you weren't actually there to take this  
8 photo.  
9 A No, I wasn't there.  
10 Q And how do you know that Rosie took this photo?  
11 A Snapchat. You --  
12 Q Okay.  
13 A -- had it on Snapchat.  
14 Q Is it -- and in the top left can you tell me what  
15 that means? It says --  
16 A It's says copy lover. That's Coffee snap.  
17 Q That's Coffee snap?  
18 A I mean Coffee -- that's Snapchat. That's Rosie's  
19 Snapchat.  
20 Q Okay. So that's Rosie's Snapchat --  
21 A Yes.  
22 Q -- username? Okay.  
23 A Username.  
24 Q And so this photo itself was taken by Rosie on

1 Snapchat.

2 A Correct.

3 Q It was sent to you or was it shared to her story --

4 well, how was it shared --

5 A Shared --

6 Q -- to you?

7 A -- to her story.

8 Q Okay. And so this is a --

9 A I took it.

10 Q -- screenshot that you took from your phone?

11 A Yes.

12 Q Okay.

13 A Correct.

14 Q Okay. And -- and why did you take this screenshot?

15 A Because that's when I started seeing more and more

16 resemblance with Alan and Jazlynn which I questioned. I

17 wanted to question. I questioned Rosie about him too, but

18 constantly he was not my son.

19 Q Okay. Next is page 94. Who's -- who's in this

20 photo? When was it taken?

21 A That's my mom. And this was after I took the --

22 after we took the paternity as to Alan on June 2017.

23 Q So this was in 2017?

24 A Correct.



1 Q And did you take this photo?

2 A Yes, I took a photo of my mom and Alan.

3 Q And what are you guys doing in this photo?

4 A Toys"R"Us.

5 Q Where was --

6 A We visited Toys"R"Us because we were all excited.

7 Q Okay. Turning to page 96. What's going on in this

8 photo?

9 A The same -- same day, June -- June 7, 2 -- 2017.

10 And that was my little sister Lisa with my son Alan. And,

11 again, there was -- we were all excited and, you know,

12 spoiling him.

13 Q Is this a -- where is it --

14 A At Toys"R"Us.

15 Q This is still at Toys -- this was the same day that

16 you --

17 A The same day.

18 Q -- just talked about?

19 A Yes.

20 Q Okay. And then 97, the next page. What's going on

21 in this photo?

22 A June 30th, 2017. That's Roslynn and Alan together.

23 That's when Rosie and I and Alan and Ro -- and Roslynn went at

24 the Labcorp where I took a -- when I took the same lab DN --

1 paternity test with Ja -- Roslynn and we went to take it  
2 together.

3 Q Okay. So sorry to clarify. And did -- had you  
4 taken a paternity test to Alan on the same day or only --

5 A No. No. No. No.

6 Q -- Roslynn?

7 A Just Alan. Just Alan. I'm -- what I'm trying to  
8 say is that the same Labcorp, that's where I went this -- just  
9 with the same person to take a paternity test. But this was  
10 in 2017 and my daughters have taken it before legal custody --

11 Q Okay. --

12 A -- before --

13 Q So -- so sorry. In this photo --

14 A It's just Alan --

15 Q -- this is --

16 A -- now.

17 Q -- this is the day that you took a paternity as to  
18 Alan only.

19 A Yes.

20 Q Okay. Can you turn to page 124, please?

21 THE COURT: And Counsel, how old was Alan on the day  
22 of that paternity test?

23 THE WITNESS: He was five.

24 THE COURT: Okay.

1 THE WITNESS: He was turning six that -- that year.  
2 THE COURT: Okay.  
3 THE WITNESS: Five years old, sorry.  
4 Q Okay. And then going to page 124 --  
5 THE COURT: Why do I see that it was in 2020?  
6 THE WITNESS: That's the one --  
7 MS. LAUX: On page 97? What -- sorry, which page  
8 are you on, Judge?  
9 THE COURT: So your client just testified that he  
10 took Alan to a paternity test at Labcorp when he was five or  
11 six. Why does my paternity --  
12 MS. LAUX: Yeah.  
13 THE COURT: -- test say that it was done in 2020  
14 when Alan was older.  
15 MS. LAUX: There have been multiple paternity tests  
16 taken in this case. So --  
17 THE COURT: Okay.  
18 MS. LAUX: -- there were actually three. One was  
19 taken without anybody's knowledge by -- by Ignacio. The  
20 second was taken on the date we just discussed with Rosie  
21 there. And then on the third was the one that Your Honor has  
22 in -- in the Court's left side file.  
23 THE COURT: Okay. Thank you for that clarification,  
24 Counsel.

1 MS. LAUX: Yes.

2 Q Now on page 124, Ignacio, what's going on in this  
3 photo?

4 A We went to the Children's Place. Rosie was shopping  
5 for clothes for the kids. And this was in 2015.

6 Q So this was before you knew.

7 A Yeah.

8 Q Okay.

9 A And I was just taking photos because like the  
10 resemblance and all that and just -- I have -- maybe there's a  
11 possibility but just more pictures to see if he could be mine.

12 Q Okay. And you -- you've said for all these photos  
13 that Rosie was usually there with you?

14 A Yes.

15 Q Is that by your choice or hers or --

16 A Hers. We would always do things together sometimes.

17 Q Okay. So it wasn't like -- so I'm -- I'm just  
18 trying to figure out what kind of custody arrangement you had  
19 at that time. Was it just that you would call kind of hang  
20 out together --

21 A Yeah.

22 Q -- sometimes --

23 A Yeah.

24 Q -- alone, sometimes --

1           A     We had a good relationship. We had a -- a baby. We  
2 were fine.

3           Q     Okay. So -- but it was more like family visitation.  
4 It wasn't --

5           A     Yeah.

6           Q     -- like hey, come over at this time?

7           A     Yeah.

8           Q     Okay. I'd like you to turn to page 109 now, same  
9 exhibit. Sorry, we're going to be flipping around through  
10 these quite a bit.

11           MR. MEDLYN: Counsel, repeat the number.

12           MS. LAUX: 109.

13           MR. MEDLYN: Thank you.

14           MS. LAUX: Yeah.

15           THE COURT: And Counsel, could you expand on family  
16 visitation and not come over at this time? Because I need  
17 more than that.

18           MS. LAUX: Sure.

19           Q     Okay. So when you were seeing the children during  
20 these photos, what was the visitation schedule? Was there a  
21 former -- formal schedule that you followed to visit the kids?

22           A     Well, we were co-parenting, yeah, between just  
23 Jazlynn. That was throwing -- going through like the -- the  
24 legal process, but we were co-parenting fine.

1 Q With respect to Jazlynn only?

2 A With respect to Jazlynn only.

3 Q Okay.

4 A Because I -- there is sometimes where she brought

5 Alan because Alan didn't have school on Fridays because he was

6 a pre-K. The same thing as what my daughter is doing, you

7 know, when she started pre-K. Fridays they don't go to

8 school.

9 Q So how often -- was -- was your schedule set that

10 you would see Jazlynn every single Friday?

11 A Yeah. No, I would -- I would see her almost every

12 other day. We were -- until -- until court, that's when we

13 started talking about custody.

14 Q And what do you mean by until court? What year was

15 it that you stopped doing it?

16 A 2016.

17 Q Okay. But you were -- you were saying that in one

18 of these photos it was 2017 that you were together for the

19 test. So between 2016 and 2017 did you continue to sort of

20 hang out as a family or --

21 A Sometimes, no, I was getting more like -- because it

22 was because of Alan, the issue of Alan.

23 Q Okay. So after you raised that issue you didn't

24 visit with them --

1           A     No, it's not that.

2           Q     -- quite as casually?

3           A     It was -- it's not that. I was visiting. For some  
4 reason it was just like more a distant. She was distancing  
5 herself because I started asking more questions with my son.

6           Q     Okay. So let me finish my question --

7           A     I'm sorry.

8           Q     -- before you answer, okay? When were you hanging  
9 out together with Rosie and the children, between 2016 and  
10 2017 did that stop being so -- so casual? Did you start  
11 following the schedule? What happened after that or during  
12 that period?

13          A     No, we distanced. We -- we were just following the  
14 -- the order just every other weekend Tuesdays and Thursdays  
15 visitations for Jazlynn.

16          Q     Okay. And so when you had -- when we just looked at  
17 all of those photos, prior to the ones that were in 2017, the  
18 ones that were in 2016 and before. When you would see Alan,  
19 was it because you were having visits with him or just because  
20 he was there with Rosie for --

21          A     Well, there was --

22          Q     -- your visit with Jazlynn?

23          A     -- Rosie and visits as well.

24          Q     Remember to let me finish talking, okay?

1           A     I'm sorry.

2           Q     Okay. So was it because you were visiting with Alan  
3 or because he was there while you were visiting with Jazlynn  
4 and Rosie?

5           A     He was there while visiting Jazlynn as well.

6           MS. LAUX: Judge, does that satisfy some of them --

7           THE COURT: A bit. Could you bring us --

8           MS. LAUX: It's --

9           THE COURT: -- through today?

10          MS. LAUX: Yes. Yeah. We're -- we're going to get  
11 through quite a bit here.

12          THE COURT: Okay. I'm -- I'm very interested, you  
13 know, for obviously reasons and a real understanding as to the  
14 historical visitation --

15          MS. LAUX: Yes.

16          THE COURT: -- between the subject minor and  
17 Ignacio. It's --

18          MS. LAUX: Yes.

19          THE COURT: -- incredibly important that I have all  
20 of the testimony from Ignacio that is specific as possible.

21          MS. LAUX: Right.

22          THE COURT: So I -- I don't want to hear family  
23 visitation. Like I -- I really need specifics. So --

24          MS. LAUX: Okay.



1 THE COURT: -- okay.

2 MS. LAUX: So what we'll -- we're going to continue

3 on with these photos but we will get to that point, Judge.

4 THE COURT: Thank you. Thank you.

5 BY MS. LAUX:

6 Q Going to page 109, are you there?

7 A Yes. Correct.

8 Q What is -- what's this?

9 A That's a picture that I took of Alan 2015 -- or no,

10 2016. And Rosie had to go to the Cosmopolitan. She was

11 parked in the parking -- parking garage and I took care of

12 Jazlynn -- I mean, Roslynn and Alan.

13 Q Okay. So this is another situation where you were

14 visiting Jazlynn --

15 A And --

16 Q -- and Alan --

17 A And Alan.

18 Q -- with Rosie?

19 A With Rosie, yes.

20 Q And then what -- where was Rosie?

21 A She went to go pick up a schedule.

22 Q From -- from --

23 A From her job.

24 Q Okay.

1           A     I --  
2           Q     So -- so when -- where -- where is this taken?  
3     Where are we at in this photo?  
4           A     At Cosmopotol -- politan in -- in her vehicle, her  
5     GMC.  
6           Q     Okay. So this is just you. The -- you took this  
7     photo of Alan while --  
8           A     I took a photo.  
9           Q     -- Rosie was --  
10          A     Yes.  
11          Q     -- in the casino?  
12          A     Correct.  
13          Q     Okay. And so you took this?  
14          A     I took this picture, yes.  
15          Q     Can you turn to page 42, please? Are you there.  
16          A     Yeah.  
17          Q     Do you recognize these it looks like two different  
18     photos?  
19          A     Mini me. Uh-huh (affirmative). And that's --  
20     that's me when I was at --  
21          Q     What -- so refer to which one you're --  
22          A     That's --  
23          Q     -- talking about.  
24          A     That's Alan and that's a picture of I when I was at

1 age five.

2 Q Okay. So on the right is the photo that we just

3 saw, correct, of Alan --

4 A Correct.

5 Q -- in the car?

6 A In the car, yes.

7 Q And what's the one on the right -- or on the left,

8 I'm sorry?

9 A That's a picture of me when I was at, you know, five

10 -- five years old.

11 Q And where did you get that photo?

12 A From my mom.

13 Q Okay. Do you know -- do you remember who took the

14 photo on the left?

15 A That was my mom who took the picture of the -- and

16 she sent it to me.

17 Q Okay. And why are -- why are these photos -- give

18 me some context here. Why are these photos combined the way

19 they are in this photo?

20 A At that time I -- I wanted to see the resemblance.

21 I got questioned from my mom too, you know, regarding my son.

22 And I was asking the question still -- I wanted to make sure

23 that it, you know, he's not mine, but, you know. And also I

24 questioned Rosie during those times but --

1 Q Okay. So when did you combine these two photos?  
2 A During the year 2015 or 2016.  
3 Q Was it -- was it -- obviously it was after that  
4 photo that we just looked at of Alan. Was --  
5 A Yes.  
6 Q -- it the same day, the same month, the same year?  
7 A You know, that was the same day after everything  
8 because this just doesn't make sense to me sometimes.  
9 Q Okay. So -- so you went home --  
10 A And then I --  
11 Q -- and combined --  
12 A -- requested --  
13 Q -- these photos?  
14 A No, I requested my mom for a picture of me when I  
15 was at that age, four or five years old. And she asked me why  
16 and I just -- no, I just said just send it to me, please, you  
17 know.  
18 Q Okay.  
19 A That's when I got it.  
20 Q And did you send this combined image to anyone?  
21 A My oldest sister Pauline Arellano (ph). Right away  
22 she just told me you have another kid.  
23 Q So she just saw this photo. You didn't provide any  
24 context?

1 A No.

2 Q And she just said that looks --

3 A She --

4 Q -- like you?

5 A -- right away. Yeah.

6 Q Who -- did you send it to anyone else?

7 A Other than that, no.

8 Q Okay. We're still in Exhibit 5 here. I'm going to

9 ask you to look at several photos. For again, I just want you

10 to tell me what it is, who took it, and how you came to -- to

11 have it. Going to page 16, please. What's going on in this

12 photo?

13 A Rosie sent this to me by Snapchat.

14 Q And who is in it?

15 A Alan and Kikis (ph) --

16 Q Who is --

17 A -- Henry -- Henry, Jr.

18 Q Kikis is Henry, Jr.?

19 A Yeah, they -- that's what they call him, like a

20 nickname.

21 Q And how is Henry, Jr. Or Kikis related to Alan?

22 A Brothers.

23 Q Can you be more specific?

24 A Oh, I'm sorry.

1 Q It's Henry's son, correct?

2 A Henry's -- Henry's son, yeah.

3 Q Is it Rosie's son as well?

4 A Yes. Correct.

5 Q Okay. And this is again from it looks like that

6 same Coffee Lover. So is this a Snapchat from Rosie?

7 A It's her Snapchat, yes.

8 Q Did you take this screenshot?

9 A Yes.

10 Q Okay. Going to page 24, please. What's going on

11 here?

12 A That's a picture of Alan and that's Rosie's

13 Snapchat, Coffee Lover. And that's just preschool through the

14 snap --

15 Q So you took --

16 A -- but I took -- I -- I took a screenshot of it.

17 Q Okay. Why -- why did you take the screenshot?

18 A Because I just wanted more pictures to see if maybe

19 he's mine.

20 Q Okay. The next page, 25, please. Can you tell me

21 who is in this photo?

22 A Rosie and Alan.

23 Q And this is again a Snapchat screenshot?

24 A Snapchat screenshot, yes.

1 Q Okay. page 31. And who is in this photo?  
2 A Alan and that's Rosie's Snapchat as well.  
3 THE COURT: And Counsel --  
4 Q And your took a screenshot of this?  
5 A I took a --  
6 THE COURT: -- a bit --  
7 A -- screenshot.  
8 THE COURT: -- of this testimony Counsel is  
9 cumulative. So I'm -- I'm wondering if you have a -- a  
10 different point.  
11 MS. LAUX: Understood. Sure.  
12 Q So when you -- when you started taking screenshots  
13 of these photos from her Snapchat, was -- you said that these  
14 weren't photos sent directly to you, correct? They were on  
15 their story?  
16 A Some of them -- some of them she would just send  
17 them to me.  
18 Q Okay. And was -- these were prior to your learning  
19 your paternity --  
20 A Yeah.  
21 Q -- of him? So why would she be sending you photos  
22 of Alan?  
23 A Just to see what she's doing and when I would ask  
24 that question as well, when I would answer -- I mean, when I

1 would ask to see if he's my son.

2 Q Okay. What -- what happened -- so Rosie gets  
3 notified by Snapchat when you take screenshots, is that right?  
4 That's my understanding of that.

5 A She gets -- at that time you couldn't save messages  
6 but that's how we were -- exchanged messages as well.

7 Q Okay. And did she ever mentioned the screenshots to  
8 you?

9 A Yes.

10 Q What did she say?

11 A A lot of times. Why are you taking screenshots.

12 Q And what did you tell her?

13 A I just said that it was an accident.

14 Q Okay. You never told her why you were taking  
15 photos, taking screenshots?

16 A I did, but then sometimes it would be an argument.

17 Q Okay. Be more specific. What did --

18 A Argument --

19 Q -- you tell her?

20 A -- towards like --

21 Q No, hold on.

22 A I'm sorry.

23 Q What -- when -- when I ask you -- you said that she  
24 mentioned the screenshots and you told you it was an accident.



1 What else did you tell her? You said that you sometimes would  
2 bring it up. What do you mean by that, bring what up?  
3 A Bring up the fact that it -- what if -- what if he's  
4 mine.  
5 Q Okay. And then what was her response when -- when  
6 you said that?  
7 A He's not yours, I would have told you.  
8 Q She said he's not yours, I would have told you?  
9 A Yes.  
10 Q Okay. Were you -- did at some point you -- were  
11 you -- at some point no longer able to see these screen --  
12 these Snapchats?  
13 A Yeah, she removed me from Snapchat.  
14 Q She removed you. Does that mean you can't --  
15 A Like -- like block me pretty much.  
16 Q And when was that?  
17 A 2016, around there.  
18 Q Do you remember beginning --  
19 A I don't know --  
20 Q -- end --  
21 A I don't know the -- the beginning or end --  
22 Q Okay.  
23 A -- but I know that to be --  
24 Q So you said that once you began to see a resemblance

1 between you and Alan you mentioned this to Rosie and Henry --  
2 I'm sorry --  
3 A Correct.  
4 Q -- to Rosie? Did you mention it --  
5 A I also --  
6 Q -- to Henry?  
7 A -- also -- did -- I also mentioned it to Henry. We  
8 exchanged text messages during 2016 and 2017.  
9 Q Okay. So I'd like for you to go to Exhibit 6. It's  
10 right here. There's a tab right here.  
11 A Oh.  
12 Q Without reading them in detail, can you just flip  
13 through them and tell me what these are?  
14 A These are text messages from Henry and I in 2016  
15 from a text free app. I have my iPhone 6 Plus and we  
16 exchanged numbers. And I started -- we started texting.  
17 And --  
18 Q What --  
19 A I'm sorry.  
20 Q Sorry, the 470 number, who is that?  
21 A That's Henry Oliva's.  
22 Q Okay. Why did you guys exchange numbers?  
23 A Because that's when I started questioning more about  
24 my son Alan.

1 Q So you said hey, can I have your phone number or how  
2 did that conversation happen?

3 A We -- we met up because Rosie was working. And in  
4 order for me to get those answers I had to confront him.

5 Q And what do you mean by those answers?

6 A Confront him. I mean, like the only to -- to know  
7 about my son is to ask some questions the right way. And we  
8 met up and Rosie sent Henry to go pick up Roslynn. And we  
9 went and I started asking him questions and we exchanged  
10 numbers. And ever since then we started texting until 2017.

11 Q Okay. So you -- you exchanged numbers at -- when  
12 you were exchanging --

13 A I --

14 Q -- custody of -- let me finish my question. When  
15 you exchanged numbers when you were doing an exchange of  
16 Roslynn -- or Jazlynn?

17 A Just that day.

18 Q Okay. So -- so Rosie sent you -- sent Henry with  
19 Roslynn to do an exchange for you to visit with Jazlynn.

20 A Uh-huh (affirmative).

21 Q And you exchanged -- you said I have questions, I  
22 want your phone number.

23 A Yeah.

24 Q Is that right?

1           A     No, I asked him personally -- like when -- when he  
2 went to go pick up my daughter --  
3           Q     From you?  
4           A     From me, that's when I started asking him about  
5 Alan.  
6           Q     And what did you say?  
7           A     I asked him like I wanted to talk to you and I  
8 wanted to know about Alan. And he said what do you -- like  
9 you should know. She -- she knows. You should ask her. That  
10 was our little argument. But I didn't want to start an  
11 argument because my daughter was there. We started talking  
12 and Henry seems very frustrated because he knew about it and  
13 he even told me too that he knew about --  
14          Q     So you -- stay focused on --  
15          A     Okay.  
16          Q     -- this conversation.  
17          A     Okay.  
18          Q     So -- so --  
19          A     Okay.  
20          Q     -- he -- so how did you get his phone number?  
21          A     He gave it to me by right there in person.  
22          Q     So he was getting frustrated and he said let's talk  
23 about this later or --  
24          A     Well, yeah, because my daughter was kind of fussy.

1 So he just said text me, here's my number.  
2 Q Okay.  
3 A And then ever since then we just started texting.  
4 Q Okay. And then these messages on -- and the lighter  
5 colored bub -- bubbles on the left, who is -- who is writing  
6 in those?  
7 A On the left side, it's Henry.  
8 Q And who is on the darker bubbles on the right?  
9 A That is I.  
10 Q Okay. Are these -- flipping through these --  
11 A Okay.  
12 Q -- are these accurate depictions of the text  
13 messages that you exchanged --  
14 A Yes.  
15 Q -- with Henry?  
16 A Yes.  
17 MS. LAUX: Okay. I'd like to move to admit these  
18 text messages, please.  
19 THE COURT: Any objection, Counsel?  
20 MR. MEDLYN: Only like I said that they're a little  
21 bit out of order and selective, but they can go in.  
22 THE COURT: Okay. Noting the objection, it will be  
23 admitted. So all of Exhibit 6 is now admitted.  
24 (PLAINTIFF'S EXHIBIT 6 ADMITTED)

1 THE COURT: And they're text messages --  
2 MS. LAUX: Okay.  
3 THE COURT: -- between the parties. So it's fair.  
4 MS. LAUX: Okay. Thank you.  
5 BY MS. LAUX:  
6 Q Now beginning on page 157, Ignacio, can you tell me  
7 what date this conversation started?  
8 A On what date, 2016 -- 4/19/2016.  
9 Q May 19, 20 --  
10 A May --  
11 Q -- 16?  
12 A I mean, no, April -- April 2016.  
13 Q Okay. In the first message on the right, aft -- so  
14 I'm looking at the one halfway down the page where -- at 1:33  
15 p.m. on April 29th after you said yo.  
16 A Uh-huh (affirmative).  
17 Q What was the next message from you to Henry?  
18 A My message was about the DNA --  
19 Q Just --  
20 A I'm sorry.  
21 Q I would like for you to read it.  
22 A Question, have you taken a DNA from Alan.  
23 Q And what is Alan -- what are -- I'm sorry, what is  
24 Henry's response?

1           A     Yeah, why?

2           Q     Okay. Why did you ask him that?

3           A     Because I just wanted to know to see if he's my son.

4           Q     Okay. Do you know how old Alan was at this time?

5           A     2016. Yeah, he was five years old. No, I'm sorry.

6     He was four years old.

7           Q     Okay. And -- and so Henry said yeah, why?

8           A     Yes.

9           Q     Okay. Can you turn the next page? I'd like for you

10   to continue reading this page telling me before you read who

11   is saying what. So on the top right, who is speaking and --

12   and what is your saying?

13          A     That is the -- the far right is me asking is he

14   mine, be honest, because I asked her which is Rosie if she has

15   doubts that he could be mine and she said she didn't know

16   that, you took -- that you took a DNA which means when I refer

17   you, that means Henry took a DNA of all three of them.

18          Q     So in this message, are you saying that Rosie didn't

19   know that he took a DNA or that she --

20          A     No. --

21          Q     -- didn't know --

22          A     -- that she -- that she did know and that she --

23   that Henry took DNA of all three kids.

24          Q     Okay. And then continue on. Just read those

1 messages.

2 A And Henry's response was no, when she tell you this.

3 Q So he's saying -- he said no in response to your

4 question is he mine, is that --

5 A Yeah.

6 Q -- your understanding?

7 A Yes, he --

8 Q Okay.

9 A -- said no.

10 Q And then what did you say after that?

11 A Today when I picked up the baby and I meant no,

12 what. And then he -- his response was -- Henry's response was

13 oh, what did you tell her. I told her I'm going to do --

14 Q So this is you talking, right?

15 A This is my talking. I told her I'm going to do a

16 DNA of Alan this week. She -- she said can you just wait a

17 little. I said for what. Because she is stressed out. And

18 the next message is I asked Henry when did you take it. Can

19 you talk on the phone. Call me.

20 Q Okay. And then flip to the next page. 159. Is

21 that this --

22 MR. MEDLYN: Objection, the document speaks for

23 itself.

24 THE COURT: This is very important --



1 MR. MEDLYN: We're just going to read --

2 THE COURT: -- testimony. Overruled. Please  
3 proceed and --

4 MR. MEDLYN: Okay.

5 THE COURT: -- ask your next question.

6 BY MS. LAUX:

7 Q Okay. So -- so on the right you asked him to call  
8 me. Is this the same day? This is the same day from the last  
9 page we just looked at?

10 A Yes. Correct.

11 Q What does it say on the left? What is --

12 A Henry's response is not right now. Why is she  
13 stressed out. Stressed out -- Henry, again, stressed out  
14 about what. And then I asked him at 2:34 p.m. do you have a  
15 copy of the DNA of Alan when you took it. I'm sure you have a  
16 copy on your email. Henry -- he responds I will have to  
17 research. My response -- I mean, my question, I have to see  
18 it to believe and if it's legit, I'll leave this alone. Henry  
19 -- Henry's response, did -- did she say what is she stressed  
20 out about. And -- and then my text -- she said a lot of stuff  
21 that's all but, you know -- you know, we don't even know if  
22 she's telling the truth.

23 Q Okay. And then it looks like maybe Henry responded  
24 but it's cut off. So going to the next page, 160. Stay on

1 that page, 160. And I'm not sure exactly. Is this -- is this  
2 text message the same day? So looking at the bottom of 1 --  
3 159, it says that this message is at 4:29 p.m.

4 A Uh-huh (affirmative).

5 Q And then the next message here is --

6 A 4:36.

7 Q -- 4:36.

8 A Yeah.

9 Q Is this the same day?

10 A Yeah.

11 THE COURT: I don't know what page you're on,  
12 Counsel.

13 MS. LAUX: We're on 160 now, Judge.

14 THE COURT: Okay. About Ysenia (ph). Okay.

15 MS. LAUX: Yes.

16 THE COURT: Who is Ysenia?

17 THE WITNESS: Ysenia is her friend and she's a good  
18 friend of Rosie's.

19 THE COURT: Okay.

20 Q Okay. And then so -- so is it your -- I mean, is he  
21 just changing the subject or what happened to your  
22 conversation at this point?

23 A Yeah, he chan -- he kept on changing the subject  
24 about Ysenia and he -- sorry, I'm going to turn the page real

1 quick because I know. When I asked -- when I kept on asking  
2 him about the DNA, he kept on changing the subject too.

3 Q Okay. Can you turn to page 161? Can you read the  
4 messages that you sent on the night at 6:04 and 6:05 p.m.?

5 A Because when I mentioned Alan again, I told her  
6 look, I take it now and if he's mine, we can sit down and talk  
7 about it and you would be included and work it out of court.  
8 And she said wait a little. And I said why. If I wait, same  
9 thing is going to happen with Jaquie (ph). That's how they  
10 call. That's how Rosie and Henry call Roslynn as a nickname,  
11 Jaquie. And if not, we would go to court again and -- and she  
12 didn't want Kikis to be alone, which Kikis is Henry, Jr. And  
13 if I want to take a DNA, go ahead but I don't know how you --  
14 how you are if you won't seem -- if you will see him. So that  
15 upset me and she just said I don't want to talk about this and  
16 she closed the door when I would discuss that with Alan about  
17 Alan.

18 Q Okay. Can you turn to page 163? Can you read the  
19 first four messages on that page?

20 A This was Henry's at 11:14 a.m.

21 Q So this was on a different day, correct?

22 A This was on a different day. 5/21/2016.

23 Q Okay.

24 A I haven't looked at -- it will take a couple of days

1 and we're discussing about the --  
2 Q Okay.  
3 A -- (indiscernible - simultaneous speech). I'm  
4 sorry.  
5 Q Go -- go -- I'm sorry. I think I skipped a page.  
6 Go back to page 162.  
7 A Here.  
8 Q Okay.  
9 A This --  
10 Q This looks like maybe a different day, correct?  
11 A Yeah.  
12 Q Okay. Because it starts down here.  
13 A Uh-huh (affirmative).  
14 Q Okay. So what are the first four messages again?  
15 A I haven't looked. It will take a couple of days.  
16 When did you do it. That's my response.  
17 Q And what --  
18 A I mean, that was my --  
19 Q -- what are you asking him?  
20 A I was asking him about the DNA again.  
21 Q So you're saying when did you take the --  
22 A When did --  
23 Q -- DNA test?  
24 A Yes, when did you take the DNA and -- and then I

1 asked him are you at work. And then he -- his response was  
2 awhile back. Ya, zip, but then I think that was a misspell or  
3 a mis -- misspell correction.

