

IN THE SUPREME COURT OF THE STATE OF NEVADA

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TONY MATKULAK

Appellant,

vs.

KOURTNEY L. DAVIS

Respondent.

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**APPELLANT'S
INDEX TO
APPENDIX**

Attorneys for Appellant:

Marshal S. Willick, Esq.
Nevada Bar No. 2515
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Email: email@willicklawgroup.com

Attorneys for Respondent:

Kevin P. Ryan, Esq.
Nevada Bar No. 4371
BADER & RYAN, LTD.
232 Court Street
Reno, Nevada 89501
(775) 322-5000

Shawn B. Meador, Esq.
Nevada Bar No. 338
Woodburn and Wedge
6100 Neil Road, Suite 500
P.O. Box 2311
Reno, Nevada 89505
(775) 688-3000
Email: smeador@woodburnandwedge.com

APPENDIX INDEX

#	DOCUMENT	FILE STAMP DATE	PAGES
VOLUME I			
1.	Verified Petition to Establish Custody, Visitation, and Child Support	4/29/2020	AA000001 - AA000005
2.	Peremptory Challenge of Judge	4/29/2020	AA000006 - AA000008
3.	Case Assignment Notification	4/29/2020	AA000009 - AA000010
4.	Order Accepting Reassignment of Case	5/1/2020	AA000011 - AA000012
5.	Summons	5/5/2020	AA000013 - AA000015
6.	Acceptance of Service	5/8/2020	AA000016 - AA000017
7.	Answer to Verified Petition to Establish Custody, Visitation, and Child Support	5/28/2020	AA000018 - AA000020
8.	General Financial Disclosure Form	6/25/2020	AA000021 - AA000040
9.	Amended General Financial Disclosure Form	6/26/2020	AA000041 - AA000062
10.	General Financial Disclosure Form	7/6/2020	AA000063 - AA000078
11.	Request for Submission	7/30/2020	AA000079 - AA000086
12.	DCR 16 Stipulation and Order	8/3/2020	AA000087 - AA000090
13.	Notice of Entry of DCR 16 Stipulation and Order	8/3/2020	AA000091 - AA000096

VOLUME II			
14.	Notice of Audio/Visual Hearing	9/2/2020	AA000097 - AA000100
15.	Respondent's Case Management Conference Statement	9/3/2020	AA000101 - AA000107
16.	Case Management Conference Statement	9/3/2020	AA000108 - AA000116
17.	Request for Submission	9/22/2020	AA000117 - AA000125
18.	Notice of Compliance with WDCR 9	9/22/2020	AA000126 - AA000131
19.	Temporary Order After Case Management Conference	10/2/2020	AA000132 - AA000136
20.	Order Setting Status Hearing	10/12/2020	AA000137 - AA000140
21.	Amended Order Setting Status Hearing	10/12/2020	AA000141 - AA000144
22.	Amended General Financial Disclosure Form	10/14/2020	AA000145 - AA000155
23.	Court Minutes	10/25/2020	AA000156
24.	Notice of Audio/Visual Hearing	11/3/2020	AA000157 - AA000160
25.	Petitioner's Statement of Significant Issues in Dispute (WDCR 45)	11/6/2020	AA000161 - AA000179
26.	Settlement Conference Statement	11/6/2020	AA000180 - AA000185
27.	Court Minutes	11/16/2020	AA000186
28.	Order After Settlement Conference: Order Setting Trial	11/17/2020	AA000187 - AA000190

29.	Notice of Entry of Order	11/18/2020	AA000191 - AA000196
30.	Court Minutes	12/7/2020	AA000197
VOLUME III			
31.	Second Amended General Financial Disclosure Form	12/11/2020	AA000198 - AA000207
32.	Deposition Transcript by Zoom Conference of Kourtney Davis	12/17/2020	AA000208 - AA000303
33.	Third Amended General Financial Disclosure Form	1/6/2021	AA000304 - AA000315
34.	Petitioner's Disclosure of Expert Witness	1/6/2021	AA000316 - AA000322
35.	First Supplement to Petitioner's Intial NRCP 16.2 Disclosures	1/6/2021	AA000323 - AA000326
36.	Motion to Award of Interim Attorney's Fees/Costs	1/6/2021	AA000327 - AA000357
37.	Affidavit of Kourtney L. Davis	1/7/2021	AA000358 - AA000359
VOLUME IV			
38.	Opposition to Motion for Award of Interim Attorney's Fees/Costs	1/19/2021	AA000360 - AA000447
39.	Second Supplement to Petitioner's Initial NRCP 16.2 Disclosures	1/21/2021	AA000448 - AA000450
40.	Respondent's Disclosure of Rebuttal Expert Witness	1/21/2021	AA000451 - AA000456
41.	Request for Submission	1/26/2021	AA000457 - AA000459
42.	Affidavit of Kourtney L. Davis	1/26/2021	AA000460 - AA000461

43.	Reply to Opposition to Motion for Award of Interim Attorney's Fees/Costs	1/26/2021	AA000462 - AA000485
44.	Motion for Leave to File Supplemental Opposition	1/29/2021	AA00486 - AA000494
45.	General Financial Disclosure Form	2/4/2021	AA000495 - AA000508
46.	Order Setting Status Hearing	2/10/2021	AA000509 - AA000514
47.	Opposition to Motion for Leave to File Supplemental Opposition	2/12/2021	AA000515 - AA000520
48.	Request for Submission	2/17/2021	AA000521 - AA000522
49.	Reply in Support of Motion for Leave to File Supplemental Opposition	2/17/2021	AA000523 - AA000525
50.	Court Minutes	2/23/2021	AA000526 - AA000527
51.	Order After Status Hearing	2/24/2021	AA000528 - AA000532
52.	Order Holding Motion for Award of Interim Attorneys' Fees and Costs in Abeyance; Order Denying Motion for Leave to File Supplemental Opposition as Moot	2/25/2021	AA000533 - AA000540
53.	Notice of Entry of Order	2/25/2021	AA000541 - AA000550
54.	Trial Statement	3/2/2021	AA000551 - AA000575
VOLUME V			
55.	Petitioner's Trial Statement (WDCR 5)	3/4/2021	AA000576 - AA000587
56.	Tony Matkulak Notice of Trial Exhibits	3/8/2021	AA000588 - AA000673

57.	Notice of Disclosure of Witnesses and Documents Intended for Use at March 11, 2021, Trial (WDCR 47)	3/8/2021	AA000674 - AA000731
58.	DCR Stipulation	3/10/2021	AA000732 - AA000734
59.	Notice of Entry of Order	3/15/2021	AA000735 - AA000739
60.	Court Minutes	5/4/2021	AA000740 - AA000751
61.	Order Establishing Custody, Visitation and Child Support	6/14/2021	AA000752 - AA000766
62.	Notice of Entry of Order	6/16/2021	AA000767 - AA000783
VOLUME VI			
63.	Affidavit of Kevin P. Ryan in Support of Request for Attorney's Fees	6/23/2021	AA000784 - AA000828
64.	Notice of Entry of Order	6/24/2021	AA000829 - AA000845
65.	Notice of Appeal	7/2/2021	AA000846 - AA000848
66.	Appellant's Case Appeal Statement	7/2/2021	AA000849 - AA000854
67.	Response to Affidavit of Kevin Ryan and Request to Stay Proceedings with Respect to Legal Fees	7/2/2021	AA000855 - AA000857
68.	Notice of Requesting Transcripts	7/2/2021	AA000858 - AA000860
69.	Certificate of Clerk and Transmittal - Notice of Appeal	7/6/2021	AA000861
70.	Notice of Appeal Deficiency	7/6/2021	AA000862 - AA000863

VOLUME VII

71.	Order Holding Submission in Abeyance Pending Appeal	7/12/2021	AA000864 - AA000866
72.	Transcript of Proceedings - Case Management Conference; Date Held September 10, 2020	7/27/2021	AA000867 - AA000882
73.	Transcript of Proceedings - Status Conference; Date Held October 29, 2020	7/29/2021	AA000883 - AA000894
74.	Transcript of Proceedings - Status Conference; Date Held February 22, 2021	8/2/2021	AA000895 - AA000912
VOLUME VII			
75.	Transcript of Proceedings - Trial Via Zoom; Date Held March 11, 2021	8/5/2021	AA000913 - AA001144

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5 IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE, FAMILY DIVISION

7 THE HONORABLE SANDRA UNSWORTH, FAMILY COURT JUDGE

8

9 KOURTNEY LYNN DAVIS,

10 Petitioner,

Case No. FV20-00559

11 vs.

Dept. No. D12

12 TONY D. MATKULAK,

13 Respondent.

14 _____/

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TRANSCRIPT OF PROCEEDINGS

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TRIAL VIA ZOOM

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THURSDAY, MARCH 11, 2021

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RENO, NEVADA

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24 Reported by:

Brandi Ann Vianney Smith

25 Job No. 733671

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APPEARANCES:

For the Petitioner:

KEVIN P. RYAN, ESQ.
BADER & RYAN, LTD.
232 Court Street
Reno, NV 89501
775.322.5000
trialryan@aol.com

For the Respondent:

SHAWN B. MEADOR, ESQ.
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, NV 89511
775.688.3000
smeador@woodburnandwedge.com

1	I N D E X	Page 3
2		PAGE
3	OPENING STATEMENTS:	
4	(waived)	
5		
6	WITNESSES ON BEHALF OF THE PETITIONER:	
7	KOURTNEY DAVIS	
	Direct Examination by Mr. Ryan	15
8	Cross-Examination by Mr. Meador	70
	Redirect Examination by Mr. Ryan	134
9	Recross-Examination by Mr. Meador	141
10	TONY MATKULAK	
	Direct Examination by Mr. Ryan	146
11	Cross-Examination by Mr. Meador	184
12		
13	CLOSING STATEMENTS:	
14	By Mr. Ryan	188
	By Mr. Meador	206
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

		Page 4 ADMITTED
1	EXHIBITS	MARKED
2	Petitioner's Exhibit A, page 205	24
3	Petitioner's Exhibit A, page 212	26
4	Petitioner's Exhibit A, page 206	36
5	Petitioner's Exhibit G	41
6	Petitioner's Exhibit F	42
7	Petitioner's Exhibit C	64
8	Respondent's Exhibit 7	95
9	Petitioner's Exhibit E	157
10	Petitioner's Exhibit D	176
11	Petitioner's Exhibit A, page 207	185
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
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1 RENO, NEVADA, THURSDAY, MARCH 11, 2021, 9:05 A.M.

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5 THE COURT: Good morning. We are present on case
6 number FV20-00559, in the matter of Davis vs. Matkulak.

7 This is the time and place set for a trial related
8 to parties' minor child for custody, visitation, and support
9 of the parties' minor child.

10 This hearing -- this trial is taking place by
11 means of a simultaneous audio/visual transmission due to the
12 continued closure of the courthouses in Washoe County
13 related to the COVID-19 pandemic.

14 The Court and it's staff are all located in Washoe
15 County, which makes that the site of today's hearing.

16 I note that Mr. Matkulak is present with his
17 attorney, Mr. Meador; and Ms. Davis is present with her
18 attorney, Mr. Ryan.

19 Counsel, do we have a stipulation to allow this
20 matter to proceed by means of this simultaneous audio/visual
21 manner?

22 MR. RYAN: Yes, Your Honor.

23 MR. MEADOR: Yes, Your Honor.

24 THE COURT: Thank you very much. I know we have a
25 number of witnesses, we also have a motion in limine, and we

1 have just today, so let's get to it.

2 I think we will swear the parties in right now so
3 that in case there is comments from them that counsel
4 elicits during the argument related to the motion to limine,
5 that those will be on the record.

6 (Whereupon, the oath was administered.)

7 THE COURT: Thank you. I presume, Mr. Meador, you
8 want to start with the motion in limine before any opening
9 statements in this case?

10 MR. RYAN: Your discretion, Your Honor.

11 THE COURT: Okay. Well, let's talk about, just
12 for a minute, that the issues that I perceive is -- I don't
13 have an issue with child custody, either legal or physical;
14 is that correct?

15 MR. MEADOR: I believe we have an agreement, Your
16 Honor.

17 THE COURT: Okay. So the issues that I would have
18 then would be child support. Mr. Ryan said that there's not
19 a holiday schedule.

20 MR. MEADOR: That's correct, Your Honor.

21 THE COURT: An issue to deal with about the who
22 gets to claim the child as a dependent for federal income
23 tax purposes?

24 MR. RYAN: Correct.

25 THE COURT: Ms. Davis is covering the child on her

1 health insurance at this time.

2 So we need to discuss uncovered medical expenses,
3 extracurricular activities and costs, and attorney's fees.

4 Counsel, are there other issues that you believe
5 we must discuss in this matter?

6 MR. RYAN: Your Honor, the insurance issue isn't
7 resolved. I believe both parties are currently carrying the
8 child.

9 Mr. Matkulak's cost for the child is like \$247 per
10 month according to his financial disclosure form.

11 So we are -- our proposal is that my client take
12 over that obligation since it's free.

13 THE COURT: Okay. All right. So insurance is not
14 resolved as well. So insurance and uncovered.

15 Anything else from your perspective, Mr. Meador?

16 MR. MEADOR: No, Your Honor.

17 THE COURT: Okay. I just want to make sure we hit
18 all of them because you've come to the Court in kind of an
19 unusual fashion. We've spent most of our time talking about
20 child support.

21 But, Mr. Meador, you're correct. This is the
22 trial, and we don't actually have a formal agreement related
23 to the parties' custodial schedule, and joint legal and
24 joint physical hasn't actually been anything other than what
25 counsel has told me. There's no written document confirming

1 that.

2 I just want to make sure we hit all of the issues.

3 All right. Why don't we deal with Mr. Meador's

4 motion in limine.

5 Mr. Meador?

6 MR. MEADOR: Yes, Your Honor. As set forth in our

7 trial statement, it's just basic notions of due process that

8 I took Ms. Davis's deposition to find out what her claims

9 are so that I could address them at this trial.

10 She did not provide me with information with

11 respect to the questions -- some of the questions I asked.

12 Therefore, it would be a denial of due process to

13 allow her to offer testimony on those issues today, for

14 which I am not prepared to address her responses.

15 THE COURT: Mr. Ryan?

16 MR. RYAN: Well, I disagree with Mr. Meador.

17 Mr. Meador didn't like some of my client's responses, but

18 when Mr. Meador asked her about specific needed pertaining

19 to Bennett, she essentially gave him three or four

20 categories dealing with time, security, financial security,

21 and lifestyle. All of which testified to. All of which are

22 in the deposition that I've read.

23 It's exactly what she's going to testify about

24 today. So if he has an objection at the time, that's fine,

25 but she's certainly allowed to put forth that same testimony

1 and explain what the heck she was talking about.

2 And if Mr. Meador disagrees, then, I guess he can
3 object at the time.

4 THE COURT: Mr. Meador, I'll give you the final
5 word.

6 MR. MEADOR: My motion in limine was simply that
7 she not offer anything she didn't offer in response to my
8 questions at deposition.

9 So, for example, I repeatedly asked her how much
10 more support she believes is reasonable, necessary, and
11 appropriate, and she would not say.

12 Therefore, I believe it would be inappropriate for
13 her to say today.

14 THE COURT: Okay.

15 MR. RYAN: Your Honor, she did respond, and she
16 said whatever's reasonable according to the Court.

17 And that also leaves it wide open for me to argue
18 what a number I believe is reasonable now that we have all
19 the financial information of the parties.

20 We only recently stipulated that Mr. Matkulak's
21 actual income when both of our experts finally decided what
22 it was, and we filed DCR 16 stipulation on March 10th.

23 So she said it's your decision, I am certainly
24 going to argue at some point what I think is reasonable, and
25 the Court is then tasked with that authority.

1 THE COURT: Okay. In this particular case,
2 Ms. Davis's testimony will be limited to what she provided
3 at the deposition.

4 However, the issue of reasonableness was not known
5 at time of the deposition, given the fact that the
6 financials were not known.

7 So the Court will allow Mr. Meador to argue what
8 reasonable is in the circumstances, but he has to comply
9 with the law.

10 So as we all know, the law has some certain
11 specifics about what can happen in a child support case.

12 MR. MEADOR: Your Honor, may I interrupt just to
13 correct. You said Mr. Meador may argue, and I believe you
14 meant Mr. Ryan may argue.

15 THE COURT: Mr. Ryan. I wondered why you
16 squinched your face. Maybe because I am used to you
17 arguing, Mr. Meador.

18 MR. MEADOR: Well, and the motion in limine was to
19 evidence, not argument. So I don't -- meanwhile I disagree
20 with some of the -- Mr. Ryan's argument. I won't address
21 that here.

22 THE COURT: Thank you very much.

23 All right. Well, in this case, Ms. Davis is the
24 plaintiff. So that would mean Mr. Ryan has the right to
25 proceed forward and present his case.

1 Do you have an opening statement for me, Mr. Ryan?

2 Oh, and before you start, can we talk about how
3 we're dividing this day up?

4 I mean, I had a trial, a one-day trial on Monday
5 wherein -- and I will say -- it was Tuesday -- I did not
6 have as experienced a counsel as you two are, and I'm much
7 more familiar with your work than I with theirs, so I wasn't
8 as shocked.

9 But I would just like to know what our basic plan
10 is? If there has been any discussion about how we're going
11 to proceed today?

12 MR. RYAN: Your Honor, from my perspective, number
13 one, I am willing to waive openings if Mr. Meador is. I
14 think it's pretty straight forward, and with the trial
15 statements, I don't think they're necessary.

16 Number two, we're down to only two witnesses: the
17 parties. The experts, we've stipulated are not going to
18 testify because we did reach agreement on the base child
19 support obligation.

20 So I would be surprised if this goes a whole day.
21 But that's my perspective.

22 THE COURT: All right. Do you agree, Mr. Meador?

23 MR. MEADOR: With respect to openings, I would
24 defer to Your Honor whether you believe you have sufficient
25 information to move forward or not, or if you have questions

1 that you would like counsel to answer.

2 I would note that Ms. Davis's deposition, with
3 breaks, took two-and-a-half hours, and I would not expect
4 her trial testimony to be as long as her deposition
5 testimony.

6 So I share Mr. Ryan's optimism that we'll take
7 less than a full day.

8 THE COURT: All right. Perfect. Well, at this
9 time I may have some questions, but I think they're more
10 adequately addressed after I've heard the evidence. So I
11 don't have questions preliminarily.

12 I have noted things that I'm looking for from both
13 of the parties, and I will be making sure that I have those.

14 Then I will question you at the end, probably
15 during your argument, if there is any reason to address
16 those.

17 I presume both counsel is so familiar with this
18 case that I will hearing everything that I need to hear
19 during testimony.

20 So with that, we will waive opening arguments.

21 Mr. Ryan, you may proceed.

22 MR. RYAN: Thank you, Your Honor. I call Kourtney
23 Davis.

24 THE COURT: Let's just establish this right now
25 because -- is there anything in front of you other than the

1 two exhibit books?

2 THE WITNESS: Nothing other. And my deposition.

3 THE COURT: You have your deposition. That's
4 fine.

5 Do you have any objection to her having her
6 deposition with her, Mr. Meador?

7 MR. MEADOR: No, Your Honor. I asked Mr. Ryan to
8 have it available in case we needed it for purposes of
9 impeachment.

10 THE COURT: Thank you.

11 MR. MEADOR: But there's a little garbledness in
12 me hearing her. Can she speak again to see if that was just
13 an aberration or if there is some technological problem?

14 THE COURT: It's this week is what it is.

15 MR. MEADOR: Okay.

16 THE COURT: It's this week. Ms. Smith has been
17 with me most of this week. On our Tuesday trial, everything
18 was garbled, and yesterday Ms. Smith lost her internet and
19 was by phone. So this is just a continuation of this week.

20 Ms. Davis?

21 THE WITNESS: Can you hear me okay?

22 THE COURT: You are sounding a bit like you are in
23 a tunnel with water.

24 THE WITNESS: Oh, boy.

25 MR. RYAN: Actually, right there, you sound pretty

1 good. If you could just speak as loud as possible.

2 THE WITNESS: Okay.

3 MR. RYAN: We'll see how that goes.

4 THE WITNESS: Okay.

5 THE COURT: And, Ms. Davis, I know that they were
6 talking about the new Zoom stress that they've been looking
7 into, and it's that we were staring at people all day.
8 We're not used to be stared at, and it's and triggering our
9 fight or flight responses.

10 But the woman that you really want to take in and
11 look at, other than the person asking you questions, is you
12 want to take in and look up occasionally at Ms. Smith up in
13 the corner. I don't know where she's at on your screen.
14 That's the other problem, I can't tell where people are at.

15 But if Ms. Smith can't hear you, that's when we
16 run into problems. Okay?

17 So if you see her making squinty noises or trying
18 to hear you, try to speak up for her. She's the one you kind
19 of watch.

20 THE WITNESS: Okay.

21 THE COURT: Thank you.

22 With that, Mr. Ryan, you may proceed.

23 MR. RYAN: Thank you, Your Honor.

24

25

1

DIRECT EXAMINATION

2 BY MR. RYAN:

3 Q. Ma'am, please state your name for the record.

4 A. Kourtney Davis.

5 Q. Okay. In what state do you reside?

6 A. Nevada.

7 Q. How long have you lived here?

8 A. My whole life, 40 years.

9 Q. Okay. Do you have any natural-born children?

10 A. I do.

11 Q. And what would be his name?

12 A. Bennett Davis Matkulak.

13 Q. And what's his date of birth?

14 A. May 3rd, 2018.

15 Q. And what state was Bennett born?

16 A. Nevada.

17 Q. What state does Bennett currently reside?

18 A. Nevada.

19 Q. Okay. And who is Bennett natural father?

20 A. Tony Matkulak.

21 Q. Okay. Now, ma'am, would you tell the Court your
22 education after high school?

23 A. Yeah. I attended college and got a business
24 degree at Nevada, UNR.

25 Q. Okay. And do you currently work a full time job?

1 A. I do.

2 Q. Where do you work?

3 A. At Cordova Financial.

4 Q. Okay. And how long have you been with Cordova?

5 A. Almost six months.

6 Q. Okay. And how did you learn about this employment
7 opportunity?

8 A. Through a family friend. It was offered.

9 Q. What is your title at Cordova?

10 A. Compliance coordinator.

11 Q. And what are your work duties as compliance
12 coordinator?

13 A. Make sure we are complaint with the financial laws
14 and regulations. And I also do due diligence to assess risk
15 and fraud for new merchants that we bring on.

16 Q. Okay. And at Cordova only, what is your level of
17 compensation?

18 A. Annual, \$45,000.

19 Q. Okay. And are there any other monetary incentives
20 to you that you're aware of?

21 A. Yeah. I put in the 401k, and I know they match a
22 certain percent of that.

23 Q. Okay. Anything like a bonus or a commission?

24 A. Not yet that I'm not aware of, no.

25 Q. Okay. And is that a full-time position?

1 A. It is.

2 Q. Okay. And what days do you generally work each
3 week for Cordova?

4 A. Monday through Friday.

5 Q. Okay. And what are your general hours working for
6 Cordova?

7 A. Well, I am supposed to eight to five. I do work
8 more than that when I can.

9 Q. Okay. So regarding additional hours, describe for
10 the Court what that entails.

11 A. For Cordova?

12 Q. Correct.

13 A. That's just -- usually, I start work around 6:00
14 or 6:30 in the morning. That's if I don't have Bennett. If
15 I have Bennett, I am busy getting him ready for school, but
16 -- can you hear me?

17 Q. Yeah. The better -- you sound a lot better when
18 you're leaning into your computer and talking louder.

19 A. Okay. Sorry. My face is giant on the screen.
20 Um --

21 THE COURT: Oh, I can make that easier for you.

22 THE WITNESS: Sorry.

23 THE COURT: If you go into the right-hand corner
24 at the top, there's some -- if you put your mouse up there,
25 there's three dots. If you pull down that three-dot menu,

1 you can hide your self view so you don't see your face as
2 huge in that screen.

3 THE WITNESS: Oh, okay. Here we go.

4 THE COURT: And you'll feel we are about it.

5 THE WITNESS: Yeah, that's not what I want to
6 stare back at.

7 THE COURT: Trust me, I hide self view most of the
8 time.

9 THE WITNESS: Yeah, so the days, obviously, that I
10 don't have Bennett, when I get up, I start work because I
11 have the ability to work from home.

12 So I will start at 6:00, 6:30 in the morning. I
13 work full days. Sometimes later.

14 BY MR. RYAN:

15 Q. Okay. And is that on every day you don't have
16 Bennett?

17 A. Yeah, I do.

18 Q. Okay. And describe what, if any, additional
19 compensation are you paid for those hours?

20 A. Oh, I'm not. I'm just salaried.

21 Q. Okay. And what was your job prior to working for
22 Cordova?

23 A. I had my own business and still do work in Club K.

24 Q. Okay. And what is Club K?

25 A. Private softball instruction.

1 Q. And prior to working for Cordova, what was your
2 annual salary from Club K?

3 A. In the low thirties.

4 Q. Okay. Okay. And are you currently coaching?

5 A. I am. Yes.

6 Q. Okay. On what days do you coach?

7 A. Right now, I am coaching on one week on a Tuesday,
8 and I do every other Tuesday; and the opposite week is
9 Wednesday/Thursday, and that's every other week.

10 Q. Okay. And where is Bennett when you're coaching?

11 A. With his father.

12 Q. Okay. And what is the rate of pay for coaching?

13 A. I charge \$45 a half hour.

14 Q. Okay. And what -- for how many hours per month do
15 you approximately coach?

16 A. Just coaching, on average, like 19 hours a month.

17 Q. Okay. To your knowledge, is that consistent with
18 your deposition testimony?

19 A. I believe so, yes. Yeah.

20 Q. In order to run Club K and coach for 19 hours per
21 month, describe for the Court how much actual time you spend
22 working for Club K?

23 A. Well, outside of just lesson time itself, between,
24 obviously, drive time getting there and lesson plans, you
25 know, obviously, logging my profit and loss sheet, and just

1 keeping in touch with parents, probably, total a month, 30
2 hours.

3 Q. Thirty hours, does that include the coaching?

4 A. Yeah.

5 Q. Okay. So an additional 30 hours a month to run
6 Club K and coach?

7 A. So total Club K, that's with my lessons and the
8 stuff outside of getting paid is 30 total a month.

9 Q. Okay. Now, are you presently working any other
10 job beyond Cordova and Club K?

11 A. No.

12 Q. Why do you continue to work two jobs?

13 A. To support myself and son. I mean, I was
14 obviously going backwards before I was working at Club K.
15 So, you know? To help him out and myself.

16 Q. Okay. And what are your total gross earnings per
17 year with both jobs?

18 A. I think 60,000.

19 Q. Okay. What is the current custody schedule
20 between you and Mr. Matkulak?

21 A. We have a two/two/three schedule right now.

22 Q. Okay. And what, if any, amendments are you
23 seeking with regard to that schedule?

24 A. None. I think it's working well for him.

25 Q. Okay. And are you seeking any modification with

1 regard to legal custody?

2 A. I am not, no.

3 Q. Okay. And in your opinion, how is Bennett doing
4 under the current custodial schedule?

5 A. I think he's doing very well.

6 Q. Okay. Ma'am, how do you generally communicate
7 with Mr. Matkulak?

8 A. OurFamilyWizard is currently our communication.

9 Q. Okay. And how's that been working?

10 A. I think it's working well, yeah.

11 Q. What are you requesting with regard to
12 OurFamilyWizard in the final custody order?

13 A. That I think it should definitely stick to make
14 the coparenting go more smooth.

15 Q. Okay. Any other reasons why you want it?

16 A. Just to -- I mean, using it to, obviously, get
17 better coparenting and us talking.

18 And there's not, you, towards me, I feel there
19 can't be the mental abuse and, you know, not nice words
20 towards me does not get used on OurFamilyWizard.

21 So I think it's the best option for us.

22 Q. Okay. What, if any, other method do you
23 communicate with Mr. Matkulak?

24 A. We do text a little bit. And I'd say, you know,
25 it's probably me sending him a text time. But it's more

1 time-sensitive issues, I feel.

2 Like, if OurFamilyWizard isn't checked, you know,
3 around something that we need an answer to, it'll be a text.

4 And those have been pretty cordial and clean as
5 well, but it's not very often.

6 **Q. Okay. And how would you describe, overall, the**
7 **communications between you and Mr. Matkulak?**

8 A. Now?

9 **Q. Correct.**

10 A. Like, with OurFamilyWizard? I think it is good.

11 **Q. Okay. Let me refer you to Exhibit A.**

12 A. In the white book.

13 THE COURT: I hadn't recognized that they were in
14 different-colored binders.

15 THE WITNESS: Well, I fumble when I -- yeah. So,
16 yes, I have it.

17 BY MR. RYAN:

18 **Q. And I'm referring to page Bates stamped 205.**

19 A. Did you give me a letter?

20 **Q. Exhibit A.**

21 A. A.

22 **Q. Bates stamped 205.**

23 A. Uh-huh.

24 **Q. Are you there?**

25 A. Yes.

1 Q. Okay. Number one, do you recognize that document?

2 A. I do.

3 Q. Okay. And what is that?

4 A. A text message from Tony.

5 Q. Okay. And when was that -- approximately
6 when was that message sent?

7 A. That one was recent. Probably January. Maybe
8 December. I think January.

9 Q. Of what year?

10 A. This year, 2021.

11 Q. Okay.

12 A. Yeah. Recent.

13 Q. Okay. And who was it sent to?

14 A. Myself.

15 Q. Okay.

16 MR. RYAN: Move for the admission of page 205.

17 MR. MEADOR: Relevance, Your Honor.

18 MR. RYAN: Your Honor, part of what we have asked
19 for in this case is a non-disparagement clause. And all of
20 these emails and texts and OurFamilyWizard go to that and go
21 to the way that Mr. Matkulak communicates with my client.

