

KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

SARAH JANEEN ROSE,
Appellant,
vs.
DAVID JOHN ROSE,
Respondent.

Electronically Filed
Jul 13 2022 05:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
CASE NO. 84295
District Court Case No:
D547250

JOINT APPENDIX

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Volume II - (Bates Stamps APPX0251 - APPX0471)
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RACHEAL H. MASTEL, ESQ.

Nevada Bar No. 11646

Kainen Law Group, PLLC

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

Tel: (702) 823-4900

Fax: (702) 823-4488

Email: service@kainenlawgroup.com

SHELLEY LUBRITZ, ESQ.

Nevada Bar No. 5410

Law Office Of Shelly Lubritz, PLLC

375 E. Warm Springs Road, #104

Las Vegas, Nevada 89119

Tel: (702) 833-1300

Fax: (702) 442-9400

Email: shelley@lubritzlawoffice.com

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

LIST OF APPENDIX DOCUMENTS

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3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
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3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
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AFFIRMATION

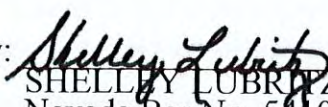
(Pursuant to NRS 239B.030)


The undersigned does hereby affirm that the preceding documents filed in the above-referenced matter does not contain the social security number of any person.

DATED this 13 day of July, 2022.

Law Office of Shelley Lubritz,
PLLC

Kainen Law Group, PLLC

By: 
SHELLEY LUBRITZ, ESQ.
Nevada Bar No. 5410
Attorney for Respondent

By: 
RACHEAL H. MASTEL, ESQ.
Nevada Bar No. 11646
Attorney for Appellant

KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of July, 2022, I caused to be served the *Joint Appendix* to all interested parties as follows:

___ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:


___ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

___ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

shelley@lubritzlawoffice.com

daverose08@gmail.com


An Employee of
KAINEN LAW GROUP, PLLC

FILED *Steven D. Grierson*

AUG 18 2020

Steven D. Grierson
CLERK OF COURT

1 TRANS

2 **COPY**

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

9 DAVID ROSE,

10 Plaintiff,

11 vs.

12 SARAH ROSE,

13 Defendant.

CASE NO. D-17-547250-D

DEPT. I

(VOL. I)

14
15 BEFORE THE HONORABLE CHERYL B. MOSS
DISTRICT COURT JUDGE

16 TRANSCRIPT RE: ALL PENDING MOTIONS

17 MONDAY, JANUARY 27, 2020

18 APPEARANCES:

19 The Plaintiff:
20 For the Plaintiff:

DAVID ROSE
SHELLEY LUBRITZ
324 E. Warm Springs Road,
Suite 104
Las Vegas, Nevada 89119

22 The Defendant:
23 For the Defendant:

SARAH ROSE
RACHEAL MASTEL
3303 E. Novat Street,
Suite 200
Las Vegas, Nevada 89129

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D-17-547250-D ROSE v. ROSE 01/27/2020 TRANSCRIPT
VERBATIM REPORTING & TRANSCRIPTION, LLC (520) 303-7356

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1 LAS VEGAS, NEVADA

MONDAY, JANUARY 27, 2020

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

3 (THE PROCEEDINGS BEGAN AT 1:50:57)

4
5 THE COURT: Case D-547250, David and Sarah Rose.
6 Counsel, your appearances and your Bar numbers.

7 MS. LUBRITZ: Good afternoon, Your Honor, Shelley
8 Lubritz, 5410, on behalf of Plaintiff.

9 THE COURT: Thank you.

10 MS. MASTEL: Good afternoon, Your Honor, Racheal
11 Mastel, Bar Number 11646 on behalf of the Defendant, Sarah
12 Rose, who is present.

13 THE COURT: Duly noted. You both are retained as
14 always, right?

15 MS. LUBRITZ: Yes, Your Honor.

16 MS. MASTEL: Yes, Your Honor.

17 THE COURT: Okay. So, we have -- we should address
18 your motion to continue trial due to a pending Supreme Court
19 opinion or decision that may go down. And we'll take it from
20 there. So --

21 MS. MASTEL: Okay.

22 THE COURT: I read your brief. Anything new or
23 anything you wanted to highlight in your motion? And I did
24 get Ms. Lubritz's opposition. It wasn't mandatory, but you

1 got one in like January 24th.

2 MS. LUBRITZ: On Thur --

3 THE COURT: Friday?

4 MS. LUBRITZ: Yes, Your Honor.

5 THE COURT: So, that came up -- that came through on

6 the weekend, I don't know if you had a chance to review it,

7 Ms. Mastel.

8 MS. MASTEL: I had a brief chance to review it, Your

9 Honor.

10 THE COURT: We work with what we have. Okay. So,

11 yes, tell me about this Supreme Court decision pending.

12 MS. MASTEL: Well, the Peterson case is pending.

13 Ms. Lubritz is right, Mr. Willick is the counsel on that case.

14 The specific dec -- issue being decided are both challenges to

15 the law set forth in Wolff and Henson which are the only two

16 cases Nevada has, I'm sure this Court is aware of.

17 THE COURT: I've had my share of Willick arguments

18 on Wolff and Henson and --

19 MS. MASTEL: Right.

20 THE COURT: -- Taylor and Coka -- not -- oh, God,

21 Doan.

22 MS. MASTEL: Yeah.

23 THE COURT: Doan probably even sometimes comes into

24 play.

1 MS. MASTEL: And --
2 THE COURT: What's that Peterson case is a public
3 record?
4 MS. MASTEL: It is --
5 MS. LUBRITZ: It is.
6 MS. MASTEL: -- Your Honor.
7 THE COURT: Okay. So, what's --
8 MS. MASTEL: It is currently --
9 THE COURT: -- that one about?
10 MS. MASTEL: -- briefed. Peter --
11 THE COURT: Is that a Metro officer also?
12 MS. MASTEL: I believe it is about military
13 survivorship, but it is about the same effectively kind of
14 pension and the survivorship options. The purpose of the case
15 is to address with the Court the issues with Wolff and Henson
16 and the presumptions that the Supreme Court made in issuing
17 those decisions as to how survivorship incurs and military
18 cases work as to whether or not those are independent or
19 pieces of community property that need to be addressed.
20 As this Court I'm sure is aware Hen -- the Wolff
21 case presumed that when you divided a retirement, you would
22 have two independent separate retirements under PERS that
23 existed, one for each party. The Henson case took that
24 further and presumed that there was no reversion of

1 survivorship if the non-employee spouse pre-deceased the
2 employee spouse. Those are not in line with PERS, and that's
3 part of what Mr. Willick has briefed as well as the idea that
4 the survivorship is part of community property. The decision
5 in that case will ultimately, frankly decide this case is my
6 expectation. The Court is aware, en banc oral argument is not
7 set for a case that the Court is going to dismiss under a non-
8 published opinion.

9 THE COURT: How long has it been pending in the
10 Supreme Court?

11 MS. MASTEL: I don't know the specific date it was
12 filed. Mr. Willick will know and he is intended to appear
13 today.

14 THE COURT: Just on --

15 MS. LUBRITZ: May of '19 --

16 THE COURT: -- that note, do you know --

17 MS. LUBRITZ: May of 2000 and --

18 THE COURT: -- how long it's been --

19 MS. LUBRITZ: May of 2019. So, it's less than a
20 year.

21 MS. MASTEL: It's set for --

22 THE COURT: It could be a while.

23 MS. MASTEL: It's set for oral argument February
24 10th.

1 THE COURT: Really?

2 MS. MASTEL: It's already been set, it's already
3 going forward. As I'm sure this Court is also aware, the
4 Supreme Court now that we have a Court of Appeals issuing
5 decisions substantially quicker, I don't expect this case to
6 sit pending for a very long time.

7 But candidly, the outcome of this case is going to
8 have a direct impact on this case and in the interest of
9 judicial economy if this Court goes forward today. And I'm
10 sure Ms. Lubritz would say the same thing, if this decision
11 comes down, one of us or the other of us is probably going to
12 end up filing under NRCP 60(b)(6) out of the -- the new
13 section as justice --

14 THE COURT: So, in other words --

15 MS. MASTEL: -- requires.

16 THE COURT: -- you don't want to do double work?

17 MS. MASTEL: Right.

18 THE COURT: Which is a --

19 MS. MASTEL: And I don't want the Court to have to
20 do double work. I mean it's possible that this decision will
21 come down and it'll be clear enough that this case can be
22 resolved without a trial.

23 THE COURT: Any other pros and cons of why you want
24 this trial continued? Is there any prejudice to either party?

1 MS. MASTEL: I don't believe so, Your Honor.
2 Mr. Rose is nowhere near retirement. You know, there's --
3 everything's been done, we're just hoping for a -- a decision
4 from the Supreme Court that I think will resolve this case.
5 Again, Mr. Rose isn't going to retire any time soon, we're
6 nowhere near eligibility for PERS to start paying out. So --
7 I mean it's not like this case is going to sit 30 years
8 necessary for him to retire, it's going to sit a few more
9 months.

10 Well, it'll take us to about a year. I believe the
11 original decree was filed in April 2019.

12 THE COURT: April --

13 MS. LUBRITZ: 2018.

14 THE COURT: -- 11th, 2018.

15 MS. MASTEL: I apologize, April 2018.

16 THE COURT: Okay.

17 MS. MASTEL: You know, so this isn't going to sit
18 forever. It's going to sit another couple of months, and it
19 is going to sit for the purpose of getting clear direction
20 from the Supreme Court which will rid this from having to be
21 heard a second time on the exact same issues.

22 THE COURT: And that was a Department P case. It's
23 Judge Pomrenze.

24 MS. MASTEL: Yes.

1 THE COURT: Okay. Very good. All right. So, let
2 me switch over to Ms. Lubritz --
3 MS. LUBRITZ: Thank you.
4 THE COURT: -- and ask her what she believes Dad's
5 position should be on this.
6 MS. LUBRITZ: A couple of things if I may, first of
7 all, please don't presuppose. My client may not work another
8 20 or 30 years there.
9 THE BAILIFF: (Indiscernible)
10 MS. LUBRITZ: Oh, it's for me. Thank you, I
11 appreciate it. A few things I need to touch upon.
12 THE COURT: How long's he been with the force?
13 MR. ROSE: I'm coming up to 12 years, Your Honor.
14 THE COURT: Twelve?
15 MR. ROSE: But we've divorced for almost three
16 years.
17 THE COURT: Okay.
18 MS. LUBRITZ: Okay? When file -- case was filed --
19 THE COURT: Right.
20 MS. LUBRITZ: -- almost three years ago.
21 THE COURT: Okay.
22 MS. LUBRITZ: And he only -- he was not in Metro the
23 entire time that they were married. He didn't --
24 THE COURT: Mmm.

1 MS. LUBRITZ: -- get into Metro and -- and go down
2 that route until a couple of years into the marriage.
3 THE COURT: Well, I'm curious as --
4 MS. LUBRITZ: He was very, very young.
5 THE COURT: They brought up the Peterson case, I
6 assume you went and looked in that case?
7 MS. LUBRITZ: I did.
8 THE COURT: Okay. What'd you find out in that case?
9 MS. LUBRITZ: Well --
10 THE COURT: Does it need -- are we apples and
11 apples, apples and --
12 MS. LUBRITZ: Okay.
13 THE COURT: -- oranges?
14 MS. LUBRITZ: A couple of things if I -- if I might
15 just start with a couple of procedural things, and then I'm
16 happy to make those --
17 THE COURT: Sure.
18 MS. LUBRITZ: -- answer those questions.
19 THE COURT: Sure.
20 MS. LUBRITZ: Ms. Mastel made it very clear on the
21 front page of her motion to continue that it was --
22 THE COURT: Uh-huh (affirmative).
23 MS. LUBRITZ: -- a first request for the defense,
24 it's not. It's the second request.

1 MS. MASTEL: Your Honor, and I will apologize --
2 MS. LUBRITZ: I'm sorry, Judge --
3 MS. MASTEL: -- for a couple --
4 MS. LUBRITZ: -- I didn't do this.
5 MS. MASTEL: -- of typos.
6 THE COURT: She just wants to --
7 MS. LUBRITZ: No, I didn't interrupt her. She does
8 this all the time. I'd like to have --
9 THE COURT: You can save --
10 MS. LUBRITZ: -- I'd like to be heard.
11 THE COURT: -- it to when she's done.
12 MS. MASTEL: Okay.
13 THE COURT: Yeah, and you --
14 MS. LUBRITZ: Thank you.
15 THE COURT: -- can make your record, too,
16 Ms. Mastel.
17 MS. LUBRITZ: Thank you. So --
18 THE COURT: Okay. Noted.
19 MS. LUBRITZ: This is actually her second request to
20 -- to --
21 THE COURT: Okay.
22 MS. LUBRITZ: -- to move on this particular issue,
23 okay? The first one came --
24 THE COURT: On the issue or a trial continuance?

1 MS. LUBRITZ: Trial continuance.

2 THE COURT: Okay.

3 MS. LUBRITZ: This case has been continued three
4 times, okay? It's going to be four if we do this. It's
5 pending 21 months. This single issue has been going on for 21
6 months. She had two con -- well, this would be her second
7 request to continue.

8 THE COURT: Uh-huh (affirmative).

9 MS. LUBRITZ: When I first came in, I was ready to
10 go but Ms. McConnell was not. Ms. McConnell is the one who
11 participated in the mediation and in the drafting -- in the
12 signing of the decree.

13 THE COURT: Right.

14 MS. LUBRITZ: So, she had to be there.

15 THE COURT: Okay.

16 MS. LUBRITZ: And then, you know, as you know we
17 came on the 23rd of October. Now, in her motion Counsel
18 asserts and alleges that it was my motion in limine which
19 required the continuance in October. That is patently false.
20 The reason why we couldn't go forward is we were a stack-two
21 case and your stack-one went forward. So, there are multiple
22 misrepresentations, misstatements contained within the -- in
23 the motion.

24 Now, let's get to the what-ifs. What if -- let me

1 back up. Counsel says -- respectfully, Counsel says that,
2 well, if it's en banc, they're probably going to make a
3 monumental decision number one. Counsel states, well, there
4 are -- it's only going to take a month or two. That's in her
5 motion, it's only going to take a month or two for the Supreme
6 Court of Nevada to issue its decision. Now, she says, well,
7 it's -- it's not going to sit very long. Well, all we have is
8 what if, what if, what if.

9 Three years ago when the complaint for divorce was
10 filed, the law that exists right now is the law that existed
11 then. Twenty-one months ago when this issue arose, the law is
12 as it remains today. We're looking at forum shopping. That's
13 all that it is, is I don't like or I don't know what's going
14 to be happening over here but my expert witness who's going to
15 come in and testify in this case is also the one that's
16 representing Peterson in the appeal. Okay?

17 So, all we're going to do is just wait, wait, wait,
18 wait, wait. Because I'll tell you what, let's add another
19 what-if. What if the Nevada Supreme Court comes down with a
20 decision and somebody appeals that? Are we going to wait
21 then? This case needs to be resolved. It's very easy when
22 you're not paying attorney's fees. It's very simple to let
23 things going on and on and on. It's more difficult when this
24 guy's going into debt to pay fees.

1 And you asked about the Peterson case. It's a TSP.
2 THE COURT: I -- okay, I will --
3 MS. LUBRITZ: It's a --
4 THE COURT: -- tell both of you, I have not looked
5 at the Peterson case.
6 MS. LUBRITZ: Okay.
7 THE COURT: But I'm well familiar -- and Kilgore is
8 another one. That was mine.
9 MS. LUBRITZ: Absolutely.
10 THE COURT: And both parents appealed me in the --
11 MS. LUBRITZ: And you won. They -- they affirmed.
12 THE COURT: There's no winning or losing but they --
13 MS. LUBRITZ: Okay.
14 THE COURT: -- the Supreme Court --
15 MS. LUBRITZ: I know. It --
16 THE COURT: -- said I --
17 MS. LUBRITZ: -- was affirmed.
18 THE COURT: Yeah.
19 MS. LUBRITZ: And I read that very --
20 THE COURT: And that --
21 MS. LUBRITZ: -- carefully.
22 THE COURT: -- that was a -- a court -- a marshal, a
23 deputy marshal down at City of Las Vegas. But who was --
24 MS. LUBRITZ: Absolutely.

1 THE COURT: -- PERS employee and police are PERS.
2 Peterson's military, so we're just talking about, you know,
3 differences in PERS survivorship versus military survivorship.

4 And so -- well --

5 MS. LUBRITZ: Yeah.

6 THE COURT: -- it'll be interesting to see what that
7 decision. But my -- my question to you is --

8 MS. LUBRITZ: Yes, Judge.

9 THE COURT: -- I don't have a problem doing the
10 trial, I'm here everyday.

11 MS. LUBRITZ: Right.

12 THE COURT: We do the trial, okay, and I make a
13 decision --

14 MS. LUBRITZ: Yes, Judge.

15 THE COURT: -- and time-wise, first of all,
16 considering the -- well, I won't say magnitude of this case,
17 you think we're going to get done in a half day. If we don't
18 get done in a half day, I'll give you another half day and
19 present your case and then maybe another hour for closing
20 arguments. And then if you put it under advisement if you're
21 top of my list, I can usually knock it out in two weekends,
22 because I have -- that's where I write all my trial decisions.

23 MS. LUBRITZ: Right.

24 THE COURT: You'd have a decision and Peterson might

1 still not be done.

2 MS. LUBRITZ: But here's the --

3 THE COURT: Now --

4 MS. LUBRITZ: I'm sorry.

5 THE COURT: -- Peterson comes down and before -- and

6 it's tricky because if the Peterson becomes official law and

7 -- whether it favors one side or the other, do you end up

8 doing another trial, a motion to reconsider? A petition for

9 rehearing? It could still linger in the Supreme Court.

10 MS. LUBRITZ: Here's -- and I get that --

11 THE COURT: And --

12 MS. LUBRITZ: -- Your -- Judge.

13 THE COURT: -- if I say, well, I'm going to make a

14 decision, I don't have a problem making a decision, oh, but in

15 light of Peterson, now we have to do the whole trial over

16 again. Is that how it works in --

17 MS. LUBRITZ: Well, a couple --

18 THE COURT: -- you know?

19 MS. LUBRITZ: -- of things. And --

20 THE COURT: Yeah.

21 MS. LUBRITZ: -- again to ask -- to respond to your

22 earlier question, Peterson is about a TSP, a Thrift Savings

23 Plan --

24 THE COURT: It's a federal --

1 MS. LUBRITZ: -- in the military.
2 THE COURT: -- federal --
3 MS. LUBRITZ: That is akin --
4 THE COURT: -- thing.
5 MS. LUBRITZ: -- to a deferred compensation plan.
6 This case is about PERS. Well, I don't think it's about PERS,
7 but the account that we're speaking about is a PERS account.
8 It's -- it has nothing to do with the military. It is not
9 deferred comp --
10 THE COURT: Uh-huh (affirmative).
11 MS. LUBRITZ: -- like a TSP.
12 THE COURT: Uh-huh (affirmative).
13 MS. LUBRITZ: It is a PERS case. It is a -- it is a
14 pension matter.
15 THE COURT: Okay.
16 MS. LUBRITZ: That's not being addressed in
17 Peterson. I have read the opening brief and the appellate
18 brief -- the reply brief, I'm sorry.
19 THE COURT: Uh-huh (affirmative).
20 MS. LUBRITZ: The stuff in between I didn't care
21 about, I wanted to see honestly what Ms. -- what Mr. Willick
22 was arguing.
23 THE COURT: Sure.
24 MS. LUBRITZ: And there are a significant number of

1 holes there. I can tell you that as far as the length of this
2 trial, from my perspective I'm going to be short, because
3 there's not a whole lot that we need to resolve. PERS
4 shouldn't even come into it. This is not a PERS case in that
5 sense.

6 The case -- the question hinges on why was it in the
7 -- not in the MOU and just a couple of hours later all of the
8 sudden, poof, it appears in the decree of divorce. That's the
9 only thing that we have to discuss and that we have to try.

10 THE COURT: Ergo your 60(b). Right? It's a --

11 MS. LUBRITZ: I didn't file --

12 THE COURT: -- motion to --

13 MS. LUBRITZ: -- a 60(b). Okay? I -- I asked for
14 an --

15 THE COURT: It wasn't you.

16 MS. LUBRITZ: -- enforcement of the -- of the MOU.

17 And -- and, you know, one of the first things you said is it
18 comes down to contract law and absolutely. Because that's --
19 that's what we're looking at, meeting of the minds and -- and
20 consideration and everything else --

21 THE COURT: Okay.

22 MS. LUBRITZ: -- that's involved. What -- what to
23 me would be absolutely a miscarriage of justice. That's how
24 strongly I feel about it. A miscarriage of justice if after

1 21 months two requests by Counsel by the Defendant to continue
2 this case, after 21 months we -- we should -- this case should
3 have already been tried, done, dried, and put away. But
4 things just kept happening.

5 And if we sit there and say, well, wait a minute,
6 there's a case that's pending appeal and it might help us or
7 it might hurt us but it's pending appeal, I want to go ahead
8 and wait until it's resolved before we go any further. That's
9 -- that's forum shopping --

10 THE COURT: It isn't --

11 MS. LUBRITZ: -- that's not how you practice law.

12 THE COURT: Well, it wasn't -- technically, it
13 wasn't you. It was Regina McConnell that filed a motion to
14 set aside the paragraph regarding survivorship benefits --

15 MS. LUBRITZ: Right.

16 THE COURT: -- in the decree of divorce. So, it is
17 a 60(b).

18 MS. LUBRITZ: Well, I filed a motion to enforce, and
19 you said that the reason you couldn't -- you -- you were
20 denying it is because you felt like there needed to be an
21 evidentiary hearing so that you could listen -- take evidence
22 and listen to both sides. Which is exactly fine. It's
23 exactly what you can should do when you have those types of
24 questions.

1 But what we don't --

2 THE COURT: Okay.

3 MS. LUBRITZ: -- want to have lost in all of this
4 going back and forth, I don't want to get lost the fact that
5 he's been waiting 21 months. It's not like this case -- this
6 issue was -- arose three months ago. If it arose three months
7 ago, I'd be like, you know what, let's wait. It's not going
8 to be two months, she asked for a 90-day continuance. They're
9 not going to have an argument -- so 90 days from today,
10 they're not going to have I don't think argument, decision,
11 and everything else laid out in a nice little -- a nice little
12 package. And again what if somebody appeals that decision?

