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

Electronically Filed
Mar 24 2022 03:52 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

4
5 NECHOLE GARCIA,
Appellant,

) Supreme Court Case No. 83992
) District Court Case No. D-20-612006-C
)

6
7 vs.

) Hearing Date:
)

8 EVGENY SHAPIRO,
Respondent.

)
)
)

9
10 **RESPONDENT'S MOTION FOR LEAVE TO CORRECT TRANSCRIPTS AND**
11 **FOR THE COURT TO ACCEPT RESPONDENT'S CORRECTION TO**
12 **EVIDENTIARY HEARING TRANSCRIPTS AND TO INCLUDE IN THE**
13 **JOINT APPENDIX**

14 Respondent EVGENY SHAPIRO, by and through his unbundled attorney of
15 record, JENNIFER ISSO, ESQ. of the Law Office of Isso & Hughes Law Firm hereby
16 submits His Motion for Leave to Correct Transcripts and for the Court to Accept
17 Respondent's Corrections to the Evidentiary Hearing Transcripts, due to errors
therein.

18 DATED this 24th day of March 2022.

19 /s/ Jennifer Isso
20 JENNIFER ISSO, ESQ.
21 Nevada Bar No. 13157
22 2470 Saint Rose Parkway #306F
23 Las Vegas, Nevada 89123
24 Telephone: (702) 434-4424
25 ji@issohugheslaw.com
Attorney for Respondent Unbundled

FACTS AND HISTORY

There was an Evidentiary Hearing held in this matter on November 3, 2021 and November 5, 2021. There was a telephonic hearing on November 4, 2021. The Court after careful review of the evidence and testimony of the parties, medical professionals and experts, consideration of the custody evaluation report, and closing briefs, rendered a decision and order on December 15, 2021. The Notice of Entry of Order was filed on December 16, 2021. Appellant then filed a Notice of Appeal on December 18, 2021 and thereafter filed a motion to stay the courts recent decision and to revert back to the week 1/ week 2 schedule that was ordered as a “temporary” order during these proceedings before an evidentiary hearing.

As part of this Appeal process, Transcripts were ordered pursuant to NRAP 9(a)(1). Upon receipt and review of the transcripts, however, numerous material errors and inaccuracies were found.

Respondent has painstakingly detailed the errors found in the transcripts, and reached out to the court reporting company to correct the errors. Ms. Isso also immediately reached out to opposing counsel in this matter, Emily McFarling, Esq. Both counsel were attempting to figure out how to handle this issue. After, Eugene Shaprio reached out to the court reporting company, a revised transcript was provided. However, the revised transcript still has errors. See Exhibit 1.

It is important to note that Eugene Shapiro is of Russian decent and has an accent. This may be the reason why the court reporter could not understand his every word. However, it would have been helpful if the court reporter informed us of this deficiency. We learned about it after the fact.

1 is seeking that the transcriptionist review and correct these errors so this court
2 will have an ACCURATE record of what was stated at the time of the evidentiary
3 hearing in this matter.

4 After Ms. Isso realized the errors, she immediately informed Emily McFarling.
5 See Exhibit 2. However, Ms. McFarling failed to add the revised transcript to the joint
6 appendix despite her misrepresentations that it was added. After careful review, Ms.
7 Isso is unable to locate the revised transcript in the joint appendix. And therefore,
8 Respondent is requesting that the revised transcript is included in the joint appendix
9 and considered by the court, as well as the court adopt the additional revisions as
10 indicated below.
11

12 Unfortunately, despite being informed of the inaccuracies in the transcript,
13 Appellant filed her fast track statement citing to these inaccuracies as her basis to have
14 the decision appealed. For example, Appellant cites to the transcript page 84 line 14
15 stating “as well as major depressive order”. However, Eugene never said those words,
16 he stated “as well as on my Medicaid.” It is bizarre and when read the transcript page
17 as a whole, it would make no sense to say major depressive order because they were
18 talking about insurance.

19 Ms. Isso in good faith provided the list of inaccuracies to Ms. McFarling,
20 however, Appellant is trying to pull a quick one by citing to the inaccurate transcript
21 and not the revised one. See Communications between counsel attached as Exhibit 1.
22 Ms. Isso immediately emailed Ms. McFarling the revised transcript but informed that
23 there are still inaccuracies. See Exhibit 3.
24

25 Respondent is aware this is a fast track briefing due to the fact there are custody
issues involved. However, Respondent respectfully requests leave of the court for

1 permission to substitute in the corrected transcripts and to address the following
2 errors and adopt the corrections herein.

3 Initially, Respondent noted the following errors in the transcript as out lined
4 below:

5 Inaccuracies in the initial evidentiary hearing transcripts of Respondent's testimony as
6 indicated by Respondent below:

7
8 November 3, 2021 (Day 1):

9 Page 88, line 3, Time stamp 10:45:06: My middle name is spelled wrong, it is
10 Ilyich.

11 Page 84, line 14, Time stamp 10:45:27: I never said "as well as major depressive
12 disorder," I said "as well as on my Medicaid."

13 Page 90, line 20, Time stamp 10:47:38: I never said "what you called a schedule," I
14 said "what she called a schedule."

15 Page 91, line 6 Time stamp 10:48:08: I never said "fight with her father," I said
16 "fight with her mother."

17 Page 112, line 13, Time stamp 11:12:03: I never said "falling the child on her knees,"
18 I said "following the child on her knees."

19 Page 158, line 11, Time stamp 12:10:37: I never said "and tell them," I said "and
20 tells her."

21 Page 166, line 18, Time stamp 12:22:25: I didn't say "BCDA," I said "BCBA."

22 Page 167, line 14, Time stamp 12:23:21: I didn't say "almost the holidays," I said
23 "on most of the holidays."

24 Page 168, line 9, Time stamp 12:25:05: I said "and then had chutzpah"

25 Page 187, line 24 and Page 188 line 1, Time stamp 12:47:23 I didn't say "you can tell
her mother," I said "she wouldn't tell her mother."

1 Page 188, line 18, Time stamp 12:48:16: I didn't say "and," I said "when."

2 Page 198, line 15, Time stamp 1:27:18: I didn't say "generally," I said, "genuinely."

3 Page 199, line 8, Time stamp 1:28:18: I didn't say "the witnesses," I said "their
4 witnesses."

5 Page 201, line 2, Time stamp 1:30:35: I did not say "I lied to her," I said "I replied
6 to her."

7 Page 207, line 14, Time stamp 1:38:03: I didn't say "fair in negotiations," I said
8 "fair negotiations."

9 Page 207, line 21, Time stamp 1:38:30: I didn't say "doesn't schedule," I said "who
10 schedules."

11
12 November 5, 2021 (Day 2):

13 Page 164, line 1, Time Stamp 1:06:50: "I didn't say "that they might," I said "that
14 Ava might."

15 Page 167, line 6, Time Stamp 1:10:45: I didn't say "out to sing," I said "how to sing,"

16 Page 172, line 7, Time Stamp 1:15:02: I didn't say "that's whatever," I said "does
17 whatever."

18 Page 175, line 7, Time Stamp 1:18:22: I didn't say "comes for me," I said "comes
19 from me."

20 Page 175, line 10, Time Stamp 1:18:33: I didn't say "she wants me on the," I said
21 "she wants me in the."

22 Page 184, line 11, Time Stamp 1:26:30: I didn't say "not an advocate present, I said
23 "another advocate present."

24 Page 188, line 15, Time Stamp 1:31:19: I didn't say "no," (the last word on the line),
25 I said "in."

Page 189, line 6, Time Stamp 1:31:01: I didn't say "Initial," I said "mutual."

1 Page 189, line 18, Time Stamp 1:32:21: I didn't say "so that doesn't show," I said "so
2 if that doesn't show."

3 Page 194, line 17, Time Stamp 1:38:04: I didn't say "on her floor," I said "on the
4 floor."

5 Page 199, line 20, Time Stamp 1:43:16: I didn't say "I love her sense of humor. I
6 enjoy," I said "I loved her sense of humor. I enjoyed."

7 Page 200, line 1, Time Stamp 1:43:34: I did not say "I also enjoy," I said "I also
8 enjoyed."

9 Page 200, line 7, Time Stamp 1:43:59: I didn't say "we might-regressions," I said
10 "micro-aggressions."

11 Page 200, line 8, Time Stamp 1:44:03: I didn't say "that we express," I said "that
12 we experienced."

13 Page 206, line 22, Time Stamp 1:50:21: where it says indiscernible, I actually said
14 "unlike your client's mom."

15 Page 217, line 21, Time Stamp 1:59:27: I didn't say "not an advocate," I said
16 "another advocate."

17 Page 218, line 21, Time Stamp 2:01:06: I didn't say "go home," I said "get along."

18 Page 220, line 20, Time Stamp 2:03:28: where it says indiscernible, I actually said
19 "I want joint."

20 Page 220, line 24, Time Stamp 2:03:42: I didn't say "the goal," I said "Nehole."

21 Page 221, line 1, Time Stamp 2:03:44: I didn't say "as an African American," I said
22 "is an African American."

23 Page 258, line 3, Time Stamp 2:51:35: where it says indiscernible, I said "per
24 student."

25 Page 262, line 8, Time Stamp 2:55:16: I didn't say "CN," I said "CSN."

Page 267, line 4, Time Stamp 3:00:22: I didn't say "in the meantime," I said "many
times."

1 Page 271, line 3, Time Stamp 3:04:28: I didn't say "I currently do gig," I said "I
2 currently do not gig."

3 Page 273, line 5, Time Stamp 3:07:02: I didn't say "POA," I said "PUA."

4 Page 273, line 12, Time Stamp 3:07:30: I didn't say "POA," I said "PUA."

5 Page 274, lines 10 and 12, Time Stamp 3:08:26: I said "2600."

6 Page 275, line 11, Time Stamp 3:08:58: I didn't say "music ad," I said "music ed."

7 Page 277, line 2, Time Stamp 3:10:41: I didn't say "doctor degree," I said "doctorate
8 degree."

9 Page 277, line 3, Time Stamp 3:10:46: I didn't say "music ad," I said "music ed."

10 Page 296, line 23, Time Stamp 3:28:31: I didn't say "any patient," I said "every
11 patient."

12 Page 296, line 24, Time Stamp 2:28:36: I didn't say, "I'm very fortunate," I said
13 "we're very fortunate."

14 Page 298, line 1, Time Stamp 3:29:58: Where it says indiscernible, I actually - said
15 "RBT's."

16 Page 298, line 4, Time Stamp 3:30:13: I didn't say "that she – she – I – I did live
17 with her," I said "that she is stressed and I agree completely with her."

18 Page 298, line 5, Time Stamp 3:30:16: I didn't say "mention," I said "mentioned."

19 Page 298, line 12, Time Stamp 3:30:47: I didn't say "I heard her talking – testified
20 on," I said "I've heard Heather Tauchen, who testified on."

21 Page 298, line 16, Time Stamp 3:31:59: I didn't say "emphasizing," I said
22 "empathizing."

23 Page 298, line 21, Time Stamp 3:31:16: I didn't say "senior," I said "singer."
24

25 After the revised transcripts were provided, Respondent still noticed the
following inaccuracies from the transcript dated November 5, 2021.

1 Page 184, line 11, Time Stamp 1:26:30: I didn't say "not an advocate present, I said
2 "another advocate present."

3 Page 194, line 17, Time Stamp 1:38:04: I didn't say "on her floor," I said "on the
4 floor."

5 Page 217, line 21, Time Stamp 1:59:27: I didn't say "not an advocate," I said
6 "another advocate."

7 Page 298, line 5, Time Stamp 3:30:13: I didn't say "that she – she – I – I did live
8 with her," I said "that she is stressed and I agree completely with her." Not an exact
9 correction, you omitted "is stressed."

10 The purpose of this motion is not to delay, but to ensure an accurate record,
11 which is appropriate in this action. Respondent is requesting that the revised
12 transcript is included as part of the record and that the revisions as stated above are
13 adopted.

14 DATED this 24th day of March 2022.

15
16
17 /s/ Jennifer Isso
18 JENNIFER ISSO, ESQ.
19 Nevada Bar No. 13157
20 8965 South Eastern #306F
21 Henderson, Nevada 89074
22 Telephone: (702) 434-4424
23 ji@issohugheslaw.com
24 *Attorney for Respondent Unbundled*
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DECLARATION OF EVGENY SHAPIRO

COMES NOW, EVGENY SHAPIRO, and Declares under penalty of perjury as follows:

1. That I am the Respondent in the above-captioned matter.
2. That I have read the contents of the foregoing Motion and it is true and

correct to the best of my knowledge.

3. That there are inaccuracies in the evidentiary hearing transcripts of my statements as identified below:

November 3, 2021 (Day 1):

Page 88, line 3, Time stamp 10:45:06: My middle name is spelled wrong, it is Ilyich.

Page 84, line 14, Time stamp 10:45:27: I never said “as well as major depressive disorder,” I said “as well as on my Medicaid.”

Page 90, line 20, Time stamp 10:47:38: I never said “what you called a schedule,” I said “what she called a schedule.”

Page 91, line 6 Time stamp 10:48:08: I never said “fight with her father,” I said “fight with her mother.”

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Page 166, line 18, Time stamp 12:22:25: I didn’t say “BCDA,” I said “BCBA.”

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16 Ava might."

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22 on," I said "I've heard Heather Tauchen, who testified on."

23 Page 298, line 16, Time Stamp 3:31:59: I didn't say "emphasizing," I said
24 "empathizing."

25 Page 298, line 21, Time Stamp 3:31:16: I didn't say "senior," I said "singer."

1 4. I then reached out to the court reporting company and they fixed many
2 of the innacuracies but refused to fix the ones below regarding the transcript for the
3 November 5, 2021 hearing:

- 4 - Page 184, line 11, Time Stamp 1:26:30: I didn't say "not an advocate present, I
5 said "another advocate present."
6 - Page 194, line 17, Time Stamp 1:38:04: I didn't say "on her floor," I said "on the
7 floor."
8 - Page 217, line 21, Time Stamp 1:59:27: I didn't say "not an advocate," I said
9 "another advocate."
10 - Page 298, line 5, Time Stamp 3:30:13: I didn't say "that she – she – I – I did live
11 with her," I said "that she is stressed and I agree completely with her." Not an
12 exact correction, you omitted "is stressed."

13 5. That I am asking the court to adopt these corrections and include the
14 revised transcripts as part of the record.

15 6. That I am competent to testify as to the matters set forth herein based
16 on my own knowledge except to those matters stated upon information and belief.

17
18 DATED this 24th day of March, 2020.

19 /s/ Evgeny Shapiro
20 EVGENY SHAPIRO
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 24TH day of March 2022, a true and correct copy of the foregoing Motion was Emailed to:

EMILY MCFARLING, ESQ.
staff@rosenblumlawoffices.com
Attorney for Appellant

_____/s/ Jennifer Isso
An employee of
ISSO & HUGHES



shapiroproject <sp.eugene@gmail.com>

RE: Proposed Corrections - Case No. D-20-612006-C - Shapiro

9 messages

Michael Pace <michael@verbatimrt.com>

Fri, Mar 4, 2022 at 9:30 AM

To: Eugene <sp.eugene@gmail.com>

Cc: Jennifer Isso <ji@issohugheslaw.com>, kimberly@verbatimrt.com, karla@verbatimrt.com

Good morning Mr. Shapiro,

Thank you for providing this list of proposed corrections. We will have a proofreader review the transcripts against your list and make the necessary changes. As soon as the revised transcripts are ready we will let you know and get them refiled with the court.

Kind regards,

Michael Pace

Intake Coordinator

Verbatim Reporting &

Transcription

michael@verbatimrt.com (281)

724-8600 | (520) 303-7356

<http://www.verbatimrt.com>



IMPORTANT: The contents of this email and any attachments are confidential. They are intended for the named recipient(s) only. If you have received this email by mistake, please notify the sender immediately and do not disclose the contents to anyone or make copies thereof.

From: Eugene <sp.eugene@gmail.com>**Sent:** Friday, March 4, 2022 11:21**To:** michael@verbatimrt.com**Cc:** Jennifer Isso <ji@issohugheslaw.com>

Subject: From Eugene Shapiro /Trial Transcripts Corrections

Good morning Michael,

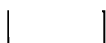
Following our phone communication this morning, I am submitting a list of transcript corrections for my testimony throughout the trial in Shapiro v. Garcia case D20-612-006-D in which I was the Plaintiff.

The corrections are for November 3 (Day 1 of trial), and November 5 (Day 2 of trial), 2021.

Please let me know if you have any questions. My cell is 702-496-2898. My attorney Ms. Isso is cc'd on this email so you can also get in touch with her, if needed. The corrected transcripts will need to be resubmitted as soon as possible.

Thank you,

Eugene (Evgeny) Shapiro



Virus-free. www.avg.com



Transcript Corrections.docx

19K

Eugene <sp.eugene@gmail.com >

Fri, Mar 4, 2022 at 9:37 AM

To: Michael Pace <michael@verbatimrt.com>

Cc: Jennifer Isso <ji@issohugheslaw.com>, kimberly@verbatimrt.com, karla@verbatimrt.com

Thank you Michael. Please do not hesitate to reach out should you have any questions on the submitted list of corrections,

Eugene Shapiro



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[Quoted text hidden]

Austin Shaw <austin@verbatimrt.com>

Mon, Mar 14, 2022 at 11:25 AM

To: "sp.eugene@gmail.com" <sp.eugene@gmail.com>

Cc: "Karla M. Soto" <karla@verbatimrt.com>, Michael Pace <michael@verbatimrt.com>, Kimberly McCright <kimberly@verbatimrt.com>, "ji@issohugheslaw.com" <ji@issohugheslaw.com>

Good afternoon,

Please find the requested amended transcripts of the 11/03/21 and 11/05/21 proceedings in the above-referenced matter are attached.

Thank you very much for giving us the opportunity to be of service.

Austin Shaw

She/Her/Hers Pronouns

Verbatim Reporting & Transcription LLC

austin@verbatimrt.com

(281) 724-8600 | (520) 303-7356

<http://www.verbatimrt.com>



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2 attachments



Shapiro 110321.pdf

743K



Shapiro 110521.pdf

674K

Jennifer Isso <ji@issohugheslaw.com>

Mon, Mar 14, 2022 at 11:36 AM

To: Alex Aguilar <AlexA@mcfarlinglaw.com>, Eugene <sp.eugene@gmail.com>

Jennifer Isso, Esq.

Isso & Hughes Law Firm

[2470 Saint Rose Parkway, Suite 306](#)

[Henderson, NV 89074](#)

702.434.4424 (main) 702.712.7811

(cell) ji@issohugheslaw.com (email)

www.issoandhugheslawfirm.com (website)

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From: Aus n Shaw <austin@verbatimrt.com>

Sent: Monday, March 14, 2022 11:25 AM

To: sp.eugene@gmail.com <sp.eugene@gmail.com>

Cc: Karla M. Soto <karla@verbatimrt.com>; Michael Pace <michael@verbatimrt.com>; Kimberly McCright <kimberly@verbatimrt.com>; Jennifer Issso <ji@issohugheslaw.com>

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2 attachments



Shapiro 110321.pdf
743K



Shapiro 110521.pdf
674K

Eugene <sp.eugene@gmail.com>

Mon, Mar 14, 2022 at 1:01 PM

To: Austin Shaw <austin@verbatimrt.com>

Cc: "Karla M. Soto" <karla@verbatimrt.com>, Michael Pace <michael@verbatimrt.com>, Kimberly McCright <kimberly@verbatimrt.com>, "ji@issohugheslaw.com" <ji@issohugheslaw.com>

Hello,

You have not corrected several things in the transcript of 110521 (Second day of trial, November 5, 2021). Please see below:

1. Page 184, line 11, Time Stamp 1:26:30: I didn't say "not an advocate present, I said "another advocate present."
2. Page 194, line 17, Time Stamp 1:38:04: I didn't say "on her floor," I said "on the floor."
3. Page 217, line 21, Time Stamp 1:59:27: I didn't say "not an advocate," I said "another advocate."
4. Page 298, line 5, Time Stamp 3:30:13: I didn't say "that she – she – I – I did live with her," I said "that she is stressed and I agree completely with her." Not an exact correction, you omitted "is stressed."

I would like these to be corrected as well. Please call me at 702-496-2898 if you have any questions.

Thank you,

Eugene Shapiro



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[Quoted text hidden]

Karla M. Soto <karla@verbatimrt.com>

Mon, Mar 14, 2022 at 1:17 PM

To: Eugene <sp.eugene@gmail.com>

Cc: Michael Pace <michael@verbatimrt.com>, Kimberly McCright <kimberly@verbatimrt.com>, ji@issohugheslaw.com,

Austin Shaw <austin@verbatimrt.com>

Good afternoon, Mr. Shapiro -

Thank you for contacting us. The transcripts we sent over a few minutes ago have been thoroughly proofread twice, corrections were made (that coincided with the record) and were certified accurate against the recorded audio.

Unfortunately, we can't make any changes that we are unable to confirm from the record, hence the proposed corrections do not proceed.

Regards,

Karla Michelle Soto

Verbatim Reporting & Transcription

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303-7356

[http://www.verbatimrt.co](http://www.verbatimrt.com)

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Please note that our offices will be operating with limited staffing between April 7 and April 13, 2022. We will return to normal operations on April 14, 2022.

[Quoted text hidden]

Eugene <sp.eugene@gmail.com>

Mon, Mar 14, 2022 at 1:27 PM

To: "Karla M. Soto" <karla@verbatimrt.com>

Cc: Michael Pace <michael@verbatimrt.com>, Kimberly McCright <kimberly@verbatimrt.com>, Jennifer Isso <ji@issohugheslaw.com>, Austin Shaw <austin@verbatimrt.com>

Hello Mrs. Soto,

With all due respect to you, the things you have not corrected are obvious and reading them in a current version does not make any logical sense. In addition, I am an immigrant from Russia and I do have an accent. So, if you don't understand my accent, please have these lines proofread by an English-Russian bilingual transcriber. My request for corrections therefore stands and I am happy to listen to these lines together with you and a bilingual transcriber. Respectfully,

Eugene Shapiro
702-496-2898 (cell)

Virus-free. www.avg.com

[Quoted text hidden]

Karla M. Soto <karla@verbatimrt.com>

Mon, Mar 14, 2022 at 1:44 PM

To: Eugene <sp.eugene@gmail.com>

Cc: chaissonr@clarkcountycourts.us, "Justice, Sherry" <JusticeS@clarkcountycourts.us>, "Balagtas, Maria" <bulfam@clarkcountycourts.us>, Michael Pace <michael@verbatimrt.com>, Kimberly McCright <kimberly@verbatimrt.com>, Jennifer Isso <ji@issohugheslaw.com>

Mr. Shapiro -

I appreciate your response. While I fully understand your position and would like to help you as much as possible in this particular situation, we will refer you to the court for additional assistance.

I have copied Ms. Rachel Chaisson, Legal Office Service Supervisor-Records, Ms. Sherry Justice and Ms. Maria Balagtas on this email, in hopes that they can assist you further with your request.

[Quoted text hidden]

Mistakes in the transcript of my testimony at the trial:

November 3, 2021 (Day 1):

Page 88, line 3, Time stamp 10:45:06: My middle name is spelled wrong, it is Ilyich.

Page 84, line 14, Time stamp 10:45:27: I never said “as well as major depressive disorder,” I said “as well as on my Medicaid.”

Page 90, line 20, Time stamp 10:47:38: I never said “what you called a schedule,” I said “what she called a schedule.”

Page 91, line 6 Time stamp 10:48:08: I never said “fight with her father,” I said “fight with her mother.”

Page 112, line 13, Time stamp 11:12:03: I never said “falling the child on her knees,” I said “following the child on her knees.”

Page 158, line 11, Time stamp 12:10:37: I never said “and tell them,” I said “and tells her.”

Page 166, line 18, Time stamp 12:22:25: I didn’t say “BCDA,” I said “BCBA.”

Page 167, line 14, Time stamp 12:23:21: I didn’t say “almost the holidays,” I said “on most of the holidays.”

Page 168, line 9, Time stamp 12:25:05: I said “and then had chutzpah”

Page 187, line 24 and Page 188 line 1, Time stamp 12:47:23 I didn’t say “you can tell her mother,” I said “she wouldn’t tell her mother.”

Page 188, line 18, Time stamp 12:48:16: I didn’t say “and,” I said “when.”

Page 198, line 15, Time stamp 1:27:18: I didn't say "generally," I said, "genuinely."

Page 199, line 8, Time stamp 1:28:18: I didn't say "the witnesses," I said "their witnesses."

Page 201, line 2, Time stamp 1:30:35: I did not say "I lied to her," I said "I replied to her."

Page 207, line 14, Time stamp 1:38:03: I didn't say "fair in negotiations," I said "fair negotiations."

Page 207, line 21, Time stamp 1:38:30: I didn't say "doesn't schedule," I said "who schedules."

November 5, 2021 (Day 2):

Page 164, line 1, Time Stamp 1:06:50: "I didn't say "that they might," I said "that Ava might."

Page 167, line 6, Time Stamp 1:10:45: I didn't say "out to sing," I said "how to sing,"

Page 172, line 7, Time Stamp 1:15:02: I didn't say "that's whatever," I said "does whatever."

Page 175, line 7, Time Stamp 1:18:22: I didn't say "comes for me," I said "comes from me."

Page 175, line 10, Time Stamp 1:18:33: I didn't say "she wants me on the," I said "she wants me in the."

Page 184, line 11, Time Stamp 1:26:30: I didn't say "not an advocate present, I said "another advocate present."

Page 188, line 15, Time Stamp 1:31:19: I didn't say "no," (the last word on the line), I said "in."

Page 189, line 6, Time Stamp 1:31:01: I didn't say "Initial," I said "mutual."

Page 189, line 18, Time Stamp 1:32:21: I didn't say "so that doesn't show," I said "so if that doesn't show."

Page 194, line 17, Time Stamp 1:38:04: I didn't say "on her floor," I said "on the floor."

Page 199, line 20, Time Stamp 1:43:16: I didn't say "I love her sense of humor. I enjoy," I said "I loved her sense of humor. I enjoyed."

Page 200, line 1, Time Stamp 1:43:34: I did not say "I also enjoy," I said "I also enjoyed."

Page 200, line 7, Time Stamp 1:43:59: I didn't say "we might-regressions," I said "micro-aggressions."

Page 200, line 8, Time Stamp 1:44:03: I didn't say "that we express," I said "that we experienced."

Page 206, line 22, Time Stamp 1:50:21: where it says indiscernible, I actually said "unlike your client's mom."

Page 217, line 21, Time Stamp 1:59:27: I didn't say "not an advocate," I said "another advocate."

Page 218, line 21, Time Stamp 2:01:06: I didn't say "go home," I said "get along."

Page 220, line 20, Time Stamp 2:03:28: where it says indiscernible, I actually said "I want joint."

Page 220, line 24, Time Stamp 2:03:42: I didn't say "the goal," I said "Nechole."

Page 221, line 1, Time Stamp 2:03:44: I didn't say "as an African American," I said "is an African American."

Page 258, line 3, Time Stamp 2:51:35: where it says indiscernible, I said "per student."

Page 262, line 8, Time Stamp 2:55:16: I didn't say "CN," I said "CSN."

Page 267, line 4, Time Stamp 3:00:22: I didn't say "in the meantime," I said "many times."

Page 271, line 3, Time Stamp 3:04:28: I didn't say "I currently do gig," I said "I currently do not gig."

Page 273, line 5, Time Stamp 3:07:02: I didn't say "POA," I said "PUA."

Page 273, line 12, Time Stamp 3:07:30: I didn't say "POA," I said "PUA."

Page 274, lines 10 and 12, Time Stamp 3:08:26: I said "2600."

Page 275, line 11, Time Stamp 3:08:58: I didn't say "music ad," I said "music ed."

Page 277, line 2, Time Stamp 3:10:41: I didn't say "doctor degree," I said "doctorate degree."

Page 277, line 3, Time Stamp 3:10:46: I didn't say "music ad," I said "music ed."

Page 296, line 23, Time Stamp 3:28:31: I didn't say "any patient," I said "every patient."

Page 296, line 24, Time Stamp 2:28:36: I didn't say, "I'm very fortunate," I said "we're very fortunate."

Page 298, line 1, Time Stamp 3:29:58: Where it says indiscernible, I actually said "RBT's."

Page 298, line 4, Time Stamp 3:30:13: I didn't say "that she – she – I – I did live with her," I said "that she is stressed and I agree completely with her."

Page 298, line 5, Time Stamp 3:30:16: I didn't say "mention," I said "mentioned."

Page 298, line 12, Time Stamp 3:30:47: I didn't say "I heard her talking – testified on," I said "I've heard Heather Tauchen, who testified on."

Page 298, line 16, Time Stamp 3:31:59: I didn't say "emphasizing," I said "empathizing."

Page 298, line 21, Time Stamp 3:31:16: I didn't say "senior," I said "singer."

1 **TRANS**

2
3
4
5 **EIGHTH JUDICIAL DISTRICT COURT**
6 **FAMILY DIVISION**
7 **CLARK COUNTY, NEVADA**
8

9 EVGENY SHAPIRO,)
10 Plaintiff,) CASE NO. D-20-612006-D
11 vs.) DEPT. N
12 NECHOLE GARCIA,) APPEAL NO. 83992
13 Defendant.)
14

15 BEFORE THE HONORABLE MATHEW HARTER
16 DISTRICT COURT JUDGE

17 TRANSCRIPT RE: EVIDENTIARY HEARING

18 WEDNESDAY, NOVEMBER 3, 2021

19 **APPEARANCES:**

19 The Plaintiff: EVGENY SHAPIRO
20 For the Plaintiff: JENNIFER ISSO, ESQ.
21 8965 S. Eastern Ave., #120M
22 Las Vegas, Nevada 89123
23 (702) 434-4424
24
22 The Defendant: NECHOLE GARCIA
23 For the Defendant: MOLLY ROSENBLUM, ESQ.
24 376 E. Warm Springs Rd., #140
Las Vegas, Nevada 89119
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I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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EVGENY SHAPIRO	87	--	--	--
NECHOLE GARCIA	210	--	--	--
HEATHER TAUCHEN	282	287	--	--

DEFENDANT'S WITNESSES:

DANIEL PICKAR	28	52	81	--
NECHOLE GARCIA	308	--	--	--

* * * * *

I N D E X O F E X H I B I T S

<u>PLAINTIFF'S EXHIBITS:</u>	<u>ADMITTED</u>
------------------------------	-----------------

8 - Receipts	184
25, Bates 0856 - Text messages	123
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25, Bates 2040, 2041 - Text messages	265
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8	53 - Dr. Gaspar report	206
9	55-3 - Video	152
10	55-9, 55-37, 55-39, 55-43 - Videos	173
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P R O C E E D I N G S

(The following transcript contains multiple indiscernibles due to poor recording quality)

(THE PROCEEDINGS BEGAN AT 9:01:58)

MS. ISSO: We're going to waive opening statements, but we -- we do want to object to the fact that we have a very limited time to present the evidence considering --

THE COURT: Okay.

MS. ISSO: -- how --

THE COURT: But I already --

MS. ISSO: -- complex --

THE COURT: You've already noted that at a --

MS. ISSO: Your Honor --

THE COURT: -- previous hearing --

MS. ISSO: -- let me --

THE COURT: -- and --

MS. ISSO: -- let me --

THE COURT: -- the Court --

MS. ISSO: -- finish my statement please --

THE COURT: -- has overruled --

MS. ISSO: -- Your Honor.

THE COURT: -- that --

1 MS. ISSO: So I was speaking, Your Honor.

2 THE COURT: -- six hours --

3 MS. ISSO: Your Honor, I was speaking.

4 THE COURT: -- is enough.

5 MS. ISSO: Your Honor, I was speaking.

6 THE COURT: Excuse me?

7 MS. ISSO: I'm trying to make a clear record. We
8 would like to object to the time limit considering how complex
9 this case is. In fact, when I spoke to your Clerk yesterday,
10 he was stating that they haven't had a case like this with so
11 many exhibits and so many binders for such a long time. So
12 it's very complex. And we do want to object to the time
13 limit. Thank you.

14 THE COURT: Okay. So noted.

15 MS. ROSENBLUM: So are we ready? Judge, just as a
16 -- as a matter of housekeeping, Dr. Pickar will be on probably
17 in about 10 minutes. He was in a meeting this morning. He is
18 the witness that we have asked for accommodation. The other
19 witness was Amber Harris. She contacted our office last night
20 and advised that she can only be available on Friday. So
21 we'll call her on Friday. If we need, we can.

22 MS. ISSO: Your Honor, we don't mind accommodating
23 their witnesses as long as they accommodate our witness. Our
24 expert won't be available until Friday. So if her expert

1 wants to go today, that's fine, but our expert will need to go
2 on Friday along with -- we have Mark James on Friday and Dr.
3 Bergquist. Who else? And Dr. Bergquist on Friday. We also
4 might want to call the Defendant's mother on Friday if we have
5 enough time. If not, then we might not call her.

6 THE COURT: Right now it's your time, Ms. Rosenblum.
7 You're the one who wanted to go out of order. Otherwise --

8 MS. ISSO: So is there a stipulation?

9 THE COURT: -- we would have started with their case.

10 MS. ISSO: Well, before -- is there a stipulation
11 to that before I allow her to call her expert?

12 THE COURT: Yeah, I'm -- I'm fine with -- I -- I
13 agree with that.

14 MS. ISSO: Okay. So there's just -- there's an
15 agreement.

16 THE COURT: Yeah.

17 MS. ISSO: Okay.

18 THE COURT: I agree with that.

19 MS. ISSO: Okay. Then she can --

20 MS. ROSENBLUM: I -- I think the Court was clear we
21 were going to call witnesses as you call them.

22 MS. ISSO: I'm sorry, I didn't hear. What? I
23 didn't hear what Opposing Counsel said, Your Honor.

24 THE COURT: Listen, I can't -- I'm not sure if she

1 said anything that was pertinent anyway.

2 MS. ISSO: So you didn't hear what she said either?
3 Okay.

4 MS. ROSENBLUM: Just briefly, Your Honor, I would
5 like to make an opening if that's --

6 THE COURT: Go right ahead.

7 MS. ROSENBLUM: -- if that's okay.

8 THE COURT: It's your time ticking.

9 MS. ROSENBLUM: Right. So Your Honor, I -- I want
10 to say at the outset of this case, and I think my client
11 agrees, both of these parents love this little girl, Ava.
12 They both care about her. They both want what's best for her.
13 And this case really is about Ava. It -- it really is not
14 about these parties.

15 As the Court considers this case, I think Ms. Isso
16 and I would agree this is not a typical custody case in that
17 we've got a child, the three-year-old little girl, who does
18 have special needs. She was diagnosed with autism spectrum
19 disorder. And I know that has been briefed and argued to this
20 Court extensively.

21 What we're asking the Court to do today is consider
22 the factors that weigh into custody and particularly pay
23 attention to the factors regarding conflict and regarding the
24 needs of this child. And we believe that the testimony and

1 evidence over the next two days will show the Court that the
2 conflict in this case is extremely high. And it started out
3 high as the Court will recall and the testimony will show that
4 Dad withheld this child for two days from Mom until the Court
5 had to weigh in -- I'm sorry, two weeks from Mom so the Court
6 had to weigh in.

7 And the -- unfortunately the conflict has remained
8 high; although, I think that the Court will find at the end of
9 the testimony and the evidence in this case that the conflict
10 is being perpetuated by the Plaintiff. For that reason, my
11 client is asking at the end of this case that the Court
12 appoint a parenting coordinator -- for the purposes of dealing
13 with the issues that will involve this little girl for the
14 next 15 years and probably for the rest of her life. The
15 issues will require the parties to communicate, to cooperate,
16 and to work together to meet Ava's best interest. And it
17 remains questionable as we stand here today whether the
18 Plaintiff can do that.

19 And so to prevent additional protracted litigation,
20 after we finish with trial we are asking that the Court
21 appoint Audrey Beeson (ph) as the parenting coordinator. We
22 are also asking that the Court order as part of the
23 therapeutic interventions for these parties that the parties
24 be ordered to participate either in parent coaching or family

1 therapy with Michelle Magnich (ph).

2 With regard to custody and visitation, Your Honor,
3 we briefed this extensively in our pretrial, but it remains
4 our position that the schedule that the Court has set is the
5 schedule that should be followed. We believe the testimony
6 and evidence will show that Ava is a child that is deeply
7 affected by change in routine, that she is deeply affected by
8 conflict, that she's deeply affected by new people involved in
9 her life, and that this schedule, at least for the time being,
10 remains in her best interest.

11 My client is willing to consider the schedule as a
12 joint custody schedule as the Court --

13 THE COURT: Well, it is joint.

14 MS. ROSENBLUM: -- has already done --

15 THE COURT: It is joint.

16 MS. ROSENBLUM: -- and that accommodations be made
17 with regard to the child support addition in this case. Even
18 the Plaintiff's experts, the -- the Court -- I guess Court
19 appointed custody evaluator has determined that a 50/50 split,
20 the way that Plaintiff is asking, is not in Ava's best
21 interest, that Dr. Bergquist recommended a 60/40 or even a
22 55/45; however, Dr. Pickar, Nechole's expert who is -- and the
23 Court will hear testimony and evidence with regard to that who
24 is one of the foremost experts in the country on creating

1 parenting plans for special needs children will inform the
2 Court as to his concerns with Dr. Bergquist's report, the lack
3 of information that Dr. Bergquist had available to her at the
4 time she made her custody recommendations.

5 Your Honor, this case has been going on for quite
6 some time. Again, with regard to the conflict, it remains our
7 position that the conflict in this case is largely being
8 created by the Plaintiff dragging this matter on, filing
9 motions, disclosing the entirety of our settlement
10 negotiations to the Court and just creating more and more
11 litigation unnecessarily.

12 So at this point we are asking the schedule to
13 remain that same, that the Court will consider that joint
14 physical custody, that the Court will appoint a parenting
15 coordinator, that the Court will order these parties to attend
16 family mediation -- or I'm sorry, family therapy or parent
17 coaching to assist with their conflict and that the Court will
18 make accommodations with regard to child support.

19 And on the child support issue, Your Honor, we
20 believe that the evidence and testimony will demonstrate that
21 Plaintiff has woefully under reported his income. He has
22 extensive education and experience in music. He is quite
23 capable of earning. But my -- there's no question. My client
24 is the primary earner in this relationship, that her earning

1 is significant. But again, with this child's needs, my client
2 is asking this Court to consider that she provide the health
3 insurance for this minor child and that she be the one who is
4 responsible for paying the medical bills associated and that
5 that be offset against the child support obligation she may
6 owe the Plaintiff.

7 THE COURT: The -- I'm sorry, she's -- that she -- I
8 don't think there's going to be an objection to that she
9 maintain health insurance and reimburse split.

10 MS. ROSENBLUM: I think they're objecting, Your -- I
11 don't --

12 MS. ISSO: Well, hold on. Let me -- let me ask.

13 MS. ROSENBLUM: -- speak to that.

14 (COUNSEL AND CLIENT CONFER BRIEFLY)

15 MS. ROSENBLUM: I -- I think they're objecting and
16 they're asking for child support.

17 THE COURT: Well, I'm -- and he may be asking for
18 child support but I'm talking about health insurance itself.

19 MS. ROSENBLUM: Right. And my --

20 MS. ISSO: Yeah, that's --

21 MS. ROSENBLUM: -- my client would ask --

22 MS. ISSO: That's fine.

23 THE COURT: Okay. That --

24 MS. ROSENBLUM: -- for a deviation.

1 MS. ISSO: As long as the child's insured, that's
2 all we care about. Who cares who's holding the insurance.

3 THE COURT: Okay.

4 MS. ROSENBLUM: I don't know if Dr. Pickar on -- I
5 can't see the screen.

6 MS. ISSO: And just to be clear, when they filed
7 their motion to accommodate, they said he was going to testify
8 at 11:00. So now it's 9:00. Okay.

9 THE COURT: My understanding was --

10 MS. ISSO: We --

11 THE COURT: -- it was --

12 MS. ISSO: We're going to agree that he can be
13 called --

14 THE COURT: Hold on one second, Ms. Isso. My
15 understanding was it was their two first -- that's why I went
16 out of order. My understanding was they're going to be their
17 first two right out of the box.

18 MS. ISSO: No. No. No. That's not what their
19 motion said. That's not what your decision said. They asked
20 for him to testify at 11:00 in their motion.

21 MS. ROSENBLUM: Your Honor --

22 MS. ISSO: Is it -- just pull up the motion. Is
23 that what it said?

24 MS. ROSENBLUM: Your --

1 MS. ISSO: They --

2 MS. ROSENBLUM: -- order clearly stated that the

3 first two witnesses would be accommodated. Those --

4 THE COURT: There you go.

5 MS. ROSENBLUM: -- two witnesses were Ms. Harris and

6 Dr. Pickar.

7 THE COURT: They're the ones wasting their time, Ms.

8 -- I shouldn't say wasting their time, but --

9 MS. ISSO: I'm not --

10 THE COURT: -- it's their --

11 MS. ISSO: I'm --

12 MS. ROSENBLUM: Well --

13 THE COURT: -- time ticking.

14 MS. ISSO: This is not my time. This is her time.

15 This is --

16 THE COURT: I --

17 MS. ISSO: -- her opening arguments.

18 MS. ROSENBLUM: Well, then why are we --

19 THE COURT: Again --

20 MS. ROSENBLUM: It's not. I'm ready to call my

21 first witness.

22 MS. ISSO: Call him.

23 MS. ROSENBLUM: I don't know if he's available on

24 the witness stand.

1 MS. ISSO: Call him. We're waiting.

2 MS. ROSENBLUM: I don't know if he's available. I

3 can't see the screen.

4 THE COURT: All I know --

5 MS. ROSENBLUM: I don't know if he's in --

6 THE COURT: -- Ms. -- Ms. Rosenblum is it's your

7 time.

8 MS. ROSENBLUM: Right.

9 THE COURT: For the first --

10 MS. ROSENBLUM: I'm -- I'm asking --

11 THE COURT: Until we get through the first two

12 professionals, it's your time.

13 MS. ROSENBLUM: Well, my other professional --

14 THE COURT: You can --

15 MS. ROSENBLUM: -- Ms. Harris is --

16 THE COURT: -- sing the National Anthem if you want.

17 We can all --

18 MS. ROSENBLUM: Well --

19 THE COURT: -- say the --

20 MS. ROSENBLUM: -- Your Honor --

21 THE COURT: -- Pledge of Allegiance.

22 MS. ROSENBLUM: My other professional is not

23 available today. I made --

24 THE COURT: Listen.

1 MS. ROSENBLUM: -- that clear at the --
2 THE COURT: We have acc --
3 MS. ROSENBLUM: -- beginning.
4 THE COURT: I understand that.
5 MS. ROSENBLUM: Dr. --
6 THE COURT: Let's --
7 MS. ROSENBLUM: -- Pickar --
8 THE COURT: -- go back to originally and that's why
9 again this was set for one day.
10 MS. ROSENBLUM: Right. And we had --
11 THE COURT: And then we --
12 MS. ROSENBLUM: -- all of our --
13 THE COURT: -- extended it --
14 MS. ROSENBLUM: -- witnesses subpoenaed --
15 THE COURT: -- twice as much.
16 MS. ROSENBLUM: -- and they were all available on
17 that day.
18 THE COURT: I --
19 MS. ROSENBLUM: And so --
20 THE COURT: -- understand that.
21 MS. ROSENBLUM: -- now Dr. Pickar --
22 THE COURT: And that's how we --
23 MS. ROSENBLUM: I don't know if he's been put in a
24 breakout room. I'm asking the Court. I don't know. I

1 can't --

2 THE COURT: Madam Clerk, is he in -- is someone in a
3 breakout room?

4 MS. ROSENBLUM: I don't know if he's on a screen, if
5 he's --

6 THE CLERK: No, I prepared a breakout room --

7 MS. ROSENBLUM: Okay.

8 THE CLERK: -- so that I can put them in there as
9 they join if they --

10 MS. ROSENBLUM: Then let me email him and see if he
11 is --

12 THE COURT: While -- while Ms. Rosenblum's doing
13 that, I mean, I know she's heard this and I believe Ms. Isso's
14 heard this as well. We try to keep things because it's so
15 tense, relaxed as possible. If you need water, feel free to
16 go back and get a drink of water. If you want to eat
17 something, I'm not offended whatsoever. If you just need to
18 get up and walk around and stretch your legs, not offended at
19 all. You'll see me typing chronically. All I'm doing is
20 keeping my internal notes. Everybody can feel free to walk up
21 and see that I have nothing up here but your case file.

22 So when I'm typing here, I'm not doing early
23 Christmas shopping, I'm not talking to my JEA. I'm not doing
24 anything else. So just simply keeping my notes.

1 We will -- we will take a couple of breaks when it
2 gets to that point. Usually, they're 10 to 15 minutes and
3 then we'll try to keep lunch to half an hour since we're kind
4 of keeping things timed. But we will try to accommodate
5 everybody. We will be done again by Friday. And I believe
6 Ms. Isso told my staff that she's got to be done by 4:45; is
7 that correct?

8 MS. ISSO: Yes.

9 THE COURT: Okay.

10 MS. ISSO: Thank you.

11 THE COURT: So we will definitely call it quits
12 by --

13 MS. ROSENBLUM: I do --

14 THE COURT: -- 4:45.

15 MS. ROSENBLUM: I do have a pref -- if I log in and
16 see this on my screen, does that create that -- Dr. Pickar is
17 on now, but if -- does that create like that reverberation
18 sound in here? Do you -- Judge? Dr. Pickar is in the room.
19 I can see him.

20 THE COURT: Madam Clerk?

21 THE CLERK: No, you know, let me check the other
22 (indiscernible).

23 MS. ROSENBLUM: Yeah. I don't know.

24 (Indiscernible). That one is for you.

1 THE CLERK: There's the general room and there's
2 nobody in there.

3 MS. ROSENBLUM: I see me, Brian Blackham, Daniel
4 Pickar, and Montana Garcia.

5 THE CLERK: In the meeting labeled Shapiro v.
6 Garcia?

7 MS. ROSENBLUM: It is -- she doesn't have a label on
8 it. It just says waiting for the moderator to start a
9 meeting. Dr. Pickar left -- has now left. It says he and --
10 this --

11 THE CLERK: Okay. Let me -- let me give you the
12 meeting ID just to make sure that everybody's on the same one.

13 MS. ROSENBLUM: Okay. Do you want to just email
14 what it is? So I have -- I still see Dr. Pickar on my --

15 THE COURT: Okay. Talk --

16 THE CLERK: Okay. Are you ready?

17 MS. ROSENBLUM: Yeah.

18 THE CLERK: I got a meeting ID 714432588. And the
19 pass code is 0416.

20 MS. ROSENBLUM: I'm sorry, one more time with the
21 pass code?

22 THE CLERK: 0416.

23 MS. ROSENBLUM: 0416. Got it. All right. I'm
24 going to email him now.

1 (PAUSE)

2 MS. ROSENBLUM: Dr. Pickar? I know that -- Dr.

3 Pickar, can you hear me?

4 (COURT AND CLERK CONFER BRIEFLY)

5 MS. ROSENBLUM: He's off now. (Indiscernible),

6 that's fine. There's Brian. So look, like I'm in this one

7 and that's me and that's your mom. Brian's in this one and I

8 think Dr. Pickar maybe --

9 THE CLERK: Mr. Blackham's on.

10 MS. ROSENBLUM: Walking into this one, hopefully

11 getting on this one. No, he's not on here anymore.

12 THE CLERK: Do you want me to go off the record for

13 a bit while they all straighten out? I mean, what if she has

14 everybody on there and that -- who she wants me to put in the

15 breakout room.

16 THE COURT: I -- I don't care either way. Keeping

17 it on or off the record is up to you. I mean, nothing's --

18 THE CLERK: Okay.

19 THE COURT: -- being said right now, so -- my

20 Clerk's going to turn off the record because nothing's --

21 MS. ROSENBLUM: Yeah.

22 THE COURT: -- going on right now. So --

23 MS. ROSENBLUM: I don't know why --

24 MR. PICKAR: Dr. Pickar.

1 MS. ISSO: And Your Honor, before Ms. Rosenblum
2 begins, I would like to object to this individual from
3 testifying. Number one, they violated 16.1. They did not --

4 THE COURT: 16 --

5 MS. ISSO: I'm hearing --

6 THE COURT: -- .1 doesn't apply in --

7 MS. ISSO: Well --

8 THE COURT: -- family court.

9 MS. ISSO: -- they -- they violated the rule
10 regarding expert disclosure. They did not provide the expert
11 report with the disclosure. They waited months before they
12 provided me with the expert report. In fact, they didn't
13 provide it to me until I disclosed our expert. The rule
14 requires this individual to provide his expert report. So I
15 have an opportunity to read it and see what I have to rebut.
16 And that's not what they did.

17 Number two, his opinions lack proper foundation. He
18 did not gather sufficient facts. Okay. His --

19 THE COURT: Let's --

20 MS. ISSO: -- opinion --

21 THE COURT: -- start -- let's start --

22 MS. ISSO: He is not -- well, let me finish. I want
23 --

24 THE COURT: Okay.

1 MS. ISSO: -- to make a clear record.

2 THE COURT: I've got a -- let's address them
3 one-by-one, Ms. Isso, because if you prevail on the first
4 issue, then we --

5 MS. ISSO: Oh.

6 THE COURT: -- don't --

7 MS. ISSO: Okay.

8 THE COURT: -- need to go to --

9 MS. ISSO: Okay.

10 THE COURT: -- second, third, fourth, fifth, sixth,
11 seventh, eighth. Ms. Rosenblum, where is the proof that you
12 provided them disclosure of this expert witness and a copy of
13 the report? Did you file that with the Court pursuant to the
14 trial setting order?

15 MS. ROSENBLUM: We filed a copy. We disclosed our
16 expert after we took the deposition of Dr. Bergquist.

17 THE COURT: That's not the question. When --

18 MS. ROSENBLUM: We filed --

19 THE COURT: -- was that?

20 MS. ROSENBLUM: -- the report. We filed the
21 disclosure. The report was provided to Ms. Isso I believe on
22 September 8th. A copy of the report was provided to Ms. Isso
23 on -- on September 8th. And if Ms. Isso is going to object to
24 our witness, I'm objecting to her witness. We had discussed

1 all --

2 THE COURT: Okay.

3 MS. ROSENBLUM: -- these issues --

4 THE COURT: Listen.

5 MS. ROSENBLUM: -- prior.

6 THE COURT: If -- if she's going to push that issue

7 and, again, if they're going to do the same thing to you

8 unless you want to stip to both experts --

9 MS. ISSO: No, we're not going to stip.

10 THE COURT: -- I -- do you have proof that you --

11 MS. ROSENBLUM: It was --

12 THE COURT: -- sent it to her on the 8th?

13 MS. ROSENBLUM: It was filed with the Court. I --

14 MS. ISSO: They disclosed their expert in July.

15 Didn't give me the report until September 8th after we

16 disclosed our expert. We were waiting for the report. This

17 violates the rule. We're going to object to this individual

18 testifying.

19 MS. ROSENBLUM: I have to pull the file, Your Honor.

20 Again, this -- I --

21 THE COURT: I just --

22 MS. ROSENBLUM: Would have been nice to --

23 THE COURT: Listen.

24 MS. ROSENBLUM: -- know --

1 THE COURT: I --

2 MS. ROSENBLUM: -- this before we showed up at court
3 today months and months later. My client has paid this expert
4 to be here twice now. The first day of trial.

5 THE COURT: You know what, I think this is a product
6 in our trial setting order. The date again?

7 MS. ROSENBLUM: I believe the report was disclosed
8 Your Honor September 8th.

9 THE COURT: 9/8/2021, expert witness disclosure. So
10 that objection is overruled.

11 MS. ISSO: That doesn't comply with the rule. Yeah,
12 we got -- we got the expert report I said but I wasn't timely.
13 It wasn't disclosed when they disclosed the expert in July.
14 They waited July, August, almost three months to get me the
15 report. And then I had to get my expert and that's when they
16 finally gave me the report after I disclosed my experts. So
17 that's not timely. It violates the rule. So we're objecting.

18 THE COURT: Point me to the exact part of the rule.
19 That's not -- not my understanding. And, again --

20 MS. ISSO: You don't know --

21 THE COURT: -- that's --

22 MS. ISSO: You don't know the expert disclosure
23 rule?

24 THE COURT: Don't -- I'm asking -- you don't know

1 that? I'm asking --

2 MS. ISSO: Do you --

3 THE COURT: -- you. And if not, there's a book of

4 rules down -- I'm -- go ahead --

5 MS. ISSO: Okay.

6 THE COURT: -- and cite the rule.

7 MS. ISSO: Let me pull it up. Let me pull it up.

8 MS. ROSENBLUM: And Your Honor, I would assume that

9 this objection is coming off of Ms. Isso's time, Your Honor?

10 THE COURT: It --

11 MS. ISSO: No.

12 THE COURT: -- will be.

13 MS. ISSO: No --

14 MS. ROSENBLUM: Thank you.

15 MS. ISSO: -- it's not. It's coming off her time.

16 THE COURT: No, it's --

17 MS. ISSO: Otherwise --

18 THE COURT: -- coming --

19 MS. ISSO: -- every single objection she makes is

20 going to come off her time.

21 THE COURT: If they're --

22 MS. ISSO: So NRS --

23 THE COURT: -- brief objections.

24 MS. ISSO: -- 50.275 is very specific on when the

1 rules are -- when -- of when an expert is supposed to be
2 disclosed.

3 THE COURT: NRS --

4 MS. ISSO: Or at 6 --

5 THE COURT: -- what?

6 MS. ISSO: NRS 50.275.

7 THE COURT: That's a Rule of Evidence. That's not a
8 Procedure Rule of Disclosure pursuant to 16. -- and first of
9 all, you cited 16.1 which does not apply to Family Court.

10 MS. ISSO: Okay. 16.2. The rule --

11 THE COURT: And --

12 MS. ISSO: -- requires the expert report to be
13 disclosed with the expert.

14 THE COURT: You're not -- I'm -- I'm not hearing a
15 -- a citation. I'm not hearing a subsection --

16 MS. ISSO: 16.2.

17 THE COURT: I need a subsection. I need a --

18 MS. ISSO: Oh, now you want a --

19 THE COURT: -- sub subsection.

20 MS. ISSO: -- subsection? Okay. Okay.

21 THE COURT: And, again, these extended objections do
22 go toward your time, Ms. Isso. A brief objections for let's
23 say for relevancy, no, but for something where we're taking
24 this time to look it up.

1 (COURT AND CLERK CONFER BRIEFLY)

2 MS. ISSO: Okay. NRS 16.2. Let's see here. Let me
3 look up the rule for you guys. Disclosure of expert, Section
4 5. Within 90 days of service of the financial disclosure
5 form. Report experts 5 and 7. Rule Number 26.

6 THE COURT: Ms. Isso, let me try to save some time.
7 Pursuant to the trial setting order on page 3, it indicates
8 that document disclosure witness list and everything related
9 to that under 16.2 and 205, any objections must be filed with
10 the court clerk. Did you do that?

11 MS. ISSO: Does that address experts?

12 THE COURT: Yes, ma'am.

13 MS. ISSO: Which rule is that? Which rule is for
14 the experts?

15 THE COURT: That is from the trial setting order.
16 If you want to turn to page 3 of the trial setting order in
17 bold. And I do this for not only attorneys, pro se. Document
18 disclosure list, witness lists, and if there's an objection to
19 them, you must file them with the court clerk.

20 MS. ISSO: Yeah, that's not for experts, Your Honor.
21 That's never been for experts. That's been for --

22 THE COURT: It does --

23 MS. ISSO: -- regular --

24 THE COURT: -- include experts.

1 MS. ISSO: No, it --
2 THE COURT: Witness --
3 MS. ISSO: -- does not. It's been for regular
4 witnesses and documents. It --
5 THE COURT: That is --
6 MS. ISSO: -- hasn't been for experts, okay?
7 THE COURT: You know what, Ms. Isso, overruled.
8 MS. ISSO: Okay. My other objection is going to be
9 his opinions lack proper foundation. He did not gather
10 sufficient facts. Furthermore, his opinion does not assist
11 the trier of fact because he's not going -- going to be giving
12 an opinion on custody or timeshare. He's here to talk about
13 whether Dr. Bergquist did her job properly. He didn't even
14 interview Dr. Bergquist. He didn't interview the parties. He
15 didn't evaluate the child. So he's basically here just to
16 mislead the Court and to confuse you.
17 THE COURT: Overruled. You -- that is four minutes.
18 MS. ROSENBLUM: Okay.
19 MS. ISSO: And that objection is based on Hallimark
20 (ph) .
21 MS. ROSENBLUM: I don't know if Dr. -- can Dr.
22 Pickar hear me from here? Dr. Pickar, can you hear me?
23 MR. PICKAR: Yes, I can.
24 MS. ROSENBLUM: Okay.

1 MR. PICKAR: Yeah.

2 MS. ROSENBLUM: Yeah.

3 MR. PICKAR: The name Dr. Pickar is the correct --

4 MS. ROSENBLUM: Okay.

5 MR. PICKAR: -- pronunciation.

6 MS. ROSENBLUM: Dr. Pickar, can you state your full
7 name for the -- I'm sorry, do you need to swear him in? I
8 don't know.

9 THE COURT: Yes, ma'am. Madam Clerk?

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

14 THE WITNESS: Yes.

15 DANIEL PICKAR

16 called as a witness on behalf of the Defendant, having been
17 first duly sworn, testified upon his oath as follows on:

18 DIRECT EXAMINATION

19 BY MS. ROSENBLUM:

20 Q All right. Dr. Pickar, can you go ahead and state
21 your full name for truth record, please?

22 A Daniel B. Pickar, spelled P-i-c-k-a-r.

23 Q And Dr. Pickar, can you tell the court what your
24 office address is, please?

1 A 1212 College Avenue, Suite A, Santa Rosa,
2 California. The zip code is 95404.

3 Q And Dr. Pickar, you have a copy of your CV as our
4 Defendant's Exhibit M; is that correct? M, like Mary.

5 A Yeah. Yes, I have a copy of my curriculum vitae.

6 Q All right. All right. Dr. Pickar, did you author
7 your curriculum vitae?

8 A Yes, I did.

9 MS. ROSENBLUM: And I would ask that Dr. Pickar's
10 curriculum vitae be admitted into evidence, please.

11 THE COURT: Exhibit number for the record?

12 MS. ROSENBLUM: M, like Mary.

13 THE COURT: Any objection, Ms. Isso?

14 MS. ISSO: No.

15 THE COURT: It'll be admitted.

16 (DEFENDANT'S EXHIBIT M ADMITTED)

17 BY MS. ROSENBLUM:

18 Q All right. Dr. Pickar -- Pickar, can you briefly
19 summarize your education for the Court?

20 A I received a bachelor's degree from Brown
21 University, a bachelor's degree in psychology and I have a
22 master's degree and PhD from the California school of
23 professional psychologist at Berkeley. I am a licensed
24 psychologist and I'm also a board certified in clinical

1 psychology. It's considered a diplomate in clinical
2 psychology that only about 10 percent of psychologists have
3 this specialty certification.

4 Q And Dr. Pickar, what do you do for a living
5 currently?

6 A Currently I'm in full-time private practice and I
7 conduct child custody evaluations. I conduct
8 psychoeducational evaluations of children and teenagers. And
9 also I do expert witness consultation where I'm asked to come
10 in on cases in which there's a special needs child or -- or to
11 review a work product of another psychologist child custody
12 evaluation report. I also previously to -- my private
13 practice is more circumscribed as of five years ago after I
14 turned 60, but I have a long history as a child psychologist
15 working in medical centers as a psychiatry department with
16 children and families.

17 Q And Dr. Pickar, if you can estimate for the Court
18 over the last year or so how many times have you been retained
19 as an expert witness in a child custody case.

20 A Are -- are you talking about cases in which I've
21 been -- done an evaluation myself or -- or when I've been
22 brought in not as the evaluator.

23 Q Both.

24 A As a consult.

1 Q Both.

2 A So in -- I'm sorry, did you say the last two years?

3 Q In the last two years we'll call it.

4 A The last two years I would estimate that I have
5 conducted 26 child custody evaluations and in the last two
6 years I have been retained as a consultant on a custody case
7 to provide expert witness services in the last two years
8 approximately eight times.

9 Q Have you ever had your testimony stricken by any
10 court?

11 A Never.

12 Q With regard to the publications that you have on
13 your CV on page 3 -- well, they start actually on page 4. Do
14 you see that?

15 A Yes.

16 Q If you could estimate for the Court approximately
17 how many publications you have with regard to custody
18 evaluations.

19 A Publications related to custody evaluations,
20 divorce, special needs children. It's -- it's in the
21 neighborhood of about 20.

22 Q Dr. Pickar, is it fair to say that your publications
23 are routinely used in custody cases?

24 MS. ISSO: Objection.

1 THE COURT: Sustained.

2 MS. ISSO: Lacks --

3 THE COURT: Sustained.

4 BY MS. ROSENBLUM:

5 Q No, it's okay. Let me -- Dr. Pickar, are you a
6 member of any associations or -- or organizations having to do
7 with family law or family court cases?

8 A Yes, I'm a member of the Association of Family and
9 Conciliation Courts. It's called AFCC. It's probably the
10 main national organization where judges, mental health
11 professionals, attorneys, mediators of in the family court.
12 And I'm currently on the board of directors of that
13 organization.

14 Q Any other organizations of which you're a member or
15 affiliated?

16 A Several. I'm a member of the American Psychological
17 Association, the Redwood Psychological Association, the
18 Society for Personality Assessment. I'm a member of the
19 American Board of Professional Psychology. I'm a fellow of
20 the Academy of Clinical Psychology and I'm a member of the
21 local bar association in the county in California in which I
22 work.

23 Q Dr. Pickar, if you could just explain for the record
24 what the AFCC is.

1 A The Association of Family Conciliation Courts is an
2 international organization. It has membership of probably 17
3 countries. And it is -- it -- it also publishes one of the
4 main journals in the family law area called the Family Court
5 Review. And it's an organization -- it's a service
6 organization essentially that provides training to
7 professionals in the family law area both in the United States
8 and internationally.

9 Q And --

10 A It offers numerous trainings also child custody
11 evaluators, parenting coordinators, children's attorneys has a
12 number of specialty trainings that offers regularly. It's
13 probably the number one educational organization for providing
14 family law education in the country, probably the world.

15 Q Dr. Pickar, you have authored a report as a result
16 of your retention in this case; is that correct?

17 A Yes.

18 Q And if you can turn to Exhibit U.

19 A Is Exhibit U the copy of my work product review --

20 Q Cor --

21 A -- report?

22 Q Correct.

23 A Yes. Yes.

24 Q Do you have a copy of that report in front of you?

1 A Yes, I do.

2 Q And is this the report that you authored?

3 A Yes.

4 Q If you could for the Judge explain what a work
5 product review is.

6 A A work product review sometimes it might be called a
7 rebuttal expert, but it's -- it -- it's -- it's a service in
8 which another child custody evaluator is asked to review the
9 report of a child custody evaluator who has been appointed to
10 the court to conduct an evaluation. And there's been a huge
11 amount written in this area about work product reviews. It's
12 entirely accepted within the courts around the country.
13 There's actually articles that are sort of guidelines about
14 doing work product review. There's books on doing forensic
15 consultation.

16 And it's also mentioned in the AFCC model standards
17 of practice that -- that this is an aspect of all custody
18 evaluation field where another individual may review the
19 quality of a work -- of a work product child custody
20 evaluation report.

21 Q And Dr. Pickar, I don't know if you heard the
22 arguments of Counsel, but why did you not make -- let me ask a
23 better question. Based on your understanding of the AFCC and
24 the AAML, are you limited in providing a custody evaluation in

1 this case?

2 A Well, you can only provide a child custody
3 evaluation if you've been provided by the court to provide
4 that service. So I have not been appointed by the court to do
5 a child custody evaluation. And you cannot make diagnoses
6 about individuals. You cannot make parenting plan
7 recommendations to a specific child if you have not evaluated
8 the family members yourself, that would be considered
9 improper. However, it is considered proper to do an
10 examination of an evaluator's work product to look at does
11 their methodology conform with the professional standards, you
12 know, in the field.

13 Do they rely on empirical research which is part of
14 the guidelines for custody evaluation by the AFCC and the
15 American Psychological Association. And then a common thing
16 which psychologists who do work product reviews is looking at
17 does the data in the report -- is the data in the report
18 consistent with the recommendations that are offered? Do they
19 logically flow from the report or does there seem to be either
20 inconsistencies or data which is omitted or nonsensical
21 recommendations that's really based upon the data that's
22 gathered in the report?

23 Q Dr. Pickar, you had an opportunity to review the
24 report produced by Dr. Bergquist with regard to this case; is

1 that true?

2 A That's correct.

3 Q Can you inform the Court as to any other documents
4 or information you received with regard to your review in this
5 case?

6 A So you provided me with a binder that contained all
7 of the documents that was reviewed by Dr. Bergquist. And then
8 you also provided me with some documents which became
9 available after the Dr. Bergquist submission of the report
10 which includes the Therapy Management Group early in -- early
11 intervention report. And that was a document on April 5th,
12 2021. I also received a developmental pediatric examination
13 report of Ava from the Sparrow Developmental Pediatrics Group
14 (ph). And then I received the deposition transcript of Dr.
15 Bergquist from July 1st, 2021.

16 And then after I submitted my report you also
17 provided a copy of the ABA, applied behavioral analysis report
18 in which there was a further evaluation of Ava with
19 recommendations for what the ABA would have -- would -- would
20 cover. And it's by Firefly. It was a treatment plan. And
21 that was dated September 13th, 2021.

22 Q And Doctor, for the record, did the Fire -- Firefly
23 report change any of your analysis or recommendations as
24 indicated in the September 10, 2021 report you authored?

1 A No, it did not.

2 Q Were -- were there documents that you had requested
3 that you did not receive?

4 A Yes. I asked to be provided the raw psychological
5 test data that Dr. Bergquist relied upon from Dr. Sunshine and
6 that was never received. The -- the other document I didn't
7 mention that I was provided after my report was the report of
8 Dr. Leslie Carter who -- who also did, you know, a review of
9 information requested by Jennifer Isso.

10 Q Okay. Doctor, do you believe that there were any
11 documents that you have requested that you did not receive
12 that might change or alter the report that you're authored as
13 of September 10, 2021?

14 A I mean, it's possible that if I was able to see the
15 raw psychological test data that I would have been able to
16 have some broader based information about the psychological
17 functioning of each of the parents as it could impact
18 parenting to be able to do a further analysis of Dr.
19 Bergquist's analysis of the case and recommendations. So that
20 -- that would have been helpful to have seen that. I don't
21 know if it would have changed anything or not in my view -- in
22 my work product review.

23 Q As part of your report in your work product review,
24 you had indicated that you review Dr. Bergquist's report for

1 bias; is that correct?

2 A That's correct.

3 Q And did you find that there was any bias in Dr.
4 Bergquist's report?

5 A No, I did not.

6 Q You have -- in your report you have a number of
7 criticisms of -- of Dr. Bergquist's report. Can you briefly
8 indicate for the Court what those criticisms are?

9 A Well, there were a few areas of -- of criticism.
10 First, she generally used a sound methodology as far as the
11 approaches than she did use what we call a converse method of
12 data gathering in which she used in interviews, home visits,
13 review of records, a number of collateral contact. And that
14 was positive.

15 What was problematic in the methodology was that at
16 times there seemed to be kind of a surprising lack of inquiry
17 or asking more questions about issues of concern that were
18 raised. One example was that Mother had alleged that Father
19 in this case -- according to a video was actually seem to be
20 almost laying down and perhaps sleeping on the ground for five
21 minutes while watching Ava.

22 MS. ISSO: Objection, misstates -- misstates --

23 A And --

24 MS. ISSO: Objection, misstates information to the

1 Court. There's no such video.

2 MS. ROSENBLUM: I'm not sure what the legal
3 objection is, Your Honor. My client is commenting on
4 something that Dr. Bergquist put in her report.

5 THE COURT: Correct.

6 MS. ISSO: There was nothing about five minutes
7 putting your head down. There was nothing about five minutes.

8 MS. ROSENBLUM: There is -- -- there is, actually.

9 MS. ISSO: Not five minutes.

10 MS. ROSENBLUM: I -- I suppose that she could --

11 MS. ISSO: They're mis --

12 MS. ROSENBLUM: -- cross --

13 MS. ISSO: He's misstating information --

14 MS. ROSENBLUM: -- cross examine --

15 MS. ISSO: -- which is --

16 MS. ROSENBLUM: -- Dr. Pickar.

17 MS. ISSO: -- out of the scope of his expert report.

18 MS. ROSENBLUM: It's not.

19 THE COURT: Do you want to direct him to that part
20 of the report I guess might be easier?

21 MS. ROSENBLUM: Sure.

22 THE WITNESS: I know which part of the report.

23 MS. ROSENBLUM: Yeah, it's in his report, Judge.

24 THE COURT: Well, I mean, her -- she's object -- it

1 would be Dr. Bergquist's report.

2 MS. ROSENBLUM: So Dr. -- yes. In Dr. Bergquist's
3 report including her clini -- clinical summary and
4 conclusions, pages 23 to 31.

5 BY MS. ROSENBLUM:

6 Q And -- and Dr. Pickar, is that the part that begins
7 on your report on page 5 on -- on page 25 of the report, the
8 evaluator? Is that --

9 MS. ROSENBLUM: I mean, he can tell you exactly
10 where in Dr. Bergquist's report it is.

11 A Yes. So --

12 THE COURT: Is that --

13 THE WITNESS: Your Honor, should I respond at
14 this --

15 THE COURT: Yeah, it'll be overruled.

16 BY MS. ROSENBLUM:

17 Q Yes, the Judge is overruling the objection.

18 A So, you know, I note this in -- in my report, but on
19 page 25 of Dr. Bergquist's report, it says on July 8th Ms.
20 Garcia noticed that Ava was, quote, left alone in a room to
21 play for several minutes while he meaning Father spent time in
22 another part of the house. It says al -- although Nechole may
23 not have seen Eugene on the camera, he could have been within
24 sight line. The total was six minutes, 39 seconds. The

1 evaluator said that Ava did appear in distress. And then
2 there was another incident -- and it said that this was a
3 video on page 25. And then there was a -- so she expressed a
4 concern that while he may have been asleep or passed out, he
5 was not fully attentive to Ava.

6 And there was another incident described on page 25
7 where the nanny cam showed that Ava appeared to be alone in
8 her room for several minutes. So one of the things that --
9 that the evaluator puts on page 25 is that she says that it's
10 impossible to know what happened on either occasion. Ms.
11 Garcia has not discussed either of them with her co-parent;
12 however, there is nothing in the report that indicates that
13 Dr. Bergquist asked father what actually happened in these
14 incidents. There's nothing -- perhaps she did but there's
15 nothing reflected in the report that she actually asked about
16 that. So that's probably an example of a number of -- of
17 times in which it just seemed inquiry, you know, was somewhat
18 weak.

19 The main concerns having to do with her report are
20 that -- is that she -- you know, it's a number of concerns
21 about Father's parenting skills, you know, maybe having weak
22 parenting skills that -- that she says that father -- excuse
23 me, I'm just going to refer to my report. That Father's not
24 aware of appropriate developmental issues for Ava, that he

1 wasn't attending to -- attentive to child proofing, that he
2 didn't seem to accept the diagnosis, that she may have some
3 particular difficulties. She talked about that Mother seems
4 much more attuned to Ava than does Father.

5 And she also reports that the psychological testing
6 showed a lot of defensiveness for Father in the psychological
7 test. Most of the psychological test data for Father was
8 invalid because he was so defensive. He couldn't admit any
9 faults, any problems. Mother's was not defensive at all. She
10 provided valid MMPI -- MMPI-2. She provided a -- a valid PAI
11 which is the parenting assessment inventory. So there was a
12 level of defensiveness she noted for Father.

13 Another striking thing that Dr. Bergquist reported
14 was that in the BASC-3 three that Dr. Sunshine gave to the
15 parents, Father's ratings for Ava were all within the normal
16 range. It was like he didn't see Ava as having any
17 difficulties. Mother's ratings for Ava showed Ava having a
18 lot of features which would be consistent with an Autism
19 Spectrum Disorder child, like there were significant ratings
20 for atypicality which means somewhat unusual behavior,
21 withdrawal, poor adaptive skills.

22 So Dr. Bergquist talks about all this information
23 that she gathered during the course of a process but then one
24 of the biggest criticisms I have is that the data she gathered

1 is not consistent with the recommendations she makes where
2 then suddenly at the end of her report she makes a
3 recommendation for close to a 50/50 custody arrangement where
4 she makes a recommendation of either a 45 -- 55/45 split or a
5 60/40 split and there's no explanation or rationale as to why
6 that's appropriate for this child who may have an autistic
7 spectrum disorder and appropriate for this child with all of
8 the difficulties she noted for Father in conducting the
9 evaluation.

10 So it -- it appeared to me reading the report that
11 there was disconnect with all of the data that she gathered
12 and -- and listed in her report with the ultimate
13 recommendations that she makes. And, again, she provides no
14 rationale, you know, of why this is an appropriate parenting
15 plan for a child, you know, with -- with moderate -- with a
16 moderate Autism Spectrum Disorder.

17 The -- the other concern that I had about the
18 report, one of the things that the AFCC model of standards is
19 that you're supposed to articulate in the report the
20 limitations of a report. Dr. Bergquist noted in her
21 deposition that she's not an expert in autism. And it
22 specifically says in the AFCC model standards of practice that
23 if you're not an expert in a particular area, you should do
24 one of two things. You should either not accept the referral

1 for the appointment to do the evaluation or you should hire an
2 expert consultant, you know, as a way to cover for your own
3 maybe lack of expertise.

4 So what Dr. Bergquist does is not only does she not
5 consult an expert, but she notes that there probably should be
6 an evaluation for aut -- an autistic spectrum disorder. But
7 she doesn't wait until those reports are done before she
8 issues her report. So it's almost as if it's not even taken
9 into consideration that this is a child with a autistic
10 spectrum disorder and to her an evaluation. And she noted in
11 her deposition that one of the things that likely should
12 happen, you know, is that in light of this new information
13 there's probably someone with expert -- expertise in autistic
14 spectrum disorder that should review the parenting plan, you
15 know, with taking in the information that is now available
16 that Ava has an auti -- autistic spectrum disorder.

17 Q Dr. Pickar, any other criticisms that you have with
18 regard to Dr. Bergquist's report that we have not already
19 discussed?

20 A Well, one of the -- the main concerns with the
21 report has -- has to do with the fact that when you have a
22 family situation that goes to a custody evaluation in which
23 there are particular kinds of issues like domestic violence or
24 a special needs children or -- or relocation, it says in the

1 AFCC model of standards that you really need -- need to use an
2 empirically based con -- risk assessment approach to looking
3 at those issues. And that was not done by Dr. Bergquist. I
4 know that the risk assessment model that I developed with my
5 colleague Robert Kaufman (ph) is being used around the country
6 in many places with special needs children. It's really the
7 only model out there.

8 And a big criticism is that Dr. Bergquist is
9 approaching her recommendations to the Court in this case as
10 if she's looking at a neurotypical child and not a child who
11 is, you know, neuroatypical and has special needs like an
12 autistic spectrum disorder. So nowhere does -- does the
13 concern about Ava's functioning, you know, come into play as
14 far as her parenting plan recommendations for the split she
15 recommends, the 45/55, and how that should be dealt with.

16 And one of the things she clearly pointed out in the
17 report was that Father didn't seem to accept that this may be
18 a diagnosis where -- where Mother did and that's a crucial
19 factor as far as compliance with ultimate treatment getting
20 the support a child needs, being a good advocate as a parent
21 for the child getting the services they need for their special
22 needs. So that -- that's another concern?

23 Now -- and lastly one other concern is that -- I
24 noted this in my report is that I've never seen -- I mean, I

1 don't know if this happens in the state of Nevada, but I've
2 reviewed a lot of reports. I've never seen an evaluator just
3 recommend percentage of time as a parenting plan
4 recommendation. And time can be divided in a number of ways
5 that I think that if you read anything about develop --
6 developmentally based parenting plans there's a lot of huge
7 amount of things written about the way, you know, if it's 15
8 -- if it's 50/50 or two-thirds and one-third about the way
9 that time should be divided based upon the age of a child.
10 And she didn't really offer any guidance to the Court in the
11 report other than percentages about what that plan would
12 actually look like that would be in this child's best
13 interests.

14 Q Any other criticisms of Dr. Bergquist's report that
15 we haven't discussed?

16 A I'm just going to refer to my report here. Yeah, I
17 mean, the other thing that she didn't -- she also noted in the
18 report that -- that there's evidence that Father's
19 inattentive, you know, and forgetful and -- and she did talk
20 about that Father had the assessment for ADHD and maybe that
21 wasn't clear and he had been recommended medication. But, you
22 know, inattentiveness is a major risk factor for a parent to
23 have with a child who may have an autistic spectrum disorder.
24 So that was another thing which I think she didn't almost take

1 into consideration in making the recommendations. But
2 otherwise I think I covered the main concerns.

3 Q All right. Dr. Pickar, you mentioned the risk
4 protection continuum, the model that you created with Dr.
5 Kaufman, could you explain to the Court what that is?

6 A Yes. So -- so essentially Dr. Kaufman and I barked
7 -- we -- we began this process probably about eight years ago
8 and had done presentations nationally about special needs kids
9 in situations of divorce and how the default model of a lot of
10 courts around the country 50/50 did not -- may not really be
11 appropriate for many special needs kids because if you have a
12 child with autistic spectrum disorder who's eight, they may be
13 functioning at the level of a three-year-old. Or if you have
14 a child who has Down's syndrome, they may be a 10-year-old
15 child functioning at the level of a five-year-old. So
16 developmentally appropriate parenting plans don't quite make
17 sense. They may be appropriate, it's possible, especially if
18 you have a child with a particular kind of special needs who's
19 at -- who's a high functioning, you know, child within that
20 particular diagnostic area.

21 But what we did is we looked at a lot of the main
22 diagnostic roots -- conditions that happen amongst children
23 and reviewed all of the empirical literature both about the
24 symptoms, the various types of empirically based treatments

1 that should happen for these kids, and what are the risk
2 factors with these kids, like autistic children, you know, not
3 really being aware of their surroundings and running, you
4 know, out of a house and into the middle of a street or
5 potentially leaving the house without telling a parent or
6 various safety factors in the home or what may be the special
7 types of parenting they may need.

8 So what we did is we looked all -- at all of the
9 literature and then as a result of that we kind of did a
10 factor analysis and looked at the main domains of concern that
11 could either cause harm -- because a risk protection continuum
12 means you're looking at what are situations where it could
13 cause harms and whether family base situations or parenting
14 plans which can mitigate against harm. So we developed a -- a
15 domain -- risk assessment model that's contained in the
16 article -- one of the articles that was referenced in my
17 report and also at the end of my work product review there's
18 an appendix which lists the key domains.

19 This is taken from the article about what it is we
20 look at. And our recommendation to the family law
21 communication was that a risk assessment model like this be
22 utilized in cases in which there is a special needs children
23 so that the best interest of the special needs child is looked
24 at, not just the best interest of a neurotypical child. So

1 that was developed.

2 And we've been presenting about this model around
3 the country. I was specifically asked to do a training at the
4 annual conference for all of the family law judges in the
5 state of Colorado three years ago right before COVID on
6 special needs children and things for the courts to be aware
7 of --

8 MS. ISSO: Objection, narrative.

9 A -- and making rec --

10 THE COURT: Sustained.

11 MS. ISSO: Narrative.

12 MS. ISSO: I'm trying not to be rude, but holy moly.

13 THE COURT: All right.

14 BY MS. ROSENBLUM:

15 Q All right.

16 THE COURT: That's sustained.

17 Q Dr. Pickar, has this model been accepted in other
18 jurisdictions?

19 MS. ISSO: Objection, lacks personal knowledge.
20 Speculation.

21 THE COURT: If he knows. I mean --

22 MS. ROSENBLUM: If he knows.

23 THE COURT: -- I -- listen, I'm not -- jurisdictions
24 could be 50 plus including territories. So I -- I don't know

1 how you want to quantify that, Ms. Rosenblum.

2 MS. ROSENBLUM: I was going to break it down.

3 THE COURT: Okay.

4 MS. ROSENBLUM: Right.

5 THE COURT: If -- if he has knowledge.

6 MS. ROSENBLUM: Right.

7 BY MS. ROSENBLUM:

8 Q So Dr. Pickar, do you know if this model has been
9 accepted in other jurisdictions?

10 A Yes -- yes, it has. I mean, I'm not aware if it has
11 been incorporated into any case law in particular, but it --
12 it is being regularly utilized by child custody evaluators
13 across the country --

14 THE COURT: Non-responsive.

15 A -- and I know if --

16 THE COURT: Your question was jurisdictions. I need
17 to know which jurisdictions specifically.

18 BY MS. ROSENBLUM:

19 Q Right. And so --

20 A Yeah, I don't think I can name specific
21 jurisdictions.

22 Q Okay. Dr. Pickar, do you believe that this model
23 should be considered by the Court in the evaluation of the
24 child in this case?

1 A Yes. Absolutely.

2 Q Are there any specific domains that you have -- that
3 are part of this model that you believe that the Court should
4 consider with specific -- was specificity to Ava?

5 MS. ISSO: Objection, Your Honor.

6 THE COURT: Sustained. That's -- we talked about
7 this before that he indicated himself that he is not to do any
8 sort of analysis in this, that he is only to do a records
9 review of it indicating any inconsistencies or error in it.

10 MS. ROSENBLUM: Okay. I'll pass the witness at this
11 point.

12 THE COURT: Okay. Hold on.

13 MS. ROSENBLUM: Oh, I would ask that his report be
14 admitted.

15 MS. ISSO: We were going to object to that, Your
16 Honor.

17 THE COURT: Ms. -- we'll start -- we'll go back to
18 the trial setting order, Ms. Isso. Did you --

19 MS. ISSO: Well --

20 THE COURT: -- file an objection?

21 MS. ISSO: Oh, yeah, but we're going to -- I just
22 want to note it for the record. Number one, it wasn't timely
23 disclosed. Number two, it lacks proper foundation. It did
24 not gather sufficient facts. Number two, it doesn't assist

1 the trier of fact because it does not give an opinion as to
2 custody. And he's not qualified to give an opportunity if Dr.
3 Bergquist did her evaluation correctly. Thank you.

4 THE COURT: Overruled. Again, I'll note for the
5 record that pursuant to the trial setting order that was
6 issued there was no objection filed with the clerk's office
7 regarding this specific report that was provided.

8 (DEFENDANT'S EXHIBIT U ADMITTED)

9 MS. ISSO: The witness passed?

10 MS. ROSENBLUM: Yeah.

11 MS. ISSO: Okay.

12 CROSS EXAMINATION

13 BY MS. ISSO:

14 Q Sir, you weren't here earlier today but your client
15 agrees that my client should have joint physical custody. Are
16 you aware of that?

17 A Well, first of all --

18 Q Sir, that --

19 A -- I -- I --

20 Q -- calls for a yes --

21 A I don't --

22 Q -- or no answer, sir. Are you aware of that?

23 A No, I'm not aware of that.

24 Q Yeah, she stated on the record that --

1 THE COURT: Okay.

2 Q -- my client should have joint physical custody
3 today during her opening arguments. So you're not aware,
4 correct?

5 MS. ROSENBLUM: Your Honor -- Your Honor, objection,
6 argumentative.

7 THE COURT: He -- he answered --

8 MS. ROSENBLUM: It's --

9 THE COURT: -- already.

10 MS. ROSENBLUM: -- been asked and answered.

11 THE COURT: He did not know.

12 MS. ISSO: Okay.

13 BY MS. ISSO:

14 Q So what are you doing here today if she's agreeing
15 to joint physical custody?

16 MS. ROSENBLUM: Your Honor, I would object that it's
17 argumentative.

18 A Well --

19 THE COURT: Su --

20 A -- you --

21 THE COURT: Sus --

22 A -- you would have -- you --

23 MS. ROSENBLUM: Hold on.

24 THE WITNESS: Should I respond, Your Honor?

1 THE COURT: The phra -- hold on one second. I'm
2 thinking. The phraseology is a little argumentative. You can
3 ask the same question, just a little less argumentative,
4 Counsel.

5 MS. ISSO: Okay.

6 BY MS. ISSO:

7 Q If she is agreeing to joint physical custody, what
8 are you doing here today, sir?

9 THE COURT: That's just asking it in a nicer tone.

10 MS. ROSENBLUM: Right.

11 THE COURT: You did different --

12 MS. ISSO: Okay.

13 THE COURT: -- phraseology.

14 BY MS. ISSO:

15 Q Sir, are you familiar with Nevada law?

16 A No.

17 Q Okay. Are you familiar with the preference in
18 Nevada regarding custody?

19 A I -- I'm not familiar with the specific law about --

20 Q Okay.

21 A -- that.

22 Q And that the preference in Nevada is joint physical
23 custody. Are you familiar with that?

24 A Well, I'm familiar with that's the law in most

1 states.

2 Q Okay. So you did a product review, correct?

3 A Correct.

4 Q And your product review does not provide additional
5 custody recommendations because you have not been appointed by
6 the Court to do so, correct?

7 A That's correct.

8 Q So you're not here to make custody evaluations.

9 A That's correct.

10 Q Did you evaluate the mother?

11 A No, I did not.

12 Q Which is the Defendant in this matter?

13 A No.

14 Q Did you evaluate the father?

15 A No, I did not.

16 Q Did you evaluate or observe the child?

17 A No, I did not.

18 Q Did you observe the child with each parent?

19 A No.

20 Q So you are lacking firsthand observations, correct?

21 A That's correct.

22 Q And isn't it true that Dr. Kathleen Bergquist did
23 in fact observe the parents and the child multiple times?

24 A Yes.

1 Q At their homes?

2 A Yes.

3 Q Sir, is it fair to say that there's no two children
4 alike?

5 A Yes.

6 Q And so your journal reports and your book chapter,
7 they're mostly generalizations, correct?

8 A I would not say that they're generalizations --

9 Q But they assume --

10 A -- be -- because --

11 Q -- that children are alike if they're giving a
12 specific recommendation, correct? Yes or no, sir? Sir, my
13 questions call for yes or no answers.