22 And it also goes to the attorney fee/increase in
23 the child support issue.

24 MR. MEADOR: We will stipulate to

25 non-disparagement and this has -- this document, this page

1 he's referred to has absolutely nothing to do with child
2 support.

3 MR. RYAN: Actually, it does Your Honor, in that
4 part of what Ms. Davis explained to Mr. Meador regarding
5 financial security.

6 And you will see further documents that pertain to
7 constantly using attorneys or Mr. Matkulak constantly
8 deciding unilaterally what the child will do.

9 So it is relevant, and it should be admitted.

10 THE COURT: I will admit it over objection.

11 (Whereupon, Petitioner's Exhibit A,
12 page 206 was admitted into evidence.)

13 BY MR. RYAN:

14 Q. Ma'am, would you read the line of page 205,
15 please?

16 A.

17 "I will start taking Bennett to play
18 therapy."

19 Q. Okay. And based on that email, why was
20 Mr. Matkulak unilaterally deciding to take Bennett to play
21 therapy?

22 A. Because he woke up from his dream crying.

23 Q. Okay. And do you see there where he references
24 dream analysis?

25 A. Yes.

1 Q. Okay. Does Mr. Matkulak, to your knowledge, have
2 any formal training in dream analysis?

3 A. Not that I am aware of, no.

4 Q. Okay. And did you agree with Mr. Matkulak that
5 Bennett should be placed in play therapy?

6 A. Absolutely not. No I think that is normal toddler
7 behavior. Yeah.

8 Q. How do you think these decisions should be made?

9 A. Both parents, a discussion, you know, bringing our
10 ideas to the table, and deciding what's best for our child.

11 Q. To your knowledge, was Bennett unilaterally placed
12 in play therapy?

13 A. He was not. There was nothing further of it.

14 Q. Okay. Would you take a look, please, at Exhibit
15 A, page 212.

16 A. Uh-huh.

17 Q. Do you recognize that document?

18 A. I do.

19 Q. Okay. And what is that?

20 A. A text message sent early in the morning from Tony
21 to myself.

22 Q. What time was the message sent?

23 A. 3:11 A.M.

24 Q. Okay. And approximately when was that message
25 sent to you?

1 A. That was later of 2020.

2 Q. Okay. So can you give as rough estimate of what
3 month?

4 A. Maybe September/October.

5 Q. Okay. And who is it sent to?

6 A. Myself.

7 Q. And who responded to the text?

8 A. I responded to him.

9 Q. Okay.

10 MR. RYAN: Move for the admission of 212.

11 MR. MEADOR: Same objection.

12 MR. RYAN: Same responses.

13 THE COURT: I will admit because I'd like to know
14 what was necessary to text early in the morning at 3:11.

15 (Whereupon, Petitioner's Exhibit A,
16 page 212 was admitted into evidence.)

17 MR. RYAN: Thank you, Your Honor.

18 BY MR. RYAN:

19 Q. Ma'am, with regard to this text, what is
20 Mr. Matkulak directing that you do?

21 A. Stop sleeping with my child.

22 Q. Okay. Why were you sleeping with your child at
23 that time?

24 A. Well, I always told him I'm not sleep with my
25 child. I do tell him there's -- I call it "special nights,"

1 and he'll get two, probably like twice a month he will.

2 But anytime that Bennett is not sleeping well,
3 with him, I often do get -- even in our OurFamilyWizard, I
4 get that, I see you're sleeping with him again. You're
5 sleeping with him again.

6 So I get the blame if he's not sleeping at Tony's
7 house.

8 **Q. What did you respond there regarding why you**
9 **had -- why you think that he should not -- as far as letting**
10 **him cry through the night, what did you respond to that?**

11 A. Well, that was really it. I said, yeah, I comfort
12 him. He going through changes. He lives at two houses. He
13 may have just started school.

14 When I mentioned it to Tony, like, don't put ear
15 plugs in and go on your side of the house, obviously, if our
16 kid has problems in the night. He's sleeping, throwing up,
17 like, all over the crib. It's for his safety, obviously,
18 please hear my kid and respond to that to as well.

19 MR. MEADOR: Your Honor, if I may, I'll further
20 object that it's an incomplete document.

21 THE COURT: Well, that objection holds to be true.
22 However, I've already admitted it for the purpose on that.

23 But as far as it's completeness, that is an issue
24 for the Court.

25 MR. RYAN: I'll move on, Your Honor.

1 BY MR. RYAN:

2 Q. Well, actually, one final question, though.

3 Regarding Mr. Matkulak's decision on how he was going to
4 handle Bennett's crying, how do you think those decisions
5 should be made?

6 A. A discussion. It was discussed between both of
7 the parents.

8 Q. Okay. Would you take a look at page 208.

9 A. Yes.

10 Q. Do you recognize that document?

11 A. I do.

12 Q. Okay. And when was that sent, approximately?

13 A. That was -- it wasn't last year. That was in
14 2019.

15 Q. Who is it from?

16 A. That date on that -- that's from Tony.

17 Q. And who is it to?

18 A. To myself.

19 Q. Okay. What were the circumstance surrounding this
20 text exchange?

21 A. Well, he was running late, later than he said, and
22 then later than he said. And we had a place to be, Bennett
23 and myself.

24 So I was getting, obviously, a little bit stressed
25 out and upset that he wasn't there.

1 Q. Okay. And does this accurately reflect the text
2 between you and Mr. Matkulak?

3 A. He did say, I'm really stressed and rushed --

4 Q. Yes or no?

5 A. Can you repeat it? Sorry.

6 Q. It does this document accurately reflect the texts
7 that were exchanged between you and Mr. Matkulak?

8 A. Yes.

9 MR. RYAN: Move for the admission of 208.

10 MR. MEADOR: Same objection. Same objection that
11 it's incomplete. There's no indication of when this was
12 sent.

13 MR. RYAN: You Honor, she testified it was sent in
14 the summer of 2019, and the relevance, again, is the way he
15 talks to her, and the way he puts her down.

16 THE COURT: It is complete?

17 MR. RYAN: Yes. It's basically: I'm late. Okay.
18 And then she said: I'm stressed.

19 And then he writes this -- yeah, and then she just
20 writes: When can I get Bennett?

21 It says everything that's included on the issue.

22 THE COURT: And it's from 2019?

23 MR. RYAN: Correct.

24 THE COURT: And she's already testified that their
25 behaviors have changed?

1 MR. RYAN: Correct.

2 THE COURT: It's stale.

3 MR. RYAN: Okay. So that's a --

4 THE COURT: That's a no. That's a no bueno.

5 MR. RYAN: Okay. Thank you.

6 BY MR. RYAN:

7 Q. Ma'am -- let's see then. 2019. Okay.

8 Ma'am, would you take a look at page 213 of

9 Exhibit A. Do you recognize that document?

10 A. 213. Yes, I do.

11 Q. Okay. Currently, have there been occasions where

12 Mr. Matkulak has, quote, bad mouthed you?

13 A. Yes.

14 Q. Okay. And has this occurred even after the use of

15 OurFamilyWizard?

16 A. Yes.

17 Q. Okay. And will you tell the Court some of the

18 things that Mr. Matkulak has said about you in front of

19 Bennett?

20 A. Yes. I know he's -- excuse me for my language --

21 said to my child, you know, bad mommie.

22 And then recently my son told me twice, back to

23 back days --

24 MR. MEADOR: Objection. Hearsay, Your Honor.

25 THE COURT: It is hearsay.

1 MR. MEADOR: And with respect to the prior,
2 clarify whether she was present when this allegedly was
3 said. Do we know if it was hearsay?

4 THE COURT: She testified -- the way it was
5 testified is what have you heard --

6 MR. MEADOR: She said he said that to his son. We
7 don't know whether she has personal knowledge of that.

8 THE COURT: And Mr. Ryan's question had been that
9 it was in his presence, and you can flush that out on cross.
10 BY MR. RYAN:

11 Q. Ma'am, with regard to the statements you were
12 about to say, were you present at the time?

13 A. I was not present.

14 Q. Okay. And --

15 MR. MEADOR: -- strike, Your Honor.

16 MR. RYAN: I'm sorry?

17 THE COURT: What, Mr. Meador?

18 MR. MEADOR: Strike her prior testimony. She just
19 admitted that she was not present when it was allegedly
20 said.

21 THE COURT: Did you -- the question was the
22 statements that you are about to say, not the ones she
23 previously said she wasn't present for.

24 BY MR. RYAN:

25 Q. Ms. Davis, when these type of bad-mouth statements

1 were made to you, who made them?

2 A. When they were made --

3 Q. Who told you about them?

4 A. Bennett did.

5 Q. Okay. And --

6 A. One was a video sent to me.

7 THE COURT: Whoa. Whoa. Whoa. Whoa. Whoa.

8 Whoa. Mr. Meador's objecting.

9 THE WITNESS: And --

10 THE COURT: Hold on.

11 MR. MEADOR: I'm at a loss to understand now.

12 What she heard. What she's been told.

13 I -- I -- I -- from everything I've heard,

14 everything is hearsay here. So I don't mean to be

15 obstructionist.

16 MR. RYAN: The Court has already ruled it is

17 hearsay. I am leading into a hearsay exception, Your Honor,

18 if I may?

19 THE COURT: All right.

20 BY MR. RYAN:

21 Q. Ma'am, when Bennett repeated -- allegedly repeated

22 statements to you, can you describe for the Court his

23 demeanor or the way he presented?

24 A. Extremely sad about one of them. I don't know if

25 I'm allowed to say it, but -- am I allowed to say what he

1 said?

2 **Q. No. Just described his demeanor.**

3 A. Very sad. He wants it to stop, and he said he
4 feels like he -- sorry.

5 He was sad. Very sad, and the other time, he was
6 very excited to tell me something that I had heard.

7 MR. RYAN: And, Your Honor, based upon present
8 sense impression and/or excited utterance, these statement
9 should be -- they follow -- exclude -- they're not excluded
10 by the hearsay rule.

11 MR. MEADOR: They're offered for the truth of the
12 matter asserted.

13 MR. RYAN: Correct, but they're --

14 MR. MEADOR: His response -- his emotional
15 response is not relevant. This is not within an exception
16 known to the hearsay rule, Your Honor.

17 MR. RYAN: Your Honor, I can refer you to the
18 exact exceptions.

19 51.075, is the general exception where there's an
20 assurance of accuracy. This is a little child coming home,
21 telling her mom something.

22 Present sense impression is 51.085, describing or
23 explaining an event or condition made while declarant was
24 perceiving that event or condition or immediately
25 thereafter, or excited utterance, a statement relating to

1 startling event or condition made which the declarant was
2 under the stress of excitement caused by a condition.

3 It's --

4 THE COURT: And how old is Bennett when this
5 statement was made to mom?

6 THE WITNESS: This was in the last month or two.
7 Sorry. I thought you were asking me.

8 THE COURT: That's fine. And you want me to
9 attribute assure of accuracy to a two year old, almost three
10 year old?

11 MR. RYAN: Hundred percent.

12 THE WITNESS: Hundred percent.

13 MR. RYAN: They blurt out everything as
14 accurately --

15 THE COURT: And they also say what they think you
16 want them to say.

17 MR. RYAN: They have no reason to lie, Your Honor.

18 THE WITNESS: Wow.

19 THE COURT: They don't. And you had the
20 opportunity that if you wanted to, you could have gone
21 through with the play therapy, or whatever else was
22 proposed, and had an expert here to tell me that this child
23 thinks and what is happening between the homes.

24 I will not allow the testimony.

25 MR. RYAN: Thank you, Your Honor.

1 BY MR. RYAN:

2 Q. Ma'am, and again, what are you requesting with
3 regard to alleged disparaging remarks?

4 A. An non-disparagement clause.

5 Q. Okay. Thank you.

6 Now, ma'am, based upon your personal knowledge,
7 what is Mr. Matkulak's position regarding the use of
8 attorneys to handle your disputes?

9 A. Um, everything we've had to coparent about has to
10 go through legal counsel.

11 Q. Okay. And why do you say that?

12 A. Can you repeat that? It cut out.

13 Q. Why do you say that?

14 A. That's how it's been thus far when we try to
15 communicate. Everything has to go through his attorney.

16 Q. Okay. Would you take a look at Exhibit A, page
17 206.

18 A. Yeah.

19 Q. Okay. What is the date of that document?

20 A. Um, August 3rd.

21 Q. Of what year?

22 A. 2020.

23 Q. I'm sorry? 2020?

24 A. 2020.

25 Q. Okay. And what is that?

1 A. A text message from Tony to myself.

2 Q. **Okay. And what is it pertaining to?**

3 A. After our COVID testing, a billing.

4 Q. **Okay.**

5 MR. RYAN: Move for the admission of 206.

6 THE COURT: Mr. Meador?

7 MR. MEADOR: No objection.

8 THE COURT: It will be admitted.

9 (Whereupon, Petitioner's Exhibit A,
10 page 206 was admitted into evidence.)

11 MR. RYAN: Thank you, Your Honor.

12 BY MR. RYAN:

13 Q. **Ma'am, and how much was at stake here?**

14 A. Um, I, um, I do not remember what Bennett's cost
15 was. Maybe, like, \$120 for his test.

16 Q. **\$120?**

17 A. Total for Bennett's test.

18 Q. **Okay. Can you read the second sentence of that
19 text?**

20 A.

21 **"You need to go through the attorneys
22 as we have agreed upon the past for
23 expenses like these."**

24 Q. **Okay. Did you ever agree that everything would
25 need to go through attorneys?**

1 A. No.

2 Q. Okay. Would you take a look at page 207. What's
3 the date of this document?

4 A. May 8th, 2019.

5 Q. Okay. What does this pertain to?

6 A. A medical bill as well.

7 Q. Okay. And how were you able to get reimbursed for
8 that medical bill?

9 A. Through our settlement conference. That one got
10 ordered in for him to pay.

11 Q. Okay. And how much was at stake that time?

12 A. I think he ended up paying -- I don't remember the
13 exact number. Maybe --

14 Q. More than a thousand dollars?

15 A. Oh, god, no.

16 Q. More than \$200?

17 A. No.

18 Q. Okay. Okay. How often are you allowed to
19 communicate with Bennett when he is not in your custody?

20 A. Well, we don't have an agreement, um, yet.

21 Q. So please answer my question. How often are you
22 allowed to communicate with him when he's not in your
23 custody?

24 A. Um, well, fully, once -- I mean, once a day or
25 whenever I would like to.

1 **Q. Okay. And can you describe for the Court, efforts**
2 **made to communicate when Bennett is with Mr. Matkulak?**

3 A. Yeah. That one's not going very well.

4 There's times that I would like to, you know, see
5 my son so he can see my face, because I think that's
6 important at his age, ask him how his day was, and just
7 facial recognition is important at two years old.

8 And it's not going we well as I think as it could.
9 A lot of my goals, they're -- they are not taken.

10 **Q. Okay. And what are you specifically requesting be**
11 **included in the final order?**

12 A. I think it would be in Bennett's best interest,
13 you know, if his father and myself can, you know, either
14 call him or facetime him one a day while in the care of the
15 other parent.

16 **Q. Okay. And why do you feel that is in his best**
17 **interest?**

18 A. I think that's in the best interest of, you know,
19 for Bennett, again, to be able to see his parents and know
20 that were both there. I mean, it's hard for being separated
21 parents.

22 Two, I know how important it is that they don't go
23 on for stretches without, like, seeing your face. That's
24 why I have a picture of Tony in his bedroom. I just think
25 that's important. It's healthy.

1 Q. Okay. Would you please take a look at Exhibit G.

2 A. G.

3 Q. Are you there?

4 A. I am.

5 Q. Okay. And what is that?

6 A. The -- 250 -- right? -- the proposed holiday
7 schedule.

8 Q. Okay. And who prepared that?

9 A. I did.

10 Q. Okay. And how did you come up with the proposed
11 holiday schedule?

12 A. Um, I put a lot of thought into this one. I dated
13 people that have had, you know, a split custody. So I am
14 kind of familiar with the way this -- the schedules work and
15 holidays.

16 And I tried to come up with something that I feel
17 is going to benefit Bennett, it's going to benefit Tony,
18 it's going to benefit me on holidays.

19 You know, I think it's fair -- it's hard -- I
20 mean, can I give examples? I mean, on a holiday if you're
21 having 24-hour break, mom or dad, no can go anywhere because
22 you have stay in town.

23 I just think -- I think this is the best schedule
24 that I've seen. They didn't propose anything. So I am
25 trying to, you know, not just leave it up to the Courts to

1 do that.

2 So this is my proposal.

3 Q. Okay. And what are you requesting of the Court
4 with regard to this holiday schedule?

5 A. Um, I would love to see it put in.

6 Q. Okay. And previously, what has been
7 Mr. Matkulak's position with regard to the holidays?

8 A. He doesn't really care. Honestly, I don't get
9 answers. But he does like -- we alternate. We've been very
10 good with that.

11 But it's not much opinion. He doesn't really ...

12 Q. Okay.

13 MR. RYAN: Move for the admission of G, Your
14 Honor.

15 MR. MEADOR: G is not evidence, Your Honor. It's
16 argument.

17 I have no problem using it to supplement closing
18 argument, but it's not evidence in the case.

19 MR. RYAN: Your Honor, there's no schedule in
20 place. My client has taken the time to prepare a schedule.
21 She just testified she did it. She believes it's reasonable
22 and in the best interest of the child.

23 It is evidence of her desire for this holiday
24 schedule.

25 THE COURT: I'll admit it.

1 MR. RYAN: Thank you.

2 (Whereupon, Petitioner's Exhibit G was
3 admitted into evidence.)

4 BY MR. RYAN:

5 Q. Ma'am, please take a look at Exhibit F, as in
6 Frank.

7 A. Uh-huh.

8 Q. Are you there?

9 A. I am.

10 Q. Do you recognize that document?

11 A. Yes.

12 Q. And what is that?

13 A. Settlement Conference Statement.

14 Q. Okay. And what's the date on the top of the
15 Settlement Conference Statement?

16 A. 11/6/2020.

17 Q. Have you reviewed this document?

18 A. Yes. It's been awhile, but, yes.

19 Q. Did you see it at or near the time that it was
20 filed?

21 A. Yes.

22 Q. Okay.

23 MR. RYAN: Move for the admission of F.

24 THE COURT: Mr. Meador?

25 MR. MEADOR: It's part of the Court's record. So

1 I don't know what your preference is. Whether you take
2 judicial notice or you admit it as an exhibit, I don't care.

3 THE COURT: Well, I'll admit it as an exhibit
4 because it is part of the Court record. How about we go
5 that direction? It's the way that Mr. Ryan wants to address
6 this.

7 So I will admit it.

8 (Whereupon, Petitioner's Exhibit F is
9 admitted into evidence.)

10 MR. RYAN: Thank you, Your Honor.

11 BY MR. RYAN:

12 Q. Ma'am, would you please take a look at page 4 of
13 the document.

14 A. The same document, page four. Yes.

15 Q. Okay. And what is the caption for Roman numeral
16 3?

17 A. A downward adjustment is appropriate.

18 Q. Okay. And, ma'am, would you please also read the
19 footnote 1 on that page.

20 A.

21 "Father believes that mother is
22 underemployed without good cause, and
23 the Court can impute income to her as
24 if she were employed full time."

25 Q. Okay. And at the time this document was

1 **filed --**

2 MR. MEADOR: Excuse me. I apologize. Excuse me,
3 your Honor.

4 I'd like to just clarify the relevance of this
5 line of questioning to make sure it's consistent with the
6 statute.

7 THE COURT: Mr. Ryan?

8 MR. RYAN: Well, again, the relevance has been
9 argued in my trial statement that I believe, as in for
10 attorney fees, number one, and child support that this
11 argument and this position taken was absolutely improper,
12 and I'm also demonstrating the time at which this position
13 as still being championed by the respondent.

14 THE COURT: I find it relevant. Let's move along.

15 MR. MEADOR: Well, Your Honor. No. Part if it is
16 and part of it isn't.

17 It cannot be offered for liability or amount. It
18 can be offered for other purposes.

19 If it is being offered for alleged good faith, bad
20 faith, unreasonableness, it's admissible for that purpose.
21 It's not admissible for other purposes under the statute.

22 So as long as it's being admitted solely for the
23 purposes of unreasonableness and bad faith, I have no
24 objection.

25 THE COURT: That will be the order of the Court.

1 MR. RYAN: Thank you, Your Honor.

2 BY MR. RYAN:

3 Q. Ma'am, at the time this document was --

4 THE COURT: Whoa. Whoa. Whoa. If she were
5 working full time at that point, and the footnote still says
6 that you believe that she was underemployed, then there
7 would be some relevance related to the statute about woeful
8 underemployment.

9 Do you not agree, Mr. Meador?

10 MR. MEADOR: She wasn't employed full time at that
11 time, Your Honor. To our knowledge.

12 THE COURT: That's the only thing I'm asking. If
13 she was -- because I don't know -- would it not be relevant
14 related to that?

15 MR. MEADOR: I don't believe so, but my
16 understanding --

17 THE COURT: If you made a claim at settlement
18 conference --

19 MR. MEADOR: -- is that she had a part-time job.

20 THE COURT: If you made a claim at settlement
21 conference and she was full-time employed as she currently
22 is -- or employed in a relatively full-time position, and
23 your claim that was still willfully unemployed, or if she
24 were earning less than what she had earned prior to parties
25 getting together, it would be relevant to apply to the

1 statute in that regard.

2 That's not -- I'm not going to debate it anymore.

3 For that purpose as well, it will be admitted.

4 Now, if she weren't working full time, it becomes
5 irrelevant quickly.

6 Go ahead.

7 MR. RYAN: Thank you, Your Honor.

8 BY MR. RYAN:

9 Q. Ma'am, once again, during your relationship with
10 Mr. Matkulak, prior to working for Cordova, where were you
11 working?

12 A. Prior to Cordova, at Club K.

13 Q. Okay. And when -- you testified earlier when you
14 were working strictly for Cordova, and during that time with
15 Mr. Matkulak, how much were you earning annually?

16 A. With Club K? How much was I earning annually?

17 Q. Correct.

18 A. Thirty. Thirties. Low thirties.

19 Q. \$30,000 a year?

20 A. Yeah.

21 Q. Okay. So at the time this was filed in November
22 of 2020 --

23 A. Yes.

24 Q. -- where were you working in November of 2020?

25 A. I was working at Cordova and Club K.

1 Q. Okay. And was -- at the time this was filed, were
2 you -- how often were you coaching for Club K?

3 A. I think the same that I had stated. An average of
4 19 hours a month.

5 Then I was working hourly at -- I think, it was,
6 like, maybe, 30 hours a month at Cordova. Yeah.

7 Q. Okay.

8 A. I don't remember when I made the switch to full
9 time.

10 Q. So you were working two jobs; correct?

11 A. Yes.

12 Q. Were you earning more than \$30,000 at the time?

13 A. Combined?

14 Q. Yes.

15 A. Yes, combined.

16 Q. Thank you. Ma'am, would please take a look at
17 Exhibit B. Do you recognize this document?

18 A. I do.

19 Q. Okay. What's the date on the very top part of the
20 document?

21 A. Monday, December 21st, 2020.

22 Q. And if you look down there below where there's a
23 different communication, what's the date on that
24 communication?

25 A. Thursday, December 17th, 2020.

1 Q. Okay. And in December of 2020, was I your
2 attorney?

3 A. Yes.

4 Q. Okay. And to your knowledge, who was
5 Mr. Matkulak's attorney?

6 A. Mr. Meador.

7 Q. Okay. And did you see this document at or near
8 that time?

9 A. We have the same -- yeah, you said -- sorry. I
10 want to make sure I have the correct document in front of
11 me.

12 Q. It's page 214, Exhibit B.

13 A. Yeah. Okay. Yeah. Yeah. Yeah. Yes, I saw it.

14 Q. Okay.

15 MR. RYAN: Move for the admission of B.

16 THE COURT: Mr. Meador?

17 MR. MEADOR: Same clarification with respect to
18 settlement negotiations.

19 THE COURT: Okay.

20 MR. RYAN: Your Honor, again, this is not a
21 settlement offer or any other thing. This is simply a
22 communication between Mr. Meador and I.

23 Number two, it is a statement against interest.
24 It's a party admission on behalf of his client.

25 And, again, it is simply offered for bad faith and

1 the fact that it was unreasonable to take this position in
2 December of 2020.

3 MR. MEADOR: To suggest it was not a settlement
4 negotiation is inaccurate, Your Honor.

5 You look at the very last paragraph of this
6 document, I am trying to elicit settlement proposals from
7 Ms. Davis so that we can try and get the case settled so
8 that you can, in conjunction with the first paragraph, about
9 why this litigation is not in their best interest.

10 So it is absolutely a settlement negotiation.

11 MR. RYAN: Your Honor, Mr. Meador is simply
12 telling me his position in the case and reciting what my
13 position is in the case, and then giving me his opinions
14 about what he believes. That's all it is.

15 And for all the other reasons, it should be
16 admitted.

17 THE COURT: I'm not going to admit the document.

18 MR. RYAN: Thank you, Your Honor.

19 BY MR. RYAN:

20 Q. Ma'am, with regard to your legal position in
21 December of 2020, and pertaining to an upward deviation,
22 what was your position at the time?

23 A. An upward deviation was appropriate.

24 Q. Okay. And to your knowledge, with regard to
25 Mr. Metkulak's legal position in December of 2020, what was

1 his position?

2 A. A downward deviation.

3 Q. Okay. Thank you. Now, ma'am, do you recall
4 having your deposition taken by Mr. Meador?

5 A. I do.

6 Q. Okay. When was that?

7 A. It was in December of 2020.

8 Q. Okay. And would you please take a look at Exhibit
9 2, which is in their exhibit binder.

10 A. Two. Uh-huh.

11 Q. Are you there?

12 THE COURT: In regard to -- counsel, in regards to
13 these pleadings that have been previously filed with the
14 Court, I will admit them because we've done it in the other
15 one. So it doesn't make any sense. I'll also take judicial
16 notice that these are pleadings that have been previously
17 been filed.

18 So you don't have to jump through the hoops of
19 moving for admission of prior pleadings.

20 MR. RYAN: Thank you, Your Honor.

21 BY MR. RYAN:

22 Q. Ma'am, was this filed by you before or after the
23 deposition with Mr. Meador?

24 A. Um, after.

25 Q. Okay. And to the best of your knowledge, is the

1 information contained in there true and correct?

2 A. Yes.

3 Q. Why did you file this updated financial disclosure
4 form on January 6th, 2021?

5 A. I wanted to make sure it was fair, honest, and
6 truthful.

7 I know Mr. Meador had mentioned that maybe there
8 were some errors in there, and he brought up some points.
9 So I just redid it and fixed it.

10 Q. Okay. Okay. So, ma'am, with regard to page 4 of
11 that document, would you take a look at that.

12 A. Yes.

13 Q. Okay. And I'm referring you to your personal
14 expenses; do you see that?

15 A. Uh-huh.

16 Q. Okay. And how much do you pay each month for
17 rent?

18 A. Nineteen fifty.

19 Q. Okay. And to your knowledge how much does
20 Mr. Matkulak pay for rent or his mortgage?

21 A. I believe zero.

22 Q. Okay. How much, ma'am, do you pay for food?

23 A. Five fifty.

24 Q. Okay. And to your knowledge, how much does
25 Mr. Matkulak report paying for food?

1 A. I think his financial disclosure said 1,800.

2 Q. I'm sorry?

3 A. Eighteen hundred from his financial disclosure.

4 Q. Okay. Would you take a look at page 5, please.

5 A. Yes.

6 Q. As far as expenses regarding Bennett, how much do
7 you pay for childcare?

8 A. Four sixty-eight.

9 Q. Okay. And how much Mr. Matkulak pay?

10 A. Four sixty-eight. We split it.

11 Q. Okay. How was the childcare provider chosen?

12 A. Um, we -- we chose it together.

13 Q. Okay. And is that monthly cost, to your
14 knowledge, comparable to other day care providers?

15 A. For sure, yeah. We were looking at others that
16 were more expensive. And it's about what all my girlfriends
17 pay, yes.

18 Q. Okay. So based upon your personal knowledge, is
19 this a reasonable monthly amount?

20 A. Yes.

21 Q. Okay. And as far as your expenses go, how would
22 you describe the cost of your share of Bennett's day care?

23 A. It's a, obviously, huge chunk. And I think I am
24 negative 250 a month. So it's a big bill.

25 Q. Okay. How often do you use childcare?

1 A. Every day that Bennett is with me and I am
2 working.

3 Q. How often does Mr. Matkulak use childcare?

4 A. I believe same. When he's working, I think
5 Bennett is there Monday through Friday, all day.

6 Q. Okay. Okay. So I would like to, kind of, take
7 you through this just so we can establish -- you said
8 something about you're negative each month; is that correct?

9 A. Yes.

10 Q. Okay. If you take a look at page 4 of the
11 document, what have you listed there as you whole, average
12 monthly income?

13 A. \$5,144.

14 Q. And do you have that calculator in front of you
15 that I put down there?

16 A. I do.

17 Q. Okay. And then from that \$5,144, take a look at
18 page 3 for your standard deductions. What are those?

19 A. Um, deductions total monthly, is that where were
20 looking at?

21 Q. Correct.

22 A. So 1136.

23 Q. Okay. And then if you take a look at page 5, what
24 are your personal expenses?

25 A. Total monthly expenses on top is \$3,468.

1 Q. Okay. And then if you look at the expenses for
2 Bennett, how much are those?

3 A. Seven eight-seven.

4 Q. Okay. And when you subtract all those from your
5 monthly income, what do you end up with?

6 A. I guess I should punch it in the calculator, but I
7 know it's around \$250.

8 Q. Okay. \$250 positive or negative?

9 A. Negative.

10 Q. Okay. And does that include child support?

11 A. I don't think so, no.

12 Q. Correct.

13 A. No.

14 Q. Okay. And with regard to the cost of the
15 childcare, what you believe is an equitable split?

16 A. I believe his father should pay for full-time day
17 care.

18 Q. Why do you say that?

19 A. Because, again, it's a much bigger burden,
20 obviously, it is for me than it is for him. I think he can
21 afford to do it.

