IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

MINH NGUYET LUONG,

Petitioner,

vs.

JAMES W. VAHEY,

Respondent.

SC NO:
DC NO: D-18-581444-D

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JAMES W. VAHEY, Plaintiff, vs. MINH NGUYET LUONG, Defendant.	Case No.: D-18-581444-D Dept.: U

ORDER FROM FEBRUARY 15, 2022 MINUTE ORDER

This matter having come before the Honorable Judge Dawn R. Throne, for a hearing on October 18, 2021, on Defendant's Motion to Correct Clerical Error in the Decree of Divorce Regarding the 529 Accounts, or in the Alternative to Set Aside the Terms in the Decree of Divorce Regarding the Division of the 529 Accounts and for Attorney's Fees and Costs ("Defendant's Motion"); and Plaintiff's Opposition to Defendant's Motion and Countermotion for Immediate Return of Hannah to Jim's Custody, an Order that Hannah Immediately Participate in Therapy with Dr. Dee Pierce, an Order that Hannah Have a Forensic Psychiatric Evaluation, an Order Requiring the Parties to

Participate in Co-Parenting Counseling with Dr. Bree Mullin, Sole Legal Custody, School Choice Determination, Return of Children's Passports, and Attorneys' Fees and Costs ("Plaintiff's Opposition and Countermotion"); Plaintiff, JAMES W. VAHEY ("Jim"), present via Blue Jeans with his counsel, ROBERT P. DICKERSON, ESQ., and SABRINA M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW GROUP; Defendant, MINH NGUYET LUONG ("Minh"), present via Blue Jeans with her counsel, FRED PAGE, ESQ., of PAGE LAW FIRM, and the Court having before it all the files, pleadings, and papers in the action, and good cause appearing therefor, the Court finds and orders as follows:

THE COURT HEREBY FINDS that NRCP 1 and EDCR 1.10 state that the procedure in district court shall be administered to secure efficient, just, and inexpensive determinations in every action and proceeding.

THE COURT FURTHER FINDS that at the October 18, 2021 hearing, the Court denied Defendant's NRCP 60(a) and NRCP 60(b) motions and granted Plaintiff's Countermotion for attorneys' fees pursuant to EDCR 7.60(b) because Plaintiff had to defend against Defendant's frivolous Motion.

THE COURT FURTHER FINDS that Defendant's Motion was frivolous and without merit because the parties agreed to the percentage each party would receive control over that is in the final Findings of Fact, Conclusions of Law, and Decree of Divorce ("Decree of Divorce"), entered March 26, 2021. More importantly, because all of the funds in these 529 accounts are solely for the benefit of the parties' three (3) minor children, Defendant's request to now make a very small change to what is in the Decree of Divorce is not a change that would make a

material difference to her. Plaintiff should not have had to incur attorneys' fees and costs to defend against this Motion. Plaintiff is entitled to an award of attorneys' fees and costs pursuant to NRS 18.010 as the prevailing party.

THE COURT FURTHER FINDS that Plaintiff filed his Memorandum of Fees on November 15, 0221 and Defendant filed an Objection to the Memorandum of Fees on November 24, 2021.

THE COURT FURTHER FINDS that when awarding attorneys' fees in a family law case, the Court must first determine that an applicable rule authorizes the award of attorneys' fees and costs. In this case, the award of attorneys' fees and costs to Plaintiff and against Defendant is warranted pursuant to EDCR 7.60(b) and NRS 18.010. Plaintiff should not have had to incur fees and costs to defend against a Motion regarding the 529 accounts when the matter had previously been fully adjudicated at trial and when the requested change was frivolous. As a direct result of Defendant's unreasonable actions in this case, Plaintiff had to incur attorneys' fees and cost that should not have been necessary and Defendant should be responsible for a reasonable amount of his attorneys' fees and costs.

THE COURT FURTHER FINDS that when awarding fees, the Court must consider the *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), factors AND must consider the disparity in the parties' income pursuant to *Wright v. Osburn*, 114 Nev. 1367, 9770 P.3d 1071 (1998); *see also Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). With regard to the *Brunzell* factors, the Court FINDS as follows:

1. Qualities of the Advocate: The Dickerson Karacsonyi Law Group is an AV Preeminent rated law firm, the highest level of

professional excellence. The attorneys at The Dickerson Karacsonyi Law Group have extensive experience in the area of family law and a reputation for competency. Mr. Dickerson has practiced law for over 45 years and has practiced family law for 30 years. He is also a former president of the State Bar of Nevada and the Clark County Bar Association. Ms. Dolson is a member of the State Bar of Nevada's Family Law Executive Counsel. She has also been recognized as a Super Lawyers Rising Star for the past three years. The rate Plaintiff's counsel normally charge their clients is consistent with the rates charged by family law attorneys in Clark County, Nevada with their level of experience and expertise.

2. Character of the Work to Be Done: In this case, the work to be done involved defending against Defendant's NRCP 60(a) and 60(b) Motion.

3. Work Actually Performed by the Attorney: The work completed by counsel in this case included preparing Plaintiff's Opposition and Countermotion, preparing an Exhibit Appendix with exhibits relevant to the 529 account issues, representing Plaintiff at the October 18, 2021 hearing, preparing the Order after the hearing, preparing the Memorandum of Fees, and preparing Plaintiff's General Financial Disclosure Form.

4. Results Obtained: Plaintiff's counsel was able to successfully assist their client to defend against Defendant's NRCP 60(a) and 60 (b) Motion.

THE COURT FURTHER FINDS that, with regard to the disparity in the income of the parties and how it impacts the award of attorneys' fees and costs to Defendant, Plaintiff last filed a Financial Disclosure Form on November 3, 2021 and Defendant last filed a Financial

Disclosure Form on January 29, 2019. Plaintiff is a hand surgeon who earns in excess of $50,000 per month from his medical practice. Since Defendant chose not to update her Financial Disclosure Form, the Court must assume that the one she filed in January 2019 is still accurate. She is a dentist who owns her own practice and she also owns numerous rental properties. She reported a gross monthly income of $34,342. Although Plaintiff earns more than Defendant, Defendant's income is substantial and she is able to afford to reimburse Plaintiff for the reasonable attorneys' fees and costs he incurred in defending against Defendant's Motion without any detriment to her lifestyle.

THE COURT FURTHER FINDS that in determining how much of Plaintiff's fees and costs were reasonably incurred in defending against Defendant's Motion, the Court carefully considered Defendant's argument that a large portion of Plaintiff's fees were attributable to his Countermotion regarding custodial issues.

NOW, THEREFORE,

THE COURT HEREBY ORDERS that Defendant, MINH NGUYET LUONG, pay Plaintiff, JAMES W. VAHEY, the amount of $3,092.50 for attorneys' fees and costs within 15 days of the date of the Court's February 15, 2022 Minute Order. Said award is also reduced to judgment against Defendant and shall accrue interest at the legal interest

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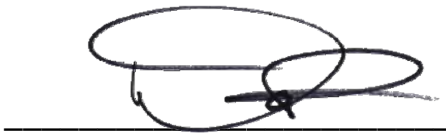
rate from February 15, 2022, until paid in full. Said judgment shall be collectible by all lawful means.

Dated this 22nd day of March, 2022



419 CB4 62A5 F1DA
Dawn R. Throne
District Court Judge

Respectfully submitted by:

THE DICKERSON KARACSONYI LAW GROUP

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Nevada Bar No. 000945
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

James W. Vahey, Plaintiff vs. Minh Nguyet Luong, Defendant.	CASE NO: D-18-581444-D DEPT. NO. Department U

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/22/2022

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ORDR

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JAMES W. VAHEY,

Plaintiff,

v.

MINH NGUYET LUONG,

Defendant.

CASE NO. D-18-581444-D

DEPT. NO. U

Date of Hearing: 3/21/22
Time of Hearing: 10:30 a.m.

ORDER FOR PLAINTIFF TO PARTICIPATE IN TURNING POINTS FOR FAMILIES PROGRAM WITH MINOR CHILDREN AND FOR DEFENDANT TO COOPERATE AND SUPPORT THE MINOR CHILDREN'S PARTICIPATION IN THE TURNING POINTS PROGRAM WITH PLAINTIFF

This matter having come before the Honorable Judge Dawn R. Throne, on Plaintiff's Emergency Motion for Order for Plaintiff to Participate in Turning Points for Families Program with Minor Children, for Defendant to Be Solely Responsible for the Costs Associated with the Program, and for Related Relief. The Court having before it all the files, pleadings, and papers in the action, and good cause appearing therefor, the Court finds and orders as follows:

THE COURT HEREBY FINDS that the Court is very familiar with the ongoing dynamics in this family related to their three minor children. Specifically, relevant to the matters now before the Court:

1. The Honorable T. Arthur Ritchie conducted an evidentiary hearing on August 8, 2019, September 5, 2019 and September 11, 2019 regarding Defendant/Mom's ("Minh") request for primary physical custody of the three minor children and to be allowed to relocate with them to California over Plaintiff/Dad's objection and Plaintiff/Dad's ("Jim") request for joint custody. The Findings of Fact, Conclusions of Law, Decision and Order were entered on September 20, 2019. After hearing two and a half days of evidence, Judge Ritchie found that Jim was more likely to allow the children to have a frequent and continuing relationship with the other parent and that there were concerns at that time regarding Minh's negative attitude toward Jim "has caused her to negatively influence the relationship between the children and their father." Page 11, lines 11–19. That Minh's dialog with the children showed "poor judgment and has the potential to alienate the children from their father." Page 12, lines 5-6. The Court further found that Minh's "intention to move is, in part, to deprive James Vahey of his parenting time." Page 18, lines 13-14. It also found that Minh's

"motives for the move are suspect, and finds that the move would frustrate and limit James Vahey's opportunity to share custody of the children." In summary, the Court found that it was in the best interest of the children for the parents to share joint physical custody, but if Minh decided to relocate to California anyway as she testified, the children would remain in Jim's primary physical custody in Nevada.

2. Minh allowed her disappointment over the denial of her request to relocate with the children to California to fester like a wound that has not only infected her, but also the two oldest children, Hannah and Matthew. She has continued down the path of "exercising poor judgment" aimed at undermining the children's relationships with Jim. The first thing she did was try to force the Court's and Jim's hand by relocating without the children, calculating that the children and Jim would be so miserable that they would be forced to allow the children to relocate with her to California. When that did not work, she returned to Nevada and purchased a new home that was as far on the other side of the Las Vegas Valley from Jim as she could find, making the logistics of transporting the children to and from school, activities and parental homes as difficult as possible.

3. Because Minh hates Jim so much and so undervalues his contribution to their three beautiful children, she automatically believes any negative

allegation that the children make about their father. She does not question, in any way, exaggerated statements the children make about their father. The children (or at least Hannah and Matthew presently) are stuck in a vicious cycle of the children making grossly exaggerated allegations against Jim that Minh believes without question and uses to justify her belief that Jim is dangerous to the children emotionally and physically and then she reinforces that belief to the children through her words and actions.

4. The actions Minh has taken to undermine Jim's relationship with the children vary from subtle things such as keeping the children on the phone with her for hours during Jim's custodial time to the extreme of disenrolling Hannah and Matthew from Challenger and enrolling them in Bob Miller Middle School without Jim's knowledge or consent. She did this knowing that Jim would object and with the participation of Matthew and Hannah so that when the plan did not work they would blame Jim. She has repeatedly caused reports to be made to CPS accusing Jim of physically abusing the children when they get a bruise during his custodial time. The children are aware of these reports and feel empowered by Minh to physically act out against their father. These efforts have been effective in that Jim does not feel like he has

the power and ability to properly parent the children by setting age appropriate expectations and boundaries for them.

5. The Court also has concerns about Minh's unwillingness to properly parent the children and set appropriate boundaries for them. If the Court believes Minh's sworn statements that she has no ability to get Matthew and Hannah to comply with her instruction to them to go into their father's home/custody, then the children do not have proper respect for her authority as their mother and the relationship between mother and children is also unhealthy. The situation with Hannah and Matthew has gotten so bad that that they have refused to be in/go to their Dad's home when it is his custodial time. They have even physically assaulted their father when he has done nothing but try exercising his custodial and parental rights and Minh has done nothing to effectively discipline them for this completely inappropriate behavior.

6. The last evidentiary hearing in this case occurred on November 3, 2021 and November 5, 2021. The first goal of this evidentiary hearing was to determine what to do about the urgent issue of Matthew and Hannah not attending any school for about a month by that time. The second point what to continue to try to restore the parents and children to a stable joint physical custody schedule.

7. In an attempt to improve the relationship between the parents in terms of co-parenting and the relationship of the children with both parents, the Court has made other orders since the November 2021 evidentiary hearing, including, but not limited to appointing a Guardian ad Litem for Matthew and Hannah, ordering Jim to attend reunification counseling with both Hannah and Matthew (individually) and the Minh attend therapy with Keisha Weiford, MFT in order to improve her ability to communicate and co-parent with Jim and to better support the children's relationship with their father. The Court indicated that Jim is not blameless for the ineffective co-parenting relationship he has with Minh, but that Jim would first put time and money toward counseling with the children and then later do the same co-parenting counseling with Ms. Weiford. Unfortunately, for many reasons, the progress has been slow so far.

