

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

Lisa M. Eorio,

Appellant,

vs.

Joel E. Eorio,

Respondent.

Supreme Ct Case No. **83132**

District Ct Case No. **D-20-608267-D**

JOINT APPENDIX

VOLUME III

Bruce I. Shapiro, Esq.
Nevada Bar No. 004050
Shann D. Winesett, Esq.
Nevada Bar No. 005551
PECOS LAW GROUP
South Pecos Road, Suite 14A
Henderson, Nevada 89074
(702) 388-1851
Attorneys for Appellant

Emily McFarling, Esq.
Nevada Bar No. 008567
MCFARLING LAW GROUP
6230 West Desert Inn Road
Las Vegas, Nevada 89146
(702) 565-4335
Attorney for Respondent

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FILED

AUG 19 2021

Sharon A. Shuman
CLERK OF COURT

COPY

TRANS

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JOEL EORIO,)	
)	
Plaintiff,)	CASE NO. D-20-608267-D
)	
vs.)	DEPT. Q
)	
LISA EORIO,)	APPEAL NO. 83132
)	
Defendant.)	

BEFORE THE HONORABLE BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE

TRANSCRIPT RE: NON-JURY TRIAL

THURSDAY, APRIL 1, 2021

1 APPEARANCES:

2 The Plaintiff: JOEL EORIO
3 For the Plaintiff: JESSICA M. FRIEDMAN, ESQ.
4 170 S. Green Valley Pkwy., #300
5 Henderson, Nevada 89012
6 (702) 990-3119
7 KENNETH S. FRIEDMAN, ESQ.
8 400 S. Maryland Pkwy.
9 Las Vegas, Nevada 89101
10 (702) 474-4660
11 The Defendant: LISA EORIO (Tel.)
12 For the Defendant: ASHLEY D. BURKETT, ESQ. (Tel.)
13 516 S. 4th St.
14 Las Vegas, Nevada 89101
15 (702) 776-9313
16
17
18
19
20
21
22
23
24

1	<u>I N D E X O F W I T N E S S E S</u>				
2	<u>PLAINTIFF'S</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	<u>WITNESSES:</u>				
4	LISA EORIO	7	51	56	--
5	MICHAEL EORIO	60	73	85	--
6	JOEL EORIO	88	103	108	--
7	<u>DEFENDANT'S</u>				
8	<u>WITNESSES:</u>				
9	JOEL EORIO	109	--	--	--
10	LISA EORIO	145	157	174	--

* * * * *

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1 LAS VEGAS, NEVADA

THURSDAY, APRIL 1, 2021

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

3 (THE PROCEEDINGS BEGAN AT 09:04:57)

4
5 THE COURT: We are on the record in the Eorio
6 matter, case D-20-608267-D. Please confirm your appearances.
7 I have the Plaintiff and Counsel here in court. So go ahead
8 and confirm your appearances.

9 MS. FRIEDMAN: Jessica Friedman, bar number 13486,
10 present on behalf of Plaintiff, Joel Eorio.

11 MR. FRIEDMAN: And good morning, Your Honor.
12 Kenneth Friedman, bar number 5311. Mr. Eorio wanted to hire
13 me for the unbundled capacity to assist with the hearing, the
14 evidentiary hearing only.

15 THE COURT: Okay. Good morning. And now moving to
16 Defendant's side. Please confirm your appearances.

17 MS. BURKETT: Good morning, Your Honor. Ashley
18 Burkett, 15185, on behalf of Defendant Lisa Eorio who is
19 present by BlueJeans with us this morning.

20 THE COURT: Good afternoon -- or good morning, I
21 mean. All right. This is the time set for trial. I -- I did
22 receive and -- and sign off on the stipulation that narrowed
23 the issues. I appreciate the work and efforts undertaken to
24 reach those stipulations and to streamline this. It's always

1 encouraging to see that there have been some settlement
2 discussions. There are some outstanding issues. Any
3 additional stipulations to report on before we begin? Any
4 other agreements?

5 MS. FRIEDMAN: I don't believe so, Your Honor. I
6 believe the main issue is the relocation. Obviously --

7 THE COURT: Right.

8 MS. FRIEDMAN: -- child support will go with that,
9 but absent that, I believe, everything is settled.

10 THE COURT: That appears to be the focus today is
11 the issue of custody relocation and -- and the result that
12 that will -- or the impact that'll have on -- on child
13 support. Let -- let me also inquire before we begin. Because
14 the parties had participated in mediation, they had negotiated
15 two parenting plans. One, if relocation was granted, one if
16 -- if relocation was denied. The sense I -- I got from the
17 pretrial memo filed by the Defendant, however, is that if
18 relocation is granted, Mom sees herself also relocating at --
19 at least at some point in the near future to New Mexico. Is
20 that correct?

21 MS. BURKETT: Mom would do whatever it takes to be
22 with her children, but --

23 THE COURT: Okay.

24 MS. BURKETT: -- Your Honor; her preference is to

1 stay here with the children and to have primary physical if
2 Dad insists on relocating.

3 THE COURT: Okay. And understood. Understood. I
4 -- and -- and the only reason I ask that is because I have
5 these two parenting plans. I don't know if it's as simple as
6 me adopting one parenting plan or -- versus the other. But
7 let's go ahead and -- and proceed. And we are set for the --
8 the full day. I don't know if we'll need all that time, but
9 we are set for -- for the full day. But I will caution both
10 sides, time evaporates very quickly even though you think --
11 you -- you envision the entire day laying out before you. It
12 does evaporate very quickly.

13 So I do keep track of time and I'll let you know
14 periodically how much time you've used. So with that being
15 said, and -- and understanding I've had a chance to read the
16 pretrial memos that both sides have -- have offered. But
17 you're entitled to make an opening statement if you would like
18 to use like to use that as part of your allocation of time.
19 I'll start with the Plaintiff, Mr. Friedman.

20 MR. FRIEDMAN: Judge, I -- I know, based on your
21 directive, that you've read the pretrials. The issue is
22 pretty simple. If Defense Counsel wants to waive, I'll waive.
23 If she wants to have an opening, then I'll have an opening.

24 THE COURT: Ms. Burkett, what's your preference?

1 MS. BURKETT: I'm -- I'm willing to waive, Your
2 Honor, so we can kind of expedite the process and --

3 THE COURT: Okay.

4 MS. BURKETT: -- get -- and get down to the issue at
5 hand.

6 THE COURT: I appreciate that. So let's go ahead
7 and proceed with testimony. And Plaintiff, you may call your
8 first witness.

9 MR. FRIEDMAN: Yes, Judge. I'm going to -- I'm
10 going to call the Defendant.

11 (WITNESS SUMMONED)

12 THE COURT: Okay. All right. So Ms. Eorio, if
13 you'll please raise your right hand to be sworn.

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

17 THE DEFENDANT: I do.

18 THE COURT: Okay. All right. And Counsel, you may
19 -- you may proceed.

20 MR. FRIEDMAN: Okay.

21 LISA EORIO
22 called as a witness on behalf of the Plaintiff, having been
23 first duly sworn, testified upon her oath as follows on:

24 DIRECT EXAMINATION

1 BY MR. FRIEDMAN:

2 Q Ma'am, as you may recall, my name is Kenneth
3 Friedman and I'm helping representing your husband in this
4 matter. I'm going to ask you some questions, okay?

5 A Yes, sir.

6 Q May I call you Lisa?

7 A Yes, sir.

8 Q Okay. Lisa, how many children -- how many children
9 are -- were born of the parties?

10 A We have two biological children together and Gianni
11 is -- was born not of Joel's biological.

12 Q Okay. So your youngest child is not the biological
13 child -- is not the biological child of the Plaintiff; is that
14 correct?

15 A Correct.

16 Q Okay. However, for all intents and purposes Joel
17 has always been dad to your youngest child, correct?

18 A Absolutely.

19 Q And you want that to remain for the indefinite
20 future. You want your youngest child to know Joel as -- as
21 dad forever, correct?

22 A Yes, I have no intention of severing that bond.

23 Q And Joel from day one has always stepped up to the
24 plate; is that correct?

1 A Mostly, yes.

2 Q Okay. And Joel is well aware that that child was --

3 or at some point in time after the child was born Joel was

4 aware that that child was not hi -- his -- was not his

5 biological child, correct?

6 A Joel was informed when I was pregnant that the child

7 was not his.

8 Q Okay. And ever since that time Joel has took child

9 as -- as his own, correct?

10 A Yes, sir.

11 Q All the children were born in New Mexico, correct?

12 A Yes.

13 Q And when did you --

14 THE COURT: Hang -- hang on just one moment. Do we

15 have a witness?

16 MS. BURKETT: I believe so, Your Honor. If we can

17 have him jump off for now.

18 THE COURT: Or we can move to a breakout session and

19 then grab any --

20 MS. BURKETT: That would be --

21 THE COURT: -- witnesses.

22 MS. BURKETT: -- appreciated.

23 THE COURT: Let's --

24 MS. BURKETT: Thank you.

1 THE COURT: Let's go ahead if -- if we can move to a
2 breakout session and then -- and then if we need to add a
3 witness, we'll do so.

4 UNIDENTIFIED VOICE: Okay. Trying to figure out how
5 to jump off here.

6 THE COURT: Oh, that's okay. We're going to go to a
7 breakout. You're -- you're fine, sir.

8 (COURT AND CLERK CONFER BRIEFLY)

9 THE COURT: And I don't know if there's any way Ms.
10 Eorio for you to increase your volume. It's -- it's fairly
11 light. I can hear you, but it's -- the volume's fairly low
12 and I think we have ours maxed out, so okay.

13 THE WITNESS: Is that --

14 THE COURT: Okay.

15 THE WITNESS: -- better, sir?

16 THE COURT: And I don't know if I -- I heard an
17 answer to the last question. Counsel?

18 MR. FRIEDMAN: I'll -- I'll go again.

19 THE COURT: Okay.

20 BY MR. FRIEDMAN:

21 Q Ma'am, all three children were born in -- in New
22 Mexico, correct?

23 A Yes, sir.

24 Q Okay. And you, Joel, and the three children lived

1 in New Mexico until 2019; is that correct?

2 A Yes, sir.

3 Q And Joel and the children and yourself prior to 2019
4 had strong bonds to the state of New Mexico, correct?

5 A Yes, sir.

6 Q And I just let -- saw a witness that you're going to
7 call later on. I believe -- is that your father, ma'am?

8 A It is.

9 Q And your father lives in New Mexico, correct?

10 A Yes, sir.

11 Q Okay. And he's going to continue to live in New
12 Mexico for the indefinite future to the best of your
13 knowledge?

14 A Yes, sir.

15 Q Okay. Joel's parent -- let's talk about Joel's
16 parents. Joel's parents live in New Mexico, correct?

17 A Yes.

18 Q They have a very, very strong bond with their
19 grandchildren, with your children and their grandchildren,
20 correct?

21 A Yes.

22 Q Okay. And as a matter of fact, they provided
23 substantial day -- I -- I don't want to use daycare, but
24 supervision when the two of you are unable to do it due to

1 work or other activities; is that correct?

2 A Yes.

3 Q And grandma and grandpa do a lot of things with the
4 children. They -- they take them to the park, they take them
5 bike riding, they -- they interact with the children when they
6 were living in New Mexico on a daily -- almost on a daily
7 basis, correct?

8 A Correct.

9 Q You moved to Las Vegas in 2019. What month did you
10 move, ma'am?

11 A Well, I moved May 1st, 2019.

12 Q And when did Joel and the children move?

13 A They joined me August 1st of '19 once I secured a
14 home for the children.

15 Q Okay. Joel also has a brother in New Mexico,
16 correct?

17 A Yes.

18 Q Okay. And he has nieces and nephews in New Mexico
19 as well?

20 A One of each. Yes, sir.

21 Q Okay. And they -- all the cousins, they love --
22 they love each other and they like to hang out with one
23 another, correct?

24 A Periodically.

1 Q Okay. Now, you remember I took your deposition,
2 right? You came to my office and I took your deposition.
3 There was a court reporter there. You raised your right hand,
4 swore to tell the truth, the whole truth, and nothing but the
5 truth. Do you remember that?

6 A Yes, sir.

7 Q Okay. And everything you testified to in there was
8 true and correct?

9 A Yes, sir.

10 Q Now, Joel -- due to your work schedule, Joel has
11 been the primary caretaker essentially of the children from
12 their birth up through the -- up through the -- at least the
13 instant litigation, correct?

14 A Yes, sir.

15 Q Okay. Joel's been the one that's primarily took
16 care of their doctor's appointments, their schooling,
17 extracurricular activities, clothing, and things like that,
18 correct?

19 A No, sir.

20 Q When you testified to that earlier -- would you like
21 me to go to your -- the page in the deposition?

22 A I do agree that Joel has primarily been the one to
23 take them to their appointments that I had set for them due to
24 availability and lack of employment. But I have always been

1 very proactive in their school, parent/teacher conferences
2 included. I was their tee-ball coach for -- well, Harley's
3 tee-ball coach for four years, in addition to, holding the two
4 jobs.

5 Q Okay.

6 A I am -- I am very proactive in the children's lives.
7 He did have more time unfortunately as I was typically working
8 60 plus hours a week or possibly two jobs most of the time.

9 Q So by definition by default you've delegated a lot
10 of the responsibilities to Joel, correct? Yes or no?

11 A Yes.

12 Q All right. You -- you have a little bit of -- you
13 have some emotional instability; do you not, ma'am?

14 A No, sir.

15 Q You don't?

16 A No, sir.

17 Q You don't have any emotional instability whatsoever?

18 MS. BURKETT: Objection, Your Honor. Asked and
19 answered.

20 THE COURT: Sustained.

21 BY MR. FRIEDMAN:

22 Q Okay. Ma'am, have you ever threatened to commit
23 suicide?

24 A I have written in a journal about perhaps they would

1 be better off without me and things of that nature --

2 Q Okay. Ma'am, so --

3 A -- because I knew --

4 Q Okay. Ma'am, you've written in a journal that you
5 -- that the children would be better off without you and to
6 remain with Joel, correct? Yes or no?

7 A I do not believe so. I have asked myself if they
8 would be.

9 Q Ma'am, did you -- yes or no, did you write in a
10 journal that the children would be better off without you and
11 to be left in Joel's care and control? Yes or no?

12 A Not to the best of my knowledge, sir.

13 Q Okay. Do you normally write things like that in
14 your journal many, many times that the children shouldn't be
15 with you and they should be with -- with --

16 (COUNSEL CONFER BRIEFLY)

17 A No, sir.

18 Q All right. What exhibit is this? Do you have the
19 exhibits in front of you, ma'am?

20 (COUNSEL CONFER BRIEFLY)

21 A I can. One moment. Okay.

22 Q You know, I'm going to -- hold on. Hold on. Ma'am,
23 I'm going to digress a minute. Do you -- you have referred to
24 your sister as a psycho sister; is that correct?

1 A At --
2 Q Yes?
3 A -- one point --
4 Q Yes?
5 A -- when we were arguing --
6 Q Ma'am.
7 A -- yes, I did.
8 Q Okay. Okay. And your sister has some emotional
9 instability; is that correct?
10 A She is bipolar.
11 Q She's diagnosed bipolar and she has -- and she takes
12 medicine for that, correct?
13 A Yes, as of, I believe, the last three years she has
14 been seeing a physician for that and is on medication and has
15 had no manic episodes.
16 Q Well, I think in your deposition you specifically
17 told me two years ago she had an episode, correct?
18 A I said it had been a couple of years.
19 Q All right.
20 A I don't know an exact time.
21 Q Okay. And your sister does not possess a driver's
22 license, does it (sic) not? She does not possess --
23 A I'm sorry?
24 Q -- a driver's license, does it -- does she?

1 A No, sir.

2 (COUNSEL CONFER BRIEFLY)

3 Q So ma'am, I'm -- I'm going to ask you one more time.
4 Did you specifically write in a journal that you wanted to
5 die, yes or no?

6 A I probably did --

7 Q Okay.

8 A -- in the --

9 Q Thank you.

10 A -- earlier years.

11 Q Okay. And did you specifically write in your
12 journal that the kids are better off with Joel and without
13 you, yes or no?

14 A Not to the best of my knowledge, sir.

15 Q Can you look -- do you have Exhibit 2 that's in
16 front of you, ma'am?

17 A I am looking through them.

18 Q Do you have Exhibit 2 there?

19 A Yes, sir. There's several pages. I'm looking --

20 Q Okay.

21 A -- through them.

22 Q Is this your handwriting, ma'am?

23 A Yes.

24 Q Did you write this?

1 A Yes, sir.

2 MR. FRIEDMAN: Judge, we're going to move for
3 Exhibit 2 to be admitted into evidence.

4 THE COURT: Any objection to the admission of
5 Exhibit 2?

6 MS. BURKETT: I -- Your Honor, are these are part of
7 the same journal or are these separate documents? And we
8 don't have dates for any of them either.

9 MR. FRIEDMAN: This is --

10 MS. FRIEDMAN: They're from her journal.

11 THE COURT: If -- if you'll just lay a foundation
12 in --

13 MR. FRIEDMAN: Yeah.

14 THE COURT: -- that regard, Mr. Friedman. So
15 (COUNSEL AND CLIENT CONFER BRIEFLY)

16 BY MR. FRIEDMAN:

17 Q Okay. This -- ma'am, you -- you historically
18 prepared a journal in your own handwriting, correct?

19 A In the early years of my marriage, yes.

20 Q Okay. And is this -- does this accurately depict of
21 the journal that you prepared in your early years of marriage?

22 A I'm sorry, can you --

23 Q Does --

24 A -- repeat that?

1 Q The -- the document that's in front of you, Exhibit
2 2, does that accurately depict your journal that you prepared
3 in the early years of your marriage?

4 A Yes, sir. That is my journal.

5 Q Okay.

6 A Or only pieces of it.

7 MR. FRIEDMAN: Okay. And we would ask that it be
8 admitted, Your Honor.

9 THE COURT: Okay. Any -- any objection to the
10 admission of Exhibit 2?

11 MS. BURKETT: Sorry, just -- just clarification. So
12 Plaintiff's Exhibit Eorio 0231, the rest look like they're
13 entries into a diary like for -- privately her speaking to
14 herself, but it looks like this particular page is a letter to
15 Joel. Is that supposed to be admitted as part of the same
16 exhibit?

17 THE COURT: Is there a let -- letter that's part of
18 it that was intended to be?

19 MR. FRIEDMAN: It looks like -- yes, Judge. It
20 looks like it's a letter -- I -- I guess Ms. Friedman prepared
21 the exhibit that it was all of her handwriting. I guess it
22 looks like it's in two portions.

23 THE COURT: Okay. So the -- so my understanding is
24 the offer is that that letter is part and parcel of what's

1 being offered as part of Exhibit 2. The -- it -- but it -- as
2 you've identified, it sounds like it is a letter to -- to the
3 Plaintiff. With that understanding, any objection to the
4 admission of Exhibit 2?

5 MS. BURKETT: No, Your Honor.

6 THE COURT: Exhibit 2 is admitted into the record.

7 (PLAINTIFF'S EXHIBIT 2 ADMITTED)

8 BY MR. FRIEDMAN:

9 Q Ma'am, I'm going to have you turn to 0233.

10 (COUNSEL CONFER BRIEFLY)

11 Q Do you have that page in front of you, ma'am?

12 A Yes, I do.

13 Q Ma'am, did you -- on -- on that page, do you see
14 where the sentence says I truly believe that everyone would be
15 better off if I was removed from the picture altogether?

16 A Yes, I wrote that.

17 Q You wrote that to Joel, correct? Correct, ma'am?

18 A No, that was just another entry in my journal. That
19 was --

20 Q Okay. So --

21 A -- not part of the letter --

22 Q So that was --

23 A -- to Joel.

24 Q Okay. So you're -- you're saying that be removed

1 from the picture. So then obviously if you're removed from
2 the picture, then the children would remain with Joel,
3 correct?

4 A Yes, sir.

5 Q Okay. And you would agree with me that that's --
6 and that's not a normal statement a mother would make about
7 her children; isn't that correct, ma'am?

8 A Generally, no.

9 Q Okay. And it's not a normal statement where you say
10 that, you -- you know, you would want a -- and I'm sorry, let
11 me -- I -- I'll strike that. You have stated before that in
12 your journal that you had thoughts of committing suicide,
13 correct?

14 A No, it was me upset venting as I knew Joel was going
15 through my things. I thought perhaps if he saw how devastated
16 I was and how unhappy I was that perhaps, you know, we can
17 work on our issues since he wouldn't actually verbally speak
18 with me.

19 Q So you -- you stated in your thoughts to -- and to
20 your journal and if Joel saw that that you're saying that you
21 wanted to commit suicide that would help you guys get back
22 together?

23 A Not back together, just hopefully he would -- it
24 would put it in perspective how genuinely unhappy I was and

1 hope for a little bit of support and understanding --

2 Q Okay. And ma'am, you -- you would agree with me
3 that that's --

4 A -- on his part.

5 Q -- not a normal statement that a mother would make
6 that she wanted to, you know, leave this Earth and leave her
7 children; isn't that correct?

8 A Correct.

9 Q Now, ma'am, I asked you in your deposition if the
10 Court allowed Joel to relocate with the children, would you
11 move back. And you -- you remember your first answer was
12 possibly. Do you remember that?

13 A Yes. Assuming I can find gainful employment and
14 provide for the children as I do here.

15 Q Gainful employment as you do here. Okay. Let's
16 talk about that for a minute now. You've had five jobs since
17 you've been in Las Vegas; isn't that correct, ma'am?

18 A Yes, sir.

19 Q Okay. So that's not stable employment in Las Vegas,
20 Nevada, is it, ma'am?

21 A I have had a rough patch beginning of this year. It
22 started off very rough.

23 Q And you -- you don't have any savings or anything,
24 do you, ma'am?

1 A I'm sorry?

2 Q You don't have a big savings, 10, 20, \$50,000 in a
3 savings account, do you?

4 A No, sir.

5 Q Okay. So if -- if you lost employment again,
6 financially you and the children, if you remained in Las
7 Vegas, you may be in -- you -- you may be in jeopardy?

8 A No, sir.

9 Q No. Okay.

10 A I have never had a gap in employment. If I had lost
11 a job or resigned from a job, there has always been one within
12 a matter of days.

13 Q Okay. Do you live paycheck-to-paycheck, ma'am?

14 A Currently, no.

15 Q How much money have you paid your lawyer so far?

16 A Right -- I don't have all the numbers right in front
17 of me, but approximately 6,000, \$7,000.

18 Q Okay. You -- when I took your depositions, you were
19 -- you were at IHOP as a waitress, correct?

20 A Yes, sir.

21 Q And you testified that what it get -- in -- when it
22 was warming in September and October that you were roughly
23 taking in tips of about \$200 a day, correct?

24 A On a good day. Yes, sir. Mostly weekends.

1 Q Okay. And you testified when it got warmer that
2 historically, you know, you would make that -- closer to \$200
3 a month as -- I'm sorry, \$200 a day as opposed to 50 to a
4 hundred dollars a day, correct?

5 A No, sir. I testified that it was speculative and
6 that tips vary from day-to-day and I could not guarantee a set
7 amount of tips.

8 Q Ma'am, did you not testify that when it's warmer you
9 make approximately 200 bucks a day?

10 A Prior to everything going on; yes, on the weekends,
11 but I can't guarantee that that amount would continue with
12 weather.

13 Q Ma'am, on page 12, you specifically said I'd say
14 September and October, yes. Since the when and everything.
15 You said you were making about 200 bucks a day. September and
16 October, we were in the middle of the pandemic, correct?

17 A Yes, sir.

18 Q And you were still making in -- in the warm weather
19 in the good season 200 bucks a day, right?

20 A Some days, yes.

21 Q All right. Now, you left that job. Did you get
22 fired from the IHOP again?

23 A No, sir.

24 Q You quit?

1 A I resigned.

2 Q You resigned from that job. Okay. Let's talk about
3 -- let's go back to New Mexico. You moved out here to become
4 an assistant manager at Denny's?

5 A Yes, sir.

6 Q And you moved out here to -- and the salary was a
7 thousand dollars a week, right?

8 A Yes, sir.

9 Q Okay. When you moved out here, did you get paid a
10 thou -- and you were making a thousand dollars a week, right?

11 A Yes, sir.

12 Q So that's \$52,000 a year.

13 A Yes, sir.

14 Q Okay. So that's more money that you -- is that more
15 money than you've ever made since you've been in Las Vegas?

16 A No, sir. I would say they're pretty equivalent.

17 Q Okay. So you quit Denny's though, right?

18 A Yes.

19 Q And you were making \$52,000 a year. Where -- where
20 was your next job after you quit Denny's?

21 A I took a general manager position back at IHOP for
22 the same salary, 52,000 a year.

23 Q And then that one you got fired from for flipping
24 off a customer, right?

1 A No.

2 Q No?

3 A I was fired for unprofessional behavior because I

4 flipped off a cook.

5 Q Oh, I'm sorry. You flipped off a cook. Okay.

6 A Uh-huh (affirmative).

7 Q So then after that you went to -- so that's your

8 second job. You third job you went to another IHOP, correct?

9 A Yes, sir.

10 Q And you became a server there, right?

11 A I started off as a server.

12 Q Okay. And how long did you work at the second IHOP

13 for?

14 A For that franchise, I was there for three months. I

15 was promoted to an area manager position --

16 Q Ma'am, I just asked --

17 A -- for the --

18 Q -- you how long you were there for.

19 A Three months.

20 Q Okay. And after that job, where did you go?

21 A To a different franchise for --

22 Q For --

23 A -- IHOP, as well.

24 Q Okay. So a different IHOP.

1 A Uh-huh (affirmative).
2 Q Is that a yes?
3 A Yes, sir.
4 Q And how long did you work that -- at that job for?
5 A I just resigned, so I was there for just over six
6 months.
7 Q And now you took a job at -- where did you take a
8 job at?
9 A At the Emerald Island Casino.
10 Q Okay. And -- and that's --
11 A Well, the restaurant inside.
12 Q And you make -- I didn't see your FDF, but I heard
13 it was just filed yesterday or something like that. And you
14 make \$40,000 a year; is that correct?
15 A Yes, sir.
16 Q So you took these other jobs making less than you
17 were making before, correct?
18 A Yes, sir.
19 (COUNSEL CONFER BRIEFLY)
20 Q Now, ma'am, you know your kids want to move back to
21 New Mexico, right?
22 A No, sir.
23 Q Your kids love being with their grandparents, right?
24 A They love their grandparents, yes.

1 Q Okay. As a matter of fact, that bond is -- on a
2 grandparent bond between grandparent and children on a scale
3 of zero to 10, they're -- they are pretty close to a 10,
4 aren't they?

5 A They are close.

6 Q As a matter of fact, Joel's parents have been coming
7 out here on a bimonthly basis to assist with some daycare,
8 have they not, ma'am?

9 A To the best of my knowledge, his parents have been
10 here on an every other week. So a biweekly basis.

11 Q So you agree with me if they come out here every
12 other week to assist in the children that that would further
13 establish their strong grandparental bond. We -- isn't that
14 correct?

15 A I -- I could.

16 Q Has your dad ever been out to Las Vegas to see the
17 kids?

18 A Not as of yet with the pandemic.

19 Q Ma'am, it was a --

20 A My father is --

21 Q -- simple question.

22 A -- elderly.

23 Q Ma'am, 2019 through the day, I just asked if your
24 dad had been to Las Vegas. So that's a no, right?

1 A Correct.

2 Q Okay. Now, you currently live -- do you currently

3 live with your sister, your mother, and your boyfriend?

4 A My mother and my sister and the three children.

5 Q Not -- not your boyfriend?

6 A No, sir.

7 Q Okay. And your sister cares for the kids sometimes

8 when you're working, right?

9 A Yes, sir.

10 Q Your sister doesn't have a driver's license, does

11 she, ma'am?

12 A No, sir.

13 Q So God forbid if she was watching the kids and

14 something happens, she wouldn't be able to rush them to the

15 doctor or do anything; isn't that correct, ma'am?

16 A If there was an emergency, she would call 911. My

17 mother is also here who possesses a vehicle and a license.

18 Q Does your mom --

19 A And I have given my sister my account information in

20 case of emergency. She can call an Uber.

21 Q She can call an Uber. So -- so God forbid if

22 something happened with the kid and we had to rush him

23 somewhere we would have to wait until the Uber driver got

24 there, right?

1 MS. BURKETT: Objection, Your Honor.

2 A If something in that --

3 MS. BURKETT: Misstates testimony.

4 THE COURT: The -- the witness may answer. I -- I
5 understand the testimony, but the witness may answer the --

6 MR. FRIEDMAN: Okay.

7 THE COURT: -- question.

8 MR. FRIEDMAN: I'll -- I'll move on.

9 BY MR. FRIEDMAN:

10 Q Is -- in your deposition, you testified earlier that
11 your mom wasn't working. Is she working now?

12 A She is currently working again. Yeah, she was
13 called back from her layoff.

14 Q Okay. So you -- you live with your mom and you get
15 some financial assistance from your mom, right?

16 A No.

17 Q So your mom doesn't help you out at all?

18 A No.

19 (COUNSEL CONFER BRIEFLY)

20 Q And your sister doesn't work, right?

21 A No.

22 Q Joel -- Joel's a -- Joel's a good dad; is he not,
23 ma'am?

24 A In most -- most aspects. Absolutely.

1 Q And you're a good mom, right?

2 A Yes, sir.

3 Q Now, you agree with me that -- what's the most

4 important thing in your life?

5 A My children.

6 Q Okay. And you would not leave your children in

7 anybody's care and control if you didn't trust them immensely,

8 correct?

9 A Correct.

10 Q So you trust Joel immensely, correct?

11 A I do.

12 Q Now, I asked you a question. So -- and -- and we've

13 already been through this, but based on whatever the situation

14 is if Joel was out -- well, let me strike that. Is it a fair

15 statement that a lot of times during the marriage that Joel

16 was a house husband and you were the breadwinner?