13 Right now since the parties' divorce was con -- was
14 filed three years ago, the law was as it is today. That's
15 what they should be trying it under. It shouldn't be grand-
16 fathered in. It -- it is truly a miscarriage of justice if we
17 can't get finality --

18 THE COURT: It's timing --

19 MS. LUBRITZ: -- right now today.

20 THE COURT: -- of my decision, too. If my decision
21 falls under the old law --

22 MS. LUBRITZ: Uh-huh (affirmative).

23 THE COURT: -- the decision's done, final. If a new
24 law supercedes, you don't go back retroactively.

1 MS. LUBRITZ: Thank you.
2 THE COURT: I think that's our duty here is to --
3 MS. LUBRITZ: Correct.
4 THE COURT: -- apply the current law as it is.
5 MS. LUBRITZ: No, because otherwise someone who had
6 primary physical custody and for someone on the other side of
7 primary physical custody --
8 THE COURT: Uh-huh (affirmative).
9 MS. LUBRITZ: -- so they're the visitation parent.
10 THE COURT: Yeah, the risk to both parents is we
11 don't know how Judge Moss --
12 MS. LUBRITZ: Exactly.
13 THE COURT: -- is going to decide this case.
14 MS. LUBRITZ: So, they're not going to suddenly come
15 up and say, oh, wait a minute, you have to go back, that order
16 you made a couple years ago --
17 THE COURT: No retroactive --
18 MS. LUBRITZ: -- you have to go back --
19 THE COURT: -- application.
20 MS. LUBRITZ: -- and it's retroactive. That's not
21 it.
22 THE COURT: And I'm not moti --
23 MS. LUBRITZ: And he will not --
24 THE COURT: -- well, I'm not motivated one way or

1 the other to see how fast I can do it or how slow --

2 MS. LUBRITZ: Right.

3 THE COURT: -- I can do it. I -- it's based on the
4 Court's schedule of when --

5 MS. LUBRITZ: And there would be no --

6 THE COURT: -- I can issue my decision.

7 MS. LUBRITZ: -- due process. My client will not
8 have due process under the Fourteenth Amendment of the
9 Constitution of the United States if we continue this matter
10 and go forward. Because I think it will --

11 THE COURT: Okay.

12 MS. LUBRITZ: -- be case-decided.

13 THE COURT: So, your --

14 MS. LUBRITZ: This is a case (indiscernible -
15 simultaneous speech).

16 THE COURT: -- your cons instead of pros -- well,
17 pros is you get a quick decision. Cons is delay was the
18 prejudice, uncertainty of the Supreme Court is a prejudice.
19 PERS versus TSP is not apples to apples, and it's -- and it's
20 not about survivorship interest. It's about basically a 60(b)
21 set aside whether or not there was --

22 MS. LUBRITZ: Whether there was fraud, mistake --

23 THE COURT: -- fraud --

24 MS. LUBRITZ: -- and everything else.

1 THE COURT: -- mistake, inadvertence, excusable
2 neglect.
3 MS. LUBRITZ: Right. And the only thing --
4 THE COURT: Okay.
5 MS. LUBRITZ: -- that I would ask --
6 THE COURT: Any other --
7 MS. LUBRITZ: -- and the last thing --
8 THE COURT: -- pros and --
9 MS. LUBRITZ: -- I would ask --
10 THE COURT: -- cons? The con -- the cons are for
11 them that I'm going to do potentially -- I don't know if it'll
12 work out that way or not, double work, you know --
13 MS. LUBRITZ: I think it --
14 THE COURT: -- what if we start this trial, and
15 boom, we get -- we're waiting on day two and then Peterson
16 hands down -- comes down, what is the Court's policy when the
17 new law goes into effect?
18 MS. LUBRITZ: And let me ask the Court if I may --
19 THE COURT: Yeah.
20 MS. LUBRITZ: -- when do you have your next half
21 day? Is it before February --
22 THE COURT: Well, I could tell you --
23 MS. LUBRITZ: -- 10th?
24 THE COURT: -- today, April 14th opened up because

1 they settled.

2 MS. LUBRITZ: Great.

3 THE COURT: Stack-one.

4 MS. LUBRITZ: Because we won't have a decision by

5 then.

6 THE COURT: Well, then if you time it right, then I

7 guess the -- day two could happen there.

8 MS. LUBRITZ: Right. But what I don't want to have

9 happen is they stretch it out --

10 THE COURT: Yeah.

11 MS. LUBRITZ: -- so that we have to have another

12 half day or something like this. This is a real quick, short

13 and dirty case.

14 THE COURT: And I don't think they're forum-

15 shopping, because they had no idea how the Supreme Court is

16 going to rule --

17 MS. LUBRITZ: Well --

18 THE COURT: -- on Peterson.

19 MS. LUBRITZ: -- but here's the problem --

20 THE COURT: It's -- for them --

21 MS. LUBRITZ: -- Mr. Willick --

22 THE COURT: -- it's a --

23 MS. LUBRITZ: -- Mr. Willick is the one who's

24 arguing the Supreme Court decision. That is their -- that is

1 who is their expert witness.

2 THE COURT: Uh-huh (affirmative).

3 MS. LUBRITZ: The other part that I have and why I'm

4 kind of -- I'm not thrilled about the timing of this motion --

5 THE COURT: Uh-huh (affirmative).

6 MS. LUBRITZ: -- is I looked at the -- the docket.

7 The decision or the -- the -- actually the notice of oral

8 argument --

9 THE COURT: Yeah.

10 MS. LUBRITZ: -- was issued the 27th of December.

11 THE COURT: Right.

12 MS. LUBRITZ: They didn't file their motion until

13 either the 14th or 15th of January.

14 THE COURT: Okay.

15 MS. LUBRITZ: Days before this trial. So, I've had

16 to divert my time away from --

17 THE COURT: I'm sure you did.

18 MS. LUBRITZ: -- trial preparation in order to get

19 this done, because it was done on (indiscernible) --

20 THE COURT: But you're ready --

21 MS. LUBRITZ: -- which I know I'm --

22 THE COURT: -- to stand trial today?

23 MS. LUBRITZ: I'm sorry?

24 THE COURT: You're ready to stand --

1 MS. LUBRITZ: I stand --
2 THE COURT: -- trial today?
3 MS. LUBRITZ: -- ready to go.
4 THE COURT: Okay.
5 MS. LUBRITZ: We were ready on the -- on the -- on
6 October 23rd.
7 THE COURT: So, let me switch back to Ms. Mastel,
8 she wants to place some things on the record or counter-argue.
9 Your pro is no double work, because you -- what we're in the
10 middle of trial, Peterson comes down, now you got to change
11 your strategy or start all over --
12 MS. MASTEL: Your Honor, here's --
13 THE COURT: -- and we've got -- we've had to do
14 double work? So, that's --
15 MS. MASTEL: Honestly, here's my bigger concern with
16 that.
17 THE COURT: Yeah.
18 MS. MASTEL: Ms. Lubritz stands here and says that
19 there's no grand-fathering in, we can't go back. First of
20 all, although, yes, this is partially about a TSP account,
21 there are also issues being addressed in that brief about the
22 general community property on the survivorship --
23 THE COURT: Can we stay on the grandfather?
24 MS. MASTEL: -- and specifically --

1 THE COURT: Are you both aware of any precedent or
2 case law that says we are in the middle of a trial and a
3 recent Supreme Court case comes down, becomes law unless it's
4 a petition --

5 MS. LUBRITZ: Well, that's diff --

6 MS. MASTEL: I --

7 THE COURT: -- for rehearing --

8 MS. LUBRITZ: -- if -- if it becomes law.

9 THE COURT: -- and should the Court apply --

10 MS. MASTEL: I --

11 THE COURT: -- the law?

12 MS. MASTEL: I am not, but what I am familiar with
13 is the U.S. Supreme Court's statement that if law is
14 overturned by the Supreme Court as being wrong or
15 unconstitutional --

16 THE COURT: The Trial Courts --

17 MS. MASTEL: -- then it is --

18 THE COURT: -- should --

19 MS. MASTEL: -- retroactive. So, if this -- if the
20 Nevada Supreme Court which by the way, the only appeal from an
21 en banc decision of the Nevada Supreme Court would be a
22 written certiorari to the U.S. Supreme Court --

23 THE COURT: Retro --

24 MS. MASTEL: -- so I think we can assume that's not

1 happening.

2 THE COURT: Retro if we are in the middle of a non-
3 finished case.

4 MS. MASTEL: I think it's either way. Because
5 here's the deal: If the Nevada Supreme Court comes down and
6 says we got it wrong in Wolff and Henson --

7 THE COURT: Uh-huh (affirmative).

8 MS. MASTEL: -- then Wolff and Henson are no longer
9 good law. And if this Court relies on its interpretation of
10 Wolff and Henson --

11 THE COURT: Ah.

12 MS. MASTEL: -- then --

13 THE COURT: It depends on the file date of my notice
14 of entry of findings of fact, conclusions of law.

15 MS. MASTEL: But the U.S. Supreme Court case law
16 says that --

17 THE COURT: Yeah, timing's everything.

18 MS. MASTEL: -- if -- if case -- if the case is
19 decided and the Supreme Court comes out with case law that
20 says that was not the law at the time it was done, then you do
21 have retroactive modification of orders under that and of --
22 and of things that existed.

23 THE COURT: I would just say I do my job, I -- I
24 issue my --

1 MS. MASTEL: Right.

2 THE COURT: -- decision and if --

3 MS. MASTEL: But --

4 THE COURT: -- want to ask --

5 MS. LUBRITZ: I'm sorry, Judge, I --

6 MS. MASTEL: I --

7 MS. LUBRITZ: -- can't hear you. We need to have a

8 clear record. And when Ms. Mastel speaks over you, I can't

9 hear you. And I think the Court --

10 THE COURT: Let's slow it down --

11 MS. LUBRITZ: -- reporter is going to --

12 THE COURT: -- down --

13 MS. LUBRITZ: Thank you.

14 THE COURT: -- Ms. Mastel, so -- yeah, no -- nothing

15 adverse on that. But -- what was I going to say? Okay. So,

16 let's say we do the trial, we -- we go through it quickly, I

17 can issue a decision within a weekend or two -- one or two

18 weekends, and then it's done and Peterson's still lingering

19 out there.

20 MS. MASTEL: And --

21 THE COURT: Now, it's up to you if -- if -- if

22 that's done, then Peterson changes the law, then you've got to

23 go back or research if there is any effect or I guess at the

24 mercy of the Supreme Court if they're -- they're going to let

1 you have the new law --

2 MS. MASTEL: It --

3 THE COURT: -- apply and that's what you meant by

4 retroactive.

5 MS. MASTEL: If Peterson invalidates the case law

6 upon which this Court makes its decision --

7 THE COURT: Uh-huh (affirmative).

8 MS. MASTEL: -- then I'm going to file --

9 THE COURT: You'll do everything --

10 MS. MASTEL: -- if we lose, I'm going --

11 THE COURT: -- obviously.

12 MS. MASTEL: -- to file to set aside that decision.

13 THE COURT: Uh-huh (affirmative).

14 MS. MASTEL: On the basis that there is a legal

15 error now.

16 THE COURT: And --

17 MS. MASTEL: I have to do that.

18 THE COURT: So, you want the Court's -- this Court's

19 guidance on, Judge, if you made a final decision, oh, look,

20 the new case law came down and so you need to make a decision

21 whether you're going to apply or not. And then that's the --

22 the fork in the road and I've got --

23 MS. MASTEL: Right.

24 THE COURT: -- to decide, no, my decision came down

1 before Peterson went into effect and if I -- if I incline to
2 go down that road, then you -- only recourse is to go through
3 the Supreme Court --

4 MS. MASTEL: Right.

5 THE COURT: -- and say, Judge Moss, you were wrong,
6 the law would give the -- the -- your client the benefit of
7 having new law --

8 MS. MASTEL: Uh-huh (affirmative).

9 THE COURT: -- apply but --

10 MS. MASTEL: I --

11 THE COURT: -- I think --

12 MS. MASTEL: -- I have to file a 60(b) motion at
13 that point --

14 THE COURT: -- I have an --

15 MS. MASTEL: -- asking you to set it aside, and if
16 you deny that; then, yes, I have to decide --

17 THE COURT: It's a law --

18 MS. MASTEL: -- whether or not --

19 THE COURT: -- thing.

20 MS. MASTEL: -- to appeal.

21 THE COURT: It's a law thing.

22 MS. MASTEL: So --

23 THE COURT: Okay. Just my -- on my 20 years'
24 experience on the bench, I think my inclination would be I

1 make a decision, once the decision is filed before a new law
2 comes into place --

3 MS. LUBRITZ: You're still --

4 THE COURT: -- it looks like --

5 MS. LUBRITZ: -- good law, Judge.

6 THE COURT: -- you're -- you're covered under the
7 old law.

8 MS. LUBRITZ: Correct.

9 MS. MASTEL: Okay.

10 THE COURT: I'm just giving you my --

11 MS. MASTEL: I --

12 THE COURT: -- guidance on that.

13 MS. MASTEL: -- appreciate with that.

14 MS. LUBRITZ: I don't want to step on Ms. Mastel --

15 THE COURT: Okay. But --

16 MS. LUBRITZ: -- foot, but I had a few things to
17 say.

18 THE COURT: Yeah.

19 MS. MASTEL: And --

20 THE COURT: You said you wanted to correct something
21 on the record that Ms. Lubritz said?

22 MS. MASTEL: I do. I -- I did have a couple of --
23 of typos in my -- my -- my motion to continue, I apologize, it
24 was in fact actually done rather quickly. I found out I don't

1 read the record of appellate cases filed on a regular basis, I
2 have other casework.

3 THE COURT: Sure.

4 MS. MASTEL: When Mr. -- when Mr. Willick posted on
5 January 2nd --

6 THE COURT: Uh-huh (affirmative).

7 MS. MASTEL: -- that this case was going up for en
8 banc oral argument --

9 THE COURT: Uh-huh (affirmative).

10 MS. MASTEL: -- I took a couple days, I looked into
11 it to determine how it might impact our case, determine that
12 it did. And so on the 10th, I sent a letter to Ms. Lubritz
13 asking to discuss that, and it was only the 13th and 14th when
14 we were back in the office after the weekend when I realized I
15 hadn't heard from her and apparently wasn't going to hear for
16 (sic) her -- from her that I very quickly put that together.
17 So, yes, there are some typos.

18 THE COURT: Thank you for --

19 MS. MASTEL: I --

20 THE COURT: -- correcting the record. Okay.

21 MS. MASTEL: I will say that the -- the second
22 request -- it is our second request --

23 THE COURT: Uh-huh (affirmative).

24 MS. MASTEL: -- however the first request in which I

1 was unavailable was also done by stip and order because
2 Ms. Lubritz had just come in and asked for an extension of
3 time to do discovery so that was both of our first requests.
4 Then she made a second request, now I'm making a second
5 request. But I will concede that it is my second request.

6 THE COURT: Okay.

7 MS. MASTEL: I do believe that as I said I -- you
8 know, I think that en banc decisions -- all decisions are
9 coming down from the Supreme Court rather quickly now. I
10 think the Court can take judicial notice of that. You've
11 seen --

12 MS. LUBRITZ: I would object to that.

13 MS. MASTEL: -- you know, the time frame between
14 oral arguments and --

15 THE COURT: Objection --

16 MS. MASTEL: -- decisions --

17 THE COURT: -- noted. I can tell you though, I've
18 had -- any of the appeals taken in my cases, I give it at
19 least a year, year and a half.

20 MS. LUBRITZ: Thank you.

21 MS. MASTEL: In the last couple months? Because
22 I've gotten some down in less than six months --

23 THE COURT: All right.

24 MS. MASTEL: -- that I've been working on.

1 THE COURT: I track them now.
2 MS. LUBRITZ: So, now we're up --
3 THE COURT: So --
4 MS. LUBRITZ: -- from -- from a month or two, now
5 we're at six months.
6 MS. MASTEL: I said less than --
7 THE COURT: And I can't tell --
8 MS. MASTEL: -- six months.
9 THE COURT: -- you if they were en banc or just
10 three judges.
11 MS. MASTEL: So --
12 THE COURT: Yeah.
13 MS. MASTEL: -- either way, I -- I do think this is
14 critical to this Court's decision.
15 THE COURT: Uh-huh (affirmative).
16 MS. MASTEL: Because there are contradictions in the
17 law.
18 THE COURT: Okay.
19 MS. MASTEL: And as Mr. Willick's going to testify,
20 the law right now doesn't --
21 MS. LUBRITZ: Objection, Your Honor, how he's going
22 to -- we're not in a -- in closing arguments --
23 MS. MASTEL: Can I make --
24 MS. LUBRITZ: -- or opening arguments.

1 MS. MASTEL: -- an offer of proof?
2 THE COURT: How about this -- you don't want it --
3 MS. LUBRITZ: He can't testify about the law --
4 THE COURT: Ms. Lubritz --
5 MS. LUBRITZ: -- Judge.
6 THE COURT: -- I'll --
7 MS. LUBRITZ: He can't testify about --
8 THE COURT: -- get back --
9 MS. LUBRITZ: -- the law.
10 THE COURT: -- to you.
11 MS. MASTEL: I'll start letting --
12 THE COURT: Yeah, you're going to like --
13 MS. LUBRITZ: That's fine.
14 THE COURT: -- disturb her train of thought here so
15 -- we're in motion argument, we're not in trial yet so --
16 MS. MASTEL: As an offer of proof --
17 THE COURT: -- yeah.
18 MS. MASTEL: -- Mr. Willick will testify that the
19 regulations under PERS don't work the way the law presumes
20 them to work.
21 THE COURT: Is he out there in the hallway, or he's
22 across the street --
23 MS. MASTEL: He is across --
24 THE COURT: -- in his office?

1 MS. MASTEL: -- the street. Because it's --
2 THE COURT: He's waiting to --
3 MS. MASTEL: -- Ms. Lubritz's --
4 THE COURT: -- find out.
5 MS. MASTEL: -- case in chief, I told both
6 Ms. Cooley and Mr. Willick to wait until Your Honor issued a
7 ruling, and they will both be able to get here before
8 Ms. Lubritz is done with her case in chief.
9 THE COURT: Okay. So, any other points or arguments
10 and I'll decide if we're going forward.
11 MS. MASTEL: I will say that --
12 THE COURT: There are children issues, too, as well.
13 So, I don't know if they're --
14 MS. MASTEL: Well, we're not --
15 THE COURT: -- to be --
16 MS. MASTEL: -- prepared to do that today, Your
17 Honor. That's set for March 3rd.
18 THE COURT: Okay.
19 MS. LUBRITZ: Well, here's the thing --
20 THE COURT: All right. Let me --
21 MS. LUBRITZ: -- I think Ms. Mastel --
22 THE COURT: -- turn it over to --
23 MS. LUBRITZ: -- and I will agree --
24 THE COURT: -- Ms. Lubritz.

1 MS. LUBRITZ: -- a notice of hearing was never
2 issued. I -- that's why on her opposition she doesn't have a
3 date --
4 THE COURT: Whose motion --
5 MS. LUBRITZ: -- and time.
6 MS. MASTEL: Correct.
7 THE COURT: -- is pending regarding kid issues?
8 MS. MASTEL: Ms. Lubritz's.
9 MS. LUBRITZ: I -- it's my motion.
10 THE COURT: Is it an emergency, or you want to set
11 it for another date?
12 MS. LUBRITZ: Well, this is --
13 MS. MASTEL: I'm not --
14 MS. LUBRITZ: -- yes, it's --
15 MS. MASTEL: -- prepared --
16 MS. LUBRITZ: -- an emergency.
17 MS. MASTEL: -- to argue that.
18 MS. LUBRITZ: And, yes, I need to set it for another
19 date, but I just got Counsel's -- this past week I think I
20 just got Counsel's -- she was sick.
21 THE COURT: Like do you want --
22 MS. LUBRITZ: And I just got --
23 THE COURT: -- to go see --
24 MS. LUBRITZ: -- Counsel's --

1 THE COURT: -- me next week --
2 MS. LUBRITZ: Yes.
3 THE COURT: -- or the week after?
4 MS. MASTEL: I would --
5 MS. LUBRITZ: Next week.
6 MS. MASTEL: -- like more time than that, Your
7 Honor. This -- they haven't --
8 THE COURT: Okay.
9 MS. MASTEL: -- filed an OST. They let it --
10 MS. LUBRITZ: No.
11 MS. MASTEL: -- sit without an --
12 MS. LUBRITZ: I filed --
13 MS. MASTEL: -- order from --
14 MS. LUBRITZ: -- an OST.
15 THE COURT: Ten days to -- 14 days to oppose but you
16 include weekends, so that's 10 --
17 MS. LUBRITZ: Here --
18 THE COURT: -- business days.
19 MS. LUBRITZ: -- here's the problem --
20 MS. MASTEL: I --
21 MS. LUBRITZ: -- Judge --
22 MS. MASTEL: -- filed my opposition --
23 MS. LUBRITZ: Here's the problem --
24 THE COURT: Ms. Lubritz?

1 MS. LUBRITZ: -- first of all, their opposition was
2 late but I'm not saying anything about that, because it --
3 it's going to go on the merits.