22 Q. Any other reasons?

23 A. Um, not that I can think of. I mean, it's just --

24 Q. Please speak up.

25 A. Sorry. No. I just said, it's a big bill, and I

1 think that's reasonable that he does pay that.

2 Q. Okay. Who currently -- I'm sorry?

3 A. I didn't say nothing.

4 THE COURT: It wasn't her. It was my dog. I
5 apologize.

6 MR. RYAN: Oh. Okay.

7 BY MR. RYAN:

8 Q. Who currently provides health insurance --
9 wellness insurance for Bennett?

10 A. We both do.

11 Q. Okay. And how long have you been providing
12 insurance for the child?

13 A. Since October of 2020, I believe.

14 Q. Okay. And what is the cost of Bennett's coverage
15 through your employer, Cordova Financial?

16 A. I do not have to pay for his insurance.

17 Q. Okay. So zero?

18 A. Zero.

19 Q. Okay. And what does that coverage cover?

20 A. It's full coverage. Dental, vision, health
21 insurance. It's good coverage.

22 Q. Okay. And according to Mr. Matkulak's financial
23 disclosure form, how much is he paying for Bennett's
24 coverage through his employer?

25 A. I think 237.

1 Q. Let me refer you to Exhibit 1, page 3.

2 A. Exhibit 1, page 3.

3 Q. It's actually 1525 is the Bates number.

4 A. Yep, 1525. Two thirty-seven fifty.

5 Q. Okay. And what are you requesting of the Court
6 with regard to providing Bennett's insurance?

7 A. I think it would make sense that I cover him being
8 as it is no cost to me and that definitely takes away
9 costing for Tony.

10 Q. Okay.

11 A. Makes sense. It's both United Healthcare.

12 Q. I'm sorry?

13 A. It's the same insurance through United Healthcare.
14 The same company.

15 Q. Okay. Regarding the child support analysis, for
16 you, what are Bennett's basic needs?

17 A. His basic needs to me is food, shelter, a place to
18 live.

19 Q. Okay. And regarding his basic needs, do you
20 believe they're provided for in both houses?

21 A. Um, his basic, yes, I do.

22 Q. Okay. Would you describe for the Court your
23 current residence where you reside with Bennett?

24 A. Yeah. We live in a small community in the Damonte
25 Ranch area. It's a 1,600-square foot home. It's got three

1 bedrooms, and, like, a five-foot rock backyard.

2 **Q. I'm sorry. A what?**

3 A. And a small, five-foot rock backyard.

4 **Q. Okay. And then would you describe for the Court**
5 **Mr. Matkulak's residence at Callahan Estates?**

6 A. His house, obviously, is much larger. I think
7 it's on an acre and a half. It's 4,500 square feet. Five
8 bedrooms. Five-car garage. Hot tub. It has the surround
9 sound. Large TVs. I know it has a security system.
10 Foosball table.

11 I mean, obviously, it's nice spread. I'm not
12 going to lie.

13 **Q. Okay. And regarding your employment, what steps**
14 **have you take to ensure that Bennett's basic needs are met?**

15 A. I mean, well, basic needs are just the food
16 shelter, and --

17 **Q. Why are you worked two jobs?**

18 A. To take care of my son, obviously, and provide
19 those things for him.

20 **Q. Okay. And in order to meet his basic needs, what**
21 **actions or what do you do to try to be thrifty or save**
22 **money?**

23 A. Well, I have to be smart with money. We eat at
24 home a lot. I shop at Walmart. A lot of my clothes and
25 toys were hand-me-downs from girlfriends. We go to the park

1 a lot to play. We haven't gone very many places.

2 Q. Okay. You really got to try to stay leaned in
3 because you cut out on me and I don't hear your answer.

4 I don't know if the Court is hearing everything.

5 THE WITNESS: Did you hear it?

6 THE COURT REPORTER: I did.

7 MR. RYAN: The court reporter got all that? Okay.

8 THE WITNESS: Okay.

9 BY MR. RYAN:

10 Q. Okay. And what did you say about clothing?

11 A. Um, most of my clothing is hand-me-downs from
12 girlfriends.

13 Q. Okay. And you recall, again, your deposition with
14 Mr. Meador; correct.

15 A. Yes.

16 Q. And he asked you about what, if any, of Bennett's
17 specific needs do you believe are not being met in your
18 care; do you recall that?

19 A. Yes.

20 Q. Okay. Please tell the Court what specific needs
21 you do not believe are being met by you when Bennett is in
22 your care?

23 A. I think there's a few specific needs that are not
24 being met at my house that are at Tony's.

25 What I think are specific needs, I think --

1 Q. If you slow down a little bit. And, again, I
2 apologize, but you really have to lean to have the mic pick
3 it up.

4 A. Okay. Yes. To me specific needs are relative, I
5 think, to the income available to the child.

6 And I think time -- quality time is a specific
7 need, and lifestyle, and standard of living. And financial
8 security is another.

9 Q. Okay. And to your knowledge, were all of these
10 items mentioned to Mr. Meador in the deposition?

11 A. Yes.

12 Q. Okay. Now, with regard to your discussion, what
13 do you mean by "time" or "quality time" with your son?

14 A. When I'm talking about time, I'm talking, yeah,
15 quality time and time.

16 I am working two jobs, you know, to \$5,100 a
17 month. I work a lot of hours. Sometimes I'm working 15,
18 16-hour days. I'm tired and I'm stressed.

19 And when I get that time with my son, I want to be
20 the best version of myself and mom that I can be when I'm
21 with him.

22 You know, I don't want to be, you know, that's not
23 the time I want to clean and run errands, and do that thing.

24 If I had the flexibility more at my job, I'd pick
25 him up early from school, and I would, you know, just more

1 quality time. I would be less, I guess, a stressed, single
2 mom. Yeah.

3 **Q. And how would an upward deviation affect that?**

4 A. I think that would allow the flexibility of, you
5 know, I could take more time off of work.

6 Just I would love to not have to work two jobs.
7 If I didn't have to do the coaching, I wouldn't over that.

8 **Q. Will you describe for the Court how Bennett acts**
9 **when he's in your care and you're having to do all these**
10 **things you just described.**

11 A. Yes. Well, yeah, if you're busy he is -- he
12 doesn't leave you alone. He cries. Like, the kid needs
13 attention all the time. It's just hard. It's not easy.
14 Stressful. Then you feel guilty.

15 **Q. Okay. You mentioned a second one, lifestyle**
16 **security; what are you referring to there?**

17 A. Um, when I'm just talking about the lifestyle or
18 the standard of living, I think an upward deviation is
19 appropriate in the fact that I think it brings more parity
20 to Bennett's life than it does disparity.

21 And as the father of Bennett, I feel, as the
22 father, I think I would want that for my child all of his
23 life, not half of his life.

24 I feel that, you know, Bennett deserves a bigger
25 home, he deserves a bigger yard to play in, nicer

1 neighborhood, you know, better schools, a security system in
2 the home.

3 I'd love to go eat with my child out to dinner all
4 the time. I mean, for example, last couple of weeks,
5 driving by restaurants --

6 MR. MEADOR: Objection, Your Honor. Never -- at
7 deposition, never suggested that she needs to eat out more.

8 THE WITNESS: Okay.

9 THE COURT: Well, I'm going to allow it because
10 that's part of lifestyle.

11 MR. MEADOR: And I asked her specifically how the
12 lifestyle was different, and she did not define that as a
13 difference.

14 THE COURT: I'm going to allow it.

15 THE WITNESS: Can I finish my example?

16 THE COURT: Yes, you may finish.

17 THE WITNESS: Yes. The last couple of weeks
18 driving by restaurants, he cries because he wants to go to
19 that one and that one. Roadhouse and Olive Garden.

20 You know, that's his norm. That's what he's used
21 to.

22 I think Tony and I both need to be mindful of the
23 psychological or emotional ramifications of two standards of
24 living.

25 I'm already sensing good cop/bad cop. My son is

1 already referring to me as mommie's house is the no house,
2 and daddy's house is the yes house.

3 And it's going to put -- sorry -- an emotional
4 strain between my son and me. And I don't want that to
5 happen.

6 BY MR. RYAN:

7 **Q. Then, ma'am, you also referenced a third issue of**
8 **financial security; what were you referring to there?**

9 A. Um, when I talk about financial security, you
10 know, obviously, his father can offer retirement and savings
11 and such.

12 You know, the security if I lose my job, I'm -- I
13 don't -- I will be stuck with softball because, obviously, I
14 don't have the 20 years of experience in the workforce.

15 You know, we could get kicked out of the rental at
16 any point in time.

17 And part of it, thus far, financial security just
18 to be able to support my kid or his legal rights or coparent
19 with his dad.

20 You know, history's proven thus far that we're
21 trying, but everything has to go through legal counsel, and
22 I cannot compete with that for 18 years.

23 And I think Tony has the means to help out. And
24 any bit that he helps out when Bennett is with me, is a
25 huge -- it takes a lot off of me. It takes a burden of off

1 us.

2 I don't feel -- honestly, I don't like it affects
3 his day to day whatsoever. I mean, he has the ability to
4 pay.

5 The amount he's paying, I've multiple times heard
6 him, it's chump change.

7 **Q. Ma'am, have you had to pay legal fees in this**
8 **case?**

9 A. Um, yes.

10 **Q. Okay. Let me back up before we go there. Just so**
11 **the Court is aware, you currently reside in a rental house;**
12 **correct?**

13 A. Yes.

14 **Q. What, if any, other real property do you own?**

15 A. Just that house. The Keystone house.

16 **Q. Do you own the house?**

17 A. I'm sorry. Do I own the house?

18 **Q. Correct.**

19 A. The Keystone house, yes.

20 **Q. Okay. And why don't you live in the Keystone**
21 **house?**

22 A. Because I lived there -- I wouldn't want to raise
23 my child there. I don't know if that sounds bad, but I want
24 to be closer to his father. I want to be in a better
25 neighborhood by my family.

1 I've had people almost knocking on my door at 5:00
2 A.M. It's not, you know, it's a transient area.

3 Q. Again, please try to keep leaning in.

4 A. Okay.

5 Q. And where, specifically, on Keystone is your
6 rental property?

7 A. On Keystone.

8 Q. And what?

9 A. I'm sorry?

10 Q. What's the cross street?

11 A. Putnam and Keystone.

12 Q. Okay. And how much do you rent that house for?

13 A. Nineteen-fifty.

14 Q. Okay. And why are you living in a rental as
15 opposed to the Keystone house?

16 A. Well, one, when I moved out with Tony, there was
17 tenants in there. But I want to be closer to his father. I
18 want a better neighborhood. And I want, you know, by my
19 family.

20 Q. Okay. Thank you. Okay. You indicated you have
21 had to pay attorney's fees in this case; correct?

22 A. Yes.

23 Q. And so far how much have you had to pay?

24 A. I think to the end of February, 2 -- 26,000.

25 Q. Okay. And will you describe for the Court how the

1 **cost of this litigation affects your finances?**

2 A. Well, it's a ton. I mean, that's half, you know,
3 26,000 is half what I make in almost a year. A lot.

4 Q. Okay. And would you take a look at Exhibit C for
5 me.

6 A. C. Yeah.

7 Q. Do you recognize that document?

8 A. Yes. The promissory note.

9 Q. Correct. And would you take a look at the second
10 page of the document. Who signed that?

11 A. Myself and my father.

12 Q. What's the date of the document?

13 A. 28th of May, 2020.

14 Q. Okay. And for what purpose was this promissory
15 note taken out?

16 A. Obviously to pay for attorney's fees.

17 Q. Okay.

18 MR. RYAN: Move for the admission of C.

19 THE COURT: Mr. Meador?

20 MR. MEADOR: No objection.

21 THE COURT: It's admitted.

22 (Whereupon, Petitioner's Exhibit C was
23 admitted into evidence.)

24 MR. RYAN: Thank you, Your Honor.

25

1 BY MR. RYAN:

2 Q. And, again, ma'am, who is the lender on this note?

3 A. Bryan Davis.

4 Q. Okay. And who's that?

5 A. My father.

6 Q. And what is the balance of that note as of May of
7 2020?

8 A. That was 16,000.

9 Q. Okay. And since that time, have you borrowed
10 additional funds from your father?

11 A. Um, yes.

12 Q. What is the current amount currently owed to him?

13 A. Um, well, at -- the total as of right now is 26.

14 Q. Twenty-six what?

15 A. Sorry. \$26,000.

16 Q. Okay. And, ma'am, according to your financial
17 disclosure form, you have certain liquid assets slash cash;
18 correct?

19 A. Yes.

20 Q. Okay. And why did you not use that money to pay
21 for fees in instead of borrowing money from your father?

22 A. Yeah. Well, that's an emergency fund. That's
23 there just in case.

24 Q. In case of what?

25 A. I mean, an emergency fund just in case anything

1 happened or I move out, car breaks. I just have an
2 emergency fund.

3 **Q. Is this a real debt to your father or kind of a**
4 **wink-wink-I'll-get-you-later thing?**

5 A. This is a -- it's a real debt. We have yet to
6 figure out how it gets paid; whether that's -- I am going to
7 sell the house or if it's monthly. We're not sure.

8 **Q. Okay. And what hourly rate are you paying me?**

9 A. Three hundred an hour, I believe.

10 **Q. Okay. Now, ma'am, with regard to extracurricular**
11 **activities, is there presently a fixed agreement how those**
12 **will be paid?**

13 A. On extracurriculars?

14 **Q. Correct.**

15 A. Right now, it's gotta be 50/50.

16 **Q. Is there an actual agreement in place on that**
17 **issue?**

18 A. Oh. No.

19 **Q. And what is your position with regard to the cost**
20 **of extracurricular activities?**

21 A. I believe that, you know, like they'd offered
22 before, I think they think it's fair as well, I would pay a
23 third and Tony would pay two-thirds.

24 MR. MEADOR: You know, I object to settlement
25 negotiations for purposes of the value amount.

1 She just offered it exactly for the purpose that
2 the statute does not allow.

3 THE COURT: Okay.

4 MR. RYAN: I'm happy to have that stricken because
5 I didn't ask her that question. I asked her what was her
6 position. So --

7 THE COURT: Thank you. We'll strike it.
8 What's your position?

9 THE WITNESS: Um --

10 BY MR. RYAN:

11 **Q. What's your position?**

12 A. That I should pay one-third, and that is father
13 should pay two-thirds.

14 **Q. Okay. And why do you think that's fair?**

15 A. Um, I mean, with the incomes. And I do want to be
16 a part of his life. I do want to contribute to my son, you
17 know, what I can.

18 And, like, I think that's fair.

19 **Q. Okay. And what about the tax credit for**
20 **dependency? What's the current arrangement that is in place**
21 **now?**

22 A. Um, we're following what were supposed to and
23 we're alternating. Every other year, we split it.

24 **Q. Okay. Who claimed Bennett in 2020 -- or who will**
25 **claim Bennett in 2020?**

1 A. I think his father has already done so this
2 year -- I mean, for 2020's taxes.

3 **Q. Okay. And what are you requesting going forward?**

4 A. I think, honestly, I think it makes sense that I
5 would claim Bennett every year on taxes.

6 **Q. Okay. And why do you think that's fair?**

7 A. I believe that's fair because I -- we do get a
8 benefit. There's a child tax credit, and I do not believe,
9 at least from what Ms. Salazar said as well, that I don't
10 think Tony --

11 MR. MEADOR: Objection. Hearsay.

12 THE WITNESS: I don't think --

13 THE COURT: I can't allow you to say what
14 Ms. Salazar said.

15 THE WITNESS: Okay. Sorry. Um, I believe --

16 THE COURT: However, just for edification here, I
17 don't believe he does get a benefit from it, from my
18 knowledge of the tax laws as well.

19 THE WITNESS: I don't think --

20 THE COURT: So please move on.

21 THE WITNESS: So I was going to finish, that's
22 why. I don't --

23 MR. RYAN: Ma'am, that's fine. You've answered
24 the question.

25 Your Honor, I have no further questions. Thank

1 you.

2 THE COURT: All right. I think we'll take our
3 morning break right here. We're going to give Ms. Smith 15
4 minutes to rest her hands, because I bet she is still
5 wearing braces because I've done this to her the last couple
6 of days.

7 So we will start back up at 10:40.

8 MR. RYAN: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (Whereupon, recess was had from 10:24

11 A.M. to 10:40 A.M.)

12 THE COURT: All right. We're all back.

13 Ms. Davis, I asked you to log out and log back in.

14 Can we try your audio?

15 THE WITNESS: Um, yeah. Is it any better?

16 THE COURT: Yes. We should have done that before.

17 THE WITNESS: Oh, wonderful then.

18 THE COURT: Less echoey.

19 Mr. Meador, cross?

20 MR. MEADOR: Thank you, Your Honor. A point of

21 clarification before I start.

22 If it becomes necessary to use Ms. Davis's
23 deposition, I'm old enough to remember some judges who made
24 us jump through a dog and pony show of opening and
25 publishing the deposition. I haven't had a judge do that

1 we went on break to say that you and your father really
2 haven't worked out how you're going to repay him, whether
3 it's going to come from house proceeds or something?

4 A. Um, that is correct. We haven't addressed that
5 yet.

6 Q. So the terms of the note -- the written note are
7 not the actual agreement between you and your father?

8 A. Um, for at least the 16, yes. And we haven't --
9 it's the last of my worries right this second, getting that
10 done.

11 Q. And when I asked you questions about your legal
12 fees at your deposition, you weren't able to tell me how
13 much your fees were; were you?

14 A. Yeah, I didn't know at the time.

15 Q. In fact, I said: You mean you can't even tell me
16 between 5,000 and 50,000 how much your fees are?

17 Do you remember that question?

18 A. I do remember that.

19 Q. And the closest you could do was you thought it
20 was probably less than 50?

21 A. Yeah. I honestly did not know.

22 Q. So can you explain to me, if these fees were
23 causing you a hardship, how it is you didn't have a clue
24 what they were?

25 A. I was not worrying about it at the time.

1 Q. Okay. Now, and if we look at your most-recent
2 financial disclosure form --

3 A. Financial disclosure. Can you tell me where
4 that's at?

5 Q. That is Exhibit 2.

6 A. In --

7 Q. My binder.

8 A. In your binder. You're green.

9 Q. There's numbers and letters.

10 A. Yes. You're numbers. And what did you say?

11 Q. Two.

12 A. Two. Yes.

13 Q. This is your fourth and most-recent financial
14 disclosure; correct?

15 A. Um, this is my most-recent financial disclosure,
16 yes.

17 Q. Is it not your fourth?

18 A. I don't know. On the spot, I don't know.

19 Q. Well, if you had an original and three amendments,
20 that's four; right?

21 A. Okay. I --

22 Q. Okay. And this is the one you just testified
23 arose out of the fact that we found some errors in your
24 previous financial disclosure?

25 A. Yes. Because the depreciation didn't make sense

1 to you. Yeah.

2 Q. Okay. We'll come back to that, but turn to the
3 sixth page of this Exhibit 2.

4 A. Yeah, the 1541?

5 Q. Yes, ma'am. Thank you. And you report that you
6 have 11,000 in cash; correct?

7 A. Uh-huh.

8 Q. You have a TD Ameritrade in excess of 25,000?

9 A. Um-hum.

10 Q. Correct?

11 A. Yes. Sorry.

12 Q. And there's something called a "Debco investment"
13 of 35,000; do you see that?

14 A. Yes.

15 Q. And that investment -- that \$35,000 investment
16 came about sometime after your third financial disclosure
17 that was in December?

18 A. Yes.

19 Q. So sometime between December and January, you
20 acquired a \$35,000 investment?

21 A. I did.

22 Q. Thank you. Would you please describe Bennett for
23 us?

24 A. Um --

25 Q. His personality is what I'm meaning.

1 A. He's awesome. He's very independent. He's funny.
2 He's very outgoing, social.

3 Q. Is he a happy, healthy, mentally well-adjusted
4 child?

5 A. Most of the time, I would say, yeah, he's a normal
6 two year old. Yes.

7 Q. Okay. I'm not meaning to suggest there aren't
8 times when he's two and he's unhappy or angry or sad. I
9 just mean in general, his personality.

10 And you didn't feel that there was a need for him
11 to go to therapy?

12 A. I did not see a need for him to go to therapy.

13 Q. You didn't think he had some mental health issues
14 that required therapy?

15 A. No. And I pray that he does not.

16 Q. And how would you describe your relationship with
17 Bennett?

18 A. It's a fantastic relationship.

19 Q. And so to the extent you speculate about fears
20 about Tony, maybe, trying to use his wealth to buy your
21 son's affection, that hasn't happened so far; right?

22 A. It has recently, yes. I'm seeing it.

23 Q. Well, when I took your deposition, you had not
24 seen any evidence of that; correct?

25 A. No.

1 Q. You speculated about maybe it might happen in the
2 future?

3 A. At my deposition, yes. Is it currently happening?
4 Yes.

5 MR. MEADOR: And, Judge, I'll say I'm still having
6 just as much feedback and echo, and having a little of a
7 hard time. I'll do my best.

8 THE COURT: I thought she was -- initially it was
9 better, but, yes, you're right. It's just degraded to the
10 same level.

11 THE WITNESS: I should have brought my headset.
12 I'm sorry.

13 BY MR. MEADOR:

14 Q. Ms. Davis, is it your position that you should
15 receive an upward adjustment to child support so that you
16 can improve your standard of living?

17 A. No.

18 Q. But it is your position that Court should award
19 you an upward adjustment to the child support formula -- to
20 the amount calculated under the child support formula?

21 A. Yes, I believe an upward deviation.

22 Q. So you want more dollars per month in support;
23 correct?

24 A. Yes.

25 Q. And you want my client to pay an additional four

1 hundred and sixty-eight thousand of school costs in addition
2 to the more dollars per month; correct?

3 A. That is not correct. Oh, wait. Excuse me. Can
4 you repeat that? I thought you said forty-eight thousand.

5 Q. You want him to pay an additional 468, that
6 represents the half of the day care costs that you're now
7 paying?

8 A. Yes. I think that would be fair.

9 Q. And you want him to pay a disproportionate share
10 of the extracurricular activities?

11 A. Yes, I said that.

12 Q. And the basis for all of those is that he makes
13 more money than you?

14 A. Um, it's for my son. And when he's in my care, it
15 helps us out. It helps -- yeah.

16 Q. And the reason you ask him to pay those additional
17 things is because he makes money than you?

18 A. Because of the disparity, yeah, with Bennett --
19 with Bennett for sure. He does make more.

20 Q. And you would agree that this litigation and the
21 fees that both you and my client have been incurring, arise
22 out of your demand for support with an upward adjustment
23 from the amount calculated under the formula?

24 A. Um, I hate to ask you, but can you repeat the
25 beginning of the question?

1 Q. Do you agree that the litigation and the fees that
2 both you and my client are incurring arise out of your
3 demand for an upward adjustment?

4 A. I don't agree it's strictly based on that, no.

5 Q. Would you please turn to page 58 of your
6 deposition, ma'am.

7 A. Okay. Page 58. Five eight?

8 Q. Five eight.

9 A. Okay.

10 Q. Would you just read lines 9 through 25 to
11 yourself, and let me know if that refreshes your
12 recollection.

13 MR. RYAN: Your Honor, I'm going to object because
14 this doesn't impeach her testimony, and that's the only
15 reason the deposition can be used.

16 So that's my objection.

17 THE COURT: Okay.

18 THE WITNESS: I read it.

19 BY MR. MEADOR:

20 Q. Does it refresh your recollection about whether
21 you agree that these fees are caused by your demand for an
22 upward adjustment?

23 A. Um, I am looking for an upward deviation. Yes.

24 MR. MEADOR: Okay. That way didn't work, Your
25 Honor. I'll do it in a more traditional way. I was hoping

1 to save time, and I failed miserably. I apologize.

2 BY MR. MEADOR:

3 Q. Starting on line 9, ma'am, I am going read it, and
4 ask you if I read it accurately.

5 A. Okay.

6 Q.

7 "QUESTION: So you do know that the
8 litigation arises out of your demand
9 for child support in excess of the
10 amount calculated under the statutory
11 formula?

12 "ANSWER: Can you repeat that?

13 "QUESTION: You do know that all of
14 this litigation and the fees that both
15 you Mr. Matkulak are incurring --

16 "ANSWER: Uh-huh.

17 "QUESTION: -- arise out of your
18 demands for child support in an amount
19 that is higher than the amount
20 calculated in the statutory formula?

21 "ANSWER: Due to the deviation factors,
22 yes.

23 "QUESTION: I didn't ask you anything
24 about the deviation factors. You seek
25 more than the statutory amount;

1 correct?

2 "ANSWER: Yes."

3 MR. RYAN: (Inaudible).

4 BY MR. MEADOR:

5 **Q. Did I read that correctly?**

6 THE WITNESS: Did you say something, Kevin?

7 MR. RYAN: I said: Same objection.

8 THE COURT: Oh, okay. I didn't hear you either,
9 Mr. Ryan.

10 I understand the objection. I will allow the
11 question.

12 BY MR. MEADOR:

13 **Q. Did I that read correctly, ma'am?**

14 A. You did, yes.

15 **Q. Okay. Thank you.**

16 **You are aware of the factors that authorize a
17 Court to adjust from the amount calculated under the
18 formula; correct?**

19 A. I believe so, yes.

20 **Q. And you've attached as an exhibit here today, my
21 client's Settlement Conference Statement; correct?**

22 A. Um, I do not know that. Did we?

23 **Q. You -- all right.**

24 A. Okay. Yeah, we did.

25 **Q. One of your complaints was that in my**

1 settlement -- my client's settlement conference statement,
2 he noted that the law allows an adjustment both upwards and
3 downward; correct?

4 A. Um, yes.

5 Q. And that he said that there were some facts that
6 would, arguably, justify a downward adjustment; correct?

7 A. Yes.

8 Q. And do you claim it's bad faith for him to
9 correctly state the law?

10 A. Um, no.

11 Q. And how much did you claim your direct costs
12 related to Bennett were at the time of the settlement
13 conference?

14 A. Settlement conference? I would have to look if it
15 was in -- I don't remember.

16 Q. Would you please look at Exhibit 4, which is
17 admitted under the Court's prior order.

18 A. Exhibit 4 in Bennett's expenses. Is it the one
19 you're looking at? 691.

20 Q. And that 691 included 468 for childcare; correct?

21 A. It did.

22 Q. And, so, was it unreasonable for my client to
23 suggest that there was an argument that Bennett's needs
24 could be met for less than the amount calculated under the
25 formula?

1 MR. RYAN: Objection. Speculation as to what's
2 reasonable.

3 MR. MEADOR: I asked her position.

4 THE WITNESS: Um, I'm -- why --

5 THE COURT: I'll allow the question. Go ahead and
6 answer.

7 THE WITNESS: Um, I never really thought about it
8 way.

9 BY MR. MEADOR:

10 Q. Okay. When you think about it that way, does it
11 seem unreasonable and bad faith to you?

12 A. Um, if that's how he chooses to look at it, no.

13 Q. Okay. It wasn't unreasonable for him to rely on
14 your sworn financial disclosure form; was it?

15 A. I think he would be able to do that.

16 THE COURT REPORTER: I'm sorry --

17 THE COURT: I didn't get that one -- nobody got
18 that last answer.

19 THE WITNESS: Sorry. Yes, you can definitely
20 trust my financial disclosures.

21 MR. MEADOR: Your Honor, I have to admit, I still
22 couldn't hear what she said.

23 THE COURT: I -- go ahead and repeat it again.

24 THE WITNESS: Yes, you can trust my financial
25 disclosures.

1 BY MR. MEADOR:

2 Q. Thank you. And separate and apart from his
3 Settlement Conference Statement, can you show me any
4 settlement offer my client made at any time where he asked
5 you to accept less than the amount calculated under the
6 statute?

7 A. I don't have that with me.

8 Q. Well, it doesn't exist; does it?

9 A. I don't know.

10 Q. And can you show me any offer you ever made at any
11 time where you agreed to accept the amount calculated under
12 the formula?

13 A. Um, no. Sorry.

14 Q. And that's because all of your settlement demands
15 were -- demanded upward adjustments?

16 A. They were.

17 Q. Okay. This litigation is about your desire for
18 more, not Tony's demand for less; correct?

19 A. Um, I'm looking for an upward deviation that I
20 think is fair for my kid trying to follow the law, yes.

21 Q. How much did Ms. Salazar conclude would be the
22 amount of support calculated under the formula without
23 adjustment?

24 A. Correct me if I'm off by a dollar or something,
25 but I believe 1,500 and maybe 90-something.

1 Q. Technically, it was 1587, but --

2 A. Okay.

3 Q. How much has my client been paying you in interim
4 child support?

5 A. Eighteen forty-nine.

6 Q. And, so, he's been paying you \$262 per month more
7 than your expert calculated was the amount under the
8 formula?

9 A. For a month, yes. We just figured our taxes -- or
10 his taxes out. Yes.

11 Q. Well, how long as he been paying you 1849?

12 A. Um, Kevin would know that. Last year. June of
13 2020, maybe.

14 Q. The Court adopted it as the interim order based on
15 the agreement between you and my client that was already in
16 place voluntarily before the case management conference;
17 correct?

18 A. Um, yes.

19 Q. Would you agree that we engaged in settlement
20 negotiations before you filed your paternity petition?

21 A. You did engage in trying to settle.

22 Q. And, for example, my client and I met with you and
23 your prior lawyer, Ms. Viloría, at Ms. Viloría's office in
24 an attempt to settle the case; didn't we?