17 A Yes.

18 Q Okay. And -- and based on the situation, Joel did a

19 lot more things with the kids than you did based upon the

20 totality of the circumstances, correct?

21 A I would disagree, sir.

22 Q Well, I thought you testified earlier that sometimes

23 with the 60 hours a week you work, right?

24 A Yes.

1 Q So if Joel was un --
2 A But I worked --
3 Q Okay. So if Joel was unemployed, he would be there
4 a lot more than you would, right?
5 A Yes, but --
6 Q All right.
7 A -- for a good part of the time he would drop the
8 children off with his parents.
9 Q Okay. But at least some of the time he was there,
10 right?
11 A Some of the time, yes.
12 Q Okay. Now, I asked you on a scale of -- let me --
13 once again, I asked you, you know, who probably took care of
14 the kids. You said Joel based upon the situation. And then
15 my question is I asked you to rate yourself zero to 10 as a
16 mom. Do you remember what you -- what you rated yourself?
17 A I believe I said I was an eight or a nine as we all
18 have room for improvement.
19 Q Well, you said an eight. But -- and do you remember
20 what you rated Joel?
21 A I think I rated him about a seven.
22 Q Right. So you want this Court to believe that
23 you've de -- that -- that you've delegated a lot of your
24 responsibility in raising you children to your husband and he

1 rates lower than you. That's what you want this Court to
2 believe, correct?

3 A I --

4 Q Yes or no?

5 A -- understand. Yes.

6 Q Okay. Now, when you moved to Las Vegas -- now, let
7 me take stuff out. I asked you a question in your deposition
8 about Jessica, about giving her some sort of power of attorney
9 -- a power of attorney. Do you remember that?

10 A Yes.

11 Q Okay. And your answer was I don't remember. Do you
12 remember that?

13 A Yes.

14 Q Okay. Now, you said one of the most important
15 things in your life is your children, correct?

16 A Yes.

17 Q Now, do you normally give out tons of power of
18 attorney for your children?

19 A No, sir.

20 Q So if you've given out a power of attorney for your
21 children, you surely would remember that, correct?

22 A Yes, sir.

23 Q But after --

24 A After that --

1 Q -- your deposition, you did not remember, correct?
2 A Correct.
3 Q Okay. So now let's get to it. You did give Jessica
4 a power of attorney when the three of you moved out from New
5 Mexico to Las Vegas, correct?
6 A No, sir. I gave Jessica permission if my children
7 had an emergency while Joel moved me out here.
8 Q Okay.
9 A It was for -- or when I came out for the --
10 Q Okay.
11 A -- interview is when I gave permission.
12 Q So you -- you printed a document that says, you
13 know, I give permission for Jessica to take care of the
14 children if there's a situation that occurs, right?
15 A Yes, I wrote a letter.
16 Q Okay. Have you -- have you wrote many of those
17 letters before?
18 A No, sir.
19 Q So you should have -- when I asked you in your
20 deposition, you should have remember that letter, correct, yes
21 or no?
22 A Yes, sir.
23 Q All right.
24 (COUNSEL CONFER BRIEFLY)

1 Q Can you ex -- can you look at Exhibit 4, ma'am?

2 A Yes, sir.

3 Q Is that the letter that you wrote giving Jessica
4 some authorizations to treat your children if necessary?

5 A Yes, sir. For the three days while we were both
6 going to be out of town.

7 MR. FRIEDMAN: Okay. Judge, we would ask that --
8 what is the exhibit? Exhibit 4 be admitted into evidence,
9 please.

10 THE COURT: Any -- any objection to the admission of
11 Exhibit 4?

12 MS. BURKETT: No, Your Honor.

13 THE COURT: Exhibit 4 is admitted into the record.

14 (PLAINTIFF'S EXHIBIT 4 ADMITTED)

15 BY MR. FRIEDMAN:

16 Q Ma'am, your previous -- what's your work schedule
17 now?

18 A I work 36 hours a week. I work Friday, Saturday,
19 Sunday 8:00 a.m. to 2:00 p.m. Monday and Tuesday I work 10:00
20 a.m. to 8:00 p.m. and I am off on Wednesdays and Thursdays.

21 Q Historically you -- just before you got this job,
22 you -- you said you work -- you work swing shift; is that
23 correct?

24 A Yes, sir.

1 Q So for the past two years while you've been in Las
2 Vegas, what is that, like 3:00 to 11:00, 2:00 to 10:00,
3 something like that?

4 A At the most recent job prior to the -- the current
5 position I was working swing shift.

6 Q And -- and what -- what is -- what is swing shift?
7 What -- what hours?

8 A It varied anywhere from 3:00 or 4:00 p.m. to 10:00
9 or 11:00 p.m., but sometimes people wouldn't show up and I was
10 stuck there until 12:00, 1:00.

11 Q Okay. And -- and on a somewhat routine basis, you
12 would also go out on -- on a weekly basis you would go out
13 after work with your friends; isn't that correct?

14 A On my days off, I would go out.

15 Q Okay. And you would leave the children with Joel or
16 Jessica, correct?

17 A If there was an adult in the home, typically my
18 mother or my sister or Joel himself, yes, I would -- I would
19 go out.

20 Q Well, your mother and sister historically didn't
21 live with you, correct?

22 A They had lived with us since February of last year.

23 Q Okay. But prior to that -- so that's February 2020,
24 right?

1 A Yes, sir.

2 Q Okay. So prior to that, they didn't live with you,
3 did they?

4 A No, sir.

5 Q So then Joel -- so it would either be your mother,
6 your sister, or Joel that was watching the children when you
7 went out, correct?

8 A Prior to --

9 Q Ye -- ye --

10 A -- that time --

11 Q Yes or no, ma'am.

12 A No.

13 Q Okay.

14 A If I went out, Joel was with me.

15 Q Okay. Ma'am, have you looked -- I -- I went through
16 your exhibits. I didn't see any -- where you looked for
17 employment in New Mexico yet, have you, ma'am?

18 A As of yet, no.

19 Q Okay. Now, this case has been going on for, what a
20 year?

21 A Yes, sir.

22 Q Okay. And you know that there's either two
23 alternative, either the children stay here or they go back to
24 New Mexico, right?

1 A Yes, sir.

2 Q And you haven't even attempted to try to find work
3 in New Mexico, got -- you know, in case the Judge rules that
4 the children are allowed to go back?

5 A I have made contact with previous employers.

6 Q So have you -- are you able to obtain employment in
7 New Mexico then?

8 A With COVID right now, there aren't any positions
9 available.

10 Q Well, let's get back to my previous question then.
11 So I haven't seen any emails or anything where you did any
12 sort of job search to see if you could obtain employment in
13 New Mexico, right?

14 A Right.

15 Q So you just made a couple phone calls.

16 A Yes, sir.

17 Q Okay. But you could obtain employment if you wanted
18 to, correct?

19 A Yes, sir.

20 Q And as a matter of fact, your mom came from New
21 Mexico, correct?

22 A Yes, sir.

23 Q And when I asked you this question in your
24 deposition, your mom has been considering moving back to New

1 Mexico as well, correct?

2 A She had considered it --

3 Q Okay.

4 A -- but she has decided not to.

5 (COUNSEL CONFER BRIEFLY)

6 Q Ma'am, your children have a better relationship with
7 their dad than you, correct?

8 A No, sir.

9 Q Your daughter gets unhappy with you on a routine
10 basis; isn't that correct?

11 A Not to the best of my knowledge, sir.

12 Q Okay. And -- and sometimes you talk derogatively
13 about Joel in front of the children; isn't that correct?

14 A No, sir.

15 Q You've never said anything bad about Joel in front
16 of the children.

17 A No, sir.

18 (COUNSEL CONFER BRIEFLY)

19 Q And ma'am, when I ask you this, Joel's mom and dad
20 are good people, correct?

21 A For the most part, sir, yes.

22 Q Okay.

23 (COUNSEL CONFER BRIEFLY)

24 Q Ma'am, you've grabbed your children on -- on

1 occasions to discipline them, correct?

2 A I have taken them by the arm.

3 Q And -- and you've actually dug your -- your nails
4 into their arms when you've done that; isn't that correct,
5 ma'am?

6 A No, sir.

7 Q And you've never grabbed them by the arm and yanked
8 them?

9 A No, sir.

10 Q Okay. If the children were to move back to New
11 Mexico, they -- they would flourish in New Mexico, correct?

12 A No, sir.

13 Q They wouldn't. And it would harm the children to go
14 to New Mexico?

15 A I'm sorry?

16 Q It would harm the children to go to New Mexico?

17 A Not necessarily --

18 Q Okay. So --

19 A -- but I don't think they would flourish.

20 Q Well, they have the love and support of their two
21 grandparents. That would have been intimately involved in
22 their lives ever since they were born, correct?

23 A Yes.

24 Q There' a park right around like within walking --

1 almost within walking distance of their grandparents' home;
2 isn't that correct?

3 A I'd say it's about a mile.

4 Q Okay. And they -- they go --

5 A But there is one close.

6 Q And they go there quite frequently, correct?

7 A No.

8 Q So if they -- if Joel's parents come up and testify,
9 they would be lying?

10 A Yes.

11 Q Okay. And Joel's parents and the children, you
12 already testified to this, interact on a daily if not weekly
13 basis in New Mexico, correct?

14 A Yes.

15 Q Okay. So if they were to go back there, that
16 grandparent bond would remain in full force and intact,
17 correct?

18 A Yes.

19 Q If the children stayed here, that bond -- assuming
20 the grandparents can't keep -- keep coming out here every 10
21 days, it would suffer somewhat, correct?

22 A I don't believe so.

23 Q You don't believe it would suffer. Somebody -- the
24 grandparents see their children -- their grandkids, you know,

1 every day or every other day as opposed to once or -- once a
2 month or once every other month? You think that would be the
3 same sort of bond?

4 A I think it is still a healthy bond.

5 Q That wasn't the question I asked you, ma'am. Do you
6 think it would be the same bond, yes or no?

7 A No.

8 Q Ma'am, the children miss their friends in New
9 Mexico, correct?

10 A I know of one that our middle daughter misses.

11 Q Okay.

12 MR. FRIEDMAN: The Court's indulgence for just a
13 moment.

14 (COUNSEL CONFER BRIEFLY)

15 Q Ma'am, you believe that Joel has a good faith reason
16 to attempt to relocate to New Mexico, correct?

17 A No.

18 Q You think it's a bad faith reason?

19 A I guess it would depend on the reason, sir.

20 Q Is -- had -- essentially his lifelong home is from
21 New Mexico, right?

22 A Yes.

23 Q He wants to go back to live where his parents are
24 and where his brother is and where he's been for years, right?

1 A Yes.

2 Q He's not trying to move to a state where he's never
3 been like Maryland, is he?

4 A No.

5 Q So you would agree with me, it's a good faith
6 reason, right?

7 A For him perhaps, sir.

8 Q Okay. So you just -- so like three minutes ago you
9 said no, but now you recognize that for him it probably is a
10 good faith reason, right?

11 A Yes.

12 Q Okay. And for Joel, there can be an actual
13 advantage for him to go back to New Mexico, correct?

14 A Yes.

15 Q Okay. And for the children, there could also be an
16 actual advantage for the children as well, correct?

17 A No.

18 Q No advantage for the children to go back to New
19 Mexico. That's your testimony under oath.

20 A Yes.

21 Q That's where the children were born and lived up
22 until the last two years; is that correct?

23 A They have not lived in Las Cruces for three years.

24 Q I thought you said it was August of 2019.

1 A We were in Alamogordo for a year prior to moving out
2 here.

3 Q Okay. And that was in New Mexico, right?

4 A But they have not been living there for three years.

5 Q Was that in New Mexico?

6 A Yes, sir.

7 Q Okay. So there could be -- all right. So there are
8 some sort of advantage to go and see their friends again,
9 isn't there? Yes or no?

10 A Yes if they were still in contact.

11 Q Okay. And there is some sort of advantage for them
12 to see their grandparents on a daily or by -- or three or four
13 times a week basis, right? That's an advantage, right?

14 A It could be. I don't see it as one.

15 Q Well, ma'am, we can roll back the tape again. I
16 just asked you, you know, I don't know, 20 minutes ago that
17 they have a great relationship with their grandkids and you
18 said yes. Is it very strong, yes. Have they helped out
19 immensely in raising the kids, yes. Remember those? Remember
20 those questions in your answers?

21 A Yes.

22 Q Okay. So there would be an advantage for them to go
23 back and see their grandparents on a more routine basis,
24 correct?

1 A In that aspect, yes.

2 Q All right. Now, let's talk about your dad. Your

3 dad lives in New Mexico, right?

4 A Yes.

5 Q Okay. So if the -- and does he live far from Joel's

6 parents?

7 A Yes.

8 Q How far?

9 A Probably I'd say about a 25 minute drive.

10 Q Okay. So I'm assuming your dad is going to testify,

11 you know, that he loves his grandkids and wants to see his

12 grandkids, right?

13 A I can't speculate as to what exactly my dad would

14 say.

15 Q Well, have you talked to him?

16 A Yes, I have spoken to my father.

17 Q Okay. Do you speak to him on a regular basis?

18 A Pretty frequently. Yes, sir.

19 Q Okay. Well, have you seen him around your kids?

20 A Yes, sir.

21 Q Did -- does he have a -- based upon your knowledge

22 and experience, do you believe that he loves his grandkids?

23 A Yes, sir.

24 Q Do you believe that your kids love their

1 grandfather, your dad?

2 A Yes, sir.

3 Q So there would be an actual advantage if the kids
4 were only 25 minutes from your father as opposed to, I don't
5 know, a thousand miles away, right?

6 A Yes, sir. But my father was never as involved. He
7 would come see sporting events but he was not a daily or even
8 weekly visit.

9 Q But there would still be an actual advantage if he
10 wanted to get more involved in the kids' life and he went to
11 sporting events, right?

12 A I suppose.

13 Q So if the kids were in sporting events in Las Vegas,
14 it would be much more difficult for your dad to attend those,
15 right?

16 A Yes, sir.

17 Q All right. And -- and you have a sister in New
18 Mexico?

19 A Yes. She is right on the border of New Mexico and
20 Texas.

21 Q How far is that from you?

22 A From me?

23 Q Or I'm sorry. How far is that from where Joel's
24 parents live?

1 A About a 45 minute to an hour drive.

2 Q Okay. And your sister loves her -- her niece and
3 nephews?

4 A Yes.

5 Q Okay. And if -- if she was to see your (sic) niece
6 and nephews more, that would be an actual advantage, correct?

7 A Yes, but not likely.

8 Q Okay. Well, she doesn't -- she doesn't have a
9 relationship with your kids?

10 A We were -- we have always --

11 Q Does she have a relationship with your kids, yes or
12 no?

13 A Yes.

14 Q Okay. But not nearly as strong as Joel's family --
15 Joel's family, correct?

16 A Yes.

17 Q So it seems to me ma'am, based upon your testimony
18 here today, it looks like Joel's family is more intimately
19 involved in the children's lives than your family; is that
20 correct?

21 A Yes, they were the caregivers for the children --

22 Q Okay.

23 A -- when they were little.

24 Q All right.

1 A It's because of our work schedules.

2 Q All right. And you believe that family values are
3 important, correct?

4 A Yes.

5 Q And you believe that family structure can pose an
6 actual advantage in your children's life, correct?

7 A Yes.

8 Q Okay. So there is an actual advantage for the
9 children to relocate to the state of New Mexico, correct?

10 A No. I'm -- I'm sorry, sir.

11 Q Okay.

12 A I don't believe the children living with their
13 grandparents is the best thing for them.

14 Q I didn't ask you that, ma'am. I -- I didn't say
15 that. I said if they move back to New Mexico, correct? The
16 -- the kids haven't lived with Joel's parents. They lived
17 with you and him when you were in New Mexico, correct?

18 A Yes.

19 Q Okay. So if Joel was to move back to New Mexico, he
20 would just have some family support there, correct?

21 A Yes.

22 Q Okay. And you appreciated Joel's parents of family
23 support while the -- while you guys were living in New Mexico,
24 correct?

1 A Yes.

2 Q You know, they helped you out with your kids, right?

3 A Yes.

4 Q And -- and they enjoyed a great relationship with
5 your children and -- and that in fact made you happy, correct?

6 A Yes.

7 Q Okay. Your mother and your sister that lives here
8 were not nearly as deeply involved in the children's lives as
9 Joel's parents and his family, correct?

10 A No, they were not as invasive.

11 Q Okay. And -- and you would agree with ma'am that
12 your -- your job history in Las Vegas has been somewhat
13 unstable, correct?

14 A I have had job changes, yes, but my stability
15 remains.

16 Q Ma'am, it's a simple question. You've been -- your
17 job history has been unstable in Las Vegas since you've moved
18 here, correct?

19 A Yes.

20 Q Okay. And would you agree with me that a lot of
21 times, history is a prediction of the future?

22 A It could be, sir.

23 Q So there's a distinct possibility that you may have
24 some job instability in the near future, correct??

1 MS. BURKETT: Objection.

2 A No.

3 BY MR. FRIEDMAN:

4 Q No? Okay.

5 MR. FRIEDMAN: I'm sorry, I'm just going to look at
6 this that was just filed, I think yesterday.

7 Q Ma'am, in looking -- when you filled out your
8 financial disclosure form, once again, you -- you stated that
9 your mother and sister contribute nothing to your household
10 expenses? That's correct?

11 A Yes, sir.

12 Q Okay. So they just live for free.

13 A Yes, sir.

14 Q And your mom gets social security and has another
15 job, right?

16 A Yes, sir.

17 Q So she doesn't contribute towards any of the
18 groceries or anything like that?

19 MS. BURKETT: Objection, Your Honor. Asked and
20 answered several times.

21 THE COURT: Sustained.

22 MR. FRIEDMAN: I -- Judge, I don't think I
23 specifically asked this question about the groceries. I'll --
24 I'll move on. It doesn't matter.

1 BY MR. FRIEDMAN:

2 Q And ma'am, you said your current sch -- well, let's
3 talk about your historical schedule before your fifth job, you
4 worked in the -- in the afternoons from 3:00 or -- 3:00 to
5 10:00, 3:00 to 11:00, 3:00 to 12:00, you just testified
6 earlier, right?

7 A Yes, sir.

8 Q So after school, you wouldn't be with the kids
9 historically, correct, because you were working.

10 A Correct.

11 Q Okay. And ma'am, you -- you didn't think it was a
12 bad thing if you worked and Joel stayed home with the
13 children, did you, ma'am?

14 A Yes, it hurt financially very much.

15 MR. FRIEDMAN: I don't have any further questions at
16 this time, Your Honor.

17 THE COURT: Okay. Any questions, Ms. Burkett?

18 MS. BURKETT: Yes, Your Honor. Just briefly because
19 I would like to call her as well in my case in chief.

20 THE COURT: As part of your case. That's -- that's
21 fine.

22 MS. BURKETT: Yes, sir.

23 CROSS EXAMINATION

24 BY MS. BURKETT:

1 Q Can -- hi, Lisa.
2 A Good morning.
3 Q Good morning. Let's get a few things out of the
4 way. Are you currently suicidal?
5 A No, ma'am.
6 Q Do you have any mental health issues?
7 A No, ma'am.
8 Q Do you feel like the kids would be better off
9 without you?
10 A Absolutely not.
11 Q When did you write those things in your personal
12 journal?
13 A It was at the beginning of the relationship and even
14 towards the middle. Unfortunately, there was infidelity on
15 both sides and I was really struggling with it. The verbal
16 abuse from my spouse.
17 Q But the -- the journal entries from however many
18 years ago have no bearing on your current mental health; is
19 that correct?
20 MR. FRIEDMAN: Ob -- objection, leading --
21 A Absolutely.
22 MR. FRIEDMAN: -- the witness.
23 THE COURT: Sus -- sustained.
24 MS. BURKETT: I'll rephrase.

1 BY MS. BURKETT:

2 Q Do your journal entries from years ago have any
3 impact or relevance to your current mental state?

4 A Absolutely not.

5 Q For the power of attorney that was discussed
6 earlier, how many days did you give Ms. Carpenter the ability
7 to seek medical treatment for your children?

8 A It was only for a couple of days because Joel was
9 bringing me out to Las Vegas so he could also pick up the
10 vehicle that we purchased.

11 Q Okay.

12 A So as they're -- as neither one of us would be in
13 town with the kids, we wanted somebody in case of emergency to
14 be able to take them to the hospital if heaven forbid they
15 fell or got hurt or got seriously ill since the grandparents
16 were an hour away.

17 Q Understood. So we were talking about family bonds.
18 Who in your family lives here in Las Vegas?

19 A My aunts and uncles. I have my uncle Skip, my aunt
20 Sandy and her husband, my mother, my sister. I have several
21 cousins that we -- we get together -- try to get together at
22 least on a monthly basis to -- to spend time and --

23 Q So do you say that the children have a strong bond
24 with their uncles and aunts?

1 A They are finally getting to know their aunts and
2 uncles which we have been estranged from.

3 Q And do they have a strong bond with your mother?

4 A Yes.

5 Q And your mother lives in the home with you; is that
6 correct?

7 A Yes, ma'am.

8 Q And your mother also helps taking care of the
9 children?

10 A From time-to-time, yes, she will -- she will assist
11 if she's not at work or she helped me take them to gymnastics
12 if it -- if it -- oh, sorry. If it didn't work out with my
13 work schedule once I changed jobs, she did help me get them to
14 and from gymnastics on a few occasions.

15 Q And do your kids have a strong bond with your sister
16 with their aunt?

17 A The youngest is definitely the most -- the most
18 attached. He always asks her to accompany him everywhere.

19 Q And do you feel it's important that your children
20 maintain the bonds with your family members?

21 A Yes, ma'am.

22 Q Is it just as important would you say as maintaining
23 the bonds with Joel's side of the family?

24 A Yes, sir.

1 Q And we -- we were discussing the grandparent bond
2 and how it is extremely important for the kids and how Joel's
3 grandparents have been there. But I would like to ask. Do
4 you believe that the bond between grandparents and children
5 should be the determining factor in a custody -- custody case?

6 A No, ma'am.

7 Q What do you think the determining factor should be?

8 MR. FRIEDMAN: Objection, calls for a legal
9 conclusion.

10 THE COURT: Understood, but I'll allow the witness
11 to answer. So the objection's overruled. The witness may
12 answer.

13 THE WITNESS: I'm sorry, ma'am, could you please
14 repeat that?

15 BY MS. BURKETT:

16 Q Well, and I can rephrase. What do you think the
17 important factors are in a custody determination?

18 A Definitely stability, structure, and overall facts.
19 What -- what is in their best interest.

20 Q And lastly we were discussing the children's friends
21 in New Mexico. And I know you testified that Hayden has a
22 friend in New Mexico that I know she misses. Does Hayden
23 interact with that friend now?

24 A Yes, they have tablets where they do like FaceTime

1 or Duo sometimes for two hours at a time. So communication
2 and it -- it's -- it's not an issue.

3 Q So would you say that Hayden is able to maintain a
4 relationship with her friends?

5 A Yes, ma'am.

6 Q And we were discussing your father as well. He
7 still lives in New Mexico. Are your children able to maintain
8 a relationship with him while living in Las Vegas?

9 A Yes, ma'am. They FaceTimed this morning.

10 MS. BURKETT: All right, Your Honor. No further
11 questions.

12 THE COURT: Any redirect?

13 MR. FRIEDMAN: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. FRIEDMAN:

16 Q I apologize. Ma'am, could you turn to Exhibit 2
17 again?

18 A Yes, sir.

19 Q 0235. Do you see that, ma'am?

20 A I'm sorry?

21 Q The -- the Bates Stamp number 0235 in Exhibit 2.
22 The bottom right-hand corner.

23 A Okay. Yes, sir.

24 Q Okay. I'm going to read this. So since they had

1 found that I was pregnant -- this -- this is you -- the
2 pregnancy of your last child; is that correct?

3 A Yes.

4 Q So that's the child born not of the marriage,
5 correct?

6 A Correct.

7 Q Okay. I've had several thoughts about taking my own
8 life to spare everyone the trouble of killing me slowly by
9 picking me apart piece-by-piece. You wrote that, right?

10 A Yes, sir.

11 Q So you're going to bring a new life in this world
12 but then you wanted to leave that new baby as well?

13 A No, sir.

14 Q And then you -- you further state ever since last
15 night the urge to do so only has grown?

16 A Yes, sir. It's what I wrote.

17 Q Ma'am, I think your attorney just asked you this
18 question. You said stability and structure is very important
19 regarding custody; is that correct?

20 A Yes, sir.

21 Q And you would agree with me that the more stable
22 person raising the children would be Joel and not yourself,
23 correct?

24 A No, sir.

1 Q Well, he's historically stayed home with the
2 children and you have historically gone out and worked, right?
3 A Yes, sir. Somebody had to make money.
4 Q Okay. Money's not the end all, is it not?
5 A No, but it does put a roof over their head and food
6 in their mouths.
7 Q The children -- your -- your children have never
8 starved, have they?
9 A No, sir.
10 Q As a matter of fact, when things have been rough
11 sometimes his parent -- Joel's parents have helped you out,
12 right?
13 A They helped with a couple of bills.
14 Q Ma'am -- ma'am, it's a sim -- it's a simple
15 question. When things have gone tough sometimes, Joel's
16 parents have helped you out, correct?
17 A Maybe once, yes.
18 Q Okay. Are you struggling financially now?
19 A No, sir.
20 Q Well, you -- you just took a pay cut, right?
21 A Yes, sir.
22 Q So is your mom going to help you out now or not?
23 A We haven't discussed that yet, sir.
24 Q How long has she been working?

1 A Just about a month now.
2 MR. FRIEDMAN: I have no further questions. Thank
3 you.
4 (WITNESS EXCUSED)
5 THE COURT: All right. Your next witness?
6 (COUNSEL CONFER BRIEFLY)
7 MR. FRIEDMAN: We're going to call Mr. Ario --
8 Eorio. I'm sorry. I apologize.
9 THE COURT: Eorio?
10 MR. M. EORIO: Eorio.
11 MR. FRIEDMAN: Eorio.
12 (WITNESS SUMMONED)
13 THE COURT: What -- what is his first name?
14 MS. FRIEDMAN: Michael.
15 MR. FRIEDMAN: Michael.
16 THE COURT: Michael.
17 (COUNSEL CONFER BRIEFLY)
18 THE MARSHAL: If you can remain standing, raise your
19 right hand to be sworn?
20 MR. M. EORIO: Sure.
21 THE MARSHAL: There we go. Either -- either way.
22 MR. M. EORIO: Okay.
23 THE CLERK: You do solemnly swear the testimony
24 you're about to give in this action shall be the truth, the

1 whole truth, and nothing but the truth, so help you God?

2 THE WITNESS: So help me God.

3 THE COURT: All right. You may be seated. Counsel,
4 you may proceed.

5 MR. FRIEDMAN: Yes.

6 MICHAEL EORIO
7 called as a witness on behalf of the Plaintiff, having been
8 first duly sworn, testified upon his oath as follows on:

9 DIRECT EXAMINATION

10 BY MR. FRIEDMAN:

11 Q Sir, may I call you Michael?

12 A Yes, sir.

13 Q Can you state your name for the record?

14 A Michael Joseph Eorio.

15 Q Okay. And how are you related to this nice young
16 man to my right?

17 A He's my son.

18 Q Okay. And sir, where do you currently live?

19 A Las Cruces, New Mexico.

20 Q Okay. And you're familiar with Lisa as well. Do
21 you see her on the screen?

22 A Yes, sir.

23 Q Who is that?

24 A That's Lisa Marie.

1 Q Okay. Is that your -- currently your son's wife?
2 A Yes, sir.
3 Q Is that your dau -- current daughter-in-law?
4 A Yes, sir.
5 Q Okay. How many children -- how many grandchildren
6 do you have with Joel and Lisa?
7 A Three.
8 Q Okay. And do you know where the children were born,
9 sir?
10 A Yes, sir.
11 Q Where were they born?
12 A In -- in Las Cruces, New Mexico.
13 Q Okay. And tell me how you've been involved in the
14 -- the children's lives ever since they've been born.
15 Briefly. We, you know, not a huge --
16 A Yeah, I'm sorry. I --
17 Q That's okay.
18 A I apologize.
19 Q That's okay. I shouldn't -- that's a loaded
20 question.
21 A The -- I love them. I mean, they're my -- but I --
22 we -- with them -- with them I'd say 70 percent of the time.
23 Q Did --
24 A You know --

1 Q Let me --
2 A -- bringing them up and -- oh, I'm sorry.
3 Q That's okay. Did you -- did you have -- when Lisa
4 and Joel were not able to be with the kids due to work or
5 other functions, did you provide care for the children?
6 A Yes, sir.
7 Q And tell me on a weekly basis from the time they
8 were born up until the parties relocated to Las Vegas, how
9 often would you see your grandkids?
10 A It was -- like I said, it was like 70, 80 percent of
11 -- of a week. We would see them all the time.
12 Q You would see them 70 or 80 percent of each and
13 every week.
14 A Yes, sir.
15 Q Okay.
16 A I --
17 Q And --
18 A Okay.
19 Q That's okay.
20 A I'm sorry.
21 Q And tell me what sort of activities that you would
22 do with your grandchildren.
23 A Well, we would -- we have a -- a little playground
24 yard if you would. I have the swing set and the little

1 airplane for Gianni, that we have little pools of the -- in
2 the summertime that they can swim in one and then swim in the
3 other. A little Slip'N Slide. I would take them down to the
4 park that's a couple blocks around the corner. Take them to
5 the movies when -- you know, when there wasn't the COVID. We
6 -- we did a lot of things. I'd take them to see the horses
7 and -- and feed the horses. So I -- I was always with them.
8 Take them camping. I mean, always.