4 THE COURT: In other words --

5 MS. LUBRITZ: Okay?

6 THE COURT: -- I may have to hear some type of
7 emergency issues to hold them over --

8 MS. LUBRITZ: Here's --

9 THE COURT: -- like a Band-Aid order until we can
10 get to court?

11 MS. LUBRITZ: Here's the issue: My client --

12 THE COURT: Okay.

13 MS. LUBRITZ: -- doesn't see his kids except for
14 Sundays. Okay? Mom doesn't work, she goes to school; and as
15 I understand it, most of her studies are online. When my
16 client said, you know what, I don't want the kids to have to
17 be in -- in Safekey --

18 THE COURT: Uh-huh (affirmative).

19 MS. LUBRITZ: -- I'd rather them be with their
20 mother.

21 THE COURT: Uh-huh (affirmative).

22 MS. LUBRITZ: So, he said, hey, Mom, do you want to
23 take the kids on what should be my -- are my days off --

24 THE COURT: Uh-huh (affirmative).

1 MS. LUBRITZ: -- when I can't -- I'm sorry, when I'm
2 working -- my days are now when I work. So, if you want to
3 take the kids rather than go to Safekey --
4 THE COURT: Uh-huh (affirmative).
5 MS. LUBRITZ: -- I'm offering that. Because he
6 believes that it's best that they be able to parent.
7 THE COURT: Okay.
8 MS. LUBRITZ: Rather than Safekey. But here's the
9 problem --
10 THE COURT: Yeah.
11 MS. LUBRITZ: -- Mom has not said go ahead and I'm
12 -- you know what, how about every other weekend? He's on
13 Friday, Saturday, Sunday now, right?
14 MR. ROSE: Yes.
15 THE COURT: You work four tens?
16 MR. ROSE: Yes, ma'am.
17 THE COURT: Four tens, so you work four days on and
18 three --
19 MS. LUBRITZ: And when do you --
20 THE COURT: -- days off.
21 MS. LUBRITZ: -- get your kids under the current
22 order?
23 MR. ROSE: I get them on Sunday at 11:00 in the
24 morning --

1 THE COURT: Uh-huh (affirmative).
2 MR. ROSE: -- and I have them until they go to
3 school Wednesday morning.
4 THE COURT: Okay. That's three days.
5 MS. LUBRITZ: Except he's working.
6 MR. ROSE: And my days off are Friday, Saturday,
7 Sunday right now from 2:30 in the afternoon --
8 THE COURT: And did you --
9 MR. ROSE: -- until midnight.
10 THE COURT: -- send a message to Mom, maybe to --
11 MS. LUBRITZ: Multiple.
12 THE COURT: -- shift your schedule?
13 MS. LUBRITZ: I did to --
14 THE COURT: Yeah.
15 MS. LUBRITZ: -- Counsel and he --
16 THE COURT: Yeah, reach out.
17 MS. LUBRITZ: -- has several. And Mom is not doing
18 that.
19 THE COURT: Okay.
20 MS. LUBRITZ: That's why -- that's why he only sees
21 his kids on Sunday. So, I think, yeah, it is an emergent
22 situation.
23 THE COURT: Okay.
24 MS. MASTEL: Objection --

1 MS. LUBRITZ: And I would ask --
2 MS. MASTEL: -- Your Honor.
3 MS. LUBRITZ: -- and I would ask --
4 THE COURT: Hang on --
5 MS. LUBRITZ: -- for a temporary order --
6 THE COURT: I'm sure she'll have reasons.
7 MS. LUBRITZ: -- I would ask for a temporary order.
8 THE COURT: Shift of the --
9 MS. LUBRITZ: Counsel had --
10 THE COURT: -- schedule?
11 MS. LUBRITZ: -- all the time she needed to file --
12 and then some to file an --
13 THE COURT: A temporary schedule --
14 MS. LUBRITZ: -- opposition.
15 THE COURT: -- for like two weekends until we can
16 get back to court in like two or three weeks?
17 MS. LUBRITZ: Yeah, so can he have them Friday,
18 Saturday, and Sunday on his days off?
19 MS. MASTEL: Your Honor?
20 MS. LUBRITZ: When Mom goes to school online?
21 THE COURT: Okay. Well --
22 MS. LUBRITZ: And she's been managing by taking the
23 kids when Dad's not available.
24 THE COURT: Let me guess, Mom's days off from -- on

1 the --
2 MS. MASTEL: Mom --
3 THE COURT: -- weekends, too?
4 MS. MASTEL: -- Mom works, no, more flexible
5 schedule, that is true. The kids --
6 THE COURT: Okay.
7 MS. MASTEL: -- do have school things. Your
8 Honor --
9 THE COURT: And remind me --
10 MS. MASTEL: -- here's the problem --
11 THE COURT: -- what does Mom --
12 MS. MASTEL: -- this is --
13 THE COURT: -- do for a living?
14 MS. MASTEL: She's a photographer and she goes to
15 school.
16 THE COURT: You're a freelance photographer? Don't
17 you do all the weddings on the weekends anyway --
18 MS. LUBRITZ: Yes.
19 THE COURT: -- when Dad's off?
20 MS. ROSE: Not necessarily.
21 MS. LUBRITZ: Yes.
22 THE COURT: Huh?
23 MS. ROSE: Not necessarily. I have a --
24 THE COURT: Okay.

1 MS. ROSE: -- lot of out-of-state clients.
2 THE COURT: Oh, people --
3 MS. ROSE: And so I have --
4 THE COURT: -- like to fly in --
5 MS. ROSE: -- Thursdays --
6 THE COURT: -- to Vegas, do those quick weddings and
7 then they --
8 MS. ROSE: Yes.
9 THE COURT: -- hire you?
10 MS. ROSE: And because I'm freelance, it's not like
11 I'm set with a company. So --
12 THE COURT: Okay.
13 MS. ROSE: -- I don't have as many weddings as
14 the --
15 THE COURT: All right.
16 MS. ROSE: -- (indiscernible) does.
17 THE COURT: Well, we're not here to --
18 MS. ROSE: Right.
19 THE COURT: -- ambush you with this request --
20 MS. ROSE: Right.
21 MS. MASTEL: Your Honor --
22 MS. ROSE: And I'm a full-time --
23 THE COURT: -- from the other side.
24 MS. LUBRITZ: It's just a --

1 MS. ROSE: -- student.
2 MS. LUBRITZ: -- temporary order until --
3 THE COURT: I know --
4 MS. LUBRITZ: -- we get into court.
5 THE COURT: -- Ms. Lubritz, yes. Okay.
6 MS. MASTEL: Your Honor, they're asking for a
7 wholesale change of custody. It's not the first time --
8 THE COURT: Okay.
9 MS. MASTEL: -- his schedule has changed. Two,
10 since --
11 THE COURT: I gotcha.
12 MS. MASTEL: -- we're discussing this, we asked for
13 proof that his schedule would be in place for --
14 THE COURT: So, as of today --
15 MS. MASTEL: -- several years.
16 THE COURT: -- tell me what Mom does on the
17 weekends. Does she not take photography jobs or --
18 MS. MASTEL: She --
19 THE COURT: -- other jobs?
20 MS. MASTEL: -- sometimes she has photography jobs,
21 sometimes she doesn't. I will point out this in our --
22 THE COURT: Are you offering --
23 MS. MASTEL: -- opposition.
24 THE COURT: -- a compromise --

1 MS. MASTEL: They have --
2 THE COURT: -- maybe?
3 MS. MASTEL: -- they -- we have said that they can
4 do exchanges and that if he wants extra time with the kids, he
5 can ask for it. They work that out on a regular --
6 THE COURT: Well, let me --
7 MS. MASTEL: -- basis.
8 THE COURT: -- see, these kids are old enough to go
9 to school, so they're usually in school on Fridays unless they
10 have a --
11 MS. MASTEL: They are.
12 THE COURT: -- teachers day or something. And --
13 MS. MASTEL: And they have sports --
14 THE COURT: -- so the parents aren't --
15 MS. MASTEL: -- on the weekends that Dad has asked
16 that they not be allowed to participate in because it
17 interferes with his time --
18 THE COURT: Hold on --
19 MS. MASTEL: -- and he works at --
20 THE COURT: -- hold on --
21 MS. MASTEL: -- Farmer's Market on Sundays and
22 there's all sorts of things. They're asking for a wholesale
23 change --
24 THE COURT: And you --

1 MS. MASTEL: -- of custody.

2 THE COURT: -- you veteran lawyers know what we do,
3 we're saying if they got activities, they go to their
4 activities no matter who has the --

5 MS. LUBRITZ: No, but the --

6 MS. MASTEL: -- kids.

7 MS. LUBRITZ: -- the --

8 THE COURT: What's the impact here?

9 MS. LUBRITZ: -- parenting plan is very clear on
10 that. That's not the case. The parenting plan says that you
11 cannot schedule -- because Mom unilaterally schedules --

12 MS. MASTEL: No.

13 MS. LUBRITZ: -- these activities. Dad says if you
14 got a C, you shouldn't be able to go play basketball and go
15 act in a play, because your grades come first. So, when you
16 carry a C, you don't get those extracurriculars. The
17 parenting plan is very clear -- and we cited it in our motion
18 that number one, the parties are supposed to cooperate with
19 one another. My client didn't get Halloween with the kids
20 because Mom sent them to go spend the night with Ms. Jeanette
21 who I think is a teacher or a friend. Okay?

22 THE COURT: Okay.

23 MS. LUBRITZ: So, that's the kind of cooperation we
24 have. But the parenting plan says very clearly if the kids at

1 the time of the parenting plan were in activities, they got to
2 stay in those activities. Afterwards --

3 THE COURT: True.

4 MS. LUBRITZ: -- once that was over, you are not
5 allowed to have the kids signed up and scheduled for something
6 that takes away the time from the other parent.

7 THE COURT: Uh-huh (affirmative).

8 MS. LUBRITZ: It's in -- it's in the parenting plan.
9 And I can pull it up if you need to --

10 THE COURT: Uh-huh (affirmative).

11 MS. LUBRITZ: -- I've got my computer here.

12 THE COURT: Uh-huh (affirmative).

13 MS. LUBRITZ: It is not allowed. And if you want,
14 we could take a look at it right now. The parenting plan's
15 really clear on this --

16 THE COURT: From a reasonable --

17 MS. LUBRITZ: -- issue.

18 THE COURT: -- person standpoint though, does that
19 effectually shut out the other parent from scheduling things
20 for the kids?

21 MS. LUBRITZ: No. They --

22 MS. MASTEL: Yes.

23 MS. LUBRITZ: -- can do it on their time.

24 THE COURT: It's possible to come back with a

1 request to the Court say outdated -- outdated provision --
2 MS. LUBRITZ: No.
3 THE COURT: -- will not work with the parents'
4 schedules and they --
5 MS. LUBRITZ: Well --
6 THE COURT: -- fight too much so --
7 MS. LUBRITZ: -- but here's the other part of it,
8 Judge --
9 THE COURT: Yeah.
10 MS. LUBRITZ: -- all he asked is ask me before you
11 sign them up. I don't think that's a big request.
12 THE COURT: Right. And --
13 MS. LUBRITZ: She doesn't even ask him.
14 THE COURT: -- if it's soccer --
15 MS. MASTEL: That's not true.
16 THE COURT: -- or T-ball -- or not T-ball or little
17 league, you know, you're not all day doing soccer, all day
18 doing little league --
19 MS. LUBRITZ: Right. He just wants --
20 THE COURT: -- that's, you know, a one-hour game --
21 MS. LUBRITZ: -- to be asked.
22 THE COURT: -- or a one-hour practice. So, I'm
23 assuming Dad wouldn't have a problem with that if he got those
24 -- that temporary order for the weekends. If they've got

1 baseball, soccer. Now, this rule about, you know, if you get
2 C or less, that is a parent judgment thing. And Courts are
3 hesitant on that. I think the -- the parents have to get on
4 the same page because -- or they have to draw the line
5 somewhere. F, yeah, you shouldn't --

6 MS. LUBRITZ: And --

7 THE COURT: -- being doing that but --

8 MS. LUBRITZ: And, you know what --

9 THE COURT: -- you know, I don't know much about the
10 kids, are they like super soccer stars or baseball stars, or
11 you know, really gifted kids or they do martial arts and
12 compete in tournaments; or if you pull your kid out, then
13 you're letting the other team -- the rest of the team down
14 or --

15 MS. LUBRITZ: And it's not necessarily --

16 THE COURT: -- is it Cubs --

17 MS. LUBRITZ: -- that he wants --

18 THE COURT: -- you know, Boy Scouts --

19 MS. LUBRITZ: -- them --

20 THE COURT: -- I don't know what it is so --

21 MS. LUBRITZ: It's not necessarily that he wants the
22 kids to never participate. Number one --

23 THE COURT: I assume that.

24 MS. LUBRITZ: -- ask me, don't go sign them up

1 behind my back. Don't let the kids go sign --
2 THE COURT: And you know what --
3 MS. LUBRITZ: -- themselves up.
4 THE COURT: -- judges do, too? They take --
5 MS. LUBRITZ: What?
6 THE COURT: -- they take seasons. Okay. You get
7 spring, you get summer, you alternate and we'll just keep
8 going, spring, summer, fall, spring, summer --
9 MS. LUBRITZ: Okay.
10 THE COURT: -- fall and they get turns.
11 (COUNSEL AND CLIENT CONFER BRIEFLY)
12 MS. MASTEL: Your Honor?
13 THE COURT: But then you also have to figure out
14 what your kids --
15 MS. MASTEL: Right. To correct --
16 THE COURT: -- like or what they're good at.
17 MS. MASTEL: -- this, so it's -- he says it only
18 interferes on his time, we have texts that we've included,
19 they included a small section of it, where he got mad because
20 one of their children was in student government. My client's
21 response was student government is only on my time. And the
22 response was I don't care, he didn't tell me, he can't do it,
23 you better not let him. So, this is not just, a, oh, it only
24 infringes with my time; it's a, oh, if I didn't get all the

1 information I wanted before it happened, then they can't do
2 it, and my word's law.

3 THE COURT: Yeah, well --

4 MS. LUBRITZ: That's -- that's just not --

5 THE COURT: -- parents --

6 MS. LUBRITZ: -- the case, Judge.

7 MS. MASTEL: So --

8 THE COURT: -- go in litigation mode in that --

9 MS. LUBRITZ: It's just not the case.

10 THE COURT: -- and they usually have to have their
11 attorneys kind of set them straight on that. You attorneys
12 know.

13 MS. LUBRITZ: If I may?

14 THE COURT: Right.

15 MS. LUBRITZ: I just asked my client, I said, Dave,
16 if you were asked and allowed to be involved in the decision-
17 making, would you have a problem with the kids doing these
18 things? No. They got signed up themselves on this side of
19 the wall --

20 THE COURT: Uh-huh (affirmative).

21 MS. LUBRITZ: -- they got signed up for a play which
22 as you know and I was just in elementary school teaching, and
23 I will tell you, it's a huge burden of time that the kids have
24 to do all the time, all usually after school and then they've

1 got all of their productions.

2 THE COURT: Uh-huh (affirmative).

3 MS. LUBRITZ: Okay? And so that is a -- a huge
4 amount of time. So, what happened? The schedule had not even
5 been put out and posted so my client could not know what --
6 what the time restraints would be.

7 THE COURT: Uh-huh (affirmative).

8 MS. LUBRITZ: And they'd already signed up before
9 the schedule even came out, Mom already allowed them to sign
10 up.

11 THE COURT: So, either we do -- I don't have all the
12 easy answers.

13 MS. LUBRITZ: Just involve him, Judge.

14 THE COURT: But if you want --

15 MS. LUBRITZ: That's all.

16 THE COURT: -- you know -- you know, your rights
17 respected in terms of being able to pick activities either two
18 parents are on the same page, or they're going to have to take
19 turns --

20 MS. LUBRITZ: If I may --

21 THE COURT: -- on activities.

22 MS. LUBRITZ: -- we also asked for either
23 FamilyWizard -- I've been out so long, I guess Parent
24 Talks (sic) is one that y'all use. Just because they can't

1 communicate well.

2 THE COURT: Talking Parents.

3 MS. LUBRITZ: Talking Parents.

4 MS. MASTEL: And we --

5 THE COURT: And I don't use --

6 MS. MASTEL: And we stipulated --

7 MS. LUBRITZ: (Indiscernible - simultaneous speech)

8 THE COURT: -- either.

9 MS. MASTEL: -- to it.

10 THE COURT: Well --

11 MS. LUBRITZ: Let's talk.

12 THE COURT: -- two are free and one you pay --

13 MS. LUBRITZ: Okay.

14 THE COURT: -- 99 bucks a year, but I can put them

15 on the free one and it's free to actually print --

16 MS. LUBRITZ: Fantastic.

17 THE COURT: -- the messages.

18 MS. MASTEL: We -- we stipulated --

19 MS. LUBRITZ: And --

20 MS. MASTEL: -- to it.

21 THE COURT: I recommend --

22 MS. LUBRITZ: That's fantastic.

23 THE COURT: -- AppClose, because it's completely

24 free and it has a --

1 MS. LUBRITZ: Which one?
2 THE COURT: -- calendaring function on there.
3 MS. LUBRITZ: What is it?
4 THE COURT: A-p-p-c-l-o-s-e --
5 MS. LUBRITZ: Thank you.
6 THE COURT: -- it's one word, it's on the App Store
7 and it's free, free to print, and free to have a calendar
8 function that -- TalkingParents is free but doesn't have a
9 calendar and they charge you to print those messages.
10 TalkingPar -- I mean AppClose is absolutely free.
11 MS. MASTEL: Okay.
12 MS. LUBRITZ: Awesome.
13 THE COURT: Wizard has got all them functions and
14 it's got tone meter on the language that they use.
15 MS. MASTEL: I like Wizard the best.
16 MS. LUBRITZ: Me, too.
17 THE COURT: Ninety nine bucks a year.
18 MS. LUBRITZ: I like it because they can also bring
19 in a third party which means --
20 THE COURT: And I'm very used to the printout, the
21 way they're printed out on there. And it's free to print with
22 your subscription.
23 MS. LUBRITZ: Thank you.
24 MS. MASTEL: But --

1 MS. LUBRITZ: So, if Counsel will agree right now --
2 THE COURT: You guys want to do OFW, it's 99 bucks a
3 year and you can get your --
4 MS. MASTEL: Well, this looks --
5 THE COURT: -- counsel can actually --
6 MS. MASTEL: -- actually I've been looking at this,
7 my -- my thing that I particularly like about OurFamilyWizard
8 is the ability to do the transfer of reimbursements. But this
9 looks like it does it, too. And if this one's free --
10 THE COURT: Oh, AppClose?
11 MS. MASTEL: -- I hadn't --
12 MS. LUBRITZ: I --
13 MS. MASTEL: -- heard of this one. So, I'm happy to
14 use this one.
15 THE COURT: Do you want to --
16 MS. LUBRITZ: I'm old school --
17 THE COURT: -- take a minute and ask your client?
18 MS. LUBRITZ: -- I know how to work FamilyWizard,
19 I'm old school. So, if -- if there is no objection, it's \$99,
20 it's not going to --
21 THE COURT: Okay. It's --
22 MS. LUBRITZ: -- cave either one of them either way.
23 THE COURT: It's up to them. I don't force anything
24 on the parents if there are budgeting reasons so would --

1 MS. LUBRITZ: Understood.

2 THE COURT: -- you take a minute to ask your client
3 if they want to fork out the 99 bucks, or they want to go the
4 free route?

5 MS. LUBRITZ: And then so I understand, and let --
6 absent an emergency, that is the only way that they can --

7 THE COURT: Yeah.

8 MS. LUBRITZ: -- communicate?

9 THE COURT: If we go App -- if they want to go
10 AppClose, you'll get used to it, Ms. Lubritz.

11 MS. LUBRITZ: Oh, absolutely.

12 THE COURT: And I really like the way they print
13 out. TalkingParents is kind of a mess.

14 MS. MASTEL: Exactly.

15 MS. LUBRITZ: So, which one do you like the way they
16 print out?

17 THE COURT: I'd say do the free one first.

18 MS. LUBRITZ: Okay.

19 THE COURT: Free one. I mean they --

20 MS. LUBRITZ: Okay.

21 THE COURT: -- these parents weren't that bad before
22 -- by the time they got divorced and just things are kind of
23 blowing up now and they just need guidance and maybe sometimes
24 the Court has to put their foot down on activities. But --

1 MS. LUBRITZ: Well --

2 THE COURT: -- because both of you are on like short

3 notice and all these issues --

4 MS. MASTEL: Uh-huh (affirmative).

5 THE COURT: -- it takes time to work it through that

6 -- rather than, hey, if I had all the answers after being on

7 the bench for 20 years, I'd figure it out for them.

8 MS. LUBRITZ: Right.

9 THE COURT: Like I don't take sides and we just want

10 to make sure that the kids -- you know, they come first. But

11 they also have to -- each parenting style, you know, stricter

12 disciplinarian or I got rules about grades, then they need to

13 find some kind of common ground regarding that. If they

14 can't, then I do the parallel parenting stuff which is like

15 you take turns and --

16 MS. LUBRITZ: Right.

17 THE COURT: -- taking activities. But I don't think

18 they're that type of parents. They're not on that side of the

19 spectrum. We just need to give them guidelines on what

20 happens, you know, and nobody likes their rights infringed.

21 So -- and they've got you guys to advise them along the way.

22 MS. MASTEL: And respectfully --

23 MS. LUBRITZ: And --

24 MS. MASTEL: -- Your Honor --

1 MS. LUBRITZ: -- the free app --
2 MS. MASTEL: -- if the Court can see this is now --
3 THE COURT: Yeah.
4 MS. MASTEL: -- this is a complicated motion. So, I
5 would prefer if we set a motion hearing date.
6 THE COURT: Let's do that.
7 MS. MASTEL: And then --
8 MS. LUBRITZ: Right.
9 MS. MASTEL: -- we can go from there.
10 MS. LUBRITZ: And then have temporary orders
11 pending --
12 MS. MASTEL: No, because we haven't --
13 MS. LUBRITZ: -- and it's obviously --
14 MS. MASTEL: -- had time to actually brief this.
15 THE COURT: And that's why we'll have you do that
16 and I will have you engage in a 5.11 -- 5.501 --
17 MS. LUBRITZ: Judge --
18 THE COURT: -- Ms. Lubritz --
19 MS. LUBRITZ: -- if I may?
20 THE COURT: -- now we're down some of the issues.
21 Yes?
22 MS. LUBRITZ: I can't tell you the number of emails
23 and text messages my client has sent to her and the number of
24 times -- to his ex and the number of times I communicated it

1 to Counsel. As a matter of fact --

2 MS. MASTEL: One.

3 MS. LUBRITZ: -- this goes -- I did it in writing --

4 THE COURT: Uh-huh (affirmative).

5 MS. LUBRITZ: -- and I also did it when we're

6 standing outside October 23rd waiting to get into your

7 courtroom --

8 THE COURT: Uh-huh (affirmative).

9 MS. LUBRITZ: -- and I said, hey, while we have this

10 little break --

11 THE COURT: Can we talk --

12 MS. LUBRITZ: -- I'd like to ask you --

13 THE COURT: -- about this? Yeah.

14 MS. LUBRITZ: So, I did it in person once, I did it

15 over -- over -- via correspondence --

16 THE COURT: Uh-huh (affirmative).

17 MS. LUBRITZ: -- they are very polarized on this,

18 okay?

19 THE COURT: The extracurriculars?

20 MS. LUBRITZ: No, they're very polarized --

21 THE COURT: Oh, on the --

22 MS. LUBRITZ: -- on the fact that --

23 THE COURT: -- schedule?

24 MS. LUBRITZ: -- Dad doesn't get his days off. Your

1 Honor, I -- she -- she is freelance, number one, so she can
2 schedule when she wants. And she's an online student. I was
3 an online student when I was getting my teaching degree --
4 THE COURT: Uh-huh (affirmative).
5 MS. LUBRITZ: -- and working towards that.
6 THE COURT: Uh-huh (affirmative).
7 MS. LUBRITZ: Which means you can do it whenever you
8 want.
9 THE COURT: What -- is Dad day shift or graveyard or
10 swing?
11 MR. ROSE: I'm swing shift, Judge.
12 THE COURT: 3:00 to 11:00?
13 MR. ROSE: 2:30 to midnight, yes.
14 THE COURT: Okay. And your weekend kind of starts
15 on like 2:00 -- like around midnight on like Thursday night?
16 MR. ROSE: Thursday night, yes, Judge.
17 THE COURT: So, yeah, you're totally available
18 Friday morning?
19 MR. ROSE: Yes.
20 THE COURT: And then you go back to work 2:30 on,
21 what, on Mondays?
22 MR. ROSE: Monday afternoon.
23 THE COURT: Yeah, okay.
24 MS. MASTEL: And, Your Honor, he has a holiday in

1 February already. So, he already has one weekend. So -- I
2 mean here's the --
3 THE COURT: I'm just doing --
4 MS. MASTEL: -- problem.
5 THE COURT: -- a Band-Aid order.
6 MS. LUBRITZ: Thank you.
7 THE COURT: Until you --
8 MS. LUBRITZ: That's all --
9 THE COURT: -- get back.
10 MS. LUBRITZ: -- we're asking for --
11 THE COURT: If it don't work --
12 MS. LUBRITZ: -- with no prejudice.
13 THE COURT: No prejudice.
14 MS. LUBRITZ: A Band-Aid order with no prejudice.
15 MS. MASTEL: So, we'll stipulate, he can have his
16 holiday weekend and one other weekend.
17 MS. LUBRITZ: No, Judge.
18 THE COURT: No, he gets --
19 MS. LUBRITZ: We don't know when --
20 THE COURT: -- he gets to see them every --
21 MS. LUBRITZ: -- you're going to set it.
22 THE COURT: -- week.
23 MS. LUBRITZ: He gets every weekend.
24 THE COURT: What are they doing on weekends, Mom?