25 A. I don't know if that was considered a settlement,

1 you know, conference or agreement or I don't -- we met.

2 Q. We all sat around the table trying to talk about
3 finding ways to get it resolved; right?

4 A. Yeah. I don't know what counts as, like, a legal
5 settlement and what doesn't. So I don't want to answer the
6 question wrong.

7 Q. Okay. Whatever we label it, we all met there and
8 spent time to try and get this case settled; right?

9 A. Yes.

10 Q. And my client took time out of his day and
11 incurred legal fees to participate in that; right?

12 A. Um, he did.

13 Q. And did you as well?

14 A. I did.

15 Q. So the fact that your paternity petition had not
16 yet been filed, didn't allow either of you to avoid the fees
17 associated with trying to get the case resolved before you
18 filed; right?

19 A. (Inaudible).

20 Q. Was that a right?

21 A. Yes.

22 Q. Thank you. And before that meeting, my client
23 voluntarily provided your counsel with his financial records
24 including his tax returns; didn't he?

25 A. I believe he did, yes.

1 Q. And he was paying you interim support without a
2 court order?

3 A. He was.

4 Q. Okay. Now, would you please look at Exhibit 6.

5 A. Yes.

6 Q. Do you recognize this document?

7 A. Um --

8 Q. Just read through it to refresh your recollection.
9 To yourself.

10 A. Um, maybe awhile ago.

11 Q. Would you agree that this was a written settlement
12 offer my client provided to you through your lawyer?

13 A. Yes.

14 MR. MEADOR: I would offer 6 with the same
15 limitations as I asked for in direct.

16 MR. RYAN: Your Honor, again, I will object.
17 Unlike the information that I elicited, not specific
18 settlement offers like Mr. Meador is trying to offer here,
19 number one, it violates 48.105. It is -- it does not fall
20 into the exception.

21 Number two, it's a settlement offer outside of
22 this case to Ms. Kelli Vilorio back in 2019. It has
23 absolutely no relevance. And I wasn't even involved in the
24 case, and the case hadn't even started, so for all those
25 reasons.

1 It's not relevant and it violates 48.105.

2 MR. MEADOR: Your Honor, my client -- I'll back
3 up.

4 Ms. Davis has made the argument to this Court that
5 the -- she should be awarded her legal fees -- that my
6 client should pay her legal fees because he took
7 unreasonable and bad faith settlement positions that have
8 driven the litigation over his demand that she accept less
9 than the amount calculated under the formula.

10 This does not go to how much he should -- Your
11 Honor should ultimately require him to pay it. It goes to
12 the claim that Ms. Davis made about his bad faith and
13 unreasonable settlement posture, which should justify Your
14 Honor in making him pay her fees.

15 And I'll do the offer of proof that this letter is
16 offer, before she ever filed, reflected proposals in excess
17 of the amount calculated under the formula, not a reduction
18 from the formula.

19 MR. RYAN: Your Honor, if I may respond?

20 THE COURT: Sure.

21 MR. RYAN: Again, this is letter includes specific
22 offers and numbers, number one.

23 Number two, it's already in the record. You have
24 ample evidence.

25 You've even written an order about it that

1 Mr. Matkulak, through December of 2019, was specifically
2 championing the position, I'm entitled to a downward
3 deviation by \$700-and-some dollars. I should only pay nine
4 hundred bucks.

5 That did drive the litigation through December.
6 It's only today, when they filed a trial statement, that he
7 abandoned that position.

8 So this is absolutely -- it's not being provided
9 for that purpose. It's being provided to show you some
10 numbers that Mr. Meador is going to tell you that are higher
11 than what are actually owed.

12 And it's inappropriate. It violates the statute.

13 THE COURT: Well, I said that A 208 could not come
14 in, based upon it being a settlement offer.

15 So 6 won't come in for the same reason.

16 MR. MEADOR: Your Honor, for purposed of the
17 record, I'd like to make an offer of proof.

18 THE COURT: You just did, sir.

19 MR. MEADOR: No. I want to make the specific
20 offer of proof for the record, Your Honor.

21 THE COURT: Proceed.

22 MR. MEADOR: Because we're being -- there's an
23 intellectually dishonest argument being made and a request
24 for fees based on that.

25 In September -- the offer of proof, Your Honor, is

1 in September of 2019, before Ms. Davis had to file a
2 paternity petition at all, my client offered -- made a
3 settlement where he offered her substantially more than the
4 amount presumed under the statute that was in place at that
5 time.

6 He offered her more than the amount her expert has
7 concluded that he would owe.

8 He offered to pay disproportionate share of joint
9 expenses.

10 And he offered to set up a trust to assure
11 Ms. Davis that she would, not only receive the support in
12 the event of his untimely demise, but that would also be set
13 up to provide additional expenses for Bennett.

14 So for -- it's, in my opinion, inappropriate for
15 Ms. Davis to come to the Court and make an argument that his
16 settlement positions are reasonable and bad faith, and then
17 insist that Your Honor is not allowed to know what his
18 offers actually were.

19 I'll move on.

20 THE COURT: I want you to hold for just one
21 second, Mr. Meador.

22 Didn't you disagree with having A 208 come in?

23 MR. MEADOR: For purposes of the amount being
24 accepted as the true amount the Court should order.

25 I never objected to it coming in for purposes of

1 motivation, the bad faith --

2 THE COURT: Oh, yes you did. You said --

3 MR. MEADOR: I did not, Your Honor.

4 THE COURT: You --

5 MR. MEADOR: The record will reflect I did not. I
6 said the same objection as prior. The same objection as
7 prior is limited admissibility.

8 And that's my position with respect to all of the
9 offers.

10 THE COURT: So if -- why would I have rejected
11 that document if you had offered limited admissibility?

12 And why would Mr. Ryan not have come back and said
13 to me, Judge, Mr. Meador said it can come in. Why did you
14 just say that it's completely out?

15 MR. MEADOR: I was completely surprised that you
16 said it was completely out. And I was surprised that
17 Mr. Ryan didn't say anything. And I assumed he didn't feel
18 it was important.

19 So if he wants --

20 THE COURT: Because Mr. Ryan must have heard the
21 same thing that I did.

22 MR. MEADOR: I will clarify, and if he wants to go
23 on redirect and reoffer it, my position on the settlement
24 offers is that they are not admissible for purposes of --
25 as, in effect, an admission about what the right amounts

1 should be.

2 They are admissible with respect to whether my
3 client took unreasonable and bad faith settlement positions.

4 THE COURT: Mr. Ryan, you will have that
5 opportunity, seeing as how Mr. Meador has clarified his
6 position related A 208, I will allow 6 in.

7 This is going to be a case where what's good for
8 the goose is good for the gander.

9 BY MR. MEADOR:

10 Q. Can -- Ms. Davis, will you please read the first
11 paragraph of Exhibit 6 to yourself, and let us know when you
12 had a chance to do so.

13 A. Yes.

14 Q. Was the amount that my client offered to use for
15 his estimated monthly income more or less than the amount
16 calculated by your expert?

17 A. Um, I believe it was -- looks like, maybe, \$2,000
18 more, so it was \$40,000.

19 Q. Do you recall in the fall of 2019, what the amount
20 presumed under the statute that was in place at that time
21 was?

22 A. There was the cap, I think, at 1138.

23 Q. And did my client offer you more or less than
24 that?

25 A. He offered more than that.

1 Q. And did he demand that you accept less than that
2 cap?

3 A. Um, not after your advice, no.

4 Q. That's one hires a lawyer; isn't it, ma'am?

5 A. Yes.

6 Q. Thank you. You weren't suggesting it was improper
7 for him to obtain legal advance; did you?

8 A. Not at all.

9 Q. Okay. And the amount of support that he offered
10 you in September of 2019, before you went to the expense and
11 trouble of filing a paternity petition, was it more or less
12 than the amount that your expert calculated under the
13 current formula?

14 A. He was paying more than the amount she calculated.

15 Q. So, again, he was not as- -- he was not demanding
16 a downward adjustment?

17 A. Just got calculated, so it's hard to answer that
18 question.

19 Q. Well, we know what number your expert calculates
20 now; correct?

21 A. Yes, we do.

22 Q. And while we didn't know that back in September,
23 he offered you more than that number; correct?

24 A. More than what we just calculated, yes.

25 Q. Okay. And in of September of 2019, he also

1 offered to pay more than half of Bennett's shared expenses?

2 A. When?

3 Q. Back in Exhibit 6, September 9, 2019.

4 A. Okay. Yes, he did.

5 Q. And he also offered to set up a trust to protect
6 you; didn't he?

7 A. I don't recall that.

8 Q. Well, please look at the last -- the paragraph
9 that begins at the bottom of page 1 and goes over to page 2,
10 and just read it to yourself.

11 A. Um, I do see that, yes.

12 Q. Does that refresh your recollection that he made
13 that offer?

14 A. Yes. It's been awhile.

15 Q. And you're aware that he had no legal obligation
16 to set up a trust to benefit you; correct?

17 A. Correct.

18 Q. Do you claim that my client's September 9, 2019
19 offer was unreasonable?

20 A. Yes, I do. Mostly because I feel it was, and
21 legal counsel, everyone said it was a joke. I mean, I hate
22 to say that on here. But, yeah. So I just followed the
23 advice.

24 Q. Well, you just waived attorney/client privilege
25 and admitted hearsay. I'll strike -- I'll move to strike

1 the hearsay.

2 I think that counsel may want to caution his
3 client about --

4 A. Oh, it wasn't --

5 Q. -- the attorney/client privilege.

6 A. It wasn't him.

7 Q. But you waive it for one, it's waved, ma'am.

8 That's the problem.

9 A. Sorry.

10 Q. And --

11 THE COURT: Thank you, Mr. Meador.

12 BY MR. MEADOR:

13 Q. You think is was unreasonable because he didn't
14 offer you enough more?

15 A. I just -- I'm -- exactly. I mean, I'm following
16 the advice of attorney's, and that's, you know?

17 Q. And how much more were you demanding?

18 A. I didn't have a number. I did not have a number.

19 Q. Is your position that Ms. Viloría never made a
20 settlement proposal?

21 A. She did not.

22 Q. So at the time -- when did you file the paternity
23 petition?

24 A. Um, I can't -- ask Kevin that question. I'm not
25 sure.

1 Q. The record will reflect. I'll move on.

2 A. Yeah.

3 Q. But at no time between September 9, 2019, and the
4 date on which you filed your settlement proposal, did my
5 client ever make a settlement offer where he asked you to
6 accept less than the amount calculated under the formula;
7 correct?

8 A. Before Kevin, yes, he never tried to go less in
9 the old law, no.

10 Q. Now, please look at Exhibit 7.

11 A. Okay. Yes.

12 Q. Do you recognize this document?

13 A. Um, is this the one, obviously, that I
14 was -- wait. Is it that 1589?

15 Q. 1588. 1589.

16 A. Okay. 1588. Yes.

17 Q. And this was a settlement offer my client made to
18 you in January of this year; correct?

19 A. Um, yes. It looks like it. Yes.

20 MR. MEADOR: I would offer 7 with the same
21 limitations as previously addressed.

22 THE COURT: Mr. Ryan?

23 MR. RYAN: Your Honor, I will object. Again, it
24 violates 48.105. And I will also point out, it specifically
25 says "this is a confidential settlement proposal" in the

1 letter.

2 I just don't think these should be coming in.
3 They're inadmissible.

4 MR. MEADOR: Your Honor, if I may?

5 THE COURT: You may.

6 MR. MEADOR: Nine days after this letter was sent,
7 when it was in Ms. Davis's hand, she came to this Court and
8 made a representation under oath that this litigation was
9 driven and required by my client's demand that she accept
10 less than the amount calculated under the formula when she
11 had, in her hand, an offer in excess of the amount
12 calculated under the formula.

13 THE COURT: I'll admit it.

14 (Whereupon, Respondent's Exhibit 7 was
15 admitted into evidence.)

16 MR. MEADOR: Thank you.

17 BY MR. MEADOR:

18 Q. Now, Ms. Davis, was the estimated monthly income
19 of my client that he was using for purposes of settlement
20 more or less than the amount your expert concluded was his
21 monthly income?

22 A. I don't know.

23 Q. Well, do you know what your expert concluded his
24 income is?

25 A. No. I don't (inaudible).

1 Q. Would you turn to Exhibit D --

2 THE COURT REPORTER: I didn't catch that last
3 answer, Your Honor.

4 THE COURT: She didn't catch the last answer, no.
5 I was just going to say that.

6 THE WITNESS: Sorry. I know. He asked me if knew
7 the numbers, and I do not have the answer for him.

8 BY MR. MEADOR:

9 Q. Would you turn to Exhibit D, please.

10 A. Yes.

11 Q. And turn to page 6 of 6.

12 A. Can you give, like, the Bates number?

13 Q. 223.

14 A. 223. Yes, I am there.

15 Q. And do you see in schedule 6, the first line says
16 gross monthly income Matkulak schedule 5, \$38,240?

17 A. Yes.

18 Q. And in Mr. Matkulak's January 20th settlement
19 offer, he relied on an estimated income just in excess of
20 \$39,000; correct?

21 A. I believe so.

22 Q. And was the amount of support my client offered
23 you more or less than the amount your expert calculated
24 would be due under the formula?

25 A. It was more than the 1590.

1 Q. And Ms. Salazar's report is dated March 3, 2021.

2 When did you first see a draft of that report?

3 A. Oh, gosh. I do know.

4 Q. Was before March 3rd?

5 A. Um, I -- honestly, I don't remember reading
6 anything from Ms. Salazar.

7 Q. When were you first aware that Ms. Salazar's
8 evaluation reflected that Mr. Matkulak had not underreported
9 his income?

10 A. I think last week sometime. I think.

11 Q. And when were you first aware that Ms. Salazar
12 calculated the base support at a few dollars less than what
13 Mr. Matkulak had calculated?

14 A. When did I know it was 1590; is that what you're
15 saying?

16 Q. Or whether it was that exact number that that was
17 the ballpark?

18 A. Oh. Just recently. I do know the dates. It was
19 last week whenever -- I can't remember, honestly, but
20 recent.

21 Q. So no information came to you through your expert
22 before you saw the written report?

23 A. No. I didn't know.

24 Q. In his January proposal, my client had also
25 offered to pay more than half of some of Bennett's expenses;

1 correct?

2 A. If I remember correctly, I think so.

3 Q. And he also offered to allow you to claim Bennett
4 as dependent in two out of three years; correct?

5 A. Um, I thought we were alternating.

6 Q. Well, what did he offer you in January?

7 A. I do not recall. If he offered, I don't remember
8 that.

9 Q. Would you look numbered paragraph 3 in Exhibit 7,
10 to see if that refreshes your recollection.

11 A. I'm sorry. Three?

12 Q. Numbered paragraph 3, on the first page of Exhibit
13 7, which is 1588.

14 A. Yeah. I don't have in front of me. I -- sorry.
15 Can you give the number?

16 Q. Exhibit 7 -- I'll move on.

17 MR. RYAN: It looks like she's missing a page. Is
18 there -- does that exhibit start with 1588, Ms. --

19 MR. MEADOR: Yes.

20 THE COURT: No. Does her copy, Mr. Meador?

21 MR. RYAN: Does her copy?

22 THE WITNESS: Um, no. So when I go to exhibit --

23 THE COURT: Okay. Okay. We'll make it work.

24 Ms. Branum, can you --

25 MR. RYAN: I can bring her down a copy, Your

1 Honor, if that works, of 1588.

2 THE COURT: That would be great.

3 THE WITNESS: I think it's stuck to the sticky
4 tag. Hold on. I do have it. It was stuck.

5 THE COURT: Okay.

6 THE WITNESS: Go ahead, Mr. Meador.

7 BY MR. MEADOR:

8 Q. Did my client offer to allow you to claim Bennett
9 in two out of three years?

10 A. He did.

11 Q. And that allows you, not just the dependency, it
12 allows you to file as head of household; doesn't it?

13 A. I don't know. Does it?

14 Q. Do you know -- do you know how much it saves you
15 on taxes by being able to claim as head of household?

16 A. I do not.

17 Q. Do you know whether it benefits Mr. Matkulak to be
18 able to claim as head of household, as opposed to just the
19 detection itself?

20 A. I do not.

21 Q. Okay. So on January, 20, 2021, my client did not
22 demand that you accept support in an amount less than the
23 amount calculated under the formula; did he?

24 A. I don't think we had the formula calculated yet,
25 but it was above the current calculation, yes.

1 Q. He'd actually offered you more, not a lot more,
2 but some more than what was due under the formula; correct?

3 A. Prior to these new calculations, it is more, yes.

4 Q. Well, based on the financial information that
5 Mr. Ryan had, and that Ms. Brachmann had, and that
6 Ms. Viloría had, he offered you more than the amount
7 calculated under the formula; correct?

8 A. Um, yes. So -- yes.

9 Q. But nine days later, you represented to this
10 Court, under oath, that he was demanding that you accept
11 less than the amount calculated into the formula; didn't
12 you?

13 A. Yes, I did.

14 Q. And that was not an accurate statement; was it?

15 A. Um, I don't know what to say to that. But, um --

16 Q. Well, you say it's either an accurate statement or
17 it's not an accurate statement.

18 A. It's an accurate statement.

19 Q. I'm sorry. You were garbled. I couldn't hear
20 you.

21 A. It's an accurate statement.

22 MR. MEADOR: Judge, could you hear the answer?

23 THE WITNESS: Sorry.

24 THE COURT: It was an accurate statement.

25 BY MR. MEADOR:

1 Q. It was accurate? How was it accurate, ma'am?

2 A. I'm sorry. I'm getting flustered. If you don't
3 mind repeating it again.

4 Q. In -- let me back up and walk through it gently.
5 In September of 2019, my client offered you more
6 than the amount calculated under the formula; correct?

7 A. Yes.

8 Q. And on January 20, 2020, my client offered you
9 more than the amount calculated under the formula; correct?

10 A. I don't know. It was just calculated, like, last
11 week.

12 Q. And was what he offered more or less than what you
13 decided to calculate last week?

14 A. In January, it was more than what we just
15 calculated last week.

16 Q. What information did you have on January 29th that
17 my client was demanding that you accept a downward
18 adjustment?

19 A. Um, settlement conference. I mean, he made it
20 pretty clear where you guys stand.

21 Q. Well, how does that compare his letter of
22 January 20th?

23 A. You guys are all over to board.

24 Q. Was that the question I asked you, ma'am?

25 A. It was not, but, I mean, I don't know. It's

1 always hard to get our numbers straight with the
2 calculations.

3 Q. And --

4 A. It's different than -- December is different than
5 January's. You guys have changed --

6 Q. Yes. In settlement negotiations, we pointed out
7 that there's a risk of litigation. That there could be an
8 upward deviation or a downward deviation.

9 Do you think it's inappropriate for us, as part of
10 negotiations, to point out that you might have litigation
11 risk of going forward to trial?

12 A. Um, for everybody -- there's a risk for everybody
13 involved.

14 Q. And you weren't in the session we had with the
15 Judge where we were specifically asked if my client would
16 settle for something that did not include a downward
17 adjustment; were you?

18 A. Was I in that conversation? I was not.

19 Q. Okay. And at that settlement conference, you did
20 not offer to accept the amount calculated under the formula;
21 did you?

22 A. I don't think that was offered, no.

23 Q. Did you make an offer -- I'm sorry I thought you
24 were talking about ours. I'll move on. I misunderstood
25 your answer. I'll move on.

1 You answered correctly and I misunderstood you. I
2 apologize.

3 So then in January, we made an offer; correct?

4 A. Yes.

5 Q. And your three lawyers that you've had over the
6 course of this dispute, all had copies of my client's tax
7 returns; correct?

8 A. I know Kelli did, and I know Kevin did.

9 Q. Okay. You have no reason to disbelieve me when I
10 say I also provided them to Ms. Brachmann?

11 A. Well, I would believe you, but I cannot say that I
12 literally had been aware for a week at that -- before she
13 moved on.

14 Q. So the -- I'll move on.

15 Would you agree that if my client offered you more
16 than the amount calculated under the formula, the litigation
17 was not driven by his demand that you accept less than the
18 formula?

19 A. I think that would be fair to say.

20 Q. And in every single proposal you've made, through
21 all of your lawyers and between you and my directly, you've
22 insisted in an upward adjustment?

23 A. We have, yes.

24 Q. So this litigation and the fees about which you
25 complain, are about more, not less; correct?

1 A. They are.

2 Q. And yet at your deposition, you refused to tell me
3 how much more you believed was reasonable, necessary, and
4 appropriate?

5 A. Correct.

6 Q. Would you agree that your refusal to tell me how
7 much you wanted prevented me from comparing your demands
8 with your evidence about Bennett's needs and his expenses so
9 that I could thoughtfully discuss that with my client?

10 A. Um, no. I don't think so.

11 Q. So I should just guess what you want and then give
12 my client thoughtful advice?

13 A. That's not really a yes or no question. I mean,
14 I -- those are my answers and they're honest answers. I do
15 not have a number.

16 Q. Now, you do understand that the amount calculated
17 under the formula is presumed to meet Bennett's basic needs?

18 A. Yes.

19 Q. And you would also agree that Bennett's basic
20 needs would actually be met with the statutory amount;
21 correct?

22 A. The basic needs, I do. Yes.

23 Q. Since you just were demanding an upward
24 adjustment, even though Bennett's basic needs would be met
25 without an adjustment, do you claim it was unreasonable for

1 me to take your deposition to determine the factual basis
2 for your request for an adjustment?

3 A. Um, I would say it's a little off the wall. I'm
4 not sure it happens as much in child support cases, but
5 yeah.

6 Q. Do you think it's unfair that I know why you're
7 asking for more?

8 A. That is fair.

9 Q. Okay. And in our system, the way I find out is by
10 taking your depo; correct?

11 A. Um, yes. I guess so. Yeah.

12 Q. Now, please look at Exhibit 3. This is admitted
13 under the Court's prior order.

14 A. Three?

15 Q. Yes, ma'am.

16 A. Yeah.

17 Q. Is that your signature on the Bates stamp 1555?
18 Well, excuse me. I meant 1554. I apologize.

19 A. 1554. Yes, it is. It's part of my -- 1555. Yes,
20 that is my signature.

21 Q. Okay. And this is the financial disclosure form
22 filed on December 10, 2020; correct?

23 A. Yes.

24 Q. And that was about a week before your deposition?

25 A. Okay.

1 Q. Do you --

2 A. Yeah.

3 Q. All right. At your deposition, we discovered that
4 there were a number of errors in this financial disclosure
5 form; correct?

6 A. Yes.

7 Q. For example, you didn't take the time to review
8 your bank statements to see if the balance you listed were
9 correct?

10 A. I did not. I was just advised to update my --

11 Q. You're not allowed -- don't --

12 A. I didn't. I did not --

13 Q. I'm admonishing you not to tell me what your
14 lawyers tell you. All right?

15 You didn't take the time to look at your bank
16 statements to make sure that the bank balances were accurate
17 at that time?

18 A. No.

19 Q. And you didn't do anything to see if the value of
20 your home had changed in last five or six months?

21 A. I didn't look, no.

22 Q. And in your financial disclosure form on page 3,
23 line, D11 --

24 A. D11, uh-huh.

25 Q. -- reflected that your Club K taxes were deducted

1 from your Cordova pay stub, and that clearly isn't true;
2 right?

3 A. I don't know if that's how it shows up to you on
4 there. I had struggled doing this, and I was just trying to
5 be honest. If it's in the wrong column --

6 Q. Fair enough. Then if you turn to page 4 --

7 A. Um-hum.

8 Q. You also list the taxes -- that same \$334 as a
9 business expense of your business.

10 A. Okay.

11 Q. Right?

12 A. I do, yes.

13 Q. Okay. And you also reflected, back on page 3,
14 that 563 was being withheld from your paycheck for
15 retirement savings; correct?

16 A. I don't recall exactly what that was for. I know
17 that I had a 401k. I had an IRA. So I haven't looked at
18 these in awhile. So I don't know.

19 Q. On page 3, you reflected that is 563 was being
20 withheld from your pay to go to your 401k; correct?

21 A. Well, I didn't think that's just from my pay. It
22 was a Roth IRA, and then my 401k at Cordova.

23 Q. And if you turn to page 5, you list a \$500
24 contribution to your IRA. So --

25 A. I'm sorry. Page 5?

1 Q. Yes, ma'am.

2 A. Okay. Yes.

3 Q. Correct me if I'm wrong, but I thought at your
4 deposition we concluded that you were saving the 563 per
5 month, not over a thousand per month?

6 A. I don't recall that.

7 Q. Well, how much are you saving for retirement each
8 month?

9 A. Right now, the retirement that I have is the 401k
10 with Cordova.

11 Q. That's the 536 a month; correct?

12 A. I believe so. I don't know if that's what's
13 coming out of the there. Yes.

14 I still also have the Roth IRA as well.

15 Q. And do you continue to contribute to the Roth IRA
16 as well?

17 A. I do that once a year.

18 Q. And how much?

19 A. The max. So it's like 6,000, I think is what it's
20 at now.

21 Q. And how long been contributing to the IRA in the
22 amount of 6,000?

23 A. I think it just changed to 6,000, maybe, this year
24 now or last. Maybe it was like 5,000 and then 5,500.

25 So awhile. Maybe 15 years.

1 Q. So --

2 A. When I can.

3 Q. So prior to Bennett's birth, you were able to set
4 aside, roughly, 500 a month for your retirement savings;
5 correct?

6 A. Um, yeah, most of the years I could. I didn't pay
7 every year.

8 Q. And now it's your testimony today that you're
9 setting aside over a \$1,000 a month for your retirement
10 savings?

11 A. I guess so. It's coming out of my paycheck
12 and --

13 Q. Well, correct me if I'm wrong --

14 A. I'm sorry if that's how you're looking at this.

15 Q. -- I thought your testimony was that -- I'm not
16 trying to trick you here.

17 I thought your testimony was you stopped
18 contributing to the IRA and now contribute to the 401k, but
19 I understand you today to say you're both?

20 A. Well, I do it once a year. What if I do it in a
21 month? I don't know. I mean, I still have them both.

22 Yes, I am making more money, and if I can
23 contribute to retirement, I will.

24 Q. Okay. Thank you.

25 A. Yeah.

1 Q. And if you look at pages 3 and 4, about your
2 business income and expenses. Do you recall that at your
3 deposition we had some difficulty understanding what your
4 business income and expenses were?

5 A. Yes.

6 Q. And, therefore, you corrected it; right? That's
7 why filed Exhibit 2; right?

8 A. Yes.

9 Q. Because we just found all these problems that we
10 didn't really know the answers to at the time of your
11 deposition; correct?

12 A. I believe so.

13 Q. And if you look of pages 3 and 4 of Exhibit 2
14 about your business income and expenses, you would agree
15 that it's much -- at least I find it, much easier to follow.

16 That was your point; right?

17 A. Yeah. I just wanted to updated and corrected it
18 and easier, yeah.

19 Q. I mean, we've run into some mixing of apples and
20 oranges comparing gross and net income and one number and
21 some problems with your prior one; correct?

22 A. I believe so.

23 Q. And your degree is in business?

24 A. It is.

25 Q. And, in fact, you have an honors degree in

1 **business?**

2 A. I do.

3 **Q. Did you have Ms. Salazar review your financial**
4 **records to see what your true income for purposes of child**
5 **support is, like you had her look at Mr. Metkulak's records?**

6 A. Um, am I allowed to say what she looked at? I
7 mean, she looked at my financial disclosure. She's looked
8 at my rough draft of my 2020 taxes. I know she glanced at
9 that.

10 **Q. Did you have her do the same analysis of your**
11 **income that you had her do of Mr. Matkulak's income?**

12 A. Yes.

13 **Q. Well, then why does her report say all she did was**
14 **rely on your financial disclosure finished form?**

15 A. Well --

16 THE COURT: She can't answer that, Mr. Meador.
17 She can't why Ms. Salazar's report says something.

18 BY MR. MEADOR:

19 **Q. So then what did Ms. Salazar conclude about your**
20 **income?**

21 A. Whatever is in the documents that we've gotten.

22 **Q. Okay. So we can rely on her report?**

23 A. Yes, we can.

24 **Q. Okay. And after you had Ms. Salazar -- well, I**
25 **take that back.**

1 We had provided to your prior counsel copies of
2 Mr. Matkulak's tax returns; correct?

3 A. Prior counsel?

4 Q. Ms. Viloría. We'll just leave it to Ms. Viloría
5 right now.

6 A. Yes.

7 Q. And then after you retained Mr. Ryan, we provided
8 them to Mr. Ryan?

9 A. I believe so. It was a new year, yeah.

10 Q. And when there was a new tax return for 2019, we
11 also provided that?

12 A. To the best of my knowledge.

13 Q. And you did formal requests for production of
14 documents in this case; correct?

15 A. In which case? Like, the recently from January of
16 2021?

17 Q. Well, I don't recall the date you served them on
18 me.

19 But do you recall your counsel sending a document
20 to me where he asked my client to produce a bunch of
21 financial records?

22 A. I do, yes.

23 Q. And do you know that my client produced in excess
24 of 900 pages of documents in response to that request?

25 A. I was not aware, no.

1 Q. And Ms. Salazar has described documents she's
2 reviewed in her report, so I will move on from that.

3 After Ms. Salazar reviewed those tax returns and
4 financial records and did her work, she concluded that the
5 support amount was about \$6 less than that what my client
6 had calculated; correct?

7 A. I don't know that. I guess. I don't know.

8 Q. And in our trial statement, notwithstanding the
9 problems in prior financial disclosures, we simply relied on
10 your most-recent financial disclosure form as well; didn't
11 we?