9 Q Okay. Did -- did Lisa ever have a problem with you
10 helping out and, you know, having a -- a familiar relationship
11 with your grandchildren?

12 A She never had a problem with us. No.

13 Q Okay.

14 A No.

15 Q And did -- did she appreciate you -- the
16 relationship that you had with your grandkids and -- and also
17 helping them out when they needed it?

18 A Oh, I believe so.

19 Q Okay.

20 A Yeah.

21 Q On a scale of zero to 10, zero being the worst
22 grandparent on the face of the Earth and 10 being the best
23 grandparent on the face of the Earth, based upon your
24 interaction with your grandkids, how would you describe

1 yourself?

2 A You know, I -- I'd say nine.

3 Q Okay.

4 A Possibly 10, because I was always -- I -- I love

5 them.

6 Q Okay. And do you work now, sir?

7 A Do I work out?

8 Q I -- no, do you work?

9 A No, sir.

10 Q I know you work out. You look like you're in --

11 A No.

12 Q -- good shape.

13 A No, I don't now.

14 Q Okay.

15 A No, I don't work anymore, sir.

16 Q You're -- you're retired or --

17 A Retired. Yes.

18 Q Okay. So you have ample time to do whatever to

19 spend time with your grandkids if need be.

20 A Yes, sir.

21 Q Okay. How is your relationship with your son? The

22 same relationship -- the same scale, zero -- zero being the

23 worst dad on the face of the Earth, 10 being the best, how

24 would you describe your relationship with your son?

1 A My -- would -- would -- well, how I would be or
2 how --
3 Q No. No.
4 A -- he would --
5 Q How you are with your son.
6 A Oh. Joel and I, we are like -- how do I say it.
7 We're pretty tight.
8 Q Okay.
9 A Pretty darn tight. I mean --
10 Q Okay. You enjoy -- you enjoy being with your son?
11 A I love being with my son.
12 Q Okay. Now, do you know -- do you know Lisa's
13 parents?
14 A Yes, sir.
15 Q Okay. Do you know if they have been actively
16 involved in the children's lives -- let's -- let's go through
17 when everyone lived in New Mexico. Do you know if they were
18 actively in the children's lives?
19 A No, sir.
20 Q Based upon --
21 A Her --
22 Q -- your knowledge?
23 A Her father occasionally. There was times where Lisa
24 had told me that she had not -- oh, I've seen her father -- or

1 the children seen her father in months, six -- six months.

2 Q Okay.

3 A You know, and --

4 Q Okay. And what -- do you know about -- what about
5 Lisa's mother?

6 A To be honest with you, I don't think there was very
7 much interaction there. I -- as in time spent together, you
8 know. So I honestly would say very little.

9 Q Okay. Sir, tell me in your mind the benefit if this
10 Court was gracious enough to allow the children to Joel and
11 the children to relocate to New Mexico. Tell -- tell this
12 Court what the actual advantage would be for Joel and the
13 children.

14 A Well, my wife and I can provide a stable home for
15 them, a home where they can enjoy themselves, go outside and
16 -- and play and -- and when school starts up again which I
17 believe it is, they can go to school, you know. And I watch
18 them -- they want to walk home. So I allow them to walk home
19 but I follow them. But --

20 Q Is -- is --

21 A -- home from school.

22 Q -- Joel -- is Joel going to be living in your house?

23 A Joel will live with us and --

24 Q Okay.

1 A -- you know, and -- and I would hope, you know, he
2 would be able to save up enough money to hopefully purchase,
3 you know, put a down payment on another home one day. But
4 yeah, he --

5 Q For the near -- for the near future, he'll be living
6 with you.

7 A Oh, yes, sir.

8 Q Okay.

9 A Yes, sir.

10 Q And -- and do you -- and -- and tell the Court how
11 you think that would benefit the children.

12 A Well, they'll have -- they'll -- they'll have a home
13 24/7, you know, and Joel would be able to work and not worry
14 about his children being -- you know, how they're taken care
15 of. And the children love us, you know. I mean, they truly
16 do. And I think it's going to benefit them because the
17 school's right down the street. Well, Harley's going to be a
18 little bit further. But there again she could take the bus.
19 It's only a couple miles, a mile-and-a-half, two miles.

20 Q And sir, did -- did I hear this correctly that since
21 December you've been traveling back and forth to Las Vegas?

22 A December 9th. Yes, sir. We spent 10 days here.
23 Well, we -- we leave here. Say we're leaving here. We'll --
24 we'll leave on a Saturday, drive home and then drive back on a

1 Thursday and then we'll stay the -- the whole week, you know,
2 while -- while Joel's working if Joel has the children, we
3 will watch them for a couple days and then Joel will have them
4 for a couple days and then we'll have them again, you know,
5 depending his days off.

6 Q So -- so --

7 A Joel will come down sometimes early in the morning
8 and spend some hours with them --

9 Q Okay.

10 A -- while they're doing their -- their schoolwork.

11 Q So for the last -- for December, January, February,
12 March, you've -- you've made this long trek so that you can be
13 with Joel and your grandchildren?

14 A Yes.

15 Q And to assist.

16 A Right. Anything for our grandchildren. We love
17 them.

18 Q And -- and is that somewhat what you've been doing
19 ever since the -- the -- all your grandkids have been born?

20 A Yeah. Yeah. Definitely.

21 Q And do you believe that benefits the -- your grand
22 -- your grandchildren?

23 A I know it does. I know it does. I know it.

24 (COUNSEL CONFER BRIEFLY)

1 Q And -- and once again, sir, you drive from New
2 Mexico to here?
3 A Yes, sir.
4 Q It's a 10 hour drive?
5 A It -- it's a 10 hour nonstop because I -- my fuel
6 tank -- I have a fuel tank where I can just switch over and
7 just keep going.
8 Q Really?
9 A So yes, sir.
10 Q Oh, okay.
11 A Yes, sir.
12 Q Okay.
13 A I have a spare, you know.
14 Q Is your wife okay with nonstops? I'm just kidding.
15 I'm sorry.
16 A Well, no.
17 Q I'm sorry.
18 A Well, no. We do have to stop for that.
19 Q I'm -- I'm just --
20 A But --
21 Q I'm just teasing, sir.
22 A I'm sorry.
23 Q I'm just teasing. I'm sorry.
24 A Yeah.

1 Q And sir, have you also financially contributed to
2 Joel and Lisa over the years when --
3 A Yes, sir.
4 Q -- they've suffered financially?
5 A Yes, sir.
6 Q Okay. And tell the Court what you've done.
7 A Joel and Lisa were in some trouble with their credit
8 cards and they -- they needed to buy a house and -- and they
9 wanted to. So my -- my wife and I paid off their credit
10 cards. One was the -- the one that comes to mind was David's
11 Bridal. That was for her wedding dress -- or gown. And the
12 -- I believe it was the bridesmaids' gowns, dresses. And I
13 believe that was around \$1800 for just that. And then there
14 was several more cards that he had. And on those, I had
15 called up and try -- well, I asked him, you know, how -- how
16 much could I pay to get this wiped off, you know, and -- and
17 they lowered it --
18 Q So you --
19 A -- a little bit.
20 Q -- you did a deal and --
21 A Yes, sir.
22 Q -- negotiated.
23 A Yes, sir.
24 Q Okay.

1 A Yes, sir.
2 Q And did you --
3 A Excuse me.
4 Q -- did -- you also helped somewhat when they
5 relocated to Las Vegas? Did you pay --
6 A Yes.
7 Q -- for a truck or something like that?
8 A No, I -- I -- yeah, we paid for the -- the --
9 Q You --
10 A -- trailer, the -- then I paid for the fuel to drive
11 out here and paid for my hotel room, paid for my flight back
12 to --
13 Q Okay.
14 A -- New Mexico. Yes.
15 Q Did you -- did you physically come out here and help
16 them move as well?
17 A Oh, I didn't -- I didn't move them. I just --
18 Q Okay.
19 A -- drove the truck out here.
20 Q Oh, okay.
21 A I -- I did not -- I did not move --
22 Q But you --
23 A -- any furniture.
24 Q -- drove their truck out.

1 A I drove the -- the U-Haul with the trailer on it,
2 with the trailer.

3 Q Okay.

4 A And that was a long drive.

5 Q And -- and sir, you believe it's in the best in --
6 do you believe it's in the best interest of the children to
7 return to New Mexico as opposed to staying here?

8 A Yes, sir.

9 Q And --

10 A I honestly do.

11 Q Okay. And -- and New Mexico, you -- you and Joel --
12 Joel can provide -- can Joel provide more stability in New
13 Mexico, household, school, family support?

14 A Things are so much less expensive there when it
15 comes to -- to -- if -- if he wants to rent, you know, but he
16 can live in our house how -- however long.

17 Q Okay.

18 A The children can live there however long. And he --
19 he can -- he can bank money, you know, I know he can.

20 Q Okay.

21 A I know he can. If he wants to start up his business
22 again, I can do a little help for him. I can run -- I can do
23 whatever it takes --

24 Q Okay.

1 A -- to help him succeed.

2 MR. FRIEDMAN: Thank you very much for your
3 testimony, sir. I don't have any other questions --

4 THE WITNESS: Oh, I'm sorry.

5 MR. FRIEDMAN: -- for you, I think. No, don't --
6 don't be sorry. Don't be sorry. I think the other attorney
7 may have some questions for you.

8 THE COURT: All right.

9 THE WITNESS: Yes.

10 THE COURT: All right. Any -- any cross
11 examination?

12 MS. BURKETT: Yes, Your Honor.

13 THE COURT: Okay.

14 CROSS EXAMINATION

15 BY MS. BURKETT:

16 Q Good morning, sir.

17 A Good morning.

18 Q What is your relationship like with Lisa?

19 A There have been times when our relationship has been
20 awesome. I mean, she -- actually, I -- I -- she felt -- she
21 felt like almost like a daughter to me at times. That's where
22 we were -- we were heading, you know, and then there's times
23 where it's been strained, were really -- really strained. She
24 had kept the children from us at one point. So it was

1 strained.

2 Q When Joel -- and your son came and told you he was
3 marrying Lisa, what did you and your wife do?

4 A Oh, I was upset. I didn't think she was a good
5 enough woman for my son at the time.

6 Q Right, but what did you do, sir?

7 A Oh, I -- I kicked my son out of the home.

8 Q And what did you and your wife do when Joel and Lisa
9 told you they were relocating to Las Vegas?

10 A What did we do?

11 Q Yes, sir.

12 A I -- honestly, you -- you have to give me a little
13 bit more on what did we do. I'm sorry.

14 Q Do you recall mention of a CPS case that was opened?

15 A Okay. Now, you said you and your wife. I had
16 nothing to do with that.

17 Q But do you know about it, sir, the question? Do you
18 know about what happened and what did you guys do when --

19 A I did nothing.

20 Q You did nothing. To --

21 A Yes.

22 Q -- your knowledge, what did your wife do?

23 A My wife called CPS -- or that -- that's what -- CYF
24 (sic) or whatever it is.

1 Q Right. Sorry. The -- the New Mexico equivalent.
2 And to your understanding, why did she call CPS?

3 A Well, at that time, the -- it -- the house and the
4 children weren't being very well cared for at all.

5 Q Was it your -- was it your testimony earlier that
6 you and your wife were in fact still caring for the children
7 the majority of the time while the parties were still in New
8 Mexico?

9 A While they were in La -- Las Cruces. And then --

10 Q Okay. So not the --

11 A -- when they moved -- may I?

12 Q Yes, sir.

13 A When they moved to Alamogordo prior to them moving
14 to New -- Las -- Las Vegas, we went down -- gosh, I think it
15 was May, April. I -- I don't remember. We moved our camper
16 down there to help take the children to school while -- once
17 -- I think that was when you had gone to -- Lisa had moved to
18 Las -- Las Vegas, moved to here. So we moved our RV down
19 there so we could help with the children going to school,
20 taking care of them, picking them up after -- after school and
21 they spend time, you know, the nights with us too.

22 Q Sorry, sir. Let me clarify because we have a lot
23 of --

24 A I'm sorry.

1 Q -- a lot of Las -- Las somethings and a lot of --
2 A I -- I --
3 Q -- different city names.
4 A -- apologize. I just -- I'm --
5 Q No --
6 A -- trying -- I'm --
7 Q -- it's totally fine.
8 A -- trying to clarify it as best I can.
9 Q That's okay. I appreciate that, but I'll try to
10 rephrase. When Lisa and Joel and the kids, they moved to
11 another city in New Mexico, correct?
12 A Right.
13 Q Okay. Well, you were still living with your wife in
14 Las Cruces; is that correct?
15 A Yes.
16 Q Okay. Did you move your camper to the other New
17 Mexico city to be with the children? Is that what you're
18 saying?
19 A To help with the children. And --
20 Q And how often will you --
21 A And it wasn't right away.
22 Q -- be there?
23 A It was before -- it was prior to -- to the move out
24 here.

1 Q Understood. How often did you see the kids when
2 they lived in that other city in New Mexico?

3 A When we -- well, okay. Can I bring this down? Is
4 this okay?

5 THE COURT: That's --

6 THE WITNESS: I'm --

7 THE COURT: You're -- that's fine.

8 THE WITNESS: I'm sorry.

9 A Well, I would pick -- sometimes I would pick the
10 children up when they're allowed to. I would pick them up and
11 bring them to -- to church on Sundays. I pick them up Sunday
12 morning, bring them up to church, bring them back down. I
13 take them to the movies. This is prior to moving down there
14 -- or moving -- to going down there for a couple months with
15 the RV. While we lived in Las Cruces -- while living in Las
16 Cruces, I would drive to Alamogordo and do things with the
17 children.

18 Q And in Alamogordo, Lisa and Joel were still living
19 together with the children; is that correct?

20 A Yes, ma'am.

21 Q So when your wife called CPS, she was actually
22 essentially calling it on both her son and her
23 daughter-in-law?

24 A Yes.

1 Q Do you believe that the grandparents being
2 responsible for the children, I believe your testimony was, 70
3 or 80 percent of the time is appropriate grandparenting
4 behavior?

5 A Well, I think it's appropriate to take care of the
6 children.

7 Q That wasn't the question, sir.

8 A That's my answer.

9 Q Do you think this is the type of interaction
10 grandparents should have with their children (sic), this --

11 A If --

12 Q -- level of interaction?

13 A -- it is needed, yes, I do. Now, -- now you might
14 want to know that --

15 THE COURT: You need to -- you need to wait --

16 THE WITNESS: I'm sorry.

17 THE COURT: -- for a question.

18 THE WITNESS: That's --

19 Q All right, sir. And moving on to Las Vegas. You
20 said you and your wife came here December 9th initially,
21 correct?

22 A That is correct.

23 Q Okay. And based on the testimony, you drive here
24 with your wife every -- approximately every other week.

1 A Yes.

2 Q Okay. So you're here every week that Joel has his
3 parenting time timeshare with the kids.

4 A Yes.

5 Q And how many days a week when you and your wife are
6 here do you guys end up watching the children for Joel?

7 A We'll get them and -- how many days do we watch --
8 well, during this -- it all depends on his -- his days off.
9 I'm sorry. And -- but that's what it is. I mean, he -- he
10 takes them home and he'll have them for two nights. But he'll
11 -- like I said earlier -- oh, I'm sorry. The questioning was
12 weird. What -- he does come down in the morning and see the
13 children before he --

14 Q Right --

15 A -- goes to --

16 Q -- sir.

17 A -- school --

18 Q But --

19 A -- to work.

20 Q -- how many days -- how many days are the three
21 children with you and your wife? How many days are you taking
22 care of the children while Joel is working in that week of his
23 timeshare?

24 A I would say that the -- it would be four, five days.

1 Q Would that be four or five overnights as well, sir?

2 A I think it would be four overnights.

3 Q And the overnights are in your -- you have a
4 recreational vehicle, correct? A -- a camper?

5 A It's a fifth wheel. Yes. We have -- it has two
6 bedrooms and the -- the couch in living room has a -- a bed in
7 it. And they have their own private bath and my wife and I
8 have our room and our bath.

9 Q Okay. And then the other two nights they stay with
10 Joel, they stay at -- at his home, correct?

11 A Yes, ma'am.

12 Q Okay. So you say you still have a close
13 relationship with the three children since their move to Las
14 Vegas?

15 A I say yes.

16 Q So clearly the move hasn't adversely impacted your
17 relationship with the children; is that correct?

18 A It has. And -- and not -- not relationship wise.
19 Time wise. I mean, it's a -- you know --

20 Q You said that yourself and your wife are retired,
21 sir?

22 A Yes, ma'am.

23 Q So you have -- you have the time to be able to
24 travel to come see the grandkids.

1 A We have time, but it's not what we want to do. We
2 don't want to travel. It would benefit the children -- it
3 would benefit the children if everybody would be, you know, in
4 one area.

5 Q Well, everybody isn't in one area, sir. So you're
6 -- the -- the move hasn't impacted your relationship with the
7 children. It has impacted your time as far as driving and
8 visitation. So that's my understanding of what you -- you
9 testified to. But clearly you and your wife have the time to
10 be able to come here and see the kids. So that's nice.

11 A It is nice. Is it --

12 Q It is nice.

13 A -- affordable?

14 MR. FRIEDMAN: They -- they --

15 THE WITNESS: I'm sorry.

16 MR. FRIEDMAN: -- haven't asked you a question.

17 THE WITNESS: I'm sorry. I don't get this -- I'm
18 sorry.

19 THE COURT: You're fine. You're fine.

20 MS. BURKETT: No, you're fine, sir. And Court's
21 indulgence. One moment, please.

22 Q Sir, do you believe it's important that the kids
23 have a relationship with Mom's parents as well?

24 A Yes.

1 Q Do you believe it's important that the children have
2 a relationship with Mom's aunts and uncles and cousins?

3 A If they could, yes. If they would, yes.

4 Q Do you think the children would benefit from having
5 a close relationship with Mom's sister and siblings and the
6 rest of her family here in Las Vegas?

7 A I don't know them.

8 Q Do you think the children would benefit from knowing
9 more of their family, sir?

10 A That's -- knowing the family that I know, I would
11 say no.

12 Q So moving on to your relationship with Lisa. And
13 understand that you testified that you helped watched the kids
14 because Lisa was working so much while the parties were in Las
15 Cruces; is that correct?

16 A I never said Lisa was working so much.

17 Q What was your understanding of why she wasn't able
18 to stay at home full-time with the children?

19 A Well, you really want me to answer that?

20 Q Do you not believe that Lisa was working, sir?

21 A No, I know she was working at part -- part of the
22 time.

23 Q Are you aware that Lisa was working multiple jobs
24 when she lived in Las Cruces, sir?

1 A She did work a couple jobs at one time, two jobs at
2 one time.
3 Q Okay.
4 A She was also --
5 Q Thank you, sir. That's all --
6 A -- her other --
7 Q -- I asked.
8 A -- times was having affairs.
9 Q Sir, that's not what I asked. That's not --
10 A Well, you asked me --
11 Q -- relative to this --
12 A -- about her time.
13 Q -- line of questioning.
14 A Ma'am, you asked me about her time. I'm sorry.
15 Q I asked her about working and you asked if you -- if
16 I really want you to answer it. If I'm asking, sir, I'm
17 going --
18 A Oh.
19 Q -- to go ahead and assume I'd like you to answer the
20 question and not deviate from the question or the answer.
21 A All right. I apologize. I do. I do.
22 Q Do you think it's appropriate that Lisa should be
23 penalized for not being home as often as Joel because she was
24 working?

1 A Not for her working hours she shouldn't be
2 penalized. Not for that.

3 Q Okay. Do you think Lisa's a good mom?

4 A No.

5 Q No? And why is that, sir?

6 A Because she has proved she's not a good mom. She
7 sleeps most of the time when she's at home. Yes, Lisa, it's
8 true. My son when he was working his business he would come
9 home and have to cook dinner while Lisa was -- was home. She
10 was home all day.

11 Q Thank you, sir.

12 A I'm sorry. I know this could hurt our relationship
13 with the grandchildren, but it's -- I got to be honest. I'm
14 sorry.

15 Q Please wait and I'll -- I'll ask you a question.

16 A I'm looking at Lisa.

17 THE COURT: You -- you need to wait --

18 THE WITNESS: I'm sorry.

19 THE COURT: -- for a question though, sir.

20 THE WITNESS: I know, Your Honor. The --

21 MS. BURKETT: The Court's indulgence. No further
22 questions, Your Honor.

23 THE COURT: Any redirect?

24 MR. FRIEDMAN: I have a couple.

1 THE COURT: Okay.

2 REDIRECT EXAMINATION

3 BY MR. FRIEDMAN:

4 Q Sir, the -- Counsel asked you a question about when
5 Lisa was working. Were there other times that you watched the
6 children for Lisa when she wasn't working?

7 A Yeah -- yes, sir.

8 Q And what was she doing to the best of your
9 knowledge?

10 A Well --

11 MS. BURKETT: Objection, sure -- sir. It's
12 speculative.

13 THE WITNESS: Oh, no. I can --

14 THE COURT: You --

15 THE WITNESS: -- tell other --

16 THE COURT: Well, you need --

17 THE WITNESS: We don't even have to go there. I
18 can --

19 MR. FRIEDMAN: Hold on.

20 THE COURT: The -- the objection's sustained. You
21 need to lay a foundation.

22 MR. FRIEDMAN: All right.

23 THE WITNESS: Oh, I'm sorry.

24 BY MR. FRIEDMAN:

1 Q And did Lisa tell you where she was when she wasn't
2 working when you watched the children?

3 A Well, this one time this came in she said she was
4 grocery shopping. And, you know, it took her several hours to
5 grocery shop for a few items.

6 Q Did she bring in groceries when she came back?

7 A I brought the children out to the car and brought --
8 brought the stuff out to her car because she picked them up
9 from the house. And there was a --

10 Q Okay. Sir -- sir, you're -- you're not --

11 A I'm sorry.

12 Q -- answering the question. So -- so if Lisa wasn't
13 working, if you know where she was, you do, or if you don't,
14 you don't.

15 A Oh, the -- no, I can't say I do a hundred percent.
16 I won't say that. Be -- I -- I know what she was doing, but I
17 can't --

18 Q Do you -- okay.

19 A -- say it.

20 Q Well, do you -- do you know what her work schedule
21 was? Was she working six, seven, eight hours a day?

22 A She was working -- or she had claimed to be working
23 eight hour shifts --

24 Q Okay.

1 A -- or --
2 Q So let -- let's take it one step at a time. She
3 claimed to be working eight hour shifts. How long was she
4 gone from the home when she claimed to be working an eight
5 hour shift?
6 A She would be gone for 12, 14 hours.
7 Q Okay. So --
8 A Pulling a double.
9 Q Okay.
10 A Sorry.
11 MR. FRIEDMAN: I don't have any further questions.
12 THE WITNESS: I'm sorry.
13 THE COURT: Okay. All right. You may step down.
14 THE WITNESS: Yes, sir.
15 THE COURT: Thank you for your --
16 THE WITNESS: Thank you, sir.
17 THE COURT: -- appearance.
18 (WITNESS EXCUSED)
19 MR. FRIEDMAN: Judge, may we -- may -- can we take a
20 five minute break? Would that be --
21 THE COURT: That's fine. Let's --
22 MR. FRIEDMAN: Okay.
23 THE COURT: Let's take a five minute break.
24 MR. FRIEDMAN: Thank you.

1 THE COURT: We'll resume in five minutes.

2 (COURT RECESSED AT 10:38 AND RESUMED AT 10:46)

3 THE COURT: All right. Let's go ahead and go back
4 on the record. We are back on the record in the Eorio matter.
5 Your next witness, Mr. Friedman?

6 MR. FRIEDMAN: I'm going to call the Plaintiff, Your
7 Honor.

8 THE COURT: Okay.

9 (WITNESS SUMMONED)

10 THE MARSHAL: Remain standing and raise your right
11 hand to be sworn. Thank you.

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

15 THE PLAINTIFF: Yes.

16 THE COURT: You may be seated. Counsel, you may
17 proceed.

18 JOEL EORIO

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

21 DIRECT EXAMINATION

22 BY MR. FRIEDMAN:

23 Q Joel, I'm going to speed it up a little bit. We've
24 heard a lot of preliminary questions. Do -- do you want to

1 move back to New Mexico?

2 A Yes.

3 Q Tell the Court why you want to move back to New
4 Mexico with the children.

5 A It's a lot safer place for the children. They are
6 happier there. I believe they can thrive a lot there.

7 Q Okay. And financially, where -- where -- if you
8 moved -- if the Court allows you to move to New Mexico, where
9 would you be living?

10 A With my parents.

11 Q Okay. That'll financially help you -- well, you
12 have to pay rent. You won't -- you won't have to pay rent,
13 will you?

14 A No.

15 Q Okay. And how many bedrooms does your parents house
16 have?

17 A Four.

18 Q So it would be your parents have a bedroom; is that
19 correct?

20 A Correct.

21 Q You have a bedroom?

22 A Yes.

23 Q And then two of the kids would double up and have --

24 A Yes.

1 Q -- is that correct?
2 A Yes.
3 Q And two boys, one girl, two girls, one boy?
4 A Two girls, one boy.
5 Q Okay. So the girls would be in one room and the boy
6 would be in the other room?
7 A Exactly.
8 Q Okay. And that would provide stability for the
9 children?
10 A Yes.
11 Q Do you know where Lisa lives right now?
12 A Yes.
13 Q The same place that you lived before?
14 A Yes, sir.
15 Q Okay. Do you have -- have you researched to obtain
16 employment in New Mexico?
17 A Yes, sir.
18 Q What do you do in Las Vegas here?
19 A I work at AutoZone.
20 Q AutoZone. Have you secured other employment in --
21 in New Mexico?
22 A Yes.
23 Q Where are you going to work in New Mexico?
24 A AutoZone.

1 Q Okay. And is that close to your parents' residence?
2 A Yes, sir.
3 Q Okay. Based upon obviously your interaction with
4 your children, do your children enjoy New Mexico?
5 A Yes, sir.
6 Q Okay. And your -- your father testified that
7 there's a -- a park that's somewhat close?
8 A Yes, sir.
9 Q The kids -- do they like to go to the park?
10 A Yes, sir.
11 Q There are other activities that they like to do in
12 New Mexico?
13 A Yes.
14 Q Do the kids have friends in New Mexico?
15 A Yes.
16 Q Do some of your children still FaceTime or -- I
17 apologize. I'm not that sophisticated. Whatever the social
18 media is, however they communicate with them?
19 A Yes, sir.
20 Q Because -- do you know what a payphone -- oh, I'm
21 sorry.
22 A I know what a payphone is.
23 Q Okay. All right. We used to talk on the payphone.
24 But anyway -- and -- and you heard -- you heard Lisa's

1 testimony before that -- of the two of you who is primarily
2 caring for the kids, it was you opposed to Mom; is that
3 correct?

4 A Yes.

5 Q And -- and Mom worked a lot more than you did; is
6 that correct?

7 A Yes, sir.

8 Q And you were more of a house husband?

9 A Yes.

10 Q Okay.

11 MS. BURKETT: Well, I'm sorry to interrupt, Your
12 Honor, and -- and Counsel. My screen froze completely on my
13 end. So I may have to leave and be added back in. I do
14 apologize.

15 THE COURT: Okay. You're -- no, we see you.

16 MS. BURKETT: Right. I don't see you.

17 THE COURT: Oh, you can't -- you can't see us
18 currently?

19 MS. BURKETT: No, sir. I see a still of you from
20 earlier, but that's it.

21 THE COURT: Okay.

22 MS. BURKETT: So I'm --

23 THE COURT: Yeah, if you want to --

24 MS. BURKETT: -- going to leave the breakout room.

1 THE COURT: Do you want to leave and -- and jump
2 back in? And we --

3 MS. BURKETT: Yes, sir.

4 THE COURT: -- we need to grab her --

5 MS. BURKETT: Sorry, guys.

6 THE COURT: -- for the breakout.

7 THE CLERK: Yes.

8 THE COURT: Yeah, why don't you do that, Counsel.

9 MS. BURKETT: Thank you.

10 (PAUSE)

11 THE COURT: All right. Do we have you back? Can
12 you -- can you see it?

13 MS. BURKETT: Yes, Your Honor. Thank you. My
14 apologies again. Now, I can see other --

15 THE COURT: Okay.

16 MS. BURKETT: -- people in the courtroom.

17 THE COURT: Okay. All right. Let's -- let's go
18 ahead and resume.

19 BY MR. FRIEDMAN:

20 Q Sir, you heard Lisa's testimony that between the two
21 of you, you were more involved with the children because you
22 were more of a house husband and Lisa was out working; is that
23 correct?

24 A Yes, sir.

1 Q Now, let's talk about your youngest child. What's
2 that child's name?
3 A Gianni.
4 Q Gianni. And when did you learn that that child was
5 not your biological child?
6 A I found out June 26th.
7 Q Of what year, sir?
8 A Of 2014.
9 Q Was that prior to the child's birth or after?
10 A Prior.
11 Q Okay. And from the inception of the birth through
12 the present day, have you taken that child in as your own?
13 A Yes, sir.
14 Q Okay. And -- and you knew that wasn't your child
15 biologically.
16 A Yes.
17 Q Okay. And for all intents and purposes, do you --
18 is -- do you have a father/son relationship with that child?
19 A Yes, sir.
20 Q Okay. You've heard Lisa testify that she wants you
21 to remain as the father -- the father/son relationship. You
22 heard that; is that correct?
23 A Yes, sir.
24 Q And despite the fact that your wife had an

1 extramarital affair that led to a child, that didn't stop you
2 from raising this child with -- as your own; is that correct?

3 A Correct.

4 Q And that child's biological father has -- has had
5 essentially no interaction in the child's life; is that
6 correct?

7 A Correct.

8 Q Okay. And if you were not there, based upon what we
9 know now that the child essentially wouldn't have a father
10 figure; is that correct?