1 MS. ROSE: Ah --
2 THE COURT: Sports or the student government thing
3 or --
4 MS. ROSE: No, Dad didn't let him do student
5 government.
6 THE COURT: Okay.
7 MS. ROSE: Carson has done robotics. He just had a
8 robotic competition, Lily is in cheer. There's still a
9 couple, he has gone to zero cheer.
10 THE COURT: Is cheer competition or practices on
11 weekends?
12 MS. ROSE: And then they --
13 MS. MASTEL: Is cheer competition or practices?
14 MS. ROSE: Oh, sorry.
15 THE COURT: On weekends.
16 MS. ROSE: For the weekends --
17 THE COURT: Yeah.
18 MS. ROSE: -- it is cheer games.
19 THE COURT: And -- okay.
20 MS. ROSE: Basketball games.
21 THE COURT: And the --
22 MS. LUBRITZ: Did you take her to cheer games?
23 THE COURT: -- other --
24 MR. ROSE: Yes.

1 THE COURT: -- twin?
2 MS. ROSE: And then the other twin has nothing
3 during the weekend.
4 THE COURT: Okay.
5 MS. LUBRITZ: And robotics is over.
6 THE COURT: So, I don't want to upset the cart, the
7 kids are in those activities, they stay in those activities.
8 And if it -- Dad's going to spend some time with him, if it's
9 on his time, sorry, Dad, but you got to take him to their
10 activities.
11 MS. LUBRITZ: He has no problem --
12 THE COURT: Which is like an hour practice and all
13 that. Of course he's going to say that. So, we're not --
14 MS. MASTEL: And the play will also --
15 THE COURT: -- here to disrupt --
16 MS. MASTEL: -- be on the weekends.
17 THE COURT: -- what the kids --
18 MS. LUBRITZ: He'd enjoy it.
19 THE COURT: -- what are going to be doing. Okay.
20 MS. MASTEL: There's also a play that will have time
21 on the weekends.
22 THE COURT: Yeah, he's --
23 MS. MASTEL: That --
24 THE COURT: Oh, there's a play -- they got to go to

1 the play.

2 MS. LUBRITZ: Absolutely.

3 THE COURT: Okay.

4 MS. LUBRITZ: Now that they're in it.

5 THE COURT: Friday, Saturday, Sunday. And we'll be

6 back -- so it will just impact a couple of weekends and we'll

7 see how he does and we'll shift the days.

8 MS. LUBRITZ: Thank you.

9 THE COURT: Friday morning, he's a supervisory

10 parent, drop them off at school Monday morning and basically

11 Mom will drop them off Monday morning but he starts.

12 MS. LUBRITZ: Right.

13 THE COURT: And then he'll drop them off Monday

14 morning and then you pick them up from school. But you

15 understand the -- explain to them supervisor parent, Dad --

16 you know, he kicks in at 9:00 a.m., and he ends at 9:00 a.m.

17 on Monday. And he has got to go to work anyway.

18 MS. MASTEL: Then can my client have the weekend --

19 the holiday weekend so that she has a weekend before --

20 THE COURT: President's --

21 MS. MASTEL: -- we come back?

22 THE COURT: -- Day?

23 MS. MASTEL: Yeah.

24 THE COURT: Is it her year?

1 MS. MASTEL: It's not, it's his. But now he's going
2 to have all the weekends which means she only has the time
3 that the kids are in school.

4 MS. LUBRITZ: Judge --

5 THE COURT: You want to do a trade --

6 MS. LUBRITZ: -- since October --

7 THE COURT: -- for one year?

8 MS. LUBRITZ: Judge, since October she's had all the
9 weekends.

10 MS. MASTEL: That's not true.

11 MS. LUBRITZ: I don't -- you know, and I apologize,
12 she changed --

13 THE COURT: I'm not her to judge that past --

14 MS. LUBRITZ: Okay.

15 THE COURT: -- stuff. But is he willing to trade
16 President's Day weekend? You working? They got you working
17 on the holiday?

18 MR. ROSE: No, I'm off, Judge.

19 THE COURT: You're off? Okay. Well, usually
20 President's Day is just the day on a Monday. If you're
21 willing to waive that and then I give you all the weekends
22 until we come back to court in like two to three weeks -- just
23 basically two to three weekends.

24 MR. ROSE: I can do that, Judge.

1 THE COURT: So, I'll give Mom the President's Day.
2 MS. MASTEL: It's a three-day -- can she have the --
3 THE COURT: You going --
4 MS. MASTEL: -- three-day weekend?
5 THE COURT: -- somewhere? Do you have plans --
6 MS. MASTEL: It was -- it was supposed --
7 THE COURT: -- even though it wasn't your year?
8 MS. MASTEL: -- to be his holiday but now she has
9 no --
10 THE COURT: I'm going to give him the regular
11 weekends --
12 MS. MASTEL: -- weekend plans.
13 THE COURT: -- for one or two or three weekends, and
14 then we're going to be in President's Day and we can come back
15 and be ready to go to court on that issue after President's
16 Day.
17 MS. MASTEL: Thank you.
18 THE COURT: So, that helps me with timing. Does Mom
19 want the whole three-day holiday weekend?
20 MS. MASTEL: Yes, Your Honor.
21 THE COURT: I'm going to give Dad all the weekends
22 so Friday morning to Monday morning. All right. So, Dad is
23 -- he's not trading anything but he's just giving up his
24 President's Day.

1 MS. LUBRITZ: That's fine.
2 THE COURT: And I'm going to grant his request --
3 MS. LUBRITZ: Thank you.
4 THE COURT: -- for weekends on a Band-Aid temporary
5 order.
6 MS. MASTEL: So, she has --
7 THE COURT: And we'll be --
8 MS. MASTEL: -- the whole weekend?
9 THE COURT: -- ready to go --
10 MS. MASTEL: She has the three-day weekend, correct,
11 Your Honor?
12 MS. LUBRITZ: Yes.
13 MS. MASTEL: Okay.
14 THE COURT: Friday morning, Dad, don't pick them up.
15 MS. LUBRITZ: Okay. Now, Dad is --
16 THE COURT: Mom will pick them up Friday after
17 school because she's -- Mom's supervisory at that time.
18 MS. LUBRITZ: Okay.
19 THE COURT: So, we're clear on that? Don't pick
20 them up Friday before President's Day.
21 MR. ROSE: Yes, Your Honor.
22 THE COURT: That's going to be Mom's holiday
23 weekend, if she wants to go out of town. And interim -- well,
24 kind of like in lieu of that, you're getting all the weekends

1 until we come back to court. And I better pick that date with
2 you guys now --

3 MS. LUBRITZ: Thank you, Judge.

4 THE COURT: -- I am booked solid. Where am I going
5 to fit you guys here? Oh, boy. It's a bad week. It's --
6 everything is just slammed.

7 (COURT AND CLERK CONFER BRIEFLY)

8 THE COURT: I've got a trial on a Friday with
9 Jackson, Kelleher. I've got a status check on the 20th with
10 LoBello and Standish. I've got a 9:30 -- that's the -- that's
11 the two-day trial with Jackson, Kelleher. And then I've got
12 motions -- I think the holiday's going to be pretty slammed.
13 Let's go the week after. Is that -- tell me that's not
14 Bishop.

15 MS. MASTEL: Bishop is the --

16 THE COURT: No, it's 24th.

17 MS. MASTEL: -- 12th and the 13th, this year, Your
18 Honor.

19 THE COURT: So, I'm in the week of February 24th,
20 let me see where I can squeeze you in, I can block something
21 out. I'm triple motions there, triple motions. This is
22 crazy.

23 MS. LUBRITZ: And my hope is perhaps because I think
24 a couple of the biggest --

1 THE COURT: Oh, I'm going --
2 MS. LUBRITZ: -- issues --
3 THE COURT: -- to get rid of the 10:30 hearing with
4 pro pers and move them somewhere else.
5 MS. LUBRITZ: Thank you.
6 THE COURT: And put you guys in at 10:30 and go --
7 MS. MASTEL: On what --
8 THE COURT: -- until --
9 MS. MASTEL: -- day?
10 THE COURT: I will be available until noon.
11 MS. MASTEL: On what day, Your Honor?
12 THE COURT: Let's presume -- hopefully I don't get
13 backed up with my 9:00 o'clocks. It is Monday, February 24th.
14 Are you available at 10:30? Tell Susanna to move the Henry --
15 MS. MASTEL: My client's in school that -- at that
16 time, Your Honor.
17 THE COURT: Oh, bummer.
18 MS. MASTEL: She's got class.
19 THE COURT: Okay. Let me --
20 MS. ROSE: Mondays and Wednesdays.
21 THE COURT: -- pick another time then.
22 MS. MASTEL: Mondays and Wednesdays are her class
23 days.
24 THE COURT: Unless y'all want to come in at 7:00

1 a.m. in the morning --

2 MS. LUBRITZ: That's fine.

3 THE COURT: -- I'm booked.

4 MS. LUBRITZ: When's your next availability after
5 that?

6 THE COURT: Well, the next day, Tuesday, I've got
7 pro per motion, pro per motion, CMC, and a pro per motion.
8 But the 10:30 looks like it's wide open, but I also have UIFSA
9 objections there and they haven't filled that one yet. It's
10 kind of crazy. And I've got David Jacks again. Ah, what's
11 going on with legal aid and a pro per trial here? They are
12 stack-two, but the stack-one looks like they're pro per, we --
13 on custody and financials. Did they have --

14 MS. LUBRITZ: My hope was that --

15 THE COURT: -- attorneys before?

16 MS. LUBRITZ: -- we can work most of it -- most of
17 what's in there out.

18 THE COURT: No, the pro pers can wait, and I tell
19 them to come in at like 2:00 o'clock and then you already
20 1:30, if we're done by 2:15, we're fine.

21 MS. MASTEL: On the 25th?

22 THE COURT: Yeah, the pro pers come in at 2:00
23 o'clock for their trial. Yeah, we're super booked.

24 MS. LUBRITZ: What day, Judge?

1 THE COURT: 1:30.
2 MS. MASTEL: What day, Your Honor?
3 THE COURT: Oh. Tuesday.
4 MS. MASTEL: The 25th?
5 THE COURT: I bel -- 24th.
6 MS. LUBRITZ: Monday's --
7 THE COURT: No, wait.
8 MS. MASTEL: The 24th's --
9 MS. LUBRITZ: -- the 24th --
10 MS. MASTEL: -- Monday, Your Honor.
11 MS. LUBRITZ: -- I thought.
12 THE COURT: Oh, Mom still in school?
13 MS. MASTEL: Yes.
14 THE COURT: Scratch that.
15 MS. LUBRITZ: But the --
16 THE COURT: Disregard, okay. On Wed --
17 MS. MASTEL: Wednesday's her other school day.
18 MS. LUBRITZ: Can we get in on --
19 THE COURT: Tuesday --
20 MS. LUBRITZ: -- Tuesday?
21 THE COURT: -- I can't do Tuesday, I've got day 10
22 of this trial --
23 MS. LUBRITZ: How about --
24 THE COURT: -- day 12.

1 MS. LUBRITZ: -- Thursday?
2 THE COURT: Huh?
3 MS. LUBRITZ: Thursday, Friday?
4 THE COURT: Well, let me look. I'm -- I'm here
5 everyday so -- I have no idea. There's Amanda Roberts there.
6 And then who's the afternoon? Romeo Perez and a pro per, or
7 is that Maria Avilaz Perez (sic)? At 1:30 on the Thursday
8 afternoon, it is actually day two of an evidentiary hearing --
9 Stacy Perez and a pro per. I could tell them to come in at
10 2:00 o'clock.
11 MS. LUBRITZ: And then just limit us to 30 minutes,
12 15 each.
13 THE COURT: Oh, I can do that.
14 MS. LUBRITZ: Yeah, I know.
15 THE COURT: We've got you on timer. Ten -- ten
16 minutes and five minutes rebuttal.
17 MS. LUBRITZ: Yeah.
18 THE COURT: Because you -- you know what will help
19 is you just give me the roadmap. You tell me your roadmap and
20 then I just say this --
21 MS. MASTEL: Uh-huh (affirmative).
22 THE COURT: -- this is how you should rule and
23 then --
24 MS. LUBRITZ: Thank you.

1 THE COURT: -- I can just weigh in which one I would
2 rule on. I can do that. So, how about Thursday, the 27th,
3 February, at 1:30. Can you remind me to tell Stacy Perez --
4 MS. LUBRITZ: Thank you, Your Honor.
5 THE COURT: -- and the proper to come in at 2:00
6 o'clock?
7 MS. MASTEL: Your Honor?
8 THE COURT: We'll start at 1:30 and we'll limit it
9 to ten and -- ten and five rebuttal.
10 MS. MASTEL: Your Honor?
11 THE COURT: And then -- yeah.
12 MS. MASTEL: In light of the fact that they're
13 asking for custody change, I mean we'll be getting obviously
14 temporary orders at that time, but does the Court want to set
15 the evidentiary hearing on that as well right now --
16 MS. LUBRITZ: Respectfully --
17 MS. MASTEL: -- since you're --
18 MS. LUBRITZ: -- we're not asking --
19 MS. MASTEL: What's that?
20 MS. LUBRITZ: -- for a change in custody. My
21 motion's entitled modify --
22 THE COURT: Give me your --
23 MS. LUBRITZ: -- time share.
24 THE COURT: -- list of items to rule on, you've

1 heard what they said --
2 MS. MASTEL: I understand.
3 THE COURT: -- it's not a custody --
4 MS. LUBRITZ: Done.
5 THE COURT: -- change.
6 MS. MASTEL: Well -- but a modification of time
7 share still requires a trial if we don't stipulate to it.
8 MS. LUBRITZ: Yeah, if you --
9 MS. MASTEL: It still --
10 MS. LUBRITZ: -- I would love that --
11 MS. MASTEL: -- (indiscernible - simultaneous
12 speech).
13 MS. LUBRITZ: -- trial, Judge, please. Set -- I
14 would love that trial. Dad can't have the kids --
15 THE COURT: Okay.
16 MS. LUBRITZ: -- on his days off.
17 THE COURT: I get it. You guys --
18 MS. LUBRITZ: Love it.
19 THE COURT: -- are -- you guys are in attorney mode.
20 Usually a visitation time share --
21 MS. LUBRITZ: It's a time share --
22 MS. MASTEL: And if we can't --
23 MS. LUBRITZ: -- modification.
24 MS. MASTEL: -- agree to it, then you have to make a

1 whole --

2 MS. LUBRITZ: Please.

3 MS. MASTEL: -- set of findings under the best

4 interest factors. Or you can --

5 THE COURT: I have no problem --

6 MS. MASTEL: -- make it a motion hearing.

7 THE COURT: -- doing that.

8 MS. LUBRITZ: Okay.

9 MS. MASTEL: I understand but all you can make on an

10 evidentiary hearing if we don't concede without evidence is a

11 temporary order.

12 THE COURT: We follow Rooney. Was there adequate

13 cause --

14 MS. LUBRITZ: Uh-huh (affirmative).

15 THE COURT: -- or can I hear it on the motion and

16 argument and make those findings and have it -- those findings

17 support that. If I feel there's not enough --

18 MS. MASTEL: Okay.

19 THE COURT: -- findings --

20 MS. LUBRITZ: Yeah.

21 THE COURT: -- then I can do lots of things.

22 MS. MASTEL: I --

23 THE COURT: I can do a trial basis for six months, I

24 can do different days of schedule. So, as -- in my 20 years

1 as a judge, have I ever done a trial on visitation
2 modification? No. I can't remember any. Unless you --
3 MS. MASTEL: I -- I've --
4 THE COURT: -- had a case with me.
5 MS. MASTEL: -- had a couple of them with you, Your
6 Honor, over the last 10 years.
7 THE COURT: These parents don't need to spend that
8 much --
9 MS. MASTEL: But --
10 THE COURT: -- attorney's fees.
11 MS. LUBRITZ: Well, she's not --
12 THE COURT: Look --
13 MS. LUBRITZ: -- paying anything, she's all pro bono
14 so it doesn't --
15 THE COURT: -- I'd like to --
16 MS. LUBRITZ: -- matter.
17 THE COURT: -- get it resolved for both of them. I
18 -- I don't take sides here. You guys do not want a trial on
19 visitation time share, I'll try to do my best to resolve it.
20 MS. LUBRITZ: Thank you.
21 THE COURT: But I'm not saying that's a no, I'm not
22 closing the door on that, but if I can't figure out -- it's a
23 tough one. If I set it for trial, it's an even tougher one.
24 MS. MASTEL: I understand, Your Honor.

1 THE COURT: If I don't have all the answers --
2 MS. MASTEL: I just --
3 THE COURT: -- then --
4 MS. MASTEL: -- want a date as early as possible.
5 THE COURT: Okay.
6 MS. MASTEL: Because I know Your Honor's calendar.
7 THE COURT: But either way I will have findings and
8 of course --
9 MS. MASTEL: Okay.
10 THE COURT: -- temporary -- yeah, you know, feel
11 free to appeal it if -- but I will make findings. I've -- I'm
12 not going to tell what other judges do down the hallway.
13 MS. MASTEL: Yeah.
14 THE COURT: But I'm good if I make findings. If I
15 do findings in a motion hearing, I'm good. And then you --
16 you know, the system, you can go 30-day appeal, I'll certify
17 it as a final order, and then you're --
18 MS. MASTEL: Okay.
19 THE COURT: -- going to be languishing a year and a
20 half in the Supreme Court. But --
21 MS. MASTEL: I'm really getting decisions --
22 MS. LUBRITZ: No, it's --
23 MS. MASTEL: -- much quicker than that.
24 MS. LUBRITZ: -- a month or two. But --

1 MS. MASTEL: But I -- I --
2 THE COURT: Right.
3 MS. MASTEL: -- I'm really getting decisions --
4 THE COURT: You're right --
5 MS. MASTEL: -- a lot quicker than that.
6 THE COURT: -- I can't close the door on your Rooney
7 requests, there'd have to be a Rooney request.
8 MS. MASTEL: Okay.
9 THE COURT: But on a --
10 MS. LUBRITZ: And what a --
11 THE COURT: -- 30-minute argument, you're going to
12 have to compact everything so briefing is very important.
13 MS. MASTEL: Uh-huh (affirmative).
14 THE COURT: I don't mind -- I get 159-page, you
15 know, exhibits and 30 pages of argument from other law firms,
16 no names mentioned. And if you file it, I read it. And I
17 usually read it, you know, the weekend before on briefing. If
18 it's all there, then you don't need to rehash it.
19 MS. LUBRITZ: Right.
20 THE COURT: Just give me your roadmap.
21 MS. MASTEL: Okay.
22 THE COURT: And then you give me a list and then I
23 can rule on it.
24 MS. LUBRITZ: Sounds good.

1 THE COURT: Okay. And you also could file a motion
2 to reconsider, you know, if I missed the boat on something,
3 file a 10-day and then you're -- you know --

4 MS. MASTEL: 14-day?

5 THE COURT: Yeah.

6 MS. LUBRITZ: No, no, sorry, 21 now.

7 THE COURT: But one lawyer will be drafting absolute
8 findings. I will be writing them down --

9 MS. MASTEL: Uh-huh (affirmative).

10 THE COURT: -- and preparing all this. Okay.

11 But --

12 MS. LUBRITZ: Thank you.

13 THE COURT: -- we're going to squeeze it in 30 to 45
14 minutes of argument. So, that's the temporary Band-Aid order.
15 Kids will stay in the activities that they're in. If Dad --
16 now on the new schedule, he's to get them to their cheer
17 activities or robotics competitions. And he'll have to make
18 time for that, because the kids' --

19 MS. LUBRITZ: Thank you, Judge.

20 THE COURT: -- activities are -- yeah. They're not
21 going to change that, we're not going to pull them from the
22 activities, they're going to maintain the status quo. If it's
23 a grades thing because we're in the middle of a school year,
24 you just need to encourage them, keep the grades up and

1 they're going to learn how to balance school and their
2 extracurricular life.

3 Now, any furthermore arguments on the motion to
4 continue trial?

5 MS. MASTEL: I --

6 THE COURT: Pros and cons or -- we've been at it --

7 MS. MASTEL: -- we've kind of moved --

8 THE COURT: -- for like --

9 MS. MASTEL: -- on three different --

10 THE COURT: -- 20 minutes to --

11 MS. MASTEL: -- ways. Apparently Ms. Lubritz has
12 more, but I think I'll hold for her next comments.

13 MS. LUBRITZ: Well, I think, Judge --

14 THE COURT: Okay.

15 MS. LUBRITZ: -- I don't want to play a tit-for-tat
16 and just go back and forth. Counsel made a couple of
17 statements, the Court made a couple of statements, and if I
18 could just briefly respond --

19 THE COURT: And you brought --

20 MS. LUBRITZ: -- and honestly --

21 THE COURT: -- your exhibit books today, did you
22 not, Ms. Mastel?

23 MS. MASTEL: Oh, we're ready --

24 THE COURT: Just in case?

1 MS. MASTEL: -- we're ready to go, I just --
2 THE COURT: Okay.
3 MS. MASTEL: -- believe that it's --
4 THE COURT: Double work.
5 MS. MASTEL: -- appropriate for --
6 THE COURT: Yeah.
7 MS. MASTEL: -- Peterson to come down since we know
8 that it's --
9 THE COURT: And there's no guarantees --
10 MS. MASTEL: -- available.
11 THE COURT: -- what my trial dates are.
12 MS. LUBRITZ: Right. But you just said the 14th is
13 open. So, we could have today --
14 THE COURT: Is it April --
15 MS. LUBRITZ: -- and we could have the 14th.
16 THE COURT: -- or March? It can't be March because
17 that's --
18 MS. LUBRITZ: No, it's February.
19 THE COURT: -- Bishop.
20 MS. LUBRITZ: It was February, you said 14th just
21 opened up.
22 THE COURT: April -- I said April.
23 MS. LUBRITZ: April? Then let's -- okay.
24 THE COURT: Rewind the video, I said April.

