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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHANIE RUBIDOUX,

Appellant,

vs.

DANIEL RUBIDOUX,

Respondent.

Case No.: 83628

**APPELLANT'S APPENDIX,
VOLUME I**

APPEAL

Appellant's Appendix, Volume I

DATED this 10th day of December, 2021.

/s/ Alex Ghibaudo

ALEX B. GHIBAUDO, Nevada Bar No. 10592

ALEX B. GHIBAUDO, PC

Attorney for Appellant



Certificate of Service

Pursuant to NRAP 25, on December 10th, 2021 APPELLANT’S

APPENDIX, VOLUME I was served upon each of the parties to appeal 82444 via electronic service through the Supreme Court of Nevada’s electronic filing system.

/s/ Alex Ghibaud

An Employee of Alex B. Ghibaud, PC

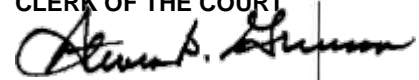


RUBIDOUX v. RUBIDOUX

Docket No. 83628

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CASE NO: D-20-601936-D
Department: To be determined

1 **COMD**
2 **JOHN T. KELLEHER, ESQ.**
3 Nevada Bar No. 006012
4 **R. NATHAN GIBBS, ESQ.**
5 Nevada Bar No. 005965
6 **KELLEHER & KELLEHER, LLC**
7 40 South Stephanie Street, Suite 201
8 Henderson, Nevada 89012
9 Telephone (702) 384-7494
10 Facsimile (702) 384-7545
11 **rngibbs@kelleherandkelleher.com**
12 Attorney for Plaintiff, **STEPHANIE RUBIDOUX**

DISTRICT COURT
CLARK COUNTY, NEVADA

10 **STEPHANIE RUBIDOUX,**
11 Plaintiff,
12 v.
13 **DANIEL RUBIDOUX,**
14 Defendant.

CASE NO.:
DEPT. NO.:

COMPLAINT FOR DIVORCE

17 COMES NOW Plaintiff, **STEPHANIE RUBIDOUX**, by and through her attorney, **R. Nathan**
18 **Gibbs, Esq.**, of the law firm of Kelleher and Kelleher, LLC, and as and for a Complaint for Divorce
19 against Defendant, **DANIEL RUBIDOUX**, alleges as follows:

20 1. That Plaintiff, **STEPHANIE RUBIDOUX** is a resident of the State of Nevada and,
21 for a period of more than six weeks immediately preceding the commencement of this action, has
22 resided and been physically present and domiciled in Clark County in the State of Nevada, and now
23 resides and is domiciled therein, and, during all of said period of time, Plaintiff has had and still has
24 the intent to make said State of Nevada her home, residence and domicile for an indefinite period
25 of time.

26 2. That Plaintiff and Defendant were married on or about June 21, 2014 in Las Vegas,
27 Nevada and ever since said date have been and now are, husband and wife.

28 ///

LAW OFFICES
KELLEHER & KELLEHER LLC
40 S. STEPHANIE STREET, SUITE #201
HENDERSON, NEVADA 89012
(702) 384-7494
Facsimile (702) 384-7545

1 3. That there is one minor child born the issue of this marriage, to wit: RILEY
2 RUBIDOUX, born January 13, 2016. There are no adopted children and Plaintiff is not currently
3 pregnant

4 4. That Nevada is the habitual residence and home state of the minor child

5 5. That the parties are fit and proper persons to have joint legal custody of the minor
6 child, with primary physical custody of the minor child to Plaintiff, STEPHANIE RUBIDOUX

7 6. That Defendant should pay child support to STEPHANIE RUBIDOUX as well as
8 pay a share of RILEY's preschool and daycare expenses pursuant to Nevada law.

9 7. That Defendant shall provide medical insurance for the minor child and the parties
10 should split equally all medical expenses not covered by insurance.

11 8. That there is community property to be adjudicated by this Court.

12 9. That there are community debts to be adjudicated by this Court.

13 10. That Plaintiff STEPHANIE RUBIDOUX shall have exclusive possession of the
14 marital residence, and that Defendant DANIEL RUBIDOUX not be allowed to bring his animals to
15 the marital residence.

16 11. That Defendant has engaged in marital waste and has incurred debts which he alone
17 should be responsible for.

18 12. That Plaintiff STEPHANIE RUBIDOUX should receive spousal support from
19 Defendant DANIEL RUBIDOUX.

20 13. That Plaintiff has incurred attorneys fees and costs in bringing this action, and
21 Defendant should pay the attorneys fees and costs of Plaintiff.

22 14. That Plaintiff and Defendant are incompatible in their tastes, natures, views, likes and
23 dislikes, which have become widely separate and divergent so that the parties hereto have been and
24 now are incompatible to such an extent that it now appears that there is no possibility of
25 reconciliation between Plaintiff and Defendant and there remains such an incompatible temperament
26 between Plaintiff and Defendant that a happy marital status can no longer exist.

27 WHEREFORE, Plaintiff prays for judgment as follows:
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1. That the bonds of matrimony now and heretofore existing between Plaintiff and Defendant be dissolved, set aside and forever held for naught, and the parties hereto, and each of them, be restored to their single, unmarried status.

2. That the Court grant the relief requested in the Complaint.

DATED this 6 day of January, 2020.

KELLEHER & KELLEHER, LLC.



R. NATHAN GIBBS, ESQ.

Nevada Bar No. 005965

40 South Stephanie Street, Suite 201

Henderson, Nevada 89012

Attorney for Plaintiff, **STEPHANIE RUBIDOUX**

VERIFICATION

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.


I, STEPHANIE RUBIDOUX, being first duly sworn, depose and say:

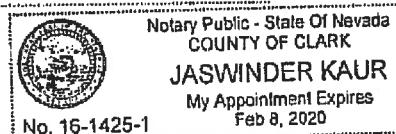
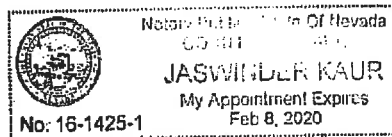
That I am Plaintiff in the above-entitled action; that I have read the foregoing COMPLAINT FOR DIVORCE, and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

DATED this 4 day of January, 2020.


STEPHANIE RUBIDOUX

SUBSCRIBED and SWORN to before
me this 4 day of January, 2020.


NOTARY PUBLIC in and for said
County and State.

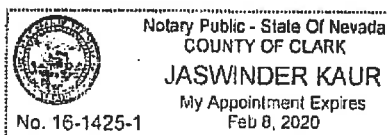


ACKNOWLEDGMENT

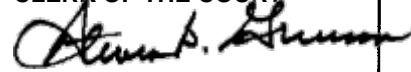
STATE OF NEVADA)
)
COUNTY OF CLARK)

Before me, the undersigned, a Notary Public in and for said State and County, personally appeared STEPHANIE RUBIDOUX, who was personally known, or proven to me to be the person who executed the above COMPLAINT FOR DIVORCE and verification, and acknowledged to me that she executed the same freely, voluntarily and for purposes stated therein.

Witness my hand and official seal this 4 day of January, 2020.




NOTARY PUBLIC



AACC
WEBSTER & ASSOCIATES
ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1221
JEANNE F. LAMBERTSEN, ESQ.
Nevada Bar No. 9460
6882 Edna Ave.
Las Vegas, Nevada 89146
Tel No: (702) 562.2300
Fax No: (702) 562-2303
e-mail: anitawebster@embarqmail.com
e-mail: jlambertsen@embarqmail.com
Attorney for Defendant, unbundled

DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHANIE RUBIDOUX,

Plaintiff,

v.

DANIEL RUBIDOUX,

Defendant.

CASE NO.: D-20-601936-D
DEPT NO.: R

**ANSWER AND
COUNTERCLAIM**

COMES NOW the Defendant, Daniel Rubidoux, by and through his attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ., in a unbundled capacity, of the law offices of WEBSTER & ASSOCIATES and in Answer to the Complaint for Divorce on file herein, admits, denies and alleges as follows:

1. Defendant admits the allegations contained in Paragraphs 1, 2, 3, 4, 8 and 9 of the Plaintiff's Complaint for Divorce.
2. In response to Paragraph 5, Defendant admits that the parties should

W:\Family\Rubidoux, Daniel\Pleadings\Drafts\ACC with children.wpd

1 share joint legal custody of the child but denies the remaining allegations
2 contained therein.

3 3. In response to Paragraph 7, denied in part and admitted in part. Plaintiff
4 is currently maintaining medical insurance, but the parties must share the
5 medical insurance premiums, therefore denied in part. Defendant admits
6 that the parties should be responsible for 50% of the medical costs and
7 deductibles not covered by insurance pursuant to the 30/30 rule,
8 therefore admitted in part.
9

10 4. Defendant denies the allegations contained in Paragraphs 6, 10, 11, 12
11 and 13 of the Plaintiff's Complaint for Divorce.
12

13 **Counterclaim**

14 COMES NOW the Defendant/Counterclaimant, and for his Counterclaim
15 for Divorce against the Plaintiff/Counterdefendant, complains and alleges as
16 follows:
17

18 I.

19 Plaintiff/Counterdefendant, for a period of more than six weeks
20 immediately preceding commencement of this action, has been and now is an
21 actual, bona fide resident of the State of Nevada.
22

23 II.

24 Plaintiff/Counterdefendant and Defendant/Counterclaimant were married
25 on June 21, 2014, in Las Vegas, Nevada, and ever since have been and now
26 are husband and wife.
27

28 ///

1 III.

2 There is one minor child of this relationship, namely: Riley Rubidoux,
3 born January 13, 2016. Plaintiff/Counterdefendant is not currently pregnant to
4 Defendant/Counterclaimant's knowledge. The State of Nevada, County of
5 Clark has jurisdiction over the minor child as the child has resided in Clark
6 County, Nevada for more than six months prior to these proceedings.
7

8 IV.

9 The parties are fit and proper persons to be awarded joint legal and joint
10 physical custody of the minor child.
11

12 V.

13 The court should set child support in accordance with NRS 125B.070 et.
14 seq. and Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998) and NAC
15 425.
16

17 VI.

18 Plaintiff should continue to maintain health insurance for the minor child
19 and the parties should divide the monthly premium and equally divide all
20 unreimbursed medical, dental, optical, and orthodontic expenses pursuant to
21 the 30/30 Rule.
22

23 VII.

24 The parties should equally divide all agreed upon extracurricular
25 expenses for the minor child pursuant to the 30/30 Rule.
26

27 VIII.

28 The parties' community property and community debt should be divided

1 in accordance with Nevada law.

2 IX.

3 The Defendant/Counterclaimant should be awarded exclusive possession
4 of the marital residence, perform drywall, paint and other minor repairs, and
5 ready the residence to be promptly listed for sale with a mutually agreeable
6 licensed real estate agent. Any out-of-pocket expenses for repair supplies
7 should be equally shared by the parties. The net sale proceeds should be
8 divided between the parties in accordance with Nevada law.
9

10 X.

11 That neither party should be awarded spousal support.
12

13 XI.

14 That Defendant/Counterclaimant be reimbursed for the community waste
15 committed by Plaintiff/Counterdefendant.
16

17 XII.

18 That the Plaintiff/Counterdefendant shall maintain her married name or
19 revert to using her maiden name, if she so chooses.
20

21 XIII.

22 That the Plaintiff/Counterdefendant should be responsible for paying
23 Defendant/Counterclaimant's attorney's fees and costs.
24

25 XIV.

26 During the course of said marriage, the tastes, mental disposition, views,
27 likes and dislikes of Defendant/Counterclaimant and Plaintiff/Counterdefendant
28 have become so widely separated and divergent that the parties have become


incompatible to such an extent that it is impossible for them to live together as husband and wife; that the incompatibility between Plaintiff and Defendant is so great that there is no possibility of reconciliation between them.

WHEREFORE, Defendant/Counterclaimant prays for a Judgment as follows:

1. That the marriage existing between Plaintiff and Defendant be dissolved and that Defendant be granted an absolute Decree of Divorce and that each of the parties be restored to the status of a single, unmarried person;
2. That the Court deny Plaintiff the relief requested in the complaint.
3. That the Court grant the Defendant the relief requested in this Counterclaim; and
4. For such other relief as the Court finds to be just and proper.

DATED this 21 day of January, 2020.

WEBSTER & ASSOCIATES

By: 
ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1221
JEANNE F. LAMBERTSEN, ESQ.
Nevada Bar No. 9460
6882 Edna Ave.
Las Vegas, Nevada 89146
Attorney for Defendant, unbundled

VERIFICATION

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

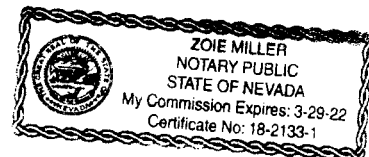
Daniel Rubidoux, being first duly sworn, deposes and says that: I am the Defendant/Counterclaimant in the above-entitled action. I have read the foregoing ANSWER AND COUNTERCLAIM, know the contents thereof, and the same is true of my own knowledge, except as to any matters therein stated upon information and belief and as to those matters, I believe them to be true.


DANIEL RUBIDOUX

SUBSCRIBED and SWORN to before me
this 21st day of January, 2020.



NOTARY PUBLIC



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 21st day of January, 2020, I caused the above and foregoing document to be served as follows:

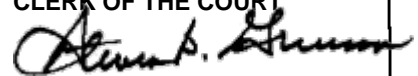
- ☒ [X] by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☐ [] by placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ [] pursuant to EDCR 7.26 to be sent via facsimile, by duly executed consent for service by electronic means;
- ☐ [] by hand-delivery with signed Receipt of Copy.

To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

John T. Kelleher, Esq.
Hjuilfs@kelleherandkelleher.com



An employee of WEBSTER & ASSOCIATES



RCCM
JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
KELLEHER & KELLEHER, LLC
40 S. Stephanie Street, Suite #201
Henderson, Nevada 89012
Telephone (702) 384-7494
Facsimile (702) 384-7545
kelleherjt@aol.com
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHANIE RUBIDOUX,

Plaintiff,

vs.

DANIEL RUBIDOUX,

Defendant.

CASE NO.: D-20-601936-D
DEPARTMENT: N

REPLY TO COUNTERCLAIM

COMES NOW Plaintiff, Stephanie Rubidoux, by and through her attorney of record, John T. Kelleher, Esq., of the law firm of Kelleher and Kelleher, LLC, and hereby answers Defendant's Counterclaim for Divorce as follows:

1. Answering paragraphs I, II, III, XII, and XIV of Defendant's Counterclaim on file herein, Plaintiff admits the allegations.
2. Answering paragraph IV of Defendant's Counterclaim on file herein, Plaintiff admits that the parties are fit and proper persons to be awarded joint legal custody of the minor child but denies that the parties are fit and proper persons to be awarded joint physical custody of the minor child.
3. Answering paragraphs V, IX, X, XI, and XIII of Defendant's Counterclaim on file herein, Plaintiff denies the allegations.

///

Appellant's Appendix 0012

4. Answering paragraph VI of Defendant's Counterclaim on file herein, Plaintiff admits that the parties should divide the monthly insurance premium for the minor child and equally divide all unreimbursed medical, dental, optical, and orthodontic expenses pursuant to the 30/30 Rule but denies that Plaintiff should continue to maintain health insurance for the minor child.

5. Answering paragraph VII of Defendant's Counterclaim on file herein, Plaintiff is without sufficient information necessary to form a basis for belief regarding the truth or falsity contained in said paragraph and therefor denies the same.

6. Answering paragraph VIII of Defendant's Counterclaim on file herein, Plaintiff is without sufficient information necessary to form a basis for belief regarding the truth or falsity contained in said paragraph and therefor denies the same.

7. Answering paragraph 11 of Defendant's Counterclaim on file herein, Plaintiff is without sufficient information necessary to form a basis for belief regarding the truth or falsity contained in said paragraph and therefor denies the same.

8. Answering paragraph 12 of Defendant's Counterclaim on file herein, Plaintiff is without sufficient information necessary to form a basis for belief regarding the truth or falsity contained in said paragraph and therefor denies the same.

WHEREFORE, Plaintiff prays that Defendant take nothing by reason of his Counterclaim, and for such other relief requested and otherwise as the Court may deem just and proper in the circumstances.

DATED this 7 day of February, 2019.

KELLEHER & KELLEHER, LLC



R. NATHAN GIBBS, ESQ.
Nevada Bar No. 5965
40 S. Stephanie Street, Suite #201
Henderson, Nevada 89012
Attorney for Plaintiff

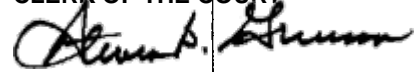
CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of February, 2020, a true and correct copy of the above and foregoing REPLY TO COUNTERCLAIM was served electronically via E-Service Master

List of Odyssey and addressed as follows:

Anita A. Webster, Esq.
Jeanne F. Lambertsen, Esq.
Webster & Associates
anitawebster@embarqmail.com
jlambertsen@embarqmail.com
Attorneys for Defendant


An employee of Kelleher & Kelleher, LLC



ORDR

FRED PAGE, ESQ.
NEVADA BAR NO. 6080
PAGE LAW FIRM
6930 SOUTH CIMARRON RD., SUITE 140
LAS VEGAS, NEVADA 89113
(702) 328-2888 office
(702) 628-9884 fax
Email: fpage@pagelawoffices.com
Attorney for Plaintiff

**EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF CLARK
STATE OF NEVADA**

STEPHANIE RUBIDOUX,
Plaintiff,
vs.
DANIEL RUBIDOUX,
Defendant.

Case No.: D-20-601936-D

Dept.: R

Hearing Date: April 16, 2020

Hearing Time: 11:00 a.m.

ORDER FROM APRIL 16, 2020, HEARING

The hearing on return from mediation, came on for hearing on the above referenced date and time in front of The Hon. Bill Henderson. Plaintiff, STEPHANIE RUBIDOUX, was present by video conference and represented by and through her counsel, Fred Page, Esq. Defendant, DANIEL RUBIDOUX was present by video conference and represented by and through his counsel, Jeanne Lambertson, Esq. The Court having reviewed papers and pleadings on file and having entertained oral argument hereby enters the following orders.

1 **IT IS HEREBY ORDERED** that the Partial Parenting Agreement is to be
2 executed at a later date.

3 **IT IS FURTHER ORDERED** that there will be no custody designation at
4 this time.
5

6 **IT IS FURTHER ORDERED** that Defendant shall have an alternating
7 visitation schedule with the minor child as follows:
8

9 Week one: Friday at 6:00p.m. to Sunday at 6:00 p.m.
10

11 Week two: Friday at 6:00p.m. to Monday at 10:00 a.m.

12 Plaintiff shall have the minor child for the remainder of the week.

13 Monday exchanges are to take place at the child's daycare/school when the
14 child is physically attending and the daycare/school is in session. All other
15 exchanges are to take place at the entrance to the gated community for Plaintiff's
16 parent's house.
17
18

19 **IT IS FURTHER ORDERED** that without prejudice, Counsel to stipulate
20 to child support, effective May 1, 2020, wherewith calculations are made by
21 applying NAC 425.140 to Defendant's reported gross monthly income of
22 approximately \$6,483.00. The child support calculation is as follows, \$6,000 x .16
23 + \$483 x .08 = \$998.64 per month.
24
25

26 **IT IS FURTHER ORDERED** that Defendant shall sign the Listing
27 Agreement to sell the marital residence within seven (7) days.
28

1 **IT IS FURTHER ORDERED** that a Status Check Hearing is set for June,
2 16, 2020 at 11:00 a.m., re: settlement.

3 **IT IS FURTHER ORDERED** that Attorney Page shall prepare the Order
4 from today's hearing, Attorney Lambertson to sign as to form and content.
5

6 **THE PARTIES ARE ON NOTICE** of the following provision of NRS
7
8 125C.0045(6):
9

10 PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,
11 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION
12 OF THIS ORDER IS PUNISHABLE AS A CATEGORY D
13 FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides
14 that every person having a limited right of custody to a child or any
15 parent having no right of custody to the child who willfully detains,
16 conceals or removes the child from a parent, guardian or other person
17 having lawful custody or a right of visitation of the child in violation
18 of an order of this court, or removes the child from the jurisdiction of
the court without the consent of either the court or all persons who
have the right to custody or visitation is subject to being punished for
a category D felony as provided in NRS 193.130.

19 **THE PARTIES ARE ON NOTICE** that the terms of the Hague
20 Convention of October 25, 1980, adopted by the 14th Session of the Hague
21 Conference on Private International Law, apply if a parent abducts or wrongfully
22 retains a child in a foreign country. The parties are also put on notice of the
23 following provision of NRS 125C.0045(8):
24
25

26 If a parent of the child lives in a foreign country or has
27 significant commitments in a foreign country:

28 (a) The parties may agree, and the court shall include in the
order for custody of the child, that the United States is the country of

1 habitual residence of the child for the purposes of applying the terms
2 of the Hague Convention as set forth in subsection 7.

3 (b) Upon motion of one of the parties, the court may order the
4 parent to post a bond if the court determines that the parent poses an
5 imminent risk of wrongfully removing or concealing the child outside
6 the country of habitual residence. The bond must be in an amount
7 determined by the court and may be used only to pay for the cost of
8 locating the child and returning him to his habitual residence if the
9 child is wrongfully removed from or concealed outside the country of
10 habitual residence. The fact that a parent has significant commitments
11 in a foreign country does not create a presumption that the parent
12 poses an imminent risk of wrongfully removing or concealing the
13 child.

14 **THE PARTIES ARE ON NOTICE** that the parties are subject to the
15 relocation requirements of NRS 125C.006 & NRS 125C.0065. If joint or
16 primary physical custody has been established pursuant to an order, judgment or
17 decree of a court and one parent intends to relocate his or her residence to a
18 place outside of this State or to a place within this State that is at such a distance
19 that would substantially impair the ability of the other parent to maintain a
20 meaningful relationship with the child, and the relocating parent desires to take
21 the child with him or her, the relocating parent shall, before relocating:

22 (a) attempt to obtain the written consent of the non-relocating
23 parent to relocate with the child; and

24 (b) if the non-relocating parent refuses to give that consent,
25 petition the court for permission to move and/or for primary physical
26 custody for the purpose of relocating. A parent who desires to relocate
27 with a child has the burden of proving that relocating with the child is
28 in the best interest of the child. The court may award reasonable
attorney's fees and costs to the relocating parent if the court finds that
the non-relocating parent refused to consent to the relocating parent's
relocation with the child without having reasonable grounds for such

1 refusal, or for the purpose of harassing the relocating parent. A parent
2 who relocates with a child pursuant to this section without the written
3 consent of the other parent or the permission of the court is subject to
the provisions of NRS 200.359.

4 DATED this 12 day of May, 2020.

Bill H. Hageman

6 DISTRICT COURT JUDGE *um*

8 Respectfully submitted:
9 PAGE LAW FIRM

10 *[Signature]*
11

12 FRED PAGE, ESQ.
13 Nevada Bar No. 6080
14 6930 South Cimarron Road, Suite 140
15 Las Vegas, Nevada 89113
16 (702) 328-2888
Attorney for Plaintiff

Approved as to form and content:
WEBSTER & ASSOCIATES

17 *[Signature]*
18
19 JEANNE LAMBERTSON, ESQ.
20 Nevada Bar No. 9460
21 6882 Edna Avenue,
22 Las Vegas, NV 89146
23 (702) 562-2300
24 Attorney for Defendant
25
26
27
28

6/16/2020

STEVEN D. GRIERSON
CLERK OF THE COURTDISTRICT COURT
CLARK COUNTY, NEVADAValerie Marsden
VALERIE MARSDEN DEPUTY

STEPHANIE RUBIDOUX,

Plaintiff,

vs.

Case No. D-20-601936-D
Department No. R

DANIEL RUBIDOUX,

Defendant.

PARTIAL PARENTING AGREEMENTDate of Hearing: April 16, 2020
Time of Hearing: 11:00am

The parents, Stephanie Rubidoux, mother, and Daniel Rubidoux, father, have met in mediation and have agreed to a Parenting Agreement regarding Riley Ann Rubidoux, DOB:1/13/2016, which addresses Legal Custody, transportation, vacation and holidays. The parents have been unable to reach an agreement with regard to the issue of time-share; therefore, they need the Court to make the final determination in this matter for them.

LEGAL CUSTODY PROVISIONS

Legal custody addresses the issues and matters including, but not limited to, the health, education, religious upbringing and welfare of the child.

The parents agree to joint legal custody of the child named above.

The parents agree to provide each other with the names, addresses and phone numbers of all medical, educational, child care and other providers of professional services for the child. Should this information change, each parent agrees to provide notification in advance, or as soon as possible, to the other parent.

1 Both parents are entitled to have access to medical information (both emergency and
2 routine) and school records, and to consult with any and all professionals involved with the child.
3 The parents agree that each parent shall be empowered to obtain emergency health care for the child
4 without the consent of the other parent. The parents agree to notify the other parent as soon as
5 reasonably possible of any illness requiring medical attention or any emergency involving the child.
6

7 OBTAINING INFORMATION

8 The parents agree to provide each other with the address and phone number at which
9 the child resides.

10 The parents agree to notify each other, and the Clerk of the Court, in writing at least
11 ten (10) days prior to changing residences, phone numbers or employment.
12

13 The parents agree to provide each other, upon receipt, information concerning the
14 well-being of the child including, but not limited to, school information, activities involving the
15 child and all communications from health care providers.

16 The parents agree to advise each other of school, athletic and social events in which
17 the child participates, and both parents may participate in activities for the child.
18

19 HOLIDAYS

20 Holidays and special times shall take precedence over all other time-share
21 arrangements. The parents agree that all holidays not specifically enumerated below shall be
22 celebrated during the regular time-share arrangements.

23 New Year's Holiday

24 The parents agree that the New Year's holiday shall be defined as beginning
25 December 31st at 12:00pm (noon) and concluding January 1st at 12:00pm (noon). The New Year's
26 holiday shall be alternated on a yearly basis, with the child residing with the mother in odd-
27
28

1 numbered years and with the father in even-numbered years. Odd- and even-numbered years shall
2 be determined by the holiday beginning on December 31st

3 Easter

4 The parents agree that Easter shall be defined as beginning the day before the holiday
5 at 5:00pm and concluding the day following the holiday at 8:00am. Easter shall be alternated on a
6 yearly basis, with the child residing with the father in odd-numbered years and with the mother in
7 even-numbered years.
8

9 Fourth of July

10 The parents agree that the Fourth of July shall be defined as beginning July 4th at
11 12:00pm (noon) and concluding July 5th at 12:00pm (noon). The Fourth of July shall be alternated
12 on a yearly basis, with the child residing with the mother in odd-numbered years and with the father
13 in even-numbered years.
14

15 Halloween

16 The parents agree that Halloween shall be defined as beginning October 31st at
17 5:00pm and concluding November 1st at 8:00am. Halloween shall be alternated on a yearly basis,
18 with the child residing with the father in odd-numbered years and with the mother in even-numbered
19 years.
20

21 Thanksgiving

22 The parents agree that Thanksgiving shall be defined as beginning the day before the
23 holiday at 5:00pm and concluding the day following the holiday at 10:00am. Thanksgiving shall be
24 alternated on a yearly basis, with the child residing with the mother in odd-numbered years and with
25 the father in even-numbered years.
26
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1 Christmas

2 The parents agree that Christmas shall be divided into two periods. The first period
3 shall begin December 23rd at 5:00pm and conclude December 24th at 7:00pm. The second period
4 shall begin December 24th at 7:00pm and conclude December 26th at 10:00am.
5

6 These periods shall be alternated yearly between the parents. In odd-numbered years,
7 the child shall reside with the mother during the first period and with the father during the second
8 period. In even-numbered years, the child shall reside with the father during the first period and
9 with the mother during the second period.
10

11 Mother's/Father's Day

12 The parents agree that Mother's/Father's Day shall be defined as beginning the day
13 before the holiday at 5:00pm and concluding the day following the holiday at 8:00am. The child
14 shall reside with the mother each year on Mother's Day and with the father each year on Father's
15 Day.
16

17 Child's Birthday

18 The parents agree that the child's birthday shall be defined as beginning January 12th
19 at 5:00pm and concluding January 14th at 8:00am. The child's birthday shall be alternated on a
20 yearly basis, with the child residing with the father in odd-numbered years and with the mother in
21 even-numbered years.
22

23 Parents' Birthdays

24 The parents agree that Mother's/Father's Birthday shall begin the day before the
25 Mother's/Father's Birthday at 5:00pm and conclude the day following the Mother's/Father's
26 Birthday at 8:00am. The parents shall have the child each year on their respective birthdays.
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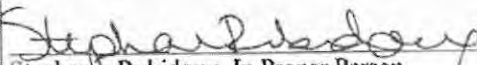
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MODIFYING THE PARENTING AGREEMENT

If parenting issues arise, the parties agree to re-mediate or seek court orders to resolve the issues.


Stephanie Rubidoux, In Proper Person
Mother

Daniel Rubidoux, In Proper Person
Father

DATE 4.6.20

DATE _____

Nathan Gibbs
Attorney for Plaintiff

Jeanne Lambersten
Attorney for Defendant

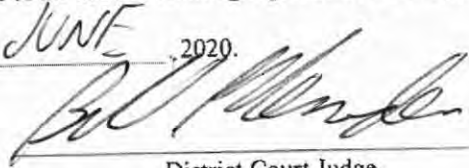
DATE _____

DATE _____

ORDER

Based upon the agreement of the parties and good cause being shown, IT IS
HEREBY ORDERED that the terms and conditions of the above Parenting Agreement are adopted.

DATED this 16 day of JUNE, 2020.



District Court Judge

ORDR
GHANDI DEETER BLACKHAM

Nedda Ghandi, Esq.
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Attorneys for Defendant

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

STEPHANIE RUBIDOUX,

Plaintiff,

vs.

DANIEL RUBIDOUX,

Defendant.

Case No.: D-20-601936-D

Dept. No: R

ORDER RE: JUNE 16, 2020 HEARING

THIS MATTER having been brought before the Court for hearing on June 16, 2020 at 11:00 a.m., upon the Status Check; with Defendant Daniel Rubidoux (Daniel), present, and appearing by and through his attorney of record, Brian E. Blackham, Esq., of GHANDI DEETER BLACKHAM, and Plaintiff Stephanie

1 Rubidoux, present, and appearing by and through her attorney of record, Fred Page,
2 Esq., of PAGE LAW FIRM; the Court having reviewed the papers and pleadings on
3 file herein, having heard the argument of counsel at the time of hearing, and being
4 fully advised in the premises, and good cause showing, hereby makes the following
5 findings and orders:

6 THE COURT HEREBY that the parties were married on or about June 21,
7 2014 and one (1) minor child was born the issue of their marriage, to wit: Riley
8 Rubidoux (Riley) born January 13, 2016 (age 4).

9 THE COURT FURTHER FINDS that with respect to the Partial Parenting
10 Agreement reached in Family Mediation, neither party objects to the agreement being
11 entered in Court with the caveat that transportation for all holiday visitation shall be,
12 on a temporary basis, in accordance with the Order from April 16, 2020, Hearing.

13 THE COURT FURTHER FINDS that Daniel's request for a Right of First
14 Refusal in this matter would require a high degree of cooperation between the parties,
15 which does not exist in the current case. Once a final custody ruling is in place, it
16 would be in Riley's best interest to have as much access to extended family members
17 as possible.

18 THE COURT FURTHER FINDS that the marital residence has been sold but
19 the net proceeds have not been distributed between the parties as of the hearing.

20 ///

1 NOW THEREFORE, IT IS HEREBY ORDERED that the Partial Parenting
2 Agreement is signed, affirmed, and adopted in Open Court with the consent of both
3 parties and their attorneys. The Court notes that Stephanie had previously signed the
4 Partial Parenting Agreement.

5 IT IS FURTHER ORDERED that, on a temporary basis, all transportation for
6 holiday visitation shall be in accordance with the Order from April 16, 2020 Hearing.

7 IT IS FURTHER ORDERED that the Court will not make any changes to the
8 temporary custody schedule at this time without a stipulation from the parties.

9 IT IS FURTHER ORDERED that Daniel's request for a First Right of Refusal
10 is denied at this time.

11 IT IS FURTHER ORDERED that the parties shall receive a partial distribution
12 of the net proceeds from the sale of marital residence in the amount of \$10,000 each.
13 The remaining funds shall remain in escrow pending the Trial Viability hearing.

14 IT IS FURTHER ORDERED that the Trial Viability hearing is set for August
15 3, 2020 at 9:30 a.m.

16 IT IS FURTHER ORDERED that a Non-Jury Trial is set for two half days, on
17 September 8, 2020 at 1:30 p.m., and September 22, 2020 at 1:30 p.m.

18 ///

19 ///

20 ///

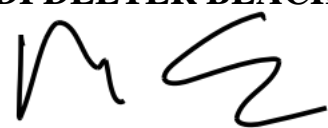
1 IT IS FURTHER ORDERED that any other outstanding issues not specifically
2 addressed herein are deferred.