THE COURT FURTHER FINDS that Minh is not solely at fault for the estrangement between Jim and Matthew and Hannah. Jim has his own contribution to these problems, as do Hannah and Matthew and that is why the Court prioritized Jim working with each child in reunification counseling. This is a family dynamic problem that requires immediate, intensive therapeutic intervention for the whole family in order to rebalance the children's relationship with each parent. The Court finds that Jim is willing and able to be counseled and

to do the work to improve his relationship with Hannah and Matthew. However, the key ingredient missing at this moment is Minh's genuine support of the children repairing their relationship with their father.

THE COURT FURTHER FINDS that Minh believes that Jim has abused their children emotionally and physically despite there being no objective evidence to support that belief. That mistaken belief is hindering Minh's willingness and ability to support the reunification efforts between Jim and the children.

THE COURT FURTHER FINDS that the relationship Hannah and Matthew have with Minh is unhealthy and the relationship they have with Jim is unhealthy. The longer this persists, the more long term damage there will be to the emotional development of the children. The fact that Matthew and Hannah are being triangulated between their warring parents is very detrimental. Immediate, intensive therapeutic intervention is necessary and these parents have the financial ability to access such professional services.

THE COURT FURTHER FINDS that Dr. Sunshine Collins, who has been appointed to conduct reunification therapy with Hannah, Matthew and Jim has recommended that the family participate in the Turning Points for Families Program in New York. Additionally, the Guardian ad Litem has also recommended that the family participate in the program.

THE COURT FURTHER FINDS that it has carefully considered Minh's position that making the family participate in this program would amount to "torturing" the children, particularly because of the required 90 day sequestration period after the intensive four days in New York. However, this family is in crisis and needs this intensive intervention and Minh holds the keys to how long the sequestration period will actually last. She has to get started immediately with her therapeutic services with Ms. Keiford to support her in this process of change.

THE COURT FURTHER FINDS that it is in the best interest of the minor children, Hannah, born March 19, 2009 (twelve (12) years old), Matthew, born June 26, 2010 (eleven (11) years old), and Selena, born April 4, 2014 (seven (7) years old), to participate in the Turning Points for Families Program in New York with Jim.

THE COURT FURTHER FINDS that it is in the children's best interest for Jim to have temporary sole legal and sole physical custody of the minor children as recommended by the Turnings Points for Families Program. This is a temporary order only, with the goal being to restore the children to healthy relationships with both parents and to return the family to the joint physical custody schedule that Judge Ritchie found was in the best interest of the children.

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NOW, THEREFORE,

THE COURT HEREBY ORDERS that Jim shall participate in the Turning Points for Families Program in New York with the parties' minor children, Hannah, born March 19, 2009 (twelve (12) years old), Matthew, born June 26, 2010 (eleven (11) years old), and Selena, born April 4, 2014 (seven (7) years old).

THE COURT FURTHER ORDERS that Jim shall have temporary sole legal and sole physical custody of the parties' minor children as recommended by the Turning Points for Families Program.

THE COURT FURTHER ORDERS that Jim and Minh shall cooperate and facilitate the reunification therapy (Turnings Points for Families Program) with Linda J. Gottlieb, LMFT, LCSW-R, as per the instructions of Linda J. Gottlieb. Neither party shall do anything to thwart the reunification process.

THE COURT FURTHER ORDERS that neither party shall inform the children of this Order until they have a consultation with Linda J. Gottlieb and will comply with her direction on how to explain the program.

THE COURT FURTHER ORDERS that on the 7th or 8th day of April, 2022 (a date and time to be determined by Linda Gottlieb/or by Order of the Court), Jim shall transport Matthew and Selena and Minh shall transport Hannah to the New York location as determined by Linda J. Gottlieb.

THE COURT FURTHER ORDERS that Minh and her family and friends must stay at least sixty (60) miles away at all times from said treatment location

of Linda J. Gottlieb. At no time should Minh intrude upon the intervention unless so authorized by Linda J. Gottlieb.

THE COURT FURTHER ORDERS that there shall be a minimum of ninety (90) days sequestration period between Minh, Minh's family, and the children. During the sequestration period, Minh and Minh's family, friends, associates, and other relatives of Minh shall have no contact with the subject children, directly or indirectly, through third parties or otherwise, including but not limited to: in person, written, telephonic, Facebook, twitter, texts, photos, or other electronic means or modes of communication.

THE COURT FURTHER ORDERS that the sequestration period can be shortened at the discretion of Linda J. Gottlieb should she determine that Minh has sufficiently demonstrated that she is ready, willing, and able to support the relationship between the other parent and the children.

THE COURT FURTHER ORDERS that an extension of the sequestration period shall be recommended to the Court for review Linda J. Gottlieb, based upon the progress and success of the reunification and based upon Minh's cooperation and support for the reunification. The Court may schedule a review date on or about ninety (90) days from day one of the intervention to determine testimony whether the no-contact period should be lifted or extended.

THE COURT FURTHER ORDERS that Minh shall engage in parent education services with Linda J. Gottlieb during the four-day intervention via

electronic communication regarding the children's need and best interest to have a meaningful relationship with Jim. Minh will further engage in individual therapy with a local therapist, the costs of which shall be borne solely by Minh. Linda J. Gottlieb shall be authorized to communicate and collaborate with said local therapist. Minh shall execute all necessary authorizations, releases, or other documents to facilitate communication, collaboration, and release of information to Linda J. Gottlieb. The therapist must be approved by Linda J. Gottlieb based upon the therapist's specialization for the treatment required.

THE COURT FURTHER ORDERS that Minh shall provide to Linda J. Gottlieb a letter addressed to the children stating the importance of having Jim meaningfully in the children's lives, including the qualities Jim has to offer the child, the importance of having a meaningful relationship with Jim, and that Minh supports the reunification and why. Minh shall also state she expects the children to support the reunification program by cooperating with all instructions.

THE COURT FURTHER ORDERS that on the date when Minh transports Hannah to the location selected by Linda J. Gottlieb, Minh shall ensure that Hannah has adequate supplies and clothing for a minimum of six (6) nights lodging. Minh must also provide to Jim any mementos, childhood photographs, videos, including without limitation: the childhood toys that were retained that may not be in the possession of Jim. This must be executed on or before the beginning of the intervention as the items are needed for the intervention. Minh

will cooperate in providing whatever family mementos are requested by Linda J. Gottlieb. Upon return from the intervention, Minh will provide Jim with all the necessities and other items that are in her possession which are needed by the children.

THE COURT FURTHER ORDERS that, in order to make sure that there is no delay in the family proceeding with the Turning Points for Families Program, Jim shall immediately pay the $15,000 program fee and Minh shall reimbursed Jim for 100% of that fee within 30 days of him providing her with a receipt showing his payment of that fee. The Court finds that this program fee is necessary for the wellbeing of the minor children and is ordered as additional child support. Minh shall be required to pay the cost of transportation for her and Hannah to get to the New York location. Jim will be responsible for the cost of transportation for himself, Matthew and Selena to get to New York and for all four of them to return from New York at the end of the program. Jim shall be solely responsible for the cost of food, entertainment activities, and overnight lodging of all of the children and Jim.

THE COURT FURTHER ORDERS that for at least the months of April, May and June 2022, MINH shall pay temporary child support to Jim for the support of their three minor children in the amount of $3,541 per month, with the first payment being due on or before April 1, 2022. This temporary child support

obligation is based upon Minh's gross monthly income of $34,342 as stated under oath in her most recent Financial Disclosure Form.

THE COURT FURTHER ORDERS that all parties will comply with the Turning Points for Families treatment protocol as outlined on the Turning Points for Families' website.

THE COURT FURTHER ORDERS that a condition for lifting the sequestration period scheduled to end on July 8, 2022, Minh's therapist must have provided documentation satisfactory to Linda J. Gottlieb that Minh is ready, willing, and able to support the relationship between petitioner Jim and the children, and Minh will abstain from any further behaviors/strategies that sabotage, interfere with, and/or do not proactively support Jim's relationships with the children.

THE COURT FURTHER ORDERS that upon conclusion of the four-day therapeutic intervention, Jim shall engage a local family therapist (i.e., Dr. Sunshine Collins) to continue family therapy between the children and Jim, with collaboration with Linda J. Gottlieb, to further the reunification. The costs of this continued family therapy shall be shared equally between the parties 50/50.

THE COURT FURTHER ORDERS that upon conclusion of the therapeutic intervention, the children will reside with Jim, who will continue to have sole physical and sole legal custody and sole decision making until and unless the sequestration period is lifted by the Court.

THE COURT FURTHER ORDERS that Mimh will cooperate fully with all releases and support for the adjustment of the children to the home of Jim as directed by Linda J. Gottlieb. This shall include any releases necessary for Linda J. Gottlieb to confer with Ms. Weiford, Dr. Sunshine Collins, Dr. Fontelle or any other professionals working with this family.

THE COURT FURTHER ORDERS that upon court review and with testimony and/or reports by Linda J. Gottlieb and the local therapists that Minh has demonstrated genuine support for the reunification and is ready, willing, and able to support the relationships between Jim and their children, the sequestration period will be lifted. A 50/50 parenting schedule may be recommended to the Court for its determination as to the best interests of the children, and the Court will order the parenting schedule.

THE COURT FURTHER ORDERS that Law enforcement, including but not limited to police, sheriffs, state police, shall enforce the terms of this Order and lend all necessary assistance.

The parents understand and acknowledge that, pursuant to the terms of the Parental Kidnaping Prevention Act, 28 U.S.C. §1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act, NRS 125A.005, et seq., the courts of Nevada have exclusive modification jurisdiction of the custody, visitation, and child support terms relating to the child at issue in this case so long as either of the parents, or the child, continue to reside in Nevada.

NOTICE IS HEREBY GIVEN of the following provision of NRS 125C.0045(6):

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals, or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this Court, or removes the child from the jurisdiction of the Court without the consent of either the Court of 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.

NOTICE IS HEREBY GIVEN that the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country. The parties are also put on notice of the following provision of NRS 125C.0045(8):

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

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

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

NOTICE IS HEREBY GIVEN that the parties are subject to the relocation requirements of NRS 125C.006 & NRS 125C.0065. If joint or primary physical custody has been established pursuant to an order, judgment or decree of a Court and one parent intends to relocate his/her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with

him/her, the relocating parent shall, before relocating: (a) attempt to obtain the written consent of the non-relocating parent to relocate with the child; and (b) if the non-relocating parent refuses to give that consent, petition the Court for permission to move and/or for primary physical custody for the purpose of relocating. A parent who desires to relocate with a child has the burden of proving that relocation with the child is 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 refusal, or for the purpose of harassing the relocating parent. A parent who relocates with a child pursuant to this section without the written consent of the other parent or the permission of the Court is subject to the provisions of NRS 200.359. The failure of a parent to comply with the provisions of this section may be considered as a factor if a change of custody is requested by the non-custodial parent.

NOTICE IS HEREBY GIVEN that the parties are subject to the provisions of NRS Chapter 31A and NRS 425.560 regarding the collection of delinquent child support payments.

NOTICE IS HEREBY GIVEN that:

A. Pursuant to NRS 125B.140, if an installment of an obligation to pay support for a child becomes delinquent, the court shall determine interest upon the arrearages at a rate established pursuant to NRS 99.040, from the time each

amount became due. Interest shall continue to accrue on the amount ordered until it is paid, and additional attorney's fees must be allowed if required for collection.

B. Pursuant to NRS 125B.145, an award of child support shall be reviewed by the court at least every three (3) years to determine whether the award should be modified. The review will be conducted upon the filing of a request by a (1) parent or legal guardian of the child; or (2) the Nevada State Welfare Division or the District Attorney's Office, if the Division of the District Attorney has jurisdiction over the case.

C. Pursuant to NRS 125.450(2), the wages and commissions of the parent responsible for paying support shall be subject to assignment or withholding for the purpose of payment of the foregoing obligation of support as provided in NRS 31A.020 through 31A.240, inclusive.

NAC 425.165 - If the child support order is for more than one child and does not allocate a specific amount to each child, the following notice must be added:

NOTICE IS HEREBY GIVEN that if either party wants to adjust the amount of child support established in this order, they must file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject

to this order is still in high school when he/she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

Dated this 22nd day of March, 2022

A49 1AC D16F 8658
Dawn R. Throne
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

James W. Vahey, Plaintiff vs. Minh Nguyet Luong, Defendant.	CASE NO: D-18-581444-D DEPT. NO. Department U

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/22/2022

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NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

James W. Vahey, Plaintiff vs. Minh Nguyet Luong, Defendant.	Case No: D-18-581444-D Department U

NOTICE OF ENTRY OF ORDER FOR PLAINTIFF TO PARTICIPATE IN TURNING POINTS FOR FAMILIES PROGRAM WITH MINOR CHILDREN AND FOR DEFENDANT TO COOPERATE AND SUPPORT THE MINOR CHILDREN'S PARTICIPATION IN THE TURNING POINTS PROGRAM WITH PLAINTIFF

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on the March 22, 2022 a true and correct copy of which is attached hereto.