1 MS. LUBRITZ: My apologies, I heard it wrong.
2 THE CLERK: April 14th at 1:30.
3 MS. LUBRITZ: Perfect.
4 (COURT AND CLERK CONFER BRIEFLY)
5 THE COURT: April 14th at when?
6 THE CLERK: 1:30.
7 THE COURT: 1:30. Stack-one.
8 MS. LUBRITZ: Thank you.
9 THE COURT: I'm going to make a -- I'll reserve it
10 for you guys.
11 MS. LUBRITZ: Thank you.
12 THE COURT: Now, anything in between, we can ask
13 Susanna if there's anything in between.
14 MS. LUBRITZ: Okay.
15 THE COURT: And we can give you those if additional
16 and necessary. But you said you -- you could move it along,
17 get it done in a couple hours, but I'd probably give the day
18 two. And then take your chances what Peterson, it's not going
19 to hold up the trial.
20 MS. LUBRITZ: Because --
21 THE COURT: I'm inclined to do -- I'm going -- let's
22 start it. Because I'm booked --
23 MS. LUBRITZ: Okay.
24 THE COURT: -- and I want to get this done before I

1 retire at the end of the year as well.

2 MS. LUBRITZ: Thank you, Judge.

3 THE COURT: And it is -- basically it is what it is.
4 That's the quote of the day.

5 MS. MASTEL: Okay.

6 THE COURT: So, whenever Peterson comes down, you
7 research that.

8 MS. MASTEL: Okay.

9 THE COURT: If I -- if I can't get my decision in
10 time for Peterson, I'm inclined to look at Peterson if it has
11 any applicability. I -- I'm not motivated one way or the
12 other, it's just what is next on my list. I -- I -- my entire
13 Christmas I spent four -- my holidays writing four trial
14 decisions.

15 MS. LUBRITZ: Wow.

16 THE COURT: It's -- I'm used to it. I've been --
17 that's why we're getting new judges with our caseload.

18 MS. MASTEL: Uh-huh (affirmative).

19 THE COURT: But I'm -- I've got one pending now with
20 Dawn Throne and Amber Robinson. I'm just waiting on their
21 proposed findings, and I can knock that one out. And then I
22 don't have anything else waiting. So, if we can get this
23 done -- and if there's something that comes up between now and
24 April 14th, you get that.

1 MS. LUBRITZ: Thank you.
2 THE COURT: You go top of the --
3 MS. LUBRITZ: The only thing --
4 THE COURT: -- priority list.
5 MS. LUBRITZ: -- I would ask, Judge --
6 THE COURT: Uh-huh (affirmative).
7 MS. LUBRITZ: -- is because we don't want things
8 potentially stretched out just so that it has to come after
9 Peterson, my -- you were going to -- we were supposed to be
10 here for a half day.
11 THE COURT: Uh-huh (affirmative).
12 MS. LUBRITZ: Right?
13 THE COURT: I got you until -- normally 5:00, they
14 won't let us work overtime. It's a --
15 MS. LUBRITZ: So, that would --
16 THE COURT: -- county thing.
17 MS. LUBRITZ: -- have given each side about two
18 hours.
19 THE COURT: Two hours a piece.
20 MS. LUBRITZ: So, can I ask that you hold us to two
21 hours a piece?
22 THE COURT: Well, when it says you got -- well, the
23 expert can be a bit --
24 MS. MASTEL: I was going to say.

1 THE COURT: -- an hour minimum.
2 MS. LUBRITZ: Well, no --
3 MS. MASTEL: Okay.
4 MS. LUBRITZ: -- because again he's not testifying
5 about anything but facts. There's no law that he can testify
6 about per your order in the motion in limine. You granted it
7 in part.
8 THE COURT: I don't want to --
9 MS. LUBRITZ: You said he can testify, but he can't
10 testify --
11 THE COURT: I don't want to --
12 MS. LUBRITZ: -- about --
13 THE COURT: -- squeeze and compact their ability to
14 like put their -- have their day in court, but I do set
15 reasonable limits.
16 MS. MASTEL: Right.
17 THE COURT: Hour for the expert -- are you asking
18 for direct and cross?
19 MS. MASTEL: If necessary. I -- I mean here's the
20 problem. Can I -- can I --
21 THE COURT: And you've got Marshal -- and Marshal
22 cleared his calendar for this afternoon?
23 MS. MASTEL: Marshal cleared his calendar for this
24 afternoon.

1 THE COURT: Don't you just want to get him in and
2 out before --
3 MS. LUBRITZ: Well, it can't be --
4 THE COURT: -- you put your case --
5 MS. LUBRITZ: -- for this afternoon, because she
6 just said that she told both Ms. Cooley and Mr. Willick not to
7 come rush over here --
8 MS. MASTEL: Mr. Willick's --
9 MS. LUBRITZ: I'm sorry, I'm --
10 THE COURT: Okay.
11 MS. MASTEL: -- work is a minute --
12 MS. LUBRITZ: -- speaking.
13 MS. MASTEL: -- and a half away.
14 THE COURT: So, we can take --
15 MS. LUBRITZ: I'm speaking.
16 THE COURT: -- a little recess and find out if
17 Marshal can just walk catty-corner across the street. I know
18 where his office is.
19 MS. LUBRITZ: But it's my case first. My case in
20 chief goes first.
21 THE COURT: And --
22 MS. LUBRITZ: Because it's our motion. And I'm not
23 calling him.
24 THE COURT: You're not --

1 MS. LUBRITZ: So, as far as I'm concerned, he's got
2 the --
3 THE COURT: You can --
4 MS. LUBRITZ: -- day off.
5 THE COURT: -- call off the attorneys then. We're
6 going to take the rest of the afternoon. What time is it?
7 Almost 3:00? You've got --
8 MS. MASTEL: Quarter to 3:00.
9 THE COURT: -- two solid hours with you guys.
10 MS. LUBRITZ: Yes, Judge.
11 THE COURT: I could stretch it to an extra half hour
12 unless you got kids to pick up at 5:00 o'clock, but I usually
13 am out of here 5:00, 5:30.
14 MS. LUBRITZ: Okay. And actually the kids I think
15 are being taken care of by --
16 MS. MASTEL: My client's --
17 THE COURT: You got it worked out, Mom? Is --
18 MS. LUBRITZ: -- by -- by --
19 MS. MASTEL: -- (indiscernible - simultaneous
20 speech) are taking --
21 MS. LUBRITZ: -- by her parents and so --
22 THE COURT: They're good.
23 MS. LUBRITZ: -- no issue with that.
24 THE COURT: Okay. And so we'll take a little

1 recess. You need to contact Willick and Cooley saying --
2 MS. LUBRITZ: And I need --
3 THE COURT: -- pft (indicating sound).
4 MS. LUBRITZ: -- to contact McConnell.
5 THE COURT: And at the next trial date would be your
6 case in chief which probably would be likely April 14th unless
7 it's pushed up faster.
8 MS. MASTEL: Okay.
9 THE COURT: Okay?
10 MS. MASTEL: So --
11 MS. LUBRITZ: If -- if he needs --
12 THE COURT: So, I keep a priority list sort of like
13 up here. But I know kind of which cases need to get done.
14 MS. LUBRITZ: Sure. May we have --
15 THE COURT: But it sounds --
16 MS. LUBRITZ: -- 15 minutes? Does that sound okay?
17 Or do you want more than that?
18 MS. MASTEL: Fifteen minutes for what?
19 MS. LUBRITZ: Just as a break right now.
20 THE COURT: Recess.
21 MS. MASTEL: Oh, that's fine. So, I assume I'm not
22 going at all today? I'm telling --
23 MS. LUBRITZ: I -- I'm not --
24 MS. MASTEL: -- Ms. Cooley and Mr. Willick --

1 MS. LUBRITZ: -- saying that. I may be --
2 MS. MASTEL: -- that they're --
3 MS. LUBRITZ: -- quick.
4 MS. MASTEL: -- not coming?
5 MS. LUBRITZ: Judge --
6 MS. MASTEL: I mean --
7 THE COURT: You know the quickest trial I had was
8 two questions from both attorneys, and I ruled in literally 10
9 minutes.
10 MS. LUBRITZ: Judge, I'm not --
11 THE COURT: But it's not that --
12 MS. LUBRITZ: -- going to take --
13 THE COURT: -- kind of case.
14 MS. LUBRITZ: -- a long time. I -- I would
15 anticipate unless there's an issue --
16 THE COURT: Then give me your time frame.
17 MS. LUBRITZ: -- my case is -- is probably --
18 THE COURT: We start at 3:00.
19 MS. LUBRITZ: -- an hour.
20 THE COURT: Huh?
21 MS. LUBRITZ: Probably -- I'll -- I'll be finished
22 probably in an hour.
23 THE COURT: You can get Willick on or --
24 MS. LUBRITZ: Maybe --

1 THE COURT: -- Cooley on by 4:00.
2 MS. LUBRITZ: Maybe an hour and a half. Maybe an
3 hour and a half.
4 THE COURT: So --
5 MS. LUBRITZ: That's --
6 THE COURT: -- 3:00 to 4:30.
7 MS. LUBRITZ: Totally.
8 MS. MASTEL: And so --
9 THE COURT: And he works late. He can come at 4:30
10 to 5:30. And then we can get him out of the way --
11 MS. LUBRITZ: Uh-huh (affirmative).
12 THE COURT: -- and then Cooley can come at the next
13 hearing.
14 MS. MASTEL: I would prefer not to break up my case
15 in chief like that.
16 THE COURT: Why not? I work on --
17 MS. MASTEL: Because I've seen --
18 THE COURT: -- the fly all the time.
19 MS. MASTEL: I -- I understand and I -- look, I'll
20 do it if the Court wants me to, but she -- Ms. Lubritz --
21 THE COURT: I have utmost --
22 MS. MASTEL: -- was saying maybe an hour --
23 THE COURT: -- faith and confidence --
24 MS. MASTEL: -- maybe an hour and a half.

1 THE COURT: -- in you, Ms. Mastel, to handle this.
2 If Ms. Lubritz is done by 4:00, 4:30, you better have -- 4:30
3 to be safe. Tell Marshal to be --
4 MS. LUBRITZ: Absolutely.
5 THE COURT: -- on standby --
6 MS. LUBRITZ: No, you can cut me off --
7 THE COURT: -- at 4:30.
8 MS. LUBRITZ: -- at 4:30. Marshal can throw
9 something at me and say Lubritz shut up. No, I'm good with
10 that.
11 MS. MASTEL: Well, me find out if --
12 THE COURT: That's why we'll take a recess.
13 MS. MASTEL: I was going to say let me find out
14 if --
15 THE COURT: Any rules --
16 MS. MASTEL: -- Mr. Willick can work until 5:30.
17 THE COURT: -- to be invoked, exclusionary rules?
18 MS. MASTEL: Yes, Your Honor.
19 MS. LUBRITZ: Yes, Judge.
20 THE COURT: Your testifying witnesses, they're not
21 allowed in the courtroom if they're going to be testifying.
22 MS. LUBRITZ: Yes.
23 THE COURT: Are you having other family member
24 sitting in the courtroom?

1 MS. LUBRITZ: Yes, Judge. My client's mother is
2 here, his wife is a -- is a witness, so she'll have to be --
3 THE COURT: The wife will have to wait outside, the
4 mother and then --
5 MS. ROSE: My boyfriend.
6 THE COURT: That's fine. As long as they sit
7 quietly in the back --
8 MS. LUBRITZ: And who -- in the back?
9 THE COURT: -- yeah, they're not disrupting or
10 anything. So, that's fine.
11 UNIDENTIFIED MALE: Just an observer.
12 MS. LUBRITZ: Okay. We have a friend in the back if
13 he's got no allegiance --
14 MS. MASTEL: Who is that?
15 MS. LUBRITZ: -- I don't care.
16 THE COURT: That's up to you, Counsel.
17 MS. MASTEL: I'm sorry?
18 UNIDENTIFIED MALE: Just observer.
19 THE COURT: This is not -- is this a sealed case?
20 It's not a sealed case.
21 MS. MASTEL: For?
22 UNIDENTIFIED MALE: Just myself. It's public. I'm
23 just the public.
24 MS. LUBRITZ: Yeah.

1 MR. ROSE: He's not part of this case at all.
2 MS. LUBRITZ: No.
3 MR. ROSE: He's just observing.
4 THE COURT: He's probably one of my cases I take it
5 or --
6 MS. LUBRITZ: No.
7 THE COURT: Oh, maybe observing me. Am I judge on
8 your case?
9 UNIDENTIFIED MALE: No, ma'am, I'm just --
10 THE COURT: Okay.
11 UNIDENTIFIED MALE: -- observing.
12 THE COURT: Oh, duly noted. Okay. If you lawyers
13 don't have any objection, the observer can remain in the
14 courtroom.
15 MS. LUBRITZ: And before we go off, Judge --
16 THE COURT: Yeah.
17 MS. LUBRITZ: -- I'm going to be referring probably
18 to a lot of pleadings that have already been filed.
19 THE COURT: Uh-huh (affirmative).
20 MS. LUBRITZ: I made a book and gave it -- that's
21 the big book I gave you, Counsel, is I'm -- I didn't have a
22 chance to mark them like I marked mine, but they're all
23 pleadings. And then there are cases at the end that have been
24 cited in both of our cases.

1 THE COURT: Uh-huh (affirmative).
2 MS. LUBRITZ: So, I gave that to Counsel.
3 THE COURT: Okay.
4 MS. LUBRITZ: And I do have a set for you. Again,
5 everything in here is either Nevada Supreme Court case --
6 THE COURT: Cases --
7 MS. LUBRITZ: -- or has been --
8 THE COURT: Permissible.
9 MS. LUBRITZ: -- filed already. It's already been
10 filed on this case.
11 THE COURT: Yeah, they're not necessarily exhibits,
12 they're court pleadings or they --
13 MS. LUBRITZ: Because I'm going to --
14 THE COURT: -- are Supreme Court --
15 MS. LUBRITZ: -- refer to them and it's difficult, I
16 think it --
17 THE COURT: -- considering the --
18 MS. LUBRITZ: -- (indiscernible - simultaneous
19 speech).
20 THE COURT: -- intricacies and complexities of the
21 law in this case, permissible.
22 MS. LUBRITZ: Okay. Thank you, Your Honor.
23 THE COURT: And thank you for the extra copy.
24 MS. LUBRITZ: And Counsel has the same.

1 THE COURT: Okay.

2 MS. LUBRITZ: And I didn't even --

3 THE COURT: And we are in recess.

4 (COURT RECESSED AT 2:49:24 AND RESUMED AT 3:00:16)

5 THE COURT: We're back on the record, we're going to

6 commence the day one of the evidentiary hearing. I did give

7 out day two. We've excluded any witnesses. And does Counsel

8 wish to do any brief opening statements?

9 MS. LUBRITZ: I'm good, Your Honor.

10 MS. MASTEL: I'll hold mine until the beginning of

11 my case in chief, Your Honor.

12 THE COURT: You will do one and Ms. Lubritz will

13 just save everything to the end?

14 MS. LUBRITZ: Yes, Judge.

15 THE COURT: Okay. That's fine. Okay. So, it is

16 your case in chief, Ms. Lubritz, you may call your first

17 witness.

18 MS. LUBRITZ: Sarah Rose, please.

19 THE COURT: All right. Mom will take the stand and

20 we'll have her sworn in.

21 MS. LUBRITZ: Your Honor, may I sit, or would you

22 prefer that I stand?

23 THE COURT: Either way --

24 MS. LUBRITZ: Okay.

1 THE COURT: -- is okay with me.

2 THE CLERK: Please raise your right hand. Do you
3 solemnly swear the testimony you're about to give in this
4 action shall be the truth, the whole truth, and nothing but
5 the truth so help you God?

6 MS. ROSE: Yes.

7 THE CLERK: Thank you. You may be seated.

8 THE COURT: Okay. Mom, we'd ask you speak up
9 directly into the microphone, because we do record this, and
10 we want to make sure it's recorded and can be heard.

11 All right. Ms. Lubritz, you may commence direct
12 examination. And we do keep track of time so --

13 MS. LUBRITZ: Yes, ma'am.

14 THE COURT: -- we can keep track. Okay. 3:01, go
15 ahead.

16 MS. LUBRITZ: Thank you, Your Honor.

17 SARAH ROSE
18 called as a witness on behalf of the Plaintiff, having been
19 first duly sworn, did testify upon her oath as follows on:

20 DIRECT EXAMINATION

21 BY MS. LUBRITZ:

22 Q Good afternoon.

23 A Good afternoon.

24 Q Take a deep breath after that. Would you please

1 just for the -- for the record, would you state and spell your
2 first and last name and middle name?

3 A Sarah Janeen Rose, S-a-r-a-h J-a-n-e-e-n R-o-s-e.

4 THE COURT: That -- I like that, you can hear you.
5 Most people are like --

6 BY MS. LUBRITZ:

7 Q Now, if I can ask you --

8 THE COURT: -- they can't -- you know?

9 BY MS. LUBRITZ:

10 Q -- in one of the pleadings you had your last name
11 being Kloss, K-l-o-s-s, is one of the declarations that you
12 signed. Is that an error, or is Kloss any part of your name?

13 A Kloss --

14 MS. MASTEL: Objection, relevance and foundation.

15 MS. LUBRITZ: Well, first --

16 THE COURT: Overruled. You've got to --

17 MS. LUBRITZ: Thank you.

18 THE COURT: -- move the trial along. Just tell
19 us --

20 MS. LUBRITZ: Well, it's relevant --

21 THE COURT: -- why it's Kloss.

22 MS. LUBRITZ: -- because I want to know if she's got
23 another name.

24 THE WITNESS: No.

1 BY MS. LUBRITZ:

2 Q Okay. Thank you. And for purposes of the record,
3 could you please provide your address and phone number?

4 A My address is 269 Garden Trellis, T-r-e-l-l-i-s,
5 Court, Las Vegas, Nevada, 89148. My phone number is 702-557-
6 9050.

7 THE COURT: I've still got you -- I've still got her
8 on Young Harbor.

9 MS. LUBRITZ: Your Honor, that's --

10 THE COURT: She's got to fill out a change of
11 address form if that's where she gets her mail --

12 MS. MASTEL: Yes, Your Honor --

13 THE COURT: -- for the future.

14 MS. MASTEL: -- we generally have our clients do it
15 when we withdraw, but I can have her do it in advance.

16 THE COURT: We'll give her the form.

17 MS. MASTEL: Okay.

18 THE COURT: It -- is David still at Young Harbor?

19 MR. ROSE: No, Judge.

20 THE COURT: You've got to fill one out, too.

21 MS. LUBRITZ: Yes, 'ma'am.

22 THE COURT: Okay. Let's continue on.

23 MS. LUBRITZ: Thank you.

24 BY MS. LUBRITZ:

1 Q All right. So, what was the date of --
2 MS. LUBRITZ: May I have permission to treat the
3 witness as adverse so that I can --
4 THE COURT: Yes.
5 MS. LUBRITZ: -- ask leading questions? Thank you.
6 BY MS. LUBRITZ:
7 Q What was the date of the -- let me back up a little
8 bit. Prior to the decree being entered, you, your respective
9 attorneys at the time, and Dave attended a mediation; is that
10 correct?
11 A Yes.
12 Q And do you remember roughly when that was?
13 A Late March, early April of 2018.
14 Q Does around March 23rd sound about right?
15 A Yeah.
16 Q Okay. Thank you. And who was the mediator?
17 A She was an attorney --
18 Q Okay.
19 A -- she's now a judge, I don't know her name.
20 Q Let me do this, it's not a pop quiz so let me just
21 help with that. Regina -- I'm sorry -- Regina McConnell is a
22 lawyer. Rhonda Forsborg was the mediator I believe at the
23 time, correct?
24 A Yes, ma'am.

1 Q All right. Thank you. And you and David had
2 already -- prior to the mediation, you and David had already
3 worked out a parenting plan; is that correct?

4 A Yes.

5 Q And in fact that had been filed?

6 A Yes.

7 Q Great. So, when you got -- when you got to
8 mediation, the main issues that had to be resolved were
9 property, real or -- or personal? So, example -- let me
10 withdraw that. What did you understand was going to be
11 resolved at the mediation?

12 A Alimony, child support, the selling of the house,
13 retirement benefits, as well as custody of the dog.

14 Q Who has the dog right now?

15 A David had the dog until she died.

16 Q Okay. Now, the biggest issue I -- I think that we
17 can all agree was how would pensions, et cetera, be resolved;
18 is that your understanding?

19 A I don't understand.

20 Q Okay. I apologize. And you did -- I'm not trying
21 to give you an instruction but I guess I am. If you don't
22 understand because it's late and I'm going to ask inartful
23 questions at times, if you don't understand them, please do as
24 you just did and ask me to rephrase it, okay? So, I'm going

1 to withdraw that question. At some point in time on March
2 23rd or thereabouts, you and David reached resolutions as to
3 main issues that you went there for, correct?

4 A Yes.

5 Q Great. And I'm just going to ask you straight out,
6 the SBP, the survivorship benefit, was that something that you
7 and David discussed or your counsel discussed during the
8 mediation?

9 A Yes.

10 Q And did you resolve that issue during mediation?

11 A It was my understanding it was part of the
12 retirement.

13 Q Okay. We all have times when we want to not answer
14 yes or no, because we -- we want to maybe give our side of the
15 story. You have very, very able counsel, so what I'm going to
16 ask is if I ask a yes or a no question, would you please
17 respond -- respond that way? And if -- if I want another
18 answer or another question, I'll ask it. But your counsel can
19 do that as well. Because she'll have an ability to cross
20 examine you, okay?

21 A Uh-huh (affirmative).

22 Q So, let's go back to the question that I asked. You
23 and David discussed during that mediation either together or
24 through counsel SBP, correct?

1 A Yes.

2 Q Survivor benefits, okay. And were survivor benefits
3 listed in the -- in the Memorandum of Understanding?

4 A No.

5 Q Okay. So, they were not addressed in the Memorandum
6 of Understanding, correct?

7 MS. MASTEL: Objection, misstates her testimony.

8 MS. LUBRITZ: How does it --

9 THE COURT: I think she just repeated her answer.
10 It's --

11 MS. MASTEL: She --

12 THE COURT: -- consistent.

13 MS. MASTEL: -- didn't. She asked --

14 THE COURT: Okay.

15 MS. MASTEL: -- if it was listed and then she asked
16 if it was addressed. So, those are two very different things.

17 THE COURT: Okay. Duly noted. Let me sustain and
18 disregard, we can start again.

19 MS. LUBRITZ: Sure.

20 BY MS. LUBRITZ:

21 Q Survivorship benefits were discussed by and between
22 you and Dave during the mediation, correct?

23 A Yes.

24 Q And what was your position on survivor benefits?

1 A That I was going to receive.

2 Q And tell me about how that came about.

3 A The mediator brought it to our attention when the
4 five of us were together. Our attorney --

5 Q Okay. I'm going to stop you there. Specifically
6 what did the mediator say?

7 A She said that there was a --

8 MS. MASTEL: Objection, hearsay.

9 THE COURT: Response?

10 MS. LUBRITZ: I have Ms. McConnell, but I think it's
11 important -- credibility is one of the issues that I think
12 you're going to have to rule and judge on. Because their
13 testimony in essence is going to resolve whether it was fraud,
14 mistake, or something else.

15 THE COURT: Do we have an unavailable declarant?

16 MS. LUBRITZ: No. And if you want me to hold that
17 until -- but I also want to know what her understanding of it
18 was.