12 A. I don't know.

13 Q. We didn't challenge your numbers; did we?

14 A. Um, I guess not, no.

15 Q. And comparing those last two financial disclosure
16 forms -- the December financial disclosure form and the
17 January financial disclosure form -- one thing that remained
18 the same was the amount of Bennett's direct expenses;
19 correct?

20 A. I don't know if they stayed the same. Wait, from
21 December to January?

22 Q. Right. In both of those financial disclosure
23 forms, you represented that Bennett's direct expenses are
24 \$787 a month; correct?

25 A. Yes. Whatever is in my financial disclosure is

1 correct, yes.

2 Q. Okay. And I will represent to you they both
3 reflect 787.

4 A. Okay.

5 Q. And included in that 787 is \$53 for swimming. Now,
6 you don't actually pay that. That's deducted from the
7 support my client's paying you to get to the
8 800-and-something dollars; right?

9 A. Correct. There's a footnote that says that. But,
10 yes, you're correct.

11 Q. And the number for Bennett's direct expenses had
12 changed quite a bit from your first two financial
13 disclosures; do you recall that?

14 A. Yes.

15 Q. But at your deposition, I asked you is this
16 number -- 787, is this a number the judge can rely on, and
17 you told me yes; correct?

18 A. Whatever is in my most-recent financial
19 disclosure, yes, you can relay on that.

20 Q. Well, the question at depo was based on your prior
21 financial disclosure that had 787, and you told me the judge
22 could rely on that; correct?

23 A. I believe so. Yes.

24 Q. And then you used that same number, 787, in your
25 January financial disclosure?

1 A. Yeah. A month apart.

2 Q. Okay. And that 787 figure includes -- in fact,
3 the majority of that number is Bennett's childcare costs;
4 correct?

5 A. Yes, that is correct.

6 Q. And that's in the sum of \$468?

7 A. Yes.

8 Q. And that's been true since -- I mean, in your
9 October, December, and January financial disclosures, they
10 all reflect that same 468 per month; correct?

11 A. They should. Whenever we started school, yes.

12 Q. And when you first went to work for Cordova, you
13 worked part time; correct?

14 A. I did not -- it was full time. It was 30 hours.

15 Q. So you're -- 30 hours is full time to you?

16 A. Um, yes. You get insurance for that. And it is
17 full time. And I also had Club K. So, yeah, it was full
18 time.

19 Q. Okay. So your dis- -- the financial disclosure
20 form that I had at the time of your deposition, reflected
21 that you were working 30 hours a week; correct? I take that
22 back.

23 At the time of the settlement conference
24 statement, you reflected that you working 30 hours a week?

25 A. No. It is more than that because I have two jobs.

1 Q. For Cordova.

2 A. Oh, for Cordova. Yes. I believe it was 30 hours.
3 Yes.

4 Q. And then you later went to, what I understood to
5 be, full-time work and got a raise?

6 A. Salary. Yeah.

7 Q. And when did that happen?

8 A. I don't recall exactly, but it was after the
9 settlement conference, I believe.

10 Q. Thank you. And you testified earlier that if you
11 compare your income with your expenses, you're \$247 short
12 per month?

13 A. That's the numbers that I'm getting that I'm going
14 off of Ms. Salazar. Yeah.

15 Q. Well, this is going off your financial disclosure
16 form; right?

17 A. No. I'm just using that number that was given to
18 me recently this week. I didn't do the calculations. So
19 whatever Ms. Salazar said or whatever's --

20 Q. You've obviously misunderstood my question. I'll
21 try again.

22 A. Yes. Sorry.

23 Q. On direct examination, your counsel had you go
24 through your most-recent financial disclosure form and
25 deduct your expenses from your income to come up a number

1 that you're \$247 short each month; do you recall that?

2 A. Yes.

3 Q. Okay. That's based on your sworn financial
4 disclosure form; right?

5 A. Yes.

6 Q. Has nothing to do with Michelle right now;
7 correct?

8 A. Okay. Yeah. Sorry.

9 Q. Okay. And of that 247, includes the \$53 for
10 swimming, that you're not really paying, that's being
11 deducted from child support to get you down to the \$1,800 a
12 month; right?

13 A. I don't know.

14 Q. Well, you're not paying the swimming out of pocket
15 are you?

16 A. I am not paying the swimming out of pocket, no.

17 Q. And, so if you deduct that 53, you're about \$200 a
18 month short?

19 A. Okay.

20 Q. You don't disagree; right?

21 A. Yeah. No, I am not going to disagree with you.

22 Q. And your saving either 563 a month for retirement
23 or a 1,063 for retirement; right?

24 A. I guess so. I just started making this money.

25 Like, this is all new to me, and it's --

1 Q. Well, but you're an honors business student.

2 You're not --

3 A. No --

4 Q. You have the ability to understand numbers;
5 correct?

6 A. My life has changed from what I did last year and
7 next year. That's why I struggled with the financial
8 disclosures at that time.

9 Do we go off last year? Do we go off current? So
10 I struggled. And I'm making more.

11 Like, I'm obviously -- I can't tell you what the
12 future holds what I am going to do.

13 Q. Okay.

14 A. That's the best I can do.

15 Q. So without receiving any child support, you have
16 the ability to save money for retirement and pay all of your
17 bills and expenses and all of Bennett's bills and expenses
18 with the exception of \$200, \$250 a month?

19 A. We hope so. Yes. I don't know.

20 Q. Okay. And Ms. Salazar calculated that the child
21 support under the formula would be 1567; is that right?

22 A. That, I was \$3 off. I'm sorry.

23 Q. So if --

24 A. 1587, I mean.

25 Q. So if you receive the 1567 that Ms. Salazar

1 calculated, you would have excess income of about 1,300 per
2 month; correct?

3 A. I guess. If that's the math, yeah.

4 Q. Okay. And if you chose to do you so, you could
5 spend part of that \$1,300 per month to have a bigger, nicer
6 home if that's what makes sense to you; correct?

7 A. We could, yes.

8 Q. And if you received that 1,567, so you have \$1,300
9 excess a month, you could, if you chose to, spend all or
10 part of that going out to dinner with Bennett?

11 A. Hopefully, yes.

12 Q. And, again, because you refused to tell me how
13 much more you want or what the specific expenses would cost,
14 there's really no way for me to address whether the 1,300
15 extra is enough or not enough; right?

16 A. I guess not with the number. It just seems fair.

17 Q. Now, you share custody of Bennett with my client
18 equally; correct?

19 A. We do.

20 Q. And my client's supports Bennett in his home fifty
21 percent of the time?

22 A. He does, yes.

23 Q. And because he earns more than you, he provides
24 you with child support to help you support Bennett in your
25 home; correct?

1 A. He does.

2 Q. Is that a yes?

3 A. Yes.

4 Q. Okay. My client works full time to support his
5 son?

6 A. Um, I would -- I know he's salary, and I don't
7 know the hours that he works.

8 Q. You know, it's interesting that you volunteer
9 that, because I was going to ask you about that later.

10 At your deposition, you insisted that you work
11 more hours than him, but then quickly admitted you don't
12 know how many hours he works.

13 So you agree --

14 A. Well, I don't -- I can't quote him. I don't --

15 Q. We would agree that if you do not know how many
16 hours he works, you have no ability to compare your hours
17 with his hours?

18 A. Well, I do. I lived with him. I know what he
19 does. I mean, I can't -- I --

20 Q. We'll come back to your deposition. We'll move
21 on.

22 A. Okay.

23 Q. So would you look at page 63 of your deposition.

24 A. Sixty three. Yes.

25 Q. And beginning on line 15:

1 "QUESTION: Right. Do you claim that
2 you work harder than Mr. Matkulak?

3 "ANSWER: Yes. I work more hours than
4 Mr. Matkulak.

5 "QUESTION: How many hours do you claim
6 he works per week?

7 "ANSWER: I don't know what he does. I
8 don't know."

9 Did I read that correctly?

10 A. You did, yes.

11 **Q. And then on page 64, beginning on line 15:**

12 "QUESTION: Well, at trial, we'll go
13 through why they didn't. How many
14 hours per week do you claim that you're
15 working now?

16 "ANSWER: At Cordova, I'm working 40
17 hours per week. That, I know, is more
18 than Mr. Matkulak works. I don't want
19 to talk. I don't want to know exactly,
20 but I can tell you that I don't know
21 what he works."

22 Did I read that correctly?

23 A. You did.

24 **Q. And we also spent a lot of time at your deposition**
25 **trying to determine how many hours per week on average you**

1 work coaching; do you recall that?

2 A. Yes.

3 Q. And at no time -- I asked you over and over and
4 over again about that, and at no time did you ever suggest
5 that you worked 30 hours a month; did you?

6 A. I'm sorry. I work more than hours 30 a month.

7 Q. At coaching?

8 A. Oh, at coaching. No. I just did my -- what I got
9 paid for -- the hours I got paid for. Yeah.

10 Q. I asked you over and over and over again, and the
11 best you could do was about 18 or 19 hours a month; correct?

12 A. Yes. Those were the hours I got paid.

13 Q. Okay. I didn't ask you a single thing about what
14 hours you got paid. I asked you how much you worked; right?

15 A. Yes.

16 Q. And you never suggested you were working 30 hours
17 a month; did you?

18 A. No.

19 Q. That's something new today we're hearing for the
20 first time today; right?

21 A. I guess so that you're hearing, yeah. Yes.

22 Q. And based on your testimony at your deposition and
23 the amount of money you claim that you earned, I calculated
24 it about four hours a week on average; correct?

25 A. With 19 a month is the average. That's how I know

1 it as.

2 Q. And I did 19 times 12 divided by 52, you get the
3 rough four. So that's -- it's not rocket science.

4 A. Yeah.

5 Q. It's just -- I need all my fingers and toes to get
6 there, but I got there.

7 Now, you're coaching on the weeks that you don't
8 have the care of Bennett; correct?

9 A. It's a day schedule, so coaching on the days that
10 I don't have Bennett, yes.

11 Q. So to the extent you have any 15- or 16-hour days,
12 those are days when you don't have Bennett?

13 A. Yes.

14 Q. What kind of car do you drive?

15 A. I drive a Lexus SUV.

16 Q. Do you seek an upward deviation to allow you buy a
17 nicer or more expensive car?

18 A. I do not, no.

19 Q. Do you seek an upward deviation so that you can
20 have more help around that house, like a maid or something?

21 A. To spend more time with my son, yeah.

22 Q. I need you to answer the question I asked you,
23 ma'am.

24 A. Okay. Can you repeat the question, please.

25 Q. Do you seek an upward deviation to allow you to

1 have a maid?

2 A. No.

3 Q. What you want is an upward adjustment to the child
4 support so that you have the ability to save more money each
5 month and put away more money for your retirement; correct?

6 A. That is incorrect.

7 Q. Would you look at page 88 of your deposition.

8 A. Deposition. 88. Yes.

9 Q. Beginning on line 11:

10 "QUESTION: Okay. So then let's go
11 back and tell me what you mean by you
12 need additional support now for the
13 security thing?

14 "ANSWER: Yes. Financial security.
15 There's things. Retirement. Like,
16 savings for my kid if something
17 happened. Security."

18 Did I read that correctly?

19 A. You did read that correctly.

20 Q. And --

21 A. Am I allowed to add to that or no?

22 THE COURT: No.

23 Q. Your counsel will handle that.

24 A. Okay.

25 Q. Will you turn to page 81.

1 A. 81.

2 Q. Starting on line 1:

3 "Like financial security. I can't
4 provide that for my child.

5 "QUESTION: Well, you just increased
6 your income from almost nothing to
7 about \$60,000 a year; right?

8 "ANSWER: Right.

9 "QUESTION: So when you had to, you had
10 the ability to provide financial
11 security for your son; correct?

12 "ANSWER: Retirement and savings.
13 There's things I can't even compete
14 with his father on. If something
15 happened, I can't work, what I would
16 do?"

17 Did I read that correctly?

18 A. Yes.

19 Q. So savings for retirement is not a need of
20 Bennett's now; correct?

21 A. Are you talking about Bennett's retirement now or
22 mine?

23 Q. Well, you don't have the ability to save -- have a
24 retirement account for Bennett because Bennett doesn't have
25 an income, so --

1 A. It doesn't --

2 Q. -- it would only be retirement.

3 A. Yes. Retirement and savings for my son, yes.

4 Q. So you're asking this Court to speculate that you
5 will save money during Bennett's minority that then comes to
6 him as in inheritance after you pass?

7 A. Just for security down the road, yes, for a
8 multitude of reasons. Yes.

9 Q. Is it your understanding that the purpose of child
10 support is to allow you to save more money for retirement?

11 A. Not for me, no.

12 Q. And Bennett doesn't have a 401 or a 401k or IRA,
13 does he?

14 A. Not that I'm aware of, no.

15 Q. And do you believe that your ability to purchase a
16 new home in which you would own all the equity is the
17 purpose of a child support award?

18 A. Absolutely not, no.

19 Q. Now, you have suggested that Bennett's entitled to
20 an equivalent lifestyle at your home as he has at his dad's
21 home; correct?

22 A. Something similar, yes, I do think he's entitled
23 to that.

24 Q. And the lifestyle that Bennett enjoys at your home
25 includes your ability to use the facilities at Hidden Valley

1 Country Club, like the pool and those kinds of things?

2 A. I do have access to that, yes.

3 Q. And to your knowledge, does Mr. Matkulak have a
4 private club membership?

5 A. Not that I'm aware of. I don't know.

6 Q. And the lifestyle that Bennett enjoys at your home
7 includes your ability to use and enjoy a vacation home at
8 Lake Almanor; correct?

9 A. We can do that, yes.

10 Q. And to your knowledge, does Mr. Matkulak have a
11 vacation home that he can use in that way?

12 A. I do not know.

13 Q. You don't know that he does?

14 A. I don't know that he does.

15 Q. Okay. So right now, those are what I would call
16 luxuries in Bennett's life that he enjoys as part of his
17 lifestyle at your home, but not at father's home?

18 A. In my care, I have access to those, yes.

19 Q. Right. Well, even though you've insisted that
20 Bennett's entitled to an equivalent lifestyle, you can't
21 tell me any way that my client spends more lavishly on
22 Bennett than you do.

23 A. That's not a question. Is that a question?

24 Q. Well, can you?

25 A. Can you repeat that? I'm sorry. I was waiting

1 for a question.

2 **Q. Can you describe for me the ways in which my**
3 **client spends more lavishly on Bennett's lifestyle than you**
4 **do?**

5 A. Um, I think I kind of talked about earlier. I
6 think the food thing, going out to eat. And I didn't really
7 hit lavish lifestyle. It was more a standard of living in
8 the households in where he lives. The clothing that he
9 wears.

10 You know, and the emotional part of it is a big
11 part to me, and it's already taking its toll.

12 So I did not say he lived more lavishly, so, no.
13 That's not what I was after.

14 **Q. Well, you can't tell us how Mr. Matkulak spends**
15 **more lavishly on Bennett's lifestyle than you do because you**
16 **don't know; right?**

17 A. I do not know what Mr. Matkulak does. The only
18 thing I know is what Bennett wears. I mean, that's it.

19 **Q. And we have the -- your costs of clothing and his,**
20 **and they're \$15 a month apart; correct?**

21 A. Um, I thought his was lot higher, unless he redid
22 his financial disclosure and changed.

23 But, anyways, I don't know that it was higher.

24 **Q. You just have no idea what he spends in connection**
25 **with Bennett to support your claim that he has this lavish**

1 lifestyle; right?

2 A. I never said he had a more lavish lifestyle. It's
3 a standard of living that is different. It is different.

4 Q. It's different in ways that you don't know,
5 apparently?

6 A. Yeah, I don't know what he does with his dad when
7 he's with his dad.

8 Q. And, in fact, you testified that his dad is cheap
9 or frugal; right?

10 A. Yes. Tony calls himself frugal at times. It
11 depends on what he's buying, but, yes, he is. We both are.

12 Q. I agree. You both are very frugal in terms of
13 your spending on your child. I agree.

14 So what you really claim is not that you want
15 Bennett to have an equivalent lifestyle at your home as he
16 has at his dad's home.

17 What you want is for Bennett to have the lifestyle
18 at your home that his father could afford if his father
19 thought that was the appropriate way to spend money?

20 A. I disagree with that statement. It's a little
21 confusing.

22 Q. Well, you're not asking -- you haven't shared with
23 us any way that his -- that Mr. Matkulak spends more
24 lavishly on Bennett than you do.

25 So I'm saying -- I'm asking you, isn't what you

1 really want for Bennett to be supported at your house to the
2 lifestyle that Mr. Matkulak could afford if he thought that
3 was the appropriate way to raise Bennett?

4 A. I'm sorry?

5 Q. I'll move on. You don't own the home you actually
6 live in; correct?

7 A. I do not.

8 Q. You use that home as an investment and rent it
9 out --

10 A. Wait.

11 Q. -- correct?

12 A. The home that I am in -- the home that I live in,
13 I am renting.

14 Q. Okay. We're still talking about the home you own.

15 A. Okay.

16 Q. On Keystone.

17 A. Um-hum.

18 Q. You own that home as an investment and rent it out
19 to others; correct?

20 A. I do rent it, yes.

21 Q. And how much rent do they pay each month?

22 A. 1950.

23 Q. And how much is the mortgage?

24 A. 1296.

25 Q. And you made the choice to rent the home that you

1 now live in with Bennett when he's in your care; correct?

2 A. I did.

3 Q. Would I be correct in assuming that you chose a
4 home to rent that you believed was an appropriate home for
5 you and Bennett to live in?

6 A. Sorry. I'm laughing because I took what was
7 available. It was hard to find a house. That was done in,
8 like, a day, but yes.

9 I checked the bathtub. And, honestly, that was
10 the biggest one. If it's clean, yes. It is a comparable
11 home, and it is good for Bennett.

12 Q. So at your deposition when I asked you that
13 question, you simply acknowledged that you picked a home
14 that you felt was appropriate; correct?

15 A. Yeah.

16 Q. All the editorial today is new. You didn't share
17 any of that with me at your deposition; right?

18 A. I guess so. I mean, I was nervous as I am right
19 this second.

20 Q. And you chose that home because, among other
21 things, it's close to your parents?

22 A. Um-hum.

23 Q. Correct?

24 A. Yes.

25 Q. And it's close parks?

1 A. It is.

2 Q. And it's a three bedroom, two bathroom home?

3 A. It is.

4 Q. Does anyone live there other than you and Bennett?

5 A. Just the dog.

6 Q. And it's in a gated community?

7 A. It is.

8 Q. It has stainless steel appliances?

9 A. Yes.

10 Q. And granite or some kind of stone countertops?

11 A. It was the granite that we went over, but, yes.

12 Q. Has a fenced-in backyard?

13 A. Yes.

14 Q. So earlier, at the outset of my examination, I
15 asked you about Bennett; do you recall those questions?

16 A. About his personality?

17 Q. Right. And about him being a normal, happy,
18 well-adjusted kid.

19 A. Yes.

20 Q. Do you remember that?

21 A. Yes.

22 Q. So can you explain to me why you take the position
23 that it's necessary for you to own a nicer, more expensive
24 home for Bennett's emotional well-being?

25 A. I think that's one of the main reasons, especially

1 the way he's been acting with me and what he's saying.

2 It's not okay that daddy's house is the yes house,
3 and mommie's house is the no house. And --

4 MR. MEADOR: Objection. Hearsay, Your Honor.
5 Move to strike.

6 THE WITNESS: I'm sorry.

7 THE COURT: Well, you didn't object the first time
8 she said it, so you already allowed it in once.

9 I'll allow it.

10 BY MR. MEADOR:

11 **Q. Then what does the value of the home that you**
12 **would own have to do with whether it's a yes or a no house?**

13 A. To make it equivalent to his dad's. I mean, I get
14 mocked from him for -- you know?

15 MR. MEADOR: I have no further questions.

16 THE COURT: Thank you.

17 We're going to break for lunch. Counsel, 1:30
18 acceptable?

19 MR. RYAN: Yes, Your Honor.

20 MR. MEADOR: Yes, Your Honor.

21 THE COURT: Thank you. You have options. We can
22 chose to just log out and all log back in, or we can all
23 just go dark.

24 MR. MEADOR: It's easier for me to go dark.

25 THE COURT: I know that to be true. So there you

1 go.

2 MR. RYAN: Sounds good.

3 THE COURT: We can go dark. Thanks.

4 (Whereupon, lunch recess was had from
5 11:16 A.M. to 1:30 P.M.)

6 THE COURT: All right, folks. We're back on the
7 record. Mr. Meador just finished his cross.

8 Mr. Ryan, you then have an opportunity to redirect
9 at this time.

10

11

REDIRECT EXAMINATION

12 BY MR. RYAN:

13 Q. Ms. Davis, can you hear me?

14 A. Yes.

15 Q. Ms. Davis, do you recall testifying with
16 Mr. Meador about what you owe in attorney's fees; do you
17 recall that?

18 A. Yes.

19 Q. Okay. And for clarification, your reference to
20 \$26,000, what's the date that was owed?

21 A. The \$26,000, the end of February, 2021.

22 Q. Okay. Does that include anything after February
23 of 2021?

24 A. No.

25 Q. Okay. Now, you recall Mr. Meador asked if you

1 believed it was reasonable under the law for Mr. Matkulak to
2 seek a downward deviation based on your child's expenses as
3 stated; do you recall that?

4 A. I do.

5 Q. Okay. So I'm asking you, was it reasonable for
6 Mr. Matkulak to seek a downward deviation based on the
7 economic circumstances of the parties?

8 A. No. Not at all.

9 Q. Why do you say that?

10 A. Because of the massive disparity between the
11 incomes.

12 Q. Okay. Now, on what approximate date did both
13 sides agree as to Mr. Matkulak's gross monthly income?

14 A. Um, just recently. This week or last.

15 Q. Okay. And regarding the documents that Mr. Meador
16 referred you to, the 900 pages; do you remember that
17 testimony?

18 A. I do.

19 Q. Okay. Regarding those additional documents
20 produced by Mr. Matkulak, were those provided to you before
21 or after you filed suit?

22 A. After.

23 Q. Okay. So your prior counsel never had any of that
24 information, did they?

25 A. No. They did not have that information.

1 Q. Okay.

2 A. Sorry. This computer.

3 Q. That's fine. Okay. And based on the agreement of
4 the parties as to Mr. Matkulak's gross monthly income, was a
5 stipulation filed?

6 A. It was, yes.

7 Q. Okay. And when was it filed?

8 A. When we filed our stipulation. It was this week
9 or last.

10 Q. Okay. And when did you definitively know, based
11 on the tax returns and the additional 900 pages of
12 documents, what Mr. Matkulak's income was?

13 A. Just recently. This week or last.

14 Q. Okay. Now, when did you file your case in this
15 lawsuit?

16 A. Um, like, last year, probably April, 2020.

17 Q. Okay. And would you take a look at Exhibit F,
18 which is in evidence.

19 A. F. Yeah. I have it.

20 Q. Okay. And, again, if you take a look at page 4,
21 what was Mr. Matkulak asking at that date?

22 A. Um, a downward adjustment is appropriate.

23 Q. Okay. And the date of that document is November
24 6, 2020; correct?

25 A. That is correct.

1 Q. Okay. Then would you take a look at Exhibit B.

2 A. B.

3 MR. RYAN: And the Court initially excluded that
4 document. So, Your Honor, are we now stipulating that
5 that's in based on the qualifications Mr. Meador has put on
6 the record?

7 THE COURT: Mr. Meador?

8 MR. MEADOR: Yes. Not as an admission about
9 what's right, but with respect to --

10 THE COURT: Perfect.

11 MR. RYAN: Okay.

12 BY MR. RYAN:

13 Q. So, ma'am, with regard to Exhibit B, what's the
14 date of that document?

15 A. The 214, I see December 17, 2020.

16 Q. Okay. And then look below. What is the date of
17 Mr. Meador's email?

18 A. That's what I see from Meador to you, December 17,
19 2020.

20 Q. Okay. And would you please read for the Court the
21 sentence.

22 A.

23 "Kourtney's position is deviate upward.
24 Tony's legal position is deviate
25 downward."

1 Q. Okay. And then would you turn to the next page,
2 number 215?

3 A. Yes.

4 Q. Okay. And would you read that middle paragraph?

5 A.

6 "My best guess is that Ms. Unsworth
7 just applies the formula and doesn't
8 deviate up or down, or we would both
9 make our best pitch for deviation up or
10 down."

11 Q. Okay. Now, would you take a look at Exhibit
12 B -- I'm sorry. Exhibit 7, please.

13 A. Seven. Uh-huh.

14 Q. Now, you recall Mr. Meador asked you questions
15 about this exhibit; correct?

16 A. He did.

17 Q. Okay. And what's the date of that document?

18 A. Oh, January 20, 2021.

19 Q. Okay. And have you looked through this document?

20 A. I have.

21 Q. Okay. And can you tell me where in this document
22 is a downward deviation mentioned?

23 A. They did not mention downward deviation in this
24 one.

25 Q. Okay. And where in this document does it state

1 that if you don't accept my offer, we will abandon our
2 downward deviation argument at trial.

3 Where does it say that?

4 A. It doesn't say that.

5 Q. Okay. What does it say with regard to the payment
6 of attorney's fees; paragraph 5?

7 A.

8 "Each party will bear their own fees
9 and costs in this matter."

10 Q. Okay. And what does it say with regard to number
11 3, with regard to the dependent credit?

12 A.

13 "Tony will agree Kourtney may claim
14 Bennett as a dependent in two out of
15 the three years. He will claim him in
16 the third."

17 Q. Okay. So at the time you received this in January
18 of 2021, was this an acceptable offer of settlement?

19 A. Absolutely not. No.

20 Q. Okay. When did you first learn that Mr. Matkulak
21 was abandoning his downward deviation theory?

22 A. Yesterday. Just now at the trial statements.

23 Q. Okay. The trial statement. Okay.

24 So from April of 2020, when you filed your suit
25 through March of 2021, where you ever told that the downward

1 deviation was off the table?

2 A. No. Not at all.

3 Q. Okay. When Mr. Meador then asked you what was
4 driving the litigation, and he said "up or down," what's
5 your answer?

6 A. It was me going up and Tony going down.

7 Q. Okay. Now, Mr. Meador also asked you about the
8 time you spend coaching; do you recall that?

9 A. I do.

10 Q. Okay. And what was your deposition answer as to
11 how much time you spent coaching?

12 A. Um, I told him I had, like, 19 hours' worth of
13 lessons.

14 Q. Okay. And at any time during that deposition did
15 he ask you how much time do you spend running your business?

16 A. He did not.

17 Q. Okay. And how much time do you spend running your
18 business?

19 A. I think I said it earlier. 30 hours.

20 Q. Per month?

21 A. Per month, yeah.

22 Q. Okay.

23 MR. RYAN: No further questions, Your Honor.

24 THE COURT: Thank you.

25 Mr. Meador?

1 RE CROSS-EXAMINATION

2 BY MR. MEADOR:

3 Q. Well, the actual question I asked was how many
4 hours you spent working in connection with your coaching;
5 right?

6 A. I don't recall exactly the wording.

7 Q. So if I asked you how much time you spent working
8 coaching, did that confuse you about me trying to figure out
9 how much time you were spending in connection with that job?

10 A. Yeah. I was just thinking of paid hours, not
11 everything else that it entails. Yes.

12 Q. And you could have settled this case before it was
13 filed and not had any downward deviation; correct?

14 A. I -- we could have settled, or I don't -- you
15 would know, but yes.

16 Q. Before you ever filed your petition, you could
17 have settled it for an amount above the statutory amount;
18 correct?

19 A. I believe you guys had put in an offer that was
20 above to old law, yes.

21 Q. And in January, you could have settled it for an
22 amount above the statutory formula; correct?

23 A. That -- I think our formula just got set, that's
24 why I get confused. It just happened this week or last.

25 Q. In January, if you had accepted that offer, it

1 would have been in excess of the amount calculated under the
2 formula; correct?

3 A. Of the form- -- yeah, like, this week's
4 calculation is above that. Yes.

5 Q. And describe for me which specific document you
6 claim, out of those 900, resulted in a different number than
7 if Ms. Salazar just looked at my client's tax return?

8 MR. RYAN: Objection. Ambiguous. She would have
9 no idea what Ms. Salazar looked at or what generated the
10 numbers.

11 MR. MEADOR: Well, Your Honor, do you want me to
12 respond, or do you have it on your own?

13 THE COURT: You can respond, but I don't know how
14 she would know.

15 MR. MEADOR: Well, she just testified that she
16 could not know what his number was until she had those 900
17 pages of documents.

18 So I asked her the follow-up question which of
19 those documents prevented her from knowing?

20 THE COURT: And she used an expert to determine
21 what those numbers were.

22 And, frankly, Mr. Meador, I think she used those
23 numbers, perhaps, to her detriment from one of your original
24 offers.

25 So I will sustain the objection.

1 MR. MEADOR: No further questions. Wait. Wait.

2 Excuse me. I do.

3 BY MR. MEADOR:

4 Q. B. Go back to B. Since were reading today.

5 A. I thought I was off this --

6 Q. I though you were too.

7 A. What did you say, B?

8 Q. B.

9 A. B.

10 Q. Would you please read the very last sentence I
11 wrote.

12 A. You wrote --

13 THE COURT: Wait. Wait. Okay. All right. Yes.

14 THE WITNESS: 214; correct?

15 BY MR. MEADOR:

16 Q. No. 215.

17 A. Okay. 215. Your very last sentence:

18 "That being said, given the emotional

19 and financial costs of contested

20 litigation between parents, if you will

21 please speak with Kourtney and get me

22 her offer, I will see if can get him to

23 consider it to bring it to resolution."