11 A Correct.

12 Q Now, sir, you've leaned on your parents for support,
13 correct?

14 A Yes, sir.

15 Q Okay. And apparently from the testimony that you've
16 heard today, your -- your wife leans on her family for support
17 as well; is that correct?

18 A Correct.

19 Q It's assisting with the children as well, correct?

20 A Yes.

21 Q As a matter of fact, I -- I think she testified that
22 her mother and sister live in the house, correct?

23 A Correct.

24 Q Okay. And -- and you believe that's -- it's -- it's

1 also important for family on -- on her side to be involved in
2 the children's life, correct?

3 A Yes.

4 Q Okay. Now, up until they moved to New Mexico -- up
5 until you moved to Las Vegas, to the best of your knowledge,
6 was her mother and sister involved -- I'm sorry, Lisa's mother
7 and sister deeply involved in the children's upbringing?

8 A No.

9 Q Okay. But you are glad that now, at least, there is
10 someone involved in the children's life?

11 A No.

12 Q You're not glad that they're involved?

13 A No. They -- they're not the greatest people in the
14 world.

15 Q Okay.

16 (COUNSEL CONFER BRIEFLY)

17 Q Are -- are you concerned about Lisa's sister and her
18 emotional instability?

19 A Yes.

20 Q I'm sorry?

21 A Yes.

22 Q Okay. And -- and do you know if her sister has a
23 driver's license?

24 A She does not.

1 Q Okay. Does her -- and is -- is it the same issue
2 with her mother? Is there some emotional instability that you
3 believe or --

4 A I believe her mother does. Yes.

5 Q Okay. Since you've been out here in Las Vegas, has
6 her mother been involved in assisting with the children?

7 A Sometimes.

8 Q And give me a for example sometimes yes, sometimes
9 no?

10 A Sometimes yes.

11 Q And what do you mean sometimes no? Would she be
12 there and just not tend to the children at all or --

13 A Right.

14 Q Give me an example on how she would not -- have
15 assistance with the children.

16 A She would be -- well, when we first moved into the
17 house, I've come home after work and Gianni's downstairs
18 playing. The kids are, you know, scattered and Laura's in her
19 room with the door closed.

20 Q So the youngest five-year-old is by himself?

21 A Yes.

22 Q And the other two are somewhere around the house?

23 A Yes.

24 Q And Mom is just in the bedroom with the door -- her

1 mother --
2 A Mom.
3 Q -- just --
4 A Yeah. Laura was in the room.
5 Q And your wife was not home.
6 A Correct.
7 Q She's working or --
8 A Yeah.
9 Q So it was -- was it your understanding that her
10 mother was supposed to be supervising the children?
11 A Yes.
12 Q And on how many occasions did that occur sir that
13 you witnessed that?
14 A A few, like two to three times.
15 Q Is that one of the reasons why you're concerned with
16 her mother supervising the kids?
17 A Yes.
18 Q Okay.
19 (COUNSEL CONFER BRIEFLY)
20 Q Sir, I'm going to ask you a couple questions. Is it
21 -- you want to -- do you want to move back to New Mexico to be
22 closer to family?
23 A Yes.
24 Q Do you want to move back to New Mexico to have

1 financial security?

2 A Yes.

3 Q Do you want to move back to New Mexico to have
4 stability?

5 A Yes.

6 Q Do you want to move back to New Mexico to have some
7 -- to have structure?

8 A Yes.

9 Q If the Court allows you to move back to New Mexico
10 with the children and the Court issued visit -- a timeshare
11 order for Mom, you would of course abide by those, correct?

12 A Oh, yeah.

13 Q And although you guys are going through a divorce,
14 you guys communicate somewhat well, correct?

15 A Somewhat.

16 Q Okay. There's no real conflict between the two of
17 you, correct?

18 A No.

19 Q And nobody's bound -- beaten somebody's door down or
20 anything, correct?

21 A No.

22 Q It looks like you get along on a grand scheme pretty
23 well, right?

24 A Yeah.

1 Q Okay. You're able to provide for the children's
2 needs; is that correct? Doctors, food, clothing, schooling;
3 is that correct?

4 A Yes, sir.

5 Q You -- and -- and you've been able to cooperate with
6 Mom to meet the needs of the child; is that correct?

7 A Yes.

8 Q Historically, Mom has delegated most of those tasks
9 to you; is that correct?

10 A Yes, sir.

11 Q And you moved -- when you -- if you're allowed to
12 move to New Mexico, it's not your intent to deny Lisa any sort
13 of timeshare with the children, is it?

14 A No.

15 Q Okay. And you -- you -- your request to move is
16 solely based to improve your life and the children's lives?

17 A Yes, sir.

18 Q And do you believe financial structure and -- and
19 stability would benefit the children as well?

20 A Yes, sir.

21 Q And -- and you have -- the children have some
22 extended family here of course. We've heard about that,
23 right?

24 A Yes, sir.

1 Q And the children have extended family in -- in New
2 Mexico; is that correct?

3 A Yes, sir.

4 Q And if you were allowed to move to New Mexico, you
5 would still cooperate with Lisa in any and all major decisions
6 relating to the children, correct?

7 A Yes, sir.

8 Q And sir, to the best of your knowledge, they have
9 direct flights from Las Vegas to --

10 A Yes, sir.

11 Q -- New Mexico?

12 A Yeah.

13 Q It's on Southwest, I believe; is that correct, or
14 Allegiant?

15 A Allegiant --

16 Q Okay.

17 A -- does it.

18 Q Okay. It's not that long -- it was an
19 hour-and-a-half flight?

20 A Yes, sir.

21 Q Okay. And your children -- are -- are all of them
22 of school age or is the youngest one not of school age yet?

23 A He can start preschool this year.

24 Q Okay.

1 A This coming.

2 Q And sir, if Lisa was to move back to New Mexico, you
3 would have no problem sharing custody, correct?

4 A No.

5 Q So your request to move to New Mexico is not to gain
6 primary custody of the children, is it, sir?

7 A No, sir.

8 Q It's to -- it's for the betterment of you and
9 betterment of the children; is that correct?

10 A Yes, sir.

11 Q And you heard Lisa's testimony that if she was able
12 to secure employment that she would -- she -- you know, she
13 would move back to New Mexico to be with the children, as
14 well, if the Court allowed you to relocate; is that correct?

15 A Yes, sir.

16 Q Okay. And you are able to secure employment
17 somewhat easily?

18 A Yes, sir.

19 Q Okay. And Lisa's historical field, is -- has she
20 historically been a waitress?

21 A Mostly, yes.

22 Q Okay.

23 A I --

24 Q Do you know if she's done anything else?

1 A She has done medical billing --

2 Q Okay.

3 A -- for a couple of jobs. She's managed a couple of
4 job -- you know, IHOPs, but yeah, she's both.

5 Q Okay.

6 MR. FRIEDMAN: The Court's indulgence. Thank you,
7 sir. I don't have any other questions, but you have to --

8 THE COURT: Cross examination, Ms. Burkett?

9 MS. BURKETT: Yes, Your Honor.

10 CROSS EXAMINATION

11 BY MS. BURKETT:

12 Q Good morning, Mr. Eorio.

13 A Good morning.

14 Q May I call you Joel?

15 A Yes.

16 Q Thank you. So earlier you testified as to your
17 belief about Lisa's mother's emotional stability and -- and
18 her ability to watch the children. How many times did you say
19 you came to the house and found the children were unattended?

20 A Two or three.

21 Q And but grandma was in the house?

22 A Yes.

23 Q Was it possible you had poor timing?

24 A No, the --

1 Q It's not possible?

2 A -- children have told me that she just sits in her
3 room, watches TV.

4 Q So the children have told you.

5 A Yes, but I've seen it too.

6 Q So we're discussing just the -- the behaviors, I
7 guess, of family members. When your parents called CPS on
8 yourself and your wife, do you think that was an appropriate
9 emotional response to your move?

10 A Move to where?

11 Q To Las Vegas, sir.

12 A It wasn't because we moved to Las Vegas, ma'am.
13 They called when we were living in Alamogordo.

14 MR. FRIEDMAN: Obj -- what -- objection, calls for
15 speculation on what he knows what the other people called
16 about.

17 THE COURT: Sustained. You'll -- you'll need to lay
18 a foundation, Counsel.

19 BY MS. BURKETT:

20 Q Do you believe that it was appropriate behavior for
21 your parents to call CPS on yourself and your wife?

22 A No.

23 Q Okay. And you are -- you're testifying that you
24 will have employment with AutoZone when you move back to Las

1 Cruces; is that correct?

2 A Yes, ma'am.

3 Q And that's -- that's where you work now in Las
4 Vegas?

5 A Yes, ma'am.

6 Q Same company, I mean? Okay. Are you obtaining a
7 different position?

8 A No.

9 Q Are you transferring?

10 A Transferring, yes.

11 Q Okay. Are you going to be making a similar wage?

12 A Exactly what I'm making here.

13 Q Okay. And are you going to be working similar
14 hours, sir?

15 A Yes.

16 Q So your -- your parents will continue to have to
17 watch the children for approximately five days out of the week
18 or when you're working; is that correct?

19 A Well, we'll be living in the household.

20 Q Right, but while you're working --

21 A Yes.

22 Q -- your (sic) grandparents will be watching your
23 children? So the move to New Mexico doesn't really bring with
24 it any financial benefits.

1 A Yes, it does.

2 Q Okay. How so?

3 A Yes, it'll be getting help from my parents and I
4 will be able to save money so I can get our own place.

5 Q When we -- when you were testifying as to financial
6 stability, you're not moving to Las Vegas (sic) for a better
7 job, correct? You're -- you're just transferring.

8 A Yes.

9 Q Okay. And I did have a question. I'm sorry, let me
10 pull the correct exhibit up. I believe it's -- it's your
11 Exhibit 3, sir. I'm not sure if you have that in front of
12 you, sir.

13 A No, I do not.

14 MR. FRIEDMAN: Bring it up.

15 MS. FRIEDMAN: Would you like me to bring it up to
16 you?

17 THE COURT: Yes. Why don't we do that.

18 THE WITNESS: Oh, okay. Yes.

19 Q Who is Mr. Pendergrass (ph)?

20 A He is a gentleman that I've known for many years
21 that has offered me a job.

22 Q And you included in your exhibits where you were
23 initially going to take this job?

24 A Well, initially it's -- I talked to him and I said

1 if I can get a transfer, you know, is a job opening still open
2 for me and he said yes. And so he sent me a letter.

3 Q And how recently did you learn that a transfer for
4 your current company got approved?

5 A Before the first court hearing was supposed to
6 happen.

7 Q I just wanted to clarify, sir. Thank you. When you
8 found out that Lisa was pregnant with Gianni, did you -- did
9 you ever file anything with the courts there? Did you do
10 anything, leave the house?

11 A No.

12 Q No? So you never filed for divorce?

13 A Yes.

14 Q You did file for divorce?

15 A Yes, I did. But not --

16 Q In New Mexico.

17 A -- when she was pregnant.

18 Q No?

19 A I filed for divorce after she had Gianni.

20 Q Okay. But there's no other court order, correct?

21 A No.

22 MS. BURKETT: Okay. No further questions.

23 THE COURT: Any redirect?

24 MR. FRIEDMAN: The Court's indulgence.

1 REDIRECT EXAMINATION

2 BY MR. FRIEDMAN:

3 Q Joel, how long have you been working at the
4 AutoZone?

5 A It's going on two years.

6 Q And when you go to New Mexico, you'll be at the same
7 company?

8 A Yes, sir.

9 Q And sir, when you -- when you -- I -- I think I
10 asked you this, but Counsel asked another question. When you
11 live with your parents in New Mexico, you won't be paying rent
12 to them, will you?

13 A No.

14 MR. FRIEDMAN: Okay. No further questions.

15 THE COURT: All right. You may step down.

16 (WITNESS EXCUSED)

17 THE COURT: Any additional witnesses, Counsel?

18 MR. FRIEDMAN: Judge, I'm just going to -- I -- if I
19 could, I would like to recall the Defendant for two questions.

20 THE COURT: Well, typically that would be rebuttal,
21 but --

22 MR. FRIEDMAN: That -- that's fine.

23 THE COURT: -- Ms. --

24 MR. FRIEDMAN: I'll --

1 THE COURT: -- Ms. Burkett, do you have any
2 objection to --

3 MR. FRIEDMAN: I'll -- I'll -- that's even better,
4 Judge. I'll wait until then. That's fine. No problem.

5 THE COURT: Okay. All right. Apart from that, do
6 you rest at this point?

7 MR. FRIEDMAN: We rest at this point.

8 THE COURT: Okay. Ms. Burkett, if you want to call
9 your first witness.

10 MS. BURKETT: Thank you, Your Honor. And I'm -- I'm
11 sorry, Joel, but I'd like -- I'd like to call the Plaintiff to
12 the stand.

13 THE COURT: Okay. You're back up.

14 (WITNESS SUMMONED)

15 THE COURT: I remind you you're still under oath.

16 THE WITNESS: Yes, sir.

17 THE COURT: You may proceed, Counsel.

18 MS. BURKETT: Thank you, Your Honor.

19 JOEL EORIO

20 called as a witness on behalf of the Defendant, having been
21 previously sworn, testified upon his oath as follows on:

22 DIRECT EXAMINATION

23 BY MS. BURKETT:

24 Q Joel, how long have the parties been exercising the

1 week on/week off timeshare?

2 A Since December.

3 Q Okay. What is your exchange --

4 A Or --

5 Q -- dates?

6 A -- Novem -- Fridays.

7 Q Okay. At what time?

8 A 7:00 o'clock.

9 Q Okay. So just once a week. Have there been any

10 issues with this week on, week off arrangement?

11 A No.

12 Q Okay. How has co-parenting been since you guys have

13 been exercising this timeshare?

14 A All right.

15 Q Okay. And I believe you testified earlier that --

16 that you and Mom generally get along pretty well when it comes

17 to the children; is that correct?

18 A Correct.

19 Q Okay. Since living in Las Vegas, do you recall Mom

20 asking you about therapy for Hayden?

21 A Yes.

22 Q Okay. And what was the end result of that

23 conversation?

24 A I'm still waiting on a phone call for her first

1 appointment.

2 Q Okay. And -- and have you communicated that to Mom?

3 A No, I have not. I --

4 Q When was the last time you communicated with Mom
5 about -- about therapy for Hayden?

6 A About a week ago.

7 Q About a week ago. And what was -- what was that
8 communication? So if you didn't tell her you were waiting for
9 a call, what was your communication with Mom?

10 A I cannot remember off the top of my head right now.

11 Q Do you recall that Mom sent you documents for
12 Hayden's therapy to get -- to get her enrolled?

13 A Yes.

14 Q Did you believe Hayden getting enrolled for therapy
15 was a good idea?

16 A Yes.

17 Q Okay. And what was the reason you didn't complete
18 the paperwork for your -- for Hayden?

19 A Because I didn't -- I did my research on that place
20 and I did not like their stuff.

21 Q Okay. So you -- you selected a different therapist;
22 is that correct?

23 A Yes.

24 Q And that -- that company or provider, they told you

1 you did not need Mom's consent to enroll Hayden in therapy?
2 A Correct.
3 Q Did that seem odd to you?
4 A No.
5 Q Okay. Are you aware that both yourself and Lisa
6 still share joint legal custody of the children?
7 A Yes.
8 Q And you understood that she had to get your
9 signature on documentation for Hayden?
10 A No, I went off of what the company told me.
11 Q But you understand that Mom had to get your
12 signature for --
13 A Yes.
14 Q -- Hayden for that first therapist. Sorry if you
15 answered. I didn't hear you.
16 A I said yes.
17 Q And then do you recall Mom asking you about Harley
18 being enrolled in classes here in Las Vegas?
19 A Yes, ma'am.
20 Q Did you help Harley enroll in her classes?
21 A No, ma'am.
22 Q Okay. Did -- were you made aware of a deadline?
23 A No, I was not.
24 Q Lisa didn't tell you that she had to -- that Harley

1 had to enroll for classes by a certain date?

2 A No, she said that it was already done.

3 Q So she didn't ask you before the enrollment to
4 assist your daughter with picking classes.

5 A No.

6 Q So if it was already done, have you since talked to
7 Harley about the classes she's enrolled in?

8 A No, I have not.

9 Q Do you know what school she got accepted to?

10 A No.

11 Q Do you know it's -- it's a really good magnet
12 school?

13 A Well, if I was notified by Lisa, I would know.

14 Q Well, if she notified you that -- that Harley was
15 already enrolled in classes, then she obviously notified you
16 about --

17 A But in --

18 MR. FRIEDMAN: Obje -- obje --

19 Q -- her being enrolled in the school.

20 MR. FRIEDMAN: Objection, badgering and leading the
21 witness.

22 THE COURT: Well, it's -- it's argumentative. So
23 let -- let's -- let's move on.

24 MS. BURKETT: Understood.

1 BY MS. BURKETT:

2 Q Why do you want to move to New Mexico?

3 A Because I believe it's a better place for the
4 children.

5 Q Okay. Okay. And you stated that you would be
6 living with your parents, correct?

7 A Correct.

8 Q How long?

9 A Until I can get us a stable place, regular house.

10 Q Will you be paying -- paying your parents any rent?

11 MR. FRIEDMAN: Objection, asked and answered.

12 THE COURT: Overruled.

13 THE WITNESS: No.

14 BY MS. BURKETT:

15 Q What is your living situation like here in Nevada?

16 A I rent a room right now.

17 Q Okay. Do you have roommates?

18 A Yes.

19 Q Where do the children sleep when they stay with you?

20 A They sleep downstairs with me in the living room.

21 And my oldest sleeps upstairs.

22 Q So your oldest sleeps in her own bed and you sleep
23 downstairs with the other two, what, on a couch?

24 A On an air mattress and a couch.

1 Q Okay. And then you said Harley gets the room to
2 herself?
3 A Yes. So she shares.
4 Q Okay. So she doesn't -- what?
5 A Yes, she gets it to herself.
6 Q Okay. So Harley gets her own room and the other
7 kiddos share with you on the couch.
8 A Yes.
9 Q Okay. So I think we went over this a little bit
10 with your dad, so I'll keep it brief. How often do the
11 children stay with their grandparents during your week
12 timeshare?
13 A Most of the time.
14 Q Okay. About how many overnights?
15 A About four.
16 Q Okay. And about how many school days?
17 A Three.
18 Q We'll continue with your -- your living situation.
19 You wrote in your FDF that you filed with the court in June of
20 last year which is also our Exhibit C that your mortgage or
21 rent was \$1,775 per month. Is that still accurate?
22 A Well, at that household, it was.
23 Q That's still accurate?
24 A No.

1 Q How much do you pay for your room you rent right
2 now?
3 A 500.
4 Q Per month, sir?
5 A Hm?
6 Q Per month, correct?
7 A Correct.
8 Q And how many hours per week are you working at
9 AutoZone right now?
10 A Forty hours.
11 Q And you said it would stay the same when you moved
12 back to Las Cruces, correct?
13 A Correct.
14 Q Okay. And what shift do you have?
15 A I work 1:00 p.m. to 10:00 p.m.
16 MS. BURKETT: Okay. At this time, Your Honor, I'd
17 like to admit Defendant's Exhibit B and address the
18 Plaintiff's interrogatory responses.
19 THE COURT: Any objection to the admission of
20 Exhibit B?
21 MR. FRIEDMAN: Those are his interrogatories and
22 responses? No --
23 MS. BURKETT: Yes.
24 MR. FRIEDMAN: -- objection.

1 MR. FRIEDMAN: Please wait -- wait for a question.

2 THE COURT: Please continue, Counsel.

3 MS. BURKETT: Thank you.

4 BY MS. BURKETT:

5 Q Please turn to your response to Interrogatory number
6 8. It's going to be JBA011. Can you please read your
7 response to Interrogatory number 8?

8 A There has not been a lapse in my employment after
9 one job. I was immediately hired at the next.

10 Q And just for clarification, this was when the
11 interrogatory was asking about your job search efforts; is
12 that correct?

13 A Yes.

14 Q Please turn to Bates JBA008.

15 MR. FRIEDMAN: I'm sorry, Counsel, what number?

16 MS. BURKETT: JBA008.

17 Q We'll be looking at Interrogatory number 6. It's on
18 both pages. But sir, do you see the Interrogatory number 6?

19 A Yes.

20 Q Okay. And you remember that it was asking about
21 your employment history?

22 A Yes.

23 Q Okay. Now, if you can scroll down to the next page.
24 Can you please read numbers one and two of your response to

1 Interrogatory number 6?

2 A AutoZone, September 2019 to current. IHOP, July
3 2018 to April of 2019. Assistant manager.

4 Q Okay. Do you see the gap in employment there, sir?

5 A Yes, ma'am.

6 Q What employment did you have between April of 2019
7 and September of 2019?

8 A Well, I was getting ready to move. And when we
9 moved here, I had to get the kids ready for school.

10 Q So you were unemployed between April of 2019 and
11 September of 2019?

12 A Yes, ma'am.

13 Q So you did, in fact, have gaps in employment.

14 A Oh, yes.

15 Q Okay. All right. Number 2 of your response to
16 Interrogatory number 6, you indicated that you worked at IHOP
17 from July of 2018 to April of 2019.

18 A Yes, ma'am.

19 Q Is this the time when you were primarily -- where
20 you allege you're primarily caring for the children?

21 A No.

22 Q I'm sorry?

23 A No.

24 Q Isn't the time you were caring for the children?

1 A Neither of us were really.

2 Q Sorry, sir. I'm having a hard time hearing you.
3 It's probably the fun masks.

4 THE COURT: Yeah, I -- and I do -- I just need you
5 to speak up into the microphone.

6 THE WITNESS: Oh, sorry.

7 Q So sorry. Once again and not -- not because I'm
8 trying to reiterate but because I literally could not hear,
9 from July of 2018 to April of 2019, who was the primary
10 caregiver for the children?

11 A We both were.

12 Q Both were. So when you -- when you testified
13 earlier that you've always been the primary caregiver for the
14 children, you're saying at least during this time period
15 that's not true?

16 A Yeah.

17 Q So would I be accurate in stating that from July of
18 2018 to present you and Lisa have shared in joint physical
19 custody of the children?

20 MR. FRIEDMAN: Objection, mischaracterizes prior
21 testify.

22 THE COURT: Over -- overruled. The witness may
23 answer.

24 THE WITNESS: Can you repeat that?

1 BY MS. BURKETT:

2 Q I can. So if you were both watching the children
3 starting July of 2018, you were both caring for the kids. And
4 you guys have been caring for the kids together since moving
5 to Las Vegas. Would I be correct in characterizing your joint
6 physical custody arrangement from July of 2018 to present?

7 A Yes.

8 Q If you can please turn to JBA010. This is the next
9 page. Are you there, sir?

10 A Yeah.

11 Q Okay. In your response to internet 7, you put Basin
12 Electronics as your number two. Do you see that?

13 A Yes, ma'am.

14 Q This was not included in your response to
15 Interrogatory number 6, was it?

16 A No.

17 Q How long were you employed with Basin Electronics?

18 A A couple of months.

19 Q From what date, sir?

20 A Got the job there right after I came back from
21 dropping -- when Lisa moved out of here -- so I would say May
22 10th to July probably 20th.

23 Q Is that 2020, sir?

24 A '19.

1 Q And I'm sorry to backtrack a little bit. For your
2 number 2 to Interrogatory number 6 which is of that one page
3 on JBA009, you indicate that you were let go from IHOP; is
4 that correct?

5 A Yes.

6 Q Why were you let go, sir?

7 A Lisa quit her job and she was the general manager.
8 And --

9 Q Sir, can you answer the question why were you let
10 go?

11 A Because Lisa quit and they got rid of me too.

12 Q To clarify, your -- your employer said you're let go
13 because your wife quit?

14 A Yes.

15 Q Sir, I'm sorry. I'm having a hard time -- I -- I
16 don't know employment law very well, but I'm having a hard
17 time believing that.

18 MR. FRIEDMAN: The -- move -- to move to strike.

19 THE COURT: Sustained.

20 BY MS. BURKETT:

21 Q When do you allege that Mom was working multiple
22 jobs or extra hours? Here, specifically.

23 A Here?

24 Q In general you were indicating you were, you know,

1 the -- the house husband. What years was Lisa working
2 multiple jobs or extra shifts?

3 A While we were living in New Mexico. Yes, she worked
4 two jobs for a couple months.

5 Q For a couple months?

6 A Yeah.

7 Q She worked extra shifts?

8 A Yes.

9 Q So when you were in New Mexico, was that -- that --
10 that's a long stretch of time. Do you have any specific years
11 for me?

12 A No.

13 Q You can't remember what years your wife was working
14 overtime or -- or multiple jobs, correct?

15 A I would say probably 2014. And that's the only year
16 I can think of.

17 Q If you can please go back to JBA009? For number 3,
18 you listed Eorio Handyman Services --

19 A Yes, ma'am.

20 Q -- September of 2016 through June of 2018.

21 A Yes.

22 Q So this was your own business?

23 A Yes, ma'am.

24 Q On average, how many hours per week did you work?

1 A Probably about 30.
2 Q Thirty hours per week. And what was your
3 approximate annual salary from this job?
4 A I bring home probably two, \$300 a day.
5 Q We -- you did your taxes, sir. Do you recall what
6 you made on an annual basis from this job?
7 A No, I do not remember.
8 Q All right. I'm trying to find the correct page
9 number.
10 MS. BURKETT: Court's indulgence.
11 Q Okay, sir. Can you turn to JBA061?
12 MR. FRIEDMAN: He -- he doesn't have that in front
13 of him.
14 THE COURT: This is a different exhibit?
15 MR. FRIEDMAN: Yes, sir.
16 THE COURT: What -- I'm sorry, which --
17 MS. BURKETT: My apologies.
18 THE COURT: Which exhibit number?
19 MS. BURKETT: All right. This is Exhibit D.
20 THE COURT: Exhibit D.
21 MS. BURKETT: Yes, these are the income tax returns
22 for 2017, '18, and '19 along with the accompanying W-2s.
23 THE COURT: Okay.
24 (COURT AND CLERK CONFER BRIEFLY)

1 THE COURT: We're -- we're going to go ahead and
2 print that out so the --
3 MR. FRIEDMAN: Okay.
4 THE COURT: -- witness can see that.
5 MR. FRIEDMAN: We're just --
6 MS. BURKETT: And Your Honor, I would like to move
7 to have this admitted, please.
8 MR. FRIEDMAN: I -- I just need to see it for a
9 second. I apologize.
10 THE COURT: Okay.
11 (COURT AND CLERK CONFER BRIEFLY)
12 THE COURT: It's 95 pages. So hang on.
13 MS. BURKETT: I'm not going to refer to all 90 --
14 THE COURT: Yeah.
15 MS. BURKETT: -- 90 some odd pages.
16 THE COURT: So I --
17 MR. FRIEDMAN: What -- what --
18 THE COURT: Can we show -- can we show the witness
19 through the -- the laptop?
20 MR. FRIEDMAN: I -- I can. It's -- this -- it --
21 I'm on Page 31. What's --
22 THE COURT: Yeah, let's hold off.
23 MR. FRIEDMAN: I'm sorry, what's the exhibit number,
24 Counsel? I mean --

1 MS. BURKETT: It is --
2 MR. FRIEDMAN: -- Bates stamp number? I'm sorry.
3 MS. BURKETT: Oh, the Bates stamp where I would like
4 you to go is JBA061.
5 MR. FRIEDMAN: Okay.
6 THE COURT: And these are -- it's my
7 understanding --
8 MS. BURKETT: And the --
9 THE COURT: -- from --
10 MS. BURKETT: -- exhibit is D,
11 THE COURT: These are tax returns?
12 MR. FRIEDMAN: I believe so.
13 MS. BURKETT: Yes.
14 THE COURT: Okay. Is there any objection to
15 admitting these documents?
16 MR. FRIEDMAN: I don't think so, Judge. And I'm
17 sorry, the computer's on 41. I apologize on --
18 THE COURT: Okay. That's fine.
19 MR. FRIEDMAN: It'll just -- it'll just take a
20 second.
21 (COUNSEL CONFER BRIEFLY)
22 MR. FRIEDMAN: No objection, Judge. It's their tax
23 return. It's fine.
24 THE COURT: Okay. Exhibit D is admitted into the

1 record.

2 (DEFENDANT'S EXHIBIT D ADMITTED)

3 THE COURT: Okay. All right. And so you may
4 continue, Counsel.

5 MS. BURKETT: Thank you, Your Honor.

6 BY MS. BURKETT:

7 Q All right. Joel, so this is your tax return for
8 2017, correct?

9 A Correct.

10 Q And this is when you filed with Lisa, correct?

11 A Correct.

12 Q And I know this is never fun to read when you're
13 doing your own taxes, but if you can please go to your total
14 income amount for Section 22 and tell me what that number is.

15 A 24,625.

16 Q Okay. And you just testified that you were making
17 \$200 a day while working for your own handyman services?

18 A Yes.

19 Q And you claim that you were working approximately 30
20 hours a week.

21 A Yes.

22 Q Okay. So that's, what, conservatively three days a
23 week working eight hour shifts? We'll give you a little -- a
24 little wiggle room.

1 MR. FRIEDMAN: Excuse -- excuse me, Counsel, just for
2 one second. Your Honor, I forgot. I have -- could you send a
3 -- I think it's Department C -- an email to Department C? I
4 apologize. I think I had an 11:00 o'clock hearing. If your
5 staff could just send that. I don't want to start the --

6 THE COURT: Okay. No, that's fine.

7 (COURT AND CLERK CONFER BRIEFLY)

8 THE COURT: Okay. Yeah, we'll --

9 MR. FRIEDMAN: Thank you.

10 THE COURT: -- we'll let them know.

11 MR. FRIEDMAN: I'm sorry, Counsel.

12 MS. BURKETT: Oh, no worries. I'm the one that
13 froze the screen earlier, so we're all good.

14 BY MS. BURKETT:

15 Q All right. Sorry, sir. I'll repeat just so we're
16 back on track. You claimed that you work approximately 30
17 hours a week and you made approximately \$200 a day while
18 working at your own handyman services; is that correct?