4 Q So he -- so when you asked him when he took the DNA  
5 test, he said awhile back?

6 A Awhile back.

7 Q Okay. On the same page near the bottom, it looks  
8 like Henry texted you again on May 21, 2016. What did he say?

9 A What's up and -- what's up. Are you sleeping.

10 Q Okay. On the next page. Is this the same time?

11 A The same time, yeah. No, got off work. Oh, okay.

12 Q So -- so tell me who's saying what.

13 A Where am I?

14 Q You can continue, but --

15 A Okay. You -- okay. So my text messages was yo, no,  
16 got off work. Oh, and then his response was oh, okay, thought  
17 you were off Saturday when I don't have -- and my response was  
18 when I don't have my daughter, I can work. And then I asked  
19 Henry did you find the results and his --

20 Q What are you -- what are you talking about when you  
21 say --

22 A The -- the results, I meant by the DNA --

23 Q Okay.

24 A -- of Alan.

1 Q And then what's his response?

2 A No, man. I have a -- I have an idea where to check.

3 So I think this week. Have you talked to Rosie lately. And

4 then my response was dude, if you have the results, all you

5 have to do is show it to me. And you should have a copy as

6 well. And then his response was I put it away electronically.

7 That's where I'm getting stuck.

8 Q And then what is your response?

9 A LOL, laugh out loud. No, man, when I did it which I

10 -- regarding to -- to Jazlynn -- I mean, to Roslynn, my

11 daughter, it was an email that I was sent when I got the

12 results. And I sent him as well. But that was just an

13 example of -- of like I got it right away. There's no

14 reasoning as to why hide it.

15 Q Okay. So in this message, you said -- can you read

16 it again, your last message?

17 A Nah, man. When I did it, I had an email paperwork.

18 Q So you're saying it doesn't make sense that you

19 filed --

20 A Yeah.

21 Q -- it away somewhere because I --

22 A Right.

23 Q -- had an email and paperwork --

24 A Correct.

1 Q -- when I got -- when -- and you're talking about  
2 when you did it as far as a DNA test to Jazlynn.  
3 A To Jazlynn, yeah, but --  
4 Q Okay.  
5 A -- that -- that's just an example of like how I -- I  
6 didn't get no stuff. I didn't make nothing up or hiding it.  
7 Q Okay. So it looks like Henry's message -- there's  
8 -- there's a grey bubble at the bottom left that maybe looks  
9 like it got cut off. Do you remember what his response was  
10 when you said that?  
11 THE COURT: And Counsel, are you on 164?  
12 MS. LAUX: That's correct, Judge.  
13 THE COURT: Is the date of 164 May 21, 2016?  
14 Q Can you flip to 163?  
15 A I'm sorry. Correct.  
16 MS. LAUX: Yes, that's correct.  
17 THE COURT: Okay. There is, you know, a hello --  
18 MS. LAUX: Yes.  
19 THE COURT: -- and are you sleeping. So I'm just  
20 not a hundred percent. So okay. Thank you.  
21 MS. LAUX: Yeah, it looks like -- and that's why I  
22 was asking him if this is the same day because he texted -- it  
23 looks like Henry texted at 1:00 p.m. you sleeping and then at  
24 3:00 something on the top left on 164 hello again.

1 THE COURT: Okay.

2 Q So is this the same day?

3 A Correct.

4 THE COURT: And just so you know, you have about 34

5 minutes until 12:00 o'clock.

6 MS. LAUX: Okay. Thank you, Judge.

7 THE COURT: We're going to --

8 MS. LAUX: Okay. Now --

9 THE COURT: -- take a lunch break for the staff

10 around that time.

11 MS. LAUX: Okay.

12 THE COURT: But we can go a little fast --

13 MS. LAUX: Of course.

14 THE COURT: -- if you need to.

15 MS. LAUX: Okay.

16 BY MS. LAUX:

17 Q Now some of these messages are out of order. So

18 skipping to page 170, please. Yes.

19 A Okay.

20 Q What date are these messages?

21 A 12/5/2016.

22 Q And what did you ask Henry on the top right? Let me

23 finish my question. What did you ask Henry on the top right

24 on December 5?



1           A     At 1:17 p.m. I asked him just saw the DNA but where  
2 is the rest of the DNA. And he showed me --

3           Q     And what -- what are you referring to?

4           A     I was -- I know that when I -- when I took the DNA  
5 of -- for Roslynn there was like -- they -- the -- I think  
6 it's Alfredo, the Labcorp guy. He told me that there's  
7 certain boxes when you take a DNA. There has to be like 13 to  
8 26 to make it seem like it's a real DNA results from a  
9 Labcorp.

10          Q     So you're saying that the Labcorp reports have 15 to  
11 26 boxes --

12          A     Something like that. Yes.

13          Q     -- that -- and that's what --

14          A     Correct.

15          Q     -- a real test looks like?

16          A     Yes. Correct.

17          Q     Okay. I think I -- no, this is fine. So -- so he  
18 had already sent you a screenshot by this time?

19          A     Yes. At that time I told him --

20          Q     Okay.

21          A     -- 5/26. Correct.

22          Q     Okay. And what is -- what is his response at 121?

23          A     That was -- well, that's the -- that's the second  
24 one, the second shot that he took. I think the first one is

1 on page 1 -- no.

2 Q Yeah, they're out of order. So just --

3 A Yeah.

4 Q So don't -- no, no, no.

5 A Okay. Okay.

6 Q So stay focused. So you -- so you're saying that

7 this was a second screenshot. He had sent --

8 A Second --

9 Q -- you another one earlier.

10 A -- screenshot, yeah.

11 Q Okay. Now what -- what is your response to that

12 photo?

13 A What I meant on -- I mean, on that photo I looked at

14 the names. This is Genex Diagnostics. But I still -- it

15 seems like somebody made it up as well. So to avoid -- you

16 know, to -- to move forward from this, I said you know what,

17 how about what I mean on this text at 1:23 p.m., I mean, how

18 about you and I go take a DNA and take it again. And I don't

19 mind paying for it.

20 Q And what was Henry's response?

21 A I don't know. 17 -- at 7:16 p.m.

22 Q Okay. And this was December 2016. The -- when's

23 the next text message from him?

24 A This is -- this is -- this -- oh, on -- okay. Ever

1 since then --

2 Q So an -- answer the question I'm asking you. So you

3 -- you have these text messages exchanged on December 5th,

4 2016. When is the next time that he texted you?

5 A May 2nd, 2017.

6 Q Okay. Did he ever agree to go with you to get a

7 test --

8 A No.

9 Q -- when you asked him? Did he ever say why?

10 A No.

11 Q And other than that photograph, and I believe there

12 is one more, again, the texts are out of order, but other than

13 this photo and the other photo that you said that he sent you,

14 did he ever provide you with a paper copy or even a PDF of the

15 document?

16 A No.

17 Q Did he forward the email to you?

18 A No.

19 Q Okay. After he sent that photo -- oh, you said that

20 he never agreed to go with you to get --

21 A No.

22 Q Did he say why not?

23 A No, he just said I don't know. That's -- that's the

24 last time I --

1 Q Okay. Can you turn to Exhibit 1, please?

2 THE COURT: And that one is not admitted, so I can't

3 look at it.

4 Q And --

5 A I'm sorry?

6 Q Sorry, my -- all of the text messages are admitted.

7 Okay. On Exhibit 1, can you tell me what this is?

8 A That's the first page of the DNA that Henry sent me

9 the screenshot from December 2016.

10 Q And this is different from the --

11 A That -- that's the --

12 Q -- one that we just looked at --

13 A This is a --

14 Q -- but --

15 A Yeah, that's -- this is a first page and that's when

16 I asked the second text was about. Like where's the rest of

17 it. Because this doesn't seem real to me.

18 Q Where did you get this photo?

19 A On the same -- the -- this -- this photo --

20 Q Yeah.

21 A -- was a screenshot that I took from my photo but

22 that Henry sent me.

23 Q Okay. So this photo -- I see that there is sort of

24 a dialogue box as --

1           A     Right.

2           Q     -- far as the X and the share symbol.

3           A     Uh-huh (affirmative).

4           Q     This photo, did you take it of a computer screen or  
5 was it --

6           A     No.

7           Q     -- sent to you --

8           A     No.

9           Q     -- that way?

10          A     No. No, that was sent to me that way.

11          Q     So when you received that photo on your phone, it --

12          A     Correct.

13          Q     -- had all those lines showing that it was from a  
14 computer screen?

15          A     Correct.

16          Q     Okay. And does this look like an accurate depiction  
17 of the --

18          A     No.

19          Q     -- photo -- let me finish --

20          A     I'm sorry.

21          Q     -- my question. Does this look like an accurate  
22 depiction of the photo that Henry sent to you?

23          A     No.

24          Q     It doesn't? It looks --

1 A It doesn't look --  
2 Q -- different from --  
3 A -- look that --  
4 Q -- what he sent you?  
5 A No. No. No. This is what he sent me.  
6 Q Okay. That's my question.  
7 MS. LAUX: I'd --  
8 A Sorry.  
9 MS. LAUX: -- like to move to admit this exhibit,  
10 please.  
11 THE COURT: Any objection?  
12 MR. MEDLYN: For the purpose they presented, no.  
13 THE COURT: Okay. So admitted.  
14 (PLAINTIFF'S EXHIBIT 1 ADMITTED)  
15 MS. LAUX: Thank you.  
16 BY MS. LAUX:  
17 Q What was your initial thought when you received  
18 these -- this image or screenshot from Henry?  
19 A When I looked at it, I just -- I saw a lot of red  
20 flags. I didn't see the last name of -- of Henry. And then  
21 -- and then there was the fact that they were not aligned  
22 together and --  
23 Q What does that mean, they're not aligned?  
24 A Aligned, like usually like what -- my paperwork, it

1 was all straight like from my name to my daughter's name. And  
2 it had the date too. And it had from a Labcorp. There's a  
3 lot of things that they didn't make sense. So that put me in  
4 a situation where I didn't believe that it seems like somebody  
5 made it up.

6 Q So when you said that you were comparing it to a DNA  
7 test that you had --

8 A Yes.

9 Q -- taken, can you remind me when -- when you have  
10 had that test taken?

11 A Which --

12 Q The DNA test as to Jazlynn.

13 A Jazlynn, 20 -- 2014.

14 Q Okay.

15 A I don't know the exact date, but I --

16 Q Okay.

17 A -- I didn't have --

18 Q That's fine.

19 A -- them.

20 Q But you had seen the --

21 A Yes.

22 Q -- results from that --

23 A Yeah.

24 Q -- and --

1           A     Correct.

2           Q     -- that's what you're comparing this to?

3           A     Correct.

4           Q     Okay. Before you ever texted Henry about the

5 paternity test for Alan, had you ever asked Rosie directly

6 whether Alan was your son?

7           A     Oh, yes. Correct.

8           Q     And when -- when was the first time that you asked

9 her?

10          A     I asked her in 2011 when she -- when she was

11 pregnant. 2011 she called me at -- from her work Skybox. And

12 she wanted to talk to me. And -- and we talked. We met up.

13 She worked in the evenings. And she told me that she didn't

14 know who the kid was.

15          Q     She told you when she was pregnant that --

16          A     From Alan --

17          Q     -- that she didn't know who was -- who was Alan's

18 father?

19          A     Yeah.

20          Q     Okay. Did you believe her?

21          A     She said she didn't know at that time. So, I mean,

22 I -- I -- didn't know like -- like I just stood there the

23 whole time too.

24          Q     Okay. And did you ask her to take a paternity test



1 at that time?

2 A Correct. After Alan was born I did ask and she said

3 no, it's a hundred percent no, that it's her roommate's,

4 Henry's.

5 Q She -- so -- so before when she was pregnant, she

6 said she didn't know who Alan's father was.

7 A Correct.

8 Q Then Alan was born and you said I'd like a paternity

9 test.

10 A Yes.

11 Q How long after he was born did you ask for that?

12 A Right away as soon as like a week or too we met up

13 again and I talked to her. And she says no, don't worry about

14 it. I am already a mom. I already know he's not yours. He's

15 my roommates. So you need to move on. So we just went --

16 Q And --

17 A -- our separate ways.

18 Q Okay. When you -- when you say it's my roommate's,

19 who are you talking about?

20 A I'm -- I'm referring to that's what she always

21 mentioned Henry as a roommate.

22 Q So she always called Henry her roommate?

23 A Her roommate, yes.

24 Q Okay.

1 MS. LAUX: Your Honor, what time were you planning  
2 to break at noon exactly?  
3 THE COURT: About noon, but if you want to change it  
4 up, I'm -- I'm down. What would you like to do?  
5 MS. LAUX: That's okay. I'm still -- I've got -- I  
6 think I'm -- I'm close to finishing. So I'll try to get  
7 through this.  
8 THE COURT: Okay.  
9 Q So Ignacio, please turn to Exhibit 7. And this is  
10 another sort of long bunch of things, but what are these?  
11 A These are text messages from Rosie and I from March  
12 12, 2017.  
13 Q Okay. And who is writing in the green bubbles on  
14 the right?  
15 A That's -- that's me.  
16 Q Okay. And who is writing in the grey bubbles on the  
17 left?  
18 A Rosie.  
19 Q Are these accurate representations of the text  
20 conversation that you had with Rosie in March 2017?  
21 A Correct.  
22 MS. LAUX: Okay. I'd like to move to admit these  
23 texts, please.  
24 THE COURT: Any objection, Counsel?

1 MR. MEDLYN: Only the same --  
2 THE COURT: I --  
3 MR. MEDLYN: -- as Number 6.  
4 THE COURT: And your objection --  
5 MR. MEDLYN: Sorry.  
6 THE COURT: -- is what? Go ahead and state it --  
7 MR. MEDLYN: Complete --  
8 THE COURT: -- verbally.  
9 MR. MEDLYN: Completeness. They're a little  
10 collective. They're a little out of order.  
11 THE COURT: Okay. Noting that objection, the Court  
12 will direct Counsel to just go around any of those problems.  
13 And Exhibit 7 will be admitted as a communication between the  
14 parties. Thank you.  
15 (PLAINTIFF'S EXHIBIT 7 ADMITTED)  
16 MS. LAUX: Thank you.  
17 BY MS. LAUX:  
18 Q Okay. So looking at these text messages, on the  
19 first page there, it's hard to tell because --  
20 A 176?  
21 Q -- the image -- yeah. But it's 176 at the bottom.  
22 It looks like that's a photo that was sent by you?  
23 A I sent it to Rosie regarding Alan.  
24 Q What is that?

1           A     That is my DNA results from Labcorp from -- that's  
2 the first time that I took it with my son.

3           Q     And it's very small, but in the photo underneath the  
4 signature on the left hand side, what does that say? What's  
5 the date that that signature is?

6           A     The date is 1/27/2017 -- oh, no, I'm sorry. January  
7 26th, 2017.

8           Q     Okay. And then --

9           A     That signature is from a Labcorp -- the chief  
10 scientific officer.

11          Q     Okay. So Labcorp is where you had this DNA test  
12 completed?

13          A     Correct.

14          Q     And who sent this to you?

15          A     No, I sent it to Rosie.

16          Q     But where did you --

17          A     Oh, okay.

18          Q     -- where did you get it?

19          A     From -- from -- I went to go pick it up from the  
20 Labcorp and I also received an email of a copy as well.

21          Q     And what is this? Is this the letter that you  
22 received that you picked up physically --

23          A     Yes.

24          Q     -- or is this --

1 A Correct.

2 Q -- the email that you received?

3 A That's a -- that's a copy.

4 Q Of the email or of the letter?

5 A Of the --

6 Q Of the --

7 A Of the --

8 Q -- physical or the --

9 A Of the letter.

10 Q -- email that you got?

11 A Of the letter. It -- it's -- it's the same thing,

12 email and the -- and the paperwork. It's the same -- the --

13 the same paperwork.

14 Q Okay.

15 A So --

16 Q I'm just mentioning because --

17 A Yeah, I'm sorry.

18 Q -- it doesn't look like a letter that you would take

19 a photo of. It --

20 A Oh, no, no, no.

21 Q -- looks like a screenshot, is that accurate?

22 A Yes. Yeah. Yeah.

23 Q And maybe up here, do -- is this a Gmail symbol.

24 I'm not trying to lead you, but I'm -- I'm ask -- I'm trying

1 to figure out what this is. Is this from your email or from a  
2 letter?  
3 A Yeah, no, it should be from the email --  
4 Q Okay.  
5 A -- then. Yeah.  
6 Q And when did you have this test done by?  
7 A It -- it should be January 10, 2017.  
8 Q January --  
9 THE COURT: And then --  
10 Q -- 10?  
11 THE COURT: -- Counsel, the --  
12 A Oh, no.  
13 THE COURT: -- the Court --  
14 A January --  
15 THE COURT: -- has a --  
16 A -- 20 --  
17 THE COURT: -- the Court has a question. Was  
18 this --  
19 MS. LAUX: Okay.  
20 THE COURT: -- Alan and Ignacio's first paternity  
21 test or was the first paternity 2'17 when Alan was a little  
22 younger?  
23 THE WITNESS: No, that -- that was my actual first  
24 one, Your Honor.

1 THE COURT: Okay. Okay. I know that --  
2 MS. LAUX: The --  
3 THE COURT: -- Counsel mentioned --  
4 MS. LAUX: The -- the one that we're looking at --  
5 THE COURT: -- there were --  
6 MS. LAUX: -- right --  
7 THE COURT: -- three. So I just wanted to check.  
8 Thank you.  
9 MS. LAUX: Yes. Correct. Yeah, this one is the one  
10 that I was referencing that he took without Rosie's knowledge.  
11 THE COURT: Okay.  
12 Q So I'm going to ask you to kind of give me some  
13 background on this. You said that you took this test in  
14 January 2017?  
15 A Correct.  
16 Q What were the circumstances of that test? When --  
17 when -- I mean, what -- did Rosie go with you? How did you --  
18 A No, this one I -- I took it in McDonald's and it was  
19 during -- it was during the time that Alan didn't go to school  
20 and we met up. And that -- and I believe that that was in the  
21 time that Rosie went to -- she -- no, that time she was  
22 ordering. And Alan needed to go to the restroom. And that's  
23 when I did the -- the swab test by myself. And it takes --  
24 I'm sorry, go ahead.

1 Q What -- so you did the swab test in the restroom.  
2 Did you just swab his mouth?  
3 A Swab, yes.  
4 Q And what did -- what did you tell him? That must  
5 have been sort of alarming to him.  
6 A I just said that -- he wasn't scared. He was okay  
7 with it. I -- I just told him that it's not going to hurt,  
8 that I just want to do it because I -- he -- he has something  
9 and -- and I want to just do -- I just wanted -- I wanted to  
10 see something and that's when I just forced it.  
11 Q Okay. So you didn't say --  
12 A I -- I --  
13 Q -- I'm -- I'm doing this because I need to figure  
14 out who your father is?  
15 A No, I didn't say that.  
16 Q Okay.  
17 A Like I said --  
18 Q Did you say anything to him --  
19 A I never --  
20 Q -- about it that --  
21 A No.  
22 Q -- day or -- okay.  
23 A Unh-unh (negative).  
24 Q Turning to page 177, so you -- you sent -- it looks



1 like the photo is cut off. But this is the same day, correct,  
2 of these messages --

3 A Correct.

4 Q -- is from the last one you sent? So you sent  
5 that --

6 A Yes.

7 Q -- photo and then --

8 A Yes.

9 Q Okay.

10 A Yes.

11 Q So here -- so what -- what are you saying in this  
12 message in the green?

13 A At 3:29 p.m., I message her here it is, so I can  
14 take a -- so you can pretty -- I mean, so you can take a good  
15 look at it, because, one, your roommate showed me was not  
16 real.

17 Q And what is -- what did she say?

18 A Oh, yeah, and what -- what proves me this is real if  
19 -- if I never let you do it unless you did it behind my back,  
20 but I don't think you would be that bad to do that still.  
21 Still doesn't prove anything, only the kind of person that you  
22 are. But anyways, I'm going to have my RM, meant for  
23 roommate, a short term, take another one in front of me  
24 because I'm tired of this and I'll let you know, don't worry.

1 Q And then what did you respond?

2 A I laughed at it. And I did tell him -- I -- I did

3 tell him. I told him let's take one. Let's go to the lab.

4 And --

5 Q And then go to the next page on -- on 78 -- 178.

6 What's -- what do you say? Continue.

7 A He said he didn't know.

8 Q And when you say he, who are you talking about?

9 A Henry.

10 Q Okay.

11 A He said he didn't know why -- he didn't know why

12 because he -- he knows too it's not his. So my -- I mean, my

13 -- my text message is all why don't we all go to a lab. I

14 already did -- I already did it twice -- no, I already --

15 Q So the -- maybe a typo or something?

16 A Yeah, a mis -- typo here twice. The same one I took

17 with Jazlynn. Why would I -- why would I like even -- oh,

18 that -- that's a mis -- misspell too. It -- it -- and what I

19 meant of that text is like why would I lie to you or him if

20 you guys don't know -- know about it anyways. Why are you

21 even acting like if he's not mine and you already know. I

22 told you before let me -- let's -- let me take one and you

23 said no because you and he probably knows he's mine. I'm not

24 trying to cause any problems but you eventually are the one

1 that's causing these problems. And so why -- and so what if  
2 he's mine, then what. You don't care if he's mine or not.  
3 Because if you do, you would have solved this -- solved this a  
4 long time.

5 Q You can continue. And this is on page 179?

6 A On 1 -- page 179, my text message I -- all I want is  
7 to be part of his life and if I can to you because I felt like  
8 what if he's mine. And of course I did. I did it behind your  
9 back because you would not let me take it. And why would I  
10 lie about it if you're the one hiding him from me. And also  
11 if you did it once with Jazlynn, now you -- you did it with  
12 Alan. But moving forward and if you want, I would be more  
13 than happy to take it again and again and -- and at the end  
14 he's -- he's a hundred percent mine.

15 Q Okay. What's the photo that you shared? Does it  
16 continue on to the next page?

17 A Oh, yeah.

18 Q And what are these that you're sending her?

19 A I sent her the one that Henry Oliva sent me.

20 Q So this message at 4:40 p.m. is the first screenshot  
21 or -- or --

22 A It's my -- that was a --

23 Q -- photo of --

24 A -- screenshot --

1 Q -- a computer?

2 A -- or photo -- no -- no, that -- what -- what

3 happened is like when Henry sent it to me, it seems like he

4 took it out of a computer and sent it to me. That's -- that's

5 the -- that's why it looks so weird like, you know, you can

6 take --

7 Q Okay.

8 A -- a picture off of the screen.

9 Q And then turning to the next page, page 181, what

10 did you say at 4:40 p.m. after you sent those photos?

11 A This is what your roommate sent me. And compared to

12 mine, my DNA is more real than his. Like I said, if -- if you

13 want me to take it in front of you guys, then let's go. And

14 I'll even pay for it. I don't need to hide anything.

15 Q Okay. And then did Rosie ever respond to that?

16 A She kept on ignoring me.

17 Q Okay. Can you turn to page 186, please? No, this

18 is 88, so --

19 A Oh.

20 Q Okay. Obviously this is cut off at the bottom.

21 What -- what did you -- what's the date on these messages at

22 the top?

23 A March 19, 2017.

24 Q Okay. And what did you say?

1           A     When are we going to take a DNA again since you  
2 don't believe the one I took. We can do it this Tuesday at a  
3 lab so you can know that he is mine even though I know you  
4 both knew about it. So either -- either we fix it ourselves  
5 or through court.

6           Q     And what is Rosie's response on the left?

7           A     The Court is okay with me. Nothing new anyways. Do  
8 whatever you want.

9           Q     Okay. Turning to page 188, please. Yes. Can you  
10 tell me -- can you read the last two messages on this page?  
11 So your message at --

12          A     5:27 --

13          Q     Yes.

14          A     -- p.m.?

15          Q     Correct.

16          A     5:27 p.m., just remember you lied about our  
17 daughter, now my son. I would not have not been bothering you  
18 at all. So trust me, I would have been quiet. But since now  
19 I know I am not going to stay still, I will do something about  
20 it.

21          Q     And how does she respond? You can -- you can  
22 continue on --

23          A     Okay.

24          Q     -- to the next page.

1           A     Why not. I don't care. It is what it is. If he's  
2 yours, I can't stop it, but I have to know for sure.

3           Q     Then this --

4           A     Okay.

5           Q     -- message --

6           A     I'll --

7           Q     -- continues, correct?

8           A     But I have to know for sure first and do whatever  
9 you want. Okay. Bye.

10          Q     Okay. Can you turn to page 192? And starting about  
11 halfway down, March 23rd, 2017. Can you please read this  
12 conversation to me?

13          A     I'll pick her up around 2:40. Yeah, I have to get  
14 my nephew, my niece from school. And my sis just called me.  
15 How's Alan. Okay. Good. RM.

16          Q     And what is -- do you know what --

17          A     RM --

18          Q     -- RM means?

19          A     -- I -- like maybe she meant roommate.

20          Q     Okay. And you can continue on to the next page.

21          A     I was wondering if we can take another DNA since you  
22 don't believe me he's mine while I showed you he's mine, if we  
23 can take one tomorrow, we can go to a lab and you can be  
24 there. And as my witness and take a DNA, I can also pay for

1 it too because I don't want to miss more time, please.

2 Q And what is Rosie's response?

3 A I can't tomorrow because I'm going to have breakfast  
4 with Alicia and Sergio is coming to for the weekend. So next  
5 week.

6 Q And then who are Alicia and Sergio?

7 A Alicia is an old friend. She's a good friend of  
8 hers, of Rosie's. And Sergio is -- is also her friend too.

9 Q Okay. And then what did -- how did you respond?

10 A So you rather have lunch with your friends and  
11 fixing this situation with our son whom I just found out about  
12 him and a 99.999 percent mine and you just want -- you just  
13 not -- you want to just not fix this --

14 Q And then can you continue on?

15 A -- situation and makes me miss more time with him.  
16 Am I correct? Because if -- if he's not mine and you are sure  
17 you would -- you would let me do it, right.

18 Q And then what is Rosie's response?

19 A Monday we can go. You're -- you're not answering my  
20 question.

21 Q And so you -- you said you're not answering my  
22 question?

23 A Uh-huh (affirmative).

24 Q Okay. And then how does she respond?

1           A     You ask me the same question a lot of times, but I  
2 can still til Monday. Okay.

3           Q     And then how did you respond?

4           A     And Monday you can because you have other things to  
5 do. Right. Well, on Monday at 12:00, you'll meet me at the  
6 lab. Correct.

7           Q     Okay. And continued on to page 195. What does she  
8 say in response?

9           A     Yeah, I thought you had sent me to court already. I  
10 have -- I was waiting for the paperworks.

11          Q     Okay. And then what is -- what is your response?

12          A     Obviously you have been denying not to take a DNA  
13 with Alan because you knew he was mine. And so I could miss  
14 more time. You rather wait for me to go to court that way you  
15 can keep withholding him like how you did with our daughter.  
16 Right. I'm on my way to go pick her up now.

17          Q     Okay. Can you turn to page 208?

18                MS. LAUX: Judge, I am just -- I'm a little  
19 concerned that -- that Rosie is talking to someone.

20                THE COURT: Okay. Rosie, who are you speaking to?  
21 You're on mute. Please unmute yourself. Rosie, who are you  
22 speaking to?

23                THE DEFENDANT: No, to nobody. It was my cat.

24                THE COURT: Rosie, you weren't speaking to your cat.



1 Who were --

2 THE DEFENDANT: It's --

3 THE COURT: -- you speaking to?

4 THE DEFENDANT: My -- my boyfriend.

5 THE COURT: Okay. What's his name?

6 THE DEFENDANT: Oscar, but he doesn't want to be any

7 part of it. He just came to see what was going on. But he's

8 going to work.

9 THE COURT: Okay. What time is his work?

10 THE DEFENDANT: At 2:00.

11 THE COURT: Okay. Don't lie to the Court again.

12 THE DEFENDANT: No, I'm not lying. It's just I

13 don't want him to be part --

14 THE COURT: Rosie.

15 THE DEFENDANT: -- of anything.

16 THE COURT: You just --

17 THE DEFENDANT: He doesn't --

18 THE COURT: -- told me you were speaking to your

19 cat.

20 THE DEFENDANT: Well, my cat's here too. I've been

21 talking to him all the time. This is my cat.

22 THE COURT: Rosie, do not lie to Court again.

23 Counsel --

24 THE DEFENDANT: Okay.

1 THE COURT: -- please ask --  
2 THE DEFENDANT: He just got here --  
3 THE COURT: -- your next --  
4 THE DEFENDANT: -- like one second ago. One second.  
5 THE COURT: Okay. I made my point. Counsel --  
6 THE DEFENDANT: Okay.  
7 THE COURT: -- please continue questioning Ignacio.  
8 You have --  
9 MS. LAUX: Thank you.  
10 THE COURT: -- approximately 10 minutes until 12:00.  
11 I'd like to take a break at 12:00, but if you need more time  
12 or if you want to, you know, us to start early, you know, I --  
13 I just need to hear from you because it's your case what it  
14 is --  
15 MS. LAUX: Yes.  
16 THE COURT: -- that --  
17 MS. LAUX: So --  
18 THE COURT: -- the plan should be.  
19 MS. LAUX: So I really only have -- I don't have a  
20 whole lot left, Judge. So I'm -- I -- I can finish it up in  
21 the next 10 minutes.  
22 THE COURT: Okay. Let's do it.  
23 MS. LAUX: Okay.  
24 BY MS. LAUX:

1 Q Okay. I lost my page. I'm sorry. Okay. Are you  
2 on -- what page are you on right now, 208?  
3 A 208.  
4 Q Okay. What's the date on these messages?  
5 A June 29, 2017.  
6 Q Okay. So this is a few months after that last  
7 conversation?  
8 A Correct.  
9 Q And what does your text say at 12:38 p.m.?  
10 A I was wondering since court is taking awhile if you  
11 and I can take a DNA of Alan tomorrow just so his grandma and  
12 grandpa meet him since they will be there -- they will be here  
13 all next week and I also wanted to see him more even if it's  
14 just for a couple of hours. I know I did do a DNA on January  
15 of this year but you say you don't believe me and --  
16 Q And you can turn to the next page. That's 209.  
17 A And to make things easy -- easier, let's go take it  
18 tomorrow and results could be in next week if we could just  
19 please take a DNA so -- so you know I'm not lying, please.  
20 Q And what does Rosie say?  
21 A How long does it take because I don't want Kikis --  
22 I don't want to take Kikis with me.  
23 Q And then you said --  
24 A Like 10 minutes if you want. I can pick you up.