3 DATED this ____ day of _____, 2020. Dated this 16th day of September, 2020

4 
DISTRICT COURT JUDGE

5 Respectfully submitted by:
6 **GHANDI DEETER BLACKHAM**

67A-E6B-DA59-5D13
Approved as to form and content:
Bill Henderson
District Court Judge
PAGE LAW FIRM

7 
8 Brian E. Blackham, Esq.
Nevada Bar No. 9974
9 725 S. 8th Street, Suite 100
Las Vegas, Nevada 89101
10 Telephone: (702) 878-1115
Attorney for Defendant

11 
Fred Page, Esq.
Nevada Bar No. 6080
12 6930 S. Cimarron Rd., Suite 140
Las Vegas, NV 89113
13 Telephone: (702) 328-2888
Attorney for Plaintiff

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Stephanie Rubidoux, Plaintiff

CASE NO: D-20-601936-D

7 vs.

DEPT. NO. Department R

8 Daniel Rubidoux, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/16/2020

15 Laura Deeter, Esq.

laura@ghandilaw.com

16 Brian Blackham, Esq.

brian@ghandilaw.com

17 Fred Page

fpage@pagelawoffices.com

18 Theresa Calabrese Vance

tcv@ghandilaw.com

19 Nedda Ghandi

nedda@ghandilaw.com

20 Rachel Neuenkirchen

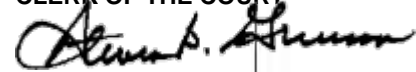
rn@ghandilaw.com

21 Rhiannon Renn

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Attorney for Plaintiff

**EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF CLARK
STATE OF NEVADA**

STEPHANIE RUBIDOUX,)	
)	Case No.: D-20-601936-D
Plaintiff,)	
vs.)	Dept.: U
)	
DANIEL RUBIDOUX,)	
)	
Defendant.)	

PLAINTIFF'S PRE-TRIAL MEMORANDUM

Plaintiff, STEPHANIE RUBIDOUX, by and through her attorney, Fred Page, Esq., hereby submits her Pre-Trial Memorandum.

**I.
STATEMENT OF ESSENTIAL FACTS**

A. Names of the parties:

1. Stephanie Rubidoux, Plaintiff
2. Daniel Rubidoux, Defendant

1 **B. Date of Marriage:** June 21, 2014

2 **C. Names and Dates of Birth of the Children:** Riley Rubidoux, January 13,
3 2016 (age 5).
4

5 **D. Resolved Issues, Including Agreed Resolution:**

- 6 1. Personal jurisdiction
- 7 2. Subject matter jurisdiction
- 8 3. Legal custody
- 9 4. That neither party is seeking alimony
- 10 5. Incompatibility

11 **E. Issues not Resolved:**

- 12 1. Physical custody
- 13 2. Property division
- 14 3. Attorney's fees

15 **F. Factual Background**

16 Stephanie is a school teacher and Daniel sells electrical supplies to
17 construction contractors. The evidence and testimony will show that Daniel has a
18 long history of being violent to the point and being arrested and convicted of
19 domestic battery.
20
21

22 On January 19, 2018, Daniel was arrested for destruction of property at
23 Stephanie's school. Eventually, Daniel was able to plea down those charges by
24 taking impulse control/anger management classes.
25

26 On May 3, 2019, Daniel was arrested for domestic battery against Stephanie.
27 October 1, 2019, Daniel pled guilty to misdemeanor battery against Stephanie. As
28

1 part of his guilty plea, Daniel was to stay out of trouble. Per the court records,
2 Daniel failed to stay out of trouble.

3 Stephanie additionally has video of Daniel attacking her in the garage in
4 front of Riley. Stephanie has video of Daniel attacking her car while she is trying
5 to leave. Stephanie has video of Daniel blocking her car in the driveway (false
6 imprisonment). Stephanie has video of doors and walls with holes punched in
7 them by Daniel. Stephanie has audio and text messages of Daniel expressing
8 suicidal ideations including threatening to put a bullet in his head. Stephanie will
9 testify that Daniel is frequently intoxicated. Stephanie has photographs of Daniel
10 having Riley hold what is presumably a loaded weapon.
11
12
13
14

15 II. 16 CHILD CUSTODY

17 The analysis for awarding Stephanie primary physical custody is set out in
18 NRS 125C.0035(4). An analysis of the factors is as follows:
19

20 a. **The wishes of the child if the child is of sufficient age and capacity**
21 **to form an intelligent preference as to his or her physical custody**

22 Riley is too young for her wishes to be taken into consideration. If she were
23 asked, it is certain she would state she prefers to stay with Stephanie.
24

25 b. **Any nomination of a guardian for the child by a parent**

26 Not applicable.
27
28

1 **c. Which parent is more likely to allow frequent associations and a**
2 **continuing relationship with the noncustodial parent**

3 The evidence and testimony will show that Stephanie has complied with all
4 court orders. The evidence and testimony will show that Daniel has violated the
5 terms of joint legal custody on multiple occasions. In addition, Stephanie has a
6 video that will be introduced into evidence wherein Daniel had Riley deliver the
7 child support check to Stephanie and told Riley, “go tell your mother to go and buy
8 something nice.” The fact that Daniel has violated joint legal custody on multiple
9 occasions during the pendency of this action should lead to the conclusion that he
10 is unwilling to facilitate a relationship with Stephanie.
11
12

13
14 **d. The level of conflict between the parents**

15 The level of conflict is heightened. The evidence and testimony will show
16 that Daniel has been committing acts of domestic violence over an extended period
17 time.
18

19
20 **e. The ability of the parents to cooperate to meet the needs of the**
21 **child**

22 The ability to cooperate is limited.

23 **f. The mental and physical health of the parents**

24 Stephanie is physically and mentally healthy. Daniel appears physically
25 healthy, but there are serious concerns as to his mental stability given the number
26 of times he has been unable to control himself and commit acts of violence. There
27
28

1 are texts and audio wherein Daniel is threatening to commit suicide by putting a
2 bullet in his head. There is also concern regarding his alcohol consumption.

3
4 **g. The physical, developmental and emotional needs of the children**

5 Riley is 5 years of age. Riley is bonded to both parents and recognizes mom
6 and mom and dad as dad. Because she is older now, Riley is able to adapt to
7 longer absences from either parent.
8

9 What is important is stability. All evidence indicates that Daniel is
10 extremely volatile emotionally. The evidence and testimony will show that Daniel
11 screams¹ and punches and breaks things. As indicated, Daniel pled guilty to
12 domestic battery. Stephanie, by contrast, is very stable and even tempered and
13 because of that she is the one Riley trusts and turns to for comfort and direction.
14
15

16 Daniel is unable to meet Riley's developmental needs because of his issues.
17
18 Daniel's work schedule extends well into the evening and makes it difficult for him
19 to exercise time and Riley and Daniel is unable to maximize his time with her.
20

21 **h. The nature of the relationship of the child with each parent**

22 Riley's relationship with both parents is good.

23 **i. Ability of the child to maintain a relationship with any sibling**

24 Not applicable.
25

26
27 ¹ *Hopper v. Hopper*, 113 Nev. 1138, 946 P.2d 171 (1997) (the Supreme Court
28 indicated that excessive yelling can be a consideration in determining custody).

1 **j. Any history of parental abuse or neglect of the child or a sibling of**
2 **the child**

3
4 It is submitted that Daniel having Riley hold what is presumed to be a
5 loaded weapon is an act of neglect.

6 **k. Whether either parent has engaged in an act of domestic violence**
7 **against the child, a parent of the child or any other person**
8 **residing with the child**

9 As indicated the evidence is that Daniel pled guilty to battery constituting
10 domestic violence against Stephanie. There is video that will be introduced as
11 evidence that show Daniel battering Stephanie. There is video that will be
12 introduced into evidence that show Daniel attacking Stephanie's car. There is
13 video evidence showing that Daniel is blocking Stephanie from leaving in her car.
14 There is video evidence that will show that Daniel has punched holes in doors and
15 walls. Two witnesses will come in and testify that Daniel is the one who engaged
16 in destruction of property at Stephanie's school.
17
18
19

20 Stephanie also has a phone he broke and a t-shirt where he left his bloody
21 hand mark on the back of the shirt because he was grabbing Stephanie as she left.
22 Daniel used to get angry and break glass beer bottles, frames, and anything that
23 belonged to Stephanie. There will be approximately 9 different incidents of
24 domestic violence that Daniel committed during the course of the marriage to
25 which Stephanie will be providing testimony.
26
27
28

1 **I. Whether either parent or any other person seeking physical**
2 **custody has committed any act of abduction against the child or**
3 **any other child**

4 Not applicable.

5 **III.**
6 **VISITATION**

7 Stephanie requests the following visitation schedule where she has Sunday
8 at 8:00 p.m. through Friday at 5:00 p.m. and Daniel has Friday at 5:00 p.m. until
9 Sunday at 8:00 p.m. Stephanie also requests the 2nd and 4th weekend of each
10 month.
11

12 The schedule would be in Riley's best interests because Stephanie has been
13 her primary caregiver since she was born. Stephanie is a school teacher and is
14 trained to help Riley excel academically. Riley needs a stable and consistent
15 schedule.
16 schedule.
17

18 Evidence of the multiple acts of domestic violence, verbal abuse, and
19 suicidal ideations committed by Daniel will be submitted at the time of trial. The
20 conviction for domestic violence that Daniel has will also be submitted into
21 evidence at the time of trial
22 evidence at the time of trial
23

24 Stephanie has summers off to maximize her quality time with Riley. As
25 indicated, Stephanie has a video of Daniel battering her in front of Riley.
26 Stephanie would also like to update/change the holiday schedule to allow both of
27 Stephanie would also like to update/change the holiday schedule to allow both of
28

1 parties to have better use of holidays for time with Riley (at this time, the parties
2 have only addressed the major holidays).

3
4 **IV.**
CHILD SUPPORT

5 Daniel should pay child support pursuant to NAC 425.

7
8 **V.**
PROPERTY AND DEBTS

9 **A. Division of Community Property**

10 Per NRS 123.130, all property acquired after marriage is presumed to be
11 community property unless there is a pre or post-nuptial agreement, the property
12 was acquired by gift, award of personal injury damages, or acquired by gift or
13 devise, and the rents issues and profits thereof. *See Peters v. Peters*,² (all property
14 acquired after marriage is considered to be community property under NRS
15 123.220 and that presumption can only be overcome by clear and convincing
16 evidence); *Todkill v. Todkill*,³ (same); *Carlson v. McCall*,⁴ (the burden is on the
17 person claiming it as separate property to overcome this presumption by proof
18 sufficiently clear and satisfactory to prove the correctness of such a claim); *Lake v.*

23
24
25 ² 92 Nev. 687, 557 P.2d 713 (1976)

26 ³ 88 Nev. 231, 495 P.2d 629 (1972)

27
28 ⁴ 70 Nev. 437, 271 P.2d 1002 (1954)

1 *Bender*,⁵ (property acquired during marriage is community property and property
2 acquired prior to marriage is separate property).

3 NRS 125.150(1)(b) provides that a court,
4

5 Shall, to the extent practicable, make an equal disposition of the
6 community property of the parties, except that the court may make an
7 unequal disposition of the community property in such proportions as
8 it deems just if the court finds a compelling reason to do so and sets
forth in writing the reasons for making the unequal disposition.

9 In *Kogod v. Cioffi-Kogod*, 135 Nev. Adv. 9, 135 Nev. 64, 439 P. 3d 397
10 (2019), the Supreme Court reaffirmed prior holdings that the community continues
11 until the Decree of Divorce is filed.
12

13 **1. Real Property:**
14

15 Daniel gave Stephanie a post-nuptial agreement between wherein Daniel
16 gave all right, title, and interest in the former martial residence to Stephanie.
17

18 **2. PERS Retirement**

19 The PERS retirement should be divided pursuant to the time rule formula.
20

21 **3. IRA's and 401(k)'s**

22 Stephanie has an IRA with T-Rowe Price. The IRA should be divided
23 pursuant to the time rule formula. Daniel has a 401(k) account with Fidelity. The
24 401(k) account should be divided pursuant to the time rule formula.
25
26
27

28 ⁵ 18 Nev. 361, 7 P. 74 (1885)

1 **4. Vehicles:**

2 The vehicles should be divided pursuant to their Kelley Blue Book values.

3 **5. Bank Accounts:**

4 Each party should keep their own bank accounts.

5 **6. Household Goods and Furnishings:**

6 The parties have divided the household goods and furnishings to their
7
8 satisfaction.

9
10 **B. Division of Debt**

11 Each party should keep the unsecured debt in their respective names as their
12
13 sole and separate property.

14
15 **VI.**
16 **SPOUSAL SUPPORT**

17 Not applicable.

18 **VII.**
19 **ATTORNEY'S FEES**

20 Attorney's fees may be awarded to Stephanie from Daniel under *Brunzell v.*
21
22 *Golden Gate National Bank.*⁶

23 Application of those factors is as follows:
24
25
26

27

28 ⁶ 85 Nev. 345.455 P.2d 31 (1969).

- 1 1. Counsel is experienced in domestic relations litigation, is certified in the
2 state of Nevada as a family law specialist and has been practicing in this
3 state for over 20 years.
- 4 2. The case itself is of moderate complexity.
- 5 3. Counsel has expended a significant amount of skill, time and attention to the
6 work in this case.
- 7 4. Stephanie should be considered as being the prevailing party as the positions
8 she is advocating are reasonable and well supported by Nevada law.

9 Fees may also be awarded to Stephanie under NRS 18.010. Stephanie has
10 maintained since the outset of this litigation that she should have been confirmed
11 as primary physical custodian due to Daniel's acts of domestic violence against
12 her, his destruction of property on multiple occasions, his suicidal ideations, and
13 his having Riley handle what should be presumed to be a loaded weapon.

14 Additionally, as the evidence will show that Daniel earns significantly more
15 than Stephanie the case is a *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618
16 (1972) case. The Supreme Court held in *Sargeant* that the wife does not have to
17 show necessitous circumstances before being awarded fees and costs.⁷

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26 ⁷ "Family law trial courts must also consider the disparity in income of the parties
27 when awarding fees." *Miller v. Wilfong*, 121 Nev. 619, 621, 119 P.3d 727, 729,
28 (2005).

Stephanie requests \$20,000 in fees. The fee request should be seen as more than fair given the fact pattern and that Stephanie will be the prevailing party on custody.

VIII. LIST OF WITNESSES

A. Plaintiff

B. Defendant

C. Jeff and Sheri Cuddy
8712 Kendall Brook Circle
Las Vegas, Nevada 89149
801-698-4805

Mr. and Ms. Cuddy are expected to testify regarding the facts and circumstances at issue in this matter.

D. Roger West
7993 Alpine Fir Ave,
Las Vegas, Nevada 89117
702-219-7670

Mr. West was present when school property was destroyed.

E. Carleen May
3574 San Pascual Avenue
Las Vegas, Nevada 89117
725-244-1732

Ms. May was present when school property was destroyed.

**IX.
LIST OF EXHIBITS**

1. USAA joint checking account statements for the period of December 21, 2016, to January 26, 2021 for the account ending 6212-5. Bates Stamped as [RUBIDIOUX000001-RUBIDIOUX000214];
2. USAA joint savings account statements for the period of December 31, 2016, to June 30, 2019, for the account ending in 5026-2, Bates Stamped as [RUBIDIOUX000215-RUBIDIOUX000248];
3. USAA personal savings account statements for the period of October 31, 2020, to January 26, 2021, for account number ending 7737-5, Bates Stamped as [RUBIDIOUX000243-RUBIDIOUX000248];
4. USAA personal checking account statements for the period of May 3, 2017 to February 2, 2021, for account ending in 6522-6, from March 2020 to Present, Bates Stamped [RUBIDIOUX000249-RUBIDIOUX000416];
5. Robinhood account statements for the period of January 1, 2020, to December 31, 2020, for account ending in 2936, Bates Stamped as [RUBIDIOUX000417– RUBIDIOUX000464];
6. Navy Federal Credit Union account statements for the period of January 20, 2020, to January 19, 2021 for account ending in 5750, Bates Stamped as [RUBIDIOUX000465-RUBIDIOUX000489];
7. T. Rowe Price account statements for the period of April 2014, to December 31, 2021, for account ending in 0590. RUBIDIOUX000490-RUBIDIOUX000561];
8. America First Credit Union statements for the period of February 1, 2017, to February 1, 2021 for account ending in 3857, Bates Stamped as [RUBIDIOUX000562-RUBIDIOUX000705].
9. Robinhood account statements for the period of August 1, 2019, to December 31, 2020, for account ending in 2936, Bates Stamped as [RUBIDIOUX000706– RUBIDIOUX000725];
10. Facebook account information
11. Instagram account information.

12. Barclay credit card account statements for the period of February 5, 2017, to January 19, 2021, for account ending in 7059, Bates Stamped as [RUBIDOUX000726-RUBIDOUX001036].
13. Citibank credit card account statements for the period of December 23, 2016, to January 20, 2020, for account ending in 7989, Bates Stamped as [RUBIDOUX001037-RUBIDOUX001138].
14. Maurice's credit card account statement for the period of June 2020, to August 2020, for account ending in 9262, Bates Stamped as [RUBIDOUX001139-RUBIDOUX001150].
15. 2014 Federal income tax return, Bates Stamped as [RUBIDOUX001151-RUBIDOUX001245]
16. 2015 Federal income tax return, Bates Stamped as [RUBIDOUX001246-RUBIDOUX001342].
17. 2016 Federal income tax return, Bates Stamped as [RUBIDOUX001343-RUBIDOUX001464].
18. 2017 Federal income tax return, Bates Stamped as [RUBIDOUX001465-RUBIDOUX001600].
19. 2018 Federal income tax return, Bates Stamped as [RUBIDOUX001601-RUBIDOUX001747].
20. 2019 Federal income tax return, Bates Stamped as [RUBIDOUX001748-RUBIDOUX001752].
21. Paystubs for Plaintiff, Bates Stamped as [RUBIDOUX001753-RUBIDOUX001772].
22. Chase Amazon credit card statements, Bates Stamped as [RUBIDOUX0001773-RUBIDOUX0001966].
23. Chase Southwest Airlines credit card statements, Bates Stamped as [RUBIDOUX0001967-RUBIDOUX0001990].
24. Navy Federal Credit Union mortgage statements, for the period of July 7, 2019, to April 16, 2020. [RUBIDOUX001991-RUBIDOUX002022].

- 1 25. Post-Nuptial Agreement between Plaintiff and Defendant wherein
2 Defendant gave all right, title, and interest in the former martial residence to
3 Plaintiff. [RUBIDOUX002023].
- 4 26. Title for Ford F150. [RUBIDOUX002024].
- 5 27. Kelley Blue Book value and loan documents for Ford F150
6 [RUBIDOUX002025-RUBIDOUX002027].
- 7 28. Text messages of Defendant threatening to kill himself, 2019.
8 [RUBIDOUX002028-RUBIDOUX002041].
- 9 29. Photographs of Defendant having Riley holding a gun.
10 [RUBIDOUX002042-RUBIDOUX002044].
- 11 30. Photographs of Riley with bruises and scratches. [RUBIDOUX002045-
12 RUBIDOUX002048].
- 13 31. Photographs of property destruction by Defendant. [RUBIDOUX002049-
14 RUBIDOUX002052].
- 15 32. Facebook posting of Defendant telling Plaintiff that she is a great mother
16 [RUBIDOUX002053].
- 17 33. Table of personal property division. [RUBIDOUX002053].
- 18 34. Video of Defendant attacking Plaintiff's car, neighbor's security footage,
19 video provided February 8, 2020.
- 20 35. Video of Defendant attacking Plaintiff's car, security footage from the
21 garage, video provided February 8, 2020.
- 22 36. Video of Defendant bothering Plaintiff after not taking Riley, video
23 provided February 8, 2020.
- 24 37. Video of Defendant pulling Riley off of Plaintiff, video provided February
25 8, 2020.
- 26 38. Video of Defendant punching hole in door and lunging at Plaintiff, video
27 provided February 8, 2020.
- 28 39. Video of Defendant refusing to take Riley, video provided February 8,
2020.

- 1 40. Video of Defendant taking Riley away, video provided February 8, 2020.
- 2 41. Video of Defendant blocking Plaintiff's car in with his car, video provided
3 February 8, 2020.
- 4 42. Video of Defendant attacking and then choking Plaintiff in the garage on
5 January 20, 2019, video provided February 8, 2020.
- 6 43. Video of Defendant driving recklessly, video provided February 8, 2020.
- 7 44. Video of Defendant harassing Plaintiff and keeping her up at night, video
8 provided February 8, 2020.
- 9 45. Video of Defendant kicking and destroying items, video provided February
10 8, 2020.
- 11 46. Video showing that Defendant left the house in the middle of the night,
12 video provided February 8, 2020.
- 13 47. Video/audio recording of Defendant threatening to put a bullet in his head,
14 video provided February 8, 2020.
- 15 48. Video of Defendant being upset about expense reimbursement, video
16 provided February 8, 2020.
- 17 49. Retainer Agreement, receipt, and redacted invoices, Bates Stamped
18 [RUBIDOUX002054-RUBIDOUX002072].
- 19 50. Register of Actions for case 18F01159X. [RUBIDOUX002073-
20 RUBDIOUX002074].
- 21 51. Clark County School District Arrest Report. [RUBIDOUX002075-
22 RUBIDOUX002080].
- 23 52. Register of Actions for case M1914063X. [RUBIDOUX002081-
24 RUBIDOUX002082].
- 25 53. Hostile Text Messages from Defendant to Plaintiff. [RUBIDOUX002083-
26 RUBIDOUX002084].
- 27 54. Photograph of Plaintiff's upper left arm being bruised after being grabbed
28 by Defendant. RUBIDOUX002085.

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**X.
UNUSUAL LEGAL OR FACTUAL ISSUES**

None.

**XI.
LENGTH OF TRIAL**

One day.

DATED this 25th day of April 2021

PAGE LAW FIRM




FRED PAGE, ESQ.
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(702) 823-2888
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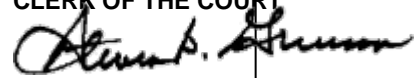
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of ~~April~~^{May} 2021 that the foregoing Plaintiff's Pre-Trial Memorandum was served pursuant NEFCR 9 via e-service to Brian Blackham, Esq. attorney for Defendant.



An employee of Page Law Firm



PMEM
GHANDI DEETER BLACKHAM

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

STEPHANIE RUBIDOUX,

Plaintiff,

vs.

DANIEL RUBIDOUX,

Defendant.

Case No.: D-20-601936-D
Dept. No: U

Date of Trial: May 14, 2021
Time of Trial: 9:00 a.m.

DEFENDANT'S PRE-TRIAL MEMORANDUM

I.

STATEMENT OF ESSENTIAL FACTS

A. Names of Parties:

1. Plaintiff: Stephanie Rubidoux (Stephanie); Age 38.

1 Defendant: Daniel Rubidoux (Dan); Age 33.

2 2. Minor Children: Riley Rubidoux, born January 13, 2016, presently
3 five (5) years old.

4 B. Date of Marriage: June 21, 2014.

5 C. Resolved Issues, including agreed resolution:

- 6 1. Joint Legal Custody; and
7 2. Vacation and Holiday schedule.

8 D. Temporary Orders:

9 1. There is no custody designation at this time; Defendant shall have
10 alternating visitation as follows:

11 i. Week One: Friday at 6:00 p.m. to Sunday at 6:00 p.m.

12 ii. Week Two: Fridays at 6:00 p.m. to Monday at 10:00 a.m.

13 2. Child support was set at \$998.64 per month effective May 1, 2020.

14 E. Statement of Unresolved Issues:

- 15 1. Child custody and custodial timeshare;
16 2. Right of first refusal;
17 3. Division of assets and debts, including proceeds from the sale of the
18 marital residence; and
19 4. Attorney's fees and costs.
20

1 II.

2 **SUMMARY OF RELIEF REQUESTED**

- 3 1. The parties should be awarded joint physical custody of Riley, subject to
4 an equal custodial timeshare;
- 5 2. Child Support should be set in accordance with NAC 425;
- 6 3. The community assets and debts should be divided; and
- 7 4. Daniel should be awarded his attorney's fees and costs.

8 III.

9 **CHILD CUSTODY**

10 NRS 125C.001 states:

11 The Legislature declares that it is the policy of this State:

- 12 1. To ensure that minor children have frequent associations and
13 a continuing relationship with both parents after the parents have
14 ended their relationship, become separated or dissolved their
marriage;
- 15 2. To encourage such parents to share the rights and
responsibilities of child rearing; and
- 16 3. To establish that such parents have an equivalent duty to
17 provide their minor children with necessary maintenance, health
18 care, education and financial support. As used in this subsection,
19 "equivalent" must not be construed to mean that both parents are
20 responsible for providing the same amount of financial support to
their children.

1 NRS 125C.0015 states:

2 Parents have joint custody until otherwise ordered by court.

3 1. The parent and child relationship extends equally to every
4 child and to every parent, regardless of the marital status of the
5 parents.

6 2. If a court has not made a determination regarding the custody
7 of a child, each parent has joint legal custody and joint physical
8 custody of the child until otherwise ordered by a court of
9 competent jurisdiction.

10 NRS 125C.0025 states:

11 Joint physical custody.

12 1. When a court is making a determination regarding the
13 physical custody of a child, **there is a preference that joint
14 physical custody would be in the best interest of a minor child**
15 if:

16 (a) The parents have agreed to an award of joint physical
17 custody or so agree in open court at a hearing for the
18 purpose of determining the physical custody of the minor
19 child; or

20 (b) **A parent has demonstrated, or has attempted to
demonstrate but has had his or her efforts frustrated by
the other parent, an intent to establish a meaningful
relationship with the minor child.**

2. For assistance in determining whether an award of joint
physical custody is appropriate, the court may direct that an
investigation be conducted.

(Emphasis supplied).

1 The Court must determine the child's "best interests" pursuant to the NRS
2 125C.0035(4) which states the following:

3 In determining the best interest of the child, the court shall
4 consider and set forth its specific findings concerning, among
5 other things:

6 **(a) The wishes of the child if the child is of sufficient age
and capacity to form an intelligent preference as to his
custody.**

7 **(b) Any nomination by a parent or a guardian for the child.**

8 **(c) Which parent is more likely to allow the child to have
frequent associations and a continuing relationship with
9 the noncustodial parent.**

10 **(d) The level of conflict between the parents.**

11 **(e) The ability of the parents to cooperate to meet the
needs of the child.**

12 **(f) The mental and physical health of the parents.**

13 **(g) The physical, developmental and emotional needs of
14 the child.**

15 **(h) The nature of the relationship of the child with each
parent**

16 **(i) The ability of the child to maintain a relationship with any
17 sibling.**

18 **(j) Any history of parental abuse or neglect of the child or a
sibling of the child.**

19 **(k) Whether either parent or any other person seeking
20 custody has engaged in an act of domestic violence against**

1 **the child, a parent of the child or any other person**
2 **residing with the child.**

3 ...

4 (Emphasis supplied).

5 Stephanie premises her entire demand for primary physical custody based on
6 allegations of prior domestic violence. In fact, Stephanie incorrectly asserts that the
7 alleged domestic violence entitles her to primary physical custody, *by law*, without
8 any consideration for the rebuttable presumption afforded by NRS 125C.0035. The
9 evidence at trial will show that Stephanie has no credible concerns as to Riley's
10 safety or Daniel's ability to care for her; she simply refuses to allow Daniel to
11 participate equally in Riley's life. Daniel will not waste the Court's time addressing
12 the facts on the alleged domestic violence here. The Las Vegas Justice Court record
13 is clear that two pending matters were ultimately dismissed, although Daniel
14 concedes entering a plea with respect to the incident that occurred in 2019 to avoid
15 the expense of uncertainty of a criminal trial. It is noteworthy that the parties
16 resumed living together after the 2019 incident, and that prior to filing the instant
17 divorce action, Stephanie has *never* expressed any reservation regarding Daniel's
18 ability to care for Riley and in fact, has left the child alone with Daniel on multiple
19 occasions subsequent to the alleged domestic violence. Nevertheless, even if the
20 Court applies a legal *presumption* against an award of joint physical custody due to

1 the alleged domestic violence, that presumption will be rebutted at trial. An analysis
2 of the applicable best interest factors follows.

3 (a) The wishes of the child if the child is of sufficient age and capacity to form
4 an intelligent preference as to his custody.

5 Riley is just 5 years old and not of sufficient age and capacity to form an
6 intelligent preference as to custody. However, at the time of her deposition,
7 Stephanie admitted Riley looks forward to spending time with Daniel and does not
8 dispute the child loves her father.

9 (c) Which parent is more likely to allow the child to have frequent associations
10 and a continuing relationship with the noncustodial parent.

11 Daniel has always supported Stephanie's relationship with Riley.
12 Unfortunately, the same cannot be said of Stephanie. Despite having no prior
13 concerns with Daniel's ability to care for Riley, she commenced her current
14 posturing after filing for divorce. Since that time, Stephanie has only begrudgingly
15 abided by the custodial timeshare presently in effect and frequently refuses to
16 facilitate phone contact between Riley and Daniel when Riley is in Stephanie's care.
17 Stephanie now asserts, without any credible basis, that Daniel should receive *even*
18 *less time* than the roughly two days he currently receives each week. As such,

Stephanie is clearly not the parent to allow the child to have frequent associations and a continuing relationship with Daniel.

(d) The level of conflict between the parents.

The level of conflict between the parties remains high due to Stephanie's refusal to cooperate with Daniel to meet Riley's needs and continued disparagement of Daniel when he tries to facilitate his relationship with Riley. Daniel is hopeful that the level of conflict will dissipate upon the conclusion of these proceedings.

(e) The ability of the parents to cooperate to meet the needs of the child.

The parties are currently unable to cooperate to meet Riley's needs due to Stephanie's unreasonable posture and demands and refusal to actively involve Daniel in Riley's life outside of the orders of this Court. Here too, Daniel is hopeful that the parties will be able to more effectively cooperate upon the conclusion of these proceedings.

(f) The mental and physical health of the parents.

Daniel avers that he is mentally and physically fit.

(g) The physical, developmental and emotional needs of the child.

At only 5 years old, Riley is in a critical stage of her physical, developmental and emotional growth, and there is no doubt she needs the love and support of both

1 of her parents. Nevertheless, after the parties jointly raised Riley while generally
2 residing together until approximately November 2019, Stephanie is now attempting
3 to eviscerate the father-daughter bond in her cruel effort to gain leverage in this
4 divorce action. This extrication of a parent from Riley's life at the whim of the
5 other is inimical with Riley's physical, emotional and developmental needs, and the
6 damage to Riley can only be mitigated by awarding substantial custodial time to
7 Daniel as soon as possible.

8 (h) The nature of the relationship of the child with each parent.

9 Daniel has always had a strong bond and healthy relationship with Riley.
10 Daniel does not deny that Riley loves her mother, but the child has *two* parents, and
11 it is inarguably in Riley's best interests to maintain a strong and healthy relationship
12 with both of them.

13
14 (k) Whether either parent or any other person seeking custody has engaged in an
15 act of domestic violence against the child, a parent of the child or any other person
residing with the child.

16 NRS 125C.0035(5) requires that this Court make specific findings of fact
17 after an evidentiary hearing is held on whether the alleged acts of domestic violence
18 occurred. Stephanie alleges that an incident of domestic violence between the
19 parties occurred in or about May 2019, in which Daniel was arrested. At the time
20

1 of her deposition, Stephanie admitted that after a brief separation, the parties
2 resumed residing together until in or about November 2019, when they decided to
3 finally separate. As such, Stephanie continued to reside with Daniel after the
4 allegations of domestic violence. Nevertheless, a criminal matter was initiated
5 against Daniel in Case No. 19M14063X. As stated above, Daniel did enter into a
6 plea bargain. As a condition of this plea, the case was to be dismissed upon his
7 satisfaction of the requisite conditions. Daniel satisfied the conditions, and the
8 domestic violence case was dismissed. Nevertheless, even if the Court finds that
9 the legal presumption in subsection (k) applies, any such presumption will be
10 effectively rebutted at the time of trial.

11 Significantly, Stephanie has conveniently failed to mention the numerous
12 instances in which she committed domestic violence against Daniel during their
13 relationship, and to which Daniel will testify at trial. The key difference is that
14 Daniel is not attempting to use Stephanie's acts of violence to relegate her to the
15 status of "visitor" in Riley's life.

16 Analysis of the above factors demonstrate that it is clearly in Riley's best
17 interests that the parties be awarded joint physical custody, and Stephanie has failed
18 to make any credible argument to the contrary. While Daniel does not question
19 Stephanie's love for Riley, her refusal to acknowledge that Daniel is a fit and proper
20 person to share joint physical custody of Riley is inconsistent with the statutory

1 preference and policies of this state, and contrary to Riley's best interests. Thus, the
2 parties should share joint physical custody of Riley in accordance with the
3 following custodial timeshare, which is designed to minimize the contact between
4 Stephanie and Daniel: The parties should share an alternating weekly timeshare,
5 with exchanges to occur Wednesday after school, or at 3:00 p.m. if Riley is not
6 attending school. Alternatively, Daniel asks that the parties share a 5-2-2-5
7 timeshare, with Riley residing with Stephanie each Monday and Tuesday, with
8 Daniel Wednesday and Thursday, and with the parties alternating the weekend.
9 Here too, custodial exchanges should occur after school, or at 3:00 p.m. if Riley is
10 not attending school.