14 MS. ROSENBLUM: Your Honor, argumentative.

15 Q Yes or no?

16 A No.

17 MS. ISSO: It's not argumentative.

18 THE COURT: She --

19 MS. ISSO: This is how I talk.

20 THE COURT: She can clarify whether it's a yes or no
21 for him. He was going to give an expanded answer at some
22 point. Go ahead, Ms. Isso.

23 THE WITNESS: Well, the answer is no but sometimes I
24 cannot adequately answer the question unless I'm allowed to --

1 THE COURT: Sir --

2 THE WITNESS: -- you know --

3 THE COURT: -- I'm sure you've testified --

4 THE WITNESS: -- go beyond --

5 THE COURT: -- I'm sure you've testified in court.

6 I'm sure you understand how court works. I'm sure you've been
7 in a situation where you can only yes or no and I'm sure you
8 know what the purpose of counsel is. Go ahead, Ms. Isso.

9 BY MS. ISSO:

10 Q Sir, did you read your journal publication?

11 MS. ROSENBLUM: Objection, foundation.

12 Q The one that you authored?

13 MS. ROSENBLUM: Objection, foundation.

14 MS. ISSO: The one titled --

15 THE COURT: Overruled on foundation but you probably
16 should specify as to which since he's indicated he's drafted
17 over 20.

18 MS. ISSO: Okay.

19 THE COURT: So --

20 MS. ISSO: I'm getting there. I'm getting there.

21 BY MS. ISSO:

22 Q Sir, did you read your article parenting plans for
23 special needs applying risk assessment models?

24 A Yes.

1 Q On the table that you authored, there is a factor
2 identified as time availability at home. Are you aware of
3 that?>

4 A Yes.

5 Q Okay. Are you aware that the Defendant works 10,
6 four -- I'm sorry, strike that. Are you aware that the
7 Defendant works four 10 hour shifts as an attorney?

8 A I'm aware she's an attorney.

9 Q Sir, that calls --

10 A Yes.

11 Q -- for a yes or no answer. I -- let me rephrase my
12 question. Are you aware that the Defendant that hired you in
13 this matter works four 10 hour shifts a week?

14 A I was not aware of her schedule. So no.

15 Q Are you aware that sometimes her work carries over
16 to her home because she has numerous trials a week?

17 A I don't know that specifically from the report.

18 Q So the --

19 A So no.

20 Q -- answer is yes or no?

21 A No.

22 Q Another one of the factors is co-parenting and
23 communication, correct?

24 A Correct.

1 Q Did you address that in your report, sir?

2 A Address how so?

3 Q Sir --

4 A I'm not --

5 Q -- does your report or inquiry address that factor
6 that was listed on the table of the journal entry that you
7 authored? Yes or no?

8 MS. ROSENBLUM: Your Honor, I would argue that
9 it's --

10 THE COURT: It's a yes --

11 MS. ROSENBLUM: -- argumentative.

12 THE COURT: No, overruled. It's a yes or no
13 question. It's either in there or it's not. I understand
14 what his report is. It's limited, but she has absolutely
15 every right to ask the question whether that particular factor
16 was in there.

17 THE WITNESS: No.

18 BY MS. ISSO:

19 Q Don't you think those are important factors sir
20 whether a parent is at home to take care of the child or
21 whether they're able to co-parent and communicate to further
22 the child's interest? Yes or no?

23 A Yes.

24 Q Well, your report is lacking that inquiry you just

1 testified, correct?

2 MS. ROSENBLUM: Objection, Your Honor. It's outside
3 his scope.

4 MS. ISSO: Correct?

5 THE COURT: Hold on. I will allow him to answer in
6 that form if in fact that's what he indicates given what his
7 knowledge of the -- his purpose of being hired was. Okay.

8 THE WITNESS: And I would say --

9 MS. ISSO: It's -- it's yes or no --

10 THE WITNESS: -- that's incorrect --

11 MS. ISSO: -- sir.

12 THE WITNESS: -- because it's not.

13 THE COURT: No, it's --

14 MS. ISSO: Sir.

15 THE COURT: -- not yes or no --

16 THE WITNESS: I'm answering --

17 THE COURT: -- Ms. Isso. I clarified he's got to
18 expand on this one because --

19 MS. ISSO: Oh.

20 THE COURT: -- if in fact his purpose or his purpose
21 for his report that he submitted if not those factors were not
22 part of that process, then of course they're not going to be
23 in there. So he's got to -- he can't -- it's not a yes or no
24 question.

1 THE WITNESS: It's incorrect because it -- it was
2 not the scope of my practice to inquire about that, the scope
3 of my -- the job that I was doing in this case to do that.

4 BY MS. ISSO:

5 Q But sir, your job was to evalu -- do a product
6 review of Dr. Kathleen Bergquist's report, right?

7 A Correct.

8 Q And does her report not address these issues?

9 A I don't think her report addresses them adequately.
10 So I would say no.

11 Q But my question to you is should you not have
12 brought that up in your report saying that she did not
13 adequate those adequately?

14 A Well, I've already said --

15 Q Yes or no?

16 A -- that she --

17 Q No, that calls for a yes or no --

18 A It's not --

19 Q -- answer. Yes or no, sir?

20 A Can you repeat the question, please?

21 Q These are factors in the chart that you prepared,
22 correct? Correct.

23 A And your report does not address these issues
24 despite the fact Dr. Kathleen Bergquist has raised them in

1 her report, correct?

2 MS. ROSENBLUM: Again, Your Honor, I would object
3 that it's outside the scope.

4 THE COURT: Overruled. It indicates that he
5 reviewed Dr. Bergquist's report. He -- he indicated that he
6 thought they were inadequate. She has a right to follow up on
7 that particular part. Go ahead, Ms. Isso.

8 BY MS. ISSO:

9 Q Correct?

10 A You're going to have to repeat the question.

11 Q Okay. Let's go back. Sir, your report does not
12 adequate factors that you just discussed to the Court saying
13 that these are factors that are used by numerous jurisdictions
14 and by numerous professionals. Factors such as time available
15 at home, factors such as co-parenting and communication. Does
16 your report address those issues? Yes or --

17 A Yes.

18 Q -- no?

19 A Yes.

20 Q Okay. Tell me where your report considered the fact
21 that Ms. Garcia, the Defendant in this matter, works four 10
22 hour shifts a week as an attorney and that her work carries
23 over to her home life. Show me in your report where you
24 addressed that issue.

1 A Well, you didn't allow me to answer --
2 Q No.
3 A -- your first --
4 Q Sir --
5 A -- question --
6 Q -- you're not going to run --
7 A -- which --
8 Q -- the show here. I asked you to specifically show
9 me in the report where you -- where you addressed that issue.
10 Are you --
11 THE WITNESS: Your Honor --
12 Q -- able to do that, sir?
13 THE WITNESS: -- she didn't allow me to --
14 Q Are you able to do that, sir?
15 THE WITNESS: Your Honor, she didn't allow me to
16 answer her first question and then she --
17 Q Are you able to do that --
18 THE WITNESS: -- changed --
19 Q -- sir?
20 THE WITNESS: -- the question.
21 THE COURT: At this juncture I believe where we're
22 at and I -- we're going to that point at the end of the day
23 since I am the trier of fact, again, he was not supposed to do
24 that as part of his analysis. The issue is if in his report

1 he specifically addressed that Dr. Bergquist did not address
2 those particular factors adequately. That was his last
3 statement. So if you want to --
4 MS. ISSO: Yeah. Okay.
5 THE COURT: -- go -- so Doc --
6 MS. ISSO: Let's -- let's just go on anyways.
7 THE COURT: Well, in your report, is there somewhere
8 in there where you specifically say Dr. Bergquist did not
9 address those factors adequately?
10 THE WITNESS: Well, yes, and that I made a statement
11 that she didn't address --
12 THE COURT: Okay.
13 THE WITNESS: -- any of the specific factors --
14 MS. ISSO: Okay. Objection.
15 THE WITNESS: -- which you can consider with a --
16 MS. ISSO: Now that's out of the scope.
17 THE WITNESS: -- special needs child.
18 MS. ISSO: That's out of the scope of his report.
19 THE WITNESS: May I -- may I --
20 THE COURT: Overruled.
21 MS. ISSO: That's not what his --
22 THE WITNESS: May I finished?
23 MS. ISSO: -- report says.
24 THE COURT: Overruled. That was the Court's

1 question. I have the right to ask questions Ms. Isso --
2 MS. ISSO: Okay.
3 THE COURT: -- as well.
4 BY MS. ISSO:
5 Q Sir, identify in your report where you make a
6 negative statement about Ms. Garcia.
7 A I -- I don't have one.
8 Q Okay. But sir, in your report you call yourself
9 objective and balanced and that you're here to be helpful to
10 the Court, right? You put that in your report, right?
11 A Correct.
12 Q How could you call yourself objective and balanced
13 when you didn't address any of the negative things that Dr.
14 Bergquist said about the Defendant?
15 THE COURT: Watch the tone --
16 MS. ROSENBLUM: Objection.
17 THE COURT: -- Ms. Isso.
18 MS. ISSO: I'm sorry. I'm sorry.
19 THE COURT: It's not funny. We're in a --
20 MS. ISSO: Listen --
21 THE COURT: -- court of law.
22 MS. ISSO: -- I -- I have the right --
23 THE COURT: This is --
24 MS. ISSO: -- to smile and laugh if I feel like it.

1 I'm sorry, but I get very involved. Okay. I'm not the issue
2 here.

3 THE COURT: Okay. But your demeanor is an issue and
4 a decorum is absolutely under your professional rules.

5 MS. ISSO: This is how I do cross.

6 THE COURT: Talk to --

7 MS. ISSO: This is --

8 THE COURT: -- to the professional --

9 MS. ISSO: This is how I do cross.

10 THE COURT: -- as a professional.

11 MS. ISSO: This is how I treat an adverse party.
12 This is how I talk.

13 MS. ROSENBLUM: He's -- he's --

14 MS. ISSO: I can't change it.

15 MS. ROSENBLUM: -- not an ad --

16 THE COURT: And I'm telling you to treat him with
17 respect and decorum. He's a professional as you --

18 MS. ISSO: I treated --

19 THE COURT: -- are as well.

20 MS. ISSO: -- him with enough --

21 THE COURT: So drop the level down and ask him the
22 question properly.

23 BY MS. ISSO:

24 Q How do you call yourself objective and neutral when

1 you haven't addressed the negative comments about the
2 Defendant that Dr. Kathleen Bergquist made in her report?

3 MS. ROSENBLUM: Objection, Your Honor. It lacks
4 foundation.

5 THE COURT: Overruled.

6 THE WITNESS: I addressed in my report what Dr.
7 Bergquist said about each of these parents' parenting skills
8 and how they affect the child. That's what was portrayed.

9 BY MS. ISSO:

10 Q Sir --

11 A That -- that --

12 Q -- show me in your report where you addressed a nega
13 -- the -- one of -- a negative comment about your -- about the
14 client that paid you to be here today. Show me in your report
15 and tell me the page and the line number.

16 MS. ROSENBLUM: Objection, argumentative. Asked and
17 answered.

18 THE COURT: It was asked and answered. He already
19 indicated --

20 MS. ISSO: Okay.

21 THE COURT: -- there was not --

22 MS. ISSO: Okay.

23 THE COURT: -- Ms. Isso.

24 BY MS. ISSO:

1 Q So sir, it's fair to say that you're not really here
2 to be helpful to anyone but yourself, right?

3 MS. ROSENBLUM: Objection, argumentative.

4 THE COURT: Sustained.

5 BY MS. ISSO:

6 Q That you're only here to benefit your own pockets,
7 right?

8 MS. ROSENBLUM: Objection --

9 THE COURT: Sustained.

10 MS. ROSENBLUM: -- argumentative.

11 BY MS. ISSO:

12 Q Sir -- sir, your report doesn't address the fact
13 that Ms. Garcia withheld the child for 33 days, does it?

14 MS. ROSENBLUM: Objection --

15 Q Yes or no?

16 MS. ROSENBLUM: -- exceeds the scope, Your Honor.

17 THE COURT: Sustained.

18 MS. ISSO: Sir, how is that sustained? He's saying
19 Dr. Kathleen Bergquist --

20 THE COURT: His scope --

21 MS. ISSO: -- didn't address --

22 THE COURT: -- was limited --

23 MS. ISSO: -- certain things.

24 THE COURT: -- Ms. Isso. He did not do an in depth

1 analysis nor --

2 MS. ISSO: Yeah, but he did --

3 THE COURT: -- custody evaluation.

4 MS. ISSO: -- an analysis where he said he withheld
5 the child. Why didn't he address the fact that Ms. Garcia
6 withheld the child? That's not a sustained. This is within
7 the scope. So I'm going to ask the question again so we have
8 a clear record.

9 BY MS. ISSO:

10 Q Sir, show me in your --

11 THE COURT: Take --

12 Q -- report where you address the fact that Ms. Garcia
13 withheld the child for 33 days. Are you able to do that?

14 MS. ROSENBLUM: Objection, Your Honor.

15 Q Yes or no?

16 MS. ROSENBLUM: Objection, Your Honor. It exceeds
17 the scope. Assumes --

18 THE COURT: He can answer --

19 MS. ROSENBLUM: -- facts not in evidence.

20 THE COURT: -- whether he addressed the 33 days.
21 That's a yes or no question.

22 THE WITNESS: I did not address --

23 MS. ISSO: Yes --

24 THE WITNESS: -- the 33 days.

1 BY MS. ISSO:

2 Q Okay. Tell me in your report where you addressed
3 the fact that Nechole withheld the child unless Eugene agreed
4 to give her primary custody. Did you address that in your
5 report?

6 MS. ROSENBLUM: Objection, assumes facts not in
7 evidence. Your Honor, I would argue that it exceeds the
8 scope. Dr. Pickar was retained to review Dr. Bergquist's
9 report.

10 THE COURT: Sustained.

11 MS. ISSO: This is -- this is Dr. Kathleen
12 Bergquist's report. I am getting --

13 THE COURT: I'm --

14 MS. ISSO: -- all these from her report. I'm not
15 pulling these from the sky.

16 THE COURT: Your next question, Ms. Isso.

17 BY MS. ISSO:

18 Q Your report did not address the fact that after
19 Eugene Shapiro baby proofed the home that Ms. Garcia continued
20 to find reasons to keep the child away from him, does it?

21 MS. ROSENBLUM: Objection, it exceeds the scope.

22 THE COURT: Sustained.

23 BY MS. ISSO:

24 Q Your report does not address the fact that Dr.

1 Kathleen Bergquist said in her report that Ava has a strong
2 bond with Eugene and enjoys being with him, does it?

3 A I don't know.

4 Q So the answer is no?

5 A Correct.

6 Q Okay. Your report doesn't address the fact that Dr.
7 Kathleen Bergquist's report stated Eugene has a stable home
8 and a support system, does it?

9 A No.

10 Q Does your report state that -- does your report
11 address that Dr. Kathleen Bergquist's report stated that
12 Eugene is able to meet Ava's primary needs?

13 A I -- I would answer that from the standpoint that
14 there was a lot of inconsistencies --

15 Q Sir.

16 A -- suggesting --

17 Q Sir.

18 A -- that he has --

19 THE COURT: It's a --

20 MS. ISSO: Move to strike --

21 THE COURT: -- yes or no --

22 A -- difficulty --

23 THE COURT: -- Doctor.

24 MS. ISSO: -- as non-responsive.

1 A -- doing them.

2 MS. ISSO: Move to --

3 THE COURT: It's a yes or no question --

4 MS. ISSO: Thank you.

5 THE COURT: -- or you don't know or if you need to

6 refer to your report, she's asked it in a yes or no form.

7 A I believe I addressed that, yes --

8 Q Okay. And show me --

9 A -- and to some --

10 Q -- show me --

11 A -- to some --

12 Q -- in your --

13 A -- degree.

14 Q -- report. Show me in your report the page and the

15 line number, sir, since you're -- since you're saying -- since

16 you're trying to mislead the Court.

17 MS. ROSENBLUM: Objection --

18 THE COURT: Sus --

19 MS. ROSENBLUM: -- argumentative. Move to strike.

20 THE COURT: Watch the professionalism, Ms. Isso.

21 THE WITNESS: On page 4 of my report, I know that

22 Dr. Bergquist says given the possibility that Ava may need

23 ongoing professional intervention --

24 BY MS. ISSO:

1 Q No, just tell me what --
2 A It says Ms. --
3 Q Sir.
4 A Ms. Shapiro's -- this is on page 4. Mr. Shapiro
5 seems to be somewhat unaware of --
6 Q No. Sir --
7 A -- developmentally --
8 MS. ISSO: Move to strike as --
9 A -- appropriate --
10 MS. ISSO: -- non-responsive.
11 A -- parenting.
12 MS. ISSO: Objection, move to strike as non --
13 THE COURT: Doctor, you're just reading the report
14 out loud. If you don't have the specific line that addresses
15 her question --
16 MS. ISSO: Move to strike.
17 THE COURT: It's stricken.
18 BY MS. ISSO:
19 Q Do you --
20 A I don't have a specific line.
21 Q Okay. Because you -- your report doesn't address
22 that statement, sir, correct?
23 A Correct.
24 Q Sir, your report did not address Dr. Kathleen

1 Bergquist's recommendation that Ms. Garcia continued to work
2 with her individual therapist to increase her ability to
3 co-parent and relinquish some control and increase her ability
4 to trust. Does your report address that?

5 MS. ROSENBLUM: Objection, exceeds the scope.

6 THE COURT: Here's where we're at at this point.
7 Then I need him to indicate that that's outside the scope of
8 what he was retained for.

9 MS. ISSO: It's not outside the scope. He's here to
10 do a product review of Kathleen Bergquist's --

11 THE COURT: Right.

12 MS. ISSO: -- report.

13 THE COURT: If he doesn't -- so --

14 MS. ISSO: So he didn't address certain important
15 information that relates to the factors that he addressed in
16 the table --

17 THE COURT: Ms. Isso.

18 MS. ISSO: -- of the journal entry that he authored.

19 THE COURT: Is that within your scope, Doctor, yes
20 or no?

21 THE WITNESS: Well, it wouldn't be within the scope
22 of the work product review.

23 THE COURT: Okay. That's --

24 BY MS. ISSO:

1 Q But don't you think that's an important thing that
2 you should consider if you're here today acting as an expert
3 to tell the Judge whether another doctor did her job correctly
4 and whether it complies with the ABA or ASD or AFCC?

5 MS. ROSENBLUM: Objection, argumentative.

6 THE COURT: Sustained.

7 MS. ROSENBLUM: Compound. Thank you.

8 THE COURT: Sus --

9 BY MS. ISSO:

10 Q Sir, don't you think that that's -- that's important
11 information that you should have considered? Yes or no?

12 A It was outside the scope of what I was to do my
13 task.

14 Q But your scope included reviewing Dr. Kathleen
15 Bergquist's report, right?

16 A Correct.

17 Q And that information was in her report, is that not
18 correct?

19 A Correct.

20 Q And that her report consisted of 33 pages plus
21 numerous exhibits, correct?

22 A Correct.

23 Q And I mean, what -- I mean, when you review a
24 report, don't you review the report in its entirety?

1 A Yes, I do.

2 Q Well, it seems like you did not do that in this
3 case, sir, because you're saying it's outside of the scope.

4 MS. ROSENBLUM: Objection, argumentative.

5 A You are incorrect.

6 THE COURT: Sustained.

7 BY MS. ISSO:

8 Q You just said --

9 THE COURT: Sustained.

10 Q -- on the record that --

11 THE COURT: Move on to your next question.

12 Q You just stated on the record that you are here to
13 review her product, to review her report. Did you not just
14 say that?

15 MS. ROSENBLUM: Objection, this is --

16 THE COURT: Sustained.

17 MS. ROSENBLUM: -- asked and answered.

18 BY MS. ISSO:

19 Q Sir, are you -- are you a reliable reporter of
20 facts?

21 MS. ROSENBLUM: Objection, vague and ambiguous.

22 BY MS. ISSO:

23 Q You agree -- yes or no, sir, are you reliable
24 reporter of facts?

1 THE COURT: Listen.

2 MS. ROSENBLUM: Same objection.

3 THE COURT: I'm going to allow him to an -- listen.

4 THE WITNESS: I strive to be, yes.

5 BY MS. ISSO:

6 Q But you didn't report these essential information
7 that was in Dr. Kathleen Bergquist's report to the Judge
8 today, right?

9 MS. ROSENBLUM: Objection, argumentative.

10 THE COURT: He can answer in the form that the
11 Court's already allowed him to answer in that if he indicates
12 it's --

13 MS. ISSO: Could you stop --

14 THE COURT: -- outside the --

15 MS. ISSO: -- coaching the witness?

16 THE COURT: -- scope of what he was retained for --

17 MS. ISSO: Stop coaching --

18 THE COURT: -- then he can --

19 MS. ISSO: -- the witness.

20 THE COURT: -- indicate that.

21 MS. ISSO: Stop coaching the witness, please.

22 THE COURT: Excuse me, Ms. Isso?

23 MS. ISSO: You're telling him what to say in
24 response to my question.

1 THE COURT: I am not. I'm saying --
2 MS. ISSO: Yes, you did. You just --
3 THE COURT: -- that that's a form.
4 MS. ISSO: -- told him to say out of the scope which
5 -- that was not what he was saying. So please do not coach
6 the witness.
7 THE COURT: I'm not coaching a --
8 MS. ISSO: You did.
9 THE COURT: -- witness.
10 MS. ISSO: It's on the record.
11 THE COURT: It is on the record.
12 MS. ISSO: And you're not going to scare him.
13 THE COURT: I'm sorry, what did you say?
14 THE MARSHAL: She told -- she told me I'm not going
15 to scare her.
16 MS. ISSO: I'm going to make my record. No one's
17 going to scare me. I'm making my record.
18 THE COURT: All right. Move on to your next
19 question --
20 MS. ISSO: Okay.
21 THE COURT: -- Ms. Isso.
22 BY MS. ISSO:
23 Q Sir, you admit that Dr. Bergquist complied with
24 AFCC standards 5.4, 5.5, and 5.6, correct?

1 A I'm sorry, could you repeat the question?

2 Q Sir, you admit that Dr. Bergquist complied with

3 AFCC standards 5.4, 5.5, and 5.6, correct?

4 A I'm going to need to refer to those.

5 Q Yeah, please do. I thought you were an expert in

6 this area, sir.

7 MS. ROSENBLUM: Move to strike the last statement,

8 Judge.

9 THE COURT: It'll be stricken.

10 A Yes, I did say that -- that her -- she conducted a

11 sound methodology.

12 Q Okay.

13 A That -- that those -- those particular codes

14 address.

15 Q Sir, did you -- did you review the child's IEP?

16 A I think I said what documents I reviewed. I'm not

17 sure what you're referring to as the IEP.

18 Q The individualized education plan issued by Clark

19 County School District.

20 A If it was in the documents, I can go -- I can go get

21 my binder --

22 Q No, sir --

23 A -- to refresh my memory.

24 Q Sir, just look at your expert report, because I

1 think in there you listed the documents that you reviewed. Is
2 it listed in there?

3 A Well, I didn't mention specifically all the
4 documents provided to me to Dr. Bergquist. So all those --
5 those were listed in the binder.

6 Q Well, let me just --

7 A If you'll refer --

8 Q -- make it easier for you, sir. That IEP was -- was
9 issued after you did your product review. So most likely you
10 did not review the IEP report. Okay? Do you agree?

11 A I -- I don't -- what's the title of the report?
12 Could you say the title of it?

13 Q State of Nevada Individualized Education Program.

14 A I don't believe that I reviewed that or was provided
15 that.

16 Q Did you know that they recommended that the child is
17 put in a generalized classroom?

18 MS. ROSENBLUM: Objection, relevance. Outside the
19 scope.

20 THE COURT: Sustained. If he hasn't seen it, how
21 would he know?

22 BY MS. ISSO:

23 Q Sir, are you aware that Eugene's been exercising
24 joint physical custody and there's been no issues? Are you

1 aware of that?

2 MS. ROSENBLUM: Objection, relevance. Outside the
3 scope.

4 THE COURT: Sustained.

5 MS. ISSO: Okay. Then I pass the witness. I pass.

6 REDIRECT EXAMINATION

7 BY MS. ROSENBLUM:

8 Q Dr. Pickar, just to figure --

9 THE COURT: Are you going to be more than 10 or 15
10 minutes, Ms. Rosenblum?

11 MS. ROSENBLUM: I don't know.

12 THE COURT: Otherwise, we're going to take a break.

13 MS. ROSENBLUM: Do you want to take a quick break?

14 A quick break?

15 THE COURT: If --

16 MS. ROSENBLUM: I'll be fine.

17 THE COURT: -- you're -- if you're --

18 MS. ISSO: Well, let's just do --

19 THE COURT: -- doing more than say 15 minutes --

20 MS. ROSENBLUM: I -- I don't know. I don't know.

21 THE COURT: All right. Let's go ahead and take a 10
22 minute break. We'll resume at 10:40 pursuant to that clock
23 up --

24 MS. ISSO: Let's just go --

1 THE COURT: -- on the wall.

2 MS. ISSO: -- for 15 minutes and see if she's going

3 to be done and then we can take a break so he can go.

4 THE COURT: Ms. Isso, she indicates she does not

5 know how long she's --

6 MS. ROSENBLUM: I don't know.

7 THE COURT: -- going to go.

8 MS. ISSO: Which means that she can finish before 15

9 minutes.

10 THE COURT: We're in recess for 10 minutes.

11 (COURT RECESSED AT 10:29 AND RESUMED AT 10:39)

12 THE CLERK: We're back.

13 THE COURT: All right. Before we -- I -- throughout

14 this trial the Court will keep Counsel apprised as to where

15 we're at time wise. So far, Ms. Rosenblum, you used 58

16 minutes. Ms. Isso, you've used a total of 29 minutes.

17 MS. ISSO: Thank you.

18 THE COURT: Ms. Rosenblum?

19 MS. ROSENBLUM: All right.

20 BY MS. ROSENBLUM:

21 Q Dr. Pickar, just following up on the questions that

22 were asked of you regarding statements made in Dr. Bergquist's

23 report that didn't make it into your report. Did you at least

24 -- you read Dr. Bergquist's report in its entirety, correct?

1 A That's correct.

2 Q You considered those statements that were read to
3 you when you authored your report; is that correct?

4 A Yes.

5 Q The fact that Dr. Bergquist commented that Eugene
6 had a stable home and a support system?

7 MS. ISSO: Objection, asked and answered.

8 A Yes.

9 MS. ISSO: Already asked him that question.

10 THE COURT: I'm sorry, I was distracted by the
11 Marshal. And what was the question again?

12 MS. ROSENBLUM: The question was whether he
13 considered those statements, the statement that Eugene had a
14 stable home and a support system.

15 THE COURT: That's -- overruled.

16 BY MS. ROSENBLUM:

17 Q You considered the fact that Dr. Bergquist commented
18 about the parents being able to meet Ava's needs?

19 A Yes.

20 Q And you considered --

21 MS. ISSO: Objection, asked and answered.

22 BY MS. ROSENBLUM:

23 Q -- you considered Dr. Bergquist's rec --

24 THE COURT: Overruled.

1 Q -- recommendations regarding therapy for Nechole?

2 A Yes.

3 Q And you considered Dr. Bergquist's statements about
4 the other issues that Ms. Isso asked you about, correct?

5 MS. ISSO: Objection, asked and answered.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 BY MS. ROSENBLUM:

9 Q Okay. Dr. Pickar, regarding your criticisms of Dr.
10 Bergquist's report and her conclusions, did those statements
11 do -- let me ask it a different way. Does being aware of
12 those statements refreshed as to those comments in Dr.
13 Bergquist's report change your opinions today?

14 MS. ISSO: Objection, lacks foundation.

15 THE COURT: Overruled.

16 MS. ISSO: Which -- which statements?

17 THE COURT: The statements in his report. She
18 specified that.

19 MS. ISSO: He just said a lot of the statements were
20 out of the scope. So which one is it? Did he read them? Did
21 he -- he just -- they testified. They were out of his scope
22 of his employment.

23 THE COURT: Not his ultimate recommendations.

24 Overruled.

1 BY MS. ROSENBLUM:

2 Q All right. Dr. Pickar, can you answer my question?

3 A It doesn't change anything with -- with respect to
4 the opinions I offered in my report.

5 Q And you stand by those opinions today; is that
6 correct?

7 A I'm sorry, could you repeat the question?

8 Q Do you stand by those opinions as you sit here
9 today?

10 A Yes.

11 MS. ROSENBLUM: Your Honor, I don't have anything
12 further for Dr. Pickar.

13 THE COURT: All right, Dr. Pickar. Thank you for
14 testifying here today. Have a good day. Stay safe and
15 healthy.

16 THE WITNESS: You're welcome. Thank you, Your
17 Honor.

18 THE COURT: Ms. Rosenblum, your next -- apparently
19 your next expert.

20 MS. ROSENBLUM: Judge, as I stated at the beginning,
21 Ms. Harris is unavailable today. She is --

22 THE COURT: Oh.

23 MS. ROSENBLUM: She is a treater. She is not an
24 expert. She's --

1 THE COURT: Okay.

2 MS. ROSENBLUM: -- a treater. And she -- originally

3 she was unavailable because she has her own children with

4 special needs that have therapy on --

5 THE COURT: Listen.

6 MS. ROSENBLUM: -- Friday.

7 THE COURT: The question -- are you ready to go with

8 your -- your case, Ms. Isso?

9 MS. ISSO: I'm going to call Eugene Shapiro.

10 THE COURT: Okay. So that fixes that.

11 MS. ROSENBLUM: Okay.

12 MS. ISSO: You're going to go up there. No, on the

13 other side.

14 THE CLERK: Raise your right hand. You do solemnly

15 swear the testimony you're about to give in this action shall

16 be the truth, the whole truth, and nothing but the truth, so

17 help you God?

18 THE WITNESS: I do. I'm going to ask permission to

19 remove my mask, Your Honor, if that's okay with you. I -- I

20 have an accent so it's probably going to be easier for court,

21 but whatever you decide on the rule.

22 MS. ISSO: I have no objection to that.

23 MS. ROSENBLUM: I have no objection.

24 THE MARSHAL: I'll move this -- this up close so you

1 can speak directly into the microphone.

2 THE COURT: My -- listen, as I couldn't find mine
3 originally, I got mine on. My understanding is unless I get
4 consensus from everybody on the courtroom, I'll just have to
5 have you speak as loud as you can. So unless everybody
6 wants --

7 MS. ROSENBLUM: There's not an objection.

8 MS. ISSO: There's no objection.

9 THE COURT: None?

10 MS. ROSENBLUM: None.

11 MS. ISSO: None.

12 THE COURT: Does that go for everybody in the
13 courtroom?

14 MS. ROSENBLUM: Yeah.

15 THE COURT: We'll have to ask I guess each witness
16 that comes in though. So if we have an -- no objection, then
17 we'll all just --

18 THE WITNESS: Sounds good.

19 THE COURT: -- unmask. All right. Ms. Isso, if you
20 want to go ahead.

21 EVGENY SHAPIRO
22 called as a witness on his own behalf, having been first duly
23 sworn, testified upon his oath as follows on:

24 DIRECT EXAMINATION

1 BY MS. ISSO:

2 Q State your name, for the record.

3 A My legal name is Evgeny Ilyich Shapiro.

4 Q What else are you known as?

5 A As Eugene Shapiro.

6 Q Okay. What is the name of the child subject of this

7 case?

8 A Ava Garcia-Shapiro.

9 Q And what's her date of birth?

10 A September 26th, 2018.

11 Q And how old is she today?

12 A She is three years old.

13 Q Is she currently -- does she have insurance?

14 A She is currently on her mother's private insurance

15 as well as Medicaid.

16 Q Was -- she was on your insurance previously?

17 A She was briefly on my private insurance --

18 Q Okay.

19 A -- most recently.

20 Q Were you present at the hospital during the child's

21 birth?

22 A Yes, I was.

23 Q Did you attend the prenatal appointments?

24 A Yes, I have.

1 Q How many of them?

2 A I have attended all of them.

3 Q All of them. Is your name on the birth certificate?

4 A Yes, it is.

5 Q Did you and the Defendant live together?

6 A We have briefly lived together for about a couple of

7 weeks the first time we dated but I would be at her house at

8 least four days a week every week.

9 Q And during that time were you taking care of the

10 child?

11 A Yes, I was.

12 Q And what things were you doing for the child?

13 A I was watching the child, I was cooking for the

14 child, I was feeding the child, I was changing her diapers. I

15 was working with her on teaching her Russian and English. I

16 would sing to her. I would play the guitar and the piano for

17 her. I would take her to my house as well in which at my

18 house I played with her and so on and so forth.

19 Q And were these times when you were alone with the

20 child?

21 A Yes. That's correct.

22 Q And about how many days a week were you watching the

23 child when -- and -- and where -- where was Ms. Garcia during

24 this time?

1 MS. ROSENBLUM: Objection, foundation.

2 THE COURT: What --

3 MS. ISSO: Okay. During the --

4 THE COURT: As far as the time period.

5 BY MS. ISSO:

6 Q During the first two years of the child's life.

7 THE COURT: There you go.

8 A The Defendant was at work when I was watching the
9 child.

10 Q And where did she work?

11 A She work -- she works at the City of Henderson.

12 Q Okay. And how many hours a day was she leaving you
13 with the child?

14 A Eleven plus hours two to four days a week.

15 Q Okay.

16 A I have also watched the child exclusively in the
17 summer of 2019 between mid-May 2019 and mid-August 2019 for
18 four days, 11 plus hours. I have also watched the child on
19 demand when she had fights with her mother every few weeks and
20 change what she called the schedule. And then I would watch
21 the child for a week or two exclusively four days a week
22 Monday through Thursday 11 plus hours a day.

23 Q You testified you would take the child to your home
24 as well, right?

1 A That is correct.

2 Q And was she complaining at that time during the
3 first two years when you took the child to your home?

4 A No, she wasn't. In -- in fact she expected myself
5 and my mother that was also watching Ava to be available
6 immediately as soon as she had a fight with her mother and
7 would deny her mother access to Ava. She expected us to jump
8 in -- in immediately and be ready for -- to watch Ava which we
9 were.

10 Q Are you involved in the child's medical care?

11 A Yes, I am.

12 Q Do you attend the child's medical appointments?

13 A Yes, I do.

14 Q Do you know which doctor the child's seeing at this
15 time?

16 A Yes.

17 Q Which doctor?

18 A Ava has seen Dr. Hutchings at Siena Pediatrics, Dr.
19 Miyake at Allergy Partners of Nevada, Dr. Gaspar at Ackerman
20 Autism Center, Firefly Behavior Services for her ABA therapy.
21 She's going to see Dr. Shin (ph) for her eye appointment. And
22 she's going to Anthem Dental Pediatrics for -- to check on her
23 teeth.

24 THE COURT: This is for the attorneys and clients as

1 well. I -- I can see him -- I prefer that you talk to your
2 attorney like a conversation exactly you are doing --

3 THE WITNESS: Absolutely.

4 THE COURT: -- and I can see you -- we don't have
5 that -- see that little box up there. But I -- I can see your
6 facial expressions much better on my video monitor. So --

7 THE WITNESS: Okay.

8 THE COURT: -- that's why --

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: -- I'm looking this way and not that
11 way.

12 THE WITNESS: Sounds good.

13 THE COURT: Okay.

14 BY MS. ISSO:

15 Q Was the child recently diagnosed with anything?

16 A Yes, she was.

17 Q And what was she diagnosed with?

18 A She was diagnosed on August 10th by Dr. Gaspar with
19 mild autism level one with speech delay.

20 Q Before she was diagnosed with that, did they have
21 any other theories of what was causing her speech impediment?

22 A Yes.

23 Q What did they believe it was?

24 MS. ROSENBLUM: Objection, speculation.

1 MS. ISSO: He's going to be here to testify, Dr.
2 Gaspar.

3 THE COURT: Then you might ask him or you would have
4 to rephrase it as to how he would know.

5 MS. ISSO: Okay.

6 THE COURT: But if you're going to have the other
7 person coming in anyway, it's --

8 BY MS. ISSO:

9 Q Does the child have a treatment plan?

10 A Yes, she does.

11 Q Could you describe it to the Judge or what -- what
12 is it titled?

13 A Yes, it's -- it's Ava's ABA plan developed by Heat
14 -- Heather Tauchen. She's one of the witnesses. And that's a
15 developmental plan for her ABA treatment. It states that --

16 MS. ROSENBLUM: Objection, move to strike.
17 Non-responsive.

18 THE COURT: He answered the question. He's just --
19 I -- I will -- he'll have to stop after he indicated that
20 there is a treatment plan done by Heather. You would have to
21 ask follow up questions.

22 BY MS. ISSO:

23 Q Okay. So who was it issued by?

24 A Heather Tauchen of Firefly Behavioral Services,

1 BCBA.

2 Q Is she currently treating the child?

3 A She is along with three other RBTs, registered
4 behavior technicians.

5 Q And do you know when Heather started treating the
6 child?

7 A Yes, on September 13th she has done evaluations on
8 September 1st at my house and on September 3rd of the
9 Defendant's house and then the treatment -- treatment started
10 on September 13th, the same day her report came out.

11 Q Okay. Was the child recently issued an IEP?

12 A Yes, she was.

13 Q And do you know who issued that?

14 A Yes, the Clark County School District Child Find.

15 Q And do you know what that report suggests or
16 recognize?

17 A Yes, it recognized that Ava goes to a -- a general
18 classroom which she actually started this week -- this Monday.
19 This is her third day of going to school. She's going to do
20 an elementary school and she's in the regular classroom,
21 inclusive classroom, with neurotypical kids.

22 Q And do you know when that report was issued?

23 A Yes, I believe it was issued on October 21st.

24 Q We have copies of the report. And we want -- we

1 want to move to admit them. They were just -- it was just
2 issued October 21st. It is the IEP for the child.

3 THE COURT: An objection with an IEP -- IEP report?

4 MS. ROSENBLUM: I don't have any objection.

5 THE COURT: What are -- we got to -- we got to label
6 it something. So what letter are you up to?

7 MS. ISSO: Well, I thought you said Kathleen
8 Bergquist's report was going to be number 1. That's what you
9 said --

10 THE COURT: Well, I -- yeah, let me clarify for the
11 record. Kathleen Bergquist's report will be Court's Exhibit
12 number 1, but anything else will have to come through you.
13 They have not objected to it. So we'll -- whatever your last
14 one is, what is -- what is the last one you have listed? I
15 don't have a --

16 MS. ISSO: 64. I have 64. So can we make this 65?

17 THE COURT: Make it 65 then.

18 (PLAINTIFF'S EXHIBIT 65 ADMITTED)

19 MS. ROSENBLUM: Another copy of it though?

20 MS. ISSO: I have five copies right here.

21 THE COURT: Do you have a copy?

22 MS. ROSENBLUM: I need to get a copy.

23 THE WITNESS: It's five copies.

24 MS. ROSENBLUM: I don't have theirs. So --

1 THE WITNESS: They're separated by those --
2 MS. ROSENBLUM: -- if she's going to refer to
3 specific pages, I need a copy. It's -- it's not an original,
4 is it?
5 THE WITNESS: This is the original. You know that.
6 MS. ROSENBLUM: This is --
7 THE WITNESS: Copy --
8 MS. ROSENBLUM: This is not an --
9 THE WITNESS: What do you mean --
10 MS. ROSENBLUM: -- original.
11 THE WITNESS: -- by an original? This is copies
12 that I made that was mailed to us by Child Find.
13 MS. ROSENBLUM: I just want the original. That's
14 all. I just asked. I didn't want to take an original, but --
15 THE WITNESS: No.
16 (COURT AND CLERK CONFER BRIEFLY)
17 THE COURT: Did you say you had five copies?
18 THE WITNESS: Yes.
19 THE COURT: Sorry. One, two, three, four and then
20 we have an extra one. So is there -- is there --
21 THE WITNESS: Yeah --
22 THE COURT: -- two here?
23 THE WITNESS: -- there's -- there's separated Judge
24 by a pink -- or whatever that is, an orange sheet. You --

1 THE COURT: Okay.

2 THE WITNESS: -- can see it, yeah.

3 THE COURT: I'm sorry.

4 THE WITNESS: No problem.

5 THE COURT: Here you go, Madam Clerk.

6 BY MS. ISSO:

7 Q Would you -- were you involved in that -- in that
8 interest, you know, evaluation and treatment?

9 A Well, yes. Absolutely. I -- I have participated in
10 every appointment since Ava was born including all of the
11 meetings with TMG, including all of the meetings with Firefly,
12 including all of the meetings with a school district and so on
13 and so forth. I have been present for every appointment.

14 Q Not only did you babysit, did you contribute
15 financially whatsoever during -- since the child was born
16 or --

17 A Yes --

18 Q -- even before?

19 A -- I have.

20 Q Tell the Judge about that.

21 MS. ROSENBLUM: Objection, calls for a narrative.

22 Q Tell the Judge about how you contributed
23 financially.

24 MS. ROSENBLUM: Objection, calls for a narrative.

1 THE COURT: Overruled. We have to -- I'm going to
2 allow it. Go ahead.

3 THE WITNESS: So I have contributed over \$10,000
4 overall that I can trace. I believe that I contributed much
5 more. I gave Defendant \$2,000 the week before Ava was born.
6 All of that is submitted as evidence. I have given her checks
7 and cash during the time we were together between September
8 2018 and July 20 -- 2020. I have also given her a check for
9 \$1900 on June 23rd, 2020 that she later returned to me I
10 believe trying to make it sound like I wasn't contributing.
11 In addition to that, I have cooked for the Defendant and
12 bought food for her, bought food for the child.

13 I bought medicine for the child. I have receipts
14 for -- Ava was on acid reflux medicine for over six months
15 when she was born. And -- and I -- which was not covered by
16 the Defendant's insurance. And that was the one who paid for
17 that -- for that medicine.

18 All that time I bought her ointments for her skin.
19 She has -- had at the time sensitive skin. Again, that was
20 not covered. It required a special prescription that I have
21 to go to special pharmacy or that was done by me. And I have
22 paid for that medicine. I have at least \$825 in receipts for
23 that. I cooked for the Defendant and I have partial receipts
24 of \$4600 from Walmart and that's partially only because at the

1 time Walmart had this policy of price matching which required
2 entering the receipts. So it -- it is much, much more.

3 In addition to that, I have paid for every outing
4 that we had between -- before Ava was even born and until July
5 2020. Every time we went out when it was two of us, three of
6 us, or even five of us when -- when we went with my older
7 kids. I was the one who would pay for, you know, going to
8 restaurants, things of that nature, any activities we had,
9 going to parks, going to Springs Preserve or going any --
10 anywhere where we would go before Ava was born and after Ava
11 was born.

12 THE COURT: See, so I am going to jump in at this
13 point. He is being narrative and is talking about stuff that
14 -- that has nothing to do with child support. Paying for
15 meals, going to parks, things like that, is not child support.

16 MS. ISSO: No, we're just --

17 THE COURT: I think that --

18 MS. ISSO: -- talking that he was there physically
19 and financially. That's what we're trying to show here.

20 THE COURT: Okay. He's indicated that --

21 MS. ISSO: Okay.

22 THE COURT: -- so far.

23 THE WITNESS: I have paid for 3D ultrasound before
24 Ava was born so we can see our child. I paid for Christmas

1 pictures and so on and so forth because I -- I have at least
2 \$10,000 of -- of evidence that I can prove that was submitted.
3 I believe that I contributed much more.

4 BY MS. ISSO:

5 Q Okay, sir. And then when you were babysitting, did
6 she ever make any complaints to you during that time, the
7 first two years when she was working, did she make complaints
8 to you about your babysitting style?

9 A No, she hasn't.

10 Q Or when you were watching the child?

11 A No, she hasn't.

12 Q And are you able to take care of the child at least
13 146 days out of the year?

14 A Yes, absolutely. I am able to take care of this
15 child every day if needed.

16 Q Every day? Okay. And then --

17 A Yes.

18 Q -- do you have a criminal record?

19 A No, I do not.

20 Q Have you been arrested?

21 A No.

22 Q What timeshare are you recommending that the Judge
23 implement in his order today?

24 A I am asking for a 50/50 timeshare. I am asking that

1 each parent gets a weekend with the child. Any decent parent
2 wants to spend weekends with their child and take them places.
3 And -- and so I -- I recommend a week on -- I recommend a
4 two-two-three schedule with the current schedule week one
5 being my weekend. That is also because Ava currently only
6 sees her brother literally twice a month which to me is just
7 cruel. They have a wonderful relationship. She loves them
8 and they love her. And so I would ask for the two-two-three
9 schedule with week one being my weekend with current temporary
10 schedule and with week two being the Defendant's weekend. I
11 would ask to adjust it to a week on week off but that depends
12 on, you know, what the other party is thinking about that.
13 But two-two-three schedule to me seems -- seems very fair and
14 a reasonable schedule to adopt.

15 Q Describe the relationship between the child and her
16 siblings.

17 A As I just stated, they have a wonderful
18 relationship. They love each other. Ava waves at her
19 brothers, smiles. She go -- I'm sorry. She calls them by
20 their names.

21 Q Do you need a tissue?

22 A No, I'm okay. She calls them by their names. She's
23 visibly upset when she comes to the house and they are not
24 there. She's learned so much from them. For example, they --

1 it was their idea to try to put a cereal snack into her
2 Cheerios and she started eating them. She loves playing with
3 them. She learned words from them. They have a wonderful
4 relationship together. My kids have been asking why they can
5 only see their sister twice a month. They do not understand
6 that.

7 She points to pictures of -- I mean, it's -- it's
8 wonderful a relationship that I would on -- only want to
9 nurture especially because Ava actually needs interaction with
10 other child. That is in her best interest.

11 Q What are some fun things you've done with with the
12 siblings together with Ava? Like do you go to a pumpkin
13 patch? What are some fun -- fun things you did?

14 A We go to parks, we go to Pumpkin Pa -- Patch in the
15 -- in the summer. We went to the pool. Ava loves going to
16 the pool. We've gone walking -- I -- I take Ava to play
17 places and she loves going with her siblings and they slide
18 down the slide and -- and play together and I -- I just see a
19 smile on her face and she knows that she has two older
20 siblings that love her very much.

21 Q So are you suggesting that you have Ava on the same
22 weekends that you have your other children?

23 A Yes, that is correct. I think to do it otherwise
24 would be really cruel because any family wants -- wants to get

1 together and -- and have time together on the weekends.
2 That's when most parents -- any decent parent might know wants
3 to spend their time with their children together so they can
4 go places they can potentially travel and so on and so forth.
5 Current schedule does not allow that. In -- in fact, current
6 schedule only has me have two Sundays a month.

7 Q Dr. Bergquist described -- in her report described
8 Ms. Garcia as being inter -- interrogative like when she
9 communicates with you almost like a criminal proceeding. What
10 is your response to that?

11 MS. ROSENBLUM: Objection, misstates the facts and
12 evidence.

13 THE COURT: Overruled.

14 THE WITNESS: Can I answer that?

15 BY MS. ISSO:

16 Q Yeah. I mean, that's what -- that's what Ms. --

17 A Okay.

18 Q -- Dr. Bergquist said.

19 A Okay. Yes, that's --

20 THE COURT: Unless you're saying no, it's absolutely
21 not in there.

22 MS. ROSENBLUM: It -- it is Dr. Bergquist's
23 recitation of what Dad reported to her. Dr. Bergquist didn't
24 make a finding that Mom is that way. Dr. Bergquist reported

1 what Dad reported to her.

2 THE WITNESS: That's not correct.

3 THE COURT: I'll have to have you read directly from

4 the report --

5 MS. ROSENBLUM: Yeah.

6 THE COURT: -- exactly what it says Ms. Isso if

7 that's the case.

8 MS. ISSO: I mean, her --

9 THE COURT: I misunder --

10 MS. ISSO: -- expert just talked --

11 THE COURT: I misunder --

12 MS. ISSO: -- about a video that --

13 THE COURT: That is --

14 MS. ISSO: -- Dr. --

15 THE COURT: -- his self -- it's his statement.

16 Okay?

17 MS. ISSO: Okay.

18 THE COURT: He can't ask about his own statement.

19 That --

20 MS. ISSO: Okay. Okay.

21 THE COURT: Go ahead --

22 MS. ISSO: But --

23 THE COURT: -- and re --

24 MS. ISSO: -- Doctor -- but you just had an expert

1 talk about --

2 THE COURT: Ms. Isso --

3 MS. ISSO: -- a video that --

4 THE COURT: -- we're not talking --

5 MS. ISSO: -- Dr. Bergquist --

6 THE COURT: -- talking about the expert.

7 MS. ISSO: -- addressed in --

8 THE COURT: Right.

9 MS. ISSO: -- her report.

10 THE COURT: We're not talking about the expert --

11 MS. ISSO: So --

12 THE COURT: -- right now.

13 MS. ISSO: -- I mean, I --

14 THE COURT: You --

15 MS. ISSO: -- just want to be treated fairly.

16 That's all.

17 THE COURT: Go ahead and read from the report if

18 necessary. If it indicates that's what he reports, then

19 that's not what she determined.

20 THE WITNESS: That's not --

21 MS. ISSO: Okay. So Dr. Bergquist states in her

22 report -- let me find the page. In Dr. Bergquist report, it

23 uses words that communication is like an -- an interrogation

24 and --

1 THE COURT: Ms. --

2 MS. ISSO: -- criminal investigation.

3 THE COURT: -- I need -- I'm at the report. I need
4 a report. I need a paragraph number. Because that is what
5 their --

6 MS. ISSO: Okay.

7 THE COURT: I don't have this -- I've read it a
8 couple of times. I do not have it memorized.

9 MS. ISSO: Okay.

10 THE COURT: I'm sure you guys probably do by now,
11 but --

12 MS. ISSO: No. In -- in page 30 of the report, it
13 says Mr. Shapiro reports difficulty with co-parenting because
14 Nechole's controlling nature but states he wants to be able to
15 co-parent for Ava's sake.

16 BY MS. ISSO:

17 Q What is -- what do you -- what do you want to tell
18 the Judge about it?

19 A The Defendant is uncooperative. She has anger
20 management issues. She -- it -- it's not possible to get
21 along with her unless you basically do whatever she says. She
22 is controlling. She is unwilling to compromise. I believe
23 she is a bully. I believe she is a tyrant. I believe she is
24 a liar who does not have moral integrity to be a prosecutor of

1 City of Henderson.

2 Q Okay. Okay. Look -- look at page 30 of the report.
3 It says results from the PAI plus suggest that she is self
4 assured, confident, and dominant and prefers to interact with
5 others in situation -- situations over which she can exercise
6 some measure of control. This is congruent with Mr. Shapiro's
7 view of Nechole. He complains that she is controlling, my way
8 or the highway. That personality trait seems to have served
9 her well in her career as a city attorney. Her communications
10 with the co-parent often sound like an interrogation or
11 criminal investigation. Assuming the worst and challenging
12 him on every detail of the story. That's page 30. What is --
13 what do you want to tell the Judge about that?

14 A That is -- that's absolutely correct. I think Dr.
15 Bergquist was spot on. And I did not tell that unlike the
16 Counsel is trying to say. She got that from interviewing both
17 of us in front an impression of the Defendant. The Defendant
18 is absolutely impossible to deal with. She has anger issues.
19 She goes from one to zero in a split of a second. She gets up
20 -- constantly upset and that's why she would change the
21 schedule that we have every few weeks. She would get upset
22 with her mother for something her mother would say or do and
23 then deny her mother -- her mother access to Ava. She did the
24 same thing with me. She's controlling, she's aggressive, and

1 she's uncooperative most of the time. Only her way or the
2 highway.

3 Q When she would argue with her mother, would she keep
4 the child away from the mother?

5 A Yes, she would. She would -- she would change this
6 -- again, the so called schedule instantly and would expect
7 myself or my mother to be available to watch Ava which she
8 were. Then she would not just deny her mother access to Ava,
9 she would not speak to her mother. She would not return her
10 phone calls, she would not return her texts, until she calm
11 down. And it takes her awhile to calm down.

12 Q How old is her mother?

13 A She is 65.

14 Q Was she using her for babysitting as well?

15 A Yes, she was even though I -- I -- when Ava was born
16 and after the Defendant went back to work after her maternity
17 leave I asked to watch Ava every day but she insisted on her
18 mother watching Ava twice a week.

19 Q When you would ask to see the child when the
20 Defendant was not working, like see the child alone, would she
21 allow you to?

22 MS. ROSENBLUM: Objection, foundation.

23 BY MS. ISSO:

24 Q The first two years of the child's life.

1 A Nechole --

2 THE COURT: I'll allow that.

3 A -- has limited my time with Ava since Ava was born.
4 She decided when, how long, and how I can see Ava. That
5 started from the moment the child was born. It escalated
6 starting in December of 2019 and then January 2020 and
7 throughout. It -- first she would limit my time with Ava on
8 Fridays and did not allow me to see Ava on Fridays at all. I
9 would ask every weekend and she would say no. then it became
10 Fridays and Saturdays. And then eventually starting July 3rd,
11 2020 she denied me access on Friday and Saturday and then only
12 allowed me to see Ava in the park for 25 minutes when she was
13 holding the child and I would have to follow them like a dog.

14 Even when I was watching the child at her home and
15 when she was there, I was working her dog in the morning and
16 then afternoon after she came back from work. In the morning,
17 she would close the door to the child's bedroom so I cannot
18 spend time with Ava. When she came back from work, she did
19 the same thing.

20 When her mother was watching Ava, I would still come
21 to the house because I took the dog to appointments. I give
22 the dog cancer medicine. I bathed the dog. Okay. And -- and
23 she would only allow me on those days would only allow me to
24 see the child for like 45 minutes between 5:00 o'clock and the

1 time she came home. So this continued throughout the
2 relationship and as soon as the child was born.

3 Q So she would only let you see the child when she was
4 working.

5 A She -- it was years and was always at the time that
6 she decided when, how, how long, when -- where and so on and
7 so forth. That --

8 Q But she doesn't work on Friday, right?

9 A She does not work on Friday.

10 Q So that's why she didn't want you to see the child
11 on Friday.

12 A That's correct. She hold --

13 Q She doesn't work -- she doesn't work on Saturday.

14 A She does not work on Saturday.

15 Q Well, you said on Sunday she would let you see the
16 child at the park while she's holding the child.

17 A That was in the last -- in the last couple months
18 before this case was filed. So between June -- I would say
19 June 20 -- no, I -- I'm sorry. It was July 3rd and until we
20 filed the case, if I recall. That was what was happened.
21 Yes. No Fridays or Saturdays and -- and only -- and only a
22 few minutes at the park when she was holding the child.

23 Q So when it financially benefitted her, she allowed
24 you to watch the child.

1 MS. ROSENBLUM: Objection, leading, assumes facts
2 not in evidence.

3 THE COURT: Sustained.

4 BY MS. ISSO:

5 Q So you were watching the child when she was working?

6 A That's absolutely correct. In fact, she calculated
7 and told me when we're speaking about the child that --

8 MS. ROSENBLUM: Objection, move to strike.
9 Non-responsive. Everything after yes.

10 THE COURT: Sustained.

11 BY MS. ISSO:

12 Q What did she tell you about that?

13 A She said that she calculated she would save \$10,000
14 by -- by not putting the child in daycare because I could
15 watch the child.

16 Q A month?

17 A A year.

18 Q A year. Okay. A year, sorry.

19 A Maybe some daycares.

20 Q Sorry. How would you describe the -- the mother --
21 the grandmother that was babysitting the child?

22 A The grandmother is old. She's overweight. She has
23 a lot of health issues. She has diabetes. She has anxiety.
24 She has depression. She wore grip socks in the house because

1 she's afraid of falling.

2 Q Grip socks?

3 A Yes, grip socks. She was overbearing with Ava. And
4 that is clear -- clear and can be seen on -- on a few videos
5 that the -- the Defendant submitted of her -- of her camera.
6 By the way, the camera was involved 24/7. And -- and she
7 would watch that camera and then confront her mother about
8 something that she did not like. Her mother was constantly in
9 Ava's business. She would not allow her a second to be by
10 herself. The grandmother cannot get down on the floor or get
11 up from it without holding onto something. On those videos
12 that they submitted, the grandmother can be seen almost
13 falling on the floor following the child on her knees because
14 she cannot get up.

15 Not -- not being able to figure out how the diaper
16 pail works. If they can prefer -- but Ava wanders in and out
17 of the -- she complained about her joints and she simply did
18 not get along with the Defendant and yet the Defendant still
19 insisted for -- for Mother to babysit.

20 Q Did you try to resolve this issue with -- this case
21 with the opposing party before you filed a complaint?

22 A Oh, yes.

23 Q Tell me about --

24 A Oh, yes.

1 Q -- that.

2 A Anytime we had a disagreement and -- and try to
3 figure things out I would state to her that if things don't
4 work out I wanted joint custody of Ava, specifically in
5 December of 2018, September 2019, and July of 2020 I told her
6 that I want the joint custody of Ava. When -- on this
7 instances when we discussed that, she would become very upset
8 and told me she would never allow that and she would spend her
9 last dollar to find -- to fight me in court. And when I
10 mentioned child support, she said that the Judge would have to
11 impose that on her. She would not be paying me child support.
12 I would have to take her to court to do that. That's what she
13 told me.

14 Q What do you do for a living, Eugene?

15 A I am a college educator. I teach music for CSN and
16 NSC. I also perform music.

17 Q Look at Exhibit number 25.

18 A I'm going to need my laptop for --

19 Q Well, look -- look right there.

20 A Oh, over there. Okay.

21 THE WITNESS: Can I -- can I -- Your Honor, can I
22 get my glasses, please?

23 THE COURT: Okay.

24 THE WITNESS: Okay. I think I can see that, but

1 just in case. Thank you. Yeah, I can see that. Oh, that
2 would make it --

3 THE COURT: Just for the record, Ms. Isso, if you
4 want to let us know which exhibit you're referencing.

5 MS. ROSENBLUM: Mine aren't paginated.

6 BY MS. ISSO:

7 Q Okay. Exhibit number 25. Do you know what this
8 document is?

9 A Yes, that's part of the text message exchange
10 between Defendant and myself.

11 Q On 0856, you're asking her to see the child on your
12 own.

13 A Yes, that was during one of the weekends.

14 MS. ROSENBLUM: Objection. I -- I'm sorry, on what
15 page is that?

16 MS. ISSO: 0856.

17 MS. ROSENBLUM: And what's the date on it?

18 BY MS. ISSO:

19 Q Do you know approximately when this text message was
20 sent? This is between January -- these are between January
21 and late December of 2019 and July 2020, but we have the
22 complete text messages for the last three years we have
23 submitted. That also has that part of the exchange.

24 A So you're asking her to see the child. And what

1 does she say?

2 Q She said no. She said I'm enjoying my time, but --
3 oh, she says enjoy your day with your boys.

4 A And you asked to see the child why? Because you had
5 your other children?

6 Q I'm asking to see the child because it's the weekend
7 and I want to see my child and I want to see my child every
8 day. And also that's what -- what my sons that also want to
9 come and -- and spend time with -- with their -- with their
10 sister because she limited my time with -- she limited their
11 time with -- with my children too. Even when we visited she
12 would -- would only allow them to stay for an hour because she
13 could not tolerate my kids. She told me that she doesn't love
14 my kids, doesn't want to live with them. In four years
15 that --

16 MS. ROSENBLUM: Your Honor, I move to strike this
17 testimony as unresponsive.

18 THE COURT: Sustained.

19 BY MS. ISSO:

20 Q Okay. Over here, you asked her to see the child on
21 your own, correct?

22 A Yes, that's correct.

23 Q And she says enjoy your day with your boys.

24 A That's correct.

1 Q Which means you're not going to see the child, you
2 have your other children.

3 MS. ROSENBLUM: Objection --

4 Q Correct?

5 MS. ROSENBLUM: -- Your Honor.

6 THE COURT: Sustained.

7 MS. ROSENBLUM: Counsel's testifying.

8 BY MS. ISSO:

9 Q And then what did you say to her?

10 THE COURT: Sustained though.

11 A I am enjoying my day with my boys. I would also
12 like to see my daughter. I am respectfully asking to see her
13 at the time that --

14 Q Did you end up seeing your child that --

15 A No.

16 Q -- day? Did you end up seeing your child that day?

17 A No.

18 Q No? Okay.

19 A No. If she said no, there's no way of -- it's my
20 way or the highway. It's never been that she changed her
21 mind. She changed her mind once in those -- when she --

22 MS. ROSENBLUM: Objection --

23 A -- she told me yes --

24 MS. ROSENBLUM: move to strike.

1 A -- and then said --
2 MS. ROSENBLUM: Non-responsive.
3 THE COURT: Sustained.
4 A -- no.
5 MS. ISSO: No, he's permitted to say what he -- what
6 he's dealing with.
7 MS. ROSENBLUM: There's no --
8 MS. ISSO: This is his own personal information --
9 knowledge that --
10 THE COURT: He's going --
11 MS. ISSO: -- he has.
12 THE COURT: -- beyond -- he answered your question
13 but he's going beyond what your question was, Ms. --
14 BY MS. ISSO:
15 THE COURT: -- Isso.
16 BY MS. ISSO:
17 Q Is that --
18 A Ms. Isso --
19 Q Is that typical --
20 A -- you can look at my --
21 Q Is that typical --
22 A -- notes over there.
23 Q -- of the --
24 A I'm --

1 Q -- Defendant to --
2 A Go ahead.
3 Q -- do that to you?
4 A Say it again?
5 Q Is that typical of her to do that to you?
6 A Yes, absolutely.
7 Q Tell the Judge about that.
8 A Nechole is a tyrant. She decides when -- how things
9 work and if it doesn't con -- she's extremely rigid. So if
10 anything doesn't conform to her understanding of how things
11 are but related to her, related to her relationship with the
12 child, related to her relationship with me, related to her
13 relationship with health professionals. Okay. Most of the
14 time she's used to getting her way. If she doesn't get her
15 way, the only way she knows how to do -- to -- what to do is
16 to react, to become angry, to scream, and to deny any types of
17 request whether it's myself, her siblings, her mother, her
18 friends, or anybody like that.
19 MS. ISSO: Okay. We move to admit Exhibit 25.
20 MS. ROSENBLUM: I would object, Your Honor. Exhibit
21 25 is, I don't know, thousands of text messages that I don't
22 believe were produced in discovery.
23 MS. ISSO: Everything was produced in discovery.
24 THE COURT: Okay.

1 MS. ISSO: Everything --
2 THE COURT: That's --
3 THE WITNESS: Yes --
4 MS. ROSENBLUM: -- with --
5 THE WITNESS: -- they were.
6 THE COURT: I don't believe -- I need to know
7 whether you receive them or not and if they were if you're
8 going to object on something else same as Ms. Isso. I would
9 need a formal objection was filed with the court. If you
10 didn't receive them, that's a legitimate --
11 MS. ROSENBLUM: I would also indicate to the Court
12 that the documents I received from Counsel are not Bate
13 labeled. So I --
14 THE COURT: They're not what?
15 MS. ROSENBLUM: They're not Bate labeled.
16 THE COURT: We -- we tried to contact your office
17 yesterday. Did you get them Bates stamped? Because --
18 MS. ISSO: I just got her a copy here. I fixed
19 everything last night for her.
20 THE COURT: Okay.
21 MS. ISSO: And I have a copy for her here. So --
22 THE COURT: Well, that would have been nice --
23 MS. ISSO: -- I'm happy to give them to her.
24 THE COURT: -- to probably given it --

1 MS. ISSO: She could have said something to me.
2 THE COURT: -- to her at 9:00 a.m., but all right.
3 THE WITNESS: All of our text messages were
4 submitted timely.
5 MS. ISSO: Here you go.
6 MS. ROSENBLUM: I don't have a flash drive to even
7 -- to even --
8 MS. ISSO: Well, you provided your -- your documents
9 on a USB.
10 MS. ROSENBLUM: I have your USB, but your USB --
11 THE WITNESS: We can hold --
12 MS. ROSENBLUM: -- weren't --
13 THE WITNESS: -- onto your computer.
14 MS. ROSENBLUM: -- Bate labeled when I got them --
15 MS. ISSO: Should have --
16 THE COURT: Okay.
17 MS. ISSO: -- said --
18 THE COURT: Listen.
19 MS. ISSO: -- something to me.
20 MS. ROSENBLUM: -- three weeks ago.
21 THE COURT: Procedurally, we contacted her
22 yesterday. As soon as we saw that they were not Bates
23 stamped, we required under the rule that she Bates stamp them.
24 So if she's done that, particularly if there's thousands of

1 documents it probably took her quite some time to do that. So
2 you don't have a USB on that --

3 THE WITNESS: I have an extra laptop if she wants to
4 use it.

5 MS. ROSENBLUM: I do not --

6 MS. ISSO: No. No. No.

7 THE COURT: That --

8 MS. ISSO: We're using that.

9 THE COURT: -- device?

10 THE WITNESS: Okay.

11 MS. ROSENBLUM: -- have a USB on here.

12 THE COURT: No?

13 MS. ROSENBLUM: I do not have a USB on here, Judge.

14 MS. ISSO: We move to admit Exhibit 25.

15 MS. ROSENBLUM: I'm still -- I still have an
16 objection pending. I would -- if Counsel knows where they
17 were disclosed and can point me to it quickly --

18 THE COURT: Right. It would --

19 MS. ROSENBLUM: -- that would be super helpful.

20 THE COURT: Okay. It was --

21 MS. ROSENBLUM: I don't have the entire --

22 MS. ISSO: This needs to be coming --

23 MS. ROSENBLUM: -- file with me.

24 MS. ISSO: -- out of her time, okay?

1 THE COURT: Not if they were not filed it's not. So
2 I need a -- a date like she gave you, the date that she showed
3 you use or you filed with the Court.

4 MS. ISSO: February 28, 2021. These are number 25.
5 We disclosed these like a year ago.

6 THE WITNESS: That's --

7 MS. ISSO: We --

8 THE WITNESS: -- right.

9 THE COURT: You seem to have if you're looking
10 through them, Ms. Rosenblum=.

11 MS. ROSENBLUM: I have what she gave me as her trial
12 exhibits. These are all of her trial exhibits.

13 MS. ISSO: Which I've given her a copy --

14 THE COURT: Okay.

15 MS. ISSO: -- weeks ago.

16 THE COURT: Do you have those ones that she's
17 referring to, the Exhibit 25?

18 MS. ROSENBLUM: I have the exhibits in front of me.
19 I'll stipulate to the admission -- I -- I guess we're
20 admitting all of it. I would object on relevance. I'm not
21 sure that all of the text messages are relevant, but --

22 THE COURT: Again, there was no objection filed like
23 was the response with Ms. Isso's over her objection because
24 there was not an objection filed with the Court. I'm going to

1 go ahead and --

2 MS. ROSENBLUM: I don't know --

3 THE COURT: -- allow it.

4 MS. ROSENBLUM: -- if that's accurate. Let me look.

5 (PLAINTIFF'S EXHIBIT 25, BATES 0856 ADMITTED)

6 BY MS. ISSO:

7 Q Take a look at Exhibit number 31. Do you know what
8 this document is?

9 A Let me see a little bit more. It's pictures of --
10 these are the pictures of Ava at my house.

11 Q Okay. And (indiscernible) when they were taken?

12 A The -- that's one of the last pictures that I was
13 actually taking at my house with -- with Ava before she denied
14 me access to Ava. This -- the -- the last time Ava was at my
15 house. This is I believe June 22nd, 2020.

16 MS. ISSO: Move to admit.

17 MS. ROSENBLUM: No objection.

18 (PLAINTIFF'S EXHIBIT 31 ADMITTED)

19 BY MS. ISSO:

20 Q Tell the Judge about the denying access --

21 THE COURT: The last time she was at your house in
22 2020?

23 THE WITNESS: That was before I filed --

24 THE COURT: Oh, okay.

1 THE WITNESS: -- before -- before the matter came to
2 court, Your Honor.

3 THE COURT: Okay.

4 THE WITNESS: Because she denied me access to Ava
5 after that for 33 days.

6 THE COURT: Okay.

7 THE WITNESS: Sorry if I wasn't clear.

8 THE COURT: No, that's okay.

9 THE WITNESS: Okay.

10 THE COURT: Listen, I have -- keep things clarified.

11 THE WITNESS: Yeah, the last time she was at my
12 house before this whole issue happened was --

13 BY MS. ISSO:

14 Q What is number -- Exhibit number 39?

15 A Number 39 are pictures of Ava at my house with her
16 siblings.

17 Q Do you know --

18 A That's --

19 Q -- approximately when these were taken, like a time
20 frame?

21 A Between I would say November, September of 2020 and
22 -- and today.

23 MS. ISSO: Move to admit.

24 MS. ROSENBLUM: No objection.

BY MS. ISSO:

Q Ava -- what is Ava doing in this --

THE COURT: All right.

Q -- picture?

THE COURT: You know what, after thinking about --
was it Exhibit 31 or 25? If it's three years of text
messages, I do need to limit it to the entries that are
actually relevant that you're going referring to. I am --

MS. ISSO: That's going to --

THE COURT: -- not reading --

MS. ISSO: -- take us 10 -- that's going to take us
14 days. We can't do that. No -- no --

THE COURT: I'm letting --

MS. ISSO: No Judge is making me --

THE COURT: Then --

MS. ISSO: -- do that.

THE COURT: Then we're going to have a gap between
here and Friday then you'll let me know which pages. But I am
not reading text messages between two people that -- that
cover --

MS. ISSO: That's --

THE COURT: -- a span of --

MS. ISSO: That --

1 THE COURT: -- three years.

2 MS. ISSO: This was not -- that's not what it is.

3 It's not what -- I don't know why she's saying that. He's

4 disclosing them in different exhibits but that one wasn't a

5 span of three years. That -- that's not that long. That --

6 THE COURT: Okay.

7 MS. ISSO: -- was only a few pages.

8 THE COURT: All right. My misunderstanding.

9 MS. ISSO: Okay. So we move to --

10 MS. ROSENBLUM: No, Exhibit 25 is three -- it's text

11 messages. It's that many pages. My client is holding that.

12 It's this many --

13 MS. ISSO: Let me look at it.

14 MS. ROSENBLUM: -- pages of text messages.

15 MS. ISSO: I'll look at it in a second.

16 THE COURT: You will --

17 THE WITNESS: We have --

18 THE COURT: -- look at it --

19 MS. ROSENBLUM: It's --

20 THE COURT: -- because --

21 THE WITNESS: We have reference.

22 THE COURT: -- again for right now --

23 MS. ROSENBLUM: -- thousands of --

24 THE COURT: -- it will --

1 MS. ROSENBLUM: -- pages.
2 THE COURT: -- it will be delayed. Then you let me
3 know which pages you believe are --
4 THE WITNESS: We have --
5 THE COURT: -- relevant.
6 THE WITNESS: Ms. Isso, we have -- if you look at my
7 -- I made a list of the -- which are all current within the
8 last year of her --
9 THE COURT: I'm not --
10 THE WITNESS: -- of her --
11 THE COURT: -- going to require you to do it today.
12 Again, you'll have a day in between now and --
13 THE WITNESS: Yeah, we have --
14 THE COURT: -- Friday --
15 THE WITNESS: You can --
16 THE COURT: -- when you come back --
17 THE WITNESS: You can ask me about --
18 THE COURT: -- Friday.
19 THE WITNESS: -- those right now.
20 THE COURT: It would be easier if you have page --
21 or Bates -- a list of Bates pages that are referred to --
22 THE WITNESS: I have that, Your Honor.
23 THE COURT: -- that the Court will look at.
24 MS. ISSO: Okay. Exhibit 39, move to admit.

1 MS. ROSENBLUM: No objection.

2 THE COURT: She -- she didn't object.

3 MS. ISSO: So you're saying for OurFamilyWizard I
4 can't move to admit that because you want specific lines?

5 THE COURT: No, that's not incorrect. If you want
6 the Court -- let's do it this -- this is how Court deals with
7 OurFamilyWizard. Again, for purposes of trial, refer to the
8 day and time, but we will go ahead and print out which will go
9 up through today. My Court Clerk will get a copy and a
10 custodian of records. That will be Court's Exhibit 2.

11 MS. ROSENBLUM: That's fine.

12 THE WITNESS: That's not -- just to correct you,
13 that's not --

14 THE COURT: That -- I understand that's not
15 OurFamilyWizard.

16 THE WITNESS: Yeah, that's --

17 THE COURT: She's talking about OurFamilyWizard.

18 THE WITNESS: Oh, okay. I'm sorry.

19 MS. ISSO: What -- what did I say wrong, Eugene?

20 THE WITNESS: You said OurFamilyWizard, but the
21 communications --

22 MS. ROSENBLUM: Are text messages.

23 THE WITNESS: Exhibit 25 is text messages --

24 MS. ISSO: Oh, yeah, yeah, yeah.

1 THE WITNESS: -- between myself and the Defendant.
2 MS. ROSENBLUM: Right.
3 MS. ISSO: Exhibit 25 is only 68 pages. That's not
4 three years of communications.
5 MS. ROSENBLUM: My Exhibit 25 --
6 MS. ISSO: It's only -- this --
7 MS. ROSENBLUM: -- is --
8 THE WITNESS: No, it starts -- Ms. Isso, it starts
9 with that but then it goes I took -- I took -- this is all of
10 the text messages. So it --
11 MS. ROSENBLUM: It --
12 THE WITNESS: -- start --
13 MS. ROSENBLUM: -- starts with text messages from
14 2018. It's this much plus.
15 THE COURT: No, Ms. Isso. I am not going through
16 it. Again, get me a list of the Bates --
17 MS. ISSO: Oh, no. You're right.
18 THE COURT: -- stamps --
19 MS. ISSO: I'm sorry.
20 THE COURT: -- of the pages --
21 MS. ISSO: It's a thousand (indiscernible) --
22 THE COURT: -- that are --
23 THE WITNESS: We can talk --
24 THE COURT: -- relevant --

1 MS. ISSO: Okay. Okay. You're right.
2 THE COURT: -- for me --
3 MS. ISSO: You're right.
4 THE COURT: -- to consider --
5 MS. ISSO: Okay. Okay.
6 THE COURT: -- and I will look at them --
7 MS. ISSO: Okay.
8 THE COURT: -- when I take this matter. Listen, let
9 me also be candid with both parties so you're not stressing
10 through now and for -- you will not be getting a decision for
11 weeks. The Court will take this matter under advisement. I
12 will be looking at everything that's been admitted and then
13 issue a decision. So hopefully that will take a little bit of
14 stress out of today and Friday as well.
15 BY MS. ISSO:
16 Q Opposing party continues to say you have -- allege
17 that you have ADHD. Did you go get tested for that?
18 A Oh, yes. Absolutely.
19 Q How many times?
20 A Three times.
21 Q And that you did that to appease her?
22 A Yes.
23 Q And what did the results show?
24 A I do not have ADHD.

1 Q Okay.

2 A I never had it.

3 Q Exhibit number 55 is -- is videos. This is 50 -- I
4 -- do you know approximately when these videos were taken?

5 A It depends on which videos. There are some videos
6 that I took with my camera at Defendant's house when I was
7 babysitting from her birth and on. And then there are also
8 recent videos that are taken at my house in the last eight
9 months, I would say.

10 Q So these are Exhibit number 55. Let's look at the
11 one title Ava and Daddy at Nechole's new house, July 13, 2020.

12 A Okay.

13 MS. ISSO: We can't hear the sound.

14 THE WITNESS: There is no sound. There is a sound
15 on my recording.

16 Q Did you take that video, sir?

17 A Yes, I did.

18 Q And what was Ava doing in that video?

19 A Oh, Ava was playing and she was saying words and I
20 would sing to her. And I -- I mean, I have -- I would have to
21 watch it to -- to see what -- but usually I would try to make
22 her say things and I would sing to her and she would repeat it
23 to me. I mean, and I was trying -- these videos were actually
24 taken to give to the Defendant because she was working and I

1 was giving her minute-by-minute progress of what I was doing
2 with the -- with -- with the child.

3 Q So she was demanding a progress report from you when
4 you were baby sitting -- when you were watching child?

5 MS. ROSENBLUM: Objection, misstates --

6 THE COURT: Sustained.

7 MS. ROSENBLUM: -- testimony.

8 THE COURT: That's not what he said.

9 BY MS. ISSO:

10 Q But was she requesting that from you?

11 A She was requesting it. I was also providing it --
12 provide -- I thought it would be a good thing to do.

13 Q What's going on in this video? Oh, this is not
14 showing. Oh, my God. I'm not playing the videos.

15 A Some of those videos Ms. Isso are very short, the --
16 the videos that I do.

17 MS. ISSO: Could -- could the Clerk play them for
18 us? Because the sound is not playing here. It's -- I hate to
19 connect to the screen share. Earlier your -- your staff told
20 me Your Honor just to do it through BlueJeans, but I had a
21 concern that the video wouldn't play the sound. I hate to do
22 screen share monitoring. Hold on. Hold on.

23 THE COURT: What is -- what is the date of that
24 video, Ms. Isso?

1 MS. ISSO: What -- what is -- it says what is the
2 AirPlay password for Courtroom 24. I don't know why it's
3 asking for a password. Whenever I do this in the other
4 courtroom, it's -- do you guys have your screen share
5 monitoring on, the mirror -- the mirror program? No one's
6 going to respond to me.

7 THE COURT: Oh, I was -- do you know what she's
8 referring to, Hilary?

9 THE CLERK: I have no idea.

10 THE WITNESS: Does that TV have HDMI?

11 THE CLERK: I have the videos --

12 THE WITNESS: Because we --

13 THE CLERK: -- that were --

14 THE WITNESS: -- can play it --

15 THE CLERK: -- submitted --

16 THE WITNESS: -- from --

17 THE CLERK: -- electronically --

18 THE WITNESS: -- from the laptop --

19 THE CLERK: -- but I don't know how to --

20 THE WITNESS: -- to HDMI.

21 THE CLERK: There's several of them marked 55, like
22 55 dash -- there's --

23 MS. ISSO: Could --

24 THE CLERK: -- 48 of them.

1 MS. ISSO: Could you play the second one; if you
2 don't mind?

3 THE CLERK: What's it called?

4 MS. ISSO: Just the second one on -- on -- that --
5 that shows up on your list.

6 THE CLERK: Blue rink?

7 MS. ISSO: Sure.

8 11:31:07

9 (VIDEO PLAYS IN COURTROOM)

10 THE CLERK: I don't know how to share this.

11 MS. ROSENBLUM: I don't know how to see it.

12 11:31:24

13 THE COURT: Is that the one?

14 MS. ROSENBLUM: We can't see it though.

15 THE CLERK: Yeah, I don't know how to share it.

16 MS. ROSENBLUM: There --

17 THE COURT: Okay.

18 MS. ROSENBLUM: -- should be --

19 THE COURT: We'll have to -- listen, we might have
20 to ask IT how that happens. We'll do that at noon when we
21 take a break.

22 MS. ISSO: Okay. We'll come back. Could you call
23 them and have IT here at noon, please?

24 MS. ROSENBLUM: There -- there should be like a --

1 MS. ISSO: You --

2 MS. ROSENBLUM: -- button at the top that says to
3 share screen.

4 MS. ISSO: And I already have it on my program here.
5 I've done -- I just did it in Department F. So --

6 MS. ROSENBLUM: I just (indiscernible).

7 MS. ISSO: So if we can have IT here at noon,
8 please. Hello?

9 THE COURT: We will, but go -- go -- continue on
10 because --

11 MS. ISSO: Okay.

12 THE COURT: -- again, I don't want you --

13 MS. ISSO: Okay.

14 BY MS. ISSO:

15 Q So in this case, what did you request from the
16 beginning in your complaint?

17 A I requested joint custody, joint physical, and --

18 Q And you --

19 A -- legal and physical custody.

20 Q And you heard today that on -- on the record the
21 opposing party has agreed to joint physical custody, correct?

22 A Yes, I have.

23 THE COURT: You know --

24 Q And I --

1 THE COURT: -- just ending it on the -- I'm not --
2 let's just get it so we don't have to keep asking it over and
3 over. That's agreed to, correct? It is joint legal, joint
4 physical custody as it -- I realize both parties would like to
5 switch the days and times around but there is no --

6 MS. ROSENBLUM: No, we don't --

7 THE COURT: -- controversy regarding joint legal and
8 joint physical custody.

9 MS. ROSENBLUM: Your Honor, our request is not to
10 change the schedule at all.

11 THE COURT: I understand that, but I -- theirs --
12 they want to change the schedule. I realize you don't. Right
13 now that is a joint physical custody schedule. So we have the
14 agreement for joint physical custody, correct?

15 MS. ROSENBLUM: The Court has --

16 THE COURT: So really what we're --

17 MS. ROSENBLUM: We're talking about --

18 THE COURT: -- going --

19 MS. ROSENBLUM: -- visitation.

20 THE COURT: -- for two days about is to figure out a
21 time schedule.

22 MS. ROSENBLUM: Correct.

23 THE COURT: All right. Okay, Ms. Isso? So you --

24 MS. ISSO: All right.

1 THE COURT: -- don't need to --

2 BY MS. ISSO:

3 Q Eugene, you know -- are -- are you seeking
4 attorney's fees?

5 A Yes, I am.

6 THE COURT: Well, let me cut -- and I do this to
7 everybody. Feel free to come to my court in every trial. I
8 do not deal with attorney's fees at trial. Once the final
9 order is done pursuant to NRCP 54, either or both sides can
10 file a motion for attorney's fees and place it on this Court's
11 chamber calendar.

12 MS. ISSO: Oh, okay.

13 THE COURT: I know both of you have done it. I've
14 -- I've done attorney -- you've never done attorney's fees in
15 mine?

16 MS. ROSENBLUM: Yes.

17 MS. ISSO: No, I think this is my first trial --

18 THE COURT: Okay.

19 MS. ISSO: -- before you.

20 THE COURT: All right. So --

21 MS. ISSO: Sorry.

22 THE COURT: It's all right.

23 THE WITNESS: It means more expense for me.

24 BY MS. ISSO:

1 Q Are you seeking reimbursement though for the custody
2 evaluation?

3 A Yes, I am. In fact, the Judge mentioned that he
4 would consider that.

5 Q If it came out in your favor.

6 A Correct.

7 Q And Dr. Bergquist recommended joint physical, joint
8 legal, correct?

9 A Yes, she has.

10 Q Can you tell the Judge how much you spent on the Dr.
11 -- Dr. Kathleen Bergquist --

12 A I paid Dr. Kathleen Bergquist \$3,000 per Judge's
13 order and I paid her seventy hundred -- \$750 for her witness
14 fee.

15 Q And you had obtained an expert in this case as well,
16 right?

17 A That is correct.

18 Q A rebuttal expert?

19 A That is correct.

20 Q And how much did you pay that expert?

21 A I paid Dr. Carter \$2,000.

22 Q How much did you spend like on depositions and stuff
23 like that?

24 THE COURT: Again, Ms. Isso, I'm -- everything --

1 all of --

2 MS. ISSO: Okay.

3 THE COURT: -- the attorney's fees and costs.

4 MS. ISSO: Okay.

5 THE COURT: Everything will come in subsequently.

6 Q When --

7 THE COURT: Let me just remind both sides because
8 I'm actually -- nevermind. Go ahead.

9 MS. ISSO: Okay.

10 Q The opposing party complained in her pleadings that
11 you didn't baby proof the home -- your home. Could you tell
12 your Judge -- tell the Judge the response to that?

13 A That is simply a blatant lie. I have baby proofed
14 my house between November of 2019 and March of 2020. In fact,
15 Ava has been at my house as that exhibit just showed as late
16 as June 22nd, 2020.

17 Q So tell the Judge what happened with that. Did you
18 provide photos, things of that sort?

19 A After we broke up and I tried to negotiate with the
20 Defendant and reach an agreement, which I could not, she
21 stated that she changed the keys to her house and would not
22 allow me to come and see my daughter there and she stated --
23 on August 2nd of 2020, she stated that she would allow me to
24 see Ava for whichever hours she wanted me to see Ava but

1 demanded baby proofing and to which I told her that my house
2 is baby proofed. She demanded to see pictures. I texted her
3 on August 20th 17 pictures of baby proofing. But she kept
4 saying my house is not baby proofed and physically -- demanded
5 physically to come and inspect my house.

6 Q Which baby proof items did you purchase and which
7 ones did you put in the house?

8 A My house is baby proofed to all the standards that
9 are described on any websites or what pediatricians recommend.
10 It's doorknobs, it's latches to not have the drawers open.
11 It's protections for -- for the -- for the corners. I mean,
12 any -- any -- you name it. I mean, it -- it's every --
13 everything is -- is done the way it should be.

14 Q Okay. Did she make any recommendations to you after
15 you showed her those pictures of any additional baby proofing
16 techniques you should implement in your house?

17 A No, she just kept saying she wanted more even though
18 again Ava was at my house since March of 2019 when the
19 Defendant went back to work after her maternity leave. That
20 is when the so called -- her schedule started and that's when
21 Ava was taken to my house and that continued between March of
22 2019 and June of 2020. And all of that time Ava was coming to
23 my house and all of that time -- and when Ava reached the age
24 where she was mobile the -- I -- I started baby proofing my

1 house. I bought items on eBay. I bought items at Walmart. I
2 installed them and so on and so forth and gradually baby
3 proofed my house. Ava was at my house until June 22nd, 2020.

4 Q And in fact during the deposition we took of Nechole
5 Garcia, we asked her do you want to inspect your home,
6 correct?

7 A That is correct.

8 Q And what did she say?

9 A She said no.

10 Q In discovery we requested medical records from the
11 opposing party, right?

12 A That is correct.

13 Q Did she provide them to us?

14 A No, she has not.

15 Q What happened? Tell the Judge what happened.

16 MS. ROSENBLUM: Objection, relevance.

17 THE COURT: Sustained. If they have any -- again,
18 listen. And this is not just you guys. It gets so tiresome.
19 When we come to court, we're at trial, and there is an
20 indication there was non response to discovery request. This
21 case has been going on for, what, over two years? That's the
22 purpose of the Discovery Commissioner. So the Court's not
23 going to take that into consideration.

24 MS. ISSO: No, Your Honor. We -- we finally got the

1 records. So that's not what we're trying to do right now.
2 We're just trying to show that she didn't cooperate during
3 this litigation.