1 Q Okay. And then her response?  
2 A Okay.  
3 Q And yours?  
4 A Thank you.  
5 Q Okay. So what -- what happened after this?  
6 A We went to -- to go take a DNA of Alan together with  
7 Jazlynn -- with Roslynn and Alan and her and I.  
8 Q And where did you go?  
9 A To the Labcorp.  
10 Q Okay. Turning next to page 217. I'm looking at the  
11 message stated July 27, 2017. Do you see where I am?  
12 A Yes.  
13 Q Okay. And then what is your first message to Rosie?  
14 A Just saw your text mess -- text, but tomorrow, okay,  
15 because right -- because we're going to the pool right now.  
16 Q Okay. And then just kind of skimming through these  
17 through page 220, what are these messages about? You have to  
18 flip through them, to -- to 220.  
19 A 220?  
20 Q Yeah. All -- just look at them. Look at all of  
21 them.  
22 A Okay.  
23 Q So these. Just read -- read through them. You  
24 don't have to read through them out loud. Okay.

1           A     I was talking to her about regarding -- about -- it  
2 was my daughter Roslynn about regi -- I mean, Alan for  
3 registra -- reg -- registration and asking her if I can go  
4 with her, you know, to registration, you know, to do stuff  
5 together for the kids.

6           Q     Okay. And continuing on to page 219.

7           A     And this is me spending time with Alan and -- and  
8 Roslynn together and her text message like can you give them  
9 back to me Saturday like at 6:00 p.m. because on -- because  
10 Sunday I'll be leaving in the morning to take them to  
11 California Adventure and Raging Waters. And my text was how  
12 you -- how you never texted me about next week when I asked to  
13 see if I can get them and because you never answered I  
14 cancelled my days for vacation. So yeah, I'm sorry, but I  
15 already have plans til Sunday with the kids. And you -- you  
16 need to give me a two week notice. I'm not trying to get back  
17 at you but she also wanted to spend time with them.

18          Q     This is you, correct?

19          A     Yeah, that's me.

20          Q     But I also wanted to spend more time with them. Are  
21 you talking about yourself?

22          A     Yeah.

23          Q     Okay. And then going to the next page, 220. What  
24 does she say at 1:14 p.m.?

1           A     You can stay with baby but I don't want to argue.  
2 I'll be back Friday. I'll give her to you Saturday and about  
3 Alan. I'll just wait for court paperworks.

4           Q     And what is she -- what -- what did you take that to  
5 mean when she said I'll give her to you Saturday, but Alan,  
6 I'm going to wait for the court papers.

7           A     Well, she was abusing that the fact that I -- that  
8 every -- it will hurt me to not see my son --

9           Q     So she --

10          A     -- until --

11          Q     So she's saying here --

12          A     Give -- give the baby. Be -- she'll -- she'll let  
13 me see the -- our daughter but not -- not our son because I  
14 don't have a court order.

15          Q     Okay. And the next page -- what does Rosie say in  
16 her first message at 1:55 p.m.?

17          A     No, I'm being so nice and letting you see him even  
18 though you're already sending me to court. Maybe I'll just  
19 wait for those papers instead and we can stop arg -- and we  
20 can stop arguing for once. You took baby last week for four  
21 days and I didn't say anything right. And -- and I don't  
22 remember you telling me two week notice in advance, but that's  
23 okay.

24          Q     Okay. As we have discussed already, even after you

1 took your own DNA tests, two of them which we've already  
2 discussed, the Court ordered you to submit to a DNA test. Did  
3 you do that?

4 A Is this the -- I'm sorry.

5 THE COURT: Counsel --

6 Q The Court --

7 THE COURT: -- could you ask --

8 Q -- ordered you to submit --

9 THE COURT: -- that question again? I -- I didn't  
10 hear it.

11 MS. LAUX: Sure.

12 THE COURT: Could you ask it again?

13 MS. LAUX: Oh, yeah. I'm sorry. Yeah.

14 Q So as we've discussed, you already have taken two  
15 DNA tests at this point. One without Rosie knowing and one  
16 with her. The Court then ordered you to submit to a DNA test.

17 A Correct.

18 Q Did you do that?

19 A Yes, I did that.

20 Q Can you turn to Exhibit 2, please?

21 THE COURT: Three minute warning.

22 MS. LAUX: Thank you, Judge.

23 Q What is this?

24 A This is a Labcorp DNA from Alan.

1 Q Okay. And what -- on -- at the top left, it says  
2 relationship. Can you tell me what the names are there?  
3 A Child and the alleged father.  
4 Q And when does it say that the DNA samples were  
5 collected over on the far right?  
6 A Collected 05/15/2020 and the alleged father was  
7 04/06/2020.  
8 Q And when was this report written?  
9 A 20 --  
10 Q There should be a stamp near the bottom or --  
11 A Oh, expires 2 -- I'm sorry. 20 -- May 21st, 2020.  
12 Q Okay. Where did you get this?  
13 A I did it through Labcorp up in -- it was a court  
14 order.  
15 Q Okay. Did you -- does this look like an accurate  
16 depiction of the DNA test result you --  
17 A Yes.  
18 Q -- received? Okay.  
19 MS. LAUX: I -- I believe the Court already has  
20 this, but I would like to move to admit it.  
21 MR. MEDLYN: We would object to its admission  
22 because it's not supposed to be copied or released. But I  
23 believe the Court already has it as its own exhibit.  
24 MS. LAUX: Yeah, we -- we would like to admit it.



1 On the left side, there's a stamp there in the middle that  
2 says it can't be released to the parties, but I don't know  
3 that that's legally binding and it was already submitted to  
4 Judge Gibson directly.

5 THE COURT: We'll go ahead and admit it and keep it  
6 sealed.

7 (PLAINTIFF'S EXHIBIT 2 ADMITTED)

8 MS. LAUX: Thank you --

9 MR. MEDLYN: Thank you.

10 MS. LAUX: -- Judge.

11 THE COURT: Thank you.

12 BY MS. LAUX:

13 Q Looking about halfway down the page, Ignacio, where  
14 it says conclusion, what was the result of this test?

15 A What -- what's -- I'm sorry, the --

16 Q When it says conclusion --

17 A Uh-huh (affirmative). Combined --

18 Q -- what was --

19 A Com -- combined the probability of -- of paternity  
20 99.39 percent.

21 Q Okay. Did you tell Rosie when you received this  
22 result?

23 A Yes.

24 Q And what did she say?

1 A She received an email through Piroozi and --  
2 Q Who's Piroozi?  
3 A Piroozi was my previous lawyer.  
4 Q Okay.  
5 A And she received it was before -- before Father's  
6 Day just to give me some time with both of my children  
7 together and not miss Father's Day.  
8 Q And did she agree to let you have him for Father's  
9 Day?  
10 A No.  
11 Q Okay. Did you tell Henry about this test result?  
12 A No.  
13 Q Okay. What about visits? Did you continue to take  
14 Jazlynn and Alan after this test?  
15 A Just -- just Jazlynn.  
16 Q Just Jazlynn.  
17 A Still.  
18 Q They -- and why didn't you take Alan with you?  
19 A I'm not allowed to.  
20 Q By who?  
21 A There are some text messages with Rosie and saying  
22 that honestly Henry doesn't let him.  
23 Q Doesn't let Alan go with you?  
24 A Doesn't let Alan go, yeah.

1 MS. LAUX: Okay. Your Honor, I don't have any  
2 further questions for this witness.

3 THE COURT: Okay. It is 12:00 p.m. and your timing  
4 is spot on. The Court has to give the staff a break. So we  
5 will resume testimony today at 1:30. How many more witnesses  
6 do you have?

7 MS. LAUX: Just two, Your Honor. The -- the other  
8 parties.

9 THE COURT: Okay. Thank you. I will see you guys  
10 at 1:30. Thank you.

11 MS. LAUX: Thank you, Judge.

12 (COURT RECESSED AT 12:00 AND RESUMED AT 1:36)

13 THE CLERK: And we are back on the record.

14 THE COURT: Department T is back in session calling  
15 the matter of Ignacio Avila, Jr. versus Rosie Martinez and  
16 Henry Oliva, D-15-515892-C. Can everybody please state their  
17 appearances, for the record?

18 MS. LAUX: Good afternoon, Judge. This is Kimber  
19 Laux, bar 15263, on behalf of the Plaintiff Ignacio who is  
20 here to my left. I also still have in my office Astasia Lucas  
21 who is taking notes. She's off screen.

22 THE COURT: Thank you, Ms. Laux. Thank you, Ms.  
23 Lucas. Other appearances?

24 MR. MEDLYN: Theodore Medlyn for Bowen Law Offices,

1 bar number 15284. Here in the same room off camera is Henry  
2 Oliva.

3 THE COURT: Hello, Mr. Medlyn. And any other  
4 appearances?

5 THE DEFENDANT: Rosie Martinez, Your Honor, present.

6 THE COURT: Hello, Mr. Medlyn. Are Counsel and  
7 parties ready to proceed?

8 MS. LAUX: Yes, Judge.

9 THE COURT: Okay. Call your -- well, I suppose at  
10 this time we're going to go to cross examination of Ignacio.  
11 Mr. Medlyn, are you ready?

12 MR. MEDLYN: I am, Your Honor.

13 THE COURT: Okay. Let's proceed.

14 MR. MEDLYN: Procedurally --

15 MS. LAUX: I'm sorry, Judge, do we -- does the --  
16 does my client need to be sworn back in? I'm not -- I'm not  
17 sure if that needs to happen again after lunch or --

18 THE CLERK: He's still under --

19 THE COURT: He's still under oath.

20 THE CLERK: He's still under oath. No.

21 THE COURT: So no.

22 MS. LAUX: Oh, okay. Okay.

23 THE COURT: And I just --

24 MS. LAUX: Thank you.

1 THE COURT: -- looked --  
2 MS. LAUX: I'm sorry.  
3 THE COURT: -- at my Clerk and she confirmed, so  
4 we're good.  
5 MS. LAUX: Okay. Thanks.  
6 MR. MEDLYN: Procedurally, does the Court wish me to  
7 keep it exclusively to cross or will some direct be acceptable  
8 to prevent calling him again in our case in chief?  
9 THE COURT: Well, let's see what Ms. Laux says.  
10 MS. LAUX: I -- I don't -- I don't mind if we just  
11 handle all of the questions for my client at once that way he  
12 doesn't have to be called back again.  
13 THE COURT: Okay.  
14 MR. MEDLYN: Okay. And I'll -- I'll try to be  
15 thorough in that regard then.  
16 THE COURT: Okay. Thank you.  
17 CROSS EXAMINATION  
18 BY MR. MEDLYN:  
19 Q Good afternoon, Mr. Ignacio.  
20 A Good afternoon.  
21 Q Earlier you discussed where you were living . I --  
22 THE COURT: Bless you.  
23 Q -- missed the address. But who do you reside with  
24 at that location?

1 A Myself.  
2 Q Just yourself? No roommates, no --  
3 A No.  
4 Q Okay. How big is it?  
5 A How big is the lot?  
6 Q The house.  
7 A Yeah, like I mean, be more specific as to how big is  
8 what.  
9 Q Okay. The residence where you reside, is it a house  
10 or an apartment?  
11 A A house, three bedroom house.  
12 Q Okay. When Jazlynn stays there with you, where does  
13 she stay?  
14 A She -- she stays with me and sometimes like if it's  
15 too late we'll stay with -- with auntie Colleen (ph). But she  
16 has her own bed, her own room. But --  
17 Q (Indiscernible) --  
18 A -- (indiscernible) late at night.  
19 Q She -- so Jazlynn has her own room.  
20 A Yes.  
21 Q Does auntie reside with you?  
22 A No.  
23 Q Okay. How much is the rent per month?  
24 A My mortgage is 1300.

1 Q Mortgage. I apologize. You own?  
2 A Correct.  
3 THE COURT: And Mr. Medlyn --  
4 Q Okay.  
5 THE COURT: -- what is the relevance of -- of these  
6 questions on a paternity case?  
7 MR. MEDLYN: Are we not going through his ability to  
8 care for the child?  
9 THE COURT: Okay.  
10 MR. MEDLYN: If you don't want me to, if you --  
11 THE COURT: No. No.  
12 MR. MEDLYN: -- want to be purely --  
13 THE COURT: I just wanted to hear an offer of proof  
14 to see where you were going with it. But okay. Go ahead.  
15 BY MR. MEDLYN:  
16 Q Okay. And where do you work, sir?  
17 A Caesars Palace Hotel and Casino.  
18 Q Okay. And which department?  
19 A Warehouse receiving dock.  
20 Q Excellent. Do you and Ms. Rosa have any sort of  
21 child support payment?  
22 A Yes, we do. And it's four -- \$400 monthly.  
23 Q Okay. \$400 from you to her?  
24 A Yes.

1 Q Okay. You discussed earlier that Ro -- Rosa went to  
2 clothes shopping for Alan; is that correct? That true?  
3 A For both of the kids.  
4 Q Okay. Who purchased the clothes on that day?  
5 A She did.  
6 Q And do you take Alan shopping?  
7 A Sometimes when I'm allowed to see him.  
8 Q Okay. And about how --  
9 A Or --  
10 Q -- much is --  
11 A Or -- or I also ask Rosa the -- the size and then  
12 either I'll send him with his clothes or I'll just keep it  
13 because I'm thinking I'm going to have him.  
14 Q Okay. If you can estimate about how much per month  
15 do you spend on Alan for his --  
16 A Well, monthly -- well, this is awhile back too but I  
17 would spend like almost a hundred to 200. But every time that  
18 I see things like if he needs shoes, I'll purchase them shoes  
19 but I'll spend like -- like 200, 300. But I let him choose,  
20 but I'll -- I'll buy him whatever he wants, whatever he needs.  
21 Q Do you know who Ms. -- who Alan's teacher is?  
22 A At the moment, I do not know because he's doing  
23 virtual.  
24 Q Okay. What school does he attend?



1           A     John Tartan Elementary.  
2           Q     And do you have access to any of his records?  
3           A     I do not have access at the moment.  
4           Q     Fair to say it's a messy situation a little bit? To  
5 -- are you able to talk to the teacher?  
6           A     No.  
7           Q     Have you tried reaching out to the teacher?  
8           A     No.  
9           Q     Have you made any effort to contact the school?  
10          A     They -- the only way that I can get access if I have  
11 any -- any rights to him with the court order but if -- or an  
12 emergency contact which I tried it once and they said I'm not  
13 an emergency contact.  
14          Q     Okay. So did you try contacting the school or who  
15 told you this?  
16          A     Sandy (ph), the receptionist at John Tartan.  
17          Q     So you did contact the school.  
18          A     I tried to get access from him because I care about  
19 him.  
20          Q     Okay. Did you ask Ms. Rosie if you can have access  
21 to his information?  
22          A     Yes, I have.  
23          Q     And where is that in your record?  
24          A     It's either on 2020 text messages, even 2019 text

1 messages, and 2018 text messages where I ask to see if I can  
2 pick him up or I ask to see if I can have access.

3 Q Okay. More specifically, have you ever asked Henry  
4 if you could have access to his school records?

5 A No, I have not asked.

6 Q Are you religious, Ignacio?

7 A Yes, Christian.

8 Q Does Christian -- any denomination, Catholic or --

9 A No.

10 Q No? Okay. Do you attend church with the child when  
11 they're in your possession?

12 MS. LAUX: Objection, you said do you attend church  
13 with the child when they are in you possession. Are you  
14 talking about Alan or Jazlynn or both?

15 BY MR. MEDLYN:

16 Q Do you take either of the children when they're in  
17 your possession to church?

18 A Roslynn some Sundays because I have her every other  
19 weekend. But there will be times where I do take her at 9:00  
20 o'clock at the South Valley -- Valley View Church.

21 Q That was going to be my next question. Thank you.  
22 Do you take her every weekend?

23 A Sometimes depending on what Rosie says if it's --

24 Q Okay.

1           A     -- okay for Rosie.

2           Q     Does Jazlynn have any medical needs that you have

3 helped with?

4           A     No, not medical needs.

5           Q     Does she go to the dentist?

6           A     Yeah, she recently went to the dentist a few days

7 ago.

8           Q     Oh, just a few days ago.

9           A     Correct.

10          Q     What did you go to the dentist for?

11          A     Cleanup and a checkup.

12          Q     Okay.

13          A     And they removed a space cleaner on the right bottom

14 tooth.

15          Q     Okay. Changing gears a little bit, you mentioned

16 that you think -- just to paraphrase that Mr. Henry's test was

17 fake. Do you recall that line of testimony?

18          A     Yes. And it was fake.

19          Q     Okay. You said -- okay. You said it seemed made

20 up. On what do you base that theory?

21          A     What do you mean?

22          Q     On what theory do you believe that the Genex test is

23 fake?

24          A     I looked at the boxes and it doesn't -- it didn't

1 make sense as to why is it that they didn't have household  
2 income last name -- his last name and Alan's last name as well  
3 and the date that was taken. And there's no lab scientific --  
4 what's it called, doctor or laboratory --

5 Q Okay.

6 A -- signature. There's just a lot of red flags that  
7 somebody seems like to make it up. I also check in the  
8 genetics website too. The only way that I can find out is to  
9 have a user and a password. The --

10 Q Okay.

11 A -- only way.

12 Q So you don't have access to this particular  
13 company's tests, correct?

14 A Correct.

15 Q All right. You're basing all your knowledge off of  
16 the company you used which was what?

17 A Well, no -- going based on the company but going  
18 based on the person that sent it to me. I -- and I do not --  
19 I -- I think that's something that he made it up just to make  
20 me believe that it was his also.

21 Q Okay. So you mistrust the person and therefore you  
22 mistrust the test.

23 A Yes.

24 Q Were you aware that you could request that test

1 through the discovery process that was open for six months?

2 A You mean the -- you mean the Hardcastle situation,

3 Judge --

4 Q No.

5 A -- Hardcastle?

6 Q Since Hardcastle in the past 10 months or so since

7 your June hearing were you aware you could demand that testi

8 in discovery?

9 A No, I was not aware of that, but I did talk to -- I

10 did talk to both of them regarding their situation. And I did

11 talk to Piroozi regarding that false DNA and we also brought

12 it up in a 2018 hearing.

13 Q So if you thought this test was false, why didn't

14 you ask my client to give it to you in discovery?

15 A Well, he didn't even answer to anything of the

16 complaints on before that January when he got served --

17 Q I'm sorry, I'm discussing the past 10 months.

18 A Ten months?

19 Q Since the June hearing. Were you aware you could

20 ask for that?

21 A No, I was -- I didn't know. I --

22 Q Okay.

23 A -- didn't know about that.

24 Q Thank you. I didn't -- I don't believe we went

1 through all of the text messages you sent back and forth with  
2 Henry. Did you ask Henry for visitation time with Alan in  
3 those?

4 A I didn't ask him visitations because he knew about  
5 it too. Why would he offer me visitations as well?

6 Q So your text messages were only about the test.

7 A Yes, because I cannot ask for visitation if -- if  
8 he's not mine.

9 Q Well, at the time you were texting with Henry back  
10 and forth, were you not already seeing Alan during that time?

11 A Yeah, but that was with Rosie though as well.

12 Q And did you want to see Alan more?

13 A I'm sorry?

14 Q Did you want to see the child more?

15 A If he was mine, if they were to show me the real DNA  
16 that if it was in his or if it was his. I mean, if it was  
17 his --

18 Q You --

19 A -- I would leave that alone and I would just focus  
20 on my daughter.

21 Q So you only want a relationship with this child if  
22 it's yours.

23 THE COURT: Okay. The Court --

24 A So --

1 THE COURT: -- handle --  
2 A -- I mean --  
3 THE COURT: -- the constant use of it. It's going  
4 to be Alan or he. Please proceed, both of you. No more it.  
5 MR. MEDLYN: Yes, Your Honor.  
6 Q So you only would like a relationship with Alan if  
7 he is yours biologically.  
8 A Rosie and I were fine and I would --  
9 Q I'm sorry, that's a yes or no or question.  
10 A Yeah. Yes, I would -- I would, you know, have an  
11 only relationship if he was mine. But regardless, I mean, if  
12 I'm not the father, I'm not just going to remove somebody from  
13 the parent as well. I mean, that's not fair. And to be  
14 called dad, I don't -- that's like none of my business. You  
15 know, it's just -- I just wanted to know if he was my -- mine  
16 or mine, if -- if Alan was mine.  
17 Q Okay. You remember discussing your Toys"R"Us Trip?  
18 I think it was a picture on page 94.  
19 A Correct.  
20 Q And again on -- on page 96 with Lisa, correct?  
21 A Yes.  
22 Q Why were you, quote, spoiling Alan?  
23 A Because that's when I -- the mom allowed me to take  
24 Alan because we confirmed that he was mine through a Labcorp

1 DNA. And my parents were here and my parents were excited to  
2 see that Alan's part of the family as well.

3 Q Okay. So have you ever talked to the child about  
4 his paternal -- I'm sorry. Have you ever talked to Alan  
5 specifically about his paternity?

6 A No.

7 Q Why would --

8 A I mean, what --

9 Q -- Ms. Rosa -- why would Ms. Rosa say that you  
10 mentioned who his father was to?

11 A Can I --

12 MS. LAUX: Objection, speculation. He can't --

13 THE COURT: Sus --

14 MS. LAUX: -- testify as to what Rosie's thinking.

15 THE COURT: Sustained. Ask it a different way.

16 THE DEFENDANT: Your Honor, that's what my -- my son  
17 told me.

18 THE COURT: I know you're trying to help, Rosie, and  
19 -- and you're not a lawyer and I -- I get it. Right now when  
20 there's one witness on the stand, the lawyers get to ask the  
21 questions. You don't get to interrupt.

22 THE DEFENDANT: Okay.

23 THE COURT: It -- it's just a procedural thing. If  
24 people try to do it a lot, then I end up muting them. I don't



1 think I'm going to need to do that because I think you --  
2 THE DEFENDANT: No, I didn't know, but --  
3 THE COURT: -- understand, but --  
4 THE DEFENDANT: -- I apologize.  
5 THE COURT: -- I just wanted you to know. It's  
6 fine.  
7 THE DEFENDANT: Okay.  
8 THE COURT: Go ahead again, Counsel.  
9 BY MR. MEDLYN:  
10 Q Do you think it's appropriate to discuss who might  
11 be a child's father with them?  
12 A No. It should be --  
13 Q Were you ever --  
14 A -- a new situation with custodial -- but no, sorry.  
15 Q So you would never do such a thing.  
16 A No.  
17 Q Glad to hear.  
18 MR. MEDLYN: I think I'm done for now, Your Honor.  
19 THE COURT: You're -- you're done?  
20 MR. MEDLYN: Yes.  
21 THE COURT: Including direct?  
22 MR. MEDLYN: Yes, Your Honor.  
23 THE COURT: Okay.  
24 MS. LAUX: I just --

1 THE COURT: Ms. Laux?

2 MS. LAUX: I just have -- yeah, I just have a couple  
3 questions. Actually, probably just one.

4 REDIRECT EXAMINATION

5 BY MS. LAUX:

6 Q Opposing Counsel -- Ignacio, I'm going to ask you  
7 questions now. Opposing Counsel asked if you ever requested a  
8 copy of the fake test through discovery. Do you know what  
9 discovery is even?

10 A No.

11 Q Okay. And did you ask for a copy of the test just  
12 directly to Henry at some point?

13 A At some point like recently, no.

14 Q At any time did you ask him for a copy of the test?

15 A Yes.

16 Q And did he provide it?

17 A No.

18 Q And as far --

19 A In fact --

20 Q -- as you're aware, I know you said you don't know  
21 what discovery is. Have you ever seen the test? Has Henry  
22 ever given you the test as far as these proceedings are  
23 concerned? Have you ever seen that test physically?

24 A No, physically, no.

1 MS. LAUX: Okay. I'm done, Your Honor. Thank you.  
2 THE COURT: Okay. Any recross?  
3 MR. MEDLYN: No, Your Honor.  
4 (WITNESS EXCUSED)  
5 THE COURT: Okay. Call your next witness.  
6 MS. LAUX: Actually, Judge, I don't -- I wouldn't  
7 like to call any witnesses at this time. We're -- we're ready  
8 to rest our case.  
9 THE COURT: Okay. Mr. Medlyn, call your first  
10 witness.  
11 MR. MEDLYN: Yes, Your Honor. I would like to call  
12 Henry Oliva to the stand.  
13 (WITNESS SUMMONED)  
14 MR. MEDLYN: Forgive me while I move some camera  
15 work.  
16 THE COURT: Okay. We're going to need to move the  
17 camera up a little bit on Mr. Henry.  
18 MR. MEDLYN: Yes, Your Honor.  
19 THE COURT: Okay.  
20 THE CLERK: Sir --  
21 MR. MEDLYN: Don't --  
22 THE CLERK: -- raise your --  
23 MR. MEDLYN: -- swivel in the chair.  
24 THE CLERK: -- right hand. Do you -- you and each

1 of you do solemnly swear the testimony you're about to give in  
2 this action shall be the truth, the whole truth, and noting  
3 but the truth, so help you God?

4 THE THIRD PARTY DEFENDANT: Yes.

5 THE COURT: And Mr. Medlyn, I just want to remind  
6 you. Please refer to your client as Henry, okay? I know you  
7 said Mr. Oliva, but I -- I need your help on that one,  
8 Counsel?

9 MR. MEDLYN: I'm so sorry.

10 THE COURT: No, you're -- perfect. I just wanted to  
11 remind you. Thank you.

12 HENRY OLIVA  
13 called as a witness on his own behalf, having been first duly  
14 sworn, testified upon his oath as follows on:

15 DIRECT EXAMINATION

16 BY MR. MEDLYN:

17 Q Can you please state and spell your name, for the  
18 record?

19 A Henry Antonio Oliva, H-e-n-r-y, A -- A-n-t-o-n-i-o,  
20 O-l-i-v-a.

21 Q Okay. And do you know Ms. Rosa Martinez?

22 A Yes.

23 Q And what is your relationship with her?

24 A Currently she is now my ex.

1 Q And when was your relationship with her current?

2 A The last year probably was -- when we were still

3 together it was like 2017.

4 MR. MEDLYN: Can the Court hear him all right?

5 THE COURT: Kind of. I wish he was a little louder.

6 MR. MEDLYN: I'm sorry, I forgot to move the

7 microphone.

8 Q So I'm sorry. Specifically what time -- between

9 what times what -- was your relationship with Ms. Martinez?

10 A We met back in 1999. Actually, it was quite later

11 than '99. Closer to 2000.

12 Q Okay. And when did your relationship end?

13 A We stopped living together in 2017.

14 Q Okay. Did you have any children with Ms. Martinez?

15 A Yes.

16 Q How many and who are they?

17 A Three, starting from the youngest, Jazlynn,

18 currently last name is Avila, Alan Oliva, and Henry Oliva.

19 Q And how old is each of those children?

20 A Thirteen, nine, and seven.

21 Q Okay. And are they all your biological children?

22 A No.

23 Q Okay. When did you first discover that some of them

24 were not your biological children?

1           A     The first one I discovered was for Jazlynn. And  
2 this was when she was approximately about six months old.  
3           Q     Okay. And at that time did you have any reason to  
4 believe that the others were not your children?  
5           A     No.  
6           Q     Did you do anything at that time to confirm they  
7 were your children?  
8           A     No.  
9           Q     Did you take any tests?  
10          A     Not at that time.  
11          Q     Did you take any tests since that time til now?  
12          A     Yeah, I did do a -- I did do one test.  
13          Q     Okay. What was the company?  
14          A     I do not recall.  
15          Q     How did you get the test?  
16          A     Through a Google search is how I found out the --  
17          Q     Okay.  
18          A     -- how I found the company.  
19          Q     How did you take the test?  
20          A     Well, they mailed out a kit and when I add the --  
21 the kids' present, I went ahead and swabbed them and send it  
22 out by mail.  
23          Q     And about when was this?  
24          A     This was late, probably about 2014 if I remember

1 correctly.

2 Q Okay. And how did you get your results?

3 A Electronically.

4 Q Okay. Were they sent to you by email or did you  
5 have to log into a service?

6 A I believe I logged into the service and that's how I  
7 was able to view it. I don't re -- I don't recall exactly.

8 Q Okay. What did the results tell you at that time in  
9 2014?

10 A That -- that pretty much my big -- my biggest focus  
11 was more on my results for -- for Alan and that's what I  
12 focused on and shows that I was the father.

13 Q Okay. Did you take tests of the other two children?

14 A Yes.

15 Q Okay. Did you send them all in together?

16 A Yes.

17 MS. LAUX: I'm sorry --

18 Q How did you --

19 MS. LAUX: -- I just -- I just wanted to object  
20 because I don't know -- send them all in. I don't know what  
21 you mean by where sending to -- can you clarify that? I'm  
22 sorry.