19 THE COURT: I'll sustain it as to hearsay.

20 MS. LUBRITZ: That's fine.

21 THE COURT: But I'll accept they went to mediation,
22 who the mediator was, and that apparently SBP was discussed by
23 the mediator. Not what the mediator said, but it was --

24 MS. LUBRITZ: That's her testimony.

1 THE COURT: -- discussed between -- this is her
2 testimony --
3 MS. LUBRITZ: Right.
4 THE COURT: -- that the mediator -- the mediator --
5 MS. LUBRITZ: Brought it to their attention --
6 THE COURT: -- brought it to their attention.
7 MS. LUBRITZ: -- is what she said.
8 THE COURT: Okay. Thank you.
9 MS. LUBRITZ: Okay.
10 BY MS. LUBRITZ:
11 Q And my question was how did she -- I'll ask a
12 different one. In what way did she bring it to your
13 attention?
14 A She spoke about a other first line responder case
15 that she had had where PERS was part of it.
16 Q Okay. So, I asked you -- you --
17 MS. LUBRITZ: We have -- we can't cut it both ways.
18 Either she's going to be able to -- permitted to state --
19 THE COURT: Unless you hear an objection --
20 MS. MASTEL: And when she was --
21 THE COURT: -- she can object.
22 MS. MASTEL: -- finished with her response for the
23 sake of the record, I was going to move to strike her answer
24 as being hearsay.

1 MS. LUBRITZ: Thank you.
2 THE COURT: Okay.
3 MS. MASTEL: However, I try not to cut --
4 THE COURT: Okay.
5 MS. MASTEL: -- my client off.
6 THE COURT: Stick with the formalities --
7 MS. LUBRITZ: So --
8 THE COURT: -- at trial so --
9 MS. LUBRITZ: -- I'd ask that her answer be
10 stricken.
11 THE COURT: It's not regarded at this point. You
12 can ask the question a different way.
13 MS. LUBRITZ: I -- I did; but I'll --
14 THE COURT: Or --
15 MS. LUBRITZ: -- I'll do it again.
16 BY MS. LUBRITZ:
17 Q And if you could please -- because I don't want
18 to --
19 THE COURT: There was absolutely nothing wrong with
20 the way you asked the question. If the witness answers, then
21 that's her attorney's job to -- which -- yeah. Okay. Go
22 ahead. But -- brought it to the parties' attention about the
23 SBP. And you can ask her why --
24 MS. LUBRITZ: Okay.

1 THE COURT: -- or something.
2 MS. LUBRITZ: So, let me --
3 THE COURT: Okay.
4 MS. LUBRITZ: -- let me move aside on that, and I'll
5 wait until Ms. McConnell's here.
6 THE COURT: Okay.
7 BY MS. LUBRITZ:
8 Q Did you and Dave agree that day on survivor
9 benefits?
10 MS. MASTEL: Objection, vague.
11 MS. LUBRITZ: What was the objection?
12 MS. MASTEL: Objection, the question was vague.
13 That day? Did -- within that --
14 MS. LUBRITZ: Okay.
15 MS. MASTEL: -- 24-hour period?
16 MS. LUBRITZ: All right. Judge, this is going to
17 be --
18 THE COURT: You want to add more --
19 MS. LUBRITZ: Okay.
20 THE COURT: Oh, you want me to rule?
21 MS. LUBRITZ: No, Judge, it's fine.
22 THE COURT: Okay.
23 BY MS. LUBRITZ:
24 Q Do you understand what I mean that day? Do you

1 understand that -- I'm going to define it. The date -- during
2 the mediation period from the moment you walked into mediation
3 until the decree was signed and y'all went out? So, when I
4 say that day, that's the period of time I'm speaking of. Is
5 that -- do you understand that?

6 A Yes.

7 Q Okay. So, we can agree that when I say that day,
8 you'll understand it's that time period, okay?

9 A Okay.

10 Q Great. Thank you. So, you and Dave did not agree
11 on survivor benefits that day, correct?

12 A Yes.

13 Q Tell me if you all didn't agree that day, on
14 survivor benefits --

15 (COUNSEL AND CLIENT CONFER BRIEFLY)

16 MS. LUBRITZ: We have nothing further of this
17 witness.

18 THE COURT: Nothing further. Okay. Cross-
19 examination? 3:01 to 3:11. That's 10 minutes.

20 CROSS EXAMINATION

21 BY MS. MASTEL:

22 Q Sarah, the last question Ms. Lubritz just asked you
23 was you agree that you and Dave did not agree --

24 MS. LUBRITZ: I'm sorry, I'm going to --

1 MS. MASTEL: -- that day --
2 MS. LUBRITZ: -- object. Counsel's testifying.
3 MS. MASTEL: No, I'm not. I was asking --
4 MS. LUBRITZ: Excuse me --
5 MS. MASTEL: -- a question --
6 MS. LUBRITZ: -- I would ask --
7 MS. MASTEL: -- that's a preface.
8 MS. LUBRITZ: -- that Your Honor rule.
9 THE COURT: Okay. Could you repeat what -- the
10 question again?
11 MS. MASTEL: If I can finish it.
12 THE COURT: Okay.
13 MS. LUBRITZ: Respectfully, I'm going to make
14 objections --
15 THE COURT: I believe --
16 MS. LUBRITZ: -- at the time.
17 THE COURT: -- she was sort of repeating back what
18 Mom --
19 MS. LUBRITZ: And that's -- and that's not
20 appropriate.
21 THE COURT: The Court --
22 MS. LUBRITZ: Let Mom repeat back what she said.
23 THE COURT: Overruled. The Court can sort that out
24 and we're not relying anything beyond either what she said.

1 Yes. Okay.

2 BY MS. MASTEL:

3 Q Ms. Lubritz's last question to you was that you and
4 Dave did not agree that day, correct, that you had come to an
5 agreement --

6 MS. LUBRITZ: Objection that's --

7 MS. MASTEL: -- on the survivor benefits?

8 MS. LUBRITZ: -- not -- that was not my question.
9 If she's going --

10 THE COURT: She was doing --

11 MS. LUBRITZ: -- to restate my question, she needs
12 to restate it accurately.

13 THE COURT: She was doing fine and then you
14 interlineated or interjected. So, at that point she wasn't
15 trying to change any of the answers or the question.
16 Overruled.

17 MS. MASTEL: Thank you.

18 THE COURT: But I guess you'll have to ask it again.

19 MS. LUBRITZ: But she's got to ask the actual
20 question, Judge.

21 THE COURT: Um --

22 MS. LUBRITZ: Because that's --

23 MS. MASTEL: I'll --

24 MS. LUBRITZ: -- just then she --

1 MS. MASTEL: -- I'll rephrase.

2 MS. LUBRITZ: Thank you.

3 BY MS. MASTEL:

4 Q You heard Ms. Lubritz's last question, correct?

5 A Yes.

6 Q Okay. Did you find it confusing?

7 A Yes.

8 Q Okay. If when you and Dave were in mediation before
9 the decree was drafted, did you and he come to a final
10 agreement on survivor benefits?

11 A No.

12 MS. LUBRITZ: Objection as to the form of the
13 question.

14 MS. MASTEL: When --

15 THE COURT: Overruled. And Mom's answer was?

16 THE WITNESS: No.

17 THE COURT: Okay.

18 BY MS. MASTEL:

19 Q When -- after the mediation, you and your attorney,
20 Ms. Cooley, and Ms. McConnell, and Dave went to a second
21 location?

22 MS. LUBRITZ: Objection, leading. It's her client,
23 she's not adverse.

24 THE COURT: It's just prefatory but --

1 MS. LUBRITZ: Well --
2 THE COURT: -- okay, sustained.
3 MS. MASTEL: Okay.
4 MS. LUBRITZ: Honestly, this is --
5 THE COURT: You can ask about --
6 MS. LUBRITZ: -- a very important --
7 THE COURT: -- location but don't suggest the
8 location or anything. Go ahead.
9 BY MS. MASTEL:
10 Q What happened --
11 THE COURT: Right.
12 MS. MASTEL:
13 BY MS. MASTEL:
14 Q -- immediately after mediation?
15 A We -- my attorney and myself went to another
16 attorney's office to be able to use the computer. She started
17 drafting the decree, and then David and his attorney joined us
18 while the decree was still being drafted.
19 Q Okay. And during --
20 THE COURT: Okay. Went to another office?
21 THE WITNESS: Another attorney's office. That was
22 not the mediator.
23 THE COURT: In the same building?
24 THE WITNESS: No.

1 THE COURT: Okay.

2 THE WITNESS: Down the street.

3 BY MS. MASTEL:

4 Q Do you recall the name of the other attorney?

5 A It was a gentleman, it was on --

6 MS. LUBRITZ: I'll stipulate that they went to
7 another location.

8 THE COURT: That's fine. You went there to make
9 copies?

10 THE WITNESS: No.

11 THE COURT: Oh. You went down there to?

12 THE WITNESS: They needed to -- my attorney needed
13 to use a different attor -- computer because her laptop that
14 had started had failed and she did not have a charger.

15 THE COURT: Oh. To use a computer?

16 THE WITNESS: Yes.

17 THE COURT: Who was your attorney at that time?

18 THE WITNESS: Shelly Cooley.

19 THE COURT: It was Shelly Cooley, okay.

20 BY MS. MASTEL:

21 Q Okay. And I'm sorry, just because we got off track
22 a little bit, you testified that Ms. McConnell and Dave came
23 to that office as well while Ms. Cooley was drafting the
24 decree, correct?

1 A Yes.

2 THE COURT: I believe I heard that.

3 MS. MASTEL: Okay.

4 BY MS. MASTEL:

5 Q And were you in a position to see Ms. Cooley
6 drafting the decree?

7 A Yes.

8 Q And did you see Ms. McConnell while she was there?

9 A Yes.

10 Q Can you tell me what Ms. McConnell was doing?

11 A Yes, Ms. -- Ms. McConnell was reading the --

12 MS. LUBRITZ: It's a little --

13 THE WITNESS: -- computer screen.

14 MS. LUBRITZ: -- vague, Your Honor. I'm going to
15 ask because my client and his former counsel did arrive later.
16 I'd like to know a time frame.

17 THE COURT: Time frame --

18 MS. LUBRITZ: Otherwise it's --

19 THE COURT: -- foundation.

20 MS. LUBRITZ: -- vague as to time.

21 THE COURT: Sustained. Okay.

22 BY MS. MASTEL:

23 Q After Ms. McConnell and Dave got to the attorney's
24 office, were you in a position to see Ms. McConnell and

1 what --
2 MS. LUBRITZ: It's still --
3 MS. MASTEL: -- she was doing?
4 MS. LUBRITZ: -- vague as to time. Same objection.
5 THE COURT: Yeah, I'm --
6 MS. LUBRITZ: We don't know when it was.
7 THE COURT: -- what time did they leave Forsberg's
8 office, what time did they arrive?
9 MS. MASTEL: All I'm saying is after they got to
10 where Sarah and Shelly were, could she see Ms. McConnell.
11 MS. LUBRITZ: No, that -- that's not the question.
12 THE COURT: It's still foundation.
13 MS. LUBRITZ: It's still -- there's no foundation --
14 THE COURT: I hate to be --
15 MS. LUBRITZ: -- it's vague --
16 THE COURT: -- technical --
17 MS. LUBRITZ: -- as to time.
18 THE COURT: -- but it would be helpful to --
19 MS. MASTEL: Well --
20 THE COURT: -- the Court if I knew like what time of
21 day, was it at midnight, was it at 3:00 o'clock they ended up
22 at the other attorney's office at 3:30 and then when did Dad
23 and his attorney come in?
24 BY MS. MASTEL:

1 Q Do you recall what time you -- approximately what
2 time you and Ms. Cooley got to the other attorney's office?

3 A It was midday, probably around noonish.

4 Q Okay.

5 THE COURT: It was around noon.

6 BY MS. MASTEL:

7 Q Do you recall approximately how much later
8 Ms. McConnell and Dave showed up?

9 A It was about 40 minutes to an hour later.

10 Q Okay. And you were in the position once
11 Ms. McConnell showed up to see her and what she was doing?

12 A Yes, ma'am, I was in the same room.

13 MS. LUBRITZ: Objection, Your Honor, please -- it
14 was a yes or a no. And I should've objected to hearsay, but I
15 want to move it along. She then just blurted out an answer so
16 it was non-responsive.

17 THE COURT: Motion to strike --

18 MS. MASTEL: You don't --

19 THE COURT: -- the later part?

20 MS. LUBRITZ: Yes.

21 MS. MASTEL: There was no hearsay. I asked if she
22 was in a position to see her.

23 THE COURT: No, we're going to get technical here
24 again. That's what lawyers do obviously. So, I'm going to

1 sustain -- I'm sorry, I'm going to sustain after the word --
2 MS. LUBRITZ: Yes.
3 THE COURT: -- yes.
4 MS. MASTEL: Okay.
5 THE COURT: You're free to ask another question --
6 MS. MASTEL: I -- I --
7 THE COURT: -- further.
8 MS. MASTEL: -- understand.
9 THE COURT: Okay.
10 BY MS. MASTEL:
11 Q What did you see Ms. McConnell do?
12 A She was standing next to my attorney, and she was
13 pointing to the computer screen and talking with my attorney
14 as they were drafting together.
15 Q Okay. And did you see Ms. McConnell sit down at the
16 computer and start typing at any point?
17 A No.
18 Q Was a copy of -- were you able to sit down at the
19 computer?
20 A I did.
21 Q And what was on the computer?
22 A The decree that was -- that was for David and
23 myself.
24 Q Okay. And were you given an opportunity to review

1 that decree?

2 A Yes.

3 Q And that decree that you reviewed, were changes made
4 to it to the best of your knowledge?

5 MS. LUBRITZ: Foundation and were changes made? I
6 -- it's vague as to time, I need foundation.

7 THE COURT: Okay. Yeah, we're very technical here.
8 So, sustained.

9 BY MS. MASTEL:

10 Q At the time that you were at that office and
11 Ms. Cooley was drafting the decree, and you were viewing her
12 and Ms. McConnell at the computer, are you aware if changes
13 were made during that time period at that attorney's office?

14 MS. LUBRITZ: That's compound, it's all -- it's --
15 as to the form. I didn't understand it.

16 THE COURT: Overruled as to compound.

17 MS. LUBRITZ: As to form.

18 THE COURT: Did you understand the question, Mom?

19 THE WITNESS: I do.

20 THE COURT: Then it's not vague to her --

21 MS. LUBRITZ: I didn't.

22 THE COURT: -- so --

23 MS. LUBRITZ: Could Counsel repeat it, please?

24 MS. MASTEL: Sure.

1 THE COURT: You can repeat the question.

2 MS. LUBRITZ: Thank you.

3 BY MS. MASTEL:

4 Q At the time that you were at the other attorney's
5 office and Ms. Cooley was drafting the degree, you testified
6 that you sat down at the computer and reviewed it, correct?

7 A Yes.

8 Q Okay. During that period of time while it was being
9 drafted while you were there, are you aware if changes were
10 made to what you reviewed?

11 A I reviewed it once.

12 Q Okay.

13 A And then --

14 MS. LUBRITZ: Objection, nonresponsive. She -- the
15 question was would you agree if any changes were made.

16 BY MS. MASTEL:

17 Q Are you aware if changes were made during that
18 period?

19 MS. LUBRITZ: I'd ask --

20 THE COURT: Sustained.

21 MS. LUBRITZ: -- her answer be --

22 THE WITNESS: Yes.

23 MS. LUBRITZ: -- stricken. Okay.

24 THE COURT: The answer is yes, okay. After she

1 asked it again.

2 BY MS. MASTEL:

3 Q Ultimately the decree was finalized effectively
4 during that time period, right?

5 A Yes.

6 MS. LUBRITZ: Again, vague as to time. What time
7 period?

8 MS. MASTEL: We've only been addressing one time
9 period this whole time.

10 MS. LUBRITZ: No, she --

11 MS. MASTEL: Does Ms. Lubritz want me to --

12 MS. LUBRITZ: If I may?

13 MS. MASTEL: -- caption this every single time?

14 MS. LUBRITZ: No. If I may? We're clear as to the
15 time that it was 40 minutes to an hour before Dave and his
16 attorney arrived.

17 THE COURT: By the way, do you lawyers know what
18 office they went to?

19 MS. MASTEL: I believe it was --

20 THE COURT: Was it Cooley --

21 MS. LUBRITZ: I wanted to get --

22 MS. MASTEL: -- Mr. Shapiro's.

23 MS. LUBRITZ: That's what it was --

24 THE COURT: Shapiro's office?

1 MS. LUBRITZ: -- told to me.
2 MS. MASTEL: I believe it was --
3 MS. LUBRITZ: Yeah.
4 MS. MASTEL: -- Bruce's office.
5 MS. LUBRITZ: Because they were very close.
6 THE COURT: Cooley knew Shapiro?
7 MS. MASTEL: Well, they were --
8 THE COURT: I'm assuming that's --
9 MS. LUBRITZ: -- at Judge Forsberg's office and --
10 THE COURT: Oh, when she was down --
11 MS. MASTEL: -- so they were very nearby.
12 THE COURT: -- was down south?
13 MS. MASTEL: Right.
14 MS. LUBRITZ: And --
15 THE COURT: Okay.
16 MS. LUBRITZ: -- they indicated that they were
17 friends and so they --
18 THE COURT: I get that --
19 MS. LUBRITZ: -- went over there to go over that.
20 THE COURT: -- okay.
21 MS. LUBRITZ: So, my -- here's my problem is that
22 Mom says it was around noon when they got to --
23 THE COURT: Shapiro's office.
24 MS. LUBRITZ: -- Shapiro's office --

1 THE COURT: I get that.

2 MS. LUBRITZ: -- if that's who it was.

3 THE COURT: Yeah.

4 MS. LUBRITZ: And then Dave and my client -- I'm
5 sorry, Dave and his former attorney arrive 40 minutes to an
6 hour later --

7 THE COURT: Right.

8 MS. LUBRITZ: -- so we know now that we're looking
9 between 12:40 and 1:00 o'clock.

10 THE COURT: Uh-huh (affirmative).

11 MS. LUBRITZ: But anything after that point, there's
12 several hours between then --

13 THE COURT: So, we want to pinpoint --

14 MS. LUBRITZ: -- and at the end --

15 THE COURT: -- it down.

16 MS. LUBRITZ: -- of the day. So, that's the time
17 period when we ask the question --

18 THE COURT: You know what would help the trier of
19 fact, which is me obviously, the layout of the office. So,
20 Shapiro's probably got this big firm with like seven, 12
21 offices and you went to an empty office, a spare office, or
22 some other lawyer's office?

23 THE WITNESS: It was an empty office. They had
24 boxes in there like --

1 THE COURT: But it had --
2 THE WITNESS: -- storage.
3 THE COURT: -- a laptop or it had a PC?
4 THE WITNESS: It had a desktop, yeah.
5 THE COURT: A desktop. And where --
6 MS. LUBRITZ: I think it's all glass, too.
7 THE COURT: -- where were you sitting?
8 THE WITNESS: I was sitting -- the computer was in
9 the back right-hand corner.
10 THE COURT: Uh-huh (affirmative).
11 THE WITNESS: And then I was sitting at the desk
12 directly past it in the middle of it. And it's a very small
13 office.
14 THE COURT: You're like 10 feet away?
15 THE WITNESS: Oh, less. Like three.
16 THE COURT: And you just sat there while you saw
17 Cooley type it up?
18 THE WITNESS: Yes.
19 THE COURT: Okay. And then McConnell and Dad showed
20 up?
21 THE WITNESS: Yep.
22 THE COURT: Walked right in the office?
23 THE WITNESS: Dad stayed at the --
24 THE COURT: Lobby?

1 THE WITNESS: -- at the door. No, he was at the
2 door --
3 THE COURT: Oh, hang on --
4 THE WITNESS: -- with his back against --
5 THE COURT: -- the doorway?
6 THE WITNESS: -- it with the phone out. And then
7 his attorney went over to the computer in the corner, and she
8 stood and leaned over the desk and was pointing at it at the
9 screen just like that.
10 THE COURT: How long were they at it?
11 THE WITNESS: They were --
12 THE COURT: Of Cooley and McConnell?
13 THE WITNESS: -- they were probably at it for a good
14 solid -- another 40 minutes to an hour.
15 THE COURT: And you just kind of sat there, and he
16 was taking calls and you were doing --
17 THE WITNESS: I just sat there and watched.
18 MS. LUBRITZ: Well --
19 THE COURT: Is that -- you could see them?
20 THE WITNESS: Yes.
21 THE COURT: And then hear them?
22 THE WITNESS: Yes.
23 THE COURT: Okay.
24 MS. LUBRITZ: And the time period that I was

1 concerned about is when Mom was sitting at the computer,
2 that's when I made my objection.

3 THE COURT: Okay. That filled the hole for me.

4 MS. LUBRITZ: Yeah.

5 THE COURT: So, McConnell and Cooley -- while Cooley
6 and McConnell were at it, and they were typing, then about 40
7 minutes you said to come on over here and look at this?

8 THE WITNESS: Uh-huh (affirmative).

9 THE COURT: So, and you sat down --

10 THE WITNESS: Yes.

11 THE COURT: -- and how long did it take you to read
12 that thing?

13 THE WITNESS: It took like 10 minutes or so.

14 THE COURT: You spent 10 minutes?

15 THE WITNESS: About 10, yeah.

16 THE COURT: Okay. Should we take it from there,
17 Ms. Mastel?

18 MS. MASTEL: Sure.

19 THE COURT: Okay.

20 BY MS. MASTEL:

21 Q The decree that you read in those 10 minutes, is it
22 the same decree as the decree that was filed in this case?

23 A Yes.

24 Q And were you in a position to see if a copy was

1 provided to David to look over?

2 A I do not recall.

3 Q Okay.

4 MS. LUBRITZ: That exceeds the scope of my direct.

5 THE COURT: Ask the quest -- what's the question

6 again?

7 MS. MASTEL: If she was in a position to see if

8 David reviewed it or not.

9 MS. LUBRITZ: I --

10 THE COURT: Overruled.

11 MS. LUBRITZ: -- very -- I didn't ask anything about

12 it respectfully, so I would ask that my objection --

13 THE COURT: We could be very --

14 MS. LUBRITZ: -- be noted.

15 THE COURT: -- technical, but I don't want to be too

16 narrow. Are you talking about the whole mediation? That's --

17 MS. LUBRITZ: No, no, no --

18 MS. MASTEL: No, when -- when --

19 THE COURT: Not the mediation the --

20 MS. MASTEL: Yeah.

21 MS. LUBRITZ: She -- she asked if her client was

22 able to see whether or not my client read the decree.

23 MS. MASTEL: Was in a position to see if he had

24 an opportunity --

1 MS. LUBRITZ: Okay.

2 MS. MASTEL: -- to review it.

3 MS. LUBRITZ: That was the question. That --

4 THE COURT: If you want to keep it out --

5 MS. LUBRITZ: -- exceeds the scope.

6 THE COURT: -- Ms. Mastel, just jot a note and ask

7 it on her direct on her case in chief.