24 Q. Thank you. So it was simply a settlement

25 negotiation; correct? Talking about --

1 MR. RYAN: Objection, Your honor. The document
2 speaks for itself.

3 THE WITNESS: My brain's fried.

4 MR. MEADOR: I'll move on. Nothing further, Your
5 Honor.

6 MR. RYAN: Thank you, Your Honor. I have nothing.

7 THE COURT: All right. Ms. Davis, you're excused
8 at this time. You get to just sit there.

9 Please mute yourself so that we don't have any
10 feedback from your computer.

11 THE WITNESS: Okay.

12 THE COURT: And then we'll move along.

13 THE WITNESS: Okay.

14 THE COURT: Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Don't worry. They could bring you
17 back on rebuttal. So don't get too comfortable.

18 THE WITNESS: Well, if my mouth's moving and you
19 don't hear anything -- yeah.

20 Mr. Ryan?

21 MR. RYAN: I would call Mr. Matkulak.

22 THE COURT: All right. Sir, you recall that
23 you're still under oath. I'll ask you the same questions.

24 So do you have anything in front of you, sir,
25 besides the two exhibit books?

1 THE WITNESS: Two exhibit books, that's it, right
2 here.

3 THE COURT: Perfect. There's nobody else in the
4 room with you, sir?

5 THE WITNESS: There is.

6 THE COURT: Who else is in the room?

7 THE WITNESS: My significant other.

8 THE COURT: I should have asked this earlier.

9 I just presumed, Mr. Meador, you were more
10 cautious than that.

11 MR. MEADOR: I apologize, Your Honor. I did not
12 realize that that was the case.

13 THE COURT: And I presumed this is a sealed file;
14 is it not?

15 MR. MEADOR: I don't know that.

16 MR. RYAN: I don't know that either.

17 THE COURT: Well, if it's not sealed, it's going
18 to be sealed here in just a second, and I'll tell you why.
19 You just admitted a piece of evidence about where I grew up,
20 and I don't need that to be public record.

21 MR. MEADOR: I -- I am completely --

22 THE CLERK: Your Honor, the case is not --

23 MR. MEADOR: -- empathetic with your position.

24 THE CLERK: Your Honor, the case is not currently
25 sealed.

1 THE COURT: Okay.

2 So, Mr. Ryan, your position about his significant
3 other listening for the remainder of this, because this case
4 will be sealed sometime today.

5 MR. RYAN: I would request that she be excluded.

6 THE COURT: Okay. All right.

7 Sir, she needs to leave the room, and she needs to
8 be where she can't hear.

9 THE WITNESS: She has left the room.

10 THE COURT: Thank you very much.

11 At this point, the Court is going to make a sua
12 sponte order to seal based upon Exhibit B, which wherein
13 Mr. Meador states that I grew up on a particular street in
14 this town that is in a home that is still owned by my
15 parents.

16 Please proceed.

17

18 DIRECT EXAMINATION

19 BY MR. RYAN:

20 Q. Sir, please state your name for the record?

21 A. Anton David Matkulak.

22 Q. Okay. And with regard to the significant other
23 that was just in the room, what is her name?

24 A. Kelly Fitzgerald.

25 Q. And she lives with you?

1 A. No.

2 Q. Okay. Are you a resident of the State of Nevada?

3 A. I am.

4 Q. Okay. And you agree that you are Bennett's
5 natural father?

6 A. Yes.

7 Q. Okay. Sir, if you would look at Exhibit 1,
8 please.

9 A. Yep.

10 Q. And you recognize that to be your most- financial
11 disclosure form; correct?

12 A. Uh, mine's out of order, obviously. Are you
13 talking about the Exhibit 1 on our side from Shawn Meador?

14 Q. Correct.

15 A. All right. Yep. Sorry. I was on your stuff.
16 Yep.

17 Q. Okay. You're on Exhibit 1, sir?

18 A. Yep.

19 Q. And you agree that's your most-recent financial
20 declaration?

21 A. Yes.

22 Q. And you agree it's dated February 4, 2021;
23 correct?

24 A. Correct.

25 Q. Okay. And you understand that you signed this

1 document under penalty of perjury?

2 A. I do.

3 Q. Okay. And you agree that it's all true and
4 correct to the best of your knowledge?

5 A. Yes. There is some old information on here that I
6 put on there. And I do believe I left out investment
7 income. But everything else is correct to my -- the best of
8 my ability.

9 Q. Okay. And, sir, with regard to your income, you
10 are aware that a stipulation was entered with regard to what
11 your income is and what it generates as far as child
12 support; correct?

13 A. Correct.

14 Q. Okay. Now, sir, you have a bachelor's degree in
15 business; correct?

16 A. Yes.

17 Q. And when did you obtain that?

18 A. 1980 -- 1993.

19 Q. Okay. And you're currently employed at Morgan
20 Stanley?

21 A. Correct.

22 Q. Are you've been there since 2008?

23 A. Well, Smith Barney was where I was employed, and
24 they were taken over by Morgan Stanley in 2011 or '12,
25 roughly.

1 Q. Okay. And your job withy Morgan Stanley is your
2 only paid form of employment at this time; correct?

3 A. Correct. And the real estate gives me a little
4 bit of income.

5 Q. Okay. You don't -- do you pay yourself a fee for
6 handling your rentals?

7 A. No.

8 Q. Okay. So it's fair to say you have one job;
9 correct?

10 A. I would not say that. I think I've got two jobs.

11 Q. You have one form of employment that pays you a
12 salary?

13 A. \$35,000, yes. The rest is commission.

14 Q. Okay. And with regard to your job at Morgan
15 Stanley, you work Monday through Fridays, typically?

16 A. Yes. And some evenings taking clients out to
17 dinner and some weekends based on client needs.

18 Q. Okay. And your typical hours, I think, based on
19 your interrogatories, are 7:00 A.M. to 4:00 P.M.; does that
20 sound right?

21 A. For the most part. When the markets get volatile,
22 I work substantially more hours than that.

23 Q. Okay. And you understand that, based on the
24 discussion between the two experts, that we've arrived at
25 a -- \$38,240 is your gross monthly income; correct?

1 A. Correct.

2 Q. Okay. And that yields an annual salary of
3 \$460,000; do you agree with that?

4 A. Give or take a few thousand, yes. That's a -- I
5 believe that's a three-year average, that is correct. Give
6 or take a thousand.

7 Q. Okay. And you agree with me, and you've heard the
8 discussion earlier, that at that level of income, the tax
9 creditor for Bennett is of no monetary value to you, is it?

10 A. That's not true.

11 Q. Okay.

12 A. There's head of household, and I get 4 to \$5,000
13 as head of household when I claim him as head of household.

14 Q. Okay.

15 A. Tax break, that is.

16 Q. Do you receive anything for a credit, though, for
17 Bennett himself as an individual?

18 A. No. I make too much money.

19 Q. Okay.

20 A. But there is a difference. I cannot file head of
21 household. I'm filing as a single if I don't have Bennett.

22 When I have Bennett, I am filing held of
23 household, and that's a 4 to 5,000 savings -- tax savings
24 for me.

25 Q. You have Bennett fifty percent of the time,

1 though; correct?

2 A. Yes.

3 Q. And you're telling me that you are unable to claim
4 head of household, even though you have Bennett fifty
5 percent of the time?

6 A. My accountant says no. I rely on my accountant.
7 He just says when Kourtney uses him to get the credits, she
8 also has to use him as head of household, and it changes my
9 filing status.

10 Q. Okay. Would you take a look at exhibit 3
11 of -- I'm sorry. Take a look at page 3 of Exhibit 1.

12 A. So that's on your documents or --

13 Q. No. You're still on the same document that you
14 were on earlier.

15 A. Exhibit 3.

16 Q. No. Exhibit -- page 3 of Exhibit 1.

17 A. Okay.

18 Q. And it's got a Bates stamp 1525.

19 A. I'm getting there. Page 3. Okay.

20 Q. Okay. You see there on line -- box number 4,
21 health insurance?

22 A. Hold on. We're on tab 1, page 3. Okay.

23 Q. Well, it's actually -- it has a Bates stamp number
24 at the bottom, 1525.

25 A. Correct.

1 Q. Okay. And you see there in box 4 at the top under
2 monthly deductions?

3 A. Yep.

4 Q. Okay.

5 A. Health insurance.

6 Q. Correct. And the amount listed for Bennett is
7 \$237.50; correct?

8 A. Correct.

9 Q. Okay. And are -- you've been told that Kourtney
10 can provide the same insurance for no cost; right?

11 A. I've been told that.

12 Q. Okay. And then you agree that it's better then,
13 financially, for Kourtney to carry the insurance at no cost
14 than you paying two hundred and forty bucks month?

15 A. Either way. I believe I heard the judge in the
16 settlement conference saying that she wanted me to pay for
17 the health insurance. I believe I heard that.

18 Q. Well, today will you agree that my client can
19 provide the insurance at no cost?

20 A. Yes.

21 Q. Okay. Then if you take a look at page 4, sir, of
22 the same document.

23 A. Yep.

24 Q. And do you see your personal expenses listed
25 there?

1 A. Yep.

2 Q. Okay. And you list \$500 per month for clothing;
3 correct?

4 A. Correct.

5 Q. \$1,800 a month for groceries; correct?

6 A. That's food, restaurants, and groceries. That is
7 correct.

8 Q. Okay. And \$600 a month for lawn care; correct?

9 A. Yeah. That varies between \$500 and \$1,000, give
10 or take a little.

11 Q. Okay.

12 A. There's no (inaudible), so I adjusted it because
13 there's no point.

14 Q. Okay. And then you have no mortgage or rent
15 regarding your primary residence?

16 A. Correct. I just have taxes and insurance.

17 Q. Okay.

18 A. It's roughly at 9,000 a year.

19 Q. Okay. Do you also have a housekeeper?

20 A. I do have somebody that comes in once a month to
21 clean my house.

22 Q. And where -- is that listed on here?

23 A. I'm looking.

24 Q. Okay.

25 A. Doesn't look like it is on there, no. I just

1 missed that one.

2 Q. Okay. That's fine. And how much is that expense?

3 A. I can't remember. \$150 a month.

4 Q. Okay. Okay. Then if you would turn to, please,
5 page 64 of the same document.

6 A. Yep.

7 Q. And there you list your personal assets and debt;
8 correct?

9 A. Correct.

10 Q. Okay. So the first eight entries are your rental
11 properties; correct?

12 A. Yes.

13 Q. Okay. And isn't it true you have a rental at
14 Fleur de Lis?

15 A. I've got -- I had three. I now have two. I sold
16 one and did a 1031 exchange into Ryan Way.

17 Q. Okay. And you would agree with me that Fleur de
18 Lis has a pool; correct?

19 A. They do.

20 Q. And you agree they also have a workout facility;
21 correct?

22 A. They do.

23 Q. And as the owner of two properties, you have
24 access to the pool and workout place; correct?

25 A. I do.

1 Q. Okay. And they don't cost you anything --
2 right? -- other than owning the property.

3 A. That homeowner's dues are six hundred bucks a
4 month. For three of them, which is around two grand, give
5 or take a little.

6 Q. Okay. And when you have Bennett, you have access
7 to that pool; correct?

8 A. I do.

9 Q. Okay. Then under your eight rental properties,
10 you have a 401k with six hundred and fifty grand; right?

11 A. Yep.

12 Q. An IRA with 413,00; correct?

13 A. Yep.

14 Q. Deferred comp of 623,000; correct?

15 A. Correct.

16 Q. Personal accounts of a 1,333,000; correct?

17 A. Correct.

18 Q. A Roth worth approximately 43,000; right?

19 A. Yep.

20 Q. And your personal home is valued at \$1.4 million;
21 correct?

22 A. As of this point in time, yes.

23 Q. Okay. And, again, that's owned free and clear;
24 right?

25 A. Yes.

1 Q. Okay. And if you turn to the next page, you have
2 a net worth of just shy of \$8 million; true?

3 A. Yes. At this point in time, correct.

4 Q. Okay. And your Porsche 911 is worth a hundred and
5 thirty grand; right?

6 A. Give or take a little.

7 Q. Okay.

8 A. Yes. That's what I paid for when I got it last
9 year.

10 Q. Okay. And now, sir, I'd like to then direct you
11 to Exhibit E, so that being in the other binder.

12 A. Okay.

13 Q. And you recognize that to be your first financial
14 declaration form; correct?

15 A. Correct.

16 Q. That was filed in June of 2020; right?

17 A. Correct.

18 Q. So about eight or nine months prior to the one we
19 just went through; true?

20 A. Correct.

21 Q. And you also signed this one under penalty of
22 perjury; correct?

23 A. Correct.

24 MR. RYAN: Your Honor, I would move for the
25 admission based on your prior ruling that they all go in.

1 THE COURT: They do. It's admitted.

2 (Whereupon, Petitioner's Exhibit E was
3 admitted into evidence.)

4 MR. RYAN: Thank you.

5 BY MR. RYAN:

6 Q. And, sir, again, at the time you filed this, you
7 would agree with me that everything on here was true and
8 correct -- correct? -- to the best of your knowledge;
9 correct?

10 A. To the best of my knowledge, yes.

11 Q. Okay. Sir, would you please turn to page 6 of the
12 document, or Bates stamped 229.

13 A. I am there.

14 Q. Okay. And see there your net worth back in June
15 of 2020?

16 A. Yep.

17 Q. And at that time it was only \$5,678,000; correct?

18 A. Correct.

19 Q. So according to your two, sworn filings, you
20 earned \$2,226,000 in approximately eight months; true?

21 A. I would not say it was earned. I would say
22 it's -- there's a lot of factors that went into that.

23 There was COVID that happened, and during COVID,
24 people were moving from San Francisco to the outskirts.

25 The real estate properties went up. My house went

1 up 200,000 based on Zillow, and that's all the other
2 properties.

3 We had a 35 percent correction in the stock
4 market. And I was very busy. That's when you can make
5 decisions on getting more aggressive or go into cash.

6 And that's investment earnings that will go up or
7 down with the market.

8 In my 401k, I went a hundred percent stock. And
9 went from a moderate to aggressive. And now, I've gone back
10 to moderate now that the market's high.

11 And the assets can go down just as quick as they
12 went up based on what the markets do.

13 **Q. Okay. Understood. So to be fair then, based on**
14 **what you just said, you would agree with me, though, that**
15 **your net worth increased by \$2,226,000 in that eight-month**
16 **period; true?**

17 A. Yes. It was not income, it was net worth based on
18 market fluctuations at this point in time. That is correct.

19 **Q. Okay. And you would agree with me that it's a**
20 **pretty fair return in eight months; yeah?**

21 A. It was better than expected, but I don't know
22 what's going to happen going forward.

23 **Q. Okay. All right. Can I please refer you to**
24 **Exhibit 2?**

25 A. That's on your stuff, Exhibit 2?

1 Q. That would be Mr. Meador's stuff or your stuff.

2 A. All right. Okay.

3 Q. And if you take a look at page 4 of the document
4 or Bates stamped 1539.

5 A. Okay.

6 Q. You see there where Ms. Davis's total monthly
7 income is \$5,144; correct?

8 A. Correct.

9 Q. Okay. So you would agree with me then -- we just
10 talked about your admitted -- or your agreed-upon gross
11 monthly income is 38,240; correct?

12 A. Give or take a little. I think we -- I think
13 we -- in the offers that we made, we rounded it up and we
14 accounted for errors. So we rounded it up to 39,000.

15 Q. Okay. So the point is you make about 33, 34,000
16 more per month than she does; right?

17 A. Yeah. A lot of that is investment income too. So
18 if it's earned income versus investment income, those are
19 two separate. But my earned income is around 34; my
20 everything, all included, is around 39.

21 Q. Okay. And if you take a look at page 6 of that
22 document --

23 A. That is Bates stamped?

24 Q. 1541.

25 A. Yep.

1 Q. You see her total net worth there is \$460,000;
2 correct?

3 A. That is correct.

4 Q. Okay. So give or take, you're worth about \$7.5
5 million more than she is; true?

6 A. Based on what the market is at this point in time,
7 yes.

8 Q. Based on your financial disclosure forms that
9 we've just gone through; correct?

10 A. Correct.

11 Q. Okay. Okay. So you would agree with me then that
12 the economic circumstances in this case clearly favor you;
13 yes?

14 A. Not necessarily, no.

15 Q. Okay. And you agree with me that you have not
16 borrowed money from anyone to pay your legal fees in this
17 case; have you?

18 A. I have not paid any legal fees at this point, and
19 I have very little cash.

20 Q. Okay. And do you know how much you're paying per
21 hour?

22 A. Four hundred, maybe, give or take a little.

23 Q. Okay. And do you know how much you've spent thus
24 far even though you haven't paid it?

25 A. I have no idea.

1 Q. Okay. Now, you understand this case was filed in
2 approximately April, 2020; is that true?

3 A. Sure. If that's what you say.

4 Q. Okay. And then if you'll take a look for me,
5 please, at Exhibit F, which is one my documents.

6 A. Yep.

7 Q. And you agree that document is dated November 6th
8 of 2020; correct? I mean, the filing date.

9 A. November 6, 2020. That is correct.

10 Q. Okay. And then if you take a look at page 248 of
11 that document.

12 A. Yep.

13 Q. Okay. You see in there in that second paragraph
14 where, for purposes of resolution or settlement conference,
15 you're asking for a downward deviation; correct?

16 A. I do believe that's what it states, yes.

17 Q. And again, that was November of 2020; right?

18 A. Correct.

19 Q. Okay. And you see there, you're asking that the
20 Court reduce your child support by \$723; right?

21 A. Correct.

22 Q. And you want to then pay \$949.63 as far as support
23 goes; correct?

24 A. That was at that date, yes.

25 Q. Okay. And that was your legal position as of that

1 date; correct?

2 A. As of that date if it's in writing, yes, it is
3 accurate.

4 Q. Okay. And then if you turn back one page to page
5 247, see the footnote down there, number 1?

6 A. Yes.

7 Q. You even -- you argue in that footnote that you
8 believe Ms. Davis is underemployed without good cause and
9 the Court could impute income to her as if she were employed
10 full time; did I read that correctly?

11 A. Correct.

12 Q. And that was your argument at that time; yes?

13 A. I believe so, yes.

14 Q. Okay. And you would agree with me that during the
15 time you and Kourtney were together, she only worked Club K;
16 right?

17 A. Yes.

18 Q. And she was only earning around thirty grand a
19 year; right?

20 A. I don't know what she was earning at that point.
21 It was -- there was a lot of cash payments that she told me
22 about, and her father actually told me she earned 50 to
23 60,000.

24 MR. RYAN: Objection. Move to strike. Hearsay.
25 Non-responsive.

1 THE COURT: Mr. Meador, you have no position; do
2 you?

3 MR. MEADOR: No.

4 THE COURT: It's stricken.

5 MR. RYAN: Thank you, Your Honor.

6 MR. MEADOR: Well, what Kourtney told him isn't
7 hearsay. What her father told.

8 THE COURT: What her father told, yes. Exactly.

9 MR. RYAN: Okay.

10 BY MR. RYAN:

11 Q. So, sir, you didn't know what she was earning
12 anally; that is correct?

13 A. I could figure it out based on the amount of hours
14 she was making, and it was somewhere, probably, in the
15 neighborhood of 40,000, give or take --

16 Q. Okay. At the time you wrote this statement, you
17 were aware that she was working two jobs; correct?

18 A. Um, you know, I'm not sure of that, to be honest
19 with you.

20 Q. Did you review any of her financial disclosure
21 forms as we came up toward settlement conference?

22 A. I did.

23 Q. Okay.

24 A. But --

25 Q. Did you see that she had been hired by Cordova?

1 A. Yes, but I think it came in a month or two after
2 she started working. It was awhile after she started
3 working that I was aware that she was getting an income.

4 So I would say that it was probably December or
5 January that I knew she was working. It was a month or two
6 after --

7 Q. Okay.

8 A. -- that she started working.

9 Q. Okay. Sir, if you take, then, a look at Exhibit
10 B.

11 A. That's on yours or ours?

12 Q. That's on ours.

13 A. Okay.

14 Q. And you see the date of Mr. Meador's email to me
15 of December 17, 2020; correct?

16 A. Yeah, December 21, 2020?

17 Q. Yes, sir. No, December 17th.

18 A. Yeah, I see that.

19 Q. Okay. And that's -- what? -- and month or so
20 after your settlement statement; correct?

21 A. I believe so, yeah, if that's what we were just
22 going over.

23 Q. Right. And in Exhibit B, once again, you are
24 asserting the legal position that you're entitled to
25 deviate -- your legal position is to deviate downward;

1 correct?

2 A. I think that that wasn't -- well, that was a part
3 of a strategy that if you can deviate up, you can also
4 deviate down.

5 Q. Okay. But would you read for me the second
6 sentence in Mr. Meador's email.

7 A.

8 "Kourtney's position is to deviate
9 upwards. Tony's legal position is to
10 deviate downwards."

11 Q. Okay. And Mr. Meador was your attorney at the
12 time; yes?

13 A. Yes, he was.

14 Q. Okay. And he tells me there that your legal
15 position is deviate downward; yes?

16 A. Yes.

17 Q. Okay. And you would agree with me that a downward
18 deviation under the economic circumstances of the
19 parties -- well -- okay. Let me rephrase that.

20 You would agree with me that you're seeking a
21 downward deviation even though the economic circumstances of
22 the parties are completely disparaging; true?

23 A. Can I expand on that --

24 Q. No. I just want a yes or no.

25 A. -- and give you what I was really thinking?

1 Q. I just want to know would you agree with me
2 that -- you had completely disparate incomes at the time you
3 were seeking a downward deviation; yes?

4 A. Yes. As long as Bennett --

5 Q. You made approximately seven times more than she
6 does; true?

7 A. It's based off of Bennett's need, to me.

8 Q. Okay.

9 A. And I've done a lot of research on what Bennett's
10 need are.

11 MR. RYAN: Your Honor, move to strike.
12 Non-responsive.

13 THE COURT: Your lawyer will flush out the details
14 of what you're trying to explore, sir. You just need to
15 answer Mr. Ryan's questions at this time.

16 Mr. Meador is really good at flushing out details.
17 So be prepared.

18 THE WITNESS: Okay.

19 BY MR. RYAN:

20 Q. So, sir, you agree with me, at the time you were
21 asserting that you were entitled to a downward deviation,
22 you earned, roughly, seven times the amount of income that
23 Kourtney did; true?

24 A. Give or take a little, yes.

25 Q. Okay. And you would agree with me also that the

1 ongoing monthly incomes of the parties were very, very
2 different. Yours was substantially more; yes?

3 A. Can I rephrase my last answer or no? Is
4 that -- because my take-home pay is a lot different than
5 what I actually earn, and I --

6 Q. Mr. Meador can --

7 A. -- (inaudible) little.

8 Q. Mr. Meador can re- --

9 MR. MEADOR: Mr. Matkulak, please just listen to
10 the question and answer the question that's asked of you.

11 THE WITNESS: Okay.

12 THE COURT: Thank you for your assistance,
13 Mr. Meador.

14 I understand your desire, but you're in a position
15 where you're an adverse witness, and Mr. Ryan's going to
16 frame his questions the way he needs to do so.

17 Mr. Meador with come back and address those
18 issues.

19 THE WITNESS: Okay. Sorry.

20 BY MR. RYAN:

21 Q. Sir, you've already stated that, give or take,
22 your monthly income is approximately \$33,000 more than my
23 client's; correct?

24 A. That's -- yes.

25 Q. Okay. And so then, again, that was -- you were in

1 the same circumstance back in December of 2020 as far as the
2 incomes are concerned; true?

3 A. Yes.

4 Q. Okay. And you were going to explain to me that
5 you were looking into Bennett's needs; correct?

6 A. Yes.

7 Q. Okay. And you are aware, under your attorney's
8 analysis, that it's about specific needs of the child and
9 economic circumstances of the parties; correct?

10 A. Correct. Number one being the need of the child.
11 Then after, the need of the child are met. Then if the
12 needs are not met, the way I interpret the law after reading
13 it five times, then you can deviate higher if the kid's
14 needs are not met.

15 That's the way I read the law. I'm not an
16 attorney.

17 Q. Okay. So you don't it read as you've got to show
18 specific needs and economic circumstances of the parties;
19 you don't agree with that?

20 A. Well, if Bennett's needs are --

21 MR. MEADOR: Objection. Asking for a legal
22 conclusion.

23 MR. RYAN: Okay.

24 MR. MEADOR: This is a matter for argument.

25 MR. RYAN: I'll move on, Your Honor.

1 THE COURT: Okay. I will allow you to move on. I
2 would have allowed him to answer the question because he
3 said that he read the law five times, and he had already
4 interpreted it. I would have let him give his opinion.

5 THE WITNESS: (Laughing).

6 MR. RYAN: Well, we're going to come back to it
7 anyway.

8 THE WITNESS: My opinion's probably not very good,
9 but -- anyway.

10 BY MR. RYAN:

11 Q. And you would agree with me that as of the filing
12 of your trial statement and trial, today, you are no longer
13 seeking a downward deviation; correct?

14 A. The whole gist was not a downward deviation. The
15 whole gist was to get everything settled and make an offer
16 that was above the statutory formula and round up and error
17 to the upside and make a reasonable offer.

18 MR. RYAN: Your Honor, again, I will object to
19 non-responsive. I simply asked him if he's asserting a
20 downward deviation position at the time of trial.

21 THE COURT: Sir, please answer the question that
22 was asked you.

23 THE WITNESS: That's at the settlement trial?

24 THE COURT: No. Today.

25 THE WITNESS: No.

1 BY MR. RYAN:

2 Q. Today. Are you seeking to downward deviate today?

3 A. No.

4 Q. Okay. And you agree with me that there's no
5 mention of a downward deviation in your trial statement;
6 correct?

7 A. Um, I would have to let Shawn testify to that.
8 I'm not sure.

9 THE COURT: Mr. Ryan, there's mentions of it, but
10 it's a mention that he's not asking for it. So I don't want
11 to confuse him because it seems to be the issue here.

12 MR. RYAN: Understood. I'll move on, Your Honor.

13 BY MR. RYAN:

14 Q. Okay, sir, could you please take a look at Exhibit
15 G.

16 A. That's on yours?

17 Q. Correct.

18 A. G?

19 Q. Correct.

20 A. Don't have it. Sorry. I got F, and that's the
21 last one. Is that -- G is based on?

22 THE COURT: Ms. Branum, can you pull up Exhibit G?

23 THE CLERK: Yes, Your Honor.

24 THE COURT: Thank you very much.

25 MR. MEADOR: Mr. Matkulak, this is the holiday

1 schedule I asked you to take a look at over the lunch hour;
2 did you not?

3 THE WITNESS: I did look at it. For some
4 reason --

5 MR. MEADOR: That's Exhibit G.

6 THE WITNESS: I remember what it was, yes.

7 THE COURT: All right. Then we don't have to pull
8 it up. Thank you very much.

9 BY MR. RYAN:

10 Q. And, sir, prior to today, have you reviewed this
11 document?

12 A. I did.

13 Q. Okay. And do you have any objection to the Court
14 adopting this holiday schedule?

15 A. As long as my attorney thinks it's fine, I'm fine
16 with it.

17 Q. Okay. That's not my question. Do you have an
18 objection to this holiday schedule?

19 A. I'm fine with it.

20 Q. Thank you. Sir, I want to refer you, really fast,
21 also to Exhibit 7, which is in Mr. Meador's binder.

22 A. Okay.

23 Q. That's dated January 20, 2021; correct?

24 A. So when you say -- what's the Bates number?

25 Q. Bates number is 1588.

1 A. I don't see that one.

2 Q. Exhibit 7 in Mr. Meador's binder, Bates number
3 1588. Nothing?

4 MR. MEADOR: Mr. Matkulak, it's the January 20,
5 2021 settlement offer.

6 THE WITNESS: That was January. I've got the
7 March settlement offer.

8 THE COURT: Mr. Meador, did you give your client
9 the binder?

10 MR. MEADOR: I believe that my as- -- I wasn't in
11 the office. I know we gave him all the exhibits. I thought
12 they were in binder form, but they may not have been.

13 THE COURT: And it appears that he's shuffled them
14 in some fashion, which has made it more difficult.

15 (Whereupon, Exhibit 7 was screen
16 shared.)

17 THE COURT: All right. Here it is.

18 MR. MEADOR: He was reviewing them on his phone
19 earlier, and I told him it wasn't appropriate for him to be
20 looking at his phone during the trial, Your Honor.

21 THE WITNESS: Yeah.

22 THE COURT: Okay. So here it is on the computer
23 screen.

24 Can you see it, Mr. Matkulak, on the screen?

25 THE WITNESS: I can see it, yes.

1 THE COURT: Perfect. Thank you, Ms. Branum.

2 BY MR. RYAN:

3 Q. And, sir, have you reviewed this document before?

4 A. I believe I have, yes.

5 Q. Okay. And this is, again, the last document we
6 talked about regarding the deviation issue was in December.

7 Now this is a January 2021 document with an offer
8 of settlement; correct?

9 A. Correct.

10 Q. Okay. And you'll see in there, you offered that
11 my client pay all of her own fees; correct?

12 A. Correct.

13 Q. Okay. And do you see anywhere in there where you
14 say we are waiving our claim for a downward deviation?

15 A. I think it's self-explnatory when we're making an
16 offer for 1750. But there is downward deviation change.
17 But I think it's self-explanatory.

18 Q. Okay. Is there anything in there that says if you
19 don't accept this, we'll still waive our downward deviation
20 claim; do you see that?

21 A. Um, I -- if you keep page -- is there another page
22 to it?

23 Q. Yeah.

24 A. Then that's --

25 THE COURT: That's it right there.

1 Ms. Branum, down one, just -- there.

2 THE WITNESS: Right there. Yeah. Ask your
3 question again. Sorry.

4 BY MR. RYAN:

5 Q. I'm just saying is there any language in your
6 offer of settlement that says if you don't accept this
7 offer, we won't raise a downward deviation at trial?