23 THE WITNESS: I mailed them out.

24 MR. MEDLYN: I thought he gave testimony that he

1 mailed them to the service. Are you looking for --  
2 MS. LAUX: So --  
3 MR. MEDLYN: -- an address?  
4 MS. LAUX: -- mail -- mail the kit. I didn't know  
5 if it was the kit or the results or what we're talking about.  
6 THE WITNESS: It -- a mailing kit that was supplied  
7 to me. Mail -- once I was finished, completed, I put it in an  
8 envelope and sent it out.  
9 BY MR. MEDLYN:  
10 Q So when you discovered Jazlynn was not your child's  
11 back in what year?  
12 A It would have been about 2014.  
13 THE COURT: Counsel, do you think you --  
14 Q So in 20 --  
15 THE COURT: -- can ask that last question one more  
16 time, please? I had to speak with somebody in the courtroom.  
17 I need you to ask that question again.  
18 MR. MEDLYN: Yes, Your Honor.  
19 Q When did you discover that Jazlynn was not your  
20 child?  
21 A Two -- 2014.  
22 Q And what changed in your life with Jazlynn at that  
23 time?  
24 A At that time nothing had changed. I mean, we -- I



1 still had -- I still took care of her. I still raised her.  
2 You know, I -- you know, I still -- we still did -- Rosie and  
3 -- and myself did the regular parenting where she would -- if  
4 she had to go to work in the evening then I would stay home in  
5 the evening with -- with all three of the kids with Henry,  
6 Alan, and Jazlynn. And I would take care of her needs as far  
7 as formula, diaper change.

8 Q So you still acted as though she was your child.

9 A Yes.

10 Q In 2014 after you learned she was not biologically  
11 yours.

12 A Yes.

13 Q How long did that go on?

14 A Til this -- til the right now. It still continues  
15 til now. I never exclude her. Whenever I have a chance to --  
16 to spend time with her, I never exclude her from the other --  
17 from Henry and Alan. It's always a -- have them together and  
18 equal -- you know, what somebody -- what somebody would break  
19 down -- somebody --

20 Q I'm sorry, I think we're getting a little bit far  
21 afield from my question. I just want us to keep us between  
22 the goalposts. Did your physical time with Jazlynn change  
23 between 2014 and now? Your --

24 A Yes.

1 Q -- physical custody time.  
2 A Yes.  
3 Q When did that change happen?  
4 A Late in 2014 she started spending some time with  
5 Ignacio.  
6 Q When you say spending some time, about how much  
7 time?  
8 A At that time it was usually the weekends.  
9 Q Every weekend?  
10 A Or at least every other weekend.  
11 Q Okay. And you would have her with Rosa all the rest  
12 of the time.  
13 A The rest of the time, yes.  
14 Q How long did that arrangement go?  
15 A Once -- once there was a court order, then the  
16 arrangement changed.  
17 Q When did that court order happened?  
18 A When -- when Rosie and Ignacio went to court to --  
19 to fight custody and there was a court -- you know, the court  
20 order was at the -- assigned at that time which would have  
21 been in 2015.  
22 Q And how old was Jazlyn at this time?  
23 A About one-and-a-half, approximately.  
24 Q You mentioned being concerned about Alan's

1 paternity. When did you -- strike it. When did you --  
2 strike.

3 MR. MEDLYN: Let me collect my thoughts, Your Honor.  
4 I apologize.

5 THE COURT: Yeah, you're okay. We've got all day.  
6 No problem.

7 Q When did you start having doubts about Alan's  
8 paternity?

9 A You -- you mean like not -- thinking that he  
10 probably was not mine?

11 Q Yes.

12 A I always believed he was mine. The only time that I  
13 had a doubt -- or not really a doubt but it got -- got me  
14 thinking as a shock was when Ignacio had mentioned it to me.

15 Q And when did Ignacio first mentioned it to you?

16 A He mentioned it the one time that I need -- I went  
17 to pick up Jazlynn because Rosie was at work and he approached  
18 me and asked me if Ros -- Rosie had told me already. And I  
19 said I don't even know what he was talking about.

20 Q Okay. Did you later discover what he was talking  
21 about?

22 A So -- so then I can -- when I asked him what he's  
23 talking about, then he said that -- that Alan was probably not  
24 mine.

1 Q And about what year was this?

2 A Maybe about 2016, I believe.

3 Q Okay. And at that time how old was Alan?

4 A Approxim -- approximately about five.

5 Q Okay. Where does Alan -- who does Alan currently

6 reside with?

7 A He spends time between Rosie and -- and myself.

8 Q What's that timeshare?

9 A Usually it consists of Wednesday through Saturday he

10 will be with me and Sunday through -- through Tuesday he would

11 be with Rosie. And sometimes in between that time there will

12 be an alternate day at work. He might go with Rosie.

13 Q Why would he go with Rosie on one of your days?

14 A Just -- just to give him an -- an opportunity.

15 Maybe he wanted to -- to go back and spend some time with her

16 or -- or go home just to play with some stuff that he has at

17 -- at his other home.

18 Q So you allowed him to go freely based off of what he

19 wants?

20 A No, not necessarily. Not based on what he wants.

21 Q Okay. What other factors besides --

22 A He -- sometimes he wants to spend time with -- with

23 Jazlynn. And so when he wants to go play with her and he'll

24 -- one of those days that she's there he will go over with --

1 with her, to spend time with her.

2 Q Okay. Do you know the name of Alan's teacher?

3 A Yes, he's -- yes, currently. Yes.

4 Q And what -- who's --

5 A So currently I believe Mrs. Reiner (ph) is charge --

6 Ms. -- or Ms. Reiner.

7 Q Okay. And how is he doing in school?

8 A The last few that -- that I got from her, he was

9 doing great, that she was really happy with -- with his

10 performance and using some of his work as an example for the

11 class.

12 Q Okay. Has he always done well in school?

13 A Yes. Yes, to -- when school in person.

14 Q What do you mean?

15 A Prior to online. So school -- when physically in

16 school he has always done good.

17 Q How does he perform when he's online?

18 A When he has online, he -- he has a little bit of a

19 struggle adapting to -- to the classes going to the online

20 courses.

21 Q Do you know how he compares to his other classmates?

22 A So usually I -- I try to have feedback on a weekly

23 basis from his teachers. And some of the times that I've

24 spoken with them they -- they actually said that he's not as

1 bad as other kids.

2 Q Okay. So does Alan have any medical needs that you  
3 take care of?

4 A Try to take -- like take him to the dentist is what  
5 -- basically what his -- is an ongoing thing for -- for him  
6 and -- and Henry also.

7 Q Ongoing? How often?

8 A We tried to do it -- excuse me. When his  
9 cleanings --

10 THE COURT: Bless you --

11 A -- are due.

12 THE COURT: -- Henry.

13 THE WITNESS: Thank you. Thank you. Based on when  
14 his cleanings are due or if I happen to see something or he  
15 has a discomfort the night, schedule an appointment.

16 Q Does he have bad teeth?

17 A He has some opportunity, but he still has baby  
18 teeth.

19 Q How often do you make trips to the dentist?

20 A Prior to COVID we were doing the -- the regular  
21 every six months checkup the day we have.

22 Q Does your other children have any dental problems?

23 A Henry also has some opportunity to -- to dental --  
24 to assess his needs. Jazlynn also had some opportunity for --

1 for her dental needs.

2 Q Did you ever take Jazlynn to the dentist?

3 THE COURT: Counsel, I -- I'm confused. I don't  
4 know if I'm hearing Henry incorrectly. He's talking about the  
5 kids having opportunity. Is that the word?

6 MR. MEDLYN: If I can -- if I can paraphrase him, he  
7 seems to not want to use problem. I say dental problems and  
8 he uses dental opportunities.

9 THE COURT: Okay. So I -- okay. Do you think you  
10 can cleanup that line of questioning? It's -- all of us kind  
11 of looked confused on the video.

12 Q When you say dental opportunities, what do you mean?

13 A They might have a tooth that is loose and might need  
14 to be looked at. It might have a cavity or decay that might  
15 be visible but I'm not completely sure if that's what it is.

16 Q Why do you call them opportunity?

17 A Opportunities because she could have teeth in a  
18 perfect world.

19 Q Why not use the more common term of problem or  
20 sickness or why -- why choose opportunities?

21 A Because an opportunity meaning that they can turn it  
22 around and -- and make it -- make their teeth be better or  
23 look -- or look better or being corrected.

24 MR. MEDLYN: Does that satisfy the Court?

1 THE COURT: It helps. Yes. Thank you. Do we need  
2 to take a -- a minute break for your client, Counsel? I --  
3 maybe we should.

4 THE WITNESS: I'm okay.

5 MR. MEDLYN: He's been -- he's been downing  
6 Chloraseptic all day, so if -- if I'm out next week, you'll  
7 know why.

8 THE COURT: Okay, Counsel.

9 Q So did you ever take Jazlynn to the dentist for her  
10 dental needs, opportunities?

11 A No, I attempted to.

12 Q When did you attempt to?

13 A Back in 2019.

14 Q What dental needs did she have at that time?

15 A I can see that her teeth -- or there was one or two  
16 teeth that might have some decay on there -- or -- or prob --  
17 or looked prob -- looked at normal.

18 Q And you scheduled a visit?

19 A Yes.

20 Q Why didn't Jazlynn make it to that visit?

21 A Because I was not able to -- to be with her that  
22 day.

23 Q Did you ask to take her to her visit?

24 A I -- yes, I asked Rosie.



1 Q Who did you -- Rosie only? Did you ask Mr. Ignacio?  
2 A No.  
3 Q Okay. Do you and Mom have a child support  
4 arrangement?  
5 A We have a -- a verbal agreement on -- on what the  
6 kids need.  
7 Q How does that look if the children need clothes?  
8 A De -- depending on the needs, she might buy certain  
9 clothes for one boy. I might buy certain clothes for the  
10 other boy or if they need shoes, we alternate shoes one time.  
11 We might alternate shoes another time.  
12 Q And you guys have worked this out without any  
13 written down agreement.  
14 A Yes.  
15 Q Do you believe you can continue to work that out  
16 with Court agreement?  
17 A Yes.  
18 Q Where do you work?  
19 A Currently, I'm -- I do have an actual job.  
20 Q How do you make an income?  
21 A I'm currently for a ride -- for a ride share.  
22 Q Uber or Lyft?  
23 A Both.  
24 Q Both. Okay. About how much do you make a week at

1 that job?

2 A The amount can -- can range depending on the need on

3 -- on rides and availability, that I might have three -- four

4 to 700.

5 Q If you can guesstimate an average.

6 A Seven-hundred.

7 Q Okay. Are you able to take care of your needs and

8 the children's needs with that money?

9 A Yes.

10 Q Where do you live?

11 A Are you asking for the address?

12 Q That would be helpful.

13 A My -- my current -- I -- I currently live at 5729

14 Awakening Street, North -- North Las Vegas 89081.

15 Q And how large is the house apartment?

16 A 2400 square feet.

17 Q How many bedrooms?

18 A Four.

19 Q Do each of your children have their own space?

20 A Yes.

21 Q And what's the rent or mortgage on that property?

22 A Approximately 1700.

23 Q Okay. Are you particularly religious?

24 A Yes.

1 Q Which denomination?  
2 A I am Catholic.  
3 Q Okay. Do you take your children to receive Catholic  
4 instruction?  
5 A Yes.  
6 Q All of them?  
7 A I was at one point doing all of them, but Henry and  
8 Alan were the -- the two that were able to finish.  
9 Q When you say finish, finish what?  
10 A They used to go to a catechism class.  
11 Q And for the Court's knowledge, can you tell us what  
12 a catechism is?  
13 A A catechism is a preparation through the church that  
14 takes two years approximately for them to go through. Once  
15 they have attended the two years and they have learned the  
16 process, they're able to receive communion.  
17 Q And Alan and Henry, Jr. completed it.  
18 A Yes.  
19 Q What about Jazlynn?  
20 A She didn't.  
21 Q Was she enrolled?  
22 A Yes.  
23 Q About how long did she go?  
24 A She went for approximately maybe three sessions.

1 Q Did you and Mom agree on this religious instruction?  
2 A Yes.  
3 Q So why was she withdrawn?  
4 A Due to the fact that Ignacio would not want her to  
5 come with me or take her to the -- to the class.  
6 Q Okay. How do you spend your times with your kids?  
7 A So basically, you know, when I have all three  
8 together, at a point I try to make it a point for them to all  
9 interact with each other. And we'll do different activities  
10 as far as fishing, maybe swimming, going to the lake, going to  
11 the arcade, going to the movies, building stuff.  
12 Q You mentioned fishing. What do you fish with?  
13 What's applied?  
14 A We use fishing pole. Just a regular pole.  
15 Q Okay. Does each child have their own fishing pole?  
16 A Yes.  
17 Q How often do you see Jazlynn?  
18 A Excuse me. Usually she might come maybe twice a  
19 month, maybe. I can -- I see her but physically where she's  
20 being with me maybe about twice a month, approximately.  
21 Q You buy her her own fishing pole?  
22 A Yes.  
23 Q For swim trips, you mentioned swim trips.  
24 A Yes.

1 Q Does each child have their own supply?

2 A Yes.

3 Q You mentioned building things. What do you build?

4 A Sometimes when we had a project a year -- a year ago

5 where we were putting a shed together and I had all three of

6 them work together along with me building that shed.

7 Q Do they each have their own supplies?

8 A They each have the tools that's needed at that time.

9 You know, there was enough supply for -- for everybody. You

10 know, enough screws -- screwdrivers if needed or if -- if a

11 drill was needed there was enough for each one to have.

12 Q How would you share the work?

13 A Depending on -- on the -- depending on what we did,

14 maybe one would hold the wall out -- wall up while the other

15 one would add to the wall or the other one -- or one would

16 hand the hardware to me. So I work more with Jazlynn so she

17 would hand me the hardware that I needed or help me hold --

18 you know, and to hold the part together until I was able to

19 secure it.

20 Q Do you ever talk to the children about who their

21 father may be?

22 A No.

23 Q How do your children call you?

24 A Dada.

1 Q How long have they called you dad?

2 A Since the first word they spoke. One of Henry's

3 first words were dada. Alan's first words were dada. And

4 Jazlynn's second word was dada. He first one was nana.

5 Q What if this Court was to tell you that Jazlynn and

6 Alan were not your children? Would you still let them call

7 you dada?

8 A Of course. And I would tell them that I will always

9 be their dada for as long as they want.

10 Q Would you treat them any differently?

11 A No.

12 Q Would you get rid of Jazlynn's fishing pole?

13 A No. I still have her baby toys.

14 Q What does it mean to you to be a dad?

15 A To be able to provide for the kids, emotional,

16 physical, good health, and -- and be a leader and -- and have

17 them love each other and work together and -- and brother and

18 sisters.

19 THE COURT: Counsel, Mr. Medlyn, my Clerk is --

20 MR. MEDLYN: Yes?

21 THE COURT: -- indicating it looks like we lost Mom.

22 But I just can't see Mom. Could Mom turn on her video?

23 THE DEFENDANT: I just went to get a napkin.

24 THE COURT: Where did you go? Can you turn your

1 video -- or is your video -- your video's still on. I can't  
2 see you.

3 MR. MEDLYN: I can see her, Your Honor.

4 THE DEFENDANT: I'm here.

5 THE COURT: We can't see her.

6 THE DEFENDANT: I'm here.

7 THE COURT: Okay.

8 MS. LAUX: I can see her as well, Judge.

9 THE COURT: We can't. We see a black screen. Hold  
10 that thought. Take a minute, Mr. Medlyn and Henry. We have  
11 to figure this out.

12 THE DEFENDANT: I'm here.

13 THE COURT: Okay. Can you turn your video on and  
14 off, Mom?

15 THE DEFENDANT: Uh-huh (affirmative).

16 THE COURT: Okay. I see letters. There she is.  
17 Okay. Oh, she left again. Rosie?

18 THE DEFENDANT: Hold on. It's -- right there?

19 (COURT AND CLERK CONFER BRIEFLY)

20 THE COURT: There she is. Oh. Okay.

21 THE DEFENDANT: Can you see me?

22 THE COURT: Yes, I can.

23 THE DEFENDANT: Okay.

24 THE COURT: I can see you. Thank you, Mom. Sorry.

1 Mr. Medlyn, Henry, please proceed.

2 MR. MEDLYN: I'm happy to pass the witness if it's  
3 fair, Your Honor. Can you hear me?

4 THE COURT: I can. I can. Yes.

5 MS. LAUX: Sorry, I -- sorry, I was kicked off for a  
6 moment. So I had to log back in. I don't know if that was  
7 everyone or just me. But I'm back now. Was there a question  
8 asked or was -- was it -- did we just realize that Rosie is  
9 on?

10 THE COURT: We talked about first words, fishing  
11 poles, he would still --

12 MS. LAUX: Yes.

13 THE COURT: -- allow --

14 MS. LAUX: Okay.

15 THE COURT: -- the --

16 MS. LAUX: I --

17 THE COURT: -- kids to say dada.

18 MS. LAUX: Yes, I was there for all of that. Thank  
19 you. Okay. Henry --

20 MR. MEDLYN: With that, I will pass the witness.

21 MS. LAUX: Thank you. Thank you, Counsel.

22 CROSS EXAMINATION

23 BY MS. LAUX:

24 Q Henry, a couple of questions for you. So my client



1 was asked earlier why he had not requested the DNA test that  
2 you took. Why -- why wouldn't you provide that to him?

3 A For -- can you repeat the question?

4 Q Sure. When my client asked you for a copy of the  
5 DNA test that you took for Alan, why did you not provide it to  
6 him?

7 A I never saw him, you know, up close ever again or  
8 had a need to -- to need to meet him or see him any -- or  
9 ever.

10 Q Okay. And could you have given those to Rosie to  
11 give to him?

12 A Possibly.

13 Q Okay. And -- and you're aware that you -- you and  
14 your attorney provided to my client some birth certificates  
15 and things like that, correct?

16 A I'm sorry, you cut out.

17 Q Can you hear me okay?

18 A Okay. Go ahead.

19 Q You're aware that you and your attorney provided  
20 some documents to my client such as birth certificates and  
21 things like that; is that right?

22 A Yes.

23 Q And why didn't you also provide the DNA test that  
24 you had taken for Alan?

1 MS. LAUX: I don't have any further --  
2 Q Do you want -- do you want to finish your answer?  
3 I'm sorry.  
4 A No, that's fine.  
5 MS. LAUX: Okay. I don't have any further questions  
6 for this witness, Your Honor.  
7 THE COURT: Redirect? Counsel, redirect?  
8 REDIRECT EXAMINATION  
9 BY MR. MEDLYN:  
10 Q Why didn't you ever ask Ignacio for child support?  
11 A Because I -- I am the father of the kids and I  
12 provided what they needed. And I didn't have a need to ask  
13 them.  
14 Q You mentioned preventing conflict and that Rosie  
15 told you there would be conflict if you reached out. Is that  
16 accurate?  
17 A To -- to prevent conflict between her and him and  
18 from us -- from Ignacio and myself, a possibility going into a  
19 type of argument or a disagreement.  
20 Q So you didn't talk to Ignacio for Rosie's benefit.  
21 A No.  
22 MS. LAUX: I -- I just wanted to object to the --  
23 the last question which was whether -- which assumed I guess  
24 that Rosie had asked Henry not to talk to Ignacio. I don't

1 believe that was testified to.

2 MR. MEDLYN: Strike and --

3 THE COURT: So it's an --

4 MR. MEDLYN: -- pass the witness.

5 THE COURT: -- objection as beyond the scope of

6 direct?

7 MS. LAUX: It assumes facts not in evidence. Nobody

8 has testified that Rosie told Henry not to talk to Ignacio.

9 THE COURT: Okay. Overruled. Next question.

10 MR. MEDLYN: That's it, Your Honor. Thank you.

11 THE COURT: Okay. Anything further, Ms. Laux?

12 MS. LAUX: No, Judge. I'm done. Thank you.

13 THE COURT: Okay.

14 MR. MEDLYN: Does Rosie want to ask any questions?

15 THE COURT: Rosie?

16 THE DEFENDANT: Yes, can I talk?

17 THE COURT: Yes, you can ask --

18 THE DEFENDANT: You're saying that --

19 THE COURT: You can ask questions to Henry. You

20 can't necessarily just talk. But go ahead.

21 THE DEFENDANT: Oh, no. I just want to tell him

22 that -- ask Henry --

23 CROSS EXAMINATION

24 BY THE DEFENDANT:

1 Q Did I tell you not to talk to Ignacio?  
2 A No.  
3 MR. MEDLYN: That's it, Your Honor.  
4 (WITNESS EXCUSED)  
5 THE COURT: Okay. Next witness?  
6 MR. MEDLYN: I apologize, Your Honor. Unless  
7 Opposing Counsel wants to hear from Rosie, I am content with  
8 just those too.  
9 THE COURT: Okay. The Court has a couple questions.  
10 Ms. Laux, when you were questioning Ignacio and he was sworn  
11 in, I was interested in -- in a timeline of historical  
12 visitation patterns. And I think you said you were going to  
13 get back to it. And I think you -- you got to it a little  
14 bit, but I need a little more information on that. Do you  
15 think you can --  
16 MS. LAUX: Okay.  
17 THE COURT: -- ask --  
18 MS. LAUX: Sure.  
19 THE COURT: -- Ignacio and then if I feel like  
20 you're missing a year or missing a date or missing a time or  
21 missing the frequency then I'm going to ask the questions  
22 myself. But if you can -- if you can try, I would really  
23 appreciate it.  
24 MS. LAUX: Sure, Judge. Give me just one second to

1 find my notes and then --

2 THE COURT: Yes.

3 MS. LAUX: -- the Court's indulgence for just a  
4 moment.

5 THE COURT: Let's take a -- let's take a three  
6 minute bathroom break. Does that sound like a plan?

7 MS. LAUX: Great.

8 MR. MEDLYN: If it can be five --

9 MS. LAUX: Thank you.

10 MR. MEDLYN: -- I would appreciate it.

11 THE COURT: Okay. Five minute bathroom break.  
12 Thank you.

13 (COURT RECESSED AT 2:34 AND RESUMED AT 2:43)

14 THE COURT: Department T is back in session.  
15 Calling the matter of Ignacio Avila, Jr. versus Rosie Martinez  
16 and Henry Oliva, D-15-545892-C. Is everybody present?

17 MR. MEDLYN: My client has stepped out of the room  
18 briefly.

19 THE COURT: Okay. He was last on the stand. Are  
20 you ready to call your next witness, Counsel?

21 MR. MEDLYN: I actually believe the Court had  
22 instructed we were going back to Ignacio.

23 THE COURT: Yes. Yes. You're right. Okay. Ms.  
24 Laux, thank you.

1 MS. LAUX: And I'm sorry, we're waiting for Henry to  
2 come back in the room; is that correct?

3 THE COURT: Mr. Medlyn, would you like to proceed  
4 with or without Henry present?

5 MR. MEDLYN: We can proceed.

6 THE COURT: Okay.

7 MS. LAUX: Okay.

8 IGNACIO AVILA, JR.

9 called as a witness on his own behalf, having been previously  
10 sworn, testified upon his oath as follows on:

11 DIRECT EXAMINATION

12 BY MS. LAUX:

13 Q Ignacio -- so you're still under oath. You  
14 understand that you have to tell the truth, right?

15 A Correct.

16 Q Okay. I want to talk about -- at the Court's  
17 direction, I want to talk about the visitation that you've had  
18 with Alan. We're just talking about Alan, okay? So Alan was  
19 born in October 2011; is that right?

20 A Right.

21 Q And between --

22 MS. LAUX: I'm sorry, Judge. I have to do a little  
23 bit of leading because I have the timeline here. So if it's  
24 okay with you, I'm going to try and just flesh that out.

1 Q Between 2011 and about 2015, how often did you see  
2 Alan?  
3 A 20 --  
4 Q So when he was born in 2011 to --  
5 A I didn't see him.  
6 Q You never -- you --  
7 A Met --  
8 Q -- have never met him?  
9 A I never met him.  
10 Q So did you -- when did you meet Alan?  
11 A Back in 2015 when we were fighting for custodial  
12 with Jazlynn.  
13 Q Okay. Do you remember what month you met him?  
14 A I'm going to say late -- between September,  
15 October --  
16 Q Okay.  
17 A -- of 2015.  
18 Q Okay. And so between 2015 and 2016 that year, how  
19 often did you see Alan?  
20 A When he had school at John Tartan on Fridays and  
21 some days where he would either, you know, be off from school  
22 as well from the breaks or --  
23 Q Okay. And when you say --  
24 A Like --

1 Q -- on his days off from school, how many times a  
2 month?  
3 A Like once or --  
4 Q So like --  
5 A -- twice.  
6 Q So one -- one or two days a month?  
7 A Two days a month, one or two days.  
8 Q And how long each day?  
9 A A few hours.  
10 Q And were you alone with Alan at this time or --  
11 A With Rosie.  
12 Q So Rosie was always present. And did you have any  
13 overnight visitation with him in 2015 to 2016?  
14 A No.  
15 Q Okay. And then it's -- did that change in -- in the  
16 summer of 2016?  
17 A 2016 in the summer, no, because of -- we were  
18 discussing about Alan.  
19 Q So it --  
20 A We --  
21 Q -- didn't change? You still saw him --  
22 A It changed.  
23 Q -- once a month?  
24 A No, it changed.



1 Q It changed to what?  
2 A To nothing. Like I don't see him at all.  
3 Q So --  
4 THE COURT: Now --  
5 Q -- you stopped --  
6 THE COURT: -- Ms. -- Ms. --  
7 Q -- seeing --  
8 THE COURT: -- Laux, I think you just said --  
9 MS. LAUX: Sure.  
10 THE COURT: -- once a month, but I -- I heard every  
11 Friday at John Tartan and went off from school. So why did  
12 you ask once a month?  
13 MS. LAUX: He -- he testified that in 2015 he only  
14 saw him once to twice per month.  
15 THE COURT: Okay. Thank you.  
16 Q Okay. So in July 2016 you stopped seeing him at  
17 all.  
18 A Yeah, like in late -- I'm going to say after July  
19 when it was -- when I was asking questions about Alan.  
20 Q And -- and why did you --  
21 A The DNA. I did the DNA.  
22 Q Why did you stop seeing him?  
23 A I stopped seeing him I think -- she just -- Rosie  
24 just stopped allowing me to see him.

1 Q Okay. And how long did that last?  
2 A Until 2017 til like in March.  
3 Q So -- so between July 2016 and about February 2017  
4 you didn't see Alan at all?  
5 A No.  
6 Q Okay. And then in March 2017, what -- what  
7 happened?  
8 A She started to believing me more about the -- the  
9 DNA that I took on January 2017 and she allowed me for some  
10 visitations.  
11 Q Okay. So this is where I want to get specific.  
12 When you say some visitations, how often did you see him  
13 beginning in March 2017?  
14 A Like once or twice a week every other week, though  
15 the weekend that I have with my daughter as well.  
16 Q So you would see him one to two times every other --  
17 A Other --  
18 Q -- week.  
19 A -- week. Yeah.  
20 Q And did he spend the night during those times?  
21 A After June, yes.  
22 Q Oh, okay. So the --  
23 A June --  
24 Q So between March 2017 and June 2017 you --

1           A     Correct.

2           Q     -- saw him one to two times per week every other  
3 week.

4           A     Yes.

5           Q     Okay. So per two weeks. And no overnights. So --  
6 and that was always when you had Jazlynn?

7           A     Jazlynn, yes.

8           Q     Okay. Now, in June 2017 what changed?

9           A     I was starting to see him more but it was mainly  
10 like with -- with Jazlynn, with Roslynn.

11          Q     Okay.

12          A     And that -- but he -- she allowed me to have him  
13 spend one night only. But every other weekend until just  
14 things got more intense with the court.

15          Q     Okay. So beginning in June 2017 you started spend  
16 -- he -- Alan started spending one night with you every --

17          A     Correct.

18          Q     -- other weekend?

19          A     Yes.

20          Q     And that was during the time that you had Jazlynn --

21          A     Jazlynn.

22          Q     -- correct?

23          A     Yes.

24          Q     Okay. Was there any -- aside from the weekend time,

1 did you see him at all during the week?

2 A Sometimes. It would be like under visitations with

3 -- with Roslynn too.

4 Q So how often -- how often did you do those, you

5 know, one day a week visits?

6 A Like I'm going to say once every two weeks. I don't

7 know. It was just more like whenever she feels like it.

8 Q And when -- how -- how long on those days did you --

9 A A few -- a few hours. I wouldn't be too long.

10 Q Okay. And then -- and did you ever ask if he could

11 spend the night on those nights and --

12 A All the time.

13 Q Okay. And what was the response?

14 A Either I get ignored, text, or let me see answer.

15 Q And that's from Rosie?

16 A From Rosie.

17 Q Okay.

18 A Also --

19 Q So how long -- sorry, go ahead.

20 A Also -- also let me ask Henry -- or let me ask my

21 roommate.

22 Q Oh, that was what she said to you?

23 A Yes.

24 Q Okay. Now, that was starting in June 2017.

1 A After two --  
2 Q When did that end?  
3 A After our first hearing Jan -- January 2018.  
4 January 2018.  
5 Q Okay. So what did you start doing in January 2018?  
6 A After the hearing, they -- it was the same thing.  
7 Nothing changed after me -- the mediation.  
8 Q Okay. So -- so the same schedule --  
9 A Yeah.  
10 Q -- continued until when?  
11 A All the way til -- before the Supreme Court 9/11.  
12 Q 9/11 what --  
13 A 2018.  
14 Q Okay. So you continued to see him one night every  
15 other weekend with Jazlynn.  
16 A The -- the overnight it stopped, so --  
17 Q When?  
18 A On -- on 2018.  
19 Q When in 2018?  
20 A I don't -- I don't really exactly remember the  
21 dates --  
22 Q Okay.  
23 A -- but it know it stops some -- sometime.  
24 Q Okay. And so beginning in September -- you said

1 September 11, 2018. What did -- what was the schedule that  
2 you exercised after that?

3 A They -- I still was in no -- it's whenever they  
4 want, whenever Rosie and Henry wants.

5 Q Okay. And how -- roughly how often is that? Like  
6 how often per week --

7 A I can say --

8 Q -- per -- per month --

9 A I can say a few hours a month, not a week.

10 Q So a few hours --

11 A Like I'm meaning less -- less than -- less than 20  
12 hours for sure.

13 Q Per month?

14 A Per month.

15 Q Split across several days or do --

16 A No, that's just straight up 20 hours. I counted the  
17 hours to -- like 18, 14 hours, depending -- and -- and every  
18 month he's different. So it'll be less than a day for sure.