11 IV.

12 CHILD SUPPORT

13 NAC 425.115 states the following:

- 14 1. If the parties do not stipulate to a child support obligation pursuant
15 to NAC 425.110, the court must determine the child support
16 obligation in accordance with the guidelines set forth in this chapter.
- 17 2. If a party has primary physical custody of a child, he or she is deemed
18 to be the obligee and the other party is deemed to be the obligor, and
19 the child support obligation of the obligor must be determined.
- 20 3. **If the parties have joint physical custody of a child, the child
support obligation of each party must be determined. After each**

1 party's respective child support obligation is determined, the
2 child support obligations must be offset so that the party with the
3 higher child support obligation pays the other party the
4 difference.

5 ...

6 NAC 425.130 states the following:

7 The court must consider the reasonable costs of child care paid by
8 either or both parties and make an equitable division thereof.

9 NAC 425.140 states the following, in pertinent part:

10 1. For one child, the sum of:

11 (a) For the first \$6,000 of an obligor's monthly gross income,
12 16 percent of such income;

13 (b) For any portion of an obligor's monthly gross income that
14 is greater than \$6,000 and equal to or less than \$10,000, 8
15 percent of such a portion; and

16 (c) For any portion of an obligor's monthly gross income that
17 is greater than \$10,000, 4 percent of such a portion.

18 ...

19 (Added to NAC by Div. of Welfare & Supp. Services by R183-18, 10-
20 30-2019, eff. 2-1-2020).

Commensurate with an award of joint physical custody to the parties, an
award of child support should be made. If Stephanie's FDF is to be believed, her
gross monthly income is \$5,846.15. Daniel's gross monthly income is \$8,932.67.
Daniel also maintains health insurance for Riley in the amount of \$105.00 per month.

1 In applying the formula set for in NAC 425.140, Daniel's child support obligation
2 to Stephanie should be modified to \$206.00, effective May 15, 2021.

3 Further, commensurate with an award of joint physical custody to the parties,
4 the parties should alternate the federal dependency of Riley, with Daniel claiming
5 the deduction in odd years and Stephanie claiming the deduction in even years.

6 **V.**

7 **DIVISION OF COMMUNITY PROPERTY AND DEBTS**

8 NRS 125.150(1)(b) states:

9 1. In granting a divorce, the court:

10 . . .

11 (b) Shall, to the extent practicable, make an equal disposition
12 of the community property of the parties, except that the court
13 may make an unequal disposition of the community property
14 in such proportions as it deems just if the court finds a
compelling reason to do so and sets forth in writing the reasons
for making the unequal disposition.

15 **Community Property Division:**

16 **1. Vehicles:**

17 Daniel should be awarded the Ford Fusion subject to the encumbrance
18 thereon and Stephanie should be awarded the 2009 Mercury Mariner and 2014 Ford
19 F150, subject to a community property equalization.

20 ///

1 **2. Retirement Accounts:**

2 Daniel should be awarded his Fidelity retirement account, subject to
3 Stephanie's community interest therein, and Stephanie should be awarded her T-
4 Rowe Price IRA and Fidelity 401(k), subject to Daniel's community interest
5 therein.

6 **3. Proceeds from the sale of the marital residence:**

7 The proceeds from the sale of the marital residence, located at 7183 Blowing
8 Breeze Ave., should be equally divided.

9 **4. Bank Accounts:**

10 The parties should be awarded their respective bank accounts, subject to a
11 community property equalization. Any joint bank accounts should be equally
12 divided and closed.

13 **5. Personal Property:**

14 Each party should be awarded all personal effects, jewelry, and clothing in
15 their possession and/or in their respective names and any and all bank accounts and
16 other property in each party's name, possession, or control and not otherwise
17 disposed of.

18 ///

19 ///

20 ///

1 **6. Community Debt Division:**

2 The parties should be solely responsible for any and all debt attached to the
3 property awarded to them and any credit card and all other debt incurred in their
4 respective names.
5

6 **VI.**

7 **ATTORNEY'S FEES AND COSTS**

8 As a result of Stephanie's meritless demand for primary physical custody,
9 despite Daniel's historical involvement in Riley's life, Stephanie's testimony at the
10 time of the deposition that Daniel has never physical harmed Riley and that Riley
11 very much looks forward to spending time with Daniel, he was forced to incur the
12 costs of proceeding to trial and has incurred significant attorney's fees and costs
13 along the way.

14 NRS 18.010 states as follows:

15 In addition to the cases where an allowance is authorized by
16 specific statute, the court may make an allowance of attorney's
17 fees to a prevailing party:

18 (a) When he has not recovered more than \$ 20,000; or

19 (b) Without regard to the recovery sought, when the court
20 finds that the claim, counterclaim, cross-claim or third-
party complaint or defense of the opposing party was
brought or maintained without reasonable ground or to
harass the prevailing party. The court shall liberally
construe the provisions of this paragraph in favor of

1 awarding attorney's fees in all appropriate situations. It is
2 the intent of the Legislature that the court award attorney's
3 fees pursuant to this paragraph and impose sanctions
4 pursuant to Rule 11 of the Nevada Rules of Civil Procedure
5 in all appropriate situations to punish for and deter
6 frivolous or vexatious claims and defenses because such
7 claims and defenses overburden limited judicial resources,
8 hinder the timely resolution of meritorious claims and
9 increase the costs of engaging in business and providing
10 professional services to the public.

11 Furthermore, EDCR 7.60(b) states as follows:

12 The court may, after notice and an opportunity to be heard,
13 impose upon an attorney or a party any and all sanctions which
14 may, under the facts of the case, be reasonable, including the
15 imposition of fines, costs or attorney's fees when an attorney or
16 a party without just cause:

17 **(1) Presents to the court a motion or an opposition to**
18 **a motion which is obviously frivolous, unnecessary or**
19 **unwarranted.**

20 (2) Fails to prepare for a presentation.

(3) So multiplies the proceedings in a case as to
 increase costs unreasonably and vexatiously.

 (4) Fails or refuses to comply with these rules.

(5) Fails or refuses to comply with any order of a judge
 of the court.

 With specific reference to family law matters, the Court has adopted “well-
known basic elements,” which in addition to hourly time schedules kept by the
attorney, are to be considered in determining the reasonable value of an attorney’s

services qualities, commonly referred to as the Brunzell factors. Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). These factors are:

1. *The Qualities of the Advocate*: his/her ability, his/her training, education, experience, professional standing and skill.

2. *The Character of the Work to Be Done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation.

3. *The Work Actually Performed by the Lawyer*: the skill, time and attention given to the work.

4. *The Result*: whether the attorney was successful and what benefits were derived.

Each of these factors should be given consideration, and no one element should predominate or be given undue weight. Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727, 730 (2005). Additional guidance is provided by reviewing the “attorney’s fees” cases most often cited in Family Law. Fletcher v. Fletcher, 89 Nev. 540, 516 P.2d 103 (1973); Levy v. Levy, 96 Nev. 902, 620 P.2d 860 (1980), Hybarger v. Hybarger, 103 Nev. 255, 737 P.2d 889 (1987). The Brunzell factors require counsel to rather immodestly make a representation as to the “qualities of the advocate,” the character and difficulty of the work performed, and the work actually performed by the attorney.

1 First, undersigned counsel is A/V rated and a Certified Specialist in Nevada
2 Family Law. As to the “character and quality of the work performed,” we ask the
3 Court to find our work in this matter to have been adequate, both factually and
4 legally; we have diligently reviewed the applicable law, explored the relevant facts,
5 and believe that we have properly applied one to the other. Finally, as to the result
6 reached, this remains to be determined when the Court rules on the present matter.

7 In light of the above, Daniel is clearly entitled to an award of fees and costs
8 pursuant to NRS 18.010(2) and EDCR 7.60(b) for being forced to proceed to trial
9 on Stephanie’s meritless demand for primary physical custody. Daniel should
10 therefore be awarded his attorney’s fees and costs for being forced to incur the costs
11 of trial to defend against Stephanie’s frivolous motion and baseless demands.

12 **VII.**

13 **LIST OF WITNESSES**

14 Daniel may present as witnesses any or all witnesses disclosed by either party
15 during the course of discovery. A full and complete list of Witnesses will be
16 submitted to the Court and served to opposing party prior to trial.

17 **VIII.**

18 **LIST OF EXHIBITS**

19 Daniel may present as Exhibits any or all documents produced by either party
20

1 during the course of discovery, any documents used as Exhibits in any pleadings
2 filed with this Court, and any documents necessary as rebuttal. A full and complete
3 list of Exhibits will be submitted to the Court and served to opposing party prior to
4 trial.

5 **IX.**

6 **UNUSUAL LEGAL OR FACTUAL ISSUES PRESENTED**

7 None.

8 **X.**

9 **LENGTH OF HEARING**

10 Evidentiary Hearing is scheduled for one and a full day. Daniel reserves the
11 right to amend his Pre-Trial Memorandum.

12 DATED this __6th__ day of May, 2021.

13 Respectfully submitted,
14 GHANDI DEETER BLACKHAM



15 Brian E. Blackham, Esq.
16 Nevada Bar No. 9974
17 725 S. 8th Street, Suite 100
18 Las Vegas, Nevada 89101
19 Attorneys for Defendant
20

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☒ Electronic Service to:

PAGE LAW FIRM
Fred Page
E-service: fpage@pagelawoffices.com

☐ Via Facsimile to:
☐ Via Email to:
☐ Placing in the U.S. Mail, with postage fully prepaid, addressed to:



An employee of GHANDI DEETER BLACKHAM

1 **TRANS**

FILED

NOV 29 2021

Sharon A. Spivey
CLERK OF COURT

COPY

5 **EIGHTH JUDICIAL DISTRICT COURT**

6 **FAMILY DIVISION**

7 **CLARK COUNTY, NEVADA**

9 STEPHANIE RUBIDOUX,)

10 Plaintiff,)

11 vs.)

12 DANIEL RUBIDOUX,)

13 Defendant.)

CASE NO. D-20-601936-D

DEPT. U

(SEALED)

14
15 BEFORE THE HONORABLE DAWN R. THRONE
DISTRICT COURT JUDGE

16 TRANSCRIPT RE: NON-JURY TRIAL

17 FRIDAY, MAY 14, 2021

18 **APPEARANCES:**

19 The Plaintiff:
For the Plaintiff:

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22 The Defendant:
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I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR</u> <u>DIRE</u>
STEPHANIE RUBIDOUX	23	130	183,205	202	
CARLEEN MAY	210	--	--	--	
ROGER WEST	217	222	225	--	
JEFFREY CUDDY	227	243	248	--	247
DANIEL RUBIDOUX	250	--	--	--	

DEFENDANT'S
WITNESSES:

(None presented)

* * * * *

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

<u>PLAINTIFF'S</u> <u>EXHIBITS:</u>	<u>ADMITTED</u>
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1-24, 26, 27, 29, 30, 32-50, 51 pg. 2079, 52-54 - Various	7
25 - Agreement	83
31 - Photographs	104
55 - T-shirt	33
56 - Cell phone	44

DEFENDANT'S
EXHIBITS:

A-D, F-O, R-DD - Various	7
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1 LAS VEGAS, NEVADA

FRIDAY, MAY 14, 2021

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

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

5 (THE PROCEEDINGS BEGAN AT 10:03:47)

6
7 THE CLERK: We are on the record, Your Honor.

8 THE COURT: Good morning. This is the time set for
9 case D-20-601936-D. Can we have Counsel make their
10 appearances, starting with Counsel for Plaintiff, please.

11 MR. PAGE: Good morning, Your Honor. Fred Page, bar
12 number 6080, on behalf of Plaintiff Stephanie Rubidoux who is
13 present with me.

14 MR. BLACKHAM: Good morning, Your Honor. Brian
15 Blackham, bar number 9974. I'm here on behalf of Dan
16 Rubidoux, who is also present.

17 THE COURT: All right. As far as housekeeping, have
18 you resolved any issues?

19 MR. BLACKHAM: We have.

20 THE COURT: Oh, goodie.

21 MR. BLACKHAM: We've resolved exhibits and then
22 there's a couple of small issues that we've resolved. The --
23 and then I think -- well, yeah. So what we've agreed to --
24 and do you want to just put the list of exhibits on the

1 record, Fred?

2 MR. PAGE: Sure.

3

4 MR. BLACKHAM: Or do you want to talk about the
5 issues first?

6 MR. PAGE: Well, I think exhibits first.

7 MR. BLACKHAM: Okay.

8 MR. PAGE: And that's easy. As far as Plaintiff's
9 exhibit list, Exhibits 1 through 24 are agreed to as being
10 able to come in. Exhibit 26, 27, 29, Exhibits 30, 32 --

11 MR. BLACKHAM: And 30 is -- there's a number of
12 these that we're not agreeing to the characterization of them
13 but we're not arguing that an evidentiary objection.

14 THE COURT: Okay. So you're stipulating to them
15 admissible, not to what they --

16 MR. BLACKHAM: Correct.

17 THE COURT: -- at the import of them.

18 MR. BLACKHAM: Or -- or characterization.

19 THE COURT: Okay.

20 MR. PAGE: 32 through 50. Then on Page -- or 51,
21 the witness statement by Ms. Rubidoux, 2079, can come in.
22 Then 52 through 54.

23 THE CLERK: Counsel, apologies. Before this group,
24 52 through 54, which one was it?

1 MR. PAGE: I'm sorry?

2 THE CLERK: Before you said 52 and 54, which exhibit
3 did you say?

4 MR. PAGE: Before 52, 54, 50 -- Exhibit 51 Page 2079
5 can come in which is Ms. Rubidoux's witness statement.

6 THE CLERK: Thank you.

7 THE COURT: Any other from the Plaintiff's?

8 MR. PAGE: Then as far as Defendant's exhibits, we
9 did end up agreeing to A through D, F through O, R through
10 Double D.

11 THE COURT: Okay.

12 MR. BLACKHAM: And Your Honor, I didn't specify, but
13 because the -- the characterization and import of multiple
14 exhibits, I didn't go each one to say that -- that -- so if
15 you need -- if you need me to say it's subject to the
16 characterization not being agreed to or the import not being
17 agreed to, I can go through, but a lot of the videos, what
18 they allegedly depict -- depict and those types of things
19 we're not agreeing to the characterization, although Mr. Page
20 did accurately state what we agreed to be admitted.

21 THE COURT: Okay. Perfect. I don't need to -- to
22 go through specific -- I assume that -- yes, the
23 characterization on things is not agreed to but their
24 admissibility of the items is stipulated to.

1 (PLAINTIFF'S EXHIBITS 1-24, 26, 27, 29, 30, 32-50, 51 page
2 2079, 52-54 ADMITTED)

3 (DEFENDANT'S EXHIBITS A-D, F-O, R-DD ADMITTED)

4 THE COURT: All right. What else have we --

5 MR. BLACKHAM: So in terms of substantive issues, we
6 have agreed that the parties will -- will keep their
7 respective credit card debt. We've agreed to the division of
8 the T. Rowe Price -- I believe it's an -- the retirement
9 account which was Stephanie 's. It was a -- it was acquired
10 prior to marriage, but then it was -- there were continued
11 contributions through marriage. We agree that she's entitled
12 to her separate property contributions subject to whatever
13 return on that investment is calculated by T. Rowe Price. We
14 don't have that number right now, but it's -- it should be
15 easy enough to obtain. And I guess the Court could just
16 reserve jurisdiction if there's any dispute as to that as to
17 the return on it. But I don't think we anticipate any.

18 THE COURT: Okay. So to the extent that the
19 community portion may be close to this -- say -- because his
20 -- he has a 401(k), right, or an IRA? Which is it?

21 MR. BLACKHAM: He does.

22 MR. PAGE: It's with Fidelity.

23 THE COURT: Is that all community or --

24 MR. PAGE: That is all community.

1 MR. BLACKHAM: Yeah, it's entirely community.
2 THE COURT: Okay. So we -- and we have a value on
3 that. It looks like they agree on that from the FDF --
4 MR. BLACKHAM: Yeah.
5 THE COURT: -- on the value. Okay.
6 MR. BLACKHAM: And -- and the Plaintiff's PERS
7 account will be divided pursuant to the time rule.
8 THE COURT: Okay.
9 MR. BLACKHAM: And we can have a -- we can talk
10 about who would prepare the QDRO. Are you okay with Shann
11 Winesett?
12 MR. PAGE: Shann Winesett or Marshal. It doesn't
13 matter to me on that one.
14 MR. BLACKHAM: Okay.
15 (COUNSEL AND CLIENT CONFER BRIEFLY)
16 THE COURT: Okay. So you're agreeing that the Court
17 is going to keep jurisdiction on that T. Rowe Price to you
18 guys getting that calculation of what portions are separate
19 property and what portion --
20 MR. BLACKHAM: And --
21 THE COURT: -- is community.
22 MR. BLACKHAM: Yes. The --
23 (COUNSEL AND CLIENT CONFER BRIEFLY)
24 MR. BLACKHAM: There's three, right?

1 THE COURT: That's what I have.

2 MR. BLACKHAM: We have PERS, we have --

3 MR. PAGE: T. Rowe --

4 MR. BLACKHAM: -- T. Rowe Price --

5 MR. PAGE: -- Fidelity.

6 MR. BLACKHAM: -- and we have Fidelity.

7 MR. PAGE: Yeah.

8 MR. BLACKHAM: Okay.

9 (COUNSEL AND CLIENT CONFER BRIEFLY)

10 THE COURT: Is that -- is that a -- what is it, 432B

11 or something?

12 MR. PAGE: No, it's not -- it's not through -- it's

13 not through the state of Nevada.

14 THE COURT: Oh, okay.

15 MR. BLACKHAM: And it's a -- it's your

16 representation she doesn't have a 432B, right?

17 MR. PAGE: Correct.

18 THE COURT: So there are only three retirements to

19 deal with and you guys have basically stipulated --

20 MR. BLACKHAM: Right.

21 THE COURT: -- to them and then to the subject to

22 equalizing.

23 MR. BLACKHAM: Okay.

24 THE COURT: So you only may need two PER -- I mean,

1 sorry. Two QDROs then --

2 MR. BLACKHAM: Correct.

3 THE COURT: -- if we -- depending how much the
4 community portion of her T. Rowe Price is.

5 MR. BLACKHAM: There should be an offset. That's
6 possible.

7 THE COURT: Against -- yeah, the amount that we
8 acknowledge is community.

9 MR. BLACKHAM: Right.

10 THE COURT: So and that's his Fidelity.

11 MR. BLACKHAM: I also -- and when Mr. Page -- I
12 don't know where we want to do this, but I do have a
13 clarification to make from something in my pretrial memo. It
14 was something we tried to stipulate to and we were unable to.
15 And that's when I discovered that I had -- I made a slight
16 misstatement in my pretrial memo. The we are -- the -- Navy
17 Federal Credit Union debt. While that is in my client's name
18 alone, it was acquired during the marriage and is a community
19 debt. I had inelegantly said that parties would keep debt in
20 their debt in their respective names. And what I meant was
21 credit card debt and debt incurred post separation. They've
22 been separated now since November of 2019.

23 And -- and I meant incurred without the other
24 parties' knowledge or consent. I didn't mean an existing

1 large loan that had been clearly community in nature and
2 maintained. And so I just wanted to correct that on the
3 record. That was just a mistake on my part in the pretrial
4 memo.

5 THE COURT: Okay. So what I'm understanding the
6 stipulation on the debts is that the Defendant is keeping the
7 Capital One and Chase credit cards in his name as his sole and
8 separate debt --

9 MR. BLACKHAM: Yes.

10 THE COURT: -- without any equalization and then the
11 Plaintiff is keeping the Barclays, Citi --

12 MR. BLACKHAM: Yes.

13 THE COURT: -- Amazon, and Southwest Chase as -- as
14 her sole and separate debts --

15 MR. PAGE: Yes.

16 MR. BLACKHAM: Yes.

17 THE COURT: -- without any offsets. Okay. So then
18 the Navy Federal Credit Union debt is in dispute?

19 MR. BLACKHAM: Yes.

20 THE COURT: Okay.

21 MR. BLACKHAM: It -- but the dispute is not -- is
22 not premised on when it was incurred. It's premised on the
23 fact that my pretrial memo was -- was inelegant. I -- I said
24 something that I didn't --

1 THE COURT: Okay.

2 MR. BLACKHAM: Was not as precise as I had --

3 THE COURT: So that's the --

4 MR. BLACKHAM: -- so that's --

5 THE COURT: -- only debt in dispute then is the Navy
6 Federal Credit Union debt.

7 MR. PAGE: Right, we detrimentally relied on that
8 representation in our preparation here today.

9 THE COURT: Okay. All right. Any other
10 housekeeping matters that we can take care of?

11 MR. PAGE: I don't think so. And we did talk about
12 how we want to do closing and whether we're going to do it by
13 brief. Just wing it at the end here if we get done today or
14 come back on a separate day and go issue-by-issue.

15 THE COURT: I would rather not come back on any day.

16 MR. BLACKHAM: Right.

17 THE COURT: I'm not picking on you guys, but if we
18 can finish it today, it should be -- the assets and debt
19 issues aren't too difficult.

20 MR. BLACKHAM: No.

21 THE COURT: It's the -- the custody that's going to
22 take up the bulk of the time.

23 MR. BLACKHAM: Right. And -- and but because of the
24 volume of exhibits, Mr. Page and I had discussed whether it

1 would be more helpful to Your Honor possibly if those were
2 briefed instead of -- so that the -- you know, everybody's
3 respective positions on the -- you know, the import of the
4 exhibits can be articulated and, you know, instead of -- it
5 just -- it -- it would -- it's just not practical to go as in
6 depth orally as you --

7 THE COURT: Right.

8 MR. BLACKHAM: -- could. And that --

9 THE COURT: Okay. Perfect. All right. So we waive
10 -- you would -- you wanted to make a small opening.

11 MR. PAGE: Yes.

12 THE COURT: Okay.

13 MR. PAGE: The marriage in itself -- in this case
14 itself is relatively short. There is one minor child, the
15 issue of the marriage, Riley Rubidoux. Really the case is
16 largely about what the custody and visitation arraignments --
17 arrangements are going to be for Riley. The evidence and
18 testimony will show that my client is willing to facilitate a
19 relationship that at this child's current developmental stage
20 she can spend longer amounts of time with each parent because
21 she's roughly five years old right now. And as such she is
22 able to understand the concept of time and is able to tolerate
23 longer absences from one parent versus the other.

24 The evidence and testimony will show that the level

1 of conflict while we've seen worse is still (indiscernible) in
2 this case. The ability of the parties to cooperate is
3 somewhat limited the evidence will show. Then we do have
4 whether there's any other siblings. No. We do have --
5 believe evidence is going to show that there's been neglect on
6 Mr. Rubidoux's part as it relates to Riley.

7 Also, we're going to have evidence that acts of
8 domestic violence have occurred, that those acts have been
9 proved by clear and convincing evidence. Accordingly, the
10 presumption we'll have to put into play here that it is not in
11 Riley's best interest for Mr. Rubidoux to have joint physical
12 custody of the minor child. But we would note that the
13 intervening orders that have been in place since Judge
14 Henderson had the case has Mom having primary physical
15 custody; we are requesting that that continue on in the
16 foreseeable future as a permanent order with a few minor
17 tweaks.

18 When we look at the mental and physical health of
19 the parties, the testimony and evidence is going to be that my
20 client is physically and mentally healthy. When we take a
21 look at the physical and mental health of Mr. Rubidoux, the
22 evidence is going to show that there should be some sif --
23 significant concerns by this Court as to Mr. Rubidoux's mental
24 and emotional stability. That should be a particular concern

1 given that we have a young child involved in this case and
2 that the child needs to be protected. That is our lodestar
3 for judicial decision as stated in Schwartz vs. Schwartz.

4 As far as the assets and debts that are in this
5 case, there is a postnuptial agreement that we will introduce
6 into evidence. It was written by the parties, signed by the
7 parties. And we're asking Your Honor to award the equity and
8 the former marital residence to Ms. Rubidoux based upon the
9 agreement that they signed. We'll have evidence and testimony
10 regarding a Ford F150 that Mr. Rubidoux sold for \$12,000 and
11 pocketed the proceeds.

12 Then we'll get into their personal property division
13 which should be relatively minor. And then we have the
14 vehicle that Ms. -- Ms. Rubidoux currently had (sic) which was
15 acquired prior to marriage. And then we have the vehicle that
16 Mr. Rubidoux has for which we'll have to go ahead and do a
17 division regarding that.

18 The bank accounts themselves; the balances should be
19 relatively minimal. If there's any significant balances,
20 those can be divided equally.

21 As we get into the custody, Your Honor is going to
22 see a number of videos in this case that we have worked with
23 IT to get set up and it's going to demonstrate a number of
24 acts of domestic violence that Mr. Rubidoux has committed

1 against my client. There'll be photographs of holes being
2 punched in walls, punched in doors. There'll be various
3 videos here of Mr. Rubidoux acting in an un -- uncontrolled
4 manner that will support Ms. Rubidoux's request that she
5 receive primary physical custody based upon the impulse
6 control issues that Mr. Rubidoux exhibits. And with that, I
7 don't have anything further. Thank you.

8 THE COURT: Mr. Blackham ?

9 MR. BLACKHAM: Yes, Your Honor. The -- the premise
10 of -- this is primarily a case of -- of physical custody. I
11 -- I believe that Counsel's representation concerning the
12 temporary order is -- is not entirely accurate. The -- the
13 timeshare is what it is, but there was specifically no custody
14 designation made as a temporary matter. So I would disagree
15 that Mom has temporary primary physical custody at this time.

16 Be that as it may, the only -- the only real
17 argument here that supports Ms. Rubidoux -- or that would
18 support Ms. Rubidoux's demand for primary physical custody and
19 for my client to have even less time than he gets right now
20 which is between two and three days a week is that he
21 allegedly committed acts of domestic violence against her.
22 And the evidence is going to show that these parties had a --
23 a rather toxic difficult conflict ridden relationship and that
24 Ms. -- in fact, Ms. Rubidoux has -- has hit Dad on multiple

1 occasions and that the actual cases that were pursued in
2 court, they've ultimately been dismissed. The -- there was a
3 plea as to one of them. And Your Honor will hear my client's
4 testimony concerning how that came about and what was pled to.
5 The pleading of -- he will testify that the plea was no
6 contest and that there was specific reasons that the parties
7 had discussed regarding that plea. And the parties
8 subsequently resumed living together. So all of those things
9 are going to be important for the Court to decide whether they
10 had even met their burden by clear and convincing evidence to
11 show that an act of domestic violence occurred. But even
12 assuming arguendo that they have met that burden, it is a
13 rebut -- it is a rebuttable presumption and my client will
14 rebut that presumption and show that -- to award a joint
15 physical custody allowing this child to have -- to have equal
16 time with both of her parents on a week on week off basis with
17 exchanges to occur on Wednesday would be in the child's best
18 interest.

19 The evidence will show that -- that Dan has never --
20 certainly it's undisputed that she's never -- he's never
21 physically harmed Riley. There's an allegation of neglect and
22 I guess they'll -- they'll make that claim. My client -- I
23 believe the evidence will show that there has been no such
24 neglect. But the -- and the evidence will also show that --

1 that Mom has ongoing mental health issues. They are -- that
2 she's medicated with multiple prescription medications to
3 treat those conditions.

4 And notwithstanding those issues and notwithstanding
5 the conflict between the parties, now that they're separated,
6 the conflict -- while this litigation certainly has not
7 helped, it is certainly much better than it was before because
8 they're not interacting in the same home on a daily basis
9 which was problematic before. And so this child would be best
10 served with equal time with both of her parents. She deserves
11 that. The best interest factors will militate in favor of
12 that award. Alternatively, Your Honor, we would ask that
13 there be a split week schedule of a five-two-two-five if -- if
14 the Court does not agree that week on week off is in the
15 child's best interest.

16 Regarding child support, child support should be
17 separate pursuant to Nevada law based upon the parties'
18 respective gross monthly incomes. This is a short marriage as
19 Mr. Page stated. There is no basis for there to be an award
20 of alimony in this case. And, again, concerning the property,
21 as I had stated briefly in our housekeeping discussion before,
22 my pretrial memo was -- was slightly in error concerning our
23 position regarding the debts. There is a Navy Federal Credit
24 Union debt that's significant that was incurred during the

1 marriage. It is in my client's name, but it is clearly
2 community debt. And that debt should be jointly -- jointly
3 bear -- borne by the parties.

4 Regarding this alleged prenuptial (sic) agreement,
5 to the extent that Mr. Page is not going to concede that this
6 might be settlement negotiations, Your Honor will receive
7 evidence -- well, that -- that the -- the alleged agreement is
8 not dated and that the -- and that the parties filed for
9 divorce multiple times and there were multiple -- there were
10 multiple proposed solutions to their -- to their marriage
11 dissolution that were floated around. It's certainly not
12 binding to the extent that it's even -- that it's even a
13 thing.

14 Your Honor, it's -- again, that -- that -- we'll --
15 we'll cross that bridge when we come to it. But the evidence
16 will show that there is no such pre -- postnuptial agreement
17 and that -- and that the remaining proceeds from the sale of
18 the parties' marital residence should be equally divided. I
19 would also point out that nothing in the pleadings as prior to
20 the pretrial memo asserted any such separate property interest
21 and that we have been in court multiple times concerning the
22 -- the allocation of that -- of those funds. And while it was
23 decided all but 10,000 to each attorney for attorney's fees
24 would be kept in reserve. By the way, that has not happened

1 yet, but my understanding is that's still the agreement is
2 that 10,000 will be paid for -- to each attorney to be applied
3 for its attorney's fees from the funds that are in escrow from
4 the sale fo the marital residence. That was agreed to on the
5 record. It just was never actually done.

6 MR. PAGE: It was ordered by Judge Henderson,
7 actually.

8 MR. BLACKHAM: Right. Yeah. No, but we agreed on
9 the record.

10 MR. PAGE: Yeah. Yeah. Yeah.

11 MR. BLACKHAM: It -- it was a stipulation. But --

12 THE COURT: So it hasn't happened yet?

13 MR. BLACKHAM: It hasn't happened, but that's still
14 -- that's still the position. And so it's what's left after
15 that that's going to be in dispute. But I would offer to Your
16 Honor that that's never -- it -- she's not asserted that that
17 was her sole and separate property until her pretrial
18 memorandum. And so I -- I believe it's being brought in bad
19 faith.

20 In any event, Your Honor, the -- the parties -- I
21 mean, should bear their own -- well, I -- I -- we -- I --
22 certainly, I believe that there is a case to be made for an
23 award of attorney's fees and costs to my client for having to
24 -- to go to trial simply to secure an -- an order in line with

1 the statutory preference for -- for their daughter. And --
2 and on that basis -- otherwise, I mean, each party should bear
3 their own fees but because -- but because Mom's taken such an
4 unreasonable position and forced a trial on custody, we're
5 asking for an award of attorney's fees and costs.

6 THE COURT: One question. She's five now. So she's
7 going to be starting kindergarten this year?

8 MR. PAGE: Yes.

9 MR. BLACKHAM: Yes.

10 THE COURT: Do the parties have an agreement on
11 school or are we putting that --

12 MR. PAGE: No.

13 THE COURT: -- evidence on --

14 MR. BLACKHAM: So --

15 THE COURT: -- today?

16 MR. BLACKHAM: Well, Your Honor, she's -- I -- I
17 would argue that that issue really isn't properly before the
18 Court under -- under Arcella. She's currently going to Good
19 Samaritan. And my client would like her to stay there. It's
20 our belief -- that -- that Mom is only disputing her
21 continuing to go to Good Samaritan because it -- it's more
22 convenient for where she is. The -- the charter school that
23 she want -- that she wants the child to go to is more
24 convenient. It's close -- it's closer to her -- to her home.

1 But the reality is that the child's well adjusted where she
2 is. I -- I think it would be Mom's burden to show that any
3 change should take place. And so our position would be that
4 -- that Riley should stay at Good Samaritan.

5 The -- if -- while the parties, in all fairness,
6 should -- should continue to divide the cost, the -- if -- if
7 -- my client's willing to assume the cost if that's what's
8 necessary to keep her where she is. She's -- she's got
9 friends there. The teachers are wonderful. And she's -- and
10 she's thriving at that school and she should remain there.

11 THE COURT: I mean, it's -- it definitely is May
12 14th. And it -- school starts August 9th for that. So they
13 have -- don't have time to come back. If they have a dispute
14 in that, we should resolve that today one way or the other.

15 MR. BLACKHAM: My client --

16 THE COURT: Good, bad.

17 MR. BLACKHAM: -- has paid the necessary fees to
18 secure her spot in the event that Your Honor agrees that she
19 should remain in -- in Good Samaritan because that's -- he --
20 you know, he had no choice as Your Honor indicated that --
21 that it's fast approaching.

22 THE COURT: Okay. So that's a -- a private
23 Christian school?

24 MR. BLACKHAM: Correct.

1 THE COURT: Okay. I will hear evidence on that then
2 too. Thank you. All right. Mr. Page, who is your first
3 witness?

4 MR. PAGE: I would like to call Stephanie Rubidoux.

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

8 MS. RUBIDOUX: I do.

9 THE CLERK: Please state your name and spell your
10 first and last name for the record. You can place your hand
11 down and you may be seated. Thank you.