8 A. Can you ask that question again. Sorry. I'm
9 getting confused.

10 Q. That's all right. I'll withdraw it because it's
11 not in there.

12 Sir, let me ask you this --

13 THE COURT: Are you done with this exhibit,
14 Mr. Ryan?

15 MR. RYAN: Yes, Your Honor. Thank you.

16 THE COURT: Thank you. We will stop the screen
17 share.

18 MR. RYAN: Okay. Thank you.

19 BY MR. RYAN:

20 Q. Sir, earlier Mr. Meador said he'll stipulate to
21 the inclusion of a non-disparagement clause. Is that an
22 agreement that you will agree to?

23 A. Yes. If it works both ways.

24 Q. It would be reciprocal, yes. And you would follow
25 that if that was part of the order?

1 A. Yes.

2 Q. Thank you. Now, sir, would you please take a look
3 at Exhibit D, as in dog.

4 A. That's on yours or ours?

5 Q. That would be on ours, sir.

6 A. Exhibit D?

7 Q. Correct.

8 A. I got Exhibit 2, and Exhibit 1.

9 THE COURT: It's the Salazar report, sir.

10 THE WITNESS: All right. Exhibit D.

11 THE COURT: No, it's D as in dog. And it's
12 Michelle Salazar's report from Litigation Evaluation
13 Consultants.

14 THE WITNESS: Yes. I see it here.

15 MR. RYAN: Okay. And Shawn, you would agree with
16 me that you would stip- --

17 THE WITNESS: Hold on. Hold on. Yes. I see it
18 here.

19 MR. MEADOR: Okay.

20 MR. RYAN: And, Mr. Meador, you agree that we've
21 stipulated that it may entered into evidence without
22 objection or foundation?

23 MR. MEADOR: Yes, we have, counsel.

24 THE COURT: Thank you. It's admitted.

25 (Whereupon, Petitioner's Exhibit D was

1 admitted into evidence.)

2 MR. RYAN: Thank you.

3 BY MR. RYAN:

4 Q. Sir, while having Exhibit D in front of you, you
5 agree with me you had your own financial expert in this
6 case; correct?

7 A. Yes.

8 Q. Okay. And that was Mr. Hartunian?

9 A. Yes.

10 Q. Okay. And you agree that, consistent with what my
11 expert was asking, Mr. Hartunian sought clarification from
12 Morgan Stanley regarding calculation of your income; true?

13 A. We spoke to somebody, but it was worthless.

14 Q. Okay.

15 A. It was a third-party company that gave some advice
16 that -- they didn't give us any advice.

17 Q. Okay. But he had questions and he asked that he
18 could speak to somebody at Morgan Stanley; correct?

19 A. He did, correct.

20 Q. And you and he had a conversation with a
21 representative of Morgan Stanley; correct?

22 A. No.

23 Q. You were on the telephone call; weren't you?

24 A. I was. It was a third-party payroll system.

25 Q. Okay. And you were seeking to gain clarification

1 on certain issues regarding your income; true?

2 A. We were trying, yes.

3 Q. Okay. Isn't it true that one of the issues was
4 pertaining to your capital accumulation program?

5 A. Yes, a little bit.

6 Q. Okay. And, basically, the way that, in a
7 nutshell, works is you can defer commissions in one year,
8 and then they're converted to restricted stock three years
9 later and then counted as income at that time; right?

10 A. Correct.

11 Q. Okay. And that was one of the issues in trying to
12 figure out what your gross monthly income was going to be
13 agreed to; true?

14 A. That was a minor issue.

15 Q. Okay. But, again, Mr. Hartunian sought
16 clarification; right?

17 A. Yes.

18 Q. Okay. And you're aware that my expert also sought
19 to speak to someone at Morgan Stanley; correct?

20 A. Correct.

21 Q. Okay.

22 A. Ah, sorry. Sorry. To the third-party payroll
23 company, that is correct.

24 Q. Okay. And you're aware that your attorney
25 provided contact information to me for that purpose;

1 correct?

2 A. The exact people we spoke to with their names and
3 their phone numbers, correct.

4 Q. Okay. And she, too, had questions regarding your
5 income -- right? -- to your knowledge.

6 A. From what I believe my accountant told me, yes.

7 Q. Okay. And you also remember she requested a bunch
8 of additional information, other than the tax returns, that
9 you produced to me early on in the case; correct?

10 A. Correct. And I believed the deferred comp plan
11 was attached to my 16.2 financial disclosures.

12 Q. Okay. And you heard Mr. Meador ask my client
13 about the additional 900 pages of documents you produced; do
14 you remember that?

15 A. Yep.

16 Q. Okay.

17 A. I remember it well. It was four days of
18 photocopying.

19 Q. Okay. And it's your understanding that all of
20 that information was part of what the expert considered in
21 reaching your gross monthly income number; true?

22 MR. MEADOR: Objection. Calls for speculation.

23 BY MR. RYAN:

24 Q. You your knowledge?

25 A. I don't know what she used.

1 Q. Did Mr. Hartunian use that information to your
2 knowledge?

3 A. The 900 hundred pages?

4 Q. Correct.

5 A. No.

6 Q. Okay.

7 A. Ah, to do -- can you rephrase that question? I
8 want to make sure I'm answering it correctly. He used my
9 tax returns, primarily. He did not have access to that 900
10 pages.

11 Q. Okay. Sir, do you realize -- are you aware that
12 when you produce the information to me, it also goes to
13 Mr. Meador?

14 A. Yes. I gave it to Mr. Meador.

15 Q. Okay. Do you know, of your own personal
16 knowledge, whether or not Mr. Hartunian looked at all that
17 additional information?

18 A. Small parts, I would bet.

19 Q. So he looked at some of it; yes?

20 A. Yes.

21 Q. Okay. Okay. With regard to -- you heard
22 testimony earlier from Ms. Davis about communication with
23 Bennett during your custodial time; do you recall that?

24 A. Yes.

25 Q. Okay. And you're aware that she's requesting she

1 be allowed to speak with him once per day while he's in your
2 care, and it would be reciprocal to you; correct?

3 A. I did not hear once per day.

4 Q. Okay. Would you object to her speaking with
5 Bennett once per day while he's in your care?

6 A. I will leave it up to the Court's discretion.

7 Q. Okay.

8 A. Or Whatever they think is reasonable --

9 Q. Okay.

10 THE COURT: I didn't understand. What was last
11 the last part?

12 THE WITNESS: Whatever the Judge or you think is
13 reasonable.

14 THE COURT: Okay.

15 BY MR. RYAN:

16 Q. Do you think it's reasonable that my client be
17 allowed to call Bennett once per day or facetime with him
18 once per day when he's in your care?

19 A. Well, after she's had him for three days, and then
20 she calls me -- she drops him off at day care on Monday
21 morning, and then she calls me Monday evening after I've had
22 him for just two hours, doesn't make sense.

23 It's just doesn't make sense to me because I've
24 only had him two hours.

25 Q. What do you think is fair?

1 A. I would say, on the weekends when I have him three
2 days, that she call once or twice during those three days.

3 But when we're switching him two days and he's in
4 day care for a portion of the day, and I get him at 4:30, 5
5 o'clock is when I normally get him, a call right after she's
6 had him for three days is -- and I've had him for an hour or
7 two -- probably not appropriate.

8 But I'll leave it up to the Judge.

9 **Q. Okay. And, sir, with regard to childcare, you**
10 **agree that you and Ms. Davis used to childcare equally;**
11 **correct?**

12 A. Yes.

13 **Q. And you, right now, are paying for it half and**
14 **half; correct?**

15 A. That's the offer that you guys made and I agreed
16 upon.

17 **Q. You're currently paying half of the day care;**
18 **correct?**

19 A. Yes.

20 **Q. Okay. Do you agree that based upon the economic**
21 **circumstances of the parties, that is not an equitable**
22 **split?**

23 A. I believe I'm already paying the whole thing.
24 Because, based on his need and what I'm paying her, it's a
25 big chunk, over double, her need. So I think that I'm

1 already paying a hundred percent of day care.

2 That's just may rationale. Whether it's accurate
3 or not.

4 **Q. You pay the day care place \$468 a month; correct?**

5 A. Correct.

6 **Q. And my client pays the same day care place \$468
7 per month; correct?**

8 A. Correct.

9 **Q. Okay. So you do not believe that you paying the
10 whole \$960-something per month, you shouldn't have to do
11 that; correct?**

12 A. Well, isn't that double counting my income?
13 Because my income's already calculated into the formula. So
14 you're double counting what I should be and shouldn't be
15 paying.

16 That's not up to me to make that decision. That's
17 Judge's and that's the Legislature; isn't it?

18 **Q. My question to you is based upon the fact you're
19 each paying half to the day care provider that you just
20 testified to, do you believe that is equitable or not? Yes
21 or no.**

22 A. My attorney said that I should pay two-thirds. I
23 don't know, is the bottom line. I don't know what's
24 equitable. I will refer to my attorney, and he said I
25 should pay two-thirds.

1 THE COURT: I think we've got to get through the
2 same admonition here.

3 You can't tell us what your attorney tells you
4 because then you're getting into whether or not you're
5 giving up attorney/client privilege.

6 Both of you have done it. You need to be careful
7 with that, sir.

8 THE WITNESS: I have to -- all right. I'm trying
9 my best. I apologize.

10 THE COURT: And going on forward, when Mr. Ryan
11 asks you a yes or no question, I need you to try and answer
12 it yes or no.

13 Because, like I told you, I know Mr. Meador. I've
14 known him way too long. I know he's going to come back and
15 give you the opportunity to be heard.

16 THE WITNESS: Okay. What was the question again?

17 THE COURT: We've got it. Let's just move to the
18 next one.

19 THE WITNESS: Okay. All right.

20 THE COURT: We've got to get done today. Counsel
21 fibbed to me, we're not going to be done early.

22 MR. RYAN: Your Honor, I have nothing further.
23 Thank you.

24 THE COURT: Okay.

25 Mr. Meador?

1

2

CROSS-EXAMINATION

3 BY MR. MEADOR:

4 **Q. Mr. Matkulak, why did you ask Ms. Davis to go**
5 **through counsel about financial disputes?**

6 A. There were many issues going on. The markets were
7 volatile. My job. We had COVID. I had phone calls off the
8 hook from clients. I was dealing with a lot of issue from
9 clients.

10 Ms. Davis was calling me, also, off the hook
11 wanting to change the schedule, wanting me to pay for
12 birthday parties, wanting me to buy child car seats, wanting
13 me to buy, wanting me to go to swim twice a week.

14 THE COURT: Ms. Davis, you need to monitor your
15 face.

16 THE PETITIONER: Mm-hmm.

17 THE WITNESS: There were a lot of phone calls. A
18 lot of text messages.

19 I was really busy and stressed out trying to
20 figure out the news, what's going on with COVID, trying to
21 protect my clients, and trying to grow their assets and
22 trying to give them up-to-date information.

23 I told Ms. Davis several times that I need to have
24 a set schedule, that we cannot change it. I need to rely on
25 it. I need to work. I need at least a week's notice before

1 any changes can be made to schedules or changing on costs
2 for anything.

3 BY MR. MEADOR:

4 Q. Would you turn to Exhibit A. That is in
5 Mr. Ryan's exhibits, and the page number is 207.

6 A. I have it. Yes.

7 MR. MEADOR: Your Honor, my notes reflect that
8 Ms. Davis testified from this document, but I don't reflect
9 that it was offered or admitted.

10 THE COURT: And I concur with you. It wasn't
11 offered or admitted. I believe that was an oversight on
12 Mr. Ryan's part.

13 MR. MEADOR: I would offer at this time, Your
14 Honor.

15 THE COURT: I presume Mr. Ryan has no objection?

16 MR. RYAN: No objection, Your Honor.

17 THE COURT: Thank you.

18 (Whereupon, Petitioner's Exhibit A,
19 page 207 was admitted into evidence.)

20 BY MR. MEADOR:

21 Q. And, Mr. Matkulak, the bottom text, would you --
22 that you sent to Ms. Davis, will you read the last sentence?

23 A.

24 "I remain hopeful that we will get a
25 resolution of the issues soon so we can

1 **hopefully and respectfully coparent**
2 **without the need for or expense of**
3 **lawyers."**

4 **Q. Okay. In your settlement negotiations, did you**
5 **distinguish between the legal position at trial and a**
6 **settlement position for purposes of settling the case?**

7 A. Settlement positions were for above the formula
8 and we also rounded up, and in the settlement, I just let
9 you handle it.

10 We did make two settlement offers for above the
11 formula that I thought was reasonable and a balanced
12 approach based on how I read the law five times and with
13 your assistance.

14 **Q. And over the last couple of years, from about**
15 **April of 2019 until now, has Ms. Davis made demands or told**
16 **you how much she thinks you should pay her?**

17 A. Yes. It started off in settlement, that it was
18 11,000 on the high end, with Ms. Vilorina.

19 It was at 7,500, was the verbal.

20 And then in some letters, it was 3,200, down to
21 2,500, plus all day care, which, to me, rounds up to around
22 3,000 a month.

23 **Q. And the lifestyle at your home, does Bennett play**
24 **foosball?**

25 A. He plays football with me, kicking it on the -- he

1 does not play foosball. He's, maybe, played it twice since
2 I've had it, which is about six months.

3 **Q. And would you describe yourself as a prolific**
4 **spender?**

5 A. No. There's -- to clarify, with Van Guard coming
6 online and Schwab, my fees are getting -- my salary is
7 35,000 a year. Everything else is --

8 **Q. Right now --**

9 A. -- commission.

10 **Q. -- I just asked you about your spending, sir.**

11 A. I'm frugal for a reason.

12 **Q. How much did you spend on Bennett for Christmas?**

13 A. \$400, and he didn't even use a lot of the
14 Christmas presents.

15 He would rather be outside digging a hole in the
16 backyard while playing with a stick.

17 And that was clothes and everything that I spent
18 \$400.

19 **Q. In any of your discussions with Ms. Davis, did she**
20 **identify for to you or tell you of any expenses that of**
21 **Bennett's that she could not afford to pay?**

22 A. No.

23 MR. MEADOR: I have no further questions, Your
24 Honor.

25 THE COURT: Well, maybe you didn't lie to me.

1 Mr. Ryan?

2 MR. RYAN: I have no follow ups, Your Honor.

3 THE COURT: Thank you. No additional witnesses?

4 MR. RYAN: No, Your Honor.

5 MR. MEADOR: I have no further witnesses.

6 THE COURT: Perfect. We're going to take a break.

7 I'll let you argue. And after argument, we'll take a break,
8 and I will rule. All right.

9 MR. MEADOR: Thank you, Your Honor.

10 THE COURT: So I will give you 15 minutes to prep
11 your closing.

12 MR. RYAN: Sounds good. Thank you.

13 MR. MEADOR: Thank you.

14 (Whereupon, recess was had from 2:37

15 P.M. to 2:53 P.M.)

16 THE COURT: Thank you very much.

17 Mr. Ryan, closing?

18

19 CLOSING ARGUMENTS

20 BY MR. RYAN:

21 Thank you, Your Honor, and thank you all. And
22 thank you, Your Honor, for your time. This is an
23 interesting new issue, and I'm glad we had this opportunity.

24 What I want to do through closing is try to
25 address the easy issues first. And I think there's been

1 some stipulations and/or, I think, easy decisions for Court.

2 The first one being health insurance. What we're
3 requesting, Your Honor, it that health insurance be provided
4 by my client.

5 We're requesting that the 30/30 rule apply, that
6 would be a standard deal, and we're requesting that -- and
7 pointing out to Court that, again, based on the testimony of
8 my client, it's very good insurance. It's health, dental,
9 vision, and it's free.

10 By switching that to my client, Mr. Matkulak then
11 would save approximately \$240 per month. So it seems like a
12 good resolution of that single issue.

13 The second one is OurFamilyWizard. Again, I heard
14 no opposition testimony to that. We're, again, requesting
15 that the final order include OurFamilyWizard, and that they
16 continue to use that as their primary method.

17 My client testified that they do text when
18 there's, you know, immediate issues like, hey, I'm going to
19 be a little bit late.

20 But, again, that should remain their primary way
21 to communicate with one another to prevent any issues.

22 Mr. Meador and both Mr. Matkulak agreed to the
23 non-disparagement clause. I know both Mr. Meador and I have
24 lengthy disparagement clauses that we could include. So I
25 think that's an easy finding as well.

1 As far as contact with Bennett during the other
2 party's care, I think it's routinely allowed by the Court.
3 Bennett is only two, two-and-a-half years old.

4 The law talks about ongoing, consistent contact
5 with both parents. It would be reciprocal.

6 So Mr. Matkulak would have the same ability to
7 contact Bennett in my client's care.

8 I don't disagree with Mr. Matkulak's testimony
9 about the drop of day, day care, and then a few hours.

10 But I do -- I think he makes a good point that on
11 weekends and stuff, we would ask that my client -- in those
12 longer stretches, my client have the ability and, not on the
13 day of exchange, but on the other days, she have the ability
14 to talk to her son once a day.

15 And I think that's a fair request. It would be,
16 again, during reasonable times and for a reasonable length
17 of time.

18 Granted, she doesn't want to interfere with his
19 visitation, but at that age, I think it's a reasonable
20 request.

21 She would respect Mr. Matkulak's, you know,
22 privacy, and he would have the same ability to contact
23 Bennett.

24 As far as the holiday schedule, again,
25 Mr. Matkulak testified that it was okay. So I think

1 that -- we request that becomes the order of the Court.

2 As far as Bennett's activities, we would request,
3 again, that the standard language would be agreed-upon
4 activities, and, again, based on the disparity of the
5 parties' incomes, we believe it's reasonable for
6 Mr. Matkulak to bear a greater share.

7 So whether it's three-fourths or two-thirds, it's
8 a reasonable request under the circumstances. We're
9 talking, again, a difference of \$33,000 per month in gross
10 monthly income.

11 As far as the dependency tax credit, my client
12 testified what she earned, the Court commented as well, I've
13 looked into it and asked two different CPAs. Again, we
14 request that that be awarded to my client.

15 I do not believe it provides Mr. Matkulak, at an
16 income level of \$460,000 a year, any benefit as far as use
17 as a tax credit.

18 It would provide my client with a significant
19 financial help when she files her taxes.

20 According to my understanding, it begins to phase
21 out at \$200,000, and at \$460,000, it's completely phased
22 out.

23 So as the Court has noted before also, the Court
24 bring its own knowledge to these hearings and to these
25 proceedings. And the Court seemed to indicate the same

1 thing that we had discussed and what we're arguing now, is
2 that there's no reason it shouldn't go to my client because
3 it will actually benefit her in the long run. She's making
4 \$60,000 to his \$460,000.

5 So, again, I think that's an easier decision than
6 not.

7 As far as day care goes, Your Honor, NAC 425.130
8 provides:

9 "The court must consider the reasonable
10 costs of childcare paid by either or
11 both parties, and make an equitable
12 division thereof."

13 The testimony elicited from my client is that,
14 although it seems outrageous to me that you have to pay
15 \$1,000 a month for day care, but that it is comparable and
16 reasonable in this area and reasonable for other day care
17 providers.

18 So as far as reasonable costs, I think that is met
19 under the statute.

20 The current reasonable costs paid by the parties
21 jointly is \$937 per month. The testimony was that both
22 parties equally use day care, and that both parties chose
23 the day provider.

24 According to Exhibit 2, my client's financial
25 disclosure form, after her rent at 2,000 and her food at

1 550 -- hers and Bennett's food at 550, this is her
2 absolutely greatest expense.

3 Exhibit 2 further demonstrates that even when
4 working two jobs, and without the inclusion of child
5 support, when you take her standard expenses and her
6 standard deductions and the cost to raise Bennett, she's
7 \$247 in the hole each month. And that does include the cost
8 of childcare.

9 On the other hand, again, you look at
10 Mr. Matkulak, who, again, has done very well for himself and
11 that's all him. That's awesome. But he has no mortgage or
12 rent. He has a gross monthly income over \$38,000.

13 And Exhibit D indicates that between the parties,
14 when you add their gross monthly income together,
15 Mr. Matkulak's accounts for 88 percent to my client's 12
16 percent.

17 The statute -- or the code section says the Court
18 should do an equitable division.

19 And I think, based on those circumstances, based
20 on those numbers, and based on that massive disparity in
21 incomes, it is equitable that Mr. Matkulak pay that entire
22 cost of day care. And we're requesting that of the Court.

23 As far as child support goes, Your Honor, when
24 establishing base child support, the code provisions still,
25 I don't think, equally apply to the parents when there's a

1 huge, large disparity in the income.

2 Now, I know Mr. Meador has argued and has written
3 in his trial statement that every dime that Mr. Matkulak
4 earns is accounted for in the new statute -- or in the new
5 code provision.

6 But the fact is, Your Honor, that under NAC
7 425.140, even after working two jobs, my client's gross
8 monthly income is under \$6,000.

9 So effective to her, Judge, she's paying the full
10 boat of 16 percent. So the 5144 times 16 percent yields
11 \$823.

12 On the other side, Mr. Matkulak, who's earning
13 \$38,248 per year, that only yields 6.5 percent of that
14 amount; significantly less than the effective rate applied
15 to my client.

16 It should be, you know, \$2,485, and that's what
17 his support is. If he was actually paying 16 percent, it
18 would be over \$6,000.

19 So it doesn't apply -- again, that's what they
20 drafted, but I'm just pointing out to you that it's a
21 significant difference; almost 10 percent difference that my
22 client actually pays or is actually child support is lowered
23 than what he is actually responsible for.

24 In addition, the fact that my client has two jobs,
25 which are necessary, just to provide for herself and

1 Bennett, and that additional income from coaching, that,
2 too, raises her child support obligation by \$223. Just that
3 additional amount she earns.

4 And, again, having to work two jobs just to reach
5 a \$60,000 annual salary.

6 Chapter 425 is new; is new to everybody. And,
7 unfortunately, there's no case law to rely on.

8 Under 425.150, Your Honor, there is no definition
9 of specific needs.

10 Yet it seems that under the respondent's
11 interpretation of the law, if you have a normal child who,
12 for instance, doesn't have a learning disability or a
13 physical disability, and so long as a parent can provide for
14 the basic needs, the way it's being argued is there's no
15 ability ever deviate upward.

16 Even when, as in this case, one parent earns seven
17 times the income of the other parent. And I don't think
18 that's a fair interpretation.

19 I think if specific needs are going to be really
20 defined as special needs, like disabilities, it's too narrow
21 of an interpretation.

22 I think specific needs, the way it's written, they
23 have to be relative to the incomes of the parties and the
24 parties' positions in life.

25 What is necessary to a child in a wealthy family,

1 I mean, really, can be absolutely meaningless to a child in
2 a low income family.

3 For instance, rides to school as opposed to
4 mandated hopping on the bus. A computer. A cell phone.
5 Shopping at Whole Foods versus Walmart. \$1,800 a month on
6 groceries, restaurants, and food versus my client's \$550 a
7 month at Walmart.

8 There is -- there is a difference. It is relative
9 to where you land in the economic spectrum.

10 I think Ms. Davis has also produced evidence and
11 provided you evidence regarding specific needs that she says
12 aren't being met in her household.

13 I think the most compelling one that I heard was
14 about time. Time and lifestyle. You know, those are
15 specific needs. Those are part of economic circumstances.

16 She needs time to be a quality mom. She needs
17 quality time with her son.

18 And I think it's not as easy to meet that when
19 you're working two jobs. And I think when you're -- the
20 testimony was when Bennett's not there, it's a 6:30-A.M.
21 morning to when-she-gets-off-at-six-o'clock night.

22 She also testified when Bennett's not there, she
23 does the coaching on alternating Tuesdays and alternating
24 Wednesday/Thursdays, I believe.

25 And, again, the whole -- the point of that being

1 that if you're constantly working outside the home and when
2 you do get the child back, you still have to work inside the
3 home, and you're still, you know, you're not at your best
4 because that's all you've been doing is working and now
5 you're working again.

6 The further testimony was that Bennett doesn't
7 like it. Bennett -- it affects Bennett when my client has
8 to do the chores and the household upkeep and that kind of
9 stuff that she has to do to keep a home, while working two
10 jobs.

11 So I think the time argument -- or the
12 time -- quality time with the child is a specific need of
13 Bennett's that's not being met by my client that could be
14 met if there were an upward deviation in child support.

15 My client doesn't have the luxury of a person to
16 clean her house. My client doesn't have the luxury of a,
17 like, I guess, a landscaper.

18 Mr. Matkulak indicated that the \$600 a month
19 varied from 600 to \$1,000 a month for that kind of stuff. I
20 mean, we're talking an acre and a half here.

21 She doesn't have the maid. She doesn't have the
22 security. She doesn't have the -- so it's just a different,
23 different circumstance that the child finds himself in in
24 Mr. Matkulak's care versus my client's care.

25 And I think quality time is a need, and it's a

1 reasonable and it's a need, especially for a child that is
2 two years old.

3 Financial security, and, again, Mr. Meador, you
4 know, poked at her a lot about, well, this is all about you
5 getting a better house. And you should have the same -- you
6 want the same lifestyle as he has. And isn't it really
7 about you getting a better car?

8 Well, it's not just -- it's not that. It's about
9 trying to reach at least some kind of a parity.

10 My client has a dirt -- or a rock backyard. A
11 different residence with a different yard and things that
12 her son can do. That would be good. That would meet more
13 of his needs, and it would put him more in line with what's
14 happening at Mr. Matkulak's house.

15 I do think it's a very reasonable position to take
16 when you know, and you heard through Mr. Matkulak's
17 testimony, he relies on his attorney for everything.

18 He just basically says, well, you know, if Shawn
19 thinks it's okay, that's fine. If Shawn thinks the holiday
20 schedule, that's fine. I'll talk to my attorney.

21 When we were trying to get back reimbursements of
22 \$165 or less than \$200 on medical reimbursements, I had to
23 file in my trial statement for you to come on and summarily
24 order Mr. Matkulak pay her the money in seven days.

25 That is a concern. That is a concern for

1 protecting a child and having the ability to deal with
2 constant use of lawyers. And I think that is part of the
3 financial security.

4 Again, the testimony about the difference in the
5 living arrangement, you got dad's house at 4,500 square
6 feet, an acre and a half, five-car garage.

7 He doesn't have a mortgage payment. She's paying
8 1,950 bucks a month.

9 And even down to things like food. I mean, at
10 1,800 a month for two people, that's a significant amount of
11 money to spend on groceries. And is it a quality-of-food
12 thing? Is it a I-go-to-restaurants-all-the-time thing? I
13 don't know, but it is certainly a different standard, and
14 it's certainly -- if it's a need in his house, shouldn't it
15 be some sort of need in hers?

16 If it's the yes house always over there, and then
17 mommie's always the no house, isn't that some sort of a need
18 that should be -- we should try to establish some kind of
19 parity that the child is being treated the same way, or, at
20 least, close to the same way?

21 I guess the other thing, too, was financial
22 security. Again, she did testify about the ability to put
23 away money. The ability to have security. The ability to
24 have savings. The ability to contribute to her 401k.

25 Again, Mr. Meador did point out she's already

1 doing that, and that's absolutely true. She's doing the
2 best she can, and she's been doing it for years.

3 But, again, we're talking net worth of 460,000
4 versus eight million. It's a significant difference, and
5 it's certainly something that the Court could consider as a
6 need for mom to -- so that she doesn't just -- if she loses
7 her job or gets kicked out of her rental.

8 That is a need for security I think is real. And
9 even though, yes, it's financial security for mom, but that
10 still yields financial security for the child. She has the
11 child 50 percent of the time.

12 So I think, even though -- like I said, there is
13 no real case law to rely on, I think there is evidence
14 presented to you of specific needs.

15 I would further point to the Court that my reading
16 of the statute, it says:

17 "Any child support obligation may be
18 adjusted upon the specific needs of the
19 child and the economic circumstances of
20 the party."

21 I think, even considering what the evidence
22 already was presented, that is it unreasonable for the Court
23 to say, well, look, she shouldn't have to work two jobs, or
24 we shouldn't have to include that income as part of her
25 gross monthly income.

1 She's proven that there's a specific need. She's
2 working two jobs. Why -- why -- there's a way under that to
3 say, look, there's specific needs.

4 And, clearly, there's no way to not say we have
5 not met the second thing of economic circumstances.

6 I mean, that is an easy way to lower what her
7 child support obligation would be in the offset
8 circumstance, and even the 250 bucks that generates an
9 additional support, is something that, you know, my client
10 could desperately use.

11 I know, back in the day, I mean, courts do not
12 force you to work two jobs just so you, for instance, pay
13 alimony. She's working two jobs just to try to get to her
14 \$60,000 mark.

15 So I think that's another way to, perhaps, make a
16 finding whereby there is an upward deviation, and it's --
17 it's -- I think it's supported by the evidence because, I
18 mean, she really shouldn't have to work two jobs just to
19 make 60 grand and to support her child.

20 I think, again, there was some discussion in the
21 trial statements about Section F, and however the Court
22 interprets it.

23 Because the respondent argued for a downward
24 deviation, that suggests, at least at the time of the
25 settlement conference, they believe that you can downward

1 deviate on special circumstances and economic -- I'm
2 sorry -- on specific needs and economic circumstances of the
3 party just as easily as you can upward deviate.

4 So, to me, they're saying that subsection F
5 applies, because they requested a downward deviation.

6 So if you take Mr. Meador's interpretation of it,
7 the deviation could only be, essentially, \$823 because
8 that's what, under his interpretation, the other party, my
9 client being the other party, or \$823 is as high as it could
10 go.

11 So I just think there are ways and there are
12 special circumstances that have been presented to you.

13 I think there's absolutely no way we haven't
14 cleared the second hurdle of economic circumstances. And I
15 think a reasonable upward deviation is consistent with what
16 Mr. Meador had suggested -- or had said it cannot exceed 800
17 or so. Like I said before, even lowering my client's gross
18 monthly income by the amount that's added by her second job.