19 Q Less than a day, but did you -- so you said that he  
20 stopped spending the night though, right?

21 A Yes.

22 Q So if you had him for 20 hours, how did that work?  
23 What was the breakup of time?

24 A It was just limited like I -- as to how I buy and

1 then a haircut, a quick two to three hours. Take him to the  
2 arcades really quick and then go back because they want him at  
3 5:30 or want him at 6:00 o'clock. That's it.

4 Q Okay. So you said 20 hours a month but you meant  
5 like a few hours here and there?

6 A Yes, like split every two weeks, every once a week  
7 or two weeks.

8 Q Okay. And was Rosie still here for these or who --  
9 who was on these visits when you had him --

10 A Just me and Roslynn, Roslynn and Alan.

11 Q Okay. So it was just you and the --

12 A Yes.

13 Q -- two kids?

14 A The two kids, yes.

15 Q And was it ever just you and Alan or did Alan --

16 A Sometimes, yes.

17 Q -- or -- let me --

18 A They would --

19 Q -- finish my question.

20 A I'm sorry.

21 Q So was it -- was it always you -- Alan and Jazlynn  
22 or were there times where Alan would be with you without  
23 Jazlynn?

24 A Oh, right. There would be times where I didn't have

1 Alan. I mean, Roslynn, but only Alan.  
2 Q But only for a few hours at a time?  
3 A Only for a few hours.  
4 Q When's the last time that you think that he spent  
5 the night at your house?  
6 A I don't remember on that.  
7 MS. LAUX: Okay. Does that help the Court?  
8 THE COURT: So what about '19, '20, and '21?  
9 MS. LAUX: Oh, yes. Sorry, Judge.  
10 Q Okay. Between September 2018 when that started, how  
11 long did that schedule last? So you said in September 2018  
12 you started only seeing him about 20 hours per month on kind  
13 of --  
14 A Correct.  
15 Q -- random days when you had Jazlynn.  
16 A Correct.  
17 Q How long did that schedule last?  
18 A Til -- 2020 actually til now.  
19 Q Okay. So that's the same schedule that you get --  
20 A That's the --  
21 Q -- right now?  
22 A -- same schedule that I get.  
23 Q So you see Jazlynn every other weekend.  
24 A I -- I see Jazlynn three, four days out of the week.



1 Q How often does she spend the night at your house?  
2 A Two to three days --  
3 Q Each week?  
4 A -- every -- every other weekend.  
5 THE COURT: Okay.  
6 Q Okay.  
7 THE COURT: He's confusing the Court. Is it every  
8 other weekend or is it --  
9 THE WITNESS: I have her --  
10 THE COURT: -- three days a week?  
11 THE WITNESS: I have her -- I'm sorry, I have her  
12 every other weekend --  
13 THE COURT: Right.  
14 THE WITNESS: -- but I'll do every two days  
15 visitations three day -- or three days visitations as well but  
16 every other weekend -- we do have every other weekend or  
17 overnights.  
18 Q So -- so you have Jazlynn every other weekend and --  
19 A Correct.  
20 Q -- she stays the night on those weekends.  
21 A Correct.  
22 Q And then you have her additional like three to four  
23 days during the week --  
24 A Visitation.

1 Q -- but just during the day.  
2 A Yes, just during the day.  
3 Q Okay. And -- and you don't see Alan during those  
4 times?  
5 A No.  
6 MS. LAUX: Okay. Sorry, Judge. I had --  
7 THE WITNESS: I'll --  
8 Q When -- when was -- so I guess you said that you  
9 can't recall the last time that you had an overnight with him,  
10 but do you -- when was the last time that you saw him?  
11 A The last time that I saw him it was in March 30th.  
12 And that was for a few hours with Jaz -- with Roslynn and Alan  
13 together.  
14 THE COURT: March --  
15 Q So you --  
16 THE COURT: March 30th --  
17 Q And was --  
18 THE COURT: -- 2021 --  
19 Q -- that just you --  
20 THE COURT: -- right?  
21 Q -- or was Rosa there?  
22 THE WITNESS: 2021. Yes. Sorry, Your Honor.  
23 THE COURT: Thank you.  
24 MS. LAUX: I think that's all I have, Judge, unless

1 you had some clarifying questions for my client.

2 THE COURT: Just a couple.

3 QUESTIONS BY THE COURT:

4 Q So you said Alan wouldn't spend the night anymore  
5 after September 11, 2018; is that correct?

6 A Correct.

7 Q Why?

8 A He's not allowed to, Your Honor.

9 Q Says who?

10 A Rosie. Most of the communication that I have was  
11 with Rosie. Sometimes I would get a text regarding that Henry  
12 -- Henry doesn't allow Alan to stay overnight.

13 Q Did you ever talk to Henry --

14 A And --

15 Q -- about that?

16 A -- it's been happening after -- I'm sorry?

17 Q Did you ever talk to Henry about that?

18 A It was just between Mom and Dad. Henry knows. So  
19 Henry knew though to Your Honor. And I know that the conflict  
20 would be big if it was -- you know, if I were to ask Henry --  
21 Henry knew our situation. I mean, I -- Rosie knows too. And  
22 I never with -- I would never withheld my children from  
23 anybody as well.

24 Q Okay. You indicated 14, 18, 20 hours per month is

1 what you would spend with Alan doing things like arcades and  
2 playing games.

3 A I -- the --

4 Q Is that right?

5 A Yeah, that's correct. My time --

6 Q Okay.

7 A -- is limited. So it's like -- I'm -- I'm afraid  
8 that -- and I'm -- I'm always on time. So when I -- when it  
9 -- when I'm -- when I'm set for a time for example like if I  
10 am able to see him for three hours, I would do anything.  
11 Whatever I -- I even asked him too what are -- what do you  
12 feel like doing, you know. I know he likes basketball as well  
13 so we would do anything. And sometimes he needed a haircut.  
14 So I would do that because my sister cuts hair. So I -- I  
15 would do that. And then he would play with his cousins. He  
16 -- I mean, the -- the first things that we would do though is  
17 try to go see auntie and -- and t hen cousins. So --

18 Q So --

19 A -- but, I mean, other than that we'll do whatever he  
20 wants to do, Your Honor.

21 Q So for the last three years, basically, it's just  
22 been like as -- as much as 20 hours a week and that's it.

23 A Three years from -- since the appeal, yes, Your  
24 Honor.

1 Q Okay.

2 MS. LAUX: I -- I thought that the testimony was 20  
3 hours per month. Am I --

4 THE COURT: Twenty hours a month. Right.

5 MS. LAUX: Am I wrong or --

6 THE WITNESS: Oh, no. No. I'm sorry. For 20 hours  
7 per month.

8 THE COURT: That's -- that's -- if -- if I -- if I  
9 didn't say month, that's what I meant to say.

10 MS. LAUX: Okay.

11 THE COURT: Thank you, Ms. -- I appreciate it.

12 Q So Ignacio, why is there an agreement with Rosie for  
13 Jazlynn, and you and her have a stipulation and you and her  
14 abide by it, but you and her can't figure out Alan?

15 A I tried to, Your Honor, several times. I try to  
16 talk to her. Even before -- before court I tried to do it the  
17 right way between Henry and Rosie as well too. And they  
18 wanted the legal way. That was according to Rosie. And I --  
19 even -- we even have mediation too. And I thought by  
20 mediation too would -- would get solved. But all I want is  
21 just to be part of their lives and I'm -- I'm -- I always try  
22 to do a settle even before the appeal.

23 Q Okay. When Rosie and you talk about why you can't  
24 resolve things regarding Alan, what does Rosie say?

1           A     Either I get ignored or let me see. I'll think  
2 about it. That was the answer. It's always about the --  
3 let's see what court has to say as well.

4           Q     Has she ever said take Alan four days a week?

5           A     No. That would be a miracle.

6           Q     Okay.

7           A     But no.

8           Q     Okay. What -- what kind of visitation would you  
9 like with Alan?

10          A     Now that you mention it, four days out of the week,  
11 please. I'm just playing. I -- I try to make it equal, Your  
12 Honor. I try to work it out.

13          Q     Equal with who?

14          A     Three-and-a-half days --

15          Q     Henry or Rosie?

16          A     Three-and-a-half days -- I'm sorry?

17          Q     Equal with who, Henry or Rosie?

18          A     With -- with Rosie.

19          Q     Okay. What about Henry?

20          A     Henry would be a big conflict.

21          Q     Well, what do you do?

22          A     I mean -- I'm sorry?

23          Q     What would you do?

24          A     What would I do? Well, it's --

1 Q Correct.

2 A -- on Rosie's time.

3 Q Let me rephrase the question. What days --

4 A Okay.

5 Q -- would you want Henry to spend time with Alan,

6 your biological child? Answer the question.

7 A I -- I believe it's fair like if -- if it -- under

8 my time and under -- under his time -- under Rosie's time if

9 that's some -- among them.

10 Q So what days?

11 MS. LAUX: Your Honor, I think he's saying that he

12 wants three-and-a-half days and that if Henry has visits, he

13 wants them to take place during Rosie's time. That's --

14 that's what he's relayed to me.

15 THE COURT: Okay. Okay.

16 Q What's your work schedule, Ignacio?

17 A Monday through Friday from 5:00 a.m. to 1:00 p.m.

18 Q And what do you do for a living, Ignacio?

19 A Warehouse. I'm with the Teamsters --

20 Q Oh.

21 A -- 986.

22 Q Caesars. Right.

23 A Caesars Palace, yes.

24 Q Okay.

1           A     Warehouse attendant.

2           Q     Okay. Okay. Do you know what Rosie's work schedule

3 is?

4           A     No, Your Honor. And I also have requested it too.

5           THE COURT: Okay. Is Counsel ready to call their

6 next witness or would Mr. Medlyn -- I apologize. Would you

7 like to have any sort of cross on the schedule? The Court

8 jumped in and asked questions. So I'll -- I'll give you your

9 time for cross, sir. Go ahead.

10           MR. MEDLYN: Thank you.

11 BY MR. MEDLYN:

12           Q     So you testified you have -- I'm -- I'm still

13 unclear as to how often you have Jazlynn. How often do you

14 pick her up from school in the past most recent month? Just

15 the past month, how often did you pick her up from school?

16           THE COURT: Oh, I think he's --

17           MS. LAUX: Sorry, my microphone's --

18           THE COURT: -- muted, Counsel.

19           MS. LAUX: -- muted.

20           A     This past month. Sorry.

21           MR. MEDLYN: I assume that's just a calendar?

22           MS. LAUX: I -- yeah, it looks like a planner.

23           MR. MEDLYN: Okay.

24           A     I'm going to say like two -- two or three days. Two



1 or three days this past month. No, I'm sorry. The April.  
2 We're talking about April?

3 Q Sure, April.

4 A Yeah, two or three days --

5 Q Okay. Which day?

6 A -- of the week -- for example, this last week I  
7 picked her up like two days from school.

8 Q Which days?

9 A And the week before it'll be like three days.

10 Q Which day?

11 A Wednesday, Thursday, Friday.

12 Q Wednesday, Thursday, Friday. Okay. So Both weeks  
13 about that much.

14 A Uh-huh (affirmative).

15 Q Two or three of those three days.

16 A The -- yes. And before the pandemic, I was picking  
17 her up almost four or five days out of the week.

18 Q Okay. So the pandemic began --

19 A 2020.

20 Q -- it was approximately March of 2020. So prior to  
21 that you were picking her up four of five days a week from  
22 school.

23 A Correct.

24 Q Okay. Yeah, that crystalizes it better for me.

1 MR. MEDLYN: No, Your Honor. I'm -- I can pass the  
2 witness.  
3 THE COURT: Okay. Rosie, any --  
4 MS. LAUX: I don't --  
5 THE COURT: -- quest --  
6 MS. LAUX: -- have any further questions, Your  
7 Honor.  
8 THE COURT: Okay. Rosie, do you have any questions  
9 on the timeline as far as Ignacio's time with Alan?  
10 THE DEFENDANT: With Alan? No. I can -- I can talk  
11 about Jazlynn?  
12 THE COURT: I just want to --  
13 THE DEFENDANT: Just about the picking up and stuff.  
14 THE COURT: I want to limit questions to, you know,  
15 time. Jasmine's -- Jazlynn is fair game. So go ahead and ask  
16 your questions.  
17 THE DEFENDANT: No, I'm just saying that about  
18 Jazlynn that he picks him up from -- he picks her up from  
19 school because he doesn't let Henry pick her up. That's the  
20 only reason. He never wants Henry to pick her up and then she  
21 gets -- one time I sent Henry to pick her up, Jazlynn told  
22 Henry who stayed in the car just in case Ignacio was around.  
23 And she was really scared. That's what Henry told me.  
24 MS. LAUX: I just -- I have to object to child

1 hearsay. I'm sorry.

2 THE COURT: Sustained as to child hearsay, but the  
3 statements between Rosie and Henry are fair. Anything else,  
4 Rosie?

5 THE DEFENDANT: Just -- Your Honor, what I don't --  
6 what -- this is my problem, because Henry doesn't want Alan to  
7 go with Ignacio and Ignacio doesn't want Jazlynn to go with  
8 Henry. That's the whole problem here. I'm like this, like  
9 no, she can't go -- no, he -- no, he can't go -- oh, oh. Oh,  
10 my God. I go crazy. So that's the whole thing that I don't  
11 want problems with either one. But they don't want to  
12 communicate. I always tell Ignacio to ask Henry or Henry ask  
13 Ignacio but they never want to talk. Never. In this whole  
14 five, six years they never want to talk to each other at all.  
15 You know, I think they could talk. They could sit down and  
16 talk and, you know, settle everything down, but they don't  
17 want to. I don't know why they don't want to see each other's  
18 face. You know what I mean?

19 THE COURT: Okay.

20 THE DEFENDANT: Everything goes through me. This,  
21 that, this, that. That's the whole problem I have.

22 THE COURT: The -- the Court asked you in the  
23 beginning about some sort of a schedule with Alan. Have you  
24 thought about it some more?

1 THE DEFENDANT: Yeah, I thought about it  
2 THE COURT: Any additional --  
3 THE DEFENDANT: Because Alan --  
4 THE COURT: -- thoughts?  
5 THE DEFENDANT: -- Alan -- to be -- to be honest,  
6 like Alan has to get into -- you know, like he really doesn't  
7 go that much. So he's not like really used to like leaving  
8 the house -- his house -- both of his houses. And that's why  
9 I think he's not comfortable going, you -- you know. I think  
10 he has to get used to it. I don't know. I don't know. It's  
11 just my -- it's him. Like sometimes he doesn't want to go.  
12 And I come -- I try to convince him just go for a little bit.  
13 You know, I'm trying -- I try to be nice, but without Henry  
14 knowing sometimes. Like I would send him.  
15 But yeah, I -- I would like to settle it now like  
16 maybe, I don't know, every other weekend. I don't know. I  
17 don't know. That's all I want, like everything to be -- but  
18 they -- and they could get along, him and -- and Henry. I and  
19 Henry.  
20 THE COURT: Okay.  
21 THE DEFENDANT: And they can talk about it.  
22 THE COURT: Okay. Anything further, Counsels?  
23 MS. LAUX: No, Your Honor.  
24 THE COURT: Okay.

1 (WITNESS EXCUSED)

2 THE COURT: Mr. Medlyn, who's your next witness?

3 MR. MEDLYN: I think Ms. Rosa might want to just  
4 speak on her own. However -- however, we would like to direct  
5 her as a party with our questioning. But I have no more  
6 witnesses.

7 THE COURT: Okay.

8 MS. LAUX: Sorry, so -- so you -- I don't  
9 understand. Are you going to call her as a witness and direct  
10 examine her or are you going to let her speak? I don't  
11 understand what you mean by direct.

12 MR. MEDLYN: I don't have -- I don't wish for her to  
13 be a direct witness, but as she is unrepresented, she seems to  
14 want to speak on her behalf.

15 THE COURT: Okay. Rosie, let me explain something.  
16 You know how the two lawyers are asking que -- questions to  
17 the witnesses and then the witnesses answer only what the  
18 lawyers say? And then if the witness tries to say something  
19 else it's over here, then the lawyer is going no, no, no, no,  
20 no, answer this question, you can't do that because it's just  
21 you. But --

22 THE DEFENDANT: Okay.

23 THE COURT: -- you are the mother of this child and  
24 your words --

1 THE DEFENDANT: Yes.

2 THE COURT: -- are very important. And, you know,  
3 the lawyers are going to -- and the Court is going to give you  
4 some latitude to explain things in your own way. And I -- I  
5 want to hear about whether or not that timeline is somewhat  
6 accurate regarding Ignacio and Alan and I'd like to hear why  
7 it's only, you know, 14, 20 hours a month from you. I'd --

8 THE DEFENDANT: Uh-huh (affirmative).

9 THE COURT: -- like to hear more about your thoughts  
10 on visitation. And then I -- I mean, you know, these kids are  
11 blessed that there's three parents that love them.

12 THE DEFENDANT: I know.

13 THE COURT: They're blessed. But it's a very, very  
14 difficult situation. And we need you to speak up because now  
15 is the time. And there won't be tomorrow. So --

16 THE DEFENDANT: Uh-huh (affirmative).

17 THE COURT: -- go ahead and tell the Court what you  
18 would like to tell the Court.

19 ROSIE MARTINEZ

20 called as a witness on her own behalf, having been first duly  
21 sworn, testified upon her oath as follows on:

22 DIRECT TESTIMONY

23 THE DEFENDANT: I don't know what to say. I'm like  
24 very nervous right now. Like I told you right now, like I

1 just want everything to be settled, like for them to -- to get  
2 along and then to just share time with them, you know, because  
3 I know they both love them.

4 THE COURT: Okay. Let's start with the timeline.  
5 Is it true that Ignacio didn't spend anytime with Alan between  
6 2011 and 2015, yes or no?

7 THE DEFENDANT: That's not true.

8 THE COURT: Okay. What kind of time did he spend  
9 with Alan?

10 THE DEFENDANT: Well, he would see him here and  
11 there. Like it would never pass like a whole month without  
12 him seeing him. I would take him -- he'll see him when I drop  
13 off Jazlynn. Almost all the time I drop off Jazlynn. Because  
14 Alan would always be with me when I pick up Jazlynn or drop  
15 off Jazlynn. So he would always see him there.

16 THE COURT: So he would see him at drop offs.

17 THE DEFENDANT: Yeah, drop off and pick up. Uh-huh  
18 (affirmative).

19 THE COURT: Okay. And you were living with Henry  
20 until --

21 THE DEFENDANT: I moved out -- I moved out on 20 --

22 THE COURT: '18.

23 THE DEFENDANT: -- 16.

24 THE COURT: '16.

1 THE DEFENDANT: '16. Uh-huh (affirmative).  
2 THE COURT: Okay.  
3 THE DEFENDANT: And then -- and then I would try to  
4 -- I would -- I would always let him see him like once here  
5 and here. But the only reason -- like when we went to court,  
6 the court told us that it's up to us to let him see Alan like  
7 whenever we want to --  
8 THE COURT: See, you can't --  
9 THE DEFENDANT: -- or whenever we --  
10 THE COURT: You -- you can't say him because you've  
11 got a male child --  
12 THE DEFENDANT: Uh-huh (affirmative). That's him.  
13 THE COURT: -- you've got Henry, and you've got  
14 Ignacio. So when you say --  
15 THE DEFENDANT: Okay. Ignacio.  
16 THE COURT: -- him, I have no idea who you're  
17 talking about.  
18 THE DEFENDANT: Sorry, Your Honor. It's Ignacio.  
19 THE COURT: Okay.  
20 THE DEFENDANT: Like all this court -- we've been  
21 having, you know, it's like always been the same thing, like  
22 oh -- and then at the end I would just tell him that you can  
23 see him whenever he was available or whenever we wanted to.  
24 THE COURT: I don't know who --



1 THE DEFENDANT: Who --  
2 THE COURT: -- he is. Who is he?  
3 THE DEFENDANT: Ignacio. Oh, my God. I'm so sorry.  
4 Ignacio.  
5 THE COURT: Okay.  
6 THE DEFENDANT: Uh-huh (affirmative).  
7 THE COURT: So the court told you that Ignacio could  
8 see Alan whenever Ignacio wanted to see Alan. Is that what  
9 you're saying?  
10 THE DEFENDANT: No. No. Whenever -- no, whenever  
11 we wanted to.  
12 THE COURT: Who is we?  
13 THE DEFENDANT: And if we wanted to.  
14 THE COURT: Who is we?  
15 THE DEFENDANT: And -- oh, me and Henry.  
16 THE COURT: Okay.  
17 THE DEFENDANT: Me and Henry.  
18 THE COURT: Okay.  
19 THE DEFENDANT: That was the -- the last court we --  
20 we went to.  
21 THE COURT: Okay.  
22 THE DEFENDANT: Uh-huh (affirmative).  
23 (Indiscernible) --  
24 THE COURT: And -- and what did you and Henry decide

1 for Ignacio to spend time with Alan?

2 THE DEFENDANT: Well, Henry didn't really like the  
3 idea, but me as a mom when I would always try to let him see  
4 him at least a little bit, you know.

5 THE COURT: A little bit as in how much? And what  
6 time frame are you talking about?

7 THE DEFENDANT: Well, we -- we didn't have a  
8 schedule but whatever he said like sometimes like for a couple  
9 hours or -- or whenever Alan wanted to go, that if he asked me  
10 oh, I want to go with him -- with him -- he called him JJ. I  
11 don't know why. But he would say can I go with JJ and I said  
12 yeah, yeah, you can go. Whenever he wants to go, I'll -- I'll  
13 let him go, whenever Alan wants to go.

14 THE COURT: Okay. And why --

15 THE DEFENDANT: And that's a lot --

16 THE COURT: -- is it only 20 hours a month, Mom?  
17 That's not a lot of time.

18 THE DEFENDANT: I don't know if it's 20 hours  
19 because I didn't add up the hours, but I don't know much --  
20 exactly how much it is.

21 THE COURT: Why isn't it seven days a week on and  
22 seven days a week off?

23 THE DEFENDANT: No, because we didn't have an  
24 agreement like in court or it was Henry or nothing, you know.

1 I was just meaning -- I mean, it's hard like with Henry and  
2 all three of us want to share him. Uh-huh (affirmative).  
3 That's why -- that's why we're here.  
4 THE COURT: Okay.  
5 THE DEFENDANT: But -- but I did try to -- I never  
6 stopped showing him Alan.  
7 THE COURT: You never stopped what?  
8 THE DEFENDANT: Showing him Alan, like, you know,  
9 never -- you would always see him.  
10 THE COURT: For a few hours.  
11 THE DEFENDANT: Uh-huh (affirmative).  
12 THE COURT: Okay. Why the overnights stop, Mom?  
13 THE DEFENDANT: I don't know. I think it was after  
14 Court, after the Court decided that he wasn't -- the -- that  
15 Henry was the legal father, that he could be the biological  
16 but Henry was the legal father. That's -- I think that's when  
17 it stopped.  
18 THE COURT: Okay.  
19 THE DEFENDANT: But it wasn't only my decision. It  
20 was me and Henry's.  
21 THE COURT: You and Henry decided that Ignacio  
22 should not have overnights with Alan after September 11th,  
23 2018; is that correct?  
24 THE DEFENDANT: I don't know if that's the correct

1 date, but yeah, I think it stopped -- it stopped overnights.  
2 I'm not -- I'm not sure about the dates or anything like that.

3 THE COURT: Okay. Any questions from Counsels?

4 MS. LAUX: No, Judge.

5 MR. MEDLYN: Just one.

6 CROSS EXAMINATION

7 BY MR. MEDLYN:

8 Q How much time does Alan spend with his older  
9 brother, Henry, Jr.?

10 A A lot. Like --

11 Q Not a lot?

12 A A lot. No, I mean, a lot.

13 Q Oh, I'm sorry. How much?

14 A All day. All day --

15 Q All day?

16 A Uh-huh (affirmative). I mean, when -- and then when  
17 Alan's here, Henry's here. They can't be separated. They  
18 can't. If one comes, the other one has to come. Like if  
19 sometimes Henry has to stay to work, Alan stays too late.  
20 They don't -- he doesn't want to come if Henry doesn't come.

21 THE COURT: Henry meaning Henry, Jr. or --

22 THE DEFENDANT: Henry, Jr. Uh-huh (affirmative).  
23 Henry, Jr.

24 MR. MEDLYN: Yes.

1 THE COURT: Okay.

2 THE WITNESS: Like they're very attached.

3 Q Does Junior ever go with Alan when they visit  
4 Ignacio?

5 A No, never. No.

6 Q Never.

7 A No.

8 Q Thank you.

9 A Thank you.

10 MS. LAUX: I have one question actually after  
11 Opposing Counsel asked a question.

12 CROSS EXAMINATION

13 BY MS. LAUX:

14 Q You said that Henry, Jr. never goes with Alan to  
15 Ignacio's timeshare. Who's choice is that?

16 A No, nobody -- just doesn't want to go. Sometimes I  
17 ask him because I remember Ignacio used to take them to  
18 basketball. And one time I asked him you want to go and he's  
19 like no, no. it was nobody's choice. We just -- he just  
20 doesn't want to go. He's older. He's 13, so --

21 Q Okay. So would you -- would you allow Henry, Jr. to  
22 go with Alan to Ignacio's timeshare?

23 A Why would he go though?

24 Q I'm asking you a question. Would you ever allow

1 Alan's brother to go with him to Ignacio's timeshare?  
2 A Yeah, that's like a birthday party or something.  
3 Yeah, why not? Uh-huh (affirmative).  
4 MS. LAUX: That's all I have, Your Honor.  
5 THE COURT: Okay. I've got a couple more, Mom.  
6 VOIR DIRE EXAMINATION  
7 BY THE COURT:  
8 Q Okay. So --  
9 A Okay.  
10 Q -- you have an agreement with Ignacio for Jazlynn.  
11 A Uh-huh (affirmative).  
12 Q Ignacio's abiding by it. He sees Jazlynn every  
13 other weekend and a couple days during the week because it --  
14 A Uh-huh (affirmative).  
15 Q -- looks like his schedule, he gets off early.  
16 A Yeah.  
17 Q You're a little unsure of what your schedule is, but  
18 Ignacio's available and he picks the baby up from school and  
19 handles business for a couple hours; is that fair?  
20 A Yes, but I want Henry to pick her up from school too  
21 because I want her to spend time with her brother --  
22 Q So the answer to --  
23 A -- sometimes.  
24 Q -- my question was yes, that that is --

1 A Yes.

2 Q -- the schedule?

3 A Yes.

4 Q Okay. My next --

5 A Yes.

6 Q -- question for you is when did you come to that

7 stipulation with Ignacio?

8 A On the Court -- you -- you mean like not the court

9 schedule?

10 Q When did you and Ignacio agree as to the schedule

11 for Jazlynn?

12 A 2015, I believe it was the court --

13 Q Okay.

14 A -- or '16 --

15 Q And -- and you and Ignacio were still kind of seeing

16 each other at that time, right?

17 A Yeah.

18 Q Okay.

19 A We kind of -- we talked a lot, yeah, about the kids

20 and stuff.

21 Q Okay.

22 A Uh-huh (affirmative).

23 Q Why can't you and Ignacio come to an agreement

24 regarding Alan?

1           A     Because there's -- now there's Henry too, you know,  
2 and -- and then Alan is older. It's like a little bit harder,  
3 you know. I don't know. It's -- it's a little different. I  
4 told Ignacio about Jazlynn when Jazlynn was six months old.  
5 She was a baby. But Alan -- I think Alan was older when he  
6 started telling me about the DNA. I think he was like five  
7 years old or six years old. It's like a -- it was a little  
8 harder with Alan.

9           Q     Why is it harder with Alan when he's five years old  
10 to come to an agreement with his biological father just like  
11 you came to an agreement with him about Jazlynn? Why -- why?

12          A     Well, I don't know. There's Henry too. Like he was  
13 the dad and he was there for him all the time. So I don't  
14 know. It was just -- it was hard because Henry was there for  
15 Alan all the time. I didn't want to hurt him that way. I  
16 don't know. I don't know. It's just --

17          Q     But what --

18          A     -- hard.

19          Q     -- about Ignacio? He lost five years of Alan's  
20 infancy, toddlerhood, and early childhood. And now he lost  
21 more years because of an appeal. Why can't you come to an  
22 agreement with Ignacio? How incredibly --

23          A     We do come --

24          Q     -- unfair is that to him?



1           A     Okay. Your Honor, yeah, I can come to an agreement,  
2 but then it's Henry too, not only me.

3           Q     My question is for you.

4           A     Yeah, I can come to an agreement with --

5           Q     It's not --

6           A     -- him --

7           Q     It's not --

8           A     -- but --

9           Q     -- punting to Henry. I'm asking you as the mother.

10          A     I think I could have done that, yeah.

11          Q     No, my --

12          A     But I always --

13          Q     -- question is --

14          A     -- had a --

15          Q     -- why haven't you come to an agreement with Ignacio  
16 for Alan? You're having a tough time answering.

17          A     Oh, because he always say he was going to send me to  
18 court and I waited -- I waited for court all the time because  
19 he would always tell me it was court, court, court. So I'm  
20 like okay. I don't know. -- I think -- I didn't know what  
21 else to do, like it was -- because I -- I would -- I always  
22 thought about Henry, you know. Always.