12 THE WITNESS: It's Stephanie Rubidoux,
13 S-t-e-p-h-a-n-i-e, Rubidoux, R-u-b-i-d-o-u-x.

14 THE CLERK: Thank you.

15 STEPHANIE RUBIDOUX

16 called as a witness on her own behalf, having been first duly
17 sworn, testified upon her oath as follows on:

18 DIRECT EXAMINATION

19 BY MR. PAGE:

20 Q Ms. Rubidoux, when did you and Mr. Rubidoux get
21 married to each other?

22 A June 21st, 2014.

23 Q How many children do you and Mr. Rubidoux have
24 together?

1 A One.

2 Q What is that child's name?

3 A Her name is Riley.

4 Q What is Riley's date of birth?

5 A Her date of birth is January 13, 2016.

6 Q Describe for me please what your daily routine is
7 with -- with Riley.

8 A We wake --

9 MR. BLACKHAM: Objection, calls for narrative.

10 THE COURT: Overruled.

11 THE WITNESS: We wake up at about 6:30 in the
12 morning to have breakfast. And then we get ready to go. She
13 goes to daycare and then I get ready to go to work. So brush
14 teeth, hair, everything like that, get dressed. We get into
15 the car, drive. I drop her off at her daycare and then I go
16 to work. And then she's there from about 8:00 a.m. to
17 anywhere between 3:30, 4:00 o'clockish. I pick her up. And
18 on time -- on Mondays I take her to dance. Tuesdays and
19 Wednesdays I take her to swimming. And then Thursdays is kind
20 of like time for us.

21 So when we come home in the evening, it's dinner
22 with my parents. We have dinner together as a family. And
23 then we may play a game, go outside, hang out and watch some
24 TV together. And then I get her ready for bed between 7:00,

1 7:30, you know, the bath and everything.

2 BY MR. PAGE:

3 Q When you and Mr. Rubidoux were residing together,
4 who took on the majority of these responsibilities for the
5 daily activities for Riley?

6 A I did.

7 Q Were the activities that you do with Riley now, as
8 far as her daily routine, were they similar when Mr. -- you --
9 you and Mr. Rubidoux were residing together?

10 A They were except for on the weekends I had a lot
11 more time with her. I could take her to the park or take her
12 to events with friends. I had more time to have quality time
13 with her.

14 Q How's Riley doing with this schedule?

15 MR. BLACKHAM: Objection, vague.

16 A She seems to be do -- be doing --

17 THE COURT: Hold on. Hold on, ma'am.

18 THE WITNESS: I'm sorry.

19 THE COURT: When they make objections, you got to
20 wait.

21 THE WITNESS: Okay. I'm sorry.

22 THE COURT: No problem. Sustained. Can you be more
23 -- more specific?

24 BY MR. PAGE:

1 Q What is your opinion as to how Riley is doing with
2 this daily schedule?

3 MR. BLACKHAM: Same objection.

4 THE COURT: Overruled.

5 BY MR. PAGE:

6 Q You can go ahead and answer that one.

7 A Okay. She seems to be doing okay. I mean, she has
8 expressed that, you know, she's unhappy with not being able to
9 do as many things with me.

10 MR. BLACKHAM: Objection, hearsay. Move to strike.

11 THE COURT: Sustained.

12 MR. BLACKHAM: Granted?

13 THE COURT: Granted, yes.

14 MR. BLACKHAM: Thank you.

15 BY MR. PAGE:

16 Q You can't say things where Riley said or --

17 A Yeah.

18 Q -- in this case expressed.

19 A Okay. I've -- I've noticed that she's -- she's
20 struggling with the lack of quality time with her and I. When
21 I have a day off from work, like on a Monday, she's definitely
22 thriving because she's be -- she's able to spend more time
23 with me.

24 Q During the pandemic for the past year, what was your

1 -- where did you work from?

2 A I was able to work from home.

3 Q Because you were able to work from home, did you
4 always take Riley to the daycare?

5 A No, I did not.

6 Q What did you do?

7 A If -- during the week, I would usually take her two
8 to three times so she could have the social -- socialization
9 with her peers. And it would give me time to work in my
10 classroom. I would take her to school on those days. But the
11 district did announce that we were not allowed to go into work
12 when the rates increased.

13 MR. BLACKHAM: Objection, hearsay. Move to strike.

14 MR. PAGE: It's a --

15 THE COURT: Overruled. It's not for the truth of
16 the matter, but go -- go ahead.

17 THE WITNESS: When the mandate was addressed that we
18 were not allowed to go into the district, I did not go in.
19 And the rates were so high. I decided that it was in Riley's
20 best interest to stay home to not put myself, my parents, or
21 herself at risk for COVID-19.

22 BY MR. PAGE:

23 Q Has it -- it relates to the work schedule that you
24 have. When do you go in and when do you get out?

1 A I start work at 8:20 and I am released from work at
2 3:31.

3 Q Is this a fairly consistent schedule?

4 A It's -- it's been a little bit more flexible this
5 year given that it's been hybrid. So it -- I mean, there's a
6 pretty good understanding with the school that, you know, if
7 -- if I start my day at 8:00 and I need to, you know, leave at
8 3:10 for a doctor appointment, that's pretty flexible.

9 Q As far as consistency, you are not usually required
10 to work weekends?

11 MR. BLACKHAM: Objection, leading.

12 MR. PAGE: I'll rephrase. It's fine.

13 BY MR. PAGE:

14 Q What -- what requirements do you have to work in the
15 evening?

16 A There are three nights out of the year that I'm
17 required to work in the evening. Other than that, it's --
18 it's just me fulfilling my job duties of grading and lesson
19 planning. There are times that I work on them in the evening
20 and on the weekends but it is inconsistent.

21 Q What -- what's -- what are the requirements for you
22 to work weekends?

23 A There are no requirements to work weekends.

24 Q What are the requirements for you to work holidays?

1 A There are no requirements to work holidays.

2 Q During the time that you -- you and Mr. Rubidoux
3 were together, what was his work schedule like?

4 A He would be at work about 8:00 -- between 8:30 and
5 9:00 a.m. And I would not see him until after 5:00 or 6:00.
6 And there were several times where he had dinners or
7 conventions or meetings with colleagues that he had to attend
8 after hours.

9 Q Based upon your experience, was his cons -- his
10 schedule less consistent than yours?

11 A Can you rephrase?

12 Q Well, did his schedule have more variability than --
13 than your schedule --

14 A Yes.

15 Q -- for work?

16 A He had a lot of variables.

17 Q Because we're going through this the first time --
18 this is the first time the Judge is hearing this. After you
19 and Mr. Rubidoux were married to each other, were there
20 incidents in which he became physical with you?

21 A Yes.

22 Q When was the first time you recall him being --
23 being physical with you?

24 A The first time that I recall him becoming physical

1 with me was at his sister's wedding June --

2 Q When was that?

3 A Jul -- I think it was July of 2013. And one of his
4 -- his sister's fiancé, the husband-to-be, one of his brothers
5 was hitting on me basically and asked to kiss me and that
6 caused an argument between him and I, in which he became very
7 drunk. There was a lot of alcohol and he grabbed me so hard
8 because I wanted to go to another room and stay in another
9 hotel room. And he left bruise marks on my arm that they're
10 visible in the wedding photo -- in -- in the wedding
11 photographs.

12 Q What is the next time you recall Mr. Rubidoux
13 becoming physical with you?

14 A The summer of 2015, I was about two months pregnant.
15 I was wanting him to be more attentive in going to the class
16 -- or not the classes, the appointments. And I wanted him to,
17 you know, work on that drinking and -- and not smoking weed.
18 And the fight escalated to where he picked me up and threw me
19 over his shoulders onto the couch. He -- he was a wrestler in
20 high school so he's very proficient in moves and tactics to
21 pin someone down and -- and throw someone over.

22 Q What did he do beyond throw you onto the couch and
23 pin you down?

24 MR. BLACKHAM: Objection, leading.

1 THE COURT: Overruled.

2 THE WITNESS: I'm sorry, can you repeat the
3 question?

4 BY MR. PAGE:

5 Q Yeah. What else did Mr. Rubidoux do besides throw
6 you to the couch and pin you down?

7 A He also had kicked me out of the house.

8 Q When was the next time you recall Mr. Rubidoux being
9 physical with you?

10 A It would be in July of 2017. I had come home from a
11 night out with friends drinking and there was an incident that
12 happened which I told him about and he basically took a
13 barstool and kicked it towards me. He slammed me down onto
14 the ground in front of Riley. And then he -- I believe he
15 broke a bunch of glass in the house and then, you know, asked
16 me to leave the house.

17 Q When is the next time you recall Mr. Rubidoux being
18 physical with you?

19 A Throughout 2017 and 2018, there was continuing of
20 throwing me down onto the ground and pinning me down to the
21 ground, not allowing me to leave the house. At one point, he
22 cut his hand on something and I was going to leave and he
23 grabbed the back of my shirt and pulled me and there's blood
24 all over the back of the shirt.

1 Q And did you bring that shirt --

2 A I did.

3 Q -- as part of evidence?

4 A I did.

5 Q It's -- this is demonstrative evidence. Is this the
6 shirt?

7 A Yes, if you look on the back you can still see where
8 it had been pulled and then there's -- if you look closely at
9 it, you can see that there's blood mark on it.

10 MR. BLACKHAM: Objection, authenticity.

11 BY MR. PAGE:

12 Q Could you identify this shirt, please?

13 A That is the shirt that Dan gave to me. He has one
14 and that was one that he -- his mom had used and he gave it to
15 me. So it is my shirt.

16 Q Approximately when did he gave you that shirt?

17 A I believe it to be around 2014.

18 MR. BLACKHAM: I still object to authenticity
19 because it's allegedly the blood on it that I presume has not
20 been tested.

21 MR. PAGE: Move for admission of this shirt as
22 Exhibit 55. It can be given to the Court.

23 THE COURT: You know if you admitted that -- that --
24 it'll be awhile before she will ever be able to get it back,

1 right?

2 MR. PAGE: Yes.

3 THE COURT: Okay.

4 MR. BLACKHAM: Same objection and then also
5 relevance, unfair prejudice, outweighs probative value.

6 THE COURT: Overruled. We'll admit Exhibit 55.

7 (PLAINTIFF'S EXHIBIT 55 ADMITTED)

8 MR. BLACKHAM: As demonstrative, Your Honor?

9 THE COURT: Well, no, she's identified it and said
10 it's the shirt he pulled. And it's -- it's a little bizarre
11 that she's kept it that long without washing it, but that's --

12 MR. BLACKHAM: But Mr. Page had said demonstrative
13 evidence and that's the only reason why I'm --

14 THE COURT: Oh, okay. No.

15 MR. BLACKHAM: He didn't say substantive.

16 THE COURT: She's identified it and -- and
17 authenticated it. It can be admitted.

18 THE WITNESS: Should I continue?

19 BY MR. PAGE:

20 Q I'm sorry?

21 A Should I continue?

22 Q Yes, you may.

23 A Okay.

24 MR. BLACKHAM: Objection, Your Honor. There's no

1 question pending.

2 MR. PAGE: I -- I -- we cut off when I had her
3 authenticate the shirt.

4 THE COURT: Okay. She testified to 2017 and '18
5 several incidences of throwing her down and pinning her and
6 not allowing her to leave. Then she got into the t-shirt. So
7 it would be helpful for the record if you asked another
8 question.

9 BY MR. PAGE:

10 Q After that incident, did you leave the house for a
11 period of time?

12 A I did.

13 Q For how long did you leave that house?

14 A I believe it to be a few week -- I -- I -- maybe
15 like a week or two. I'm not -- I don't recall the exact
16 amount of days.

17 Q How would you describe the trauma that you suffered
18 as a result of the attack you described from Dan?

19 MR. BLACKHAM: Objection, leading.

20 MR. PAGE: I just asked how.

21 MR. BLACKHAM: It assumes there's trauma. It
22 assumes --

23 THE COURT: That's --

24 MR. BLACKHAM: -- facts not in evidence.

1 THE COURT: -- a lack of foundation. I --
2 sustained. Go ahead and ask her more, please.

3 BY MR. PAGE:

4 Q What -- what happened to you emotionally as a result
5 of what you experienced?

6 A I mean --

7 MR. BLACKHAM: Objection, vague. Which experience
8 are we talking about?

9 MR. PAGE: What she just went through.

10 THE COURT: So -- she's talking about the incident
11 with the t-shirt --

12 MR. PAGE: Correct.

13 THE COURT: -- specifically. So okay. Overruled.
14 Go ahead.

15 THE WITNESS: With all the incidences that happened,
16 I -- I knew that I needed to keep some of the things, because,
17 you know, in the back of my head if it didn't get better I
18 needed to have proof of what I was going through.

19 MR. BLACKHAM: Objection, non-responsive. He asked
20 as to a specific incident. She's speaking in general terms.

21 THE COURT: It is non-responsive. I'll sustain that
22 and -- and strike that testimony.

23 MR. BLACKHAM: Thank you.

24 MR. PAGE: I'll -- I'll circle back to it. That's

1 fine.

2 BY MR. PAGE:

3 Q What -- how would you describe the emotional impact
4 of what Dan did to you when he got his blood on your shirt?

5 A It was extremely de -- debilitating. I felt. I
6 felt like I was in a movie like it wasn't real. This wasn't
7 happening. As a very educated person, I just didn't
8 understand why I was in this situation. I was just very taken
9 back. I felt very isolated.

10 Q When Daniel gets like this, how would you describe
11 his -- the tone of his voice, the volume of the voice, the
12 expression on his face?

13 A The tone of his voice is very --

14 MR. BLACKHAM: Objection, compound.

15 THE COURT: Sustained. If you want to break it
16 down.

17 BY MR. PAGE:

18 Q How would you describe when Dan gets like this, the
19 tone of his voice?

20 A The tone of his voice is very deep and angry and
21 very hostile.

22 Q Okay. How would you describe the volume of Dan's
23 voice when he's like this?

24 A Very loud and controlling, overbearing.

1 Q How would you describe the expression on his face
2 when he gets like this?

3 A Terrifying, extremely angry, very scared for me.

4 Q When he's not getting physical with you like we have
5 with the incident with the shirt, how often would he get like
6 this where he has an ugly tone to his voice, where he's loud,
7 where he has an angry look on his face?

8 A It --

9 MR. BLACKHAM: Objection, compound.

10 THE COURT: Overruled.

11 THE WITNESS: It was primarily on the weekends or if
12 he had been drinking excessively during the week.

13 BY MR. PAGE:

14 Q During the time you and Daniel were together, what
15 -- what was the volume of alcohol he would drink on the
16 weekends?

17 A I would say 12 to 18 beers in one night. It just --
18 it was a lot.

19 Q When he was drinking like this, who was taking care
20 of Riley?

21 A I was.

22 Q What concerns did you have of Dan looking after
23 Riley when he was drinking like this?

24 MR. BLACKHAM: Objection, leading.

1 MR. PAGE: There's no pending question.

2 MR. BLACKHAM: It assumes concerns for her.

3 MR. PAGE: What concerns?

4 MR. BLACKHAM: What if any.

5 THE COURT: Sustained. You can reword it.

6 BY MR. PAGE:

7 Q When Daniel, to your observation, had drank between
8 12 and 18 beers, what concerns did you have as to him being
9 able to take care of Riley?

10 MR. BLACKHAM: Same objection.

11 MR. PAGE: Again, it's -- I --

12 THE COURT: Yeah.

13 MR. PAGE: The foundation has been laid. She
14 testified as to the number of beers.

15 THE COURT: Yeah, it -- it does assume that she has
16 concerns. So I guess it is a lack of foundation question
17 there -- or objection.

18 BY MR. PAGE:

19 Q Do -- you've seen Dan drink. You have concerns when
20 Dan drinks. What concerns --

21 MR. BLACKHAM: Objection, leading.

22 Q -- do you have?

23 MR. BLACKHAM: Objection, leading. Assumes facts
24 not in evidence.

1 MR. PAGE: It's foundational.

2 THE COURT: Okay. You got to ask her the -- the --
3 you're missing the link question there of does she have
4 concerns when that happens.

5 BY MR. PAGE:

6 Q Do you have concerns when that happens?

7 A Yes, I have concerns when that happens because he
8 has broken --

9 MR. BLACKHAM: Objection, non-responsive. He just
10 asked if she had concerns.

11 THE COURT: Sustained.

12 BY MR. PAGE:

13 Q You have -- you have established that you have
14 concern. What concerns do you have?

15 A The concerns that I have would be that he breaks
16 beer bottles often when he's drinking out of clumsiness or out
17 of anger. And he leaves the glass around on the ground that
18 she can potentially walk on. He also drinks to a point where
19 he'll pass out. And we co-sleep. And I know that she still
20 co-sleeps with him. And so I worry that he can roll over and
21 suffocate her. And I also worry that his mentality in just
22 navigating and making decisions are going to be adjusted due
23 to the amount of alcohol that he's consuming.

24 Q Did Dan concern -- consume alcohol during the week?

1 A Yes.

2 Q Okay. How many times during the week would he
3 consume alcohol?

4 A I would say during the week it was probably about
5 two to three times during the week.

6 Q When he did consume alcohol two to three times
7 during the week, how much alcohol would he consume?

8 MR. BLACKHAM: Objection, asked and answered.

9 THE COURT: Overruled.

10 THE WITNESS: It would be about six to 12 like
11 during the week.

12 BY MR. PAGE:

13 Q Yes, Monday through Friday or Monday --

14 A Monday through Friday.

15 Q Did you have concerns about Dan drinking during the
16 week?

17 A Yes, but it wasn't as worrisome because he did have
18 to go to work in the morning so he wouldn't -- oh, I mean,
19 there were a few occasions where he did drink and it got out
20 of control, but there was more chances of him getting out of
21 control on the weekend versus during the week.

22 Q What concerns do you have about Riley with Dan
23 drinking during the week?

24 A I would worry about him not doing the daily things

1 that need to be done, having her fed, dinner, you know,
2 spending quality time with her, getting her bath -- bathed,
3 showed, and then in bed at an appropriate hour for her to get
4 up for school. There have -- looking at the -- the drop off
5 time to the daycare on the days that he's taking her it's
6 usually after 8:30, 9:00 a.m. That's not going to work with
7 her being in an actual kindergarten.

8 Q What concerns did you have with Daniel's -- well,
9 did Daniel consume marijuana?

10 A Yes.

11 Q Okay. How often would he consume marijuana?

12 A Quite a bit. I would say there were some times
13 where it was excessive daily like before where -- after work
14 and then all throughout the evening. And then there were
15 times where it would be once a day.

16 Q Would he use marijuana in conjunction with drinking
17 or separately?

18 A In conjunction.

19 Q What impact did you see on Dan in using marijuana in
20 conjunction with alcohol?

21 A There were times he was asleep on the couch at 7:30
22 and then he would leave the marijuana pen, the vape pen, or
23 whatever he was using to get to -- to have the -- the
24 marijuana, on the couch and on the table which, you know, if

1 you were going to partake in those type of activities, they
2 need to be kept away from children's reach.

3 Q What concerns do you have of Daniel caring for Riley
4 if he's using marijuana?

5 A I would worry about the decisions that he makes.
6 One of -- one time he took a bunch of edibles when we were
7 driving on a road trip to --

8 MR. BLACKHAM: Objection --

9 A -- Utah.

10 MR. BLACKHAM: -- narrative. Move to strike.

11 THE COURT: Overruled.

12 BY MR. PAGE:

13 Q You can go ahead.

14 A He took edibles on a road trip to Utah and when I
15 tried to take -- tell to him hey, this is not okay, we -- we
16 need to not do this, there was no care. It's -- he didn't
17 stop, pull over, and allow me or his mom to drive who are also
18 in the vehicle and, you know, my fear is since I'm not going
19 to be there to watch the situation or offer to help the
20 situation like what -- what situation is Riley going to find
21 herself in? She has no one to advocate for her.

22 Q If you're not around when this is going on, what
23 concerns do you have?

24 A I worry that I'm going to get a phone call in the

1 middle of the night, that something's happened to Riley. I
2 worry that she's going to end up in the hospital. I worry
3 that she could walk out the front door. I worry that she
4 could get hurt. She could consume alcohol. She could consume
5 marijuana. I worry about him being with another woman and him
6 treating the woman or having the same toxic relationship that
7 I had -- that we had with someone else and then there's no one
8 to protect her. I also worry about, you know, potential
9 sexual abuse. That -- that increases significantly when two
10 parties separate.

11 Q Now, when we dropped off with the times Dan had been
12 physical with you, it related as to the shirt which has been
13 admitted into evidence as Exhibit 55. When's the next time
14 that Daniel was physical with you?

15 A It was another time in that same area in which we
16 got into a fight and he took my phone and he just destroyed
17 it. It was broken in half. And it was absolutely devastating
18 because there were pictures on my phone of Riley that I have
19 not been able to get back.

20 Q Did you keep the phone that he broke?

21 A I did. I kept it at my school where he couldn't
22 find it.

23 Q Okay. Is this the phone that he --

24 A It is.

1 Q -- destroyed?

2 A Yes, that's the phone.

3 MR. PAGE: Move for admission of the phone as
4 Exhibit 56.

5 THE COURT: Any ob --

6 MR. BLACKHAM: Objection, authenticity, relevance,
7 unfair prejudice, outweighs probative value.

8 THE COURT: Exhibit 56 will be admitted.

9 (PLAINTIFF'S EXHIBIT 56 ADMITTED)

10 MR. BLACKHAM: The shirt was 55, Fred?

11 MR. PAGE: The shirt was 55.

12 MR. BLACKHAM: Okay.

13 BY MR. PAGE:

14 Q What is the reason you decided to keep the phone?

15 A I kept the phone in case the -- this behavior did
16 not stop, that, you know, I would have evidence to show that,
17 you know, his demeanor and his behavior. Otherwise, it was my
18 -- it -- you know, there was just my word against his.

19 Q Were you willing to continue to try and give the
20 marriage an effort to make it work?

21 A Yes, I one-hundred-percent wanted to try and make
22 the marriage work. I felt it was best for Riley and I felt
23 that it was best in us being together to be there for her. So
24 I one-hundred-percent kept giving chances after chances.

1 Q During this time did you and Mr. Rubidoux file a
2 complaint for divorce?

3 MR. BLACKHAM: Objection, vague. What time?

4 MR. PAGE: That's what I want to get to -- laying
5 foundation.

6 THE WITNESS: It wasn't until the summer of 2019
7 which we haven't gotten there on the timeline.

8 BY MR. PAGE:

9 Q Okay.

10 (PAUSE)

11 MR. PAGE: I assume that you're looking up the
12 complaint online.

13 THE COURT: Oh, I'm just look -- looking up that --
14 yeah, there's two other complaints for divorce. There's no we
15 filing it. They're both filed by the Plaintiff in this case,
16 so she's filed a total of three.

17 THE WITNESS: Uh-huh (affirmative).

18 THE COURT: One in December 2014 and one in May
19 23rd, 2019 and then this one.

20 Q What was the reason you filed back in December?

21 A Of 2014?

22 Q Yes.

23 A I filed in December 2014 because Dan and I were not
24 on the same page. We were not matching up. He basically

1 played video games all the time, didn't want to spend time
2 with me. There was really no point in us being married. When
3 I would express how I felt, he just didn't care. He didn't
4 make any active effort to change anything.

5 MR. BLACKHAM: I'm going to object as to relevance,
6 Your Honor. There's no child at that time. None of this has
7 any bearing on the custodial issues.

8 MR. PAGE: I'm following up on the Court's comment
9 that there was a complaint filed in 2014. So I concluded it
10 was relevant and want to ask her about it.

11 THE COURT: Yeah, overruled.

12 BY MR. PAGE:

13 Q You can go ahead.

14 A It just -- it just didn't seem like there was a
15 point to our marriage.

16 Q What was the reason why you filed in May of 2019?

17 A I filed in May of 2019 because there had been a huge
18 incident that had happened right before that in April -- or
19 no, it was -- it was -- yeah, around -- it was in May. And he
20 had like chased me out of the house very dramatically and it
21 was a terrifying experience. And I just was like -- I was
22 done with the whole situation after that because I was like I
23 can't live like this anymore.

24 Q When he (sic) says chased you out of the house,

1 could you elaborate what caused the incident?

2 A Okay. So there had been alcohol and he had gotten
3 drunk and he had woken me up and, you know, I would wake up
4 and go from one bedroom to the extra to try and sleep and try
5 to tell him hey, just go to sleep, like you're drunk, let's
6 have -- let's not have this conversation. He would continue
7 to follow me, pin me down onto the ground not allow me to get
8 up. Then I would take my stuff and my keys and, at this
9 point, Riley would be awake and she would be crying because
10 she wanted me and he would not leave us alone because he was,
11 you know, constantly following me around and, you know, it's
12 in the middle of night and we need to be asleep. And so I had
13 gotten into the car with Riley on my lap because I had tried
14 leaving before several times and he would always pull her out
15 of the car seat. So put her on my lap to leave and as I'm
16 backing out he's banging on the window.

17 And there's an incidence before that where he's
18 broken a window at my work. And that flashed into my mind
19 where I was like oh, my God, he's going to break the window.
20 The glass is going to come on Riley and I, like I can't do
21 this. And I saw him trying to enter my car through the
22 keyless entry. And so like I just backed up as -- as slowly
23 as I could. And then when he start -- continued doing it
24 again I took off and drove and he was latched onto the car.

1 He wouldn't let go because he was pounding so hard. And so
2 the -- the car I guess he -- he was clinging on and it dragged
3 him. And I was just like I can't -- like I can't live in this
4 world anymore. I can't have someone drinking, keeping me up
5 all night sleep depriving me, you know, waking our -- our
6 daughter up and she's crying and witnessing things that she
7 shouldn't see and just being in this constant state of fear.
8 So I filed for divorce.

9 Q So did you end up giving him another chance?

10 A That chance was given because he said I could have
11 the house and I wouldn't have the debt that he had if I gave
12 him another chance. And that's when we did that -- did that
13 agreement. And we were going to go forward with a divorce
14 living in the house.

15 Q Before we get to that, were there other incidents
16 before the -- when you left in May of 2019 in which he was
17 physical with you?

18 A Yes.

19 Q When was the next one that you recall?

20 A So January 19, 2018, I was at work on a Friday
21 night. It was the only place where I could find peace in the
22 house and his mom was watching our daughter at the time. So I
23 could stay late at work and just kind of be in a quiet space.
24 And he was demanding to talk to me and I said I'm not going to

1 talk to you, I'm at -- I'm not -- I'm at work. If you want to
2 go pick up Riley, that's fine, but I'm at work. I'm -- this
3 is my place of peace. And he came to the school and somehow
4 got into the building. I think he followed behind a parent or
5 somehow. And he came up to where my hallway was because it's
6 an indoor/outdoor type school. So he came into the out --
7 outdoor area of the quad and was banging on the outdoor eighth
8 grade hallway doors. And I'm inside and my classroom is right
9 next to it. And I open up my classroom door and I see him on
10 the outside of the hallway door. And I tell him I'm not
11 opening the door, you need to leave. You need to go away.
12 This is ridiculous.

13 And at this point, our custodian hears it and she
14 comes down to see what's going on. I tell her not to open the
15 door and I see that he has tried to take his Swiss army knife
16 and unlock the door which I'm like stop, like you need to
17 leave. You need to go away. Like this is my work. If you
18 continue this, CCSD police are going to be called out here.
19 And so then he took his hand with his wedding ring and just
20 banged on the glass as hard as he could until the glass broke
21 and shattered everywhere. And instead of staying and handling
22 the situation responsibly, he took off and left.

23 And so then I -- I have my custodian. My
24 principal's come out. My head custodian's out. CCSD police

1 is out. And, you know, the -- the cost of the damage was high
2 enough to where they -- you know, they -- they were talking
3 about arresting him. And I -- I told him that he needed to go
4 home, he needed to leave Riley. He was not in a mental state
5 to pick her up at this point after what he had done. I was
6 very fearful for her safety. And at that point, CCSD police
7 went down and arrested him.

8 Q I'd like you to go ahead and turn to Exhibit -- one
9 moment, please. Could you turn to Exhibit 51, please? Are
10 you there?

11 A Yes.

12 Q Okay. Could you go to the document that's Bates
13 label 2079, please?

14 A I'm sorry, what did you say?

15 Q 2079.

16 A Oh, okay. Okay.

17 Q Okay. Could you identify this piece of paper for
18 me, please?

19 A Yes, this is --

20 MR. BLACKHAM: I'm going to object, Your Honor.
21 This has already been admitted and this is cumulative and the
22 document speaks for itself.

23 THE COURT: Overruled.

24 THE WITNESS: Yes, this is the police statement that

1 I filled out with Clark County School District Police
2 Department about the event.

3 BY MR. PAGE:

4 Q What did you write in the narrative portion of the
5 statement?

6 A My husband and I got in a fight over finances. He
7 continued to call and text me all day threatening to show up
8 at my work again because he did this last week. He then
9 showed up demanding I open the door and I refused to. He
10 grabbed a Swiss army knife and banged on the glass twice. I
11 wouldn't open the door so he pounded his hand with his wedding
12 ring against the glass. The glass broke and he left. My
13 husband's name is Daniel Rubidoux. He has been aggressive
14 towards me before, bruising me at his sister's wedding,
15 breaking my phone, breaking glass in my house. I'm afraid of
16 his angry violent tendencies especially since we have a
17 two-year-old daughter.

18 Q Is that your signature at the bottom?

19 A It is.

20 Q And was this statement made contemporaneously with
21 the incident?

22 A What does that mean?

23 Q At the same time.

24 A Yes, it was.

1 Q Now, you testified that CCSD made the decision to
2 have Mr. Rubidoux arrested?

3 A Yes.

4 Q Was he arrested?

5 A Yes.

6 Q Okay. What was the outcome of the arrest?

7 A He was let out on bail within six hours and at the
8 house. It was terrifying. And he then went before the court
9 and I don't recall if he pled guilty but it was worked out to
10 where he paid for it. I was too terrified to testify knowing
11 that there could be repercussions for my actions.

12 Q What -- what did Mr. Rubidoux have to do to the
13 court -- for the court as a result of being arrested?

14 A He had to take anger management classes and he was
15 to pay the -- the -- for the glass door at my school.

16 Q Do you know whether he paid for the glass door?

17 A I assumed that he did. I -- it did not come out of
18 our joint account -- or I don't remember actually. I don't
19 recall.

20 Q What classes did he have to take?

21 A He was supposed to take anger management classes.

22 Q Who ended up taking those classes?

23 A I did.

24 Q Why did you take his classes?

1 A He told me I had to do it because of me putting him
2 in this situation.

3 Q Was there another incident that occurred in
4 approximately February of 2018?

5 A Yes.

6 Q What was that incident?

7 A We were supposed to refinance the house because
8 Dan's line of work, he has to charge all of his work expenses
9 onto -- onto his credit cards -- or my credit cards. And he's
10 supposed to get the money back in -- in form of reimbursement.
11 But the money just never got reimbursed. It was used for
12 other means. And so we had a substantial amount of debt on my
13 credit card. So we were to refinance the house to pay off
14 that debt and make it a 30 year loan into a 15 year loan. At
15 that signing is when I found that he had the Navy Federal
16 Credit loan that has been discussed that I was not aware of.

17 And I was very shocked that he would hide this from
18 me because it was just like one thing after another. And so I
19 wanted to go stay at a hotel room to just kind of be away from
20 the situation. In which case, he continued to harass me via
21 phone calls and text. He even tried calling the hotel because
22 he tracked where I was using my iPhone, Find my iPhone. He
23 called the hotel, he showed up at the hotel, just continuing
24 to try and locate me. So it was just a fear that I'm never

1 going to get away.

2 Q Did you -- what happened with this incident also as
3 it -- as it deals with you streaming live on Facebook? What
4 happened there?

5 A Oh, I'm sorry. That was 2019. The one that I just
6 said was February 2019. Now, February 2018 he came after me
7 again upset about everything that happened going on with the
8 school and just attacking me and slamming me down onto the
9 ground. And I told him he needed to stop and if he didn't
10 stop that I was going to do something and he just continued
11 coming after me. And so I grabbed my phone and I hit Facebook
12 Live. And I streamed the event of what he was doing. And you
13 can hear me screaming and yelling. But, you know, he forced
14 me to delete it because he didn't want anyone to know about
15 what was going on in our household.

16 Q Were the police called out to that incident?

17 A Someone in our neighborhood did see the video and
18 they did call and have the police come out to the house.

19 Q In October of 2018, was Daniel threatening to commit
20 suicide?

21 MR. BLACKHAM: Objection, leading.

22 MR. PAGE: It's foundational.

23 THE COURT: Sustained. You're going to have to back
24 up and lay more foundation on that.

1 BY MR. PAGE:

2 Q Have there been times when Daniel has threatened to
3 commit suicide?

4 A Yes.

5 Q Okay.

6 A There is a situation in which he had grabbed his gun
7 and he was in the kitchen and he was screaming and yelling
8 that he was going to count down and he was going to put a
9 bullet in his head. And so I grabbed my phone to record. So
10 there's no visual but you can hear audio of him counting down
11 to where he's like I'm going to put a bullet in my head and
12 then three, two, one.