19 A Give or take, yes.

20 Q Give or take. Okay. So if we're conservative and
21 you worked three days a week, that would be about \$600 a week,
22 correct?

23 A Yes.

24 Q And three full work days as you know much less than

1 30 hours but we're trying to give you the benefit of the
2 doubt. I just did math because I absolutely cannot do it in
3 my head. But that means you yourself would have earned
4 \$31,200 for that year. So maybe perhaps you were incorrect
5 about the number of hours per week you worked or the amount of
6 income you were bringing in.

7 A I mean, yeah, that could be how much I brought in.

8 Q You didn't, sir. So, again, please look at JBA061,
9 Section 22, the combined income for yourself and your wife for
10 2017 was 24,625, correct?

11 A Correct.

12 Q And that's with your wife's income, correct?

13 A Yeah.

14 Q That change your view of how many hours per week you
15 worked perhaps?

16 A One second.

17 Q All right, sir. I can -- I can help out if you'd
18 like to turn to JBA063.

19 MR. FRIEDMAN: I'm sorry, Counsel, what was your
20 question?

21 MS. BURKETT: I'm trying to understand what the
22 Plaintiff's understanding of his income, but it's -- it's
23 demonstrated on JBA063.

24 MR. FRIEDMAN: Okay. So it -- I'm sorry, was there

1 a question?

2 THE COURT: So yeah, what --

3 MS. BURKETT: There will be. I was just waiting for
4 him to get to the page, so --

5 MR. FRIEDMAN: Yeah he's here. He's here.

6 MS. BURKETT: Got it. Okay. Understood.

7 BY MS. BURKETT:

8 Q All right, sir. What was your total income from
9 your business for 2017 based on this -- this page here?

10 MR. FRIEDMAN: See it right here?

11 A 12,394.

12 MR. FRIEDMAN: And speak up a little louder.

13 A 12,900 -- or 394.

14 Q I'm sorry, what was that number? I said it was
15 31,200 with your -- with your guess at, you know, 21 hours a
16 week? So let's see. You actually made less than half of what
17 you just estimated and testified to. Okay. And you did this
18 for two years, the handyman services. Did you make
19 approximately the same amount from September 2016 through June
20 of 2018?

21 A No.

22 Q No. Okay. Did you make more some years?

23 A I -- all I did for two years. So -- or a
24 year-and-a-half. And a lot of the time it was mostly --

1 MR. FRIEDMAN: Just -- just listen to her question.
2 Answer her question.

3 Q So if you -- if you were earning \$12,394 for the
4 year, do you think that's enough to support the family?

5 A No.

6 Q Okay. So do you think Mom had a choice in working
7 heavy hours or two jobs at the time?

8 MR. FRIEDMAN: Objection, calls for speculation.

9 THE COURT: Overruled. The witness may answer.

10 THE WITNESS: Can you repeat the question?

11 BY MS. BURKETT:

12 Q Sure. Do you think Mom had a choice in working
13 either heavy hours or multiple jobs at this time?

14 A Yes.

15 Q Okay. Okay. Do you think your family could have
16 survived financially without Mom working more than full-time?

17 A No.

18 Q Now, I'll move on. Can you please turn to Bates
19 JBA027? We'll go back to interrogatories.

20 MR. FRIEDMAN: So I'm sorry, Counsel. What -- you
21 -- what's the -- what -- 027?

22 MS. BURKETT: Yes, sir.

23 MR. FRIEDMAN: Oh, we -- we have the printed copy.
24 He's there.

1 Q Okay. So we're actually going to look at your
2 response to Interrogatory number 33. I think there's a little
3 bit of a numbering mishap. But the question was -- and you
4 can see it's -- and it's mislabeled as Interrogatory number 8.
5 It's asking you about Mom's fitness. Do you see that?

6 MR. FRIEDMAN: Yeah, it's right here.

7 A Yeah.

8 Q Okay. Can you please read your response to
9 Interrogatory number 33?

10 MR. FRIEDMAN: She wants you to read this out -- out
11 loud. Is that right, Counsel?

12 MS. BURKETT: Yes, please.

13 A Lisa is --

14 MR. FRIEDMAN: You have to speak up a little. Can't
15 hear you.

16 A Lisa is a good mom. I am troubled -- sorry, I'm
17 dyslexic. However, with that fact that she relies on other
18 people to care for our children. It's also troublesome that
19 Lisa goes on dates with stranger -- strange men and brings the
20 children or introduces the children to new or romantic
21 partners without my acknowledge or consent. The children have
22 already gone through enough and do not need to be exposed to
23 new lovers just yet.

24 Q So do you believe this means Mom should not be

1 allowed to go on dates?

2 MR. FRIEDMAN: Objection, mischaracterizes prior
3 testimony.

4 THE COURT: Overruled. The witness may answer.

5 THE WITNESS: No, she's -- she can go on dates.

6 BY MS. BURKETT:

7 Q Do you think Mom is allowed to have male friends?

8 A Yes.

9 Q Okay. Did Mom need your consent to introduce the
10 children to a friend?

11 A No.

12 Q Did Mom need your consent to introduce the children
13 to a boyfriend?

14 A No.

15 Q Okay. What would remedy this issue for you based on
16 your response to Interrogatory 33?

17 MR. FRIEDMAN: Do you understand the question?

18 THE WITNESS: No, I do not understand the question.

19 Q Okay. If -- if you find it troublesome based on
20 your response that Lisa goes on dates or introduces the
21 children to new partners without your knowledge or consent,
22 but you also are testifying that she does not need to have
23 your consent to introduce the children to a boyfriend, what do
24 you think the resolution is?

1 MR. FRIEDMAN: Objection, it's a compound question.

2 THE COURT: No, the -- the witness may answer if he
3 understands the question. It's a single question.

4 MR. FRIEDMAN: I'm not sure, Judge, he understands
5 the question.

6 THE WITNESS: Yeah, I'm sorry.

7 THE COURT: If you can restate the question,
8 Counsel.

9 MS. BURKETT: Okay.

10 BY MS. BURKETT:

11 Q What would alleviate your concerns about Mom having
12 either new friends or boyfriends?

13 A Well, the problem is is which one would it be? You
14 know.

15 Q Well, sir, you just testified that she doesn't need
16 your consent to introduce the children to a friend or a
17 boyfriend.

18 A My -- my issue is is how many boyfriends she has at
19 the time.

20 Q And then I'll have you -- I'll just bring up -- I --
21 I won't have you read it again, but the second sentence in
22 your response to Interrogatory number 33 where you discuss how
23 you're troubled with the fact that Mom relies on other people
24 to care for our children. Do you also rely on other people to

1 care for your children, sir?

2 A Well, my parents. Yes.

3 Q Okay. So do you not think that this comment is
4 perhaps hypercritical?

5 A In a way, yes.

6 Q I'm sorry?

7 A In a way, yes.

8 Q Please turn to JBA019. Okay. We're going to look
9 at Interrogatory number 19. Would you like me to read your
10 response to Interrogatory number 19, sir?

11 A Sure.

12 Q Okay. I -- again, if you would like, I was just
13 offering. Lisa is not home enough to be the primary caretaker
14 of our children. Lisa has always relied on me, Jessica, and
15 her family to care for the children. Right. And then keeping
16 that in mind, please turn to JBA028. And looking at your
17 response to Interrogatory number 37 which is asking about what
18 your schedule would look like with a relocation. Do you see
19 where I am, sir?

20 A Uh-huh (affirmative).

21 Q Would you like me to read your response to
22 Interrogatory number 37, sir?

23 A Sure.

24 Q Okay.

1 A Please.

2 MR. FRIEDMAN: Well, we -- we stipulate to what it
3 says. It's already been admitted.

4 MS. BURKETT: Okay. Understood.

5 Q Okay. So Mom has her family to help with the
6 children, correct?

7 A Correct.

8 Q And you have your family to help with the children,
9 correct?

10 A Correct.

11 Q Okay. So how is Mom's using help a reason she can't
12 exercise joint or primary custody here? Would you like me to
13 rephrase, sir?

14 A Yes, ma'am.

15 Q Okay. One of your interrogatories was going over
16 why Mom should not be a primary physical custodian. And we
17 read that out loud where you stated it was because she has
18 other people watch the children and she's not home with them.

19 A Correct.

20 Q But then you answered that you would have the exact
21 same situation if you move to New Mexico and had your parents
22 watching the children, correct?

23 A Correct.

24 Q So why is this a reason for Mom to not be awarded

1 primary custody?

2 A Because in New Mexico the kids are more comfortable
3 with my parents.

4 Q But that's not what your response was, sir. Your
5 response was because she has other people watch your children.

6 A Well, yes, she has her boyfriend watch the children
7 too.

8 Q Well, the Court -- Court will see that that is --
9 that is inaccurate, sir, but the point I'm trying to get at
10 and I'm sure you understand even though I'm not wording it as
11 eloquently as I would like, both parties have family watching
12 the children, correct?

13 A Correct.

14 Q Okay. And that doesn't make one parent better or
15 worse than the other, does it?

16 A No.

17 Q All right. So we'll talk about the kids briefly.
18 And you indicated that the move to New Mexico will benefit
19 them because they'll be able to move in and -- and have space
20 with grandma and grandpa, right?

21 A Correct.

22 Q Okay. And you indicated that you would have
23 financial stability which would benefit them.

24 A Correct.

1 Q Okay. And then how else would the move benefit the
2 children?

3 A They're -- they're just -- they're a lot happier in
4 New Mexico.

5 Q You believe that moving again after like moving
6 twice in three years might be disruptive to the children?

7 A We have moved twice in a year.

8 Q Do you think moving again would be disruptive to the
9 children?

10 A Children have mentioned to me many of times that
11 they miss Las Cruces. They want to go home.

12 Q Can you answer my question, please?

13 A This would be the final move, yes. It would be
14 beneficial to them.

15 Q I didn't ask that, sir. I said do you think moving
16 again after you just testified that they have moved multiple
17 times in the past three years, do you think that would be
18 disruptive to them?

19 A No.

20 Q No. You -- have you discussed the proposed New
21 Mexico school for Harley with Lisa?

22 A No.

23 Q No? Okay. I do believe it's one your exhibits,
24 sir, where you pulled up the early college high school; is

1 that correct?

2 A Yes, at --

3 Q Okay.

4 A -- Arrowhead.

5 Q Correct. And was it your intent to have Harley go
6 to that school?

7 A Harley -- that's one of the schools Harley mentioned
8 that she would want to go to.

9 Q Did you plan on Harley attending this school for
10 2021-2022?

11 A I was going off of what the Court would bring and
12 that's what I -- you know, she wants to go in the medical
13 field; that would probably be the best school for her.

14 Q Okay. And I know we talked about this earlier. You
15 know, Harley was accepted to a magnet pre-med program here in
16 Las Vegas, correct?

17 A Okay. Correct.

18 Q Okay. And you know she had to earn her seat and
19 participate in the lottery to get her seat. Were you aware of
20 that?

21 A Yes.

22 Q Okay. And you know she was accepted to two
23 programs, but the one she picked here was actually her
24 selection?

1 A Okay.

2 Q Okay. So Harley made a choice for attending this
3 magnet school for 2021-2022. Do you think that moving to Las
4 Cruces would disrupt that?

5 MR. FRIEDMAN: Oh, just -- objection to
6 mischaracterizes the -- the testimony. I'm sorry. Objection,
7 foundation, hearsay, it -- and -- and speculation to whatever
8 Harley said or Harley did or things like that. So the
9 question --

10 THE COURT: Well --

11 MR. FRIEDMAN: -- is an inappropriate question.

12 THE COURT: If you'll rephrase the question,
13 Counsel.

14 MS. BURKETT: Sure. And I apologize. We had
15 already discussed this school in town so I thought we had
16 already covered that.

17 BY MS. BURKETT:

18 Q So sir, we are talking about how Harley got into the
19 magnet school here and you are aware of that, correct?

20 A Yes.

21 Q Okay. Were you aware that she applied to and was
22 accepted to two magnet schools in Las Vegas?

23 A No.

24 Q Okay. So you weren't aware that Harley had the

1 choice of two schools here.

2 A No.

3 Q Were you aware that she got accepted and signed up
4 for classes?

5 MR. FRIEDMAN: Objection, lack of foundation.
6 There's no way a child of that age could go in there and sign
7 up for classes.

8 MS. BURKETT: They do it online.

9 THE COURT: Okay. Well, if -- if this witness
10 knows. It's -- it's a yes/no answer. So the objection's
11 overruled. You may answer the question.

12 THE WITNESS: What was it again?

13 BY MS. BURKETT:

14 Q Are you aware that Harley has already been accepted
15 to one of the magnet schools in Las Vegas and has already in
16 fact signed up for classes?

17 A No.

18 Q Your earlier testimony indicated that when you
19 discussed this school with Mom that she told you the classes
20 were already selected; is that correct?

21 A Yes, but I did not know what classes and all that.

22 Q No, sir. I'm not asking which specific classes.
23 Were you aware that your daughter has already completed the
24 process to be enrolled in this school for the next school

1 year?

2 A No, I didn't know that she was fully completed.

3 Q So do you know what the enrollment cutoff was for
4 your Arrowhead New Mexico school for enrollment this year?

5 A No, I do not.

6 Q You do not. Okay.

7 MS. BURKETT: I'll represent to the Court and it's
8 -- this is just from the -- the website for the school and --

9 MR. FRIEDMAN: Well --

10 MS. BURKETT: -- everybody can verify.

11 MR. FRIEDMAN: -- objection, move to strike. She --
12 is she a witness? Because Counsel can't -- can't make any
13 representations.

14 THE COURT: Yeah. Yes. Sustained.

15 MS. BURKETT: Understood.

16 BY MS. BURKETT:

17 Q So there are no other efforts to get Harley enrolled
18 in this New Mexico school, correct?

19 A Not at this time. No.

20 Q All right. Regarding Hayden's school performance,
21 did you have a school picked out for her in New Mexico?

22 A Yes.

23 Q Okay. And what school is that?

24 A Lynn Middle School.

1 Q What it is?
2 A Lynn Middle School.
3 Q And what is your understanding of what kind of a
4 student Hayden is?
5 A She's --
6 Q Did you -- I'm sorry --
7 A She knows --
8 Q -- did you say --
9 A -- her stuff.
10 Q -- believe?
11 A She just don't --
12 Q Okay.
13 A -- like doing it.
14 Q Okay. To your knowledge, since Hayden's moved here,
15 has her academic performance improved?
16 A No.
17 Q Has her academic performance declined?
18 A Yes.
19 Q It has. How do you know that, sir?
20 A From her report cards. I -- it wasn't that good in
21 New Mexico, but it's getting worse.
22 Q I'm sorry, I didn't hear that first worst. You were
23 what in New Mexico?
24 A It wasn't that good in New Mexico, but it's getting

1 worse.

2 Q Sir, I'm going to -- I think we have established
3 this, but I just want to clarify. Aside from your desire to
4 relocate, what other reasons should you have primary physical
5 custody of the children?

6 A It is the children seem a lot happier with me.

7 MS. BURKETT: Okay. No further questions, Your
8 Honor.

9 THE COURT: All right. I'm -- I'm looking at taking
10 our lunch break at this point.

11 MR. FRIEDMAN: Okay.

12 THE COURT: And we'll resume at 1:15.

13 THE WITNESS: All right.

14 THE COURT: Okay?

15 MR. FRIEDMAN: Thank you.

16 THE COURT: So we'll -- we'll be back on at 1:15.

17 (WITNESS EXCUSED)

18 MR. FRIEDMAN: You can leave the binder there.

19 (COURT RECESSED AT 11:57 AND RESUMED AT 1:17)

20 THE COURT: Okay. We are back on the record in the
21 Eorio matter. At the time we adjourned for lunch, the
22 Plaintiff was on the stand and had been examined by Ms.
23 Burkett. And so at this point in time, Mr. Friedman, did you
24 wish to conduct examination?

1 MR. FRIEDMAN: I'll save for rebuttal, Your Honor,
2 if that's acceptable.

3 THE COURT: Okay. That's fine. All right. Then.
4 Ms. Burkett, your next witness.

5 MS. BURKETT: Thank you, Your Honor. I'd like to
6 call my client, the Defendant, to the stand, please.

7 (WITNESS SUMMONED)

8 THE COURT: Okay. All right. Ms. Eorio, I -- I
9 remind you you're still under oath.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. All right. You may proceed,
12 Counsel. Thank you, Your Honor.

13 LISA EORIO

14 called as a witness on her own behalf, having been previously
15 sworn, testified upon her oath as follows on:

16 DIRECT EXAMINATION

17 BY MS. BURKETT:

18 Q Lisa, what is your understanding of why we are here
19 today?

20 A I believe we are --

21 MR. FRIEDMAN: I'm sorry, Your Honor.

22 A -- here to discuss --

23 MR. FRIEDMAN: I -- I could -- I couldn't hear that
24 question. I apologize.

1 THE COURT: What is your understanding as -- as to
2 why we are here today.

3 MR. FRIEDMAN: Oh, okay. Thank you.

4 A To establish if relocation is in the best interest
5 of the children and custody.

6 Q And how long have the children lived in Nevada?

7 A Just shy of two years now.

8 Q Is there any other court order concerning the
9 custody of the children?

10 A No, ma'am.

11 Q And I know I asked Dad this as well. Have there
12 been any issues with the joint physical custody arrangement
13 you guys have been exercising?

14 A As of yet, no, ma'am.

15 Q And how has co-parenting been since -- since you
16 guys have been exercising joint physical custody?

17 A Overall it has been pretty well. There is sometimes
18 a lack of communication, you know, regarding appointments,
19 school, and -- and things of that nature when I am trying to
20 get information, you know, pertaining to the kids. Sometimes
21 there's a lack in responses, but overall, pretty good.

22 Q And we -- we heard from Dad that he intends to
23 transfer his job from AutoZone here to New Mexico. To your
24 knowledge, would the -- would Dad's employment in New Mexico

1 be superior to his employment here?

2 MR. FRIEDMAN: Objection, calls for speculation.
3 Lack of foundation.

4 THE COURT: Sustained as to lack of foundation.
5 BY MS. BURKETT:

6 Q Dad testified earlier that one of the reasons he
7 believed it was a good idea to move to New Mexico was for
8 financial stability. Do you believe that him transferring and
9 keeping the same job would increase his financial stability?

10 A No, ma'am.

11 Q And what actual advantage would Dad have by moving
12 to New Mexico?

13 A He would be able to, as he stated, live with his
14 parents with no bills.

15 Q If the children are permitted to relocate to New
16 Mexico and Dad is awarded physical custody, do you believe
17 this would deprive you of your parenting time?

18 A Yes.

19 Q And you heard Mr. Eorio; grandpa, as he testified
20 earlier. And it's true that grandma and grandpa will be the
21 ones primarily watching the children in New Mexico, correct?

22 A Yes.

23 Q And you heard grandpa say that he testified he
24 doesn't think that you are a good mom?

1 A Yes.

2 Q Do you think based --

3 MR. FRIEDMAN: Objection --

4 Q -- on grandpa's --

5 MR. FRIEDMAN: -- mischaracterizes --

6 Q -- behavior --

7 MR. FRIEDMAN: -- prior test --

8 THE COURT: Over -- overruled.

9 BY MS. BURKETT:

10 Q Do you think based on grandpa's testimony that the

11 grandparents will continue to foster your relationship with

12 your children?

13 A No, ma'am.

14 Q And you don't deny that the children love their

15 grandparents, correct?

16 A Absolutely not.

17 Q Okay. Your children love your parents as well,

18 correct?

19 A They do.

20 Q We touched on Dad's living situation here in Nevada.

21 And he -- he indicated as you recall that Harley has her own

22 room when she stays at Dad's house. Is --

23 A Correct.

24 Q -- that your understanding of the sleeping

1 arrangements?

2 A No.

3 Q What is your understanding of the sleeping
4 arrangements at Dad's house?

5 MR. FRIEDMAN: Objection -- objection, lack of
6 foundation and hearsay.

7 THE COURT: Sustained.

8 BY MS. BURKETT:

9 Q Harley discussed the sleeping arrangements at Dad's
10 house with you?

11 A Yes.

12 Q Has she complained about it.

13 MR. FRIEDMAN: Objection, hearsay.

14 THE COURT: Overruled.

15 THE WITNESS: Yes.

16 BY MS. BURKETT:

17 Q And why did she complain about it?

18 MR. FRIEDMAN: Objection, hearsay.

19 A That she --

20 THE COURT: Sustained.

21 BY MS. BURKETT:

22 Q Do you know of anybody else that lives with Dad?

23 A From what I've heard --

24 MR. FRIEDMAN: Objection, hearsay.

1 A -- from her --

2 BY MS. BURKETT:

3 Q Well, here -- Dad testified earlier that he does
4 have roommates. Are you aware of Dad's roommates? Do you
5 know how many he has?

6 A To the best of my knowledge --

7 MR. FRIEDMAN: Objection, lack of foundation.

8 THE COURT: Sustained.

9 BY MS. BURKETT:

10 Q Has Dad shared with you how many roommates he has?

11 A No.

12 Q Has Dad shared with you the other adults living in
13 the house with him?

14 A No.

15 Q And you don't have to say what they said, but have
16 the children shared how many adults are living in that house?

17 A Yes.

18 Q We'll move on to -- to your living situation with
19 the kids. So if you could -- when the children are with you,
20 where do they sleep?

21 A They all have their own bedrooms.

22 Q Okay.

23 A It's a four bedroom house.

24 Q And I'd like to get into the children's daily lives

1 here in Nevada, if you could talk a little bit briefly about
2 that.

3 A Okay. Well, when they're with me, I get up around
4 7:00 a.m. We make sure the kids have breakfast and everything
5 before I leave for work for the three days when I go in at
6 8:00 o'clock. I do leave pretty early. They have my -- my
7 sister. She makes sure that the children, you know, have
8 their lunch. Of course, they have their normal school day.
9 With the new job, I am able to be here present with the
10 children a lot more. So we still -- I'm home by 3:00 o'clock
11 at the latest and we still get to go enjoy our days. We go to
12 the park. Sunday, we just went to the Adventuredome. Sleep
13 overs constantly.

14 It is -- it is the definite priority for Harley
15 right now. She has her two friends and it is every time she's
16 with me, it is one of her two friends that is always present.
17 Hayden and Bubba (ph), they get regular play dates with --
18 with my friend's grandchildren. They're the same ages, so we
19 get them together. In fact, we just went to the park and they
20 went to the Adventuredome with us. So they have -- when
21 they're with me, you know, we -- we try to make sure that we
22 go out at least once a week and do some type of group activity
23 whether we invite their friends or not. Sometimes it's the
24 mini grand prix, the Adventuredome, the park, bowling,

1 whatever the case may be, but they've -- they've spent a lot
2 of time with -- with friends and now that the summer months
3 are coming up it'll be nice because we'll have the barbeques
4 again with -- at my aunt's house swimming which they seem to
5 really enjoy.

6 Q And can you discuss a little bit the school that
7 Harley was just accepted into?

8 A She was accepted into two schools. Valley for res
9 -- Valley View for restaurant, hotel, management tourism and
10 into Rancho High School for the premedical program. She -- I
11 let her choose which one she wanted to apply for and I helped
12 her fill out the applications. And then she chose the Rancho
13 High School for the pre-med program. It's about 10 miles away
14 from the house, but I've already made arrangements and told
15 work, you know, when I would have to leave or if I needed to
16 adjust my hours slightly so that I can make sure that she gets
17 to and from as we -- I -- we'll be responsible for the
18 transportation since it's out of the school zone.

19 Q And would you say that the children are settled with
20 their lives here in Las Vegas?

21 A I believe so.

22 Q And do you --

23 A They have --

24 Q -- think they would benefit from a move back to Las

1 Cruces?

2 A No, it's been three years since they've been there.
3 They may have one or two lingering friends left that would
4 actually stay and -- or that they may have stayed in contact
5 with. But they have friends here now. You know, school's
6 going to start back up. Unfortunately, COVID was a -- it was
7 a rough year this past year with everything being shut down
8 and no school.

9 Q Let's go back to your current job as it pertains to
10 flexibility to be with your children. I know this was
11 addressed by Opposing Counsel earlier that you -- you took a
12 job that's a -- a lower salary. Can you explain why that is?

13 A Because this job allows me stability. At least I
14 can set a budget and pay bills accordingly based on knowing
15 exactly how much I'm going to have. This job once I hit the
16 90 days will be -- I will have the benefits as well for this
17 job. I haven't gotten there yet, but I was told that the
18 benefits --

19 MR. FRIEDMAN: Objection, hearsay.

20 A -- are --

21 THE COURT: Sustained.

22 MS. BURKETT: I'm sorry, what --

23 THE WITNESS: But --

24 MS. BURKETT: -- what were we objecting to?

1 THE COURT: It was a hearsay objection. The witness
2 was about to test -- she stated I was told.

3 MS. BURKETT: Ah, okay.

4 THE COURT: And so the objection was hearsay and I
5 sustained the objection.

6 BY MS. BURKETT:

7 Q Is there room for professional growth at your job?

8 A Yes, ma'am.

9 Q How many hours per week are you working?

10 A 36.

11 Q So based on what you previously testified was your
12 schedule, your mother or your sister only have to help the
13 children with their school two days a week?

14 MR. FRIEDMAN: Objection, leading.

15 A Yes, ma'am.

16 MR. FRIEDMAN: Objection, leading the witness.

17 THE COURT: Sustained.

18 BY MS. BURKETT:

19 Q How many days a week do your mom or sister help the
20 children with their schoolwork?

21 A It is only going to be on Mondays and Tuesdays and
22 for just a little bit on Fridays.

23 Q So briefly can you describe the relationship that
24 you have with Joel's parents?

1 A Well, it has always been a -- a little rocky. I --
2 I definitely have a better relationship with his father. But,
3 you know, when Joel announced that we were going to get
4 married, they did kick him out and that's how we ended up
5 living together since 2005. And they have just -- overall it
6 was a very controlling relationship. They would get upset if
7 we told them that they couldn't take the children. You know,
8 we -- we definitely appreciated the help when they would help
9 us with the children, you know, to save us that childcare
10 cost. In the beginning, we were paying \$200 a month which
11 wasn't much, but at least it was an effort to pay something
12 for his mother watching the children before his father was
13 also put on disability or -- or retired.

14 So it helped them and helped us and -- and it worked
15 and we really appreciated that. But it got to the point where
16 if -- if they didn't like how we wanted to discipline the
17 children they had something to say or they would overrule.
18 They didn't follow our rules that we set forth in our
19 household at their house. So it -- it really became a
20 struggle. The children are -- are very coddled, no chores, no
21 responsibilities. One in particular is absolutely hands down
22 spoiled to -- to put it as -- as best as I can. It's --
23 everything.

24 Q But we're -- well, you're not denying that, you

1 know, there is a loving relationship between Joel's parents
2 and the children?

3 A No, I abso -- his -- I know his parents love the
4 children and I know the children love his parents.

5 Q And would it be safe to say they can still see the
6 children with regularity if they stayed in Las Vegas?

7 A Absolutely.

8 Q You would not try to hinder any relationship between
9 Joel's parents and your children?

10 A No, ma'am.

11 Q You wouldn't try to hinder any relationship between
12 himself and -- and your children?

13 A Absolutely not.

14 Q You would be the one to foster a relationship
15 between the children and their dad?

16 A Yes, ma'am.

17 Q If you were granted primary physical custody and
18 allowed to keep the kids here in Las Vegas, are you able to
19 provide for their emotional, developmental, and physical
20 needs?

21 A Yes, ma'am.

22 MS. BURKETT: Indulgence. No further questions,
23 Your Honor.

24 THE COURT: Cross examination?

1 MR. FRIEDMAN: Yes. Thank you, Your Honor. May I
2 sit? Is that okay?

3 THE COURT: Yes, you may.

4 CROSS EXAMINATION

5 BY MR. FRIEDMAN:

6 Q Ma'am, your deposition was taken January 13th, 2021;
7 is that correct?

8 A Yes, sir.

9 MR. FRIEDMAN: Judge, I move -- what is it -- I move
10 for Exhibit 1 to be introduced into evidence.

11 THE COURT: Okay. Any objection to the admission of
12 Exhibit 1 into the record?

13 MS. BURKETT: No, Your Honor.

14 THE COURT: Okay. Exhibit 1 is admitted into the
15 record.

16 (PLAINTIFF'S EXHIBIT 1 ADMITTED)

17 BY MR. FRIEDMAN:

18 Q Ma'am, up until January 13th, 2021, you testified
19 that Joel was the primary person responsible for the
20 children's schooling, correct?

21 A He was home with them most of the time during the
22 day because I was working nights -- or I was working days and
23 he was working nights.

24 Q Ma'am, I'm -- it's a simple question. You testified

1 in your deposition that prior to January 13th, 2021 Joel was
2 the primary parent that had to do with the children's
3 schooling, correct?

4 A Correct.

5 Q Okay. Now, this -- all this other testimony about
6 these schools and, you know, Rancho and all this other kind of
7 stuff, you just started that in the month of February 2021,
8 correct?

9 A The --

10 Q Corre --

11 A -- deadline --

12 Q Correct?

13 A -- to apply was March 4th.

14 Q Ma'am, I didn't -- I didn't ask you that question.
15 Please -- please answer the question I asked you, okay? So
16 you just started with this schooling, being concerned about
17 the Court's schooling, in February of 2021, correct?

18 A No.

19 Q No. Okay. Ma'am --

20 A No, sir.

21 Q -- do you have Exhibit 3 in front of you?

22 MS. FRIEDMAN: 1.

23 Q I'm sorry, Exhibit 1 in front of you?

24 A I can pull it up.

1 Q Okay. I'm -- I'm going to help you. Nowhere in
2 this 50 -- well, 60 -- it looks like it's 60 -- 68 pages in
3 here, do you ever mention about trying to enroll the school
4 and the children in the state of Nevada, do you, ma'am?