23          Q     What about Ignacio?

24          A     Yeah, and -- well, him too, but I -- at the time it

1 was Henry, like he was -- I don't know. I was there with him.  
2 So that's why I -- that's the reason I moved out too because I  
3 wanted to settle all this -- this whole thing, this whole  
4 thing going on. I couldn't do it.  
5 THE COURT: Okay. Any Counsel have any follow up  
6 questions?  
7 MS. LAUX: No, I don't, Judge.  
8 THE COURT: Mr. Medlyn, I'm assuming you have some  
9 follow up?  
10 MR. MEDLYN: I have just a brief one.  
11 THE COURT: Please.  
12 RECROSS EXAMINATION  
13 BY MR. MEDLYN:  
14 Q When you have a set schedule with Jazlynn, did --  
15 does Ignacio ask for any more time outside of that set  
16 schedule?  
17 A Yes.  
18 Q Why was he picking the child up every day after  
19 school?  
20 A Because he doesn't want Henry to pick her up.  
21 Q Was that during his time?  
22 A Whose time? Ignacio? No.  
23 Q His time.  
24 A No.

1 Q Was that during Ignacio's time?  
2 A No.  
3 Q Why did you permit him extra time? Why did you  
4 permit Ignacio extra time?  
5 A Because I didn't want to have the problem -- like  
6 he's always telling me I don't want Henry to pick her up -- to  
7 pick her up. One time he went to my work, took a picture of  
8 me because I told him that I was going to work -- that I was  
9 going to be off to take the kids somewhere and I went to work  
10 because Henry was going to take them somewhere. And he went  
11 and took a picture of me while I was working. And saying that  
12 I -- I -- that I lied to him, that Henry picked up Jazlynn.  
13 He did that like two times.  
14 Q So --  
15 MS. LAUX: So it's still confusing -- it's still  
16 confusing when we're throwing around he and his --  
17 THE DEFENDANT: Oh.  
18 THE COURT: It is --  
19 MS. LAUX: -- and I don't --  
20 THE DEFENDANT: Ignacio.  
21 MS. LAUX: -- understand --  
22 THE COURT: -- so confusing.  
23 THE DEFENDANT: Ignacio.  
24 THE COURT: I agree. We have to use --

1 THE DEFENDANT: Ignacio.

2 THE COURT: -- names and the names are as follows:

3 Henry, who is dad, Henry, Jr., who is the little guy, Ignacio,

4 Alan, and Jazlynn. Those are the only names.

5 THE DEFENDANT: Okay. I'm talking about Ignacio.

6 Sorry.

7 THE COURT: Okay. Then say --

8 Q So --

9 THE COURT: -- Ignacio.

10 Q -- to -- to help clean that up, when you told

11 Ignacio that you were going to be available to pick Jazlynn up

12 from school, correct?

13 A Yes.

14 Q And it is your testimony that Ignacio came and

15 photographed you at your place of work.

16 A Yes, I have the picture. Uh-huh (affirmative).

17 Q How did he send you that picture?

18 A Through text.

19 Q And this happened on more than one occasions.

20 A Two times. Uh-huh (affirmative). One time he

21 showed up at my work.

22 Q Does he bombard you in other ways for additional

23 timeshare?

24 A No, well, he always asks for extra time. But when I

1 ask for extra time, oh, no, he's -- he gets mad, he starts  
2 yelling -- telling me all this stuff just because I -- I don't  
3 give him to her -- to him long time -- to Ignacio long time.

4 Q So when you asked Ignacio for extra time, he is  
5 combative?

6 A Yes.

7 Q But it is your testimony that he, quote, always asks  
8 for extra time. How often is always in one week?

9 A Him or me? Ignacio --

10 Q He -- how often does Ignacio ask you in one week?  
11 How much is always in your mind?

12 A Well, he wants -- he -- Ignacio wants to pick her up  
13 every day from school. Now, that she's back to school. And  
14 then when -- when then other -- the -- when she wasn't in  
15 school and then the other weeks he would have asked for --  
16 when it's only Tuesday and Thursdays for him one week and then  
17 the next week he doesn't see her, he will want to see her like  
18 maybe Wednesday from the other week.

19 Q Okay. Thank you very much.

20 A Uh-huh (affirmative). You're welcome.

21 MS. LAUX: I have a couple of questions if that's  
22 okay, Judge.

23 THE COURT: Yeah.

24 MS. LAUX: Sorry.

1 THE COURT: Please.

2 MS. LAUX: I think I'm going --

3 THE COURT: Please.

4 MS. LAUX: -- out of order. I -- I do apologize.

5 THE COURT: Please.

6 MS. LAUX: Okay.

7 MR. MEDLYN: We're good.

8 RECROSS EXAMINATION

9 BY MS. LAUX:

10 Q Okay. Rosie, you said that Ignacio showed up at  
11 your work but you -- you also testified that you had told  
12 Ignacio that you would be picking up the kids from school; is  
13 that right?

14 A I just told him I was going to be off. That's it.

15 Q And was that a lie?

16 A Yeah, because I had to lie to him --

17 Q That's all.

18 A -- and I --

19 Q No. No. It's just it --

20 A Oh.

21 Q -- it's just a yes or no question.

22 A It was --

23 Q So was that a lie that you told him?

24 A Always lies because he never wanted Henry to pick

1 her up.

2 Q Okay. So you lie to Ignacio about when you're going

3 to be taking care of your kids because you're worried about

4 conflict between --

5 A Yes.

6 Q -- Ignacio and --

7 A Yes.

8 Q -- Henry.

9 A Yes. Correct.

10 Q Okay.

11 A Yes.

12 Q And then also you -- you mentioned that when you ask

13 for more time, Henry can be combative. Don't you have primary

14 custody already of Jazlynn?

15 A What was the -- what was the question?

16 Q You testified that you -- that when you asked for

17 more time --

18 A With who?

19 Q -- Henry -- sorry, Ignacio, either child, Jazlynn or

20 Alan, when you ask for more time with either -- have -- okay,

21 let me break it down. Have you asked for more time with Alan?

22 A With Henry?

23 Q Correct. No, with -- have you asked for more time

24 for yourself during Ignacio's timeshare of Alan?

1           A     But Alan doesn't have a timeshare. I mean --  
2           Q     Okay. Great. Yes. So that's my point. I'm  
3 talking about Jazlynn. So during Ignacio's timeshare with  
4 Jazlynn, you just testified that you asked for more time; is  
5 that correct?  
6           A     No. It's a -- it's not really, maybe once or twice  
7 in the whole schedule. But he gets mad. He doesn't want me  
8 to -- to --  
9           Q     But you have primary custody of Jazlynn, do you not?  
10          A     Yes, but it's only like I told you --  
11          Q     Okay.  
12          A     -- once a year --  
13          Q     So let -- no, just answer my question, okay? Do --  
14          A     Uh-huh (affirmative).  
15          Q     -- you have primary custody of Jazlynn and Henry --  
16 or sorry, I'm not -- not talking about Henry. Ignacio has  
17 every other weekend, why do you ask for more time if Ignacio  
18 only has every other weekend?  
19          A     When I ask, it's for an emergency. Like last time I  
20 have surgery. So I told him that I was going to give it to  
21 him -- her -- him on Saturday, not Friday. Well, that's when  
22 everything starts. That's why when he had --  
23          Q     So you were --  
24          A     -- (indiscernible) --



1 Q So -- so in this example that you're citing, you  
2 didn't ask for additional time. You asked Ignacio if he could  
3 take Jazlynn for a different day; is that correct?  
4 A Yes. Yeah, that's correct.  
5 MS. LAUX: Okay.  
6 A Like --  
7 MS. LAUX: That's all the --  
8 A -- if it's the same --  
9 MS. LAUX: -- questions I have. Thank you.  
10 That's --  
11 THE DEFENDANT: Uh-huh (affirmative).  
12 MS. LAUX: -- all.  
13 THE DEFENDANT: Okay.  
14 FURTHER VOIR DIRE EXAMINATION  
15 BY THE COURT:  
16 Q Rosie, what do you do?  
17 A I work at the Cosmopolitan food and beverage  
18 cashier.  
19 Q What days in the week do you work?  
20 A I'm off Sunday, Monday. So Tuesday through  
21 Saturday.  
22 Q What hours do you work?  
23 A 10:30 -- right now it's six hours, 10:30 to 4:30 --  
24 or 10:30 to 6:30. What -- the -- I mean, it's six hours, but

1 it depends. Like sometimes it's eight.

2 Q So 10:30 to 4:30 or 6:30; is that correct?

3 A Yes. Yes. Correct.

4 Q So is it fair to say that you're unavailable to pick  
5 up your babies from school if their school --

6 A Yes.

7 Q -- gets out? Okay.

8 A Yes.

9 Q So who usually handles pick up from school for all  
10 of your kids?

11 A Henry. Henry.

12 Q Okay. What about Ignacio?

13 A Ignacio, Jazlynn.

14 THE COURT: Okay. Do Counsel have any other  
15 questions for Mom based on me asking about Mom's work schedule  
16 at all or no?

17 MS. LAUX: I do not, Judge.

18 MR. MEDLYN: No --

19 MS. LAUX: Thank you.

20 MR. MEDLYN: Your Honor.

21 THE COURT: Okay. I believe Mr. Medlyn then -- do  
22 you have any other witnesses?

23 MR. MEDLYN: I do not.

24 THE COURT: Okay. You guys both have, you know,

1 witness lists but you're not going to call anybody.

2 MR. MEDLYN: Based off how it has shaped up, it's  
3 not necessary.

4 THE COURT: Okay.

5 MS. LAUX: We only listed the three parties and --  
6 and we're satisfied with the questions we've asked today.

7 THE COURT: Okay. The Court has a couple questions  
8 for Henry. Do you think you can turn the camera back?

9 MR. MEDLYN: Happy to. If you'll give me just a  
10 moment.

11 THE COURT: Yes, please. Hello, Henry. You're  
12 still under oath. I'm just reminding you.

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q I -- I didn't feel like I heard enough from you.  
16 And so I wanted to ask you a couple follow up questions. You  
17 mentioned that Henry, Jr.'s first word was dada, right?

18 A Yes.

19 Q And then which of the two kids says dada first and  
20 which one said nana first and then dada second? I -- I need  
21 to correct my notes.

22 A Alan said dada first and Jazlynn said nana first.

23 Q And then dada second, right?

24 A Yes.

1 Q Okay. I can see that this is incredibly difficult  
2 for you. How do you think it feels from Ignacio's  
3 perspective?

4 A I'm sure there's -- there's some discom --  
5 discomfort there from his side also.

6 Q Okay. Do you think you could have a conversation  
7 with Ignacio and -- and maybe talk to him a little bit more?

8 A Honestly, Your Honor, I don't think so because I  
9 don't think he would be satisfied with anything based on what  
10 I've -- what I've -- going through mediation in the prior  
11 case.

12 Q He has nothing with Alan on paper.

13 A He goes -- yeah, he goes -- I mean, nothing --  
14 definitely there's nothing on paper. You're right.

15 Q So you're saying he wouldn't be satisfied with  
16 anything even though he has nothing on paper with Alan.  
17 Why --

18 A We --

19 Q -- do you think --

20 A We tried to -- because we tried to offer that in the  
21 past and he -- he denied it.

22 Q Okay. What do you want Ignacio to have with Alan?

23 A Well, Your Honor, it's -- it's hard for me to -- to  
24 agree, you know, just in the whole -- and how difficult this

1 whole situation is. Regardless of the case, you know, it's --  
2 it's just -- it's painful --

3 Q I can see that.

4 A -- to -- for all -- for -- just for all three.

5 Q I can see that.

6 A You know, one thing that -- you know -- you know,  
7 there is time that Alan calls me and asked me if he can go.  
8 And -- and my answer has always been yes. The only -- the  
9 only problem that I've felt that -- and I'm not comfortable  
10 with is that when he goes it seems like he's interrogated or  
11 he's told information that's probably not necessary where  
12 they're telling him that, you know, and -- and also Jazlynn,  
13 we're just telling Jazlynn and Alan, you know, not to come  
14 with me, I'm not the real dad, you know, and -- and stuff like  
15 that and --

16 MS. LAUX: Objection. I mean, this is child  
17 hearsay. We don't have these children here to ask. So we  
18 can't talk about what they've said.

19 THE DEFENDANT: That --

20 THE COURT: Sustained.

21 THE DEFENDANT: -- is true.

22 THE COURT: Sustained as to child hearsay.

23 BY THE COURT:

24 Q Henry, typically, hearsay, that's lawyer speak for

1 any he said, she said, they said statements. So if you find  
2 yourself saying he said, she said, they said, it's probably  
3 hearsay. Just a rule of thumb.

4 MR. MEDLYN: And he's allowed to comment what the  
5 child has said to him. It doesn't go to the truth of the  
6 matter. The child said it to him.

7 THE COURT: It's child --

8 MS. LAUX: That -- that --

9 THE COURT: -- hearsay.

10 MS. LAUX: That's the definition of hearsay.

11 THE COURT: That's not -- the Court -- I -- the  
12 sustained it. I'm not changing my ruling.

13 Q Henry --

14 A So based -- based on sometimes the actions and the  
15 character -- characteristics that the kids have displayed with  
16 me and my time when -- when I -- I have them present. You  
17 know, it -- it seems like they felt uncomfortable, for  
18 example, if say Jazlynn -- like Jazlynn, me going to school  
19 with her or her coming over to my house she's felt discomfort  
20 or -- or an uneasiness because she -- she just -- she -- she  
21 seems afraid to be reprimanded. And with Alan, he seems  
22 sometimes where he's kind of like disappointed and -- and, you  
23 know, and -- and has asked me certain questions and stuff or  
24 he's -- or not satisfied. Just in -- as far as their

1 characteristics go.

2 Q Okay. I have a different question. What if Henry,  
3 Jr. was Ignacio's?

4 A I'm sorry?

5 Q What if Henry, Jr. was Ignacio's biological child?  
6 What if -- how would you --

7 A I don't -- I don't --

8 Q How would you share him?

9 A I would have to get over my -- my pain first to be  
10 able to think about it.

11 Q Okay. I -- I can't divide him in three. So you  
12 have Wednesday to Saturday and Sunday to Tuesday are Mom's  
13 time. What's the exchange time and which day does the  
14 exchange occur?

15 A Are you asking me?

16 Q Yes, Henry.

17 A It depends. It -- it varies. You know, activities  
18 that maybe the kids might be something. So sometimes it could  
19 be Saturday night. Sometimes it could be Sunday -- Sunday  
20 morning.

21 Q Okay.

22 A Maybe the kids, you know, they're -- they have  
23 something going on, especially if all three are together. You  
24 know, we -- we might do something on Saturday nights. And if,

1 you know, so the -- they might stay over. Or sometimes I'll  
2 just -- just drop them off at that -- at that time.

3 Q Okay. Do you have any opinion as to why Ignacio and  
4 Rosie can't come to an agreement as to Alan? Mom keeps saying  
5 it's your fault. What's the story with that?

6 A Well, it almost seems like everything is my fault  
7 from everything that's happened. But I -- I mean, I -- I  
8 think from -- from what I sense, she tries to avoid the  
9 conflict. She doesn't want to, you know, be in conflict with  
10 -- with him or with Ignacio or with -- or with myself which I  
11 feel that sometimes I give her the least amount of conflict.

12 And I think that part of the reason it's always --  
13 if, you know, kind of like the time that Jazlynn has with her  
14 mother, with Rosie, you know, it's pretty much when she's not  
15 available is -- you know, Rosie can make that decision on  
16 where that time could be spent, but it seems like it's -- it's  
17 taken away from her -- from him for not allowing her to come  
18 -- for not allowing Jazlynn to -- to come to -- with me.

19 Q Okay. What is it from you to Rosie that's  
20 preventing Rosie and Ignacio from coming to an agreement as to  
21 Alan? What's happening in your head regarding Alan?

22 A Well, Alan is really attached to -- to Henry.  
23 They've -- they've growing up -- you know -- you know,  
24 together the majority of the time because Jazlynn had her



1 visitation when she would leave. So both of them are -- are  
2 always inseparable. They're always looking out for each  
3 other. They -- they do things together. You know, it's --  
4 it's -- they're -- they're like right and left to each other.  
5 You know, they're close and -- and, you know, just -- you  
6 know, I -- I don't -- you know, I wouldn't like to take  
7 anything away from -- from Henry, Jr. as what -- what he has  
8 grown up with and the -- the relationship that he's had with  
9 -- with his brother.

10 Q Okay. So what are you saying to Rosie that's  
11 preventing Ignacio and Rosie from coming to an agreement to --  
12 as to Alan?

13 A What am I saying to Rosie?

14 Q Yeah, Mom keeps saying you're the reason why her and  
15 Ignacio can't come to an agreement about Alan. Is she lying?

16 A What -- well, I think that when she said that, it's  
17 because I'm a -- I'm a third person. If I wasn't ever  
18 involved in anything, then it would be really easy for just  
19 them two. But she -- because she also -- she also knows that  
20 the way I feel is that of course, you know, it's hard to me to  
21 accept for Alan to -- to go and -- and spend time with him  
22 also but also, you know, I haven't -- I haven't really denied  
23 him visiting the time that he's visiting even though it's --  
24 it's something that might be uncomfortable to me, but what --

1 what I don't -- what I don't like is if -- if we had -- if  
2 Alan is on the program or on a plan with his brother, you  
3 know, to be distracted from that. And sometimes that -- you  
4 know, that could -- that could happen or, you know, something  
5 might be planned for all three of us, you know, for Alan,  
6 Henry, and myself. And, you know, and he might be pulled --  
7 pulled away from that activity or -- or whatever we're going  
8 to do.

9 Q Okay.

10 A And then she -- she knows that -- you know, I'm one  
11 of the reasons that, you know, I'm -- that I always tell her  
12 that I'm not -- you know, that bother -- bothers me is when I  
13 see the actions of the -- you know, how the kids, you know,  
14 how they're -- they're feeling the -- you know, their  
15 character -- character -- characteristics that they have  
16 wondering did he come back sometime.

17 Q Have you ever called Ignacio and said hey, do you  
18 want to see Alan or take him for some ice cream?

19 A No.

20 Q Okay. Have you ever said hey, let's -- let's call  
21 Ignacio or let's FaceTime or let's WhatsApp Ignacio so you can  
22 see him?

23 A Me and who else? Me and Alan?

24 Q When you have Alan, have you ever called Ignacio and

1 FaceTimed with Alan and Ignacio?  
2 A No.  
3 THE COURT: Okay. Okay. Do Counsel have any follow  
4 up questions?  
5 MR. MEDLYN: No, Your Honor.  
6 THE COURT: Ms. Laux?  
7 MS. LAUX: No, Your Honor.  
8 THE COURT: No? Okay. And there's no further  
9 witnesses?  
10 MR. MEDLYN: No, Your Honor.  
11 THE COURT: Would you guys like a short break to get  
12 your thoughts together for closing?  
13 MS. LAUX: I -- I'm -- I'm ready, but it seems like  
14 everyone else can use a break.  
15 THE DEFENDANT: Thank you.  
16 THE COURT: The Court's okay with the break. Let's  
17 do -- do you guys want 10 minutes, Mr. Medlyn?  
18 MR. MEDLYN: Ten is fine, Judge.  
19 THE COURT: Ten is fine? Okay. So we'll come back  
20 at 3:50, okay?  
21 MS. LAUX: Thank you.  
22 THE COURT: Thank you, Counsels and Rosie.  
23 (COURT RECESSED AT 3:41 AND RESUMED AT 3:52)  
24 THE COURT: Department T is back in session and

1 ready to proceed with closing arguments on the Ignacio Avila,  
2 Jr. versus Rosie Martinez and Henry Oliva matter, case number  
3 D-15-515892-C. Are Counsel and Rosie ready to proceed with  
4 their closing arguments?

5 MS. LAUX: Yes, I am, Your Honor.

6 THE COURT: Thank you. Mr. Medlyn, are you ready to  
7 proceed as well?

8 MR. MEDLYN: I -- I'm sorry. Yes, Your Honor.

9 THE COURT: Okay. Perfect. Please proceed,  
10 Counsel.

11 MS. LAUX: Okay. While this case is clearly an  
12 emotionally fraught one, today's evidentiary hearing concerns  
13 one legal issue which is Ignacio Avila's paternity of Alan.  
14 The evidence presented today has shown that from the time  
15 Rosie was pregnant with Alan Rosie and Henry have deliberately  
16 and consistently lied to Ignacio regarding the possibility  
17 that Alan could be Ignacio's son. In so doing, the Defendants  
18 have stripped Ignacio of his fundamental right to parent Alan  
19 and watch him grow.

20 Now nine years after Alan was born and nine years  
21 after Rosie and Henry submitted a fraudulent acknowledgment of  
22 paternity of Alan, Defendant Henry alleges that this Court's  
23 confirmation of paternity would strip him of his parental  
24 rights. Unfortunately for him, Mr. Oliva -- I'm sorry, Henry

1 does not have any legal parental right over Alan.

2 First, I want to talk about the law of the case.

3 The Nevada Supreme Court has long held that wherein an  
4 Appellate Court deciding an appeal states a principle or rule  
5 of law necessary to the decision, the principle or rule  
6 becomes the law of the case and must be adhered to throughout  
7 its subsequent process -- I'm sorry, progress both in the  
8 lower court and upon subsequent appeal. This mandate is known  
9 as the law of the case doctrine. The District Court commits  
10 an error if an order on remand contradicts the Appeal Court's  
11 decision.

12 Here, the Supreme Court of the state issued an order  
13 of reversal and remand on January 23, 2020 instructing this  
14 Court to follow the procedures specified in NRS Chapter 126 to  
15 determine the issue of paternity. Accordingly, the law of  
16 this case is that paternity must be determined under NRS 126  
17 and the presumptions provided therein.

18 I -- you know, contrary to Opposing Counsel's  
19 argument earlier that this is not a black and white issue,  
20 with respect to the paternity, it very much is black and  
21 white. Every student in their first year of law school learns  
22 that the first place to look when interpreting a statute is  
23 the plain meaning of that statute. Here, a plain reading of  
24 NRS 26 provides that the liberty interest of a parent in the

1 care, custody, and management of the parent's child is a  
2 fundamental right. NRS 126.051 provides for presumptions of  
3 paternity.

4 Subsection 1 of this chapter read together with  
5 subsection 3 provides for a rebuttable presumption for  
6 paternity which can be rebutted by clear and convincing  
7 evidence. Moreover, subsection 3 provides that where two or  
8 more presumptions arise which conflict the presumption founded  
9 on, quote, weightier considerations of policy and logic  
10 controls.

11 Subsection 2 of this chapter provides for a  
12 conclusive presumption where genetic testing reveals that a  
13 man is the biological father of a child with 99 percent  
14 probation or greater. A rebuttable presumption is defined by  
15 Black's Law Dictionary as an inference drawn from certain  
16 facts that establish a prima facie case which may be overcome  
17 by the introduction of contrary evidence.

18 A conclusive presumption on the other hand is  
19 defined by Black's Law Dictionary as a presumption that cannot  
20 be overcome by any additional evidence or argument because it  
21 is accepted as irrefutable proof that establishes a fact  
22 beyond dispute. Here, Ignacio has submitted one DNA test to  
23 this Court and has had two others completed which show within  
24 99.9999 percent probability that he is Alan's father. Ignacio

1 presented a paternity test at this Court's own direction. So  
2 he's following the law of this case in so doing.

3 Even absent this conclusive presumption, the other  
4 presumptions have been rebutted by clear and convincing  
5 evidence of fraud. Specifically that Ignacio confronted Rosie  
6 and Henry about Alan's paternity in about 2016 or 2017 and was  
7 lied to and told that there was no possibility that Alan was  
8 his child. Even a few weeks after Alan's birth Ignacio asked  
9 Rosie whether Alan was his child or could be his child and  
10 Rosie told him there was no possibility of that. A party who  
11 has lied should not be entitled to a presumption of paternity  
12 by their own -- by their own fraud. In this case, the  
13 fraudulent birth certificates and the fraudulent holding out  
14 of Alan as Henry's own son.

15 Now, with respect to the relevant case law, that --  
16 that's the plain reading of the statute. We really don't need  
17 to go much further than that, but obviously other cases have  
18 been raised interpreting this. So moving onto Love v. Love  
19 which was cited by Opposing Counsel in the pretrial memo of  
20 Henry.

21 In Love v. Love, a father who -- the -- Love v. Love  
22 involved a father who learned late in a child's life that he  
23 was not the father and he only raised the issue of paternity  
24 two years after he had a DNA test completed. The reason that

1 he raised paternity as an issue was to claim that he was not  
2 the child's father and to evade Mom's motion for child support  
3 modification based on his increased income.

4 In contrast to the presumptive father in Love v.  
5 Love, Ignacio is asking this Court to use a DNA test to find  
6 that he is the father of his child, not to disestablish  
7 paternity or evade his obligation for support of Alan.  
8 Moreover, the presumption father in Love took a DNA test,  
9 discovered he was not the child's father, and then sat on the  
10 results until the mother requested to modify child support.

11 Here again, as soon as Ignacio realized that he  
12 might be Alan's father, he confronted Rosie and Henry and  
13 asked whether they had ever done a paternity test. And  
14 shortly thereafter he conducted two paternity tests on his own  
15 and then raised this issue with the Court so that the Court  
16 could intervene and help establish paternity in this case.

17 Next, the Court held in Love that a decision of  
18 paternity will not operate as res judicata where extrinsic  
19 fraud existed in the original proceeding. Thus, Henry's claim  
20 that the children's birth certificate and his completion of a  
21 voluntary acknowledging of paternity precluded Ignacio from  
22 claiming paternity is unpersuasive. The messages presented  
23 today between Ignacio and Henry show clearly that Henry and  
24 Rosie conspired to conceal from Ignacio that he might be



1 Alan's father.

2           Finally, Love v. Love was decided in 1998 before a  
3 conclusive presumption of paternity was added to NRS 126.051  
4 in 2007. Opposing Counsel would like to cite to Love in a  
5 vacuum and say that DNA is not controlling. And while that  
6 was one sentence that was used in Love v. Love, we need to  
7 look at the broader context. Specifically, the Supreme Court  
8 in Love noted that NRS 126.051 does not set forth conclusive  
9 presumptions of paternity. The statutory scheme clearly  
10 reflects the legislature's intent to allow biological factors  
11 to become critical in a paternity determination, just as  
12 Opposing Counsel is arguing today.

13           However, in 2007, Assembly Bill 498 added subsection  
14 2 to this chapter and specifically added language to  
15 subsection 3 which was formerly the second subsection  
16 providing that only presumptions under subsection 1 rather  
17 than in this chapter are rebuttable. The Supreme Court in  
18 Love held explicitly that the legislature has the power to  
19 decide that the results of biological tests do not  
20 conclusively determine a paternity. So the Court's holding in  
21 Love actually supports Ignacio's claim today which is that the  
22 legislature amended NRS 126 in 2007 to provide that the  
23 results of a biological test do conclusively determine a  
24 paternity action; therefore, Love is not controlling, the

1 legislature has spoken on this issue, and it has spoken quite  
2 clearly.

3 To -- now moving onto the second case by Opposing  
4 Counsel which is St. Mary vs. Damon. Again, St. Mary involved  
5 two mothers, a surrogacy, and a co-parenting agreement that  
6 was entered prior to the child's birth.

7 This case is simply not analogous and the Court  
8 doesn't need to consider best interest factors because  
9 paternity presum -- the paternity presumption in favor of a  
10 DNA test is conclusive. There does not need to be any  
11 additional evidence -- or so to Opposing Counsel's point of a  
12 de facto agreement between the parties, Ignacio's good  
13 co-parenting and his willingness to accommodate Rosie's time  
14 are not in agreement when he did not even know that he had  
15 rights to Alan.

16 So to say that he agreed to some sort of schedule is  
17 simply unpersuasive when you look at the evidence and you see  
18 the -- as soon as he learned that Alan can be his child in  
19 2017, he began asking for his rightful timeshare of him.  
20 There was no agreement that Henry was a third party or even a  
21 party to this case. That was a court order which joined him  
22 to this case.

23 Now, I understand that the -- again, the motions are  
24 high in this case. Unfortunately, the law is not whoever

1 loves Alan as a parent. That's not the law. The laws are  
2 written by the legislature for a reason and the law is very  
3 clear on this point that when the DNA test proves that one  
4 person is the father conclusively, that cannot be rebutted.

5 Now, with respect to third party standing, my client  
6 requests that Henry -- you know, his arguments may be for  
7 custody or visitation, they're not prop -- properly pledged  
8 here because he does not have paternal rights. So I -- I want  
9 to discuss a little bit about third party standing.

10 The Nevada Supreme Court held in Silva v. Mathis  
11 (ph) that even in the absence of an adoptive or biological  
12 relationship a party may have standing to seek custody of a  
13 minor child under N -- NRS 125C. So absent biological  
14 paternity, a third party can still request custody.

15 A non-parent custodian has three avenues available  
16 to him to maintain a legal relationship with the minor child.  
17 Again, the first is parentage which we just established is not  
18 viable. The second is third party custody and the third is  
19 third party visitation. Here, like the appellant in Silva  
20 (ph), Henry's presumptive paternity is defeated by Ignacio's  
21 conclusive paternity; therefore, he lacks standing to  
22 challenge or petition for paternity of either Jazlynn or Alan.  
23 Therefore, a parentage is not a viable avenue.

24 However, unlike the appellant in Silva, Henry does

1 not even standing to pursue a claim for third party custody  
2 under NRS 125C.004 because he has not alleged that an award of  
3 custody to Ignacio would be detrimental to the child;  
4 therefore, a third party custody is also not a viable avenue.