13 Q Now, in 2019
14 in approximately January, was there another incident in which
15 Daniel was physical with you?

16 A Yes. So January 20th, 2019 we were getting into an
17 argument in the morning and he was blocking my car from
18 leaving the house and wouldn't allow me to leave. So I
19 recorded it so, you know, I can have evidence that, you know,
20 he's not allowing me to leave, you can see him -- him getting
21 angry and he's demanding that I wear my wedding -- wedding
22 ring. So I finally agreed to it and he drives off. And I go
23 to work and there's just text messaging going on all day long
24 with that. And then come home and I was asking about the

1 credit card debt, how the credit card debt -- had he gotten
2 the reimbursement checks from his work expenses. And there's
3 a video of me recording that where I asked him about it and
4 he's screaming at me and cursing at me and knocking off
5 Riley's juices and just, you know, going off about it.
6 Because I'm just asking hey, did you get that reimbursement
7 check. And then there's another video where -- where he's
8 screaming at me again and then kicking Riley's stuff and
9 berating me and calling me all kinds of different curse names.
10 And it escalates.

11 You can hear in his tone that he's under the
12 influence and it's not a normal speaking pattern. And then at
13 this point it's like it's getting out of control. I know he's
14 going to get angry. So I pick up Riley to go take her into
15 the car and I'm like I'm going to go stay somewhere else, this
16 is ridiculous. And as I am walking out holding -- like kind
17 of guiding Riley to go towards the car, he then grabs
18 everything out of my hands forcefully, like throwing it right
19 past Riley. And then takes me and shoves me right into the
20 garage -- the back of the garage door that lifts up. And as I
21 jump back, I'm trying to push him off of me and I grabbed
22 Riley's little picnic table. So I kind of hold it between him
23 and I. I keep him away from me. And there's security footage
24 of that in our house.

1 Q Well, have you produced this security footage as
2 part of your document production?

3 A Yes, all three videos are on there.

4 MR. PAGE: I'd like the Court to view the incident
5 in the garage. It's going to be Exhibit 42, it looks like.
6 We'll need to turn off the -- turn on the TV -- or the
7 monitor, I should say. There you go. Just a moment.

8 THE CLERK: Counsel, is there audio for that video?

9 MR. PAGE: There -- I don't believe there is for --

10 THE CLERK: Okay.

11 MR. PAGE: -- that one, but I'll -- I'll turn on my
12 audio for my computer --

13 THE CLERK: Okay.

14 MR. PAGE: -- just to make sure.

15 THE WITNESS: There isn't.

16 THE CLERK: Thank you.

17 11:13:40

18 (VIDEO PLAYED)

19 Q Could you watch the video and -- and --

20 MR. PAGE: I'll kill the volume.

21 MR. BLACKHAM: No -- no, I think -- I would ask that
22 the volume remain on. I think it's important.

23 MR. PAGE: Okay.

24 (PAUSE)

1 THE COURT: To clarify the record, the sounds we
2 hear are not from the video on January 20th, 2019 --

3 MR. PAGE: Correct.

4 THE COURT: -- but of her watching that --

5 MR. PAGE: Yes.

6 THE COURT: -- with the child there.

7 MR. PAGE: Yes.

8 THE COURT: Okay.

9 Q What was the reason why Riley was with you when you
10 were recording that on your cell phone?

11 A I did not have access to the security system. It
12 was on Dan's computer only. And unfortunately there was no
13 way for me to record from my phone. So I had to use my
14 daughter's -- I had to use my daughter's iPad. So it was the
15 iPad that I was recording it on the counter. So she was
16 extremely upset that I had used her iPad for that because she
17 wanted to have her iPad. She was not able to see the video.
18 It was on top of the counter. She was little. So she could
19 not see the video.

20 Q As it relates to Riley, she's sort of diminutive in
21 size?

22 A Hm?

23 Q Is she diminutive in size?

24 A What do you mean?

1 Q Small.

2 A She's very petite. She's very tiny. She's about
3 the -- in the one percent of the growth. So she -- she wasn't
4 able to see this.

5 Q When you're in the garage and Daniel's coming at
6 you, what are the thoughts going through your head?

7 A I was extremely surprised he did that on camera
8 because every time that he had attacked me it's always been in
9 the house. So I was extremely surprised that it happened, but
10 obviously, I was terrified and mad that he was doing this in
11 front of our daughter who does not need to see anything like
12 this, not even on a TV show much less her parents.

13 Q You saw where he grabbed the belongings you had in
14 your hand and --

15 A Uh-huh (affirmative).

16 Q -- flung them backward. What concerns do you have
17 that this could have hit Riley?

18 MR. BLACKHAM: Objection --

19 A I --

20 MR. BLACKHAM: -- Counsel's testifying.

21 THE COURT: Overruled.

22 BY MR. PAGE:

23 Q You can go ahead and answer.

24 A So yes, I was worried that, you know, he was going

1 to take the items out of -- out of my hand and then hit them
2 towards her or even just, you know, knock something out. I
3 mean, you saw the garage. There was a lot of stuff in there
4 that could have toppled over and fallen because it was just --
5 there was all -- all -- a lot of his work stuff in there.

6 Q Why did you try and put Riley's picnic between you
7 and -- and Daniel?

8 MR. BLACKHAM: Same objection.

9 THE COURT: Overruled.

10 MR. PAGE: It's a (indiscernible) question.

11 THE WITNESS: I didn't know how else to establish
12 space between him and I. There wasn't really anywhere for me
13 to go. I couldn't really fit behind the car and the garage
14 door. And I wasn't going to walk past him because then he
15 could have grabbed me and -- and tackled me down to the ground
16 in a wrestle hold. And so it was the only thing I could find
17 that would hold space between him and I. Maybe get him to
18 kind of come back to reality. This isn't a smart thing for
19 him to be doing.

20 BY MR. PAGE:

21 Q When you were backed up against the door, did he
22 actually put his hands on you?

23 A Yes, he slammed me into the garage door pretty hard.

24 Q Now, as part of this event, the evening, you said he

1 was kicking stuff and cursing?

2 A Yes, there's two other videos where you can hear
3 that I've asked about the check. These were right before the
4 incident took place.

5 Q Okay. Now if I -- if we go to Exhibit 45, would
6 this be where he's kicking stuff and cursing?

7 A Yes.

8 Q Okay.

9 11:20:48

10 (VIDEO PLAYED)

11 Q So when he is going to that and you hear sounds of
12 things being hit, what's going on?

13 A With me or with the situation?

14 Q With the situation.

15 A He was upset because something wasn't put back and
16 he just started kicking things and destroying things because
17 there's -- there's no using words and having a calm
18 conversation when he's under the influence of alcohol and his
19 anger and he snaps and he loses control. He just starts
20 breaking things. And it's always my stuff or our daughter's
21 stuff. He doesn't ever break his things.

22 Q When he's speaking in that sort of tone and that
23 sort of volume, are you frightened?

24 A Yes, I'm frightened hearing it again. It's -- it's

1 extremely unsettling to have someone coming at you with such a
2 ferocious amount of tone and volume to their -- to -- to who
3 they are.

4 Q How does Riley react when she hears and sees those
5 things?

6 A She -- she obviously was very upset and -- and she
7 started to -- developmentally, she never sucked her thumb or
8 -- that was a pacifier, but about the age of two to three she
9 started sucking her thumb. She started really twirling her
10 hair. I mean, she started to really become even more clingy.
11 I mean, these were all due to the screaming and yelling. She
12 doesn't like loud noises at all. It -- it makes her shake,
13 you know, and gets scared. It's definitely impacted her.

14 Q Now there's also another -- something else that
15 happened that night about expense reimbursement. And this is
16 Exhibit 48. And I'd like you to view that as well.

17 11:22:58

18 (VIDEO PLAYED)

19 Q Do you have concerns --

20 THE COURT: Is --

21 Q -- about Daniel's temper in that video?

22 MR. PAGE: I'm sorry, Your Honor?

23 THE COURT: The -- just to clarify, is the reason
24 that the -- you have a -- there's some of it that's double

1 played like a double exposed picture, is the -- the -- is that
2 because she's taking a video of a video off her phone?

3 THE WITNESS: No, it's a --

4 MR. PAGE: She's saying --

5 THE WITNESS: It's a clear video. It's just
6 something with the playback here.

7 THE COURT: Okay.

8 MR. PAGE: And I -- there's a bit of a delay. I can
9 hear it from mine and then I hear it from over there. I just
10 -- I think it's --

11 THE WITNESS: Yeah.

12 THE COURT: And did you upload the --

13 MR. PAGE: I did.

14 THE COURT: Load -- load them in there so I have
15 them.

16 MR. PAGE: You have it.

17 THE COURT: Replay them.

18 MR. BLACKHAM: Would it be -- I'm sorry, would it be
19 possible to -- to actually play them through the court system
20 so that maybe -- maybe it's -- there's something -- because I
21 -- I noticed with the court's --

22 MR. PAGE: I -- I don't know because I -- I don't do
23 the IT, but --

24 MR. BLACKHAM: But I -- I -- it would seem to me

1 that might be preferable if --

2 (COURT AND CLERK CONFER BRIEFLY)

3 MR. BLACKHAM: -- if you want to hear what's
4 happening.

5 THE CLERK: I can get IT to help.

6 THE COURT: Do you have -- do we have the actual
7 video files of -- whatever is a wave or whatever there?

8 THE CLERK: I do, Your Honor.

9 THE COURT: Okay. Because I'm not seeing a file I
10 have.

11 MR. BLACKHAM: And -- and if Your Honor didn't hear
12 everything --

13 THE COURT: These are stipulated, right? Because --

14 MR. BLACKHAM: Yes. Yes. But --

15 THE COURT: So I can also listen to them --

16 MR. BLACKHAM: Correct.

17 THE COURT: -- again --

18 MR. BLACKHAM: Yes.

19 THE COURT: -- at lunch?

20 MR. BLACKHAM: Yes.

21 THE COURT: Okay. Yeah, because I -- the first one
22 I couldn't make out any words.

23 MR. PAGE: Yeah, that's where she was videotaping
24 the -- on the iPad and the video wasn't contemporaneous with

1 what was going on in the garage.

2 THE COURT: No, I mean, the --

3 MR. BLACKHAM: I think it's the one before that.

4 THE COURT: -- the -- this -- the first of --

5 MR. PAGE: Oh, this one.

6 THE COURT: -- those two audio --

7 MR. PAGE: Oh, okay.

8 THE COURT: -- clips I couldn't make out any words.

9 The second one was the -- at least words I can make out what
10 they're arguing about.

11 BY MR. PAGE:

12 Q You heard Daniel's manner speaking in the third
13 video. What con -- having known that, what can you tell us
14 based upon the way he's speaking?

15 A I can tell that he's been drinking. He's slurring
16 his words. He's a lot more pronounced with his anger. His
17 anger because escalated due to alcohol.

18 Q What concerns do you have for Riley's safety when
19 Dan's like that?

20 A My safety (sic) would be that he's going to take his
21 aggression out on her in a similar fashion that it was taken
22 out on me where he's derogatory and cursing at her, breaking
23 her things, having her feel like she's in -- in an out of
24 control situation in which she's not safe. And, you know,

1 there's nowhere for her -- for her to go because he will
2 follow me from wherever room I was in the house with the same
3 temperament and the same tone and the same aggression.

4 Q And as -- as part of that aggression, is -- I'm not
5 sure how to phrase this. In what ways is he physical with you
6 as it relates to wrestling?

7 MR. BLACKHAM: Objection, vague. What are we
8 talking about?

9 THE COURT: I'm sorry, restate the question.
10 BY MR. PAGE:

11 Q Does Daniel use his training as a wrestler against
12 you?

13 A I believe so. He was able to pin me down onto the
14 ground where I wasn't able to move and, you know, if try to
15 get up, rotate and do lock holds on me, I mean, I just -- I
16 was, you know, held down to the ground. I've never been held
17 against my will before.

18 Q Was this something that you objected to?

19 A Yes, I would definitely be screaming for him to get
20 off of me. I asked him to get off of me. I would scream for
21 the neighbors, you know. I would -- I would just scream for
22 help for someone to call the police.

23 Q After you told him to stop doing what he was doing,
24 would he continue to do that on other occasions?

1 A Yes, this happened several times all throughout the
2 marriage.

3 Q Now, in January -- or I'm sorry, in February of
4 2019, did you decide to stay at a hotel for awhile?

5 A Yes, that was the incident that I mixed up the two
6 Februaries. So this was where the refinance had happened.
7 And you can tell from the videos. The finances were kind of a
8 question at that time. And I stayed at the hotel and he
9 continued to call and harass and text me with that same tone
10 and aggression. And that's -- like I said, he came to the
11 hotel and he was trying to find me. And, you know, I told him
12 he needed to like leave me alone.

13 Q In April of 2019, was there another incident
14 involving you and Daniel?

15 A Yes. So in April of 2019, I was actually nominated
16 for the teacher of the year award. It was at the Smith
17 Center. So this is a very like special moment for me. And we
18 needed someone to watch Riley. And so, you know, usually his
19 mom or my parents would do that. But for some odd reason he
20 wanted his boss and his boss's girlfriend and daughter to
21 watch our child. And she was two at the time. So I wasn't --
22 or three at the time. So I wasn't very comfortable with just
23 dropping her off with strangers. And so we were trying to
24 have a conversation about that in the house and that led to

1 him getting upset.

2 And then as we were in the car, he's just cursing
3 and screaming and berating me in front of our daughter and --
4 and just calling me all kinds of names just because I
5 expressed concern about her not being dropped off with someone
6 that she wasn't very familiar with. She wasn't familiar with
7 the house. She's three. She can put things in her mouth.
8 It's not a child safe place. You know, I -- she could easily
9 have gone to his mother's or my parents' house. And it just
10 completed escalated. And there's a video of that escalation.

11 Q Was there yet another incident that happened in May
12 of 2019?

13 A Yes, that's the one with the car in which he
14 followed me out to the car banging on the window and I thought
15 the window was going to break similar to the window breaking
16 at my work. And he had latched onto the car. And as I was
17 backing away, continued to bang on the window and try to enter
18 my car through the keyless entry and I took off.

19 Q Is there -- is there video footage of this?

20 A Yes, there's video footage of me backing away.
21 There's also video footage of the neighbors seeing that he
22 gets up because he filed a -- a police report saying I left
23 him unconscious in the street. And as I drove away I pulled
24 off to the side to put Riley in a car seat because I obviously

1 wanted our daughter to be safe in the vehicle. As I got back
2 onto the main road to leave the neighborhood to go to my
3 parents' house, he had found me because he was in his car. He
4 was speeding at me, honking at me, trying to swerve and get my
5 car to come off the road and just acting erratic. And I
6 luckily remembered there was a guard gated community in our
7 neighborhood. And so I drove up there praying that the guard
8 was there and he was. And, you know, the guard documented the
9 incident. I also have a statement from the guard of what
10 happened that night.

11 Q Is this a -- your neighbor's video of you backing
12 out of the garage from your house?

13 A I don't see anything.

14 MR. BLACKHAM: What proposed exhibit is this?

15 MR. PAGE: This is Exhibit 34.

16 THE WITNESS: Yes, this is the neighbor's.

17 11:32:13

18 (VIDEO PLAYED)

19 Q Now, is this you getting out of the car --

20 A No --

21 Q -- and getting --

22 A -- I'm in the car. That's Dan trying to do the
23 keyless entry. No, he took my -- oh, there's me. I had a
24 second set of keys he didn't know about. And that's him.

1 He's coming to the car window banging on it. Trying to get
2 into the car. And I was trying to back away cautiously. But
3 when he started banging even harder, that's when I got scared
4 and I drove off.

5 Q So he was hanging onto the car and you drove away.

6 A Yes, because at that point he was getting even more
7 intense and I was starting to get fearful and I was no longer
8 going to be cautious because at that point it was my -- my
9 safety and our daughter's safety over -- over him.

10 Q And as we go along in the video here, will Dan come
11 back in and --

12 A Yes.

13 Q -- walk back --

14 A He will --

15 Q -- into the house?

16 A -- walk back in with my purse because he had taken
17 my purse from me. He wouldn't allow me to leave with it and
18 my other set of keys.

19 Q So is that Dan walking back --

20 A Yeah, that's Dan walking back into the house.

21 Q And he has your purse in his right --

22 A Yeah.

23 Q -- hand?

24 A -- he has my purse. And this was in the middle of

1 the night.

2 Q What time in the morning was this?

3 A I would say this was between 12:00 or 1:00. There's
4 a statement from the guard that has the approximate time. I
5 don't recall it at this moment.

6 Q Then there is another version of this from your
7 security camera footage. Is --

8 A Yes.

9 Q -- that accurate?

10 A Yes.

11 MR. BLACKHAM: What exhibit is this?

12 MR. PAGE: 35.

13 11:34:40

14 (VIDEO PLAYED)

15 Q Is this -- is that where he took your purse?

16 A Yeah, because he thought that he had, like
17 basically, not allowed me to leave. He took my -- my purse
18 and my keys but I had a spare key in my pocket.

19 Q Now, a lot of these incidents, what factor is
20 alcohol in these incidents?

21 A All of them.

22 THE COURT: Are you at a point where we can try to
23 play those two -- I'll call them audio files because they
24 don't show much video, the two Exhibits 45 --

1 MR. BLACKHAM: Yes.

2 THE COURT: -- and 48? If you can --

3 MR. PAGE: Yeah, we can play -- play those, 45 and
4 48. Other -- I have 47. Oh -- oh, you want 45 to be played
5 again?

6 THE COURT: Yes, the one I couldn't -- yeah, I
7 couldn't hear very clearly.

8 MR. PAGE: Sure. Sure.

9 THE COURT: If we play it through ours, then maybe
10 we can hear it. Now, for clarification, those two videos were
11 at the same night, right?

12 THE WITNESS: Yes.

13 MR. PAGE: Correct.

14 THE COURT: Okay.

15 MR. PAGE: And actually -- and I did the time -- I
16 did the chronology backwards. The -- the last one was the
17 garage. The second to last one would have been the -- Dan
18 kicking stuff and cursing. And the first one in the
19 chronology, but the last one played was him yelling about
20 reimbursement.

21 THE COURT: Okay. Well, the two -- the two files
22 that we could not hear very well that -- and they don't show
23 much, but -- so I call them audio files.

24 MR. PAGE: I'll -- I'll go ahead and play them

1 again.

2 THE COURT: If we can play them through the courts,
3 maybe -- maybe directly? I don't know.

4 11:36:40

5 (VIDEO PLAYED)

6 (COUNSEL CONFER BRIEFLY)

7 MR. PAGE: It's actually much clearer on my speaker.

8 THE MARSHAL: There's no output on the computer to
9 go directly into the system. So let me see here.

10 THE COURT: But we have the file on -- uploaded in
11 our exhibits. So we should be able to just play it, right?

12 THE MARSHAL: Yeah, if you have it -- if you can
13 show me where it's at, I can play it from here.

14 THE COURT: That would be good, because I don't know
15 where it's at.

16 MR. PAGE: Mind if I -- I watch.

17 THE COURT: Sure, they're not in my -- they're not
18 in my folder. The exhibits were --

19 (COUNSEL CONFER BRIEFLY)

20 MR. BLACKHAM: Your Honor, did you intend to break
21 for lunch at any point? I just want to get a sense of when
22 if --

23 THE COURT: Yeah.

24 MR. BLACKHAM: -- the --

1 THE COURT: No, we'll -- we'll break about 12:00 and
2 try to put in a place. I don't know how much time -- more
3 time if he -- if it -- we can break -- when he finishes
4 direct, that helps, but I don't know if he's -- how much more
5 he has.

6 MR. PAGE: We have a little ways to to go.

7 MR. BLACKHAM: Did you anticipate the break would be
8 an hour or longer than that?

9 THE COURT: We can limit it to an hour if --

10 MR. BLACKHAM: I --

11 THE COURT: -- it's okay with everybody and give us
12 more time to put evidence on or we can take an
13 hour-and-a-half --

14 MR. BLACKHAM: I --

15 THE COURT: -- if you need it.

16 MR. BLACKHAM: I would like -- I'd like to take 90
17 minutes, if possible.

18 THE COURT: You want 90 minutes?

19 MR. BLACKHAM: Yeah.

20 THE COURT: That's fine as long as you guys are
21 going to get the evidence in today, all of it. I don't want
22 to have to come back for more evidence.

23 (COUNSEL CONFER BRIEFLY)

24 11:39:28

1 (VIDEO PLAYED)

2 MR. BLACKHAM: Still going good?

3 THE COURT: You -- that I heard clearly.

4 MR. BLACKHAM: Okay.

5 THE COURT: Clearly.

6 MR. PAGE: It -- it was clear. It wasn't -- it

7 wasn't scratchy.

8 THE COURT: And then we have 48.

9 11:40:11

10 (VIDEO PLAYED)

11 THE COURT: Thank you. Now, at least we can hear

12 that clearly.

13 MR. BLACKHAM: That was 48 or 45, Fred? I'm sorry.

14 MR. PAGE: That was 45 and 48.

15 MR. BLACKHAM: The one we just saw was 48, yes?

16 MR. PAGE: The last one is 48.

17 MR. BLACKHAM: Thank you. And what date was that?

18 Because do you --

19 MR. PAGE: That was 1/20/19. Anything else, Your

20 Honor?

21 THE COURT: Oh, sorry. I thought -- I thought --

22 MR. PAGE: Just kind of waiting.

23 THE COURT: Sorry. Sorry. I -- I should have said

24 go ahead. Go ahead. We are back -- we were on the May 3rd.

1 Are we done talking about May 3rd, 2019?

2 BY MR. PAGE:

3 Q Is there anything that you want to add about May
4 3rd?

5 A He then came to my parents' house where I had gone
6 to flee and he, you know, demanded that -- to my dad because
7 my dad answered the door that I come out and that, you know,
8 that -- that he let Dan come into the household in which my
9 parents are like no, we're not allowing that; it's late in the
10 night, this is -- this is an argument that's gone beyond. You
11 know, they can tell that he had been drinking. And so he
12 decided to sleep inside my car in front of my parents' house.

13 Q How do you know he was sleeping inside your car in
14 front of your parents' house?

15 A Because he was there the next morning to demand to
16 talk to me. And we can see that he had gone into my car and
17 there -- there was a -- my parents had a security footage and
18 it showed him going in there and sleeping in there.

19 Q Does that give you concerns about his emotional
20 stability?

21 A Yes, it -- it terrifies me. There's no letting go.
22 It's -- it's continuous. Anytime I try and leave he's
23 persistently there, continuously there; always essentially
24 stalking me and harassing me and not letting me have any

1 freedom. I've been terrified since this situation.

2 Q Was there another incident that happened in June of
3 2019?

4 A Yes, I -- I went out to the house to try and get
5 some stuff and he had changed the locks on the house. And so
6 I called out for non-emergency police to please come out and
7 talk with me about the situation. And when I was talking to
8 the police officers about what had happened, I showed them the
9 video and that's when the police officer is like we need to do
10 something which was a first for me. Every time police had
11 been called out to the house, nothing's ever happened. So to
12 finally hear someone say that they were going to do something
13 I was like oh, thank God. And so, you know, that's when we
14 filed the police report against him for what happened on
15 January 20th.

16 Q As a result of the incident on January 20th, did he
17 plead guilty to domestic violence?

18 A Yes, he pled guilty.

19 Q Now, during this time in 2019, were you and Daniel
20 separated?

21 A January 2019?

22 Q I'm sorry, in -- during this period of June -- May,
23 June of 2019, I'm sorry, were you and Daniel separated?

24 A Yes, May and the majority of June we were separated

1 and -- and I didn't know that there had actually been a
2 protective order that he wasn't supposed to talk to me put in
3 place. And he was completely violating it.

4 Q As part of this when you were separated from Daniel,
5 who is Riley staying with?

6 A Primarily me. He would take her on the weekends
7 because that was the only time that he could have her really.
8 And it was -- it was not a forced order. Obviously, if he
9 didn't want to have her on the weekend, he would not have to
10 have her. If he wanted to go do something else, he could. It
11 was kind of like an agreement that he could see her.

12 Q So during the regular week, Riley was with you in
13 daycare, et cetera?

14 A Yes. There might have been a couple times where he
15 did take her to daycare. I'm not saying that that didn't
16 happen.

17 Q As far as you giving the marriage yet another try,
18 what was the rationale behind it?

19 A He said that he finally hit rock bottom basically,
20 that he was going to get his life together and that he was
21 going to really make -- go for it, that Riley was at the point
22 where she was going to start remembering things and he really
23 needed to get it together and -- and figure it out. Like this
24 had to stop because it just wasn't okay.

1 Q And what had --

2 A And --

3 Q What had to stop?

4 A The -- he anger and the violence and the drinking.

5 Q What about the marijuana use?

6 A At that point in 2019, it wasn't as much of an
7 issue. 2018, it was an issue, but by 2019 I would say it --
8 it hadn't become as -- like he wasn't leaving stuff out
9 anymore. He wasn't like habit -- like habitually like three
10 to four times a day doing it. So that had actually slowed
11 down but the alcohol had increased.

12 Q As it relates to you and Dan giving it yet another
13 try, what was the pattern of -- or the plan for how much time
14 would you spend at the house, how much time would you spend
15 with the parents, et cetera; how did that work?

16 A So basically I told him that I would be open to
17 seeing what he can do but I was going to primarily stay at my
18 parents and come at the house a little bit. But there were
19 stipulations. I did want to actually get a divorce done. I
20 did want to have it set up to where I was going to have
21 primary custody and I was going to have the house, because,
22 you know, we needed to have a place to live. And so that's
23 what we tried to do.

24 Q During this time, did Daniel enter an agreement with

1 you that he was going to give you the house?

2 A Yes, we signed on a notebook piece of paper that --
3 that I would get the house, I would get primary custody if I
4 gave it another try. And he, you know, made significant
5 efforts as well.

6 Q I'd like you to take a look at Exhibit 25, please.
7 Could you identify this document, please?

8 A This is the document that we signed. It's in Dan's
9 handwriting. It says by Stephanie agreeing to give Daniel the
10 chance to change her mind about divorce --

11 MR. BLACKHAM: Objection --

12 A -- she --

13 MR. BLACKHAM: -- Your Honor. Move to strike it --
14 it hasn't been admitted. It hasn't been authenticated. It
15 hasn't been --

16 THE COURT: Right. She can't --

17 MR. BLACKHAM: -- found -- laid foundation.

18 THE COURT: -- read -- read it aloud --

19 MR. BLACKHAM: Move to strike, please.

20 THE COURT: That'll be stricken.

21 BY MR. PAGE:

22 Q You've -- let me reask this question. Well, you
23 testified this is Daniel's handwriting.

24 A This -- the top part is Daniel's writing and

1 signature and then the bottom part is my handwriting and
2 signature.

3 Q Okay. You've been around Daniel long enough you
4 know what his writing looks like?

5 A Yes.

6 Q Is this his handwriting?

7 A This is his handwriting.

8 Q Is this his signature?

9 A That is his signature.

10 Q Is that your handwriting?

11 A That is my handwriting.

12 Q Is that your -- is that your signature?

13 A That is my signature.

14 MR. PAGE: Move for admission of Exhibit 25.

15 MR. BLACKHAM: Object on -- on the basis of
16 settlement negotiations and/or the relevance and undue
17 prejudice outweighing probative value. Your Honor noticed
18 that there was a -- that there -- the case that was -- the
19 divorce case in May was subsequently dismissed and there was a
20 refiling in November. This obviously was -- was contemplated
21 -- it -- they term it a postnup but it's not a postnup. It's
22 -- it's simply something that -- I mean, on it's face it's
23 simply something the parties were discussing.

24 And it's never been raised before. She's never

1 raised it in her complaint. When we allocated money towards
2 the attorney's fees and -- and several months ago, in front of
3 Judge Henderson it was never alleged that this was her sole
4 and separate property. And so this is just being made in bad
5 faith. And it's clearly, even if it existed, it was
6 abandoned. And it's of no legal consequence. And the legal
7 formalities of postnup. We're not -- we're not --

8 MR. PAGE: I -- I found this in --

9 MR. BLACKHAM: -- here to --

10 MR. PAGE: -- going through the discovery documents
11 when I took over the case from prior counsel. It was
12 subsequently produced. I also note that Mr. Rubidoux produced
13 this very same document as part of his third supplement
14 pursuant to NRC 16.2. So he was well aware of it. And since
15 he produced it, there is a tacit omission on his part that the
16 document is genuine. The parties were married at the time.
17 The agreement is the agreement. And we'd like the agreement
18 to be enforced. It's not a settlement negotiation. It's an
19 agreement. And we just wanted the terms to be enforced.
20 There was offer, acceptance, and consideration; therefore,
21 it's a contract. A contract needs to be enforced.

22 MR. BLACKHAM: I don't recall serving this document
23 in discovery. If I did, it is not -- it is -- just because
24 something's disclosed because it's -- because it -- because

1 it's discoverable doesn't make it dispositive. It doesn't --
2 it's not a tacit admission that it's accurate. There's things
3 that it -- that must be disclosed in discovery. And so it's
4 --

5 THE COURT: Hold on. Hold on. She's authenticated
6 it, thus it can be admitted. The legal import of that we'll
7 hear argument on and --

8 MR. BLACKHAM: Correct.

9 THE COURT: -- and deal with, but Exhibit 25 is
10 admitted.

11 (PLAINTIFF'S EXHIBIT 25 ADMITTED)

12 MR. PAGE: Thank you.

13 BY MR. PAGE:

14 Q In return for Daniel offering what he did, did you
15 accept his offer?

16 A I did.

17 Q Would you like the agreement that Daniel offered to
18 you -- you accepted to be enforced?

19 A Yes.

20 Q Now, moving along in a more chronological way, after
21 you gave Daniel another chance, did you eventually move back
22 into the marital residence?

23 A Yes, I believe it was the end of September, the
24 beginning of October, when I moved in -- I still might have

1 stayed at my parents like one -- one night a week, but I was
2 primarily living in the marital home. But I was also staying
3 in the other bedroom at times because it was still kind of
4 rocky.

5 Q When you say it's kind of rocky, could you give some
6 specifics?

7 A There was still a lot of arguments because he was
8 now aware of the domestic violence conviction. He hadn't been
9 aware of it until the middle of July I -- I think somewhere
10 around there. I'm not sure of the dates exactly. So he was
11 obviously upset with having to go to court, upset with the
12 legal fees with court, and then upset with having to now go
13 classes. And they were going to be really strict with him.

14 Q In November, was there another incident in the cycle
15 of violence?

16 A Yes, there was. This was the last incident that
17 happened which again evolved -- involved him drinking and in
18 getting out of control and him coming to the home waking me up
19 in the middle of the night and, you know, I tried going to the
20 other bedroom to sleep. It's the same routine. And then, you
21 know, he follows me and then pins me down onto the ground and
22 wouldn't allow me to get up. And I'm screaming. Then I went
23 into the closet to grab a couple of things. He held me into
24 the closet, wouldn't allow me to leave, and, you know, I was

1 screaming for my phone to call 911 through Siri. And Riley
2 was outside the door crying and trying to push the phone
3 underneath the door. And he ended up moving and leaving
4 because she was crying so loudly and then I called 911. And
5 to this day Riley remembers this incident and it really
6 bothers me because I had hoped that, you know, she wouldn't
7 remember anything, but she does.

8 Q Now, while you're still going through this, did
9 there -- was there yet another incident in August of 2019
10 where he punched a hole in the door?

11 A Yeah, there was a video of that. I was getting
12 ready to go, I think, to Green Valley Pool or something if I
13 remember the -- the -- what we were doing. And he was
14 sleeping because of course when he drinks he sleeps and
15 doesn't get up. And so he was really upset that I didn't want
16 him to go, but I just didn't want to have -- I wanted to have
17 a nice day with -- with our daughter. I didn't really want to
18 have anymore of this chaos and drama.

19 And so he kept trying to take her from me and ended
20 up like -- I went into the bedroom or somewhere or another and
21 locked the door. And whenever I would lock the door, I mean,
22 almost every door in our house has some sort of like dent or
23 push in. He, you know, banged on the door so much that he put
24 a hole in it.

1 Q If we take a look at Exhibit 35 where it's
2 indicating he's lunging --

3 11:55:33

4 (VIDEO PLAYED)

5 MR. PAGE: Are -- are you able to play it?

6 THE CLERK: You can do -- you -- you can do -- we
7 present here, Counsel.

8 11:56:00

9 (VIDEO PLAYED)

10 MR. PAGE: It's not transferring over, it looks
11 like.

12 THE CLERK: And this is Exhibit -- which one, I'm
13 sorry?

14 MR. PAGE: Exhibit 38. It says cannot connect to
15 the ser -- receiver. Oh, I need to --

16 11:56:39

17 (VIDEO PLAYED)

18 Q When he's reaching out and -- and taking a swing at
19 you, was he trying to knock the cell phone out of your hand?

20 A Yeah, he was trying to knock the phone out of my
21 hand.

22 Q You saw the -- the dent in the door. Who caused
23 that hole?

24 A Dan did.

1 Q When that occurred had been Dan -- was Dan drinking
2 or sober?

3 A He actually was sober but he had spent the night
4 drinking so he might have been groggy or still kind of
5 intoxicated from the night before.