19 Again, I point out that if Mr. Matkulak were
20 actually paying 16 percent, that's a \$6,000 bill.

21 On the attorney fee issue, I would point out to
22 the Court that in the February 25, 2021 order, the Court
23 wrote:

24 "The Court is convinced Mr. Matkulak is
25 using his superior wealth to

1 unnecessarily increase the cost of
2 litigation as evidence by the filing of
3 the motion to supplement."

4 As the exhibits have shown, Your Honor, as late as
5 December of 2020, which is the letter that was admitted
6 after the -- we broke from testimony.

7 As late as December 2020, it was still
8 Mr. Matkulak's position -- legal position -- it specifically
9 said in the letter it's his legal position that he's
10 entitled to a downward deviation.

11 The settlement statement from November of 2020, he
12 sought and he requested that you lower his child support by
13 \$700, whereby he only paid \$900.

14 And I think, Judge, what's most important to this
15 argument and why, contrary to the position taken by the
16 respondent, is that we have at least attempted to show you
17 specific circumstances, and I think we clearly demonstrated
18 that the economic circumstances of the parties and
19 Mr. Matkulak's ability to pay are certainly there.

20 I mean, you can't argue with a \$33000-a-month
21 difference the incomes and say, well, you know, the economic
22 circumstances don't warrant the deviation.

23 But on the other hand, they asserted the downward
24 deviation position from, basically, when the case was filed
25 in April of 2020, all the way up to trial statements, at

1 least through December, that a downward deviation should be
2 applied.

3 But, Judge, they never had any evidence that would
4 support the economic, the second step. Because you we know
5 Mr. Meador's interpretation. It's an and.

6 So it has to be special needs -- or specific needs
7 and the economic circumstances of and the parties.

8 And, I mean, he's made a big, big thing about the
9 and, that it's conjunctive.

10 And they were arguing a position, Your Honor, all
11 the way up, as far as I'm concerned, to trial because that
12 letter from January of this year didn't say, hey, you know,
13 even if you don't accept this offer, we're going to just
14 waive our right to seek a downward deviation. It didn't say
15 that. It just simply -- it didn't include anything about
16 it.

17 But they never had any evidence to support that
18 the economic circumstances the parties warranted a downward
19 deviation to a person making five grand a month versus a
20 person making \$38,000.

21 So it was bad faith. There was no legal basis to
22 make that argument, especially under Mr. Meador's own
23 interpretation of the law.

24 And then it was only abandoned at the time of
25 trial. It was. And that's when there was no suggestion at

1 all of economic circumstance or the downward deviation. It
2 wasn't there.

3 So, again, even with all those settlement offers
4 that the Court allowed into evidence, again, there was never
5 anything that suggested we're getting rid of this, before we
6 saw it in their trial statement.

7 The other thing I think is really important as far
8 as -- through February of 2021, my client spent in excess of
9 \$26,000.

10 Unlike the respondent's position, her position
11 remains steadfast. We tried and we've tried to show you
12 using actual evidence in dealing with both factors that
13 she's entitled to an upward deviation under NAC 425.150.
14 And that's contrary to the position they've taken.

15 The ability to pay and the economic circumstances
16 just cannot be ignored in this case.

17 Your Honor, we're requesting that the Court award
18 my client attorney's fees.

19 Again, I am suggesting that, not only -- we are
20 the only party that raised all the other issues as well.
21 All the ones that needed to be dealt with in this case to
22 get a final order.

23 The only thing we ever heard from the other side
24 was, you know, here's what the child support numbers should
25 be, and you pay your own attorney's fees.

1 That's the other thing they argue in their offer
2 of January, again, it's still said you pay your own
3 attorney's fees. And by that time, \$26,000 had accrued.

4 So it wasn't in good faith to argue for a downward
5 deviation. And it wasn't in good faith, and that's why that
6 offer was not considered or accepted by Ms. Davis.

7 So in summary, Your Honor, I think as far as my
8 interpretation and trying to get a grasp on this new law, I
9 think there's enough evidence there for you to make those
10 findings, and we request that you do.

11 And we also request that, consistent with your
12 earlier order and then what's been today as far as what we
13 do consider bad faith litigation or a bad faith legal
14 position, that my client be allowed to seek attorney's fees
15 consistent with the case law.

16 Thank you.

17 THE COURT: Thank you, Mr. Ryan.

18 Mr. Meador?

19 MR. MEADOR: Yes, Your Honor. Thank you.

20 BY MR. MEADOR:

21 You know, I would be absolutely astounded if
22 Ms. Davis could cite authority from the Nevada Supreme Court
23 or, quite frankly, any other court that it is bad faith to
24 accurately state the law.

25 The great irony here is that, while my client did,

1 in his testimony, waive the right to have this Court impose
2 a downward deviation, Ms. Davis did not. She said follow
3 the law and trust your judgment.

4 If you follow the law and trust your judgment, an
5 argument could be made for a downward deviation.

6 At the time that Mr. Matkulak argued for a
7 downward deviation, Ms. Davis's financial disclosure form
8 reflected that she could pay her bills and that her bills
9 related to Bennett were \$681 a month, including child care,
10 which is a number substantially less than the formula
11 amount.

12 Now, if my client had, from day one, refused to
13 settle the case for the statutory amount, she would have a
14 good faith, legitimate argument to argue that it was
15 unreasonable.

16 But that's not true. It's not true and it's
17 intellectually dishonest.

18 She was offered more from day one, before even
19 filed her petition. And my client's testimony, she was
20 asking for \$7,500 to \$11,000 a month at that time.

21 And it's undisputed because her testimony was she
22 couldn't recall any offers that she made.

23 So it's undisputed that she was demanding \$7,500
24 to \$11,000 a month, and that is reasonable in her position,
25 and then my client's simple reference to the law is bad

1 faith and unreasonable.

2 So I'll back up. You know, it strikes me that
3 counsel's argument, for the most part, is more appropriate
4 for testimony before the legislature than testimony -- or
5 argument before this Court.

6 My client has a constitutional right to make the
7 decisions about how he raises his child.

8 He can choose to be -- afford his son the level of
9 affluence that he believes is appropriate. The State of
10 Nevada does not get to make that decision for him.

11 The State of Nevada gets to make the decision
12 about the appropriate amount of child support that he pays
13 to the mother of his child to assist her with Bennett's
14 expenses during the fifty percent of the time that Bennett
15 is in her home.

16 Now, there's been a significant change in the
17 statute since this all began. When we first started
18 negotiating, the statutory cap was less than \$1,200.

19 Under the law at that time, the Court could
20 deviate from that statutory cap based on the fact that my
21 client made more money. But there was no guidance,
22 whatsoever, to assist the trial court in how much more.
23 With the adoption of the new statute, that all changed. The
24 Nevada Legislature determined how much more my client should
25 pay.

1 Is it undisputed that under the old statute, the
2 high earners skated with the cap. They paid a far smaller
3 percentage than middle-class workers.

4 The legislature looked at that, and they did not
5 determine that the high-wager earner should pay 16 percent
6 of their total income. They determined that the amount
7 above 10,000 a month would be at a significantly lower
8 percentage.

9 Now, any one of us on this screen can agree or
10 disagree with the legislature's analysis. But it is not the
11 place of the trial court to second-guess that analysis, but
12 to simply apply the law.

13 So under the new statute, it is presumed that the
14 child's basic needs, the assistance that mother needs from
15 father, the higher-wage earner, are met by the statutory
16 formula.

17 That presumption can be rebutted by evidence that
18 the needs of a particular child are not met or are exceeded
19 by the amount calculated under the statute. That's 425C 100,
20 subparagraph 2.

21 I do not believe that Ms. Davis offered admissible
22 evidence that Bennett's needs are not met.

23 Needs are not whatever somebody can fashion an
24 argument about. Counsel argued that the single greatest
25 need is more time.

1 And yet Ms. Davis's testimony is that she works
2 those additional hours when Bennett is not with her. If she
3 did not work those additional hours, it would not give her
4 one minute more with Bennett.

5 More importantly, the Nevada Legislature told you
6 the specific needs that you can take into account. And more
7 time for mother or less stress for mother, however logical
8 anyone on the screen might think those are arguments, were
9 not factors adopted by the Nevada Legislature.

10 The first factor the Court may consider is the
11 special education needs of the child. No evidence that such
12 exists.

13 The second is the legal responsibility for the
14 support of others. No evidence of such support obligation.

15 The third is the value of services contributed by
16 either party. Each party has the child 50 percent of the
17 time. There's no evidence that either party contributes
18 greater services than the other.

19 The next factor is public assistance paid to
20 support the child. No such public assistance exists.

21 The next is the cost of transportation of the
22 child to and from visitation. The only evidence is
23 Ms. Davis moved so that she would be close to Mr. Matkulak.
24 There's no evidence of any cost of any amount associated
25 with that.

1 The relative income of both households, I'll come
2 back to.

3 Third, any my other necessary expenses for the
4 benefit of the child. And while that's somewhat broad, you
5 still have to evidence of what that expense is and what it
6 costs. No such evidence was introduced by Ms. Davis.

7 She may desire to go out to dinner more; she
8 didn't tell us what it would cost. She may desire a bigger,
9 more expensive, nicer home; she did not tell us what it
10 would cost.

11 There is no evidence that she specifically -- no,
12 I'll back up. I'll back up.

13 So the relative income of both households. I will
14 concede that I was thick as a brick as I tried to read and
15 know what that section mean at the time I drafted the
16 settlement conference statement.

17 Having gone back and reviewed it and thought about
18 it in terms of historical context, I remain absolutely
19 convinced that it addresses the issue of the cohabitant or
20 new spouse's income.

21 That argument is set forth in my trial statement;
22 I won't repeat it here.

23 It is undisputed that my client earns more than
24 Ms. Davis. And yet, if the only thing that matters is that
25 my client earns more than Ms. Davis, both for 425C 100,

1 subparagraph 2 and 425.150 would be rendered meaningless.

2 And it's basic, statutory construction that you
3 cannot construe a statute to render sections of that statute
4 meaningless when there is ability not to do so.

5 Now, Ms. Davis did admit that Bennett's basic
6 needs are met.

7 Using her financial disclosure, she testified that
8 she can save more money for retirement now than she saved
9 before Bennett's birth.

10 And I don't know by how much, because her
11 testimony was confusing to me told about whether it's the
12 almost-\$600-a-month or the almost-\$1100-a-month. But it was
13 \$500 a month and less before Bennett's birth.

14 Ms. Davis's ability to put away money for
15 retirement is not one of the factors listed in the statute.

16 But setting aside either almost \$600 or almost
17 \$1,100 a month for retirement and paying half of Bennett's
18 childcare -- the cost of Bennett's childcare when he's in
19 her care, Ms. Davis has about 1337 to 1387 a month of excess
20 income at the statutory amount. And the difference is how
21 you throw in the cost of swimming that she's not currently
22 paying out of her income.

23 Now, so let's call it 1337, just to be on the
24 conservative side.

25 With an additional 1337, she could elect to go out

1 to dinner more. It's -- there was evidence about the food
2 spending.

3 What my client testified was that he frequently
4 takes clients to dinner as part of his job. And that that
5 cost was part of his food.

6 I don't believe that -- I do not believe that
7 Ms. Davis testified that he takes clients to dinner.

8 Mr. Matkulak very clearly testify that he takes
9 clients to dinner.

10 THE COURT: But he didn't testify that that was
11 part of that amount. He did not testify that that was part
12 of what he put in for his food.

13 MR. MEADOR: Well --

14 THE COURT: He said he took clients to dinner. So
15 you're asking the Court to draw that inference.

16 MR. MEADOR: I'm asking the Court to draw the
17 inference that it's not a separate, undisclosed expense that
18 he has.

19 THE COURT: I don't know whether he doesn't have
20 an expense account at work.

21 MR. MEADOR: Okay.

22 THE COURT: That was never testified to. So, I
23 mean, you can't just presume something that wasn't placed
24 into evidence, Mr. Meador.

25 MR. MEADOR: Well, and you can't assume that

1 there's an expense account that there's no evidence of
2 either, Your Honor.

3 THE COURT: And you had the opportunity to flush
4 that out and chose not to. So you don't get to argue that
5 his expenses related to taking clients out are included in
6 his food budget.

7 MR. MEADOR: He testified that it was an accurate
8 budget, Your Honor. I'll move on.

9 Now, there is nothing in the statute when
10 specifically outline the needs this Court can take into
11 account for Ms. Davis to have a larger or more expense home.

12 There's no suggestion or admissible evidence that
13 Bennett is suffering, emotionally or otherwise, because he
14 lives in a lovely home that's smaller than the one his
15 father lives in.

16 There's no language of the statute that says the
17 home should believe equivalent.

18 There is no evidence that Bennett's needs would
19 not be met with the statutory amount.

20 Ms. Davis testified that she did not seek an
21 upward adjustment so that she could hire extra help around
22 the home, such as a maid.

23 You know, I became aware of the issue about an
24 unreimbursed expense as part of the case management
25 conference statement. I was completely unaware of it.

1 It would have taken two minutes to shoot me an
2 email saying, hey, what's up with this?

3 I think that it could have been resolved in four
4 minutes, which would have been less time than the amount of
5 time devoted to it in a case management conference
6 statement.

7 Similarly, never saw a proposal of any kind, that
8 I recall, on holidays and phone or any of those issues.

9 I don't recall ever receiving any email or
10 correspondence from Ms. Davis's counsel that there was any
11 problem with phone communication. Perhaps, I am overlooking
12 or mistaken or forgetting something, but I don't recall
13 that.

14 Now, I clearly disagree with the Court's order
15 about the litigation -- my client's litigation. That's not
16 the purpose of this argument. If my client disagrees with
17 that analysis, his remedy is on appeal, not here. So I will
18 move on from that.

19 The argument over and over and over again about
20 disparity of income is simply not the law.

21 The argument that if he paid 16 percent, it would
22 be a bigger number, is simply not the law.

23 The evidence of two jobs, the jobs she chooses to
24 work are the jobs she chooses to work.

25 My client also testified that, in addition to his

1 job, he did work in relation to his rentals. He didn't get
2 paid for that. But it doesn't suggest that it's not work.

3 There's no evidence that Ms. Davis works more
4 hours per week than my client.

5 We agree that Ms. Davis may carry the health
6 insurance on the 30/30 rule. My client continued to carry
7 Bennett on insurance because, I believe, that was what we
8 discussed and agreed upon at the case management conference
9 at that time, because her insurance was so new at that time.

10 We agree on OurFamilyWizard and text in terms of
11 simple issues like, I'm running 10 minutes late. Or more
12 importantly on an emergency, Bennett and I are on the way to
13 the emergency room, or something like that should certainly
14 be exceptions to OurFamilyWizard.

15 We agree to non-disparagement.

16 The phone contact Mr. Ryan described, one
17 day -- or one time per day, but not necessarily on exchange
18 dates when you may have more time with the child yourself.

19 My client did say the holiday schedule was
20 acceptable to him.

21 I would note that, whether appropriate or not, I
22 would ask the parties to acknowledge that when Bennett is
23 school age, they may want to treat that as a change of
24 circumstances that would warrant a revision of the holiday
25 schedule based on school schedules.

1 It's not important now at three. At when he's in
2 school and has those breaks from holidays to allow people to
3 travel, it may be important to him at that time.

4 The -- you know, I have, on many occasions, argued
5 for the dependency exemption, not for the value of the
6 dependency exception itself, but for the value of claiming
7 head of household.

8 So it is not -- they're two different things. But
9 you cannot claim of household -- you can take judicial
10 notice of the law, Your Honor, and I believe if you look,
11 you've find that you cannot take head of household status
12 unless you're claiming a dependent.

13 And that, while the dependency exemption phases
14 out, the head of household benefits do not. So I would ask
15 you to take judicial notice of that.

16 It is undeniable that my client makes more than
17 Ms. Davis. Bennett's needs are met. There's no evidence
18 that Bennett's needs are not met. Ms. Davis would have over
19 \$1,300 a month of leeway in excess of those benefits.

20 It's notable that she owns a house with a mortgage
21 payment of 1250, 1290, something like that, rents it out for
22 1950, and then pays rent of 1950. That's her choice. She
23 made that choice. It's not my place to second-guess that
24 choice.

25 She -- at a time when she claimed that she could

1 not afford to pay her legal fees, she increased her
2 retirement savings, increased her net worth, and had ample
3 cash in her liquid accounts to pay those fees and obtained a
4 new \$32,000 investment between her December and January
5 financial disclosure forms.

6 She provided a note, and then, if I understood her
7 testimony correctly, said that she and her father are still
8 talking how the money she's going to borrow -- how the money
9 she borrowed will be repaid, which is inconsistent with the
10 terms of that note.

11 It's -- I don't fault Ms. Davis for taking the
12 position that under the law she could request an upward
13 adjustment.

14 Since her current counsel has been involved, the
15 upward adjustments have been within a range that's
16 understandable.

17 The \$7,500-to-\$11,000-a-month demands, I don't
18 believe were reasonable.

19 I don't think she should be punished for asking
20 for modestly more than the statutory amount.

21 Nor should my client be required to pay her legal
22 fees for demanding more than the statutory amount when she
23 presented no evidence that Bennett's needs are not being met
24 by the statutory amount.

25 Particularly, in light of the undeniable fact that

1 she had offers, before she filed her petition and after she
2 filed her petition, pursuant to which she was offered more
3 than the statutory amount.

4 As an aside, Your Honor, you may have noticed my
5 eyes about bulged out my head when Mr. Matkulak said he had
6 not paid me anything. I texted my assistant and,
7 apparently, something -- there's some quirk in our billing
8 system and no bills ever got sent to him.

9 So I'm taken aback. He's probably taken aback.
10 But I apologize to Your Honor for that.

11 I apologize to Your Honor that your parents'
12 address came in as part of the settlement negotiations. I
13 didn't intend that to be public knowledge to anyone beyond
14 us.

15 And also apologize that my client had a third
16 person present. I thought he understood that you couldn't
17 do that, and he obviously didn't. That's, undoubtedly, my
18 fault for not making it more abundantly clear. So I
19 apologize.

20 THE COURT: I am as well because I just presumed
21 that you had spoken with your client.

22 MR. MEADOR: Well, I thought that was an
23 understood thing. I obviously didn't do a good enough job,
24 and I apologize for that.

25 There was, you know, obviously, no request for a

1 private trial, but there would have been no reason for
2 Mr. Ryan do it not know that someone else was present.

3 So, I mean, there may be a technical waiver, but I
4 would not assert that, given that way there was no way that
5 Mr. Ryan could have been aware that someone else was there.

6 So, Your Honor, at this point, it strikes me that
7 the correct decision under the law is to require
8 Mr. Matkulak to pay child support consistent with the
9 statutory formula as calculated by his expert. For each of
10 the parties to pay their own legal fees and costs.

11 Thank you.

12 THE COURT: I have three questions, I think.
13 Three, maybe four.

14 In NAC 425.100, presumption uses a specific term
15 that a child's basic needs are met by the calculated child
16 support.

17 In NAC 425.150, it talks about specific needs of
18 the child. And additionally, in that same section in the
19 sentence, it then just speaks about the terminology of needs
20 without having it be specific or basic or anything else.

21 In that first sentence in subsection 1:

22 "Specific needs of the child and the
23 economic circumstances of the parties
24 based upon the following factors."

25 So the needs of the child, tell me how we get to a

1 definition, because you seem to be referring to needs that
2 it is all basic needs, unless it is a specific need, such as
3 special education.

4 Am I correct that that's how you're looking at
5 that?

6 MR. MEADOR: Yes. I believe the law presumes that
7 that child support should cover the basic needs and that a
8 litigant can offer evidence that the basic needs of a
9 hypothetical average child may not be the needs of a
10 particular child.

11 So you may present evidence of the particular
12 needs -- the specific needs of a particular child to
13 demonstrate that that child's basic needs are different than
14 the hypothetical average child's needs.

15 THE COURT: So if specific needs is one of the
16 factors, and the relative income of both households is
17 another one of those factors, isn't that the delineated
18 special need?

19 MR. MEADOR: I believe that and is a conjunction,
20 and get to disparity only if there's evidence that the
21 particular child's specific needs are not being met.

22 THE COURT: You --

23 MR. MEADOR: Otherwise, it's --

24 THE COURT: Whoa. Whoa. Whoa. Whoa. Whoa.
25 Whoa. Whoa. My question wasn't that.

1 MR. MEADOR: Okay. I didn't --

2 THE COURT: If all we're looking at is that is
3 says:

4 "Any child support obligation may be
5 adjusted by the Court in accordance
6 with the specific needs of to child and
7 the economic circumstances of the
8 parties."

9 Then one of the specific needs that is set forth
10 below is the relative income of both households.

11 One of the factors that we're looking at -- you
12 said, you know, we don't get to special education.

13 Where do you get to the definition of specific
14 needs? Where is it defined? How's it defined? Because
15 it's different -- specific needs are clearly different than
16 basic needs.

17 MR. MEADOR: I think you have to read the entire
18 statute together, Your Honor.

19 THE COURT: And I've read it more than five times,
20 sir.

21 MR. MEADOR: And 425.140, except as provided by
22 145, the base child support, which I think parallels the
23 language base in 100, basic needs, base child
24 support -- maybe I'm mistaken -- determined according to
25 this schedule.

1 Now, that schedule takes into account every dollar
2 of Ms. Davis's income and every dollar of Mr. Matkulak's
3 income.

4 The Nevada Legislature said, when there is this
5 disparity between their incomes, this the amount of support
6 that Mr. Matkulak pays, unless there is evidence proving
7 that the needs of a particular are not met or are exceeded.

8 And then you go to 150, and it talks about all of
9 the specific factors.

10 Now, F -- F I've addressed in the trial statement.
11 I believe that the only rational argument about F, the
12 relative income of both households, is the income of the
13 cohabitant or new spouse.

14 Because, if you read this subsection F to be
15 taking Mr. Matkulak's -- or the disparity in their incomes
16 into account for a second time, there is -- where would
17 you -- under what factor would you get in the new spouse's
18 income?

19 THE COURT: Yes. I understand your position, but
20 you still haven't answered my question about where's the
21 definition of basic needs -- we know what those
22 are -- versus specific needs versus needs?

23 Because in this statute, all three of those are
24 used, and they're all very different.

25 MR. MEADOR: And I didn't write it. I can only

1 make my argument about interpretation.

2 THE COURT: Okay.

3 MR. MEADOR: My argument of interpretation is that
4 if Ms. Davis's position that all that really matters is that
5 Mr. Matkulak earns more than her, the disparity in income,
6 and therefore he has a bigger house, if that's all matters
7 is the disparity of income, then 425.150 and 425.100,
8 subparagraph 2, rendered meaningless.

9 MR. RYAN: Your Honor, though, under --

10 THE COURT: Whoa. Whoa. Whoa. I'll let you
11 respond to the same positions because I'm asking questions
12 now that are different.

13 Tell me if it is your opinion, sir, that the new
14 statute has eliminated the case law related to child
15 support?

16 MR. MEADOR: Yes. Absolutely.

17 THE COURT: Okay. So where in this case, in this
18 statute does it say that I have to impose Wright v. Osburn?

19 MR. MEADOR: In 425.037 and 425.115 3.

20 THE COURT: 425 -- what did you say? 425?

21 MR. MEADOR: 037. They're each an obligor. Then
22 statute then goes to say what an obligor has to do:

23 "Pay support consistent with the statute."

24 Then 115, subparagraph 3, it talks about the
25 offset with the party with the higher support obligations

1 pays the other party the difference. That is the Wright v.
2 Osburn.

3 THE COURT: Okay.

4 MR. MEADOR: I've read this more times than I care
5 to admit as well, because parts of it not -- I'm not the
6 legislature. It may not be to support the statute I would
7 adopt, but the Nevada Legislature said when there's this
8 disparity, this is how much he pays.

9 THE COURT: Finally, does she have to work two
10 jobs in order be --

11 MR. MEADOR: I don't know. Those aren't facts
12 before the Court.

13 THE COURT: Well, yes they are. It was put in
14 whether or not she should have to work two jobs.

15 You put in your settlement conference statement
16 that you believe that there was a possibility that she was
17 underemployed.

18 So if she were to stop coaching, and your client
19 testifies that she had previously made \$40,000 a year, to
20 the best of his knowledge, but she's capable of making 60,
21 which she is with working two jobs, is there a requirement
22 anywhere that she has to work two jobs in order to meet the
23 basic needs?

24 MR. MEADOR: I'm not aware of an obligation to
25 work more than a full-time job. But that's not the facts

1 that are before this Court.

2 The facts before this Court right now are that
3 they both choose to work hard in more than one capacity to
4 support their child.

5 THE COURT: Okay.

6 MR. MEADOR: That's the facts before this Court
7 today.

8 THE COURT: Thank you.

9 Mr. Ryan, you wanted to be heard.

10 MR. RYAN: Your Honor, I would just refer you back
11 to 425.150, and consistent with what you're saying.

12 Mr. Meador, when he read that statute to us, he
13 talked about the and, and then he said the deviation factors
14 or the specific needs are then listed. Special educational
15 needs of the child.

16 But he failed to reference Exhibit number H -- or
17 letter H that says obligor's ability to pay.

18 So if he's going to argue that these are the
19 specific needs of a child, and these are set out by the
20 Legislature and this is how you can deviate as to specific
21 needs, the obligor's ability to pay, certainly, would be a
22 deviation factor that the Court could apply.

23 He didn't read that one when he read all the other
24 ones.

25 So if that's his interpretation, I think -- if

1 he's going to say these are the specific needs and the
2 Legislature has defined them, then that's one of them. The
3 obligor's ability to pay. So I think that alone allows you
4 to deviate upward.

5 The other thing, and I wrote it in my trial
6 statement, they don't define specific needs. And, again, if
7 we're saying that under that statutory scheme -- I agree it
8 says what Mr. Meador said -- that the basic, base needs are
9 met by the statute amount.

10 The only way to have deviation --

11 THE COURT: Hold on for one second.

12 MR. RYAN: I guess there is no point, then, in the
13 deviation factors, because I think if the Legislature was
14 saying you have, essentially, special needs, then they would
15 have defined that.

16 But instead they -- just like the Court was
17 looking at, and Mr. Meador just argued this, that he's
18 saying that the specific needs are listed here. And we've
19 put on plenty of evidence about the obligor's ability to pay
20 and the relative income of both households.

21 So, again, I think you have evidence of beyond
22 that with regard to what we consider specific needs of
23 Bennett. And I think we've put on evidence, obviously, that
24 fits into either F or H of the statute.

25 Agree with Mr. Meador that the Wright vs. Osburn

1 does apply under the statute that he referred you to.

2 And I don't believe my client has any obligation
3 to work two jobs. The evidence before the Court is she does
4 it to try to make a little extra money to provide for her
5 child and herself.

6 I get Mr. Matkulak's argument. But, again, Your
7 Honor, if you look at his expenses in his financial
8 disclosure form, he's not doing work on these rental houses.
9 It's all being done. He's asking you for -- the financial
10 disclosure form shows all his costs. It's not a job. I
11 mean, he collects a check. He has people do all the work on
12 his eight rental houses. So I would just point that out
13 you.

14 And one other thing about Mr. Meador's argument,
15 if I may, the settlement statement that we filled on
16 11/6/20, does cover all the things that I suggested in my
17 trial statement that Mr. Meador said he wasn't aware of.
18 It's all in there. All right.

19 THE COURT: Thank you.

20 MR. MEADOR: Your Honor, the only thing I would
21 like to add, if I may, is that, if you actually look at 150,
22 it talks about the needs of the child in factors.

23 The first half, A through F -- A through G are
24 needs. G and H are factors.

25 Bennett doesn't need -- I mean, the obligor's

1 ability to pay is not a need of Bennett.

2 It's a factor the Court considers if there's
3 evidence that child's needs are not met.

4 THE COURT: Is that it, Mr. Meador?

5 MR. MEADOR: Oh, you know, I can go ad nauseam,
6 Your Honor, but I will --

7 THE COURT: Well, I have to tell the parties that
8 I smiled when Mr. Meador said one last thing.

9 Mr. Meador always gets the last word. He's well
10 known for that, and the Court was not smiling at any aspect
11 other than Mr. Meador.

12 I wasn't try to belittle what's been happening
13 here today and the importance of this case. I was, rather,
14 laughing at Mr. Meador.

15 All right. I'm going to take a few minutes,
16 approximately 15, to put my thoughts together, and then I'll
17 put my order on the record.

18 MR. RYAN: Thank you, Your Honor.

19 (Whereupon, recess was had from 4:00
20 P.M. to 4:20 P.M.)

21 THE COURT: All right. Thank you. Don't hate me.
22 I am going to take it under submission.

23 MR. MEADOR: I had thought that if you were going
24 to give us a decision today, it was made before we put the
25 case on.

1 THE COURT: No. I can't get my math done quickly
2 enough, I can't put my thoughts in the order that I want
3 them done, and I can't make the record clean enough to do
4 that.

5 No, I hadn't made my decision.

6 MR. RYAN: Thank you, Your Honor.

7 THE COURT: So I will put it under and do that.
8 Thank you.

9 Madam court reporter, will you remain after
10 everyone signs off.

11 We will be in recess.

12 (Whereupon, proceedings were concluded
13 at 4:20 P.M.)

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.

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4 I, BRANDI ANN VIANNEY SMITH, court reporter, do
5 hereby certify:

6 That I was present via Zoom audio visual on March
7 11, 2021, at the Trial, and took stenotype notes of the
8 proceedings entitled herein, and thereafter transcribed said
9 proceedings into typewriting as herein appears.

10 That the foregoing transcript is a full, true, and
11 correct transcription of my stenotype notes of said
12 proceedings consisting of 230 pages.

13 DATED: At Reno, Nevada, this 28th day of July,
14 2021.

15

16 /s/ Brandi Ann Vianney Smith

17 BRANDI ANN VIANNEY SMITH

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