5           Finally, even under NRS 125C.050, a non-parent may  
6 pursue reasonable visitation rights only if a parent of the  
7 child has denied or unreasonably restricted visits with the  
8 child -- I'm sorry, with -- yes, with the child. So in other  
9 words, the parent needs to have restricted the third party's  
10 ability to visit with the child. Here as the evidence has  
11 indicated and has -- as the Court has heard, Ignacio is the  
12 party who has restricted from visitation by Henry and Rosie.  
13 Henry has not been restricted visitation with Alan.

14           Accordingly, if this Court confirms paternity of  
15 Alan to Ignacio, Henry should be dismissed from this action in  
16 order to pursue any claims he may have to visitation with Alan  
17 or Jazlynn under NRS 125C, the statute providing for a  
18 non-parent's right to visit -- petition for visitation.

19           Now, obviously, this Court may take this issue under  
20 advisement. There's a lot to review. In the interim, my  
21 client respectfully asks that this Court enter temporary  
22 orders awarding him joint physical custody of Alan. NRS  
23 125C.0025(3) provides that the Court shall award physical  
24 custody in the following order of preference unless in a

1 particular case the best interest of the child requires  
2 otherwise. The first -- the first priority for preference of  
3 -- of physical custody is to both parents jointly pursuant to  
4 NRS 125C.

5 NRS 125C also provides that during the pendency of  
6 an action the -- the Court may make any such order for the  
7 custody, care, education, or maintenance of the child as  
8 appears in his or her best interest. Of course the ultimate  
9 concern of the Court is the best interest of the children.

10 Like I said, there's a preference for -- for parents  
11 to be awarded joint physical custody first. A stepparent  
12 relationship does not give that parent -- that purported  
13 parent no mater whether he calls himself dad or not rights.  
14 And additionally, Ignacio has not said that he will stop  
15 letting Henry see the minor child. He has never said that he  
16 would restrict visits with Henry. He simply wants the custody  
17 that is -- that he is entitled to under the law.

18 I also want to point out that it's curious that when  
19 Henry was deemed the legal father by the Court, Henry and  
20 Rosie conspired to decline and decrease Ignacio's visits not  
21 letting him visit overnight anymore and only letting him see  
22 by Rosie's own testimony at exchanges of Jazlynn for just a  
23 few moments here and there. Now that Ignacio's paternity may  
24 be confirmed, they are -- they would like to penalize him for

1 not agreeing to a generous schedule. That -- that's not  
2 Ignacio's burden.

3           You also heard testimony that Henry and Rosie have a  
4 great co-parenting relationship, but again, the co-parents in  
5 this case should be Rosie and Ignacio. And -- and those two  
6 need to collaborate to come up with a schedule that is in the  
7 children's and -- and specifically in Alan's best interest.

8           With that being said, Your Honor, I -- I also would  
9 like to point out that one of the most relevant considerations  
10 for this Court under the best interest factors is whether a  
11 parent has withheld or tried to frustrate another parent's  
12 relationship with that child. I think the evidence today has  
13 pretty clearly shown that Rosie and Henry have conspired and  
14 -- and -- again, and Henry's, you know, doesn't have any  
15 responsibility in this case, then -- then Rosie really has  
16 allowed for Henry to have time with -- with Alan to which he's  
17 not legally entitled.

18           Of course Henry is upset. This is a complicated  
19 case. This case affects three children and three parents.  
20 But that is not Ignacio's fault. Rosie and Henry would like  
21 to align and say that Ignacio is the one who is causing  
22 frustration in the -- in this case and that he is the reason  
23 that this case has not settled. The reality however is that  
24 Ignacio was not even given the option to settle until his own

1 son was six-and-a-half years old. And ever after that time  
2 once Henry was confirmed to be the legal father, he was again  
3 cut out and not offered any opportunity to settle this case.

4 I think it's pretty evident Your Honor that Rosie  
5 and Henry are now scrambling to say that they would love to  
6 settle with Ignacio because they realize that it's possible  
7 that Ignacio will have joint custody of his son. That's -- I  
8 hope that the Court sees through that and sees that Ignacio  
9 has been the party who has been trying to make things right  
10 with respect to Alan.

11 Again, the Supreme Court intervened and Ignacio has  
12 now lost nine years with his son and Henry and Rosie would  
13 like to penalize him for asking for time with his son now now  
14 that he knows conclusively without a doubt that he is Alan's  
15 father.

16 To allow Henry and Rosie to share some sort of  
17 custody when Ignacio is clearly Alan's father biologically and  
18 under the law would be not only cont -- converse -- or sorry,  
19 contradictory to Nevada law on this issue, but it would also  
20 be inequitable and it would strip Ignacio of his fundamental  
21 rights to parent. Thank you, Your Honor.

22 Oh, I'm sorry. I didn't -- I need to mention the  
23 schedule that my client would request. He requests the joint  
24 physical custody schedule with Rosie with each party having

1 three-and-a-half days with the exchanges taking place at the  
2 child's school. If -- if that's not amenable and the Court  
3 prefers to do a cleaner schedule, he would be amenable to a  
4 week on week off schedule such that Rosie could split the week  
5 with Henry if she so desires, but -- so that his time remains  
6 in fact.

7 THE COURT: Thank you.

8 MS. LAUX: Thank you, Judge.

9 THE COURT: Thank you. Mr. Medlyn.

10 MR. MEDLYN: Yes, Your Honor. There was a lot to  
11 unpack there. While the Court is familiar with my arguments  
12 on the law, I think it's more important to discuss the matters  
13 of the facts. We could have raised matters of law including a  
14 Rule 41B, involuntary dismissal of the action for the  
15 Plaintiff's failure to comply with the Court's order in  
16 achieving a guardian ad litem so that these children could  
17 have a voice. Instead, Plaintiff elected for his rights. And  
18 again, we'll see that theme throughout the entirety of the  
19 action as you have seen all day today.

20 In doing so, he is in contempt of court. And the  
21 evidence should weigh even heavier against him for what would  
22 be in the best interest test of the children. Counsel  
23 believes that does not apply; however, NRS 126 is very clear  
24 that there are weighty considerations of policy and logic



1 which control any decision of paternity. I have cited to a --  
2 a California appellate case previously cited by the Nevada  
3 Supreme Court giving a bench line of three years wherein a  
4 child can develop quite an attachment because it doesn't take  
5 very much to be a father. It takes -- I believe that's a  
6 crass comment.

7           It does not take very much to be a biological  
8 father, but it takes a lot to be a dad. To takes a lot to be  
9 a -- a dada. It requires the effort towards the children's  
10 schooling, towards their religion, towards their raising.  
11 That is why in NRS 126 at 053 the voluntary acknowledgment of  
12 paternity gets its own section. While Counsel would like to  
13 point to a clause that is inclusive, a voluntary  
14 acknowledgment is one man stepping up from the crowd saying  
15 yes, I will take care of them. And even if parentage is in  
16 doubt, he will still take care of them. And that is what it  
17 takes to be a dad.

18           Plaintiff hasn't made efforts. We have heard  
19 testimony that he made one phone call towards school, that he  
20 retributively pulled the youngest out of religious schooling.  
21 And that's because he is interest in only one thing. His  
22 black and white legal rights. But the black and white legal  
23 rights are not as black and white as Plaintiff's Counsel would  
24 like to paint them. There is those weighty considerations of

1 policy and logic that must be factored into in a paternity  
2 action.

3           While they cite a change in the legislation from  
4 2007, the 2013 case delved right back into those weighty  
5 considerations of policy and logic. They might be  
6 differential on the facts. There might be -- but the facts  
7 here are quite disparate. The common theme though in all of  
8 family law, paternity actions, all the way going back to Love  
9 v. Love and even with the legislature's amendments remains to  
10 be in the best interest of the children. What have they been  
11 living under to get to this point? How have they been  
12 treated?

13           Your Honor heard testimony that the children are  
14 bothered after their interactions with Plaintiff. You heard  
15 allegations that the Plaintiff has discussed paternity  
16 improperly with a minor who is subject to these proceedings  
17 and might otherwise be engaged in nefarious sorts of  
18 brainwashing which are alleged. I -- I think that doesn't  
19 even need to be reached.

20           All that needs to be reached is the actual  
21 day-to-day care and concern of these kids, the factors of  
22 keeping them together as much as possible, the factors of  
23 keeping them with their siblings which shame on all the  
24 parents, my client included, their siblings are their rocks,

1 their avail -- available brothers, literally, to face through  
2 this mire that the adults have created.

3 In doing so, while our fallback position is  
4 visitation, we don't believe that we are required to fallback  
5 that far. Plaintiff has failed their burden in clear and  
6 convincing evidence of showing why his designation of  
7 paternity would be good for the children. We heard that it was  
8 technically 99 percent. We won't even argue that point. We  
9 have a test. But that does not meet clear and convincing  
10 evidence. They did not push this boulder all the way up the  
11 hill to show that he is a dad, is a good dad, and cares for  
12 this child who has been cared for by my client since.

13 My client signed a voluntary acknowledge of  
14 paternity, is on the birth certificates, was co-habiting  
15 with the natural mother and even after this action has raised  
16 these kids. My -- my client is the legal father and entitled  
17 to those presumptions which he has shown through his conduct  
18 and the facts Your -- Your Honor has heard. And it is up to  
19 you to weigh the weighty considerations of policy and logic  
20 and picking whether one of these fathers is more invested in  
21 the actual well-being of the children and which one is  
22 entitled to his time and rights and technical designations.  
23 Thank you.

24 THE COURT: Any short reply, Ms. Laux?

1 MS. LAUX: Yes, Judge. Just very briefly I want to  
2 talk about the policy and logic considerations. Again, our --  
3 our request for paternity to be established is based on a  
4 black and white statute, but it is based on a fundamental  
5 right of a parent to have custody and care of their children.  
6 So this isn't some -- you know, I'm reading the statute to  
7 strictly or I'm being technical. This is a fundamental right  
8 all of us have to parent our children when we birth them or  
9 when we contribute to their being born. And my client has  
10 been stripped of that.

11 And to say that, you know, Henry has shown up, and I  
12 -- and I believe he has. I don't -- I don't doubt for a  
13 second that he's been an excellent figure in these kids lives.  
14 That being said, he perpetrated a fraud which has resulted in  
15 him holding out Alan as his own child. And that should not be  
16 allowed under public policy of fundamental rights to parent.  
17 And -- and that's all I'll say on that. Thank you, Judge.

18 THE COURT: Thank you. What was I going to -- okay.  
19 The Court is ready to make a decision. I know it's Friday and  
20 I know that Ms. Laux said that -- sorry, it's not Friday. Is  
21 it Friday? Is it Friday? Happy Friday.

22 MR. MEDLYN: It is Friday.

23 THE COURT: Counsel said that the Court might take  
24 this matter under advisement and I think that this case

1 screams a need for finality. So I want to provide that to the  
2 parents. Ms. Laux, I'd like you to prepare the final order  
3 and please include findings of fact and conclusions of law.

4           The Court cannot go outside of the law and make  
5 decisions. The Court has to start with the law and make a  
6 decision starting from that point. And it is incredibly  
7 difficult and sad to see what's happened. But the Court finds  
8 that none of the things that have happened are Ignacio's  
9 fault. And he's innocent in this particular case as much as  
10 Alan is innocent.

11           Pursuant to NRS 126.051(2), the paternity test that  
12 was finally ordered and accepted by the Nevada Supreme Court  
13 and confirmed in this case in 2020 is conclusive. And that  
14 means that Ignacio Avila, Jr. is conclusively the biological  
15 father and legal father of Alan. The Court makes a finding  
16 that Ignacio confronted Mom in 2016 and '17 and was lied to.  
17 The Court makes a finding that Ignacio asked after the child's  
18 birth and even while Mom was pregnant about the child Alan and  
19 was lied to again.

20           The Court finds that at 11:50 a.m. today Mom lied to  
21 the Court two times. The Court finds that the birth  
22 certificates need to be amended to reflect the name of Ignacio  
23 Avila, Jr. The Court is not going to make a finding that  
24 Henry's paternity test and text message string is a fraud

1 because the Court doesn't have enough for that. And the Court  
2 doesn't care to go down that path.

3           The Court is going to also make a finding regarding  
4 the voluntary acknowledgment of paternity. Pursuant to NRS  
5 126.053, that governs voluntary acknowledgments of paternity  
6 or parentage. Under subsection 3, after the expiration of the  
7 period during which an acknowledgment may be rescinded  
8 pursuant to subsection 2, the acknowledgment may not be  
9 challenged except upon the grounds of fraud, duress, or  
10 material mistake of fact. The burden of proof is on the  
11 person challenging the acknowledgment to establish that the  
12 acknowledgment was signed because of fraud, duress, or  
13 material mistake of fact.

14           Henry, this is not your fault. I want to say that  
15 to you directly. I wish I could see your face. My heart goes  
16 out to you, but my heart goes out to Ignacio more because he's  
17 missed nine years.

18           Under subsection 3, the Court finds that there was a  
19 -- either material mistake of fact or fraud when Henry signed  
20 that voluntary acknowledgment of paternity and that under NRS  
21 126.051(2), the conclusive presumption of paternity from the  
22 paternity test that was finally done in 2020 after the Nevada  
23 Supreme Court made its decision overcomes any voluntary  
24 acknowledgment of paternity signed by a person that was not

1 the child's biological father.

2           The Court further finds that when this matter was  
3 pending in 2018 and right before it was appealed, Mom and  
4 Henry intentionally deprived Ignacio of time with Alan. And  
5 the Court finds that that withholding was affirmed in  
6 testimony by all three parties; Henry, Rosie, and Ignacio,  
7 when it was clear that Alan had had some overnights and those  
8 overnights were suddenly taken away three years ago. Not only  
9 has Ignacio missed infancy and toddlerhood and young  
10 childhood, then when there's a decision in 2018, square on the  
11 head frequent associations; that factor incredibly favors  
12 Ignacio. Counsel is correct that Ignacio was denied real  
13 settlement opportunities and -- regarding Alan until he was  
14 six-and-a-half years old.

15           Counsel for Henry indicated that there was possible  
16 contempt. There is no contempt proceeding before this court.  
17 Counsel for Henry indicated that, you know, that contempt --  
18 in his closing argument; there is no pending order to show  
19 cause before this court. So that's not before me.

20           The Court finds that pursuant to NRS 126.081(1),  
21 paternity action such as this are not time barred until a  
22 child reaches the age of 21. And the Court finds that the  
23 paternity test is a conclusive presumption. In this  
24 particular case, the timeshare for Alan and Ignacio is to

1 start immediately. The parents are to communicate -- meaning  
2 Rosie and Ignacio -- are to communicate as to any backpacks or  
3 things that need to be shared with Dad. But Dad, Ignacio, is  
4 going to start his timeshare as soon as court ends.

5           The timeshare after is going to be Thursday at 2:00  
6 p.m. because Dad gets off at 1:00 p.m. And it will end Sunday  
7 at 8:00 p.m. So Dad's going to have three overnights. And  
8 what I want you to do Dad, I want you to seriously consider on  
9 Fridays when you're working from 5:00 a.m. to 1:00 p.m., I  
10 want you to seriously consider picking up the phone and  
11 calling Henry and saying hey, does Alan want to spend some  
12 time with Henry, Jr. and you. I want you to seriously give  
13 that a lot of thought. And maybe you and Henry can perhaps  
14 become friendly and use that Friday to be a Henry, Jr. day  
15 when you're at work. Okay, Ignacio? Do you hear me?

16           THE PLAINTIFF: Your Honor --

17           THE COURT: Okay.

18           MS. LAUX: Thank you.

19           THE COURT: Okay. I --

20           THE PLAINTIFF: Yes, Your Honor.

21           THE COURT: -- I want to see you nodding and I want  
22 to see you saying something. I -- I can't imagine being in  
23 Henry's shoes right now. I think that man's heart just broke  
24 in half. So I think and I hope that you really, really,



1 really think of that Friday as a Henry, Jr. and Henry day,  
2 okay, when you're at work.

3 THE PLAINTIFF: Yes, Your Honor.

4 THE COURT: Okay. Thank you. Ms. Laux, I would  
5 like you to please prepare the final order. And the Court can  
6 either do the default holiday schedule, but I would much  
7 prefer to have Ignacio and Rosie go to FMC and try to figure  
8 out holidays and vacations. Do either Counsel have a  
9 preference?

10 MS. LAUX: Judge, maybe you can do a temporary order  
11 for the default holiday schedule and then set -- refer them to  
12 FMC for a permanent holiday schedule.

13 THE COURT: Mr. Medlyn?

14 MR. MEDLYN: I don't believe I factor into that  
15 decision.

16 THE COURT: I hear you. Rosie? I can't hear you --

17 MS. LAUX: You're --

18 THE COURT: -- Mom.

19 MS. LAUX: You're muted.

20 THE DEFENDANT: Yes, I agree that a temporary will  
21 be okay.

22 THE COURT: Okay. Where is Alan right now?

23 THE DEFENDANT: Right now he is at the house with  
24 his brother, Henry.

1 THE COURT: Okay. He's at Henry's house?  
2 THE DEFENDANT: Yes.  
3 THE COURT: Okay. Ignacio, you're going to pick him  
4 up today, okay?  
5 THE DEFENDANT: What -- okay.  
6 THE PLAINTIFF: Yes, Your Honor.  
7 THE COURT: Okay. As far as the request to change  
8 the birth certificate, so granted. As far as the request to  
9 change the name, so granted. Ignacio, you have to give Rosie  
10 a birth certificate of her own. What I suggest is get two  
11 originals. I'd like you to bear the cost of that.  
12 THE PLAINTIFF: Yes, Your Honor.  
13 THE COURT: And we will --  
14 MS. LAUX: Judge --  
15 THE COURT: -- have the --  
16 MS. LAUX: -- I -- I know that --  
17 THE COURT: -- the default holiday and vacation  
18 schedule apply for now and the Court will formally ask Rosie  
19 and Ignacio to go to FMC to resolve parenting holiday and  
20 vacation time.  
21 MS. LAUX: Yeah. Judge, I had one question. I know  
22 that this is obviously raw. The child's name on his birth  
23 certificate is -- the middle name is Sergio which is, I  
24 believe, after one of Henry's relatives and my client wants to

1 know if he and Rosie can cooperate to change his middle name.

2 THE COURT: What's the proposed middle name?

3 MS. LAUX: He would like for it to be his own name,  
4 Ignacio, but he understands that this is a co-parenting  
5 decision. So -- just he doesn't have any connection to  
6 Sergio.

7 THE COURT: Rosie, any thoughts?

8 THE DEFENDANT: I don't want to talk about that  
9 right now.

10 THE COURT: Okay. Ms. Laux, I didn't hear evidence  
11 about that. And the Nevada Supreme Court case law changing  
12 last names and, you know, all of that requires me to hear some  
13 evidence and I just don't have it. So I could invite briefing  
14 and do a status check on that issue. If you would like to do  
15 that, I could set it out for 30 days and sort of see how  
16 things went at FMC maybe 45 days, see how --

17 MS. LAUX: That --

18 THE COURT: -- things went.

19 MS. LAUX: Forty-five days sounds -- sounds good  
20 Your Honor and I think that'll give us time to let this issue  
21 breathe and then maybe even Rosie and Ignacio can come to an  
22 agreement as opposed to --

23 THE COURT: Right.

24 MS. LAUX: -- having to do this again. But 45 days

1 status check would be really great.

2 THE COURT: I'm just concerned that when you prepare  
3 the final order you won't get a signature and so then the  
4 Court won't be able to see any sort of potential agreement or  
5 not with a middle name.

6 MS. LAUX: No, I -- I wouldn't include this issue in  
7 the decree. I would -- I would -- the name change would just  
8 be the last name in the decree and then it would be a  
9 stipulation and order if the parents agree to change his name  
10 down the road.

11 THE COURT: Okay. Okay. And then the last thing  
12 the Court wants to say is to Henry. Henry, you are a person  
13 in this case that is now considered a -- a third party. And  
14 third parties have -- have the ability to ask for things. And  
15 if you would like to do that, this Court would entertain that.  
16 But it's not going to be the kind of custodial parenting time  
17 that you're used to. It's -- it's akin to grandparents'  
18 rights. It's -- it's a shorter amount of time that your  
19 lawyer can explain to you about. But there are avenues. And  
20 this case is available to do that.

21 This will be the order of the Court from today. I'm  
22 signing off on a Family Mediation Center referral for Ignacio  
23 and Rosie to go to FMC to resolve holidays and vacations. And  
24 the return date is May 26th at 10:00 a.m. Any other --

1 MS. LAUX: That works for him, Your Honor.  
2 THE COURT: -- questions, Counsels?  
3 MS. LAUX: No, Your Honor.  
4 THE COURT: Okay. Thank you. That will conclude  
5 today's case.  
6 MR. MEDLYN: Thank you, Your Honor.  
7 THE COURT: Thank you, Counsel.

8 (PROCEEDINGS CONCLUDED AT 4:31:53)

9 \* \* \* \* \*

10 ATTEST: I do hereby certify that I have truly and  
11 correctly transcribed the digital proceedings in the above-  
12 entitled case to the best of my ability.

13 *Adrian Medrano*  
14

15 \_\_\_\_\_  
16 Adrian N. Medrano  
17  
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FILED

AUG 24 2021

*Sharon A. [Signature]*  
CLERK OF COURT

ORIGINAL

1 TRANS

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4  
5 EIGHTH JUDICIAL DISTRICT COURT  
6 FAMILY DIVISION  
7 CLARK COUNTY, NEVADA  
8

9 IGNACIO AVILA, JR., )  
10 Plaintiff, ) CASE NO. D-15-515892-C  
11 vs. ) DEPT. T  
12 ROSIE MARTINEZ, ) APPEAL NO. 83023  
13 Defendant. )  
14

15 BEFORE THE HONORABLE GERALD W. HARDCASTLE  
16 DISTRICT COURT JUDGE

17 TRANSCRIPT RE: ALL PENDING MOTIONS

18 TUESDAY, JUNE 23, 2020  
19  
20  
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22  
23  
24

1 APPEARANCES:  
2       The Plaintiff:                    IGNACIO AVILA, JR. (Tel.)  
3       For the Plaintiff:                AREZOU H. PIROOZI, ESQ. (Tel.)  
4                                        509 S. Sixth St.  
5                                        Las Vegas, Nevada 89101  
6                                        (702) 260-1010  
7  
8       The Third Party  
9       Defendant:                        NOT PRESENT  
10       For the Third  
11       Party Defendant:                 MICHELE L. MERCER, ESQ. (Tel.)  
12                                        Eighth Judicial District Court  
13                                        Family Division, Dept. Z  
14                                        601 N. Pecos Rd.  
15                                        Las Vegas, Nevada 89101  
16                                        (702) 455-0085  
17  
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1 LAS VEGAS, NEVADA

TUESDAY, JUNE 23, 2020

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

3 (THE PROCEEDINGS BEGAN AT 10:00:22)

4

5 THE COURT: Let's see, we -- we have a -- we have  
6 Avila versus Martinez. We do not have her yet.

7 MS. MERCER: Good morning, Your Honor.

8 THE COURT: Good morning. We'll -- we'll wait a  
9 couple of minutes. It's a little bit early. I hate to -- I  
10 was hoping everybody be ready, but everybody's not. So we'll  
11 just come back in a couple minutes. Okay?

12 MS. MERCER: Okay. I should tell -- I should tell  
13 you I have another hearing at 10:00 o'clock. It's telephonic.  
14 So I'm kind of balancing both of you. So --

15 THE COURT: Okay. Well, this one's --

16 MS. MERCER: -- but I'll be here. You'll see.

17 THE COURT: Okay. This one's more important.

18 MS. MERCER: I agree, Your Honor.

19 THE COURT: Okay. There we go. But we -- as soon  
20 -- we'll wait for her. Well, hopefully we can get her on the  
21 -- on the line quickly and -- and go from there. All right.  
22 Thank you. We'll be back in a minute.

23 MS. MERCER: Thank you. Okay.

24 (COURT RECESSED AT 10:01 AND RESUMED AT 10:05)



1 MS. MERCER: I don't see Counsel for Plaintiff. I  
2 don't see Plaintiff or Plaintiff's Counsel.  
3 THE COURT: Who's -- who's appearing for the  
4 Plaintiff?  
5 THE CLERK: Piroozi is.  
6 MS. MERCER: Arezou Piroozi.  
7 THE COURT: She -- that person is not present,  
8 right? The attorney is not present?  
9 MS. MERCER: Correct. You have me. I'm Counsel for  
10 Henry Oliva, Michele Mercer. And then you have Rosie  
11 Martinez, the Defendant.  
12 THE CLERK: I can call her, Judge.  
13 THE COURT: Okay.  
14 THE CLERK: Want me to?  
15 THE COURT: Yeah. Yeah. We need to get it started.  
16 MS. MERCER: And I know -- I know Counsel knows  
17 about it. I called her office yesterday.  
18 UNIDENTIFIED VOICE: Piroozi Law Group. This is  
19 (Indiscernible). How can I help you?  
20 THE CLERK: Hello?  
21 UNIDENTIFIED VOICE: Hello, how can I help you?  
22 THE CLERK: Yes, this is Ann calling from Family  
23 Court. We're calling in the matter of the Avila Martinez. We  
24 have a 9:00 o'clock hearing.

1 UNIDENTIFIED VOICE: It -- okay. And how can I help  
2 you?  
3 THE CLERK: Ms. Piroozi, the Plaintiff.  
4 UNIDENTIFIED VOICE: So -- so I had called earlier  
5 today to advise them Piroozi had a second hearing in  
6 Department T. And so I asked if the trial could be -- if --  
7 if the hearing could be -- if another case or two could be  
8 called beforehand just because he had another hearing at the  
9 (indiscernible).  
10 THE COURT: Well, Ms. Mercer , why don't I do this?  
11 Why don't they -- let's see what I have at 11:00, what we have  
12 at 11:00. We'll call back at about 15 to 11:00. This is  
13 Judge Hardcastle. We'll back --  
14 MS. MERCER: Okay.  
15 THE COURT: -- at about 15 minutes to 11:00. Tell  
16 him -- tell him to be on the line at that time. Would that --  
17 is that all right, Ms. Mercer?  
18 MS. MERCER: Yes, Your Honor.  
19 THE COURT: Okay. We'll call it at 10:45.  
20 UNIDENTIFIED VOICE: Okay. Perfect. I will let the  
21 attorney know.  
22 THE COURT: All right. Ma'am, we'll call it again  
23 at -- at 10:45 when your attorney can be present, all right?  
24 All right. Thank you.

1 MS. MERCER: Thank you, Your Honor.

2 UNIDENTIFIED VOICE: Thank you.

3 THE COURT: We'll see if we can do the other one.

4 (COURT RECESSED AT 10:08 AND RESUMED AT 10:47)

5 THE COURT: I -- I -- you know, first of all, I -- I  
6 wasn't aware of the Supreme Court decision. And in based on  
7 that, and I'm glad to see that Mr. Oli -- Oliva is  
8 represented. He certainly has a claim here. Based on that  
9 decision, I think it's appropriate to set aside the order of  
10 September 21, 2018 and set this matter down for a hearing on  
11 the issue of paternity.

12 The father's repre -- or the -- Mr. Olivi -- Oliva  
13 -- Oliva is represented and that's one of my concerns. The  
14 other concern was -- was the appointment of a guardian ad  
15 litem under the statute. But I think there should be a -- a  
16 guardian ad litem appointed. And finally, yet -- after that's  
17 done, we need to have an issue -- a hearing on the issue of  
18 paternity of, now I guess, the two children. The results came  
19 back that the Plaintiff is the father -- nat -- or is the  
20 natural father. So apparently he's the father of both of the  
21 children, the natural father.

22 But it -- the legal paternity of course is the issue  
23 that needs to be addressed. And Mr. Oliva certainly has a  
24 claim there. And we need to resolve that issue before we

1 proceed much further.

2           It would seem to me that after we have resolved the  
3 issue of paternity, then we can address Mr. Avila's issues of  
4 custody and support. Is there anyone who disagrees with the  
5 characterization that's where we are? Ms. Piroozzi, do you  
6 agree that's where we are?

7           MS. PIROOZI: Yes, Your Honor. I -- I do disagree.  
8 In -- back in November of 2017, Henry Oliva filed a motion  
9 with an attorney just to have him join for the limited purpose  
10 of determining paternity of the minor child, Alan Oliva. That  
11 was in November of 2017. As you know, Your Honor, Judge  
12 Elliott refused to give my client the opportunity to take a  
13 paternity test. He just was confirmed as the father on May  
14 15th through DNA testing that he is the father of -- of Alan  
15 Oliva.

16           THE COURT: He's the --

17           MS. PIROOZI: Now --

18           THE COURT: -- natural father.

19           MS. PIROOZI: -- Henry Oliva --

20           THE COURT: We know -- we know that.

21           MS. PIROOZI: -- should not be a party.

22           THE COURT: I'm sorry?

23           MS. PIROOZI: He should not be a party to this  
24 action. In fact, Henry Oliva should not be a party to this

1 action. In fact, he's the one who fraudulently submitted a  
2 fake DNA test claiming that he was the father of Alan. He  
3 signed the birth certificate, fraudulently claimed to be the  
4 father this whole time. And that's how he obtained custody.  
5 Now, he's the whole reason why my client has had to wait all  
6 these years to actually be -- be determined to be the father  
7 because they submitted a fake DNA --

8 THE COURT: Okay.

9 MS. PIROOZI: -- test to the court --

10 THE COURT: Ms. Piroozi, that -- that's an --

11 MS. PIROOZI: -- and --

12 THE COURT: -- arg -- that's an argument for the  
13 trial. It's not an argument on who's -- who ought to be  
14 allowed to be heard. It's not really an argument on the  
15 relationship between Mr. Oliva and the children. My  
16 understanding is that -- and whether it's to one or both, I  
17 can remain unsure about that, but I think that under the  
18 circumstances that he had -- he would have the right to be  
19 heard. The -- the whole problem we had was there apparently  
20 -- the -- the conclusions that were reached by the judge were  
21 not done as the result of a hearing and without notice to the  
22 essential parties.