4 MS. ROSENBLUM: I'm going to argue relevance.

5 THE COURT: Overruled.

6 BY MS. ISSO:

7 Q So did she give us those medical records that --

8 THE COURT: Or --

9 Q -- that we requested?

10 THE COURT: Or sustained. I'm sorry.

11 MS. ISSO: Okay.

12 MS. ROSENBLUM: Thank you.

13 THE COURT: The objection's sustained.

14 THE WITNESS: Yes, she gave us the medical
15 records --

16 MS. ROSENBLUM: Objection --

17 THE WITNESS: -- after we --

18 MS. ROSENBLUM: -- Your Honor.

19 THE WITNESS: -- subpoenaed them.

20 MS. ROSENBLUM: Relevance.

21 THE COURT: The objection is sustained.

22 MS. ISSO: No, she didn't give them to us. We
23 subpoenaed --

24 A Subpoenaed. That's what I just said.

1 MS. ROSENBLUM: Move to strike.

2 THE COURT: Sustained. Granted.

3 BY MS. ISSO:

4 Q Did Dr. Kathleen Bergquist observe the child at your
5 home?

6 A Yes, she has.

7 Q Did she make any complaints to you about the baby
8 proofing?

9 A No, she has not. She was very happy with the baby
10 proofing. In fact, I showed her every item and they actually
11 have to explain it to her because -- because she said she
12 hasn't had younger children in awhile. So I explained
13 everything and showed her everything and -- and told her she
14 can stay at my house for as long as she wanted to.

15 (COURT AND CLERK CONFER BRIEFLY)

16 THE COURT: Sorry.

17 THE WITNESS: No problem. Would you like me to
18 repeat what I said, Your Honor?

19 THE COURT: You can't do it during trial.

20 THE CLERK: That's IT.

21 THE COURT: That's IT. I -- I'm not stopping the
22 trial. So we're going to go at least until noon or 12:15 or
23 12:30 before we take a lunch break. What?

24 MS. ROSENBLUM: Noon, we -- I have to use the

1 restroom.

2 MS. ISSO: We can just stop now since they're here
3 because I -- I need a break too.

4 THE COURT: All right.

5 MS. ROSENBLUM: Yeah, I really need --

6 THE COURT: (Indiscernible), you want to go grab
7 them real quick.

8 MS. ROSENBLUM: The restroom would be fantastic.

9 MS. ISSO: Stop our --

10 THE COURT: We'll go ahead and --

11 MS. ISSO: -- time.

12 THE COURT: -- take a break.

13 MS. ISSO: Stop our time.

14 THE COURT: Break is 11 -- 11:40.

15 MS. ROSENBLUM: How long, Judge?

16 THE COURT: I -- if they're going to take more than
17 10 minutes --

18 MS. ROSENBLUM: Okay.

19 THE COURT: -- we'll have them come back. So for
20 right --

21 (COURT RECESSED AT 11:40 AND RESUMED AT 11:54)

22 THE COURT: We're back on the -- hold on a second.

23 MS. ISSO: Oh, I'm sorry.

24 THE COURT: Okay.

1 THE CLERK: We're back on.

2 THE COURT: We're back on the record.

3 MS. ISSO: Okay.

4 BY MS. ISSO:

5 Q So after Dr. Bergquist observed you and the child in
6 your home, did she make any complaints to you about anything
7 that she witnessed?

8 A She has not.

9 Q Did she ask you for additional time to observe you
10 and the child?

11 A No, she has not.

12 Q Did she report you to CPS?

13 A No, she has not.

14 Q You're able to subpoena some medical records of the
15 Defendant, correct?

16 A That is correct.

17 Q And which record did you subpoena?

18 A We subpoenaed the records of her therapist, Megan
19 Carp (ph).

20 Q Let's look at Exhibit number 49. What do the
21 records show?

22 MS. ROSENBLUM: Objection, Your Honor.

23 THE COURT: Did you file an objection, Ms.
24 Rosenblum?

1 MS. ROSENBLUM: No. No. Hold on.

2 THE COURT: If -- and if you need it sealed, we will
3 seal it, but as far as --

4 MS. ROSENBLUM: No, it's not that. I'm -- I guess
5 -- so the question is objection, what do the records show, I
6 guess it's vague and ambiguous. I guess that's my objection.
7 The question itself is vague and ambiguous.

8 BY MS. ISSO:

9 Q Look at Exhibit number 49. Are those the medical
10 records you subpoenaed?

11 A I do not see it currently on the screen
12 unfortunately.

13 Q Hold on.

14 A I'm happy to look at that.

15 Q Okay. You don't have to get up. Just
16 (indiscernible).

17 A Okay.

18 Q Are these the records that we subpoenaed?

19 A Yes.

20 Q Exhibit 49? Okay.

21 A Yes.

22 Q Are they true and accurate copies?

23 A Yes.

24 Q Do they contain a certificate of custodian?

1 A Yes, they do.

2 MS. ISSO: Move to admit.

3 MS. ROSENBLUM: I would object, Your Honor, as to
4 relevance. I believe we did file a written objection with
5 regard to these documents.

6 MS. ISSO: Parent's mental and physical health of
7 the parties is a factor.

8 THE COURT: It is a factor. I -- and I don't look
9 at stuff before so I don't know what's contained in it and
10 I'll just simply give it its due weight.

11 MS. ISSO: So it's admitted before I start talking
12 to him?

13 THE COURT: It's not submitted yet because I don't
14 know what's in it.

15 MS. ISSO: It's the medical records.

16 THE COURT: I still -- I don't know what's in it.

17 MS. ISSO: It's her med --

18 THE COURT: I don't look at -- I don't look at
19 exhibits beforehand.

20 MS. ISSO: Okay. But we're moving to admit them.
21 They're her medical records, her therapy records.

22 THE COURT: And I don't know what's in them. It
23 might be correct. It might -- might not be relevant. I mean,
24 there might --

1 MS. ISSO: It goes to her mental health. It's
2 relevant.

3 THE COURT: Okay. Go ahead and go off the record,
4 Madam Clerk, while you fix that.

5 THE CLERK: It was on that and then they said that I
6 changed something when I came in but I didn't -- I don't know
7 what it was that it was --

8 THE COURT: When you guys were in here, it was
9 playing up on there.

10 THE CLERK: Oh.

11 THE COURT: It just didn't have any sound.

12 THE CLERK: And that's not the file that she wants
13 to share apparently. So -- I don't know what's --

14 MS. ISSO: So I just go over here. I click share
15 screen.

16 UNIDENTIFIED VOICE: Oh, it's frozen. That's what
17 it looks like.

18 MS. ISSO: Well, it wasn't like that when she
19 touched the --

20 UNIDENTIFIED VOICE: No, it looks like it kind of
21 just froze up.

22 MS. ISSO: So when we played a video, I need the
23 sound to be playing too.

24 UNIDENTIFIED VOICE: Oh, it should play the sound

1 but it looks like it just kind of froze up.

2 MS. ISSO: Okay.

3 UNIDENTIFIED VOICE: Let me (indiscernible).

4 THE COURT: Ms. Rosenblum, since we're still
5 apparently on the record, what date did you file the
6 objection?

7 MS. ROSENBLUM: Because there's been a number of
8 them filed so I would have to look at what disclosure this was
9 and when the objection was filed. I'll look at -- the thing
10 froze up. It was -- wasn't something I did, just so you know.

11 THE COURT: Okay.

12 MS. ROSENBLUM: It just froze up.

13 MS. ISSO: Two, four, two, four, right?

14 (PAUSE)

15 MS. ROSENBLUM: It's -- we filed that objection on
16 September 2nd. It was their document disclosure 42. And that
17 objection was filed September 2nd.

18 UNIDENTIFIED VOICE: There's no sound.

19 MS. ROSENBLUM: Again, it's like you can either get
20 one or the other and you can't get both. It's either sound or
21 video or not --

22 12:01:02

23 (VIDEO PLAYS IN COURTROOM)

24 12:01:08

1 MS. ROSENBLUM: Oh, here we go.

2 THE COURT: All right. Are you guys -- are you guys
3 ready to resume now that the video is up? Okay. We're back
4 on -- did we go off the record are we still doing the --

5 MS. ROSENBLUM: We're still on.

6 THE COURT: All right. Were -- can you do it? Who
7 plays it? You or the Clerk?

8 MS. ISSO: Move to admit that exhibit.

9 THE COURT: I'm sorry?

10 MS. ISSO: Move to admit the exhibit that we were
11 just talking about.

12 THE COURT: I'm not going to -- I have not looked at
13 it. I don't know what it contains. It would have to be --

14 MS. ISSO: You can't look at it --

15 THE COURT: -- something of a --

16 MS. ISSO: -- until we admit it.

17 THE COURT: -- mental health diagnosis that would
18 affect someone's ability to raise a child. If it's just her
19 and her therapist talking, I don't know it.

20 MS. ISSO: She's alleged that he has ADHD and he
21 can't raise a child. So we can't --

22 THE COURT: I don't --

23 MS. ISSO: -- bring up --

24 THE COURT: -- know --

1 MS. ISSO: -- her issues?

2 THE COURT: -- until the -- again, we'll wait until
3 we get to that point. Let's do the --

4 MS. ISSO: Okay.

5 THE COURT: -- video and then --

6 MS. ISSO: Let's look at this.

7 THE COURT: -- get to that exhibit. And if it's --
8 they -- it's not relevant, it's not relevant.

9 BY MS. ISSO:

10 Q Okay. So let's look at this video which I labeled
11 as 55-3. This is part of Exhibit 55. So 55-3. I labeled
12 these all yesterday. And this is a video of -- of what?

13 A You -- you have to play it, Mrs. -- I --

14 Q Well, look at the top of the title.

15 A I wish I could see.

16 MS. ROSENBLUM: I cannot even see that part.

17 A Oh, this is --

18 Q Oh.

19 A -- Ava and speaking Russian.

20 Q Okay.

21 A Speaking Russian.

22 Q Okay. And approximately when was this video taken,
23 like month and year?

24 A I have to watch it. I'm not sure.

1 12:02:30

2 (VIDEO PLAYS IN COURTROOM)

3 12:03:02

4 A So I would say that's November of last year
5 approximately.

6 MS. ISSO: Okay. I move to admit this video.

7 MS. ROSENBLUM: No objection.

8 (PLAINTIFF'S EXHIBIT 55-3 ADMITTED)

9 THE COURT: I -- I have already stipulated to the
10 videos being admitted.

11 MS. ISSO: Offer 55.

12 THE CLERK: Just that one or all of them? Because
13 55 --

14 MS. ISSO: They're all just videos of the child.
15 They're not like anything --

16 THE COURT: Listen, I am not watching what could end
17 up being hours and hours --

18 MS. ISSO: I know. So we're going to move to admit
19 -- we're not going play each -- all -- play all of them.

20 THE COURT: Okay.

21 MS. ISSO: We're just going to play a couple.

22 THE COURT: So -- so that particular one then,
23 correct? Okay.

24 MS. ISSO: No, all of them. I thought we said --

1 MS. ROSENBLUM: Yeah.

2 MS. ISSO: -- all of them.

3 MS. ROSENBLUM: No, I'm objecting to all of them
4 being admitted.

5 THE COURT: I'm sorry.

6 MS. ROSENBLUM: I would object to all of the videos.

7 THE COURT: They're being cumulative. I'm not
8 watching half a child's life that's been placed on video, Ms.
9 Isso. Again, I'll watch a few of them, a few select ones, but
10 I am not watching all of them. The same thing as your text.

11 THE WITNESS: This is a video of me watching Ava at
12 the Defendant's house where I was teaching her how to -- how
13 to play the keyboard.

14 MS. ISSO: Move to admit this one, 55 --

15 THE COURT: They are --

16 MS. ISSO: -- 17.

17 THE CLERK: Which one is it?

18 MS. ISSO: 55-17.

19 (PLAINTIFF'S EXHIBIT 55-17 ADMITTED)

20

21 MS. ISSO: Now it's not working. 6 --

22 BY MS. ISSO:

23 Q Is -- is Ava bilingual?

24 A Yes, she is.

1 Q Does she understand Russian?

2 A She -- not only that she understands, she speaks
3 Russian. I mean, she knows at this point over 300 words
4 combined in both English and Russian.

5 Q What is this video? Oh, it's not playing but it's
6 playing on my computer. It's playing here but not the --

7 A This is myself and Ava and my kids Eric and Adam at
8 the Pumpkin Patch last year.

9 MS. ISSO: Do I have to go back on or something?

10 UNIDENTIFIED VOICE: (Indiscernible).

11 Q While we're waiting for that, has Nechole ever
12 committed domestic violence against you?

13 A She has been violent towards me, yes.

14 Q Tell the Judge about that.

15 A She has physically pushed -- pushed me out of the
16 house several times at her new house when I wanted to stay and
17 spend time with her and Ava which when first time with Ava is
18 when she was at her old house. She -- every time she would
19 get upset with me she would kick me out of the house. She
20 screamed at me, cursed at me, and give -- would give me the
21 silent treatment for weeks.

22 Q Other than push you, did she do anything else?

23 A Scream, curse me out.

24 Q No, anything else physically?

1 A No.

2 Q About how many times did she push you?

3 A I remember at least three to four incidences that
4 that happened.

5 Q And then how -- how strong were the push and were
6 they like a light push or a very forceful push?

7 A Oh, it was a forcible push.

8 Q Would you step back after she pushed you?

9 A Yeah, I would just leave. I -- I don't fight and --
10 and I don't --

11 Q Yeah, well, my question is when she pushed you, did
12 your body go back, what -- did you step backward or did you
13 re --

14 A Yes, somewhat. Uh-huh (affirmative).

15 Q I'm sorry, yes or no?

16 A Yes.

17 Q We went to a settlement conference in this matter,
18 right?

19 A That's correct.

20 Q And what happened there?

21 MS. ROSENBLUM: Objection, Your Honor.

22 THE COURT: Sustained.

23 MS. ROSENBLUM: Confidential settlement
24 negotiations.

1 MS. ISSO: We're not going to talk about the terms.
2 We're going to show the bad faith. That's why I filed --

3 THE COURT: Sustained.

4 BY MS. ISSO:

5 Q Did you guys come to an agreement?

6 MS. ROSENBLUM: Objection, Your Honor.

7 THE COURT: Sustained.

8 MS. ISSO: Because I have to go there and do it.
9 That doesn't work.

10 BY MS. ISSO:

11 Q Have there been any issues with guns on the
12 Defendant's side of the family?

13 A Yes, there were.

14 Q And tell the Judge about that.

15 A Her brother --

16 MS. ROSENBLUM: Obje -- I -- Judge, I'm going to ask
17 for an offer of proof as to how this is relevant.

18 MS. ISSO: Well, first and foremost, her grandma --
19 the grandma watches the child and in the grandma's household
20 there's been shootings where the brother shot himself and his
21 wife has shot him. There's violence on that side of the
22 family.

23 THE COURT: The objection's sustained.

24 12:08:47

1 (VIDEO PLAYS IN COURTROOM)

2 12:0852

3 MS. ISSO: Hold on. How do I stop this for a
4 second?

5 BY MS. ISSO:

6 Q So tell the Judge about that.

7 MS. ROSENBLUM: Objection, Your Honor.

8 MS. ISSO: Oh, sustained?

9 THE COURT: It's sustained.

10 MS. ISSO: Okay.

11 BY MS. ISSO:

12 Q So this video -- tell the Judge about this video.

13 A This is the video of last year when we went to
14 Pumpkin Patch. It's myself, Ava, and two of my kids. My
15 oldest was filming his -- he's doing -- he's midyear in -- in
16 middle school. So they do projects. So he liked doing this
17 project. So he's the one who's taking the video and my middle
18 son Adam is in -- in this video too. There are a series of
19 videos that we took.

20 MS. ISSO: It froze again. This never happened in
21 my other court -- in the other courtroom I was in. Just okay.

22 Q And then how would you describe the -- the
23 Defendant's relationship with her immediate family members?

24 A The Defendant doesn't get along with anybody

1 including her family members. She does not have an
2 established relationship with her siblings. She has a sister
3 and two brothers. They only see each other pretty much during
4 the holidays, Thanksgiving, and -- and Christmas. She maybe
5 talks to her sister Stephanie twice a year. She does not talk
6 to her brother, Caesar Jr. (ph) at all. In fact, they just
7 simply don't get along. And maybe talks three to four times a
8 year with her brother Christopher. She does not get along
9 with her mother, constantly gets upset at anything the mot --
10 the -- the mother would say about her. And when that happens,
11 she basically limits time with Ava and tells her not to come
12 to babysit anymore.

13 Q So the Judge wants to know what's in the -- the
14 medical records that I tried to admit. You want to see --
15 like I don't know, I don't know what's -- I can't see them.
16 We can't see them until they're admitted, Your Honor. So tell
17 the Judge what's in those medical records.

18 A The medical records show that Nechole has what's
19 called adjustment d/o.

20 MS. ROSENBLUM: Your Honor, I would object that this
21 is outside the scope of --

22 THE COURT: If there is a medi -- if the -- she is
23 correct in that there is a mental health component under the
24 statute, Ms. Rosenblum. And if there is something diagnosed

1 that might affect her ability as a parent, I have to -- it is
2 relevant. So your objection regarding relevance would be
3 overruled. I don't know. I don't look at them beforehand so
4 I don't get tainted in that way. But if she's got documents
5 that says she's diagnosed with something that might affect, I
6 have to let it in.

7 MS. ISSO: Sir -- sir, why did the -- oh, you're
8 fixing it?

9 UNIDENTIFIED VOICE: Yeah, every time it
10 (indiscernible).

11 MS. ISSO: So you're going to stay here, right?

12 UNIDENTIFIED VOICE: Yeah, I'll --

13 MS. ISSO: Cool. Thank you.

14 BY MS. ISSO:

15 Q So what -- so what do the medical records show?

16 A The medical records shows that she has adjustment
17 disorder with -- with anxiety. It talks about her being
18 anxious about her relationship with her mother. It -- they --
19 the records talk about her need to control her mother and
20 myself. The records show one of the billing codes that she
21 has for the generalized anxiety disorder is what's called
22 psychosocial dysfunction.

23 THE COURT: If there's diagnosis contained in the
24 reports, it will come in. Again, I will seal it for -- so no

1 one can access it at all from the public. I don't know how
2 you do that, Madam Court Clerk, for that particular exhibit.
3 I don't think the public can really get the exhibits anyway,
4 but just I want to be overly cautious that your personal stuff
5 does not get out.

6 MS. GARCIA: Thank you.

7 (PLAINTIFF'S EXHIBIT 49 ADMITTED)

8 THE COURT: And there will be an admonishment to the
9 Plaintiff, Counsel, as well as the Plaintiff that those
10 records are not to be disseminated to anybody.

11 MS. ISSO: We wouldn't do that --

12 THE WITNESS: Absolutely.

13 MS. ISSO: -- Your Honor.

14 THE WITNESS: Absolutely.

15 MS. ISSO: Okay. So that's admitted, right?

16 THE CLERK: So which exhibit is being sealed?

17 MS. ROSENBLUM: 49.

18 BY MS. ISSO:

19 Q And those medical records, they also talk about her
20 suffering from depression, correct?

21 A That's correct.

22 Q And we'll come back to that. How would you describe
23 Ava?

24 A Ava is a wonderful child. I -- Ava means everything

1 to me. She's smart. She's bright. She has wonderful sense
2 of humor. She is extremely talented. She has an amazing
3 memory. She remembers books by heart in both Russian and
4 English. Different books at my house and I hear also
5 Defendant's house. In fact when we started ABA treatments,
6 the RBTs that we have saw that Ava already knows to read which
7 actually at this point she just started. But at that point
8 she wasn't and they all thought that Ava knows how to read
9 because she memorizes the content of books by -- by just
10 reading it once or twice when I read it to her she remembers.
11 She has an amazing musical talent. That is my area of
12 expertise. I do have master's degree in music and have been
13 in music myself since I was seven years old and have taught at
14 CSN for over 21 years.

15 And I can tell you that Ava has perfect pitch --
16 near perfect pitch, amazing musical memory, exceptional sense
17 of rhythm and a very beautiful voice. I have no doubt that
18 she has what it takes to become a very talented musician or a
19 singer and that is something that I've been nurturing since
20 she was born and will continue to nurture.

21 Q What is it like a typical day for you and the child?

22 A Before Ava started school, and this is just recent
23 because she just started the school this Monday, but typically
24 we'll wake up in the morning and I help her dress up. I brush

1 her hair. I brush her teeth. And then we have breakfast.
2 After that, we typically go out for either a walk or to the
3 park. Then we come back and I work with her on the techniques
4 that were introduced by the RBT technicians as well as the
5 speech therapist or -- and occupational therapist. In fact,
6 every minute of my day is dedicated towards helping Ava with
7 her condition. We play games. We take turns doing preferred
8 and non preferred activities. We read books in English and
9 Russian. We try to memorize different words. We sing. We
10 play.

11 Q What kind of food does she eat?

12 A Ava is a picky eater. At my house she eats
13 Beech-Nut strawberry fruit bars. She eats Gerber organic
14 fruit and vegetable bars, date and carrots specifically. She
15 eats Cheerios. She cereal, a fruit snack. She eats sun
16 butter -- sunflower butter sandwiches. She drinks juice,
17 diluted juice, which was one of the recommendations that TMG,
18 the early intervention recommended that the Defendant actually
19 refused to implement. We are working currently with RBTs on
20 introducing the chicken to her.

21 Q Did the Defendant ever tell you that she stopped
22 breastfeeding the child?

23 A Yes, she has.

24 Q When did she tell you that she stopped

1 breastfeeding?

2 A She told me in May of 2020 even prior to that at our
3 first appointment of Ava's one year well visit our
4 pediatrician at the time from Anthem Hill Pediatrics Dr.
5 Miller (ph) advised the Defendant to wean Ava from the breast
6 stating that --

7 MS. ROSENBLUM: Your Honor, I would object to the
8 hearsay statements.

9 THE COURT: Sustained.

10 BY MS. ISSO:

11 Q Just don't say what the doctor said.

12 A She was advised to stop breastfeeding and she
13 didn't. She told me in May of 2020 that she's done
14 breastfeeding.

15 Q Has the Defendant informed you that she started
16 potty training the child?

17 A No, she hasn't. She refused to do that last year
18 even though it was recommended by Dr. Hutchings. And even now
19 when the potty training has started by Firefly Behavior
20 Services, she failed to inform me about that. I actually
21 found out from RBTs. In fact, what I was told is that she
22 didn't even have a potty at her house. And the first time
23 they tried, they had to hold Ava over the toilet which wasn't
24 very comfortable for her. I still do not know if she has a

1 potty at her house or not.

2 Q You ended up buying a potty, right?

3 A I bought the potty last year.

4 Q And you informed the Defendant?

5 A Yes, at our appointment with Dr. Hutchings last year
6 I have informed the Defendant and -- and asked Dr. -- the
7 doctor for the advise.

8 Q Tell the Judge about the situation related to the
9 potty.

10 A I -- it was a well visit. It was her two year well
11 visit with Dr. Hutchings. And after he was done with the
12 regular routines for the well visit he asked if we had any
13 questions. And I told Dr. Hutchings that what -- what his
14 opinion is on -- on potty training. And I told him that I
15 have a potty for Ava and would it be a good time to introduce
16 the potty to Ava. He said yes, absolutely. And he
17 recommended that. And then the Defendant after that emailed
18 me through OurFamilyWizard trying to sound like I started
19 potty training Ava without telling her. I did not.

20 I bought a potty for her so she can get used to it
21 in the room and I was waiting for an advice. And Dr.
22 Hutchings did recommend having Ava play with it, go around it,
23 and so and so forth. Because the Defendant refused to potty
24 train, I waited until this year to start it when she finally

1 realized that it was time for Ava to get potty trained.

2 Q You told her that the child sat on the potty with a
3 diaper, right?

4 A Yes, Ava would play with the -- around the potty and
5 would sit on it for -- for a few seconds. I have never
6 removed her pants. I have never removed her diaper. Nothing
7 like that. She was just treating it as a toy which again Dr.
8 Hutchings informed us that that's actually a very good idea to
9 let them get used to something in their --

10 Q And what was the Defendant's response to that? What
11 did she say and what did she do?

12 A She accused me of potty training. She said that I
13 started potty training without informing her.

14 Q And she got upset?

15 A Yes, she got very upset and emailed me several times
16 trying to -- trying to make it sound like I did not share that
17 with her which again I did not start potty training.

18 Q So the opposing party is accusing you of not being
19 attentive towards your child. What's your response to that?

20 A Again, that is just a blatant lie. That is
21 absolutely not true. Ava -- Ava means everything to me. And
22 I have -- her needs are the most important needs to -- to --
23 in fact, that's why I started the RBT training myself. I am
24 currently 80 percent down into -- into the -- finishing the 40

1 hour RB -- RBT class to become myself a registered behavior
2 tech -- behavior technician so I can help my daughter. I have
3 implemented every advice that was given since -- since she was
4 born, specifically including every treatment we received from
5 all -- any advice received from the early intervention TMG or
6 Therapy Management Group.

7 I have worked with Ava on speech, occupational
8 therapy, on the feeding therapy. I have participated in every
9 appointment whether it was via Zoom or in person. I have
10 participated in every ABA appointment since we choose Firefly
11 to -- to be our ABA therapy company. I have sat with RBT
12 technicians and work with them together on using those
13 techniques to teach her how to use -- prefer to not rotate
14 between preferred and non-preferred activities. I have
15 participated in parental training with Heather Tod -- Todgin
16 (ph) and I -- as I said before started an RBT class and almost
17 finished with it and after that will undergo supervision by
18 another BCBA.

19 I, in fact, emailed the Defendant via family --
20 OurFamilyWizard as soon as Ava was diagnosed and stated in
21 laid out my principles of what the ABA treatment should be and
22 how I see it. So I -- the -- the statements are blatant lies
23 of the Defendant.

24 Q Is -- is -- do you know if -- is Ava's room baby

1 proofed in Nechole's house?

2 A She -- the room is completely baby proofed in -- in
3 Nechole's house which can be seen on some of those videos.

4 Q And there's a gate at the threshold?

5 A There is no gate but we would close the door if we
6 didn't want her to get out.

7 Q Is there anything else you want to tell the Judge?

8 A Regarding --

9 Q Anything else you want to tell the Judge?

10 A Yes. I would like to talk about the temporary
11 schedule to explain to Your Honor what that is and how that
12 reflects what's happening. And first of all, I'm very
13 grateful to Your Honor for the holiday schedule because if it
14 wasn't for that, I would not see Ava on most of the holidays.
15 The Defendant's offer to me last year around Christmas was
16 four hours on Christmas Day and four hours New Year's Day.
17 That was it. She vehemently -- both her and her attorney have
18 vehemently fought me getting -- get -- getting overnights, me
19 getting weekends, me getting holidays.

20 So if it wasn't for that order -- as an example,
21 last weekend was one of the few weekends when I had all three
22 of my children together because of the Nevada Day/Halloween.
23 And it was wonderful. It was absolutely wonderful.

24 However, I feel that the temporary schedule that was

1 imposed is extremely unfair and tilted heavily towards the
2 Defendant. I feel that the Defendant has been treated
3 throughout this with kid gloves. Both her and her attorney
4 vehemently lied and played games since this started, lying
5 sometimes to -- to the Judge's face during the hearing. Ms.
6 Rosenblum lied to the Judge saying that I am unemployed during
7 one of those hearings. That is a blatant lie.

8 Ms. Rosenblum during her deposition laughed when I
9 said that Ava is a picky eater and then had chutzpah to bring
10 the fact that she has other clients that might have a similar
11 problem. That is just very concerning to me as -- as a mother
12 that cannot empathize with another parent. Obviously she has
13 no idea what it's like to have a child that has feeding
14 issues.

15 The Defendant had lied throughout the beginning of
16 this procedure saying that I have not established the
17 relationship with Ava when I have seen Ava every day since she
18 was born unless denied by the Defendant. And so the current
19 schedule was imposed.

20 First, before March of this year I have not had any
21 overnights and Ava was dragged between both houses for six
22 months. I do not think that's in the best interest of Ava. I
23 do think it's in the best interest of the Defendant. And then
24 when -- since the report came out and it came out in February,

1 only then through objections of the Defendant and her Counsel
2 was I awarded two overnights. The schedule is still heavily
3 tilted towards the Defendant. It is -- on the weekends, it's
4 a -- it's an 80/20 schedule because it's not -- it's not
5 sharing weekends. It's me having two Sundays a month and the
6 Defendant having the rest. And the way it affects me as a
7 parent and the way it affects Ava's relationship with her
8 older siblings to me is just cruel. The same goes with the
9 rest of the schedule. I only have two full days a month -- a
10 -- a week, I'm sorry, and then one partial day. So that is
11 still a 70/30 split which I think is extremely -- extremely
12 unfair.

13 On top of that, I want the Judge to know that the
14 Defendant has not paid a penny of child support. In fact, she
15 has been receiving Biden Administration child payments. But
16 her salary of a hundred and nine thousand dollars. She still
17 receives \$300 a month. She's been receiving that since July
18 of -- of this year. I have seen exactly zero from that. So I
19 just wanted Your Honor to know.

20 I have -- I think Ava deserves the best and Ava's
21 best interests met when she has equal timeshare with both
22 parents. In fact, I have never had problems sharing Ava with
23 the Defendant. It was always the other way around. And when
24 this case is settled, I will invite the Defendant to

1 participate with the activities that we have. I have no
2 problems with that whatsoever. I will advise her to -- when I
3 have Ava for birthdays, when we go out, I have absolutely no
4 issues with that whatsoever. It has always been the other
5 side. It has always been the Defendant.

6 Q So this is the video we were talking about earlier.
7 This is you said the video with the Pumpkin Patch --

8 A Yes.

9 Q -- with the siblings?

10 12:2805

11 (VIDEO PLAYS IN COURTROOM)

12 A It's lagging.

13 MS. ISSO: Let's go forward to the part where it
14 says (indiscernible) --

15 Q The child is taking the video, right?

16 12:28:31

17 A One of my children, Eric is taking the video. The
18 other one, Adam, is like in and out of the frame.

19 MS. ISSO: So we want to move 55-9. Is this the one
20 with the child in it?

21 THE COURT: Here --

22 THE WITNESS: This is just me with activities tak --

23 THE COURT: Hold on one second.

24 THE WITNESS: Yes.

1 THE COURT: Here -- listen, so you also don't have
2 to use your -- your time at -- at trial, Ms. Isso. Here's
3 what I'm going to do because if these are just -- listen. I
4 love nothing better than to just watch stuff like this all day
5 long. And it's the only good thing we get to do is the warm
6 fuzzy stuff.

7 MS. ISSO: Yeah.

8 THE COURT: We get it all the time. I'm sure you
9 both submitted in all your cases. So just kind of give a
10 touch of how things really are, having a good time. And,
11 again, I -- I know that you have photos or videos of your own.
12 I will both allow you to submit five -- no longer than five
13 minute videos and up to 30 pictures of -- if you've got them
14 as proposed exhibits. If there's -- if they're submitted for
15 other things like child abuse or something of that nature,
16 that's different. But these -- what I call the warm fuzzy
17 stuff I --

18 MS. ISSO: Yeah.

19 THE COURT: -- am going to limit. I am not watching
20 all those videos just --

21 MS. ISSO: These are the warm fuzzies. So we wanted
22 to admit -- admit 55-43 and the two that are just --

23 THE COURT: Wait, hold on. If you're going to give
24 me the -- if you've already picked them out, go -- give me a

1 second to write them down. Go ahead.

2 MS. ISSO: Well, I don't know if you've ever
3 admitted. So 55-39.

4 THE COURT: 55-39.

5 MS. ISSO: Well, which are the other two that I
6 already admitted.

7 THE CLERK: 55-3 is already admitted.

8 MS. ISSO: 55-3. Is there another one, Eugene, that
9 you want me to really focus on?

10 (COUNSEL AND CLIENT CONFER BRIEFLY)

11 MS. ISSO: Okay. It kicked me out again. 55,
12 that's your house, yeah, right? Yeah.

13 THE WITNESS: That's my house.

14 MS. ISSO: That's -- got to show that one. They
15 kicked me out again. 55-37. They kicked me out again Your
16 Honor which is -- this doesn't typically happen just so you
17 know.

18 THE COURT: Again, I'm -- I'm reiterating. You can,
19 but you're suing your time. I will absolutely watch it before
20 I render a decision. If you want to play it in court, that's
21 up to you, Ms. Isso.

22 MS. ISSO: This is ridiculous. It constantly kicks
23 me out.

24 (COURT AND CLERK CONFER BRIEFLY)

1 THE COURT: What's -- I'm sorry?
2 MS. ISSO: I'm just going to play this other video.
3 It's --
4 THE COURT: That -- you're fine.
5 MS. ISSO: It kicked --
6 THE COURT: You're fine.
7 MS. ISSO: It kicked -- it kicked me out again.
8 THE COURT: I'm just affording you the opportunity
9 if you don't want to --
10 MS. ISSO: I'm sorry, what opportunity is it?
11 THE COURT: I absolutely will watch it because it's
12 going to be an admitted exhibit.
13 MS. ISSO: Okay. The --
14 THE COURT: If you don't want to use your six hours
15 of time playing it for the Court since I'm going to watch it
16 anyway, it's up to you. I'm not going to dictate --
17 MS. ISSO: There's --
18 THE COURT: -- how you --
19 MS. ISSO: -- (indiscernible) a couple more and
20 we're done at this time. Just a couple more.
21 THE COURT: That's fine.
22 (PLAINTIFF'S EXHIBITS 55-9, 55-37, 55-39, 55-43 ADMITTED)
23 MS. ISSO: Eugene? Eugene?
24 THE WITNESS: Yes?

1 MS. ISSO: How much -- what time am I at right now?

2 THE COURT: I took 21 minutes off of the prior where
3 they were assisting you. At this point if you are insistent
4 on having them fix it and play it in court, this is going to
5 be allocated towards your time. Prior to the break it was 58
6 minutes and then we started again at 12:01 minus those 20
7 minutes. So I haven't added that up yet.

8 MS. ISSO: Are we on? Are we on? Just so you know,
9 the extra time is because the computer's freezing up. The
10 technology computer of the courtroom is freezing up. I don't
11 feel like it should be subtracted from our time, but -- what
12 number was I just looking at? 55 what? Which one was it?
13 I'm at your house.

14 (COUNSEL AND CLIENT CONFER BRIEFLY)

15 12:33:58

16 (VIDEO PLAYS IN COURTROOM)

17 BY MS. ISSO:

18 Q That's your house, right?

19 A Uh-huh (affirmative).

20 Q Okay. So here's -- go ahead and go back up there.
21 So this is 55-36.

22 MS. ISSO: I want to move to admit this video.

23 (PLAINTIFF'S EXHIBIT 55-36 ADMITTED)

24 BY MS. ISSO:

1 Q Eugene, tell the Judge what is this a video of.

2 A This is me paying with Ava, reading her books. It
3 looks like her crib, playing the keyboard. This is earlier in
4 terms of -- this -- I believe this is maybe the beginning of
5 this year. Oh, it says -- I'm sorry. October --
6 12:34:37

7 Q Oh, here it is. This -- is this her bedroom?

8 A Yes.

9 Q She has a crib?

10 A She has a crib, yes.

11 Q What else does she have in her bedroom?

12 A She has drawers there for her clothes and you cannot
13 see in the video but she has shelves with books and -- and her
14 toys.

15 MS. ISSO: I move to admit 55-37.

16 Q Who -- who do you live with, Eugene?

17 A I live with Ava and my sons Eric and Adam.

18 Q And does each child have their own room?

19 A My kids, Eric and Adam, my sons have their -- the
20 room that they share and then Ava right now this is the
21 biggest bedroom in the house. Right now I -- Ava's crib is in
22 my bedroom so I can tend to her which is very helpful. And
23 then when she gets older around five or six if -- if I'm still
24 in the same house that's going to be her main bedroom and I

1 have a third bedroom. My house is 1100 square feet three
2 bedroom house. And so my office will become my bedroom if I'm
3 still in the same house.

4 Q And do you have a backyard?

5 A I do have a huge backyard because the house was
6 built back in the 80s and these other houses that it's old
7 Henderson by Skyline Casino just to give you an idea. And the
8 -- the backyards are bigger than what they build now for the
9 houses that are worth half a million dollars. So huge
10 backyard. I have a lot of toys there for Ava, a lot things
11 that she loves to do. I have a swing. I have a slide. I
12 have a basketball hoop there and -- and so on and so forth.
13 Soccer gates and many other things.

14 Q Have you taken any other certificates or classes or
15 anything like that?

16 A Yes, I have. I have -- I have taken the parenting
17 case right away as -- as Dr. Bergquist's report came out. I
18 love taking classes. I love learning. I mean, I'm an
19 educator. That's my -- that's what I do for a living. So I
20 love taking classes so I took a 10 hour class to -- to -- and
21 -- and I -- I -- it's excellent. And like I said right now, I
22 -- was my decision to immediately to start being certified
23 towards becoming an RBT registered behavior technician myself
24 so that I can give the most to my daughter.

1 Q Were there ever times that you got the child back
2 from the Defendant and where she had a rash or anything like
3 that?

4 A Oh, yeah. There were many instances like that.

5 Q Tell the Judge about that.

6 A There are exhibits where Ava comes to my house and
7 she -- and she -- she has diaper rash, some severe. The --
8 the thing about Nechole is that she is extremely strict and
9 rigid in many areas but she -- then she's laissez-faire with
10 other stuff. One of them is a dog. She had a dog at her
11 house and they --

12 MS. ROSENBLUM: Your Honor, I move to strike his
13 testimony as non-responsive.

14 THE COURT: Sustained.

15 MS. ROSENBLUM: The question was about diaper rash.

16 THE COURT: Regarding the dog stuff, the --

17 MS. ISSO: Okay. Well -- okay.

18 THE COURT: The --

19 BY MS. ISSO:

20 Q Let's just talk about --

21 THE COURT: -- statement --

22 Q -- the diaper.

23 THE COURT: -- regarding the diaper rash --

24 A The diaper rash --

1 THE COURT: -- will be omitted.

2 A -- was because Nechole refused to put Ava in a
3 bigger diaper. She doesn't -- she's very square in terms of
4 understanding things. So to her the -- the diapers have to go
5 only by weight of the baby but not of the si -- because of the
6 size of the baby. So when I got Ava on those instances in the
7 exhibits that were submitted that she had diaper rash, it was
8 clear to me that she -- she's constricted in the diaper that
9 she was using. She was using a smaller size diaper. And then
10 when I confronted her on my -- OurFamilyWizard, she would say
11 but that's -- that's a right size of the diaper and I even
12 forward her -- forwarded her a couple of articles that talked
13 about parents and -- and health professionals, medi -- medical
14 professionals stating that the diaper does not just go by the
15 baby's weight, it goes by the baby's side -- size, I'm sorry.

16 MS. ISSO: So Your Honor, we have pictures of the
17 child's private area with the rashes, but I don't know how --
18 I've never had to disclo -- you know --

19 THE COURT: They'll be sealed from the public, Madam
20 Clerk.

21 MS. ISSO: Exhibit 40. We will move to admit
22 Exhibit 40 which has those pictures. I don't want to play
23 them because it shows her whole private area.

24 MS. ROSENBLUM: So we're offering to admit them but

1 we're sealing them, I guess? Is that what --

2 THE COURT: From the public. Yeah, again, I don't
3 know what they would have acc -- I'm just being overly
4 cautious, again, with her medical records, with pictures of a
5 young child's genital --

6 THE WITNESS: Absolutely.

7 THE COURT: I know that I've seen other cases where
8 exhibits admitted at trial have been sealed, you know, in case
9 anybody goes to review them. But --

10 MS. ROSENBLUM: This is a fundamental --

11 THE COURT: Listen, can -- they are what they --
12 stuff --

13 MS. ROSENBLUM: Right.

14 THE COURT: -- like that --

15 MS. ROSENBLUM: I mean --

16 THE COURT: -- comes in. Is it relevant?

17 MS. ROSENBLUM: -- I will stipulate --

18 THE COURT: Yes.

19 MS. ROSENBLUM: -- to their admission. The Court
20 I'm sure will give it the weight it is entitled to.

21 THE COURT: Okay.

22 MS. ISSO: So Exhibit 40 is admitted, Madam Clerk,
23 right?

24 (PLAINTIFF'S EXHIBIT 40 ADMITTED)

1 MS. ISSO: Okay. I don't want to even -- I don't
2 want to even -- I don't want to play them because I just don't
3 want to look at them.

4 BY MS. ISSO:

5 Q So let's go to --

6 THE COURT: Do you have anymore videos so -- so we
7 don't have to keep --

8 MS. ISSO: How many videos --

9 THE COURT: -- IT --

10 MS. ISSO: -- did I --

11 THE COURT: -- in here forever?

12 MS. ISSO: How many videos did I play already?

13 THE COURT: I'm sorry?

14 MS. ISSO: How many videos that I admit? I lost --

15 THE COURT: Mad -- Madam Clerk?

16 THE CLERK: There were -- after you talked about the
17 five, you had mentioned 55-3 which was already admitted,
18 55-39, -37, and then -36 was that last one that --

19 THE COURT: So that's four?

20 THE CLERK: Yeah.

21 THE COURT: So it would be one more.

22 THE CLERK: So then 40 was the photo.

23 MS. ISSO: So there should be one more?

24 THE COURT: I said you can -- you're not -- you

1 don't have to but you could.

2 MS. ISSO: So Exhibit 55, is that already admitted?

3 That was the one that we just got admitted, the one with the

4 pictures, right? 55?

5 THE COURT: 55 is all the pictures; is that correct?

6 MS. ISSO: Yeah.

7 THE COURT: Madam Clerk?

8 THE CLERK: 55 is all the videos.

9 THE COURT: Right. So it's not all of 55.

10 MS. ISSO: Oh, okay.

11 THE COURT: She just read the sub ones that were

12 admitted.

13 MS. ISSO: Okay. So here's some pictures that we

14 have too for 55.

15 THE WITNESS: These are the pictures that are going

16 to show Ava's Ava came --

17 MS. ISSO: So just hold on.

18 THE WITNESS: -- how Ava came --

19 MS. ISSO: Hold on.

20 THE WITNESS: -- to me.

21 MS. ISSO: That -- that contains some of the private

22 stuff. Hold on.

23 THE WITNESS: Ava --

24 MS. ISSO: I want to see if there's anything else.

1 Okay. So which one did we just admit with the -- with the one
2 that's sealed? Which one did we just admit?

3 THE COURT: That was 40.

4 MS. ISSO: That was 40? Okay. Yeah, okay. Those
5 were duplicate. Okay. And then we're just going to -- so
6 Exhibit 6, 7, 10, 11, 13, 22, 24. Those are -- let me see.
7 These are how you contributed financially to the child. Do
8 they stipulate to admit those? They just -- they just talk
9 about how much money they spent.

10 THE COURT: Ms. Isso, let's finish with the last
11 video. Do you have any other videos you --

12 MS. ISSO: Oh, yeah.

13 THE COURT: -- want to admit so we can let IT go?

14 MS. ISSO: Okay.

15 BY MS. ISSO:

16 Q Is there any other videos particularly you want me
17 to show --

18 A You can just pick another random one if you want to
19 say -- say something else or whatever you prefer. Something
20 at my house. And they're all good videos, but obviously I'm
21 not going to ask the Judge to sit down and watch movie. I
22 understand that.

23 Q Which one -- which one's at your house? Do you see
24 when it was dated there?

1 A (Indiscernible).

2 Q I thought this is the -- we'll do 55-43.

3

4 12:43:01

5 (VIDEO PLAYS IN COURTROOM)

6 12:43:19

7 MS. ISSO: Move to admit that one.

8 THE COURT: Okay. And which one is that for the

9 Court Clerk?

10 MS. ISSO: That was 55-43.

11 THE COURT: All right.

12 THE CLERK: 43?

13 MS. ISSO: Yes.

14 BY MS. ISSO:

15 Q When there was issues with -- did you purchase a

16 humidifier for the child?

17 A Yes, I have.

18 Q Okay. Exhibit number 6 is -- well, let's look at

19 number -- 6 and number 8. Those are purchases you made.

20 A Yes, some of them are purchases that show that I got

21 baby proofing.

22 Q So this is a baby proofing --

23 A Yeah, some of -- yeah, some of that you can see

24 right there is baby proofing and that's back in November --

1 wait, that's June.

2 Q So you went and bought these items?

3 A Yeah, so I -- I gradually -- yeah, these are items
4 that some of -- some of the items that I --

5 MS. ISSO: Okay.

6 A -- bought.

7 MS. ISSO: I move to admit Exhibit 8.

8 THE COURT: Any objection?

9 MS. ROSENBLUM: No objection.

10 THE COURT: It'll be admitted.

11 (PLAINTIFF'S EXHIBIT 8 ADMITTED)

12 BY MS. ISSO:

13 Q So Exhibit number 10, these are Walmart receipts.
14 What are these about?

15 A These I -- I would buy things for the Defendant and
16 cook for her. Some of it I bought for her dog given to --
17 chicken to -- so -- so that her dog can eat chicken. Some of
18 them are food that I cooked for us and so and so forth. And,
19 again, that's only partial because I was just entering them
20 into the phone.

21 MS. ISSO: Move to admit Exhibit 10.

22 THE COURT: I didn't hear anything regarding the
23 child. I heard the dog, I heard the --

24 MS. ISSO: Okay.

1 THE COURT: -- Defendant, I heard him --
2 MS. ISSO: That was him contributing to the child's
3 household.
4 THE COURT: But I'm saying from what he just said on
5 the stand regarding that particular exhibit I didn't hear
6 anything regarding the child.
7 MS. ISSO: He said he -- food he got for the child
8 and for the Defendant.
9 THE WITNESS: No, you started talking about the
10 humidifier.
11 THE COURT: Right.
12 THE WITNESS: That's where the --
13 THE COURT: That's --
14 THE WITNESS: -- dog comes in.
15 THE COURT: That was already admitted. And you
16 started referencing another exhibit. He then said he bought
17 chicken and other stuff and food for the Defendant. He didn't
18 say anything about the child.
19 MS. ISSO: Oh, okay.
20 BY MS. ISSO:
21 Q Well, let's -- let's talk about the dog.
22 A Yes.
23 Q Tell the Judge about the issue with the dog.
24 MS. ROSENBLUM: Objection --

1 A So --

2 MS. ROSENBLUM: -- Your Honor. I got to ask that

3 there be some foundation or background or something.

4 MS. ISSO: There's a dog. What foundation do you

5 need?

6 BY MS. ISSO:

7 Q Okay. Tell the Judge -- the --

8 MS. ROSENBLUM: Whose dog?

9 Q -- Judge about the dog at the Defendant's house.

10 A The Defendant has a dog --

11 THE COURT: I have to --

12 A -- named Athena.

13 THE COURT: -- see if there's an issue with the dog.

14 A dog comes up a lot of times, if a dog bites, if a dog causes

15 allergies, if the dog did this or that --

16 THE WITNESS: That's exactly --

17 THE COURT: -- Ms. Rosenblum.

18 THE WITNESS: -- what this is.

19 THE COURT: I have to allow it in.

20 THE WITNESS: So the Defendant had a dog, Athena,

21 wonderful animal. But the dog was -- Ava was diagnosed in

22 January of 2020, was di -- was diagnosed with multiple

23 allergies. She's allergic to soy. She's allergic to dairy.

24 She's allergic to nuts, any kind of nuts. She's allergic to

1 eggs. And then the last one she's allergic to dogs. We were
2 both at that appointment that -- when Ava was diagnosed
3 with --

4 THE COURT: Could we let IT go? Are you -- we're
5 done with the videos, correct?

6 MS. ISSO: Okay. Thank you. You can go now. Thank
7 you.

8 THE COURT: Sorry.

9 UNIDENTIFIED VOICE: I'll just wait because there's
10 like something -- like my phone is where i left it and --

11 THE COURT: Oh, okay.

12 THE WITNESS: Thank you.

13 THE COURT: I just want to make sure.

14 THE WITNESS: The Defendant was at that appointment
15 when Ava was diagnosed and --

16 BY MS. ISSO:

17 Q Okay. Eugene, start over. Say that again?

18 A Okay. So the Defendant had a dog in her and the --
19 Ava was diagnosed in -- in January of 2020 with multiple
20 allergies and one of tho -- those allergies was allergies for
21 a dog. But she would not remove the dog. And the dog was
22 there until I believe she put him -- put the dog down until --
23 which was if I remember correctly in maybe October, November
24 of last year. So she refused to remove the dog. In fact,

1 wouldn't tell her mother that Ava has been diagnosed with --
2 with allergies because she knew her mother didn't like the
3 dog. Her mother would say the dog smells and only tolerated
4 the dog because she wanted to keep a relationship with her
5 daughter. But the dog remained there.

6 Another issue with the dog is that she herself
7 admitted to me that she was afraid that -- because at one
8 point her dog became a little bit aggressive towards Ava and
9 she was -- she was concerned about that. But yet the dog was
10 not removed. I bought the humidifier because it showed --
11 because that was one of the things that they recommended to
12 do. But she never -- she never used it and -- and told me
13 that, oh, it was too small or -- no, I'm sorry. She -- she
14 said she didn't know where to put it in her room. So I went
15 and -- and returned it and then gave her money to buy a
16 humidifier.

17 She never did and then she lied, blatantly lied on
18 -- of -- OurFamilyWizard when I brought up the issue later
19 saying that she had humidifiers in her home in -- while we
20 were still together which is just a blatant lie.

21 And I asked her if that's the case, please provide
22 receipts for the humidifiers that she bought showing the time
23 when we were still together. Nothing was provided as I
24 provided pictures that were taken with a timestamp that shows

1 that you have humidifiers in the house while we -- we were
2 still in a relationship. Nothing like that was ever provided.

3 Q So the child was diagnosed with -- of being allergic
4 to dogs and she refused to move the dog out of her house?

5 A That is correct.

6 Q The Defendant?

7 A That is correct.

8 Q And she didn't inform the -- the maternal
9 grandmother, right?

10 A She did not.

11 Q And even though the maternal grandmother was
12 babysitting the child.

13 A That is correct.

14 Q And the dog was still present in the house.

15 A That is correct.

16 Q Okay. When they took your deposition, when opposing
17 party took your deposition, did they ask you any questions
18 regarding custody?

19 A No, most of their questions were 90 percent if I
20 recall --

21 MS. ROSENBLUM: Objection, Your Honor. Move to
22 strike everything after no.

23 THE WITNESS: All the questions were about my --
24 income.

1 THE COURT: I don't even know --
2 MS. ROSENBLUM: You're --
3 THE COURT: -- what the --
4 MS. ISSO: I'm asking about the -- the deposition
5 they took. They didn't ask about custody. They only asked
6 about child support.
7 MS. ROSENBLUM: Relevance, Judge.
8 MS. ISSO: It is relevant.
9 MS. ROSENBLUM: Why?
10 MS. ISSO: Because if there were issues with
11 custody --
12 MS. ROSENBLUM: It's our --
13 MS. ISSO: -- they were questions.
14 MS. ROSENBLUM: -- deposition.
15 THE COURT: It's their -- they can ask --
16 MS. ROSENBLUM: We're allowed to ask --
17 MS. ISSO: And I can --
18 THE COURT: If that's all --
19 MS. ROSENBLUM: -- whatever question --
20 MS. ISSO: -- ask about it.
21 MS. ROSENBLUM: -- we want.
22 THE COURT: No.
23 MS. ISSO: I can ask about it in this trial. I'm
24 permitted to do that.

1 THE COURT: It's not --
2 THE WITNESS: They have not.
3 THE COURT: -- re -- it's not relevant.
4 MS. ISSO: It is relevant. We're talking about
5 child support and custody. They're both relevant and part of
6 this case.
7 THE COURT: Listen.
8 MS. ISSO: This is what this case about.
9 THE COURT: Let me start with what Ms. Rosenblum
10 even started this whole trial with, that they're both great
11 parents and they love this child. All right. And if she has
12 a deposition just regarding your -- your client's income,
13 that's not to be held against them.
14 MS. ISSO: Well --
15 THE COURT: It's not --
16 MS. ISSO: -- I'd -- I'd --
17 THE COURT: -- relevant.
18 MS. ISSO: -- like to differ.
19 THE COURT: That means they're -- that --
20 MS. ISSO: Our entire deposition was about custody.
21 THE COURT: I don't --
22 MS. ROSENBLUM: They --
23 MS. ISSO: And their entire deposition was about
24 money because it's all this case is about is money. So it is

1 relevant. Okay.

2 MS. ROSENBLUM: Your -- Your Honor --

3 MS. ISSO: That's one of the factors.

4 MS. ROSENBLUM: I would --

5 MS. ISSO: And that's in the statute.

6 MS. ROSENBLUM: -- ask for a ruling, Your Honor.

7 MS. ISSO: And ask --

8 MS. ROSENBLUM: Please in -- instruct --

9 THE COURT: It was --

10 MS. ROSENBLUM: -- Counsel not to testify.

11 THE COURT: Your objection was sustained. It's not

12 relevant. Ms. Isso, I need to know for my Clerk purposes how

13 much longer you're going to have your client on the stand.

14 Because if we're going to go ahead and take our half lunch

15 if --

16 MS. ISSO: Let's take the half hour. I need to eat

17 something. And then I'll probably --

18 THE COURT: All right.

19 MS. ISSO: -- just have --

20 THE COURT: It is 1:50. Let me give -- let me give

21 you a total of where we're at.

22 MS. ISSO: Okay.

23 MS. ROSENBLUM: 12:50.

24 THE COURT: I mean --

1 MS. ROSENBLUM: 12:50.
2 THE COURT: -- 12:50.
3 MS. ROSENBLUM: Yeah.
4 THE COURT: 12:51.
5 MS. ROSENBLUM: 1:20, Judge?
6 THE COURT: Hold on one second.
7 MS. ISSO: Is the food thing open upstairs?
8 MS. ROSENBLUM: No, I don't think so. I don't think
9 he's been open for a minute.
10 THE COURT: Ms. Rosenblum used 70 minutes. I -- and
11 you have used a hundred and it looks like 37. All right.
12 We'll be in recess for a half hour. If you are leaving
13 anything in here -- are you locking the door Torrey (ph) or --
14 THE MARSHAL: Yes, we are.
15 THE COURT: You may need to take it out to the
16 ancillary room and then, again, we'll start at 1:20.
17 THE MARSHAL: Okay.
18 MS. ISSO: -- be on -- does a deposition --
19 THE COURT: Right. So as far as the actual one
20 sealed, yeah, you can give those to my Court Clerk. It's
21 the --
22 MS. ISSO: Okay. Well -- well, we'll bring ours too
23 then.
24 THE COURT: The -- you're not -- I mean, you're not

1 required. I mean, she just has them here doing it old school
2 wise.

3 MS. ROSENBLUM: I don't know what the --

4 THE COURT: I -- listen.

5 MS. ROSENBLUM: Half a day argument across the
6 hallway on whether originals are required and --

7 MS. ISSO: They're not.

8 MS. ROSENBLUM: -- whether --

9 MS. ISSO: The rule changed. I checked with my --
10 one of my partners --

11 MS. ROSENBLUM: I mean, it's --

12 MS. ISSO: -- that does personal injury. The rule
13 changed.

14 MS. ROSENBLUM: It just --

15 MS. ISSO: You don't -- you don't need the sealed
16 ones anymore. (Indiscernible) --

17 MS. ROSENBLUM: Just telling you what I went through
18 across the way in a seven day --

19 MS. ISSO: Because I mentioned --

20 MS. ROSENBLUM: -- trial all the time.

21 MS. ISSO: -- that and he started laughing at me.
22 He's like you don't need that anymore. The --

23 MS. ROSENBLUM: I --

24 MS. ISSO: -- rule changed.

1 MS. ROSENBLUM: -- didn't think you did, but --
2 MS. ISSO: Do we -- well, tell us. Do you require
3 it here?
4 MS. ROSENBLUM: Every --
5 MS. ISSO: If not, I'll have to go --
6 MS. ROSENBLUM: Apparently --
7 MS. ISSO: -- get them.
8 MS. ROSENBLUM: -- every judges are doing it --
9 MS. ISSO: Okay.
10 MS. ROSENBLUM: -- in a different way.
11 THE COURT: As far as published when we start
12 referring to the deposition, I'll start referring to some
13 specifics because people under the -- go ahead and go off the
14 record, Madam --
15 (COURT RECESSED AT 12:53 AND RESUMED AT 1:23)
16 THE CLERK: We're on the record.
17 THE COURT: All right. Going by the JAVS clock,
18 we'll -- I'll use 1:24 since we're almost there. So far Ms.
19 Isso's used two hours and 17 minutes, Ms. Rosenblum one hour
20 and 10 minutes. So we're kind of staying on track. We'll be
21 done by Friday. Done by Friday.
22 MS. ROSENBLUM: Yeah.
23 THE COURT: Ms. Isso?
24 MS. ISSO: Okay.

1 BY MS. ISSO:

2 Q Mr. Shapiro, the opposing party says that they have
3 a video of you where you put your head down in the room when
4 you're watching the child. Tell the Judge about that.

5 A I was watching Ava in her room which is fully baby
6 proofed with the door closed. I had a headache and I had to
7 lay down for a few minutes. I was watching Ava through the
8 peripheral vision of my eye.

9 Q Your what?

10 A Peripheral vision.

11 Q Peripheral? Okay.

12 A I -- I am not unlike the Opposing Counsel says. I
13 am -- I was not unconscious. That is a lie. And I -- in that
14 video I also checked my watch. I checked my phone. So I knew
15 where Ava was. And, again, the room is fully baby proofed.
16 And just -- just to state that I said that earlier, but the
17 Defendant had thousands of hours. She had -- she had cameras
18 all over the -- all over the house. That -- and she was --
19 she -- she filmed her mother, filmed anybody, and then looked
20 at it and then called her mother and confront her. We have
21 asked for the -- for the evidence. It was never submitted.

22 Q We asked for the additional videos that were --

23 A Yes.

24 Q -- not submitted.

1 A She -- all she submitted was like maybe seven days
2 but even that shows that her -- that even those videos show
3 that the mother cannot take care of the child.

4 Q Okay. And then you raised your head after a couple
5 minutes, right?

6 A Yes, I did. Yes, absolutely.

7 Q Okay. And then they say they have another video
8 where the child was in the room by herself. Tell -- tell the
9 Judge about that.

10 A Absolutely. So in that video that -- that -- what
11 happened was that I had to go to the bathroom. Again, I
12 closed Ava's door. Ava's room is fully baby proofed, has been
13 baby proofed be -- before Ava was even born. And I was in the
14 bathroom which is adjacent to -- to the child's bedroom. And,
15 again, we asked for the blueprints of the house which were
16 never submitted. But that -- but by bathroom as right as you
17 ex -- exit the door of -- of Ava's bedroom is right to the
18 left, immediately to the left.

19 So I was in the bathroom. I -- and I was using the
20 baby monitor. She has a baby monitor. She has a monitor in
21 -- in Ava's bedroom that shows what Ava is. In fact, if you
22 watch that video, only I know that because I'm the only one
23 who -- here who speaks Russian. Okay.

24 What happened is Ava pooped. And so the first thing

1 that I say when I come into the room, I can see that and I say
2 oh, you pooped. Okay. But I was in the -- the bathroom. I
3 have to go. And I was watching the whole thing on the
4 monitor. And, again, the door is closed. Ava's in there. If
5 I saw that Ava was doing something improper that needed help,
6 all it takes is split of a second and I'm in the -- in the
7 room. So it wasn't -- how -- it's a big house, but her bed --
8 her -- her bathroom -- Ava's bathroom is right there. It
9 takes less than half a second to jump in.

10 Q Okay. And then in both these incidents they were at
11 the Defendant's house?

12 A That is correct.

13 Q How -- how has the Defendant treated you throughout
14 the relationship from the beginning?

15 A I would say pretty badly. I genuinely cared about
16 her and I tried to make -- make her life better and I've done
17 a lot of things for her. Never asked for anything. I was
18 cooking for her, cleaning for her, walking her dog, taking her
19 dog to -- to appointments across town and so on and so forth.
20 And all along she treat me like a slave. She even used the
21 term servitude trying to describe that.

22 Q She used the word servitude to describe what you're
23 doing for her?

24 A Yes.

1 Q And then there was recently an issue with an
2 appointment where the -- the Judge -- tell the Judge about
3 that, some issue with the doctor appointment.

4 A We had an appointment scheduled for August 10th with
5 Dr. Gaspar. That is when Ava was diagnosed with autism.
6 Prior to that appoint -- that was all coordinated by -- by
7 TMG, the early intervention, specifically Amber Harris, one of
8 their witnesses. And so we would have Zoom sessions where we
9 would talk about it and talk about different policies. At the
10 same time as this was happening, this was also the time when
11 Nevada Department of Health and Hum -- Human Services changed
12 their guidelines regarding in person appointments. And so
13 they told us that we need to -- we could do a ten -- first of
14 all, we could do in person appointments. And then turned
15 around and said oh, no, we -- we cannot because A -- Ava could
16 not wear a mask and so they would not do it without a mask.

17 And they encouraged us -- Amber Harris -- both Amber
18 Harris and Jennifer Lokiano, who is Amber's manager, and Mark
19 James, who is a speech therapist, they all encouraged us to
20 write to the Department of Health and Human Services which I
21 did and the Defendant didn't. And I received a response. And
22 the person's name is Rick Rob (ph). He's -- he's a deputy
23 health -- I forget what the term is, but he's -- he's one of
24 the people that is in charge of that. And he responded to me

1 and actually said that --

2 MS. ROSENBLUM: Your Honor, I would object to the
3 hearsay statement.

4 THE COURT: Sustained.

5 BY MS. ISSO:

6 Q But anyways, the doctor had stated only one parent
7 could attend the appointment, right?

8 A Well, I'm getting to that, but what happened was
9 that -- that they -- when they told us that and Nechole did
10 not e -- email or -- I let her know and I let the
11 (indiscernible) know when their appointments were -- went back
12 to in person. But then we had the next Zoom session with
13 them, Amber Harris, and Nechole start -- accused TMG of -- of
14 discrimination saying that they -- they did not -- they --
15 they failed to disclose to her, you know, what -- what I
16 actually told her and they told her as well.

17 And so then when the appointment came up, the
18 appointment of August 10th, only one parent can be in the room
19 with prior had the appointment on -- in January of 2020 where
20 a hearing appointment for Ava suggested by TMG. Nechole
21 contacted me via OurFamilyWizard and indicated to me that when
22 she called to schedule the appointment she was told that only
23 one parent could be in the room with Ava.

24 And she stated to me that she would like to take Ava

1 to that appointment because she is the one that has custody of
2 Ava on that day. And I replied to her on OurFamilyWizard
3 saying that that is a -- a shame that -- because I -- I like
4 to go to all of the appointments. When I told her that, I --
5 that is a shame; however, yes, I would agree with that as long
6 as I get to go to the next appointment. And once --

7 Q So just real quickly, what was the first appoint --
8 so what -- what appoint did you agree that she can take the
9 child?

10 A The hearing appointment, the hearing test
11 appointment which at that -- with -- I -- I do not recall who
12 that was with.

13 Q And -- and what month was that in?

14 A It was January of 2020.

15 Q And in lieu, she agreed that you can take the child
16 to the next appointment, correct?

17 A That is correct.

18 Q Okay. And when was the next appointment?

19 A The next appointment in person was August 10th
20 appointment.

21 Q And then --

22 A We --

23 Q -- when it was your turn to take the child, what
24 happened?

1 A What happened was that she started saying that she
2 -- she -- at first she agreed to it. It seemed like she was
3 fine with it. She was asking if she could be in a -- in a --
4 on a Zoom in -- in the building -- with the TMG building and
5 they told her that was just fine. But then a week later TMG
6 suddenly called me and said that Nechole has been -- it
7 sounded like she was -- she was --

8 MS. ROSENBLUM: Your Honor --

9 A -- I use --

10 MS. ROSENBLUM: -- I have to ask to strike the
11 hearsay statement.

12 THE COURT: Sustained.

13 THE WITNESS: What sound -- what -- well, it sounded
14 like --

15 BY MS. ISSO:

16 Q Explain what happened without telling -- telling the
17 Judge what someone else said.

18 A Nechole accused TMG of racism and was trying to use
19 the color of her skin to -- to be in the room for Ava's
20 appointment.

21 Q Because at that time they were implementing the
22 COVID procedures?

23 A Yes. That's correct.

24 Q So when she couldn't be in the room and it wasn't

1 her turn, she started screaming racism?

2 A That's correct.

3 Q Okay. And then they ended up accommodating her?

4 A They did all along. But they offered -- she met
5 with Dr. Gaspar prior to the appointment which I haven't. And
6 she was on a Zoom in the building which I was when I -- when I
7 -- during that hearing appointment I could not even go there.
8 I was not on the zoom. No Zoom link was provided and I was
9 not in the appointment.

10 Q And at that time were they also implementing the
11 COVID procedures?

12 A Yes. That's correct.

13 Q So did they -- for the August 10th doctor
14 appointment, did they end up accommodating

15 A Yes.

16 Q -- her request?

17 A Absolutely.

18 Q Accommodating her request?

19 A Yes.

20 Q After she made those allegations against them.

21 A They were trying to -- yes, they were trying to and
22 -- and I -- I told them that this is mine just like she was --
23 she said about her -- her own appointment that it was on a day
24 that Ava's with me. And so I would like to be in the room and

1 she can be on the Zoom call which she was --

2 Q And the August --

3 A -- in -- in the building.

4 Q And the August 10th appointment was on your day.

5 A That is correct. That is --

6 Q And if she had agreed --

7 A -- one of the few ones because she has been
8 strategically scheduling them to -- to have on her days. That
9 was the only one that just by accident happened to be because
10 we had to agree to a day no matter what day that is to get an
11 appointment with Dr. Gaspar because usually you wait over
12 three years. And by being with TMG we were lucky to get an
13 appointment early. But we would have to agree to -- whenever
14 that appointment was, it just happened to be on my day. One
15 of the few times. Maybe the only time.

16 MS. ISSO: Okay. Exhibit 57 is the ABA Fire --
17 Firefly treatment plan. We want to move to admit that, Your
18 Honor. It's the ABA plan.

19 THE COURT: Any objection?

20 MS. ROSENBLUM: I just need to look at it. No
21 objection.

22 THE COURT: All right. It'll be admitted.

23 (PLAINTIFF'S EXHIBIT 57 ADMITTED)

24 MS. ISSO: Exhibit 33 is the Therapy Management

1 Group CARS report. CARS. We want to move to admit that.
2 MS. ROSENBLUM: Yes. No objection.
3 THE COURT: It'll be admitted.
4 (PLAINTIFF'S EXHIBIT 33 ADMITTED)
5 MS. ISSO: And Exhibit number 60 is the TMG exit
6 records. We want to move to admit that.
7 MS. ROSENBLUM: I'm sorry, which one?
8 MS. ISSO: Exhibit number 60.
9 MS. ROSENBLUM: 6-0? Yeah, I have no objection to
10 that either.
11 THE COURT: It'll be admitted.
12 (PLAINTIFF'S EXHIBIT 60 ADMITTED)
13 MS. ISSO: Exhibit number 56 is the -- not that one.
14 Exhibit number 33 is the --
15 THE COURT: 30 --
16 MS. ISSO: Oh, I -- oh, I already did that one.
17 Sorry. I already did 33, right?
18 THE CLERK: Yeah.
19 MS. ISSO: Thank you. And then Exhibit number 53,
20 the Dr. Gaspar report, pediatric report. We want to admit
21 that.
22 MS. ROSENBLUM: I have no objection to that one
23 either.
24 THE COURT: It'll be admitted.

1 (PLAINTIFF'S EXHIBIT 53 ADMITTED)

2 MS. ISSO: And then we -- we want to go back and
3 identify the FamilyWizard and the text messages for you, Your
4 Honor, for the next court hearing. Want to reserve the
5 right --

6 THE COURT: No. No. No.

7 MS. ISSO: -- to do that.

8 THE COURT: Let me be clear. You have read -- you
9 through your client should be able to have access to the
10 OurFamilyWizard program. If you're going to make reference to
11 specific ones, again, you can here in court by date and time.

12 MS. ISSO: Okay.

13 THE COURT: The entirety will come in. By Friday
14 we'll get a custodian of records so the entirety of their --
15 OurFamilyWizard communications will come in as Court's Exhibit
16 2.

17 MS. ISSO: Okay.

18 THE COURT: Okay?

19 MS. ISSO: And -- and then --

20 THE COURT: But the text exhibits, again, you're
21 going to have to -- I saw the stack.

22 MS. ISSO: Yeah.

23 THE COURT: You're going to have to list specific
24 Bates stamps and why -- why it's relevant.

1 MS. ISSO: Okay. And then I want to reserve the
2 right to call Eugene back as a rebuttal witness.

3 THE COURT: You always have that right.

4 MS. ISSO: Okay.

5 BY MS. ISSO:

6 Q Anything else you want to tell the Judge, Eugene?

7 A I want Your Honor to know that this case is about
8 two things and two things only. The first is the Defendant's
9 unwillingness and inability to relinquish her control and the
10 second one is her plain refusal to be -- her greed and plain
11 refusal to -- to pay child support. And I want the Court to
12 know that I have done everything in my power to negotiate an
13 agreement. And I'm always flexible and I'm -- I'm easy to
14 negotiate with if it's fair negotiations. And that has never
15 been the case. I do not have the money to be here nor the
16 desire to be here. I'm the only one in the room who does not
17 have any legal background. Okay. And I have done everything
18 possible to negotiate with the Defendant.

19 But it is impossible to negotiate with the Defendant
20 who does not want to give an inch, who does not want to
21 cooperate, who doesn't want to fairly co-parent, who do -- who
22 schedules appointments strategically on her own time without
23 letting me know and then comes up with nonsense excuses that
24 she respects my time with Ava where there's a clear need to --

1 clear evidence of controlling the situation. And this is just
2 as recent as this -- in the last couple of weeks with the eye
3 doctor appointment and now with the dentist appointment where
4 I specifically state on -- on FamilyWizard that I would like
5 to schedule or please let me know what dates are available,
6 why I asked to call. And she does the opposite and either
7 doesn't respond or responds with some nonsense -- half-legal
8 nonsense of I respect your time but I disagree with your
9 statement. Those are the most common ones that she's been
10 doing.

11 So I -- I have no desire to be here. I love Ava --
12 Ava very much. I believe that I have as much to offer to Ava
13 as the Defendant does, if not more. I am a college educated
14 professional with master's degree. I am a multi-cultural mi
15 -- multilingual person that have lived in different countries
16 and went to school in three different countries. I have
17 worked for CSN now for over 21 years and have participated in
18 education of thousands of students.

19 I received an -- an honor part-time faculty of the
20 year award last year. And I object to my -- the assassination
21 of my character the Defendant has employed because she has
22 nothing else -- nothing else to -- to offer. That is the only
23 reason we are here and I want the Court to know that.

24 MS. ISSO: All right. I pass the witness.

1 THE COURT: Ms. Rosenblum?

2 MS. ROSENBLUM: Your Honor, I'm going to reserve my

3 cross. I -- I would just -- I'm going to call Mr. Shapiro in

4 my case in chief.

5 THE COURT: Okay.

6 MS. ISSO: So --

7 THE COURT: Sir --

8 MS. ISSO: -- I --

9 THE COURT: -- you --

10 MS. ISSO: -- I would like to do my cross when --

11 when Ms. Garcia is called.

12 MS. ROSENBLUM: That's fine.

13 THE COURT: Okay.

14 MS. ROSENBLUM: I mean, I'm happy to explain to the

15 Court my logic for why.

16 THE COURT: It's --

17 MS. ROSENBLUM: I just -- I'm going to just reserve.

18 THE COURT: All right, sir. I guess you can go

19 ahead and sit down. Ms. --

20 THE WITNESS: Thank you.

21 (WITNESS EXCUSED)

22 MS. ISSO: The next two witnesses we have Your Honor

23 are --

24 (COUNSEL AND CLIENT CONFER BRIEFLY)

1 MS. ISSO: The next two witnesses I have, Your
2 Honor, that are coming at 3:00 o'clock are Heather Tauchen
3 with Firefly Behavioral Services. She's the clinical
4 director. She's the one that's doing Ava's assessment for the
5 ABA. Right. And then also we have Jennifer Barry (ph) who is
6 the RBT with Firefly. They're going to be here at 3:00
7 o'clock to testify in person.

8 THE COURT: Well, I need -- who -- the next -- then
9 I need someone else.

10 MS. ISSO: Okay. I -- I can call Ms. Garcia.

11 THE COURT: All right.

12 MS. ISSO: I guess I'll call Ms. Garcia.

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

16 THE WITNESS: I do.

17 NECHOLE GARCIA
18 called as a witness on behalf of the Plaintiff, having been
19 first duly sworn, testified upon her oath as follows on:

20 DIRECT EXAMINATION

21 BY MS. ISSO:

22 Q Please state your name, for the record.

23 A It's Nechole Garcia.

24 Q Ms. Garcia, isn't it true that during your

1 deposition you admitted to withholding the child for clearly
2 three days from Eugene?

3 A No.

4 Q Yes or no.

5 A No.

6 Q You didn't admit that in your deposition?

7 A No.

8 Q Okay. Could you turn to Exhibit 38, please?

9 A I don't have it in front of me. I'm sorry.

10 (COUNSEL AND CLIENT CONFER BRIEFLY)

11 MS. ISSO: Can we take a five minute break so we can
12 get this setup over here?

13 THE COURT: A what?

14 MS. ISSO: We're going to get the -- we're going to
15 get her binder setup for her over there.

16 THE COURT: A binder or a laptop?

17 THE WITNESS: It's going to be on a laptop. It's a
18 -- it's a USB.

19 THE COURT: Okay. Just whatever works.

20 MS. ISSO: You know, it's just going to be easier if
21 I do my cross at the same time that they call her. So if
22 she's going to deny everything and not be truthful, it's going
23 to take a lot of time. So I'd rather just do -- just like Ms.
24 Rosenblum is requesting to do her cross when she calls Mr.

1 Shapiro, I want to do the cross of Ms. Garcia when she's
2 called. The thing is that we don't have any other witness to
3 call in the meantime. We might not even use six hours. We --
4 we got through Eugene quickly.

5 THE COURT: First off, she's not obligated to call
6 her own client as a witness. You understand that, right?

7 MS. ISSO: Yeah, but she will. And if she doesn't,
8 then she doesn't.

9 THE COURT: Ms. Rosenblum, do you want to start with
10 your --

11 MS. ROSENBLUM: Well, I guess my understanding is
12 that Montana Garcia is standing by and prepared to testify who
13 is Ms. Isso's witness. So --

14 THE COURT: Is there someone out there, Torrey?

15 MS. ROSENBLUM: No, they're on BlueJeans with Brian
16 Blackham is represent -- Brian Blackham is representing Ms.
17 Montana Garcia. So I don't know if Ms. Isso wants to call
18 Montana now or -- she's available.

19 THE COURT: Is she showing up by video?

20 MS. ROSENBLUM: She's been waiting -- Brian --

21 THE COURT: Oh, I'm sorry.

22 MS. ROSENBLUM: -- was on the video and --

23 THE COURT: Do you have them both on them?

24 THE CLERK: Yeah, hold on one sec.

1 THE COURT: We wondered why Mr. Blackham was on
2 today whether he was just, you know --
3 MS. ROSENBLUM: He's --
4 THE CLERK: Yeah, I actually had them in a
5 breakout --
6 MS. ROSENBLUM: They're --
7 THE CLERK: -- room but they're --
8 MS. ROSENBLUM: Yeah --
9 THE CLERK: -- back in the main room.
10 MS. ROSENBLUM: -- they're right there.
11 THE CLERK: So you're --
12 THE MARSHAL: There's no one for --
13 THE CLERK: -- going to --
14 THE COURT: All right.
15 THE CLERK: -- call which --
16 THE MARSHAL: -- here for that prior --
17 THE COURT: Who's --
18 THE MARSHAL: -- Department, Your Honor.
19 THE COURT: Who -- no, they're on video. Sorry.
20 MS. ROSENBLUM: Well, this is Ms. Isso's witness.
21 So --
22 THE COURT: All right. Ms. Isso, apparently you
23 have your witness by video.
24 MS. ISSO: Okay. We'll just continue with the --

1 THE WITNESS: Okay.

2 MS. ROSENBLUM: Wait, what are we doing?

3 (COUNSEL AND CLIENT CONFER BRIEFLY)

4 MS. ROSENBLUM: It goes Montana Garcia or Brian

5 Blackham.

6 MS. ROSENBLUM: Yeah, they're both together. I

7 mean, Brian is Montana's attorney.

8 THE CLERK: Oh, okay. Okay. Okay. They're both on

9 there.

10 MS. ROSENBLUM: So are they not --

11 BY MS. ISSO:

12 Q Okay. So Ms. Garcia, was your deposition taken in

13 this matter?

14 A Yes.

15 Q And do you recall which day?

16 A Not this specific day.

17 Q Okay. Take a look at Exhibit number 38.

18 THE COURT: What -- what --

19 MS. ISSO: Which she --

20 THE COURT: Hold --

21 MS. ISSO: -- doesn't have.

22 THE CLERK: Do I --

23 THE COURT: They have the -- we have the -- your

24 expert up there. So I didn't --

1 MS. ISSO: Oh, it's not my expert.

2 MS. ROSENBLUM: She's not an expert. She's the --

3 THE COURT: Or whoever it is --

4 MS. ROSENBLUM: My client's mother.

5 THE COURT: -- whoever the person is with Mr.

6 Blackham is up there if you want to do that because you said

7 you did not want to continue on with your direct --

8 MS. ISSO: Let me --

9 THE COURT: -- of her.

10 MS. ISSO: -- see.

11 THE COURT: Again, Ms. Issso, however you want to

12 proceed.

13 MS. ISSO: Okay.

14 THE COURT: But candidly my preference is that you

15 get Mr. Blackham and the other person since they've been

16 apparently waiting all morning, but --

17 (COUNSEL AND CLIENT CONFER BRIEFLY)

18 MS. ISSO: You know, I -- I don't know if I'm -- I

19 don't know if I'm going to call her just yet. Let me just go

20 through Ms. Garcia, go through her.

21 BY MS. ISSO:

22 Q So your Exhibit number 38 is your deposition

23 transcript. Do you have any reason to believe this is not a

24 true and accurate copy?

1 A I haven't seen it.

2 Q Okay. You haven't -- your --

3 A I don't have Exhibit --

4 Q -- your --

5 A -- 38.

6 Q But -- but has your attorney reviewed the exhibits

7 with you, the ones that we disclosed?

8 MS. ROSENBLUM: Objection to the extent that it's --

9 it's attorney/client privilege communication.

10 MS. ISSO: If we're doing exhibits, it's not

11 attorney/client --

12 THE COURT: Sus --

13 MS. ISSO: -- privilege.

14 MS. ROSENBLUM: Sure, it is.

15 BY MS. ISSO:

16 Q Have you reviewed your deposition transcript?

17 A I was waiting on a ruling on the objection.

18 THE COURT: Sustained. Come on. We're all

19 attorneys. Let's not play games. Come on. Answer -- have

20 you reviewed your deposition?

21 THE WITNESS: Yes.

22 THE COURT: All right. There you go.

23 Q Thank you. And was your deposition taken on October

24 9, 2020?

1 A Yes.

2 MS. ISSO: Okay. We want to move to admit Exhibit

3 number 38.

4 MS. ROSENBLUM: I would object to the admission

5 of --

6 THE COURT: No.

7 MS. ROSENBLUM: -- the deposition --

8 THE COURT: Listen, let me --

9 MS. ROSENBLUM: -- transcript.

10 THE COURT: -- pull -- it's going to take one second

11 for me to pull up my citations. I am --

12 MS. ROSENBLUM: I believe it's --

13 THE COURT: -- not admitting a blanket full

14 deposition.

15 MS. ROSENBLUM: I believe it's Rule 53, Judge.

16 THE COURT: Give me a second and I'll get to it. I

17 have it. Been while since I've had to pull it.

18 MS. ROSENBLUM: No, 52.

19 THE COURT: Okay. For the purposes of contradicting

20 or impeaching testimony and the other subsection does not

21 really apply usually at Family Court. So the exceptions to

22 that is -- don't apply in this particular case which is the

23 third subsection. So if you want to impeach her, you can feel

24 free to reference a page and lines, show it to her, but I am

1 not admitting the entire deposition, but portions that are
2 relevant will be admitted.

3 MS. ISSO: Okay.

4 BY MS. ISSO:

5 Q So did Eugene propose to you a week on week off
6 schedule?

7 A Yes.

8 Q And what was your response to that?

9 MS. ROSENBLUM: Objection, Your Honor, to the -- the
10 settlement negotiations.

11 MS. ISSO: It's -- it's to show -- Your Honor, it's
12 -- it's to go to her credibility.

13 THE COURT: It's not outright settlement
14 negotiations. That part I'm -- I'm going to go ahead and
15 allow in.

16 THE WITNESS: So my response was that I didn't think
17 it was appropriate for a child of Ava's -- Ava's age to follow
18 week on week off schedule.

19 BY MS. ISSO:

20 Q Well, then what did you propose to him?

21 MS. ROSENBLUM: Again, Judge, I'm -- I -- to the
22 extent that it's --

23 THE COURT: Now, we're getting into --

24 MS. ROSENBLUM: -- see, settlement negotiations.

1 MS. ISSO: No. No, we're not.

2 MS. ROSENBLUM: And I have to object.

3 MS. ISSO: Because she proposed that -- that they --
4 that -- that the child should only be away --

5 THE COURT: Now, you're going beyond telling me now.
6 I'll go ahead and strike the prior portion as well, the part
7 for the week on week off. That is settlement negotiations.

8 MS. ISSO: Okay.

9 THE COURT: Both parts will be stricken.

10 BY MS. ISSO:

11 Q Isn't it true that you stated that a child should
12 not be away from another parent for more than -- more than two
13 to three days at a time?

14 A I did state that. Yeah.

15 Q Okay. And then he proposed exchanging the child
16 every two days, correct?

17 A Yes.

18 Q And did you agree to that?

19 MS. ROSENBLUM: Again --

20 A No.

21 MS. ROSENBLUM: -- Judge to the extent that it seeks
22 the settlement --

23 MS. ISSO: It goes to her credibility.

24 MS. ROSENBLUM: -- negotiations of the party.

1 THE COURT: It does not -- it's settlement
2 negotiations at this point when we're sitting here in trial,
3 Ms. Isso. So sustained.

4 MS. ISSO: No, it goes to the child's best interest,
5 which timeshare would he work.

6 THE COURT: Sustained. It's what they were
7 negotiating back and forth. And apparently at one point they
8 almost reached an agreement. I believe that was when Judge
9 Bailey was involved. Again, this is how I remember all these
10 cases and it fills my mind with this stuff, but for today's
11 purposes at trial, settlement negotiations, the objection is
12 sustained.

13 BY MS. ISSO:

14 Q Isn't it true that Dr. Bergquist described your
15 co-parenting style as dominant?

16 A I think that she said --

17 Q Yes or no? Yes or no?

18 A No.

19 Q And describe your -- describe you as exacting?

20 A I don't recall that.

21 Q Do you want to -- do you want to review the report?

22 Do you want to review the report? Because I'm going to ask
23 you some (indiscernible).

24 A If you wouldn't mind. Yeah, just to --

1 MS. ISSO: Can we a copy for her of the report? Do
2 you have a copy of the report, Molly?

3 MS. ROSENBLUM: I have a copy on my laptop for me,
4 but if you want to direct them to the court --

5 THE PLAINTIFF: There's a copy in that binder.

6 MS. ISSO: Okay. Which one? Oh, that binder?

7 THE PLAINTIFF: The very last one.

8 MS. ISSO: Why aren't the binders over there, the
9 ones that you guys made us copy? It cost Eugene \$1800 to --

10 THE COURT: Torrey (ph) --

11 MS. ISSO: -- make a photocopy --

12 THE COURT: -- do you want to --

13 MS. ISSO: -- of that.

14 THE COURT: What -- I didn't know they were not --

15 MS. ISSO: And now the binder's not there.

16 THE COURT: Ms. Isso, I didn't -- this is the first
17 time this has come up today, correct? I -- I didn't know that
18 they weren't over there.

19 MS. ISSO: He paid \$1800 to get --

20 THE COURT: That --

21 MS. ISSO: -- these two binders printed.

22 THE COURT: Take a -- one second. All I said is
23 this is the first time it's come up this entire day that they
24 were not over there. So apparently those binders go --

1 MS. ISSO: Damn it.

2 THE CLERK: Do you want me to print out
3 (indiscernible) report?

4 THE COURT: I just want them to have the binders.

5 THE CLERK: The boxes of binders?

6 THE COURT: Yes. Whether it's the -- the witness's
7 exhibit or the binders apparently need to go up against the
8 wall.

9 THE CLERK: And there's whole boxes --

10 THE MARSHAL: What binders are we -- are we move --

11 THE CLERK: I guess all of them.

12 THE MARSHAL: The (indiscernible) instructions --

13 THE COURT: Your exhibits -- which exhibits, Ms.
14 Isso, do you want over at the witness stand? Ms. Isso?

15 MS. ISSO: All -- all of our exhibits, we want them
16 there, please.

17 THE COURT: All right. All the --

18 MS. ISSO: Please stop the timer.

19 THE COURT: All the numbered --

20 MS. ISSO: Stop the timer.

21 THE COURT: All the numbered exhibits.

22 THE PLAINTIFF: It's all the folders --

23 THE CLERK: The -- the --

24 THE PLAINTIFF: -- and there's two copies --

1 THE CLERK: All I know --

2 THE PLAINTIFF: -- and those are the -- that's --

3 THE CLERK: -- is there four boxes of binders.

4 THE PLAINTIFF: -- what's the Court -- the Court's

5 requesting.

6 THE CLERK: Four boxes --

7 THE PLAINTIFF: That's what I would use.

8 THE CLERK: -- of exhibits. Do you want me to bring

9 them over there?

10 THE COURT: Somebody has to take them --

11 THE CLERK: Okay.

12 THE COURT: -- to the witness. Yes. And I guess

13 just leave them against the wall and it'll be up to the

14 witness to pull the binder out that's relevant. Can you tell

15 her what binder she needs to be pulling out, Ms. Isso?