Dated: March 22, 2022

/s/ Suzanna Zavala
Suzanna Zavala,
Judicial Executive Assistant to
the Honorable Dawn R. Throne

DAWN R. THRONE
DISTRICT JUDGE
FAMILY DIVISION, DEPT. U
LAS VEGAS, NV 89101 2408

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamp date:

☒ I ESERVE, EMAIL or MAIL a copy of the foregoing NOTICE OF ENTRY OF **ORDER FOR PLAINTIFF TO PARTICIPATE IN TURNING POINTS FOR FAMILIES PROGRAM WITH MINOR CHILDREN AND FOR DEFENDANT TO COOPERATE AND SUPPORT THE MINOR CHILDREN'S PARTICIPATION IN THE TURNING POINTS PROGRAM WITH PLAINTIFF** to the appropriate attorneys to:

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Sabrina M. Dolson, Esq.
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Attorneys for Plaintiff

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Guardian Ad Litem for minor children

/s/ Suzanna Zavala
Suzanna Zavala,
Judicial Executive Assistant to
the Honorable Dawn R. Throne

DAWN R. THRONE
DISTRICT JUDGE
FAMILY DIVISION, DEPT. U
LAS VEGAS, NV 89101 2408

ORDR

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JAMES W. VAHEY,

Plaintiff,

v.

MINH NGUYET LUONG,

Defendant.

CASE NO. D-18-581444-D

DEPT. NO. U

Date of Hearing: 3/21/22
Time of Hearing: 10:30 a.m.

ORDER FOR PLAINTIFF TO PARTICIPATE IN TURNING POINTS FOR FAMILIES PROGRAM WITH MINOR CHILDREN AND FOR DEFENDANT TO COOPERATE AND SUPPORT THE MINOR CHILDREN'S PARTICIPATION IN THE TURNING POINTS PROGRAM WITH PLAINTIFF

This matter having come before the Honorable Judge Dawn R. Throne, on Plaintiff's Emergency Motion for Order for Plaintiff to Participate in Turning Points for Families Program with Minor Children, for Defendant to Be Solely Responsible for the Costs Associated with the Program, and for Related Relief. The Court having before it all the files, pleadings, and papers in the action, and good cause appearing therefor, the Court finds and orders as follows:

THE COURT HEREBY FINDS that the Court is very familiar with the ongoing dynamics in this family related to their three minor children. Specifically, relevant to the matters now before the Court:

1. The Honorable T. Arthur Ritchie conducted an evidentiary hearing on August 8, 2019, September 5, 2019 and September 11, 2019 regarding Defendant/Mom's ("Minh") request for primary physical custody of the three minor children and to be allowed to relocate with them to California over Plaintiff/Dad's objection and Plaintiff/Dad's ("Jim") request for joint custody. The Findings of Fact, Conclusions of Law, Decision and Order were entered on September 20, 2019. After hearing two and a half days of evidence, Judge Ritchie found that Jim was more likely to allow the children to have a frequent and continuing relationship with the other parent and that there were concerns at that time regarding Minh's negative attitude toward Jim "has caused her to negatively influence the relationship between the children and their father." Page 11, lines 11–19. That Minh's dialog with the children showed "poor judgment and has the potential to alienate the children from their father." Page 12, lines 5-6. The Court further found that Minh's "intention to move is, in part, to deprive James Vahey of his parenting time." Page 18, lines 13-14. It also found that Minh's

"motives for the move are suspect, and finds that the move would frustrate and limit James Vahey's opportunity to share custody of the children." In summary, the Court found that it was in the best interest of the children for the parents to share joint physical custody, but if Minh decided to relocate to California anyway as she testified, the children would remain in Jim's primary physical custody in Nevada.

2. Minh allowed her disappointment over the denial of her request to relocate with the children to California to fester like a wound that has not only infected her, but also the two oldest children, Hannah and Matthew. She has continued down the path of "exercising poor judgment" aimed at undermining the children's relationships with Jim. The first thing she did was try to force the Court's and Jim's hand by relocating without the children, calculating that the children and Jim would be so miserable that they would be forced to allow the children to relocate with her to California. When that did not work, she returned to Nevada and purchased a new home that was as far on the other side of the Las Vegas Valley from Jim as she could find, making the logistics of transporting the children to and from school, activities and parental homes as difficult as possible.

3. Because Minh hates Jim so much and so undervalues his contribution to their three beautiful children, she automatically believes any negative

allegation that the children make about their father. She does not question, in any way, exaggerated statements the children make about their father. The children (or at least Hannah and Matthew presently) are stuck in a vicious cycle of the children making grossly exaggerated allegations against Jim that Minh believes without question and uses to justify her belief that Jim is dangerous to the children emotionally and physically and then she reinforces that belief to the children through her words and actions.

4. The actions Minh has taken to undermine Jim's relationship with the children vary from subtle things such as keeping the children on the phone with her for hours during Jim's custodial time to the extreme of disenrolling Hannah and Matthew from Challenger and enrolling them in Bob Miller Middle School without Jim's knowledge or consent. She did this knowing that Jim would object and with the participation of Matthew and Hannah so that when the plan did not work they would blame Jim. She has repeatedly caused reports to be made to CPS accusing Jim of physically abusing the children when they get a bruise during his custodial time. The children are aware of these reports and feel empowered by Minh to physically act out against their father. These efforts have been effective in that Jim does not feel like he has

the power and ability to properly parent the children by setting age appropriate expectations and boundaries for them.

5. The Court also has concerns about Minh's unwillingness to properly parent the children and set appropriate boundaries for them. If the Court believes Minh's sworn statements that she has no ability to get Matthew and Hannah to comply with her instruction to them to go into their father's home/custody, then the children do not have proper respect for her authority as their mother and the relationship between mother and children is also unhealthy. The situation with Hannah and Matthew has gotten so bad that that they have refused to be in/go to their Dad's home when it is his custodial time. They have even physically assaulted their father when he has done nothing but try exercising his custodial and parental rights and Minh has done nothing to effectively discipline them for this completely inappropriate behavior.

6. The last evidentiary hearing in this case occurred on November 3, 2021 and November 5, 2021. The first goal of this evidentiary hearing was to determine what to do about the urgent issue of Matthew and Hannah not attending any school for about a month by that time. The second point what to continue to try to restore the parents and children to a stable joint physical custody schedule.

7. In an attempt to improve the relationship between the parents in terms of co-parenting and the relationship of the children with both parents, the Court has made other orders since the November 2021 evidentiary hearing, including, but not limited to appointing a Guardian ad Litem for Matthew and Hannah, ordering Jim to attend reunification counseling with both Hannah and Matthew (individually) and the Minh attend therapy with Keisha Weiford, MFT in order to improve her ability to communicate and co-parent with Jim and to better support the children's relationship with their father. The Court indicated that Jim is not blameless for the ineffective co-parenting relationship he has with Minh, but that Jim would first put time and money toward counseling with the children and then later do the same co-parenting counseling with Ms. Weiford. Unfortunately, for many reasons, the progress has been slow so far.

THE COURT FURTHER FINDS that Minh is not solely at fault for the estrangement between Jim and Matthew and Hannah. Jim has his own contribution to these problems. as do Hannah and Matthew and that is why the Court prioritized Jim working with each child in reunification counseling. This is a family dynamic problem that requires immediate, intensive therapeutic intervention for the whole family in order to rebalance the children's relationship with each parent. The Court finds that Jim is willing and able to be counseled and

to do the work to improve his relationship with Hannah and Matthew. However, the key ingredient missing at this moment is Minh's genuine support of the children repairing their relationship with their father.

THE COURT FURTHER FINDS that Minh believes that Jim has abused their children emotionally and physically despite there being no objective evidence to support that belief. That mistaken belief is hindering Minh's willingness and ability to support the reunification efforts between Jim and the children.

THE COURT FURTHER FINDS that the relationship Hannah and Matthew have with Minh is unhealthy and the relationship they have with Jim is unhealthy. The longer this persists, the more long term damage there will be to the emotional development of the children. The fact that Matthew and Hannah are being triangulated between their warring parents is very detrimental. Immediate, intensive therapeutic intervention is necessary and these parents have the financial ability to access such professional services.

THE COURT FURTHER FINDS that Dr. Sunshine Collins, who has been appointed to conduct reunification therapy with Hannah. Matthew and Jim has recommended that the family participate in the Turning Points for Families Program in New York. Additionally, the Guardian ad Litem has also recommended that the family participate in the program.

THE COURT FURTHER FINDS that it has carefully considered Minh's position that making the family participate in this program would amount to "torturing" the children, particularly because of the required 90 day sequestration period after the intensive four days in New York. However, this family is in crisis and needs this intensive intervention and Minh holds the keys to how long the sequestration period will actually last. She has to get started immediately with her therapeutic services with Ms. Keiford to support her in this process of change.

THE COURT FURTHER FINDS that it is in the best interest of the minor children, Hannah, born March 19, 2009 (twelve (12) years old), Matthew, born June 26, 2010 (eleven (11) years old), and Selena, born April 4, 2014 (seven (7) years old), to participate in the Turning Points for Families Program in New York with Jim.

THE COURT FURTHER FINDS that it is in the children's best interest for Jim to have temporary sole legal and sole physical custody of the minor children as recommended by the Turnings Points for Families Program. This is a temporary order only, with the goal being to restore the children to healthy relationships with both parents and to return the family to the joint physical custody schedule that Judge Ritchie found was in the best interest of the children.

...

...

NOW, THEREFORE,

THE COURT HEREBY ORDERS that Jim shall participate in the Turning Points for Families Program in New York with the parties' minor children, Hannah, born March 19, 2009 (twelve (12) years old), Matthew, born June 26, 2010 (eleven (11) years old), and Selena, born April 4, 2014 (seven (7) years old).

THE COURT FURTHER ORDERS that Jim shall have temporary sole legal and sole physical custody of the parties' minor children as recommended by the Turning Points for Families Program.

THE COURT FURTHER ORDERS that Jim and Minh shall cooperate and facilitate the reunification therapy (Turnings Points for Families Program) with Linda J. Gottlieb, LMFT, LCSW-R, as per the instructions of Linda J. Gottlieb. Neither party shall do anything to thwart the reunification process.

THE COURT FURTHER ORDERS that neither party shall inform the children of this Order until they have a consultation with Linda J. Gottlieb and will comply with her direction on how to explain the program.

THE COURT FURTHER ORDERS that on the 7th or 8th day of April, 2022 (a date and time to be determined by Linda Gottlieb/or by Order of the Court), Jim shall transport Matthew and Selena and Minh shall transport Hannah to the New York location as determined by Linda J. Gottlieb.

THE COURT FURTHER ORDERS that Minh and her family and friends must stay at least sixty (60) miles away at all times from said treatment location

of Linda J. Gottlieb. At no time should Minh intrude upon the intervention unless so authorized by Linda J. Gottlieb.

THE COURT FURTHER ORDERS that there shall be a minimum of ninety (90) days sequestration period between Minh, Minh's family, and the children. During the sequestration period, Minh and Minh's family, friends, associates, and other relatives of Minh shall have no contact with the subject children, directly or indirectly, through third parties or otherwise, including but not limited to: in person, written, telephonic, Facebook, twitter, texts, photos, or other electronic means or modes of communication.

THE COURT FURTHER ORDERS that the sequestration period can be shortened at the discretion of Linda J. Gottlieb should she determine that Minh has sufficiently demonstrated that she is ready, willing, and able to support the relationship between the other parent and the children.

THE COURT FURTHER ORDERS that an extension of the sequestration period shall be recommended to the Court for review Linda J. Gottlieb, based upon the progress and success of the reunification and based upon Minh's cooperation and support for the reunification. The Court may schedule a review date on or about ninety (90) days from day one of the intervention to determine testimony whether the no-contact period should be lifted or extended.

THE COURT FURTHER ORDERS that Minh shall engage in parent education services with Linda J. Gottlieb during the four-day intervention via

electronic communication regarding the children's need and best interest to have a meaningful relationship with Jim. Minh will further engage in individual therapy with a local therapist, the costs of which shall be borne solely by Minh. Linda J. Gottlieb shall be authorized to communicate and collaborate with said local therapist. Minh shall execute all necessary authorizations, releases, or other documents to facilitate communication, collaboration, and release of information to Linda J. Gottlieb. The therapist must be approved by Linda J. Gottlieb based upon the therapist's specialization for the treatment required.

THE COURT FURTHER ORDERS that Minh shall provide to Linda J. Gottlieb a letter addressed to the children stating the importance of having Jim meaningfully in the children's lives, including the qualities Jim has to offer the child, the importance of having a meaningful relationship with Jim, and that Minh supports the reunification and why. Minh shall also state she expects the children to support the reunification program by cooperating with all instructions.

THE COURT FURTHER ORDERS that on the date when Minh transports Hannah to the location selected by Linda J. Gottlieb, Minh shall ensure that Hannah has adequate supplies and clothing for a minimum of six (6) nights lodging. Minh must also provide to Jim any mementos, childhood photographs, videos, including without limitation: the childhood toys that were retained that may not be in the possession of Jim. This must be executed on or before the beginning of the intervention as the items are needed for the intervention. Minh

will cooperate in providing whatever family mementos are requested by Linda J. Gottlieb. Upon return from the intervention, Minh will provide Jim with all the necessities and other items that are in her possession which are needed by the children.