5 A No, sir.

6 Q Okay. So once again you did this to gain a -- a --
7 an attempt to gain a tactical advantage in the pending
8 custodial dispute, correct?

9 A No, sir.

10 Q Okay. And in your deposition, we -- we just went
11 through this, you admitted that Joel was the one that
12 primarily attended -- up until January 13th, 2021 doctors,
13 dentists, clothing and -- and such; isn't that correct, ma'am?

14 A Clothing and such. No, sir.

15 Q Okay. All right. Let's go to -- okay. Ma'am, do
16 you have the deposition in front of you?

17 A It's loading. I apologize.

18 Q No problem. You're -- I -- I -- I'm --

19 A Okay.

20 Q I have to have the hard copy because I'm not that
21 smart, so -- and see you all are younger generation. So my
22 daughter has a computer and I have the hard copy. I'm sorry,
23 it was another little joke at myself. Do you -- you have it
24 up there, ma'am?

1 A Yes, sir.

2 Q Okay. Can you go to page 20 -- the end of Page 25
3 and Page 26, please? You have it there?

4 A Yes, sir.

5 Q Okay. So let's start -- let's -- I'm going to read
6 this to you. Line 20 -- 25. And you tell me if this is what
7 you said. This is my question to you. Now, isn't it correct
8 ma'am that throughout the duration of your marriage that the
9 person that took the children to the doctor more -- now we're
10 going to page 26 -- often than -- than not was Joel and not
11 yourself, correct? What was your answer?

12 A Yes.

13 Q Okay. Let's go to the next line. My next question
14 to you is then throughout the duration of our marriage Joel
15 was the one that attended to the kids more of -- more than you
16 have. Isn't that correct, ma'am? Bathing, clothing, feeding,
17 schooling. And what was your answer?

18 A Yes.

19 Q So ma'am, it is correct that Joel was the primary
20 person that was responsible for the kids' bathing, clothing,
21 feeding, and schooling, correct?

22 A Yes, I do apologize. I thought you're talking
23 purchasing their clothing.

24 Q All right. Ma'am, you're -- it's not your position

1 now because you earned -- you were the breadwinner that you
2 are far superior in raising the kids than Joel, was it -- is
3 it?

4 A I'm sorry?

5 Q It's not your -- it's not your position that because
6 you earned more money than Joel that you're a superior parent,
7 is it?

8 A No.

9 Q Okay. Ma'am, these friends that you talked about
10 with your daughter, those are you boyfriend's grandchildren,
11 are they not?

12 A For the -- for the younger two.

13 Q Okay. And that -- that's your boyfriend's
14 grandchildren?

15 A Yes, my male friend's grandchildren.

16 Q Well, it's your boyfriend, right?

17 A Yes.

18 Q Okay. I mean, there's -- there's nothing wrong with
19 it. He's your boyfriend, right?

20 A Yes.

21 Q Okay. So why did you refer to him as your male
22 friend?

23 A I don't understand the relevance.

24 Q Well, these -- do you -- your boyfriend's grandkids.

1 It's not like these kids that -- your kids met these other
2 kids at school. They're -- they're your -- your boyfriend's
3 grandchildren, right?

4 MS. BURKETT: Objection, Your Honor.

5 MR. FRIEDMAN: I'll -- I'll withdraw.

6 MS. BURKETT: The witness is --

7 MR. FRIEDMAN: That's fine.

8 MS. BURKETT: -- right. Relevance.

9 THE COURT: Sustained.

10 BY MR. FRIEDMAN:

11 Q Ma'am, I don't have that in front of me once again.
12 How many exhibits do you have, ma'am?

13 A Excuse me?

14 Q So like for instance, this is deposition -- what --
15 Jess, what exhibit number is this -- ours 1 -- this is our
16 Exhibit 1. So it's 67 pages. So do you know how many
17 exhibits you have? Hundreds of pages, right?

18 A Yes.

19 MS. BURKETT: Your Honor, objection, relevance.
20 What are we --

21 MR. FRIEDMAN: Just a little bit. I'm going to get
22 to the next question.

23 THE COURT: Okay.

24 MR. FRIEDMAN: Okay.

1 THE COURT: Overruled.

2 BY MR. FRIEDMAN:

3 Q All right. So where you say you have some
4 flexibility with your job, I'm just wondering where is the
5 documentary proof to back it up to say that you have some
6 flexibility to work with your schedule? You don't have that,
7 do you, ma'am?

8 A No, there is nothing in writing.

9 Q Okay. And you don't have the witnesses on your
10 witness list to come in here and establish that, you know, we
11 can modify Lisa's schedule to -- to fit her children's needs,
12 correct?

13 A No, sir.

14 Q Okay. So is it -- this is -- am I counting correct?
15 Is this your fifth or sixth job in Las Vegas?

16 A My fifth.

17 Q Okay. Now, I think you previously -- did you used
18 to do medical billing?

19 A I did.

20 Q Okay. And did -- isn't it correct that, you know,
21 you can make a nice living doing medical billing?

22 A Yes.

23 Q Four to \$6,000 a month?

24 A I don't know, sir.

1 Q Well, you used to be a medical biller. How much --
2 how much did you make?

3 A Well, when I started the position, I was making \$10
4 an hour. After seven years, I was making 13.

5 Q Okay. And you can do that from home, correct?

6 A Depending on if they can actually find a legitimate
7 company.

8 Q What -- so we know you've been in the service
9 industry as a wait -- as a waitress and assistant manager,
10 correct?

11 A And a general manager, yes.

12 Q And a general manager. Great. And we know you've
13 been a medical biller, correct?

14 A Yes.

15 Q Okay. What -- what other jobs have you performed
16 over the past 10 years?

17 A That has been -- it's been either the food industry
18 or the medical industry.

19 Q And -- and you just went into a new industry, right?

20 A No.

21 Q I'm sorry. So what's your position now? Who do you
22 work for?

23 A I am the assistant restaurant manager for Emerald
24 Island Casino.

1 Q Okay. All right. And you would agree with me that
2 it's probably pretty easy for you to get a job in New Mexico,
3 right? The -- with your history? You're a --

4 A No.

5 Q -- good worker, right? No? And I know I asked you
6 this question, but you didn't esta -- you didn't produce any
7 exhibits showing you couldn't get a job, you know, a hundred
8 emails showing you applied for jobs in New Mexico and didn't
9 get it, right? New Mexico. I apologize.

10 A No, but I don't speak Spanish.

11 Q I'm sorry, New -- I said New Mexico. I apologize.
12 Well, let me take a -- I'll just take a step back. Nowadays a
13 lot of times when you apply for jobs it's -- it's over the
14 internet and emails, right?

15 A Yes.

16 Q Okay. So you didn't produce any emails showing you
17 applied for jobs in New Mexico, did you? New Mexico. Sorry.

18 A No, sir.

19 Q Okay. And ma'am, when your Counsel was asking you
20 questions, you weren't -- just a few minutes ago you weren't a
21 hundred percent truthful, were you, ma'am?

22 A Excuse me?

23 MS. BURKETT: Objection, it's argumentative.
24 Badgering.

1 MR. FRIEDMAN: No, it's -- I'm going to get to the
2 next one.

3 THE COURT: Overruled.

4 MR. FRIEDMAN: Okay.

5 BY MR. FRIEDMAN:

6 Q I asked you -- so were -- you were not a hundred
7 percent truthful a few minutes ago when you just testified
8 under direct examination, were you, ma'am?

9 A To the best of my knowledge, I was, sir.

10 Q Okay. I asked you que -- well, you testified a few
11 minutes ago that there would be no benefit for the children to
12 move back to New Mexico; isn't that correct? I wrote it down.

13 A Yes, sir.

14 Q That's not true, is it, ma'am? Yes or no?

15 A In my opinion, it is, sir.

16 Q Okay. Well, I asked you and I guess we can roll
17 back the tape. I don't know. Before lunch I asked you, and
18 we went through this litany of questions, that there is a
19 benefit for the children to go back to New Mexico, right?
20 They -- they would be closer to their grandparents, correct?

21 A Yes, they would.

22 Q Okay. There's some stability there, that they have
23 a stable -- for lack -- even worst case scenario daycare
24 providers, right?

1 A On Joel's behalf, yes.

2 Q Okay. So that's -- and -- and they have some
3 structure in their life, right? They wouldn't be going
4 between, you know, different daycare providers, correct?

5 A I would hope not, sir, but --

6 Q Okay.

7 A -- I can't speculate to items that haven't happened
8 yet.

9 Q Okay. So there is some benefit for the children to
10 -- to relocate to -- you may not agree with it, but there is
11 some benefit for the children to relocate to the state of New
12 Mexico, correct?

13 A There could be.

14 Q Okay. Now, -- so I just want to know. Earlier you
15 said there was some benefit, I don't know, about 11:00
16 o'clock. About 1:15 you said no and now you're saying there
17 could be; is that correct?

18 A Yes.

19 Q All right. There -- you've had a week on week off
20 relationship -- custodial relationship with Joel since -- for
21 four months now, right?

22 A Yes.

23 Q Okay. And you testified that the kids have been
24 going back and forth, right?

1 A Yes.

2 Q And nobody's prohi -- restricted you from seeing
3 your children on your timeshare, have they?

4 A No, sir.

5 Q And does your mom -- your mom's a loving
6 grandparent, right?

7 A Yes.

8 Q And she spoils your kids sometimes, right?

9 A No.

10 Q Isn't that what grandparents do sometimes?

11 A No.

12 Q Okay.

13 A I -- I -- some --

14 Q Okay.

15 A -- I guess do.

16 Q Okay. So it's -- but it's not -- it's not out of
17 the ordinary for a grandparent to spoil their grandkids, is
18 it?

19 A No, I guess depending on the extent.

20 Q Okay. Your kids are good kids, right?

21 A For the most part, yes.

22 Q Okay. And your kids have -- your kids have told you
23 that they want to relocate to New Mexico, right?

24 A No.

1 Q Okay. You've talked to them about it, right?

2 A No, I was told not to bring the children in the
3 middle of this.

4 Q I understand that, but you -- you've never talked to
5 your kids before litigation started about what's -- you know,
6 where they want to go or who they want to -- if they want to
7 stay in Las Vegas or go back?

8 A The only thing the children have ever told me is
9 that they don't want to have to choose.

10 Q Okay. Now, when you moved -- I'm sorry. Was -- was
11 -- originally you lived in -- is it Las Cruces, New Mexico?

12 A Yes, sir.

13 Q Okay. And then you moved to another city in New
14 Mexico, correct?

15 A Yes, sir.

16 Q What -- how do you pronounce that city?

17 A Alamogordo.

18 Q All right. And then you lived there for a year?

19 A Yes, sir.

20 Q Okay. And then -- and you heard Joel's dad testify
21 that he came up to that -- I'm -- I'm going to butcher that
22 city. I don't know.

23 MS. FRIEDMAN: Alamogordo.

24 Q Ala --

1 MS. FRIEDMAN: Mogordo.

2 Q Alamogordo, they came up there sometimes and brought
3 their fifth wheel to help with the children, correct, while
4 you guys were living out there for sometimes?

5 A They brought their camper up there so they could
6 assist Joel with the children --

7 Q Okay. And you -- well --

8 A -- in my absence.

9 Q Okay. When you moved to -- when you -- so when you
10 moved --

11 MS. FRIEDMAN: Alamogordo.

12 Q -- Alamogordo to Las Vegas -- I'm going to call it
13 Al, because -- and I'm just going to keep it -- some things --
14 when you moved there, you didn't take the children with you to
15 Las Vegas, did you?

16 A No, sir.

17 Q Because you wouldn't be able to handle the children
18 all by yourself in Las Vegas, Nevada without anybody assisting
19 you, would you?

20 A I moved out here sir --

21 Q Ma'am, it's a --

22 A -- first --

23 Q -- simple -- ma'am, I -- I understand that. You --
24 you didn't take your children with you because you couldn't

1 handle them by yourself, correct?

2 A No.

3 Q Okay. So when you moved out here, you left the
4 children with Joel, not Joel's parents, but you left them with
5 Joel for three months, right?

6 A Yes.

7 Q And then Joel brought the children to Las Vegas to
8 be with you, correct?

9 A Yes.

10 Q And, at that time, you thought that was in the best
11 interest of the children, correct? Otherwise you wouldn't
12 have done it, right?

13 A I moved out here, sir.

14 Q Ma'am, it's a -- ma'am, it's a yes or no.

15 A Yes.

16 Q Okay.

17 A I did not want to approve schools at --

18 Q Okay.

19 A -- the end of the year.

20 Q Because -- because Joel was primarily attending to
21 them, right?

22 A No.

23 Q Okay. And did -- were you working in Al, New
24 Mexico?

1 A Yes.

2 Q Okay. So you could have waited until the end of the
3 school year and then took the kids and went with you and get
4 your job then, correct?

5 A Yes.

6 Q But you chose not to, correct?

7 A I got a job sooner than anticipated and we agreed as
8 a couple that I should take it and move out here, get a house,
9 and be ready for the children to join me.

10 Q Okay. So we know we have a diary where you said the
11 children would be better off with Joel, right? We went
12 through this before, correct?

13 A It was me asking myself if they would be.

14 Q I -- I understand. And then we have another
15 situation several years later that you left the children with
16 Joel for three months, right?

17 A Only to establish a home. Yes, sir.

18 Q Okay. Ma'am, I didn't ask you if it was to
19 establish a -- a home, but we'll move on. We also have your
20 testimony in your deposition where you acknowledged under oath
21 and today that historically primarily maybe due to your work
22 schedule that Joel took care of the children more than you,
23 correct?

24 A Yes.

1 Q All right. Your mom never visited the children when
2 you were in Al, New Mexico, correct?
3 A She did. Not daily --
4 Q How often did she --
5 A -- but she did come visit.
6 Q How many -- how many times she would go see your
7 kids in -- in Al, New Mexico? Once?
8 A I would say maybe at least probably about once a
9 month.
10 Q She came down there once a month.
11 A She lived in the same town.
12 Q So she lived in the same town as your children and
13 she only saw them once a month?
14 A Well, she saw them move often because we would take
15 them to see her at work or she would come and see them.
16 Q Ma'am, you -- you --
17 A But as far coming to visit at the house, she would
18 come about once a month.
19 Q Ma'am, you just like changed your testimony. I just
20 asked you a question. How often would your mom see the
21 children in Al, New Mexico. Then you just said once a month.
22 Now, a few minutes later now your testifying --
23 MS. BURKETT: Objection.
24 Q -- that --

1 MS. BURKETT: Your Honor -- sir, I think you said
2 how often did she visit. Maybe she was -- misunderstood your
3 question.

4 MR. FRIEDMAN: Is that an objection?

5 THE COURT: Yeah, is there an evidentiary objection?

6 MR. FRIEDMAN: Just misstates -- I don't know if it
7 misstates your own question, sir, but I -- I believe that's
8 where the confusion lies.

9 THE COURT: Okay.

10 MR. FRIEDMAN: I'll -- I'll rephrase the --

11 THE COURT: Go --

12 MR. FRIEDMAN: -- the question.

13 THE COURT: Go ahead and restate, Counsel.

14 MR. FRIEDMAN: All right.

15 BY MR. FRIEDMAN:

16 Q Is it your testimony under oath that your mom in Al,
17 New Mexico saw the children many times a month?

18 A Yes.

19 Q Okay.

20 MR. FRIEDMAN: The Court's indulgence just for a
21 moment. Thank you, ma'am. I have no further questions.

22 THE COURT: Any redirect?

23 MS. BURKETT: Yes, Your Honor.

24 REDIRECT EXAMINATION

1 BY MS. BURKETT:

2 Q Lisa, you heard Dad testify today that the parties
3 have been joint physical custodians since around 2018; is that
4 correct?

5 A Yes, ma'am.

6 Q And did you also hear Dad testify that he hasn't
7 attempted to enroll Harley in any school in New Mexico?

8 MR. FRIEDMAN: Objection, goes beyond the scope of
9 my examination.

10 THE COURT: Sustained.

11 MS. BURKETT: Your Honor, he addressed enrolling
12 Harley in schools. Is that not relevant?

13 THE COURT: Well, it -- it -- it's relevant. The --
14 the objection is that it goes beyond the scope of his cross
15 examination. I don't believe --

16 MS. BURKETT: Understand.

17 THE COURT: -- there were any questions about Dad
18 enrolling the children. I think they were all focused on
19 school --

20 MS. BURKETT: Understood.

21 THE COURT: -- in Las Vegas.

22 BY MS. BURKETT:

23 Q Was your decision to help Harley get enrolled in
24 school tactical?

1 A No, ma'am. We were going to proceed with life as
2 normal and she decided she wanted to apply for the magnet
3 programs. I helped her. The deadline was March 4th. It was
4 not a tactical play. It was -- if -- if -- it would if they
5 stay. Is she going to be enrolled in a good school or am I
6 supposed to sit -- I didn't know. I wasn't going to sit
7 around and wait and miss the deadline because we didn't know
8 what was going to happen in a month.

9 Q And the decision to move to Las Vegas from Al, New
10 Mexico, that was decided by both parties, correct?

11 A Yes, it was.

12 Q And while you were in Las Vegas and the children
13 were still in New Mexico, what were you doing?

14 A I was working. I stayed -- I came alone because I
15 was staying with my uncle and I didn't want to have the
16 children in an uncomfortable situation or environment whether
17 it be a hotel room, a weekly rental or all of us trying to
18 squeeze into one bedroom because I don't find that suitable.
19 So I chose to come out here to secure a home to have something
20 for them to come to. Joel and I agreed that we didn't want to
21 move them at the end of the school year and then with the
22 summer we don't want them to come out here and waste their
23 whole summer with no friends and nothing to do. So in the
24 meantime for that 90 days, I had no choice but to come out

1 here alone so that I could make sure that my kids have their
2 best chance when they got out here.

3 Q Were you working during that time?

4 A Yes, ma'am.

5 Q And it's your testimony you were doing that to
6 secure a home in Vegas, correct?

7 A Yes, ma'am.

8 Q Were you still paying any bills in New Mexico?

9 A I was having to help out a little bit because Joel
10 did lose his job at Basin Electronics. So I was having to --
11 to help out with the bills back there while still trying to
12 save up money to get a house here.

13 MS. BURKETT: Nothing further, Your Honor.

14 THE COURT: Okay. Any --

15 MR. FRIEDMAN: No, sir.

16 (WITNESS EXCUSED)

17 THE COURT: All right. Your next witness?

18 MS. BURKETT: We will rest, Your Honor. All right.

19 And any rebuttal examination?

20 MR. FRIEDMAN: The Court's indulgence for one
21 moment.

22 (COUNSEL CONFER BRIEFLY)

23 MR. FRIEDMAN: No, Your Honor.

24 THE COURT: Okay. Ms. Burkett, any -- any rebuttal

1 examination?

2 MS. BURKETT: No, Your Honor.

3 THE COURT: Okay. All right. I'll receive some
4 closing statements.

5 MR. FRIEDMAN: Yes, please. If you --

6 THE COURT: And I'll start with the Plaintiff and
7 then conclude with the Defendant.

8 (COUNSEL CONFER BRIEFLY)

9 MR. FRIEDMAN: Yes, Judge. There's -- there's no
10 question here that we have -- we have two good parents.
11 There's -- there's not -- there's not really a question. And
12 if -- in -- in my humble opinion if the parties were -- were
13 going to -- there's no question that they were going to remain
14 in Las Vegas and probably in all likelihood the best interest
15 would be joint -- would be joint physical custody. There's
16 absolutely no reason based on the -- the recent case law and
17 the new statute's preference on 0035 and -- and the like and
18 the chapter whether it should be one parent over the other.
19 They're both -- they're both good and decent people. There's
20 -- there's no question about that.

21 The question primarily comes down to is whether or
22 not this Court's going to allow the relocation to -- to the
23 state of New Mexico. First, I want to point out, Judge, that
24 one question in the deposition when I -- and -- and I -- I

1 specifically asked Mom this question; would you relocate.
2 When she asked that -- if -- if this Court granted her --
3 granted my client permission to relocate to the state of New
4 Mexico would you move. Her first -- her first answer was
5 possibly and then she quantified it later on and said you know
6 if I secure employment, then I would definitely go.

7 But when -- when I'm looking for the best interest
8 of the child, you know, absolutely, the -- the answer should
9 be, you know, I'm going to be wherever my kids are. And the
10 reason I bring that up, Judge, is because if we -- if we're
11 judging credibility of the parties and -- and I don't -- and I
12 don't mean to, you know, say anything negative about my client
13 in any way, shape, or form, but, you know, my client -- and
14 it's clear from the testimony that Mom was the breadwinner in
15 the household. There's -- it's crystal clear there. And
16 there's nothing wrong with it.

17 And Dad -- although, he may not have the training,
18 experience, and knowledge of Mom, he's a good guy. He may not
19 be -- you know, he may not -- he may not be Albert Einstein,
20 but that doesn't mean that he's not a good man. These parties
21 may not be millionaires, doesn't mean that they're not good
22 people and they can't provide whether they have -- you know,
23 there's many people that have to sleep six in a bed doesn't
24 mean that they're bad people. They just don't have the money.

1 They can be the greatest parents in the world. It's just it
2 is what it is.

3 But what's -- what's more pressing in this
4 particular case -- question is about the credibility of the
5 parties and acknowledging what the situation has been and
6 what's acknowledging what's for the best interest of the
7 subject minor children.

8 And I bring up the credibility. You know, it's --
9 it's not somewhat normal for someone to write in their diary,
10 you know, I -- the children will be better off without me.
11 Now, I understand that if it was just, you know, a one time
12 occurrence or something like that, but it really wasn't a one
13 time occurrence because Mom's pattern has established that it
14 -- it's clearly that Dad has taken a more active role and
15 maybe Dad can take care of the kids on some -- some occasions
16 when Mom can't. Like for instance when they relocated. And I
17 know there's a job assignment, but I'm looking at based --
18 based upon the totality of the circumstances and her own
19 acknowledgment in her deposition that Dad has been the one
20 that's been there.

21 And, again, it -- that's not the end all if they
22 both live -- if they both were trying to reside in the same
23 city. I -- I don't think it would be -- it would tip the
24 scale one way or another. But when it comes to what's in the

1 best interest of the subject minor children, Mom has
2 acknowledged that when she relocated for the three or four
3 months the best interest were the -- for the children to stay
4 with Dad. Mom has acknowledged that during -- when --
5 primarily when they were raising those children the best
6 interest was to delegate a lot of that responsibility to Dad.

7 Now, we know that these parties have historically
8 lived in New Mexico. They lived in Las Cruces for years and
9 years and years and then they moved to -- I apologize, to Al,
10 New Mexico. I'm going to butcher the name again. But that
11 was their home base for years and years and years and years.

12 So now let's go onto the statute. Has Dad
13 established a good faith reason to relocate to the state of
14 New Mexico? There's no question about that. Mom's even --
15 Mom's acknowledged that. There's no question he wants to move
16 back to where he has stability where the children -- where he
17 grew up, where the children grew up. So there -- there's no
18 question about that. And -- and more specifically, case law
19 specifically says, you know, we want -- we want -- we don't
20 want to tie people to the state of Nevada. They should be
21 able to freely relocate if they meet their -- if they meet
22 their proper requirements. And one of them is a good faith
23 reason. I think that's probably the easiest burden to meet.
24 So there's no question about that. Mom has -- Mom has

1 established that.

2 Number two, then the next factor would be, you know,
3 whether it's in the best interest of the subject minor
4 children. So now we go through all the factors. A lot of the
5 -- the two most important factor -- well, the most important
6 factor is the physical, development and emotional well-being
7 of the children. There's -- it's -- it's undisputed
8 testimony, undisputed testimony that Dad has been the parent
9 that has taken care of the physical, development and emotional
10 well-being of the children. In her deposition, she
11 acknowledged and -- and she acknowledged here today that Dad
12 is the one that's done the doctors. Dad is the one that's
13 done the schooling. Dad is the one that's done the clothing.
14 Dad is the one that's done the bathing. She's acknowledged
15 that.

16 Now, is it somewhat suspect that -- Mom -- again,
17 and -- and the reason I wanted the deposition admitted is this
18 is January 13th. Mom never there in her deposition -- and why
19 it's crucial is you can -- in her testimony here today, you
20 know, when I ask her some questions, she tries to quantify
21 things. And there's nothing wrong. That's human nature. But
22 not once in her deposition did she quantify and say you know
23 what, I think the kids should go here, this magnet school or
24 whatever it is, not one time. Not one time did she mention

1 about any other, you know, therapy appointment or any -- or
2 anything like that. Not one time did she ever mention any of
3 that.

4 So was it designed -- was -- is it primarily
5 designed to -- to gain some sort of influence with the court?
6 Probably. I mean, is it a bad things for the kids?
7 Absolutely not, because who knows -- you know, we don't know
8 what the Court's going to do. But I think the timing is
9 somewhat suspect and no over gestures to say okay, well, this
10 is what we're going to do. They know the main focus of the
11 case was relocation. That's the essential issue in the case.

12 So when it gets down to the physical, development
13 and emotional well-being, the -- the -- another important
14 factor is cooperating to meet the needs of the child. They
15 have historically cooperated. There has been -- you know, we
16 -- we didn't see any text -- you know, just -- we didn't see
17 any text messages going back and forth saying that they're not
18 cooperating or anything like that. We didn't -- we didn't see
19 that. Because essentially they've been able to cooperate to
20 meet the needs of the child.

21 That -- the nature loan forgiveness the relationship
22 with each parent. Now, this is an extremely important factor
23 in my humble opinion. We have the youngest child here.
24 That's not Dad's biological child. It's not. The biological

1 father of that child has no interaction with that child in any
2 way, shape, or form. Zero, zilch, none. If Dad did not step
3 up to the -- if Dad; Joel, did not -- I'm going to call him
4 Dad, Joel, did not step up to the plate, what would happen to
5 that youngest child? He would have no father figure in his
6 life in any way, shape, or form. Okay. That to me is
7 extremely telling.

8 And let's not forget that during those three months
9 when Mom left and that's not her -- that's not his biological
10 child, once again, she didn't take one or two of them or three
11 of them. She left all of them with Dad.

12 The relationship with each parent. Obviously Dad --
13 that relationship is a little stronger with Dad because Dad
14 has been for -- call it a domestic engineer. You can call him
15 a house husband. You can call him a stay-at-home dad, what --
16 whatever you want, based upon -- I'm not saying it's right or
17 wrong. It's just -- it's just -- it is what it is. That's
18 what's been going on for years and years and years and years.
19 Mom has delegated that situation.

20 So the relationship with each parent -- I'm not
21 saying the relationship with Mom is -- is derogatory with the
22 parents in any way, shape, or form. I'm not saying that. I'm
23 saying that the relationship with Dad and the children is
24 slightly more than Mom's.

1 The ability to maintain a relationship with any
2 sibling. Once again, in the generic sense it doesn't really
3 come into effect. But let's not forget that Dad stuck up --
4 stuck up -- stood up to the plate to make sure that these
5 three -- that these -- all three of these children would
6 always stay together, not two and one. He never played once
7 against the other. Those -- those are the most important
8 factors.

9 Obviously, there is no history of parental abuse or
10 neglect. There -- none of those other factors. They're --
11 these -- these people are good and decent people. There's
12 nothing -- the -- I got it.

13 The -- the other factor that slightly comes into
14 effect, Judge, is that Defense Counsel didn't object to this
15 and Dad specifically -- Mom said, you know, I didn't talk to
16 them about a move or anything like that. But Dad's testimony
17 was that the children have stated that they wanted -- now, if
18 there was an objection, I couldn't -- I couldn't bring this
19 in. But there was testimony, there was evidentiary proof,
20 that Dad testified that the children have stated that they
21 want to go back to New Mexico. So based upon that, Judge,
22 there's no question that the best interest of the subject
23 minor child would be served by the relocation.

24 The next factor then we have to establish

1 essentially is whether or not there's an actual advantage to
2 Dad moving to -- to New Mexico. There actually is an actual
3 advantage. Number one, that's where he's from. Number two,
4 he's got very strong family support in New Mexico. Number
5 three, financially it would be much better off for Dad to be
6 in New Mexico. He testified that -- we know he makes \$10 an
7 hour. He -- he can't -- Mom has testified, you know, nobody
8 can make it on \$10 an hour anymore.

9 He's able to live with his parents in New Mexico
10 without any rent in any way, shape, or form. The children
11 would have their own rooms in New Mexico. So there would be
12 -- they -- they would also be able to foster and preserve
13 their grandparental bond, their extended family members.
14 That's an actual advantage between Dad and the subject minor
15 children. There's no question about it.

16 One of the next factors is Dad doing this to -- to
17 frustrate any sort of visitation with the children. We --
18 there's been testimony back and forth that there's been no --
19 there's been no denial of any frustration between the parties
20 they've been -- since the -- since the Court came into
21 existence. They're -- it's -- it's been going back and forth.
22 The quality of life also, you know, grandpa testified that he
23 takes the kids to the park. He takes -- they do various
24 functions and activities and things like this.

1 You know, Judge, also who's not -- one of the things
2 to -- to show truth -- to improve the quality of life if we
3 get it on Mom's part is the lack of evidence that we don't
4 have here today. Who do we have -- who do we have to support
5 -- you know, they said the strong family lifestyle here in Las
6 Vegas. I didn't hear Mom -- I didn't hear grandma get on the
7 stand and testify. I didn't hear her sister get on the stand
8 and testify.

9 I didn't hear any aunts and uncles get on the stand
10 and testify. No, but we had grandparent here who came -- who
11 drove from New Mexico to -- to show his strong support, to
12 show that it would improve the quality of life for the
13 relocating parent -- for the potential relocating parent and
14 the children.