16 THE PLAINTIFF: It's the last binder that says -- it

17 ends with file 64 and then it says last Dr. Bergquist report.

18 It's either copy one or copy two.

19 THE COURT: Listen, ma'am. Go ahead and have a

20 seat. Ms. Isso, you -- since they're your exhibit and you're

21 showing them to them either --

22 MS. ISSO: Have a seat.

23 THE COURT: -- you or your client go grab the book

24 and hand it --

1 MS. ISSO: Have a seat. You can have a seat.

2 BY MS. ISSO:

3 Q Okay. So on page 30 of Dr. Bergquist's report, she
4 says results from the PAI plus suggests that she, as in you,
5 is self-assured, confident, and dominant and prefers to
6 interact with others in situations in which she can exercise
7 some measure of control. This is congruent with Mr. Shapiro's
8 view of Nechole. He complains that she's controlling, my way
9 or the highway. That personality trait seems to have served
10 her well in her career as a city attorney. Her communications
11 -- this is what her statement is.

12 Her communication with her co-parent often sound
13 like an interrogation or a criminal investigation assuming the
14 worst and challenging him on every detail of his story.
15 That's on page 30 of Dr. Bergquist's report. Do you have any
16 reason to believe that I did not read that word-for-word off
17 of the report?

18 A No, I don't.

19 Q In discovery, we requested your medical records from
20 Dr. Carp, right?

21 A Megan Carp. Yeah.

22 Q And you did not provide those to us, correct?

23 A I ultimately did sign a HIPAA release.

24 Q Ultimately, but when we asked you for the medical

1 records --

2 THE COURT: I'm going to --

3 Q -- you didn't provide them.

4 THE COURT: I'm going to bring up the same thing
5 that I did prior and I don't even remember --

6 MS. ISSO: Okay.

7 THE COURT: -- who was objecting to whatever. If
8 it's not done in discovery, we're done.

9 MS. ISSO: It's okay. It shows -- it just her lack
10 of cooperation.

11 THE COURT: No, we're not bringing that up. That's
12 what I said.

13 MS. ISSO: Yeah.

14 THE COURT: I'm not bringing that up.

15 MS. ISSO: Okay.

16 THE COURT: You could have fixed that situation in
17 the last year-and-a-half --

18 MS. ISSO: I did fix it.

19 THE COURT: -- of two years.

20 MS. ISSO: I did fix it.

21 THE COURT: You could -- okay.

22 MS. ISSO: I did fix it.

23 BY MS. ISSO:

24 Q In fact, you did not participate in the settlement

1 conference in good faith, did you?

2 MS. ROSENBLUM: Your Honor, objection.

3 THE COURT: Sustained.

4 MS. ISSO: And listen. This is -- this is a motion
5 that --

6 THE COURT: Sustained.

7 MS. ISSO: -- we filed with the court. It was --

8 THE COURT: Sustained.

9 MS. ISSO: -- supposed to be heard today.

10 THE COURT: Move on. Sustained.

11 MS. ISSO: It was supposed to be heard today.

12 BY MS. ISSO:

13 Q And during your deposition, your attorney made over
14 50 speaking objections; isn't that true?

15 MS. ROSENBLUM: Objection, relevance.

16 THE COURT: Sustained.

17 BY MS. ISSO:

18 Q In fact, you answered I don't know 8 -- over 80
19 times to questions I asked you in your deposition. Are you
20 aware of that?

21 MS. ROSENBLUM: Objection, relevance.

22 THE COURT: That part I will allow if in fact she
23 answered that many.

24 THE WITNESS: I was not aware of that.

1 BY MS. ISSO:

2 Q I just searched I don't know through the word search
3 on the --

4 MS. ROSENBLUM: Your Honor --

5 Q -- deposition.

6 MS. ROSENBLUM: -- I got to move to --

7 THE COURT: Sustained.

8 MS. ROSENBLUM: -- strike that as testimony.

9 THE COURT: You cannot testify as to what you --

10 MS. ISSO: Okay.

11 THE COURT: -- pulled up on your own --

12 MS. ISSO: Okay.

13 THE COURT: -- search --

14 MS. ISSO: Okay.

15 THE COURT: -- Ms. Isso.

16 BY MS. ISSO:

17 Q Do you have any reason to believe that's not true?

18 A No, I have no reason to not believe -- to believe
19 it's not true.

20 Q Do you understand that we're seeking sanctions
21 against you for bad --

22 MS. ROSENBLUM: Your Honor --

23 Q -- faith participant -- participation in the
24 settlement conference?

1 MS. ROSENBLUM: Your Honor, I have --

2 THE COURT: Sustained.

3 MS. ISSO: What day -- what day is that being heard?
4 We filed the motion. You said it was going to be heard on the
5 day of the evidentiary hearing. Now we're here and you're
6 telling me I can't talk about it.

7 THE COURT: Right now we're doing trial. That's
8 correct.

9 MS. ISSO: You said it was going to be hard today
10 that my motion for sanctions. Initially you thought it was
11 Molly's -- you thought it was Molly's motion.

12 THE COURT: Okay.

13 MS. ISSO: That's why you said it was going to be
14 (indiscernible) when in fact it was my motion.

15 THE COURT: Okay. You can couple your request for
16 sanctions along with your request for attorney's fees or
17 simply renote it. I won't -- I won't -- I'm not going to
18 make you do the whole thing. I just -- when you -- if you
19 file -- if you file for attorney's fees, you can renote the
20 portion of sanctions.

21 MS. ISSO: Okay.

22 BY MS. ISSO:

23 Q Isn't it true that you had a dog living in your
24 home?

1 A Yes.

2 Q And you had a dog despite the fact the child was
3 diagnosed with being allergic to dogs?

4 A Yes.

5 Q And isn't it true that you admitted that your mom
6 was pre-diabetic and overweight?

7 A I said my mom was pre-diabetic.

8 Q Is she --

9 A I don't --

10 Q -- overweight though?

11 A I don't know what her weight is.

12 Q But, I mean, is she -- is she heavyset?

13 A No, I would not call her heavyset.

14 Q Okay. I guess we'll have to ask her. Isn't it true
15 that you make a hundred and nine thousand dollars a year?

16 A I actually make a hundred and twelve thousand
17 dollars a year now.

18 Q Okay. And is it true that you work four 10 hour
19 days?

20 A Yes.

21 Q And that you used to use your mom and Eugene to
22 babysit?

23 A Yes.

24 Q And that you have a trial calendar two days a week

1 consisting of numerous trials?

2 A Yes.

3 Q And in fact, you testified that your work carries
4 over to your home life sometimes?

5 A Rarely is what I said.

6 (PAUSE)

7 Q Well, you testified that sometimes you need to work
8 at home in preparation for your trials.

9 A Yes, rarely.

10 Q Okay. You testified during your depo that you
11 stated that your brother Christopher lived with your mother,
12 right?

13 A Yes.

14 Q And at -- at that time there was a DV altercation
15 where he was shot, correct?

16 A He was shot a few years prior. Yeah.

17 Q And you helped pay for his criminal fees.

18 A No.

19 Q What if I told you Eugene has a text message where
20 you're explaining all of that to him and that you are drafting
21 the motion for his case?

22 MS. ROSENBLUM: Your Honor, I would object to
23 relevance.

24 THE COURT: Sustained.

1 BY MS. ISSO:

2 Q What was the other shooting incident? There was two
3 of them.

4 A My brother's exwife shot him and then when he was --
5 my brother was a teenager, he accidentally shot himself in the
6 leg.

7 Q During this litigation you -- you kept insisting
8 that Ava will only consume breast milk, correct?

9 A No.

10 Q Well, you made a big deal about breast milk when
11 Eugene had the child for two weeks, did you not?

12 A Yeah, because I was breastfeeding.

13 Q But -- make that call --

14 MS. ISSO: Move to strike. I -- I was asking a yes
15 or no question. Move to strike I asked a yes --

16 THE COURT: Sus --

17 MS. ISSO: -- or no question.

18 THE COURT: Sustained. So yes --

19 MS. ISSO: Okay.

20 THE COURT: -- yes or no.

21 THE WITNESS: Okay. Thank you.

22 MS. ISSO: Not overruled, right? Sustained? Okay.

23 BY MS. ISSO:

24 Q So my question was during this litigation you kept

1 in -- insisting -- during this litigation you kept insisting
2 that Ava will only consume breast milk, correct?

3 MS. ROSENBLUM: Objection, asked and answered.

4 BY MS. ISSO:

5 Q Yes or no?

6 A No.

7 Q But when Eugene had the child, you were making a big
8 deal about the breast milk, were you not? Yes or no?

9 A Yes.

10 Q But you just testified that she's not only consuming
11 breast milk, right?

12 A That's correct.

13 Q So she may have been eating other things, right?

14 A She was.

15 Q And in fact, during your deposition you testified
16 that she eats carrots, right?

17 A I think that's what I said.

18 Q Yeah.

19 A Or that I used to. I think I said she used to and
20 she stopped.

21 Q Yeah.

22 A I definitely said she was eating solids though,
23 other foods.

24 Q Yeah, but she's eating carrots, right?

1 A She's eating other foods.

2 Q But she -- but -- but you said that she -- she's --

3 she's eating carrots before, right?

4 A Before, yes.

5 Q Yeah.

6 A Okay.

7 Q Okay. And then you also testified that she's -- she

8 eats Beech-Nut fruit bars, right?

9 A Yes.

10 Q And Gerber chicken apple.

11 A I think I said that. Yes.

12 Q Yeah. And then you said also she eats Cheerios.

13 A Yes.

14 Q So she's not relying solely on breast milk, correct?

15 A That's correct.

16 Q In your deposition, you stated that it's okay for a

17 child to be breastfed -- fed until they're four years old?

18 A I think I said something to that effect, yeah.

19 Q And you testified that when you are working you use

20 a breast pump and you have -- and your mom offers the child

21 milk, correct?

22 A I believe I said that I done that at a certain point

23 while I was working.

24 Q Yeah, but you -- you were working 40 hours a week,

1 right? Or you still are, right?

2 A Yeah.

3 Q So when you were breastfeeding, you were pumping
4 into a pump, right?

5 A I did up until a certain point and --

6 Q But you were pumping into a pump, right?

7 A Absolutely.

8 Q And you were leaving that milk for your mother to
9 feed the child when she was babysitting, right?

10 A My mother and Eugene.

11 Q Yeah, and Eugene, right? Okay. You testified Ava
12 is allergic to dogs, right?

13 A Yes.

14 Q In fact, you testified that when the child was in
15 your care she had an allergic reaction and was taken to the ER
16 because you had fed her whole wheat pancakes and they may have
17 contained egg in it, correct?

18 A Yes.

19 Q And during another incident when the child was in
20 your care you testified that she had an allergic reaction,
21 correct?

22 A Yes.

23 Q And you assumed it was from hair products. But then
24 you stated I honestly don't recall beyond that.

1 A Yes.

2 Q So there are two incidents when the child was rushed
3 to the hospital for having an allergic reaction in your care.

4 MS. ROSENBLUM: Objection, misstates testimony.

5 BY MS. ISSO:

6 Q True, yes or no?

7 A No, --

8 THE COURT: Well --

9 A -- not rushed to the hospital.

10 Q Well, did she go to the hospital?

11 THE COURT: Hold on with the objection -- when
12 there's objections. You guys just keep going on. If you're
13 clarifying that now as she indicates there was two times but,
14 what, one was not rushed?

15 THE WITNESS: When I took her to the pediatrician's
16 office and the other time I took her to -- I did take her to
17 the ER to be seen.

18 THE COURT: Does that answer your question, Ms.
19 Isso?

20 MS. ISSO: Okay. Thank you.

21 BY MS. ISSO:

22 Q In --

23 THE COURT: Okay.

24 Q -- fact, you know that your mom would not approve of

1 having a dog in the house since the child's allergic, right?

2 A No.

3 Q But you kept that information from her.

4 A At the time I didn't tell her.

5 Q But, you know, what if -- what if your mom was
6 babysitting and there was an allergic reaction that was
7 serious?

8 MS. ROSENBLUM: Objection.

9 Q Don't you think that's important information for her
10 to know?

11 MS. ROSENBLUM: Objection, in --

12 Q Yes or no?

13 MS. ROSENBLUM: Objection, incomplete hypothetical.

14 THE COURT: I can't hear you with your mask on.

15 MS. ROSENBLUM: I'm sorry.

16 THE COURT: You're okay.

17 MS. ROSENBLUM: Objection.

18 THE COURT: If you want to wear it --

19 MS. ROSENBLUM: I didn't even realize I still had it
20 on. Objection, incomplete hypothetical. I'm sorry.

21 THE COURT: Similar to speculation? I mean, I --

22 MS. ROSENBLUM: Speculation. Yeah, I'll go with
23 that.

24 THE COURT: Incomplete --

1 MS. ROSENBLUM: And --
2 THE COURT: -- hypothetical --
3 MS. ROSENBLUM: -- assumes --
4 THE COURT: -- I haven't heard --
5 MS. ROSENBLUM: -- facts --
6 THE COURT: -- in awhile.
7 MS. ROSENBLUM: -- not in evidence.
8 MS. ISSO: No, there -- there's no speculation.
9 He's allergic to dogs and the mom was babysitting. What if --
10 THE COURT: And --
11 MS. ISSO: -- there was --
12 MS. ROSENBLUM: Right.
13 MS. ISSO: -- an allergic reaction? She's had two
14 allergic reactions.
15 THE COURT: Correct, you can ask her that.
16 MS. ISSO: Okay.
17 BY MS. ISSO:
18 Q So --
19 THE COURT: Okay.
20 Q -- what if there was an allergic reaction? Don't
21 you think that's an important thing for your mom to have
22 known?
23 A Yeah, that's why I've told her about it.
24 Q But at the time when she was babysitting, she -- you

1 told me -- you just said that she didn't know, right?

2 A She didn't know initially. No.

3 Q Eugene was present at the birth of the child?

4 A Yes.

5 Q And Eu -- and you testified that he attended most

6 prenatal appointments with you, right?

7 A Yes.

8 Q And you testified that he drove you to and from the

9 doctor appointments, right?

10 A The prenatals, yes.

11 Q And you further testified that Eugene cared for you

12 during your prenatal time.

13 A I don't recall saying that, but --

14 Q Let me find it for you.

15 A -- he would sometimes cook meals for us if that's

16 what you mean.

17 Q On -- on Bates Stamp 3448 --

18 THE COURT: Which exhibit is that? Sorry, Ms. Is --

19 Isso.

20 MS. ISSO: Exhibit 38.

21 THE COURT: 30 --

22 Q I stated to you --

23 MS. ROSENBLUM: I'm sorry, I -- mine are not Bate

24 labeled. So can you tell me what page of the deposition --

1 MS. ISSO: I think it's page --
2 MS. ROSENBLUM: -- transcript?
3 MS. ISSO: -- 105 of Exhibit 38 --
4 MS. ROSENBLUM: Thank you.
5 MS. ISSO: -- is what my thing --
6 THE WITNESS: Should I --
7 MS. ISSO: -- shows.

8 Q But I state to you based on his conduct and based on
9 your interaction with him, would it be fair to say that Eugene
10 cared about you and for you during your prenatal time? And
11 your answer was yeah, I think that's fair.

12 A Okay.

13 Q So would you agree with me that you admitted that he
14 -- I lost my spot. Cared for you during your prenatal time?

15 A Yes.

16 Q And you stated that you believe that Eugene loves
17 Ava, correct?

18 A Yes.

19 Q And you stated that Eugene cooked for you
20 frequently, right?

21 A At a certain point in our relationship. Yes.

22 Q And that he cooked for you several times a week in
23 2019, correct?

24 A Yes.

1 Q And that he would cook chili, hamburgers, beef -- I
2 don't know how to say this word. Beef stroganoff?

3 THE PLAINTIFF: Beef stroganoff. Yeah, that's
4 Russian, actually.

5 MS. ISSO: Is it Russian?

6 THE PLAINTIFF: Yeah.

7 MS. ISSO: Oh, wow.

8 Q And beef stroganoff?

9 A Yes.

10 Q Okay. And that he also cooked for you in 2020.

11 A Okay. Yes. Yes.

12 Q And that he would clean your house and walk your dog
13 regularly.

14 A Yes.

15 Q He would bathe your dog, take your dog to the
16 doctor, right?

17 A Yes.

18 Q And that he also admitted that he would cook for you
19 at your home and then wash the dishes.

20 A Yes.

21 Q And that he continued to do these things for you
22 which means that he was around -- what -- I'm sorry. So the
23 fact that he would continue to do these things for you means
24 that he was around and present in the child's life since

1 birth, correct?

2 A Yes.

3 Q In fact, you testified that during these times he
4 would be there he would spend time with Ava also, right?

5 A Yes.

6 Q And that you testified that he was caring for Ava on
7 Tuesdays and Thursdays when you were at work, right?

8 A Yes.

9 Q What is your issues with him having some weekends if
10 you were okay with him watching the child while you're
11 working?

12 A Well, current --

13 Q Well, let me -- move to strike that question. I'm
14 sorry. I mean, isn't it -- isn't it -- I -- I mean, do you
15 believe that a reasonable person would think it's unusual for
16 you to allow him to watch the child when -- when you're
17 working but you don't want him to have weekends, do you think
18 that's fair, yes or no?

19 MS. ROSENBLUM: Objection, speculation.

20 THE COURT: You know what --

21 MS. ROSENBLUM: It's compound.

22 THE COURT: -- I'm -- again, I have the right to ask
23 my own -- and since it is an issue, I believe the way you
24 asked the first way was appropriate. Why -- why is it not

1 reasonable for him to have any weekend time?

2 THE WITNESS: So he does have every other Sunday.

3 THE COURT: I get the Sunday. I'm talking full
4 weekends which --

5 THE WITNESS: The --

6 THE COURT: -- most people define as Friday evening
7 to Sunday night or Monday morning so they can let's say for
8 instance go down to Disneyland.

9 THE WITNESS: So my primary issue was just that
10 Eugene worked at very few hours a week and has a lot of free
11 time during the week whereas I work during the week and my
12 only days off were Friday, Saturday, Sunday. And so my issue
13 was -- was just that Ava is very young. The things that you
14 can do on Sat -- Friday or Saturday you can do on Monday,
15 Tuesday, or Wednesday. I on the other hand am not available
16 on Monday, Tuesday, Wednesday. I'm available Friday,
17 Saturday, Sunday. So I was asking that those -- that I be
18 able to take kind of full advantage of my time that I'm off
19 with -- with Ava. So it's not that I don't he should be able
20 to have weekends. It's that I was trying to maximize my
21 parenting time because Eugene's work schedule was sparse
22 especially at certain points. I don't know what it is right
23 now but certain points in our relationship -- and he had all
24 this free time. I felt that he could use that time during the

1 week since he was off.

2 BY MS. ISSO:

3 Q You further stated that you had your 65-year-old mom
4 babysit for two days a week and then Eugene cared for the
5 child the other two days a week, correct?

6 A Yes.

7 Q And then you stated there were some variations to
8 the schedule where Eugene actually watched the child four days
9 Monday through Thursday for at least 10 hours a day, correct?

10 A Sometimes.

11 Q And you've got upset -- let me go back to these.
12 Have you started the potty training process yet?

13 A Through the ABA therapy, we both started it with the
14 therapist.

15 Q How is that going?

16 A It's going okay. It's a slow pro -- pro -- slow
17 process.

18 Q Isn't it -- Isn't it true that during your
19 deposition I asked you why don't you want Eugene to have
20 overnights? Didn't I ask you that question?

21 A I don't recall. I think you did, but I don't --

22 Q It's on 3497. So would you agree that I did ask you
23 that question?

24 A I don't have the --

1 MS. ROSENBLUM: What's the page of the deposition
2 transcript?

3 MS. ISSO: Let me get to it and I'll --

4 THE COURT: You -- you don't need --

5 THE WITNESS: I don't need it?

6 THE COURT: Then --

7 THE WITNESS: Okay.

8 THE COURT: Because if in fact they would go on a
9 cross because I think it contradicts it, then I'm going to
10 have them come get it and bring it over --

11 THE WITNESS: Okay.

12 THE COURT: -- to you to show it to you.

13 THE WITNESS: Okay.

14 THE COURT: I'm not going to make you get up and
15 search their documents.

16 THE WITNESS: Thanks.

17 Q I state to you so you don't want --

18 MS. ROSENBLUM: I'm sorry, what page?

19 MS. ISSO: This is on page 154.

20 Q I state to you so you don't want Eugene to have any
21 overnights. I asked you that question, right?

22 A I believe it --

23 MS. ROSENBLUM: That's not on -- I'm sorry,
24 Jennifer. I don't --

1 MS. ISSO: page 154 which is Bates Stamp -- I'm
2 reading it directly from the -- I -- from the --
3 MS. ROSENBLUM: I don't -- I'm not --
4 MS. ISSO: -- deposition transcript. I wouldn't
5 lie. Okay.
6 MS. ROSENBLUM: No. No. I'm just --
7 THE COURT: No.
8 MS. ROSENBLUM: -- I'm not on the --
9 MS. ISSO: Third --
10 MS. ROSENBLUM: -- same page with you. So I want to
11 be able to --
12 MS. ISSO: Yeah.
13 MS. ROSENBLUM: -- follow along.
14 MS. ISSO: So just hold on.
15 MS. ROSENBLUM: So I just wanted to see where you
16 were --
17 THE COURT: If it's a depo, why don't we go page a
18 line?
19 MS. ISSO: Here. So you don't want Eugene to have
20 overnights.
21 MS. ROSENBLUM: And that's on page -- No. No. Go
22 up where you can -- no --
23 MS. ISSO: Oh, I'm not looking at those pages.
24 MS. ROSENBLUM: Yeah. Yeah. Yeah.

1 MS. ISSO: I'm talking about the other ones.

2 MS. ROSENBLUM: So you can see the page number on

3 the actual transcript. No. No. No. 1 -- that's 152. So --

4 MS. ISSO: So it's on page 152.

5 MS. ROSENBLUM: 152. Okay. Thank you.

6 MS. ISSO: Oh, my God. I was looking --

7 MS. ROSENBLUM: Sorry.

8 MS. ISSO: -- at the PDF (indiscernible).

9 MS. ROSENBLUM: It's just we're in different --

10 we're on different pages. So I just --

11 Q So --

12 MS. ROSENBLUM: -- want to make sure --

13 Q -- I state to you so you don't want Eugene to have

14 any overnights. I asked you that question, right?

15 A Okay. Yes.

16 Q And then you said there's no room in his home for

17 Ava to sleep. That's what you responded, correct?

18 A Yes.

19 Q But you just heard Eugene testify that Ava's going

20 to have -- basically has her own room. She's right now

21 sharing a room with him because she's so young, right?

22 A It's the first time I'm hearing of it. But yes --

23 Q Did you ask him?

24 A -- I did -- I did hear that today, yes.

1 Q Did you ask him recently though?

2 A No, I've not asked him.

3 Q So there should be no issue with overnights now,
4 right?

5 A You're asking if I should have an issue with
6 overnights?

7 Q There should be no issues, but I asked you what was
8 the issue that you had and you mentioned there was no room in
9 your deposition --

10 A Okay.

11 Q -- correct?

12 A Okay. Yeah.

13 Q And you didn't bring up any other issue regarding
14 overnights, correct?

15 A Yes.

16 Q And then -- then we asked you during your deposition
17 -- I -- I asked you about the baby proofing, correct?

18 A Yes.

19 Q And you testified that Eugene sent you proof of the
20 baby proofing in August of 2020, correct?

21 A I said he sent me some photos. Yes.

22 Q Which was to -- to show the proof of the baby
23 proofing, right, in his house?

24 A Yes.

1 Q Yeah. And that he sent you more than 10 photos,
2 correct?

3 A You -- are you asking me if you asked me that? Yes,
4 you did ask me that.

5 Q And then you testified that he sent you proof of the
6 baby proofing in August of 2020 that he has sent you photos,
7 correct?

8 A He did send me photos. Yes.

9 Q More than 10 photos, correct?

10 A I -- I think I said I don't remember how many
11 photos, but he definitely did send me more than 10. Yes.

12 Q Okay. And then I asked you are you requesting to go
13 inspect Eugene's home? I asked you that question, right?

14 A Yes.

15 Q And you stated not anymore, correct?

16 A Yes.

17 Q You testified that you witnessed Eugene play guitar
18 for the child, right?

19 A Yes.

20 Q And read to the child.

21 A Yes.

22 Q And that he cooked for her, right?

23 A I don't recall saying that he cooked for her. But
24 he made her food. He definitely prepared food for her.

1 Q And then he bought her books, right?

2 A Yes.

3 Q And he changed her diapers.

4 A Yes.

5 Q He fed her.

6 A Yes.

7 Q Rocked her to sleep.

8 A I assume so, yeah.

9 Q And he stayed awake at your old house to watch her

10 at night.

11 A No.

12 Q You didn't testify?

13 A I'm pretty sure I said that he did not stay at the

14 night to watch her because he would go home at nights.

15 Q I said well, let me rephrase that. When she was a

16 newborn I believe -- no, no. You said -- you said no. then

17 you said well, let me rephrase that. When she was a newborn,

18 I believe that he did once or twice.

19 A Okay. Once or twice. Uh-huh (affirmative).

20 Q And then I asked you what are Eugene's strengths as

21 a parent, right? And you --

22 A Yes.

23 Q -- responded I do believe he loves Ava. I do think

24 it's great that he's teaching her Russian. I think it's great

1 that he has attended most of her appointments. I do think
2 it's great that he's trying to pass on his musical abilities
3 to her. I think that's wonderful. That's what you said,
4 right?

5 A Yes.

6 Q You then -- I then asked you what -- what are
7 Eugene's weaknesses as a parent, right?

8 A Yes.

9 Q And you made a comment stating that he puts his own
10 -- Eugene has put his own -- then you said this is tough for
11 me to answer because I want -- I want Eugene and I to be able
12 to co-parent and I'm sad we're at this point. But -- but
13 Eugene puts his interest in front of Ava's interest. That's
14 what you said.

15 A Yes.

16 Q But Ms., you just testified he's been to almost
17 every prenatal appointment, right?

18 A Yes.

19 Q And that he's been to almost every doctor
20 appointment for this child, right?

21 A Yes.

22 Q And that he cooked for her -- or I'm sorry, prepared
23 food for her.

24 A Yeah.

1 Q Bathed her, read to her, sing to her, watched her,
2 rocked her to bed to sleep at night, sing to her. I mean,
3 he's done everything for her. He spent a lot of money in this
4 case to be here today, right?

5 A I assume he has. Yeah.

6 Q So do you think that's a fair statement to say that
7 he puts his interests before the child? Do you think that's
8 fair?

9 A Yes.

10 Q You testified that Eugene's -- that you and Eugene
11 spoke and it would be a good idea for the child to be
12 bilingual, correct?

13 A Yes.

14 Q Is A -- I also asked you about the baby proofing in
15 your -- in your home, right?

16 A I think so.

17 Q I asked you is your child's room baby proofed?

18 A Yes.

19 Q In both of your homes, right, the old one and the
20 new one, right?

21 A Both my -- yes. Uh-huh (affirmative).

22 Q Right?

23 A Yes.

24 Q Is there a gate at the doorway?

1 A No.

2 Q Okay. But you have cameras in there, right?

3 A I did.

4 Q Why did you take them out?

5 A Because Eugene and I broke up.

6 Q Oh, okay. But you used to watch the cameras when
7 your mother was babysitting, were you not?

8 A No. My concerns were specific to Eugene.

9 Q Okay. But, I mean, if you really had concerns, why
10 were you having him babysit?

11 A Well, that's why I end -- ending up the relationship
12 and asking him to start watching her at his home on his time
13 because of my concerns.

14 Q Yeah, but you know what, you make a lot of money.
15 Why didn't you put your child in childcare?

16 A Because I think it's better if she can spend time
17 with her grandmother and with her father.

18 Q Yeah, but don't you think it's a good idea for the
19 child to spend time with other children her own age?

20 A So I can also say that I feel like this is a
21 decision he and I needed to make together and that it was both
22 of our responsibility and we agreed together that it was
23 better.

24 Q But I asked you for the videos that were taken in

1 your home so I can observe them and you didn't provide those
2 to me --

3 MS. ROSENBLUM: Objection --

4 Q -- did you?

5 MS. ROSENBLUM: -- Your Honor.

6 THE COURT: Sustained.

7 MS. ROSENBLUM: Relevance.

8 MS. ISSO: It goes to her credibility.

9 THE COURT: Sustained.

10 MS. ISSO: She cherry picked a couple videos.

11 THE COURT: it has to do with the same discovery
12 issue that's come up for the third or fourth time today.

13 MS. ISSO: Okay.

14 BY MS. ISSO:

15 Q So you -- you were telling Dr. Bergquist that
16 Eugene's forgetful and absentminded. That's what you told
17 her, right?

18 A Yes.

19 Q Okay. You know that Eugene's boss that he's had for
20 over --

21 MS. ISSO: How many?

22 THE PLAINTIFF: Two bosses.

23 Q Two bosses for over 20 years were interviewed by Dr.
24 Bergquist? Did you know that?

1 A I -- I saw that he had some people who he worked
2 with and they were interviewed --

3 Q Yeah.

4 A -- yes.

5 Q And he's worked for them for over 20 years. You
6 know that, right?

7 A Yes.

8 Q Okay. And did they communicate to Dr. Bergquist
9 according to her report anything about Eugene being for --
10 forgetful or absentminded?

11 A I don't recall that they did. No.

12 Q No, they didn't.

13 MS. ROSENBLUM: Objection, Your Honor.

14 THE COURT: Sustained.

15 MS. ROSENBLUM: Is Ms. Isso --

16 THE COURT: It'll be stricken.

17 MS. ROSENBLUM: -- testifying?

18 MS. ISSO: Okay. Well, the record -- the -- the
19 report speaks --

20 THE COURT: Your comment --

21 MS. ISSO: -- for itself.

22 THE COURT: -- afterwards --

23 MS. ISSO: Okay. But the report speaks --

24 THE COURT: -- is what's stricken. She answered the

1 question. You got it on the record. It's just your
2 subsequent comment's stricken.

3 BY MS. ISSO:

4 Q In fact, he -- he's told Dr. Bergquist according to
5 her report which is part of the record that Eugene's an
6 excellent employee and goes above and beyond the call of duty,
7 right?

8 A I will take you for your word because I don't recall
9 reading that, but --

10 Q When Amber Harris informed you that only one parent
11 can be -- be at the -- at the medical appointment on August
12 10th, she informed you of that, right?

13 A Yes.

14 Q Okay. And at that previous appointment which was
15 the hearing appointment, right, in January?

16 A January 2021. Yes.

17 Q You -- and you attended that appointment on your
18 own, right?

19 A Yes.

20 Q Because that fell on your day.

21 A Yes.

22 Q And then the August 10th appointment fell on whose
23 day?

24 A Eugene's.

1 Q Eugene's day. And it was Eugene's turn to take the
2 child to the doctor, right?

3 A Absolutely.

4 Q And instead of you just allowing that and let Eugene
5 take the role of taking the child to the doctor, you got
6 upset, right?

7 A I let him take her. I -- I just wanted to be in the
8 room when -- if our -- if our child was going to be diagnosed
9 with autism I just wanted to be in the room --

10 Q Yeah, but --

11 A -- with Eugene and Ava.

12 Q Yeah, but this was Eugene's time to go to the
13 appointment because you went to one on your own previously.

14 A Absolutely.

15 Q And they told you there was COVID-19 procedures that
16 they're implemented.

17 A But they offered accommodations so that we can both
18 be in the room and Eugene said no, that I couldn't be in the
19 room.

20 MS. ISSO: Move to strike Your Honor because I --
21 that doesn't answer my question. My question called for a Yes
22 or no answer.

23 THE COURT: Sustained.

24 BY MS. ISSO:

1 Q So when they informed you that there's COVID-19
2 procedures they have to implement, that's what they informed
3 you, right?

4 A Yes.

5 Q You did not want to comply with that, right?

6 A No.

7 Q You requested accommodations, right?

8 A Yes.

9 Q Okay. So do you think your request of
10 accommodations should trump the government orders in the
11 state?

12 A I --

13 Q Yes or no?

14 A Yes.

15 MS. ROSENBLUM: I would --

16 Q You think that your -- your request should trump the
17 government orders in the state?

18 A I think there's a way to keep people safe and allow
19 both parents to be in the room.

20 Q But there was government orders in place, right?

21 A There was a government policy in place. Yes.

22 Q And you're an attorney, right?

23 A Yes.

24 Q And that's what we do. We follow rules and

1 procedures, right?

2 MS. ROSENBLUM: Objection, it's foundation. It's so
3 outside the scope. Argumentative.

4 THE COURT: Sustained.

5 (COURT RECESSED AT 2:23 AND RESUMED AT 2:23)

6 Q Isn't it true that after Dr. Bergquist interviewed
7 and evaluated you she also observed you with the child alone,
8 correct?

9 A Yes.

10 Q And after she ordered a psycho te -- what kind of
11 test is it? What kind of test did she order?

12 A Different psychological tests.

13 Q Yeah.

14 A Both of us.

15 Q She ordered these tests and they were conducted on
16 you, correct?

17 A Yes.

18 Q And after all of her evaluation, she indicated and
19 recommended that it's not in the child's best interest for you
20 to have primary physical custody, correct?

21 A She recommended joint. That's correct.

22 Q Okay. And in fact she recommended that you continue
23 individual therapy to assist you with your co-parenting and
24 trust issues that you have, correct?

1 A Yes.

2 Q And have you done that?

3 A Yes, I've been in therapy.

4 Q Okay. Exhibit 38. Let me see if I can pinpoint
5 these. Exhibit 25.

6 MS. ROSENBLUM: What? We're changing exhibits?
7 Text messages.

8 Q So let's look at Exhibit -- page 25. And this is
9 going to be Bates Stamp 2040. And for Molly, it's going to be
10 page 1196.

11 MS. ROSENBLUM: I'm --

12 A I don't --

13 THE COURT: Ms. Isso -- Isso, I've -- as I've
14 indicated, if in fact you're going to have her look at a
15 particular exhibit, I'm going to either need --

16 MS. ISSO: Well, I can put it on the screen.

17 MS. ROSENBLUM: Yeah, ours aren't Bate labeled. So
18 not --

19 MS. ISSO: I think. So we go to BlueJeans. Just
20 the ID. General session Department B, that's not it. Let me
21 find the other link.

22 Q So if you look at Exhibit number 25, Bates Stamp
23 number 2040.

24 MS. ROSENBLUM: I'm sorry, I can't see --

1 Q On this -- these are messages between you and
2 Eugene, correct?

3 A I believe so. I can -- I can barely read it myself.

4 Q And it says -- this was received by Nechole on --
5 this -- so this was a message you sent Eugene on October 9,
6 2019. And you state here we go again. My mom asked me about
7 giving Ava formula because she must be vitamin deprived.
8 That's when I got angry. She told me I can't -- I can't get
9 so angry now because I'm a mom and I need to be respectful. I
10 told her to respect me instead of respecting my parenting.
11 She also again said that Ava is cold when sleeping. I'm using
12 the wrong kind of cup. I shouldn't drink coffee while breast
13 feeding. So these are the things that your mom told you,
14 right?

15 A Yes.

16 THE COURT: The -- the Bates stamp on that, Ms.
17 Isso, for my reference?

18 MS. ISSO: It is 2040.

19 THE COURT: All right. Thank you.

20 Q And your mom is telling you not to get so angry now,
21 right?

22 A I think my mom was telling me not to get angry at
23 her.

24 Q No, she told me I can't get so angry now because I'm

1 a mom.

2 A At her.

3 Q But she's saying -- that's what she said to you.

4 You can't get so angry now, right?

5 A I believe so, yeah.

6 Q And that -- and that you need to be respectful,

7 right?

8 A Of her, yes.

9 Q And when she gave you some feedback or some

10 information, did you take that information?

11 A I took it. I didn't like it, but I took it.

12 Q And then Eugene sent you a long text basically

13 calling you a sweetheart and, you know, saying that, you know,

14 you -- he supports you because your mom had mentioned that the

15 child should have formula, right?

16 A If I recall -- are you asking me yes or no?

17 Q Well, this is -- this is the message you texted

18 Eugene. This is a message you sent Eugene. You said my mom

19 is asking me about giving Ava formula. That's what you texted

20 Eugene.

21 A Yeah, she -- she probably did ask about it. Yes.

22 Q And then you said I let her have it. It's the one

23 in -- in yellow, the one that's highlighted in yellow.

24 A I can't -- I'm --

1 Q I let her have it. I told her she was a total
2 hypocrite and that she needs to look at her own parenting and
3 stop criticizing mine.

4 A Okay.

5 Q I told her I don't want to bring Ava to her house
6 because of the living situation and environment. I also told
7 her do -- do some research before lecturing me about drinking
8 coffee or giving a toddler formula. So you were drinking
9 coffee while you were breastfeeding?

10 A Not -- I didn't drink coffee until Ava was over a
11 year old. And then I did start at that point because I had
12 read that -- you're asking -- okay. Oh, I did start because I
13 had read that at that age the level of caffeine that passed
14 through the breast milk was okay. It wouldn't harm the child.
15 But I didn't -- I didn't drink coffee for like the first year
16 of breastfeeding.

17 Q I told her that she let me witness abuse and alco --
18 alco -- alcoholism and she wants to lecture me about drinking
19 coffee starting when Ava was 10 months old, question mark,
20 that's what you typed to Eugene, right?

21 A Yes.

22 Q I also told her to get some therapy because it's
23 ridiculous for her to claim Ava is spacing out. And if so,
24 it's because she's malnourished. You text -- you texted that

1 to -- to Eugene, right?

2 A Yeah.

3 Q You -- you -- and you say I'm so sick of her
4 bullshit. Let me -- and we'll get (indiscernible). Sorry.
5 Okay.

6 MS. ISSO: So we'll need to admit this into
7 evidence, Your Honor.

8 MS. ROSENBLUM: It's already admitted.

9 MS. ISSO: No, it's not. You objected earlier --

10 MS. ROSENBLUM: I objected to the --

11 MS. ISSO: -- about it being admitted.

12 MS. ROSENBLUM: -- entirety of the exhibit. I
13 believe the Court's already determined that 25 would be
14 admitted. You just had to identify the ones you wanted.

15 THE COURT: Yeah, if you want to give the -- the
16 page and -- or the -- the Bates stamp's number, she has
17 admitted to that particular conversation.

18 MS. ISSO: Okay. So 25's been admitted?

19 MS. ROSENBLUM: Not --

20 THE COURT: Not --

21 MS. ROSENBLUM: -- the entire.

22 THE COURT: -- the entire document. The pages
23 you're referencing that are relevant. And if you want to do
24 that by -- if you -- listen.

1 MS. ISSO: Okay.

2 THE COURT: You don't have to do it today but --

3 MS. ISSO: Well, we'll --

4 THE COURT: -- maybe Friday.

5 MS. ISSO: -- try to do some today. We'll try to do

6 some today. I mean --

7 THE COURT: You -- you can get me a -- a list of the

8 pages that are being admitted but I am not admitting every

9 page that encompasses a three year period.

10 MS. ISSO: Okay. So we're going to admit then --

11 THE COURT: So yeah, that would be even better if

12 you want to specifically put it on the record right now.

13 MS. ISSO: So the -- what exhibit is this?

14 THE COURT: That -- we will --

15 MS. ROSENBLUM: 25.

16 MS. ISSO: Okay. 25, Bates 2040 and 2401.

17 MS. ROSENBLUM: 2041.

18 MS. ISSO: I'm sorry, 2041.

19 THE CLERK: Can you say that one more time? I can't

20 hear you very well.

21 MS. ISSO: I'm sorry. 2040 and 2041.

22 MS. ISSO: This is like -- I don't know how to use.

23 It's got (indiscernible). Hold on, Your Honor. I'm going

24 down -- going --

1 THE COURT: It's going to start smoking there a
2 minute, Ms. Isso. It's like you're starting a fire on
3 Survivor.

4 MS. ISSO: I'm just eating so much lately.

5 (PLAINTIFF'S EXHIBIT 25, BATES 2040, 2041 ADMITTED)

6 MS. ISSO: All these trials make me hungry. Okay.
7 Let's go to 802, page 802, Molly, which is Bates 1646.

8 MS. ROSENBLUM: What date is it?

9 MS. ISSO: 5/24/19.

10 MS. ISSO: So it's Bates Stamp 1646. We're going to
11 move to admit this one, just so you know.

12 BY MS. ISSO:

13 Q Basically these are text messages again between you
14 and Eugene, correct?

15 A Yes.

16 Q And over here, you say by the way, my mom sent me a
17 text this morning claiming that Ava had a cough yesterday and
18 offering to come over today to help me take care of her. I
19 told her no thanks. Now she just tried calling me and I
20 didn't answer. She text -- sent me a text claiming it was a
21 butt dial. That's what you messaged him, right?

22 A Yes.

23 Q And then you sent -- you sent him a message saying
24 yeah, she didn't cough at me either. Sometimes I wonder about

1 my mom's mental health. Even if Ava was sick, does my mom
2 think I want to spend the day arguing with her about Ava's
3 care or that I can't care for Ava on my own. I spent every
4 day with her for six months. So do you question your mom --
5 so that's -- that's what it says there, correct?

6 A Yeah, it does say that, yes.

7 Q You question -- the -- isn't it true here that you
8 -- you question your mom's mental health to Eugene, yes or no?
9 Is that what that text message says in this?

10 A I was saying it tongue and cheek, but yes
11 technically that's what I said, yes.

12 MS. ISSO: Move to strike. It calls for a yes or no
13 answer. Move to strike

14 THE COURT: Her question is did you do that.

15 Q Did you --

16 THE WITNESS: Yes --

17 Q -- question --

18 THE WITNESS: -- I did say that.

19 THE COURT: Okay.

20 MS. ISSO: Okay. So move to strike the other
21 statement though.

22 THE COURT: I will strike it.

23 MS. ISSO: The other one.

24 BY MS. ISSO:

1 Q So you did question your mom's mental health though.

2 A I did say that, yes.

3 Q Okay. And then --

4 THE COURT: So that page of that exhibit will be
5 admitted as well, correct?

6 MS. ISSO: Which is Exhibit 25, Bate 1646.

7 THE COURT: Correct.

8 (PLAINTIFF'S EXHIBIT 25, BATES 1646 ADMITTED)

9 BY MS. ISSO:

10 Q I'm going to go to page 144 which is --

11 MS. ROSENBLUM: What's the date?

12 Q What's the child's date of birth in this case again?

13 A September 26th, 2018.

14 MS. ROSENBLUM: Your Honor, I'm going to ask the
15 Plaintiff to stop testifying when the question is being asked
16 of my client. I can -- I can hear him --

17 THE COURT: Sir, you can't --

18 BY MS. ISSO:

19 Q So in this exhibit over here which is another text
20 message to --

21 MS. ROSENBLUM: What's the date?

22 MS. ISSO: July 4th, 2018.

23 MS. ROSENBLUM: July --

24 Q You sent a message to Eugene thinking about taking

1 baby weaning classes, correct?

2 A I -- that's what the word says, yes. I think I
3 meant breastfeeding classes. I had -- I was still pregnant at
4 the time so I don't think I would have been taking baby
5 weaning -- want to take a baby weaning class. It was
6 breastfeeding.

7 THE COURT: Are you moving to admit that particular
8 one, Ms. Isso?

9 MS. ISSO: No, it's not important.

10 THE COURT: Okay.

11 Q We'll go to 1567. What was -- just look at I guess
12 2354. These are messages between you and Eugene, correct?

13 A Yes.

14 MS. ROSENBLUM: What's the date?

15 MS. ISSO: February 12th, 2020.

16 Q And you're asking him -- (indiscernible) -- and
17 you're -- and you're messaging him did Ava have a good nap,
18 correct?

19 A I think Eugene's messaging me did Ava have a good
20 nap.

21 Q Yeah. And then you said oh, she slept for two
22 hours, right?

23 A I think so.

24 Q Message received from Nechole. Yeah, she slept

1 about two hours. And then he sent you these pictures?

2 A Yes.

3 Q And you responded red heart.

4 A I think so. I'm --

5 Q So there is -- so there is good communication
6 between you two, right?

7 A Majority of our communication before the
8 relationship ended was good. Yeah.

9 MS. ISSO: Okay. So move to admit Exhibit 2354 --
10 I'm sorry, Exhibit 25, Bate 2354 and 2355.

11 THE COURT: Okay.

12 MS. ISSO: And 2356, because then Eugene texts you
13 she's absolutely gorgeous and so smart. Ava ate carrots,
14 fruit bars, and Cheerios. Ava pooped. Ava ate all four of
15 her foods, right? That's what he texted you?

16 Q Yes. Uh-huh (affirmative).

17 A And what did you write in response?

18 Q I -- from here it looks I texted him later on in the
19 day to tell him my mom confirms she's watching Ava on Tuesday.
20 And --

21 A That was about 45 minutes later. You said my mom
22 confirmed she's watching Ava on Tuesday. You wrote okay,
23 thank you. And then he texts you I just put Ava to bed, she
24 fell asleep. I -- I found an excellent article on biracial

1 people. I also found out there's early voting in the Dem --
2 Democratic Primary. Okay. Good.

3 MS. ISSO: So let's -- we're going to move to admit
4 that one too, Your Honor, 2356.

5 (PLAINTIFF'S EXHIBIT 25, BATES 2354-2356 ADMITTED)
6 BY MS. ISSO:

7 Q 2357, he messages you that she slept for two hours,
8 she pooped in her sleep, she ate very well, she ate four
9 foods, she pooped again, she's been eating, she pooped. We're
10 on the way back to the house. We're on the way back at your
11 house. So they were out. And then she messaged you happy
12 Valentine's, heart. And you wrote to him thank you for the
13 flowers and balloon. I saw the wine in the fridge. Why did
14 you buy that. And he writes you're welcome.

15 MS. ISSO: Move to admit that one too, Your Honor.
16 2357.

17 THE COURT: Okay.

18 (PLAINTIFF'S EXHIBIT 25, BATES 2357 ADMITTED)

19 MS. ISSO: I don't know why that was funny to me.
20 I'm sorry.

21 BY MS. ISSO:

22 Q Okay. Okay. 1567, dates are sent in March of 2020.
23 He sends you a message on March of 20 -- March 20, 2020. It
24 says good morning. Please let me know when I can stop by and

1 see Ava. And your response was not today, I need a break.
2 Don't you have your boys today. Focus on them instead of
3 leading them to come over here. And then he writes back and
4 says Ava's diapers came. I'll bring them in the morning. And
5 there was no response from you, correct?

6 A Correct.

7 THE COURT: The Bates stamp again?

8 MS. ISSO: This is 2411.

9 THE COURT: Okay.

10 MS. ISSO: Exhibit number 25.

11 Q He messages you on March 22, 2020, Bates Stamp 2412
12 which is page number 1568. Can I see Ava for a little bit
13 when it's convenient for you. And you state why did you wait
14 until so late in the day to ask? He sent you that message at
15 2:28 p.m., correct?

16 A Yes.

17 Q And you wrote why did you wait so late in the day to
18 ask? What about your boys? I just woke up from a nap and
19 Ava's still sleeping. I have to run a quick errand and she
20 wakes up and walk Athena. I don't know if there will be time.
21 And he messages you on Athena's walk or I can stop by -- by
22 myself for a little bit if there's time. And you respond so
23 now it's all three of you. So you wrote now it's all three of
24 you. What do you mean three of you?

1 A He and his sons.

2 Q So now it's all three of -- of you. You earlier --
3 your earlier text said it's just you. That's what you wrote,
4 right?

5 A Yes.

6 Q You know those boys are her siblings, right?

7 A Yeah.

8 Q You then respond later in the day because this is
9 all on March 22nd you respond you can walk Athena tomorrow
10 morning, right?

11 A Yes.

12 Q Athena's the dog?

13 A Yes.

14 Q He wrote cool, I'll walk her at six.

15 MS. ISSO: Move to admit that, Your Honor. 2413,
16 2412, of Exhibit 25.

17 THE COURT: Okay.

18 (PLAINTIFF'S EXHIBIT 25, BATES 2412, 2413 ADMITTED)

19 (COUNSEL AND CLIENT CONFER BRIEFLY)

20 BY MS. ISSO:

21 Q So in this text messages Eugene was giving you some
22 advice, correct?

23 A I -- I got to read it.

24 Q He was recommending that you drive your cars around

1 your neighborhood.

2 MS. ROSENBLUM: What date is this?

3 Q Otherwise you --

4 MS. ISSO: It's April 2nd, 2020, Bates Stamp 2437,
5 page number 5093.

6 Q He -- he tells you you should drive your cars around
7 the neighborhood for a couple of days otherwise you'll risk
8 the batteries of going dead, right?

9 A Yes.

10 Q He said I'll be more than happy to do it for you,
11 right?

12 A Yes.

13 Q And then you respond you sound like my mom with the
14 unsolicited advice and assumptions what I do and don't know.
15 That's what you told him, right?

16 A Yes.

17 Q And he responded I'm sorry.

18 A Yes.

19 MS. ISSO: Move to admit page 2437.

20 THE COURT: It'll be admitted.

21 (PLAINTIFF'S EXHIBIT 25, BATES 2437 ADMITTED)

22 BY MS. ISSO:

23 Q So on page -- let's go to page 2441, the same --
24 it's -- it's page 1597, the April 5th, 2020. Eugene messages

1 you and says good morning, please let me know when I can see
2 Ava, right?

3 A Yes.

4 Q And then you responded what about your boys. Will
5 you be bringing them with you or leaving them behind. That's
6 what you messaged him, right?

7 A Yes.

8 Q And then he said they said they would like to see
9 Ava too, right?

10 A Yes.

11 Q And then you wrote this is the routine you do every
12 Sunday. You have your boy -- your boys, isn't going to work.
13 You should have already known whether you were going to visit
14 Ava alone and leave your boys behind. You should have also --
15 you also should have shown regard for me and asked me if it
16 was okay, good seeing three of you for a second day in a row
17 or arranging something where all of us are together again.
18 You later say I'm not doing it -- any of it. You then later
19 say enjoy your day with your boys, correct?

20 A Yeah, among other things. Yes.

21 MS. ISSO: Move to admit 2441 from Exhibit 25.

22 (PLAINTIFF'S EXHIBIT 25, BATES 2441 ADMITTED)

23 BY MS. ISSO:

24 Q He then messages you and says I am enjoying my day

1 with my boys. I would also like to see my daughter. I'm
2 respectfully ask -- I'm respectfully asking to see her at this
3 time that is convenient for you. And what did you say in
4 response?

5 A It looks like I said enjoy your day with your boys.

6 Q No, the second one at the bottom. You said --

7 A Oh, have fun.

8 Q Exclamation point.

9 A Exclamation point, yes.

10 Q That was on April 5th, 2020, right?

11 A I -- I'd have to go back. I wasn't paying attention
12 to the date. I'm sorry.

13 Q It says April 5th, 2020. That's what the document
14 says, right?

15 A That -- what you're showing me now, yes. Uh-huh
16 (affirmative).

17 Q And then on April 5th, 2020 later in the night -- 17
18 -- let's go to 1795. You're almost there. 1795. So these
19 are text messages between you and Eugene, right?

20 A Yes.

21 Q And these are messages that he sent to you on August
22 3rd, 2020, correct?

23 A Yes.

24 Q And these are messages showing pictures of what?

1 A The crib I asked him to get and some baby proofing
2 in the house.

3 Q So he baby proofed the cabinet. Is that what I'm
4 seeing right here? The baby -- so it can't open?

5 A Yes.

6 Q And then he baby proofed the stove, right?

7 A Yes.

8 Q And then he bought the crib, right?

9 A Yes.

10 Q And then he baby proofed the door, right? Do you
11 see the door she can't open --

12 A I do see that. I think those were -- there was some
13 that were sent after I asked for some more pictures of some
14 more areas. I'm not sure if tho -- that's those or if that
15 was the same day.

16 Q It says August 3rd, 2020, Ms., right there.

17 A Okay.

18 Q So he sent you a picture of the door -- doorknob
19 being baby proof, right?

20 A Yes.

21 Q And then another cabinet being baby proof, right?

22 A Yes.

23 Q And then an -- another drawer and cabinet, correct?

24 A Yes.

1 Q Look at this picture. He even put this -- this
2 rubber -- this rubber corner so the child doesn't hit her head
3 on the corner. He put a rubber thing there so she doesn't get
4 hurt.

5 MS. ROSENBLUM: Objection, Your Honor, to the extent
6 that Counsel's testifying.

7 THE COURT: We'll strike that part of it, but the
8 question itself --

9 MS. ROSENBLUM: Yeah.

10 THE WITNESS: Yeah, it looks like there's a
11 rubber --

12 THE COURT: -- regarding the corner.

13 THE WITNESS: -- corner guard.

14 MS. ISSO: Okay. And we're going to move to admit
15 2639, 2640.

16 (PLAINTIFF'S EXHIBIT 25, BATES 2639, 2640 ADMITTED)

17 THE COURT: Ms. Isso, let me just ask a trial
18 management question. Is -- is the person with Mr. Blackman
19 (sic) that is waiting, is that your witness?

20 MS. ISSO: That's her mother. We're -- we're
21 planning on calling her if we have time. I don't want to call
22 her now. I -- that's the last witness if we have time. It's
23 like the least important witness for us.

24 THE COURT: Okay. I just --

1 MS. ROSENBLUM: So --
2 THE COURT: I just --
3 MS. ROSENBLUM: -- I guess here's my question. Can
4 they -- can they be released, Brian and -- and Montana, if
5 they're not going to get called today? Because my
6 understanding is Ms. Isso has to leave at 4:45 and she's
7 calling witnesses at 3:00. So can --
8 MS. ISSO: No.
9 MS. ROSENBLUM: -- they be released for today, my
10 client's mother and Mr. Blackham?
11 MS. ISSO: I'm -- I'm -- listen, in my motion to
12 accommodate for -- for us, I said we'll call her on Friday.
13 We're going to call these particular people so everyone knows
14 when they're going to be called and they updated to it. So I
15 -- I don't -- I did everything I could to make this move.
16 THE COURT: Okay.
17 MS. ROSENBLUM: Right, but she's subpoenaed for two
18 days. I mean --
19 THE COURT: So what?
20 MS. ROSENBLUM: She was subpoenaed for two days.
21 Her mother was subpoenaed --
22 MS. ISSO: Because I couldn't --
23 MS. ROSENBLUM: -- for two days.
24 MS. ISSO: -- get the day that they were going to

1 agree to allow us to call her. So we were accommodating her
2 expert and another witness so I was trying to get
3 accommodation for everyone else so we can have a -- a strict
4 schedule and not so they're sitting here waiting. She can --

5 THE COURT: Just --

6 MS. ISSO: -- go -- we'll call her on Friday at the
7 end of the day if --

8 MS. ROSENBLUM: Okay.

9 MS. ISSO: -- we have time left, but I have to save
10 my time for him as a rebuttal, for our expert. We have the
11 therapists, the ABA therapist coming in right now at 3:00. I
12 don't know how much time I'm at.

13 THE COURT: Okay. I'll count it up --

14 MS. ISSO: And we had --

15 THE COURT: -- when we --

16 MS. ISSO: -- technology issues --

17 THE COURT: -- take a break.

18 MS. ISSO: -- in this courtroom.

19 THE CLERK: That's providing --

20 THE COURT: Yeah, I'll -- I'll add mine up too and
21 we'll -- do you have the ABA therapist coming in when?

22 MS. ISSO: Right now at 3:00 o'clock from Firefly.
23 So we're going to --

24 THE COURT: Well, if you're going to -- if we're

1 that close and you're not going to -- rather than five more
2 minutes of questions and jumping to the expert witness, why
3 don't we take our -- our last -- since we're stopping at 4:45
4 today, correct?

5 MS. ISSO: Correct.

6 THE COURT: Because you need --

7 MS. ISSO: And I want to reserve the right to ask
8 her more questions on Friday.

9 MS. ROSENBLUM: That's fine.

10 THE COURT: If -- if you have time, you -- you have
11 the right --

12 MS. ISSO: Yeah.

13

14 THE COURT: -- to do that.

15 MS. ISSO: My time. Yeah. Yeah.

16 THE COURT: You have the right to do that. I will
17 -- let's take a 10 minute break -- our last 10 minute break
18 for right now and then if you have your other witness coming
19 in, but I will give you a tally of what -- what time you have
20 left.

21 MS. ROSENBLUM: I just -- I mean, it -- if your mom
22 -- did your mom has -- or --

23 THE WITNESS: I arranged --

24 MS. ROSENBLUM: Or --

1 THE WITNESS: -- alternative childcare because of
2 the subpoena.

3 THE COURT: All right. So we'll be in recess for 10
4 minutes.

5 (COURT RECESSED AT 2:57 AND RESUMED AT 3:10)

6 THE CLERK: We're back on.

7 THE COURT: All right. We're back on the record.
8 It is 3:10 pursuant to the JAVS timestamp. As far as time
9 left, Ms. Isso, you have two hours and eleven minutes left.
10 Ms. Rosenblum has four hours and fifty minutes left. I'll
11 remind you that that includes cross examination of any of Ms.
12 Rosenblum's witnesses. So I just -- keep a running tally.
13 Keep people informed.

14 MS. ISSO: Okay. We'll call Heather Traucha next --
15 I'm sorry, Taucha --

16 MS. TAUCHEN: No, that's okay.

17 MS. ISSO: Sorry, Heather Tauchen.

18 (WITNESS SUMMONED)

19 THE COURT: Okay. And you want to come up. My
20 Court Clerk will -- do you want -- remain standing. My Court
21 Clerk will swear you in.

22 MS. TAUCHEN: Do you want me over here, right?
23 Okay.

24 THE CLERK: Raise your right hand. You do solemnly

1 swear the testimony you're about to give in this action shall
2 be the truth, the whole truth, and nothing but the truth, so
3 help you God?

4 MS. TAUCHEN: Yes.

5 HEATHER TAUCHEN

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

8 DIRECT EXAMINATION

9 BY MS. ISSO:

10 Q Please state your name for the record and tell us
11 your -- what company you work for.

12 A Yeah, Heather Tauchen, Firefly Behavioral Services.

13 THE CLERK: I'm sorry, can you spell your last name?

14 THE WITNESS: Yeah, T-a-u-c-h-e-n.

15 THE CLERK: Thanks.

16 MS. ISSO: And just to confirm, Exhibit 57 is
17 already admitted, right?

18 THE COURT: Madam Clerk?

19 THE CLERK: Exhibit which one?

20 MS. ISSO: 57.

21 THE CLERK: Yes, that's in.

22 MS. ISSO: Okay.

23 Q Exhibit 57 is the Firefly treatment plan for ABA
24 therapy. Could you just tell the Judge what that is?

1 A Yeah, the treatment plan? So it's just an overview
2 of what assessment results were conducted and how I really
3 develop goals and move forward for the next six months of
4 Ava's therapy.

5 Q And what -- what are the goals for this child?

6 A Yes. So a lot of it is social communication,
7 working on communicating her basic needs and wants instead of
8 engaging in maladaptive behaviors of screaming or saying no or
9 running away. And it also includes a lot of parent training
10 angles as well. That's something that I put a lot of emphasis
11 on. So I -- you know, I have a lot of involvement for my
12 parents and we were able to make progress as much as possible.

13 I also have a lot of adaptive goals for her too, so
14 I'm working on becoming more flexible in tolerating changes in
15 her environment. And then, you know, some play skills in
16 there because she was so young and working on integrating it
17 to more of a school environment.

18 Q Okay. And how is the treatment going for the
19 treatment?

20 A It's going great. Yeah, she's been doing really
21 awesome. I love how much progress she's made so far with just
22 spontaneously communicating her needs. Instead of becoming
23 frustrated, she's definitely become a lot more flexible which
24 is really awesome to see. Yeah, so I would say that -- that

1 treatment is going really well so far.

2 Q And did you observe this child at both parents'
3 home?

4 A Yes.

5 Q In the parents' home. Okay. And did you observe
6 anything at Eugene's home that would give, you know, a rise to
7 a concern or anything of that sort?

8 A No.

9 Q And has Eugene participated in all of the
10 appointments?

11 A Yes. Uh-huh (affirmative).

12 Q And has he asked questions?

13 A Yeah. Uh-huh (affirmative).

14 Q Has followed your recommendations?

15 A Yeah. Uh-huh (affirmative).

16 Q Okay. When did -- when did your company start
17 providing services to this child?

18 A Let's see, beginning of September probably like a
19 weekend.

20 Q Sorry, I don't mean to ask the question like --
21 so --

22 A Oh, no, that's okay. Yeah, the beginning of
23 September. I thin it was like the second weekend, if not, the
24 first, so --

1 Q And when does the treatment end?

2 A

3 So that's really depending on Ava's progress. And so right
4 now we have goals for the next six months and then I'll
5 reassess where we're at. I had developed some more goals for
6 her and once we hit a certain percentage, you know, where
7 she's mastering most of her goals and able to communicate and,
8 you know, follow social interactions to, you know, age typical
9 peers, then we'll look at discharge for her.

10 Q And is it true that you told Eugene that you were
11 impressed with his involvement with ABA -- with Ava's ABA
12 therapy?

13 A Yeah. Yeah.

14 Q And that you wished that all parents you worked with
15 were like him?

16 A Yeah, I would say that for both parents. I'm very
17 impressed with both parents how -- how much they participate
18 in ABA therapy. It's really great to see. And that's
19 something that I am very adamant about and can sometimes be
20 very challenging for parents. And so I love how both parents
21 for Ava are so invested and involved and I think it's really
22 going to make a difference with the -- her treatment.

23 Q Did you see that there was a bond between the child
24 and Dad?

1 A A bond?

2 Q Yeah, a bond.

3 A Yeah. Yeah, I think so.

4 Q how would you describe Eugene as a father to his

5 child based on what you've witnessed?

6 A I would say, yeah, very caring -- sorry.

7 Q Sorry, and that's tough question.

8 A Yeah, very caring, affectionate. He definitely

9 wants to put her needs first. He gets very involved in

10 wanting to learn what's the best way to teach her. I -- yeah,

11 I would say he's a great parent.

12 Q Has Eugene communicated with you?

13 A Yeah. Uh-huh (affirmative).

14 Q How often does he communicate with you?

15 A Yeah, I would say weekly, not more than that.

16 Q And what are those communications consist of?

17 A Questions, sometimes, you know, phone calls,

18 sometimes over email, parent training, what we review in

19 parent training, the lesson handouts.

20 (COUNSEL AND CLIENT CONFER BRIEFLY)

21 Q And did you attend that IEP meeting for Ava?

22 A I did, yes.

23 Q And was Ava placed in a regular inclusive general

24 education class?

1 A Yes.

2 Q Okay. Have you observed Eugene's older children
3 with Ava?

4 A Yeah, I got to see a little of that interaction.
5 Uh-huh (affirmative).

6 Q And how would you describe it?

7 A It was good. Yeah, Ava's definitely seeking out
8 that interaction and wanting to hold her brother's hand and
9 bring him to play with her and everything.

10 MS. ISSO: Okay. No further questions.

11 THE COURT: Ms. Rosenblum?

12 MS. ROSENBLUM: Yeah, just brief -- briefly.

13 CROSS EXAMINATION

14 BY MS. ROSENBLUM:

15 Q Heather, Ms. Isso might have asked you already, but
16 what is your role at Firefly?

17 A I got -- so I'm the clinical director. I'm also a
18 board certified behavior analyst. So I oversee the cases for
19 the RBTs.

20 Q And you're providing a -- are you providing direct
21 services to Ava or just supervising them?

22 A Supervising and parent training. Yeah.

23 Q Okay. And I think your -- you indicated that your
24 goals for Ava were social communication and communicating

1 basic needs and wants --

2 A Uh-huh (affirmative).

3 Q -- instead of engaging in maladaptive behavior; is
4 that correct?

5 A Yes.

6 Q Can you explain to the Judge where Ava was when she
7 started with Firefly and what the behaviors were?

8 A Yeah. So when starting when I first walked in the
9 door, I think it was Dad's first that we -- I went to and then
10 Mom's. and so I went to Dad's and I -- at first she was
11 crying. She didn't really want anything to do with me. She
12 was very shy. And so that's something that, you know, I -- I
13 take very lightly because I -- I want to build a relationship
14 with my clients as quickly as possible. And so a lot more
15 just like observing and seeing how she interacts and plays. I
16 noticed a lot of routines, very rigid with her routines. So
17 if there was any changes, she got really upset. If I were to,
18 you know, try to change the way she played or asked her
19 questions, part of that she would, you know, cry or -- or say
20 no or turn away from me.

21 And similar at Mom's, I think she did open up, you
22 know, started to get more used to seeing me probably by then
23 too and -- and yeah, we were able to play. I was able to see
24 how Mom interacted and Dad too and -- but yeah, definitely a

1 lot of rigid with play and if -- you know, if that was
2 interactive and crying.

3 Q I don't know how to ask it in any other way. A
4 neurotypical child, kids cry, right?

5 A Yeah.

6 Q Shy kids cry. It -- can you give me a little more
7 detail on how Ava would be different, how -- how these changes
8 in her routine as you've described would be different than a
9 neurotypical child or what we would --

10 A Yeah.

11 Q -- expect to see?

12 A Yeah, definitely. So a lot more of -- of like what
13 we would call restrictive and repetitive behavior. So
14 repeating the same activity or, you know, behavior over and
15 over. And if that was interrupted, then it leads to more
16 tantruming. Of course, we didn't, you know, push her so far
17 to where she's like having a meltdown or anything, but based
18 off parent report I know that, you know, those -- that's
19 usually where it leads. She does have different like stemming
20 behaviors is what we call with her fingers and her
21 repetitively moving, you know, her fingers in some way or
22 across her face.

23 And then as far as communication to -- so those
24 social interactions being a lot more -- you know, it's -- it's

1 pretty normal for a kid to be shy, but, you know, eventually
2 when she does start opening up we do see a lot more of those
3 like social interaction skills where with Ava we really do
4 have to teach, you know, how to, you know, say hi, how to --
5 how that engagement, what kind of, you know, words do we say
6 in certain context and go from there.

7 Q How would you describe when you first started seeing
8 Ava her vocabulary? Was she able to say words, sentences?

9 A Yeah, she was able to say some words. A lot of like
10 scripting is what we say. So repeating, you know, what she
11 sees on like a TV show or what, you know, Mom says or even,
12 you know, what other people in her environment are saying. So
13 not -- so kind of just saying words or sentences that don't'
14 -- aren't relevant to the context aren't like functional
15 communication for her so that when she started, that's kind of
16 where we were at. She wasn't really functionally
17 communicating with people.

18 Q How -- so I know you've only been involved for maybe
19 two months give or take.

20 A Yeah.

21 Q How have you seen Ava's improvement or
22 non-improvement since your involvement in the case?

23 A Yes. So a lot more communication. So she's able to
24 ask for things, make requests, asking for, you know, help and

1 asking for different items and asking for food, asking to stop
2 something too saying all done or that if she wants more of
3 something starting to get a lot more of those greetings and
4 farewells from her too instead of saying hi when somebody
5 enters the room or goodbye when we leave and communication
6 during play too. So making different sounds that are, you
7 know, associated with -- with play. So like if we're driving
8 a truck say, you know, like vroom vroom or making the sound
9 animals have and responding to questions more relevant as well
10 too.

11 Q I don't know if you can compare Ava to a
12 neurotypical child. Can you compare her where she's at to a
13 neurotypical child?

14 A So I can say that she does have deficits. So
15 definitely with, you know, communication she has some deficits
16 there. And -- and meeting, you know, some more supports and
17 then adaptive as well and being able to be flexible when
18 changes in her routine happen and, you know, supporting her
19 with play skills to help with those social interactions as
20 well, labeling different things in her environment to wanting
21 to broaden her vocabulary to help with her having more
22 communication and tools to use in those social interactions.
23 So I would -- you know, I would say that she does have
24 deficits. Do I think that they're severe deficits? No, but

1 she does have autism and has, you know, behaviors that
2 demonstrate that difference.

3 Q How often do you see Ava each week?

4 A Yeah, I see her weekly. If not, more. Definitely,
5 you know, at least an hour or two a week. And then sometimes
6 I'm able to make it to both parents' house. Sometimes it's
7 just one. But I do parenting time with both of them I guess
8 every other week. So if it's at Dad's one week, I'll do it
9 with Mom's the other week.

10 Q In -- I -- I don't know if you can tell me, but in
11 total how many hours a week is Firefly spending with this
12 family?

13 A Oh, a week?

14 Q Yes.

15 A Let's see. So she has 30 hours of direct therapy
16 and then I supervise at least an hour and do an hour of parent
17 training a week. So yeah, like 32 hours. So quite a bit.
18 Yeah.

19 Q Each week.

20 A I'm trying to think of the math. Or do you want me
21 like an actual number or that --

22 Q No. No. I mean --

23 A Okay.

24 Q -- if that's -- if that's your best estimate, I'm

1 going to go with 32 hours each week. And that --

2 A Yeah.

3 Q -- includes -- I think you mentioned parent
4 training. So can you explain what that is and what that
5 entails?

6 A Yeah, definitely. So parent training is -- I have
7 like a set of goals in the treatment plan that I have for
8 parents and in six months I want to be able to, you know, meet
9 those goals. So right now I have getting through at least 10
10 lessons in a curriculum. The curriculum just goes over what
11 is autism, what is ABA, and then it go -- dives into some, you
12 know, teaching strategies and techniques that the parents can
13 use while we're not there providing services.

14 Q And in your opinion, are both parents meeting those
15 goals?

16 A Yeah. Yeah. Uh-huh (affirmative).

17 Q I think your testimony was that both parents are
18 involved, correct?

19 A Yeah. Yeah.

20 Q Has there ever been a time where either parent has
21 denied Firefly access to Ava or access to their home?

22 A No.

23 Q Has there ever been a disruption in Ava's services
24 with Firefly that you can recall?

1 A I guess there has been a -- a slight disruption with
2 the insurance. We had a week off.

3 Q And can you explain what happened with that?

4 A We had --

5 MS. ISSO: Objection, relevance.

6 THE WITNESS: Oh.

7 THE COURT: Sorry.

8 MS. ISSO: She's asking her about insurance.

9 MS. ROSENBLUM: I asked if there was a disruption in
10 services with Firefly and what happened.

11 MS. ISSO: And she said it was with insurance.

12 MS. ROSENBLUM: I didn't say insurance. The witness
13 said insurance.

14 THE COURT: If the --

15 MS. ISSO: So --

16 THE COURT: If there was a disruption, I mean, that
17 would be relevant and we'll find out why.

18 MS. ISSO: With insurance? It's relevant?

19 THE COURT: I don't know why Ms. -- but we'll find
20 out why. Not to the why. The question is whether there was a
21 disruption. So --

22 MS. ROSENBLUM: Right.

23 THE COURT: -- that can be answered.

24 MS. ROSENBLUM: And the witness said that there was

1 -- there was an issue with insurance and I asked her to
2 explain.

3 THE COURT: Okay.

4 THE WITNESS: Okay. And so we had a pause in
5 insurance coverage. And so we -- or I guess we had a change
6 in insurance. So that led to a pause in services for a week.

7 BY MS. ROSENBLUM:

8 Q Are you aware of what specifically happened with the
9 insurance coverage?

10 A Yeah. So the insurance switched to Health Plan of
11 Nevada and we weren't contracted with them. And so we had to
12 pause so that we were able to know that we can get coverage
13 and pay for -- for those services.

14 Q Do you know which parent was responsible for the
15 pause in insurance?

16 A So Dad's insurance --

17 MS. ISSO: Objection, relevance.

18 A -- switched and --

19 THE COURT: I'm sorry?

20 MS. ISSO: Objection, relevance.

21 THE COURT: It's going to be overruled, but, again,
22 it's -- it's not going to make or break today. I mean, things
23 happen with insurance all the time. So overruled.

24 THE WITNESS: Okay. So let's see. So insurance

1 switched under Dad. And so since they both had commercial,
2 his birthday was before Mom's. And so his was primary. And
3 his primary insurance isn't what we were in network with. So
4 we had to pause services and tell her to switch it back over
5 to Mom's.

6 BY MS. ROSENBLUM:

7 Q And that situation was remedied; is that correct?

8 A Yes. Yeah, very quickly I would say.

9 Q At no point was Ava discharged from Firefly,
10 correct?

11 A No. No.

12 Q Okay. The last question I have to ask you is about
13 the IEP --

14 A Uh-huh (affirmative).

15 Q -- that Counsel asked. You were present for that
16 meeting; is that correct?

17 A Yeah. Yeah. Both meetings.

18 Q Why would Firefly be present for an IEP meeting?

19 A Yeah, so I like to provide consultation during IEP
20 meetings. It's just kind of help support for families,
21 advocate for Ava. Sometimes IEP meetings can be a little bit
22 stressful for a parent and there's a lot that goes into it.
23 And so I like to, you know, be there and support the parents
24 through that process so we can make sure we have, you know,

1 effective goals to move forward for Ava in this school
2 environment.

3 Q And to your knowledge, has Ava actually started in
4 school now?

5 A Yeah, she started Monday.

6 Q And the IEP plan has been approved and accepted by
7 the school to your knowledge?

8 A Yes. Uh-huh (affirmative).

9 Q Do you know what the accommodations are for Ava with
10 regard to the IEP?

11 A Yeah. Uh-huh (affirmative).

12 Q Can you -- can you tell me what those accommodations
13 are and tell the Judge what the accommodations are?

14 A Yeah. Yeah. So let's see, accommodations. So she
15 has a lot of goals but as far as the accommodation lays she,
16 you know, has supports for, you know, communication, visuals,
17 having somebody kind of one-on-one support to help her
18 initiate interaction and respond to her peers. And then she
19 also has -- I know she had like a -- a bathroom goal. And I
20 think it was relative to communicating surrounding that. She
21 had some accommodations for her mass as well, not being --
22 having to be required to wear one. And then I think there was
23 one more. I'm kind of spacing off that last accommodation.

24 MS. ROSENBLUM: I don't know if the IEP is on the

1 witness stand. Can I approach, Judge, with the IEP? I don't
2 know. If it's up there. It was Ms. Isso's exhibit.

3 THE COURT: I don't either, but yeah, I have no
4 problem with that.

5 MS. ROSENBLUM: I don't know if it would --

6 Q Would it help to take a look at the IEP?

7 A Sure. Yeah.

8 Q Sure.

9 A Yeah, sounds good. When's a lot --

10 Q Here you go. All right.

11 A Thank you.

12 Q Do you want me to find her accommodations?

13 A If -- if it helps refresh your recollection on what
14 the accommodations are.

15 Q Okay.

16 A Yeah, okay.

17 Q Does that help refresh your recollection?

18 A Yeah.

19 Q So -- so --

20 A Yeah.

21 Q -- yeah.

22 A I guess with the toileting one helping with pulling
23 her pants up and down and checking in with the parents to
24 communicate as far as potty training goes and writing

1 communication home for them to know what's going on in the
2 school environment.

3 Q And I think you said one of the accommodations that
4 she has one-to-one support; is that correct?

5 A Yeah, direct sport to -- support to help initiate
6 interactions and respond to her peers.

7 Q Okay.

8 A Yeah.

9 Q So can you just for the record explain what that
10 means? I -- I'm --

11 A Yeah.

12 Q I think we all know, but just so we have a clear
13 record of what one-to-one support means.

14 A Yeah. So somebody directly with her I guess one --
15 I don't know, one to -- like one -- one adult to one student
16 ratio supporting her in initiating interactions and saying hi
17 or, you know, if you want to play and then working on
18 responding if peers were to come up to her and ask her
19 questions.

20 Q Thank you for your testimony today.

21 A Yeah.

22 MS. ROSENBLUM: I don't have anything --

23 THE WITNESS: Of course.

24 MS. ROSENBLUM: -- further, Judge.

1 THE COURT: Ms. Isso, do you have any --
2 MS. ISSO: No, no further questions.
3 THE COURT: All right. Thank you for being here
4 today --
5 THE WITNESS: Yeah.
6 THE COURT: -- to testify.
7 THE WITNESS: Of course. Thank you.
8 THE COURT: Have a good day. Stay safe and healthy.
9 THE WITNESS: Thanks.
10 MS. ISSO: And we're -- we're not going to call
11 Jenny. We're not going to call her because --
12 THE WITNESS: Okay.
13 MS. ISSO: -- we're going to run out of time.
14 THE WITNESS: Okay. Perfect. Sounds good. Thank
15 you.
16 (WITNESS EXCUSED)
17 MS. ROSENBLUM: Thanks, Heather.
18 MS. ISSO: Your Honor, I would prefer to leave at --
19 because we only have -- if I can leave at 4:30 instead just so
20 I'm not speeding. I noticed I have to speed lately because
21 there's no traffic. So I'm there in time. And we -- we were
22 now -- we only have, what, like a couple hours left? So we're
23 going to save our time --
24 THE COURT: You have two hours and four minutes left

1 now.

2 MS. ISSO: I'm going to save our time for our expert
3 on Friday and we're going to call Mark James and what else?

4 THE COURT: Mark James now?

5 MS. ISSO: No, on --

6 THE COURT: Or on --

7 MS. ISSO: -- Friday.

8 THE COURT: -- Friday?

9 MS. ISSO: He -- he can only do Friday. And anyone
10 else?

11 (COUNSEL AND CLIENT CONFER BRIEFLY)

12 MS. ISSO: Oh, and Bergquist. We got to save some
13 time for Bergquist.

14 THE COURT: Listen, that's -- again, see, so I --
15 trial management. However you need or want -- however you
16 need to do it, but when time runs out, time is out. Make --
17 make objections, but it does not -- it does not afford you --
18 it includes cross examination. So do you have anybody --

19 MS. ISSO: No on else today.

20 THE COURT: Do you have anybody else you want to do
21 for a bit? You have four hours and fifty minutes. And,
22 again, I don't want to force you to --

23 MS. ROSENBLUM: No. No. I just -- again --

24 THE COURT: Because that makes --

1 MS. ROSENBLUM: -- I mean --
2 THE COURT: -- that will make --
3 MS. ROSENBLUM: -- I don't know if Mr. Blackham's
4 still there.
5 THE COURT: That will be --
6 THE CLERK: He's not.
7 THE COURT: See, that gets us the -- because we're
8 doing it short, that cuts us on Friday. So we're either
9 starting early or going late because right now we would have
10 looking at both of your totals six hours and fifty-four
11 minutes.
12 MS. ISSO: I can get here at 8:30 on Friday. I'll
13 rush. But I think I can get here at 8:30. And I don't know
14 if I'll be using --
15 MS. ROSENBLUM: I'll be here anytime you want me
16 here.
17 MS. ROSENBLUM: I don't know if we're going to use
18 up all of our time to be honest with you. We might not even
19 call Dr. Bergquist. Her report is already admitted then I
20 don't need to call her. So I don't -- I might not even use
21 all that time to be honest with you.
22 THE COURT: So what did you say about Mr. Blackham?
23 Do you want to --
24 MS. ROSENBLUM: I don't know -- he's not my witness.

1 THE COURT: No, I --

2 MS. ROSENBLUM: I just know he's on -- he's been on
3 the video screen all day. I don't know if he's still there.

4 THE CLERK: He's not there right now.

5 THE COURT: Yeah, that's on -- they're apparently
6 done.

7 MS. ROSENBLUM: I don't know if -- I mean, it would
8 seem like that would be a good -- you know, if we only have a
9 few minutes and -- but I'll -- whatever the Court wants to do,
10 I'm here. We're here. You tell me.

11 THE COURT: I mean, it's how you guys want to
12 present your case. If they're saving the rest of their time
13 for their expert and cross of yours, It would end up I guess
14 turning to you to start. And if you're not -- the most we
15 would go I guess would be 50 minutes or so.

16 MS. ROSENBLUM: 50? I can go --

17 THE COURT: What's that?

18 MS. ROSENBLUM: I can go 50. It's up to you.
19 That's fine with me. I mean, if she's -- I guess the question
20 is is whether -- aside from their experts, are they done
21 calling witnesses?

22 MS. ISSO: We still have --

23 THE COURT: Listen.

24 MS. ISSO: -- Mark James.

1 MS. ROSENBLUM: Right.

2 MS. ISSO: And Dr. Carter. And if we have time,
3 we'll call Kathleen Bergquist. And we might call her mother
4 if we have time too.

5 MS. ROSENBLUM: But her mother's available now.
6 That's my point.

7 THE COURT: Listen, it's -- she can present it how
8 she wants. She has two hours left. Again, to reiterate, that
9 includes cross examination. So --

10 MS. ISSO: And I got to save some time for closing
11 arguments.

12 THE COURT: You can do written, if not. I am not
13 adding additional time for closing arguments. If you have
14 additional time you want to use that for closing arguments,
15 you can use it for closing arguments. Otherwise --

16 MS. ISSO: That's what I just said. I said --

17 THE COURT: -- you can do it --

18 MS. ISSO: -- I got to save some time for closing
19 arguments.

20 THE COURT: I'm sorry?

21 MS. ISSO: I got to save some time for closing
22 arguments.

23 THE COURT: If you guys want a stip to do brief
24 written closings, you can do that as well.

1 MS. ROSENBLUM: That's fine with me. I don't mind
2 either way.

3 MS. ISSO: He's -- he's saying he wants me to just
4 present it here, the closing argument.

5 THE COURT: Okay. And the Court's going to end up
6 reading everything again including the pretrial memorandums,
7 et cetera. So --

8 MS. ROSENBLUM: I --

9 THE COURT: -- Ms. Rosen -- who is it you would be
10 calling?

11 MS. ROSENBLUM: I would call my client first.

12 THE COURT: Let -- let's just go ahead and start
13 that --

14 MS. ROSENBLUM: Yeah.

15 THE COURT: -- with the foundation --

16 MS. ROSENBLUM: That's --

17 THE COURT: -- stuff and we'll --

18 MS. ROSENBLUM: Get it --

19 THE COURT: -- stop by like --

20 MS. ROSENBLUM: -- going and --

21 THE COURT: -- 4:15 or --

22 MS. ROSENBLUM: -- go ahead.

23 THE COURT: -- 4:20 and we can at least get the
24 basic stuff started.

1 MS. ROSENBLUM: Yeah.

2 (WITNESS SUMMONED)

3 MS. ROSENBLUM: Can I just ask a housekeeping? I'm
4 sorry --

5 THE COURT: Sure.

6 MS. ROSENBLUM: -- before we start with that, can I
7 ask a housekeeping question?

8 THE COURT: Sure.

9 MS. ROSENBLUM: The Court -- my understanding that
10 the Court is admitting all of the OurFamilyWizard as Court's
11 Exhibit 2, correct?

12 THE COURT: It -- yes.

13 MS. ROSENBLUM: And the Court --

14 MS. ISSO: Wait, was -- what was the question?

15 MS. ROSENBLUM: OurFamily -- the OurFamilyWizard or
16 Talking --

17 MS. ISSO: Oh, Exhibit 2?

18 MS. ROSENBLUM: -- whatever they're using.

19 MS. ISSO: We're requesting to admit one.

20 MS. ROSENBLUM: Yeah. The Court intends to review
21 those messages. Is that -- will the Court review the entirety
22 of those messages or --

23 THE COURT: I will peruse them. My preference is
24 for people to put Bates stamps and specifics and closings.

1 That's why I'm submitting the written closings. And if not, I
2 guess Ms. Isso would have to verbally bring it up. But the
3 same as that big stack of text messages. I don't want to read
4 all of their --

5 MS. ROSENBLUM: No, that's fine.

6 THE COURT: -- back and forth.

7 MS. ROSENBLUM: I'm ready to go.

8 THE COURT: Okay. All right. So we'll call it JAVS
9 3:40, starting at 3:40. All right. Ms. Rosenblum.

10 MS. ROSENBLUM: All right.

11 THE COURT: We'll -- we'll remind you --

12 MS. ISSO: More like 3:37.

13 THE COURT: More like?

14 MS. ISSO: More like 3:37, not 3:38.

15 THE COURT: What do you -- 3:38 -- what?

16 MS. ISSO: No, it wasn't 40. It was --

17 THE COURT: I'm going --

18 MS. ISSO: -- 3:38.

19 THE COURT: -- off JAVS. I have a running JAVS that
20 was reset and if you guys want to check JAVS this entire time,
21 you can. Right now JAVS says 3:40 and 17 seconds. Right up
22 there. Right on the screen if you want to look, Ms. Isso.
23 That's what the Court's been using.

24 MS. ROSENBLUM: We good?

1 THE COURT: Yeah.

2 MS. ROSENBLUM: All right.

3 NECHOLE GARCIA

4 called as a witness on her own behalf, having been previously
5 sworn, testified upon her oath as follows on:

6 DIRECT EXAMINATION

7 BY MS. ROSENBLUM:

8 Q Nechole, how many children do you have?

9 A One.

10 Q And her name and date of birth, please?

11 A Ava Garcia-Shapiro, date of birth September 26th,
12 2018.

13 Q The Plaintiff is the father, correct?

14 A Yeah.

15 Q He's on --

16 A Yes.

17 Q -- the birth certificate?

18 A Yes, he is.

19 Q And you heard his testimony and you agree he was
20 present when Ava was born?

21 A Yes.

22 Q There's no dispute as to paternity; is that correct?

23 A That's correct.

24 Q Were you -- how -- tell me how you and the Plaintiff

1 met.

2 A 2012 or 2013 we met on an online dating site.

3 Q When did you begin a dating relationship?

4 A Approximately 2012 or 2013 is when we started dating
5 and we dated about a year -- a year and four -- four months, a
6 year-and-a-half. And then we broke up and resumed dating in I
7 think April of 2017. And then we were together until July of
8 2020.

9 Q You were asked questions about whether you and the
10 Defendant -- I -- I don't know. Let me just ask it. Did you
11 and the Defendant -- or you and the Plaintiff ever live
12 together?

13 A In like 2014 for about two weeks but not from the
14 2017 to 2020 period, no.

15 Q After Ava was born, have you resided with Eugene at
16 all?

17 A No.

18 Q Was there a reason that you and Eugene decided not
19 to live together?

20 A Eugene wanted to move in with me and live with me.
21 I had issues with -- what I talked a little bit about earlier.
22 It was some concerns with him and kind of putting his needs
23 before Ava's. As well there was issues with him expecting me
24 to financially support him. And so I wasn't comfortable with

1 him moving in with me. And before we had Ava, I made that
2 clear. We discussed that. I believe we were on the same page
3 about that.