23 We now have the essential parties. The Supreme  
24 Court has said we've got to determine paternity. The mere

1 fact that he is the natural father of both of these children  
2 is not the end of the inquiry. The inquiry is who is the  
3 legal father. And we're going to have an evidentiary hearing  
4 on that issue. Mr. Oliva is going to be allowed to  
5 participate. I do want a guardian ad litem for the children.  
6 I think the statute requires the appointment of a guardian ad  
7 litem. So I -- I want that done. I want that done at Mr.  
8 Oliva's expense. We can reassess --

9 MS. PIROOZI: Mr. --

10 THE COURT: -- that at the time of trial, but  
11 initially I -- I want him to bear that cost of -- of the  
12 guardian ad litem. I would suggest that the Children's  
13 Attorney's Project be contacted and they may be able to either  
14 represent the children or to represent someone or know someone  
15 who could be retained to represent them. But I want that done  
16 quickly because I think these chi -- both of these children in  
17 view of what's the issue here need to have a guardian ad litem  
18 represent them. If there's a conflict, we can address that.

19 If -- if two children take differing positions, I  
20 mean, we can -- we can worry about that. But at this point,  
21 I'm only going to require one guardian ad litem to represent  
22 the children. And -- and we'll have an evidentiary hearing on  
23 the issue of paternity and we'll get all this hashed out and  
24 everybody can make their arguments.

1 But while it's seek -- it's clear that based on the  
2 paternity testing that Mr. A -- Avila is the natural father of  
3 these children, he may not be the legal father; we know that.  
4 So we -- we need to get down to that issue to get that  
5 resolved. Once that gets resolved, then we can discuss  
6 support and custody.

7 MS. MERCER: So Your Honor --

8 MS. PIROOZI: Your Honor --

9 MS. MERCER: I'm sorry.

10 MS. PIROOZI: -- as to Jazlynn --

11 THE COURT: I'm sorry.

12 MS. PIROOZI: -- there is already --

13 THE COURT: Well, Ms. Piroozi, what? What?

14 MS. PIROOZI: As to Jazlynn, there is -- there are  
15 already custodial orders and has had primary physical custody  
16 since March of 2017. And legal custody -- they have joint  
17 legal custody. But as to Alan, which my client was just --

18 THE COURT: The difficulty --

19 MS. PIROOZI: -- determined to be --

20 THE COURT: -- is I don't know that --

21 MS. PIROOZI: -- be --

22 THE COURT: -- Mr. --

23 MS. PIROOZI: -- biological --

24 THE COURT: I don't know that Mr. Oliv -- Oliva was

1 a party at the time that those orders were entered. And the  
2 reason I'm saying that is is because he was a necess --

3 MS. PIROOZI: No.

4 THE COURT: My opinion is notice should have been  
5 given to him formally and he should have been given the  
6 opportunity to be heard. And the problem is is that -- just  
7 because --

8 MS. PIROOZI: Your Honor, give us --

9 THE COURT: -- you -- you -- just because you had an  
10 order entered -- just because you had an order entered in an  
11 action between Mr. Avila and Ms. Martinez does not impact Mr.  
12 O -- Oliva's rights and he's here now. It -- the -- I mean,  
13 this decision in my opinion --

14 MS. PIROOZI: Your Honor

15 THE COURT: -- works both ways. I -- I -- I'm --  
16 you know, we're going to set it down for the evidentiary  
17 hearing on paternity as to both children with the appointment  
18 of guardian ad litem. If you think you're entitled to  
19 summary judgment --

20 MS. PIROOZI: And --

21 THE COURT: -- on the issue of filing --

22 MS. PIROOZI: -- I just want to be clear.

23 THE COURT: Ms. Mercer?

24 MS. PIROOZI: Mr. Oliva was never a party to



1 Jazlynn. I don't believe he should have ever been a party.  
2 He's not claiming to be a third party to Jazlynn's action.  
3 He's only -- he only joined in as a third party to paternity  
4 of Alan Oliva which now my client has determined to be the  
5 father of Alan. So he's -- he was never --  
6 THE COURT: He was in --  
7 MS. PIROOZI: -- requesting --  
8 THE COURT: He was in a relationship --  
9 MS. PIROOZI: -- the party --  
10 THE COURT: -- with the mother and --  
11 MS. PIROOZI: -- Jazlynn --  
12 THE COURT: -- he was -- and he had --  
13 MS. PIROOZI: -- and he was never --  
14 THE COURT: -- the care of the child. They were --  
15 weren't they -- weren't -- weren't they living together at the  
16 time?  
17 MS. MERCER: Yes. Yes, Your Honor.  
18 THE PLAINTIFF: No.  
19 MS. MERCER: (Indiscernible - simultaneous speech)  
20 --  
21 MS. PIROOZI: They had been living together on and  
22 off --  
23 THE PLAINTIFF: That's not true.  
24 MS. PIROOZI: -- for all these years.

1 THE COURT: Yeah, I know.  
2 MS. PIROOZI: And --  
3 THE COURT: The answer --  
4 MS. PIROOZI: -- Your Honor --  
5 THE COURT: Ms. -- Ms. Piroozi --  
6 MS. PIROOZI: -- this is --  
7 THE COURT: -- I'm --  
8 MS. PIROOZI: -- this is the thing.  
9 THE COURT: -- I'm inclined -- no, I -- I'm -- he --  
10 he was entitled to notice. He was someone --  
11 MS. PIROOZI: Yes.  
12 THE COURT: -- who obviously should have been given  
13 notice and the opportunity to appear and at least been given  
14 that opportunity. Now -- now, you did something that you  
15 served him with the notice and what have you, but he's someone  
16 that he was in a relationship with the mother at the time;  
17 they were residing together. Or maybe, this is a long term  
18 relationship. So I -- I mean, I'm not -- I'm not --  
19 MS. PIROOZI: But he's --  
20 THE COURT: At this point --  
21 MS. PIROOZI: -- not the father.  
22 THE COURT: I'm -- I'm not, at this point --  
23 MS. PIROOZI: He's never been the --  
24 THE COURT: -- going to accept that.

1 MS. PIROOZI: -- father of --  
2 THE COURT: No.  
3 MS. PIROOZI: -- either child.  
4 THE COURT: What?  
5 MS. PIROOZI: The -- the paternity test is clear.  
6 He's not the father of either child.  
7 THE COURT: Ms. Piroozi --  
8 MS. PIROOZI: Just because --  
9 THE COURT: -- do not --  
10 MS. PIROOZI: -- he had signed the birth  
11 certificate --  
12 THE COURT: Ms. Piroozi, we're not going to argue it  
13 anymore.  
14 MS. PIROOZI: -- he was never married to Rosie.  
15 THE COURT: Doesn't matter. I mean, you know,  
16 here's the point.  
17 MS. PIROOZI: Judge --  
18 THE PLAINTIFF: And it does -- it does matter in  
19 this situation. So -- so does that mean -- excuse me --  
20 THE COURT: Who --  
21 THE PLAINTIFF: -- so does --  
22 THE COURT: Mr. --  
23 THE PLAINTIFF: -- that mean that --  
24 THE COURT: Mr. Avila --

1 THE PLAINTIFF: -- I can take care --  
2 THE COURT: Mr. Avila, no. You got an attorney.  
3 Ms. -- Ms. Mercer?  
4 MS. MERCER: Thank you, Judge.  
5 THE PLAINTIFF: Wow.  
6 MS. MERCER: You're absolutely right. And that was  
7 exactly what I was going to bring up that there's never been  
8 notice of an opportunity to hear. Mr. Oliva was never -- was  
9 never considered. He was the legal father when these children  
10 were born. He was the only father they ever knew. He was on  
11 the birth certificate, Your Honor. So you're exactly right.  
12 He had a right to be --  
13 THE COURT: Uh-oh.  
14 MS. MERCER: -- heard --  
15 THE COURT: It --  
16 MS. MERCER: -- and there's never been any pleadings  
17 alleged against him.  
18 THE COURT: If he was on --  
19 MS. MERCER: So procedurally --  
20 THE COURT: -- the birth certificate --  
21 MS. MERCER: -- this case is --  
22 THE COURT: -- Ms. Piroozi, he absolutely was  
23 entitled to notice.  
24 MS. PIROOZI: And -- and there was --

1 MS. MERCER: (Indiscernible) --  
2 MS. PIROOZI: -- never a signed birth --  
3 MS. MERCER: (Indiscernible) --  
4 MS. PIROOZI: -- certificate doesn't mean they're  
5 the father. He did it by fraud, Your Honor.  
6 MS. MERCER: He can --  
7 THE COURT: Well --  
8 THE PLAINTIFF: Twice.  
9 THE COURT: -- you can -- you can argue it.  
10 THE PLAINTIFF: And that's twice already.  
11 THE COURT: No. No. No. No.  
12 MS. PIROOZI: And my client had to prove to the  
13 Court that he was really -- through paternity DNA testing that  
14 he's the father and his rights need to be considered. He's  
15 the one who's being harmed here. Why is Henry Oliva, a third  
16 party, who is not even in a current relationship with Rosie,  
17 being considered? My client has been missing --  
18 THE COURT: Okay. The --  
19 MS. PIROOZI: -- a time with --  
20 THE COURT: Then you --  
21 MS. PIROOZI: -- his son --  
22 THE COURT: Then you misunderstand the concept --  
23 MS. PIROOZI: -- because of Henry Oliva.  
24 THE COURT: -- of paternity. Ms. Piroozi, you

1 misunderstand the concept of a per -- paternity if you're  
2 taking that position.

3 MS. PIROOZI: I don't.

4 THE COURT: Here's what I'm going to -- here's what  
5 I'm going to do is -- is I was right. I'm going to set aside  
6 the order of September 21st, 2018. I'm going to set an issue.  
7 First, on the issue of paternity, I'm glad that Mr. Arle --  
8 Oliva -- Oliva has a -- an attorney that resolves one of the  
9 issues I was concerned about, notice to him. And the minutes  
10 will reflect that he is here represented by Ms. Mercer.

11 The hearing will be as to both children, as to the  
12 paternity as to both children. The Court finds that Mr. Oliva  
13 has not been given notice an opportunity to be heard on the  
14 paternity as to Jazlynn, but it will be honest to both Jazlynn  
15 and Alan upon determination of the issue of paternity.

16 MS. PIROOZI: He has, Your Honor. It's in the  
17 pleadings. He was given notice. He lived with Rosie. He  
18 knew what was going on. I was not the attorney as to Jazlynn.

19 THE COURT: Ms. Piroozi --

20 MS. PIROOZI: He was given notice.

21 THE COURT: -- if you continue to argue with me,  
22 we're going to have some difficulties. I made this decision  
23 three times. You can argue it at the time of the hearing.  
24 You can argue whatever you want at the time of the hearing.

1 I'm making the decision; do you understand?

2 MS. PIROOZI: But it's incorrect. The pleadings say  
3 differently. I don't -- I don't want wrong findings, Your  
4 Honor.

5 THE COURT: Ms. Piroozi --

6 MS. PIROOZI: We have to go --

7 THE COURT: -- one more time --

8 MS. PIROOZI: -- to the Supreme Court on the --

9 THE COURT: One more time.

10 MS. PIROOZI: -- same thing.

11 THE COURT: That's the last time, you got it?

12 MS. PIROOZI: I want visitation -- a visitation  
13 schedule for my client who has been missing time with his son.

14 THE COURT: You're pushing it, Ms. Piroozi. And  
15 it's not appreciated at all.

16 MS. PIROOZI: I'm sorry you feel that way, but I've  
17 been fighting this case for over three-and-a-half years. I  
18 went up to the Supreme Court. It was reversed and remanded  
19 back down just to get justice for my client just so he can  
20 prove he's the father of this child. I'm a little bit  
21 frustrated at the -- at the system --

22 THE COURT: Ms. Piroozi --

23 MS. PIROOZI: -- that --

24 THE COURT: -- if you want my --

1 MS. PIROOZI: -- Judge Elliott and you --  
2 THE COURT: -- honest evaluation just so you know,  
3 the case was mishandled in the first instance. Had the -- had  
4 the Plaintiff in this action, your client, given the proper  
5 notice to the -- to all the parties that she should have given  
6 notice to, this would have been resolved years ago. And  
7 you're right. But it was your --  
8 MS. PIROOZI: No.  
9 THE COURT: -- incompetence --  
10 MS. PIROOZI: He did give proper notice.  
11 THE COURT: It was your incompetence that has gotten  
12 us into this box. Do you understand that?  
13 MS. PIROOZI: No, it was not my incompetence, Your  
14 Honor. Oliva was given notice November 2017. They filed an  
15 action to have them --  
16 THE COURT: Ms. --  
17 MS. PIROOZI: -- joined --  
18 THE COURT: Ms. Piroozi, I'm done arguing with you.  
19 MS. PIROOZI: -- here with the register of actions.  
20 It's there. It's clear.  
21 THE COURT: I'm done arguing with you, Ms. Piroozi.  
22 MS. PIROOZI: If you read the registered documents  
23 and pleadings. Okay. I don't want you to say I'm incompetent  
24 on the record because that's untrue and un -- unfounded.



1 THE COURT: We just have to disagree, I suppose.  
2 The --  
3 MS. PIROOZI: Okay.  
4 THE COURT: The first --  
5 MS. PIROOZI: Let's do that.  
6 THE COURT: The first trial is -- is -- give me a  
7 date on the issue of paternity.  
8 THE CLERK: How far out would you like it, Judge?  
9 THE COURT: A couple of months. It shouldn't take  
10 very long.  
11 THE CLERK: I can -- August 31st at 9:00 a.m.  
12 THE COURT: Okay. August 1 -- 31st at 9:00 a.m.  
13 Again, the --  
14 MS. PIROOZI: Let me look at my calendar, please.  
15 I'm sorry, I need to look at my calendar.  
16 MS. MERCER: Your Honor, while we're waiting, who  
17 did you say has to pay for the guardian ad litem? Was that  
18 Ignacio or Henry?  
19 THE COURT: That is Mr. -- Ms. --  
20 MS. PIROOZI: Henry.  
21 THE COURT: -- Mr. Avila, Ignacio.  
22 MS. PIROOZI: No, you --  
23 MS. MERCER: Mr. --  
24 MS. PIROOZI: No, Your Honor. You said Mr. Oliva

1 has to pay.

2 THE COURT: Then I was -- misspoke.

3 THE PLAINTIFF: Why do I have to pay?

4 THE COURT: I -- I intend that Mr. -- Mr. Ignacio

5 that the -- the person who's the Plaintiff in the -- in the --

6 he needs to pay for it. He's the one who has the --

7 MS. PIROOZI: Your Honor, you --

8 THE COURT: -- obligation under the --

9 MS. PIROOZI: realigned your case.

10 THE COURT: He's the one who had the --

11 MS. PIROOZI: You -- you said Mr. Oliva.

12 THE COURT: -- obligation under the rules to comply

13 with the statute. So I -- I want him to bear the initial cost

14 of the guardian ad litem.

15 MS. MERCER: And Your Honor, I believe you

16 agreed --

17 MS. PIROOZI: But before, Your Honor --

18 MS. MERCER: -- with me there's --

19 MS. PIROOZI: -- you said Mr. Oliva.

20 MS. MERCER: -- never been -- excuse me. I believe

21 that there's never been any pleadings filed alleged against my

22 client whatsoever. So I agree with you that there's never

23 been any due process here. And that is exactly what I was

24 going to try and argue today.

1 THE COURT: Well, the --  
2 MS. MERCER: So --  
3 THE COURT: A paternity action is a noticed  
4 petition. If he has notice of the petition and the hearing  
5 date if it was served on him, for instance, and he failed to  
6 appear, I mean, it's notice to all the world of sorts. I -- I  
7 mean, it's a -- a paternity action is a noticed hearing. It's  
8 a petition hearing, not a -- not a complaint directed at  
9 certain people. The Court would require that notice be given  
10 to those who are in a position to maybe make a claim for  
11 paternity. Certainly, Mr. Oliva was and should have been  
12 given -- should have been served with the notice and -- and  
13 the petition. If he were served --  
14 MS. PIROOZI: I -- Mr. Oliva --  
15 THE COURT: -- and failed to --  
16 MS. PIROOZI: -- was present --  
17 THE COURT: -- appear --  
18 MS. PIROOZI: -- at the hearing.  
19 THE COURT: Ms. Piroozi, I'm so tired of being  
20 interrupted by you.  
21 MS. PIROOZI: I'm sorry --  
22 THE COURT: Or whoever is interrupting.  
23 MS. PIROOZI: -- but he was present at the last  
24 hearing. He's been present.

1 THE COURT: If he has received -- well, if he's  
2 present, then he's entitled to it, but there -- there has to  
3 be some notice of hearing and then a -- a clear opportunity  
4 for him to be heard on this issue of paternity as to both  
5 children. I'm -- I'm simply going to --  
6 MS. PIROOZI: But -- but --  
7 THE COURT: -- have that issue determined as to both  
8 children. That's all there is to it.  
9 MS. MERCER: Okay. But even though he received the  
10 petition that was -- that was alle -- was alleged against  
11 Rosie, there's never been anything alleged against him.  
12 There's never been a claim for relief --  
13 THE COURT: Ms. Mercer --  
14 MS. MERCER: -- alleged --  
15 THE COURT: -- my -- my --  
16 MS. MERCER: -- against him.  
17 THE COURT: -- concern is that a paternity petition  
18 alleges that someone is the father. It -- it --  
19 MS. MERCER: And his name's not on there.  
20 THE COURT: It -- well, it -- the --  
21 MS. PIROOZI: So I'm --  
22 THE COURT: -- the issue --  
23 MS. PIROOZI: -- agreeing with (indiscernible).  
24 THE COURT: Ms. -- Ms. -- let me -- let me explain

1 something to you. A paternity petition is a petition that  
2 says I am the father of the child. The issue to me is one of  
3 notice. Prior to any determination being made, was he given  
4 notice or toward the conclusion of the -- was he given notice  
5 that the petition of Mr. Avila was that Olivia was -- he was  
6 the father of Olivia -- not just the paternal, not just the --  
7 the blood father but was he in fact the legal father of  
8 Olivia. If he was served with notice of the declaration, if  
9 he was served personally with the notice of the declaration  
10 that -- that Mr. Oliva asserted that he was the father and he  
11 did nothing, then he would be bound by the consequences of the  
12 judge's decision.

13 But the issue to me is if you have a person who is  
14 living with the mother who's on the birth certificate, you are  
15 required, not just simply to file a petition and -- and do it  
16 generally and to serve it on the mother -- you're required to  
17 specifically give notice to someone who can very well be the  
18 father and in fact has claimed under -- and I understand under  
19 the birth certificate or under the circumstances under which  
20 they were living that he in fact was the father. So the issue  
21 to me is really one of -- of notice more than it is whether or  
22 not some claim has been stated, because the -- the claim is is  
23 that Mr. Avila stated he is the father. That prima facie  
24 would exclude any other person in the world, any other man in

1 the world, I suppose. And so that's the issue. And to me was  
2 -- was notice. He should have been noticed. Did he have to  
3 be named in the petition?

4 MS. PIROOZI: He --

5 THE COURT: Again, these are -- these are petition  
6 hearings. These are -- these are not complaints. They're not  
7 actions against him to exclude him, but it's a matter of  
8 giving notice to someone who stands in a very clear position  
9 of -- of asserting an adverse claim. Does that make sense?

10 MS. PIROOZI: Your Honor, Mr. Oliva was given  
11 notice. He was given notice. He actually appeared at the  
12 hearing and was represented by Counsel.

13 THE COURT: Well, I would --

14 MS. PIROOZI: That's how he --

15 THE COURT: -- I would assume that --

16 MS. PIROOZI: -- was given notice.

17 THE COURT: -- if he did that he may have --

18 MS. PIROOZI: He was given --

19 THE COURT: -- waived notice.

20 MS. PIROOZI: -- notice. He appeared at the last  
21 hearing --

22 THE COURT: No. No. We're --

23 MS. PIROOZI: -- in front of Judge Elliott.

24 THE COURT: -- not talking about the last hearing.

1 We're talking about the hearings --  
2 MS. PIROOZI: He appeared --  
3 THE COURT: -- where --  
4 MS. PIROOZI: -- at the hearing in front of you.  
5 THE COURT: -- where -- no, no. That -- not that  
6 hearing, Ms. -- Ms. Piroozi. I know you're trying to do this,  
7 but the --  
8 MS. PIROOZI: He was --  
9 THE COURT: -- answer is before any --  
10 MS. PIROOZI: But he appeared --  
11 THE COURT: -- determination --  
12 MS. PIROOZI: -- at the hearing --  
13 THE COURT: -- before --  
14 MS. PIROOZI: -- in front of Judge Elliott --  
15 THE COURT: -- any determination of paternity --  
16 MS. PIROOZI: -- on --  
17 THE COURT: -- was made --  
18 MS. PIROOZI: -- paternity test.  
19 THE COURT: Before any determination of paternity  
20 was made, was he given notice? And --  
21 MS. PIROOZI: Yes, he was. He was given notice when  
22 he appeared at the hearing.  
23 THE COURT: And which hearing?  
24 MS. PIROOZI: With his counsel. And Rosie appeared

1 with her counsel. And I was present and I requested a  
2 paternity test and I was denied. And I --  
3 THE COURT: Well --  
4 MS. PIROOZI: -- requested an --  
5 THE COURT: -- you -- you --  
6 MS. PIROOZI: -- evidentiary hearing --  
7 THE COURT: -- can -- you know --  
8 MS. PIROOZI: -- and I was denied --  
9 THE COURT: -- you -- let me tell you something --  
10 MS. PIROOZI: -- by Judge Elliott.  
11 THE COURT: -- is I have not set aside that order.  
12 I'm simply -- and I don't have the -- the complete file in  
13 front of me and I'm not going to research it now. But I'm --  
14 I'm leaving it on for a determination of that issue because  
15 I'm not sure that I think that he was given notice especially  
16 because on the birth certificate -- if he was on the birth  
17 certificate, he should have been given notice from day one.  
18 He should have been treated --  
19 MS. PIROOZI: And he was.  
20 THE COURT: You served him with a copy of the  
21 petition personally?  
22 MS. PIROOZI: Yes, Your Honor. He was present. He  
23 was served a copy and he was present --  
24 THE COURT: Well --



1 MS. PIROOZI: -- at the hearing, Your Honor, with  
2 Counsel.  
3 THE COURT: Is that right, Ms. Mercer?  
4 MS. PIROOZI: This is the whole mistake that  
5 happened with Judge Elliott. She refused to give --  
6 THE COURT: Okay.  
7 MS. PIROOZI: -- my client --  
8 THE COURT: Ms. Mercer --  
9 MS. PIROOZI: -- a --  
10 THE COURT: -- was that correct?  
11 MS. PIROOZI: -- paternity test --  
12 THE COURT: Was -- was he --  
13 MS. PIROOZI: -- stating that the child --  
14 THE COURT: Was he served --  
15 MS. PIROOZI: -- is over three years old.  
16 THE COURT: Is there an affidavit of service in the  
17 file showing that he was served with the petition initially or  
18 some other --  
19 MS. PIROOZI: There should be. Yes, Your Honor.  
20 And you can watch the video. He was present with Counsel at  
21 the hearing when I requested the DNA test --  
22 THE COURT: Of who?  
23 MS. PIROOZI: -- for Alan.  
24 THE COURT: That's not the hearing we're talking

1 about.

2 MS. PIROOZI: Alan. Okay. Well, I was not counsel  
3 for the hearing with custody of Jazlynn. Either way, he was  
4 involved --

5 THE COURT: He's -- he --

6 MS. PIROOZI: He -- and --

7 THE COURT: Clearly --

8 MS. PIROOZI: -- there was --

9 THE COURT: -- he is entitled to have a hearing on  
10 the issue of paternity of -- of Alan. We know that. Alan is  
11 not the issue. I thought we were discussing Jazlynn. I don't  
12 know.

13 MS. PIROOZI: Okay. Well, there's two --

14 THE COURT: The --

15 MS. PIROOZI: -- kids --

16 THE COURT: But it's the --

17 MS. PIROOZI: -- and Jazlynn --

18 THE COURT: -- but it's also the same.

19 MS. PIROOZI: Like I said, he was -- Mr. Avila was  
20 involved and he knew he -- his name's in the pleadings and my  
21 client and Rosie came up to a stipulation. I -- I can't tell  
22 you about that case because I was not counsel for -- for the  
23 Plaintiff at that time.

24 THE COURT: That's the one I thought we were talking

1 about.

2 MS. PIROOZI: But I know Mr. Oliva had notice --

3 THE COURT: Ms. Piroozi, I -- I made my --

4 MS. PIROOZI: He's been --

5 THE COURT: -- point clear.

6 MS. PIROOZI: -- involved --

7 THE COURT: -- I don't intend --

8 MS. PIROOZI: -- in these proceedings.

9 THE COURT: -- to argue with you. I -- this is --

10 this -- we're -- we're going to go back to -- and I read the

11 Supreme Court decision. I think we need to go back and do

12 what the Court said and that is is that on both of these

13 children go back to square one and determine who the legal

14 father is. That's the first issue. Who is the legal father?

15 We now have Mr. -- Mr. Oliva before the Court; we have Mr.

16 Avila before the Court, and we have the mother before the

17 Court. There's going to be a hearing on that issue. Raise

18 any issues that you want. The children will have a guardian

19 ad litem. Once the Court determines who in fact is the legal

20 father, then we discuss issues of -- of visitation and

21 neglect.

22 Ms. Mercer, would you prepare an order, please?

23 MS. MERCER: I'll be happy to, Your Honor. Thank

24 you.

1 THE COURT: And we got the hearing date set for --  
2 MS. PIROOZI: And I'm sorry, do we have a date for  
3 --  
4 THE COURT: -- August 31st --  
5 MS. PIROOZI: -- for the trial?  
6 THE COURT: -- at 9:00 o'clock. That's the --  
7 MS. PIROOZI: This is --  
8 THE COURT: -- trial date.  
9 MS. PIROOZI: -- full day? It's a full day?  
10 THE COURT: Sure, why not.  
11 THE CLERK: No, it can't be a --  
12 MS. MERCER: Thank you.  
13 THE CLERK: -- a full day, Judge. I'm sorry.  
14 MS. PIROOZI: Your Honor, I would like -- is there  
15 any way we can get some temporary visitation schedule for my  
16 client and his son, Alan --  
17 THE COURT: Not until --  
18 MS. PIROOZI: -- in the meantime?  
19 THE COURT: -- August.  
20 THE CLERK: Judge, that can't be -- I would have to  
21 change the date if they want a full day. Because they -- he  
22 stacks his on that day. So Ms. Piroozi said she was going to  
23 look at her calendar.  
24 THE COURT: This -- these calendars are all going to

1 be --  
2 MS. PIROOZI: I'm available.  
3 THE COURT: -- past that. Give me -- give me the  
4 date. That'll be the August --  
5 THE CLERK: 31st at 9:00 a.m.  
6 THE COURT: August 31st at 9:00 o'clock. That's the  
7 hearing date.  
8 THE PLAINTIFF: So am I allowed to see my son?  
9 THE COURT: Sir --  
10 MS. PIROOZI: We're --  
11 THE COURT: -- we're going to --  
12 MS. PIROOZI: We'll discuss that.  
13 THE COURT: -- make a determination as to whether or  
14 not that's your son.  
15 MS. PIROOZI: It is his son.  
16 THE PLAINTIFF: The paternity --  
17 MS. PIROOZI: He's the biological --  
18 THE PLAINTIFF: -- the paternity test --  
19 MS. PIROOZI: -- father of Alan.  
20 THE PLAINTIFF: And she has a -- a --  
21 THE COURT: Hey, look. No, I'm done arguing with  
22 you -- with all of you. The nature of paternity is such that  
23 it isn't determined by blood test at all. And Igna -- or Mr.  
24 Avila, your grinning is not going to win you any points, do

1 you understand that? I'm still a District Court Judge and  
2 I'll -- you know, we can deal with that kind of behavior. The  
3 bottom line is I know you and your attorney don't agree  
4 with some of the decisions. I frankly looked at this case as  
5 -- this weekend, paid a lot of attention to it. The Court is  
6 first of all directed that we set up the issue of paternity as  
7 to whether you are the legal father, not the -- not the -- the  
8 natural father. We can see that you're the natural father of  
9 the child. But whether or not you're the legal father is  
10 something that has yet to be determined. Between now and  
11 then --

12 MS. PIROOZI: My client has had --

13 THE COURT: -- it'll stand like it is.

14 MS. PIROOZI: -- a relationship with both of the  
15 kids this whole time, so --

16 THE COURT: We're done.

17 MS. MERCER: Thank you, Your Honor.

18 THE CLERK: Who's going to prepare, Judge?

19 MS. PIROOZI: Thank you.

20 THE COURT: Hm?


21 THE CLERK: Who's going to prepare the order?

22 MS. MERCER: I am.

23 THE COURT: Ms. Mercer.

24 THE CLERK: Ms. Mercer.

1 MS. PIROOZI: And I will review and sign off.  
2 MS. MERCER: Certainly.  
3 THE CLERK: Is that correct, Judge?  
4 THE COURT: Yes.  
5 THE CLERK: Okay. Thank you.  
6 MS. PIROOZI: Have a good day.  
7 THE COURT: All right. We're done.  
8 THE CLERK: We're off the record.  
9 (PROCEEDINGS CONCLUDED AT 11:11:52)  
10 \* \* \* \* \*  
11 ATTEST: I do hereby certify that I have truly and  
12 correctly transcribed the digital proceedings in the above-  
13 entitled case to the best of my ability.

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18 Adrian N. Medrano  
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