8 MS. LUBRITZ: That's fine, because I don't want to

9 mix the two.

10 THE COURT: All right.

11 MS. LUBRITZ: And maybe --

12 THE COURT: I'll accept those -- this is the last

13 thing I wrote. She sat down at the computer and read it for

14 10 minutes.

15 MS. LUBRITZ: Thank you.

16 MS. MASTEL: Okay.

17 THE COURT: Okay. They didn't object to that so

18 they -- I'll sustain it out of scope, you can reserve it --

19 MS. MASTEL: Okay.

20 THE COURT: -- for your direct.

21 BY MS. MASTEL:

22 Q You -- after reviewing the decree, you signed the

23 decree, correct?

24 A Yes.

1 MS. LUBRITZ: I'd ask her not to lead her witness.
2 I'm going to let that one go, but please just an admonition
3 or --

4 BY MS. MASTEL:

5 Q Did Ms. Cooley sign the decree at that time?

6 A Yes.

7 Q Did you have any questions or changes to the decree?

8 A No.

9 MS. MASTEL: I suppose I'll save the rest for my
10 direct just to --

11 THE COURT: Yeah --

12 MS. MASTEL: -- make it easy.

13 THE COURT: -- I got it. Okay. Redirect if any?
14 That was 3:24 p.m. Okay. I'm just keeping track here.

15 REDIRECT EXAMINATION

16 BY MS. LUBRITZ:

17 Q Just so I'm clear if I may, ma'am, the decree that
18 you read while sitting at the computer table was the decree
19 that was filed?

20 A Yes.

21 MS. LUBRITZ: I have nothing further.

22 THE COURT: Okay. Give me a second. Decree she was
23 signing that day was the same --

24 MS. LUBRITZ: Can the marshal check to see if

1 Ms. McConnell's out --

2 THE COURT: -- decree --

3 MS. LUBRITZ: -- she was on her way when they called
4 her.

5 THE COURT: Mom, you can step down. We're done with
6 your testimony for now. You just go back down and sit with
7 your attorney. Thank you.

8 Your next witness was McConnell?

9 MS. LUBRITZ: Yes, and I -- she may be a few minutes
10 still coming, but if we have could have the marshal check to
11 see if she's there, please?

12 THE COURT: Genaro (ph), Attorney Regina McConnell.

13 THE BAILIFF: Yes, Your Honor.

14 THE COURT: Thank you. What, didn't she text you
15 letting you know she was in the building?

16 MS. LUBRITZ: I'm sorry?

17 THE COURT: Did she not text you she was in the
18 building?

19 MS. LUBRITZ: No, we were communicating over the
20 break, and she's in Henderson, and she said that she was on
21 her way.

22 THE COURT: Okay.

23 MS. LUBRITZ: And I don't want to keep the counsel
24 waiting longer than I have to as opposed to --

1 THE COURT: Right. If she's a way -- a ways away,
2 do you have somebody else to call?
3 MS. LUBRITZ: Absolutely, my client.
4 THE COURT: Okay. Good.
5 MS. LUBRITZ: I have witnesses, Judge.
6 THE COURT: You got it.
7 MS. LUBRITZ: I take it that's a no.
8 THE COURT: Okay.
9 MS. LUBRITZ: The only thing I would ask so that --
10 because I did want to have Ms. McConnell as my next witness
11 that can we just get a word to her -- would you ask --
12 THE COURT: Do you need a minute --
13 MS. LUBRITZ: -- Ms. McConnell --
14 THE COURT: -- to text her or something?
15 MS. LUBRITZ: I -- I'm just going to ask if Mom
16 would just go out to Nexie (ph) who's got the phone and just
17 text her and see how far away she is.
18 THE COURT: It's up to you.
19 MS. LUBRITZ: And then just let her know, please,
20 that once she arrives, just to come on in so we know if that's
21 okay with the marshal.
22 THE BAILIFF: Sure.
23 MS. LUBRITZ: Thank you.
24 THE COURT: Okay.

1 MS. LUBRITZ: At this point I'll call my client.

2 THE COURT: Right. We can start, we can pause --

3 MS. LUBRITZ: Thank you.

4 THE COURT: -- because we've got to get this thing
5 done.

6 All right. Dad, we'll have you up on the stand.
7 Remain standing, raise your right hand. Watch your step,
8 we'll have you sworn in, then you can be seated.

9 THE CLERK: Do you solemnly swear the testimony
10 you're about to give in this action shall be the truth, the
11 whole truth, and nothing but the truth so help you God?

12 MR. ROSE: I do.

13 THE CLERK: Thank you.

14 THE COURT: All right. Very good. You may proceed,
15 Counsel. It's 3:26 p.m.

16 MS. LUBRITZ: 3:26?

17 THE COURT: Uh-huh (affirmative).

18 MS. LUBRITZ: Thank you.

19 THE COURT: Thank you.

20 DAVID ROSE

21 called as a witness on his own behalf, having been first duly
22 sworn, did testify upon his oath as follows on:

23 DIRECT EXAMINATION

24 BY MS. LUBRITZ:

1 Q Mr. Rose, hi, may I call you Dave?

2 A Yes.

3 Q Thank you. Because I'll forget to call you
4 Mr. Rose. You've heard your exwife's testimony about the
5 timeline; is that correct?

6 A Yes.

7 MS. LUBRITZ: I'm sorry, that was a leading
8 question.

9 BY MS. LUBRITZ:

10 Q Did you take exception or do you disagree with any
11 part of the timeline?

12 A I'm not 100 percent certain of the time we got to
13 the office, or how long they were there before we arrived.

14 Q Okay. Thank you.

15 A I know that we got there a little later in the
16 afternoon.

17 Q Thank you. Did -- did you and your exwife reach an
18 agreement as to survivorship benefits?

19 A It was --

20 Q During the mediation, yes or no?

21 A It was -- yes.

22 Q You did -- you did reach an agreement as to survivor
23 benefits?

24 A Yes.

1 Q In the mediation? What was that agreement?

2 A That she didn't get them.

3 Q Okay. Can you explain a little bit more, please?

4 A Yes. The now-Judge Forsberg asked about survivor
5 benefits, and I told her no based on the time that I had on,
6 and that was the end of it. That no -- nothing else was
7 brought up about survivor benefits.

8 Q Okay. So -- so that we can provide a -- a broader
9 scope for the Court the prior fact, when were you married?
10 What -- what date was the date of the marriage?

11 A We got married in June of 2006.

12 Q And when did you join Metro?

13 A I hired on as a civilian in August of 2008, and then
14 I became commissioned eligible for PERS in February of 2009.

15 Q Okay. So, approximately three years into the
16 marriage?

17 A Yes.

18 Q And how long after you joined Metro in February of
19 2009 did you divorce?

20 A I filed for divorce in February of 2017. And it
21 took approximately 14 months, and in April of '18 it was
22 granted.

23 UNIDENTIFIED FEMALE: She just pulled in.

24 MS. LUBRITZ: I'm being told she just pulled in, so

1 I'll keep with my client until Ms. McConnell arrives.

2 THE COURT: Up to you, Counsel.

3 MS. LUBRITZ: Thank you. I appreciate it.

4 THE COURT: So, you want to -- or you want to just
5 keep going?

6 MS. LUBRITZ: Yeah.

7 THE COURT: Okay.

8 BY MS. LUBRITZ:

9 Q So, you filed in '17, you divorced in '18, so how
10 long were you on Metro during the course of the marriage?

11 A When the divorce was granted, it was just over nine
12 years.

13 Q Nine years. And how old were you at the time of the
14 divorce?

15 A Uh --

16 THE COURT: Minus nine years.

17 THE WITNESS: Thirty-three; 32, almost 33.

18 BY MS. LUBRITZ:

19 Q So, 32 and three-quarters?

20 A Yes.

21 Q All right. Are you married now?

22 A Yes.

23 Q And when did you marry?

24 A In May of last year.

1 Q So, that would be May of 2019?

2 A Yes.

3 Q Why -- why did you say no to survivorship benefits
4 for your exwife?

5 A I said no for a variety of reasons. By making a
6 decision now --

7 MS. MASTEL: Your Honor, I hate to interrupt, but
8 Ms. McConnell is here, and she is a witness so --

9 MS. MCCONNELL: Do you want me to wait --

10 THE COURT: We saw her walk in.

11 MS. LUBRITZ: Oh, I didn't --

12 THE COURT: No, she could stay in.

13 MS. LUBRITZ: -- realize --

14 THE COURT: Do you want her --

15 MS. MCCONNELL: (Indiscernible - away from
16 microphone)

17 THE COURT: -- do you want her to wait outside, or
18 do you want to pause on --

19 MS. LUBRITZ: Can we --

20 THE COURT: -- David?

21 MS. LUBRITZ: -- pause that, please?

22 THE COURT: Pause on David?

23 MS. LUBRITZ: May I have five minutes that will
24 count against my time to talk to Ms. McConnell? Actually, you

1 know what, I don't need it, let's go. Because I don't want
2 there to be any question as to what she might talk about.

3 THE COURT: I think you're right. Okay. We're
4 ready to go.

5 Okay. Thank you, Counsel, for coming in today. I
6 know usually you're not used --

7 THE BAILIFF: There's some ice water here.

8 THE COURT: -- to that, Ms. McConnell.

9 THE BAILIFF: There's cups there.

10 MS. MCCONNELL: I've just been --

11 THE BAILIFF: Remain stand -- remain standing.

12 MS. MCCONNELL: -- running around.

13 THE COURT: If you can stand, raise your right hand,
14 remain standing, we'll you have sworn in.

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

18 MR. MCCONNELL: I do.

19 THE CLERK: Thank you.

20 THE COURT: Okay. So, Ms. Lubritz, it's your
21 witness.

22 MS. LUBRITZ: Thank you.

23 THE COURT: Okay.

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REGINA MCCONNELL

called as a witness on behalf of the Plaintiff, having been
first duly sworn, did testify upon her oath as follows on:

DIRECT EXAMINATION

BY MS. LUBRITZ:

Q Thank you for being here.

A No problem.

Q I -- I do apologize, I thought that we had discussed
the time and -- or the date and apparently we didn't and --

A Yeah.

MS. LUBRITZ: She was just served a couple of days
ago.

THE COURT: Okay.

MS. LUBRITZ: So, I appreciate her efforts to be
here.

BY MS. LUBRITZ:

Q Thank you very much. Are you familiar with the
parties --

A Yes.

Q -- sitting in both sides?

A Yes.

Q And who are they, please?

A David Rose and Sarah Rose.

Q And whom did you represent during the divorce

1 portion?

2 A David Rose.

3 Q And were you his counsel from initiation or
4 commencement of the action until I came in?

5 A Yes.

6 Q Okay. Thank you. At some point did the parties
7 attend a mediation?

8 A Yes.

9 Q And were you there during the mediation?

10 A Yes.

11 Q And what was your participation in it?

12 A I was representing David.

13 Q And at one point in time the issue of survivorship
14 benefits came up, correct?

15 A Yes.

16 Q Okay. And what is your recollection as to how that
17 issue was resolved if at all?

18 A David had stated at the beginning he was not going
19 to give any survivorship benefits and it was not --

20 MS. MASTEL: Objection, hearsay.

21 MS. LUBRITZ: It's her client. And it's --

22 MS. MASTEL: It doesn't matter --

23 MS. LUBRITZ: -- he's here.

24 MS. MASTEL: -- it's still hearsay.

1 THE COURT: Party opponent's the only exception.
2 Sustained. It has to be a party opponent. Mom's -- whatever
3 Mom says is fine, but that's your client. I'll accept that
4 SBP was discussed with the Forsberg mediation. I will --
5 let's see, I will accept that it was discussed. Dad's
6 position was expressed at the mediation, not what he said but
7 he made an expressed position on the SBP.

8 THE WITNESS: And --

9 THE COURT: We can -- we can work from there and
10 then 'til you -- wait 'til you get your client back on the
11 stand.

12 MS. LUBRITZ: Understood. Thank you.

13 THE WITNESS: When -- I was just going to finish it.
14 When we left, there was agreement to split the SBP.

15 BY MS. LUBRITZ:

16 Q Approximately how long after --

17 MS. LUBRITZ: Let me strike that, I'm sorry. Brief
18 indulgence.

19 THE COURT: Uh-huh (affirmative).

20 (COUNSEL AND CLIENT CONFER BRIEFLY)

21 BY MS. LUBRITZ:

22 Q When you say when you left there was no agreement,
23 does that mean when -- when the mediation was concluded, it
24 had -- there was no agreement as to survivorship benefits?

1 A Correct. The -- we'd settled and there was no
2 agreement of survivorship benefits.

3 Q Okay. And -- and that was at the end of the
4 mediation period, correct?

5 A Yes, ma'am.

6 THE COURT: That would be the Forsberg office?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Got it.

9 BY MS. LUBRITZ:

10 Q And then at some point --

11 MS. LUBRITZ: Strike that.

12 BY MS. LUBRITZ:

13 Q The -- the decree of divorce was prepared the same
14 day, yes?

15 A Correct.

16 Q And it was immediately following the mediation?

17 A Correct.

18 Q During any time between the conclusion of the
19 mediation and the signing of the decree of divorce, did David
20 express a desire to change his position on survivor benefits?

21 A No.

22 Q Did you and Ms. Cooley discuss making a change to
23 the survivorship benefit --

24 A No.

1 Q -- provision?
2 A No.
3 (COUNSEL AND CLIENT CONFER BRIEFLY)
4 MS. LUBRITZ: Okay.
5 BY MS. LUBRITZ:
6 Q I'm sorry to have you just for this amount of
7 time --
8 A That's okay.
9 Q -- but I'm finished.
10 A Okay. Thank you.
11 THE COURT: Okay. Cross-examination, Ms. Mastel?
12 MS. MASTEL: Yes --
13 MS. LUBRITZ: How long --
14 MS. MASTEL: -- Your Honor.
15 MS. LUBRITZ: -- is my time, Judge?
16 THE COURT: She started at 3:30 and ended at 3:35.
17 MS. LUBRITZ: Thank you.
18 CROSS EXAMINATION
19 BY MS. MASTEL:
20 Q Just to get through the -- the background stuff,
21 Ms. McConnell, can you state your profession for the record?
22 A I'm an attorney.
23 Q How long have you been practicing?
24 A Since 2003.

1 Q Can you recall what your understanding of the
2 intention was in the MOU by the language that counsel for
3 Sarah shall draft a final, formal agreement --

4 MS. LUBRITZ: Objection, Your Honor --

5 MS. MASTEL: -- incorporating --

6 MS. LUBRITZ: -- exceeds the scope.

7 MS. MASTEL: -- the terms herein?

8 MS. LUBRITZ: You know what, I'm going to withdraw
9 that, because I don't want Ms. McConnell to have to stay.

10 THE COURT: Okay. So, let's --

11 MS. LUBRITZ: I -- I apologize --

12 THE COURT: -- start again --

13 MS. LUBRITZ: -- I spoke over --

14 THE COURT: -- Ms. Mastel.

15 MS. LUBRITZ: -- you.

16 THE COURT: Withdrawn, objection withdrawn.

17 MS. MASTEL: I'll --

18 MS. LUBRITZ: I apologize, Counsel.

19 BY MS. MASTEL:

20 Q I'll make it -- I'll make it easier. If you'll turn
21 to Exhibit A in, yep, that book.

22 MS. MASTEL: I can go through it, or Ms. Lubritz, do
23 you want to stipulate since we both have it in our exhibit
24 book --

1 MS. LUBRITZ: Sure.

2 MS. MASTEL: -- to the entry of Exhibit A.

3 MS. LUBRITZ: I'll --

4 THE COURT: Oh, thank you, that will save time. A
5 is admitted by stipulation, no objection.

6 (Defendant's Exhibit A admitted)

7 THE COURT: Okay. We're there, the MOU.

8 BY MS. MASTEL:

9 Q In the first paragraph, there is language that says
10 -- the third line from the bottom, Counsel for Sarah shall
11 draft a final, formal agreement incorporating the terms
12 herein. You see that language?

13 THE COURT: Let me see if I can find it. Hang on.
14 Where is it?

15 MS. MASTEL: The third line from the bottom of the
16 very first paragraph on page one. It starts about three words
17 in.

18 THE COURT: I'm there.

19 THE WITNESS: Yes.

20 THE COURT: Are you there, Mom (sic)?

21 THE WITNESS: Yes.

22 THE COURT: Okay. I'm sorry, Ms. McConnell. Sorry,
23 we --

24 THE WITNESS: Or, Mom, too, it's okay. So, I'm

1 not --

2 THE COURT: We just had --

3 THE WITNESS: -- worried.

4 THE COURT: -- Mom on the stand, so -- and you both
5 are blonde so -- okay. My bad.

6 BY MS. MASTEL:

7 Q What was intended by that language to your
8 understanding?

9 A That we were formalizing the decree, because we
10 couldn't file this as a decree of divorce. And these terms
11 would be the terms of the agreement --

12 Q Okay.

13 A -- of the decree.

14 Q Did you anticipate in general that additional
15 language would be necessary for a final decree?

16 MS. LUBRITZ: Objection, very vague.

17 THE COURT: Yeah, I don't understand.

18 MS. MASTEL: Okay.

19 THE COURT: Sustained, re -- rephrase that.

20 MS. MASTEL: Okay.

21 BY MS. MASTEL:

22 Q Well, let's do it this way: Why couldn't you file
23 the Memorandum of Understanding?

24 A There's a caption.

1 Q Okay. Why couldn't you just put a caption on the
2 front page and filed it like that?

3 A There's no place for the judge's signature.

4 Q Okay. Was there other language that would be
5 necessary and expected in the decree that wasn't in the
6 Memorandum?

7 A We had to incorporate the custody --

8 Q So --

9 A -- and the child --

10 Q Yes.

11 A -- the custody --

12 MS. LUBRITZ: I'm sorry, could we allow the -- the
13 witness to finish her answer for the record? Thank you.

14 THE COURT: But noted. Okay. Continue.

15 THE WITNESS: I just said we would have to
16 incorporate the -- the custody and make it a formal order.

17 BY MS. MASTEL:

18 Q So, the answer then to my question because that was
19 nonresponsive was, yes, there was other language necessary --

20 MS. LUBRITZ: I'm -- I'm sorry --

21 MS. MASTEL: -- for a final copy?

22 MS. LUBRITZ: -- if I may?

23 THE COURT: Motion granted, sustained.

24 MS. LUBRITZ: Thank you.

1 THE COURT: Ask it a different way.

2 MS. LUBRITZ: And stricken?

3 THE COURT: I'll accept that they needed to draft a
4 formal decree --

5 MS. MASTEL: Okay.

6 THE COURT: -- and include custody, other language,
7 et cetera, et cetera.

8 MS. LUBRITZ: And that was for -- Counsel's remarks
9 were stricken?

10 THE COURT: Disregarded.

11 MS. LUBRITZ: Thank you.

12 THE COURT: Okay. She can start again though,
13 rephrase it though.

14 BY MS. MASTEL:

15 Q So, to summarize, the answer to my question as to
16 whether or not additional language would be necessary for a
17 formal decree would have been yes, correct?

18 THE COURT: Your prior answer --

19 MS. LUBRITZ: I think it's vague.

20 MS. MASTEL: The -- the -- to --

21 MS. LUBRITZ: There's so many things --

22 MS. MASTEL: -- the decree was --

23 THE COURT: I (sic) answered that -- I mean she
24 answered that already, they needed --

1 MS. MASTEL: Okay.

2 THE COURT: -- to draft the decree, you can just

3 submit it like that, and yeah, you need to --

4 MS. MASTEL: Okay.

5 THE COURT: -- put a judge's signature on it.

6 Include custody and everything.

7 BY MS. MASTEL:

8 Q And you --

9 THE COURT: Okay.

10 BY MS. MASTEL:

11 Q -- were present during the time frame while

12 Ms. Cooley was drafting --

13 MS. LUBRITZ: Objection --

14 MS. MASTEL: -- the decree?

15 THE COURT: Foundation, could -- let's -- yeah.

16 MS. MASTEL: My --

17 THE COURT: You can ask it.

18 MS. MASTEL: Yeah.

19 THE COURT: They might want -- okay --

20 MS. LUBRITZ: I want foundation.

21 THE COURT: -- additional detail.

22 MS. MASTEL: My client set the foundation --

23 MS. LUBRITZ: I'm sorry --

24 MS. MASTEL: -- during her testimony.

1 THE COURT: Oh, but Ms. McConnell wasn't here so --
2 MS. LUBRITZ: That's exactly -- and I'd ask that --
3 THE COURT: Right. And it could go to their --
4 MS. MASTEL: Okay.
5 THE COURT: -- recollection.
6 MS. MASTEL: Okay.
7 THE COURT: We know what everybody heard in this
8 courtroom.
9 MS. LUBRITZ: But the witness is --
10 THE COURT: Ms. McConnell didn't so we want to get
11 Ms. McConnell's version of what happened --
12 MS. LUBRITZ: Thank you.
13 THE COURT: -- so -- okay, try again.
14 BY MS. MASTEL:
15 Q After -- after the mediation --
16 THE COURT: Uh-huh (affirmative).
17 BY MS. MASTEL:
18 Q -- it is your understanding that Ms. Cooley and
19 Ms. -- my client went to I believe Pecos Law Group --
20 MS. LUBRITZ: I'm sorry, can we not have leading
21 questions?
22 THE COURT: On cross --
23 MS. LUBRITZ: She's not adverse --
24 MS. MASTEL: She --

1 MS. LUBRITZ: -- to anyone.

2 MS. MASTEL: -- cross -- it's still cross
3 examination.

4 THE COURT: She's dad's attorney.

5 MS. LUBRITZ: Oh, gosh, I'm sorry --

6 THE COURT: She could be deemed --

7 MS. LUBRITZ: -- I had a brain --

8 THE COURT: -- adverse.

9 MS. LUBRITZ: -- cramp. My apologies.

10 THE COURT: Withdrawn.

11 MS. LUBRITZ: And that was unintended.

12 THE COURT: You can ask a leading question on cross.

13 MS. LUBRITZ: Absolutely, all day long.

14 THE COURT: Yes. All day long.

15 MS. LUBRITZ: I (indiscernible - simultaneous
16 speech).

17 THE COURT: So, you went to the -- Shapiro's office?

18 THE WITNESS: Yes.

19 THE COURT: After Forsberg's office?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 BY MS. MASTEL:

23 Q And when you arrived there, Ms. Cooley and my client
24 were there, correct?

1 A Yes.

2 Q And at the time that you arrived there, Ms. Cooley
3 was in the process of drafting the formal decree of divorce,
4 correct?