4 Q The Plaintiff has asked you about seeing a
5 therapist. Who do you see?

6 A Megan Carp.

7 Q And how long have you've seen Megan Carp?

8 A I started seeing her because Eugene and I were
9 having problems and I wanted just some help coping with that.
10 So -- and that was in June of 2020. So I've seen her from
11 June of 2020 to the present. And I see her through Teladoc,
12 so it's all through video.

13 Q Okay. Is Megan a -- is Ms. Carp a doctor?

14 A No, she's a licensed clinical social worker.

15 Q Okay. Has she given you a diagnosis?

16 A As far as I'm aware, I actually learned this through
17 the custody evaluation, adjustment disorder with anxiety is
18 what she stated.

19 Q Has she recommended that you take medication?

20 A No.

21 Q Has your diagnosis of adjustment disorder with
22 anxiety affected you ability to parent Ava in any way?

23 A Not at all.

24 Q You mentioned that you started seeing Ms. Carp in

1 June 2020 because you were having issues with Eugene. Can you
2 be more specific about what those issues were?

3 A Yeah, so I have to back up just a little bit more.
4 Toward the end of 2019, and Eugene referenced this, there was
5 a change in our relationship and it was because he had
6 initially put some baby proofing measures in his home and then
7 took -- took them out because his parents were complaining.
8 And for me, that just started to -- I became very dissatisfied
9 with the relationship and just started feeling like he wasn't
10 putting Ava's safety needs first. And there were other
11 incidents throughout the course of the next several months
12 that were causing me to really have concern about whether he
13 and I should stay together. He told me I think early in 2020
14 that his son had reported being molested. I was adamant that
15 he contact the police and report it. He didn't want to do
16 that. That really bothered me. A little while later I did
17 see on the nanny cam him it looked like to me sleeping or
18 passed out while Ava was playing around him. That really
19 concerned me.

20 And then in June I was at work. He was watching
21 Ava. He texts me before I -- I would come home for lunch
22 every day and -- or just about every day and he would text at
23 me before I got home that Ava dropped a sippy cup on her
24 wrist. He's -- I initially thought okay, that's weird, but

1 okay. I'll -- when -- I'm going to get home.

2 I come home, Ava's crying hysterically. Her wrist
3 is a little swollen. And Eugene just asked me if I wanted to
4 take her to the doctor. It bothered me that he hadn't already
5 taken her so I immediately called work, took the afternoon
6 off, took her to the doctor. He came with me. There was --
7 the physician assistant that saw her was concerned that she
8 may have a -- a fracture in her wrist and I was very upset
9 because Eugene wasn't acting very concerned. He was there.
10 He was definitely there at the appointment, but he was kind of
11 trying to give -- have her hi five him and things that to me
12 weren't appropriate considering.

13 Anyway, thankfully her wrist -- I -- I took her to
14 get an X-ray. It was not fractured thankfully. But for me,
15 that was kind of just the end and -- but I was struggling
16 because injury did not grow up with an intact family. I
17 really wanted that for my -- for Ava. And I did not want to
18 end the relationship but it was -- had become so unhealthy and
19 toxic and I had just had some concerns about Eugene's behavior
20 that I just was in a rough place and wanted to start seeing
21 somebody to help me work through it and figure out what to do.

22 Q You're continuing to see Ms. Carp; is that correct?

23 A Yes.

24 Q Why are you -- so obviously the relationship is --

1 has ended as --

2 A Yes.

3 Q -- far as a dating relationship goes --

4 A Uh-huh (affirmative).

5 Q -- or a romantic relationship, is that fair?

6 A Yes.

7 Q So why are you continuing to see Ms. Carp?

8 A Mostly it's the stress of this litigation to be
9 honest with you. Eugene as been -- is like a switch flipped.
10 Once I told him that I changed the locks to my home and -- and
11 didn't want him just coming and going and he has just been
12 incredibly hostile, disagreeable, alm -- on almost every
13 issue, just seems to almost want to pick fights with me and --
14 and bait me into arguments. It's just been very emotionally
15 difficult. At doctors appointments he'll openly disagree with
16 me or disparage me to whatever professional's in the room.
17 It's just been very difficult and stressful. And so therapy's
18 kind of been helping me manage it. And honestly this case has
19 been -- it's been hard and the anxiety of what's going to
20 happen and, you know, each court hearing. And so I've been
21 seeing the -- the therapist to help me primarily with that.

22 Also on top of that, Ava was showing signs and
23 symptoms of something not being right. And then there was a
24 possibility of an autism diagnosis. And that itself is a lot

1 for -- was a lot for me to -- to handle and to try to adjust
2 to and, you know, to me -- I'll speak for myself. My
3 expectations have to -- had to shift once -- it would be an
4 understanding that my daughter's not neurotypical and -- and
5 my understanding of -- of what her outcomes are going to be
6 and, you know, my dreams of what she be had to shift and
7 change. So therapies help me a lot with that as well.

8 Q Okay. We've spent a lot of time talking about each
9 other. Let's talk about Ava.

10 A Okay.

11 Q She's three?

12 A Yes.

13 Q She's in school?

14 A She just started this week.

15 Q Where does she go?

16 A To I think it's called John Dooley Elementary School
17 in Henderson.

18 Q And how did the -- how did John Dooley become the
19 school that Ava would attend?

20 A So I initiated getting her involved in early
21 intervention and through that process as she got closer to the
22 age of three Amber Harris, the developmental specialist,
23 introduced us to the Child Find team for the school district
24 kind of a transition plan. And so we met with the school

1 district and that kind of initiated the process of getting her
2 into their pre-K program with the school district.

3 Q So how long has she been in school?

4 A Literally just started on Monday. So this -- today
5 was her third day of school.

6 Q So far how is she doing?

7 A I've been email --

8 Q Two days?

9 A -- the -- I've been emailing the teacher. She's
10 been doing well. She -- it's an adjustment for her. She --
11 according to what the teacher responded, she's struggling with
12 the social communication. She has had -- protested somewhat
13 when she -- or Eugene and I have left her there. But all and
14 all she's doing well and she seems to be adjusting and
15 hopefully she's going to make friends. And they're -- they're
16 going to offer -- she's going to get 30 minutes of speech
17 therapy a week. She's going to get 30 minutes of occupational
18 therapy a week. So she's going to get services in -- at
19 school as well that are going to help her.

20 Q Okay. So let's talk about what Ava's needs are
21 today. Communication has been discussed a lot. Does she
22 communicate?

23 A Somewhat. As Heather said, a lot of her speech is
24 that re -- Dr. Gaspar said it's echolalia and scripting. It's

1 repeating what -- what you say to her out of context or she --
2 she hasn't -- she can mem -- her memory is amazing. She can
3 memorize just whole books and she'll just recite parts of
4 books. She'll recite a whole section of a song. Functionally
5 though, the functional communication is -- is a big issue.
6 She's gotten better. And --

7 Q So when you say functional --

8 A Yeah.

9 Q -- communication, what do you mean?

10 A Like making requests, communicating what she -- when
11 she wants something, communicating when she wants you to stop,
12 you know, asking for help. Those things where there's a
13 function to it I guess is what I'm trying to say.

14 Q Okay. Physically does she have limitations?

15 A Not really. I think she's pretty much on point with
16 her gross -- like with her gross motor stuff. She does have a
17 very, very limited diet, very, very picky eater. And -- and
18 her weight has dropped a little off the -- a little bit she's
19 still pro -- he weight's still progressing. So I would say
20 that physically she's -- all and all she's okay.

21 Q The picky eating and limited diet, has --

22 A Yes.

23 Q -- that been attributed as part of the autism
24 diagnosis that she has?

1 A Yes, it has.

2 Q What are her limitations with regard to eating and
3 diet?

4 A So Ava is -- it is very, very, very difficult to get
5 her to try new things, period. But food in particular she's
6 very resistant to trying new foods. When we first started
7 early intervention, she only ate three to four foods. It's
8 expanded now where there's a couple more of the same type of
9 food but maybe a different flavor. But it's still very
10 difficult. So that is something ABA's working on and also she
11 needs a feeding therapist as well.

12 Q Explain what the feeding therapy is and what it does
13 for her.

14 A So it'll -- it -- it -- Dr. Gaspar recommended
15 speech/feeding. So they'll also work on speech with her. But
16 it -- I believe will help -- the -- the feeding therapist will
17 kind of figure out what the issue is, is it sensory, is it the
18 texture of the food, is it the smell of the food or is it that
19 she just doesn't want to try anything new, exactly what the
20 issue is, and then help her with that hopefully by gradually
21 introducing other foods and hopefully just to help her
22 encourage her to eat a more varied diet.

23 Q And the testimony through the Plaintiff's portion
24 was that Ava also has a number of food allergies; is that

1 correct?

2 A Yes, she does.

3 Q Can you again recite what the --

4 A Yes.

5 Q -- allergies are?

6 A Soy, peanuts, which we recently tested and it is
7 expanded to other nuts as well, dairy, eggs. I feel like I'm
8 -- oh, soy, peanuts, dairy, eggs. I feel like I'm missing
9 one.

10 Q Wheat?

11 A She was -- originally we thought wheat but then the
12 doctor later said it was fine. Maybe it's -- maybe dogs is
13 the other one.

14 Q Okay. Her diet -- I think you said she has expanded
15 her diet now. So is it still limited in what you would --

16 A Yes.

17 Q -- I guess what you understand of a neurotypical
18 child of Ava's age?

19 A Yes. So she -- so she eats the -- the Beech-Nut
20 fruity oat bars in my home. I have expanded it where she will
21 try a few other cereal bars. That's the expansion. She eats
22 sun butter and jelly sandwiches and cheerios. And she only
23 drinks water at my home out of a particular cup. She won't
24 drink out of any other cup. So it's very, very limited.

1 Q So we talked about the vocabulary. We talked about
2 the diet, the gross motor skills. Her -- you -- you mentioned
3 that she can memorize whole books.

4 A Yes.

5 Q Is she able to read for a child her age?

6 A So what -- what Ava can do, she can memorize the
7 word. And then if she sees the word again, she can say the
8 word. So it's -- her brain operates very differently from my
9 if of a neurotypical kid. Like I -- I learned to phonetically
10 sound out a word. Ava just learned that a-n-d means and. And
11 so she sees that word, she says and. So in that sense if she
12 can memorize enough words and then see them, yes, she can say
13 those words out loud. I don't believe she understands what
14 she's -- she comprehends it or that it has, you know, meaning
15 for her other than she's just repeating what she's memorized
16 if that makes sense.

17 Q How about counting? Can she --

18 A Ava --

19 Q -- count?

20 A Ava can count to at least 30. I think heard her
21 count to 31. And she can even count from 10 on back -- 10 to
22 1. So yes.

23 Q Okay.

24 A Uh-huh (affirmative).

1 Q ABCs, does she know her ABCs?

2 A She does. Uh-huh (affirmative).

3 Q Dad mentioned that Ava is musically gifted. Have
4 you been able to see that?

5 A Yeah. So she -- well, she does have a very good
6 sense of rhythm. She does have a very pretty voice. She
7 loves music. And that's pretty much what I've seen. She
8 loves singing -- singing songs and stuff and she loves when I
9 sing with her and sings stuff together and year.

10 Q How does Ava do when you introduce new people to
11 her?

12 A Initially, she is not at all interested. And
13 actually, I -- and this still happens with me, not as much,
14 but like even during early intervention early on if I were
15 Eugene were even talking to someone else, she would get upset
16 and start protesting. She still does it with me sometimes but
17 it's gotten better since she started ABA therapy. So she does
18 -- it take her a long time to warm up to new people.

19 Q When you say protesting or describe her -- and even
20 with Heather describing her crying or -- can you be more
21 specific? Give me an example of what that looks like.

22 A Okay. So she'll -- Ava doesn't say no. She goes
23 na, na, na, na, na. And she might just start na, na, saying
24 it loudly. She might start whining loudly. And if you keep

1 going, she would start crying. And if you keep going after
2 that, the crying will get more intense and get really bad.
3 And so I usually -- I -- I won't speak for Eugene, but I
4 usually back off way before we get to that point because I
5 hate seeing her that way. But it usually involves her kind of
6 whining, repeating a phrase over and over again, it then it
7 escalates to crying. I have seen her sometimes more lately
8 start to kick and flail a little bit. I guess I'm just
9 demonstrating a tantrum, but it's kind of tantruming type
10 behaviors.

11 Q Has she ever injured herself having a tantrum?

12 A Not that I'm aware of.

13 Q Does it ever escalate to the point that you're
14 concerned that she could injure herself or injure you I guess?

15 A I'm not concerned about her injuring me. Some of
16 the kicking that I've seen, sometimes, you know, she's been in
17 her -- her crib and she kicks and I do get a little concerned
18 she might hit something or bump into something if she does
19 that. One of the RBTs reported that she did see Ava start to
20 hit herself in the head but that only happened once. So we're
21 kind of monitoring that to see if that happens again. I
22 haven't see that, so --

23 MS. ISSO: Objection, Your Honor. Move to strike
24 that as hearsay.

1 THE COURT: The statement --

2 MS. ISSO: RBT said something.

3 THE COURT: The what?

4 MS. ROSENBLUM: The --

5 THE COURT: All right.

6 MS. ROSENBLUM: Yeah.

7 THE COURT: So the hearsay statement will be
8 stricken.

9 MS. ROSENBLUM: Right.

10 BY MS. ROSENBLUM:

11 Q Nechole, has -- as far as the therapies that Ava's
12 involved in, can you give me an -- give us an idea of who she
13 sees? Start out with who she sees.

14 A Okay. So her primary therapy is the applied
15 behavioral analysis therapy with Firefly. That is 30 hours a
16 week, six hours a day. She has one shift for three hours in
17 the afternoon and then a second one kind of at -- late
18 afternoon, early evening. That's a primary one. Then now
19 with the school district, she goes to school Monday through
20 Thursday from 8:00 to 10:30. And she -- we did have her
21 placed in the general education room but then she gets those
22 additional services. And then I'm actually lining up. She
23 also needs speech and feeding therapy. So I found a place and
24 I've messaged Eugene asking if he will agree to that as well.

1 So then -- so that would be the sum of her therapies. Through
2 the school again she's -- she is also receiving speech and
3 occupational therapy.

4 Q Okay. The school district Monday through Thursday,
5 she attends school at John Dooley, correct?

6 A Yes.

7 Q And she's getting -- so when you say she goes from
8 8:00 to 10:30 and she gets additional services, is that during
9 that 8:00 to 10:30 time?

10 A Yes, my understanding is the speech therapist goes
11 to the class. The occupational therapist goes to the class to
12 perform the services.

13 Q Okay. And then in addition to that, there is --
14 there will be additional speech and feeding therapy. Is that
15 my -- is that what I'm understanding from you?

16 A Yes, because that's what Dr. Gaspar recommended.

17 Q Okay. And I believe you said that you had found a
18 -- a place to conduct that, correct?

19 A Yes. My biggest concern was because she's got so
20 much therapy during the week I don't want to overwhelm her.
21 So I was able to work something out with the ABA therapy but
22 they would actually just come with us to the speech therapy
23 and she can kind of have the speech and therapy and ABA all at
24 once. And so I found a place willing to do that. So I'm

1 trying to --

2 Q With regard to finding the therapist, particularly
3 the services that she's in now with ABA and Firefly and then
4 this speech therapist and feeding therapy, has that been --
5 who's been responsible for -- for trying to find those people?

6 A It's been primarily me. I mean, I got her into
7 early intervention. I asked Eugene if he would agree and he
8 kind of said he didn't see an issue but then did ultimately
9 agree. I wanted -- the Child Find stuff, the -- that was
10 through Therapy Management Group. They -- they're the one --
11 they're the ones who initiated that.

12 When -- even for the -- the evaluation of the school
13 district, I wanted some additional evaluations done and Eugene
14 initially was drawing a line in the sand and saying he
15 wouldn't agree to that. After Dr. Gaspar diagnosed Ava, he
16 finally backed off of that. But I would say it's primarily
17 been me.

18 Q Since -- well, let me back up. When did Nevada --
19 or when did -- sorry, when did Ava initiate with Nevada Early
20 Intervention?

21 A It was the end of 2020. I had -- we had taken her
22 to her well check -- two year well check. And I was concerned
23 about her speech. The pediatrician said well, she's
24 bilingual. They -- they usually have a delay but if she stops

1 progressing, then you should be concerned. And I noticed
2 regression in her speech and actually in some of her
3 comprehension. And that's what caused me to have some
4 concerns. And I learned about early intervention, that it was
5 at no cost. I felt like what was the harm at least getting
6 her evaluated. So I messaged Eugene about it and once he
7 agreed I went ahead and contacted them to get it started.

8 Q To your recollection, was Eugene in agreement with
9 you about Ava's speech issues at the time?

10 A No.

11 MS. ISSO: Objection, foundation.

12 THE COURT: Do you want to I guess get a time period
13 for --

14 MS. ROSENBLUM: Sure.

15 THE COURT: -- foundation purposes.

16 BY MS. ROSENBLUM:

17 Q And -- and your -- your testimony is at the end of
18 2020 you took Ava to a well check. Who was it with?

19 A It was Dr. Hutchings at Sienna Pediatrics.

20 Q And what did you mention to Dr. Hutchings at that
21 time?

22 A I was concerned about Ava was only saying a few
23 words and I was concerned about her -- her speech being
24 delayed.

1 Q Was Dad in agreement with your assessment at that
2 time that Ava's speech was delayed?

3 A I think he -- I want to -- I don't want to be -- I'm
4 just thinking about your question. I think he agreed it was
5 delayed. I think we disagreed as to the cause if that makes
6 sense.

7 Q Okay. And you have mentioned somewhere along the
8 way that's -- I don't know if it was Dr. Hutchings or Dad or
9 somebody mentioned that Ava was bilingual; is that correct?

10 A Yes.

11 Q Was there some position on Dad's part that Ava's
12 speech delay was due to the fact that he was -- that she was
13 bilingual?

14 A Yes, for a very long time it's -- he attributed it
15 -- I think even when I initially raised it to him thousands of
16 dollars to have her evaluated he says bilingual and then he
17 also honestly blamed it on me as well.

18 Q And when you say he blamed it on your, what do you
19 mean?

20 A He is insisting that I withheld Ava for 30 something
21 days and that during that time that's when she forgot a lot of
22 the words that I noticed she stopped saying.

23 MS. ISSO: Objection, Your Honor. Hearsay. It's
24 basically discussing what the child said or didn't say.

1 MS. ROSENBLUM: It's discussing what Dad said.

2 THE COURT: That's what Dad said --

3 MS. ROSENBLUM: It's a party admission.

4 THE COURT: -- and Dad's a party here. So
5 overruled.

6 BY MS. ROSENBLUM:

7 Q Nechole, there have been points throughout this
8 litigation and even prior where you and Eugene would you agree
9 have co-parented well?

10 A Before the litigation, absolutely. Yeah.

11 Q Okay. Ms. Isso showed you text messages and -- and
12 videos of Dad sending you pictures of --

13 A Yes.

14 Q -- Ava, correct?

15 A Yes.

16 Q If you can look at the Defendant's Exhibit book. I
17 think there's two of them up there.

18 A Yes.

19 Q Number one.

20 A Uh-huh (affirmative).

21 Q And we're going to Exhibit I which are the
22 OurFamilyWizard messages.

23 A Okay.

24 Q So just looking -- I'm looking at what has been -- I

1 believe these are Court's Exhibit 1 also. But even just
2 looking at the first few. So when -- let's -- let's lay some
3 context here. When were you ordered to start using
4 OurFamilyWizard?

5 A I think the hearing was September 17th of 2020.
6 Because I think we were ordered on September 17th, 2020.

7 Q Okay. And you signed up for it?

8 A Yes.

9 Q And Dad obviously signed up for it as well, correct?

10 A Yes.

11 Q Is that the way that you and Dad communicate?

12 A Yes.

13 Q And -- and is that your request that you continue
14 communication through OurFamilyWizard?

15 A Yes.

16 Q Have -- generally has OurFamilyWizard communication
17 worked for the two of you since it's been ordered?

18 A It hasn't tapped down on the hostility and the
19 conflict honestly. No. My hope is that it does eventually at
20 some point.

21 Q Okay. But as far as getting messages --

22 A Yes.

23 Q -- communicating --

24 A Yes.

1 Q -- with each other --

2 A No, yeah. And -- and the calendar -- some of the
3 other features of this app also work well.

4 Q Okay. Is it your request at the end of this that
5 the Court continue to order the use of OurFamilyWizard?

6 A Yes, it is very much. Yeah.

7 Q Okay. So just looking at page 1 here sort of at the
8 beginning, if you can just take a look at these messages.

9 A Yes.

10 Q You and Dad are sending pictures back and forth; is
11 that correct?

12 A Yes.

13 Q And kind of communicating with each other about how
14 Ava is doing every day; is that correct?

15 A That's correct.

16 Q Would that be pretty typical up until this case was
17 started or right before, I guess?

18 A It was typical. Yeah, when he was with Ava while I
19 was at work, he would send me pictures. If I was with Ava and
20 when wasn't there, I would send him pictures.

21 Q Okay. One of the videos that Counsel's had admitted
22 was Ava in a pool --

23 A Yes.

24 Q -- with Dad. Are you in that video?

1 A I am.

2 Q And when about was that?

3 A Probably summer of 2019 I had wanted Ava to take
4 swimming lessons. So I signed her up and I invited Eugene to
5 join us.

6 Q And he came to the swimming lesson?

7 A He did. Uh-huh (affirmative).

8 Q And you guys were getting along okay?

9 A Yes. Yeah.

10 Q All right. Let me just follow up on some of these
11 other issues here. In his direct examination, Dad described
12 you as uncooperative and it's not possible to get along with
13 you unless you're doing whatever you say. Do you agree with
14 that statement?

15 A No.

16 Q That you have been unwilling to compromise. Do you
17 agree with that statement?

18 A No.

19 Q That you're a bully. Do you agree with that
20 statement?

21 A No.

22 Q That you're a liar? Do you agree with that
23 statement?

24 A No.

1 Q And that you're constantly upset. Do you agree with
2 that statement?

3 A No.

4 Q In fact, the text message -- or the OurFamilyWizard
5 messages I just showed you show you and Dad getting along
6 pretty well, right?

7 A Yes.

8 Q There have been -- have there been times where
9 you've asked Dad to do things and he's disagreed with you?

10 A Yes.

11 Q How do those disputes generally resolved?

12 A We're in a -- a phase now where I just stop --
13 we're in a phase where Eugene has to have the last word. He's
14 accusing me of being a liar. He's accusing me of playing
15 games. And so I usually just try to keep communications,
16 focus on Ava, and I try to stop so that the conflict on
17 whatever the issue stops. And then us -- usually most of the
18 messages end with Eugene telling me something about how the
19 evidence will show that I'm a liar or whatever. And I -- I
20 usually leave those messages alone because I don't think
21 they're productive to co-parenting.

22 Q And so Nechole, let's talk about potty training.

23 A Okay.

24 Q If you can flip in that book to I believe it's on

1 page 29.

2 A The Bates stamp number?

3 Q Yeah, the Bates at the bottom.

4 A Okay. Okay.

5 Q Okay. Was there a time -- so you heard the
6 testimony that Ava is getting supports for potty training now,
7 correct?

8 A Yes.

9 Q Was there a time prior to that where either of you
10 had started to potty train Ava?

11 A In my opinion, Eugene had started. Yes.

12 Q And --

13 MS. ISSO: Objection, lacks personal knowledge. He
14 already testified that he did not start it. She's guessing
15 that he started it. Speculation.

16 THE COURT: Okay. But -- okay. That -- that's her
17 belief. That's her understanding.

18 MS. ISSO: But she doesn't have any knowledge of
19 that.

20 THE COURT: Do you have any --

21 MS. ISSO: She's speculating.

22 THE COURT: -- knowledge either way?

23 THE WITNESS: Based on our communications, that's
24 all I'm -- I'm basing our comun -- I haven't been in the home

1 to personally observe it, but based on our communications,
2 yes.

3 MS. ISSO: Well -- well --

4 THE COURT: Okay.

5 MS. ISSO: -- no, that's not what she's -- yeah,
6 that's not what she's saying. That's an objection. That's
7 hearsay, speculation.

8 THE COURT: No, that's not hearsay. She's --

9 MS. ISSO: Yeah --

10 THE COURT: -- saying based on their communication.

11 MS. ISSO: Yeah, based on --

12 THE COURT: That was her --

13 MS. ISSO: -- what communications?

14 THE COURT: -- understanding.

15 MS. ISSO: Foundation then.

16 MS. ROSENBLUM: Okay.

17 MS. ISSO: What communications?

18 THE COURT: Overruled.

19 MS. ISSO: He didn't say that --

20 (COURT RECESSED AT 4:10 AND RESUMED AT 4:10)

21 Q All right.

22 MS. ISSO: -- started potty training

23 Q So looking at Exhibit -- I'm sorry, page 29. If you
24 can take a look at that message. 68.

1 A Yes.

2 Q Is this the basis for why you believed that Dad had
3 started potty training?

4 A Yes.

5 Q And if you could just explain what you've documented
6 in this email.

7 A Yes. So Eugene and I went to Ava's well check and
8 rather than communicating anything to me in front of me, he
9 told the doctor that he bought a potty for Ava, that he
10 started sitting her on it, introduced it to her and he started
11 putting her on the potty and then kind of asked him about
12 questions about potty training. So really surprising to me
13 because he had never actually said to me about her potty. I
14 started sitting around the potty. It did bother me that I was
15 learning through him asking the Doctor questions about it
16 instead of discussing it and I was very concerned also because
17 I felt like we need to be on the same page and start at the
18 same time and kind of be consistent with our method so that
19 Ava wouldn't get confused and we didn't prolong the process
20 for her.

21 Q And then if you look at the next page on page 30,
22 that message, 71 of 819. Do you --

23 A Okay.

24 Q -- see that there?

1 A Yes.

2 Q And that was Eugene's response to you?

3 A Yes.

4 MS. ISSO: What page are we on?

5 MS. ROSENBLUM: Page 30.

6 MS. ISSO: Page 30 like on the top?

7 MS. ROSENBLUM: Of Exhibit I. It's Bate labeled at

8 the bottom right.

9 MS. ISSO: What was the Bate?

10 MS. ROSENBLUM: 30.

11 MS. ISSO: Oh, okay. I'm trying to figure out

12 how --

13 Q Do you see that there? Was that Eugene's response?

14 A Yes, it is.

15 Q Did he dispute that he was potty training Ava at

16 that time?

17 A He did dispute it. Yes.

18 Q Okay. And this discussion continued onto page 32;

19 is that correct, looking at Exhibit 73?

20 A Yes.

21 Q Is that correct?

22 A That's correct. Yes.

23 Q Okay. Based on these communications, did you

24 believe that Eugene had started to potty train Ava?

1 A Yes.

2 Q And kind of more to your point, so looking at page
3 36 of this exhibit, message 76 there, do you see that one?

4 A Yes.

5 Q Again, this is Eugene's response to you?

6 A Yes.

7 Q Did the potty training argument continue after
8 Eugene had the last word?

9 A No, because I let it go. I -- I don't want to keep
10 the conflict going.

11 Q Is -- is that responsiveness from Eugene pretty
12 typical when there's a dispute?

13 A Yeah, this is actually a -- a tamer one of his
14 responses. And a lot of times they were harsher than yes.
15 But yes, the -- he always has to have the last mess -- the
16 last word.

17 Q Because we're starting to run out of time here,
18 Nechole, there's a whole lot of negativity here. Can you say
19 anything positive about Eugene?

20 A Yeah, I do believe he loves Ava. I do believe that.
21 I -- I do think it's -- you know, we agreed together to have
22 him teach her Russian. I think it's good for her. I love
23 that he's exposing her to that -- that part of his culture.
24 And I do think he's a talented musician and I think it's great

1 that he's -- to whatever extent he's passing on that ability
2 to Ava and kind of sharing that world of music with her, I
3 think that's -- that's great.

4 Q Let's talk about your dog.

5 A Okay.

6 Q Do you still have the dog?

7 A She passed away on November 11th last year.

8 Q How did you learn that Ava was allergic to dogs?

9 A So I did -- I was trying to feed Ava new foods. I
10 made these whole wheat pancakes. After -- as -- as she was
11 eating the pancakes, she started kind of breaking out in hives
12 and getting really itchy and swollen. So I took her to the
13 pediatrician. They recommended allergy testing. Took her to
14 Quest Labs to get tested. And that's when it came back that
15 she was allergic to all these different foods and dogs.

16 Q And about when was that?

17 A It was early 2020, maybe January -- Jan -- sometime
18 between January and March of 2020.

19 Q So by that point early 2020, January 2020, Ava's
20 just a little about a year-and-a-half old give or take?

21 A Give or take, yeah.

22 Q Had she ever had a reaction to your dog before?

23 A Never.

24 Q Had she ever had any sneezing, coughing, or anything

1 that you noticed with regard to the dog?

2 A Never.

3 Q Were you surprised to learn then January of 2020
4 that she was allergic to dogs?

5 A I was surprised and -- well, I don't want to --

6 Q Did -- did the person who diagnosed her give you any
7 recommendations with regard to the dog?

8 A We ended up taking Ava to Dr. Miyake at the -- the
9 name of the place I think is Allergy Partners of Nevada. And
10 I told them about the mitigation measures I was taking. I
11 bought -- I bought purifiers. I -- I had already even kind of
12 keeping them separate just because I do have a big dog. I was
13 keeping them separate, vacuuming regularly. My dog's not
14 allowed in Ava's room and he said to keep doing those things.
15 I also explained that my dog was old and had cancer and
16 probably wouldn't live much longer. And so yeah, he
17 recommended just continuing to do those -- to do those things.

18 Q Okay. Did the doctor ever recommend that you get
19 rid of the dog?

20 A No.

21 MS. ISSO: Objection, hearsay, Your Honor. Move to
22 strike.

23 THE COURT: Sustained.

24 BY MS. ROSENBLUM:

1 Q Let me ask it a different way. Did you have an
2 understanding as to whether you should get rid of the dog?

3 A I was never -- my understanding was that I didn't
4 have to get rid of the dog, the mitigation measures were
5 enough.

6 Q Okay. At some point did Eugene ask you to get rid
7 of your dog?

8 A Eugene never had a problem with my dog until after
9 the relationship ended and he started this litigation. And
10 then in October 2020 he then started this message string
11 claiming that Ava had a bump on her face and after several
12 back and forths started saying that it was because of the dog
13 and that I should get rid of my dog.

14 Q I'm sorry, one more time. The dog passed away when?

15 A November 11th of 2020.

16 Q Okay. Was Ava bonded to your dog?

17 A A little bit. She was a little bit. Yeah.

18 Q Okay. Looking at pages -- page 51 of that same
19 Exhibit I.

20 A Okay.

21 Q When you're referencing bumps on Ava, did -- is --
22 are these the messages that you're referring to, starting at
23 message 110?

24 A Yes.

1 Q In fact, did you ask Eugene if maybe the bumps were
2 being caused by something in his home?

3 A Yes, I did, because I -- I didn't observe any when I
4 handed her over. And so my initial reaction was well, let's
5 try to figure out what's causing them. Maybe it's your after
6 shave. Maybe it's some perfume. Maybe she rubbed her face on
7 the car seat and something irritated.

8 Q And this discussion regarding the bumps, it started
9 on August 12th, 20 -- or -- or on October 12th, 2020; is that
10 correct?

11 A Yes.

12 Q And how long did the discussion about the dogs and
13 the bump go on for?

14 A Several -- I'm -- I'm just looking at the exhibit.
15 I think it went at least a couple days, two or three days.

16 Q Do you have a new dog?

17 A No.

18 Q Do you intend to get a new dog?

19 A No.

20 Q There's testimony of -- during Ms. Isso's case that
21 you withheld Ava for 33 --

22 THE COURT: You know, we're going to switch
23 subjects. I think we're getting to a point where let's just
24 shut it down and start again on Friday.

1 MS. ROSENBLUM: Friday morning?

2 MS. ISSO: 8:30?

3 THE COURT: We can get it done if we start right at
4 9:00. If everybody gets set up by -- you can get here. I
5 think the courtroom's open by 8:30. But as far as starting
6 JAVS, it'll be at 9:00 a.m. is when we'll start.

7 MS. ISSO: So we have 4:45, 4:30 usually --

8 THE COURT: Again -- what?

9 MS. ISSO: I still have to leave at the same time on
10 Friday.

11 THE COURT: That's fine. I think -- again, we'll be
12 done by then because again you have two hours and four
13 minutes. Ms. Rosenblum at this point has three hours and
14 fifty-seven minutes. And if we keep a short lunch again we
15 should be able to get done.

16 MS. ROSENBLUM: I have a -- leave all this stuff
17 here or do we need to take all this with us?

18 MS. ISSO: I'm going to take my stuff over here but
19 I can't carry those ones.

20 THE COURT: It's your call. I mean, I'm not going
21 to given the extent of everything you guys brought.

22 MS. ROSENBLUM: It's just a lot of stuff. It's
23 not --

24 THE COURT: We might have one in person hearing

1 tomorrow and if this -- you -- you can just leave it. We'll
2 make sure nobody --

3 MS. ROSENBLUM: I mean, I don't --

4 THE COURT: -- touches it.

5 MS. ROSENBLUM: -- mean to leave it like this.

6 THE COURT: No.

7 MS. ROSENBLUM: I just mean to leave it in the
8 courtroom.

9 THE COURT: You absolutely can.

10 MS. ROSENBLUM: I'm -- I'm not asking to take up the
11 whole --

12 THE COURT: That's fine.

13 (PROCEEDINGS CONCLUDED AT 4:20:43)

14 * * * * *

15 ATTEST: I do hereby certify that I have truly and
16 correctly transcribed the digital proceedings in the above-
17 entitled case to the best of my ability.

18
19 

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21 _____
Adrian N. Medrano

22

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1 **TRANS**

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

9 EVGENY SHAPIRO,)
10 Plaintiff,) CASE NO. D-20-612006-D
11 vs.) DEPT. N
12 NECHOLE GARCIA,) APPEAL NO. 83992
13 Defendant.)
14

15 BEFORE THE HONORABLE MATHEW HARTER
16 DISTRICT COURT JUDGE

17 TRANSCRIPT RE: EVIDENTIARY HEARING

18 FRIDAY, NOVEMBER 5, 2021

19 **APPEARANCES:**

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I N D E X O F E X H I B I T S

<u>PLAINTIFF'S</u> <u>EXHIBITS:</u>	<u>ADMITTED</u>
4, 14, 20 - Receipts	292
7, 10, 11, 13, 22, 24 - Receipts	296
56 - Dr. Carter report	118
<u>DEFENDANT'S</u> <u>EXHIBITS:</u>	
G - Medical expenses	283
P - Mr. Shapiro deposition	260
V - Insurance letter	144
W - Bank records	272
Z-4, Z-13, Z-15, Z-83 - Text messages	83

P R O C E E D I N G S

(The following transcript contains multiple indiscernibles due to poor recording quality)

(THE PROCEEDINGS BEGAN AT 9:02:10)

THE CLERK: We're on the record.

THE COURT: All right. We're back on the record in case D-612006, Shapiro versus Garcia. Unless we're moving something out of order, Ms. Rosenblum, I think we were -- had your client?

MS. ROSENBLUM: Yes, we did, Judge. The only thing is I don't know if witnesses are on or in the waiting room.

THE CLERK: Mr. Blackham's (ph) on.

MS. ROSENBLUM: Okay.

MS. ISSO: And Your Honor, our expert's going to be on at 11:00 a.m.

MS. ROSENBLUM: So I don't have a problem starting with Nechole but if another witness pops on, if we can stop her and call that witness.

THE COURT: Okay.

MS. ROSENBLUM: Is that okay with the Court? I just -- because these are treaters and they're fitting us into their schedules so I want to make sure that we give them the

1 time and courtesy to get them on and off as quick as we can.

2 MS. ISSO: And we have Mark James coming today too.

3 I just can't remember the -- the time.

4 THE CLERK: Ready?

5 MS. ISSO: Yeah, he's going to -- he wants to come

6 like around 10:00 a.m. Let me ask him if he come on at like

7 -- at like 1:00 p.m. We can just get started when I get a

8 text back --

9 MS. ROSENBLUM: Yeah.

10 MS. ISSO: -- and then I'll --

11 MS. ROSENBLUM: Judge, are you ready?

12 THE COURT: Yeah. And for JAVS Bates Stamp, we're

13 starting at 9:03. So --

14 MS. ROSENBLUM: Okay.

15 THE COURT: -- 9:03.

16 MS. ROSENBLUM: All right. You don't need to swear

17 her back in or anything? She's still --

18 THE COURT: The next day, do we, Madam Clerk? Yes?

19 THE CLERK: I'm sorry?

20 THE COURT: When they testify the next day? It's

21 been so long since we've done the next day.

22 THE CLERK: It's up to you. I --

23 THE COURT: I'll just remind her. She's an -- she's

24 an attorney. She's an officer of the court. I'll just remind

1 you you've been sworn in.

2 MS. ROSENBLUM: Okay.

3 NECHOLE GARCIA

4 called as a witness on her own behalf, having been previously
5 sworn, testified upon her oath as follows on:

6 DIRECT EXAMINATION CONTINUED

7 BY MS. ROSENBLUM:

8 Q All right, Nechole. Still continuing to talk about
9 Ava, do you believe that you have the ability to manage Ava's
10 behaviors?

11 A I do. I -- I believe so. And I -- you know, I've
12 reached out to different -- I got myself involved in different
13 organizations at the Families for Effective Autism --

14 MS. ISSO: Objection.

15 A -- Treatment.

16 MS. ISSO: Non-responsive. It calls for a yes or no
17 answer. Move to strike.

18 THE COURT: Sustained.

19 BY MS. ROSENBLUM:

20 Q Why do you believe that you are capable of managing
21 Ava's behaviors?

22 A Because I've done my -- I -- I talked to a lot of
23 parents and got myself involved in different organizations to
24 educate myself about autism, read -- read different books to

1 help me. I think even the therapy that I'm in helps. And I
2 also think I do have a temperament as well to be able to do
3 that.

4 Q As far as medications, is Ava taking any
5 medications?

6 A No, not right now.

7 Q Okay. Have any of her treaters recommended that she
8 take medications?

9 A Not right now.

10 Q And -- and you -- you're saying not right now. I
11 meant is there -- have they suggested that at --

12 A No.

13 Q -- some point --

14 A There's been no suggestion. It's just my
15 understanding with autism you just don't know.

16 Q With regard to any potential emergencies that come
17 up as far as Ava's autism, do you believe that you're capable
18 of managing that?

19 A Yes, I do.

20 Q And as far as managing her appointments, are you
21 capable of managing that?

22 A Yes, I do believe that.

23 Q And I know we talked briefly about the amount of
24 services that she's in. If you can just explain to the Court

1 how -- how those services are working. Do you go somewhere?
2 Do they come to you? Just -- just explain briefly to the
3 Court how that works.

4 A Right now with the applied behavioral analysis
5 therapy they're coming to our homes. They go to Eugene's home
6 when Ava's there and they come to my home when Ava's with me.
7 They come to each home. They're two different -- they're
8 called registered behavioral technicians. They -- it's a one
9 three hour session and then another three hour session each
10 day. But they come to our homes. The speech and -- and the
11 feeding therapy is -- it's very difficult to find providers
12 that come to home. So that's going to have to be at a clinic.
13 And the -- my hope is that the ABA therapist will be able to
14 come with us to the clinics so that they caregiver kind of do
15 ABA concurrently with that.

16 The schooling and the -- the therapies through
17 school are going to be -- or take place at the school site,
18 the Dooley Elementary School site. And then on top of that,
19 she does have to see Dr. Gaspar twice a -- twice a year. That
20 of course would be at the Ackerman Center.

21 Q Okay. And, again, as far as being able to manage
22 the appointments and the number of -- of service providers she
23 has day-to-day, you feel that you can handle that.

24 A Yes, I do.

1 Q Let's talk about Eugene just briefly. Do you
2 believe that Eugene can manage the appointments?

3 A No, I --

4 Q Why not?

5 A So I -- I have -- I do have concerns with Eugene
6 about the instances of inattentiveness in the past that I
7 think impact that. Eugene also gets -- gets overwhelmed and
8 anxious kind of easily. And historically particularly before
9 this case was filed Eugene relied on me and expected me to
10 make the appointments and to manage all those types of things.

11 Q Okay. In fairness over the last let's say six
12 months, he's testified that he's made it to all of the
13 appointments.

14 A Yes, absolutely.

15 Q And that he's been involved in the appointments; is
16 that true?

17 A That's true.

18 Q Okay. As far as managing Ava's behaviors, let's
19 just kind of stay focused in that last six month time period.
20 Has there been anything that you've witnessed with Eugene that
21 makes you believe he cannot manage her behaviors?

22 A Transitions are hard when I give Ava over to Eugene.
23 Sometimes she will cry very hard and his way of managing it is
24 just very different than mine. It's to kind of hand her a toy

1 and turn up the music and whisk her away. So that's -- that's
2 really all I've seen. Most of the other time, you know, we're
3 not together and Ava's in his home and he doesn't communicate
4 with me about her behaviors. His messages to me are usually
5 just about how wonderful everything is going at his -- at his
6 house, so --

7 Q Okay. Has he ever contacted you? And -- and,
8 again, I just -- I want to stay focused in this really -- this
9 last six month time frame.

10 A Okay.

11 Q Has he ever sent you a text or communicated with you
12 about, you know, Ava's having a meltdown and I can't handle it
13 or she's crying and she won't stop, anything like that?

14 A No.

15 Q Okay. Do you believe that you're able to identify
16 subtle changes in Ava's behaviors?

17 A I do. I -- I do think so. I -- I'm the parent who
18 observed all those behaviors that got -- that raised flags for
19 me and got her into early intervention. I've been the parent
20 for the past six months who's been advocating for her to be
21 seen and evaluated for autism and had real concerns about her
22 having autism based on everything that I've learned about --
23 about the disorder. So yes, I do.

24 Q Can you give me an example of maybe where you

1 noticed a subtle change in -- in her behaviors?

2 A Yes. So I did notice there were words that Ava was
3 saying. Around 18 months or so there were words that she was
4 saying that she -- she stopped being able to say. And so she
5 was regressing in her speech, as well, there were things -- I
6 was able to say for example go get your shoes and she would go
7 get her shoes. I started saying those kind of things to her
8 and she stopped seeming to be able to comprehend what I was
9 saying. So I -- I noticed that regression and that was a
10 subtle change that for me raised some red flags.

11 Q As far as making decisions about Ava and getting
12 treatment for her, I think you testified that that was kind of
13 always -- you -- as sit here today do you believe that you are
14 able to make those decisions and get those treatments for her?

15 A Absolutely. Yes.

16 Q With regard to Eugene on those questions, do you
17 think that he has the ability to identify subtle changes in
18 Ava's behavior?

19 A No, I don't. I --

20 Q And why --

21 MS. ISSO: Objection --

22 Q -- do you --

23 MS. ISSO: -- calls for speculation.

24 THE COURT: She can testify as to her opinion as to

1 his abilities to parent.

2 BY MS. ROSENBLUM:

3 Q Why do you believe that?

4 A Well, up until the moment she was diagnosed, Eugene
5 was in denial about a lot of her issues.

6 MS. ISSO: Objection, calls for speculation.

7 THE COURT: Over --

8 MS. ISSO: He's not a doctor to be --

9 THE COURT: Overruled.

10 MS. ISSO: -- able to -- to -- be able to assess
11 whether a child has autism. Okay. A medical professional is
12 required for that.

13 THE COURT: She said -- I think she didn't say
14 autism. She said the --

15 THE WITNESS: Issues.

16 THE COURT: -- issues is what she said.

17 MS. ISSO: Well -- well, objection --

18 THE COURT: Overruled.

19 MS. ISSO: -- ambiguous, foundation.

20 THE COURT: Overruled.

21 THE WITNESS: So I -- at appointments I would state
22 my concerns to the early intervention professionals or to Dr.
23 Gaspar and Eugene would immediately jump in, interrupt me, and
24 tell the professionals that none of those behaviors are

1 happening at his home and start talking about how everything
2 was great at his home and everything was great with Ava. So
3 we were on very, very different pages in terms of what her
4 issues were.

5 BY MS. ROSENBLUM:

6 Q Okay. Let's talk about since she's been diagnosed.

7 A Uh-huh (affirmative).

8 Q Have there been instances where you've noticed a
9 change in Ava's behavior but Eugene is still carrying on that
10 same thought process or I guess what you've described as him
11 being in denial I guess I would say that is --

12 MS. ISSO: Objection, assumes facts not in evidence.
13 There's no evidence that he's in denial of anything.

14 THE COURT: That part then I will sustain that as
15 been established.

16 BY MS. ROSENBLUM:

17 Q I would just ask your opinion as his co-parent. I
18 mean, have you observed instances in the last six months or in
19 the last couple months since Ava's been diagnosed where you
20 noticed behavior changes or something going on with Ava and
21 Eugene has stated something contrary to that?

22 A Yes.

23 Q And can you give me an example?

24 A Yes. We had the school district assessment in

1 September. We both attended that assessment that was after
2 Ava had been diagnosed. And during that assessment, again, I
3 try to relay my concerns, talk about Ava's issues. Eugene
4 would interrupt, tell them that he didn't observe those
5 things. He told them that a part of Ava's issues were -- were
6 still because he was bilingual and not because of autism.

7 Q Have you ever seen Eugene become frustrated with
8 Ava?

9 A I've seen him become overwhelmed, but not
10 frustrated.

11 Q When you say overwhelmed, give me an example of what
12 you mean by that.

13 A This is going back to when we were together, if she
14 -- she started crying hard, was having difficulty that way
15 getting upset.

16 MS. ISSO: Objection, Your Honor. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: He would get kind of frazzled and look
19 to me to kind of take over and be able to calm her down.

20 BY MS. ROSENBLUM:

21 Q Shifting gears, Nechole, let's talk about a typical
22 day. I want to talk about Ava's kind of structure and
23 routine. So what's a typical day in your house?

24 A So get Ava up some time between a quarter to 7:00,

1 7:00 o'clock. She just started school this week. So I have
2 to get her to school by 7:45. So get her ready for school,
3 get her to school by 7:45. She's in school from 8:00 until
4 10:30. I will pick her up from school or my mother will pick
5 her up from school, bring her back to my house. She then has
6 an ABA therapy session starting 11:45 and going until 2:45.
7 And then she has a little bit of a break until 3:30 where she
8 can eat or what have you. And during the -- that first ABA
9 session as well, Ava will eat. And that's one of the things
10 they're working on is her feeding, getting her to eat more
11 variety of foods.

12 And then she'll have a second ABA session starting
13 at 3:30 and ending at 6:30. By that point it's bath time. So
14 I'm getting her ready for her bath -- bath. And then it's
15 bedtime by 7:00 or 7:30.

16 Q And is this pretty much daily -- this routine is
17 pretty much daily in your household?

18 A It is. Yes.

19 Q Do you believe it's important for Ava to stick to
20 this routine?

21 A I think it is extremely important.

22 Q And --

23 A Yes.

24 Q -- why is that?

1 A Even before she was diagnosed I knew -- I observed
2 that Ava got -- got very upset with even minor changes in
3 routines --

4 MS. ISSO: Objection, hearsay. Move to strike

5 THE COURT: Overruled.

6 MS. ISSO: A child's conduct or what she says is
7 hearsay.

8 THE COURT: Overruled. What -- do you want me to
9 bring the -- overruled.

10 THE WITNESS: So yes, she got upset in -- with even
11 minor changes and routine.

12 THE COURT: Sir, hold on. You are very distracting.

13 THE PLAINTIFF: I'm sorry.

14 THE COURT: I -- are you a lawyer?

15 THE PLAINTIFF: No.

16 THE COURT: Do you understand the ramifications of
17 objections and overruled? It doesn't mean that you're losing
18 your case or --

19 THE PLAINTIFF: I understand.

20 THE COURT: -- anything of that effect. But your
21 laughing and shaking your head every time your -- your --

22 THE PLAINTIFF: I'm sorry, Your Honor.

23 THE COURT: -- client (sic) loses an objection is
24 very distracting.

1 THE PLAINTIFF: Okay. I'm sorry, Your Honor.

2 THE COURT: You can continue.

3 THE WITNESS: Yeah. So she just -- she gets very
4 upset even, you know, if -- if you're reading a book to her
5 and you get one of the words wrong which she typically got in
6 the past, she would -- if you typically said it a certain way
7 it pasts -- she just gets very upset and starts crying and
8 gets really frustrated. See, a routine structure is very
9 important.

10 BY MS. ROSENBLUM:

11 Q If something -- and I think you touched on it a
12 little bit, but aside from the crying, getting upset, I -- I
13 want to go into that a little more. Does she -- for example,
14 does she hold her breath?

15 A She -- and she can -- if -- if it gets to --

16 MS. ISSO: Objection, leading. Move to strike

17 THE COURT: Sustained.

18 BY MS. ROSENBLUM:

19 Q Be a little more specific about what you mean when
20 she -- when you say she gets upset.

21 A She will start protesting saying no, no, no, no, no,
22 no, then will escalate to crying and the crying can become
23 more and more hysterical where it is that hard crying that can
24 affect, you know, you're breathing heavy because you're crying

1 really hard and then she may start to kind of kick her legs
2 and kind of flail just a little bit, kind of tantrum meltdown
3 type behavior.

4 Q Okay. Are there any types of routines or structures
5 that you and Eugene have agreed to use in both of your homes?

6 A No, it's -- it's been extremely difficult to
7 communicate with Eugene and get agreement on things like
8 providers and things like that. And so no, we have not been
9 able to discuss or agree on routine and structure for the
10 scheduling and stuff like that.

11 Q I think at one point you mentioned Ava has a sippy
12 cup that she'll --

13 A Yes.

14 Q -- only drink out of at your home. Are there -- is
15 -- is that a sippy cup that goes back -- for example, is that
16 a sippy cup that goes back and forth between both homes?

17 A No, my understanding is Eugene has the identical
18 cup, just the same brand same color, at his house. So she has
19 one at his house and one at my house.

20 Q Okay. Are there other items like that where you
21 both have identical items?

22 A I think we have identical toys. There is a -- like
23 a toy radio that I started giving to her kind of to attach to
24 to transition because music does seem to help soothe her a

1 little bit. And so when I -- during transitions when I'm
2 giving her to Eugene I get -- she has that radio with her and
3 then when he gives her back she's got that radio again with
4 her. It's a toy radio.

5 Q Are there comfort items -- aside from the radio and
6 maybe the cup, are there comfort items that Ava likes to have
7 with her?

8 A Other than the radio, not really. Ava's never been
9 one for stuffed animals or dolls. When I have attempted to
10 give her those, she kind of just throws them. Doesn't have
11 any interest in them. So that radio -- music -- for Ava,
12 music is -- she loves it and it does kind of calm her at times
13 and that radio in particular lights up as well and I think the
14 lights help. She likes to look at the lights and -- and kind
15 of just rock as she listens to the music. So that really
16 would probably be the biggest comfort item --

17 Q Okay.

18 A -- that she's got.

19 Q Any -- any particular like blanket or outfit that
20 you both send her back and forth in or make sure each of you
21 have?

22 A No.

23 Q Okay. You heard Eugene's testimony that you're very
24 rigid and hot tempered and angry. How would you describe your

1 parenting style with Ava?

2 A I believe that I'm -- I'm patient. I'm a loving
3 parent. I am -- I am a fierce advocate for Ava. I -- and I
4 -- I will not deny that. I am. I want her to get all the
5 services and treatments that -- that she can. I -- I don't
6 believe that I'm rigid or -- or inflexible or a bully or a
7 tyrant or any of the things that -- that he described.

8 Q You described a pretty tight schedule --

9 A Yes.

10 Q -- with Ava. What are some things that you and Ava
11 like to do for fun that -- that are maybe outside that
12 schedule?

13 A Yeah. I -- I like -- you know, when the weather's
14 cool in particular I just like being outside. I like taking
15 her to the park, you know -- you know, walking around in her
16 -- in her stroller. I -- before she started school, it was
17 important to me that she gets some socialization with kids her
18 age. So I started taking her -- which -- I had taken her to
19 Gymboree before COVID and -- since in the past six months I've
20 been taking her to a place called My Gym where she's in a
21 class with other kids and I'm there. But just to give her
22 some social interaction and work on her motor skills, you
23 know, just climbing and things like that.

24 Q How would you -- I'm assuming even before this

1 litigation started you had the opportunity to observe Eugene
2 parent Ava?

3 A Yes.

4 Q How would you describe Eugene's parenting style?

5 A And I -- I observed him parenting his boys as well.
6 It's -- it's a more laid back passive style of parenting.
7 He's -- he has not been big on routine and structure. I think
8 -- I think we -- we disagreed about that in the past whereas I
9 was more of -- especially I felt like toddlers and -- and
10 younger kids got a sense of security from having a routine and
11 some consistency and then especially now with -- with her
12 diagnosis she needs that.

13 Q Do you believe that it's important for Ava to have
14 similar structures? I'm not going to say the same, but
15 similar structures and routines between both households?

16 A I really do especially with her -- her diagnosis. I
17 understand it's not possible to be identical, but I think for
18 her it gives her a sense of that consistency and stability and
19 minimizes the risk of her hav -- having those, you know, that
20 tantrum meltdown type behaviors, that distress that she gets
21 into because of -- of the changes.

22 Q Let's talk about discipline. I understand she's
23 three.

24 THE COURT: Listen, it's a little more distracting

1 for some reason than the last time. If you guys will use a
2 pad and pass it back and forth. I can only hear you
3 whispering back and forth over her. Okay. If you need paper,
4 we'll have my -- my Marshal get you some paper to -- to go
5 back and forth. But I can -- I can't hear any word and you're
6 talking back and forth. I can't hear her. It's distracting.

7 MS. ROSENBLUM: And Judge, I'm -- as I'm looking
8 over here, I'm noticing other people that I -- don't have
9 glasses and I can't see that far. I don't know who else is on
10 the -- MT? I don't know who that is.

11 THE CLERK: Marnie -- it's really tiny on my screen.

12 MS. ROSENBLUM: Oh, Marnie -- wait --

13 THE CLERK: Marnie --

14 MS. ROSENBLUM: -- a minute.

15 THE CLERK: (Indiscernible) and Montana Garcia.

16 MS. ROSENBLUM: Okay. Is it possible to -- to stop
17 with Nechole and call Ms. Lancz --

18 THE COURT: Yeah.

19 MS. ROSENBLUM: -- as our witness?

20 THE COURT: That's fine.

21 MS. ROSENBLUM: So that we can get her --

22 MS. ISSO: How much time do I have?

23 MS. ROSENBLUM: -- off.

24 THE COURT: You have two hours and four minutes.

1 MS. ISSO: I would still like to cross her, Nechole.
2 MS. ROSENBLUM: I'm not even close to done.
3 THE COURT: Yeah. Yeah.
4 THE CLERK: So which one? Which one?
5 MS. ROSENBLUM: Ms. Lan -- Marnie Lancz.
6 THE CLERK: Okay.
7 MS. ROSENBLUM: Lancz.
8 THE CLERK: Do you want me to do this for a breakout
9 room so that the other ones don't hear or --
10 THE COURT: Well, who is -- who is it and --
11 MS. ROSENBLUM: Her -- her name is Marnie Lancz.
12 She is one of the treatment providers.
13 THE COURT: Well, then Mr. Blackham and the other
14 person should not be in there, correct?
15 THE CLERK: Okay. Well, I can -- I can just move
16 her to a breakout room if you want to do it that way.
17 THE COURT: Yeah.
18 MS. ISSO: That's a good point since she's been
19 listening the whole time.
20 THE CLERK: They're -- they can't hear. I --
21 MS. ISSO: Oh.
22 THE CLERK: -- have us muted.
23 MS. ISSO: Oh, okay.
24 (COUNSEL AND CLIENT CONFER BRIEFLY)

1 MS. ROSENBLUM: Ms. Lancz, can you hear us?

2 MS. LANCZ: Yes, I can.

3 MS. ROSENBLUM: All right.

4 THE COURT: Madam Clerk, you're going to have to

5 swear her in as a witness.

6 MS. ISSO: Your Honor, we're going to object to this

7 witness. She hasn't treated the child.

8 THE COURT: We'll go back to what she list -- was

9 she listed as a witness?

10 MS. ISSO: I'm sorry?

11 MS. ROSENBLUM: She was.

12 THE COURT: Was she listed as a witness.

13 MS. ROSENBLUM: She was, Your Honor.

14 MS. ISSO: No, but point is it's not relevant. She

15 wasn't -- she didn't --

16 THE COURT: Did you --

17 MS. ISSO: -- treat the child.

18 THE COURT: -- file an objection as we've gone

19 through the trial setting order over yesterday? Did you file

20 an objection to this particular witness indicating that she

21 was not relevant?

22 MS. ISSO: Okay. Well, just -- just stating for the

23 record.

24 THE COURT: Okay.

1 MS. ROSENBLUM: Are we ready?

2 THE COURT: Uh-huh.

3 MS. ROSENBLUM: All right.

4 MARNIE LANCZ

5 called as a witness on behalf of the Defendant, testified as
6 follows on:

7 DIRECT EXAMINATION

8 BY MS. ROSENBLUM:

9 Q Good morning, Ms. Lancz. Can you hear me?

10 A Yes, I can.

11 Q All right. Can you go ahead and state your name for
12 the record, please?

13 A My name is Marnie Lancz.

14 Q And Ms. Lancz, where -- where are you employed?

15 A I am employed at Therapy Management Group.

16 Q And what is your job title there?

17 A I'm the director.

18 Q Are you familiar with Nechole Garcia and Eugene
19 Shapiro?

20 A Yes, I am.

21 Q How are you familiar with them?

22 A I have had conversations with both Eugene and
23 Nechole in regards to services for Ava.

24 Q Are you providing direct treatment for Ava?

1 A No, I am not.

2 Q At any point have you provided direct treatment for
3 Ava?

4 A No, I have not.

5 Q Is it fair to say that you have supervised some of
6 that treatment -- or at least the provider's giving that
7 treatment?

8 A I have talked to the providers. They have been
9 providing the treatment but I have never met Ava nor provided
10 any treatment for Ava.

11 Q Okay. Ms. Lancz, at some point were you aware that
12 Ava was seen by Dr. Gaspar?

13 A Yes.

14 Q Were you assisting the parties in obtaining that
15 evaluation and assessment?

16 A I was aware that it was scheduled with Dr. Gaspar
17 and then was assisting the family and in granting access per
18 both parents to be present for that evaluation.

19 Q Do you recall the date of that assessment with Dr.
20 Gaspar?

21 THE COURT: Ms. Isso, again, all I can do is hear
22 you. It's very distracting. Please use a pen. And, again, I
23 know this is a process used around the country. It is. I
24 cannot hear when you and your client talk back and forth while

1 people are testifying.

2 MS. ISSO: I'm sorry.

3 THE COURT: Go ahead, Ms. Rosenblum.

4 BY MS. ROSENBLUM:

5 Q Ms. Lancz, are you familiar with -- with the date
6 that the assessment was to occur or the evaluation was to
7 occur with Dr. Gaspar?

8 A I'm referring to my notes here. I believe it was
9 August 10th, 2021.

10 Q And, again, did you participate in that evaluation?

11 A No, I did not.

12 Q With regard to the evaluation on August 10th, 2021,
13 if you can just briefly again for the Court and for me what
14 was your role in that?

15 A I was approached by Nechole in regards to granting
16 access for both parents to attend that appointment. Generally
17 for evaluations of that nature we like to have both parents
18 present for the evaluation. Unfortunately because of our
19 phase three guidance, TMG is contracted with the state of
20 Nevada to provide early intervention services and so we fall
21 under their guidance in regards to COVID protocols. So under
22 the current COVID protocols it was prohibiting parents from
23 two separate households both being physically present for that
24 evaluation due to those COVID protocols. So that's how I was

1 involved in the appointment.

2 Q Okay. And Ms. Lancz, did you offer accommodations
3 so that Nechole could be present for that assessment with Dr.
4 Gaspar?

5 A Yes. I spoke with the Individuals with Disabilities
6 Education Act Part C office as well as the Aging and
7 Disabilities office with the state of Nevada requesting
8 reasonable accommodations for both parents to be present in
9 the office. And we offer for a large space to be used so both
10 parents can be present for that evaluation. Eugene declined
11 that accommodation and ultimately we ended up having Nechole
12 in an adjacent room over Zoom because both parents can be
13 present in the same room.

14 Q Aside from offering a larger room for the parents to
15 meet in, were there any other accommodations that you offered
16 to the parents?

17 A We talked about having the families swap rooms
18 halfway through the appointment both being present on Zoom and
19 swapping rooms. Eugene did not agree to that. My
20 understanding is that the family has split custody and
21 therefore it was Eugene's day, the date of the evaluation was
22 Eugene's custody day. And so we tried to offer accom --
23 reasonable accommodations for both parents to be present. And
24 Eugene was -- was not in agreement of that.

1 Q At any point, did my client threaten -- I don't even
2 want to say the word threaten. At any point -- and my client
3 -- did my client Nechole bring up the issue of race with
4 regard to a lack of accommodation?

5 A No.

6 Q That -- at any point, did she allege that you -- you
7 or TMG were discriminating against her because of her race?

8 A No, not that I'm aware.

9 MS. ROSENBLUM: I have nothing further for this
10 witness, Judge.

11 THE COURT: Ms. Isso? Hold -- you can -- give me
12 one second to write this down. Hold on a second. All right.
13 Go ahead.

14 MS. ISSO: Oh, okay. Thank you.

15 CROSS EXAMINATION

16 BY MS. ISSO:

17 Q Isn't it true there was another appointment
18 previously before August 10th, correct?

19 A With Dr. Gaspar? That was the only appointment with
20 Dr. Gaspar.

21 Q Okay. So it's fair to say though that Ms. Garcia
22 did participate in the appointment, correct?

23 A She did. She did participate via zoom and in an
24 adjacent room during the visit.

1 Q And isn't it true that at the previous appointment
2 with Dr. Gaspar only Ms. -- okay, isn't it true that
3 previously Ms. Garcia met with Mr. Gaspar alone?

4 A To my knowledge, there was only one appointment with
5 Dr. Gaspar on August 10th and that was the only time that
6 there was an appointment with Dr. Gaspar and that was with both
7 parents present.

8 Q But didn't she meet with him personally by herself,
9 Ms. Garcia, didn't she meet with Mr. Gaspar alone before the
10 appointment?

11 A Not to my knowledge.

12 Q And if there are any communications between Ms.
13 Garcia and Ms. Amber Harris regarding the discrimination or
14 racism, would you be privy to those communications?

15 A This is the first I'm hearing of any discussion in
16 regards to that. So I am not aware of any of that
17 information.

18 Q Okay. But if Ms. Garcia did allege discrimination
19 and racism, when she wasn't permitted to be in the room and
20 she communicated that to Amber Harris, would you have known
21 about that?

22 A If Amber reported it --

23 Q Okay.

24 A -- to me, I would have known about it.

1 Q Okay.

2 A Again, this is the first I'm hearing of that.

3 Q What did -- what did Eugene communicate to you about
4 the hearing test previously?

5 A I believe when I spoke to Eugene he said that there
6 had been a previous appointment that fell on Nechole's custody
7 day which he wasn't permitted to attend because of their COVID
8 policies. That's what I recall him saying.

9 Q And did you agree with him that since he didn't --
10 since only one parent was permitted to attend the hearing test
11 that his -- you know, his request, you know, is reasonable
12 that he -- he attend this one alone as well?

13 A My job is to make sure that both parents have access
14 and it -- to the services and make reasonable accommodations.
15 And it's not my job to determine what's appropriate in terms
16 of who attends. I'm -- I'm legally bound to provide services
17 for new children as will meet the requirements under IDEA
18 Part C law.

19 Q And does -- in your opinion, has -- has Eugene been
20 involved and has he been nice and pleasant to deal with?

21 A Again, I'm -- I'm not able to give my opinion. I --
22 I've --

23 Q Oh.

24 A -- interacted with Eugene and it's been -- all of my

1 interactions have been professional.

2 MS. ISSO: Okay. No further questions. How many
3 minutes was that for me.

4 THE COURT: Give me one second. Nine
5 thirty-seven --

6 MS. ISSO: How many minutes was that? I'm counting
7 it down to the second.

8 THE COURT: That was five minutes. So you're down
9 to one minute and fifty-nine.

10 MS. ISSO: This is such a joke. Go ahead.

11 THE COURT: Ms. Rosenblum?

12 MS. ROSENBLUM: Yeah. No further questions, Judge.

13 THE COURT: All right. Thank --

14 MS. ROSENBLUM: Thank you, Ms. Lancz.

15 THE COURT: Thank you for being here to testify
16 today.

17 THE WITNESS: Thank you.

18 THE COURT: Have a good day. Stay safe and healthy.

19 THE WITNESS: All right.

20 MS. ROSENBLUM: And if we don't have any new people,
21 I would just put my client back up.

22 THE COURT: Is there anybody in there, Madam Clerk?

23 THE CLERK: Yes, there's Mr. Blackham and Ms.
24 Garcia.

1 MS. ROSENBLUM: Okay. All right. Are we good?

2 THE COURT: Yeah.

3 MS. ROSENBLUM: Ready to go? All right.

4 NECHOLE GARCIA

5 called as a witness on her own behalf, having been previously
6 sworn, testified upon her oath as follows on:

7 DIRECT EXAMINATION CONTINUED

8 BY MS. ROSENBLUM:

9 Q Nechole, just kind of where we left off, as far as
10 disciplining Ava, are -- are you at that stage with her?

11 A I'm not. She's really little and -- no, I'm not.

12 Q Okay. Do you have any understanding of how Eugene
13 handles discipline with Ava in his household?

14 MS. ISSO: Objection, calls for speculation. She is
15 not in his household. She doesn't know --

16 THE COURT: She asked --

17 MS. ISSO: -- what's going on.

18 THE COURT: -- if he -- she has any knowledge. If
19 she doesn't, then she doesn't. Overruled.

20 THE WITNESS: I don't. No.

21 BY MS. ROSENBLUM:

22 Q Have you and Eugene have -- had a conversation about
23 discipline for Ava when she reaches that age?

24 A No, we haven't.

1 Q There was testimony given when Ms. Isso had her case
2 in chief about your work schedule. State again for the record
3 your employer.

4 A City of Henderson.

5 Q And what do you do there?

6 A I'm an assistant city attorney in the criminal
7 division. So I'm a prosecutor.

8 Q What is your work schedule?

9 A It's Monday through Thursday from 7:30 a.m. to 5:30
10 p.m.

11 Q Okay.

12 THE COURT: Wait, hold on one second. Again, how do
13 you get her -- if you got to be at work at 7:30, how do you
14 get her to school --

15 MS. ROSENBLUM: Yeah.

16 THE COURT: -- by 7:45 to 8:00?

17 THE WITNESS: So my boss is really great and he's
18 allowing me to come into work late --

19 THE COURT: Okay.

20 THE WITNESS: -- so that I can take her to school.
21 If Ava has any important appointments, IEP meetings, the
22 assessments, I'm able to take time off work for that. He also
23 allows me to work from home sometimes so that I can -- I can
24 be there with Ava. Yeah, my -- I -- I have a really great

1 boss and he allows me a lot of flexibility with my -- with my
2 work schedule.

3 Q Okay. And I appreciate the Court because that's
4 literally the next question I had.

5 THE COURT: I told you I ask questions.

6 Q Do you -- do you typically work holidays?

7 A No.

8 Q Do you typically --

9 A Off always.

10 Q -- work overtime?

11 A It is very rare. If -- so I -- I -- you know, in my
12 job I have calendars that I have to handle two times a week.
13 I have a trial calendar that I handle. If there's a
14 particularly somewhat complicated case, I may take that case
15 home and after Ava's sleep I may do a little extra work on it.
16 But this year for example I've only done six trials the entire
17 year. So it -- it hasn't happened in -- in quite awhile.

18 Q Who typically watches -- so I know you talked about
19 the school schedule and that she's in school Monday through
20 Thursday. But while you're at work who's watching Ava?

21 A My mother.

22 Q Okay. Anyone else?

23 A It's my mother. Today because my mother's been
24 subpoenaed and I have a -- a dear friend of mine named Tracey

1 Yaro (ph). She's watching her.

2 Q Do you and Eugene for instance share a babysitter or
3 a nanny?

4 A No.

5 Q Have you ever talked about that with Eugene?

6 A No.

7 Q As far as Eugene goes, do you know what his work
8 schedule is?

9 A I don't. I've -- he's told me different things at
10 different times. As far as I am aware right now he has a
11 pretty open schedule and is -- has a lot more free time during
12 the week than I do.

13 Q Can you state for the court what the existing
14 custodial schedule is with Ava?

15 A Right now it's a week on week two schedule. Week
16 one Eugene has Ava from 7:00 a.m. on Sunday morning to 7:00
17 p.m. on Tuesday. Week two he has Ava from 7:00 a.m. on Monday
18 morning to 7:00 p.m. on Wednesday.

19 Q And your request as you sit here today is to
20 maintain that schedule as the custodial schedule; is that
21 correct?

22 A Yes.

23 Q Explain to the Court why you believe that this
24 existing schedule is in Ava's best interest.

1 A Well, a big thing is that Ava has become accustomed
2 to the schedule. She's become used to it. I do think -- I do
3 think change in her routine and the structure would be very
4 jarring for her. It would be difficult for her to manage.

5 MS. ISSO: Objection, hearsay.

6 THE COURT: Overruled.

7 THE WITNESS: I think the schedule only requires a
8 couple of transitions a week which I think, you know,
9 minimizing the number of transitions is good because in my
10 experience with her she does have difficulty when I get her
11 back from Eugene. She's more likely to have meltdowns and
12 tantrums for at least a few hours until she kind of gets
13 reacclimated to my home. And then when I do hand her over to
14 Eugene at times, she also is having issues melting down and
15 getting upset. So I -- I also think it's good because it
16 minimizes the number of -- of those exchanges.

17 BY MS. ROSENBLUM:

18 Q Does this existing schedule -- and -- and I know you
19 heard Eugene's testimony that he doesn't ever really have a
20 full weekend with Ava. Do you think this --

21 MS. ISSO: Your Honor --

22 Q -- schedule --

23 MS. ISSO: -- I want to object for a second because
24 yesterday you held a conference call.

1 THE COURT: Listen, I absolutely --
2 MS. ISSO: No, I'm --
3 THE COURT: -- did.
4 MS. ISSO: -- going to object for a second.
5 THE COURT: I -- I don't -- I --
6 MS. ISSO: Yesterday --
7 THE COURT: That actually --
8 MS. ISSO: -- you held a --
9 THE COURT: -- goes to --
10 MS. ISSO: -- conference call --
11 THE COURT: -- all of this.
12 MS. ISSO: -- with me and Opposing Counsel and you
13 basically coached Opposing Counsel what to do today for her
14 case in chief. And you said to me that everything that we
15 presented is irrelevant. So I'm going to ask for a whole new
16 trial, a whole new trial right now, based on what happened --
17 THE COURT: I'm giving --
18 MS. ISSO: -- yesterday --
19 THE COURT: -- a whole new trial.
20 MS. ISSO: -- during that call. Was that --
21 THE COURT: I --
22 MS. ISSO: -- on the record, by the way?
23 THE COURT: That was absolutely --
24 MS. ISSO: The -- okay.

1 THE COURT: -- on the record --

2 MS. ISSO: So you basically --

3 THE COURT: -- and you guys can --

4 MS. ISSO: -- coached Opposing Counsel on what to do
5 today --

6 THE COURT: I --

7 MS. ISSO: -- and ba -- and we lost all of our time.
8 You didn't give us that advice or that information before we
9 presented our case in chief and I'm going to ask for a whole
10 new trial.

11 MS. ROSENBLUM: So Your Honor, can I --

12 THE COURT: The request for a new trial is going to
13 be denied and again we'll allow each -- you guys can continue
14 to present your case. I never said don't. I said I would add
15 in -- and, again, as far as what the issue is, I know the
16 parties were not present yesterday. The issue is what
17 schedule, what schedule, because we've already agreed on
18 custody, is in the best interest of this child and the child
19 support issue. Again, that is not coaching the Defendant on
20 how to present her case. That was simply a comment by this
21 Court to everybody post after the first day, Ms. Isso, to
22 hopefully direct.

23 And so the questions could be more pointed to the
24 issue. And, again, if you guys want to pro -- we've allocated

1 the time. Do you want to continue on? And quite candidly,
2 I'll make this comment right now. Everything thus to right
3 now, maybe a couple of things, are of relevance, but you guys
4 can use the rest of your time as is. Your request for another
5 trial is denied.

6 MS. ISSO: You should have made that suggestion then
7 after opening arguments when they agreed to joint physical
8 custody --

9 THE COURT: You --

10 MS. ISSO: -- not after we already presented our --

11 THE COURT: You could have --

12 MS. ISSO: -- case in chief.

13 THE COURT: You could have stated that as well, Ms.
14 Isso. You could have absolutely made that --

15 MS. ISSO: I'm the not the --

16 THE COURT: -- comment --

17 MS. ISSO: -- one that --

18 THE COURT: -- as well.

19 MS. ISSO: -- called for a hearing yesterday to give
20 your opinion on how we should conduct our -- our case or which
21 strategy --

22 MS. ROSENBLUM: I --

23 MS. ISSO: -- we should implement.

24 MS. ROSENBLUM: Your Honor --

1 THE COURT: Go ahead and move on.

2 MS. ROSENBLUM: -- please.

3 THE COURT: Next question, Ms. Rosenblum. I -- I
4 made my comments. The record's clear. That was absolutely on
5 the record. I would never have a discussion like that off the
6 record.

7 MS. ROSENBLUM: And -- and I want to be sure it's
8 clear for the record. I did -- certainly did not contact the
9 Court and ask for a conference.

10 MS. ISSO: Nobody --

11 MS. ROSENBLUM: In fact, I was --

12 MS. ISSO: -- said that.

13 THE COURT: I set it.

14 MS. ROSENBLUM: -- in a settlement conference.

15 THE COURT: I set it.

16 MS. ROSENBLUM: Yeah.

17 BY MS. ROSENBLUM:

18 Q Sorry, forgot where I was. As far as Dad was
19 requesting some additional weekend time with Ava --

20 A Yes.

21 Q -- as far as this schedule goes, explain to the
22 Court how this schedule impacts or doesn't impact weekend time
23 with Ava.

24 A Because Eugene has the availability he has during

1 the week, in my opinion this schedule maximizes the time that
2 both of us get to -- to spend with her. I'm able to on my off
3 days maximize my time with Ava and Eugene during his time
4 during the week that he's not working I -- gets to maximize
5 his time as well. And yes, he also does have those Sundays
6 with Ava and his sons to -- to do different activities.

7 MS. ISSO: Move to strike that. She just -- she
8 just testified she doesn't know what his schedule is. So how
9 can she say that would maximize the time with each parent?
10 Relevance, foundation.

11 THE COURT: She testified she does not know his
12 schedule. You are correct. I'll sustain that part.

13 MS. ROSENBLUM: I -- I'm -- okay. Let me ask a
14 question again.

15 BY MS. ROSENBLUM:

16 Q The you believe that the existing schedule based on
17 what you know maximizes both of your times with Ava?

18 A I do because in my communications with Eugene in
19 OurFamilyWizard he would frequently ask to have -- or -- or
20 state that he should have Ava during my work hours because he
21 is available.

22 Q Let's talk about holidays.

23 A Yeah.

24 Q There's a holiday schedule currently in place in

1 this case; is that true?

2 A Yeah, I think we're on the default holiday schedule.

3 Q Do you agree --

4 THE COURT: Let me -- this is another part where I
5 pipe in. And this is not the first case. And it is pro se
6 litigants up to multimillion dollar clients. If these parties
7 cannot agree on their own visitation schedule, it will be the
8 Court's default, period.

9 MS. ROSENBLUM: And I'm asking the Court based on
10 the needs of this child to at least hear the testimony as to
11 whether or not there will be a deviation from the Court's
12 default holiday schedule.

13 THE COURT: Okay.

14 THE WITNESS: Yes, we are -- we are on the default
15 schedule.

16 BY MS. ROSENBLUM:

17 Q Okay. Do you agree with the default holiday
18 schedule?

19 A Not for Ava because of her age and also because of
20 her -- having autism. Particularly the parts about the
21 schedule -- the Christmas schedule that requires the long
22 segment with one parent and then the long segment with the
23 other parent --

24 THE COURT: So let's go -- and, again, let's note

1 them specifically. So it's the Christmas one. I realize
2 that's elongated. Okay.

3 MS. ROSENBLUM: Right. Yes.

4 Q So specifically Christmas.

5 A Specifically the Christmas and -- and the spring
6 break went as well -- is elongated. We did have this year.
7 We each took the -- a week vacation with Ava. And I did
8 notice during that long period of time when I got her back
9 from Eugene she was more prone to having meltdowns and
10 tantrums and she was extremely --

11 MS. ISSO: Objection, hearsay.

12 THE COURT: Overruled.

13 THE WITNESS: And she was ex --

14 MS. ISSO: Isn't -- isn't it an out of court
15 statement? A statement could be --

16 THE COURT: It is not, Ms. Isso. What am I supposed
17 to do, bring a child in here? They can absolutely --

18 MS. ISSO: That's --

19 THE COURT: Your --

20 MS. ISSO: That --

21 THE COURT: -- client testified to the observations
22 of -- of what he sees what his child does and says. He's
23 testified to that as well.

24 MS. ISSO: Your Honor --

1 THE COURT: The objection --
2 MS. ISSO: -- a statement --
3 THE COURT: -- for hearsay --
4 MS. ISSO: -- under the hearsay rule includes --
5 THE COURT: -- is overruled.
6 MS. ISSO: -- conduct and includes verbal.
7 THE COURT: Right.
8 MS. ISSO: Okay.
9 THE COURT: Right.
10 MS. ISSO: So she's saying --
11 MS. ROSENBLUM: It's the present sense --
12 MS. ISSO: -- the child did --
13 MS. ROSENBLUM: -- impression.
14 THE COURT: Overruled.
15 THE WITNESS: So yeah, and she was a lot clingier.
16 And then when I had her for that week and when I gave her back
17 to Eugene, she -- she really cried and had a hard time with me
18 handing her over. So I do think that long -- those -- the
19 longer stretches are time are -- are really hard on her. And
20 I -- I would request that for those periods maybe just be
21 shortened to just Christmas Day, Christmas Eve, that sort of
22 thing.
23 BY MS. ROSENBLUM:
24 Q Okay. So you mentioned Christmas Day, Christmas

1 Eve. What would you your proposal for modifying at least the
2 Christmas schedule? Let's start there.

3 A Perhaps if we can just alternate. One of us has a
4 Christmas Even let's say even years and the other one has a
5 Christmas Day. And then it switches.

6 Q Okay.

7 A Something really straightforward.

8 Q As far as spring break, how would you propose
9 managing that?

10 A I just ask that we don't have the spring break --
11 that we just maintain our normal schedule during spring break.

12 Q Okay. And you mentioned that you and Eugene both
13 just took vacations and that that was another concern you had
14 as far as the Court's default schedule. So tell me how you
15 would propose handling the vacation issue.

16 A The other thing now is now that Ava's on these
17 therapies and it's important that she maintains the
18 consistency with the therapies, I don't think he or I are --
19 are going to be able to leave town and -- and stop the
20 therapies for that long period of time anyway. So I -- I
21 think perhaps just -- maybe we extend our -- whatever
22 visitation we have maybe once or twice a year we can extend
23 that by a few days so that you -- you can have that longer,
24 you know, few more day period of time with her, but not the

1 full week.

2 THE COURT: So those are the three parts, right? Is
3 that correct? Or is there any others?

4 MS. ROSENBLUM: Yes. Well, I'm going to ask her if
5 there's --

6 THE COURT: Okay.

7 MS. ROSENBLUM: -- any others. Is that the Court's
8 question or mine?

9 THE COURT: Again, I -- there a -- I assume. Okay.
10 Sorry.

11 BY MS. ROSENBLUM:

12 Q So we've talked about those three. Any other
13 holidays that you've got concerns with or any other piece of
14 the default plan that you're worried about?

15 A No.

16 THE COURT: Okay.

17 Q Okay. As far as Ava's educational needs, I think
18 the Court sort of touched on this a little bit. I know she --
19 your testimony was she just started school --

20 A Yes.

21 Q -- this -- this week, right?

22 A Yes.

23 Q Did -- is she bringing home homework?

24 A Not yet, but the teacher has informed I think both

1 of us that she may have little assignments that we're expected
2 to do with her.

3 Q Okay. Do you have any difficulty with your work
4 schedule being able to assist her with homework or anything
5 the Court -- or sorry, the school may ask you to do --

6 A No.

7 Q -- outside of school hours?

8 A Not at all. Ava's my priority and my work is very
9 flexible. So I can take time off if I need to. I can --
10 it's a meeting I can even do in my office and close my office
11 door. I can go home, whatever I need to do.

12 Q Okay. To your knowledge, has Eugene been able to
13 participate in getting Ava to school on time?

14 A To my knowledge, yes.

15 Q And picking her up on time.

16 A As far as I know, yes.

17 Q And, again, I know we've only been in school for
18 four days, but there's been no issues with that this week.

19 A That's right.

20 Q Is that correct?

21 A That's correct.

22 Q Does Ava have an educational surrogate?

23 A She has an advocate.

24 Q Okay. Oh, sorry. Different -- different court it's

1 called a surrogate. As far as the advocate goes, what is her
2 role to your understanding?

3 A It's my understanding is that the advocate attends
4 the IEP meetings with all the -- with the parents and with the
5 -- all the school district staff. And their job is to make
6 sure that the school district provides every service that
7 she's entitled to by law. And the advocate -- the advantage
8 of the advocate is that they know the school system, they know
9 the professionals that work there, they know the regulations
10 and they can -- you know, they know a lot more than the
11 parents often know.

12 MS. ROSENBLUM: Is that Dr. Gaspar?

13 THE COURT: Hold on one second. Who is this person
14 and can they hear, Madam Clerk?

15 THE CLERK: They cannot hear us right now though.

16 MS. ROSENBLUM: Okay. That is their witness.

17 THE COURT: Okay.

18 MS. ROSENBLUM: I don't know if Ms. Isso wants to --

19 THE COURT: Can you -- can you ask him to mute his
20 mic then --

21 MS. ROSENBLUM: -- stop --

22 THE COURT: -- so we can't hear him?

23 THE CLERK: I just -- I just muted him.

24 THE COURT: Thank you.

1 MS. ROSENBLUM: Do we want to stop here and start
2 with --
3 THE COURT: You guys --
4 MS. ROSENBLUM: -- Mr. James?
5 THE COURT: Listen. You guys present your case how
6 you want and call your witnesses how you want. So --
7 MS. ROSENBLUM: I'll defer to Ms. Isso.
8 MS. ISSO: Can we ask him --
9 MS. ROSENBLUM: I anticipated --
10 MS. ISSO: -- if he can come --
11 MS. ROSENBLUM: -- this.
12 MS. ISSO: Can we -- can we ask if he can -- excuse
13 me?
14 MS. ROSENBLUM: I anticipated that we would be --
15 like at least for my witnesses that as they appear we would
16 try to get them in and out.
17 MS. ISSO: Oh, how --
18 MS. ROSENBLUM: So --
19 MS. ISSO: -- much longer do we have in front of
20 Nechole Garcia? I'd rather we finish up with her and then
21 call him if he's available. Can we ask him if he's available?
22 Like how long do you think you're going to go?
23 MS. ROSENBLUM: I don't know.
24 THE COURT: I'm sorry, whose witness is this?

1 MS. ROSENBLUM: This is --
2 MS. ISSO: This is Mark --
3 MS. ROSENBLUM: -- Ms. Isso's witness.
4 MS. ISSO: -- James. I have another patient
5 appointment I'm planning at 10:00. I have -- oh, so he -- he
6 has to go at 10:00? Could you -- could you hear us, Mr.
7 James?
8 THE CLERK: He cannot hear us.
9 MS. ISSO: Oh, because he's texting me. Do you have
10 to be done at 10:00, question mark?
11 THE CLERK: Do you want to ask him?
12 MS. ISSO: I just texted him.
13 THE CLERK: Oh.
14 MS. ROSENBLUM: I -- I can --
15 THE COURT: These kind of delays do add -- are
16 coming from your time though, Ms. Isso. Go right ahead.
17 MS. ROSENBLUM: I can continue to ask Nechole
18 questions if she wants straight.
19 MS. ISSO: He wants to start at 10:00.
20 MS. ROSENBLUM: He wants to start at 10:00? So I
21 have four minutes.
22 MS. ISSO: Okay. We'll call you at 10:00.
23 THE COURT: Okay. Do you want to continue on, Ms.
24 Rosenblum?

1 BY MS. ROSENBLUM:

2 Q I'm sorry, Nechole. So I think we left off there's
3 an educational advocate who attends meetings with the staff,
4 school district. Can you just kind of -- I -- I don't know if
5 you were done explaining what the educational advocate's role
6 is.

7 A I think so. Just that they -- so they attend and
8 are there to make sure that Ava gets all the services she
9 needs and the advantage of having one is that they -- they
10 know kind of the system much better than the parents do. And
11 so they're just a good resource for the parents to have to
12 make sure the kids are getting all the services they're
13 entitled to.

14 Q Did you and Eugene agree on an ed -- educational
15 advocate?

16 A No, we did not.

17 Q When -- well, first of all, do you have your own
18 educational advocate for Ava?

19 A No. The last advocate we both -- both ended up
20 using her.

21 Q Okay. Do you intend -- well, let -- strike that.
22 Who is the educational advocate to Ava currently?

23 A So it's -- it's changed. The last advocate to
24 attend the last meeting's name was Cheryl Jung (ph).

1 Q Okay. Who picked Cheryl Jung?

2 A So I -- Cheryl Jung was recommended -- strongly
3 recommended to me by several people. I talked to her about
4 joining. I asked Eugene to talk to her. Initially he refused
5 to do so. He had said he already picked someone else. And
6 that other person he had picked handled the first segment of
7 the IEP meeting. The second segment of the IEP meeting I did
8 then because I had concerns with the -- the other advocate
9 that he selected and asked Ms. Jung to join the meeting.