THE COURT FURTHER ORDERS that, in order to make sure that there is no delay in the family proceeding with the Turning Points for Families Program, Jim shall immediately pay the $15,000 program fee and Minh shall reimbursed Jim for 100% of that fee within 30 days of him providing her with a receipt showing his payment of that fee. The Court finds that this program fee is necessary for the wellbeing of the minor children and is ordered as additional child support. Minh shall be required to pay the cost of transportation for her and Hannah to get to the New York location. Jim will be responsible for the cost of transportation for himself, Matthew and Selena to get to New York and for all four of them to return from New York at the end of the program. Jim shall be solely responsible for the cost of food, entertainment activities, and overnight lodging of all of the children and Jim.

THE COURT FURTHER ORDERS that for at least the months of April, May and June 2022, MINH shall pay temporary child support to Jim for the support of their three minor children in the amount of $3,541 per month. with the first payment being due on or before April 1, 2022. This temporary child support

obligation is based upon Minh's gross monthly income of $34,342 as stated under oath in her most recent Financial Disclosure Form.

THE COURT FURTHER ORDERS that all parties will comply with the Turning Points for Families treatment protocol as outlined on the Turning Points for Families' website.

THE COURT FURTHER ORDERS that a condition for lifting the sequestration period scheduled to end on July 8. 2022, Minh's therapist must have provided documentation satisfactory to Linda J. Gottlieb that Minh is ready, willing, and able to support the relationship between petitioner Jim and the children, and Minh will abstain from any further behaviors/strategies that sabotage, interfere with, and/or do not proactively support Jim's relationships with the children.

THE COURT FURTHER ORDERS that upon conclusion of the four-day therapeutic intervention, Jim shall engage a local family therapist (i.e., Dr. Sunshine Collins) to continue family therapy between the children and Jim, with collaboration with Linda J. Gottlieb, to further the reunification. The costs of this continued family therapy shall be shared equally between the parties 50/50.

THE COURT FURTHER ORDERS that upon conclusion of the therapeutic intervention, the children will reside with Jim, who will continue to have sole physical and sole legal custody and sole decision making until and unless the sequestration period is lifted by the Court.

THE COURT FURTHER ORDERS that Mimh will cooperate fully with all releases and support for the adjustment of the children to the home of Jim as directed by Linda J. Gottlieb. This shall include any releases necessary for Linda J. Gottlieb to confer with Ms. Weiford, Dr. Sunshine Collins, Dr. Fontelle or any other professionals working with this family.

THE COURT FURTHER ORDERS that upon court review and with testimony and/or reports by Linda J. Gottlieb and the local therapists that Minh has demonstrated genuine support for the reunification and is ready, willing, and able to support the relationships between Jim and their children, the sequestration period will be lifted. A 50/50 parenting schedule may be recommended to the Court for its determination as to the best interests of the children, and the Court will order the parenting schedule.

THE COURT FURTHER ORDERS that Law enforcement, including but not limited to police, sheriffs, state police, shall enforce the terms of this Order and lend all necessary assistance.

The parents understand and acknowledge that, pursuant to the terms of the Parental Kidnaping Prevention Act, 28 U.S.C. §1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act, NRS 125A.005, et seq., the courts of Nevada have exclusive modification jurisdiction of the custody, visitation, and child support terms relating to the child at issue in this case so long as either of the parents, or the child, continue to reside in Nevada.

NOTICE IS HEREBY GIVEN of the following provision of NRS 125C.0045(6):

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals, or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this Court, or removes the child from the jurisdiction of the Court without the consent of either the Court of 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.

NOTICE IS HEREBY GIVEN that the terms of the Hague Convention of October 25. 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country. The parties are also put on notice of the following provision of NRS 125C.0045(8):

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

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

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

NOTICE IS HEREBY GIVEN that the parties are subject to the relocation requirements of NRS 125C.006 & NRS 125C.0065. If joint or primary physical custody has been established pursuant to an order, judgment or decree of a Court and one parent intends to relocate his/her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with

him/her, the relocating parent shall, before relocating: (a) attempt to obtain the written consent of the non-relocating parent to relocate with the child; and (b) if the non-relocating parent refuses to give that consent, petition the Court for permission to move and/or for primary physical custody for the purpose of relocating. A parent who desires to relocate with a child has the burden of proving that relocation with the child is 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 refusal, or for the purpose of harassing the relocating parent. A parent who relocates with a child pursuant to this section without the written consent of the other parent or the permission of the Court is subject to the provisions of NRS 200.359. The failure of a parent to comply with the provisions of this section may be considered as a factor if a change of custody is requested by the non-custodial parent.

NOTICE IS HEREBY GIVEN that the parties are subject to the provisions of NRS Chapter 31A and NRS 425.560 regarding the collection of delinquent child support payments.

NOTICE IS HEREBY GIVEN that:

A. Pursuant to NRS 125B.140, if an installment of an obligation to pay support for a child becomes delinquent, the court shall determine interest upon the arrearages at a rate established pursuant to NRS 99.040, from the time each

amount became due. Interest shall continue to accrue on the amount ordered until it is paid, and additional attorney's fees must be allowed if required for collection.

B. Pursuant to NRS 125B.145, an award of child support shall be reviewed by the court at least every three (3) years to determine whether the award should be modified. The review will be conducted upon the filing of a request by a (1) parent or legal guardian of the child; or (2) the Nevada State Welfare Division or the District Attorney's Office, if the Division of the District Attorney has jurisdiction over the case.

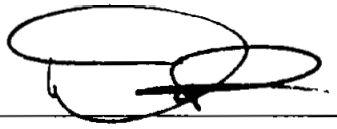
C. Pursuant to NRS 125.450(2), the wages and commissions of the parent responsible for paying support shall be subject to assignment or withholding for the purpose of payment of the foregoing obligation of support as provided in NRS 31A.020 through 31A.240, inclusive.

NAC 425.165 - If the child support order is for more than one child and does not allocate a specific amount to each child, the following notice must be added:

NOTICE IS HEREBY GIVEN that if either party wants to adjust the amount of child support established in this order, they must file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject

to this order is still in high school when he/she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

Dated this 22nd day of March, 2022



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Dawn R. Throne
District Court Judge

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DISTRICT COURT
CLARK COUNTY, NEVADA

James W. Vahey, Plaintiff	CASE NO: D-18-581444-D
vs.	DEPT. NO. Department U
Minh Nguyet Luong, Defendant.	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/22/2022

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VOLUME XXI

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JAMES W. VAHEY, Plaintiff, vs. MINH NGUYET LUONG, Defendant.	Case No.: D-18-581444-D Dept.: U

ORDER FROM FEBRUARY 8, 2022 HEARING

This matter having come before the Honorable Judge Dawn R. Throne, on the 8th day of February, 2022, for a Status Check hearing; Plaintiff, JAMES W. VAHEY ("JIM"), appearing via Blue Jeans with his attorneys, ROBERT P. DICKERSON, ESQ., and SABRINA M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW GROUP; Defendant, MINH NGUYET LUONG ("MINH"), appearing via Blue Jeans with her attorney, FRED PAGE, ESQ., of PAGE LAW FIRM; and Guardian Ad Litem, Valarie I. Fujii, Esq., appearing via Blue Jeans. The Court having before it all the files, pleadings, and papers in the action, having heard the oral argument of counsel, having reviewed the report

submitted by Ms. Fujii and the reports submitted by Dr. Michelle Fontenelle-Gilmer and Dr. Sunshine Collins, and good cause appearing therefor, the Court finds and orders as follows:

THE COURT HEREBY FINDS that the parties should continue using Dr. Sunshine Collins as a local provider for Matthew and Hannah; however, the Court also believes it would also be in the children's best interest to participate in a program operated in New York, Turning Points for Families, that provides reunification therapy for severe parental alienation or unreasonably disruptive parent-child relationships. The program is a four (4) day, in person, intense therapy in New York and then two (2) years of follow-up with a local provider. The Court's goal would be for Hannah and Matthew to participate at the same time, but the Court is unaware if the provider can do Hannah and Matthew at the same time. The Court will make the Order for Matthew and Hannah to participate in the Turning Points for Families program if the provider can do both children at the same time. If the provider will allow both children to participate at the same time, the Court will order MINH to fly to New York with Hannah to participate in the program and Hannah will have no contact with MINH for a period of at least ninety (90) days. If the provider cannot do both children at the same time, the Court will order for Matthew to participate first and then Hannah separately. JIM should discuss the program with Dr. Collins, and if JIM wants to participate in this program, the Court can work on the language of an Order to facilitate same.

THE COURT FURTHER FINDS that the cost of the Turning Points for Families program is $15,000, and MINH should pay 75% of . . .

this cost as a child support obligation for Matthew and JIM should pay 25% of the cost.

THE COURT FURTHER FINDS that it is in Matthew's best interest to have zero communication with MINH for the next ninety (90) days and thus, JIM shall have temporary sole legal and sole physical custody of Matthew. No contact between MINH and Matthew means there shall be no calls, no text messages, no emails, no messaging through any platform, no messages at Matthew's school, no visits to Matthew's school to communicate with him, no messages through Selena or anyone else, no food, no gifts, no money, none of the games that have been played since November 2021.

THE COURT FURTHER FINDS that it is in Matthew's best interest for any contact between him and MINH to be through Dr. Collins if recommended by Dr. Collins.

NOW, THEREFORE,

THE COURT HEREBY ORDERS that Dr. Collins shall continue to provide services for Matthew and Hannah.

THE COURT FURTHER ORDERS that both parties shall cooperate with Dr. Collins to schedule appointments for Hannah to get her started in the reunification therapy process. MINH shall treat Hannah's appointments with Dr. Collins as a priority and scheduling such appointments is a higher priority than traveling to California.

THE COURT FURTHER ORDERS that JIM shall contact the provider at Turning Points for Families regarding participating in the program with Matthew and Hannah. The Court will send informative materials to the parties regarding the Turning Points for Families program.

. . .

THE COURT FURTHER ORDERS that for the next ninety (90) days MINH shall have zero contact or communication with Matthew. No contact between MINH and Matthew means there shall be no calls, no text messages, no emails, no messaging through any platform, no messages at Matthew's school, no visits to Matthew's school to communicate with him, no messages through Selena or anyone else, no food, no gifts, no money, none of the games that have been played since November 2021.

THE COURT FURTHER ORDERS that any contact or communication between MINH and Matthew shall only occur through Dr. Collins if recommended by Dr. Collins.

THE COURT FURTHER ORDERS that JIM shall have temporary sole legal and sole physical custody of Matthew for the next ninety (90) days.

THE COURT FURTHER ORDERS that JIM shall contact Turning Points for Families to inquire as to whether the program will allow both Hannah and Matthew to participate at the same time or if he must participate in the program separately with each child.

THE COURT FURTHER ORDERS that MINH shall pay 75% of the $15,000 cost of the Turning Points for Families program as a child support obligation for Matthew and JIM shall pay 25% of the cost.

THE COURT FURTHER ORDERS that neither party, their significant others, or any family member of either party shall inform the children of any upcoming hearings.

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. . .

THE COURT FURTHER ORDERS that a Status Check hearing shall be set for May 31, 2022 at 3:00 p.m. on a one hour setting.

Dated this 30th day of March, 2022

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Dawn R. Throne
District Court Judge

Submitted by:

THE DICKERSON KARACSONYI
LAW GROUP

/s/ Sabrina M. Dolson

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
SABRINA M. DOLSON, ESQ.
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1645 Village Center Circle, Suite 291
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

James W. Vahey, Plaintiff	CASE NO: D-18-581444-D
vs.	DEPT. NO. Department U
Minh Nguyet Luong, Defendant.	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/30/2022

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Attorneys for Plaintiff

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

JAMES W. VAHEY, Plaintiff, v. MINH NGUYET LUONG, Defendant.	CASE NO.: D-18-581444-D DEPT NO.: U

NOTICE OF ENTRY OF ORDER FROM FEBRUARY 8, 2022 HEARING

TO: MINH NGUYET LUONG, Defendant; and

TO: FRED PAGE, ESQ. of PAGE LAW FIRM, Attorney for Defendant:

PLEASE TAKE NOTICE that an ORDER FROM FEBRUARY 8, 2022 HEARING, a true and correct copy of which is attached hereto, was entered in the above-entitled matter on the 30th day of March, 2022.

DATED this 5th day of April, 2022.

THE DICKERSON KARACSONYI LAW GROUP

By */s/ Sabrina M. Dolson*
SABRINA M. DOLSON, ESQ.
Nevada Bar No. 013105
1645 Village Center Circle, Suite 291
Las Vegas, Nevada 89134
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 5th day of April, 2022, I caused the above and foregoing document entitled NOTICE OF ENTRY OF ORDER FROM FEBRUARY 8, 2022 HEARING to be served as follows:

[X] by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

[ ] by placing 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;

[ ] to be sent via facsimile, by duly executed consent for service by electronic means

[ ] by hand-delivery with signed Receipt of Copy.