15 Whether the motives are -- are honorable and not
16 designed to frustrate the visitation, we've already talked
17 about that. Very honorably, he wants to go back where he was.
18 I don't want to reliti -- rehash those issues again. But it's
19 not designed to frustrate any sort of visitation in any way,
20 shape, or form. Let's not forget that Mom left the children
21 with Dad before.

22 Relocating will comply with any substitution
23 visitation orders. There's been no problem with that in any
24 way, shape, or form.

1 Whether the motives of the non-relocating parent are
2 honorable in resisting the petition to -- for -- for -- to
3 relocate to what extent the opposition is intended to secure
4 an financial advantage. Do I believe that Mom is -- is
5 resisting, it's not honorable? No, I think absolutely. She
6 doesn't want her kids to move. There's nothing wrong with
7 that. It's human nature. She's mom. I know she -- we know
8 what her testimony is and Joel established that she loves her
9 kids. There's no question about it.

10 She's not being unreasonable in saying I don't want
11 my kids to relocate. You know, honest -- you know, the -- the
12 chips are where they are. I mean, you know, it -- it -- this
13 -- we wouldn't be in litigation if -- if that was a situation.

14 Whether there will be a realistic opportunity for
15 the non-relocating parent to maintain a visitation schedule.
16 Absolutely. You know, the Supreme Court has said you can get
17 some sort of, you know, a block here and a block there. I may
18 not necessarily agree with that that because I think their
19 blocks are too restrictive. But there can be expanded
20 visitation for Mom. For instance, you know, you can get
21 essentially, you know, 10 weeks in the summertime. You can
22 get half of Christmas break. You can get all of Spring break.
23 I mean, the -- the plane flight is an hour-and-a-half. You
24 know, Mom could -- Mom could get -- in addition to that, Mom

1 could get, you know, all the three day weekends. It's not a
2 long plane flight. You can get Martin Luther King Day. You
3 can get President's Day. You get Spring break. You know, I
4 think Dad should probably either have Memorial Day or Labor
5 Day so at least he gets one holiday in there, but then Mom
6 would -- you know, Dad could potentially have Memorial Day and
7 then Mom would get, you know, 10 weeks in the summertime
8 assuming they have a 12 week schedule. I don't know exactly.
9 And then of course, you know, every other Thanksgiving and one
10 week at -- at Christmas.

11 So there's definitely expanded -- there's definitely
12 an expanded time that -- that could be allotted for Mom so
13 that she can foster and preserve her maternal bond with the
14 subject minor children.

15 And -- and Judge, the -- this move -- this move is
16 in good faith. There's just no question about it. It's
17 unfortunate that there's no happy medium. It's either yea or
18 nay. You know, you know, Dad just believes this is in the
19 best interest for himself and the subject minor child based
20 upon the totality of the circumstances. We believe that we --
21 we've met all the factors. This -- I'm going to date myself
22 but the Schwartz factors and now the codified factors in 125C.

23 And I -- I think each party should bear their own
24 attorney's fees and I think both parties had good positions.

1 I think, you know, Counsel on the other side, I think both --
2 both parties presented the case well. I don't think there
3 should be an award of attorney's fees either way because it's
4 -- it's just -- it's just a tough issue. And of course, you
5 know, child support is what it is depending upon the
6 situation.

7 And -- and Judge, Dad -- and Dad is saying that he
8 -- he wants to relocate, but his position is he's going to be
9 wherever the kids are. So if this Court says no, he can't
10 relocate, you know, he's unfortunately going to have to stay
11 here. But my client wants the Court to -- to know that that's
12 not his primary motive. He wants to move back to New Mexico.
13 He wants to do that. He thinks it's best for the children.
14 And -- and that -- and -- and, you know, that's the -- that's
15 the case in a nutshell and I save two minutes for rebuttal.

16 THE COURT: Okay. Ms. Burkett.

17 MS. BURKETT: Thank you, Your Honor. I believe
18 Counsel's correct. There aren't any bad parents here. Mom
19 loves the kids, Dad loves the kids. But there is -- there is
20 some confusion when Dad is on one hand trying to claim he has
21 a better relationship with the children because he was their
22 primary caregiver while Mom worked and on the other hand
23 indicating that his parents are so integral to these
24 children's lives and they spend the majority of their time

1 with the kids essentially raising them. So I'm not sure why
2 or it shouldn't -- it shouldn't be acceptable that my client
3 is penalized for taking a different role in child rearing. It
4 doesn't make her less. It doesn't make her any worse of a
5 mom. It just means that her role in the family was different.

6 And then I would like to address just a few things
7 quickly. We keep saying Mom left to Las Vegas. This was a
8 decision made by the family. And Mom went ahead to try and
9 secure a place for the family to be comfortable and try to not
10 disrupt the kids while they finished school and finished
11 activities and got to spend some time with friends. And now
12 the kids have been here for two years. They're settled.
13 They're happy. They're looking forward to the future.

14 They're all enrolled in gymnastics together and other
15 activities and, you know, one child I think is getting braces
16 and Harley got into that great school. And, you know, the
17 kids are happy and settled here. And I think most of all it
18 would be extremely disruptive to continue to try and uproot
19 the children.

20 Dad keeps arguing that there is an actual advantage
21 to his move. He is basically doing a lateral transition for
22 his finances. So the benefit to Dad would be the free
23 essentially daycare from grandma and grandpa and not having to
24 pay rent. This is also a concern. Does that mean Dad is

1 going to live with the grandparents indefinitely? And we know
2 from case law that when we are considering the relocation,
3 we're not looking at the best interest of Dad or what makes
4 Dad's life easier. We're looking at the best interest of the
5 children. And uprooting them right now just so Dad can have
6 free healthcare -- or excuse me, free daycare is not in their
7 best interest. They are settled are happy and healthy and
8 trying to thrive and live their lives.

9 We also have additional, you know, concerns.
10 Grandpa and grandma are -- are a huge part of their lives.
11 But when we're looking at the statute, we're talking about the
12 parties to the case. The grandparents aren't parents. They
13 don't have any custody rights to the children. They haven't
14 adopted the children. The parents are the ones that have to
15 make these decisions for the kids. And grandparents are
16 retired. It seems like the best solution would be for the
17 grandparents to move to Las Vegas. I believe that would be
18 resolving all of the issues, but obviously we can't force
19 anybody to do that.

20 And then when Dad says, you know, I should be where
21 my kids are, and that was the argument. That's -- that's the
22 -- the touchstone of why we're here. Again, I think the ben
23 -- the benefit of the move to New Mexico is primarily for Dad.
24 The kids are happy, healthy, established. If we're going

1 through the best interest factors, you know, the kids are not
2 of any sufficient age to kind of decide on a -- on a
3 preference for the parents and we don't want to -- we don't
4 want them do that anyway. I think that's inappropriate.

5 Which parent is more likely to allow to have --
6 allow the the child to have frequent associations with the
7 other? Again, I don't think that Joel would prohibit Lisa
8 from seeing the kids. But I am concerned that his parents
9 might do that or might brainwash the children since there
10 obviously is some animosity. We are not saying they should
11 never be with their grandparents. We think that's a great
12 relationship for the kids and it is in their best interest,
13 but I am concerned if they are watching the children the
14 majority of the time if it's going to alienate Mom or if it's
15 going to cause her relationship with the children to suffer?
16 The level of conflict between the parents, again, I don't
17 think Joel and Lisa have a huge amount of conflict.

18 I think when other parties -- not parties. When
19 relatives get -- get muddled into the case, that's where the
20 conflict arises. The ability of the parents to cooperate the
21 needs of the child; again, we discussed this. And while I --
22 I think that they do a decent job co-parenting, we have found
23 that Joel has kind of been uninvolved and not responding to
24 Mom's inquiries about co-parenting issues such as re-enrolling

1 Hayden in therapy such as the school stuff for Harley. A few
2 other examples that were expressed during Plaintiff's
3 testimony.

4 Mental and physical health; I think both parents are
5 healthy. And, again, the physical, development and emotional
6 needs of the child: emotional needs, we're trying to get
7 Hayden into some therapy and -- and get her happy and healthy
8 and make sure, you know, as she goes through this middle child
9 process that she's -- she's stable and happy.

10 Developmental, we're talking about getting Harley
11 into the best school possible here. And then it -- you know,
12 emotional and physical, we -- we have all the kids together
13 doing activities together with both parents. They get to see
14 both of their parents every other week. They have both
15 parents in their lives which of course is the preference in
16 Nevada.

17 The ability of the child to maintain a relationship
18 with any sibling, as Counsel was saying, it -- I don't think
19 it's anybody's intention to ever split up the siblings. They
20 are a unit. They love each other and they should stay
21 together. And I don't believe any of the abuse or neglect
22 applies either.

23 So while -- while I understand Dad's -- Dad's desire
24 to relocate, I -- we do not feel it's in the children's best

1 interest to go with him. They are already settled. They have
2 a good life here. And I don't think it is worth uprooting the
3 children after they had already moved multiple times based on
4 a decision that was made by the family just so Dad can get
5 some free daycare.

6 So with that, Your Honor, I'll say that it's -- it's
7 not in the children's best interest at this time to relocate
8 to New Mexico with their father and should both parties not
9 remain here in Las Vegas and exercise joint physical custody,
10 we would ask that Mom reach -- have primary physical custody
11 so the kids don't have to be moved again.

12 THE COURT: Okay.

13 MR. FRIEDMAN: Judge, just very briefly, just --

14 THE COURT: Okay.

15 MR. FRIEDMAN: -- I'm -- I'm not sure what Counsel
16 was talking about, but the extent of which the location -- the
17 relocation is likely to improve the quality of life for the
18 child and relocating parent. The case law is pretty clear in
19 determining whether the move will improve the quality of life,
20 the Court should consider subfactors such -- such as whether
21 positive family care and support will be enhanced. That's
22 obviously the family members, you know, grandparents, aunts,
23 cousins. So I'm not exactly sure what they're talking about.
24 Will be enhanced -- whether housing and living conditions will

1 be improved. Obviously, the housing and living conditions for
2 the children and my client, while the children are in his care
3 and control, would be enhanced if Joel was allowed to relocate
4 to the state of New Mexico. Whether the custodial employments
5 will improve, it's going to be the same. So I'm not exactly
6 sure what Counsel's saying, but that's exactly what the case
7 law and the factors specifically say. And let's not forget,
8 Judge, that one of the factors that they're talking about is
9 the children as -- as I said before, there was testimony that
10 the children want to relocate to the state of -- to the state
11 of New Mexico. And one of the -- the oldest child is 14 years
12 of age.

13 So once again, I don't want to rehash everything.
14 The Court's read everything. And I just believe that based
15 upon the best interest of the subject minor child and based
16 upon the case law, all -- all the case law, Schwartz, the --
17 the codified of 125C.006, 0065, and 007, that -- that my
18 client has met the statutory requirements to relocate to the
19 state of New Mexico and we would submit on that.

20 THE COURT: Okay. All right. We're going to take
21 about a 20 minute recess. I'll have a chance to go through my
22 notes and review some additional exhibits. And then we'll
23 return and I'll issue my findings and conclusions and orders.
24 Okay?

1 MR. FRIEDMAN: Yes.

2 (COURT RECESSED AT 2:22 AND RESUMED AT 2:53)

3 THE COURT: Okay. We are back on the record in the
4 Ori -- Eorio matter. I've had a chance to review additional
5 exhibits and the testimony of the parties and I'm prepared to
6 issue my findings, conclusions, and orders. You may be
7 seated. I did -- before I begin, there are some additional
8 questions that I'm going to ask both parties just from a
9 jurisdictional standpoint. But I'm not -- and if they were
10 asked previously, I apologize, but I didn't include them in my
11 notes. So let me start with the Plaintiff. The -- you filed
12 the underlying complaint for divorce?

13 THE PLAINTIFF: Yes, sir.

14 THE COURT: And there were three children born
15 during the marriage, correct?

16 THE PLAINTIFF: Yes, sir.

17 THE COURT: And based on the pleadings on file,
18 you're asking the Court to -- on an equitable basis include
19 Gianni as a child of this marriage.

20 THE PLAINTIFF: Yes, sir.

21 THE COURT: But you acknowledge that you are not the
22 biological child (sic) of the marriage -- that he's not the
23 biological child -- child of the marriage.

24 THE PLAINTIFF: Yes, sir.

1 THE COURT: And are you and the Defendant
2 incompatible in marriage? You want a divorce?
3 THE PLAINTIFF: Yes.
4 THE COURT: Any chance for reconciliation?
5 THE PLAINTIFF: No, sir.
6 THE COURT: Any other children born during the
7 marriage?
8 THE PLAINTIFF: No, sir.
9 THE COURT: And Mom, are -- are you currently
10 pregnant?
11 THE DEFENDANT: No, sir.
12 THE COURT: Okay. And what is your current address,
13 ma'am?
14 THE DEFENDANT: 4905 Sparkling Sky Court, Las Vegas,
15 Nevada 89130.
16 THE COURT: Okay. And how long have you lived in
17 Nevada to make it your home?
18 THE DEFENDANT: I moved here May 1st of 2019. So
19 just -- just shy of --
20 THE COURT: Of two years.
21 THE DEFENDANT: -- two years.
22 THE COURT: Now, -- and I understand that the -- the
23 impact of the Court's decision may determine exactly where you
24 go, but you have no imminent plans of moving from the state of

1 Nevada, correct?

2 THE DEFENDANT: No, sir.

3 THE COURT: And do you desire to have your maiden
4 name restored to you?

5 THE DEFENDANT: Not at this time, sir.

6 THE COURT: Okay. All right. So I make the
7 following findings, conclusions, and orders based on the
8 record before the Court. I do find that the parties are
9 incompatible in marriage; therefore, an absolute decree of
10 divorce is entered restoring the parties to the status of
11 single unmarried individuals. I previously noted that I
12 approved the stipulated terms contained in the stipulation and
13 order that was previously signed and -- and filed. That for
14 the -- for the most part governs the resolution of all
15 financial issues with the exception of child support which is
16 impacted by the Court's decision regarding relocation and
17 custody. And I appreciate the efforts that were undertaken to
18 reach those stipulations because it did streamline our -- our
19 focus and the proceedings here today.

20 I do also make a finding that the parties -- that
21 there are three children under the jurisdiction of this Court
22 as part of these divorce proceedings recognizing that the
23 youngest child, Gianni, born Augu -- October 17th, 2015, is
24 not the biological father (sic) of the Plaintiff but was

1 conceived during the marriage. And both the complaint and the
2 answer and counterclaim affirmatively represent that the
3 Plaintiff is the equitable father of the child and the Court
4 recognizes his paternity in that regard and also the efforts
5 that have been undertaken to reach out to the biological
6 father.

7 Now, although I -- I -- and -- and there was a
8 statement that was -- that's offered as part of the record in
9 terms of the biological father; although, that technically
10 does not necessarily rise to a relinquishment, I do recognize
11 that document is accepting the fact that the Plaintiff is for
12 all intents and purposes the father of Gianni; has held
13 himself at -- as out as the father and that the biological
14 father has had no relationship with Gianni or established a --
15 a father/son relationship in that regard. So my decision
16 encompasses all three children.

17 From a procedural matter and a due process
18 standpoint, my direction is that both the stipulation and
19 order and the decree be served on the biological father, just
20 to ensure that there is some finality to these proceedings to
21 the extent that that individual ever determine that they --
22 that he wanted to make any contrary claims. But I do ba --
23 based on the overall record, the stipulation and order, the
24 statement offered by that gentleman, I make a finding that --

1 that all three children are a product of this marriage and
2 paternity should be established of all three children for that
3 matter.

4 The focus today is on relocation and custody. These
5 -- please understand these are the most challenging
6 proceedings that I deal with when I'm -- I'm looking at the
7 physical separation that is caused or created by a relocation.
8 Because the problem is when -- particularly when children are
9 school aged, there's no middle ground. There's not some type
10 of a midpoint that would allow me to maintain some type of a
11 joint physical custody arrangement. And -- and so that's
12 challenging when I look out and I see two good quality
13 parents, two parents who have a love -- a -- a love and -- and
14 a deep abiding relationship with all of their children.

15 And -- and so that becomes the challenge. And this
16 is not a situation where today I -- it's easy for me because I
17 -- I find a specific fault or failure by one party that makes
18 it easy for me to -- to make this type of determination. I
19 see two good parents that are before me today. And so that
20 makes this process extremely daunting.

21 I go back to the initial hearing we had in this case
22 which was on August 26th, 2020. And I had questions and
23 inquiries at that -- the time of that hearing if you may
24 recall. We had a discussion about New Mexico and -- and the

1 -- that -- because that was raised in the underlying pleadings
2 and relocation to New Mexico. But you may recall as well at
3 the same time I asked why Las Vegas. Not only why New Mexico,
4 Las Cruces, New Mexico, but why Las Vegas, Nevada. I
5 recognize at that time -- at the time the -- this divorce case
6 was filed, the parties together had not been here for -- even
7 for a full year when the -- when the case was filed. Everyone
8 arrived here based on the testimony and the record that's
9 before me. Everyone was here by August 1st, 2019. So as of
10 the date of that hearing, it had just been over a year. The
11 testimony established that Mom had moved out here on -- on May
12 1st, 2019. Dad and the children followed on -- on August 1st.
13 It's also undisputed that the children were born and
14 up until August of 2019 raised in New Mexico. Neither party
15 has deep rooted connections to Las Vegas, Nevada. And I also
16 know that both parties have expressed an inclination to be in
17 the same location as -- as the children. Whether Dad stays in
18 Las Vegas, Nevada, if the Court denies his request to relocate
19 or Mom moves to New Mexico if the Court grants his request for
20 relocation, both parties have expressed that desire to be
21 where -- where the children are.
22 And so it's important for me to recognize at the
23 outset that just as much -- I -- I don't hold it against the
24 Plaintiff for stating that he would remain here in Las Vegas,

1 Nevada if I denied his request for a relocation as challenging
2 as that may be. I equally can't hold it against Mom as -- as
3 a point of contention or argument that she would relocate to
4 New Mexico if I allowed the relocation. They're somewhat
5 similar positions.

6 And I -- from a judicial standpoint as a conclusion
7 of law, I don't find that taking that position should be
8 outcome determinative of the path the Court takes on either
9 side. I -- I know there is sometimes I -- I hear a discussion
10 that well, if someone doesn't intend to relocate, then you
11 don't even go down the path of relocation, if they're going to
12 stay here, if it's denied, I -- I don't -- I -- I get the fact
13 that I have two parents who want to be wherever their children
14 are, whatever my decision is.

15 And -- and, again, I -- I emphasized throughout my
16 decision this afternoon that I look at both of you as two good
17 parents. I'm not concerned about either of you. There was
18 some testify that was -- that was offered about certain
19 ruminations of -- of the Defendant previously about self-harm
20 or suicide. I -- I don't find that the children are at risk
21 of harm with either of you. Again, I find that you're both
22 capable of taking care of your children. And I don't find
23 that they're disqualifying factors that would inhibit or
24 preclude you from maintaining custody of your children for at

1 least a hundred and forty-six days. You're both very capable
2 of providing for that care.

3 When I look at the factors, there's a best factor
4 analysis that I -- that I'm looking at. And also the
5 relocation factors. As -- as conclusions of law, this matter
6 is governed by NRS 125C.0035 as well as NRS 125C.007 which is
7 the factors to be weighed by the Court when a request for
8 relocation has been offered.

9 I just want to highlight a few of those provisions
10 just to be clear for the record. The highlight of those
11 sections that I believe interplay with the facts that have
12 been provided to the court as part of our record. In
13 125C.0035, subsection 1 provides that in any action for
14 determining physical custody of a minor child, the sole
15 consideration of the Court is the best interest of the child.
16 Subsection 2 provides preference must not be given to either
17 parent for the sole reason that the parent is the mother or
18 the father of the child. There is no gender preference and no
19 preference based on -- on your roles in that regard that one
20 is the mother and one is the father.

21 That becomes important too as part of the Court's
22 analysis because the two of you established different roles
23 during the marriage. And perhaps it didn't fit the typical
24 stereotype or or mold. And -- and I think it's very important

1 to be careful not to get caught in looking at things from a
2 different perspective because this arrangement was different
3 perhaps than many other arrangements. Perhaps it's becoming
4 more common today.

5 But in -- in this situation, the -- the record
6 clearly established that Mom was a breadwinner. She was out
7 working throughout the entirety of the marriage. There were
8 portions of time in which the Plaintiff/Dad did work during
9 the marriage. But at times he served the role as a -- what
10 was defined as a -- a house husband. Frequently, we hear
11 house wife. We don't hear house husband as much.

12 But I just note that because I think it's very
13 careful -- we -- we have to be very careful to recognize that
14 the same standard would have to be applied. If the roles were
15 reversed and we had what might be considered more
16 stereotypical with Dad out working and being the breadwinner
17 and Mom at home, this should be viewed in the same fashion and
18 in the same light regardless of -- of the roles that you
19 played and how you defined those roles, because you did define
20 those roles by your actions throughout the relationship and
21 throughout the marriage.

22 Subsection 4 sets for the requirement that the Court
23 shall consider and set forth specific findings concerning a
24 mother -- among other things. And there's subsections A

1 through L. And I'm going to go through those here shortly
2 where -- when I get into the best interest analysis. Those
3 factors become very important for the Court to consider and
4 analyzing what is in -- in your children's best interest.

5 And -- and one thing I do agree with that came up in
6 closing argument that is that I -- I do believe that your
7 children benefit and it would be in their best -- best
8 interest for the two of you to have joint physical custody.
9 This truly becomes a matter of whether or not I look at
10 requiring that to take place in Las Vegas, Nevada or in Las
11 Cruces, New Mexico.

12 In reviewing the factors and under 125C.007,
13 subsection 1 requires that the relocating parent must
14 demonstrate and it is -- it is the Plaintiff's burden that
15 there is a sensible good faith reason for the move. And the
16 move is not inclined -- intended to deprive the non-relocating
17 parent of his or her parenting time. B, the best interest of
18 the -- the children are served by allowing the relocating
19 parent to relocate with the children. And C, the children and
20 the relocating parent will benefit from an actual advantage as
21 a result of the relocation.

22 If those three factors are satisfied, then the Court
23 must weigh the following factors and the impact of each of --
24 on the children, the relocating parent and the non-relocating

1 parent, including with out limitation to extent to which
2 compelling interest of the children, the relocating parent,
3 and the non-relocating parent are accommodated. A, the extent
4 to which the relocation is likely to improve the quality of
5 life for the -- the children and the relocating parent. B,
6 whether the motives of the relocating parent are honorable and
7 not designed to frustrate or defeat any visitation rights
8 accorded to the non-relocating parent. C, whether the
9 relocating parent will comply with any substitute visitation
10 orders issued by the Court if permission to relocate is
11 granted.

12 D, whether the motives of the non-relocating parent
13 are honorable in resisting the petition for permission to
14 relocate or to what extent any opposition to the petition for
15 permission to relocate is intended to secure a financial
16 advantage in the form of ongoing support obligations or
17 otherwise. E, whether there will be a realistic opportunity
18 for the non-relocating parent to maintain a visitation
19 schedule that will adequately foster and preserve the parental
20 relationship between the child and the non-relocating parent
21 if permission to relocate is granted.

22 And F, any other factor necessary to assist the
23 Court in determining whether to grant permission to relocate.
24 Those are the requirements of the Court and the factors I'm

1 required to consider. And -- and as I mentioned before, we'll
2 get in -- into the best interest factors as well in going
3 through this.

4 And I had the chance to listen to the testimony of
5 both parties. And there were times both parties were
6 challenged about statements that -- that did appear on their
7 face to seem inconsistent in -- in terms of the testimony that
8 may have been offered today versus at other times,
9 inconsistencies that were drawn out and in -- in terms of the
10 examination of answers that were given to the interrogatories
11 when the Plaintiff was on the stand juxtaposed with his
12 testimony today. And acknowledgments on -- on both -- by both
13 parties.

14 I felt like both parties to that extent were candid
15 when they -- when they realized that things were -- perhaps
16 were a little different or shaded a little differently. I
17 don't find that overtly either party was intending to deceive
18 the court.

19 There was one part of the testimony I -- I recall
20 when Plaintiff was challenged about the answer to the
21 interrogatory that talked about Mom not -- Mom having to rely
22 on -- on other individuals to help care for the children. And
23 that was a -- a factor for the Court to consider. And the
24 reality is, and the record will very strongly suggest it, that

1 -- that Plaintiff himself necessarily relied on -- on his
2 parents to help watch the children. And it was one of those
3 instances where obviously that -- that impacts both of you.
4 Both of you rely on family members to assist. And part of the
5 testimony provided to the Court indicates that for some time I
6 believe it was since December the paternal grandparents have
7 traveled here on a very regular frequent basis to provide care
8 even to the point that the children spend nights per week
9 during Dad's week to help and assist care for the children.

10 And -- and so that's not lost on the Court. And I
11 -- I -- to be very clear, this is a custody case between Mom
12 and Dad. And it's not between grandparents and other
13 grandparents or Mom and grandparents, Dad and grandparents.
14 These are your children. And I -- I think we have to tread a
15 little bit carefully because I think there's -- there's a -- a
16 concern, a legitimate concern that's been raised about
17 recognizing that we have some very loving grandparents who
18 have been very actively involved and have a very positive
19 relationship with the children.

20 There's a line that can't be crossed and I think
21 there's a legitimate concern that's been raised about how
22 involved they are to the detriment of one parent.

23 It is undisputed, and Dad acknowledged this in his
24 testimony, that there was a CPS report that was made by the

1 paternal grandparents against both of you. And Dad
2 acknowledged in his testimony that that wasn't -- that wasn't
3 right. It should have never been made.

4 But as I -- I go through the -- the factors under
5 007, the -- the first factor that -- that I'm going to
6 reference in terms of my findings is actually the last factor
7 in 007, subfactor F. Any -- any factor -- any other factor
8 necessary to assist the Court in determining whether to grant
9 permission to relocate. And I reference that because I'm not
10 sure that these findings fall specifically under any other
11 factor.

12 Per -- perhaps they do, but something that I -- I
13 have -- as -- as I thought about this case, as I've prepared
14 for today and read your pretrial memos, reviewed prior
15 hearings, and I was reminded of exactly this case was about
16 because it has been some time -- time since we were last
17 together. I go back to something I've mentioned before about
18 Las Vegas versus New Mexico.

19 What makes this case very unique is clearly the
20 parties have not been in Las Vegas, Nevada for a lengthy
21 period of time. Yes, these proceedings have taken some time
22 to get to trial. We're now here on April 1st. But when this
23 case was initiated, the parties had not been here for even a
24 year.

1 There are no deep rooted connections or ties that
2 suggest that Las Vegas is a superior place from a career
3 standpoint to New Mexico in terms of a -- a career opportunity
4 that would connect or tie someone to Las Vegas that's not
5 available in the same line of work in Las Cruces, New Mexico.

6 Now, to be clear, when I talk about sensible good
7 faith reasons for the move which is subfactor A, there's
8 nothing here that blows me out of the water in terms of -- of
9 there being some type of a -- an employment opportunity or a
10 -- a job -- a job opportunity in New Mexico that blows me out
11 of the water which often times is what I see when someone is
12 asking for permission to relocate is they've been offered some
13 type of a promotion or an employment opportunity that is so
14 vastly superior to what they have in Las Vegas that they
15 can't turn it down. That's not the case here to be very
16 clear.

17 We're talking about a lateral move by Dad where he's
18 not going to be making any more money. It's the -- with the
19 same company which is not necessarily a bad thing, but he's
20 going to be making the same amount of money that he is earning
21 here in Las Vegas. And so it's clearly a lateral move. Mom
22 has had prior employment experience. And of the two parties,
23 Mom has more experience than Dad. She again is the primary
24 breadwinner. I look at Mom and she's a go getter. She's

1 going to get -- she's going to survive financially. She's
2 going to go out and get a good paying job.

3 The -- the testimony did show that the amount of
4 income that she is earning now than what she was earning at --
5 at the time this case started is less. There have been
6 multiple employment changes. The testimony established five
7 different jobs in -- in the -- in just under two years. So
8 there has been a lot of transition but Mom always seems to
9 land on her feet. Whatever happens, she finds -- she finds a
10 job.

11 But when I look at the -- the sensible good -- good
12 faith reasons, it -- the -- the difference in this case where
13 the parties have only been here a year, less than a year at
14 the time this case was initiated, is I look at financial
15 survivability. There's no -- this is not a -- a spousal
16 support case. That was already defined in your -- your
17 stipulation and order. There's no spousal support as I recall
18 to be paid by one party to the other.

19 And the difference in this situation is when I look
20 at the sensible good faith reason which I define as the family
21 connections, the historical ties that the party -- both
22 parties and the children have with New Mexico and the
23 financial stability that I define as not simply an employment
24 opportunity because, again, I emphasize it's a lateral

1 transfer, but the economic stability really arrives from --
2 from that support that's available for the Plaintiff in New
3 Mexico. That level of support does not exist here in Las
4 Vegas, Nevada.

5 And -- and Mom testified that her -- her mother and
6 her sister live with her, her mother having relocated also
7 from New Mexico and there was some testimony at some point in
8 time grandma -- maternal grandma -- mother had contemplated
9 moving back to New Mexico. The Defendant/Mom testified that
10 that -- that was no longer the case. But it -- it wouldn't
11 surprise me if that happened at some point in the future.
12 But, again, I recognize that's speculative on my part. But it
13 doesn't appear that there's a long standing connection here.
14 I'm not so -- I'm not as sure about the -- the sister, I
15 believe her name's Jessica, I don't know what her level of
16 connection is with Las Vegas, Nevada, but it may be similar.

17 There was testimony about an aunt and an uncle,
18 aunts and uncles and some cousins. Mom acknowledged in that
19 testimony though that they're basically just reconnecting with
20 that side of the family, that that relationship is -- is
21 coming perhaps back into fruition. But it's not something
22 that appeared to be a longstanding existing relationship that
23 there was regular -- regular contact.