10 Q Okay. Who was the first person?

11 A Her name is Robin Kincaid (ph) and she works for
12 Nevada PEP.

13 Q And who selected Ms. Kincaid?

14 THE WITNESS: That's Amber.

15 MS. ROSENBLUM: Is that Amber?

16 THE WITNESS: Yes.

17 MS. ROSENBLUM: That's Ms. Harris.

18 MS. ISSO: All right. Let's call Mr. James -- I'm
19 sorry, Dr. James -- Mr. -- Mr. James. It should only be like
20 five minutes.

21 THE COURT: All right. So we're calling -- it's now
22 Ms. Isso's witness?

23 MS. ISSO: Mark James.

24 THE CLERK: Mr. James, can you hear me?

1 MR. JAMES: Yes.

2 MS. ISSO: Thank you, sir. Could you please state

3 your name --

4 THE COURT: Hold on one second, Ms. Isso.

5 MS. ISSO: Oh.

6 THE COURT: We have to --

7 MS. ISSO: Yeah, I'm sorry. I'm sorry.

8 THE COURT: -- swear in witnesses --

9 MS. ISSO: I'm sorry. I'm sorry.

10 THE COURT: -- before they --

11 THE CLERK: Can you --

12 THE COURT: -- testify.

13 THE CLERK: -- please raise your right hand? You do

14 solemnly swear the testimony you're about to give in this

15 action shall be the truth, the whole truth, and nothing but

16 the truth, so help you God?

17 THE WITNESS: Yes.

18 MARK JAMES

19 called as a witness on behalf of the Plaintiff, having been

20 first duly sworn, testified upon his oath as follows on:

21 DIRECT EXAMINATION

22 BY MS. ISSO:

23 Q Could you please state your name for the record?

24 Could you please state your name for the record?

1 A Mark James.

2 Q Mr. James, what position do you hold?

3 A I'm a speech language pathologist.

4 Q And have you treated the minor child in this case?

5 A Yes.

6 Q About how many times?

7 A I can count my notes.

8 Q Like 20 times?

9 A Maybe 25 -- 25 roughly.

10 Q Did you treat the child at the facility or at the

11 parties' homes?

12 A Via Telehealth and at the parties' homes.

13 Q Okay. And did you ever witness the child having

14 temper tantrums?

15 A Yes.

16 Q And did you ever witness -- at Eugene's home, did

17 you ever witness anything that was unusual?

18 A No.

19 Q And did you find that he participated in these

20 meetings and was always susceptible or open to accepting

21 medical information and advice regarding his child?

22 A Yes.

23 Q Did he follow your recommendations and referrals?

24 A I don't know that I made any particular referrals,

1 but following recommendations, (indiscernible).

2 Q Was a referral made for Ava to be evaluated by a
3 bilingual speech pathologist in March of 2021?

4 A That was a concern that he brought up and I do not
5 recall whether I -- a recommendation for that to happen. I --
6 I know that was a concern of his.

7 MS. ISSO: Okay. No further questions.

8 THE COURT: Ms. Rosenblum?

9 MS. ROSENBLUM: Nothing further. No questions.

10 THE COURT: All right, sir. I guess there's no more
11 questions for you. Thank you for being here to testify today.
12 That was three minutes --

13 THE WITNESS: Okay.

14 THE COURT: -- Ms. Isso that you used.

15 THE WITNESS: All right. Thank you.

16 THE COURT: So I guess we're back to --

17 MS. ROSENBLUM: Ms. Harris is on --

18 THE COURT: Oh.

19 MS. ROSENBLUM: -- also, so --

20 THE COURT: Who is?

21 MS. ROSENBLUM: Amber Harris.

22 THE COURT: I'm sorry.

23 MS. ROSENBLUM: Oh, Amber Har -- she was --

24 THE COURT: It's hard to keep track.

1 MS. ROSENBLUM: -- she was there, I thought, but now
2 I see Dr. Gaspar. I think -- oh, no, wait. That's not Tanner
3 Garcia (ph). I think she's the AD up top as Amber Harris.
4 Can we call her?

5 THE COURT: Yeah, whose witness is this?

6 MS. ROSENBLUM: Mine.

7 THE COURT: Yours? Okay.

8 MS. ROSENBLUM: She's mine.

9 THE CLERK: Which one?

10 MS. ROSENBLUM: Amber Harris.

11 THE CLERK: Okay.

12 MS. ISSO: Was Marnie Lancz sworn in?

13 THE COURT: I'm sorry, who?

14 MS. ROSENBLUM: Ms. Lancz.

15 MS. ISSO: Marnie Lancz. Well, she's -- was she
16 sworn in? Let's just go. Who's -- who's next?

17 THE COURT: I don't -- I don't recall.

18 MS. ISSO: Are we calling Amber Harris now?

19 MS. ROSENBLUM: Yes.

20 THE COURT: If necessary, if you believe that's
21 going to be something that will flaw this, we will absolutely
22 contact her and call her back. I don't know. Madam Clerk --
23 we'll have Madam Clerk check at lunch and we can reaffirm that
24 on the record.

1 THE CLERK: Ms. Harris, can you hear me?

2 MS. HARRIS: Yes, I can.

3 THE CLERK: Can you please raise your right hand?

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

7 THE WITNESS: Yes.

8 AMBER HARRIS

9 called as a witness on behalf of the Defendant, having been
10 first duly sworn, testified upon her oath as follows on:

11 DIRECT EXAMINATION

12 BY MS. ROSENBLUM:

13 Q Ms. Harris, can you go ahead and state your full
14 name for the record, please?

15 A Amber Lynn Harris.

16 Q And Ms. Harris, again, I want to thank you for your
17 testimony today. I know this is disruptive to your schedule.
18 So I'll try to be fast. Can you state your job title?

19 A Developmental specialist service (indiscernible)
20 therapy.

21 Q And Ms. Harris, are you familiar with the parties in
22 this case?

23 A Yes.

24 Q How do you know them?

1 A Previous clients.

2 Q And did you help -- did you participate with them
3 with regard to their minor child Ava Garcia-Shapiro?

4 A I did.

5 Q Are you familiar with the CARS report that was
6 created in this case?

7 A Yes.

8 Q Who created that report?

9 A Myself and my team members, Ms. (Indiscernible) and
10 Ms. (Indiscernible), her team therapist, Danielle Palmer (ph),
11 and my nutritionist Kiera (ph). And I apologize, her last
12 name escapes me at the moment.

13 Q If you could for the record explain what the CARS
14 report is.

15 A It is the Childhood Autism Rating Scales and it is a
16 -- an assessment that we use to determine whether there are
17 red flags for autism.

18 Q And in this particular case, the result of your
19 assessments, did it demonstrate red flags for autism?

20 A Yes.

21 Q Did you provide a copy of the report to the parents
22 in this case?

23 A We are actually not allowed to provide a copy of the
24 report. We've never provided copies to families. This was

1 actually the first family that requested and we provided
2 copies to.

3 Q And Ms. Harris, upon providing the parties a copy of
4 the report, did you receive objections to the report from
5 either party?

6 A I did.

7 Q Who did you receive objections to the report form?

8 A Mr. Shapiro.

9 Q Do you happen to have a copy of the report in front
10 of you?

11 A I can get it. I have it available.

12 Q Okay. So I also have a copy of it and I want to use
13 the one they've already admitted.

14 MS. ROSENBLUM: And Judge, for the record, the TMG
15 report has already been admitted by Counsel through
16 stipulation. I believe it's Plaintiff's Exhibit --

17 THE COURT: Okay. It's been admitted.

18 Q And Ms. Harris, in the report did you note Dad's
19 concerns with the report?

20 A Yes, both parents' concerns are noted in the CARS
21 assessment. Now, the way that the previous CARS assessment is
22 set up because it's a PDF and now I did not create the PDF,
23 so I am not aware of how to fix it, but what happens is if
24 there's additional information that goes outside of the box we

1 get a -- a little plus side on the side. If you have the
2 editable version of the PDF, we can see that information which
3 is exactly why we do not share this because once you print it
4 out or you make it an -- editable, you cannot see that
5 additional information. We did make an exception and find a
6 way to manipulate the PDF and turn it in -- as into a Word
7 document. So that's why the additional information is --

8 Q And you indicated that both parents I think had
9 concerns about the report?

10 A As far as I know, the concerns that I have here are
11 listed from an email from Mr. Shapiro.

12 Q And is -- in the report version that you have, are
13 those concerns available to you?

14 A Yes.

15 MS. ROSENBLUM: And I would represent to the Court
16 that they're at the end of Ms. Isso's Exhibit 33.

17 THE COURT: I need a Bates stamp if you're referring
18 to --

19 MS. ROSENBLUM: I don't have the Bates stamps. It's
20 the last two pages of that exhibit. It's starts -- at the
21 top, it states additional notes page.

22 THE COURT: Last two pages of what exhibit?

23 MS. ROSENBLUM: Exhibit 33.

24 THE COURT: Okay.

1 Q Ms. Harris, do you have the -- that information
2 available to you right now?

3 A Additional notes? Yes.

4 Q Do -- do you believe that these additional notes
5 accurately reflect Mr. Shapiro's documented concerns with you
6 about the CARS report?

7 MS. ISSO: What exhibit?

8 A All I did was copy the email he sent and paste it
9 onto the additional notes. So --

10 Q Okay.

11 A -- whatever he said is there.

12 Q With regard to the concerns that Mr. Shapiro raised
13 about the diagnosis, did you change any of your opinions or
14 assessments with regard to Ava in the CARS report?

15 A No, our assessment and the way that we document our
16 concerns really is based on -- of our observations. I mean,
17 parents can say one thing or another.

18 Q In these additional notes pages, you indicate that
19 -- and I'm looking -- one, two, three, four, five, six lines
20 from the bottom. It -- it states father has stated that he
21 doesn't know if Ava's being extremely musically talented as
22 hereditary or part of autism or a combination of both. Is
23 that a fair and accurate representation of what Dad expressed
24 to you as part of his concerns with this report?

1 A As I mentioned, it's just copy and pat -- pasted
2 from his emails. So what --

3 Q Okay.

4 A -- Dad said is on this -- this page.

5 Q And in the next statement, it states Father
6 expressed he has concerns that he wanted to be addressed by
7 medical professionals. Do you know what additional concerns
8 he might have had?

9 A No.

10 Q Do you know if Dad ever sought additional medical
11 professionals to address any other concerns?

12 A If he did, that information was not shared with us.

13 MS. ROSENBLUM: I have nothing further for this
14 witness, Judge.

15 THE COURT: Ms. Isso, do you have any questions of
16 the witness?

17 CROSS EXAMINATION

18 BY MS. ISSO:

19 Q Is it common for parents to share concerns after
20 there's been a report?

21 A As I mentioned before, we've never provided -- this
22 is the first family that I've provided a CARS report too.
23 Typically this is kept in house and provided to our
24 developmental pediatrician. So this is the first situation

1 that I've run into where we've had this issue.

2 Q Or if you just tell them what the overall assessment
3 is or the outcome, is it common for -- for parents to ask
4 questions or have concerns?

5 A I mean, they have questions and we discuss them, but
6 for the most part I'm able to come to some kind of agreement
7 with all of my families.

8 Q And -- and eventually was there an agreement reached
9 here?

10 A Well, she received a diagnosis, so I guess so.

11 Q Okay. And has -- has Eugene participated in every
12 appointment with TMG that you're aware of?

13 A That I'm aware of. Every visit in our notes we
14 state who is present. The only time that I did not see Father
15 was my in home visit with Nechole.

16 Q Okay. And, you know, did you witness anything that
17 would give you concern that Eugene can't meet this child's
18 needs?

19 A I'm not here to determine that.

20 Q But did you witness anything though?

21 MS. ROSENBLUM: Objection, Your Honor. The witness
22 has already answered.

23 THE WITNESS: I -- that's not my call.

24 BY MS. ISSO:

1 Q Okay. And --

2 THE COURT: Wait. Listen, it -- not even as a
3 professional, as a layperson. I believe she can answer that
4 question as a -- even a layperson.

5 THE WITNESS: I -- I mean, I -- I want to make it
6 extremely clear that our -- from our side and from our
7 profession, our job is to make sure that our parents are
8 provided with the tools that they need to support their child.
9 That is my goal. That is my focus. My focus has always been
10 on making sure that Ava has the tools that she needs. If at
11 any point in time do I feel that a parent is not able to do
12 that if it's, you know, a -- a safety issue, I'm a mandated
13 reporter. Of course, I'm going to report that. But what goes
14 on in the family's home and whether or not they pro --
15 practice the strategies and follow those, I can't say one way
16 or another.

17 Q And did you ever report anything against Eugene as a
18 mandatory reporter?

19 A No.

20 Q Okay. And did Nechole -- when Nechole wasn't
21 permitted to be part of an evaluation, did she allege
22 discrimination?

23 A As far as making an actual report, I know that there
24 was a complaint that was made and we took it to Part C (ph)

1 which is our office that is above us. We also took it to the
2 District Attorney's Office and they examined the complaint and
3 they let us know that we were following Part C and that's the
4 information that I got.

5 Q So that was after she alleged discrimination,
6 correct?

7 A To be honest, I was not part of any of that
8 discussion. That all went on with Marnie. Once all of this
9 occurred, I was pretty much removed.

10 Q But -- but she did allege discrimination when you
11 guys were implementing COVID-19 procedures, right?

12 A I don't know the complaint is what I'm trying to get
13 you to understand. This went above me. I don't know the
14 nature of the complaint.

15 Q Didn't she complain of discrimination on a Zoom call
16 along with you and your supervisor Jennifer Lokiano (ph)?

17 MS. ROSENBLUM: Objection, Your Honor. It's been
18 asked and answered now three times.

19 THE COURT: Well, no. She testified to the
20 complaint. She's now asking about a Zoom call. So she can
21 ask that. Go ahead, Ms. Isso.

22 THE WITNESS: I don't have that note in front of me
23 but I can look through my notes. Do you know a date?

24 BY MS. ISSO:

1 Q Do -- do you recall her doing that, Ms. -- it's just
2 a really simple question.

3 THE COURT: She's just asking if you know by memory,
4 ma'am. You don't need to look through your notes.

5 A By memory, I don't.

6 Q Did your -- did your office recommend that the --
7 the child is getting juiced?

8 A Our nutritionist recommended.

9 Q And isn't it true that Nechole Garcia refused to
10 follow the doctor's order regarding the juice?

11 A Absolutely not. That's not the case at all.

12 (COUNSEL AND CLIENT CONFER BRIEFLY)

13 Q Okay. So go to page -- go to page -- the last --
14 the second to last page of the Exhibit 33. I'll just read it
15 to you miss since it's not in front of you. Or maybe it is in
16 front of you. Where is it again? It says that --

17 (COUNSEL AND CLIENT CONFER BRIEFLY)

18 Q -- later when -- when Eugene mentioned an error in
19 the report, did you guys modify it to state what Eugene
20 suggested which was Father successfully introduced juice,
21 Mother decided not to introduce juice.

22 A That was the only change we made.

23 MS. ISSO: No further questions. How many minutes
24 was that since we're --

1 THE COURT: Six minutes, Ms. Isso. Ms. Rosenblum?
2 MS. ROSENBLUM: I don't have any follow up.
3 THE COURT: All right. Thank you, ma'am. Thank you
4 for being here to testify today. Have a good day. Stay safe
5 and healthy.
6 THE WITNESS: You as well.
7 THE COURT: Unless somebody's calling someone else
8 out of order, Ms. Rosenblum --
9 THE CLERK: Did you want to get Marnie Lancz back on
10 there? Do you want me to --
11 MS. ISSO: Do you want to --
12 THE COURT: I'm sorry?
13 MS. ROSENBLUM: Marnie Lancz is back on the
14 record --
15 THE COURT: Okay.
16 MS. ROSENBLUM: -- and Ms. Isso asked if she was
17 sworn in.
18 MS. ISSO: As long --
19 THE COURT: Yeah, we'll --
20 MS. ISSO: -- as it's not --
21 THE COURT: -- go ahead and --
22 MS. ISSO: As long as we're on --
23 THE COURT: -- we'll go on an absolutely --
24 MS. ISSO: -- as long as it's not --

1 THE COURT: -- perfectly --

2 MS. ISSO: -- against my time.

3 THE COURT: -- crystal clear record. So go ahead
4 and put her back on.

5 (WITNESS SUMMONED)

6 THE COURT: And if you want to ask the foreman what
7 she previously testified is true and accurate when you swear
8 her in.

9 MS. ROSENBLUM: I'm sorry, the question is is this
10 going against my time?

11 THE COURT: This one I'm not. You can see I'm not
12 writing anybody's --

13 MS. ISSO: It was her witness.

14 THE COURT: -- time down for right now.

15 MS. ISSO: It was her witness.

16 THE COURT: This is my --

17 MS. ISSO: No.

18 THE COURT: -- time --

19 MS. ISSO: It goes against her time.

20 THE COURT: -- because it was an oversight.

21 MS. ISSO: It was her witness.

22 THE COURT: I'm not taking away from either side.

23 It is the Court's time. It was --

24 MS. ISSO: When I'm talking --

1 THE COURT: -- an oversight.

2 MS. ISSO: -- you're like oh, where's notepad.

3 THE COURT: It was --

4 MS. ISSO: Let me document --

5 THE COURT: -- an oversight.

6 MS. ISSO: -- it. It's her witness. It goes
7 against her time.

8 THE COURT: It was our oversight. It is my time.
9 Go ahead.

10 MS. ISSO: It's still her time though.

11 THE CLERK: How did you want me to do it?

12 THE COURT: I need you to -- same question but what
13 she previously testified to on the record is accurate and
14 correct. So ma'am -- we forgot to swear you in, ma'am. So my
15 Court Clerk is just going to swear you in and affirm what you
16 testified to previously was accurate and correct. Okay? We
17 -- it was just an --

18 MS. LANCZ: Okay.

19 THE COURT: -- over -- it was an oversight on our
20 part.

21 THE CLERK: Can you please raise your right hand?
22 You do solemnly swear that the testimony you have previously
23 given was true and accurate --

24 THE COURT: To the best of your knowledge.

1 THE CLERK: -- to the best of your knowledge?
2 THE COURT: Do --
3 MS. LANCZ: Yes, it was.
4 THE COURT: Do either Counsel have any questions or
5 clarifications?
6 MS. ROSENBLUM: No.
7 THE COURT: Ms. Isso?
8 MS. ISSO: No.
9 THE COURT: All right. Thank you. Sorry about --
10 sorry for the oversight.
11 MS. LANCZ: Thank you.
12 THE COURT: All right. Nobody was allotted with any
13 of that. So Ms. -- are we going on with --
14 MS. ROSENBLUM: Just we're an hour and 20 in. Is it
15 possible to take a quick --
16 THE COURT: Oh.
17 MS. ROSENBLUM: -- quick break? Sorry, it's just --
18 THE COURT: You're -- you're going to continue on
19 with your witness?
20 MS. ROSENBLUM: I am.
21 THE COURT: Oh, it will be awhile.
22 MS. ROSENBLUM: That -- that's --
23 THE COURT: So --
24 MS. ROSENBLUM: -- my intention and --

1 THE COURT: -- perfect time to take a break. It is
2 -- we'll go by the courtroom clock. It is 10:20. We'll
3 resume at 10:30.

4 (COURT RECESSED AT 10:20 AND RESUMED AT 10:31)

5 THE CLERK: We are back on.

6 THE COURT: Okay. As far as time wise, given what's
7 been to date, everything to date broken down, Ms. Isso, you
8 have one hour and fifty minutes left. Ms. Rosenblum, you're
9 down to three hours even.

10 MS. ROSENBLUM: All right. Back to my client.

11 NECHOLE GARCIA

12 called as a witness on her own behalf, having been previously
13 sworn, testified upon her oath as follows on:

14 DIRECT EXAMINATION CONTINUED

15 BY MS. ROSENBLUM:

16 Q Nechole, with regard to the autism diagnosis for
17 Ava, do you have any reason to disagree with that diagnosis?

18 A No.

19 Q Do you have any reason to disagree with her
20 recommended treatment plan?

21 A No.

22 Q Have you ever asked for a second opinion about the
23 diagnosis?

24 A No.

1 Q Do you have any reason to disbelieve the severity of
2 the CARS rating that was described for her?

3 A No.

4 Q Do you believe in your opinion has Eugene questioned
5 that diagnosis?

6 A I'm not aware that he's actually questioned or
7 disputed the diagnosis itself.

8 Q Do you believe that Eugene disputes the severity of
9 Ava's autism?

10 A I -- yes. Yes.

11 Q And what makes you believe that?

12 A When we've had communications on OurFamilyWizard and
13 I have mentioned that she has autism and he becomes -- he --
14 he gets kind of defensive and he's then wants to kind of rate
15 it while it's only mild or it's very high functioning. So --
16 so yes, I do.

17 Q Has there ever been a conflict about Ava's treatment
18 with Eugene?

19 A There's been several conflicts about Ava's
20 treatment.

21 Q And tell me about those con -- what --

22 MS. ISSO: Objection, foundation.

23 THE COURT: I think that was going to be your next
24 question --

1 MS. ROSENBLUM: Yeah, I --
2 THE COURT: -- but I will rule --
3 MS. ROSENBLUM: -- haven't even got --
4 THE COURT: -- before --
5 MS. ROSENBLUM: -- the question.
6 THE COURT: Go right ahead.
7 MS. ISSO: Well, I mean, what time frame are we
8 talking --
9 THE COURT: Sustained.
10 MS. ISSO: -- about?
11 THE COURT: It'll be sustained. She's going to --
12 but I can tell by her next -- Go ahead. Sustained.
13 BY MS. ROSENBLUM:
14 Q Can you identify a specific conflict with regard to
15 Ava's treatment?
16 A Yes, we had a -- a conflict -- right after she was
17 diagnosed I wanted her to receive an -- an assessment with an
18 occupational therapist as part of her overall assessment with
19 the school district. And Eugene rather than discussing it
20 with me was just telling the school that he was not going to
21 agree -- agree to that.
22 MS. ISSO: Objection. Objection. He told the
23 school? She lacks --
24 THE COURT: I need the legal --

1 MS. ISSO: -- personal knowledge.

2 THE COURT: I need the legal terminology, Madam --
3 Ms. Isso.

4 MS. ISSO: Lacks personal knowledge, speculation,
5 foundation.

6 THE COURT: I'll go ahead and do it. I will --

7 MS. ISSO: Move to strike.

8 THE COURT: -- sustain the objection on hearsay.

9 BY MS. ROSENBLUM:

10 Q Did Eugene express to you an objection to the OT
11 assessment?

12 A Yes. So we were on a group text with the school
13 district and I requested -- and we got the (indiscernible)
14 real quick. During the early intervention appointment with
15 Therapy Management Group with that current occupational
16 therapist, the recommendation was made to both of us to ask
17 the school district for an assessment so that Ava could get
18 those services at the school district. So later we were on a
19 group text with the individual from Child Find, her name is
20 Erin Shurry (ph), who was coordinating Ava's evaluation.

21 On that group text in which Eugene was a
22 participant, I asked Erin to schedule the occupational therapy
23 assessment. And rather than messaging me about it, Eugene
24 would immediately respond at multiple times that he disagreed

1 with having her assessed, that she had been dragged to too
2 many assessments already and didn't want her dragged to
3 another one.

4 Q And if you could, Nechole, take a -- I believe it's
5 in the first binder in front of you. And you said these are
6 texts -- I'm sorry, I don't have them memorized at the top of
7 my head. This is what happens when (indiscernible). All
8 right. We'll go back and we'll ask for those texts to be
9 admitted.

10 A Any other time that you can think of where there's
11 been a conflict between yourself and Eugene regarding Ava's
12 treatment?

13 Q Yes.

14 A And when was that?

15 Q Earlier I was talking about the educational advocate
16 for Ava. Initially I contacted Eugene -- Eugene. I wanted us
17 to --

18 THE COURT: Ms. Rosenblum, now it's you guys. Ms.
19 Rosenblum?

20 MS. ROSENBLUM: Uh-huh.

21 THE COURT: Now --

22 MS. ROSENBLUM: Yeah.

23 THE COURT: -- it's --

24 MS. ROSENBLUM: I --

1 THE COURT: -- you guys talking that's distracting.
2 So by writing, please.

3 BY MS. ROSENBLUM:

4 Q Go ahead.

5 A The educational advocate -- I wanted us to select
6 the advocate together so that we could, you know, kind of
7 present a united front to the school district. And Eugene
8 instead picked one on his own and refused to pick to -- to
9 work with me to select one and basically just told me he
10 picked his, I can pick mine, and they can both just be present
11 at -- at the IEP meeting.

12 Q Any other conflicts that you can think of regarding
13 Ava's treatment? So we talked about the OT. We talked about
14 the educational surrogate. Any --

15 A Yes.

16 Q -- other conflicts?

17 A Yes.

18 Q And what is the particular conflict that you're
19 thinking about?

20 A Well, the conflict about being able to -- both of us
21 being present for the evaluation in the room present for the
22 autism evaluation with Dr. Gaspar.

23 Q And, again, if you can just briefly explain to the
24 Court why you thought that it was important for you to be

1 there.

2 A Well, I think an assessment through Zoom, it's
3 difficult to get the full picture of what's happening. In
4 this particular assessment, I was in an adjacent room but Dr.
5 Gaspar had his back to me. So and -- and I was trying to hear
6 and kind of get a full picture of what was happening. And I
7 wanted to be able to fully understand everything so that she
8 was diagnosed so that I can go on and -- and be that advocate
9 for her. And then I also just thought that -- that it would
10 Ava to have both of her parents there to support her through
11 that -- through that process because there was some -- some
12 testing involved.

13 Q And you -- just -- let's just touch on that real
14 quick. You've heard the allegation that somehow you alleged
15 race or discrimination as a basis to be physically present.
16 Did you ever make that allegation?

17 A No.

18 Q In your opinion, is Ava aware of the conflict
19 regarding these issues --

20 MS. ISSO: Objection.

21 Q -- between you and Eugene?

22 MS. ISSO: Objection, lacks personal knowledge,
23 speculation, foundation, relevance.

24 THE COURT: The only reason I'm going to sustain

1 that Ms. Rosenblum is we're talking about a three-year-old.

2 There is no way even with someone without -- so --

3 MS. ROSENBLUM: Okay. I -- I mean, has --

4 THE COURT: There's just -- there's just absolutely
5 no way.

6 MS. ROSENBLUM: Sure.

7 BY MS. ROSENBLUM:

8 Q Has -- has Ava ever seen you and Eugene -- well, let
9 me ask you. These conflicts, how do they arise? Is it
10 verbally, confrontational, or is it in writing?

11 A A lot of them occur in writing, but there have been
12 a couple at appointments where Ava was present.

13 Q In your opinion, has any of that conflict affected
14 Ava in any way?

15 MS. ISSO: Objection.

16 THE COURT: In her opinion she can testify to.
17 Overruled.

18 THE WITNESS: I think it has. E -- even though Ava
19 can't fully understand what's happening she can hear, you
20 know, if Eugene's angry and he's got a certain tone -- tone of
21 voice and is making these comments about me to these
22 professionals in front --

23 MS. ISSO: Objection.

24 THE WITNESS: -- of Ava.

1 MS. ISSO: Objection. We don't know -- she can't
2 testify what the child heard.

3 MS. ROSENBLUM: She was there.

4 MS. ISSO: Move to strike.

5 THE COURT: She can testify as to the conflict and
6 the fact that the child was there. That I have no problem
7 with. So that part will be overruled to that level.

8 MS. ISSO: Objection, foundation.

9 THE COURT: Overruled.

10 THE WITNESS: So -- so I do think that she can sense
11 that. You know, she can sense the anger and the tension
12 between us at those appointments.

13 BY MS. ROSENBLUM:

14 Q When there is conflict between yourself and Eugene
15 and Ava's present, does she act out in any way? That you've
16 observed.

17 A No, she just get a little quieter. But no, she
18 doesn't act out.

19 Q If you can look at the book, Exhibit Z. I just want
20 to go back real quick. Z like zebra.

21 A Yes, I've got it here.

22 Q Okay. Are these the text messages that you were
23 referencing regarding the issue with the occupational
24 therapist?

1 A Yes.

2 MS. ROSENBLUM: I would ask --

3 Q And these are text messages between yourself and
4 Eugene and Erin?

5 A Eugene, Erin, and myself.

6 Q Okay. Do the -- do you believe these represent the
7 complete text messages regarding this issue between yourself,
8 Eugene, and Erin?

9 A Yes.

10 MS. ROSENBLUM: I would ask that Exhibit Z be
11 admitted.

12 MS. ISSO: I got to look at it, Your Honor. I
13 thought we weren't going to just admit documents of text
14 messages that we're going to have to pinpoint it.

15 MS. ROSENBLUM: They're -- they're literally --

16 THE COURT: Three years.

17 MS. ROSENBLUM: -- like four pages.

18 THE COURT: So yeah, give me Bates stamps that you
19 want me to refer to.

20 MS. ROSENBLUM: They're --

21 THE COURT: But I'm --

22 MS. ROSENBLUM: It's Exhibit Z. It's the -- it --
23 it's four pages.

24 THE COURT: Okay. If it's only four pages, that'll

1 be admitted.

2 MS. ROSENBLUM: I'm sorry, it's 15 pages but a lot
3 of them repeat. It -- because of the way they're
4 photographed. So it's a text and then it repeats. So it's 15
5 pages.

6 THE COURT: Well, if it repeats, why don't you just
7 give me some specific Bates --

8 MS. ROSENBLUM: Okay.

9 THE COURT: -- stamps then?

10 MS. ROSENBLUM: So Exhibit Z-15, Z-13, Exhibit Z --
11 it's 3 -- Exhibit Z-3.

12 THE COURT: Okay. Those three pages?

13 MS. ISSO: No.

14 MS. ROSENBLUM: Yes. Well, and that full text
15 that's on three is actually on 4. It cuts off at the bottom.
16 So I would -- not 3. It would be page 4.

17 THE COURT: Okay.

18 MS. ISSO: So what, there was Z-15, Z-13, Z-3, and
19 what else?

20 MS. ROSENBLUM: Not Z-3. Z-4.

21 THE COURT: 4, 13, and 15.

22 MS. ROSENBLUM: Yeah.

23 MS. ISSO: It's just -- it's -- it's repetitive.
24 You just explained to her to only pick one and now it's

1 repeating the same thing over and over again.

2 MS. ROSENBLUM: It's -- it's literally three pages.

3 THE COURT: Is it the exact same thing?

4 MS. ROSENBLUM: No.

5 THE COURT: Okay. All right.

6 (PLAINTIFF'S EXHIBIT Z, BATES Z-4, Z-13, Z-15 ADMITTED)

7 THE COURT: You can continue.

8 MS. ROSENBLUM: Thank you.

9 BY MS. ROSENBLUM:

10 Q Nechole, do you believe that your family would
11 benefit from the assistance of parent coaching or parenting
12 coordinator?

13 A Absolutely, yes.

14 MS. ISSO: I'm sorry, I didn't hear the question.
15 Say that again?

16 Q Do you believe that your family would benefit from
17 parent coaching or a parent coordinator?

18 A Absolutely, yes.

19 Q And why do you believe that?

20 A I am having a lot of difficulty communicating with
21 Eugene, reaching agreements on things like pro -- providers,
22 therapists, appointments. It -- it's -- it's extremely
23 difficult. It's multi day discussions, sometimes -- you know,
24 it -- -- it's -- it's just very difficult. He's very hostile.

1 And I just think that having a neutral party that can help us
2 when we reach an impasse can help and -- and/or having someone
3 help us, both, you know, I will own my own -- my part to the
4 extent that I have a part in it, can help us both to learn to
5 communication more constructively with each other.

6 Q What about family therapy? Have you thought about
7 that?

8 A I have, yeah.

9 Q Do you think that would be helpful?

10 A Yes, as long as it's limited to helping us to
11 co-parent with one another, yes.

12 Q When you limiting it, why do you want it limited?

13 A Well, I -- Eugene -- his communications with me, he
14 -- he brings up a lot of past issues, a lot of things from the
15 past and I -- I want just to be able to focus on Ava and focus
16 on moving forward. And so if it -- if it entails dredging up
17 past issues and who's at -- was at fault for this or that,
18 that, that, no, but just let's focus on Ava and let's make it
19 about her. That, yes, I would like to do.

20 Q We've spent a lot of time talking about Ava's
21 therapy interventions. Are there any new interventions that
22 you are aware of?

23 A Yes, so she now has -- she's going to be assessed
24 for physical therapy as well through the school district.

1 Q And what --

2 A And if she qualifies, she's also going to be
3 receiving physical therapy each week.

4 Q And will that be at the -- during the school time?

5 A It should be.

6 Q And why is she being -- why is physical therapy now
7 on the table? Do you know?

8 A Yesterday when I picked her up from school her
9 teacher expressed concerns about Ava's gait -- she called her
10 waddly when she was out on the playground and asked if we
11 would agree to have her assessed for physical therapy.

12 Q Do you know if you Eugene is aware of this
13 recommendation?

14 A Yes. As soon as she asked me, I immediately
15 messaged Eugene on OurFamilyWizard to see if he would agree.

16 Q Has he expressed any disagreement with the physical
17 therapy?

18 A No, he agreed.

19 Q We talked about an educational advocate for Ava.
20 You've also testified that you believe you are a -- in your
21 own words a fierce advocate --

22 A Yes.

23 Q -- for Ava. I think we can agree that you would
24 describe yourself as assertive in that regard; is that true?

1 A Yes.

2 Q Do you believe that your advocacy for Ava has helped
3 her?

4 A Absolutely. I -- I do. I mean, she got into early
5 intervention and through early intervention she was able to
6 see Dr. Gaspar much sooner than a lot of kids are able to see
7 him. She was able to get placed into the Child Find program
8 so as soon as, you know, she turned -- turned three she was
9 able to get put into that program. And through Dr. Gaspar she
10 was able to get the referrals for ABA therapy. So yes, I
11 absolutely do believe it.

12 Q We talked about -- well, just on that point, do you
13 have an opinion as to whether or not Eugene is -- as -- as
14 fierce an advocate as you are?

15 A I don't think he is.

16 Q Do you have any understanding of what Ava's
17 developmental age is?

18 A She --

19 MS. ISSO: Development -- I -- I couldn't hear.
20 Developmental what?

21 THE COURT: I -- yeah, I didn't --

22 MS. ROSENBLUM: Age. Age. Her --

23 THE COURT: Okay.

24 MS. ROSENBLUM: -- developmental age.

1 THE COURT: Okay.

2 MS. ISSO: Wait, what's the -- what was the
3 question?

4 THE COURT: Just does she know what her
5 developmental age is?

6 THE WITNESS: She was assessed through the school
7 district. And through that they found it was an interesting
8 dichotomy that cognitively she was around the age of a
9 one-year-old but that she also had some advance skills in
10 counting and -- and memory of a four-year-old.

11 Q Okay. Do you think that the schedule that you
12 currently have meets her developmental age?

13 A I think so.

14 MS. ISSO: Objection, calls for an expert opinion.

15 THE COURT: The question was whether she herself,
16 correct?

17 MS. ROSENBLUM: Right.

18 THE COURT: She has the right to ask that. You can
19 ask your own client the same question.

20 MS. ROSENBLUM: Yeah, but her -- her opinion should
21 be given --

22 THE COURT: Overruled.

23 MS. ROSENBLUM: -- very little weight because she's
24 not an expert.

1 THE COURT: Go ahead. Overruled.

2 BY MS. ROSENBLUM:

3 Q Do you believe that a week on week off schedule
4 meets Ava's developmental age?

5 A I don't, no.

6 MS. ISSO: Objection, calls for an expert opinion.

7 THE COURT: She can testify as a layperson just as
8 your client can testify as a layperson. Overruled.

9 BY MS. ROSENBLUM:

10 Q Do you believe that the schedules that Eugene has
11 proposed regarding the two-two-three or a two-two-five or a
12 two-five-five-two schedule meets Ava's developmental age?

13 MS. ISSO: Objection, calls for an expert opinion.

14 THE COURT: She -- for the record clear again for
15 the third time, this is her own personal opinion, correct,
16 Ms. --

17 MS. ROSENBLUM: Correct.

18 THE COURT: -- Ms. Rosenblum?

19 MS. ROSENBLUM: I'm not asking --

20 THE COURT: Okay.

21 MS. ROSENBLUM: She's not an --

22 THE COURT: I understand.

23 MS. ROSENBLUM: -- expert.

24 THE COURT: I understand.

1 MS. ROSENBLUM: I am stipulating she's not an
2 expert.

3 THE COURT: Okay.

4 MS. ISSO: We know that.

5 THE WITNESS: So the answer is no.

6 BY MS. ROSENBLUM:

7 Q Do you believe that Ava is capable of expressing her
8 own views or preferences about her day-to-day living
9 arrangements?

10 A No, Ava has very little -- she has a lot of words
11 she can say re -- repeating but she has a very hard time
12 communicating her needs and her wants.

13 Q We've heard sort of tangentially in this case that
14 Eugene has other children. Do you know those children?

15 A Yes. Yes.

16 Q What are their names?

17 A Eric and Adam.

18 Q And do you know what their ages are?

19 A I believe Eric is 13. I think he'll be 14 in
20 February. And Adam is 11. I think he'll be 12 in I think
21 April of next year.

22 Q Are you -- as you sit here today, are you familiar
23 with the custodial schedule Eugene has with Eric and Adam?

24 A What I believe it is is that he has them every other

1 weekend starting Friday after school until Monday right before
2 school he takes them to school.

3 Q What are your -- well, do you have concerns about
4 incorporating for time for Ava with Eric and Adam?

5 A Yes.

6 Q What are those concerns?

7 A So Eric in particular in -- around February of 2020
8 told Eugene -- or Eugene told me that Eric said that he had
9 been molested and provides some pretty graphic detail by
10 Eric's mother's former live-in boyfriend. Then later
11 Eugene --

12 THE COURT: That I'm going to strike about --
13 because that's about four hearsay times over. That one I'm
14 going to do myself.

15 MS. ROSENBLUM: Okay.

16 THE COURT: She has direct knowledge or whatever,
17 but not -- I -- there was four people just listed out. Heard
18 from this, hard from this to this to this. So --

19 THE WITNESS: Then Eugene told me that Eric recanted
20 that and just made it up because he was jealous of the
21 attention that Eugene was get -- giving to Ava and to his
22 other brother. And so I -- I just became concerned one way or
23 the other either he had been molested and I was concerned
24 because of the big age gap, Ava's inability to express herself

1 and communicate if anything was wrong. I -- I became
2 concerned that unfortunately maybe he might perpetuate that
3 abuse onto Ava or that he may act out because being jealous of
4 the attention that Ava was given. So yeah, I did have those
5 concerns.

6 MS. ISSO: Objection --

7 THE COURT: This is the --

8 MS. ISSO: -- hearsay.

9 THE COURT: -- time again where I'm going to -- I
10 told you I was going to do it the other day where I insert
11 where I do not get why we're getting to these levels of the
12 bashing of the other party when the issue is what is going to
13 be the best custody schedule. It is joint physical custody.
14 I don't get the other stuff. I simply don't.

15 MS. ROSENBLUM: It -- I --

16 THE COURT: I simply don't.

17 MS. ROSENBLUM: I would argue to the Court that her
18 concerns about creating a custody schedule that
19 incorporates --

20 THE COURT: Obviously it never went anywhere because
21 nothing ever happened.

22 MS. ROSENBLUM: It is part of Dr. Bergquist's report
23 as well.

24 THE COURT: I remember seeing that part --

1 MS. ROSENBLUM: And --
2 THE COURT: -- in there.
3 MS. ROSENBLUM: -- part of Dr. Bergquist's
4 recommendations as well.
5 THE COURT: Okay.
6 MS. ROSENBLUM: And specifically on that point.
7 THE COURT: Okay.
8 MS. ROSENBLUM: I would content to the Court that it
9 is relevant.
10 THE COURT: Again, it's the custody schedule. All
11 right. I --
12 MS. ROSENBLUM: It -- it relates specifically to the
13 schedule --
14 THE COURT: Correct.
15 MS. ROSENBLUM: -- Your Honor. Specifically --
16 MS. ISSO: Your --
17 MS. ROSENBLUM: -- to the schedule.
18 MS. ISSO: Your Honor, Dr. Bergquist made this, you
19 know, discussion or recommendation based on information that
20 Ms. Garcia gave her.
21 MS. ROSENBLUM: That is --
22 MS. ISSO: Fed her on a platter.
23 MS. ROSENBLUM: -- absolutely --
24 MS. ISSO: Ms. --

1 MS. ROSENBLUM: -- not --
2 THE COURT: All right.
3 MS. ISSO: Dr. --
4 MS. ROSENBLUM: -- accurate.
5 MS. ISSO: -- Bergquist never witnessed this. In
6 fact, she observed the children together --
7 THE COURT: Okay.
8 MS. ISSO: -- the siblings together.
9 THE COURT: I -- listen. I've seen that report at
10 least three times. I recall that portion. Again, but for the
11 overall purposes of today, go ahead, Ms. Rosenblum.
12 MS. ISSO: So we move to strike all that testimony,
13 Your Honor.
14 MS. ROSENBLUM: I would --
15 THE COURT: The Court will consider the portions
16 that are contained in Dr. Bergquist's report.
17 MS. ROSENBLUM: And, again, I just reiterate, that
18 goes specifically to the schedule that --
19 THE COURT: I understand.
20 MS. ROSENBLUM: -- my client is asking this Court to
21 implement.
22 THE COURT: I understand.
23 BY MS. ROSENBLUM:
24 Q Outside of that report --

1 A Yes.

2 Q -- and those allegations, is there any other
3 concerns that you had about incorporating Eric and Adam into
4 the schedule that Eugene is proposing?

5 A No. And I'm glad that she has that -- some time
6 with them. He only sees them a couple times a month and I'm
7 glad that she's able to -- to be included in part of that
8 time.

9 Q Okay. You agree that Ava is bonded to her brothers,
10 isn't that true?

11 A I think so.

12 Q In that she loves them?

13 A Yes.

14 Q Is it fair to say that your concern is strictly from
15 a safety standpoint?

16 A Yes.

17 Q With regard to your providers and caregivers, you've
18 heard the concerns that Eugene has raised about your mother.

19 A Yes.

20 Q I believe those include the fact that she's
21 diabetic, she's old, she's fat, she's mentally unstable,
22 violent, and exposing and/or you to violence. You heard those
23 allegations?

24 A Yes.

1 Q Do you dispute those allegations?

2 A Yes, I did.

3 Q Do you believe that your mother is capable of
4 watching Ava?

5 A Yes, I do.

6 Q Do you believe that your mother is mentally
7 unstable?

8 A No, I don't think she's mentally unstable.

9 Q Okay. Can you explain the text message that you
10 sent over two years ago?

11 A Yes. So my mother is very free with her opinions
12 about child rearing. She's having raised four of us and
13 having other grand -- grandchildren. She's very free with her
14 opinions. And particularly when Ava was a baby, I was very
15 sensitive about being a new mom and some of her advice. And
16 thinking that I was venting to my boyfriend safe -- in a safe
17 -- kind of safe space, I vented to him about it. But I in no
18 way believe that my mom has any kind of mental health issues
19 that render her unfit to -- to care for Ava.

20 Q Okay. I think in your testimony you said that your
21 mom watches Ava in your home; is that correct?

22 A Yes. Yes, she only watches Ava in my home.

23 Q And is there a reason that she only watches Ava at
24 your home?

1 A I just -- I asked her to do that because there are a
2 lot of people in her home, both my brothers and my brothers'
3 two kids are in her home. One of my brother's daughter has
4 autism. And so just based on that, I -- I feel like she can
5 focus her attention and energy on Ava without all the extra
6 people and distraction in my house.

7 Q Let's talk about finances.

8 A Okay.

9 Q Again, your testimony is you work for the City of
10 Henderson --

11 A Yes.

12 Q -- an attorney. Your income you -- I believe your
13 testimony was a hundred and twelve thousand a year; is that
14 correct?

15 A Yes.

16 Q Do you make any overtime?

17 A No.

18 Q Any additional pay?

19 A No, we may get -- be eligible for a bonus, maybe a
20 thousand dollars toward the end of the year, but that's about
21 it.

22 Q Have -- have you ever received a bonus as a City of
23 Henderson --

24 A Last year --

1 Q -- employee?

2 A -- I think I did receive maybe a thousand or \$2,000
3 bonus.

4 Q Okay. With regard to medical, you provide medical
5 insurance for Ava?

6 A I have since birth, yes.

7 Q Is that through your employer?

8 A Yes.

9 Q And do you know how much the health insurance costs?

10 A Ava's -- the cost for Ava's is \$78.78, I believe.

11 Q Is that per paycheck?

12 A I think that's a month.

13 Q A month.

14 A Per month.

15 Q And you're paying that?

16 A Yes.

17 Q Are there out-of-pocket medical expenses associated
18 with Ava's care?

19 A Yes.

20 Q Can you give me an estimate about monthly what those
21 look like?

22 A Yes. So there are co-pays for primary doctor visits
23 are \$15 a month for specialty. The co-pays are \$25 a month.
24 So for the therapies, they're considered specialty.

1 THE COURT: Hold on one second. I just want to make
2 sure they -- Madam Clerk, can you tell that person whoever it
3 is to mute their mic?

4 THE CLERK: I -- it's Dr. Carter.

5 MS. ROSENBLUM: Can I just finish with this question
6 and then --

7 THE COURT: Yes.

8 MS. ROSENBLUM: -- if Ms. Isso wants to call her --

9 THE COURT: All right.

10 THE WITNESS: So specialty visits are \$25 a month
11 and so specialty would be the ABA therapy, would be the speech
12 and feeding therapy -- or not \$25 a month. \$25 per visit.

13 BY MS. ROSENBLUM:

14 Q Okay.

15 A Additionally, there is a deduction of a thousand
16 dollars a year.

17 Q Okay. As far as the deductible for this year, have
18 you paid that deductible?

19 A Yes.

20 Q Has Eugene reimbursed you for any portion of that?

21 A No.

22 Q As far as the out-of-pocket medical expenses, have
23 you paid the expenses?

24 A Yes.

1 Q Has Eugene reimbursed you for any of that?

2 A No.

3 Q What is your request with regard to -- strike that.

4 Do you know if there's any government funding available for

5 Ava?

6 A That I don't know. Eugene in the past has told me

7 that he put Ava on his Medicaid, but then he later told me he

8 put her on his private insurance. So I'm not sure right now

9 if he has Medicaid coverage for her or not.

10 MS. ROSENBLUM: I'll -- I'll stop there if Ms. Isso

11 wants to call --

12 THE COURT: Okay. Give me one second to -- no --

13 MS. ROSENBLUM: -- Dr. Carter.

14 THE COURT: It is right at 11:00 o'clock. All

15 right, Madam Clerk. Apparently we have a --

16 THE CLERK: It's Dr. --

17 THE COURT: And who --

18 THE CLERK: It's Dr. Carter you said?

19 THE PLAINTIFF: Oh, sorry. Yes.

20 MS. ISSO: Dr. Carter, can you hear us?

21 THE COURT: Madam Clerk, before we forget, the -- it

22 should always be you swearing him in first, so --

23 THE CLERK: Yeah.

24 MS. ISSO: Okay.

1 THE COURT: At --

2 THE CLERK: Dr. Carter, can you hear me? Oh, your
3 microphone is on mute if you can hear me.

4 MR. CARTER: Okay. I've unmuted it. Is that
5 better?

6 THE CLERK: Yes. Are you able to unmute your video
7 as well?

8 MR. CARTER: I can.

9 THE CLERK: Okay. And can you please raise your
10 right hand? You do solemnly swear the testimony you're about
11 to give in this action shall be the truth, the whole truth,
12 and nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 LESLIE CARTER
15 called as a witness on behalf of the Plaintiff, having been
16 first duly sworn, testified upon her oath as follows on:

17 DIRECT EXAMINATION

18 BY MS. ISSO:

19 Q Dr. Carter, could you please state your name, for
20 the record?

21 A My name is Dr. -- my name is Dr. Leslie Carter.

22 Q It's kind of not clear. Leslie Carter?

23 A Yes.

24 Q Okay. Could you tell the Court about your

1 educational background?

2 A Yes. I'm a licensed psychologist (indiscernible)
3 and I've been licensed for 25 years. I have a doctorate in
4 clinical psychology from Oklahoma State University in 1994 in
5 neuropsychology and medical psychology. And I've been working
6 in the field of autism since 2002 and have been running a
7 parent support group since 2003 and have done approximately 11
8 presentations in the autism area for doctoral level training
9 as well as community education. And currently consult, I take
10 -- three-quarters of my practice is consulting about autism
11 related things for social security disability appeals, school
12 districts, criminal, civil, and administrative
13 (indiscernible).

14 Q And how many times have you been retained as an
15 expert?

16 A Good question. For many years. Hundreds of cases,
17 maybe.

18 Q Okay. And have you written any publications?

19 A No, I haven't -- I'm -- I'm not an academic.

20 Q Okay. You're an actual --

21 A So I'm private practice.

22 Q Okay. Are you -- tell -- tell the Judge about the
23 organization that you run also on the side.

24 A I run a parenting caregiver support group for a

1 number of years -- since 2003 to present, just ran it last
2 night for support of parents and caregivers. I've also done
3 groups for teens who are (indiscernible) affected. And I also
4 do a variety of other (indiscernible).

5 MS. ROSENBLUM: I'm having a really hard time
6 hearing her.

7 THE COURT: Doctor, for some reason when you face
8 forward you get a little garbled sometimes. When you turn to
9 what would be your left seems to come in clearer. So I don't
10 know if your microphone is off to the left more. But if you
11 can maybe -- when you speak, aim to the left. There you go.

12 Q Could you tell the --

13 THE WITNESS: Okay. Is that better?

14 THE COURT: Much better.

15 Q Could you tell --

16 THE WITNESS: Okay.

17 Q -- the -- the Judge --

18 A I can do that.

19 MS. ISSO: Oh, she can't hear me either.

20 Q Could you tell the Judge what documents you
21 reviewed?

22 A I have reviewed the ABA therapy plan for Ava. I
23 have reviewed the pediatric evaluation, Dr. Bergquist's
24 evaluation, the Therapy Management Group early intervention

1 evaluation, custody evaluation by Dr. Bergquist, and
2 employment information on Mr. Shapiro and Ms. Garcia as well
3 as mental health records and the evaluation of Dr. Pickar as
4 well as I received recent documents on -- from the Firefly ABA
5 program and early intervention programs.

6 Q And you re -- did you say you reviewed Dr. Kathleen
7 Bergquist's report?

8 A I did.

9 Q Okay. And that report she recommended that custody
10 is split 55/45 or 60/40, correct?

11 A Correct.

12 Q And can you tell me how that recommendation is
13 supported by the different -- by the different -- how that
14 recommendation is -- in congruence with a child that has ASD
15 level one disorder. How is that -- how -- how does that
16 recommendation support a child with that type of diagnosis?

17 MS. ROSENBLUM: Objection, foundation. Speculation.

18 THE COURT: Sustained. You'll have to provably
19 break it down, Ms. Isso.

20 MS. ISSO: Okay.

21 BY MS. ISSO:

22 Q So in this -- in this particular case, the child was
23 diagnosed with level one autism, correct?

24 A Correct.

1 Q Could you tell the Judge what that is?

2 A Autism Spectrum Disorder is a constellation of
3 symptoms that include communication problems, social skill
4 deficits, difficulty reading non-verbal queues in other people
5 and giving off non-verbal queues to allow them to be
6 understood (indiscernible). We think that non-verbal cues
7 make up about 90 percent of a one-on-one communication. So
8 that's a significant deficit. The words alone are about seven
9 percent, I think. And then they also have repetitive
10 behaviors and focused interests that are quite extensive and
11 often have sensor integration problems.

12 So level one, we have three levels of autism, level
13 one, two, and three. And the level one is considered the high
14 functioning and relatively mild and usually quite responsive
15 to training. Level three is more of the multiply handicapped
16 complex medical presentations. Often they have significant
17 language delays, have trouble speaking even later in school
18 age and -- and have more personal problems. And then the
19 level twos are somewhere in between.

20 Q Tell the Judge about the myth for the need of
21 sameness, the need for sameness myth.

22 A Well, OCD symptoms, obsessive compulsive symptoms,
23 where a person is -- who is mentally disorganized like a lot
24 of early young children who have ASD have repetitive

1 behaviors. And that's because -- my opinion is that's because
2 they're trying to make sense of the world. They are mentally
3 disorganized. And so they discovered that during having a
4 very small awareness of the world and in -- this would have
5 been -- it's like (indiscernible) --

6 THE COURT: Doctor, you're -- Doctor, you're turning
7 to your right again too much. I need you to turn to the left.
8 That is where -- and, again, unless you need to move your mic.
9 But you're breaking up from the record and we have to be able
10 to hear you for the record.

11 THE WITNESS: Okay. Sorry about that.

12 THE COURT: There you go.

13 THE WITNESS: Is that better?

14 THE COURT: Yes, much better.

15 BY MS. ISSO:

16 Q Do you -- well --

17 THE WITNESS: Okay.

18 Q -- let me ask you this. Do you -- do you believe
19 that after reviewing the documents and for a child that's
20 three years old level one that there's a need to have things
21 the same all the time?

22 A No. The need for sameness is a symptom for autism
23 which needs to be treated. So we can have -- so as a result
24 we can control meltdowns and temper tantrums because kids

1 resist variety in autism. That's a symptom. So we want to
2 treat that. So what we do is we add little surprises but in
3 an organized way because if -- if Ava's going to get good at
4 going to school, she needs to tolerate having the principal
5 pop his head in to speak to her teacher unexpectedly. She
6 needs to tolerate changes in schedule. She needs to tolerate
7 changes in environment. And level one students often are able
8 to tolerate that in a (indiscernible) way so that they become
9 more flexible. And that's a type of treatment for autism.

10 Q What did you say before flexible? The -- the what?
11 Because your -- your mic broke up.

12 A Oh. Huh. Okay. The -- the treatment makes them
13 more flexible. So what it -- it does is it allows us to make
14 the more flexible -- give them no surprises and an ABA program
15 will usually do that. And Ava's ABA program shows that she
16 has been targeted for this type of treatment.

17 Q And would a custodial schedule including a
18 two-two-three help treat -- treat that symptom?

19 A Yes, because you're getting exposure -- my
20 understanding is is that Ava would have early intervention in
21 the morning. She would have time with one parent on say
22 Monday and Tuesday, another parent on Wednesday and Thursday,
23 and then every other weekend which would allow her to
24 transition from house to house, get used to the different

1 schedules on the different parenting styles as well as morning
2 with early intervention and (indiscernible).

3 THE COURT: Doctor, again, you're -- I'm sorry, you
4 are breaking up and you are turning to your right. I don't
5 know what kind of microphone, if you have a built in
6 microphone.

7 MS. ISSO: Does she have all of her bars? You guys
8 don't know?

9 THE WITNESS: Let's see.

10 BY MS. ISSO:

11 Q What was the last thing you said, Doctor?

12 THE COURT: Hold on. Let her see if --

13 THE WITNESS: Okay. I've got lots of bars. So I'm
14 -- and I'm using the regular microphone from my computer. And
15 usually that works just fine. So I'm finding it interesting
16 I'm having problems.

17 THE COURT: Right now we heard everything right.
18 For some reason you tend to start turning to your right and
19 when you turn to your right is when you start becoming
20 garbled.

21 THE WITNESS: Okay.

22 Q What was --

23 THE WITNESS: I'll try and hold still.

24 THE COURT: There you go.

1 Q Thank you --

2 A All right.

3 Q -- Doctor.

4 A What was the question again?

5 Q What was the last thing you said; do you remember?

6 MS. ISSO: Or can we -- can we have it read from the

7 record?

8 THE COURT: No, we -- we don't have that access --

9 MS. ISSO: Oh.

10 THE COURT: -- Ms. Isso.

11 Q Do you remember the last thing you said?

12 A Okay. So the last thing I said was we were talking

13 about how the schedule that she -- that Ava participates in is

14 good for her because it -- it teaches her the different

15 parenting styles of her parents and teaches her flexibility

16 with her two different training programs, early intervention

17 and the afternoon and evening with her ABA program for autism.

18 Q So the mother just testified but never told the

19 Judge the schedule of the child. Are you able to tell the

20 Judge what the child's schedule is?

21 MS. ROSENBLUM: Objection, misstates testimony.

22 MS. ISSO: for example --

23 THE COURT: Hold on. Sustained then if you're going

24 to reask.

1 THE WITNESS: Okay. So my --

2 THE COURT: Hold --

3 THE WITNESS: -- understanding now --

4 THE COURT: Hold on.

5 THE WITNESS: -- the sch --

6 THE COURT: Ask --

7 BY MS. ISSO:

8 Q So yes, can you tell the Judge the child's schedule?

9 A The schedule is 8:00 a.m. to 10:30 with school
10 district early intervention from noon to 3:00. And -- and --
11 well, noon to 6:30 p.m. actually with ABA services. And that
12 would be Monday through Friday with the afternoon program with
13 ABA and Monday through Thursday with the early intervention.

14 Q Okay. So Monday through Thursday 8:00 a.m. til
15 10:30 a.m. she's with -- at the school, right?

16 A Correct.

17 Q And then Monday through Friday 12:00 to 6:30 she's
18 doing the ABA treatments at each parent's home, correct?

19 A Correct.

20 Q Okay. So how would a two-two-three schedule benefit
21 a child that has a schedule of -- of this sort -- of this
22 sort?

23 MS. ROSENBLUM: Objection, speculation. Incomplete
24 hypothetical. Outside the scope.

1 THE WITNESS: Well, I -- as --

2 THE COURT: Hold on.

3 THE WITNESS: -- an autism expert --

4 THE COURT: Hold on. Your question again, Ms. Isso?
5 I think I've heard most of it. Just rephra --

6 MS. ISSO: I said how is a -- a schedule -- I -- I
7 -- how does a two-two-three schedule benefit a child that has
8 this current school and ABA schedule?

9 THE COURT: That I'll allow.

10 THE WITNESS: The principle is we want to teach
11 flexibility. So -- and there are always differences with the
12 way children need to behave. For example, the grocery store
13 versus at school versus Mom's house versus Dad's house. So
14 the -- when a child has to learn in an organized way in
15 several different environments, that is usually a good thing
16 because they're learning about how to behave appropriately in
17 different settings with different people.

18 BY MS. ISSO:

19 Q You've interacted with Eugene -- you spoke to him.
20 What -- what is your opinion on how -- and has he ever denied
21 that the child has ASD?

22 A No.

23 Q Has he ever, you know, shown you that he won't
24 follow the schedules or participate or contribute to this

1 child?

2 A No.

3 Q Or support this child?

4 A He seems very supportive and he's actually learning
5 ABA.

6 Q What is your opinion about having access, equal
7 access to both parents for a child with this particular
8 diagnosis and -- at this age?

9 A I think -- in general I think children benefit from
10 the exposure to both parents on a regular basis.

11 Q But not in --

12 A It --

13 Q -- general.

14 A -- helps them promote bonding and consistency of
15 that bonding, it reduces separation anxiety which can happen
16 if one parent is -- does not have regular access to the child,
17 particularly this age. Children who have a history of having
18 access to a parent and then not being able to have access to
19 that same parent often become anxious about when they're going
20 to see that parent. So a consistent schedule is beneficial to
21 the student for bonding purposes as well as continuing to
22 benefit from gender differences, skill differences, interest
23 differences that parents invariably bring to teaching and
24 raising a child.

1 Q When you said in general, do you mean in general for
2 a child of this age with this diagnosis? Is that what you
3 meant?

4 A Right.

5 Q Okay. So is your opinion today that if the Judge
6 limits Ava's access to one parent that it can be detrimental
7 to her program's success later on?

8 A Yes, because --

9 Q Okay.

10 A -- ideally in an ABA program and in with children
11 who are having problems learning skills initially is that
12 ideally they should be exposed to on a regular basis everybody
13 who is a regular caregiver. And ideally those people are
14 trained in the ABA and early intervention goals so that they
15 can continue to support that in the home --

16 THE COURT: You last word cut out. Sorry, Doctor.

17 A And -- and to continue to support the student in the
18 home environment.

19 THE COURT: Thank you.

20 Q But what could you tell the Judge about the least
21 restrictive environment theory?

22 A Well, the IDEA is a law that was put into place
23 about education and we evaluate the needs of special needs
24 students by placing them in the least restrictive environment.

1 The least restrictive environment means that if you have a
2 smart student you don't want them to be placed in a say
3 special educa -- a contained education classroom with a bunch
4 of other peers who may not be intellectually similar. You
5 want to ideally expose students to as many -- to same age and
6 skilled peers and have them have access to as much regular
7 education services as possible.

8 In turn with a young child who's in an ABA program,
9 you don't want to (indiscernible) them to -- overly until
10 there's some demonstration that the -- there's a need for ad
11 -- additional structure. It's better to have a more
12 naturalistic environment (indiscernible) and that naturalistic
13 environment (indiscernible) -- living as much of a normal
14 lifestyle despite their (indiscernible) possible. And as long
15 as the frequency of frustration or temper tantrum does
16 (indiscernible) are manageable.

17 Q So are you suggesting that a student should not be
18 restricted to a more limited learning environment until they
19 demonstrated failure of learning in the least instructive --
20 least restrictive environment?

21 MS. ROSENBLUM: Objection, relevance.

22 THE WITNESS: Yes.

23 THE COURT: I'm -- hold on before she -- relevance
24 is overruled, but it was a leading question. If you want to

1 ask it in a different way.

2 BY MS. ISSO:

3 Q So what are you -- so what are you telling on the
4 Judge that -- what is your opinion on that issue then?

5 MS. ROSENBLUM: I make the same objection. It --
6 I'll fix it in cross. That's fine.

7 THE COURT: All right. She can answer. Go ahead.

8 BY MS. ISSO:

9 Q So what is your opinion on the least restrictive
10 environment theory?

11 MS. ROSENBLUM: Objection, relevance.

12 THE COURT: Overruled.

13 THE WITNESS: In my opinion in Ava's case, my
14 understanding from reviewing the ABA documents is that she
15 does not require more restrictions or more structure at this
16 time than what the ABA programs are (indiscernible) and that
17 she is adapting well to the amount of structure that is being
18 pro -- provided by each household and their sayings under ABA
19 direction.

20 BY MS. ISSO:

21 Q And -- and Ava was placed in a generalized
22 classroom, correct?

23 A Correct.

24 Q And the A -- Ava's ABA program talks about

1 increasing flexibility. Could you tell the Judge a little bit
2 about that?

3 A Yes. Her ABA program specifically states that she's
4 a good candidate for teaching increased flexibility because of
5 her level one mild -- milder symptoms, that she doesn't need
6 excessive amounts of structure at this time and she's
7 responding well to their program of providing little surprises
8 and helping her expand her interests in other toys, other
9 types of food, those types of things are -- so that she
10 expands her repertoire and -- skills in feeding and activities
11 and things like that.

12 Q And I apologize, this might be a dumb question but I
13 don't know much about ASD. Could you just tell us what is
14 high functioning mean?

15 A High functioning is level one. So that means that
16 she is more verbal and has fewer other developmental delays
17 that might complicate her presentation.

18 Q Like will she be able to make friends in the future?

19 MS. ROSENBLUM: Objection, speculation.

20 MS. ISSO: Well, someone -- does -- someone that --
21 someone --

22 THE COURT: Hold on.

23 MS. ISSO: Oh.

24 THE COURT: Wait for the ruling. Just like --

1 MS. ISSO: Sorry.

2 THE COURT: -- you like --

3 MS. ISSO: Sorry. Sorry.

4 THE COURT: -- to wait for it.

5 MS. ISSO: Sorry. Sorry. Sorry.

6 THE COURT: Sustained. Go ahead and --

7 MS. ISSO: Okay.

8 THE COURT: -- rephrase.

9 BY MS. ISSO:

10 Q Is -- is someone with a level one, ASD, you know,
11 capable or able to hold a job, get married, make friends in --
12 in the future, things of that sort?

13 MS. ROSENBLUM: Objection, compound, calls for
14 speculation, incomplete hypothetical.

15 THE COURT: The compound I will sustain. If you
16 want to break it up, Ms. Issso.

17 BY MS. ISSO:

18 Q Is someone with ASD level one that is high
19 functioning able to -- I mean, do -- do these individuals end
20 up getting married in the future?

21 A Yes, usually.

22 Q Do they end up getting jobs?

23 A Yes.

24 Q Are they able to -- you know, do they -- do they end

1 up going to, you know, high -- high -- do they end up -- end
2 up obtaining higher education?

3 A Yes.

4 Q So are they functioning citizens and people in
5 society that are able to contribute to society?

6 MS. ROSENBLUM: Objection, speculation.

7 A Yes.

8 THE COURT: Overruled.

9 BY MS. ISSO:

10 Q So they're not like sitting in a straightjacket in a
11 padded room, right?

12 A Correct.

13 Q I don't know. I'm sorry. And then --

14 MS. ISSO: Oh, we -- we move to admit Exhibit Number
15 33 which is her expert report.

16 THE CLERK: 33 is already admitted.

17 MS. ISSO: Oh, sorry. I'm sorry. 56. I'm sorry.

18 THE COURT: Any objection?

19 MS. ROSENBLUM: I mean, other -- other than she
20 hasn't asked the doctor if that's her report or --

21 MS. ISSO: Oh.

22 MS. ROSENBLUM: -- authenticate that I heard, but --

23 BY MS. ISSO:

24 Q Is -- is --

1 THE COURT: If you want to --

2 Q -- that -- that -- is that your report, the -- the
3 one -- the one that you wrote?

4 A Yes.

5 MS. ISSO: Okay. I move to admit that. No further
6 questions.

7 (PLAINTIFF'S EXHIBIT 56 ADMITTED)

8 THE COURT: All right. Give me one second. 11:25.
9 Okay, Ms. Rosenblum.

10 CROSS EXAMINATION

11 BY MS. ROSENBLUM:

12 Q Good morning, Dr. Carter. Can you tell the Court
13 how many parenting plans you've created for ASD children?

14 A Helped with a few of them.

15 Q When you saw a few, more than 10?

16 A Let's see. I've consulted on custody cases probably
17 total of 10 times. Probably -- that's probably right -- about
18 right.

19 Q And in those cases, have you created parenting plans
20 for children?

21 MS. ISSO: Objection, outside of the scope.

22 MS. ROSENBLUM: It's absolutely

23 THE COURT: Overruled.

24 MS. ROSENBLUM: Thank you.

1 BY MS. ROSENBLUM:

2 Q Go ahead.

3 A I usually consult on the parenting plans, but it's
4 usually the custody evaluator who -- who writes it or the --
5 the courts.

6 Q Are you member of the AFCC?

7 A I'm not sure what -- what's that acronym stand for?

8 Q Let me ask you it a different way. Ma'am -- Dr.
9 Carter, are -- what certifications do you hold?

10 A I'm a licensed psychologist. Let's see. I am an
11 Oregon forensic evaluator. And I belong to some professional
12 organizations.

13 Q I would rec -- sorry.

14 A I'm not -- I'm -- I'm not a -- I don't do custody
15 evaluations. I consult about them for autism cases, but I
16 don't write them. Is that your question?

17 Q Well, when you say you consult about them for
18 custody cases, generally what is the scope of your
19 consultation?

20 MS. ISSO: Objection, foundation, relevance,
21 outside --

22 THE COURT: Overruled.

23 MS. ISSO: -- the scope.

24 BY MS. ROSENBLUM:

1 Q Go ahead.

2 THE COURT: Clarifying her scope of what she just
3 indicated she does.

4 A Okay. I -- often people have questions about how
5 autistic people benefit from certain schedules. And I consult
6 about that.

7 Q And Dr. Carter, for the record, the AFCC stands for
8 the Association of Family and Conciliation Courts. Are you a
9 member of that organization?

10 A No.

11 Q Are you familiar with their recommendations and
12 guidelines creating parenting plans for children with special
13 needs?

14 A I've read Dr. Pickar's articles and the -- his
15 report.

16 Q Okay.

17 A But I have not -- but I don't know that I've read
18 that particular document that you're referring to.

19 Q Do you believe that there is a standard across
20 therapists and cus -- custody evaluators regarding the
21 creation of a parenting plan involving a child with special
22 needs?

23 A Makes sense that there should be some basic
24 guidelines. My concern is general guidelines do not always

1 suit individual children. And so I recommend that you go with
2 -- here we have a child who has been diagnosed for two or
3 three months. And we have some --

4 MS. ROSENBLUM: Your Honor --

5 A -- good recent --

6 MS. ROSENBLUM: -- I move to strike --

7 A -- data --

8 MS. ROSENBLUM: -- as --

9 A -- that's very --

10 MS. ROSENBLUM: -- non-responsive.

11 A -- specific to her needs.

12 THE COURT: If you're asking it --

13 THE WITNESS: So --

14 THE COURT: Hold --

15 THE WITNESS: -- generally (indiscernible) --

16 THE COURT: Doctor, hold on one second because it
17 was asked in the form of a yes or no, correct?

18 MS. ROSENBLUM: Correct.

19 THE COURT: She asked that question in the form of a
20 yes or no. Ms. Isso can ask you a question to expand if
21 needed, but right now that --

22 THE WITNESS: Okay.

23 THE COURT: -- question is just a yes or a no.

24 THE WITNESS: Can you restate the question?

1 BY MS. ROSENBLUM:

2 Q Do you believe that there are standards with regard
3 to the creation of a parenting plan for children with special
4 needs?

5 A Yes.

6 Q And do you know what those standards are or where
7 they're found?

8 MS. ISSO: Objection, foundation, ambiguous.

9 THE COURT: Overruled.

10 MS. ISSO: She said special needs. That can mean a
11 million things.

12 THE WITNESS: I'm not an expert on those.

13 MS. ISSO: What special needs are you talking about?

14 BY MS. ROSENBLUM:

15 Q Dr. Carter, with regard to your report, you make a
16 statement. It states it's helpful for -- for all -- I'm on --
17 sorry, I believe it's page 2. Page 2 of 5 under the
18 acceptance fo the ASD diagnosis you state if it's helpful for
19 all caregivers involved with a special needs child to accept
20 the medical diagnosis given and educate themselves about
21 parenting adjustments that need to be made. Since each child
22 with ASD has unique needs, participation, and edu --
23 educational programs and then you go on. Do you see that
24 statement?

1 A I do.

2 Q Would you agree that it is important in this
3 particular case that Eugene accept the diagnosis of ASD?

4 A Yes.

5 Q Do you agree that it is important and actually
6 critical for Ava's well-being that Dad be supportive of her
7 treatment and support that diagnosis?

8 A Yes.

9 Q In this case, your testimony earlier was that you
10 met with Dad or talked to Dad; is that correct?

11 A Correct. I've spoken with him.

12 Q Did you have the opportunity to see or observe Ava?

13 A No.

14 Q It -- did you ask to speak with my client?

15 A No.

16 Q Why did you only speak with Dad?

17 A I was not asked to -- I was asked to consult --

18 MS. ISSO: Objection, outside of the scope.

19 A -- about --

20 THE COURT: Overruled.

21 MS. ISSO: No, she made the same objections --

22 THE COURT: Overruled.

23 MS. ISSO: -- when I was asking her expert, that she
24 would say outside the scope and you were sustaining it.

1 THE COURT: Okay. That's overruled.

2 BY MS. ROSENBLUM:

3 Q Go ahead.

4 A Restate the question.

5 Q Why did you not speak with Nechole in this case?

6 MS. ISSO: That was outside the scope what she was
7 hired for. That was the same objection --

8 MS. ROSENBLUM: That can be her --

9 MS. ISSO: -- she was raising --

10 MS. ROSENBLUM: -- testimony.

11 MS. ISSO: -- when I was asking her expert that
12 question.

13 THE COURT: She can answer that then. Overruled.

14 MS. ISSO: But why didn't her expert answer it?

15 THE COURT: She can answer it that way. Overruled.

16 THE WITNESS: Yes, I was not asked to assess
17 anybody.

18 BY MS. ROSENBLUM:

19 Q Do you believe that it would have been important to
20 speak with Nechole before completing your recommendations in
21 this case about the proposed schedule of --

22 THE COURT: No we're edging into the same thing
23 where we were objecting and -- and it was sustained. So --

24 MS. ROSENBLUM: She's here making her recommendation

1 that a two-two-three schedule is what's in this child's best
2 interest and I'm asking her if it's important that she speak
3 with my client and get my client's opinion and my client's
4 perceptions.

5 MS. ISSO: Her expert was talking about charts and
6 all these different jurisdictions and when I questioned him
7 about the chart, you guys said oh, it was outside the scope of
8 what he was retained for.

9 MS. ROSENBLUM: No.

10 MS. ISSO: He sat there for 30 --

11 MS. ROSENBLUM: This is not --

12 MS. ISSO: -- minutes like a --

13 MS. ROSENBLUM: -- outside the scope.

14 MS. ISSO: -- talking head talking about his -- how
15 -- how wonderful he is. But when I questioned him about it,
16 you objected -- you sustained it.

17 MS. ROSENBLUM: This expert is here today making a
18 specific --

19 THE COURT: She is making --

20 MS. ROSENBLUM: -- parenting plan --

21 THE COURT: -- more --

22 MS. ROSENBLUM: -- recommendation.

23 THE COURT: She is making a more in depth statement
24 and/or recommendation than what was made by the Defendant's

1 expert. So go ahead. You can ask.

2 MS. ROSENBLUM: Okay.

3 BY MS. ROSENBLUM:

4 Q Again, Dr. Carter, when you may -- you -- you
5 answered Counsel's questions about a two-two-three schedule.
6 Do you believe that having my client's input prior to making
7 that recommendation would be important?

8 A Generally I think that a two-two-three pro -- that
9 shared time --

10 MS. ROSENBLUM: Your Honor, I --

11 A -- that is fairly --

12 MS. ROSENBLUM: -- I move to strike.

13 A -- (indiscernible).

14 THE COURT: She asked it in a yes or no form, I
15 believe.

16 THE WITNESS: Okay.

17 THE COURT: Do you want to reask the question?

18 THE WITNESS: There wasn't time and it wasn't part
19 of what I was asked to do because I just found out about that
20 last night.

21 MS. ROSENBLUM: Again, Your Honor, I would move to
22 strike as non-responsive.

23 THE COURT: It'll be stricken. Ask the question
24 again.

1 BY MS. ROSENBLUM:

2 Q Dr. Carter, again, my question is specifically a yes
3 or no question. Before you made the recommendation for a
4 two-two-three schedule or any schedule, do you believe that it
5 would have been important to have the input of my client?

6 MS. ISSO: Objection, Your Honor. This is outside
7 of the scope of what she was retained. And Eugene didn't give
8 her any input. He just called to retain her. We were -- he
9 didn't give her any input about what he thinks should --
10 should be done.

11 THE COURT: She testified --

12 MS. ISSO: Ms. Garcia --

13 THE COURT: -- she met with them.

14 MS. ISSO: -- is not a doctor. Her input is not --

15 THE COURT: She testified that --

16 MS. ISSO: -- really that important.

17 THE COURT: -- she met with --

18 MS. ISSO: She's not a doctor.

19 THE COURT: -- him. She --

20 MS. ROSENBLUM: Okay.

21 THE COURT: She testified that she met with him for
22 the third time in a row.

23 MS. ISSO: She didn't meet with him. She --

24 THE COURT: Doctor, did you not --

1 THE WITNESS: Yes.

2 THE COURT: -- state that you met with the
3 Plaintiff?

4 THE WITNESS: I spoke with him by phone.

5 THE COURT: Thank you.

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 THE WITNESS: So and I was --

9 THE COURT: The -- there's no question until Ms.
10 Rosenblum asks you a question. Hold on one second.

11 BY MS. ROSENBLUM:

12 Q Again, it's the same question. Doctor --

13 A Okay.

14 Q -- prior --

15 A It would -- it would be -- it would certainly be
16 beneficial, but I was not retained for that purpose.

17 Q And so is it fair to say that the recommendations
18 you're making here today regarding a specific parenting plan
19 or timeshare are outside of your retention?

20 MS. ISSO: Objection, Your Honor. She's talking
21 about children with ASD and her experience working with
22 children with ASD and what kind of schedule she think would be
23 suitable for a --

24 THE COURT: She's --

1 MS. ISSO: -- child.

2 THE COURT: -- made a statement particularly about
3 the two-three -- two -- two-two-three. Unless you want to
4 strike that entire line, she has a right to ask that question.

5 MS. ISSO: Okay. Let her ask. What was the
6 question?

7 THE WITNESS: State the question again.

8 BY MS. ROSENBLUM:

9 Q Dr. Carter, you've come today to make
10 recommendations about the schedule; is that correct?

11 A That is one of the questions I was asked. Yes.

12 Q Okay. Was that within your scope in preparing and
13 becoming an expert in this case?

14 A I think so. Yes.

15 Q Okay. And your testimony today is that you did not
16 receive my client's input into making those recommendations;
17 is that correct?

18 A Correct.

19 Q And do you believe that your report is biased in
20 favor of the Plaintiff?

21 A Could be given that I didn't even know about the
22 schedule until last night. There wasn't time. I would be
23 happy to --

24 Q There's --

1 THE COURT: No, there's --
2 A -- with time --
3 THE COURT: -- not a --
4 Q Ma'am --
5 THE COURT: -- question --
6 Q -- there's no --
7 THE COURT: -- in front of you.
8 Q -- question pending. In your report on page 3 under
9 subsection 3 where you talk about ABA programming and parental
10 involvement, you indicate -- and you -- and I'm questioning
11 you've indicated that substantially limiting the access of one
12 parent would be detrimental to program's success. Do you see
13 that?
14 A Right.
15 Q When you say substantially limiting the access of
16 one parent, what do you mean?
17 A Having the child not being able to see the parent in
18 a roughly 50/50 sort of visitation time.
19 Q But your statement states limiting the access of one
20 parent would be detrimental to program success. Can you
21 explain how that limiting their access translates to success
22 of a child in their ABA program?
23 A Well, because ABA programs are based on the
24 principle that all -- ideally all caregivers who have

1 substantial roles in a child's life get trained in the ABA
2 skills because they're intensive and they take time to
3 complete. And ideally they should be completed even after the
4 ABA therapist goes home, that all parents need -- all
5 caregivers need to be trained in that and continue to provide
6 that service to the child --

7 Q And Doctor, you --

8 A -- and that if that doesn't happen and then an
9 untrained individual spends a whole bunch of time with the
10 student, then the student has -- then the untrained caregiver
11 who doesn't have experience with the child and potentially not
12 reenforce the behaviors that the ABA program is focusing on
13 and could lead to the failure of the program or confusion of
14 the child as far as achieving the goals in the program.

15 Q Doctor, you would agree with me though that that
16 doesn't necessarily mean a 50/50 custody schedule; is that
17 correct?

18 A Well, the students -- my students benefit from a
19 variety of caregivers and I believe even access to both
20 parents.

21 Q Okay. But certainly Dad could participate in
22 therapies in Mom's home and that would be access to the ABA
23 program, correct?

24 A Correct.

1 Q And Mom could participate in therapies in Dad's home
2 and that would be equal access to the therapies, correct?

3 A Correct.

4 Q And their respective caregivers could participate in
5 the therapies and that would give them access, correct?

6 A Correct.

7 Q And that doesn't necessarily mean that you need to
8 have a two-two-three schedule or some sort of exactly equal
9 timeshare, correct?

10 A Correct.

11 Q You -- in November 4 -- and Counsel asked you about
12 the sameness myth. Would you agree with me that the idea of
13 sameness as part of the DSM?

14 A ASD affected people have obsessive compulsive dis --
15 disorder symptoms that are lighter than the actual diagnosis.
16 So they have repetitive behaviors that can be very ridden. So
17 it is a sameness in something that is seen in their behaviors
18 and it is a symptom that needs to be treated.

19 Q And it is part of -- of the DSM, correct?

20 A It's a DSM symptom. Yes.

21 Q And it's -- it -- the idea of sameness is in a myth,
22 right? It's an actual symptom in the DSM, true?

23 A Well, technically it's seen as repetitive behaviors.
24 That's how it's described in DSM.

1 Q Doctor, you -- you would -- I think we -- you
2 touched on it, but depending on the severity of the ASD
3 diagnosis, there may be some -- the child may -- may show some
4 -- more rigidity or less rigidity; is that true?

5 A Correct.

6 Q With regard to this particular child, you reviewed
7 the TMG records, true?

8 A True.

9 Q And you reviewed the CARS assessment, true?

10 A Correct.

11 Q And you're familiar with the scoring on the CARS
12 assessment; is that true?

13 A True.

14 Q Do you recall what Ava's CARS score was?

15 A I believe it's 35.

16 Q Okay. And do you know what the scoring would be to
17 put Ava into a level two autism diagnosis? The CARS doesn't
18 have a way to assess level one, two, and three within its
19 forum system. It has mild to moderate, moderate to severe,
20 which is different than level one, two, and three.

21 A Okay. Do you believe that Ava is of the high end of
22 the mild to moderate range based on her score?

23 Q The CARS 2 was done entirely by video conference.

24 And so I -- I -- when I do an assessment of a child, I always

1 have to spend some time in person with them because it -- I am
2 unable to do high quality observations of things like degree
3 of eye contact, degree of fine and gross motor skill
4 capabilities, by video conference. So we also need to
5 remember that the CARS 2 evaluating team concluded that they
6 were -- saw autistic symptoms but chose not to formally
7 diagnose. And I assume that -- that may have been because it
8 was school district people and they don't have that tradition
9 could have been because they were doing video conference and
10 didn't feel as confident in their ratings because of the COVID
11 restrictions.

12 A Doctor, are you questioning the TMG CARS assessment?

13 Q I would be unable to do a CARS assessment. I do
14 them on a weekly basis without having in person contact with
15 the student.

16 A So is it your testimony today that the CARS
17 assessment conducted in this case is inaccurate?

18 MS. ISSO: Objection, misstates prior testimony.

19 THE COURT: Overruled.

20 THE WITNESS: I suspect that there is more
21 variability in the scores that -- than if we had -- if the
22 evaluators had had the benefit of being in person with her.

23 BY MS. ROSENBLUM:

24 Q And with that based on your opinion, it -- Ava's

1 symptoms can be more severe; is that true?

2 A Or milder.

3 Q Correct. But they can also be more severe; is that
4 correct?

5 A Correct.

6 Q Okay. Ava's just over three years old, true?

7 A True.

8 Q Would you agree that the abil -- her ability to be
9 taught flexibility at this age is -- is questionable?

10 A No, she -- the -- my understanding from the ABA
11 notes so far is that she's responsible adequately to the
12 training she's been provided about flexibility. That's based
13 on notes. I had not observed her personally.

14 Q You would agree that being able to tolerate change
15 is part of an ongoing diagnosis; is that correct?

16 A The tendency toward repetitive restricted behaviors
17 is part of autism. Yeah. And it needs to be treated by
18 teaching flexibility.

19 Q Doctor, you were asked questions about the idea
20 theory. Do you recall those questions? Yes?

21 MS. ISSO: What period?

22 A The IDEA.

23 Q IDEA. Yeah.

24 A Yeah. Okay.

1 Q And the IDEA is something that's used in an
2 educational setting; is that correct?

3 A Correct.

4 Q Is it your recommendation or your -- your expert
5 opinion that the idea of least restrictive should be -- or
6 that IDEA theory should carry over into parenting plans?

7 A Ava is being --

8 Q Doctor, it's a yes or no question.

9 A Okay. Yes.

10 Q So your position is that for -- I want to be sure
11 I'm understanding what you're opining today. You're opining
12 today that the IDEA of a least restrictive setting is used in
13 a school or educational situation should also be the standard
14 for creating parenting plans. Am I understanding that
15 correctly?

16 A I think it should -- yes, it should be considered.

17 Q And what documentation, literature, studies do you
18 have to suppose that theory?

19 A In Ava's case --

20 Q No.

21 A -- she's being --

22 MS. ROSENBLUM: Judge --

23 THE COURT: No, you asked an open ended question,
24 Ms. Rosenblum.

1 MS. ROSENBLUM: I asked her what --

2 THE COURT: She can --

3 MS. ROSENBLUM: -- what literature, what studies.

4 THE COURT: But we're talking about Ava. She just
5 prefaced it by in Ava's case --

6 MS. ROSENBLUM: Okay.

7 THE COURT: -- and then --

8 MS. ROSENBLUM: All right.

9 THE COURT: -- go ahead, Doctor. She just prefaced
10 it by in Ava's case.

11 A In Ava's case, she is -- part of her parenting plan
12 at this time is that parents agree that she should be in
13 educational programs like early intervention and ABA which are
14 educational programs. So from that perspective, her -- IEPs
15 and IFSPs associated with educational programs are driving and
16 affecting her -- her parenting plan whether the Court wants to
17 acknowledge that or not.

18 THE COURT: That was non-responsive. You can ask
19 the question again. Doctor, listen to her question again.
20 That is the not the question she asked.

21 THE WITNESS: Okay.

22 BY MS. ROSENBLUM:

23 Q Okay. Doctor, I -- I feel like we're speaking two
24 different languages here. The ID --

1 A Possible.

2 Q The IDEA theory regarding least restrictive, right,
3 you would agree with me it talks about school environments,
4 correct?

5 A Correct.

6 Q That if you --

7 A Uh-huh (affirmative).

8 Q -- have a special needs child, you're not going to
9 put them in a self-contained classroom if it would be less
10 restrictive to have them in general education, correct?

11 A Correct.

12 Q With regard to this case, do you believe there's a
13 dispute with regard to Ava's education?

14 A I don't know. It doesn't appear to be.

15 Q Okay. So again, I'm trying to understand this IDEA
16 theory. Is it your opinion today that that same theory that
17 if the least restrictive for these parents is 50/50 custody,
18 are you trying to transpose that IDEA theory into a custodial
19 situation or a parenting plan?

20 A What I am trying to do is -- let's see. How to
21 explain this. I believe children with special needs should
22 have -- should have access to as much opportunity as possible
23 for flexibility and learning. Special needs students should
24 not be denied that simply because of their diagnosis. So I

1 worry that general guidelines overlook the needs of individual
2 students. And I don't want students to be seeing as needing
3 extra restrictions when in fact just because just because they
4 have an ASD or other developmental disability sort of
5 diagnosis. Does that clarify?