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

FRED PAGE, ESQ.
PAGE LAW FIRM
6930 South Cimarron Road, Suite 140
Las Vegas, Nevada 89113
fpage@pagelawoffices.com
Attorney for Defendant

/s/ Sabrina M. Dolson
An employee of The Dickerson Karacsonyi Law Group

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ORDR

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JAMES W. VAHEY, Plaintiff, vs. MINH NGUYET LUONG, Defendant.	Case No.: D-18-581444-D Dept.: U

ORDER FROM FEBRUARY 8, 2022 HEARING

This matter having come before the Honorable Judge Dawn R. Throne, on the 8th day of February, 2022, for a Status Check hearing; Plaintiff, JAMES W. VAHEY ("JIM"), appearing via Blue Jeans with his attorneys, ROBERT P. DICKERSON, ESQ., and SABRINA M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW GROUP; Defendant, MINH NGUYET LUONG ("MINH"), appearing via Blue Jeans with her attorney, FRED PAGE, ESQ., of PAGE LAW FIRM; and Guardian Ad Litem, Valarie I. Fujii, Esq., appearing via Blue Jeans. The Court having before it all the files, pleadings, and papers in the action, having heard the oral argument of counsel, having reviewed the report

submitted by Ms. Fujii and the reports submitted by Dr. Michelle Fontenelle-Gilmer and Dr. Sunshine Collins, and good cause appearing therefor, the Court finds and orders as follows:

THE COURT HEREBY FINDS that the parties should continue using Dr. Sunshine Collins as a local provider for Matthew and Hannah; however, the Court also believes it would also be in the children's best interest to participate in a program operated in New York, Turning Points for Families, that provides reunification therapy for severe parental alienation or unreasonably disruptive parent-child relationships. The program is a four (4) day, in person, intense therapy in New York and then two (2) years of follow-up with a local provider. The Court's goal would be for Hannah and Matthew to participate at the same time, but the Court is unaware if the provider can do Hannah and Matthew at the same time. The Court will make the Order for Matthew and Hannah to participate in the Turning Points for Families program if the provider can do both children at the same time. If the provider will allow both children to participate at the same time, the Court will order MINH to fly to New York with Hannah to participate in the program and Hannah will have no contact with MINH for a period of at least ninety (90) days. If the provider cannot do both children at the same time, the Court will order for Matthew to participate first and then Hannah separately. JIM should discuss the program with Dr. Collins, and if JIM wants to participate in this program, the Court can work on the language of an Order to facilitate same.

THE COURT FURTHER FINDS that the cost of the Turning Points for Families program is $15,000, and MINH should pay 75% of . . .

this cost as a child support obligation for Matthew and JIM should pay 25% of the cost.

THE COURT FURTHER FINDS that it is in Matthew's best interest to have zero communication with MINH for the next ninety (90) days and thus, JIM shall have temporary sole legal and sole physical custody of Matthew. No contact between MINH and Matthew means there shall be no calls, no text messages, no emails, no messaging through any platform, no messages at Matthew's school, no visits to Matthew's school to communicate with him, no messages through Selena or anyone else, no food, no gifts, no money, none of the games that have been played since November 2021.

THE COURT FURTHER FINDS that it is in Matthew's best interest for any contact between him and MINH to be through Dr. Collins if recommended by Dr. Collins.

NOW, THEREFORE,

THE COURT HEREBY ORDERS that Dr. Collins shall continue to provide services for Matthew and Hannah.

THE COURT FURTHER ORDERS that both parties shall cooperate with Dr. Collins to schedule appointments for Hannah to get her started in the reunification therapy process. MINH shall treat Hannah's appointments with Dr. Collins as a priority and scheduling such appointments is a higher priority than traveling to California.

THE COURT FURTHER ORDERS that JIM shall contact the provider at Turning Points for Families regarding participating in the program with Matthew and Hannah. The Court will send informative materials to the parties regarding the Turning Points for Families program.

. . .

THE COURT FURTHER ORDERS that for the next ninety (90) days MINH shall have zero contact or communication with Matthew. No contact between MINH and Matthew means there shall be no calls, no text messages, no emails, no messaging through any platform, no messages at Matthew's school, no visits to Matthew's school to communicate with him, no messages through Selena or anyone else, no food, no gifts, no money, none of the games that have been played since November 2021.

THE COURT FURTHER ORDERS that any contact or communication between MINH and Matthew shall only occur through Dr. Collins if recommended by Dr. Collins.

THE COURT FURTHER ORDERS that JIM shall have temporary sole legal and sole physical custody of Matthew for the next ninety (90) days.

THE COURT FURTHER ORDERS that JIM shall contact Turning Points for Families to inquire as to whether the program will allow both Hannah and Matthew to participate at the same time or if he must participate in the program separately with each child.

THE COURT FURTHER ORDERS that MINH shall pay 75% of the $15,000 cost of the Turning Points for Families program as a child support obligation for Matthew and JIM shall pay 25% of the cost.

THE COURT FURTHER ORDERS that neither party, their significant others, or any family member of either party shall inform the children of any upcoming hearings.

. . .

. . .

. . .

. . .

THE COURT FURTHER ORDERS that a Status Check hearing shall be set for May 31, 2022 at 3:00 p.m. on a one hour setting.

Dated this 30th day of March, 2022

sa

4F9 66F 7C41 7FF7
Dawn R. Throne
District Court Judge

Submitted by:

THE DICKERSON KARACSONYI
LAW GROUP

/s/ Sabrina M. Dolson

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DISTRICT COURT
CLARK COUNTY, NEVADA

James W. Vahey, Plaintiff vs. Minh Nguyet Luong, Defendant.	CASE NO: D-18-581444-D DEPT. NO. Department U

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/30/2022

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VOLUME XXI

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EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF CLARK
STATE OF NEVADA

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

Case No.: D-18-581444-D

Dept.: U

HEARING REQUESTED

ORAL ARGUMENT REQUESTED ___X___ YES _____ NO

DEFENDANT'S EMERGENCY MOTION TO ALTER OR AMEND THE ORDERS FROM THE MARCH 22, 2022, HEARING FOR ORDERS FOR THE COURT TO COMPLY WITH THE VIOLENCE AGAINST WOMEN ACT, FOR REHEARING OR RECONSIDERATION OF THE ORDERS FROM THE FEBRUARY 8, 2022, HEARING OR IN THE ALTERNATIVE TO ALTER OR AMEND AND FOR ATTORNEYS FEES AND COSTS

EMERGENCY MOTION TO ALTER OR AMEND, FOR ORDERS FOR THE COURT TO COMPLY WITH THE VIOLENCE AGAINST WOMEN ACT AND FOR ATTORNEY'S FEES AND COSTS

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF, THE COURT AND TO PROVIDE THE UDNERSIGNED WITH A

COPY OF YOUR RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR RECIEPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

COMES NOW, Defendant, MINH NGUYET LUONG, by and through her counsel, Fred Page, Esq. and hereby submits her Emergency Motion to Alter or Amend the Orders from the March 21, 2022, Hearing, for Orders for the Court to Comply with the Violence Against Women Act, for Rehearing or Reconsideraton of the Orders from the February 8, 2022, Hearing, or in the Alternative to Alter or Amend and for Attorney's Fees and Costs. This Motion is based upon the papers and pleadings on file, the attached Points and Authorities and any oral argument that the Court may wish to entertain.

DATED this 5th day of April 2022

PAGE LAW FIRM

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Attorney for Defendant

POINTS AND AUTHORITIES
I.
FACTUAL BACKGROUND

As the Court is familiar with what has occurred in this case since the first hearing on March 22, 2021, a detailed factual background section will be omitted.

On Tuesday, March 15, 2022, Jim filed an "Emergency" Motion for Order to Plaintiff to Participate in the Turning Points for Families Program with Minor Children, for Defendant to be Solely Responsible for the Costs Associated with the Program and for Related Relief.

On March 16, 2022, the Violence Against Women Act (VAWA)[1] was reauthorized and the updated version of VAWA was signed into law by President Biden on March 16, 2022. The reauthorized version of VAWA explicitly prohibits the orders cutting off contact between a parent and child as part of reunification therapy. VAWA provides enhanced financial assistance to states that have laws prohibiting contact between a parent and child as part of reunification therapy.

The relevant language regarding reunification treatment in on pages 119-121. VAWA section 1504 states on page 121,

> (ii) a court may not, solely in order to improve a deficient relationship with the other parent of a child, restrict contact between the child and a parent or litigating party

[1] VAWA was signed into law in 1994 by President Bill Clinton. VAWA has been reauthorized a number of times over the years.

(I) who is competent, protective, and not physically or sexually abusive; and

(II) with whom the child is bonded or to whom the child is attached

(iii) a court may not order a reunification treatment, unless there is reunification generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the reunification treatment; reunification.

(iv) **a court may not order a reunification treatment that is predicated on reunification cutting off a child from a parent with whom the child is bonded or to whom the child is attached**; and

(v) any order to remediate the resistance of a child to have contact with a violent or abusive parent primarily addresses the behavior of that parent or the contributions of that parent to the resistance of the child before ordering the other parent of the child to take steps to potentially improve the relationship of the child with the parent with whom the child resists contact.

(Emphasis added).

On Wednesday, March 17, 2022, at 10:24 a.m. Jim submitted an *Ex Parte* Application for an Order Shortening Time. At 11:00 a.m. that same morning the Order Shortening Time was setting the hearing for Monday, March 21, 2022, at 10:30 a.m. The Order Shortening Time gave Minh two days in which to respond.

Dr. Collins' report dated March 20, 2022, was received from Judge Throne at 9:18 a.m. The hearing on Jim's Motion was held at 10:30 a.m. on March 21,

2022. Counsel and Minh had approximately 45 minutes to read, digest, and respond to Dr. Collins' report.

At the hearing, Jim's counsel requested that the children, Hannah, Matthew, and Selena attend Turning Points for Families located in Great Neck New York. Jim's counsel referred to the director of the program as Dr. Linda Gottlieb. Ms. Gottlieb does not have a doctorate. Ms. Gottlieb has Marriage and Family Therapist (MFT) and Licensed Clinical Social Worker Designation (LCSW) licensing only.

Minh was criticized for recording the children telling what Jim did to them on November 5, and November 6, claiming that the interview was "unilaterally biased" when Minh essentially asked the children no direct questions. Judge Throne criticized Minh for recording her meeting with Dr. Collins. AA003935.

The webpage for Turning Points for Families states that the program is for severe parental alienation or severely disrupted relationships. It was pointed out that there has never been a finding of parental alienation by Dr. Gravley, Nate Minetto, Dr. Fontenelle-Gilmer, or Dr. Collins. It was pointed out that Dr. Collins concluded that Hannah should go to Turning Points for Families before she ever met her. Dr. Collins concluded that Selena should go to Turning Points for Families and Dr. Collins has never met with Selena.

Even though the Stipulation and Order filed October 16, 2021, required the parties to follow Dr. Fontenelle-Gilmer's recommendations as it related to Hannah, Dr. Collins never met with Dr. Fontenelle-Gilmer before making her recommendation regarding Hannah to attend Turning Points. Dr. Collins never met with the guardian ad litem for Hannah and Matthew before she made her recommendation.

Minh was deprived of the opportunity to question Dr. Collins as to the content of her report; why she wrote what she wrote, when she wrote it and prevented Minh from being meaningfully able to respond impacted her due process rights.

On March 21, this Court made the following relevant findings,

> THE COURT FURTHER FINDS that Dr. Sunshine Collins, who has been appointed to conduct reunification therapy with Hannah, Matthew and Jim has recommended that the family participate in the Turning Points for Families Program in New York.[2]

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[2] In a 2018 case out of New York, J.F. v D.F. 2018 NY Slip Op 51829(U) decided on December 6, 2018 Supreme Court, Monroe County Dollinger, J., the trial judge described Linda Gottlieb's testimony as follows: "[f]or this court, the expert's comment [Linda Gottlieb], at times, reached almost the apex of foolishness: she testified that a mother who tells her children that she misses them when they are gone is guilty of alienating conduct and manipulation. If so, every mother in the world needs reprogramming.

A copy of the J.F. v. D.F Decision is attached for the Court's convenience as Exhibit A.

Additionally, the Guardian ad Litem has also recommended that the family participate in the program.[3]

Order from March 21, 2022, hearing at page 7, lines 20-25.

THE COURT FURTHER FINDS that it has carefully considered Minh's position that making the family participate in this program would amount to "torturing" the children, particularly because of the required 90 day sequestration period after the intensive four days in New York. However, this family is in crisis and needs this intensive intervention and Minh holds the keys to how long the sequestration period will actually last. She has to get started immediately with her therapeutic services with Ms. Keiford (sic) to support her in this process of change.

Order from March 21, 2022, hearing at page 8, lines 1-9.

On March 22, this Court entered its order that the children attend "Turning Points," and gave Jim sole legal and sole physical custody, stating,

THE COURT FURTHER ORDERS that Jim shall have temporary sole legal and sole physical custody of the parties' minor children as recommended by the Turning Points for Families Program.

THE COURT FURTHER ORDERS that there shall be a minimum of ninety (90) days sequestration period between Minh, Minh's family, and the children. During the sequestration period, Minh and Minh's family, friends, associates, and other relatives of Minh shall have no contact with the subject children, directly or indirectly, through third parties or otherwise, including but not limited to: in person, written, telephonic, Facebook, twitter, texts, photos, or other electronic means or modes of communication.