6 Q Was there another incident in -- on August 29 where
7 Dan pulled Riley off of you after waking her up?

8 A Yeah.

9 MR. PAGE: Okay. Could you play Exhibit 37, please?
10 11:57:43

11 (VIDEO PLAYED)

12 Q What is your issue with him waking you up in the
13 middle of the night?

14 A It's exhausting. It's -- it's sleep deprivation. I
15 mean, I just was constantly like -- like controlled, like in
16 this like hostage situation, you know, where like I -- this
17 was the only place I could sleep, this was our home. And I
18 wasn't able to go to work. I wasn't able to think clearly. I
19 wasn't able to just be in the right mind. I was constantly in
20 -- in this fight or flight sleep deprived life.

21 Q So how does that impact your ability to get up in
22 the morning and do your job the next day?

23 A Oh, it -- it dramatically impacted my ability to be
24 able to get up. I was constantly late every morning. I'm

1 supposed to be there at 8:20. I was -- I was arriving at
2 8:30, 8:40. Luckily, I have a very forgiving and
3 understanding principal who -- who is very supportive and
4 didn't, you know, write me up or -- or come after me for that
5 sort of thing. But, I mean, it was -- it was really difficult
6 to do my day-to-day duties, be attentive to my students. I
7 was also working on my national board certification at that
8 time which is a very elite certification that very few
9 teachers have. And it was -- it was a very exhausting time.

10 Q Was Dan aware of all of this?

11 A Yes, he was.

12 Q Did Dan care?

13 A No. And -- and class sizes had actually increased.
14 We were going from class sizes of 33 to 43. I mean, that was
15 a huge adjust in my work life. Our -- our school went from --
16 from 1100 students to -- to over 1800 students. I needed to
17 be on top of my A-game. I needed to be able to take our
18 daughter to daycare on time and go to work on time and work on
19 my national board certification, at least have the support of
20 letting me sleep.

21 Q When Dan does this, is sometimes he's drinking,
22 sometimes he's not drinking?

23 A Majority of the time that this behavior happened,
24 was -- was due to alcohol. There were a couple of times where

1 the anger was there but it was not to this level. I would say
2 his normal anger is probably at like a six or seven and then
3 with the alcohol it's a 10.

4 Q In trying to get this going in a chronological
5 manner, after this November incident happened, did you just
6 say I've had enough?

7 A I realized that he was not going to change. I had
8 given it every chance; I could walk away from this knowing
9 one-hundred-percent in my heart that there was no changing, no
10 coming back.

11 Q If you stayed, do you believe there would be
12 additional incidents of domestic violence?

13 MR. BLACKHAM: Objection, calls for speculation.

14 THE COURT: Sustained.

15 BY MR. PAGE:

16 Q What do you think would have happened if you stayed?

17 A I think I'd be dead. During the quarantine, where
18 the bars were closed and he did have access to the alcohol and
19 the night life that he enjoyed having and his outlet, if I
20 would have been in the house taking care of Riley and
21 finishing out my national board and asking for assistance from
22 him, I believe I would be dead.

23 Q Was there a time where, I don't know how to go back
24 in time here a little bit, in which Dan wouldn't let you out

1 of the driveway?

2 A Yes, he had blocked my car from leaving. That was
3 the January 20th, I believe.

4 Q May 2, does that ring a bell?

5 A Yeah, it -- May 2nd then. Yeah, it was --

6 MR. BLACKHAM: Objection, leading. Move to strike

7 THE COURT: Overruled.

8 MR. PAGE: Okay. Madam -- Ms. Clerk, could you play
9 Exhibit 41, please.

10 THE CLERK: Yes.

11 12:02:45

12 (VIDEO PLAYED)

13 BY MR. PAGE:

14 Q What was the reason Daniel blocked you in the
15 driveway?

16 A I wasn't being intimate enough with him and he
17 wanted to have a discussion about it. He was always upset
18 about me not being intimate enough with him.

19 Q What did they -- what comment did he have about the
20 wedding ring? Did he expect you to wear the wedding ring?

21 A Yes, if I didn't have the wedding ring on and I
22 didn't say I love you and be intimate with him and do
23 everything that he demanded that I do then he would, you know,
24 be upset and, you know, keep me obstructed from leaving; in

1 this case, for work.

2 Q After this case commenced, Daniel was ordered to pay
3 you child support; is that accurate?

4 A Yes.

5 Q What -- how would he -- on at least one occasion
6 have the child support paid?

7 A One of the occasions he -- he handed the check to
8 our daughter and told her to tell mommy to buy something nice.

9 Q Had Dan also threatened to commit suicide at times?

10 A Yes, there are several text messages over primarily,
11 I think, 2019 where he had said that he wanted to kill
12 himself, walk into traffic, he hated his life, get hit by a
13 truck.

14 MR. PAGE: Ms. Clerk, could you play Exhibit 47,
15 please?

16 THE CLERK: You said 47?

17 MR. PAGE: 47. Thank you.

18 12:05:37

19 (VIDEO PLAYED)

20 MR. BLACKHAM: This wasn't stipulated to. That's
21 understood, right?

22 MR. PAGE: You did?

23 MR. BLACKHAM: We did not stipulate to this.

24 MR. PAGE: Oh, you didn't?

1 MR. BLACKHAM: No, we didn't.

2 MR. PAGE: Could you --

3 MR. BLACKHAM: We did the --

4 MR. PAGE: -- stop playing, please?

5 THE CLERK: Yes.

6 MR. PAGE: Sorry.

7 BY MR. PAGE:

8 Q Do you have audio of Daniel threatening to commit
9 suicide?

10 A I -- there might have been. It's not con -- I mean,
11 there was a -- there was a really long video which he had kept
12 me up at night. He might have said something in that one.

13 Q But did you -- you're plugging in an audio file of
14 Daniel taunting and in a -- audio file that he threatened to
15 put a bullet in his head?

16 MR. BLACKHAM: Objection --

17 THE WITNESS: Yeah.

18 MR. BLACKHAM: -- asked and answered.

19 THE WITNESS: Yes.

20 BY MR. PAGE:

21 Q Okay. Had that -- to the best of your knowledge,
22 has that audio been provided to Opposing Counsel?

23 A I believe so.

24 Q Okay. Do you believe if you heard Dan's voice you

1 could identify Dan's voice as being Dan?

2 A Yes, I can.

3 MR. PAGE: Move for admission of Exhibit 47.

4 MR. BLACKHAM: Object to regarding -- I don't think
5 -- lack of foundation. I don't think that --

6 THE COURT: Well, it --

7 MR. BLACKHAM: And she didn't sound like she even
8 knew what he was talking about and -- and said there was a
9 long one. And then he led her to something else. I'm not
10 saying anything improper. I'm just saying he gave her leading
11 questions and then she said oh, yeah. I mean --

12 THE COURT: Well, we can admit it now or he can use
13 it during cross examination of your client and he -- your
14 client can verify it's his voice.

15 MR. BLACKHAM: And -- oh, if he can't, then --

16 THE COURT: Well --

17 MR. BLACKHAM: -- then that's -- that's the issue.

18 THE COURT: Go -- go ahead and play it and -- and if
19 she can identify his voice.

20 MR. PAGE: Ms. Clerk, can you play that, please?

21 THE CLERK: Yes.

22 12:07:35

23 (VIDEO PLAYED)

24 A Yes, that's his voice. He said bullet in my head

1 right now.

2 Q Whose voice was that, Ms. Rubidoux?

3 A That was Dan.

4 Q And what was Dan threatening in that?

5 A He was threatening to put a bullet in his head and
6 he was counting down.

7 Q How was he counting?

8 A Two, one.

9 Q What concerns do you have if he is in an emotionally
10 weak place and he has Riley?

11 A I'm extremely concerned that there can be some
12 erratic behavior, that he can do this again with someone else.
13 I mean, this -- this behavior runs in the family. This is --
14 you know, this wouldn't be the first time that this happened
15 and I -- I don't want this to happen where my daughter sees,
16 you know, her family members dead.

17 MR. BLACKHAM: Excuse me, Fred, did you establish a
18 date for the --

19 MR. PAGE: No, I didn't, but thank you.

20 BY MR. PAGE:

21 Q Approximately when did -- did you recall recording
22 that audio? A year is fine.

23 A I believe this one -- 2019. October 2019.

24 Q If I said October 2018, would that sound better?

1 A Yeah. Sorry. I -- it's -- yeah, I meant 2018.

2 Q You also have text messages between you and Dan on
3 -- regarding him threatening to commit suicide?

4 A Yes, I do.

5 Q Could you turn to Exhibit 28, please?

6 A Yes. Yes.

7 Q Could you go through the pages and identify the
8 document, please?

9 A So page 28 is a compilation of text messages from
10 July 23rd, 2018 to August 5th, 2019 in which he stated times
11 that he wanted to kill himself.

12 MR. BLACKHAM: Objection, Your Honor. She needs --
13 that's not a foundation. She's reading it into the record.

14 THE COURT: Sustained.

15 MR. BLACKHAM: Move to strike

16 THE COURT: That's stricken.

17 BY MR. PAGE:

18 Q How did you compile these text messages?

19 A I found a court approved app that would take all
20 messages off of my phone and put it into a PDF file that would
21 list out the date, my phone number, his phone number, and it
22 would have all the messages that I could go through and find
23 where he had talked about wanting to kill himself.

24 Q How many times do you estimate that Dan has

1 threatened to kill himself?

2 A Twelve.

3 Q Are these text messages you have here a true and
4 accurate representation or copy of the text messages that you
5 took from your phone?

6 A Yes.

7 MR. PAGE: Move for admission of Exhibit 28.

8 THE COURT: The problem is they're not readable.

9 MR. PAGE: It depends on which one you have. And I
10 -- I acknowledge that some of these are sort of faded.

11 THE COURT: Do you have a better copy? Because I
12 can't --

13 MR. BLACKHAM: Yeah.

14 THE COURT: -- I can't admit them when I can't even
15 read --

16 MR. BLACKHAM: And --

17 THE COURT: -- the dates --

18 MR. PAGE: Because --

19 THE COURT: -- or -- or what the whole thing is.

20 MR. PAGE: There -- the ones that are on my computer
21 are legible. The ones that are in his book are legible. The
22 ones that are in her book are legible.

23 THE COURT: Okay.

24 MR. BLACKHAM: They're not entirely legible at all.

1 And the context is absent. I mean, they --
2 MR. PAGE: That's --
3 MR. BLACKHAM: -- they are --
4 MR. PAGE: That's a (indiscernible).
5 MR. BLACKHAM: -- snippets of text messages.
6 THE COURT: Yeah, I don't think --
7 MR. BLACKHAM: And best evidence.
8 THE COURT: -- this Exhibit 28 can be admitted.
9 MR. BLACKHAM: Thank you.
10 THE COURT: It's just not complete or readable.
11 THE CLERK: Your Honor, for clarification, would you
12 like Exhibit 47 admitted?
13 THE COURT: Has that --
14 MR. PAGE: Yeah, we -- I thought --
15 MR. BLACKHAM: I think she did.
16 MR. PAGE: -- it was admitted.
17 MR. BLACKHAM: I think she admitted 40 --
18 THE CLERK: Okay.
19 MR. BLACKHAM: -- 47.
20 THE CLERK: Thank you.
21 BY MR. PAGE:
22 Q Could you go ahead and turn to the next exhibit
23 which would be Exhibit 29?
24 A Okay.

1 Q What is -- what are these photographs of?

2 A This is a photograph of our daughter holding an
3 assault rifle.

4 Q Who took the photograph?

5 A Dan took the photographs.

6 Q What's the first rule of gun safety?

7 A That the gun is always loaded.

8 Q What concerns do you have about your -- how old
9 daughter holding a loaded gun?

10 A She is three and she's holding a gun not in a
11 fashion that a gun should be held and not in a place where a
12 gun should be held and not with someone assisting her who
13 knows gun safety.

14 Q What concerns do you have about Daniel's judgment in
15 engaging behavior like this?

16 A That he thinks this is funny or cute, that he's not
17 taking guns seriously. Every gun should be treated like it's
18 loaded and he should be teaching her gun safety. I mean,
19 obviously at this age she shouldn't even be aware of guns.
20 They should be locked up either in a safe or where a child
21 cannot reach them.

22 Q What concerns do you have considering Daniel's
23 alcohol use, drug use, as to whether he is going to keep a gun
24 secured?

1 A I mean, I definitely worry that he's not going to
2 keep a gun safe and secure and that he's not going to take it
3 seriously if he's under the influence. He may not remember to
4 put it away or may not remember to lock up a gun safe and
5 therefore she can think this is fun because obviously, you
6 know, she sees this as a toy.

7 Q Could you turn to Exhibit 30, please? Could you
8 iden -- what's -- what are these photographs of?

9 A The photograph of her back. It was a bruise from
10 where a car door had hit her and she said Daddy hit her with a
11 car door.

12 Q Are you concerned as to whether when Riley is with
13 Mr. -- Mr. Rubidoux that he -- that he may not be looking out
14 for her as closely as he should be?

15 MR. BLACKHAM: Objection, leading.

16 MR. PAGE: I'll rephrase it. You're correct. It's
17 leading. I'll -- I'll rephrase.

18 BY MR. PAGE:

19 Q What concerns do you have if Riley is being returned
20 with bruises as to his ability to look after Riley?

21 A I -- I worry that she's going to continue to get
22 hurt or that her care is not going to be cared after. There
23 was no message in OurFamilyWizard that she had been -- you
24 know, that something had happened. There was -- there was no

1 communication at all whatsoever. You know, I was changing her
2 and then saw these bruise marks on her back. And when I asked
3 her about it, that's what she said had happened.

4 Q I'd like you to turn to Exhibit 31, please.

5 THE COURT: Are you at a point where -- where -- I
6 want -- didn't want to break your subject flow there, but it's
7 already 12:15. And I haven't given a morning break to -- to
8 my staff either.

9 MR. PAGE: They're hard workers.

10 THE COURT: They -- they are very hard workers. I
11 have the best staff in the whole court system. But are you at
12 a point where we can break now or are you right in the middle
13 of a subject?

14 MR. PAGE: I mean, I'm going to go through a little
15 bit more, but we can take a break. That's fine.

16 THE COURT: Okay.

17 MR. BLACKHAM: Thank you.

18 THE COURT: And how much of your -- of direct do you
19 think you have for your client?

20 MR. PAGE: Honestly, maybe 10 minutes.

21 THE COURT: Okay. So let's -- let's go ahead and
22 take our lunch break now.

23 MR. BLACKHAM: Can I go on 45?

24 THE COURT: Yes, you -- do you really -- I'm

1 concerned. We haven't even got through --

2 MR. BLACKHAM: I --

3 THE COURT: -- the Plaintiff's direct.

4 MR. PAGE: I am --

5 MR. BLACKHAM: Your Honor, I think -- I think that

6 honestly Mr. Page indicated he didn't think we were going to

7 finish today anyway.

8 MR. PAGE: I -- I was preparing my client on

9 Saturday. I thought -- I don't think I can get through --

10 MR. BLACKHAM: I'm --

11 MR. PAGE: -- the day.

12 MR. BLACKHAM: And -- and I -- and believe me, I

13 don't want that to be the case, but I just think realistically

14 and also again the idea that we would finish today and then

15 have to hurry and close scares me. And so I'm -- my -- my

16 thought is that we might need another day on calendar. And

17 I'm just saying I just realistically --

18 THE COURT: Let's go off the record --

19 MR. BLACKHAM: And he has --

20 THE COURT: -- and can I talk to Counsel.

21 MR. BLACKHAM: Yeah, absolutely.

22 (COURT RECESSED AT 12:16 AND RESUMED AT 1:35)

23 THE CLERK: We are on the record, Your Honor.

24 THE COURT: Okay. Is there anything new we need to

1 talk about?

2 MR. BLACKHAM: I -- I think we confirmed another

3 date; is that correct?

4 THE COURT: I --

5 MR. PAGE: Yeah.

6 THE COURT: I found you one.

7 MR. BLACKHAM: Yeah, I think my office said we would

8 do it. I don't know --

9 THE COURT: It's Friday, June 25th --

10 MR. BLACKHAM: At 9:00 a.m.

11 THE COURT: -- at 9:00 o'clock. That's a full day.

12 A new -- we will get it finished that day --

13 MR. BLACKHAM: Yeah.

14 THE COURT: -- including decision if you guys --

15 MR. BLACKHAM: That's right.

16 THE COURT: -- if it works for everybody.

17 MR. PAGE: I suspect the 24th will open up.

18 THE COURT: I have -- he has a trial from me on the

19 24th.

20 MR. BLACKHAM: Yeah, I gleaned that.

21 MR. PAGE: It's -- it's an open date for me.

22 THE COURT: Perfect. We will lock that in. Your

23 first stack locked in. All right. Continue Mr. Page when you

24 -- as you're ready.

1 DIRECT EXAMINATION CONTINUED

2 BY MR. PAGE:

3 Q Ms. Rubidoux, you're -- you're still under oath so
4 you're aware of that. When we left off, we were talking about
5 photographs of Riley with bruises and scratches. I now would
6 like you to turn to Exhibit 31, please.

7 A Okay. I'm there.

8 Q Are you there?

9 A Yes.

10 Q Could you identify the photographs in this exhibit?

11 A Yes. It is a picture in our master bedroom. That's
12 the master closet behind. And you can see that there is a
13 hole in the wall which was punched by Dan.

14 Q Well, when did these holes occur?

15 A I don't recall the exact date right now at this
16 current moment but there were several instances all throughout
17 the marriage of things like the switches being punched and
18 doors being punched and -- and walls being punched in. But
19 this definitely was probably 2019. 2018 or 2019.

20 Q Over the course of the marriage, how many walls
21 would you estimate Dan has punched in?

22 A Four of five.

23 Q Okay. Over the course, how many doors do you think
24 Dan has punched in?

1 Q What concerns do you have as it relates to the
2 safety of Riley because Dan is punching holes and doors and
3 walls and things like that?

4 MR. BLACKHAM: Objection, leading.

5 THE COURT: Overruled.

6 THE WITNESS: I would definitely be worried that he
7 cannot control or manage his temper in any setting. And so if
8 he's frustrated with work or if he's frustrated with Riley or
9 if he's frustrated with the future person that he's with that
10 he's going to take his anger out and -- on the property which
11 is going to be in front of Riley or eventually it could lead
12 up to happening to Riley or to someone else in front of Riley.

13 BY MR. PAGE:

14 Q Do you know as to whether Mr. Rubidoux is -- has
15 ever been psychologically evaluated?

16 A We went to counseling once and there was talk about
17 his dad having bipolar and there was talk about him --

18 MR. BLACKHAM: Objection, non-responsive. Move to
19 strike.

20 THE COURT: That's sustained and granted.

21 BY MR. PAGE:

22 Q Did you ever attend marriage counseling with Mr.
23 Rubidoux?

24 A Yes.

1 Q What were one of the things that came out of
2 counseling as it relates to the family's psychological
3 history?

4 A The -- the --

5 MR. BLACKHAM: Objection, calls for hearsay or lack
6 of foundation. Both.

7 THE COURT: Sustained as far as foundation. It's
8 not hearsay if he disclosed things during their counseling.
9 BY MR. PAGE:

10 Q When did the counseling occur?

11 A I want to -- there was -- there was two different
12 times that -- that we went. There was 2018, 2019, and then he
13 tried to go in 2020. So I believe this one was 2018.

14 Q Who was the therapist?

15 A I don't remember. We only saw her once.

16 Q As part of your therapy, did you have to discuss
17 with each other what your background was to your respective
18 family psychological histories?

19 A Yes, we did discuss family.

20 Q What was one of the things that Dan mentioned as it
21 relates to his family history?

22 MR. BLACKHAM: Sorry. Go ahead. I apologize.

23 A Dan mentioned that --

24 MR. BLACKHAM: Objection, relevance. His family

1 history isn't relevant.

2 MR. PAGE: One -- one of the factors that we look at
3 is the emotional, physical, and mental health of the parties.
4 So therefore the family history as it -- could carry over into
5 him is relevant.

6 MR. BLACKHAM: If Counsel is giving expert testimony
7 concerning the relevance of family history of mental illness,
8 if any, to a parent in the litigation, then I assume you would
9 have disclosed the expert. But I am not aware of that. So,
10 again, my objection.

11 THE COURT: Sustained as to relevance. Thank you.

12 BY MR. PAGE:

13 Q What did Dan indicate about his psychological
14 issues?

15 MR. BLACKHAM: Objection, leading.

16 MR. PAGE: No, it's not.

17 THE COURT: Overruled.

18 THE WITNESS: There wasn't any that he indicated to
19 me about -- I mean, he thinks he's perfect. He thinks
20 everything he does is right.

21 BY MR. PAGE:

22 Q What ownership was Daniel willing to take of the
23 things that he done?

24 A There is no ownership. It's always my fault. He

1 blames everything on me. I'm the one that had him arrested.

2 That's what he said --

3 MR. BLACKHAM: Objection --

4 A -- about the --

5 MR. BLACKHAM: -- non-responsive. Move to strike.

6 MR. PAGE: No, it's responsive. I asked about
7 ownership and he blames everyone else. And now it includes --
8 including him being arrested and convicted.

9 MR. BLACKHAM: And she's going into a narrative.

10 THE COURT: I'm going to overrule that, but you can
11 go ahead and ask your next question.

12 MR. PAGE: Thank you.

13 BY MR. PAGE:

14 Q What concerns do you have in the future as to
15 whether Daniel's going to take any ownership over the things
16 that he does?

17 A I -- I have a huge concern about, you know, Riley's
18 safety and -- and, you know, what situation she's going to be
19 put in and -- and the decisions that he's going to make and
20 where she's going to find herself. And there's no one there
21 to advocate her and take care of her and -- and help her.

22 Q And during the pendency of the case, has -- in your
23 opinion, has Daniel been on his better behavior?

24 A From what I -- I -- from what I know but I -- I

1 assume that's because the case is open and pending and he
2 wants to try and --

3 MR. BLACKHAM: Objection, move to strike everything
4 after from what I know.

5 THE COURT: Sus -- granted.

6 MR. BLACKHAM: Non-responsive.

7 BY MR. PAGE:

8 Q What concerns do you have after the spotlight is off
9 of Dan and how he's going to behave?

10 A I worry that this isn't a permanent decision him
11 trying to be involved in Riley's life, that, you know, he's
12 going to pawn her off on other people, that he's not going to
13 be an active role anybody because the case isn't open.

14 Q What do you have -- what concerns do you have as it
15 relates to his impulse control issues?

16 A I -- I worry about him drinking and driving and --
17 and driving under the influence. I worry about his anger
18 coming after Riley. I worry about, you know, him not being
19 there. Right now he's being present in -- in Riley's life
20 during the time that he has her and so she has this
21 expectation now because she's five. You know, I worry that
22 he's going to -- you know, once this case is closed he's not
23 going to continue this. And this is going to be an emotional
24 let down to her because, you know, this is going to have

1 change with -- with what she's seeing.

2 Q As it -- could you turn to Exhibit 32, please?

3 A Okay.

4 Q What is this document?

5 A This is a Facebook post.

6 Q Who -- who posted this?

7 A Appears to be Dan posting it.

8 Q And that -- what does Dan say about you?

9 A Happy Mother's Day to all the mothers out there,
10 especially the mother of my beautiful daughter; Stephanie.
11 Thank you for being a great mother to our child.

12 Q Can you turn to Exhibit 33, please?

13 A Yes.

14 Q What is that?

15 A It's a list of my personal property, his personal
16 property, and then property during the marriage.

17 Q Are these -- do you believe that the -- who created
18 this document?

19 A I did.

20 Q Okay. What did you base the distribution on?

21 A How everything was pretty much taken because our
22 house was sold. So items he took, items I took. And then
23 obviously his personal property was his before marriage and
24 mine was before marriage or inheritance gifts.

1 Q Is this the personal property division you would
2 like the Court to affirm?

3 A The only one that I was questioning was he has three
4 of the guns, two of them were won at Rocky Mountain Elk
5 Foundation. And I wanted to have one of them.

6 Q So you're requesting the Court ordering -- that you
7 received that particular gun.

8 A He took it. So I -- I want the AR gun, the one that
9 was won at the Rocky Mountain Elk Foundation. It was like a
10 -- I think it was a 9 millimeter assault rifle.

11 Q Let's talk about your vehicle. When did you acquire
12 that vehicle?

13 A I purchased it in 2008, prior to the marriage.

14 Q Are you requesting that that vehicle be confirmed to
15 you as your sole and separate property that was acquired by
16 you prior to marriage?

17 A Yes.

18 MR. BLACKHAM: I don't think there's any dispute of
19 that.

20 MR. PAGE: What?

21 MR. BLACKHAM: I don't think there's any dispute on
22 the vehicle.

23 MR. PAGE: Okay. We can make that stipulation on
24 the record. That would --

1 MR. BLACKHAM: Yeah, I thought we did. I apologize.
2 MR. PAGE: Okay.
3 MR. BLACKHAM: Her vehicle, it was --
4 THE COURT: It's the --
5 MR. BLACKHAM: -- pre-marriage.
6 THE COURT: -- 2009 Mercury Mariner?
7 THE WITNESS: Yes.
8 Q Okay. Could you turn to Exhibit 54, please?
9 A Okay.
10 Q Can you identify this document, please?
11 A Yes, this is a photograph from his sister's wedding,
12 Jessica. That's me in the middle.
13 Q What would you like the Court to note about --
14 anything particular about that photograph?
15 A On both arms, you should be able to --
16 MR. BLACKHAM: Objection, calls for narrative.
17 THE COURT: Overruled. I'm sorry, but which exhibit
18 are you on?
19 MR. PAGE: 54.
20 THE COURT: 54. Thank you.
21 THE WITNESS: On both arms, you can see imprints of
22 where he had grabbed me on my arms. And there's actually
23 makeup on there. So it was still pretty evident even with
24 makeup on.

1 BY MR. PAGE:

2 Q In your opinion, is there a pattern of conduct that
3 Daniel has in committing acts of domestic violence?

4 MR. BLACKHAM: Objection, leading.

5 THE COURT: Overruled.

6 THE WITNESS: Yes, his actions of domestic violence
7 have increased throughout the years.

8 BY MR. PAGE:

9 Q What concerns do you have as it relates to Riley?

10 A I'm concerned that one day it's going to happen to
11 Riley because she is the spitting image of me.

12 Q I'm sorry, she what?

13 A She looks exactly like me.

14 Q I've got to ask some questions that are basic to
15 every divorce just so you understand. Is it true that your
16 likes and dislikes, interests and friends have grown so
17 separate and apart that you and Mr. Rubidoux are unable to
18 live together harmoniously as husband and wife?

19 A Yes.

20 Q Is there any possibility of reconciliation?

21 A No.

22 Q It's a question I have to ask everything. Are you
23 now pregnant?

24 A No.

1 Q Would you like to have your maiden name restored to
2 you?

3 A No.

4 Q I -- I've a couple more items. Mr. Rubidoux has
5 presented some documents in his exhibits as it relates to
6 timeshare. What issues do you have with those exhibits even
7 though they haven't been admitted yet?

8 A The majority of the pictures that -- well, a good
9 por --

10 MR. PAGE: Oh, they're admitted. Yeah, they're
11 admitted. Nevermind.

12 THE WITNESS: I'm sorry?

13 MR. BLACKHAM: We stipulated to --

14 MR. PAGE: They -- they stipulated to their
15 admission.

16 Q So you --

17 A Okay.

18 Q -- you can just keep going.

19 A Oh, keep going?

20 Q Yeah.

21 A Okay. A lot of the pictures that were included were
22 actually pictures from my Facebook page that was requested of
23 me during discovery. So the pictures of Riley are from times
24 that I was present or times that I orchestrated events with

1 either my family, his family, or things going on.

2 MR. BLACKHAM: Objection, non-responsive. Move to
3 strike.

4 THE COURT: Yeah, I don't think she understood your
5 question -- or maybe I didn't understand your question.

6 THE WITNESS: Oh, I'm sorry.

7 BY MR. PAGE:

8 Q Could you turn to Exhibit C in the big book there?

9 A The big book? Okay. Oh, okay.

10 MR. BLACKHAM: Your Honor, my -- my motion to
11 strike, because I don't think it was non-responsive to that --

12 THE COURT: Oh, yes. I'm sorry. Granted.

13 MR. PAGE: I'll ask the question another way. Don't
14 worry about it.

15 Q Your at Exhibit C?

16 A Yes, I am.

17 Q Okay. What is this document?

18 A This is a document that Dan created where he states
19 he had certain time with Riley but this is inaccurate.

20 Q Is it in photo or in black and white?

21 A It's in color.

22 Q Okay. Because the one they gave me is in black and
23 white. What issues do you have with that document?

24 A Several issues. The green is where he's stating he

1 has her which I have text message evidence of every single
2 exchange that happened. The first one that you can look at,
3 November 5th, is when he left. If he left, he didn't take
4 Riley. How did he have her on the 6th? He did not pick her
5 up from school. I have all the sign-in sheets from the
6 school. He did not pick her up. Almost all of these are
7 drastically inaccurate. He says he had more time than me in
8 December and I think he only had like 11 nights in December.
9 And then in January, I think, the most he had was like 14.
10 But the -- these are -- these are all inaccurate. And if he's
11 inaccurate with this custody schedule, he's going to be
12 inaccurate with a lot of other things.

13 Q Okay. So for example in January 2020, he's trying
14 to claim he actually had Riley 68 percent of the time. Is
15 there any possible way that can possibly be true?

16 A No. I have text message evidence of every single
17 exchange. I have every single sign-in drop-off sheet for this
18 time frame. I have pictures of -- of me doing things with
19 her. This is completely inaccurate. I have created a
20 calendar myself color coded as well which dictates (sic) the
21 accurate time that she was with me and every time she was with
22 him.

23 Q So take a look here at February. How -- is that in
24 any way possible way accurate?

1 A That one's a little bit more accurate. I think
2 there was only two discrepancies that I had with February.
3 But November, December, January were completely off.

4 Q Take a look at March. Is March in any way possibly
5 correct?

6 A March would be accurate. This is -- I -- I think
7 there might have been one or two errors. I think it might
8 have been one or two errors. I think it might have been he
9 actually had time with her when he said it was mine. But this
10 one -- this one might just have like one or two errors.

11 Q Also for April, is that in any possibly accurate?

12 A April's accurate.

13 Q Okay.

14 A That's when the custody order was in place.

15 Q And that was entered by Judge Henderson?

16 A Yes.

17 Q Also there was some issues with Daniel having COVID
18 around Christmas. What happened then?

19 A So he had Riley on the weekend and then she was
20 given back to me I think it was like December 12, 13, 14,
21 somewhere in that time range. And then he contacted me on a
22 Tuesday of that week and said I think I have COVID. Him and I
23 do not have a conversa -- we cannot have a conversation. So I
24 didn't want to get into the conversation of if he has COVID

1 what to do. I said look, get tested. When you get tested,
2 let me know. We'll make adjustments. And he didn't contact
3 me. He was supposed to get tested on the 17th. I didn't get
4 any contact of whether he was positive or not. On the 20th, I
5 reached out. Hey, do you have COVID, like what's going on. I
6 don't know. And he said I had COVID. You know, and that just
7 doesn't match up with the amount of time that you're supposed
8 to quarantine. And -- and when did he have COVID? Because he
9 could have had Riley when he had COVID. In that case, he
10 should have quarantined with her or he should have let me know
11 that I needed to get tested and my parents need to get tested.
12 None of this communication happened at all.

13 I immediately contacted one of my good friends who
14 is an ICU nurse to find out her opinion on what to do in this
15 manner because she is a professional. And I reached out to my
16 lawyer on how I should handle this situation. And it was
17 determined until --

18 MR. BLACKHAM: Objection, calls for hearsay.

19 MR. PAGE: No. No. Didn't have to say that. It
20 was determined.

21 THE COURT: Go ahead.

22 THE WITNESS: It was determined that I needed to get
23 a hold of the first original COVID test so we can find out
24 what day one of symptoms was --

1 MR. BLACKHAM: I'm going to object to lack of
2 foundation. She's saying it was determined without -- and it
3 could be -- she's basing it on hearsay information. I don't
4 -- what does that mean?

5 MR. PAGE: If -- he can't object to the answer. You
6 can object to the question?

7 MR. BLACKHAM: I can -- I -- I can move to strike
8 the answer as non-responsive.

9 MR. PAGE: It was responsive.

10 MR. BLACKHAM: It -- it's -- it's inadmissible.

11 BY MR. PAGE:

12 Q So what did the COVID test show?

13 A I was never -- I never received the original test.
14 He went and got a rapid test done on, I think it was, either
15 the 23rd -- yeah, the 23rd because he was supposed to pick her
16 up in the after -- in the evening of the 23rd. And upon
17 reviewing the rapid test result it says that it cannot -- it
18 can give false positives, you know, it's not accurate. And I
19 think it had like a 40 or 60 percent inaccuracy. I don't
20 recall the exact number. And upon speaking with COVID ICU
21 professional and my lawyer again I was advised to wait.

22 MR. BLACKHAM: Objection, calls for hearsay.

23 MR. PAGE: I'll ask a different question.

24 BY MR. PAGE:

1 Q As a result of the investigation that you conducted,
2 what happened as it relates to Daniel having visitation with
3 Riley?