6 Q Yes.

7 MS. ROSENBLUM: I don't have any further questions.

8 THE COURT: Hold on one second. Let me get my
9 timestamp up.

10 MS. ISSO: How much time do I have left?

11 THE COURT: You have one hour and 25 minutes. I'll
12 have to add yours up. Was that --

13 MS. ISSO: How do I only have --

14 THE COURT: Was that --

15 MS. ISSO: -- one hour and twenty --

16 THE COURT: -- Ms. Isso?

17 MS. ISSO: -- five -- I had one hour and fifty
18 minutes a minute ago.

19 THE COURT: Correct. And you had 25 minutes of
20 questioning her.

21 REDIRECT EXAMINATION

22 BY MS. ISSO:

23 Q Since the CARS assessment was done via Zoom, is
24 there a possibility that her symptoms or readings could be

1 less severe?

2 A Correct.

3 Q When you gave your recommendation on a two-two-three
4 schedule, was that based off of the documents that you
5 reviewed?

6 A Yes.

7 Q And were one of those documents Dr. Kathleen
8 Bergquist's report?

9 A Yes.

10 Q And did that report contain Ms. Garcia's concerns?

11 A It did.

12 Q So you're not actually biased, correct?

13 A I hope not. No.

14 Q How long have you treated or worked with children
15 that are autistic?

16 A Extensively since 2002.

17 Q Two -- so how many years is that?

18 THE COURT: I'll take judicial notice that from 2002
19 is 18, 19 years.

20 Q And you --

21 A Right.

22 Q -- and you work with them one-on-one?

23 A I do.

24 Q Okay. And are you court appointed in Oregon for

1 this type of issue?

2 A Yes.

3 Q How many times have the courts appointed you in the
4 last 18 years, approximately?

5 A For autism generally or for --

6 Q Sure, autism. That's what we're here for today. So
7 let's talk about autism.

8 A Specific to autism, I don't know, hundreds of times.

9 Q Okay. And did they ask for your opinion on the
10 parenting plans?

11 A Yes.

12 MS. ISSO: Okay. No further questions. No further
13 questions.

14 THE COURT: That's it? Okay. Thank you for being
15 here to testify today, Doctor.

16 THE WITNESS: Thank you.

17 THE COURT: Hold on. One second, Counsel, so I can
18 give you guys a tally and decide where we're going from there.

19 MS. ROSENBLUM: At 12:00 o'clock. So are we doing
20 lunch? Are we just going to get right into it? We can finish
21 early. I don't really need lunch.

22 THE COURT: Things are starting to even up a little.
23 Ms. Isso, you have one hour and 23 minutes left. Ms.
24 Rosenblum, you have two hours and three minutes left. So I

1 don't know how do you want to --

2 MS. ROSENBLUM: I wouldn't mind an extended potty
3 break.

4 THE COURT: Well, we'll -- we'll do --

5 MS. ROSENBLUM: Fifteen minutes?

6 THE COURT: -- lunch if you --

7 MS. ISSO: Well, is --

8 THE COURT: -- guys want to --

9 MS. ISSO: Is she done with Ms. Garcia?

10 THE COURT: I don't think so, but --

11 MS. ISSO: Well, let's ask her. Let's not assume.
12 Are you done with Ms. Garcia?

13 MS. ROSENBLUM: I don't think so.

14 MS. ISSO: Okay.

15 MS. ROSENBLUM: I wouldn't mind --

16 MS. ISSO: So no.

17 MS. ROSENBLUM: -- just reviewing my notes real
18 quick to --

19 MS. ISSO: Calls for a yes or no --

20 MS. ROSENBLUM: -- see.

21 MS. ISSO: -- answer.

22 MS. ROSENBLUM: If I'm not -- and, again, I don't
23 want the time to be taken away, so -- since we left off at the
24 -- yeah, I don't mind -- now, see I just have maybe like three

1 more minutes worth of questions.

2 MS. ISSO: Let's just --

3 THE COURT: How many --

4 MS. ROSENBLUM: Maybe three. Do you want me to
5 finish Nechole and then we can take a little break or --

6 THE COURT: That's fine. We'll do -- we'll do lunch
7 then at that point.

8 MS. ROSENBLUM: Okay. Yeah, that's fine.

9 MS. ISSO: Like a lunch or extended potty break?

10 MS. ROSENBLUM: I mean, I was thinking like -- '

11 THE COURT: I'll talk to staff. I understand,
12 but --

13 MS. ISSO: They're looking at me like what, no
14 lunch?

15 NECHOLE GARCIA

16 called as a witness on her own behalf, having been previously
17 sworn, testified upon her oath as follows on:

18 DIRECT EXAMINATION CONTINUED

19 BY MS. ROSENBLUM:

20 Q All right. Nechole, I'm not sure we ever got to a
21 total -- total on the out-of-pocket medical expenses. I'm not
22 sure it really matters. At one point you mentioned that you
23 believe Eugene had private insurance; is that correct?

24 A Yes.

1 Q I'm sorry, I do want to go back to one other
2 exhibit. So looking in our book at Exhibit V.

3 A D as in dog?

4 Q V like Victor.

5 A Oh, okay. Okay.

6 Q Does this -- tell the Court what this is.

7 A It's a letter from the City of Henderson Human
8 Resources breaking down the amount of the premium for Ava's
9 insurance.

10 Q Does this accurately reflect the letter you
11 received?

12 A Yes.

13 MS. ROSENBLUM: I'd ask for Exhibit V like Victor to
14 be admitted.

15 MS. ISSO: That's fine. No objection
16 (indiscernible).

17 THE COURT: Exhibit D will be admitted.

18 MS. ISSO: No. V -- V as in Victor.

19 MS. ROSENBLUM: V like --

20 THE COURT: V.

21 MS. ROSENBLUM: -- Victor.

22 THE COURT: I'm sorry.

23 (DEFENDANT'S EXHIBIT V ADMITTED)

24 MS. ROSENBLUM: Yeah. It's just the letter that

1 talks about the insurance.

2 BY MS. ROSENBLUM:

3 Q Okay. So again, Nechole, going back to insurance,
4 have there been any issues with regard to the -- to Ava's
5 insurance for treatment?

6 A Yes.

7 Q And can you explain when the issue occurred?

8 A The issue occurred last month.

9 Q And what occurred?

10 A So Eugene sent me a message on OurFamilyWizard
11 telling me that he had gotten private coverage for Ava and
12 under the birthday rule his insurance would become primary. I
13 asked him whether he had verified whether Firefly even took
14 the insurance, what the ABA coverage limits were. He had not
15 but assured me it wouldn't be a problem.

16 A day or two later Firefly informed both of us that
17 they had to -- to stop Ava's ABA therapy because they weren't
18 a provider under Eugene's insurance and there was no prior
19 authorization. Eugene then -- I was trying to get Eugene to
20 communicate with me about what was happening. It was very
21 difficult. I was finding out what was happening because
22 Firefly was emailing both of us updates, but Eugene spent the
23 next few days trying to push through an authorization so that
24 his insurance can remain primary while Ava went without the

1 services.

2 And once Firefly told us both that the insurance was
3 not going to rush through anything. Then Eugene finally
4 cancelled that coverage and Ava was able to resume services
5 under my insurance.

6 Q Prior to changing insurance, did Eugene discuss that
7 with you?

8 A Not at all.

9 Q Were you surprised by the fact that he had obtained
10 private insurance?

11 A I was very surprised and this was the second time
12 that he changed Ava's coverage and hadn't told me about it.
13 So that was concerning.

14 Q And why were you concerned?

15 A Because Ava, it's -- her therapies are so important
16 and it's so important that they maintain consistency. And
17 it's also important that he and I discuss and agree on
18 coverages so that she can maintain those services. And so
19 just changing it without doing any research, any checking, or
20 any discussion directly impacted her -- her care. And I'm --
21 and I am concerned that's going to happen again in the future.

22 Q Are you asking -- let me ask -- I -- do you know if
23 you had an order from this Court your insurance would be
24 primary if that would have avoided that situation?

1 A I do because I asked Firefly and they said that they
2 -- a court order would trump the birthday rule. So yes.

3 Q Are you asking this Court for a court order to
4 prevent that your insurance be primary to prevent that
5 situation from occurring in the future?

6 A Yes, I am.

7 THE COURT: Let's -- is there an objection to that?

8 MS. ISSO: To what?

9 THE COURT: To her insurance coverage --

10 MS. ISSO: Be primary?

11 THE COURT: -- being first -- being primary. Because
12 it caused problems before. \$78 a month.

13 (COUNSEL AND CLIENT CONFER BRIEFLY)

14 MS. ISSO: As long as they're going to move to
15 strike what they're trying to state that he was like
16 intentionally changing the coverage --

17 THE COURT: I'm -- I'm not taking that into
18 consideration.

19 MS. ISSO: We'll -- we'll -- then we'll -- we'll
20 agree to that.

21 THE COURT: We'll --

22 MS. ISSO: Yeah.

23 THE COURT: -- stipulate to that. Okay. So her
24 insurance. We now have a stipulation.

1 MS. ISSO: Right.

2 THE PLAINTIFF: Yeah, that's fine --

3 THE COURT: We have one --

4 THE PLAINTIFF: That's --

5 THE COURT: -- stipulation --

6 MS. ISSO: But as long as the child's --

7 THE COURT: -- going on in this court.

8 MS. ISSO: -- insured that's what matters.

9 THE COURT: And we also agree since we're on the

10 stipulation stuff any unreimbursed costs --

11 MS. ISSO: 30/30?

12 THE COURT: 30/30 rule --

13 MS. ISSO: Yes.

14 THE COURT: -- submitted through the OurFamilyWizard

15 program.

16 MS. ISSO: Yes.

17 MS. ROSENBLUM: I --

18 THE COURT: See, there we go.

19 MS. ROSENBLUM: I think there's a different proposal

20 from our end on -- on medical expenses.

21 THE COURT: Okay. We'll strike that last part.

22 MS. ROSENBLUM: That's all the questions I have for

23 you.

24 THE COURT: Before that was five minutes. So you

1 have one hour and fifty-eight minutes, Ms. Rosenblum. You
2 have one hour and twenty-three minutes. My staff need a half
3 hour break --

4 MS. ROSENBLUM: Okay.

5 THE COURT: -- so we will resume -- let me let you
6 guys get adjusted. We'll make it 35 minutes. So 1:40 by that
7 clock, we'll go ahead and resume.

8 MS. ROSENBLUM: 12:40.

9 THE COURT: I'm sorry, 12:40.

10 THE PLAINTIFF: 12:40?

11 THE COURT: 12:40.

12 THE PLAINTIFF: Okay.

13 THE COURT: Thirty-five minutes.

14 THE PLAINTIFF: Okay.

15 MS. ROSENBLUM: 35 minutes.

16 (COURT RECESSED AT 12:05 AND RESUMED AT 12:55)

17 THE COURT: Madam Clerk, if you want to -- all
18 right. Now we're on the record. We're back on the record in
19 the -- the Shapiro case.

20 MS. ROSENBLUM: Dr. Gaspar will be on at 2:00. So
21 he should be up on the screen at 2:00. So --

22 THE COURT: Okay.

23 MS. ROSENBLUM: -- I guess wherever we are if it's
24 okay to get him in. He's got a full practice.

1 THE COURT: Okay.

2 MS. ROSENBLUM: Okay. So --

3 MS. ISSO: So I -- I plan on calling Eugene today
4 for rebuttal. And I might call Montana for a few minutes.
5 And --

6 THE COURT: Again, you have one hour and
7 twenty-three minutes including cross. So how ever you want to
8 use it, Ms. Isso. I would say since we started with the
9 Defendant's direct, we -- are you done --

10 MS. ROSENBLUM: Yes.

11 THE COURT: -- with -- okay. So we're back to them?

12 MS. ROSENBLUM: Correct.

13 THE COURT: Okay. So whoever you want next, Ms.
14 Isso.

15 MS. ISSO: Okay. I guess we'll call -- let's call
16 Ms. Montana Garcia who -- who is Nechole's mother.

17 THE CLERK: They're on.

18 MS. ISSO: And then after, that I'll call Eugene.

19 THE CLERK: And Mr. Blackham is --

20 MS. ROSENBLUM: Well --

21 THE CLERK: -- her attorney --

22 MS. ROSENBLUM: -- hold on a second. Before we
23 start all of this, so I want to be sure we're clear. Is Ms.
24 Isso not going to cross examine Nechole?

1 MS. ISSO: I'm -- I'm just going to call Eugene --
2 THE COURT: Okay.
3 MS. ISSO: -- as an ex --
4 THE COURT: I don't know.
5 MS. ISSO: -- as --
6 THE COURT: She has --
7 MS. ISSO: -- as a rebuttal.
8 THE COURT: She technically -- has she called her
9 yet? I mean, she has the right to call her in her case still.
10 MS. ROSENBLUM: She's already called her in her
11 case.
12 THE COURT: Okay.
13 MS. ROSENBLUM: I just finished my direct. I didn't
14 know if she was going to -- if she planned on crossing her or
15 not.
16 THE COURT: Okay.
17 MS. ISSO: Considering the time constraints and I
18 spoke to my client about it, he wants me to --
19 THE COURT: Okay.
20 MS. ISSO: -- call him as a rebuttal --
21 MS. ROSENBLUM: Okay.
22 THE COURT: Okay.
23 MS. ISSO: -- to address the --
24 MS. ROSENBLUM: And I still have the right to call

1 him in my case in chief.

2 THE COURT: Correct.

3 MS. ISSO: Okay.

4 MS. ROSENBLUM: Right. Okay.

5 THE CLERK: Mr. Blackham you said is Ms. Garcia's
6 attorney?

7 MS. ROSENBLUM: Yes.

8 THE CLERK: Okay.

9 MS. ISSO: How much time do I have left?

10 THE COURT: One hour and 23 minutes left.

11 MS. ROSENBLUM: Has there coming a -- Jennifer, do
12 you plan on calling Dr. Bergquist today? Is she going to --

13 MS. ISSO: Unh-unh.

14 MS. ROSENBLUM: -- show up today? Okay.

15 MS. ISSO: We don't -- we don't have time.

16 THE CLERK: Ms. Garcia, can you hear me? Your
17 microphone is muted if you're -- if you can hear me.

18 MS. ISSO: Turn on your video, please.

19 MS. GARCIA: Okay.

20 THE CLERK: Okay. Can you please raise your right
21 hand? You do solemnly swear the testimony you're about to
22 give in this action shall be the truth, the whole truth, and
23 nothing but the truth, so help you God?

24 THE WITNESS: Yeah.

1 MONTANA GARCIA
2 called as a witness on behalf of the Plaintiff, having been
3 first duly sworn, testified upon her oath as follows on:

4 DIRECT EXAMINATION

5 BY MS. ISSO:

6 Q Ms. Garcia, how are you relate -- I'm sorry, Ms.
7 Montana --

8 MS. ISSO: Say Montana?

9 THE PLAINTIFF: Yes.

10 Q How are you related to Nechole Garcia?

11 A I'm her mother.

12 Q Are you babysitting her child when she's at work?
13 I'm sorry?

14 A Yes.

15 Q Okay.

16 THE COURT: I --

17 Q And how --

18 THE COURT: I need her volume turned up, Mr.
19 Blackham, for -- it's really low in our courtroom.

20 MR. BLACKHAM: Montana, did you hear that?

21 THE WITNESS: Yes, I got it up to 100 percent. Can
22 you hear me?

23 THE COURT: Then I need you to scoot --

24 THE WITNESS: Speak up?

1 MR. BLACKHAM: I --

2 THE COURT: -- closer to the something.

3 MR. BLACKHAM: Yeah, can -- can you move closer to
4 the mic?

5 THE WITNESS: Can you hear me? Hello?

6 THE COURT: That right there is probably the best so
7 far. And so maybe if you stay right there. All right.

8 THE WITNESS: Okay.

9 Q And how many days a week are you babysitting the
10 child?

11 A One to two days a week. It depends on when do they
12 have the child. One day a week. Well, he has her Monday,
13 Tuesday, Wednesday and Sunday, Monday, Tuesday. I have her
14 Wednesdays and Thursdays.

15 Q So when Eugene doesn't have the child and Nechole's
16 working, you're babysitting the child?

17 A Yes.

18 Q And about how many hours is that for at a time?

19 A I would say on an average it -- it's about eight
20 hours because she usually comes home for lunch for about an
21 hour, maybe an hour-and-a-half, and spends time with the
22 child.

23 Q Okay. But if she doesn't come home for lunch, it's
24 at least 10 hours, right?

1 A Yes. And she usually comes home at -- I would say
2 only once per month she doesn't come home.

3 MS. ISSO: Move to strike. I called for a yes or no
4 answer.

5 THE COURT: Sustained. Ma'am, she's asking yes or
6 no questions, so you'll have to answer yes or no.

7 BY MS. ISSO:

8 Q So when she --

9 THE WITNESS: Okay.

10 Q -- doesn't come --

11 THE WITNESS: I'm sorry, could you repeat the
12 question?

13 Q So when she doesn't come home, it's -- you're
14 babysitting for at least 10 hours in a shift, right?

15 A Yes.

16 Q Ms. -- there's been some allegations regarding your
17 ability to properly care for the child. Could you show me --
18 could you please stand up and get down on your knees and then
19 get back up?

20 MS. ROSENBLUM: I'm --

21 A In front of the --

22 MS. ROSENBLUM: Your Honor --

23 A -- camera?

24 MS. ROSENBLUM: -- I'm going to --

1 A I don't know if I can --
2 MS. ROSENBLUM: I'm going to object to --
3 THE COURT: Sustained.
4 MS. ROSENBLUM: -- this.
5 MS. ISSO: It goes to her physical ability --
6 MR. BLACKHAM: Join.
7 MS. ISSO: -- to care for the child if she can't
8 bend down over down to her knees or stand up. So how is she
9 taking care of a three-year-old?
10 THE WITNESS: I can.
11 BY MS. ISSO:
12 Q Okay. Well, then please show the court.
13 MS. ROSENBLUM: Objection, Your Honor.
14 Argumentative.
15 MR. BLACKHAM: Join.
16 THE COURT: I'm not -- it's going to be sustained.
17 You could have -- you could have subpoenaed records or
18 anything else or had a video. But for right now given these
19 circumstances under these conditions, I'm not going to have
20 her do physical modalities in front of us. So --
21 MS. ISSO: Okay. Here's the thing. Okay. She
22 can't -- she can't do it. That's the problem.
23 THE COURT: I --
24 MS. ISSO: If she could do it --

1 THE COURT: It's been alleged.
2 MS. ISSO: -- she would have done it.
3 THE COURT: It's been alleged.
4 MS. ISSO: If you could do it, you would actually
5 get down --
6 THE COURT: It's been alleged.
7 MS. ISSO: -- down on your knees and get back up,
8 but in fact --
9 MS. ROSENBLUM: Your Honor --
10 MS. ISSO: -- you can't do that --
11 THE COURT: It's been alleged.
12 MS. ISSO: -- without holding onto furniture.
13 THE COURT: I'm not allowing it.
14 MR. BLACKHAM: Objection, argumentative.
15 THE COURT: It's been --
16 MR. BLACKHAM: Harassing.
17 THE COURT: -- sustained, Mr. Black -- it's been
18 sustained.
19 MS. ISSO: Okay. No further questions. I'm not
20 wasting more time.
21 THE COURT: Do you have any questions of --
22 MR. BLACKHAM: Is my client released?
23 THE COURT: I got to ask Ms. Rosenblum.
24 MS. ROSENBLUM: I have no questions of this witness,

1 Judge. I have no questions.

2 THE COURT: All right. Yes, apparently that was it,
3 Mr. Blackham. So thank you for hanging around for a
4 day-and-a-half.

5 THE WITNESS: Thank you, Your Honor.

6 MR. BLACKHAM: Thank you, Your Honor.

7 THE COURT: Have a good day.

8 MR. BLACKHAM: You too.

9 THE WITNESS: You too.

10 MS. ISSO: I'll call Eugene next, Your Honor.

11 MS. ROSENBLUM: Well --

12 MS. ISSO: Or did -- did you get someone else? It's
13 1:00 o'clock.

14 MS. ROSENBLUM: At 2:00 o'clock I do. But --

15 THE COURT: So now --

16 MS. ROSENBLUM: Yeah, I mean, I'm going to have an
17 opportunity to cross examine him, right?

18 THE COURT: Yeah, if she --

19 MS. ROSENBLUM: If she's redirecting.

20 THE COURT: -- if she calls -- yeah.

21 MS. ROSENBLUM: I'm going to ask to just to exceed
22 the scope since I'm not calling him in my case in chief.

23 THE COURT: That's --

24 MS. ROSENBLUM: I'll just reserve --

1 THE COURT: -- got to be by stipulation.

2 MS. ISSO: I'm calling him for rebuttal purposes.

3 THE COURT: Then she's going to call him in her

4 chief I gue -- then you'll have to call him in your chief.

5 MS. ISSO: Okay.

6 MS. ROSENBLUM: Unless you want to -- you agree you

7 want to call him now and I'll just exceed the scope and ask

8 the other questions I have.

9 MS. ISSO: But I wanted to do that with Montana and

10 you didn't agree to that. But not Montana, Nechole. You

11 didn't agree.

12 MS. ROSENBLUM: No, it's fine.

13 MS. ISSO: Okay.

14 THE COURT: Go ahead.

15 MS. ROSENBLUM: I'm -- I'm calling him in my case in

16 chief, yeah?

17 THE COURT: You have the right to. Yeah.

18 MS. ROSENBLUM: Okay. But she's calling him for

19 rebuttal now.

20 THE COURT: She's calling him for rebuttal --

21 MS. ROSENBLUM: Okay.

22 THE COURT: -- now.

23 MS. ROSENBLUM: That's fine.

24 MS. ISSO: Eugene -- can --

1 THE COURT: Yes. Yes, ma'am.

2 EVGENY SHAPIRO

3 called as a rebuttal witness on his own behalf, having been
4 previously sworn, testified upon his oath as follows on:

5 DIRECT EXAMINATION

6 BY MS. ISSO:

7 Q Ms. Garcia claims that you took the baby proofing
8 out after you had installed the baby proofing; is that true?

9 A No.

10 MS. ROSENBLUM: Objection --

11 A That's a lie.

12 MS. ROSENBLUM: -- misstates testimony.

13 MS. ISSO: She stated that he removed the baby
14 proofing after he had installed it in the house. I'm asking
15 him about that. I wrote down what she said, everything she
16 said.

17 THE COURT: Overruled. The other thing is I got to
18 inform you. The same as the Defendant. You were sworn in
19 yesterday. We're not going to reswear you in again. I know
20 you're not an attorney or an officer of the court, but we were
21 just going to re-advise you you're still under oath under --

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: -- the per -- penalties --

24 MS. ISSO: No --

1 THE COURT: -- of perjury.

2 MS. ISSO: -- he's more honest then.

3 THE COURT: Okay?

4 THE WITNESS: Absolutely.

5 THE COURT: Okay.

6 THE WITNESS: Absolutely.

7 THE COURT: All right.

8 BY MS. ISSO:

9 Q Okay. And then she made allegations of your son
10 being molested. Could you tell the Judge about that?

11 A That's a lie. That never happened.

12 Q She claims that when the child dropped the sippy
13 wrist on her -- a sippy cup on her wrist that you didn't take
14 the child to the -- to the emergency or doctor. What happened
15 there?

16 A That's absolutely -- that's a lie. I was watching
17 Ava and went -- and -- and she came home and I told her what
18 happened. And I -- I offered to take the child to -- to the
19 doctor because she was working. And she got upset with me,
20 mad, and kicked me out and then texted me through -- you know,
21 texted -- texted me come to the appointment which I -- which I
22 did.

23 Q Are you hostile or disagreeable?

24 A Absolutely not.

1 Q In fact, did any of the professionals that work with
2 you say that about you?

3 A No.

4 Q Did she interrupt you and disparage you at doctor
5 appointments?

6 A Oh, absolutely.

7 Q What --

8 A She --

9 Q -- did she say about you?

10 MS. ROSENBLUM: Objection, relevance.

11 MS. ISSO: That's what she said --

12 THE COURT: Sus --

13 MS. ISSO: -- he did --

14 THE COURT: Overruled. Okay. Ms. Isso, don't get
15 -- just wait for the ruling and then --

16 MS. ISSO: I'm sorry.

17 THE COURT: -- you can --

18 THE WITNESS: Yes.

19 THE COURT: Sustained.

20 THE WITNESS: Absolutely. Many, many times. An
21 example of their witness --

22 THE COURT: Sustained. Overruled. Sorry.

23 THE WITNESS: -- Ms. Harris on the Zoom call that
24 she -- she alleged that I have ADHD. She very often during

1 the appointments get upset and mad at me if I -- if I say
2 something. And that's -- that's routinely happened.

3 BY MS. ISSO:

4 Q Do you -- do you assist in finding the therapist and
5 doctors for the child?

6 A Yes, absolutely. All the time.

7 Q Did you ever say that she shouldn't be evaluated?

8 A No, never.

9 Q Or participate in early intervention?

10 A No, never.

11 Q What did Dr. Hutchings say at the app -- appointment
12 that Nechole discussed during her case in chief?

13 MS. ROSENBLUM: Objection, hearsay.

14 THE COURT: Sustained. Hold on. I'm sorry, who
15 said?

16 MS. ISSO: Dr. Hu -- Hutchings.

17 THE COURT: What did the doctor say? That --

18 MS. ISSO: About the --

19 THE COURT: That's hearsay.

20 MS. ISSO: -- speech therapy.

21 THE COURT: That's sustained.

22 BY MS. ISSO:

23 Q What do you believe was your understanding about the
24 recommendations regarding speech therapy?

1 A The recommendations in general were that Ava might
2 have speech delay due to bilingualism. He said at first to
3 wait, to -- to see if she has more delay and then he would
4 infer to her -- to early intervention. We have decided
5 together that we're going to refer -- not -- not going to wait
6 and refer her to -- to the early intervention which we did.

7 Q So did you go against the doctor's recommendation?

8 A No, not at all. In fact, all her pediatricians said
9 from the beginning of her birth that bilingualism causes
10 speech delay. Dr. Bergquist said that during her deposition
11 with the Defendant. And Dr. Gaspar said that during his --

12 MS. ROSENBLUM: Judge --

13 A -- (indiscernible).

14 MS. ROSENBLUM: -- I got to move to strike the
15 hearsay statements.

16 THE COURT: Those parts are sustained.

17 BY MS. ISSO:

18 Q When Ava started school, did she cry or have temper
19 tantrums?

20 A No, she very easily adapts to the environment. I
21 mean, she's unhappy for a second but in fact Ms. Dembrasky
22 (ph), Ava's teacher, suggested that we --

23 MS. ROSENBLUM: Your Honor, I got to move to strike
24 the hearsay statement.

1 THE COURT: Sustained.

2 BY MS. ISSO:

3 Q How do you believe she's doing in school?

4 A She's doing wonderfully. She's -- she -- she has
5 adapted really well. She's playing. She's playing with the
6 other kids. She's sharing. No -- no tantrums whatsoever.

7 Q Were any concerns ever communicated by her tea so
8 far?

9 A The only concern we had recently was that she was
10 wobbly on the playground which we -- we are going to address.
11 I absolutely of course agree to have her evaluated but in
12 terms of everything else she's doing fantastically well.
13 She's adopting to the environment of being around neurotypical
14 kids. She's playing with them. She's sharing. She's very
15 happy. She's doing potty training. I see her. When I pick
16 her up, she smiles at me. She knows she's going to school and
17 she says that. I taught her how to say that in both
18 languages. So -- so her -- her first week was -- was
19 extremely successful at school.

20 Q Did you tell Nechole to get rid of the dog?

21 A Yes, absolutely I have.

22 Q And what happened there?

23 A She would never consider that. She -- in fact, she
24 didn't tell her mother that -- that she -- that -- that Ava

1 was allergic to the dog.

2 Q Did -- did -- was Ava bonded with the dog?

3 A No, in fact, Nechole raised issues that she was
4 afraid that the dog might be hostile to -- to -- the -- the
5 dog growled at Ava a couple times and she was -- she wasn't
6 sure, you know, what -- what to do with it honestly.

7 Q Eugene, are you capable of managing Ava's behaviors
8 and appointments?

9 A Oh, yes. Absolutely.

10 Q We already told the Judge the child's schedule. Are
11 you able to manage services provided to Ava?

12 A Yes.

13 Q Ms. Garcia claimed that at -- at exchanges the
14 transition is hard. The child will cry very hard. And then
15 you'll give her a toy, turn up the music, and whisk away in
16 the car. What is your response to that?

17 A That's just a simple lie. I mean, Ava is a
18 three-year-old child and of course she might not be, you know,
19 always happy. She -- for most of the time first of all she's
20 very happy to see me. She smiles. She -- she give -- she
21 gives me a kiss and so and so forth. But Ava's a typical
22 child. So she might, you know, have a, you know, a -- a
23 second of, you know, not being happy and -- you know. And --
24 and then she's absolutely fine. In fact, I provide daily

1 progress on -- on OurFamilyWizard showing pictures of Ava
2 have --

3 Q Did you like turn up the music and whisk away?

4 A No, of course not. I have music on because she
5 loves singing in the car. And we do that because I'm a
6 musician and I teach my daughter how to sing. I want her to
7 be a professional singer. I think she's extremely talented
8 and I think she can be the new Whitney Houston or Madonna and
9 that's what I'm trying to nurture. But absolutely not. I
10 don't want to stand in the Defendant's way of -- because, you
11 know, she has her car there and she needs to go to work. So
12 as soon as I pick her up, I put her in a car seat and I buckle
13 her up and I leave. The same thing she does at my house.

14 Q When Nechole kept the child away for you for 33
15 days, did you notice any changes in her Russian speaking?

16 MS. ROSENBLUM: Objection --

17 A Yes, she --

18 MS. ROSENBLUM: -- assumes --

19 A -- ha --

20 MS. ROSENBLUM: -- facts not in evidence.

21 MS. ISSO: That is in evidence and that's in Dr.
22 Bergquist's report too.

23 THE WITNESS: Dr. Gaspar's.

24 MS. ROSENBLUM: That's what he's reported.

1 THE WITNESS: It's Dr. -- it's in Dr. Gaspar's
2 report.
3 MS. ROSENBLUM: That's what --
4 MS. ISSO: She kept the child for
5 MS. ROSENBLUM: -- he reported.
6 MS. ISSO: She kept the child for 33 days.
7 MS. ROSENBLUM: Objection, assumes facts not in
8 evidence.
9 THE WITNESS: She kept --
10 MS. ROSENBLUM: And just because Mr. --
11 THE WITNESS: -- kept the child.
12 MS. ROSENBLUM: -- Ms. Isso keeps saying it doesn't
13 mean it's in evidence.
14 MS. ISSO: No --
15 THE COURT: Ask --
16 MS. ISSO: -- we talked about it. I asked him about
17 it on his --
18 THE COURT: Okay.
19 MS. ISSO: -- his direct.
20 THE COURT: Then ask the question first and then --
21 MS. ISSO: Okay.
22 THE COURT: -- ask the --
23 BY MS. ISSO:
24 Q So --

1 THE COURT: -- follow up --
2 Q -- did she hold --
3 THE COURT: -- question.
4 Q Did -- did she --
5 THE COURT: Just take --
6 Q -- ever withhold the child from --
7 THE COURT: Just splitting it up.
8 Q -- you recently?
9 A Yes.
10 Q For how many days?
11 A 33 days.
12 Q Okay. And did you notice any delays in her speaking
13 Russian during that time?
14 A When Ava -- I got Ava back, she forgot most of the
15 Russian that I taught her.
16 Q Like which words?
17 A She used to say many different things. I mean, she
18 -- she didn't remember any of them.
19 Q Nechole's trying to claim that you were in denial
20 and interrupting her at doctor appointments. Is that true?
21 A No, that's a lie. I'm not denial. I know my
22 daughter has autism, mild autism level one with speech delay.
23 I have accepted the -- the diagnosis. I have been
24 participating in all of the appointments as has been stated

1 multiple times. I am myself learning to be an RBT so I can
2 giver her firsthand support that she needs. I did not hear
3 the Defendant say that she's studying to be an RBT.

4 Q She's claiming that when, you know, at times the
5 child gets -- you know, that -- that at appointments you get
6 overwhelmed. You know, she claimed that with the child you
7 get overwhelmed, frazzled, and then you look at Nechole to
8 take over; is that true?

9 A No, that's -- that's a lie. I mean, the -- she gets
10 overwhelmed. If -- if I bring something to the appointment,
11 she's so -- she's so afraid of other people that if I bring a
12 toy or a book to appointments and try to get Ava engaged she
13 gets upset about that. She got upset once that I brought --

14 Q Who is --

15 A -- Ava --

16 Q -- she?

17 A The Defendant.

18 Q What did she get upset about?

19 A If I bring a toy -- while we're in the waiting room
20 I will bring a toy or a book to read to -- to Ava. She gets
21 upset about that because she's -- she's conscious of other
22 people's reaction like I'm screaming at something -- or
23 something like that. She --

24 Q She gets upset if you bring a book or a toy to --

1 A Yes.

2 Q -- the child?

3 A And I start reading in a -- in a waiting room. She
4 got upset that I -- I brought the child wearing my clothes.
5 She always want -- if -- in -- in few instances and since
6 there's only been a few that -- that I actually brought Ava to
7 something because most of the time she schedules the
8 appointments on her own time and -- and doesn't even give me a
9 chance to respond. But in the few instances that I brought
10 the child then, the Defendant -- the first thing she does, she
11 goes on pick A -- and, you know, of course I don't fight her,
12 but the first thing she does is picks up Ava from me. She
13 doesn't even let me hold Ava which is what she's done when --
14 when she was withholding Ava from me and I had to follow them
15 like a dog in a park for 25 minutes.

16 Q So she's scheduling doctor appointments without
17 consulting with you first?

18 A Absolutely. Consistently, strategically for --
19 since Ava was born and even now she does that.

20 Q She's claiming that's it's difficult to com --
21 opposing party is claiming that it's difficult to communicate
22 with you regarding routine, structure, or providers. What is
23 your respond to that?

24 A That is absolute nonsense. And you just have to go

1 to OurFamilyWizard which I believe was submitted as -- as
2 Exhibit 2 and -- and just type any appointments and see what
3 comes back. And I'll let Your Honor decide on that. Because
4 you see on -- on those -- on those exchanges that she -- I
5 asked her specifically to let me know before she calls the
6 appointments or to alternate the appointments. And she
7 doesn't do that. She ignores me and does whatever -- whatever
8 she wants. I commu -- communicate everything with her. I
9 post daily progress. I post daily progress of ABA therapy
10 specifically describing what we are working on.

11 And her -- if you look at her moments in the
12 journal, she basically lets me know that Ava's alive. Ninety
13 percent of her entries in the -- in the -- in the moments
14 basically say Ava's doing great today. That is all she does.

15 So no, absolutely not. I communicate with her. I
16 schedule appointments. I -- I am all for co-parenting. I'm a
17 reasonable person. I am a person who's willing to comp --
18 compromise. I wanted to compromise. I did not want to be in
19 court as I stated on Wednesday. I have done everything
20 possible. I went to the settlement conference and sat there
21 for six hours. I did everything possible to -- to reach an
22 agreement with -- with the Defendant.

23 But everybody who knows me including my bosses and
24 Dr. Bergquist interviewed, testified that I'm a reasonable

1 person. I teach students for God's sake. I deal with
2 students every day that want to get -- you know, that are
3 failing and -- and going to pass the class. And I have to
4 deal with them and -- and reach an agreement. So that -- that
5 -- those statements are -- are just slander. What she engaged
6 in --

7 Q Let me -- let me ask you this. When you were --

8 A Yes.

9 Q -- cleaning for her, taking care of her dog, cooking
10 for her, grocery shopping for her, was she complaining that
11 you were difficult?

12 A No.

13 Q No, she wasn't. Okay. And let me ask you this.
14 Was there a toy -- the CC -- toys that the CCSD recommended?

15 A Yes, we have written Ava's IEP plan. They -- they
16 wrote in that she is allowed to have a fidget spinner which
17 the ABA therapist had testified yesterday Heather Tauchen
18 recommended. And I -- Ava has one at my house which she's
19 very attached to. And I emailed the Defendant and told her --
20 the radio that she was talking about earlier, Ava's not
21 attached to a radio --

22 MS. ISSO: Your Honor, are you paying attention? I
23 feel like you're like sending an email or something.

24 THE COURT: I am typing notes from what he's saying.

1 MS. ISSO: Are you sure?

2 THE COURT: Oh, my God. Move on with your question.

3 BY MS. ISSO:

4 Q Go on. Go on, Eugene.

5 A I'm sorry. So that -- okay. So the radio that she
6 was -- was talking about before, that radio -- Ava's not
7 attached to it anymore. It's not -- and she passed -- she's
8 three years old. That radio was with her. And -- and we
9 still transfer it. I don't have any problems with the radio
10 or anything else that she wants to transfer. I'm all -- I'm
11 -- I'm all for it. But I -- I offer it before the school
12 started and also because I give -- because of the temporary
13 schedule, I was the one who brought Ava to school for the
14 first -- this -- this weekend is two days.

15 And so I -- I emailed the Defendant and offered it
16 to her. I said I have a toy -- fidget toy that -- that -- and
17 I spoke to her teacher and I brought it to Ava to have that
18 toy. And I said --

19 THE COURT: I'm sorry, what toy?

20 THE WITNESS: It's a fidget spinner.

21 THE COURT: Fidget toy.

22 THE WITNESS: Fidget spinner. Yes.

23 A And so I wanted to share because Ava -- you know,
24 she -- that's written in her IEP plan that she -- you know,

1 she needs that to -- that's what a lot of autistic people do.
2 You know, they need to -- and -- and so I offered the
3 Defendant to -- to share that toy and she declined. She said
4 that she has other toys with -- at the -- at -- at -- tons of
5 other -- other fidget spinners.

6 So when -- the issue here that -- that I have is
7 that when it comes from me, it's always -- it's always a
8 denial. Okay. The Defendant clearly hates me. And the only
9 reason she's trying to do this is she doesn't want me in the
10 child's life or -- I'll stipulate. She wants me in the
11 child's life on her own schedule. And she knows that. She's
12 not looking at me, but she knows that. Okay. That's --
13 that's been the case from the very, very beginning and I want
14 the Court to know. Okay. I'm a good person. I'm a --

15 THE MARSHAL: Sir, I'm going to ask you to direct
16 your attention to either the --

17 THE WITNESS: Sure.

18 THE MARSHAL: -- Judge or one of these attorneys.

19 THE COURT: To her Coun -- to his --

20 THE WITNESS: Sure.

21 THE COURT: -- Coun --

22 A So the only reason the Defendant is doing this is
23 because she hates me. And she only wants me in the child's
24 life on her own schedule. This is why she's spending

1 thousands of dollars. This is -- this is why she's making me
2 spend thousands of dollars. But I make three times less than
3 her. And -- and it's a financial burden on me. Just to bring
4 these folders right here behind me, \$1800. Okay. That's what
5 I have to pay Ms. Isso. I still owe Ms. Isso \$20,000. But so
6 -- so the -- the clear case here is that when it come -- comes
7 from me, it's never going to be accepted. When it comes from
8 her, then I have to accept. And most of the time I do. Okay.

9 Q And Eugene, she's claiming that your parenting style
10 is laid back, no routine, no structure. What is your response
11 to that?

12 MS. ROSENBLUM: Objection, misstates testimony.

13 MS. ISSO: That's what she said.

14 THE COURT: Overruled. That's what was said.

15 THE WITNESS: Again, that's a bold lie. I -- I keep
16 the same schedule as her. We -- but -- and the reason for
17 that is simple because were together. So we did that schedule
18 together. It -- this is the same schedule where Ava wakes up
19 and -- and goes to -- and takes her naps and -- and goes to
20 bed. It's the same schedule. And I was there. I was never
21 absent. Okay. I was never absent. They claimed in her first
22 -- in their first motion, they claimed that I did not --

23 MS. ROSENBLUM: Your Honor, I move to strike as
24 non-responsive.

1 THE COURT: He's narrating at this -- sustained.
2 He --
3 MS. ISSO: Okay. Let's --
4 THE WITNESS: The routines have been followed to a
5 T.
6 THE COURT: That -- that means stop when I say
7 sustained.
8 THE WITNESS: Okay.
9 BY MS. ISSO:
10 Q Just look -- look at the Judge when you're
11 talking --
12 A Sure.
13 Q -- because --
14 THE COURT: No. No. I --
15 A No, he want me to --
16 THE COURT: I've --
17 A -- look at him.
18 THE COURT: I've already directed them to talk to
19 you guys because I'm watching it on the monitor.
20 MS. ISSO: Oh, okay.
21 Q So look at me, I guess.
22 A Yes, I am.
23 Q Okay.
24 THE COURT: Unlike what was alleged previously. But

1 go ahead. That is -- I've told you before, that's why I look
2 this way. This is the stuff I --
3 MS. ISSO: Your Honor --
4 THE COURT: -- type.
5 MS. ISSO: -- I'm sorry. I just --
6 THE COURT: This is the stuff --
7 MS. ISSO: -- felt --
8 THE COURT: -- how I watch the witnesses.
9 MS. ISSO: I apologize. Okay. I --
10 THE WITNESS: Yeah, I'm looking at Mrs. --
11 MS. ISSO: I apologize --
12 THE WITNESS: No worries.
13 MS. ISSO: -- for that. I retract that. I move to
14 strike that.
15 THE COURT: Thank you.
16 MS. ISSO: I move to strike that. I apologize.
17 Move to strike my own statement. I apologize, Your Honor.
18 BY MS. ISSO:
19 Q Okay. Let's go to -- so you do actually have
20 routines and structure?
21 A Yes, absolutely. But I do the same thing. Wakes up
22 around 7:00 o'clock in -- in the morning, goes to bed right --
23 right after her ABA therapy at 6:30. I give her a bath, put
24 her to bed. The same thing. I -- I was the one actually when

1 -- when the ABA therapy started and we -- and they told us
2 it's going to be six hours , I -- I was the one who suggested
3 okay, but let's not give her naps, you know, if the therapy is
4 cancelled so she can get used to it. Yes, absolutely.
5 Everything is down to -- to -- Ava has a -- if not exact
6 schedule, a very similar schedule. I -- I mean, I've -- this
7 is my third child. I have raised two kids and the Defendant
8 has never changed a diaper before the -- Ava was born.

9 So to -- to allege that -- that -- at 43. And --
10 and so to allege that I don't follow the schedule, that I'm
11 this laid back and relaxed guy, no, not at all. Not at all.
12 And that's not even in my culture. We were talking about
13 culture on Wednesday. That's not --

14 Q Let me ask you --

15 A -- in the culture.

16 Q -- this question. Let me ask you this question.
17 Did Nechole ever suggest that the child is home schooled?

18 A No.

19 Q So when the child started school, was there any
20 concern from Nechole that the child was not going to be able
21 to adapt?

22 A No, not at all.

23 Q Okay. And then -- and -- and when Nechole
24 testified, she said that she wanted the weekends because it

1 would maximize the time with each parent, right? That's what
2 she testified?

3 A Yes.

4 Q And then later she changed her testimony saying oh,
5 no, because the child doesn't adapt, right?

6 A Yes.

7 Q So she's not been --

8 MS. ROSENBLUM: Objection, Your Honor.

9 Q -- consistent.

10 MS. ROSENBLUM: It's a mischaracterization in the
11 testimony.

12 THE COURT: Got to sustain it. You can make that as
13 the argument. I understand what you're trying to say, but
14 given what's come out today but as far as the question, I will
15 sustain that objection.

16 MS. ISSO: Okay.

17 BY MS. ISSO:

18 Q What is your work schedule right now?

19 A Right now I mostly work Monday through Thursday.

20 Q Okay. And then you've had holidays because of the
21 holiday schedule that was in place.

22 A Yes, I have

23 Q How -- how did those go?

24 THE COURT: Okay. Hold on one second so I can fill

1 it in. That's going to be -- Monday through Friday what time
2 to what time?

3 THE WITNESS: It depends. My schedule depends on --
4 on every day. I teach sometimes in person. Sometimes I -- I
5 teach online. But I -- I work approximately 30 plus -- 30 --
6 between 30 and 36 hours Monday through Thursday.

7 Q Nechole states that you said that you should have
8 Ava during the hours that she's working because -- were you
9 available at that time?

10 A Not always.

11 Q But -- but when you -- did you make that comment to
12 her?

13 A No, I never made that comment.

14 Q Okay.

15 A No --

16 Q And -- and then --

17 A -- I never made that comment.

18 Q -- how did the child do during the holiday schedule
19 this last year?

20 A Well, it was wonderful. I mean, I -- I already
21 thanked Judge Harter for that schedule. It's wonderful. I
22 mean, every -- any parent wants to spend time with their --
23 with their children. Again, I do not quite understand -- I --
24 I do. I know why, but I do not quite understand how any

1 reasonable parent can think that their -- their child doesn't
2 want to spend time with their parent over the weekend. And
3 Judge Hater himself was saying to take the child to
4 Disneyland, to spend time with their other kids and so on and
5 so forth. I honestly do not understand that.

6 Q Were there any issues when the child was with you
7 during those long stretches of time?

8 A No, absolutely not.

9 Q Was there police --

10 A Ava --

11 Q -- ever called on you?

12 A No.

13 Q C --

14 A No.

15 Q -- PS?

16 A Ava loves spending --

17 Q Was the child in the hospital because of --

18 A No.

19 Q -- injury?

20 A No, Ava loves spending time with me.

21 Q Were the -- were your -- were your sons there too?

22 A Yeah, a part of the time, yes.

23 Q Did they have fun together?

24 A Yes, they have wonderful time together. They love

1 each other. They are very close. We have witnesses testify
2 to that.

3 Q Okay. Let's talk about the educational advocate
4 issue that Nechole brought up. Tell the Judge about that.

5 A Of course. It was recommended in fact by the
6 witness Amber Harris when they were preparing for -- for
7 August 10th for a possible autism diagnosis. Prior to that,
8 she recommended getting an advocate. And I immediately jumped
9 in and -- and found an advocate, Ms. Robin Kincaid (ph), from
10 Nevada PEP, who's a wonderful person and -- and I let the
11 Defendant know that I found an advocate. And the advocate was
12 helping me throughout -- she has a lot of knowledge in -- in
13 disabilities and autism and she was supporting me. When
14 Nechole insisted on -- on finding her own advocate, she --
15 first of all, I'm sorry, I forget this. She procrastinated.

16 She hasn't done anything for two months. There's a
17 statement on OurFamilyWizard that she say oh, it's too -- too
18 early to do that. We can do that if -- you know, closer to
19 the -- when -- when it gets, you know, to the -- to -- to the
20 CCSD assessment. And that's not how I operated.

21 So I found an advocate and the advocate was
22 supporting me. And then she jumped in and said she wants to
23 bring her own advocate. And I said that's fine, no problem at
24 all. We -- we can do both. Okay. And then what happened

1 before the CCSD assessment is that her advocate had a death in
2 the family. And so she had no choice but to accept mine,
3 which, again, this wasn't my -- it's the advocate for the
4 family. It's Ava's family. It's not my advocate or her
5 advocate. But she accepted Ms. Kincaid and Ms. Kincaid
6 participated in the first IEP meeting.

7 And then she claimed that Ms. Kincaid was giving her
8 wrong information and -- and brought back her advocate. And
9 Ms. Kincaid had to pull out of it because according to Nevada
10 PEP policies, they cannot participate with -- if -- if there's
11 not an advocate present. And so I said okay, that's fine.

12 And so what happened was that -- and she claimed
13 that Ms. Kincaid was giving her a wrong schedule or was not
14 talking about the classes correctly and so and so forth. So I
15 spoke to her advocate and the result of the IEP meeting is
16 exactly the same as it did with the first advocate, Ms.
17 Kincaid, as with Ms. Jung. They both recommended the
18 inclusive classroom and that's what Ava got.

19 So, again, that is just an example of her my way or
20 the highway attitude. The advocate was not -- I -- I enjoyed
21 being supported by Ms. Kincaid, but she -- she spoke to the
22 Defendant and -- and gave her information needed. And she was
23 there for Ava. She wasn't there for either one of us. So was
24 Ms. Jung. The end result is exactly the same. It's the in

1 the best interest of Ava --

2 Q Okay.

3 A -- to be in all inclusive --

4 Q Nechole said that you refused to talk to an advocate
5 or something --

6 A No --

7 Q -- is that true?

8 A -- that's absolutely not true. At the time that she
9 contacted me I already had an advocate.

10 Q Did you -- did -- did you disagree with the
11 diagnosis or treatment of any -- of any treatment for Ava?

12 A Absolutely not.

13 Q Did you ask for a second opinion?

14 A No.

15 Q Did you ask for a second diagnosis?

16 A No.

17 Q Do you dispute the severity of the diagnosis autism?

18 A Absolutely not. I am not a medical doctor.

19 Q So Nechole made an issue on her direct about
20 occupational -- an issue that happened -- happened with
21 occupational therapy. Could you tell the Judge about what
22 happened --

23 A Absolutely.

24 Q -- there?

1 A Again, it's -- it's just blatant lie. So Dr. Gaspar
2 at -- it was suggested on August 10th appointment that Ava
3 gets ABA therapy and a private speech therapist. Okay.
4 Because CCSD therapists are horrible. That's what was said.
5 And so I immediately emailed her right after that appointment
6 and laid out my vision for ABA and said I wanted the private
7 speech therapist. She ignored that. Now we already had
8 scheduled CCSD appointment for the IEP. And that appointment
9 did not include a speech therapist because I -- my
10 understanding is that they normally do not include a -- a
11 speech therapist. Okay.

12 And she was trying to schedule another appointment.
13 Now Ava had three appointments in the span of just a few
14 weeks. And her -- yesterday -- or I'm sorry. On Wednesday,
15 she testified herself that she wants the OT be -- to be at the
16 time of ABA because she doesn't want Ava to be dragged to
17 other appointments which I absolutely agree with.

18 And that was my point with the -- with the
19 occupational therapist. I said Ava just had assessment with
20 Dr. Gaspar. She has upcoming appointment IEP. And then she
21 also has exit appointment with TMG which included the speech
22 therapists. How -- so the -- these text messages which we --
23 we showed are -- are not complete. That is just a part of it.

24 The second part of it was that I contacted the Child

1 Find person who -- who was at the -- at the time and explained
2 the situation to her. And she was able to move us to a
3 different team and -- and change the evaluation date. And
4 that team got the speech therapist.

5 My concern was that this -- this -- in a COVID time,
6 okay, with -- with -- and -- and the child being three years
7 old why drag her to a separate appointment when that was not
8 suggested. I'm sorry to say, CCSD does a lot of things right,
9 but their speech therapists are not very good. And that was
10 what's stated to us. So --

11 Q By Dr. Gaspar?

12 A By Dr. Gaspar. Correct.

13 Q So you weren't denying the child -- that -- that the
14 child should be assessed or treated. You just said let's push
15 the appointment because she had multiple treatments already
16 during that time.

17 A That's absolutely true and then she was -- she has
18 been evaluated by a speech therapist.

19 Q So Nechole's statement that you did not want her to
20 get assessed is not true.

21 A No, that's a blatant lie.

22 Q Nechole's insisting on a parent coaching
23 coordinator. What is your thoughts about that? What are your
24 thoughts about that?

1 A I don't think it's needed. I -- again, they're
2 trying to make -- to -- I understand what they're trying to
3 do. And this is simple. I want the Court to know that
4 there's no conflict here. Okay. I am a very reasonable
5 person. And -- and I -- I can always compromise. And that's
6 what I've done.

7 Q If the Judge does order that, are you going to
8 request that Nechole pays for it?

9 A Yes, I've heard that this -- this is thousands of
10 dollars. Again, Your Honor can go through the communication
11 and -- and he can see that -- that our com -- communications
12 are civil. But, I -- I mean, I -- I was married before and I
13 know that people who are married don't agree on everything. I
14 mean, that is just how life is. You talk about and then you
15 make a decision together. But there's been no hostility in
16 communications. Ava has received every possible service and
17 will. In fact, that's my goal as her parent that she receives
18 every possible service. And, again, that's why I'm
19 training --

20 Q Do you think --

21 A -- myself to be a professional.

22 Q Do you think she's requesting that just so she
23 doesn't have to co-parent with you?

24 A Of course.

1 Q Mom is claiming that her fierce advocacy is the word
2 she used. Her fierce advocacy is the one -- is -- is the
3 reason why there was early intervention and she got into
4 Firefly and Dr. Gaspar for the child. What's your response to
5 that?

6 A No, that's simply not true. It was a mutual
7 decision by both of us. I want the best for my daughter.

8 Q So were you advocating as well?

9 A Yes, of course. All the --

10 Q And what is it --

11 A -- time.

12 Q -- I guess --

13 A I -- I was just talking about getting an advocate
14 where she -- where she procrastinated for two months.

15 Q I guess my --

16 A It was my -- be -- even before the -- this was
17 before Dr. Gaspar's assessment where she was diagnosed and
18 before the IEP meeting. So if that doesn't show that I was
19 proactive. And she didn't like that. And why didn't she like
20 it? Because I did something by myself before she did because
21 everything has to be done to a T to how she's -- she's an
22 extremely rigid person. And so everything has to be done
23 exactly to a T of how she perceives things to be. But that's
24 simply not true. In fact, I don't think parents should fight

1 on that. I -- I think parents should be united and parents
2 should do what -- what's best for their child which is what
3 I'm doing.

4 Q Did you ever tell Nechole that Eric, your son, is
5 jealous of Ava?

6 A No, absolutely not.

7 Q Or jealous of your other son?

8 A No, absolutely not.

9 Q Had there been any issues with the siblings being
10 together?

11 A No, absolutely not. They have a wonderful
12 relationship. In fact, Heather Tauchen testified to that on
13 -- on Sun -- on Wednesday. They love each other. They --
14 they enjoy playing together. She's learned so much from them.
15 I mean, it -- it's -- it's bogus. It's -- it's a -- it's a
16 lie.

17 Q Nechole testified that she had issues with with her
18 mom in the beginning because she was sensitive about being a
19 new mom. Do you believe Nechole is still sensitive?

20 A Nechole is lying. Nechole cannot stand --

21 Q No. No. Do you believe Nechole is still sensitive
22 and --

23 A Oh, is she still sensitive? Yes, she absolutely is.
24 What --

1 Q Is she -- is she like super sensitive about every --

2 A Extremely.

3 Q -- little thing?

4 A You cannot -- you cannot criticize her on anything.

5 I mean, there's text message where I recommended her to drive
6 her car for -- for -- because her car -- she has two cars and
7 one was not driven and she got upset about that.

8 Q Nechole's claiming that, you know, you did something
9 and you -- you messed up the child's insurance and this and
10 that. Tell the Judge about that.

11 A Again, that is just simply not true. First of all,
12 I did not know anything about her insurance. She never told
13 me. And -- and she was (indiscernible) by Medicare. But what
14 happened is I got private insurance and like any parent I
15 wanted to put Ava on my insurance which I let her know. I
16 spoke to Heather Tauchen and -- and BCBA therapy and on the
17 Firefly Behavioral Services and we submitted evidence that on
18 their website I took screenshots that their -- their website
19 says that they accept the insurance that I currently have,
20 Health Plan of Nevada.

21 In fact, it says that they work with any plan as
22 long as they -- as long as they provide ABA therapy. And I
23 called Health Plan of Nevada and made sure that they do
24 provide and -- and the conditions were very similar to her

1 insurance. Just like any parent in this country the way it
2 works, which is unfortunate in my opinion, however, I wanted
3 to have my daughter on -- on my insurance and also to
4 participate in expenses.

5 And so but once I did, then Firefly turned around
6 and said oh, by the way, we are not -- even though it says it
7 on our website but we have not yet -- we are -- we are not in
8 all the way yet. And so what I did immediately, I was trying
9 to -- to both (indiscernible) documented on OurFamilyWizard.
10 I tried cancelling the insurance and seeing if they would
11 accept it. And I said -- again, this is OurFamilyWizard, that
12 whichever one comes in first it doesn't matter to me which
13 insurance Ava has. But I was trying to cancel it and/or to
14 make it accepted as a -- as a takeover because I wanted Ava to
15 stay with the same provider.

16 We like Behavior -- Firefly Behavioral Services.
17 And so I was able to in the very short period of time, okay,
18 because I -- again, I am Ava's best advocate. And I was able
19 to get it cancelled. That's what happened.

20 Q And was the issue remedied quickly?

21 A Yes. Yes.

22 MS. ISSO: Okay. How much time do I have left,
23 please?

24 THE COURT: You'll have to give me a second to --

1 since we don't have math classes in law school and it's been
2 awhile.

3 MS. ISSO: I used to be a math teacher now. I have
4 two teaching duties.

5 THE WITNESS: I love math.

6 THE COURT: All right. 105 to 36. So 30 -- I'm --
7 I'm just going to give you an approximation. About 50 minutes
8 left.

9 MS. ISSO: Okay.

10 BY MS. ISSO:

11 Q What specific two-two-three schedule are you
12 requesting?

13 A Okay. So I'm requesting the following. Week one
14 currently under the temporary schedule. Week one, Monday,
15 Tuesday, Eugene, Wednesday, Thursday, Nechole, Friday,
16 Saturday, Eugene.

17 Q And Sunday.

18 A Friday -- I'm sorry, Friday, Saturday, Sunday.
19 Thank you. Friday, Saturday, Sunday, Eugene. And then week
20 two, Monday, Tuesday, Nechole, Wednesday, Thursday, Eugene,
21 and then Friday, Saturday, and Sunday, Nechole.

22 Q When Nechole was asked about family therapy, she --
23 she was hesitant, right?

24 A Yes.

1 Q But then did you -- you do believe she wants you
2 present in the child's life?

3 A Only through the extent where she wants me to be.
4 Only on her own terms. Only when it suits her. Only when --
5 when it's good for her. But no, otherwise absolutely not.

6 Q Montana Garcia, you've -- you've seen her in person,
7 correct?

8 A Oh, yeah. Many times.

9 Q Have -- have you witnessed her having any
10 difficulties moving, getting up, getting down?

11 A Oh, yeah. That's all on video that they've
12 submitted. Even in a few videos that they submitted as I
13 stated on Wednesday --

14 Q Well -- well --

15 A -- show --

16 Q -- tell the Judge about that.

17 A Yeah. Montana Garcia cannot get down on her floor
18 and get up without holding onto something. She cannot. And
19 -- and I don't have any -- any issues with her. She's a --
20 she's a nice woman. But she cannot -- they are both lying --

21 Q And --

22 A Okay. So --

23 Q -- does she wear grip socks?

24 A She does wear grip socks because she's afraid of

1 falling and she's -- during her deposition she said she
2 recently fell. She cannot -- she -- she cannot follow the
3 child without getting up. That's why one of the videos shows
4 her getting out of the room on her knees because she cannot
5 get up.

6 Q Do you have safety issues or concerns regarding Ms.
7 Garc -- Montana Garcia watching the children --

8 A Absolutely.

9 Q -- for --

10 A Absolutely. She -- I -- I do not believe that she
11 is -- is capable of watching Ava especially as Ava now is
12 getting older, she's mobile, she can run, and so on and so
13 forth. No, she cannot.

14 Q Has Nechole told you any health issues her mother
15 has had?

16 A Yes.

17 Q What is she --

18 A She has diabetes, she -- she has anxiety, she has
19 depression, she's overweight. She weights a hundred and
20 ninety pounds.

21 MS. ISSO: No further questions.

22 THE COURT: Okay. Just a second. That will be
23 1:39.

24 MS. ROSENBLUM: Am I up?

1 THE COURT: Are we -- I -- I think so.

2 MS. ROSENBLUM: Yeah. I'll be quick.

3 CROSS EXAMINATION

4 BY MS. ROSENBLUM:

5 Q Eugene, circling back on Ms. Garcia, have you
6 expressed your concerns in writing to Nechole about Montana
7 watching your child?

8 A Have I expressed writings about my -- my --

9 Q Have you --

10 A -- concern --

11 Q -- expressed your concerns in writing about Montana
12 watching your child?

13 A No, I have not.

14 Q Have you contacted CPS about your concerns for your
15 child's safety in Montana's care?

16 A No, I don't think like that.

17 Q Have you contacted law enforcement --

18 A No --

19 Q -- about --

20 A -- I have not.

21 Q -- your concerns for your child's safety while in
22 Montana's care?

23 A No.

24 Q Is it fair to say that today and for the purposes of

1 this litigation you're raising these concerns?

2 A No, that is not a -- that -- that is a lie.

3 Q With regard to the insurance --

4 A Uh-huh (affirmative).

5 Q -- prior to changing your health insurance that
6 ended up potentially affecting Ava's therapies, did you notify
7 Nechole that you were thinking about changing insurance?

8 A Yes, I notified her that I'm going to change the
9 insurance. Abs --

10 Q How did you notify her?

11 A Via OurFamilyWizard.

12 Q And you did that prior to actually changing it.

13 A I told her that I'm going to -- I -- I -- let me
14 step back. First I told you that she's under Medicaid and
15 then I provided her the -- the numbers for the health
16 insurance, whatever that is, and then I have told her that I
17 am -- I was able to get insurance at my work and -- and so I'm
18 going to be changing Ava's -- Ava's insurance to my insurance.

19 Q And you notified her of that before you actually
20 changed it or after it was already changed.

21 A At the same time as I was doing it.

22 Q So you had already made up your mind to change the
23 insurance before you notified Nechole.

24 A I just answered the question. I said at the same

1 time.

2 Q Did you give any consideration to whether or not
3 that might affect Ava's therapies?

4 A Yes, I absolutely. As I just explained to Ms. Isso,
5 I have done extensive research. I -- I call the insurance to
6 make sure that they do ABA therapy. I make sure that -- that
7 -- these are compatible hours that she's getting that -- that
8 -- in hours a year. And I -- I made sure that that insurance
9 is accepted as -- as I just explained. Firefly's website list
10 my insurance which you can look it up right now. You can take
11 it -- take it out. But I have screenshots that I provided as
12 evidence that my -- that my insurance is accepted. In fact,
13 they actually accept any insurance they claim. I love
14 Firefly. I think that Ms. Tauchen is wonderful. RBTs are
15 wonderful. But -- but they -- it -- it's a misstatement I
16 believe on their part.

17 I don't run their business but it shouldn't say that
18 certain insurances are not accepted. And they stated that --
19 that all of the insurance -- in fact, they said if -- if the
20 insurance is not listed, contact us. If they accept ABA, we
21 will work -- my insurance will specifically list it in -- in
22 fact, next to your client's insurance. So yes, absolutely I
23 did the research. And, again, it's -- any -- any parent dream
24 in this country where the health insurance is not mandatory

1 and it's not universal unlike for example, you know --

2 MS. ROSENBLUM: Your Honor, I move to strike this as
3 non-responsive.

4 THE COURT: He's -- he is narrating at this point.
5 Do you want to ask your next question, Ms. Isso?

6 MS. ISSO: Ms. -- Ms. Rosenblum's asking questions,
7 no?

8 BY MS. ROSENBLUM:

9 Q Eugene, you've --

10 A I'm explaining what -- what she asked me about.
11 Okay.

12 Q You've -- you've referred to Nechole several times
13 just in this time you've been up on the stand and -- and on
14 Wednesday as a liar.

15 A Correct.

16 Q Do you have anything good to say about her?

17 A Yes, absolutely.

18 Q What can you say good about her?

19 A Absolutely. I think Nechole is a smart person.

20 She's very bright. I loved her sense of humor. I enjoyed

21 spending time with her when she was not upset. But I think

22 we've had many good times together. We had vacations

23 together. We watched movies together. I enjoyed talking to

24 her about politics which we have very similar political views.

1 I also enjoyed talking to her about similarities in our
2 upbringing. Not everything, but we have -- we shared
3 something which is that we both grew up in countries where we
4 were minorities. I as a Russian Jew in former Soviet Union
5 and Russ -- Russia and her in this country as an
6 African-American woman. And we shared some of the things that
7 we -- micro-aggressions and -- and, you know, hatred that we
8 -- it -- that we experienced. So yes, absolutely.

9 Q You -- your testimony -- well, let me ask you just
10 based on this last answer. Are you sad that your relationship
11 with her is over, that your romantic relationship is over?

12 A No.

13 Q Are you angry that the relationship is over?

14 A No, I moved on with my life. In fact, there is no
15 -- there is no -- you stated earlier that there -- there is --
16 or -- or your client stated that -- that there is -- your
17 client, I'm sorry, stated that there is -- I bring up the
18 past. And I challenge you to find one entry in
19 OurFamilyWizard where I talk about my relationship with your
20 client. I challenge you to do a search right now and find one
21 where I say oh, it was never. I accepted that the
22 relationship is over. I was sad because I wanted to have a
23 family. Yes. Unfortunately, I found the wrong person, but we
24 are still family. So a romantic relationship has ended;

1 however, we are still family and we're going to be until the
2 day we die because we share a daughter. But I -- I moved on
3 and I wish Ms. Garcia all the best. I hope that she finds
4 what she's looking for and I hope that she -- if -- if she's
5 looking for -- I am not looking her -- looking for a romantic
6 relationship, but if she is, I hope that she finds a person
7 that -- that satisfies all of your needs.

8 Q So despite this, you would still describe Nechole as
9 uncooperative?

10 A At times. Absolutely, yes.

11 Q A bully?

12 A Yes, if -- it -- so -- so your client can be very --

13 Q I'm --

14 A -- reasonable, but --

15 Q Sir.

16 A -- but -- yes?

17 Q Yes?

18 A Yes.

19 Q Unwilling to compromise?

20 A Yes.

21 Q Un -- controlling?

22 A Yes.

23 Q No integrity to be a prosecutor?

24 A I believe on -- on what I've read about --

1 Q Yes or no, sir?

2 A Yes. Yes.

3 Q Impossible to deal with?

4 A Very challenging to deal with. Yes.

5 Q Constantly upset?

6 A That is my -- my experience in -- I was talking

7 specifically about my relationship with her. Yes.

8 Q Aggressive?

9 A Yes, she's very aggressive. As I testified, she

10 pushed me out of the house.

11 Q And a liar.

12 A And a liar.

13 Q And yet it remains your testimony today that you're

14 not angry or upset with her.

15 A Ms. Rosenblum, there are different --

16 Q Yes or no, sir?

17 A Ask me again, please?

18 Q It remains your testimony today that you're not

19 upset with --

20 A I am not upset with Ms. Garcia at all.

21 Q And it remains your testimony today that despite

22 describing her as all of those things --

23 A Uh-huh (affirmative).

24 Q -- impossible, controlling, aggressive, unable to

1 communicate, lacking integrity, and a liar, you don't need a
2 parenting coordinator.

3 A As I testified before --

4 Q Yes or no, sir?

5 A No.

6 Q You believe you can adequately co-parent with this
7 person that you've just described as a liar, controlling,
8 aggressive, impossible to communicate with.

9 A Yes. And if you want me to explain, I will explain
10 why. But I guess you don't.

11 Q Your testimony when your Counsel asked you about the
12 holidays were that your holidays were wonderful. You would
13 agree with me that last year the Christmas holidays were
14 modified by this Court different than the parenting plan you
15 have now; is that true?

16 A I am talking about the holidays that were -- since
17 they were modified. Yes.

18 Q So last Christmas this Court changed -- modified
19 away from the default schedule, correct?

20 A It was only modified in terms of me not having
21 overnights. Is that --

22 Q Right.

23 A -- what you're talking about?

24 Q Correct. You did not have overnights, true?

1 A For -- well, actually I had because that was an
2 error and I did for a few days and then I didn't and then --
3 and then I did again after -- after Bergquist's report came
4 in.

5 Q Okay. But as far as the Christmas holiday in 2020,
6 you did not have overnights, correct?

7 A Not true. Yes, I had.

8 Q Not the whole time.

9 A That's correct.

10 Q Okay. So it was modified --

11 A It was only --

12 Q -- from the --

13 A -- modified because of --

14 Q Hold on. Let me get the question all the way out.
15 It was modified from the way the schedule currently exists; is
16 that true?

17 A Only because your client -- your client --

18 Q I --

19 A -- filed a motion.

20 Q Yes or no, Mr. --

21 A Yes.

22 Q -- Shapiro? Your testimony on -- with Ms. Isso
23 asked you is that you worked Monday through Thursday --
24 Thursday -- 30 to 36 hours Monday through Thursday, correct?

1 A Correct.

2 Q When did you start that schedule?

3 A I spoke to you about my schedule during your
4 deposition.

5 Q Sir, when did you start the schedule, month --

6 A This semester.

7 Q -- and year? This semester. So in August --

8 A Correct.

9 Q -- of 2021; is that correct?

10 A Correct.

11 Q And you no longer work Friday, Saturday, Sunday; is
12 that correct?

13 A That's correct.

14 Q No gigs?

15 A No.

16 Q No part-time employment at The Venetian?

17 A I never worked at The Venetian on -- on the
18 weekends.

19 Q No private lessons or anything like that?

20 A I don't do private lessons right now. It's COVID.

21 Q While you're at work 30 to 36 hours Monday through
22 Thursday, who watches Ava?

23 A I watch Ava myself because I -- my -- my work right
24 now is asynchronous a lot of it so I can do it when Ava goes

1 to sleep. I also have my brother who's helping me. But most
2 of the time it's myself.

3 Q Does your mother ever watch Ava?

4 A No, she hasn't watched Ava in a -- in a very long
5 time.

6 Q When was the last time?

7 A The last time? I cannot recall exactly. It's been
8 awhile. She's my backup, but most of the time right now it's
9 my brother.

10 Q And your mother is your backup?

11 A In case, but I have not used her since maybe -- I'm
12 guessing since maybe January of this year.

13 Q How old is your mother?

14 A My mother is 79.

15 Q And at 79 years old, she has no medical issues?

16 A Way less than your -- your client's mother.

17 Q I'm sorry, yes or no? She has no medical issues?

18 A I don't believe she has.

19 Q No medical issues at all.

20 A Nothing that would interfere with her -- with her
21 ability to watch over. My mother can actually bend down and
22 get up from the floor unlike your client's mom.

23 Q There was discussion about scheduling appointments.

24 A Correct.

1 Q And Counsel asked you about scheduling the
2 appointment for the CCSD OT assessment; is that correct?

3 A That's correct.

4 Q And your testimony I believe was that you didn't
5 want to schedule the appointment that they had recommended
6 because she had already had multiple appointments the same
7 day; is that correct?

8 A It's part of it.

9 Q What was the other part of it?

10 A The other part of it was it was not recommended.
11 That's something that she made up. The -- what was
12 recommended on -- on August 10th appointment was ABA therapy
13 and private OT. The doctor specifically stated that the CCSD
14 OT is horrible. That's what he said.

15 Q And your testimony is that there was no need for
16 CCSD OT, correct?

17 A No, that was not my issue. My issue was that Ava
18 already had the CCSD assessment. I have no problem getting
19 Ava assessed but at that point she already had three
20 appointments that go back-to-back. And so my issue was why
21 drag her -- just like she said on Wednesday. Why drag her to
22 another appointment? But once we moved it to a different team
23 that included OT, she was assessed. I absolutely have no
24 issues with her being assessed by a speech therapist. That

1 was one of my concerns was speech delay, bilingualism. And
2 that -- so absolutely. I have no issues with that. I just
3 had issues with she already has appointments, why drag her
4 through another appointment. And then I was myself who
5 facilitated. I was the one who facilitated getting a
6 different team and -- and having her evaluated.

7 Q Mr. Shapiro, I would ask you to look at the book in
8 front of you, please --

9 A Sure.

10 Q -- that's marked as Defendant's exhibits, the big
11 one.

12 A Yeah, this one?

13 Q Yes. I'm looking at the exhibit marked -- I think
14 it's H which is the OurFamilyWizard -- no, I'm sorry. It's I.

15 A I? Okay.

16 Q Yes. Which is the OurFamilyWizard. And you'll see
17 at the bottom right the exhibits are paginated. You're going
18 to have to go about midway through that stack.

19 THE COURT: Again, if we can get a --

20 MS. ROSENBLUM: 633.

21 THE COURT: -- specific date and time, the entire
22 fam -- and we did -- I think my law clerk texted me late
23 yesterday. We got the custodian of records that entire --
24 through -- and we started trial on Wednesday. All those

1 entries will come in. I think it's Court's Exhibit 2?
2 MS. ROSENBLUM: Uh-huh.
3 THE COURT: So for today's pur -- these portions
4 where you guys try to submit them as exhibits will not come
5 in.
6 MS. ROSENBLUM: No, I'm not trying to submit them.
7 I'm asking him to look at it --
8 THE COURT: I understand that. I understand.
9 MS. ROSENBLUM: -- to refresh recollection.
10 THE COURT: But -- but if you will just for my
11 purpose give me a date and a time.
12 MS. ROSENBLUM: Sure. It's --
13 THE COURT: Sure.
14 MS. ISSO: And --
15 MS. ROSENBLUM: It's --
16 MS. ISSO: -- our -- our exhibits too, right, for
17 the --
18 THE COURT: Yeah.
19 MS. ISSO: -- text messages?
20 MS. ROSENBLUM: Yeah.
21 THE COURT: That --
22 MS. ISSO: That --
23 THE COURT: Since they're all sporadic and broken
24 up, they -- it won't come in because they're all --

1 MS. ROSENBLUM: Right.

2 THE COURT: -- encompassed in the Court's Exhibit 2.

3 MS. ISSO: Well, how about --

4 MS. ROSENBLUM: Okay.

5 MS. ISSO: -- our text messages? I think it was

6 Exhibit Number what --

7 MS. ROSENBLUM: 25. No.

8 THE COURT: It -- what?

9 THE WITNESS: 25.

10 MS. ISSO: Yeah. Yeah.

11 MS. ROSENBLUM: We've already had --

12 MS. ISSO: You had said --

13 MS. ROSENBLUM: -- this --

14 MS. ISSO: -- it was admitted.

15 MS. ROSENBLUM: This is taking from my time now.

16 So --

17 MS. ISSO: Yeah, but --

18 THE COURT: Okay. We --

19 MS. ISSO: -- is that one admitted as well?

20 THE COURT: We will deal with the housekeeping stuff

21 in -- in just a minute.

22 MS. ROSENBLUM: Okay.

23 THE COURT: Or -- or at a break.

24 MS. ROSENBLUM: So I'm looking, Your Honor, at the

1 messages that are from August -- I believe they start August
2 10th.

3 MS. ISSO: What Bates stamp?

4 MS. ROSENBLUM: And go through August 12th.

5 MS. ISSO: Do we have a Bates stamp on those

6 MS. ROSENBLUM: And just for the sake of time and
7 the Court, I know at one point Your Honor had referenced like
8 if there was specifics that we wanted you to look at because
9 they've already been admitted, do you want us just to submit a
10 list?

11 THE COURT: Of OurFamilyWizard --

12 MS. ROSENBLUM: Of the --

13 THE COURT: -- exhibits?

14 MS. ROSENBLUM: -- OurFamilyWizard exhibit?

15 THE COURT: Yes, but we're going to get to a point
16 when we start talking about that and Ms. Isso's text messages.
17 I'm going to limit it because obviously they're going to be
18 similar. I'm not --

19 MS. ROSENBLUM: Right.

20 THE COURT: -- doing cumulative. I'm not doing --

21 MS. ROSENBLUM: No. No. I just -- I mean, because
22 I can move on from this. There's like three pages and --

23 THE COURT: Okay.

24 MS. ROSENBLUM: -- if they're already admitted, I

1 don't need to cover it.

2 THE COURT: That's fine. I'll take --

3 MS. ROSENBLUM: Okay.

4 BY MS. ROSENBLUM:

5 Q Eugene, sorry. Let's --

6 A No problem.

7 Q -- flip to the May OurFamily -- May 5th
8 OurFamilyWizard.

9 A You said Exhibit I. That's --

10 Q Yes, it's our -- it's Exhibit I. On my exhibits,
11 it's page 0388.

12 A Exhibit I is -- is September 18th, 2020. So I -- I
13 -- it -- I rather not --

14 Q It should be a giant stack of OurFamilyWizard
15 exhibits. I -- I like igloo. Yeah.

16 A Yeah, I'm looking at it right now.

17 Q Is there another book there?

18 MS. ISSO: I what?

19 A This is Exhibit I I'm looking at, correct?

20 Q 0388. Yeah.

21 A Okay.

22 Q Okay. So --

23 A So it start --

24 Q -- if you look on the bottom righthand corner,

1 they're paginated, right? It says Defendant EX- --
2 A Yes.
3 Q Okay. So -- I'm on page 388 --
4 A Oh, I see.
5 Q -- of that exhibit.
6 A 388? Okay. Okay.
7 Q Okay. So are you with me?
8 A No, I haven't found it yet.
9 Q Okay.
10 A I'm sorry. 3 -- so -- so again, I don't understand.
11 Is it the actual page or it says Defendant EXI --
12 Q Well --
13 A -- and -- and then --
14 Q -- it'll say Defendant EXI0388 but right above it,
15 it says page --
16 A Page.
17 Q -- 388 of 725.
18 A Page 388.
19 MS. ISSO: Is it 388 of 900?
20 A 388. Yes.
21 MS. ISSO: Is it Bates --
22 A I'm looking --
23 MS. ISSO: -- Stamp --
24 A -- at it.

1 MS. ISSO: Okay. I think I have it.

2 MS. ROSENBLUM: 388.

3 A May 6th?

4 Q They start at the top -- yeah, it's May 6th, May

5 5th.

6 A Okay.

7 Q And these are the emails between you and Nechole

8 regarding Nevada PEP; is that correct?

9 A Uh-huh (affirmative).

10 Q On May 5th, you told Nechole that you had called

11 Nevada PEP today and asked for an advocate; is that correct?

12 A Yes.

13 Q Is that the first time that you had discussed Nevada

14 PEP with Nechole?

15 A No, we talked about getting an advocate on that

16 meeting with Amber Harris.

17 Q Okay. Did you talk to Nechole at the meeting about

18 Nevada PEP?

19 A I wasn't -- we were encouraged to contact advocates

20 what -- which is what I did and that's why I let her know that

21 I spoke --

22 Q Eugene, did you talk to Nechole at the meeting with

23 Amber Harris specifically about Nevada PEP?

24 A No, I did not.

1 Q You selected Nevada PEP, correct?

2 A I spoke to an advocate for -- to find for myself.

3 Q Okay. And you selected Nevada PEP, correct?

4 A I started talking to Nevada PEP. Correct.

5 Q And in the text -- or I'm sorry, in the

6 OurFamilyWizard message that's on 5/6/2021 at 10:29 you wrote

7 to Nechole I simply let you know that I spoke to Nevada PEP

8 and asked them to provide an advocate.

9 A Again, I need the page. I'm sorry.

10 Q It's the same page.

11 A Oh, it's --

12 Q It's the --

13 A -- the same page.

14 Q -- very first --

15 A Oh.

16 Q -- message.

17 A Yes. Yes. Okay. Sure.

18 Q You -- you talked to Nevada PEP and asked them to

19 provide you an advocate, correct?

20 A That's what it says. Yes.

21 Q And, again, did you coordinate that with Nechole?

22 A Again, I'm trying to explain.

23 Q Yes or no?

24 A I called Nevada PEP.

1 Q Did you --

2 A That's --

3 Q -- coordinate that with Nechole?

4 A One more time, we were encouraged to -- to
5 contact --

6 Q Eugene --

7 A -- advocates.

8 THE COURT: Sir, you've been -- listen, you've been
9 to trial here enough. You understand just like she's been put
10 in a position where you might have to say yes or no and you
11 might not like saying yes or no and you have an attorney who
12 can let you expand if she has time left.

13 THE WITNESS: I understand --

14 THE COURT: So --

15 THE WITNESS: -- but that's not --

16 THE COURT: -- her question right now is a yes or no
17 question.

18 THE WITNESS: I don't believe it's a yes or no
19 question, but if that's -- that's how I have to answer, then
20 I'll answer it.

21 MS. ROSENBLUM: So I missed the answer. I'm sorry.

22 THE COURT: I -- he was complaining he didn't answer
23 yet.

24 MS. ROSENBLUM: Yeah.

1 BY MS. ROSENBLUM:

2 Q Did you coordinate with Nechole prior to selecting
3 Nevada PEP?

4 A No.

5 Q Looking at page 387. Do you see that? At the very
6 bottom.

7 A Okay.

8 Q Nechole asked if you were going to proceed with
9 Nevada PEP. Do you see that?

10 A Okay. So --

11 Q And did you respond to that?

12 A That's my next -- my -- my response is on the next
13 page that you -- but we just talked about.

14 Q Did you tell Nechole that -- at any point did you
15 tell Nechole that if she didn't want to agree to your advocate
16 that she was free to choose her own?

17 A Yes, absolutely. In fact, I said that we can use
18 two advocates. I have -- in fact, Amber Harris was the one
19 who recommended that and said that the more the better. I did
20 not know at the time that Nevada PEP actually does not
21 participate in meetings if there's not an advocate. But yes,
22 I absolutely -- the more advocates, the better. We are not
23 specialists. They are.

24 Q Mr. Shapiro, your -- your testimony is that you

1 don't need a parenting coordinator because there's no conflict
2 and there's no hostility in communications. Do you recall
3 that testimony?

4 A Yes. That's correct.

5 Q Can you -- do you think that calling my client a
6 liar in -- in the OurFamilyWizard is hostile?

7 A I don't think so because I'm responding to -- to --
8 when she -- so -- so the title --

9 Q Yes or no, Mr. Shapiro?

10 A No. No. Not under the circumstances.

11 Q And do you think telling her that she is
12 inappropriate or unfair isn't hostile?

13 A No, absolutely not. Hostility is screaming at the
14 person. Hostility is giving the person the silent treatment.
15 That's what she gives me. But if she stated something that
16 was factually wrong which she did many times, will try to
17 smooth it up and -- and make it sound like it -- like it was,
18 you know, basically make up -- make up an excuse, I just -- I
19 just told her what it -- what it is. But there's no -- was no
20 hostility whatsoever. Again, I don't have any problem with
21 your client. I wish her the very best. I want us to coparent
22 and I want to be able to see my daughter. I believe it's in
23 Ava's best interest.

24 Q Do you think she loves Ava?

1 A Yes.

2 Q Do you think she cares about Ava's well-being?

3 A Yes.

4 Q Do you think she cares about Ava's best interests?

5 A Yes, but only when it suits her. When -- when it
6 comes to me, yes -- when -- I'm sorry, when it comes to Ava on
7 -- on her time with Ava, yes. When it comes to me, only when
8 it suits her and that's been the case from the very beginning,
9 unfortunately. And that it shouldn't be because I -- I don't
10 have an issue with her. She has an issue with me. But it
11 shouldn't be an issue. We have a wonderful daughter that
12 needs help and we both can provide her help.

13 Q So let me just ask you this final question.

14 A Sure.

15 Q She is liar, a bully, uncooperative, aggressive,
16 lacks integrity. You've accused her of domestic violence.
17 You've accused her of leaving Ava with unfit care providers.
18 Why are you asking for joint custody?

19 A Because I don't want the Defendant to be out --
20 she's the mother and I -- I have never -- I want her to --
21 this is her only daughter. And I have never had an intention
22 of taking Ava away from her. It's always been her intention.
23 I did not want to limit her time with Ava. I believe she's an
24 -- she -- she loves Ava and she should have time with Ava. I

1 have never as I just testified on Wednesday I would even --
2 when I -- once I get weekends, I will invite her to join us if
3 she wants to. There's no absolutely no reason to -- to what I
4 was talking about. You're misinterpreting my words. What I
5 was talking about is the actions that your client -- both you
6 and your client took. That's what I was talking about. I was
7 not talking about -- we both love Ava.

8 I mean, you -- you opened your -- your opening
9 argument was about that. You -- that's what you said. You
10 said that there is no dispute that both of these parents love
11 Ava very much. I'm -- I'm absolutely on board with you. I
12 think that's -- that's the case. That's always been the case.
13 That's not an issue here. The issue here is that one parent
14 doesn't want the other parent to be in -- in her child -- in
15 her child's life. That's the issue. She only wants it when
16 it suits her. That's why no weekends. That's why
17 (indiscernible).

18 So no, absolutely not. I have never -- I have -- I
19 will step in if that's the case, but I have never advocated
20 for -- for her to take -- to take I want joint custody because
21 Ava has a mother. She -- that he can contribute to her life
22 that has her own experiences. You know, Ava is -- is -- you
23 know, I'm a Russian Jew. And so I want Ava to know about my
24 life just like I -- I raised my sons. And Nechole is an

1 African American black woman, proud black woman. And I want
2 Ava to be raised with that -- with that knowledge as -- as
3 well. So absolutely not.

4 But the fact that -- that parents -- as I just said
5 before, I was married. I don't know if you are. But if you
6 were, if you were in a long distance rel -- a long term --

7 MS. ROSENBLUM: Your Honor --

8 A -- relationship --

9 MS. ROSENBLUM: -- at this point, I have to --

10 THE WITNESS: Sure.

11 MS. ROSENBLUM: I just --

12 THE COURT: You're done?

13 MS. ROSENBLUM: I --

14 THE COURT: Okay.

15 MS. ROSENBLUM: I think Dr. Gaspar is --

16 THE COURT: All right. Sir --

17 MS. ROSENBLUM: -- on --

18 THE COURT: -- if want to go ahead and step down.

19 THE WITNESS: Thank you.

20 THE COURT: Let me get a -- let me get a tally while
21 we set up Dr. Gaspar as well. Additionally, I just asked my
22 Court Clerk. They have received the Defendant's tax returns.
23 We haven't gotten the Plaintiff's yet. I need to confirm that
24 before we all leave today. I need to make sure we have those.

1 (COUNSEL AND CLIENT CONFER BRIEFLY)

2 THE COURT: Let me get a time stamp. Sorry about

3 that also. Four -- that is 25 minutes.

4 MS. ROSENBLUM: Oh, that guy is not Dr. Gaspar.

5 THE CLERK: There was a --

6 MS. ROSENBLUM: But that's --

7 THE CLERK: -- different --

8 MS. ROSENBLUM: -- somebody at his office. I am

9 assuming he'll go get Dr. Gaspar if --

10 THE CLERK: There was a different guy there before

11 but then walked away. Was that --

12 MS. ROSENBLUM: Yeah.

13 THE CLERK: Okay.

14 THE COURT: All right. Here is the current tally.

15 Ms. Isso, you have 44 minutes. Ms. Rosenblum, you have one

16 hour and thirty-three minutes.

17 MS. ROSENBLUM: We're going to do our closing

18 arguments too, right?