Order from March 21, 2022, hearing at page 9, lines 20, to page 10, line 11.

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[3] The Guardian ad Litem is to be a voice for Hannah and Matthew, not to make recommendations. The Guardian ad Litem is exceeding her authority by making or endorsing "treatment" recommendations.

On April 5, 2022, the Order from the February 5, 2022, was entered. In that Order, this Court found,

> it is in Matthew's best interest to have zero communication with MINH for the next ninety (90) days and thus, JIM shall have temporary sole legal and sole physical custody of Matthew. No contact between MINH and Matthew means there shall be no calls, no text messages, no emails, no messaging through any platform, no messages at Matthew's school, no visits to Matthew's school to communicate with him, no messages through Selena or anyone else, no food, no gifts, no money, none of the games that have been played since November 2021.

Order from February 8, 2022, hearing at page 3, lines 3-11.

This Court then ordered,

> THE COURT FURTHER ORDERS that for the next ninety (90) days MINH shall have zero contact or communication with Matthew. No contact between MINH and Matthew means there shall be no calls, no text messages, no emails, no messaging through any platform, no messages at Matthew's school, no visits to Matthew's school to communicate with him, no messages through Selena or anyone else, no food, no gifts, no money, none of the games that have been played since November 2021.
>
> . . .
>
> THE COURT FURTHER ORDERS that JIM shall have temporary sole legal and sole physical custody of Matthew for the next ninety (90) days.

Order from February 8, 2022 hearing at page 4, lines 1-8, and 12-14.

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II.
GOVERNING LAW AND ARGUMENT

A. Compliance with EDCR 5.501

Any attempt to resolve matters outside of Court with Jim are fruitless. Over the weekend, an effort was to try and resolve matters with Jim to no avail. Minh has complied with Eighth District Court Rule 5.501 to the extent possible.

B. The Court's Orders Entered March 22, 2022, Should be Altered or Amended

The relevant rule for a motion to alter or amend findings is Nevada Rule of Civil Procedure 52(b). The rule states,

> On a party's motion filed no later than 28 days after service of written notice of entry of judgment, the court may amend its findings — or make additional findings — and may amend the judgment accordingly. The time for filing the motion cannot be extended under Rule 6(b). The motion may accompany a motion for a new trial under Rule 59.

Similarly, a judgment may be amended pursuant to Nevada Rule of Civil Procedure, 59(e). The rule states, "[a] motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment.

In *AA Primo Builders, LLC v. Washington*,[4] the Nevada Supreme Court extensively discussed the standard for deciding a motion to alter or amend. In that case, the Supreme Court stated,

[4] 245 P.3d 1190 (2010)

> Because its terms are so general, Federal Rule 59(e) "has been interpreted as permitting a motion to vacate a judgment rather than merely amend it," 11 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2810.1, at 119 (2d ed.1995), and as "cover[ing] a broad range of motions, [with] the only real limitation on the type of motion permitted [being] that it must request a substantive alteration of the judgment, not merely correction of a clerical error, or relief of a type wholly collateral to the judgment." *Id.* at 121, 976 P.2d 518 (citing *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 109 S.Ct. 987, 103 L.Ed.2d 146 (1989); *Buchanan v. Stanships, Inc.*, 485 U.S. 265, 108 S.Ct. 1130, 99 L.Ed.2d 289 (1988)). Among the "basic grounds" for a Rule 59(e) motion are "correct[ing] manifest errors of law or fact," "newly discovered or previously unavailable evidence," the need "to prevent manifest injustice," or a "change in controlling law." *Id.* at 124-27, 976 P.2d 518.

The Motion is timely. This Court has concluded that there is alienation and that because of that there should be reunification despite not a single mental health professional ever making a finding of alienation. To the contrary, Dr. Fontenelle-Gilmer specifically concluded that there was no alienation as it related to Hannah.

The Court's findings as to the "treatment regimen" for alienation of sequestration for Minh should be altered or amended because those findings are directly prohibited by VAWA. As stated,

> (iii) a court may not order a reunification treatment, unless there is reunification generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the reunification treatment; reunification.
>
> (iv) **a court may not order a reunification treatment that is predicated on reunification cutting off a child from a parent with whom the child is bonded or to whom the child is attached**;

(Emphasis added).

A substantive change in the orders is being requested as required by NRCP 52 because the findings contradict what is required by Federal law in order to receive increased federal funding.

This Court's orders contradict what is required by federal law in order to receive funding by recommending that Minh be sequestered from the children. Accordingly, any findings regarding sequestration and limiting Minh's contact with the children as has occurred should be removed. As the findings should be altered to conform with federal law, the orders should also be altered to conform with federal law.

C. This Court Should Follow the VAWA Pursuant to the Supremacy Clause of the United States Constitution from Entering Orders Restricting Contact or Prohibiting Minh from Having Contact with Minor Children as Part of "Reunification Therapy"

The directives in what courts cannot do in VAWA as it relates to "reunification" are pretty explicit. A review of VAWA shows that the language of the statute contradicts what this Court has just ordered. The relevant language regarding reunification treatment is on section 1504, pages 119-121. VAWA provides in section 1504(k)(1)(B)(ii)-(v), as stated,

> (ii) a court **may not**, solely in order to improve a deficient relationship with the other parent of a child, **restrict contact** between the child and a parent or litigating party.

(I) who is competent, protective, and not physically or sexually abusive; and

(II) with whom the child is bonded or to whom the child is attached

(iii) a court may not order a reunification treatment, unless there is reunification generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the reunification treatment; reunification.

(iv) **a court may not order a reunification treatment that is predicated on reunification cutting off a child from a parent with whom the child is bonded or to whom the child is attached**; and

(v) any order to remediate the resistance of a child to have contact with a violent or abusive parent primarily addresses the behavior of that parent or the contributions of that parent to the resistance of the child before ordering the other parent of the child to take steps to potentially improve the relationship of the child with the parent with whom the child resists contact.

(Emphasis added).

The analysis is straightforward. The children are very bonded with Minh. Under VAWA, this Court **may not**, solely in order to improve the children's deficient relationship with Jim, **restrict contact** between the children and Minh as it has ordered. Further, under VAWA, this Court **cannot** order a reunification treatment that is predicated on cutting of the children from Minh as it has ordered because they are very bonded with her.

It is submitted that this Court's orders have violated all of the proscriptions set out in VAWA. In order for Nevada to receive increased federal funding under

VAWA the orders entered by this Court cannot remain. Because of VAWA, the orders entered by this Court for the children to attend "Turning Points" and to cut off Minh's contact with the children should be vacated.

D. The Orders from the February 8, 2022, Hearing, Entered April 5, 2022, Should be Reheard or Reconsidered or in the Alternative Should be Altered or Amended

This Court is authorized under Eighth District Court Rule 5.512 to reconsider or rehear motions provided they are timely.[5] A court has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 403, 536 p.2d 1026, 1027 (1975) ("a court may for sufficient cause shown, amend, correct, resettle, modify or vacate, as the case may be, an order previously made and entered on the motion in the progress of the cause or proceeding."), *see also, Barry v. Linder*, 119 Nev. 661, 670, 81 P.2d 527, 543 (2003). Minh incorporates

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[5] Eighth District Court Rule 5.512 states,

> (a) A party seeking reconsideration and/or rehearing of a ruling (other than an order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59, or 60), must file a motion for such relief within 14 calendar days after service of notice of entry of the order unless the time is shortened or enlarged by order. A motion for reconsideration does not toll the period for filing a notice of appeal.
>
> (b) If a motion for reconsideration and/or rehearing is granted, the court may make a final disposition without hearing, may set it for hearing or resubmission, or may make such other orders as are deemed appropriate under the circumstances.

the above authority regarding findings being altered or amended as fully set forth herein.

The analysis regarding the orders entered on March 22, 2022, is applicable here. The federal government has reauthorized VAWA. Given the fact that the federal government has made states receiving increased federal funding contingent upon adhering to section 1504 of VAWA has the effect of prohibiting orders that restrict contact between a parent and child as a "treatment method" of repairing a relationship with the other parent. Accordingly, the findings and orders from the February 8, 2022, hearing as cited, should be reheard or reconsidered.

As part of the rehearing and reconsideration of the orders from the February 8, 2022, Matthew should be ordered returned to Minh immediately.

E. Minh Should be Awarded the Attorney's Fees She Has Incurred

An attempt was made with Jim to try and resolve matters without further litigation. Jim's response has been "no" he will do nothing to lower the level of litigation. Attorney's fees can and should be awarded to Minh under NRS 18.010(2)(b) for forcing Minh to go this route.

Minh should be awarded the fees she has incurred under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). The undersigned is well experience in domestic relations law, the work has been extremely complex,

involves the highest constitutional issues, and result should be considered as being successful as to the requests for relief being made for Minh and the undersigned performed 100 percent of the work.

III.
CONCLUSION

WHEREFORE, based upon the foregoing, Defendant, MINH NGUYET LUONG, respectfully requests that the Court enter orders:

1. Altering or amending the Court's findings to conform those findings and orders to compliance with federal law.

2. Vacating the entirety of this Court's orders from the March 21, 2022, hearing as the orders entered on March 22, 2022, violate the clear language in VAWA and the orders are prohibited by the Supremacy Clause of the United States Constitution.

3. Vacating the entirety of this Court's orders from the February 8, 2022, hearing, as the orders entered on April 5, 2022, violate the clear language in VAWA and the orders are prohibited by the Supremacy Clause of the United States Constitution.

4. Awarding to Minh the attorney's fees and costs she has incurred, and;

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///

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5. For any further relief the Court deems proper and just.

DATED this 5th day of April 2022

PAGE LAW FIRM

FRED PAGE, ESQ.
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Las Vegas, Nevada 89113
(702) 823-2888
Attorney for Defendant

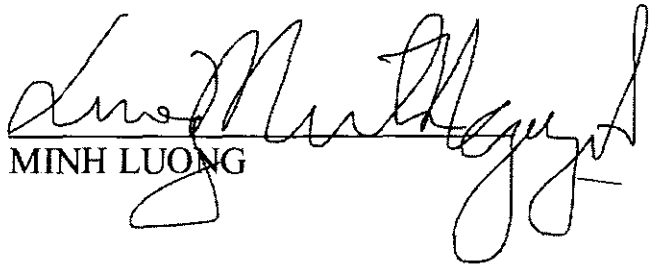
DECLARATION IN SUPPORT OF MOTION

I, MINH LUONG, declare, under penalty of perjury:

I have read this Motion, and the statements it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. The statements contained in this motion are incorporated here as if set forth in full.

I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 USC § 1746), that the foregoing is true and correct.

DATED this 5th day of April 2022



MINH LUONG

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VOLUME XXI

EXHS
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EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF CLARK
STATE OF NEVADA

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

Case No.: D-18-581444-D

Dept.: U

DEFENDANT'S EXHIBIT APPENDIX IN SUPPORT OF EMERGENCY MOTION TO ALTER OR AMEND THE ORDERS FROM THE MARCH 22, 2022, HEARING FOR ORDERS FOR THE COURT TO COMPLY WITH THE VIOLENCE AGAINST WOMEN ACT, FOR REHEARING OR RECONSIDERATION OF THE ORDERS FROM THE FEBRUARY 8, 2022, HEARING OR IN THE ALTERNATIVE TO ALTER OR AMEND AND FOR ATTORNEYS FEES AND COSTS

COMES NOW, Defendant, MINH NGUYET LUONG, by and through her counsel, Fred Page, Esq. and hereby submits her Exhibit Appendix in Support of Emergency Motion to Alter or Amend the Orders from the March 21, 2022, Hearing, for Orders for the Court to Comply with the Violence Against Women

Act, for Rehearing or Reconsideraton of the Orders from the February 8, 2022, Hearing, or in the Alternative to Alter or Amend and for Attorney's Fees and Costs. The Exhibit Appendix is the slip opinion from the case of J.F. v D.F. 2018 NY Slip Op 51829(U) decided on December 6, 2018 Supreme Court, Monroe County Dollinger, J.

DATED this 5th day of April 2022

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EXHIBIT A

EXHIBIT A

EXHIBIT A

J.F. v D.F.

[*1] J.F. v D.F. 2018 NY Slip Op 51829(U) Decided on December 6, 2018 Supreme Court, Monroe County Dollinger, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on December 6, 2018
Supreme Court, Monroe County

J.F., Plaintiff,

against

D.F., Defendant.

2012/01795

Sharon P. Stiller, Esq.

Attorney for Plaintiff

Rochester, New York

Seema Ali Rizzo, Esq.

Attorney for Defendant

Rochester, New York

Lisa B. Morris, Esq.

Attorney for Children

Rochester, New York
Richard A. Dollinger, J.

Introduction

In this matter, the court must wrestle with a significant, but undefined concept in New York matrimonial law: what is parental alienation, and when does it require a change in primary residence and/or time sharing?