4 A Can you repeat the question?

5 Q Sure. As a result of the investigation that you
6 conducted, what happened with Daniel's visitation with Riley?

7 A So he did not get Christmas Even with Riley because
8 my fear was that if I gave her to him on Christmas Eve and he
9 still has COVID with symptoms that are contagious then she's
10 going to come back to me and then, you know, it's not
11 following the -- the CDC guidelines of quarantine or anything.
12 And so he did not get Christmas Eve with her. So she had
13 spent Christmas Eve with me which was his holiday time and
14 then spent Christmas Day with me as my holiday time. And then
15 I sat down and really thought about the situation and, you
16 know, decided that it had been enough time because the 24th or
17 the 20 -- no, the 25th was 10 days, I think.

18 And I felt comfortable with giving her back to him.
19 And I said why don't you have her the entire next week. If
20 there is anything that happens, then she's not going back and
21 forth. And so she ended up being with him the -- the entire
22 rest week of the winter break.

23 Q Was that -- is -- was that a way of making up the
24 time that he lost on Christmas?

1 A That made up some of his vacation time that he had
2 requested, but that was my attempt to make up for -- for
3 Christmas Eve being missed, but I know he's not satisfied with
4 that.

5 THE COURT: I'm sorry, what year again are we
6 talking about? December '19 or --

7 MR. PAGE: 2020.

8 MR. BLACKHAM: 2020.

9 THE COURT: '20.

10 THE WITNESS: 2020.

11 THE COURT: Okay. All right.

12 Q If Daniel wants to have FaceTime with Riley and vice
13 versa, what do you do to facilitate that?

14 A When COVID hit in April of -- March -- March of
15 2020, I immediately searched avenues for her to be able to
16 engage in conversation with him because she was going to be
17 staying with me. And I found Kids Messenger and I put it on
18 her iPad. And so she is free to call him, text him, FaceTime
19 him. They can play little games together. And it's her iPad.
20 So she's able to use this. When I was at home quarantined --
21 or during quarantine at work, she was able to make almost
22 daily phone calls with him. And then obviously Christmas Eve
23 and Christmas Day I made sure that, you know, I told her I
24 said you need to call Dad, you know, have some time with Dad

1 because, you know, this was a very unfortunate situation.

2 Q Okay. So did Riley speak to her father on Christmas
3 Eve via that?

4 A Yes, she spoke to him on Christmas Eve and Christmas
5 Day. She's free to call him whenever she wants. There's --
6 there's -- I don't control it or stop it on the iPad.

7 Q What limits do you put on the length of the
8 conversations?

9 A I would prefer there to be limits late at night just
10 because she doesn't transition well from talking to -- to him
11 or even assume it was me and then go to bed. I think it's
12 kind of a rough transition. So sometimes at night I try and
13 go okay, five, 10 minutes. But during the day if it's -- you
14 know, when she was home with me, I didn't mind if it was an
15 hour or two hours or whatever. Obviously he would be working
16 sometimes so that might be his limit. And then obviously
17 after 3:30 if there wasn't swimming or dance, you know, she
18 can talk to him for as long as she wants to.

19 Q What issues do you have with the Navy Federal Credit
20 Union loan?

21 A This loan was taken out without my knowledge. I did
22 not find out about it until the refinancing that happened.
23 And when I asked him about where that money went because I --
24 I didn't even know there was -- like where does 25, 30, 40

1 grand, whatever the amount, it -- where did it go? I was told
2 that it was to pay off the lawyers from the school incident
3 where he broke the window at my school and to pay for the
4 domestic violence lawyer because he had to get more loans
5 after that. So these all went to that and they also went to
6 his reimbursements that he's supposed to get back from work.
7 But he pulled out money to -- to do stuff, random stuff with.
8 I don't know what he does it with. But all the community
9 property like groceries, gasoline, activities and things that
10 we do is always on my card.

11 Q Do you want to pay for his criminal lawyers for
12 having been arrested?

13 MR. BLACKHAM: Objection --

14 A No.

15 MR. BLACKHAM: -- relevance. What difference does
16 it make if she wants to?

17 MR. PAGE: Well, she can agree to accept a
18 non-community expense and pay for one-half of that or she can
19 object to it. She's objecting to it.

20 BY MR. PAGE:

21 Q What would you like Dan to do with the \$23,000 that
22 he spent on his criminal lawyers?

23 A He should pay for it. Those were his a -- his
24 consequences of his actions. He should be responsible for

1 them.

2 Q Also was there a time when Daniel retained a
3 different (indiscernible) in the past for a divorce?

4 A Yes, he -- he retained Cordell Law.

5 Q How much did he pay them?

6 A He wrote a \$2500 check which bounced out of our
7 joint account. And then when we started to kind of discuss us
8 working out, he asked if he could use my card to pay 1.5
9 thousand dollars or something like that that he owed. And I
10 said just 1.5 thousand and he said yeah. And so I agreed.
11 And then I got about a \$4,000 charge on my credit card. And I
12 was like this is not what we discussed. And he said yeah,
13 they put the \$4,000 charge on it. They'll give you a refund.
14 Well, they did not give me the refund. He gave them his
15 credit card and got the refund put on his credit card. So
16 then I was then responsible for the \$4,000 charge from Cordell
17 Law. And he got the refund on his card.

18 Q Would you like Daniel to make you whole for that?

19 A No, I don't want to be responsible for his attorney
20 fees.

21 Q Do you want him to pay you back for that?

22 A I would like to be paid back for that. Yes.

23 Q What happened with the Ford truck?

24 A We purchased the Ford truck and we worked really

1 hard to pay it off. There was a \$560 payment and we worked
2 really hard to pay it off two years early. And right upon
3 separation, December 2019, he decided to sell a paid off truck
4 that was probably worth about \$20,000 for \$12,000.

5 Q What happened to that \$12,000?

6 A He put it into his account and spent it. I mean,
7 there's -- if you look at his bank account, there's four to
8 \$6,000 worth of ATM withdrawals every month.

9 Q When this truck was sold, was it during the pendency
10 of this case?

11 A It had sold right before, like within days.

12 Q Days before the complaint for divorce was filed.

13 A Yes.

14 Q Did Dan ever split that money with you?

15 A No, he did not.

16 Q Are you concerned that the car was -- the truck was
17 sold for less than its fair market value?

18 MR. BLACKHAM: Objection, leading.

19 MR. PAGE: Let me rephrase the question.

20 BY MR. PAGE:

21 Q What concerns do you have as to the price of which
22 the vehicle was sold?

23 A Like I said, it was probably estimated at about
24 \$20,000 and we paid it off early and he sold it for 12,000.

1 So obviously he was getting rid of it because it was joint
2 property. And he wanted to get rid of it quickly.

3 Q What discussions did -- what permission did he get
4 from you to sell the vehicle?

5 A There was no permission from me and unfortunately
6 the title said or instead of and. I did not realize that.

7 Q Again, I think you have expressed to the Judge
8 already. He never split the money with you?

9 A No, the money was deposited into his account and
10 then pulled out for ATM withdrawals.

11 Q Have you reviewed Daniel's financial disclosure
12 form?

13 A Yes, I have.

14 Q What are your concerns with that?

15 A The W-2 was not an accurate W-2. And I know Dan is
16 very competent with computers and he does know how to change
17 ATM all source. It did -- just didn't look like an accurate
18 representation of his W-2s. His paychecks were not also
19 actual pay stubs that list out all of the withdrawals that
20 come out of your tax -- that come out of your paycheck, you
21 know, like medical and -- and social security and whatnot. It
22 was just literally it looked like a check. And so I worry
23 that these things can be frivolously put together and these
24 are not accurate depictions of what he makes.

1 Q Now, in his pretrial memorandum, what did Dan say
2 that he was going to do with the debt that was in his name?

3 A He said he was going to keep it.

4 Q Had you known that he was going to try and change
5 his mind today, what would you have done differently to have
6 more evidence before this Court as it relates to the Navy
7 Federal Credit Union debt?

8 A I would ask that we subpoena his bank records so we
9 can find out where this money went because he's -- he's
10 claiming that this is community property but I don't know what
11 community this went to. This was not the community of him, I,
12 and Riley.

13 Q But you never signed the loan of Nevada -- Navy
14 Federal Credit -- Nevada Federal Credit Union.

15 A No, I did not. I did not find out about it until we
16 did the refi on the house. It was a surprise for me.

17 Q As it relates to custody, what timeshare are you
18 asking the Court to implement for Riley?

19 A One to two days a week.

20 Q What is your reasoning for asking that he has Riley
21 one to two days per week?

22 A Dan has established a pattern of domestic violence
23 and he snaps. So we don't know when that's going to be. And
24 with his consumption of alcohol and anger and temperament

1 issues, we want to make sure that the time that he has with
2 Riley is short so he can enjoy time with his daughter but not
3 enough time where he can snap or do something drastic.

4 Q But Dan appears to be claiming that you committed
5 your own acts of violence against him. Have you ever?

6 A I've only defended myself.

7 Q When you say defended yourself, what do you mean?

8 A If he's come -- he -- he typically would attack me
9 in the house when there weren't cameras present. So he would
10 be coming at me. And when he was coming at me -- 2019 is when
11 I started to fight back. So I would bite, like if he came at
12 me I would bite on his chest. And I would kind of like try
13 and move out of the way. So I might have, you know, knocked
14 his glasses off or, you know, like maybe made contact with his
15 face. But I never came at him attacking him. I only was
16 defending myself.

17 Q Prior to that time, what did you do when -- when Dan
18 was physical or engaged in acts of domestic violence against
19 you?

20 A In 2017 and 2018 I would not fight back. I was just
21 kind of hoping that this would subside and go away. I was
22 just very submissive.

23 Q Are you requesting that Daniel pay child support
24 according to the statute?

1 A Yes, according to the statute.

2 Q Who's providing health insurance for Riley?

3 A I am.

4 Q Do you request that Daniel pay for one-half of the
5 cost of the health insurance allocable to Riley on your
6 insurance?

7 A Yes, and I would also like for him to contribute
8 towards, you know, the -- like follow the 30/30 rule.

9 Q Also you -- are you asking the Court to award you
10 the tax dependency exemption each year?

11 A Yes.

12 Q At this point as it relates to bank accounts, are
13 you requesting that you keep your bank accounts and Daniel
14 keep his bank accounts?

15 A Yes, I would like for him to sign off on my -- my --
16 I have a joint check with USAA that he's still on. I would
17 like to have him removed from it.

18 Q Well, also where's Dan living?

19 A I'm sorry?

20 Q Where's Dan living?

21 A He's living in an apartment off of -- it's like
22 Durango and Russell.

23 Q What address information has he given you as to
24 where Riley's residing when she's with -- when she's visiting

1 with him?

2 A I was attempting to update my address with the court
3 and I asked for his apartment number two days in a row and he
4 neglected to give me the information but he did just provide
5 it --

6 Q When did --

7 A -- recently.

8 Q -- he just provide it?

9 A I believe it was yesterday. He had originally sent
10 it but, unfortunately, our communication on OurFamilyWizard is
11 not very organized and it's kind of cumbersome. So I was
12 struggling to find it. It's not a simple thing to read
13 through.

14 Q And are you're requesting that you receive any and
15 all life insurance policies in your name?

16 A No, you can remove that. That's fine. It -- it --

17 Q I'm sorry?

18 A I mean, it -- it doesn't matter. That one's not
19 any --

20 MR. PAGE: I'll pass the witness.

21 CROSS EXAMINATION

22 BY MR. BLACKHAM:

23 Q Would you please turn to Proposed Exhibit B?

24 A B or D?

1 Q B as in boy.

2 A Okay.

3 Q Okay. Do you recognize that document?

4 A I do.

5 Q What is it?

6 MR. PAGE: I object to the line of questioning to
7 the extent it asks the -- asks question about settlement
8 offers and counteroffers.

9 MR. BLACKHAM: It's a text message from her directly
10 to Daniel. It is not through attorneys. They had counsel at
11 the time. They were talking together. She's trying to admit
12 a postnup that's not even valid and this -- this definitely
13 shows -- this speaks both to the property issues and to the --
14 and to the -- primarily to -- and especially most importantly
15 to the custody issue. I'm sorry, but it's not a settlement.
16 If it was a true settlement offer it would have been done
17 through Counsel. They had both retained counsel by March of
18 2020.

19 MR. PAGE: Whether one has counsel or doesn't have
20 counsel doesn't mean that the discussions between the parties
21 as to potential settlement is admissible. It's --

22 MR. BLACKHAM: Okay.

23 MR. PAGE: Look, 48.105 is very explicit. Offers
24 and counteroffers are not admissible. Maybe because they're

1 unduly prejudicial. The probative values are weighed by the
2 dangers of undue prejudice.

3 MR. BLACKHAM: There's no -- there's no undue
4 prejudice.

5 MR. PAGE: That's why the statute exist.

6 MR. BLACKHAM: If the Court's -- if the Court's --
7 you know, if the primary concern of the Court is the best
8 interest of the child, then I -- I think it's important for
9 the Court to know exactly what the opinion of the parties is.
10 If it was -- I mean, there's a reason why we put on letters in
11 bold face settlement purposes only and often cite to the
12 evidentiary statute if we want to be for that purpose. This
13 was a text exchange between the parties. She said what she
14 said and that's it.

15 MR. PAGE: There are no formal requirements as to
16 what one has to put on a communication in order to render it
17 inadmissible in a court of law. The fact that it may engage
18 in discussions between the people who are -- that are
19 preliminary and are never ultimately agreed upon makes it
20 unduly prejudicial which is why 48.105 (indiscernible) be
21 inadmissible.

22 THE COURT: It is settlement negotiations and it's
23 not admissible for the purpose of showing what she thought
24 was a -- a good deal. If you have another purpose that comes

1 under the statute --

2 MR. BLACKHAM: The purpose of best interest and what
3 her understanding of the best interest of the minor children
4 is and what her understanding of the agreement that she's now
5 trying to enforce is.

6 MR. PAGE: Again, the --

7 MR. BLACKHAM: Alleged agreement. Which is --

8 MR. PAGE: The --

9 MR. BLACKHAM: -- inadmissible -- I mean --

10 MR. PAGE: The --

11 MR. BLACKHAM: -- unenforceable.

12 MR. PAGE: Any possible probative value is
13 outweighed by the natures of undue prejudice. It doesn't
14 matter whether the think at that time that this might be
15 possible considering the cost of litigation per the motion of
16 the moment, things like that. It's still inadmissible.

17 MR. BLACKHAM: Your Honor, we're not trying to have
18 this agreement enforced per se like they're trying to do with
19 the alleged postnup. We're simply -- we simply think it's
20 important for the Court to know what the -- what one of the
21 two parents believes is in the child's best interest. And I
22 think overall it's important information. It would have been
23 done through Counsel if it was truly intended to be for
24 settlement purposes only. She can't have it both ways. She

1 can't -- she can't talk about how concerned she is and then at
2 the same time, you know, undermine it. It's important for the
3 Court to know exactly what's going on here and exactly what
4 the truth is.

5 MR. PAGE: The truth is is that they're trying to
6 get in items that deal with some discussions that are going
7 back and forth between the parties which may or may not be
8 what they finally arrive at. Also there may be considerations
9 under the heat of the moment, the emotions of the moment, and
10 the possible litigation which is why 48.105 exists. And it's
11 possible probative value which is none is outweighed by the
12 dangers of undue prejudice.

13 MR. BLACKHAM: Respectfully, Your Honor, if you --
14 if you admitted the alleged postnup, I don't understand why
15 this would not come in. This is from her. So it's
16 effectively signed against the party -- the -- by the party
17 against some enforcement aside.

18 MR. PAGE: There is a --

19 MR. BLACKHAM: And we're not asking that the Court
20 enforce it as written. We simply think it is -- it does have
21 important probative value here and the Court -- this is
22 information the Court needs in order to make a determination
23 regarding best interest.

24 MR. PAGE: There are distinctions between the two

1 because the contract that was Exhibit 25 was written --
2 handwritten by the parties, was signed by the parties and was
3 a completed contract. This is not a completed contract of
4 anything. It is purported discussions between the two parties
5 that are not even complete. And it's cherry picked as to what
6 Mr. Rubidoux wants to put in and he put this in by the way
7 Your Honor on last Thursday I believe it was. The close of
8 discovery was April 30th. He submitted this after the close
9 of discovery. I'm trying to be accommodating to Counsel by
10 letting some documents that came in after the close of
11 discovery because we've all been there but this goes beyond
12 what is allowable to allow something to come in that is a
13 settlement negotiation that was submitted after the close of
14 discovery.

15 MR. BLACKHAM: As I told Mr. Page, and I concede to
16 the timing of it, I thought when was trial was moved a week
17 that all of the deadlines were moved out a week. Mr. Page did
18 not timely file his pretrial memorandum, so I assumed he
19 thought the same thing; the pretrial memos were due on the
20 30th. Again, my bad. I own it. I'm simply saying he had
21 just as much time prior to trial to review this as he would
22 have had had the original trial date gone forward and it had
23 been disclosed on the discovery deadline. There's no --

24 MR. PAGE: And --

1 MR. BLACKHAM: Her -- his client wrote this. There
2 is no unfair prejudice here.

3 MR. PAGE: Now in any event, I --

4 THE COURT: I --

5 MR. PAGE: -- I object --

6 THE COURT: It is admissible to -- to cross examine
7 her and -- and attack her credibility as to her belief of
8 what's in the best interest of the child because she's changed
9 her story now. So I am going to admit Exhibit --

10 MR. BLACKHAM: Thank you.

11 THE COURT: -- B --

12 MR. BLACKHAM: Thank you, Your Honor.

13 THE COURT: -- and let him question her. Well, I
14 mean, you got to authenticate Exhibit B.

15 MR. BLACKHAM: I think I just did though. She
16 acknowledged that it was a text me -- it was a text message
17 between her and -- and Rubidoux and then -- Mr. Rubidoux. And
18 what -- what -- I asked her if -- if she recognized the
19 document --

20 THE COURT: I didn't --

21 MR. BLACKHAM: -- and she acknowledged --

22 THE COURT: -- hear her testify that the -- this
23 is --

24 MR. BLACKHAM: I'm trying to think of where I left

1 off when Mr. Page --

2 THE COURT: I'm sorry.

3 MR. BLACKHAM: -- objected.

4 THE COURT: So go --

5 MR. BLACKHAM: I apologize.

6 THE COURT: -- go back and lay the foun --

7 MR. BLACKHAM: Okay. I'll start from the beginning.

8 THE COURT: -- the foundation of authenticity for

9 it --

10 MR. BLACKHAM: It's probably easier

11 THE COURT: -- but the objection under 48.105 is for

12 the purpose of proving that she's made other statements about

13 the best interest.

14 BY MR. BLACKHAM:

15 Q Okay. Do you recognize Proposed Exhibit B?

16 A I do.

17 Q What is it?

18 A It is a message between I guess Dan and I. It just

19 has my name at the top.

20 Q Who wrote this message?

21 A It looks to be me.

22 Q It looks to be you or it is you?

23 A I mean, there are some messages where my name has

24 been changed on messages that I've seen by him --

1 Q Really?

2 A -- so --

3 Q It's a -- you're -- are you denying that you sent
4 this message?

5 A No, I'm not denying that. I'm just --

6 Q Okay.

7 A -- saying it does appear to be me.

8 Q Okay. And so -- so you acknowledge that this is a
9 text message from you to Dan, correct?

10 A It appears to be that.

11 Q And you acknowledge that it is, correct? I -- I
12 mean, let's not play games.

13 A I -- I understand that. It's just it's -- it's --
14 it can easily be adjusted.

15 MR. PAGE: Your Honor --

16 A It's -- it's not --

17 MR. PAGE: -- I'm --

18 A -- a PDF.

19 MR. PAGE: -- I -- I --

20 A It's not anything that -- like there's no response.
21 It's just a snapshot.

22 Q Okay. You -- you agreed --

23 MR. PAGE: Your Honor --

24 Q -- in March of --

1 MR. PAGE: Your Honor --

2 Q -- 20 --

3 MR. PAGE: -- I'm --

4 THE COURT: Hold on.

5 Q -- of 2020 --

6 MR. PAGE: I got an objection.

7 Q -- you agreed to joint physical custody --

8 THE COURT: Hold on.

9 Q -- did you not?

10 MR. PAGE: I have -- I have to enter an objection.

11 You said this comes in. It says here on page 2 of this

12 document, and, again, I just got this last Thursday. So

13 basically seven days ago, eight days ago. It says when

14 they're talking this, none of this is to be used in court is a

15 discussion of custody and divorce, not an absolutely

16 agreement.

17 MR. BLACKHAM: Doesn't --

18 MR. PAGE: I mean, the things that Mr. Blackham just

19 discussed about what attorneys do, she did without the benefit

20 of counsel.

21 MR. BLACKHAM: She -- she did -- she did at the end,

22 tacked it on, and then there's a continued conversation that

23 says thoughts on going to bed soon. So I'm sorry but she

24 can't -- she can't cherry pick a section of -- of chest -- of

1 text messages to be inadmissible and excludable when she's
2 trying to tell this Court that there's some kind of -- my
3 client causes some kind of imminent danger to their daughter.
4 It's --

5 MR. PAGE: Well --

6 MR. BLACKHAM: -- ridiculous.

7 MR. PAGE: -- they're cherry -- they're cherry
8 picking this because there would be other -- lots of other
9 text messages in between him where he's making suicidal
10 ideations where we don't let those come in for whatever
11 reason. There's discussions about his conduct toward her that
12 doesn't come in. And obviously it's cherry picked.

13 MR. BLACKHAM: The -- the Court -- the Court didn't
14 have it come in because it was illegible.

15 THE COURT: Yeah.

16 MR. BLACKHAM: That was --

17 THE COURT: That -- that was the reason of those is
18 it's illegible.

19 MR. PAGE: I mean, I can -- I can give you a --

20 THE COURT: But --

21 MR. PAGE: I can give you a legible copy, but
22 apparently we don't want to sub -- swap something out that is
23 legible versus something that you have in your record that's
24 not legible. I think that would be --

1 THE COURT: That's --
2 MR. PAGE: -- a little bit inconsistent. But in any
3 event --
4 THE COURT: Well, you didn't --
5 MR. PAGE: -- there --
6 THE COURT: Well, first of all --
7 MR. PAGE: She -- she specifically stated this is
8 not to be used in court.
9 MR. BLACKHAM: And --
10 MR. PAGE: It --
11 THE COURT: Not being used as what -- for her
12 liability or that --
13 MR. BLACKHAM: Right.
14 THE COURT: -- she agreed to these terms like you're
15 trying to enforce the handwritten --
16 MR. BLACKHAM: Correct.
17 THE COURT: -- one --
18 MR. BLACKHAM: Exactly.
19 THE COURT: -- that you're -- you offered that for a
20 different purpose.
21 MR. PAGE: That --
22 THE COURT: So --
23 MR. PAGE: It's a contract.
24 THE COURT: -- this is offered for a purpose that

1 she really didn't believe that it was dangerous --

2 MR. BLACKHAM: Exactly.

3 THE COURT: -- for him to have shared custody.

4 MR. BLACKHAM: Exactly.

5 THE COURT: If she authenticates it, then it can
6 come in for that purpose to -- to question her credibility.

7 MR. BLACKHAM: And right.

8 MR. PAGE: But -- but the -- the document that's in
9 Exhibit 25, that's an actual contract because it's signed by
10 the parties of the --

11 MR. BLACKHAM: So --

12 MR. PAGE: -- completed agreement.

13 MR. BLACKHAM: Your Honor, you know what, it -- it's
14 a -- it -- it --

15 THE COURT: And that --

16 MR. BLACKHAM: -- addresses custody so it's --

17 THE COURT: And you're trying to enforce that
18 against him and that -- that's fine. They can't enforce this
19 offer against her.

20 MR. BLACKHAM: Your Honor, the statute and postnup
21 says that if it addresses custody of support it's void. Okay.
22 So it's void as a matter of law. It's completely irrelevant.
23 I'm simply saying it was admitted. And so I don't see
24 treating this any differently, particularly when I'm not

1 trying to enforce it the way they are.

2 MR. PAGE: Of course it's enforceable as a matter of
3 law. He can't say it's not enforceable.

4 MR. BLACKHAM: The statute says it's not. And I
5 don't understand -- I don't -- and you can't address in a
6 postnup. You -- they're -- you can't address alimony, you
7 can't address -- you can't address custody.

8 MR. PAGE: The document itself in Exhibit 25 --

9 MR. BLACKHAM: This is all besides the --

10 MR. PAGE: -- doesn't --

11 MR. BLACKHAM: -- point, Your Honor.

12 MR. PAGE: -- doesn't --

13 MR. BLACKHAM: This -- the issue of this particular
14 exhibit is what's --

15 MR. PAGE: It --

16 MR. BLACKHAM: -- before the Court now.

17 MR. PAGE: Look, alimony can be addressed in a
18 postnuptial agreement.

19 MR. BLACKHAM: No, it can't.

20 MR. PAGE: Absolutely it --

21 MR. BLACKHAM: It void --

22 MR. PAGE: -- can.

23 MR. BLACKHAM: It voids -- it voids the agreement.
24 I disagree entirely.

1 MR. PAGE: No, if -- only if they --

2 THE COURT: I think the case --

3 MR. PAGE: -- only if they intended --

4 THE COURT: -- law is not very clear on that, but I
5 didn't see alimony in that. So that's a -- an academic --

6 MR. BLACKHAM: And it can be -- and that's --

7 THE COURT: But --

8 MR. BLACKHAM: -- if we're briefing it, we can brief
9 it.

10 THE COURT: Okay.

11 MR. BLACKHAM: But --

12 THE COURT: We -- we still haven't -- we have not
13 authenticated this and we're dancing around that issue.

14 MR. BLACKHAM: Well, I mean, the -- I -- I think
15 that she -- she recognized the document before Mr. Page
16 objected. So I think what she's trying to do now is -- is
17 have it both ways and imply that there might be something
18 here. And I had a follow up question that I wasn't -- you
19 know, that was objected to.

20 THE COURT: Yeah, continue -- continue on.

21 MR. BLACKHAM: Yeah.

22 BY MR. BLACKHAM:

23 Q It -- isn't it true that in March of 2020 you -- you
24 were willing to agree to joint physical custody being awarded

1 to you and Dan?

2 MR. PAGE: Again, it inquires into settlement
3 offers. It has nothing -- ask a question about her child --
4 the child's best interest.

5 MR. BLACKHAM: The statute is liability. Okay.
6 This -- this is not -- this -- it doesn't even apply to this.

7 THE COURT: Okay. The -- that -- the objection's
8 overruled. You -- you need to answer the question.

9 THE WITNESS: There were discussions between Dan and
10 I about --

11 BY MR. BLACKHAM:

12 Q It was a yes or no question, ma'am. Didn't you --
13 didn't you offer to agree to joint physical custody to you and
14 Dan in March of 2020?

15 MR. PAGE: Same objection. It's relevant the
16 probative values outweighed by the dangers of undue prejudice
17 plus it's a settlement offer prohibited by coming in under NRS
18 125.105. It has nothing to do with the child's best interest.

19 MR. BLACKHAM: Well, it's got everything to do.

20 THE COURT: I already overruled that objection on --

21 MR. BLACKHAM: Okay.

22 THE COURT: -- the -- the issue of it's not being
23 offered for the purpose of proving liability or that -- those
24 are enforceable terms. But to -- to cross examine your

1 client's credibility what she now testifies is not in the best
2 interest but she is willing to do it over a year ago. So --

3 BY MR. BLACKHAM:

4 Q After all of these incidents.

5 THE COURT: You -- you need to answer the question,
6 ma'am.

7 A Under duress, yes.

8 Q Under duress.

9 THE COURT: Hold -- hold on. Did he make you -- you
10 send that message?

11 THE WITNESS: I was constantly being called and text
12 and called and text and it was -- it was continued harassment.
13 It was daily.

14 MR. BLACKHAM: Have we established that this is
15 authentic yet?

16 THE COURT: No.

17 Q And would you acknowledge that it's authentic,
18 ma'am?

19 MR. PAGE: It goes back to my objection of this
20 being a settlement offer. Also as an objection that it's not
21 complete because my client is testifying to that he's
22 harassing her on a daily basis until -- when he -- he's going
23 to badger her until she just puts something on to make him go
24 away. It looks like this is the end of the night so she just

1 wants to go to bed and go to sleep. And he won't let her but
2 we don't get it because we -- they cherry pick what they give
3 to the court and it doesn't have everything prior to that
4 where he's calling, texting, and harassing her.

5 MR. BLACKHAM: What -- and -- but she couches it
6 with settlement negotiation language because it's just being
7 done under duress. So she includes that? I mean, that's
8 ridiculous.

9 MR. PAGE: Again, another reason why the document
10 should never come in.

11 MR. BLACKHAM: Your Honor, I mean, I can get the
12 document in through -- through my client. You know, the
13 reality is that -- I mean, it -- you --

14 MR. BLACKHAM:

15 Q In March of 2020, you offered to accept joint
16 physical custody of Riley; isn't that correct?

17 A I was continuously --

18 MR. PAGE: Asking --

19 A -- being told.

20 MR. PAGE: He's asking about --

21 Q Ma'am, it's a --

22 MR. PAGE: -- offers --

23 Q -- yes or no --

24 MR. PAGE: -- and counter --

1 Q -- question.

2 MR. PAGE: -- offers and settlement counteroffers.

3 MR. BLACKHAM: Your Honor, you've already ruled on
4 this objection. Can I please continue?

5 THE COURT: Yes.

6 MR. PAGE: The question's improper.

7 MR. BLACKHAM: Thank you.

8 BY MR. BLACKHAM:

9 Q Please answer the question, ma'am.

10 A I was continuously being told --

11 Q Ma'am, it's a --

12 A -- by several people --

13 Q -- yes or no question. In March of 2020, you
14 offered to accept joint physical custody of Riley, did you
15 not?

16 A I was continually being --

17 Q Ma'am --

18 A -- told --

19 Q -- it is --

20 MR. BLACKHAM: Your Honor, move to strike, please.
21 Direct -- please direct the witness to answer.

22 THE COURT: Ma'am, you need to answer the question
23 of whether you sent him this message that said you would agree
24 to joint physical custody but 60/40. Did you send that

1 message to your husband?

2 THE WITNESS: Yes, it appears I did.

3 BY MR. BLACKHAM:

4 Q Okay. And you also -- you also offered in that same
5 message to get half the equity as of January, isn't that
6 right?

7 A Yes.

8 Q Okay. And that applied to the marital residence,
9 did it not?

10 A Yes.

11 Q And you said you wanted her -- you wanted Riley in
12 private school, correct?

13 A At that time.

14 Q Okay. And you also stated that -- that you wanted
15 joint physical custody but that you insisted the timeshare be
16 60/40, right?

17 A It appears, yes.

18 Q Do -- do you not recall doing that?

19 A Like I said, it was under a lot of duress.

20 Q Okay. So -- so did you -- did you say it or not?

21 A It appears so.

22 MR. BLACKHAM: Move to admit Proposed Exhibit B.

23 MR. PAGE: Same objection, it's a settlement offer.

24 My client made --

1 MR. BLACKHAM: You've already ruled on this, Your
2 Honor.

3 MR. PAGE: My -- my client had those discussions
4 with the -- none of this is to be used with court. This is a
5 discussion of custody and divorce. Moreover, Opposing Counsel
6 went into questions about the house and private school and
7 things like that that have nothing to do with his original
8 claim oh, this is in Riley's best interest.

9 MR. BLACKHAM: Oh, no, but that's credibility, Your
10 Honor. She's saying that they had this enforceable agreement.
11 There was this understanding it's --

12 MR. PAGE: It's a --

13 MR. BLACKHAM: -- done and meanwhile it was
14 obviously all open. And then --

15 MR. PAGE: Well, wait.

16 MR. BLACKHAM: -- this is a brand --

17 MR. PAGE: It wasn't --

18 MR. BLACKHAM: -- new complaint she never brought in
19 her complaint and never mentioned before now.

20 MR. PAGE: It was all --

21 MR. BLACKHAM: It's all credibility.

22 MR. PAGE: -- offers and counteroffers which are
23 inadmissible which is why this --

24 THE COURT: Okay.

1 MR. PAGE: -- should not be admitted.

2 MR. BLACKHAM: And --

3 MR. PAGE: He didn't use it for Riley's best
4 interest. He opened it up into other areas that are not
5 germane to what he claimed it was to be opened up for.

6 MR. BLACKHAM: Your Honor said it was appropriate --

7 MR. PAGE: It's extremely --

8 MR. BLACKHAM: -- for credibility.

9 MR. PAGE: -- prejudicial. It's -- this is why
10 48.105 exists. It doesn't come in.

11 MR. BLACKHAM: It doesn't establish liability. It
12 does not establish liability. It establishes --

13 MR. PAGE: It's not -- it's not --

14 MR. BLACKHAM: -- her utter lack of credibility.

15 MR. PAGE: It's not the purpose for which --

16 THE COURT: Okay.

17 MR. PAGE: -- 48. --

18 THE COURT: I've heard --

19 MR. PAGE: -- 105 --

20 THE COURT: I've heard enough arg --

21 MR. PAGE: -- exists.

22 THE COURT: I've heard enough argument. Exhibit B
23 is -- is coming in for the purpose of attacking your client's
24 credibility on both the issue of whether she thought she had a

1 binding postnuptial agreement and on the issue of that she
2 believes it would be seriously detrimental to Riley if he were
3 to have -- have a 40/60 split with her. That was -- it goes
4 directly to your client's credibility and they're being
5 admitted for that purpose, not for the purpose of saying it's
6 a -- it's a binding settlement that should be enforced.