19 THE COURT: I've -- I've told you before I will also

20 take the consideration written if you want to do just brief

21 written. It's -- we'll --

22 MS. ROSENBLUM: We'll -- we'll --

23 THE COURT: -- we'll just talk --

24 MS. ROSENBLUM: -- just do it here.

1 THE COURT: We'll -- we'll discuss it at the end of
2 the day. It's up -- I'll look forward to either. And if one
3 wants one and one wants the other, I'm -- I'm going to
4 accommodate that as well. It will be -- it will be brief, but
5 I -- I usually don't let you allow more than 10 pages. So
6 with these issues I think it could even be less because we're
7 -- child support, visitation schedule. But so be it.

8 THE CLERK: Your Honor, just so I know about whether
9 I need to put him in a breakout room, are you guys expecting
10 anymore witnesses to be logging onto BlueJeans?

11 MS. ROSENBLUM: I'm -- I'm not.

12 MS. ISSO: No, I'm sorry.

13 THE CLERK: Okay.

14 THE COURT: Are those --

15 MS. ISSO: I'm trying to figure out --

16 THE COURT: -- paintings in the background, are
17 those the kind of paintings that are supposed to elicit like
18 weird things in your mind as you -- as you --

19 MS. ROSENBLUM: No.

20 THE COURT: -- lay on the couch? Because --

21 MS. ISSO: I like --

22 MS. ROSENBLUM: It's not my --

23 THE COURT: -- I -- I just want to know what --
24 it --

1 MS. ROSENBLUM: -- experience.
2 THE COURT: Listen, can he hear us or not, Madam
3 Clerk?
4 THE CLERK: Not yet.
5 THE COURT: And I don't care. This is on the
6 record. What -- what is -- what do you guys see in the blue
7 one? I see a cat.
8 MS. ROSENBLUM: I see cat too.
9 THE COURT: I see a cat.
10 THE CLERK: Yeah.
11 THE COURT: I see a cat --
12 MS. ISSO: The Van Gogh --
13 THE COURT: -- with a black --
14 MS. ISSO: -- one?
15 THE COURT: -- head and a --
16 MS. ROSENBLUM: With a --
17 THE COURT: -- red body.
18 MS. ROSENBLUM: Yeah.
19 THE PLAINTIFF: My guess is that's what children do
20 because he's an -- he's an --
21 MS. ISSO: Well, that --
22 THE PLAINTIFF: -- autism doctor.
23 MS. ISSO: That's a --
24 MS. ROSENBLUM: Yeah.

1 MS. ISSO: -- child that's raising their hands like
2 this.
3 THE COURT: Oh, okay.
4 MS. ISSO: Or like a mouse.
5 MS. ROSENBLUM: Is it?
6 THE COURT: Are you sure?
7 MS. ROSENBLUM: I can't see that far so it's all
8 super blurry anyways.
9 THE COURT: I just -- I -- okay. You got to love
10 the shrinks, don't you? I actually considered that way back
11 in the day before I -- when I -- when I went to -- started
12 undergraduate, that's where I thought I'd go.
13 MS. ROSENBLUM: I think he's waiting for us to tell
14 him we're ready so that we can -- we can get Dr. Gaspar maybe.
15 MS. ISSO: You know, I'm -- I'm having a hard time
16 emailing --
17 THE CLERK: Is --
18 MS. ISSO: -- these. Can I just give --
19 THE CLERK: Is --
20 MS. ISSO: -- this to you?
21 THE CLERK: -- Mr. Gaspar available?
22 MS. ROSENBLUM: Doctor.
23 MS. ISSO: This has --
24 MS. ROSENBLUM: Doctor.

1 MS. ISSO: -- the --

2 MS. ROSENBLUM: Md.

3 MS. ISSO: This just has the taxes on it.

4 THE COURT: Let's -- let's go off the record for one
5 minute, Madam Clerk. Can -- she's going to walk up and give
6 you the thumb drive to -- Okay.

7 MS. ISSO: I'm sorry.

8 THE CLERK: Okay. We're back on the record.

9 THE COURT: All right. We're back on the --

10 THE CLERK: And Dr. Gaspar, can you please raise
11 your right hand? You do solemnly swear the testimony you're
12 about to give in this action shall be the truth, the whole
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you.

16 MARIO JOSE GASPAR DE ALBA
17 called as a witness on behalf of the Defendant, having been
18 first duly sworn, testified upon his oath as follows on:

19 DIRECT EXAMINATION

20 BY MS. ROSENBLUM:

21 Q Good afternoon, Dr. Gaspar. Can you state your full
22 name for the record, please?

23 A Mario Jose Gaspar de Alba.

24 Q And Dr. Gaspar, where do you currently work?

1 A At the Kirk Kerkorian School of Medicine at UNLV.

2 Q Dr. Gaspar, are you a licensed physician in the

3 state of Nevada?

4 A I am.

5 Q When did you receive your license?

6 A About -- I believe it was December of 2012.

7 Q And Dr. Gaspar, you're board certified?

8 A I am.

9 Q Where -- in what field are you board certified?

10 A I'm board certified in pediatrics and in the sub

11 specialty of developmental behavioral pediatrics.

12 Q And when did you obtain your board speciality --

13 your board certification? Sorry.

14 A I believe it was October of 2011. I believe it was

15 October 2011.

16 Q Dr. Gaspar, did you do an internship?

17 A I did.

18 Q When did you do it and where?

19 A An internship at the University of New Mexico

20 Children's Hospital in 2002 to 2003.

21 Q And in what -- did you specialize in anything during

22 your internship?

23 A Hold on just a second.

24 Q No, it's okay.

1 THE COURT: Got to love our world how it is.

2 MS. ROSENBLUM: Yeah, right.

3 A Sorry, can you repeat that? I'm having a hard time
4 hearing you.

5 Q I'm sorry, it's okay. Let me move on. Doctor, did
6 you complete a residency as part of your medical training?

7 A I did.

8 Q And when did you complete your residency?

9 A In 2005.

10 Q And where did you complete your residency?

11 A University of New Mexico Children's Hospital.

12 Q And was your residency in any spec -- in any
13 specific field?

14 A Pediatrics.

15 Q Can you briefly describe for the Court the nature of
16 your practice currently?

17 A So my practice is at the Grant a Gift Foundation --
18 Grant a Gift Autism Foundation Ackerman Center. I see
19 children with developmental delays, concerns for various
20 neural developmental issues. I do evaluations, make
21 recommendations for treatment.

22 Q As part of your day-to-day practice, do you see
23 children who are -- who are being assessed for autism?

24 A Every day.

1 Q In the last year approximately how many children
2 would you estimate you've seen for an autism assessment?

3 A In the last year?

4 Q Sure.

5 A 250.

6 Q You're familiar with the minor child in this case;
7 is that correct, Ava Garcia-Shapiro?

8 A I am.

9 Q You authored a report dated -- I believe it's dated
10 August 10, 2021; is that correct?

11 A Yes.

12 Q Do you have a copy of the report with you?

13 A I do.

14 Q I would -- I would suggest to you that that report I
15 believe is four pages long. Does that sound accurate?

16 A It does.

17 Q And it begins at the top with the identification of
18 the patient; is that correct?

19 A Yes.

20 Q And you've signed that report; is that correct?

21 A I have.

22 MS. ROSENBLUM: I would ask that Dr. Gaspar's
23 report, Exhibit L, be admitted. I think it might have already
24 been admitted actually.

1 THE CLERK: I --
2 THE COURT: Ask -- go ahead and ask the Clerk --
3 MS. ISSO: I think --
4 THE COURT: -- if it --
5 MS. ISSO: I think --
6 THE COURT: I --
7 MS. ISSO: -- I --
8 THE COURT: Yet -- no, not yet.
9 MS. ISSO: We -- yeah, we admitted it as Exhibit
10 Number 53.
11 THE COURT: It's the same as 53, so --
12 MS. ROSENBLUM: Oh, yeah.
13 THE COURT: -- let's just technically admit both.
14 It's duplicate, so -- well, no. Let's -- let's not confuse
15 the record. It's already been admitted as 53.
16 MS. ROSENBLUM: Okay.
17 THE COURT: Okay.
18 BY MS. ROSENBLUM:
19 Q All right. Dr. Gaspar, as part of your assessment
20 for this child, did you obtain information from other
21 providers?
22 A I obtained information from the early intervention
23 provider who was providing services to the child.
24 Q And was that Therapy Management Group?

1 A It was.

2 Q And you've had an opportunity to review the Therapy
3 Management Group's CARS scoring assessment --

4 A I did --

5 Q -- or CAR -- CAR --

6 A -- as part of the evaluation.

7 Q If I refer to it as the CARS report, you'll
8 understand what I'm talking about?

9 A I will.

10 Q Okay. Do you have any reason to believe that the
11 CARS report is inaccurately reported?

12 A No.

13 Q Do you have any reason to believe that the CARS
14 report overstates Ava's signs and symptoms and possible
15 quote/unquote red flag for autism?

16 A No.

17 Q Asked a different way, Doctor, do you believe that
18 the CARS report from TMG is reliable and accurate?

19 A I do.

20 Q In addition to the CARS report, was there other
21 information that you relied on to reach your diagnosis?

22 A Information from Mother, information from Father,
23 and my clinical evaluation.

24 Q And in terms of the information from Mother and

1 information from Father, how did you obtain that information?

2 A There was a -- a parent questionnaire that was
3 filled out prior to the evaluation and then during questioning
4 during the evaluation.

5 Q In your -- in your report, you -- you've indicated
6 -- and I'm going to refer to the port -- report I guess by
7 page and line. So I'm looking at the first paragraph where it
8 states reason for evaluation, you state Ava's brought to
9 evaluation by her father due to concerns about limited diet
10 and speech delay -- speech delay that may be due to bilingual.
11 Do you see that?

12 A Yes.

13 Q Can you -- first of all, tell me did Dad report to
14 you that he thought the speech delay was due to Ava being
15 bilingual?

16 A According to what I wrote there, yes.

17 Q Okay. And in the next statement goes on to identify
18 what Mom reported as concerns including rigidity and routine
19 lack -- lack of functional communication despite a good
20 vocabulary and limited diet. Do you see that?

21 A Yes.

22 Q Did you believe that the -- the ri -- the reason for
23 the evaluation as reported by Mother and Father to be somewhat
24 divergent?

1 A Yes.

2 Q Can you explain that?

3 A Simply that the stated reasons for the evaluation
4 were different.

5 Q And, again, under the development portion, you've
6 indicated that Dad reports Ava has 200 words and Mom reports
7 Ava has 10 words. Do you see that? I believe that's on
8 page --

9 A Yes.

10 Q -- page 1 as well. Again, did you --

11 A Yes.

12 Q -- believe that reporting to be divergent?

13 A Yes.

14 Q For a child of Ava's age, with this type of
15 assessment, did that appear to be extremely divergent in the
16 reporting?

17 A Yes. I mean, for -- for one person to report that a
18 child only has 10 spontaneous words and for another to say
19 that they have 200 is -- is wildly different.

20 Q Okay. And then again the report goes on and it
21 states that Dad notes Ava communicates in phrases. Mom notes
22 that Ava has to communicate with gestures. Mom has to guess.
23 Do you see that part of the report or recall that part of the
24 report?

1 A Yes.

2 Q And --

3 A I'm looking at it.

4 Q And again with that reporting, Dad compared to Mom,

5 did you believe that those statements to be divergent?

6 A I did.

7 Q Same thing with regard to the eye contact, that Dad

8 says the minor child always uses eye contact and Mom says

9 about 60 percent of the time. Did you --

10 A Yes.

11 Q -- believe that to be wildly divergent in the

12 reporting?

13 A Somewhat divergent, yeah. I mean, it's a -- it's a

14 difference of 60 percent to all the time.

15 Q Okay. Based on this re -- on this divergent in

16 reporting, did you have -- do you have an opinion -- or did

17 you have an opinion about whether someone was over reporting

18 or under reporting Ava's abilities?

19 A Not until I -- not until I actually sat down and

20 tried to interact with Ava.

21 Q Okay. And after you interacted with Ava, what if

22 anything did you determine?

23 A After interacting with Ava, I -- I -- from what I

24 could tell her communication skills were -- were more delayed

1 than were being reported by Dad.

2 Q Any other information or any other skill set that
3 you believe was either being over reported or under reported
4 by either parent based on your assessment of Ava?

5 A Social communication skills were -- from my
6 experience during the evaluation the social communication
7 skills that had been described by Dad I -- I did not see many
8 of those during the evaluation.

9 Q And did you believe that with regard to the social
10 communication skills Dad was reporting to you that he was over
11 reporting her ability?

12 A Yes.

13 Q Did you believe that Mom was accurately reporting
14 her ability?

15 A More accurately, yes.

16 Q Okay. Looking at page 2, Doctor, of -- of the
17 report you indi -- you had made a statement there that Dad
18 reports the same regression. So you're talking about
19 developmental regression in that first paragraph, but believes
20 it is due to Mom not allowing him to see Ava. Do you see
21 that?

22 A Okay. Yes.

23 Q Aside from that statement, do you recall anything
24 independently about Dad's reporting regression due to Mom not

1 allowing him to see Ava?

2 A I believe they both reported a regression in some
3 language based skills. And I put that because Father reported
4 that -- that his belief that it was because he had not been
5 allowed to see Ava.

6 Q Did you agree with Father's assessment?

7 A I -- you know, it's a historical assessment. I
8 don't know that I can judge that.

9 Q Okay. You -- again, on page 2 I believe you've
10 given her -- you said a follow up CARS reported mild/moderate
11 range of autism symptoms with a score of 35. Is that based on
12 the CARS report?

13 A That is based on the CARS report that was filled out
14 by Therapy Management Group.

15 Q Okay. And if you could just briefly explain what
16 the different ranges are.

17 A Sure. So the Children's Autism Rating Scale or the
18 CARS has a rating scale of minimal to no symptoms which is up
19 to a score of 30. And then from 30 to 37 is mild to moderate
20 symptoms. And then a score of 37.5 and higher is severe range
21 symptoms.

22 Q Okay. And Ava is in the mild to moderate; is that
23 correct?

24 A Yes.

1 Q Is there any way to tell whether her autism is --
2 were moderate or more mild?

3 A That's simply based on that clinical evaluation.

4 Q Okay. And a child of Ava's age with a CARS score of
5 35 is in the mild to moderate. What -- how -- how would --
6 what are the signs and symptoms of that, I guess?

7 A Well, the -- the CARS is a clinical rating scale
8 that assists in the diagnosis, but the diagnosis of autism is
9 a clinical diagnosis.

10 Q Okay.

11 A In the clinical diagnosis, there are criteria and
12 depending on, you know, criteria met, then a diagnosis is
13 made. Each of those criteria can actually present as mild,
14 moderate, or severe.

15 Q Okay. And with --

16 A So the -- the diagnosis itself when given isn't
17 given as mild, moderate, or severe. It's given in levels
18 based on support needed.

19 Q And -- and on page 4, you've diagnosed Ava with
20 Autism Spectrum Disorder level 1 with communication delay,
21 correct?

22 A Correct.

23 Q And could you explain what types of behaviors we
24 would expect to see for -- for Ava with that diagnosis?

1 A That's -- that's incredibly variable. The level 1
2 diagnosis indicates that she needs some supports in social
3 communication and behaviors some of the time.

4 Q What about in terms of routine or rigidity, those
5 types of things? Is that something that you're equipped to
6 opine on today?

7 MS. ISSO: Objection, Your Honor. Outside of the
8 scope. And he's not here to give that --

9 MS. ROSENBLUM: I --

10 MS. ISSO: -- information today.

11 MS. ROSENBLUM: -- literally just asked him if he
12 could.

13 THE COURT: Overruled.

14 THE WITNESS: Sorry, could you repeat the question?
15 BY MS. ROSENBLUM:

16 Q In -- in terms of rigidity and routine and
17 scheduling for Ava; is that something that you could opine on
18 today?

19 A You mean -- you mean her rigidity?

20 Q Correct.

21 A Just based on my report from what I've written that
22 there was some rigidity in her behaviors.

23 Q Okay. There's been some discussion in this case
24 that perhaps her speech delay and communication delay was due

1 to the fact that she was bilingual. Do you agree with that?

2 A No, I do not.

3 Q Why not?

4 A The -- the evidence for language delay in children
5 who are bilingual is that they do not typically have a speech
6 delay. There's more than 25 percent delayed. And their
7 social communication skills should not be affected.

8 Q You -- as -- as part of your treatment for Ava, you
9 attempt to meet with this family I believe it's twice a year;
10 is that correct?

11 A Correct.

12 Q And you just had this -- I think the first meeting
13 was in August. When is the next meeting, do you know?

14 A Whenever they schedule it.

15 Q Okay. You would expect to see them though
16 approximately six months from the August 10th assessment; is
17 that true?

18 A I believe that is what I had put. I wanted to see
19 her -- once she was out of early intervention and after she
20 had her child find evaluation which I expected would be done
21 in September sometime. So anytime after September.

22 Q You've made recommendations for Ava moving forward
23 including ABA therapy, OT, and some other recommendations. Do
24 you see that? On page -- I think it's on page 4 and 5,

1 correct?

2 A I do.

3 Q Any -- as you sit here today, any additional
4 recommendations that you have for this family regarding Ava?

5 A Just those because I haven't seen her again since.

6 MS. ROSENBLUM: Nothing further.

7 THE COURT: Okay. Give me one second. The 27th --

8 CROSS EXAMINATION

9 BY MS. ISSO:

10 Q Sir, you test --

11 THE COURT: Ms. Isso, go ahead.

12 Q Sir, you testified that -- that Eugene was over
13 reporting her language development. Is that -- was that what
14 your testimony was earlier?

15 A Is that Mr. Shapiro?

16 Q Yes.

17 A Yes, based on -- based on the language I heard
18 during the evaluation. Yes.

19 Q Sir, do you -- do you speak Russian?

20 A I do not.

21 Q Do you understand Russian?

22 A I do not.

23 Q Okay. So do you think maybe it's possible that Mr.
24 Shapiro's reporting is accurate if he was including both

1 English words and Russian words?

2 A That's possible, but not from what I can tell during
3 the evaluation.

4 Q Okay. But if you look at your reports, sir, when
5 Ms. Garcia reported to you the words the child can speak, she
6 said this is a combination of English and Russian, correct?

7 A Correct.

8 Q Okay. With respect to the divergent reporting, do
9 you believe it's possible for a child to act differently in a
10 parent's home depending on the parent's parenting style?

11 A Yes.

12 Q So if one parent is very strict, overbearing, and
13 controlling, do you think that child could act differently in
14 that parent's home relative to the other parent who is more
15 creative and colorful?

16 MS. ROSENBLUM: Objection --

17 A A -- a child who --

18 MS. ROSENBLUM: -- specula

19 A -- adapted their environment.

20 MS. ROSENBLUM: Hold on.

21 THE COURT: She -- overruled. She can ask it in
22 that form.

23 BY MS. ISSO:

24 Q I'm sorry?

1 A No, a -- a child will adapt to their environment.

2 Q Would --

3 A Absolutely.

4 Q And -- and -- but -- and a child could act

5 differently in the two different households, correct?

6 A Yes.

7 Q Okay. Did you tell Eugene during the evaluation on

8 August 10th that 25 percent of speech delay is caused by

9 bilingualism and that a child catches up by the age of seven?

10 A I -- not exactly like that. I told him that a child

11 with -- exposed to multiple languages will have up to a 25

12 percent delay in language and that they tend to catch up by

13 the age of seven.

14 Q So before your assessment, before your -- your

15 evaluation, did you consider that maybe it could be due to

16 bilingualism, her -- her speech delay?

17 A Of course. It's always a concern.

18 Q And is that something you communicated with Mr.

19 Shapiro?

20 A That's -- that's -- I assume that's why we had that

21 conversation. I don't remember exactly what we said, but yes.

22 Q And then Ms. Garcia is alleging that Mr. Shapiro --

23 (COUNSEL AND CLIENT CONFER BRIEFLY)

24 Q -- did not want to --

1 (COUNSEL AND CLIENT CONFER BRIEFLY)

2 Q Okay. So she's alleging that Mr. Shapiro did not
3 want the child to be assessed by an occupational therapist
4 when Mr. Shapiro just wanted to delay it -- not delay it, but
5 push it back a few weeks because the child had so many
6 treatment sessions already or evaluations. And basically he
7 wanted to use a private occupational therapist because you had
8 informed him that Clark County School District's speech
9 therapy is horrible. So did you -- did you say that to him?

10 A I did not.

11 Q Okay. All right. It's okay. Did Eugene
12 participate in all of the appointments?

13 A He participated in the one appointment that I had
14 with him.

15 Q And did he appear to be, you know, involved and
16 supporting?

17 A He did.

18 MS. ISSO: Okay. Okay. I -- and Your Honor, this
19 is all I'm going to ask for today.

20 THE COURT: Okay. Do you have any follow up?

21 MS. ROSENBLUM: Just one.

22 THE COURT: Sure.

23 REDIRECT EXAMINATION

24 BY MS. ROSENBLUM:

1 Q Dr. Gaspar, the fact that these parties are in split
2 households and that the child may act different in one
3 household versus another, do you believe that accounts for the
4 divergent reporting in this case?

5 A I don't know that I --

6 MS. ISSO: Objection --

7 A -- that I can --

8 MS. ISSO: -- lacks personal --

9 A -- answer that.

10 MS. ISSO: -- knowledge.

11 THE COURT: He -- well, that was his answer.

12 MS. ROSENBLUM: Literally just said he can't answer
13 it.

14 THE COURT: That was his answer --

15 MS. ISSO: Oh, okay.

16 THE COURT: -- anyway.

17 MS. ROSENBLUM: So there we go.

18 MS. ISSO: Okay. Thank you, sir.

19 MS. ROSENBLUM: That's fine. That was the only
20 other question I had.

21 MS. ISSO: What did he say, I can't -- what did he
22 say?

23 (COUNSEL AND CLIENT CONFER BRIEFLY)

24 THE COURT: All right, Doctor. Thank you for all

1 the work you do in our community. I appreciate it. And thank
2 you for being here to testify today.

3 THE WITNESS: Okay. Thank you.

4 MS. ISSO: Thank you, Doctor.

5 THE WITNESS: Bye-bye.

6 THE COURT: Are we --

7 MS. ISSO: Who -- who do we have --

8 THE COURT: You're down to --

9 MS. ISSO: Who do we have left?

10 THE COURT: -- 39 minutes, so --

11 MS. ISSO: Who do we have left? Is she going to
12 call anybody?

13 THE COURT: Well, we'll switch to her -- she -- she
14 still has to --

15 MS. ROSENBLUM: I -- I don't know if Ms. Isso wanted
16 to redirect Mr. Shapiro. I don't think she did after I
17 crossed him. It's up to her. If not, I will call him in my
18 case in chief.

19 MS. ISSO: Well, I think --

20 THE COURT: You'll call you?

21 MS. ROSENBLUM: I would -- I would call Mr. Shapiro
22 in my case in chief.

23 MS. ISSO: I mean --

24 THE COURT: Okay.

1 MS. ISSO: -- I guess I can call Mr. Shapiro to talk
2 about the statement that -- that Mr. -- Dr. Gaspar told her
3 about -- told him --

4 THE COURT: Well, she's calling him right now so
5 you'll be able to --

6 MS. ISSO: Oh, she is? Okay.

7 MS. ROSENBLUM: Well --

8 MS. ISSO: Then let her call him. I'll -- I'll
9 ask --

10 THE COURT: Okay.

11 MS. ISSO: -- after.

12 THE COURT: Let's -- sorry.

13 MS. ISSO: Who do we have left?

14 THE COURT: Ms. Isso, it's your guys' people and
15 case. I don't know who you guys have left. I can tell --
16 what I can tell you is you have 39 minutes left. Ms.
17 Rosenblum has one hour and 15 minutes left.

18 MS. ISSO: Who else are you going to call?

19 THE COURT: So --

20 MS. ISSO: Let -- let Eugene go and then I'll ask
21 him any questions we have left.

22 MS. ROSENBLUM: Well, are we just --

23 THE COURT: You're -- you're calling --

24 MS. ISSO: She's calling about his case -- her case

1 in chief, right?

2 THE COURT: I don't know.

3 MS. ISSO: I don't know either. What's going on?
4 Because I thought he was already -- I thought you already
5 asked him questions.

6 THE COURT: Are you -- were -- I don't know that you
7 were done with your case to where it got turned over to her,
8 correct? I mean --

9 MS. ROSENBLUM: That's correct.

10 THE COURT: -- officially we've got -- we've part --
11 we've -- we witness swapped in and out but technically unless
12 your case has rested or done, then it'll be her and --

13 MS. ISSO: There's no one else we're calling, right?

14 THE COURT: Listen, do you -- you guys are like
15 every case. Do not feel like you have to use every minute of
16 it. It's not required, but --

17 MS. ISSO: How about this? Can we take a five
18 minute restroom break? It's 2:35. We started at like --

19 THE COURT: Before we go off, let me -- let me
20 clarify on the record a couple of things. First of all, we
21 got --

22 MS. ISSO: Exhibit 25. Exhibit 25. That was one of
23 the housekeeping issues. If --

24 THE COURT: Yeah.

1 MS. ISSO: If the --

2 THE COURT: We -- I clarified. We went back in and

3 my Clerk can read you off the pages. I limited it to -- and

4 here's what we're going to do with the OurFamilyWizard as

5 well. Both sides can direct this Court to -- let's make it 15

6 entries each side since it's that period of time. You don't

7 need to. If you want to reference the Court to 15 entries in

8 OurFamilyWizard, I just need the dates and the times. You

9 don't need to.

10 MS. ISSO: How about -- how about --

11 THE COURT: As far as --

12 MS. ISSO: -- our text messages?

13 THE COURT: -- your texts, I limit you to 10 and she

14 can read off the pages you already -- you are the one who

15 picked out the pages and she -- she -- if you want her to read

16 them off again real quick, she will, but you stated the 10

17 pages you wanted this Court to consider. The Court will

18 consider those 10.

19 MS. ISSO: I wanted you --

20 THE COURT: That was already done --

21 MS. ISSO: -- to consider all of them.

22 THE COURT: -- the other day.

23 MS. ISSO: I wanted you consider all of them.

24 UNIDENTIFIED VOICE: There's a thousand --

1 THE COURT: I'm not --
2 UNIDENTIFIED VOICE: -- pages.
3 THE COURT: -- going to. I know. I said I'm not
4 going to and that's why we'll limit it to 10 and we took the
5 time, you looked through them, and you gave me the 10 numbers.
6 MS. ISSO: So what -- what -- when are the 15
7 entries due?
8 THE COURT: If you would like to direct the Court to
9 review up to 15 entries from OurFamilyWizard that you think
10 would benefit your client, and -- and, again, I'm going to
11 give you guys a week or so if you want to submit -- we'll --
12 we'll do that at the very end of the day so don't feel like
13 you have to do it today, a -- a list and I will look at those
14 up to 15 each side.
15 THE PLAINTIFF: Yeah, that's fine.
16 MS. ISSO: We'll just use her exhibits. What --
17 what exhibit is that?
18 UNIDENTIFIED VOICE: M.
19 MS. ROSENBLUM: You -- what?
20 MS. ISSO: The FamilyWizard is what exhibit?
21 THE COURT: No, it's Court -- it's --
22 MS. ROSENBLUM: No --
23 THE COURT: -- Court's exhibit.
24 MS. ROSENBLUM: -- it's the Court's Exhibit 2.

1 THE COURT: It's still --
2 MS. ISSO: Oh.
3 THE COURT: -- going to be the same --
4 MS. ROSENBLUM: It's all the OFWs.
5 THE COURT: Yeah.
6 MS. ROSENBLUM: You just got --
7 MS. ISSO: Okay.
8 MS. ROSENBLUM: -- to get in there and tell him I
9 want you to look at --
10 THE COURT: Right.
11 MS. ROSENBLUM: -- message 25 of 900 --
12 MS. ISSO: Oh.
13 MS. ROSENBLUM: -- and 17 --
14 MS. ISSO: Got it. Got it.
15 MS. ROSENBLUM: -- or whatever.
16 THE COURT: Right.
17 MS. ISSO: Okay.
18 THE COURT: Okay.
19 MS. ISSO: Okay.
20 MS. ROSENBLUM: Right? That's what the Court --
21 THE COURT: Correct.
22 MS. ROSENBLUM: -- is asking --
23 MS. ISSO: Okay.
24 MS. ROSENBLUM: -- us to do?

1 THE COURT: You --
2 MS. ROSENBLUM: Right.
3 THE COURT: Not required to, but you can.
4 MS. ROSENBLUM: Right.
5 MS. ISSO: Okay.
6 THE COURT: The other thing, my Clerk, do you want
7 to write it down, has the six tax exhibits. We're going to
8 add them on the back end of your guys' exhibits. So Madam
9 Clerk, if you'll let them know which one's which.
10 THE CLERK: Plaintiff's are 6 -- Exhibit 66, 67, and
11 68 and Defendant's are EE, FF, and GG.
12 MS. ROSENBLUM: I -- is there any way I can get a
13 copy of the tax --
14 THE COURT: Yeah, we're going to -- we're going to
15 do that as well. I'm going to -- once we've done that, I'm
16 going to have -- here's what -- we're still on the record.
17 You -- you both have the right. That's why I'm going to
18 submit you're going to want to -- we're going to have a
19 closing brief at least on the child support issue. I'm going
20 to have my JEA and we'll make sure you have received it before
21 we leave today. Send those to you -- now to your email
22 address so you have those. Those are to be kept in your
23 office in camera not to be disclosed. And once you are
24 done --

1 UNIDENTIFIED VOICE: Destroy them?

2 THE COURT: And once you are done, they are to be
3 shredded, okay?

4 MS. ISSO: The tax returns? The -- the tax returns?

5 THE COURT: The tax -- the -- the other party's tax
6 returns.

7 MS. ISSO: Okay.

8 THE COURT: Okay. Shredded, destroyed, set on fire,
9 however else you would like. All right. Anything else before
10 we take a quick -- you want five? It's what you wanted?

11 MS. ROSENBLUM: Or 10, sure.

12 MS. ISSO: Five?

13 MS. ROSENBLUM: Five?

14 THE COURT: Five? Five?

15 MS. ISSO: Seven.

16 THE COURT: Five?

17 MS. ISSO: Let's just do seven.

18 MS. ROSENBLUM: Seven.

19 MS. ISSO: So --

20 MS. ROSENBLUM: Seven minutes sounds perfect.

21 THE COURT: Let's go seven, so --

22 MS. ISSO: 2 --

23 THE COURT: -- 3:45 or so by that clock.

24 MS. ISSO: 3:45? Okay.

1 THE COURT: Or --

2 MS. ROSENBLUM: Thank you.

3 THE COURT: -- I'm sorry, 2:45.

4 (COURT RECESSED AT 2:39 AND RESUMED AT 2:47)

5 THE COURT: Ms. Rosenblum.

6 THE CLERK: We're back on the record.

7 MS. ROSENBLUM: So again, we're in my case in chief
8 now, correct?

9 THE COURT: Correct.

10 MS. ROSENBLUM: Ms. Isso's done and rested, correct?

11 MS. ISSO: Well, I'm going to -- I reserve the right
12 to call someone for --

13 THE COURT: Yeah. Yeah.

14 MS. ROSENBLUM: -- for rebuttal.

15 THE COURT: You can. You have -- and you have the
16 right to cross. Again, you're down to the total of 39
17 minutes. You have one hour and fifteen minutes.

18 MS. ROSENBLUM: Okay. I would call the Plaintiff,
19 please.

20 EVGENY SHAPIRO

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

23 DIRECT EXAMINATION

24 BY MS. ROSENBLUM:

1 Q All right. Mr. Shapiro, how far did you go in
2 school?
3 A I have masters degree.
4 Q In what?
5 A In jazz studies.
6 Q In jazz studies?
7 A Correct.
8 Q And what do you do for a living?
9 A I teach --
10 THE COURT: I'm sorry, I still didn't hear the
11 second time. What study?
12 THE WITNESS: Jazz.
13 THE COURT: Jazz study. Okay.
14 THE WITNESS: Uh-huh (affirmative).
15 MS. ROSENBLUM: Jazz.
16 THE WITNESS: Music, basically --
17 MS. ROSENBLUM: Music.
18 THE WITNESS: -- music.
19 Q Yeah. And what do you do for a living?
20 A I teach for CSN and NSC.
21 Q You teach for CSN --
22 A College of Southern Nevada and for Nevada State
23 College.
24 Q And Nevada State College. And what do you teach?

1 A I teach music. I teach jazz appreciation and I
2 teach guitar, beginning guitar.

3 Q And what is -- what is your class schedule for this
4 semester?

5 A Right now I'm teaching asynchronous online most --

6 Q What --

7 A -- of my classes with one class being a hybrid class
8 once in person.

9 Q So tell me what asynchronous means.

10 A That means that I check -- I -- I handle some
11 sessions live but most of them are -- are recorded or I -- I
12 come in and check the student's work and post grades and
13 communicate with students and so on and so forth so all of
14 that can be done on my own time.

15 Q And the work you do with CSN and Nevada State
16 College; is that full-time work?

17 A No, it's a part-time work.

18 Q Okay. How much time do you estimate is split
19 between CSN and Nevada State College?

20 A It's about 12 hours for Nevada State College. Could
21 be less, could be more, depends on what I need to do. It's
22 about 16 hours for CSN.

23 Q And how much do you make working for each?

24 A I don't have that numbers in front of me. I

1 answered that question during the deposition.

2 Q Well, sir I'm asking you the question today. Do you
3 know how much you make working for CSN?

4 A I do not remember off the top of my head. I'm
5 sorry, I -- you're going to have to go back to the -- to my
6 deposition. I -- I --

7 Q Do you have a pay -- do you get a paycheck?

8 A Yes, I do.

9 Q Do you know how much is on your paycheck each week?

10 A I don't get paid weekly, yes, hours, but I get paid
11 monthly.

12 Q How much do you make each month?

13 A I do not -- I cannot recall how much money I make.
14 I -- I answered that question in the deposition.

15 Q Can you ask -- can you estimate how much money you
16 make each month?

17 A I -- I believe I currently make 2600.

18 Q How much of the 2600 comes from CSN?

19 A I can -- I do not remember the numbers. They're my
20 tax -- tax return. You have all of the information, Ms.
21 Rosenblum. I have not hidden a thing.

22 MS. ROSENBLUM: Judge, I have to --

23 MS. ISSO: He doesn't remember.

24 THE WITNESS: I cannot recall --

1 THE COURT: Well, apparently your client answered
2 that 80 times at a deposition.

3 THE WITNESS: Yes, I have.

4 THE COURT: So if he doesn't know --

5 THE WITNESS: That's all you asked me --

6 THE COURT: -- he doesn't know.

7 THE WITNESS: -- about in the deposition.

8 MS. ISSO: He answered during the deposition.

9 THE COURT: I mean, I've -- I've got --

10 THE WITNESS: The tax documents have been --

11 THE COURT: -- I've got tax returns.

12 THE WITNESS: -- submitted. All of my --

13 MS. ISSO: You guys have it right --

14 THE WITNESS: -- paycheck -- paychecks have been
15 submitted. In fact, I had to correct myself because even then
16 I made a mistake.

17 BY MS. ROSENBLUM:

18 Q Then just -- do you have a contract from CSN?

19 A It's a -- it's a semester, per semester contract.

20 Q You're an adjunct professor then?

21 A Yes. That's correct.

22 Q And what about with Nevada State College?

23 A The same -- same situation.

24 Q Do you get paid per class?

1 A It -- it -- yeah, I get paid per class and the CSN
2 it is also -- it has to be a full class in order to get a full
3 pay, otherwise it's per student pay.

4 Q If you can take a look at Exhibit P like Paul.

5 MS. ROSENBLUM: And I believe the Court has
6 deposition transcript. So at this point I would ask to
7 publish the transcript of Mr. Shapiro's deposition.

8 MS. ISSO: You already said that you're not going to
9 do that.

10 MS. ROSENBLUM: That's -- no.

11 THE COURT: No. No. No.

12 MS. ROSENBLUM: That's not --

13 THE COURT: What I said is --

14 MS. ROSENBLUM: -- accurate at all.

15 THE COURT: -- the -- the depositions would come in.
16 I don't care how we do it, old school or new school or
17 whatever. I just need the relevant portions. I'm not looking
18 at anything other than what -- than what's referred to in
19 court pursuant to --

20 MS. ISSO: So is Ms. Garcia's deposition in?

21 THE COURT: -- Nevada Rules of --

22 MS. ISSO: Because when I want to get it admitted,
23 you said you're not going to do that and you wanted to --

24 MS. ROSENBLUM: I didn't ask for it to be admitted.

1 THE COURT: I -- exactly. No.

2 MS. ISSO: But being --

3 THE COURT: And we --

4 MS. ISSO: -- published is being --

5 THE COURT: The other pages --

6 MS. ISSO: -- admitted.

7 THE COURT: -- we absolutely put pages and lines on

8 the record and I specifically put them in my notes as well

9 because I only aim to look at the relevant portions of

10 depositions.

11 MS. ISSO: Okay. Was Ms. Garcia's deposition then

12 -- because when I wanted to move to admit that, you told me

13 no, you --

14 MS. ROSENBLUM: It's

15 MS. ISSO: -- can't do it.

16 THE COURT: I did not.

17 MS. ISSO: You said let me cite the rule --

18 THE COURT: I did not do that. I did not do that.

19 MS. ISSO: Well, I wanted it to be admitted then or

20 published.

21 MS. ROSENBLUM: I would object to the admission of

22 Ms. Garcia's deposition.

23 THE COURT: Correct. We're not at a -- a specific

24 -- again, there was nothing on the record regarding a date and

1 a time. You did not use it for purposes -- listen, it's for
2 purposes of impeachment. I don't sit there and read their
3 deposition. That's new evidence that's outside this court.
4 This is the time for trial. Had you cross examined her for
5 purposes of veracity, et cetera, date and line, it would have
6 come in, I absolutely would have looked at it. That's the
7 only reason I'm going to use their part they're going to refer
8 to.

9 MS. ISSO: But they're not using it to impeach him.
10 He just doesn't remember.

11 MS. ROSENBLUM: I'm using it to refresh his
12 recollection. I'm literally going to ask him to look at a
13 page to see if he can remember.

14 THE COURT: That's correct. Go ahead, Ms.
15 Rosenblum.

16 MS. ROSENBLUM: Thank you.

17 (DEFENDANT'S EXHIBIT P ADMITTED)

18 BY MS. ROSENBLUM:

19 Q Looking at Exhibit P, page 12, Line 15 -- I'm sorry,
20 let's start at Line 13. Do you see that there? I asked you
21 in deposition.

22 A You're going to have to give me the time because I
23 cannot find what you're looking for. Please tell me again
24 what page.

1 Q P like Paul.

2 A Okay.

3 Q And then if you look at the top, they're paginated.

4 Do you see that? Page 12. This is your deposition

5 transcript.

6 A Okay.

7 Q I asked you about your pay at CSN. Do you see that

8 on Line 15? So down the side it's numbered.

9 A Yes.

10 Q Okay. And you said in 430 -- I asked you in 436 a

11 week. Is that based on the number of classes you teach. Does

12 the 436 a week sound accurate to you?

13 A No, because I then submitted correction. I -- I

14 misspoke. I -- it's 346. And so that's a correction that has

15 been submitted as evidence. I misspoke. Okay.

16 Q Who did you submit a correction to?

17 A It was submitted for their -- after my deposition,

18 they gave me the company which hired to -- to do the -- to

19 take the transcript. There was a page. The page is submitted

20 as evidence of -- just like you with your client had a chance

21 to correct the testimony, so did I. So that's one of the

22 things that I corrected because I misspoke. I said 436 I

23 believe and it was 346.

24 Q Okay. And at Nevada State College, I asked how much

1 you get paid. If you look at the next page. Page 13, line
2 15. How much do you get paid at Nevada State College. Do you
3 see that?

4 A Tell me again the page, please.

5 Q 13.

6 A 13. I see CSN. I don't see NS --

7 Q Line 15.

8 A I typically teach three classes a semester at CSN --

9 Q That's not my question, sir. I said and how much do
10 you get paid at Nevada State College. And your --

11 A I must be look --

12 Q -- answer was from what I recall approximately a
13 hundred and seven -- eighty-seven per week on a 16 week --

14 A That's on the --

15 Q -- contract.

16 A -- next page, but yes, I see that. That's page --

17 Q That's --

18 A -- 14.

19 Q -- exactly what I said.

20 A Oh, it's 15 on top. Okay. I'm confused about
21 pages. Yes. That's correct.

22 Q And is that still -- does that refresh your
23 recollection as to what you're getting paid at Nevada State
24 College?

1 A Yes.

2 Q And is that still accurate, a hundred and
3 eighty-seven a week on a 16 week contract?

4 A That is correct.

5 Q Okay. We talked about BEST Agency. Do you --

6 A Yes.

7 Q -- recall that --

8 A Yes.

9 Q -- and from your deposition?

10 A Uh-huh (affirmative).

11 Q Are you still working for BEST Agency?

12 A I'm working, but not as much because they -- they
13 have changed their schedule because I was hired -- it was a
14 temporary assignment because their gondoliers cannot sing and
15 so they hired musicians. At this time, they have rehired --
16 allowed gondoliers to sing. So the position I -- I was
17 working in was eliminated. And so right now the only thing
18 they have musicians do is to play at what's called a front
19 drive. And so I work now an average of once a week.

20 Q Okay. So no longer 16 hours a week, correct?

21 A Correct, but I teach more for CSN. I teach four --
22 four classes this semester, not three.

23 Q Okay. And so from the time of your deposition on
24 May 7th until now, is your pay from CSN more?

1 A This semester I am getting paid more at CSN because
2 I'm teaching -- I'm teaching three classes for them and -- and
3 then one class for -- for NSC. So it's a total of four
4 classes that I'm teaching right now.

5 Q Okay. And then you were making \$18 an hour working
6 for BEST; is that correct?

7 A At the position that I'm currently in that -- once I
8 week that I told you about, it's \$17, not 18.

9 Q Okay. At the time of your deposition, it was 18.
10 Did you make that correction?

11 A I'm trying to explain to you. That changed since
12 our deposition. When I told you \$18 an hour, that was
13 correct. I did not -- I did -- I did not make a mistake. The
14 only mistake I made was in 300 and I said 436 and that should
15 have been 346. The rest of the -- the amounts I -- because I
16 looked at it before the deposition to make sure. But I
17 misspoke on the -- everything else was correct; however, at
18 the BEST Agency, I am not currently working in the same
19 position. And so the position that I'm in first of all has
20 less hours. And second of all, it pays a dollar less an hour.

21 Q And that's \$17 an hour, correct?

22 A \$17 and it's only on average because there are too
23 many people that want to -- to do that. It's only on average
24 I would say once a week.

1 Q Okay.

2 A That's all.

3 Q Do you make tips now with BEST or no?

4 A No.

5 Q And what is the position with BEST Agency if you can
6 explain to the Court?

7 A It's called a stationary musician.

8 Q And what do you end?

9 A I play Italian music.

10 Q I'm sorry, you play --

11 A Italian music.

12 Q Italian music? Where?

13 A At the hotel, at The Venetian.

14 Q At The Venetian.

15 A Yes.

16 Q Okay. And what day and time do you typically work
17 at that job?

18 A Right now, if I get anything it's -- it's typically
19 Thursday morning.

20 Q What times?

21 A 10:00 to 2:00.

22 Q And when you do that job, who watches Ava while
23 you're gone?

24 A I currently don't have Ava on -- on Thursdays.

1 Q On Thursdays. If you were to get the schedule
2 you're asking for, who will watch Ava if you were doing that
3 job?

4 A I would change the schedule to accommodate -- to
5 accommodate that change. There are several musicians that
6 work there in -- in the coming ages like your -- your client's
7 job is flexible. It's flexible in -- in terms of -- in terms
8 of accommodating as long as they have shifts covered.

9 Q Mr. Shapiro, is your schedule for next semester as
10 far as CSN and Nevada State College set?

11 A No.

12 Q When will that be set?

13 A Sometime in January, I believe.

14 Q When does the semester start?

15 A CSN and NSC have one week difference. So it's maybe
16 third a week of January for CSN and second week of January for
17 NSC, but that's -- that -- that's just my best guess. I'm --
18 I'm not going to --

19 Q And you won't know what your schedule is until
20 January? So right before the semester starts?

21 A That is the life of an adjunct professor, Ms. -- Ms.
22 Rosenblum.

23 Q Do you have any control over what classes you're
24 assigned or what days you work?

1 A Somewhat, but not -- I don't want to take -- take
2 your time but if you want, I can explain to you. I mean, it's
3 -- college is taught by -- by adjunct professors, the 60/40
4 ratio, many times 70/30. And -- and the reason for that is
5 that it's cheaper for them to employ one full-time --

6 Q Yeah --

7 A -- professor.

8 Q -- I don't want to get --

9 A So -- so --

10 Q -- into like why.

11 A -- that's what I'm saying. So -- and so as an
12 adjunct professor you -- you do what you're told and then yes
13 there are some -- there's some ways to change things. There's
14 -- I -- I cannot guarantee what, you know, what happens.

15 Q Does your schedule change semester to semester?

16 A It wasn't before COVID, but we're in a new situation
17 now and so it's all the way -- this -- you know, it -- it will
18 go back to normality I'm -- I'm assuming at some point.

19 Q Okay. Do you anticipate as you sit here today, and
20 you may not know, do you anticipate that your classes will be
21 in person or will you continue this asynchronous work from
22 home?

23 A I do not know, Ms. Rosenblum. That would be my best
24 honest answer.

1 Q So you're just waiting for the university -- or the
2 CSN and Nevada State to tell you.

3 A It's -- it's a -- yes, that is typically the -- the
4 way it works.

5 Q You were also working for music and arts at the time
6 of your deposition. Do you recall that testimony?

7 A Yes, of course.

8 Q And you indicated that Music & Arts is a -- is a
9 store chain, correct?

10 A That is correct.

11 Q Tied to Guitar Center?

12 A Yes, it's a sister company of the Guitar --

13 Q Okay.

14 A -- Center. Uh-huh (affirmative).

15 Q You're still working with them?

16 A Yes.

17 Q And what hours do you work with them?

18 A That's on Monday right now.

19 Q Okay.

20 A And, again, I have a flexibility to change that if
21 needed.

22 Q So in -- in May when I took your deposition. And,
23 again, I'm looking at page 17, lines 12 to 13.

24 A Yes.

1 Q You indicate you were working Mondays between 3:00
2 and 6:30. Are you still working Mondays 3:00 to 6:30?

3 A Mondays 3:00 to 5:30.

4 Q Okay. So now only two-and-a-half hours.

5 A Yeah. That -- these jobs like that they fluctuate.
6 I also accommodate because I want to go back and -- and
7 participate in Ava's therapy. But these jobs like that, they
8 -- they change -- the hours can change on a monthly change.
9 And, again, I have flexibility to change the date, if needed.
10 -- change the day, if needed.

11 Q Any other employment that you have currently that we
12 haven't talked about?

13 A Yes.

14 Q What is that?

15 A The -- it's -- well, the one that is also was -- was
16 stated in the -- that deposition and that I -- I teach also
17 for Downtown, the Rec Center, on Thursday.

18 Q Okay. And that's on Thursdays?

19 A That is on Thursdays, yes.

20 Q And how -- and -- and again, I don't want to read
21 through the whole deposition.

22 A Yeah, I will tell you. I remember.

23 Q Yeah.

24 A No problem.

1 Q Go ahead.

2 A So it's -- right now it's an hour-and-a-half. And
3 the pay -- what -- so in the deposition I said 19.75 but that
4 was because they -- there's a contract there and it was -- and
5 it's typically 60/40. 60 -- and they instructed 40 at the --
6 the Rec Center. And then for -- for the pandemic they were --
7 they were giving us a favor and giving us extra 10 percent.
8 So it was 19.75 an hour. And now, they went back to
9 pre-COVID, so it's 17.79 an hour.

10 Q Any other employment that we haven't discussed?

11 A CSN, NSC, Music & Arts, and --

12 Q And Downtown.

13 A -- Downtown Rec Center. Yes.

14 Q Right. Do you do side gigs or gigs?

15 A I do not have -- currently do not have any gigs.

16 Q When was the last time you did a gig?

17 A I did a gig in May of -- I'm sorry, in April of --
18 okay. Let me think. So I did a gig on -- in April -- on
19 April 30th which was a gig that was transferred from the
20 previous year because the can -- concert -- it was a concert
21 and it was cancelled. And so it was -- it was already paid
22 for but it was cancelled due to COVID. And so I promised them
23 that I'm going to come back and do it when it's possible. And
24 then I had one gig in -- in March for City of Henderson. That

1 -- that is all I had. And I actually indicated when I
2 calculated my income I added some extra in case I do have
3 gigs, but I currently do not gig.

4 Q So currently you're not doing gigs.

5 A No.

6 Q Okay. When you do gigs, how much do you make?

7 A It depends on -- on a -- not -- on the situation of
8 -- of the gig and how much the contract is and so forth.
9 There's no set number. But like I said, I have not been doing
10 that, so --

11 Q Can you give me an average?

12 A I -- I cannot in this type of business is what --
13 whatever you -- whatever -- if you're working for an agent,
14 it's whatever the agent negotiates and tells you that they
15 will pay you or whatever client is paying you. There's no
16 average.

17 Q If you can look at Exhibit W.

18 A Okay. Is that in the second book?

19 Q Nope -- it might be for you.

20 A Okay. I'm looking at it.

21 Q Okay. You provided us -- these are your bank
22 records, Mr. Shapiro. You provided these to us I believe at
23 the beginning of this case. Do you see that?

24 A Yes.

1 Q Do these look like an accurate reflection of your
2 bank records?

3 A Yes, at the time. Uh-huh (affirmative).

4 MS. ROSENBLUM: Okay. I'm going to ask that the
5 bank records be admitted.

6 MS. ISSO: Were these provided by us?

7 MS. ROSENBLUM: These were --

8 THE WITNESS: Yes, they reque --

9 MS. ROSENBLUM: -- provided by your client --

10 THE WITNESS: They're requested.

11 MS. ROSENBLUM: -- in discovery.

12 MS. ISSO: Okay.

13 THE COURT: All right. They'll be admitted.

14 (DEFENDANT'S EXHIBIT W ADMITTED)

15 BY MS. ROSENBLUM:

16 Q So Mr. Shapiro, again, with the pages at the bottom,
17 I -- I just happened to open it and I'm going to page 0057.

18 A 0057. Okay. Okay. I'm looking at it.

19 Q Okay. So I'm looking at a deposit in June of 2020.
20 So we can both agree at -- at least on the time frame that
21 that's still in COVID, right?

22 A Yes.

23 Q And looking at that second deposit for \$3,814. Do
24 you see that?

1 A Sure.

2 Q What is that for?

3 A I was -- during the pandemic I was partially
4 unemployed and I received several payments from pandemic
5 unemployment, insurance, whatever it's called, PUA; however,
6 it is now in question because they paid to a bunch of people
7 and they want that money back. So I don't know what's best --

8 Q Do you believe you were entitled to the \$3800?

9 A I applied -- I did what the government of the state
10 told us to do because my hours were reduced. And I first
11 applied to the regular unemployment what's called UI. UI
12 kicked me out and told me to apply for PUA. I did. And then
13 apparently that's how government works. They disburse some
14 pay -- payments and then later decided that I'm -- I'm not the
15 only one in the situation. I'm no -- many other people. And
16 so they -- so -- so there's hearings regarding that and -- and
17 things of that nature. I'm -- I am not sure if that's the
18 money that I'm going to keep or give back. I -- I do not
19 know.

20 Q So Mr. Shapiro, you -- you've got a master's degree.
21 And I asked you this in your deposition --

22 A Sure.

23 Q -- so it shouldn't come as a surprise. You've got a
24 master's degree in music --

1 A That -- that's right.

2 Q -- right?

3 A Uh-huh (affirmative).

4 Q You -- you've been a musician for your whole life,

5 true?

6 A Correct.

7 Q And you're making about \$2400 a month, correct?

8 A Something like that. Yes.

9 Q In 20 --

10 A 20 --

11 Q -- 24 --

12 A -- sometimes 26 -- yeah, currently.

13 Q Your FDF I think we can both agree has fluctuated

14 depending on the time --

15 A That's --

16 Q -- of year, correct?

17 A That's the life of -- of part-time faculty. Yes.

18 Absolutely.

19 Q Why don't you get a job with the school district?

20 A Because I'm not licensed to -- to be in the school

21 district. Again, the -- as the -- not what one full system

22 here works. My master's degree is -- is in performance. It's

23 not in education. And so I cannot teach. I would be more

24 than happy to teach for CCSD, but they will not hire me

1 besides some part-time work that I've done for them. They do
2 not accept my -- because my degree is not in music education.
3 It's in music ad -- it's music performance.

4 Q Do you believe you need to have an education
5 certificate or degree in order to teach?

6 A I don't believe so, but the school district --
7 that's the -- these other rules in the school district. I
8 actually completely agree with you and -- and I think we have
9 something for example Las Vegas Academy which is a -- a high
10 school where I would be a huge asset, but they -- again
11 because my degree is not in music ed. It's music performance.

12 And that -- these are all wonderful things that I
13 found out about one -- once I joined, you know, the market as
14 an -- as an adjunct faculty what I was trying to tell
15 regarding, you know, how you work and so and so forth and the
16 same with this. So unfortunately I -- I've tried that many
17 times and they do not accept. You have to have -- you have to
18 have an accredited master's in music and -- and I do not have
19 that.

20 Q Have you applied with the school district?

21 MS. ISSO: Objection, Your Honor. Relevance and
22 there was no allegations regarding these issues that they're
23 trying to bring up right now.

24 MS. ROSENBLUM: Oh, no, there's a hundred percent

1 allegations (indiscernible).

2 MS. ISSO: No, there isn't and in any of the
3 pleadings.

4 MS. ROSENBLUM: A hundred percent.

5 MS. ISSO: This is a notice pleading --

6 THE COURT: I thought --

7 MS. ISSO: -- statement.

8 THE COURT: -- she already asked it, but if you
9 haven't asked it, you can go ahead and ask. You can ask.
10 BY MS. ROSENBLUM:

11 Q Have you applied?

12 A Applied for what?

13 Q Any jobs with the school district to teach.

14 A I already explained to you at least --

15 Q Yes or no?

16 A Yes.

17 Q When?

18 A Multiple times. I'm -- I'm not even get called for
19 -- for interviews because of my degree. I do not have -- you
20 have to have a teaching license.

21 Q When was the last time you applied?

22 A Last year. I do not have the teaching license.
23 Okay. It's like if you have a lawyer, you have to have a
24 license. In order to teach for CCSD, you have to have a

1 license, a CCSD license. They will not give it to you. You
2 can have a doctorate degree. But if it's not in what they --
3 in my profession, if it's not music ed, they will not hire
4 you.

5 Q You have insurance through the state; is that
6 correct?

7 A I currently have private insurance because I -- I'm
8 teaching four classes. And so I -- I have -- I have private
9 insurance.

10 Q Have you paid any of the co-pays in the last six
11 months for Ava's medical needs?

12 A I have not. Your client never asked me to do that.

13 Q Okay. Do you agree that -- strike that. For Ava's
14 birth, did you ever reimburse Nechole for those expenses?

15 A Absolutely. I gave her \$2,000 a week before Ava was
16 born.

17 Q Do you have proof that you gave her \$2,000?

18 A Yes, of course. We've submitted that as evidence.
19 Yes. I -- I found at least 10,000 that I have contributed. I
20 gave her a check that she returned for -- for \$1900. Yes,
21 I've been constantly giving her money throughout the
22 relationship.

23 Q When was the last time you gave her money?

24 A I gave her \$1900 on June 23rd, 2020 that she later

1 returned to me.

2 Q I just want to establish the record on this point.
3 Mr. Shapiro, in your testimony you offered that there had been
4 allegations of domestic violence against Nechole. Do you
5 recall that?

6 MS. ISSO: Objection, misstates prior testimony.

7 A That's not what I said. I --

8 THE COURT: Overruled. That's exactly what he said.

9 THE WITNESS: Domestic --

10 MS. ISSO: He didn't say there wasn't allegations of
11 domestic violence of --

12 THE WITNESS: Of domestic violence.

13 MS. ISSO: -- of Nechole.

14 THE COURT: I'm sorry, if you --

15 THE WITNESS: I have never said --

16 THE COURT: -- want to take out the allegations, it
17 would be --

18 MS. ISSO: He said Nechole pushed him.

19 THE COURT: Okay.

20 THE WITNESS: I said that she pushed me. I never
21 said there's been dom -- she asked me if she -- Ms. -- Ms.

22 Isso asked me if -- if she laid her hands on me --

23 MS. ISSO: He said they --

24 THE WITNESS: -- and I said yes, I have never filed

1 a complaint. I have never -- I have never --

2 MS. ISSO: She pushed him.

3 THE WITNESS: Yeah, she pushed me. That's what she
4 did.

5 MS. ROSENBLUM: So I think he already started to
6 answer my questions.

7 THE WITNESS: Okay. There's -- but I've never
8 bought allegations. I've never contacted any -- I never
9 contacted law enforcements. I've never -- that's not what I
10 do. I don't -- I don't hit women. I don't -- I never -- I've
11 never engaged in violence but the fact is yes, when she didn't
12 want me to be in my -- at her house and I wanted to stay and
13 spend time with Ava and with -- with herself, she pushed me
14 several times. She also screamed at me, kicked me out of the
15 house. I -- I would call that em -- emotional abuse. I would
16 not call it domestic violence.

17 I don't think it always is -- is a -- I -- I never
18 alleged that she's a -- she's a -- a violent person. I never
19 alleged that. That's not -- that's just not what it is.

20 BY MS. ROSENBLUM:

21 Q Mr. Shapiro, prior to these proceedings, and I'm
22 talking about trial, did you ever document Nechole pushing you
23 or shoving you as you've described anywhere?

24 A I told my brother. My brother actually testified in

1 Dr. Bergquist's report that she kicked me out of the house
2 multiple times when we were together. Yes. My brother knew
3 about it. My brother will -- actually was the one to warn me
4 to not to be with her, but I did not listen.

5 MS. ROSENBLUM: I don't have anything further,
6 Judge.

7 THE COURT: Okay.

8 MS. ISSO: I have no questions. Hold on. Wait
9 until the Judge tells you.

10 THE WITNESS: Oh, sorry.

11 MS. ISSO: Should we do our closing arguments now?

12 THE COURT: You're going to call your witn -- your
13 client?

14 MS. ROSENBLUM: I'm going to call my client and
15 redirect --

16 THE COURT: Okay.

17 MS. ROSENBLUM: -- just briefly.

18 THE COURT: Let me give you what you have left. Ms.
19 Isso, again, you still have 39 minutes.

20 MS. ROSENBLUM: All right.

21 THE COURT: 17 -- you're down to 58 minutes.

22 MS. ROSENBLUM: Yeah. It'll go quick.

23 NECHOLE GARCIA

24 called as a rebuttal witness on her own behalf, having been

1 previously sworn, testified upon her oath as follows on:

2 DIRECT EXAMINATION

3 BY MS. ROSENBLUM:

4 Q Nechole, you heard Mr. Shapiro's testimony that he
5 gave you \$2,000 a week before Ava was born. Do you agree with
6 that?

7 A \$2,000 a week? No.

8 Q No. No. The week before --

9 A Oh, the week before Ava was born.

10 Q Correct.

11 A He did give me \$2,000 at some point prior to her
12 birth because I had asked him to contribute.

13 Q And do you believe that that -- that that was for
14 her, her expenses? What did you believe that means?

15 A In that particular instance, I do believe that money
16 was for -- I -- I told him I was going to be going on
17 paternity leave and I wanted some financial help. So I do
18 believe it was to help with expenses while I was on maternity
19 leave.

20 Q Okay. I've included as Exhibit G -- or I'm sorry,
21 we have included as Exhibit G. If you can tell the Court what
22 these are.

23 A Yes, this is documentation for all of the medical
24 expenses that I've paid for Ava since birth.

1 Q And --
2 MS. ISSO: Which exhibit?
3 MS. ROSENBLUM: G. I'd ask for this exhibit to be
4 admitted.
5 MS. ISSO: Your Honor, we're going to obj -- did you
6 ever -- wait, hold on.
7 (COUNSEL AND CLIENT CONFER BRIEFLY)
8 MS. ISSO: I mean, Your Honor, considering this goes
9 back how many years, three years, the parties were living
10 together at one point.
11 THE COURT: I --
12 MS. ROSENBLUM: The --
13 THE COURT: Listen, I don't know that I'm going to
14 award any or part of them.
15 MS. ISSO: And just so you know, she never asked him
16 to pay any of these. This is the first time --
17 MS. ROSENBLUM: This is --
18 MS. ISSO: -- I'm hearing --
19 MS. ROSENBLUM: -- the testimony --
20 THE COURT: Again --
21 MS. ROSENBLUM: -- Judge.
22 MS. ISSO: -- that she wants --
23 THE COURT: -- any --
24 MS. ISSO: -- reimbursement.

1 THE COURT: -- or -- any or part of them. And,
2 again, you can bring that up in -- the request is going to be
3 -- will be in the five page child support brief that you guys
4 -- or closing statements which will be separate.

5 MS. ISSO: We're going to --

6 THE COURT: But --

7 MS. ISSO: -- object because there's no custodian of
8 records.

9 MS. ROSENBLUM: There was never an objection laid --

10 THE COURT: Back --

11 MS. ROSENBLUM: -- as to authenticity.

12 THE COURT: -- to the objection. Unless you filed
13 an objection indicating that specifically.

14 MS. ISSO: You're going back three years for medical
15 records, but won't go back for three years of communications
16 between the parties?

17 MS. ROSENBLUM: Oh, for crying out loud. Okay.
18 This is my time.

19 THE COURT: It'll be admitted.

20 (DEFENDANT'S EXHIBIT G ADMITTED)

21 MS. ROSENBLUM: Thank you.

22 BY MS. ROSENBLUM:

23 Q Do you agree that Eugene gave you a check in June of
24 2020 for \$1900?

1 A He did but then he asked for it back once I ended
2 the relationship.

3 Q And did you give it back to him?

4 A Yes, I did.

5 Q And your testimony is he asked for it back?

6 A Yes.

7 Q Do you agree that Eugene has paid at least \$600 for
8 Ava?

9 A At least 600 total?

10 Q 600, yes.

11 A Yes.

12 Q And he paid for her acid reflux medication; is that
13 correct?

14 A He did for a few months. Yes.

15 Q Okay. As far as the -- the out-of-pocket expenses
16 though, you've been paying those; is that correct?

17 A That's correct.

18 Q With regard to Eugene's testimony that you're
19 uncooperative, I think we already covered all of that so I'm
20 just going to pass over it. Let's talk about the -- the
21 allegation of domestic violence. Do you agree with that
22 statement?

23 A I absolutely do not.

24 Q Have -- you agree you've kicked -- you've asked him

1 to leave your house. I guess he describes it as kicking him
2 out, but you've asked him to leave.

3 A I have when Eugene would sometimes try to pick
4 fights with me in front of Ava and I would tell him it wasn't
5 good for Ava and I asked him to leave if he -- if he couldn't
6 stop.

7 Q Did you ever put hands on him?

8 A I have never put my hands on Eugene in a violent
9 aggressive way.

10 Q Has he ever called the police on you?

11 A No.

12 Q Is this the first allegation or the first time
13 you're hearing of an allegation that you've somehow committed
14 a domestic battery?

15 A Yes.

16 Q Do you take that seriously?

17 A Extremely seriously.

18 Q And why is that?

19 A For several reasons. First, because it can impact
20 my time with Ava. I -- I think to to be that desperate and
21 that level of hostility and to make those accusations again
22 makes me concerned about his willingness to co-parent with me
23 and how that affects Ava. Also affects my reputation in the
24 community. It could affect my employment. It's like the

1 extremely serious allegations. And -- and they're also --
2 it's a -- it's a crime. What he's alleging is a crime. So I
3 can go to jail.

4 Q Again, you've heard the testimony about your mom.

5 A Yes.

6 Q Do you believe that she's physically capable of
7 watching your child?

8 A Yes, I do.

9 Q Do you -- can she get up and get down off the floor?

10 A Yes, she can.

11 Q Can she watch after a three-year-old?

12 A Yes, she can.

13 Q Does she have medical conditions? You heard his
14 testimony that prohibit her from being able to adequately care
15 for a child to your knowledge?

16 A No.

17 Q Does it remain your position today that you want to
18 keep the schedule all the way it is?

19 A Yes.

20 Q Does it remain your position today that you want the
21 holiday schedule -- or the adjustments to the holiday schedule
22 you've asked the Court for?

23 A Yes.

24 Q Based on all the testimony you've heard, does it

1 remain your position today that you're asking for a parenting
2 coordinator?

3 A Yes.

4 Q Does it remain your position today that you want to
5 be the primary -- well, we've already stipulated to that.
6 Does it remain your position today that you're asking for an
7 offset against child support for the out-of-pocket medical
8 expenses you incurred for Ava?

9 A Yes.

10 MS. ROSENBLUM: I don't have anything else, Judge.

11 MS. ISSO: I'll call Mr. Shapiro.

12 MS. ROSENBLUM: I thought she already called him
13 on --

14 MS. ISSO: For the --

15 MS. ROSENBLUM: -- redirect.

16 THE COURT: For what?

17 MS. ISSO: This is for the rebuttal for what she
18 just said.

19 MS. ROSENBLUM: Thought we've rebutted.

20 MS. ISSO: No, but I asked him and he said I can
21 call --

22 MS. ROSENBLUM: This could go on forever.

23 MS. ISSO: -- for the rebuttal. I double checked
24 before so.

1 THE COURT: She has 39 minutes. She has -- she has
2 the right to call rebuttal. I mean, the -- you've done yours.
3 She's briefly going to -- can't imagine -- can't be too long
4 because your client was only up there for three or four
5 minutes, so --

6 EVGENY SHAPIRO
7 called as a surrebuttal witness on his own behalf, having been
8 previously sworn, testified upon his oath as follows on:

9 DIRECT EXAMINATION

10 BY MS. ISSO:

11 Q Did Ms. Garcia ever ask you for reimbursement of any
12 medical expenses since the child was born?

13 A No.

14 Q No. And -- but did you still contribute?

15 A Yes, of course.

16 Q Okay. Let's look at Exhibit 4, 14, and 20. What
17 are those?

18 A I don't have them in front of me.

19 Q Those are the medical -- the -- the money that you
20 paid Ms. Garcia, correct?

21 A Yes.

22 Q And a list of the expenses that you paid for for the
23 child, correct?

24 A Yes, correct.

1 MS. ISSO: I move to admit those into evidence.
2 MS. ROSENBLUM: Hang on. I'm sorry. I would object
3 to 20.
4 MS. ISSO: For Ava's medical expenses.
5 MS. ROSENBLUM: I understand --
6 THE COURT: Hold --
7 MS. ROSENBLUM: -- but it's a handwritten I can
8 trace and then it's handwritten by the Plaintiff.
9 MS. ISSO: It's not handwritten. He --
10 THE WITNESS: I also --
11 MS. ISSO: -- typed up his --
12 THE WITNESS: - have receipts.
13 MS. ISSO: -- notes --
14 MS. ROSENBLUM: Typed up.
15 MS. ISSO: -- of -- of --
16 MS. ROSENBLUM: I'm sorry, it's a typed summary of
17 what -- it -- it's not evidence.
18 THE WITNESS: I have receipts --
19 THE COURT: It's --
20 THE WITNESS: -- for all of those that I submitted.
21 THE COURT: If you have receipts, then you can
22 submit re --
23 THE WITNESS: That -- some of the other files have
24 specific receipts. I have all of my --

1 MS. ISSO: Okay. So then 4 and 14 is admitted.
2 THE COURT: So 4 and 14.
3 MS. ROSENBLUM: Hold on. The same thing on 14.
4 It's the same thing. It's a list that the Plaintiff has
5 written of --
6 THE COURT: Okay. Then --
7 MS. ROSENBLUM: -- checks --
8 THE COURT: -- we're back --
9 MS. ROSENBLUM: -- given.
10 THE COURT: Again, Ms. Rosenblum, at the end of the
11 day I will take in consideration and give it its due weight.
12 Did you file an objection when you received it?
13 MS. ROSENBLUM: I just received it as part of their
14 trial --
15 THE COURT: Well, then --
16 MS. ROSENBLUM: -- exhibits.
17 THE COURT: -- it'll be untimely. That will be
18 untimely, right?
19 MS. ISSO: No, everything was timely that we did.
20 Everything was timely.
21 THE WITNESS: This was submitted --
22 THE COURT: When did you get -- when did you receive
23 it?
24 MS. ISSO: This is Exhibit number 14. We have over

1 7 --

2 THE WITNESS: That's --

3 MS. ISSO: -- 70 exhibits.

4 THE WITNESS: -- submitted last year.

5 MS. ISSO: This was way early in the --

6 MS. ROSENBLUM: Not the sun -- listen, I'm not going
7 to argue with the Plaintiff. I'm going to talk to you, Your
8 Honor. I've received bank records and documents from Counsel.

9 THE COURT: I'm talking about these specific ones.

10 MS. ROSENBLUM: These are a typed list by the
11 Plaintiff that summarized there's no attachment to it. It's
12 just a summary.

13 THE COURT: Okay.

14 MS. ROSENBLUM: I received them as part of their
15 trial exhibits.

16 MS. ISSO: No, all of our exhibits were given in
17 16.2 disclosure. This is number 14, way early in the case.
18 We're at like number 70 now.

19 THE WITNESS: That is absolutely correct. And many
20 of those there's also some -- there's receipts submitted.

21 MS. ROSENBLUM: It's fine.

22 MS. ISSO: So for --

23 MS. ROSENBLUM: I'll withdraw my objection. I'm
24 sure the Court will give it the weight it deserves.

1 THE COURT: Okay.

2 (PLAINTIFF'S EXHIBITS 4, 14, 20 ADMITTED)

3 THE WITNESS: I did not make anything up and if
4 anything --

5 MS. ROSENBLUM: Your Honor --

6 THE WITNESS: -- I -- it --

7 MS. ROSENBLUM: -- there's no --

8 THE COURT: Sir --

9 MS. ROSENBLUM: -- question pending.

10 THE COURT: -- there's nothing in front of you.

11 BY MS. ISSO:

12 Q What did you want to tell the Judge about the
13 holiday schedule?

14 A I would like the holiday schedule to remain the way
15 it is.

16 Q You mean you want it to be the default holiday
17 schedule.

18 A The default holiday schedule, yes.

19 Q Which is the Department's default holiday
20 schedule --

21 A Yes.

22 Q -- correct?

23 A I think that's a very good schedule and I'm -- I'm
24 very happy with that and gives each parent an opportunity to

1 spend time with Ava. I think it's wonderful. We have tried
2 to -- to reach common ground when I'm not able to. I think
3 that schedule is -- is a good -- is a good schedule. I want
4 Nechole to spend extended time with Ava on -- on the -- on
5 holidays and -- and so can I. It rotates. So it is very
6 fair.

7 MS. ISSO: You want to move to admit Exhibit 10
8 which is the receipts Eugene just spoke about?

9 MS. ROSENBLUM: I'm pretty sure the Court had
10 already denied that.

11 MS. ISSO: Did you deny --

12 THE COURT: I --

13 MS. ISSO: -- that? I don't recall.

14 THE COURT: I don't --

15 MS. ROSENBLUM: Yeah, these are the Walmart
16 receipts. Remember when we talked about those on Wednesday
17 and you were asking --

18 THE WITNESS: There's other --

19 THE COURT: Yeah, it had --

20 THE WITNESS: -- receipts.

21 THE COURT: -- nothing to do with --

22 THE WITNESS: I'm talking --

23 THE COURT: Yeah, it was his -- his testimony was
24 that those were receipts where he cooked for the family, where

1 he --

2 MS. ROSENBLUM: For food.

3 THE COURT: -- cooked for this --

4 BY MS. ISSO:

5 Q Yeah, but there's --

6 THE COURT: -- where he cooked --

7 Q -- also things --

8 THE COURT: -- for that --

9 Q -- that --

10 THE COURT: -- where he cooked --

11 Q -- you bought for the child, right?

12 A Some of them were and there's also separate receipts
13 there where I put -- there's -- that I bought medicine, that I
14 -- that I give the checks, where those checks have been
15 submitted. Okay. So that list that she was talking about,
16 that's under the list where I started where it is. But all of
17 those expenses are documented. There's actual proof. That's
18 when I was -- was withdrawing money from the ATM. There's --
19 there's checks that I gave you -- gave her including that
20 check for -- for \$1900 that this check's --

21 MS. ISSO: Okay. Okay. Is that -- is that
22 admitted? I got to move on.

23 THE WITNESS: Okay.

24 THE COURT: No, I think it's previously moved to

1 admit it and I denied it. So --

2 MS. ISSO: Okay. Exhibit 22 is a list of -- move to
3 admit Exhibit Number 22 which is the list of the payments made
4 on -- it says Walmart Supercenter. I move to admit that.

5 THE PLAINTIFF: I don't know what it is.

6 MS. ISSO: And then Exhibit number 24 which is a
7 PayPal transaction history. How much time do I have left,
8 please?

9 THE COURT: 32 minutes.

10 MS. ISSO: And then Exhibit 7 is the picture of a
11 humid -- humidifier that he purchased for the child. I want
12 to move to admit that too.

13 THE COURT: I'm sorry?

14 MS. ISSO: So the exhibits that I just mentioned and
15 then Exhibit also number 7. Move to admit.

16 THE COURT: Apparently it's a receipt for a
17 humidifier.

18 MS. ISSO: Not just that one. It was the other ones
19 I just mentioned too. 10, 11, I think, 13, 22, 24, which is
20 receipts --

21 MS. ROSENBLUM: 10, 11 now?

22 MS. ISSO: -- and things that -- things that he
23 spent money on.

24 MS. ROSENBLUM: So 10 the Court -- whatever. I --

1 all of it. Fine.

2 THE COURT: Okay.

3 MS. ROSENBLUM: Admit it all. I'm sure the Court
4 will give it the weight --

5 THE COURT: All the ones she just mentioned,
6 correct?

7 MS. ROSENBLUM: Uh-huh.

8 THE COURT: So let's clarify, Madam Clerk. Will you
9 clarify those --

10 THE CLERK: So --

11 THE COURT: -- with the 4 --

12 THE CLERK: -- after --

13 THE COURT: -- 14, 20 --

14 THE CLERK: I got 10, 11, 13, 22, 24, and then we
15 said 7 also, right?

16 MS. ISSO: Yes, please. And then 4, 14, 20, right?

17 THE CLERK: Yeah, 4, 14, and 20 I got.

18 (PLAINTIFF'S EXHIBITS 7, 10, 11, 13, 22, 24 ADMITTED)

19 MS. ROSENBLUM: Yeah, I don't care.

20 BY MS. ISSO:

21 Q Anything else you want to tell the Judge, Eugene?

22 A I just wanted to mention about Dr. Gaspar regarding
23 the (indiscernible) what he said and his testimony. I mean,
24 Dr. Gaspar obviously doesn't -- doesn't remember every

1 patient. He's a -- he's a great doctor and I'm -- we're very
2 fortunate to -- to have him, but he did tell me that the --
3 the OT and CCSDs were only recommended private -- private OT
4 which is -- which is what we did. I also was not -- because
5 it was an assessment. When I was in the room, I was not -- he
6 told me not to talk to Ava and -- and so I was -- I was just a
7 silent participant. So in terms of as I'm the only person
8 here -- well, I'm not sure actually as I'm not going to say
9 that. But as a person who's trilingual himself, okay, it's
10 very -- it's very, very different from a person with one
11 language. And so they -- they -- you know, estimations of
12 parents differ be -- because Ava -- many -- many words that
13 she -- she knows in both languages.

14 And of course I -- in that -- during that assessment
15 I -- I was just sitting there and watching Dr. Gaspar was the
16 -- here's an example. Ava knows how to stack blocks. In
17 fact, there's a video that was submitted to TMG to Amber
18 Harris, you know, when she does that. But during the
19 assessment, she did not do that. So he -- she was
20 inconsistent according to him which -- which is true. I -- I
21 agree with that.

22 But in no way have I overestimated Ava's progress.
23 Ava is a bilingual child. And she's -- and she's as such,
24 she even -- the Defendant mentioned that she doesn't speak

1 Russian at the house but I know that not to be true because I
2 have heard that advice from the -- from the RBTs.

3 And then finally I just wanted to address a couple
4 of things that the Defendant said on Wednesday. The first one
5 was that she said that she -- she -- I -- I agree completely
6 with her; this is very stressful for both of us. She
7 mentioned something about that she -- she is heartbroken and
8 -- and depressed that Ava is not going to -- to -- what --
9 what she wants her to -- when -- what she envisioned her to do
10 and I -- I do not agree with that completely. Autism is a
11 spectrum and on autism spectrum people like Mozart and
12 Einstein and Bill Gates and -- and Steve Jobs and Jerry
13 Seinfeld.

14 In fact, Heather Tauchen that testified on Wednesday
15 said that many autistic parents have bumper stickers saying my
16 child doesn't have autism, my child has magic powers. And
17 when Judge himself was talking about, you know, empathizing
18 with both of us in talking about his own daughter.

19 So I don't believe that in a second. I don't think
20 that's the -- the way I would encourage the Defendant to look
21 on the bright side. Ava is extremely smart and she has just
22 my point of view of -- of -- great opportunity to become a
23 wonderful singer and she has a great opportunity -- she is
24 great with numbers. I mean, all of the people I just

1 mentioned, what would world be without people like that? And
2 for those of you who don't know who Temple Grandin is, I -- I
3 encourage you to Google that -- that person. She is a -- an
4 animal scientist professor at the Colorado State University in
5 and one of the 10 leading educators -- college educators in
6 the country and -- and designs we use to build half of the
7 animal facilities in this country. She was born level three
8 autism, level three nonspeaking individual and she's a
9 professor at college. And we -- in our quest to find an
10 expert, Ms. Isso and I talked to many specialists and we
11 talked to an attorney who herself had a child with autism that
12 is now in college, also level three nonspeaking.

13 So I would encourage positive thoughts, we -- that
14 there's no -- I'm not denying what -- what Ava has, but we
15 would not be where we are if we didn't have people like that.
16 And Ava is a special individual. I'm going to get her all the
17 -- all the help she needs. And I am committed to working with
18 the Defendant.

19 THE COURT: All right. At that point, I'm cutting
20 -- it's narrative at this point. All he's doing is rambling.

21 MS. ISSO: That was -- that was very touching,
22 Eugene. Thank you so much for sharing that.

23 THE COURT: Thank you.

24 MS. ISSO: We're ready to do our closing arguments.

1 THE COURT: I'm going to have you do written
2 closings, Ms. Isso.

3 MS. ISSO: Well, I still have time.

4 THE COURT: The Court has the -- I'm sorry?

5 MS. ISSO: We still have time to do it. It's 3:32.

6 THE COURT: I have the right and to have you do
7 closings. I'm going to have -- particularly have you do
8 closings, five page maximum, on child support.

9 MS. ISSO: Only on child support?

10 THE COURT: Child support, if you're asking for
11 arrears, et cetera. And that includes the adjustments. If
12 you're going to argue adjustments, argue the adjustments under
13 NAC 425.150. If you want to combine them together, that's
14 fine. I don't care if they want to be two separate. They're
15 going to be due the same day. Up to 10 pages on what you want
16 specifically; hours, days, times, holidays, as far as your
17 parenting schedules since those are the two issues that still
18 remain.

19 MS. ROSENBLUM: And why.

20 THE COURT: I'm sorry?

21 MS. ROSENBLUM: And why.

22 THE COURT: And why, yeah. Well, yeah, you're going
23 to want to argue why.

24 MS. ROSENBLUM: Right.

1 THE COURT: Right?

2 MS. ISSO: And how about --

3 THE COURT: It's closing.

4 MS. ISSO: -- how about attorney's fees and costs?

5 THE COURT: I'm sorry?

6 MS. ISSO: Attorney's fees and costs. No, right?

7 THE COURT: Those come subsequently if I -- as I've

8 indicated before you need to watch the time parameters on the

9 costs and it -- the -- when the time ticks, but that's to be

10 filed after the decision's been entered pursuant to NRCP 54.

11 And I forget what the rule is on costs. I think it's NRS 11

12 something.

13 MS. ISSO: And then --

14 THE COURT: Okay?

15 MS. ISSO: -- when is this due, the closing brief?

16 THE COURT: Oh, I'll give you the -- well, I'll ask

17 you guys because you're both -- I know you are both busy

18 attorneys. So I don't want to hamstring you. It's 10 pages

19 single spaced and five pages single spaced.

20 MS. ISSO: So those are two different -- one for

21 child support and one for custody or those going to be

22 combined in one?

23 THE COURT: You can staple it together. I don't

24 care --

1 MS. ISSO: So --
2 THE COURT: -- how.
3 MS. ISSO: -- 15 pages total?
4 THE COURT: Right. Five pages child support -- you
5 don't have to again use them all.
6 MS. ISSO: Okay.
7 THE COURT: And then that's going to start my clock.
8 And I will give myself under the rule up to 21 days but I can
9 assure you I have never taken that long to -- to get the
10 decision done. So if I go one week, if I go -- they are due
11 by the close of business next Friday. Is that sufficient?
12 No?
13 MS. ROSENBLUM: I already have another --
14 MS. ISSO: What's the --
15 THE COURT: See, and that's --
16 MS. ISSO: -- question?
17 THE COURT: -- why I asked.
18 MS. ROSENBLUM: And there's a holiday in there.
19 MS. ISSO: What's the question?
20 THE COURT: What's that?
21 MS. ISSO: What's your question?
22 THE COURT: She wanted more time than a week.
23 MS. ISSO: What about the current holidays? What's
24 going on right now? Is it the default holiday schedule?

1 THE COURT: For right now --
2 MS. ROSENBLUM: The schedule --
3 THE COURT: -- until I --
4 MS. ROSENBLUM: -- is the schedule.
5 THE COURT: -- order otherwise, it'll be the
6 default. The only thing coming up is Thanksgiving anyway. So
7 this will be addressed before Christmas. So two weeks, Ms.
8 Rosenblum?
9 MS. ROSENBLUM: I mean, I'm -- I would be fine to get
10 it to you on the -- by the 15th. I just -- I just -- the --
11 the -- there's Veteran's Day in there. If I can just have
12 through that weekend, that would be --
13 THE COURT: Are you okay with the 15th which is a
14 Monday, Ms. Isso?
15 MS. ISSO: Because this --
16 THE COURT: That would be --
17 MS. ISSO: -- this --
18 MS. ROSENBLUM: That's 10 days.
19 MS. ISSO: I -- I don't know. I just -- I
20 probably --
21 THE COURT: That -- that would be fine.
22 MS. ISSO: I think -- I think I just need two weeks.
23 Let's just make it the --
24 MS. ROSENBLUM: That's fine. Then the 19th. That's

1 -- yeah.

2 THE COURT: Okay. Then the 21 will start from
3 there. Again, I will guarantee it's not going --

4 MS. ISSO: So the 19th.

5 THE COURT: -- to take that long after I receive
6 them and I review them.

7 MS. ROSENBLUM: I'll make sure it's filed timely.

8 THE COURT: It -- it has to be filed on -- on that
9 day.

10 MS. ISSO: The 19th?

11 THE COURT: I'm sorry?

12 MS. ISSO: The 19th?

13 THE COURT: Yes.

14 MS. ROSENBLUM: Yeah.

15 THE COURT: And then the matter will be taken under
16 advisement for the -- up to 21 days after that.

17 MS. ROSENBLUM: And Judge, you'll issue a -- a
18 written or are we going to come back in for it?

19 THE COURT: A written decision.

20 MS. ROSENBLUM: A written decision.

21 MS. ISSO: So how does this work? We do our brief,
22 they do theirs, and we do a --

23 MS. ROSENBLUM: No.

24 MS. ISSO: -- reply.

1 THE COURT: No. No.

2 MS. ROSENBLUM: No.

3 THE COURT: No. They are to be --

4 MS. ROSENBLUM: They're blind briefs --

5 THE COURT: -- submitted the --

6 MS. ROSENBLUM: -- submitted.

7 THE COURT: -- same day. That's why -- listen, to

8 be candid with you, if -- if -- I'm sure you guys have done

9 this before. If you want to sit around and wait to see if the

10 other one pops before you want to make any comments, that's up

11 to you. It just needs to be typed, stamped. I don't care if

12 it's 11 --

13 MS. ISSO: By what time?

14 THE COURT: -- 59 --

15 MS. ISSO: By 5:00 p.m.

16 THE COURT: -- on --

17 MS. ISSO: 5:00 p.m. --

18 THE COURT: -- November --

19 MS. ISSO: -- on the 19th?

20 MS. ROSENBLUM: 11:50 --

21 THE COURT: Well --

22 MS. ROSENBLUM: Listen.

23 MS. ISSO: Wait.

24 THE COURT: You guys let me know. Either by

1 midnight or 5:00. I don't care.

2 MS. ISSO: 5:00 p.m.

3 MS. ROSENBLUM: I don't care.

4 THE COURT: 5:00 p.m.

5 MS. ISSO: And then --

6 MS. ROSENBLUM: 5:00 p.m.'s fine.

7 THE COURT: File it 4:59 if you would like, but it's

8 got to have -- if you for some reason don't want the other

9 side to see what you're filing, there you go.

10 MS. ISSO: Thank you, Your Honor.

11 THE COURT: All right. I guess we'll be in -- in

12 recess.

13 THE PLAINTIFF: Thank you.

14 MS. ISSO: Thank you. Have a --

15 THE COURT: You guys --

16 MS. ISSO: -- nice day.

17 THE COURT: -- have a good day.

18 MS. GARCIA: Thank you.

19 THE COURT: If you want to again let my Marshal know

20 what you're going to do with your boxes if you're going to

21 have a runner come pick them up, if you're going to take

22 them --

23 MS. ROSENBLUM: Oh.

24 THE COURT: -- whatever you --

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MS. ROSENBLUM: Yeah.

(PROCEEDINGS CONCLUDED AT 2:37:25)

* * * * *

ATTEST: I do hereby certify that I have truly and
correctly transcribed the digital proceedings in the above-
entitled case to the best of my ability.



Adrian N. Medrano