24 So those are those sensible good faith reasons. And

1 when I look at the economics and finances, I do believe it's
2 appropriate for the Court and I find that it is to look at the
3 financial benefits of relocation in the context of not just
4 the employment but the family support. The fact that the
5 Plaintiff does have the opportunity for an indefinite period
6 of time to -- to live rent free. That doesn't exist here.

7 The -- Dad's current living conditions, he rents a
8 room. Financially -- he's not in a position financially
9 because he has not been the breadwinner in the home. He's
10 right now not in a position where he perhaps could go out and
11 get a larger place that has greater accommodations. And
12 they're not the greatest accommodations in the world right now
13 with children sleeping on a blowup mattress and a couch and
14 someone else in a room. And I recognize that there's some
15 temporary -- there's a -- there's a temporary aspect to that
16 living arrangement pending these proceedings hoping about what
17 the outcome may be that may provide some financial stability.

18 But I have a spouse here who post divorce there's
19 not a lot out there in terms of support especially in Las
20 Vegas, Nevada to make ends meet and to provide these children
21 with -- with a roof over their head -- their head.

22 And I want to be clear. I'm not suggesting that --
23 that those living conditions have -- have necessarily
24 compromised the health or well-being of the children. They're

1 not the optimal living conditions with Dad living as a
2 roommate. And -- and that should, and I anticipate it will
3 change. But I do find that -- that these bases are that it is
4 a sensible good faith reason for the -- for the move and the
5 move is not intended to -- to deprive the non-relocating
6 parent of his or her parenting time.

7 The next factor I'm required to consider are the
8 best interest factors, if those are served by allowing the
9 relocating parent to relocate with the children. And then I
10 go through those factors. Many of those factors are not
11 applicable. Let me just note at the outset the factors that
12 really don't apply to my analysis include subsection B, the
13 nomination of a guardian, subsection J, history of abuse or
14 neglect, K, whether either parent has engaged in act of
15 domestic violence against the child, a parent, or any other
16 person residing with the child, or L, whether either parent
17 has engaged in an act of abduction.

18 The -- the record is devoid of any facts that would
19 allow me to make any findings on those factors. Even
20 subfactor F which is mental, physical health of the parents, I
21 -- I don't find a sufficient basis that that plays a role in
22 my decision today. Both parties are physically capable of
23 providing for the care of the children. The only aspect that
24 this really touches on is the examination, the probing that

1 was conducted as it relates to Mom's candid prior notes in a
2 diary or a journal where she talked about her emotions and her
3 emotional state and -- and perhaps self harm, but I don't find
4 that she's in that position or she is -- is mentally unstable.
5 There's been no expert testimony or reports that suggest that
6 there's any mental incapacity by either party that would
7 inhibit your ability to care for the children.

8 So looking at the factors that -- that do apply, C,
9 which parent is more like to allow frequent associations and a
10 continuing relationship. This is your gatekeeping propensity.
11 And you're trusting that you're going to foster the other
12 parent's relationship with the -- with the children. There's
13 nothing that jumps out at me as it relates to either of you in
14 terms of your gatekeeping propensities. You also in terms of
15 subfactors D and E, level of conflict and ability to
16 cooperate, you do show signs of being able to cooperate.
17 There are some communication issues.

18 I -- I agree with that and that was offered as some
19 testimony. So there are some lapses there that -- that you
20 can do better on. But I don't view the two of you as high
21 conflict parents. And -- and I believe you're capable of
22 cooperating. And -- and, again, I view you both as being
23 capable gatekeepers. And what I mean by that is that you're
24 going to foster your children's relationship with the other

1 parent.

2 I think the -- the one worry that I -- I do have is
3 really not the two of you. I worry about the impact of these
4 proceedings. These very -- the very fact that you're in court
5 because these are very negative proceedings. You've just gone
6 through a -- a -- not a full day of -- of trial but a -- a
7 healthy portion of trial where a lot of the testimony that's
8 elicited, and it's natural, this is -- is what happens in
9 these cases, is negative. What negative points can be drawn
10 out about both of you.

11 And unfortunately, that does nothing to enhance your
12 relationship with each other as parents because once -- once I
13 conclude these findings, conclusions, and orders, you've still
14 got to go out and parent these children. And I always worry
15 about those -- the negative aspect of these proceedings and
16 how that impacts your ability to get back on the same page and
17 recognize our children more than -- more than anything need to
18 feel love from both of us and not that division.

19 And -- and on top of that, you -- you as the parties
20 have a responsibility to make sure that other individuals,
21 other family members don't engage in conduct that is going to
22 hinder your children's relationship with the other parent.
23 And I'll tell you right now, some of the worst offenders that
24 I've seen as I've had experience here on the bench are

1 grandparents.

2 Now, I -- I heard from -- from the paternal
3 grandfather here -- here today. And both sides acknowledge,
4 it's undisputed, that your children have a very close bond and
5 a good relationship with the paternal grandparents. And I
6 believe they have a positive bond with the maternal
7 grandparents as well. But the paternal grandparents have been
8 involved perhaps above and beyond what is normal. And -- and
9 I know Ms. Burkett kind of elicited that testimony through the
10 paternal grand -- grandfather that their level of involvement
11 probably exceeds what most grandparents do.

12 And -- and you've got to be careful in that regard
13 because grandparents can sometimes be the worst offenders when
14 it comes to making negative remarks about the other parent.
15 And that just cannot happen on either side. And I -- I -- it
16 -- it's clear to me that at points in time there have been
17 strains in that relationship. Grandpa and -- and Mom both
18 talked about the fact that when the two of you discussed --
19 announced your engagement, that was not met favorably. Dad
20 gets -- gets kicked out. We have this CPS report.

21 So there's some red flags that have gone out there
22 and -- and those perhaps are some warning signs. I -- I do
23 see a very loving relationship, but the moment they step out
24 of their lane as grandparents and if they start making

1 negative comments about Mom for example in front of your
2 children, I -- I want you to un -- or understand and I
3 emphasize the result of that is emotional harm to your
4 children. Bottom line. Your children naturally want to love
5 both of you. And that's getting into the -- the wishes of a
6 child of sufficient age and capacity. Actually, that's where
7 I should have started. That's subsection A. Your children
8 have a natural bond and -- and a loyalty to each of you. And
9 I know there were some discussion about what their preferences
10 are and their desire to return to where they're -- they --
11 they were raised for most of their lives in -- in New Mexico.

12 I don't have any type of -- of child interview
13 report. I -- I recognize that Harley, who just turned 14, is
14 of a sufficient age, but I -- I don't have a child interview
15 report. And -- and I believe your children, and Mom testified
16 to this, I believe they don't want to be in the middle. I
17 believe they love both of you. They don't want to make this
18 decision. And -- and they would perhaps tell each of you what
19 they perceived or believed you wanted to hear if that question
20 ultimately was asked, because they love you so much.

21 Allow them, give them permission to love the other
22 parent. That is so essential. And the more you can assure
23 them of that, the more you can tell them not only that you
24 love them but the other parent loves them and encourage them

1 to go tell the other parent that they love the other parent.
2 Emotionally -- they'll be emotionally healthier.

3 And if anyone in your family on either side gets out
4 of line and starts saying negative things about the other
5 parent, you need to stop that immediately. And -- and that
6 happens because your parents, the grandparents, are your
7 parents and they're looking out perhaps for the two of you as
8 much as they want to look out for the -- the grandkids, it is
9 emotionally damaging to your children when they hear
10 derogatory comments about the other parent. They don't need
11 it. So make sure it doesn't happen.

12 And I'm not -- I'm not finding that it has happened,
13 but I recognize that there's a layer of involvement that goes
14 beyond what is typical. When I hear grandma and grandpa
15 driving out here almost every other week to take care of
16 children and they're spending the night, and -- and I'm not
17 saying that's a bad thing, but just keep in mind the two of
18 you are -- are the parents.

19 Physical, developmental and emotional needs of -- of
20 the children and the nature of their relationship with each of
21 you are somewhat intertwined. And the reason I say that is
22 the two of you have defined your roles over the years. And
23 those roles were defined with the testimony was -- was clear
24 that -- and Mom acknowledged that Dad was a stay-at-home

1 parent. He handled primarily those responsibility with
2 respect to taking the children to -- to appointments, to
3 handling school related issues. That was the dynamic. That's
4 how you define your roles. Because Mom was working.

5 Now, there were periods of time in which you both
6 worked and other family members stepped up, often times the
7 paternal grandparents, to assist the two of you in -- in
8 making sure the children were taken care of. But the two of
9 you defined you -- the nature of your relationship. And to be
10 very clear, that does not mean that the Defendant that Mom was
11 an absentee parent. I do believe she was proactive, that she
12 was involved to the extent that she was able to with handling
13 the -- the -- her employment aspects. It also doesn't mean
14 that one parent was the good parent and one parent was the bad
15 parent.

16 Again, you were both good parents. Your children
17 had a -- a natural and -- and deep love for both of you. And
18 so -- but that being said, you define your respective roles.

19 More recently, it's been more of a shared
20 arrangement, but -- but again, I think historically over the
21 length of your marriage you define your roles and Dad was --
22 was from a de facto standpoint more involved in terms of some
23 day-to-day affairs.

24 The ability of the children to maintain a

1 relationship with siblings, I'm not going to be splitting up
2 the children. So that really -- that factor as much as it is
3 applicable, this is not about splitting up the children. And
4 those -- that encompasses my analysis of the best interest
5 factors. Again, overall, there's not a disqualifying element
6 to -- to that analysis that disqualifies either of you from
7 being joint -- a joint physical custodian.

8 Subfactor C, the -- the children and the relocating
9 parent will benefit from an actual advantage as a result of
10 the relocation. This ties into some of my prior analysis.
11 This is where you both are from. There's family support. The
12 financial stability do -- comes from not only the fact that
13 there is employment -- it's the same employment, but there's
14 also the ability, some contribution financially and by virtue
15 of the fact that there is family support available. There's a
16 place to live with -- with no rent being paid.

17 And so we have positive family connections that
18 exist on both sides of the family, both on Dad's side and
19 Mom's side. So there will be an improvement to Dad's housing
20 situation and the living conditions for both Dad and the
21 children.

22 Finding that those factors have been satisfied to
23 proceed in the analysis regarding the relocation under
24 125C.007, I must weigh -- then weigh the -- the following

1 factors an then the impact on the children, the -- the
2 relocating parent and the non-relocating parent, including
3 without limitation the extent to which compelling interest of
4 the children, the relocating parent and the non-relocating
5 parent are accommodated.

6 A, the extent to which the relocation is likely to
7 improve the quality of life for the children and the
8 relocating parent. This is similar to some of the Court's
9 prior findings about the -- the stability that's offered by
10 virtue of the family support that's available, the fact that
11 economically there is not necessarily a lengthy or strong tie
12 to the Las Vegas area in employment fields that are unique to
13 Las Vegas, Nevada. You're both employed in areas, food --
14 whether it's food or auto parts. Economic areas that exist in
15 Las Cruces, New Mexico and Las Vegas, Nevada.

16 I understand that there are differences in the
17 economic dy -- dynamics in both cities, but at the same time
18 it's not as though employment opportunities are unique to this
19 location. And your experience and training is -- is unique
20 and can only be exercised here in Las Vegas, Nevada. And as I
21 indicated before, there is an improvement to -- to Dad's
22 housing and living conditions.

23 Whether the motives of the relocating parent are
24 honorable and not designed to frustrate or defeat any

1 visitation rights accorded to the non-relocating parent. I do
2 find that they are honorable, that it's not designed to -- to
3 frustrate or defeat Mom's visitation rights. Whether the
4 relocating parent will comply with any substitute visitation
5 orders issued by the Court if permission to relocate is
6 granted, there's nothing in the record that suggest as any
7 pattern of noncompliance with the Court's orders.

8 Whether the non -- the motives of the non-relocating
9 parent are honorable in resisting the petition for permission
10 to relocate or to what extent any opposition of the petition
11 for permission to relocate is intended to secure a financial
12 advantage in the form of ongoing support obligations or
13 otherwise. I don't have find that the motives of the
14 non-relocating parent are dishonorable. I think they -- they
15 are honorable given the circumstances of this case.

16 And finally, whether there will be a realistic
17 opportunity for the non-relocating parent to maintain a
18 visitation schedule that will adequately foster and preserve
19 the parental relationship between the -- the children and the
20 non-relocating parent if permission to relocate is granted. I
21 do find given the fact that there already have been bonds
22 established between the children and the Defendant Mom that
23 there is a realistic opportunity to maintain a schedule that
24 will allow -- that will foster the relationship as defined by

1 the parenting agreement that the parties developed in
2 mediation prior to today's proceedings.

3 So in summary, as I review the analysis under
4 125C.007 and the best interest factors, and I conclude that
5 the -- that relocation analysis is essentially a codification
6 under Nevada statutory law of prior case law precedent that
7 they're -- they're -- Dad has satisfied his burden as it
8 relates to the relocation analysis.

9 So I would I -- based on those findings, I -- I
10 order that it -- the relocation is permitted at the conclusion
11 of this school year. The Court -- it's my order that the
12 children are to finish their -- their school year here since
13 we're only a couple months away. I want them to finish their
14 school year here, at which time the relocation will -- will be
15 allowed.

16 Now, that being said, if Mom -- and she's indicated
17 that perhaps she -- she may consider, and I'm not requiring
18 her to make this determination today, she may consider
19 relocating herself to be near the children. And if she
20 designate tho -- designates those intentions by May 28th,
21 which is around the end of the school year, her intentions
22 would need to be designated simply for the purpose of
23 determining how we're going to allocate the summer months.

24 So there were two parenting plans that were

1 developed by the parties in mediation. One, if relocation had
2 been denied. One, if granted. And -- and upon granting that,
3 that's what I would adopt with the understanding that if Mom
4 determines that she is going to relocate that she would --
5 that the custody schedule, the joint custody schedule, would
6 be maintained upon her relocation of a week on week off
7 schedule. I'm finding that would be in the best interest of
8 the children. And so the parenting agreement based on the
9 approval of the relocation would only be adopted if Mom
10 designated her intent -- her intent not to relocate.

11 And if -- if she does relocate, then the schedule
12 that the parties mediated subject to the week on week off
13 regular custody schedule would be adopted by the Court. And
14 -- and if Mom relocates, I would retain jurisdiction until
15 such point in time and all part -- that all parties relocated.

16 I'm not inclined to implement any child support
17 obligation at this point in time pending each party filing an
18 updated financial disclosure form upon relocation. I'm going
19 to maintain the status quo for the time being, but I need
20 updated financial disclosure forms because Dad's employment as
21 much as it sounds like it is lateral, I need him to file an
22 updated financial disclosure form once he relocates. And
23 Mom's employment has changed.

24 I -- I did see a current financial disclosure come

1 in from Mom but I didn't see anything recently filed by Dad.
2 I know there was reference to one, but I didn't see it show up
3 in Odyssey. I think that it may have been included as an
4 exhibit. I -- I don't know that it was ever admitted into the
5 record.

6 So that would basically be the timeline and the
7 parties would -- if -- if Mom makes the designation that she's
8 not going to relocate, then obviously she would be entitled to
9 the majority of the summer as you've defined it in your
10 parenting agreement. If she is going to relocate, then
11 obviously you would maintain other provisions during those
12 summer months. And -- and I would -- my order would be that
13 -- that the relocation should take place not later than six
14 months from today's date regardless of the designation.

15 I'm asking that Mom designate her intent by May
16 28th, but the actual -- actual relocation would -- would need
17 to take place no longer than six months from today's date.

18 Each party should bear their own attorney --
19 attorney's fees and costs.

20 Are there any questions?

21 MS. FRIEDMAN: Your Honor, I just have a procedural
22 question. As far as preparing a decree of divorce, do you
23 want to -- do you want me to hold off on that for the child
24 support purposes until --

1 MR. FRIEDMAN: No, I think we could -- I'm sorry, I
2 should have talked to Ms. Friedman, but I think we can prepare
3 it, Judge, and then put that provision in there with the
4 understanding that -- or if Your Honor wants us to hold
5 and --

6 THE COURT: Yeah. No. I -- well, it's a -- it's a
7 fair point. I -- I -- I'd like to proceed with a decree.
8 Just -- it's with the understanding that -- and I -- and I
9 understand the -- the -- I think the question is it's not
10 really final until that -- that is handled. But I do -- I
11 still treat it as final. I just view ultimately Dad's
12 relocation and once he obtains his employment -- once that
13 lateral transfer occurs, even though, I -- I understand the
14 income's perhaps going to be the same, I want to see payroll
15 statements.

16 I'm just not finding a basis today to establish that
17 child support until the relocation has taken place and I have
18 the numbers. So let's -- let's have it prepared and -- and
19 then I'll make that determination at that time.

20 MR. FRIEDMAN: Yes, sir.

21 THE COURT: So Mr. Friedman, if you'll prepare --
22 Ms. Burkett, any questions?

23 MS. BURKETT: No, Your Honor.

24 THE COURT: Okay. All right. So Mr. Friedman, if

1 you'll prepare and submit to Ms. Burkett for --

2 MR. FRIEDMAN: Yes, Your Honor.

3 THE COURT: -- review and signature.

4 (PROCEEDINGS CONCLUDED AT 3:41:03)

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7 * * * * *

8 ATTEST: I do hereby certify that I have truly and
9 correctly transcribed the digital proceedings in the above-
10 entitled case to the best of my ability.

11

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Adrian Medrano

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Adrian N. Medrano

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REGISTER OF ACTIONS

CASE NO. D-20-608267-D

Joel Eorio, Plaintiff vs. Lisa Eorio, Defendant.

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Case Type: **Divorce - Complaint**
Subtype: **Complaint Subject Minor(s)**
Date Filed: **06/01/2020**
Location: **Department Q**
Cross-Reference Case Number: **D608267**
Supreme Court No.: **83132**

PARTY INFORMATION

Defendant	Eorio, Lisa 4905 Sparking Sky AVE Las Vegas, NV 89130	Lead Attorneys Bruce I. Shapiro <i>Retained</i> 702-388-1851(W)
Plaintiff	Eorio, Joel 1716 Imperial Ridge Las Cruces, NM 88011	Pro Se

Subject Minor Eorio, Gianni Edward

Subject Minor Eorio, Harley Rose

Subject Minor Eorio, Jayden Bell

EVENTS & ORDERS OF THE COURT

07/15/2020 **Minute Order** (8:00 AM) (Judicial Officer Gentile, Denise L)

Minutes

07/15/2020 8:00 AM

- NRCP 1 and EDCR 1.10 state the procedure in district courts shall be administered to secure efficient, speedy, and inexpensive determinations in every action. Pursuant to S.C.R. 48.1(1), a party wishing to exercise the right to change of judge shall file a pleading entitled Peremptory Challenge of Judge. The notice may be signed by a party or by an attorney, it shall state the name of the judge to be changed, and it shall neither specify grounds, nor be accompanied by an affidavit. COURT FINDS Plaintiff filed a Peremptory Challenge of Judge on July 2, 2020. COURT FINDS Plaintiff sought to exercise his right to peremptorily challenge the judge assigned to his case. However, Plaintiff only named the department to be changed in his Peremptory Challenge. The Judge to be changed was not named. Therefore, COURT FINDS Plaintiff's Peremptory Challenge fails to comply with S.C.R. 48.1(1) by failing to name the Judge to be changed. Accordingly, COURT FINDS Plaintiff's Peremptory Challenge is defective and ORDERS the matter shall be reassigned to Department T of the Eighth Judicial District Court Family Division. CLERK S NOTE: On 7/15/20 a copy of the Court's Minute Order was provided to each Attorney via email, if an email address is on record with the Court; if no email address is available then the Minute Order was mailed to the physical address of record. (mm)

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REGISTER OF ACTIONS

CASE NO. D-20-608267-D

Joel Eorio, Plaintiff vs. Lisa Eorio, Defendant.

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Case Type: **Divorce - Complaint**
 Subtype: **Complaint Subject Minor(s)**
 Date Filed: **06/01/2020**
 Location: **Department Q**
 Cross-Reference Case Number: **D608267**
 Supreme Court No.: **83132**

PARTY INFORMATION

Defendant Eorio, Lisa 4905 Sparking Sky AVE Las Vegas, NV 89130	Lead Attorneys Bruce I. Shapiro <i>Retained</i> 702-388-1851(W)
Plaintiff Eorio, Joel 1716 Imperial Ridge Las Cruces, NM 88011	Pro Se

Subject Minor Eorio, Gianni Edward

Subject Minor Eorio, Harley Rose

Subject Minor Eorio, Jayden Bell

EVENTS & ORDERS OF THE COURT

08/26/2020 | **All Pending Motions** (9:00 AM) (Judicial Officer Duckworth, Bryce C.)

Minutes

08/26/2020 9:00 AM

- PLAINTIFF'S MOTION FOR PRIMARY PHYSICAL CUSTODY OF THE PARTIES' MINOR CHILDREN FOR THE PURPOSES OF RELOCATING WITH THE PARTIES' MINOR CHILDREN TO THE STATE OF NEW MEXICO...DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRIMARY PHYSICAL CUSTODY OF THE PARTIES' MINOR CHILDREN FOR THE PURPOSE OF RELOCATING WITH THE PARTIES' MINOR CHILDREN TO THE STATE OF NEW MEXICO AND DEFENDANT'S COUNTERCLAIM FOR ATTORNEY'S FEES AND COSTS...PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRIMARY PHYSICAL CUSTODY OF THE PARTIES' MINOR CHILDREN FOR THE PURPOSES OF RELOCATING WITH THE PARTIES' MINOR CHILDREN TO THE STATE OF NEW MEXICO AND OPPOSITION TO DEFENDANT'S COUNTERMOTION...CASE MANAGEMENT CONFERENCE Parties all present via video conference. Court confirmed parties have two children together, Rose and Hayden, and a third child Gianni who is not Plaintiff's biological child but has been treated as his child throughout her lifetime. Court noted that raises some due process concerns and a discussion with the issue of custody and the biological father will be needed. Court further noted that both parties agreed they shall have joint legal custody and per that stipulation, COURT SO ORDERED, noting physical custody is still at issue. COURT FURTHER ORDERED, parties are REFERRED to MEDIATION and a return date SET for November 2, 2020 at 10:00 AM. Colloquy regarding the biological father of and whether there should be a paternity action. Court noted that individual needs to be named and given notice. Ms. Friedman noted parties are currently residing in the same household, noted the concerns, and argued in support of Plaintiff's motion for relocation. Mr. Schaller argued in opposition of relocation and clarified the Defendant lost her job and was rehired to the same position and is currently employed as an area manager. Upon Court's inquiry, Defendant advised her mom and mom's family is here in Las Vegas and just her dad is in New Mexico. Court further inquired whether school in New Mexico is online or in person and Plaintiff advised some schools are in person. Court noted it is not inclined to grant this on a temporary basis. Court noted its preference is for the parents to be in the same place for the benefit and best interests of the children and clarified it is not making any

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orders today with regard to living arrangements as there is no request for exclusive possession. Court encouraged parties to have a dialogue and possible stipulation regarding their living situation. Court commented on insulating and minimizing the stress on the children, and noted the possibility of a nesting arrangement where the children stay in the home while the parents alternate and go somewhere else when it is not their time. Additionally parties can consider having an exclusive room within the home. Parties further agreed no order is needed, the minutes shall be sufficient. COURT FURTHER ORDERED, Case Management Conference CONTINUED to the same return date of November 2, 2020 at 10:00 AM.

Parties Present

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REGISTER OF ACTIONS

CASE NO. D-20-608267-D

Joel Eorio, Plaintiff vs. Lisa Eorio, Defendant.

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Case Type: **Divorce - Complaint**
Subtype: **Complaint Subject Minor(s)**
Date Filed: **06/01/2020**
Location: **Department Q**
Cross-Reference Case Number: **D608267**
Supreme Court No.: **83132**

PARTY INFORMATION

Defendant **Eorio, Lisa**
4905 Sparking Sky AVE
Las Vegas, NV 89130

Lead Attorneys
Bruce I. Shapiro
Retained
702-388-1851(W)

Plaintiff **Eorio, Joel**
1716 Imperial Ridge
Las Cruces, NM 88011

Pro Se

Subject Minor Eorio, Gianni Edward

Subject Minor Eorio, Harley Rose

Subject Minor Eorio, Jayden Bell

EVENTS & ORDERS OF THE COURT

11/02/2020 | **All Pending Motions**, (10:00 AM) (Judicial Officer Duckworth, Bryce C.)
CASE MANAGEMENT CONFERENCE...RETURN: MEDIATION

Minutes

11/02/2020 10:00 AM

- RETURN: FMC-MEDIATION...CASE MANAGEMENT CONFERENCE Plaintiff/Dad, Defendant/Dad and Mr. Schaller present by video. Ms. Friedman present by audio. The Court noted parties formulated two (2) parenting agreements at mediation. One (1) agreement was contingent upon Dad's relocation. Ms. Friedman represented parties' agreed they need to separate households, however Dad needs approximately two (2) months to save money to pay the deposit for his new residence and move out of marital residence. Unfortunately, Dad is not unable to move out immediately, although he wishes to, as he is not in the financial position to do so yet. Ms. Friedman represented she will be filing Dad's opposition Mr. Schaller stated Dad's new girlfriend Jessica Carpenter who is currently residing in the marital home represented to Mom she has a conviction for burglary charges and a Child Protective Services (CPS) case in Arizona and further represented Mom did not know this information at the time the parties drafted the agreements at mediation. Mr. Schaller requested to be able to shorten the time on the motion for exclusive possession of the marital residence and stated is not healthy to have Dad's girlfriend's presence in the house with the children. Ms. Friedman argued there is no evidence to support allegations against Ms. Carpenter and further clarified Ms. Carpenter is not Dad's girlfriend but rather a mutual friend of the parties. Ms. Friedman further indicated Mom never had a problem before with Ms. Carpenter's presence as Mom even delegated Ms. Carpenter's with tasks regarding the children's care and school. The Court noted it will set trial on this matter based on the parties' arguments and requests. COURT stated its FINDINGS and ORDERED the following: 1. The Court set the matter for a NON-JURY TRIAL to address ALL ISSUES on 02/11/2021. The Court will issue a Case and Non- Jury Trial Management Order based on the court minutes. 2. DISCOVERY shall close by 01/29/2021. Pre Trial Memorandums (PTMs) and Exhibits shall be submitted by 02/04/2021 and WITNESS LIST shall be submitted no later than 12/18/2020 including name, address and a brief description of what the witness has to offer. No order needed the court minutes shall suffice. 02/11/2021 9:00 A.M. NON-JURY TRIAL: (ALL ISSUES-FULL DAY)

Parties Present

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REGISTER OF ACTIONS

CASE NO. D-20-608267-D

Joel Eorio, Plaintiff vs. Lisa Eorio, Defendant.

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Case Type: **Divorce - Complaint**
 Subtype: **Complaint Subject Minor(s)**
 Date Filed: **06/01/2020**
 Location: **Department Q**
 Cross-Reference Case Number: **D608267**
 Supreme Court No.: **83132**

PARTY INFORMATION

Defendant	Eorio, Lisa 4905 Sparking Sky AVE Las Vegas, NV 89130	Lead Attorneys Bruce I. Shapiro <i>Retained</i> 702-388-1851(W)
Plaintiff	Eorio, Joel 1716 Imperial Ridge Las Cruces, NM 88011	Pro Se
Subject Minor Eorio, Gianni Edward		
Subject Minor Eorio, Harley Rose		
Subject Minor Eorio, Jayden Bell		

EVENTS & ORDERS OF THE COURT

04/01/2021 | **Non-Jury Trial** (9:00 AM) (Judicial Officer Duckworth, Bryce C.)
DIVORCE (ALL ISSUES-FULL DAY)

Minutes

02/11/2021 9:00 AM

04/01/2021 9:00 AM

- DIVORCE (ALL ISSUES- FULL DAY) Attorney Kenneth Friedman, bar #5311, present in an unbundled capacity to assist Attorney Jessica Friedman. In the interest of public safety due to the Coronavirus pandemic, Defendant and Attorney Burkett were present via VIDEO CONFERENCE through the BlueJeans application. Court noted the Stipulation and Order filed on 3/30/2021 which narrowed the issues for today. Court also noted parties formulated two parenting plans in mediation through Family Mediation Center (FMC), with one being contingent upon the Court granting Plaintiff's relocation. Both sides WAIVED Opening statements. Testimony and exhibits presented (see worksheets). Court recessed for 5 minutes. Court reconvened. Further testimony. Matter TRAILED for lunch. Matter RECALLED with all previous parties present. Continued testimony. Closing arguments by Counsels. Court recessed for 20 minutes. Court reconvened. Court canvassed parties. COURT stated FINDINGS and ORDERED, DIVORCE GRANTED. Parties shall be returned to the status of single and unmarried individuals. Stipulation and Order and the Decree of Divorce shall be served on minor child Gianni's biological father. Plaintiff's request to relocate to New Mexico shall be GRANTED. Relocation is permitted upon the conclusion of the minor children's school year but no later than six months from 4/1/2021 regardless of a designation. Defendant shall have until 5/28/2021 to designate her intentions to relocate to live closer so the children or not to relocate to determine how to allocate the summer timeshare. If Defendant does not relocate, Defendant shall be entitled to majority of the summer time. If Defendant determines that she is going to relocate the Joint Custody schedule shall be maintained upon her relocation. The Parenting Agreement, subject to the week on week off regular custody schedule will be ADOPTED by the court. The Parenting Agreement based on the approval of the relocation will be ADOPTED only if Defendant designates her intent not to relocate. The Court will RETAIN JURISDICTION until such point and time that all parties relocated. Court is not inclined to implement any child support orders at this time pending each party filing an Updated Financial Disclosures upon relocation. Status Quo shall remain at this time. Parties shall

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bear their own attorneys fees and costs. Attorney K. Friedman shall prepare the Decree of Divorce with opposing counsel's signature.

Parties Present

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