The parties signed a custody and parental access agreement in 2013 ("the agreement") and thereafter a property settlement agreement. The couple—a college professor and an attorney—have three daughters. The judgment of divorce was signed in November 2013. The agreement designated the father as the primary custodial parent and included a shared parenting schedule - the children spending two days each week with one parent, the remaining five with the other, then flipping the arrangement during the second week. It provided for a week-to-week rotation during the summer. The couple anticipated conflict; the agreement contains language providing for an arbitrator to resolve disputes, and the couple referred a series of disputes to one.

The present hearing was not the first conflict for this couple. Less than a month after the divorce was signed, the father sought and obtained a temporary order of protection against the mother, requiring her to stay away from him and his home. He later commenced a town court proceeding seeking to enforce the order and received a one-year order of protection. In August 2014, less than a year after the agreement was signed, the court, in the face of

competing show cause orders, issued an order that resolved a series of custody, visitation, and parenting issues. In September 2015, the court, confronted with a second set of competing affidavits, issued an order defining the summer schedule and confirming the scope of authority for the arbitrator.

Within two years, the parties began another litigation war of attrition. The mother filed a family court petition for sole custody, arguing that the father was inhibiting the children's growth and development by refusing to take them to activities. The mother sought to modify the agreement to permit the couple's two older daughters to spend an entire week during the school year with her. The father filed an order to show cause claiming that the mother violated the agreement by scheduling activities on the father's parenting days - and cutting into his parenting time - without his approval. The father also sought sole custody, alleging that the mother had violated the agreement and through a course of conduct, had alienated the children from him.

All the motions were consolidated, and the trial court conducted a multi-day hearing, over the course of a month. After the hearing, the court conducted a Lincoln [FN1] hearing with the three daughters (ages 15, 13, and 7). Thereafter, the court, prior to the submission of summations by both parties and the attorney for the children, issued a temporary order finding that "there's sufficient parental alienation to deem a sufficient change of circumstances that required modification of the original agreement."

The court made the following "temporary" findings:

(1) there was a prior positive relationship between the daughters and their father;(2) the mother had "badmouthed" the father to professionals and told the children there was an order of protection and, as consequence, the children could not get out of a car apparently at their father's home;(3) the mother over-scheduled the children, limiting the father's contact;(4) the mother's gift of a cell phone to their oldest daughter and telling her to call the mother, if she needed or wanted to, was evidence of the mother suggesting that the father was dangerous;(5) the mother was engaged in conduct that painted the father as "unloving," even though those words were never spoken by the mother because the mother let the children choose who to live with, and advocated for a change in residency that the children desired, was designed to make "the dad look like he was an ogre;"(6) the mother was inappropriately confiding in the children when she told them, "if you don't like the schedule, call your attorney instead of trying to mitigate the situation;"(7) the mother withheld medical information from the father relating to several medical episodes involving the daughters; and,(8) the mother's suggestion that the father should have rules

for viewing television at his home, and commenting that he does not correctly do laundry, were evidence that she was [*2]"undermining his authority."

The court, after making these findings, rejected expert testimony that the proof demonstrated a "moderate or medium situation of parental alienation." She held that the proof established a "mild case of alienation" and added "part of that is because dad is engaged in some of the exact same alienating behavior that mom did," adding that it included "badmouthing" and "scheduling one banquet on mom's time for his house."

She added: "You're both guilty of this." She further noted that only the father had applied for a change in residence/custody based on the alienation allegation and she rejected any result that would deny the mother access to her children for any period of time. However, the court held that the proof justified a modification of the parenting time, granting each parent a week on and week off during the school year with a mid-week meal for the non-residential parent as a method of continuing contact between the parent and children during the week they resided with the other parent. Based on these findings, joint custody continued, but the court created zones of interest for each parent: the mother was given final authority in medical, dental, and religious activities, while the father was given final say on education and extracurricular activities.[FN2]

Sadly, after signing the temporary order setting forth the new schedule, the assigned judge in this case, and the judge who conducted the hearing, died. The parties stipulated to have this court review the transcript and decide the matter based on the hearing proof, the exhibits, and the contents of the Lincoln hearing.[FN3] This decision is based on that stipulation. This court read the transcript several times, reviewed all the admitted exhibits, the transcript of the Lincoln hearing, and the prior orders and submissions. This court did not utilize any of the work of the prior judge or her law clerk in reaching this determination.

The parental alienation doctrine has become a basis for contentious parents to undercut parenting agreements; agreements that were based, at their inception, on a parental concurrence of the best interests of their children. Any decision in this matter demands a detailed analysis of the concept of parental alienation, a review of the proof of alleged conduct by both parents, an assessment of the maze of expert testimony, and then an evaluation of the parental conduct as it impacts their children's view of their mother and father. It is undisputed that the father, seeking to curtail his ex-wife's access to the children, holds the burden of proof on the concept of parental alienation and whether each item of conduct, alleged to be alienating conduct, is proven by a preponderance of the record.

Before analyzing the facts in this matter, an exploration of the concept of parental alienation is essential. This concept sidled its way into New York's family law largely as a result [*3]of aggressive parent reaction to changes in their relationships with their children after a divorce.[FN4] The landscape of post-divorce family relationships is pitted with emotional intra-family land mines. Children, whose lives can be turned topsy-turvy by the separation of their parents, have uncertain and unpredictable reactions to the separation and their view of the causes of such separation. Combine these understandable and easily foreseen changes in the children's relationship with their parents, with the increasing independence and self-determination of children as they grow into teenagers, and it becomes difficult for any parent, professional, or ultimately the court, to determine the relative causes of a teenager's reaction to their parents. For parents, the calculation is a mix of emotions, developmental psychology, personality development, and intellectual growth. For professionals, viewing these myriad changes from the sidelines, and making evaluations based on interviews with family members, it is a daunting task. The court, seeking to align the various factors into some discernable legal judgment, is cast into a labyrinth of competing facts, trying to discern each parent's culpability in the transformation of their children. Then, if justified, it must devise a "best interests" plan for their future.

There is no dispute that there is evidence of a change of circumstances proven at the hearing of this matter. The evidence clearly establishes that at least in the period within 18 months after their divorce, the parents could not reasonably communicate with each other. [FN5] Eschbach v. Eschbach, 56 NY2nd 167 (1982); Matter of Murphy v Wells, 103 AD3rd 1092 (4th Dept 2013) (change in circumstances exists where, as here, the parents' relationship becomes so strained and acrimonious that communication between them is impossible). These facts, largely uncontested by either parent, establish a change of circumstances and allow this court, in accord with the children's best interests, the discretion to fashion a new parenting plan (including a [*4]change of custody, a change of primary residence and a change in the visitation plan). The extent of any changes depends in significant measure on unraveling and analyzing the web of proof presented, claiming that the mother has alienated these children against their father.

The Law of Parental Alienation in New York

Against this broad canvass of conflicting emotions among parents and children, this court acknowledges that the New York courts have accepted the notion of parental alienation as a factor in determining whether a change in circumstances exists. The judicial refrain is unmistakable: a concerted effort by one parent to interfere with the other parent's contact

with the child is so inimical to the best interests of the child, that it, per se, raises a strong probability that the interfering parent is unfit to act as a custodial parent. Matter of Avdic v Avdic, 125 AD3rd 1534 (4th Dept 2015) (the court's determination that the mother had engaged in parental alienation behavior raised a strong probability she is unfit to act as a custodial parent).[FN6] The acknowledgment of this concept requires a more demanding definition than just the "unjustified frustration of the non-custodial parent's access."[FN7] Vargas v. Gutierrez, 155 AD3rd 751, 753 (2nd Dept 2017). Parental alienation as a basis to alter parenting access is a relatively new concept in family law. The term was first coined in 1985 by a researcher who recorded impressions [*5]involving false allegations of child sexual abuse.[FN8] These initial observations led to development of the still-controversial Parental Alienation Syndrome, a form of psychological, but non-sexual abuse. Id.[FN9] When first articulated in New York, the concept was linked to a parent "programming" a child to make claims of sexual abuse. Karen B. v. Clyde M., 151 Misc2nd 794 (Fam. Ct. Fulton Cty 1991), affd sub nom Karen PP v. Clyde QQ, 197 AD2nd 753 (the trial court concluded that a parent was unfit by casting the false aspersion of child sex abuse and involving the child as an instrument to achieve his or her selfish purpose).[FN10] Less than a decade later, a New York court found alienation without allegations of sexual abuse, but there was overwhelming evidence that one parent had virtually brainwashed the children:

In the instant case, the children do not want to visit with their father. With the passage of time, these children have become "staunch corroborators" of their mother's ill opinion of the father. They call their father names, they make fun of his personal appearance, they treat him as though he were incompetent, and they speak of and treat his mother similarly . . . The mother's view of the father has been completely adopted by the children and she has done nothing to promote their relationship with him.

J.F. v. L.F., 181 Misc2nd 722 (Fam. Ct. Westchester Cty 1999). As the concept worked into New York law, the courts, without evidence of physical abuse or false reports of sexual abuse, [*6]required proof that a party "intentionally" engaged in conduct for the "sole purpose" of alienating the child. Smith v. Bombard, 294 AD2nd 673 (3rd Dept 2002). Trial courts held that occasional adverse statements, even made in the presence of children, and the occasional failure to communicate about scheduling treatment sessions, while deplorable behavior calculated to antagonize the other parent, did not countenance a finding of change of circumstances sufficient to change custody. F. D. v. P. D., 2003 NYLJ LEXIS 2057 (Sup. .Ct. Nassau Cty 2003) (both parties in this matter agree that there has been no interference with visitation). With respect to statements alleging abuse of the child, the court added: This court finds that [the therapist] testified credibly and truthfully, and that in fact the Mother's statements [regarding alleged abuse by the father] were made

while the child was present. While this court does not countenance the Mother's statements and deplores them, the statements on the several occasions testified to, did not result in any alienation of the child.

Id. at 9.The court concluded: In this matter, although the Mother's statements to [the therapist], in front of the child, are not to be countenanced and are never to occur again, nevertheless the court does not find that the Father has met his burden of proof with respect to change of circumstances. Regardless of the unfortunate statements by the Mother, the visitation with the Father has been unhampered, and in fact, the Father has had additional visitation in excess of that provided by the current so-ordered stipulation. The child further loves his Father very much, despite the Mother's negative comments and apparent attempts to alienate the child on the several occasions the Mother made certain statements to [the therapist] in the presence of the child.

Id. at 11. While the court rejected a finding of parental alienation, the trend to allege alienation based on a pattern of intentional conduct involving statements and derogatory comments took hold in New York. The Family Court in Whitley v. Leonard, 5 AD3rd 825 (3rd Dept 2004) found alienation when a parent encouraged a child to negotiate changes in visitation directly with the father, denied the father an opportunity for visitation while she was away on vacation, failed to communicate with the father concerning the child's problems at school, discussed court proceedings with the child, and promised the child that he would be returned to her custody. In addition, courts began to summarize parental alienation as a form of "brainwashing" of the child. Jennifer H. v. Paul F., 6 Misc3rd 1013 (A) (Fam. Ct. Suffolk Cty 2004). Throughout this process, the courts, as a sine qua non, have insisted on a finding of an actionable refusal or failure by the children to visit the targeted parent. Duzant-Forlenza v. Wade, 2009 NY Misc. LEXIS 6688 (Fam. Ct. Westchester Cty 2009).

One other precedent attracts interest because it was the basis for the court to admit testimony from the experts during the hearing. In Mastrangelo v. Mastrangelo, 2017 Conn. Super. LEXIS 226 (Sup. Ct. 2017), a Connecticut court held that even though the children were not seeing their father, the father's conduct in seeking to establish parental alienation was not proven and what emerged was "a picture of two parents constantly in court over issues involving the children." The court in Mastrangelo said that pursuing the alienation claim was part of the father's "efforts to take the mother down." In that case, three of the experts who testified here, also testified on behalf of the father in Connecticut. In addition, the "rejection" alleged by the father in Mastrangelo was complete in that the children were not seeing their father; a fact in stark contrast to the more-then-equal access that the father

has in this instance. The decision in [*7]Mastrangelo, while not controlling, is instructive on several fronts. It demonstrates that alienation can be a two-way street. Excessive litigation based on a flimsy theory can be as alienating as any other strategy. The presence of the same three experts here - at a substantial cost by the father — suggests to the court that the parental alienation theory is a new tool in the "para-psychology-in-the-courtroom complex," as part of a strategy to upend negotiated parenting agreements by the more aggressive and more moneyed spouse. Finally, in Mastrangelo concludes that even if there is proof "rejection" (lack of access by a parent), that fact alone does not lead to the conclusion of alienation.[FN11] In this case, as noted throughout the opinion, there is no evidence of lack of access for this father to his children.

Other New York courts have expressed equal skepticism over the scientific validity of "parental alienation." Matter of Montoya v Davis, 156 AD3rd 132, 136 n.5 (3rd Dept 2017) (the appeal was concerned about the forensic evaluator having been deemed an expert in "parental alienation," which is not a diagnosis included in the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders and further noted that, in the criminal context, "parental alienation syndrome" has been rejected as not being generally accepted in the scientific community, citing People v Fortin).[FN12] Another New York court used a descriptive method to reference parental alienation:

Parental alienation has been described as the programming of the child/children by one parent, into a campaign of denigration against the other. The second component is the child's own contributions that dovetail and complement the contributions of the programming parent. It is this combination of both factors that define the term parental alienation.