7 MR. PAGE: So you -- it is an agreement that should
8 be enforced, but to say that one can have a binding agreement
9 and yet entertain offers and counteroffers later on down the
10 road which would undermine the enforceability of that
11 agreement, she's making this offer/counteroffer with the
12 expressed purposes between the parties that it's not to be
13 used in court, yet that's exactly what is being used for
14 whether you call it credibility or otherwise.

15 MR. BLACKHAM: Her actions are complete -- if -- if
16 -- addressing property only her actions until the filing of
17 her pretrial memo are completely inconsistent with any intent
18 to enforce this purported postnuptial agreement. This
19 document shows that she -- that in conjunction with the fact
20 that she's not raised it in her complaint, has not said
21 anything about this postnuptial agreement prior to now, it
22 impeaches her credibility that she believed that there was any
23 enforceable agreement between these parties as to that issue.

24 MR. PAGE: Nevada is a noticed --

1 MR. BLACKHAM: During her second of three divorces.

2 MR. PAGE: Nevada is a noticed pleading state. We
3 don't have to allege that there is a postnuptial agreement in
4 a notice of pleading. Instead, we indicated that there's
5 community property, community debt, separate property, and
6 alimony and attorney's fees and custody. That's all we have
7 to allege. We don't have to go specificity as we would under
8 a fraud complaint.

9 THE COURT: But it would have been brought up at the
10 hearing in front of the judge about selling the house.

11 MR. BLACKHAM: Exactly.

12 THE COURT: Yeah, if she didn't say hey, why are we
13 putting this away, it's all mine.

14 MR. BLACKHAM: Right.

15 THE COURT: Why are we securing this for anybody
16 if --

17 MR. PAGE: That's --

18 THE COURT: -- he agreed to it being mine?

19 MR. PAGE: She had -- she had prior counsel. That
20 is counsel or Mr. Kelleher. Why he didn't bring up at that
21 hearing, that's an issue with him; however, they also took her
22 deposition for a couple of hours back in April of March and
23 they could have asked her questions about it then. But they
24 never did. They had the document. They were aware of it.

1 They should have asked her questions about it then, what her
2 intent to do it -- use it, the purpose she intended to use
3 that document at trial is for. They didn't do it. They're --
4 they waived to right to complain, they were stopped from
5 complaining and latches of lies.

6 MR. BLACKHAM: That's -- that's -- Your Honor, I'm
7 sorry, but that is -- that simply makes no sense. If we -- if
8 we disclose a document that's related to the case, that is not
9 an admission that it is a binding contract. I mean, that --
10 if we were to extend that logically, it would go to absolutely
11 absurd proportions.

12 MR. PAGE: Not --

13 MR. BLACKHAM: That's not -- and I don't have to
14 talk, just like he doesn't have to put it in his complaint
15 then, I don't have to ask her about it at the deposition when
16 I know it's -- it's nonsense and unenforceable legally. I
17 didn't think she would ever try to bring that up.

18 MR. PAGE: They already had it -- they -- they were
19 served with it back in February. They served it back to me at
20 the end of April. So they obviously knew about it.

21 MR. BLACKHAM: And I didn't -- I didn't say anything
22 about not knowing about it.

23 THE COURT: Well, if they knew about it, they --

24 MR. BLACKHAM: It's not an enforceable agreement.

1 THE COURT: -- they should have asked questions
2 about it at her deposition --

3 MR. BLACKHAM: Well --

4 THE COURT: -- and she would have given you the
5 answer she's given you --

6 MR. BLACKHAM: What would that --

7 THE COURT: -- today.

8 MR. BLACKHAM: What would have changed? Just
9 because her opinion about something was something else. The
10 real -- the reality is this establishes the fact that there --
11 that that was -- there was no understanding that that was an
12 enforceable agreement during their second divorce. This is
13 now their third divorce. She's brought all three of them.
14 And apparently there's this enforceable prenup -- that -- that
15 postnup that divests my client of his house. That's absurd.

16 MR. PAGE: This document was entered into back in
17 2019.

18 MR. BLACKHAM: Second divorce.

19 MR. PAGE: And this was shortly before their final
20 separation in November. So to say this was in existence for
21 the prior complaints for divorce as filed is a
22 misrepresentation --

23 THE COURT: Okay.

24 MR. PAGE: -- of the record.

1 THE COURT: I have -- I have not made a ruling on --
2 on what you're -- anything on the enforceability of the
3 handwritten agreement. So that -- that's not what we're
4 talking about and we're digressing here. We're talking about
5 Exhibit B. And -- is being admitted to challenge the
6 credibility of your client in terms of what she's saying on
7 both the -- the custody and on saying she believes she had a
8 valid postnuptial agreement and said she was entitled to it.
9 That in combined with her not even arguing that the -- all the
10 proceeds are hers, why tie them up at the hearing in -- in
11 front of Judge Henderson, there's an argument to be made she
12 knew that wasn't binding or --

13 MR. PAGE: She --

14 THE COURT: -- she had no intention of enforcing it.
15 And he relied on that and -- and she would be stopped.
16 There's those arguments.

17 MR. BLACKHAM: There's no --

18 THE COURT: Right now --

19 MR. BLACKHAM: There's no notaries

20 THE COURT: -- we're not to the --

21 MR. BLACKHAM: -- of acknowledgment --

22 THE COURT: -- arguments. We're getting the
23 evidence in. So Exhibit B is being admitted for the purposes
24 of challenging your client's credibility on those two issues

1 which I find is an exception to NRS 48.105. All right. Mr.
2 Blackham.

3 MR. BLACKHAM: Your Honor, would you -- can I ask
4 for a specific finding that this is -- this does not implicate
5 specific liability one way or the other regarding Mr. Rubidoux
6 as contemplated under NRS 48.105?

7 MR. PAGE: It's -- 48.105 has nothing to do --

8 MR. BLACKHAM: Yes, it does.

9 MR. PAGE: It doesn't entirely connect with what the
10 offers and counteroffers are. If you're talking about
11 liability, you're talking about a traffic accident case and
12 where causation is -- is contested. There's no causation
13 here. It's a marriage.

14 MR. BLACKHAM: The length of --

15 THE COURT: That's right. That's why NRS 48.105
16 doesn't fit very well --

17 MR. BLACKHAM: Exactly.

18 THE COURT: -- in family law cases and the way
19 people conduct their business when they're married and -- or
20 in a relationship with somebody. But it -- it still --

21 MR. BLACKHAM: That's --

22 THE COURT: -- applies and I'm not accepting it as
23 what she thinks is a fair settlement or -- or -- nor that it's
24 binding.

1 MR. PAGE: But you're -- you're asking her to defend
2 why she did what she did.

3 MR. BLACKHAM: And --

4 THE COURT: No, I'm not asking her to defend it.
5 I'm saying it go -- it challenges her credibility when she
6 says today that it would be not in Riley's best interest to
7 share custody with Dad, that he's all these dangers when she
8 didn't think --

9 MR. BLACKHAM: Right.

10 THE COURT: -- that in May of -- or March of 2020.

11 MR. PAGE: We can take -- we can take a look at that
12 where she says it's 60/40. That's the maximum that she's
13 willing to give --

14 THE COURT: Okay.

15 MR. PAGE: -- in order to save cost and litigation.
16 That would be a rational choice to possibly make if she's
17 looking at many thousands of dollars of attorney's fees and
18 trying to do the very best that she can to protect the health
19 and safety of her daughter which is -- I'll give you 2.7 days
20 but that's -- that's about all I can give you in order to
21 protect the health and safety of her child. That is not -- it
22 doesn't impact her credibility. It impacts her ability to
23 fund the litigation all the way to the end.

24 MR. BLACKHAM: Which she appears to have done and

1 the reality is apparently their child's welfare has a price.
2 And that's important for this Court to know.

3 MR. PAGE: Well, if that's what everybody --
4 because there are people who don't have these sorts of funds
5 and they have to make these sorts of hard decisions when we're
6 looking at cases where I've seen the cost go to a hundred and
7 fifty thousand dollars.

8 THE COURT: Okay. Move on to the next question,
9 please.

10 MR. BLACKHAM: Thank you.

11 BY MR. BLACKHAM:

12 Q You alleged that there's been domestic violence
13 between you and Daniel, right?

14 A Yes.

15 Q And you alleged that in May of 2019 Daniel assaulted
16 you.

17 A Yes.

18 Q Okay. But you guys began residing together again
19 after that, right?

20 A Not immediately.

21 Q Ma'am, it's a yes or no question. You resided
22 together after that, didn't you?

23 A Yes.

24 Q You left Ri -- Riley alone in Daniel's care after

1 this alleged incident, correct?

2 A Yes.

3 Q You've acknowledged that Daniel has never physically
4 hurt Riley?

5 A Physically, no.

6 Q Okay. And Daniel is an involved father.

7 A He has been now.

8 Q Okay. He's involved right now, right?

9 A Now.

10 Q All right. Riley loves her father, right?

11 A Is that question?

12 Q Yeah, it was an inflection at the end.

13 A I'm sorry, yes.

14 Q Okay. She looks forward to -- to visiting with her
15 father each week, right?

16 A Yes.

17 Q Daniel currently has between two and three days of
18 visitation with Riley per week, right?

19 A Yes.

20 Q And that's pursuant to this Court's temporary order.

21 A Yes.

22 Q But you think under this schedule you don't have
23 enough quality time with Riley, correct?

24 A I work Monday through Friday --

1 Q Ma'am, it's a yes or no question.

2 A Yea -- wait, can you ask it again, please?

3 Q You -- under the schedule, you don't think you have

4 enough quality time with Riley, correct?

5 A Correct.

6 Q You believe Daniel -- you believe it would be ideal

7 for Daniel to have less than two days per week with Riley,

8 correct?

9 A Yes.

10 Q You don't think Dan's a good father.

11 A Yes.

12 Q You don't think he's a good father because he

13 domestically abused you.

14 A Yes.

15 Q You would agree then that if you domestically abused

16 Dan you would not be a good mother, correct?

17 A Can you --

18 MR. PAGE: Objection --

19 A -- explain that?

20 MR. PAGE: -- foundation, speculation and complete

21 hypothetical.

22 MR. BLACKHAM: I -- I think it's a complete --

23 THE COURT: Overruled.

24 BY MR. BLACKHAM:

1 Q You would agree then that if you domestically abused
2 Dan you would not be a good mother, correct?

3 A If I came after someone, yes.

4 Q If you domestically abused Dan, you would not be a
5 good mother, correct?

6 MR. PAGE: Objection, vague.

7 THE COURT: Overruled.

8 MR. BLACKHAM: She knew what it meant for the other
9 direction.

10 BY MR. BLACKHAM:

11 Q You acknowledge that since November of 2019 you
12 haven't witnessed any behavior by Dan that would lead you to
13 believe Riley's physical welfare was at risk?

14 A Not that I'm aware of.

15 Q And, again, you've witnessed no behavior on the part
16 of Dan that would lead you to believe that Riley's physical
17 welfare was at risk, correct?

18 MR. PAGE: Objection, relevance. The intervening
19 time period as it relates to domestic violence is not a valid
20 consideration.

21 MR. BLACKHAM: Best interest.

22 THE COURT: Overruled.

23 MR. PAGE: I'll -- I'll find the case cite.

24 BY MR. BLACKHAM:

1 Q Correct?

2 A Can you repeat the question again?

3 Q You -- you acknowledged that since November 2019 you

4 haven't witnessed any behavior by Dan that would lead you to

5 believe Riley's physical welfare was at risk.

6 A No.

7 Q Is that correct? Are you agreeing -- I'm asking

8 you.

9 A I know.

10 Q Is it --

11 A It's just the way you word it, it's --

12 Q Isn't it true --

13 A -- kind of like a double negative.

14 Q Isn't it true that since November 2019 you have not

15 witnessed any behavior by Dan that would lead you to believe

16 Riley's physical welfare was at risk?

17 A I have not witnessed anything.

18 Q So it is true?

19 A Yes.

20 Q Okay. And please turn to Exhibit C.

21 A C?

22 Q The -- yeah, the calendar.

23 A Okay.

24 Q Now you indicated that this is incorrect.

1 A Yes.

2 Q You indicated that you have text messages proving
3 that this is incorrect.

4 A Yes.

5 Q You indicated that you have school records that
6 proves this is incorrect.

7 A Yes.

8 Q You haven't brought any of that to court today, have
9 you?

10 A I have.

11 Q Where?

12 A I sent everything to my lawyer.

13 Q Can you point me to the exhibit in your attorney's
14 exhibit binders that -- that bear out your allegations?

15 MR. PAGE: What's your question?

16 MR. BLACKHAM: She says she's got evidence that
17 proves this calendar is incorrect. I'm asking --

18 MR. PAGE: Well --

19 MR. BLACKHAM: -- where it is.

20 MR. PAGE: -- what was incorrect?

21 MR. BLACKHAM: I'm sorry, I -- I don't -- I don't
22 know what the question is.

23 MR. PAGE: I don't know what your question is.

24 MR. BLACKHAM: Right. I'm asking her where in her

1 attorney's exhibit books is the evidence she's referring to
2 that proves this -- that Dan's calendar is incorrect.

3 THE WITNESS: I'm -- I'm -- I didn't compile the
4 binder. I just sent the information to my attorney.

5 Q So you're unable to point to any right now, right?

6 A Yeah.

7 Q Okay.

8 MR. PAGE: Again, Your Honor, this has to do with
9 the objection that we made earlier about documents being
10 supplied after the close of discovery. We got these documents
11 from Counsel back on last Thursday. And there is -- it's
12 unduly prejudicial for my client to have to come back in here
13 and answer questions for him as to why she doesn't have any
14 documents when she's had less than a week to get a rebuttal in
15 place.

16 MR. BLACKHAM: We had trial --

17 MR. PAGE: What I would like to do if this is the
18 route -- route -- road he's going to go down that we come back
19 here on June 24th that my client be allowed the latitude
20 because it's unduly prejudicial to show the evidence that she
21 provided me in the last week for which I've had two other
22 trial days to show that his calendar is completely inaccurate.
23 That would be fair. That would be having the matter heard on
24 its merits.

1 THE COURT: Okay. Now hold on. I'm --

2 MR. BLACKHAM: Your Honor --

3 THE COURT: I'm going to address that issue. If --
4 if -- let me talk. Mr. Blackham, when did you produce this
5 calendar?

6 MR. BLACKHAM: This was produced on last Thursday.
7 And, again, I -- he would have had a week had the trial gone
8 forward when we agreed. It was pushed a week. So I thought
9 discovery was pushed. So -- so it would have been unduly
10 prejudicial on the 30th of April. And so we --

11 MR. PAGE: We --

12 MR. BLACKHAM: -- can't be unduly prejudicial now.

13 MR. PAGE: Absolutely --

14 MR. BLACKHAM: We had just --

15 MR. PAGE: -- it's --

16 MR. BLACKHAM: -- as much time.

17 MR. PAGE: -- unduly prejudicial to have me try and
18 come up -- to have her come up with the rebuttal documents
19 within a week's period of time --

20 MR. BLACKHAM: She provided that.

21 MR. PAGE: -- because he says it is because I say it
22 is.

23 THE COURT: Okay. Mr. Page, I am going to allow you
24 to -- you're going to -- because we're going to come back on

1 June 25th --

2 MR. BLACKHAM: Okay.

3 THE COURT: -- you can supplement your exhibits with
4 documents you've previously produced that show that these
5 calendars are there, assume that you produced them since you
6 gave -- since she gave you a bunch of --

7 MR. PAGE: No, she gave -- she gave me documents
8 within the last week. I haven't had the opportunity because
9 well, one, discovery is closed to give those to opposing
10 Counsel. But I'll certainly get them to him in a short
11 period of time after today.

12 MR. BLACKHAM: Your Honor was clear that it would
13 have to have been already produced. It clearly would have
14 been relevant --

15 MR. PAGE: We didn't have actually equal application
16 of the rules. If going to throw in things that come in after
17 the date of discovery closes and then expect my client to have
18 a full and complete response within a week's period of time as
19 to whatever he wants to throw out assuming it's actually
20 true --

21 MR. BLACKHAM: Where's -- where's --

22 MR. PAGE: -- and to be able to rebut that.

23 MR. BLACKHAM: I don't understand the equity and
24 balance when it would have been a week from -- from the 30th

1 to our prior trial date. I -- I did it the Thursday before.
2 So he had eight days instead of seven days. I -- I don't
3 understand how it's unpre -- preju -- unduly prejudicial now
4 but it wasn't back then. It doesn't make any sense.

5 MR. PAGE: It -- it always was because you're
6 expecting my client to prove a negative. It is your client's
7 responsibility to show that the document is true and complete
8 and accurate. Not my job -- my client's job to show that it's
9 incorrect in some way. It is a bastardization of the Rules of
10 Evidence and -- and the burdens of proof to have my client
11 come in here and show that it's somehow incorrect.

12 THE COURT: Okay.

13 MR. BLACKHAM: I --

14 THE COURT: I think we --

15 MR. BLACKHAM: -- disagree by that.

16 THE COURT: -- need to take a break.

17 MR. BLACKHAM: Sure.

18 THE COURT: We're going to take a break until --
19 until 2:55 so that we can all compose ourselves and take you
20 back to break.

21 MR. BLACKHAM: Your Honor, I have no objection -- I
22 have no objection to Mr. Page supplementing his discovery. I
23 have no objection to that because, again, if he believes that
24 this was unduly prejudicial I think he should have an

1 opportunity to supplement his -- his dates --

2 MR. PAGE: Counsel, it's your --

3 MR. BLACKHAM: -- subject to --

4 MR. PAGE: -- burden to show that the document is --

5 MR. BLACKHAM: No.

6 MR. PAGE: -- actually accurate, not my client's job
7 to show --

8 MR. BLACKHAM: My --

9 MR. PAGE: -- that it's inaccurate.

10 MR. BLACKHAM: My client can testify to it. He's
11 provided a summary just like your client has on other issues
12 like -- like the -- the property distribution that she typed
13 up. This is not -- and she didn't have any burden for that.
14 He doesn't have any burden for this. If she's saying it's
15 wrong, he can testify to this without an exhibit.

16 THE COURT: Okay. If --

17 MR. BLACKHAM: But I -- but I -- I --

18 THE COURT: You may --

19 MR. BLACKHAM: -- have no objection.

20 THE COURT: -- be being -- the months that she
21 claims that are inaccurate, it may not be worth all this
22 fight --

23 MR. BLACKHAM: I agree.

24 THE COURT: -- over because it's so remote in time.

1 MR. PAGE: And it's actually --

2 THE COURT: I'm just telling you, but --

3 MR. PAGE: -- a fair -- a relatively small period of
4 time.

5 THE COURT: Yeah.

6 MR. PAGE: What I'm offended by is the audacity to
7 come in here and ask my client to prove why that calendar is
8 somehow inaccurate. She didn't create it. His client created
9 it. It's his job to show that it's accurate, not her job to
10 show that it's inaccurate.

11 MR. BLACKHAM: She -- she in her own testimony
12 volunteered that she had things that proved this was
13 inaccurate. That is why I raised that point. My client can
14 testify to this without any exhibit going along with it.
15 Again, if -- if the issues are the months of -- I guess it
16 would probably be the first -- so let's say --

17 MR. PAGE: November through April, Counsel.

18 MR. BLACKHAM: Okay. No. No. And that's -- and if
19 that's what it is, then I think that should be the scope of
20 Mr. Page's supplementation.

21 THE COURT: Well, I've -- I can find that I don't
22 think that the -- in it -- the differences between the two
23 parties regarding who had which days from November, December,
24 January, and February aren't that relevant. What I am looking

1 at and what -- what she should focus on challenging is on
2 March. March and April where he's alleging that she can
3 hardly give him any time, that's very relevant to the best
4 interest factors.

5 MR. BLACKHAM: She -- she hasn't disputed that now
6 to my knowledge.

7 MR. PAGE: But also there was an --

8 THE COURT: I gue -- if she does --

9 MR. PAGE: -- order in place at that time.

10 MR. BLACKHAM: No, not -- not the whole time. I
11 think the first hearing was in --

12 THE COURT: Not until April?

13 MR. BLACKHAM: Yeah.

14 THE COURT: Right. That -- that's a very relevant
15 thing. So if she -- I'm not looking at who had what and is
16 there discrepancies on them. And I think she said February
17 was pretty accurate.

18 THE WITNESS: There's like one to two.

19 THE COURT: Yeah.

20 MR. BLACKHAM: Had she not made reference to the
21 documents, I never would have asked that question, Your Honor.

22 THE COURT: I understand. So I just don't want you
23 to get bogged down on -- on things that I'm -- I'm not finding
24 that relevant, Mr. Page. I understand what you're saying.

1 MR. PAGE: It's just --

2 THE COURT: But if you have proof that March and
3 April his calendar representations are accurate, then I would
4 like you to get that and --

5 MR. PAGE: Yeah, we will. And it's -- it's
6 incredibly unfair to pepper my client with questions asking
7 her to disprove things that she's never had an opportunity to
8 put before Your Honor.

9 THE COURT: And that's why I asked --

10 MR. BLACKHAM: I was cross examining her. That's
11 all.

12 THE COURT: That's why I asked. And -- and there is
13 -- there is a valid point to what Mr. Page is saying.
14 Obviously they didn't put it in their exhibits if they didn't
15 have it until last week. And --

16 MR. PAGE: Right. And --

17 THE COURT: -- I think he submitted his exhibits
18 first, but I'm not sure.

19 MR. BLACKHAM: But she chose to testify to it and I
20 genuinely was asking if there was anything that she --

21 THE COURT: Right.

22 MR. BLACKHAM: -- brought today that met that
23 standard that she said she had.

24 THE COURT: Okay.

1 MR. BLACKHAM: And, again, I will stipulate to Mr.
2 Page being able to -- because I don't want -- I don't want
3 anything to be unfair here.

4 MR. PAGE: No, you are harassing my client asking
5 her --

6 MR. BLACKHAM: No, I'm not.

7 MR. PAGE: -- where in this exhibit book is any
8 piece of paper showing that this calendar is wrong.

9 MR. BLACKHAM: I'm not getting personal, Your Honor.
10 I'm trying -- I'm trying to wind this up. I really am.

11 THE COURT: Okay. All right.

12 MR. BLACKHAM: Do you want to take --

13 THE COURT: Let's take --

14 MR. BLACKHAM: -- a break?

15 THE COURT: Yes, let's take a break.

16 MR. BLACKHAM: All right.

17 (COURT RECESSED AT 2:47 AND RESUMED AT 3:03)

18 THE CLERK: We're on the record, Your Honor.

19 THE COURT: All right. I did want to go back on the
20 record and say two things before you pick up with your cross
21 examination of the Plaintiff. My notes from this morning say
22 that Exhibit B was already stipulated to be admitted.

23 MR. PAGE: No, that's not checked off on mine.

24 MR. BLACKHAM: I -- and Your Honor --

1 THE COURT: A through D.

2 MR. BLACKHAM: -- I -- I don't believe it was
3 stipulated to be honest with you.

4 THE COURT: No, oh, my Clerk has the same notes.

5 A --

6 MR. BLACKHAM: Oh.

7 THE COURT: -- through D, F through O, R through DD.

8 MR. PAGE: Yeah, we -- I checked off which ones I
9 haven't --

10 MR. BLACKHAM: Yeah.

11 MR. PAGE: -- I didn't have it and Mr. Blackham
12 doesn't have it.

13 MR. BLACKHAM: Yeah, I -- and I -- I'm -- I know I
14 try to cause a problem. I'm just saying that I don't -- I --
15 I was under the impression that Mr. Page was not agreeing to
16 that.

17 THE COURT: And when -- the second point was when
18 you do redirect, Mr. Page, I'm not going to limit you to just
19 what was on cross because there's questions about the school
20 issue. I need to know what your client's position is so I can
21 make a decision on that.

22 MR. PAGE: Yeah, I wrote -- I wrote those down as
23 well.

24 THE COURT: Okay. I just wanted to remind you I do

1 -- I have nothing right now to -- to know what their --
2 MR. BLACKHAM: Well --
3 THE COURT: -- dispute is.
4 MR. BLACKHAM: -- and -- and Your Honor, and I hope
5 that -- that I'll have a chance to --
6 THE COURT: Sure.
7 MR. BLACKHAM: -- to ask her about that at that
8 time.
9 THE COURT: Or ask her now.
10 MR. BLACKHAM: I mean, I --
11 THE COURT: You -- you've taken her deposition. You
12 know what --
13 MR. BLACKHAM: Well, I --
14 THE COURT: -- I guess the position is.
15 MR. BLACKHAM: The -- the real -- I mean, look. I
16 thought -- I thought -- frankly I thought she was done on her
17 -- on her substantive --
18 MR. PAGE: And -- and --
19 MR. BLACKHAM: -- testimony. And -- and I'm not
20 saying that she needs to be. I'm simply saying -- so I -- I
21 didn't think they were really making any case for -- an
22 affirmative case for school.
23 MR. PAGE: I mean, she's maintained throughout that
24 she -- I mean, there's a long history. If we're asking for

1 primary physical custody, she should receive primary physical
2 custody since that's the case because she should -- the child
3 should attend school --

4 MR. BLACKHAM: Okay.

5 MR. PAGE: -- where she selects.

6 THE COURT: Okay.

7 MR. BLACKHAM: And then --

8 THE COURT: I -- I just need to hear some evidence
9 on what the difference. I -- I've heard from your argument
10 that your client's proposing that she start kindergarten at
11 the --

12 MR. BLACKHAM: Is that your offer of proof Mr. Page
13 that -- that it's -- it's under the assumption that she's
14 going to be awarded primary physical custody?

15 MR. PAGE: If yeah, she's awarded primary physical
16 custody the child should attend school --

17 MR. BLACKHAM: Okay.

18 MR. PAGE: -- where she selects and that it's
19 probably -- it'll be -- there's a -- there's a magnet school
20 that the child has been admitted to that's close to her
21 residence. That would make sense --

22 MR. BLACKHAM: I --

23 MR. PAGE: -- for the child to attend a magnet
24 school.

1 MR. BLACKHAM: I just think the Court has to apply
2 Arcella. I don't think -- I don't think necessarily
3 contingent on the custody award. But -- and that's what -- I
4 haven't --

5 MR. PAGE: I -- I --

6 MR. BLACKHAM: -- heard that case we need --

7 MR. PAGE: I understand. We used to run into
8 Arcella analysis when -- Arcella, excuse me, when we have
9 joint -- a joint physical custody situation because of the
10 child's going to be with one parent a majority of the time
11 when she's usually Monday through Friday, it would not make
12 sense to do anything other than have the child attend the
13 school close to that particular custodial parent.

14 MR. BLACKHAM: Okay.

15 THE COURT: Okay.

16 MR. BLACKHAM: So Your Honor, I -- I don't know if
17 this is housekeeping or -- I -- I did talk to Mr. Page about
18 the Navy Federal debt. And, again, and this is just -- not
19 for purposes of attorney's fees or anything like that, I'm not
20 trying to -- I mean, the reality is I talked to my client
21 about what it went to after I heard the Plaintiff's testimony.
22 And he does believe it went to some community expenses;
23 however, he also acknowledges that some of it went to the
24 attorneys that she had referenced for the -- for that purpose.

1 And so, at this point and -- and, you know, and considering
2 the fact that, you know, the -- the pretrial memo said what it
3 said any way, we'll -- we'll withdraw our request that the
4 Navy Federal debt be equally divided and --

5 THE COURT: Okay.

6 MR. BLACKHAM: -- that my client will assume --

7 THE COURT: So you're going to stipulate that that's
8 his sole and separate debt.

9 MR. BLACKHAM: Yeah. Yeah. But, I mean, again,
10 not --

11 THE COURT: Okay.

12 MR. BLACKHAM: -- subject to any liability on my
13 client's part. And -- and I do think it should be considered
14 for alimony purposes to the extent of which he's assuming
15 debt. It's relevant under the statute. But --

16 THE COURT: I thought neither party was asking for
17 alimony.

18 MR. PAGE: Yeah, that's correct. It wasn't in any
19 of the -- it wasn't in the point or counterclaim. It was in
20 our pretrial memorandum so we -- although, under force we
21 could bring it up at any time.

22 MR. BLACKHAM: Which -- what was it? I'm sorry, I
23 -- I didn't -- what were you referring to?

24 MR. PAGE: Alimony.

1 MR. BLACKHAM: Oh, well, yeah, you don't have to --
2 you don't have to --

3 MR. PAGE: You don't have to --

4 MR. BLACKHAM: I know that.

5 MR. PAGE: You don't have to plead it, but --

6 MR. BLACKHAM: It's an -- to the divorce.

7 MR. PAGE: -- but we put it both in --

8 MR. BLACKHAM: I know.

9 MR. PAGE: -- our pretrial memorandums of neither
10 party seeking alimony.

11 THE COURT: Okay. All right. Mr. Blackham.

12 MR. BLACKHAM: Okay. Sorry, Court's indulgence.

13 THE COURT: No problem.

14 BY MR. BLACKHAM:

15 Q Would you please turn to Exhibit 29 in your -- you
16 exhibit books? Let me know when you're there.

17 A I'm there.

18 Q Now, that's the picture of Riley holding the assault
19 rifle?

20 A Yes.

21 Q Okay. And you took issue -- or you take issue with
22 Daniel allowing her to hold the assault rifle?

23 A Yes.

24 Q Okay. And you took that picture though, didn't you?

1 A No.

2 Q You're denying that you took that picture.

3 A I did not take that picture.

4 Q Okay. You acknowledge that Dan did miss some time
5 for the winter break due to COVID.

6 A Yes.

7 Q And you would agree that it would be fair if this
8 coming Christmas Eve and Christmas he were to have Riley both
9 days and then the rotation resume after that, right?

10 A No.

11 Q You don't believe that would be a fair resolution of
12 the time that he missed?

13 A I don't think I should be penalized for him having
14 COVID.

15 Q Okay. But he sent you a te -- you -- you
16 acknowledged that he sent you a test that says that he didn't
17 have COVID, right?

18 A Well, I mean, the communication wasn't exactly fair.
19 He didn't tell me he had COVID until I asked and then he said
20 he did have it.

21 Q But -- but you also acknowledged at your deposition
22 that he's due some time, didn't you?

23 A There were a couple of vacation days that he missed
24 and we agreed in OurFamilyWizard that he can make them up.

1 Q Right. And so, again, if he were to -- if that
2 issue were to be resolved with him having Christmas Eve and
3 Christmas instead of getting any more days, that would be a
4 fair resolution; would it not?

5 A Well, we agreed on the vacation. We didn't agree on
6 the holiday.

7 Q Okay. You -- you have a vacation schedule in your
8 parenting agreement?

9 A Yeah. I'm sorry --

10 Q Okay.

11 A -- can you repeat the question?

12 Q You have a vacation -- pardon me. A vacation
13 provision in your parenting agreement?

14 A Yes.

15 Q And it provides that you get seven days of vacation
16 each year?

17 A That's correct.

18 Q Okay. And you believe that that means you can
19 select one day at a time during Dan's timeshare over a
20 calendar year to fulfill or satisfy your seven days, right?

21 A Well, there is no stipulation. So we both used it
22 how we both --

23 Q You believe --

24 A -- see fit.

1 Q -- that's fair, yes?

2 A I don't see why it would be fair.

3 Q Okay. And you -- you intend to continue doing that.

4 A It -- it depends. I -- I wanted to --

5 Q It's a yes or no question. And you intend to

6 continue doing that, right?

7 A I guess.

8 Q Okay. Because you did it last year, right?

9 A Well, I proposed a new holiday schedule --

10 Q Ma'am, you did it last year, right?

11 A Yes.

12 Q Okay. And you did it this year too, right? You

13 took at least one day as of the doc -- of your deposition,

14 right?

15 A Yes.

16 Q And you taken it during Dan's time, right?

17 A Yes.

18 Q All right. And you filed tax return separately,

19 correct?

20 A That's correct.

21 Q Okay. And you -- you don't -- you have no intention

22 of amending your tax return to file jointly to insulate the

23 community from the maximum tax liability possible, right?

24 A No, I do not.

1 Q Okay. You -- even if the Court told you that you
2 needed to.

3 A If the Court demanded that I do it or asked -- told
4 me to do it, I would follow what the Court asked me to do.

5 Q But you don't think you should have to.

6 A I would file unmarried but separate. So no.

7 Q Okay. Okay.

8 THE COURT: Can I clarify that? So you have filed
9 your 2020 return?

10 THE WITNESS: Yes.

11 THE COURT: And you got a refund?

12 THE WITNESS: Yes.

13 Q And how much was your refund?

14 A I don't recall off the top of my head. I'd have to
15 look at my bank statement.

16 Q Was it more than a thousand dollars?

17 A I believe so.

18 Q Was it more than \$2,000?

19 A I don't know. I'm sorry, I don't recall.

20 MR. BLACKHAM: The Court's indulgence. Pass the
21 witness.

22 REDIRECT EXAMINATION

23 BY MR. PAGE:

24 Q Counsel asked you the question -- well, let me back