5 A Yes.

6 Q And you stood with her during the time that she was
7 drafting that decree?

8 MS. LUBRITZ: Objection, that -- that misstates --

9 MS. MASTEL: What -- there's nothing --

10 MS. LUBRITZ: -- she --

11 MS. MASTEL: -- to mistake.

12 MS. LUBRITZ: -- because she said --

13 THE WITNESS: I --

14 MS. LUBRITZ: -- they were there ahead of time and
15 so to say that isn't it correct that you were there the --

16 MS. MASTEL: I didn't say the entire time.

17 MS. LUBRITZ: Can I ask for a clarification of the
18 question?

19 THE COURT: Let me sustain it, and make sure we
20 have --

21 MS. LUBRITZ: Thank you.

22 THE COURT: -- these details are very --

23 MS. MASTEL: I --

24 THE COURT: -- important as to what happened there.

1 Actually, time frame as well.
2 MS. LUBRITZ: Yes.
3 THE COURT: What time was it, midnight, 3:00 a.m.,
4 or 7 -- 9:00 in the morning?
5 THE WITNESS: No.
6 THE COURT: What time did you end with Forsberg?
7 THE WITNESS: I know we ran a little late because
8 she was trying to get out and we were a free mediation, the
9 one that was recommended --
10 THE COURT: Settlement masters?
11 THE WITNESS: Yeah.
12 THE COURT: Yeah. Okay.
13 THE WITNESS: And we were running late so I think
14 those are normally set 9:00 to noon so --
15 THE COURT: Uh-huh (affirmative).
16 THE WITNESS: -- we probably --
17 THE COURT: You were past noon?
18 THE WITNESS: -- got out of there about 12:30.
19 THE COURT: Okay. And --
20 THE WITNESS: And Shelly went back -- whenever she
21 found Shann over at Pecos. And they said they had
22 WordPerfect.
23 THE COURT: And they -- she's still on WordPerfect.
24 Okay.

1 MS. MASTEL: So, are we.
2 THE COURT: And so you said we'll follow you there?
3 I'm --
4 THE WITNESS: My --
5 THE COURT: -- that was my understanding?
6 THE WITNESS: -- office is right across from his so
7 we're like in the same parking area so --
8 THE COURT: Oh, okay.
9 THE WITNESS: -- we went over there and --
10 THE COURT: Your office is right in --
11 THE WITNESS: It --
12 THE COURT: -- front of Shapiro's office?
13 THE WITNESS: Well, it's in the same --
14 THE COURT: Nearby?
15 THE WITNESS: -- commercial --
16 THE COURT: Well, that's --
17 THE WITNESS: -- complex.
18 THE COURT: -- convenient. Okay. So, you -- they
19 got a head start?
20 THE WITNESS: Yes.
21 THE COURT: Do you know how long you arrived?
22 THE WITNESS: I would say --
23 THE COURT: How long --
24 THE WITNESS: -- probably maybe 20 minutes or so

1 afterwards. I dropped my stuff off at the office.
2 THE COURT: And headed straight there?
3 THE WITNESS: I believe so.
4 THE COURT: Okay. I know it was --
5 THE WITNESS: I --
6 THE COURT: -- a while ago.
7 THE WITNESS: Yeah.
8 THE COURT: Okay. And so they definitely got the
9 head start --
10 THE WITNESS: I'm --
11 THE COURT: -- because she was going to start
12 drafting anyway?
13 THE WITNESS: I think she was drafting at Rhonda's
14 office -- Ms. Forsberg's office.
15 THE COURT: She was -- oh, and then her laptop --
16 THE WITNESS: Yes.
17 THE COURT: -- didn't work, blew out?
18 THE WITNESS: No power.
19 THE COURT: Okay. All right. So, she arrived -- do
20 you have a time frame when you arrived at the Pecos -- at
21 Shann Winesett's office? It -- was Dad with you the whole
22 time? Did he ride with you?
23 THE WITNESS: No. No, no, no. We drove --
24 THE COURT: You --

1 THE WITNESS: -- separately.

2 THE COURT: Okay. Okay.

3 THE WITNESS: So, he -- he met me --

4 THE COURT: He got there first? Did Dad meet you
5 first? You're trying to --

6 THE WITNESS: I -- I -- I'm trying to remem -- and I
7 -- honestly, I don't know, so I don't want to misstate facts.

8 THE COURT: But definitely they got the head start?

9 THE WITNESS: Yes.

10 THE COURT: Mom and her attorney got the --

11 THE WITNESS: They were there.

12 THE COURT: -- head start?

13 THE WITNESS: Yes.

14 THE COURT: All right. So, you found Dad at the
15 off -- at that office and --

16 THE WITNESS: Yes.

17 THE COURT: -- I -- where'd you go? An empty office
18 or Shann's office or --

19 THE WITNESS: No, he had an extra office.

20 THE COURT: Extra office.

21 THE WITNESS: With a computer.

22 THE COURT: With a computer. What else do you
23 remember?

24 THE WITNESS: I don't know if she -- she must have

1 emailed it or put it on -- I think she put it on a flash drive
2 -- well, no, because I think her computer was dead.

3 THE COURT: What do you remember seeing like where
4 was Dad, where was Mom, where were --

5 THE WITNESS: Oh, Mom was --

6 THE COURT: -- you?

7 THE WITNESS: -- sitting back on her phone and Dad
8 was hanging like over here by the door and I was kind of
9 standing by Shelly.

10 THE COURT: So, you -- you -- you sat next --

11 THE WITNESS: But Ms. --

12 THE COURT: -- to Shelly?

13 THE WITNESS: I was standing there, there was not
14 an --

15 THE COURT: Standing there --

16 THE WITNESS: -- extra seat, yes.

17 THE COURT: -- over Shelly and she's typing away?

18 THE WITNESS: Yes.

19 THE COURT: Okay. Take it from there, Ms. Mastel.

20 MS. MASTEL: Okay.

21 BY MS. MASTEL:

22 Q Were you reviewing what Shelly was typing while she
23 was typing it?

24 A Yes. We were going through it.

1 Q Okay. And you had the opportunity to make changes
2 and revisions while she was typing?

3 A I -- I'm sure I -- yes, I could've ans -- informed
4 her.

5 Q Okay. And are you aware if Sarah was provided a
6 copy to review or had a chance to review it?

7 A There was a copy at the end printed.

8 Q Okay. Did David have an opportunity to review it?

9 A There was a copy for everyone at the end.

10 Q Okay. And David signed it?

11 A Yes.

12 Q You signed it?

13 A Yes.

14 Q You wouldn't have signed the decree unless you knew
15 that David had read it and fully understood it, would you?

16 A It -- I have all my clients review it, if they have
17 questions, they ask me. So --

18 Q Okay. And so to the best of your understanding but
19 you would not have signed it if you thought he hadn't reviewed
20 it and understood it?

21 A Well, I can't really know if someone understands
22 something.

23 Q If he had told you he didn't understand something,
24 would you have signed it?

1 MS. LUBRITZ: Objection, calls for speculation.

2 It's also a hypothetical.

3 THE COURT: I will sustain that, speculation. Yep,
4 it is.

5 BY MS. MASTEL:

6 Q So, to the best of your knowledge at the time you
7 signed it, David had been given an opportunity to read and you
8 thought he fully understood --

9 MS. LUBRITZ: Objection --

10 MS. MASTEL: -- what he was signing?

11 MS. LUBRITZ: -- it's compound, number one. It
12 calls for speculation.

13 MS. MASTEL: It doesn't call for --

14 THE COURT: I'll sustain --

15 MS. MASTEL: -- speculation.

16 THE COURT: -- it on compound. You can --

17 MS. LUBRITZ: Thank you.

18 THE COURT: -- break it down into separate
19 questions.

20 MS. MASTEL: Okay.

21 BY MS. MASTEL:

22 Q When you signed it, it was your impression that
23 David had fully understood it?

24 MS. LUBRITZ: Again calls for speculation.

1 MS. MASTEL: It does not, it calls her for her state
2 of mind at the time that she --
3 MS. LUBRITZ: I'm sorry --
4 MS. MASTEL: -- signed it.
5 MS. LUBRITZ: -- Judge, you're the -- you're the --
6 THE COURT: I would overrule it.
7 MS. LUBRITZ: Thank you.
8 THE COURT: Do you understand the question? It was
9 -- was --
10 THE WITNESS: Well --
11 THE COURT: -- that your impression? Or what was
12 your impression?
13 THE WITNESS: My impression is he signed it, I
14 signed it, Ms. Rose signed it, and Ms. Cooley signed it.
15 THE COURT: In that order?
16 THE WITNESS: Ooh, goodness.
17 THE COURT: They're technical --
18 THE WITNESS: I don't know.
19 THE COURT: -- here.
20 THE WITNESS: Ms. -- Ms. Rose might have signed it
21 first.
22 THE COURT: Could we back up a second?
23 MS. MASTEL: Yeah, absolutely.
24 THE COURT: You and -- Shelly was typing, you're

1 standing over here, do you guys say much?
2 THE WITNESS: Not -- not --
3 THE COURT: You just --
4 THE WITNESS: -- small talk or anything. I mean --
5 THE COURT: Right.
6 THE WITNESS: -- just trying to get it done.
7 THE COURT: Yeah. And if you don't disturb her as
8 much, she'll get it done --
9 THE WITNESS: Right.
10 THE COURT: -- quicker?
11 THE WITNESS: Right.
12 THE COURT: But nothing -- you didn't talk about
13 anything out of the ordinary? It's just you typing it up,
14 you're putting in these terms, right?
15 THE WITNESS: Right.
16 THE COURT: Okay.
17 THE WITNESS: And I wasn't -- I -- and I don't know
18 if I was standing over her the whole time; but yeah, I was
19 standing -- I mean I'm really --
20 THE COURT: It takes a while to draft a decree --
21 THE WITNESS: Right.
22 THE COURT: -- when you have everything --
23 THE WITNESS: And a lot -- like I said, a lot she
24 had drafted I believe --

1 THE COURT: Some boilerplate --
2 THE WITNESS: -- I don't even know when.
3 THE COURT: -- in there?
4 THE WITNESS: Yeah.
5 THE COURT: Okay. And how long -- how long were you
6 watching Shelly do this before everything got done or ready
7 for printing?
8 THE WITNESS: I think we might have been done by --
9 THE COURT: Less than an hour?
10 THE WITNESS: Well, I know Ms. Rose had to pick up
11 her kids.
12 THE COURT: Okay.
13 THE WITNESS: Because she left to pick them up
14 maybe. We probably -- we probably left about -- it was
15 probably done about 2:30, 3:00.
16 THE COURT: We're going to be very technical here so
17 after you and Shelly were doing it or Shelly was done typing
18 it, did she print -- hit the print button or did each of the
19 clients like look at the computer screen? That's what we're
20 trying to figure out --
21 THE WITNESS: Right.
22 THE COURT: -- here. Yeah, if you --
23 THE WITNESS: I --
24 THE COURT: -- recall.

1 THE WITNESS: -- Mr. -- Mr. Rose may have been
2 looking behind me but I -- you know, since he was kind of
3 standing behind me, I don't know what he was doing at that
4 point.

5 THE COURT: All right. And --

6 THE WITNESS: I do know Ms. Rose was mostly sit --
7 because she was kind of to my left so I -- I believe she --

8 THE COURT: Right.

9 THE WITNESS: -- was mainly sitting in the back.

10 THE COURT: And do you know --

11 THE WITNESS: I --

12 THE COURT: -- so it was all done --

13 THE WITNESS: And then when --

14 THE COURT: -- Shelly was done, what -- what
15 happened next?

16 THE WITNESS: -- she printed it.

17 THE COURT: She printed it?

18 THE WITNESS: I don't know if she printed it or if
19 she emailed it to Shann to print, but --

20 THE COURT: Uh-huh (affirmative).

21 THE WITNESS: -- it got printed there --

22 THE COURT: It got printed?

23 THE WITNESS: -- at their office.

24 THE COURT: Everybody got a copy? Everybody got a

1 copy for distribution? Did everybody --
2 MS. LUBRITZ: She was drinking.
3 THE WITNESS: Obviously the original --
4 THE COURT: Huh?
5 THE WITNESS: -- and I believe Ms. Cooley --
6 MS. LUBRITZ: She was drinking.
7 THE WITNESS: I'm sorry.
8 THE COURT: Oh.
9 MS. LUBRITZ: I'm sorry, that's why she -- you --
10 she was listening --
11 THE COURT: Okay.
12 THE WITNESS: Yeah.
13 MS. LUBRITZ: -- but she was drinking, yeah.
14 THE COURT: Okay. We'll try and get through this
15 real --
16 THE WITNESS: Um --
17 THE COURT: -- quick.
18 THE WITNESS: Right. So --
19 THE COURT: Okay. As far as you --
20 THE WITNESS: -- I had the --
21 THE COURT: -- recall --
22 THE WITNESS: -- original, Ms. Cooley had a copy, I
23 don't know -- I -- I honestly can't --
24 THE COURT: Shelly was done --

1 THE WITNESS: -- recall.

2 THE COURT: -- maybe -- okay. You do know
3 everything was printed out and everybody got a copy. You do
4 remember that part, right?

5 THE WITNESS: I remember that I had an original, and
6 she had a copy after it was --

7 THE COURT: Was anybody --

8 THE WITNESS: -- signed.

9 THE COURT: -- rushed? Was anybody rushed that day?
10 You, Shelly, Mom? Mom had to go pick up kids but --

11 THE WITNESS: I know she had to pick up kids, I
12 don't know if --

13 THE COURT: But nobody was like --

14 THE WITNESS: -- Ms. --

15 THE COURT: -- screaming and jumping --

16 THE WITNESS: No, no, no -- yeah.

17 THE COURT: -- I've got to go --

18 THE WITNESS: Absolutely not, no.

19 THE COURT: -- hurry up? So, people -- there was
20 adequate time to review or no? Okay.

21 THE WITNESS: I know it was Friday --

22 THE COURT: Do you --

23 THE WITNESS: -- and we -- we wanted to make sure
24 everything got done that day. But I mean I don't feel anyone

1 was like super rushed. I don't --
2 THE COURT: Okay.
3 THE WITNESS: -- I mean --
4 THE COURT: Okay. Ms. Mastel, we're still with you.
5 MS. MASTEL: Yep, just a little bit.
6 THE COURT: Okay.
7 BY MS. MASTEL:
8 Q Now, you testified that your client expressed during
9 the mediation that he was not willing to grant survivorship
10 benefits, correct?
11 A Did that get stricken?
12 Q No, no, you were --
13 A Okay.
14 Q -- allowed to say he expressed --
15 A Yes, he --
16 Q -- that was --
17 MS. LUBRITZ: It -- it's been asked and answered.
18 MS. MASTEL: Right.
19 THE WITNESS: Yeah, okay, yes, he did express that.
20 BY MS. MASTEL:
21 Q Okay. Was there ever a specific agreement by Sarah
22 to waive them?
23 A Specific? I -- she never said I'm waiving it; but
24 it was --

1 Q Okay.

2 A -- not agreed upon --

3 Q Okay.

4 A -- and we did not have it in writing that she

5 signed. So, I would say, yes, she waived it.

6 Q Yeah, I didn't ask for your opinion, I asked if --

7 A Um --

8 Q -- there was ever a specific agreement by Sarah

9 waiving her interest --

10 THE COURT: Oh, in writing.

11 MS. MASTEL: -- to survivor benefits. Or -- or --

12 THE COURT: In writing?

13 MS. MASTEL: -- verbally.

14 THE COURT: Or verbally?

15 BY MS. MASTEL:

16 Q Did she ever say I'm agreeing to the term by your

17 client? He said, no, did she say okay?

18 A That was at the beginning, and then they separated

19 and they never mentioned it --

20 Q Okay.

21 A -- again. They didn't ask --

22 Q Okay.

23 A -- for any of them.

24 Q To the best -- to the best of your knowledge, she

1 never specifically conceded --

2 MS. LUBRITZ: Objection, it's --

3 MS. MASTEL: -- that term?

4 MS. LUBRITZ: -- been asked and answered three times

5 now.

6 THE COURT: Sustained. I heard her --

7 MS. LUBRITZ: Thank you.

8 THE COURT: -- answer.

9 MS. MASTEL: All right. I'll pass.

10 THE COURT: In the beginning Dad said no and they --

11 they went to separate rooms?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: They went to separate rooms.

14 MS. LUBRITZ: Who --

15 THE WITNESS: Right.

16 MS. LUBRITZ: -- could you explain that a little

17 bit?

18 MS. LUBRITZ: What were you asking her?

19 THE COURT: Oh, I was writing in the beginning, Dad

20 absolutely said no to the SBP, and then they went to separate

21 rooms --

22 MS. LUBRITZ: Who's they?

23 THE COURT: -- during the mediation?

24 MS. LUBRITZ: The -- the parties and --

1 THE COURT: The parties --
2 MS. LUBRITZ: -- their lawyers?
3 THE COURT: -- were separated.
4 MS. LUBRITZ: Okay.
5 THE WITNESS: Yeah.
6 THE COURT: Ms. McConnell said the parties were kind
7 of separated.
8 MS. LUBRITZ: With their --
9 THE WITNESS: Ms. --
10 MS. LUBRITZ: -- counsel?
11 THE WITNESS: Yes, Ms. --
12 THE COURT: Oh, the parties --
13 THE WITNESS: -- Cooley and Ms. Rose went to their
14 separate --
15 MS. LUBRITZ: Okay.
16 THE COURT: And the parties were separated to go to
17 their counsel.
18 REDIRECT EXAMINATION
19 BY MS. LUBRITZ:
20 Q Ms. McConnell, from the time that the MOU --
21 THE COURT: 3:51 p.m.
22 MS. LUBRITZ: I'm sorry.
23 BY MS. LUBRITZ:
24 Q From the time that the MOU was signed until the

1 decree was signed, did the parties -- did the parties come
2 together themselves and speak?

3 A No.

4 Q So, then it -- it wouldn't be a situation where the
5 MOU was signed and then they -- they stipulated to change it
6 and then grant survivor benefits to Mom?

7 MS. MASTEL: Objection --

8 THE WITNESS: No, it was --

9 MS. MASTEL: -- it calls for speculation.

10 MS. LUBRITZ: No, I asked --

11 THE COURT: Overruled.

12 MS. LUBRITZ: -- her observation. Thank you.

13 THE COURT: She just asked if it ever happened.

14 It's not speculating. It did --

15 THE WITNESS: No.

16 THE COURT: -- or did not happen.

17 BY MS. LUBRITZ:

18 Q So, just to be clear for the record, there was no
19 time from the -- at no point from the time the MOU was signed
20 until the decree was signed that Mom and Dad spoke with one
21 another about the terms they'd reached?

22 A No.

23 MS. MASTEL: Objection, calls for speculation. She
24 can only say what she saw.

1 MS. LUBRITZ: Okay.

2 MS. MASTEL: She can't say that they never spoke.

3 MS. LUBRITZ: So -- so --

4 THE COURT: I'll sustain. Rephrase --

5 MS. LUBRITZ: Sure.

6 THE COURT: -- again. Okay. We're talking about

7 the period between after --

8 MS. LUBRITZ: (Indiscernible - simultaneous speech)

9 THE COURT: -- signing the MOU and just before the

10 decree was signed? Right?

11 BY MS. LUBRITZ:

12 Q Were Mom and Dad ever -- did Mom and Dad talk to one

13 another --

14 MS. LUBRITZ: I'm going to strike it so we're clear.

15 BY MS. LUBRITZ:

16 Q From the time that the MOU was signed until the

17 decree was -- just before the decree was signed, did Mom and

18 Dad speak to one another?

19 A No.

20 Q Okay. From the time --

21 MS. LUBRITZ: Strike that.

22 BY MS. LUBRITZ:

23 Q Was there ever a time --

24 MS. LUBRITZ: Strike that.

1 BY MS. LUBRITZ:

2 Q At some -- at any point from the time that the MOU
3 was signed until just before the decree was signed, did you
4 and Ms. Cooley discuss a modification from the MOU regarding
5 the survivorship benefits?

6 MS. MASTEL: Objection, asked and answered. She
7 already testified --

8 MS. LUBRITZ: I never asked --

9 MS. MASTEL: -- they didn't make --

10 MS. LUBRITZ: -- that question.

11 MS. MASTEL: -- small talk --

12 THE COURT: Can you re --

13 MS. MASTEL: -- she didn't recall the specific
14 details of what they --

15 THE COURT: Let me --

16 MS. MASTEL: -- spoke about.

17 THE COURT: -- defer on that. Can you ask it again?

18 It was --

19 MS. LUBRITZ: Sure.

20 THE COURT: -- sort of a long one.

21 BY MS. LUBRITZ:

22 Q Did -- did you and Ms. Cooley prior to -- from the
23 time that the MOU was signed until just before the decree was
24 signed, did you and Ms. Cooley discuss changing from no

1 survivorship benefits to survivorship benefits?

2 A No.

3 MS. MASTEL: Same objection.

4 MS. LUBRITZ: And --

5 THE COURT: And what was the basis for the
6 objection?

7 MS. MASTEL: She's asked and answered. She already
8 testified to this Court when you asked the question that she
9 could not remember exactly what they spoke about although she
10 knew it wasn't --

11 THE COURT: I didn't ask --

12 MS. LUBRITZ: Could I ask --

13 THE COURT: -- it spec --

14 MS. MASTEL: -- (indiscernible - simultaneous
15 speech).

16 MS. LUBRITZ: -- very specific.

17 THE COURT: I remember what I asked so just based on
18 my recollection, overruled.

19 MS. LUBRITZ: Thank you.

20 THE COURT: And basically that was a very specific
21 question about did you guys discuss SBP from -- I guess at the
22 -- while they were in Shapiro's office or any time you left
23 Forsberg's office or on the way there until that decree was
24 signed?

1 THE WITNESS: No, I didn't.

2 THE COURT: That in between period. You and Shelly

3 talk about SBP?

4 THE WITNESS: We did not talk about SBP.

5 MS. LUBRITZ: Thank you for your time.

6 THE WITNESS: Thank you.

7 THE COURT: Any follow-up, Ms. Mastel? Recross?

8 MS. MASTEL: Court's indulgence for a second.

9 THE COURT: Okay. That's good, because I'm typing

10 something here.

11 MS. MASTEL: No, Your Honor.

12 THE COURT: Thank you, Ms. McConnell.

13 MS. LUBRITZ: Thank you for coming in --

14 THE COURT: Okay.

15 MS. LUBRITZ: -- short notice.

16 THE WITNESS: Thank you. Oh, no --

17 MS. LUBRITZ: Could I have --

18 THE COURT: Is she --

19 THE WITNESS: -- problem.

20 THE COURT: -- under subpoena?

21 MS. LUBRITZ: -- five minutes?

22 THE COURT: Is she under subpoena?

23 MS. LUBRITZ: Yes.

24 THE COURT: You're released. Thank you.

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MS. LUBRITZ: Okay. Thank you.

THE COURT: Thank you for your time.

MS. MCCONNELL: Thank you, Your Honor.

THE COURT: Yeah, five-minute recess and then you
can get squared away --

MS. LUBRITZ: Thank you.

THE COURT: -- who you want to call --

(COURT RECESSED AT 3:55:27 AND RESUMED AT 4:01:28)

* * * * *

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.



Tami S. Ondik, CET

(SEE VOL. II)