P.M. v. S.M., 17 Misc3rd 1122 (A) (Sup. Ct. Nassau Cty 2007); Zafran v. Zafran, 191 Misc2nd 60 (Sup. Ct. Nassau Cty 2002). See also Seetaram R. v. Pushpawattie M., 2018 NYLJ LEXIS 2069 (Fam. Ct. Queens Cty 2018) (parental alienation is where a custodial parent actively interferes with, or deliberately and unjustifiably frustrates, the non-custodial parent's right of reasonable access).

Amidst the swirl of these increasingly more frequent cases, the concept of parental [*8]alienation remains controversial, both in psychological studies and the courts. In a widely-quoted study, a California law professor in 2001 commented:

PAS as developed and purveyed by Richard Gardner has neither a logical nor a scientific basis. It is rejected by responsible social scientists and lacks solid grounding in psychological theory or research. PA, although more refined in its understanding of child-

parent difficulties, entails intrusive, coercive, unsubstantiated remedies of its own. Lawyers, judges, and mental health professionals who deal with child custody issues should think carefully and respond judiciously when claims based on either theory are advanced. Although the use of expert testimony is often useful, decision-makers need to do their homework rather than rely uncritically on experts' views. This is particularly true in fields such as psychology and psychiatry, where even experts have a wide range of differing views and professionals, whether by accident or design, sometimes offer opinions beyond their expertise. Lawyers and judges are trained to ask the hard questions, and that skill should be employed here.

Burch, Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases, 35 Family Law Quarterly 527, p.33 (2001). Another judge intoned in a Maryland family dispute: I write separately to state my view that I consider the diagnoses of "parental alienation" or "parental alienation syndrome" (which, quite evidently, are the basis for Father's appeal) to be based on novel scientific theories. Prior to admissibility, testimony on these subjects must be subjected to a Reed/Frye hearing to prove that such diagnoses are generally accepted in the relevant scientific community, a conclusion about which I have significant doubt. See Smith, Parental Alienation Syndrome: Fact or Fiction? The Problem with Its Use in Child Custody Cases, 11 U. Mass. L. Rev. 64 (2016) (collecting cases denying admissibility of diagnoses of parental alienation syndrome); Burch, Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases, 35 Fam. L.Q. 527, 539 (2001-2002) (quoting Dr. Paul J. Fink, past president of the American Psychiatric Association: "[Parental Alienation Syndrome] as a scientific theory has been excoriated by legitimate researchers across the nation. Judged solely on [its] merits, [Parental Alienation Syndrome] should be a rather pathetic footnote or an example of poor scientific standards."). Unless and until that happens, however, I would caution courts, lawyers, expert witnesses, and litigants not to use the terms "parental alienation" or "parental alienation syndrome" casually, informally, or as if they have a medically or psychologically diagnostic meaning that has not been established.

Gillespie v. Gillespie, 2016 Md. App. LEXIS 1366, p.36 (Ct. Sp. App. Md. 2016) (Freidman, J., concurring).[FN13] Despite these judicial misgivings expressed by others, there is no doubt that parental alienation exists.[FN14] As one commentator noted: Although PAS has generated much controversy in both the mental health and legal fields, there is little doubt that parental alienation exists, and has existed, for years. See, e.g., Fidler & Bala, Article: Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums, 48 Fam. Ct. Rev. 10, n. 12 (2010) (noting that parental alienation "is not a

new phenomenon") . . . Young, Parent Trap, Parental Alienation Cases divide Scholars, Boise Weekly, January 2007 ("Whether or not a psychological 'syndrome' exists, parental alienation clearly does."). As a news reporter glibly claimed, "Anybody old enough to drink coffee knows that embittered parties to divorce can and do manipulate their children."

Vernado, Article: Inappropriate Parental Influence: A New App: A New For Tort Law and Upgraded Relief For Alienated Parents, 61 DePaul L. Rev. 113, n. 6 (2011).

In this somewhat uncertain landscape, this court seeks a more demanding definition of parental alienation to more explicitly describe the concept of what constitutes "unjustified behavior." To achieve this, the court borrows from a comparable tort-law cousin: the tort of intentional infliction of emotional distress, a concept in which an individual, as a consequence of certain directed behavior, caused harm to the emotional status of a second party. Howell v. New York Post Co., 81 N.Y. 2nd 115 (1993). The tort of intentional infliction of emotional distress consists of four elements: "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress." Id. Simple word substitution — "parental alienation" for "emotional distress" - creates an equivalence between this tort designed to protect an individual's emotional status and the family law concept to protect and preserve a parent's relationship with their children.[FN15] If the substitution works, then parental alienation consists of four elements: "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe alienation of any parent from a child; (iii) a causal connection between the alienating conduct and the child's rejection of a parent; and (iv) severe parental alienation." The resulting equivalence allows a more refined analysis of what "unjustified . . . frustration of access" means in the parental alienation context.

In reaching this equivalence, the court examines the nature of the conduct that is the first prong of this test. In intentional infliction of emotional harm, the standard of "extreme and outrageous conduct" is "strict," "rigorous" and "difficult to satisfy" unless there is evidence of a prolonged "deliberate and malicious campaign of harassment or intimidation." Nader v General Motors Corp., 25 NY2nd 560, 569 (1970).Importantly, New York courts have recognized that alienating conduct by a parent must meet the family law equivalent of "extreme and outrageous" [*9]conduct that supports the tort of intentional infliction of emotional harm. In defining the conduct that constitutes parental alienation, the courts have broadly stated that the underlying conduct must be "so inconsistent with the best interests of the children."[FN16] Matter of Sanders v Jaco, 148 AD3rd 812, 813 (2nd Dept

2017); Rosenstock v Rosenstock, 162 AD3rd 702 (2nd Dept 2018) (absconding with the child as "inconsistent conduct"); Altieri v Altieri, 156 AD3rd 667 (2nd Dept 2018) (false accusation of sexual abuse as "inconsistent conduct'). In short, the alleged alienating conduct must be more than minor parental mishaps - an isolated vulgarity, a missed communication or unreturned phone call on a child's welfare, a disparaging comment about the other spouse's significant other, a statement about "who loves you more," questioning the ex-spouse's judgment, an occasional complaint about inadequate support or the other parent's reliability.[FN17] While downplaying these incidents, this court concedes that a chorus of suspect behaviors - perhaps all of the above repeated over a prolonged period of time - might reach the "extreme and outrageous" threshold to justify a finding of alienation. In short, the alleged conduct to support a finding of parental alienation must "so" violate norms of proper parenting, age appropriate conversations with children and/or parenting conduct. This aspect of the analysis — determining the standards of parenting and when parent conduct sharply violates those valued intra-family standards — represents a serious challenge to the court, but one that this case demands be resolved.

When analyzed in this light, parental alienation, as a legal concept, requires (1) that the alleged alienating conduct, without any other legitimate justification, be directed by the favored parent, (2) with the intention of damaging the reputation of the other parent in the children's eyes or which disregards a substantial possibility of causing such, (3) which proximately causes a diminished interest of the children in spending time with the non-favored parent and, (4) in fact, results in the children refusing to spend time with the targeted parent either in person, or via other forms of communication.[FN18]

The Alleged Alienating Conduct by the Mother

Within this framework, the court reviews the conduct by the mother that the father alleges is evidence of alienation, with an understanding that the father must prove that the conduct occurred and that it meets the "extreme and outrageous" test.

(a) The October 2013 Removal of Items from the Marital Residence

In October 2013, during the divorce action, the father contends that the mother removed several items of personal property from the marital residence without his consent. The father testified that he was out of town with the children when the removal occurred, and he and the children returned to an almost empty house. The mother returned, a few days later, this time with a police officer, and took additional items, all while the father was present. The next day the mother appeared again at the house, again with a police officer,

and a confrontation ensued. According to the father, he gave the mother a note instructing her not to return again, which she promptly destroyed. Thereafter, the mother visited again and removed additional personal property. All of these incidents occurred after the signing of the couple's property settlement agreement and before the execution of the judgment of divorce.

There is little dispute that these actions occurred, but the context is extremely pertinent. First, at the time the mother removed items from the house, the couple had agreed on a distribution of personal property in their separation agreement. There is no requirement in that agreement governing when the mother could retrieve the property from the marital residence. Second, at the time the mother entered the marital residence to remove items, she still was an owner of the house, and as the agreement specified that she did not need to vacate the house until December 1, 2013 (approximately six weeks after her entries to retrieve personal property). There is nothing in the agreement that barred the mother from entering the house, needing the father's permission to enter the house, or barring her from removing agreed personal property. Third, there is no evidence in this record that the mother took anything from the house other than what they had agreed she could take as her share of personal property. The only exception was a guitar of minimal value, which they eventually resolved. Fourth, the father, despite the obvious opportunity to do so, never sought to amend the agreement to change the access provisions or enforce it before the judgment roll was signed in December 2013.

In this court's view, this episode, while perhaps raising questions over the conduct of the mother, does not equate as alienating conduct. The conflict between the parents was obvious - they had signed the agreement only a few days before. The mother's injudicious calling of the police was unnecessary. Her involvement with the children during the removal was also a misjudgment, even though it appears that the children were present, in part, because they were living in the house at the time. The tension was aggravated by the father's attempt to foreclose the mother from returning to the house, when the agreement gave her that undisputed right to enter and stay there. In short, both parties exacerbated the tension in this confrontation and this court declines to apportion the culpability to either side. Poor obstinate behavior was exhibited by both, but the mother's behavior in returning to the house she owned and retrieving property does not constitute alienating behavior as she was within her rights under the couple's agreement.

(b) The Driveway Exchanges and Order of Protection

Frustrated by the mother's conduct, the father filed for an order of protection, which was [*10]granted in October 2013.[FN19] The order of protection contained provisions for the

mother to stay away from the father and changed the site of mandated pick-ups and drop-offs of the children. The agreement had permitted these at the top of the father's driveway, but the order mandated that exchanges occur away from the top of the driveway, curbside outside his residence. The father feared the mother would violate the terms of the order, so he sent the order to the mother on every email he sent to her during this period of time. [FN20] The mother violated the order on November 6, 2013 - prior to the grant of the judgment of divorce - when she appeared at the top of the driveway for exchanges. In response to the mother's conduct, the father filed a criminal complaint, which was eventually resolved through an adjournment in contemplation of dismissal. Importantly, the mother acknowledged that she somewhat frequently discussed the order of protection with her daughters, discussed the order with others and told her children that as a result of the order, she had to keep away from them when they were with the father. The mother also claimed that the order prevented her from calling the children on their father's phone and claimed that she had no means to contact the children, a claim rebutted by phone records that show that she had long calls with her children during the period from October 2013 through February 2014.[FN21] The temporary order of protection was eventually resolved by a one-year order in which the exchange distance was changed back to the top of the driveway and the father agreed to stay 30-feet away from the mother while both attended the children's activities.

Based on the credibility of the father and mother on this aspect of this matter, the court finds that the mother did violate the order of protection by driving to the top of the driveway. Her comments, in the verbal exchange with the father, at the top of the driveway were intemperate, but hardly "outrageous and extreme." She lacks credibility on her claims that somehow the order did not apply when she drove to the top of the driveway. She used poor judgment in discussing the order of protection with her daughters, but it was inevitable that she would discuss the order with her daughters in some context. She would need to explain to them that she could not deliver them to the top of their father's driveway and she had to keep away from him when they jointly attend events. However, the court declines to extrapolate this finding into evidence of parental alienation because the conduct fails to meet the "per se" or "extreme and outrageous conduct" that the test requires. In addition, there is no evidence that any of the daughter's considered the mother's violation of this aspect of the order as a factor in [*11]their relationship with the father. There is no evidence in this record that the daughter's complained to the father about the pending order, the mother's violation of the order or, for that matter, that the father complained to the daughters about their mother's violation of the order.

(c) The Medical/Mental Health Care Controversies

In October 2013, before the judgment was signed, the mother took the children to a physician for flu shots. According to the father, the mother argued that she had sole authority to permit administration of the shots, a notion rebutted by the text of the agreement which requires joint decision-making on healthcare issues involving the daughters. The father appeared at the appointment, with his computer in hand, brandishing his joint decision-making agreement. A verbal confrontation ensued. The pediatric group later terminated services to the family. The father asks this court to infer that the confrontation, triggered by the mother's behavior, caused the termination of the physician services. This court declines to draw that speculative inference, as there is no testimony from any personnel at the pediatric office explaining the basis for the termination.

In February 2014, after the divorce was signed, the mother took the couple's oldest daughter to a psychologist because she was, according to the mother, engaging in self-mutilation. This incident is diagnosed in greater detail in another portion of this opinion. Importantly, despite a furor of what the mother said or wrote during this appointment, the psychologist determined that the daughter did not need further treatment and there was no finding of any harm to the child.

In a second episode, shortly thereafter, the mother took all three daughters to a pediatric practice and again the father appeared, and, in his version of the incident, the mother ran from the room. In sum, these doctor visits show a troubled and virulent antagonism between father and mother. The mother failed to notify the father of the appointments, even routine ones. The father appeared at the doctor's office and confrontations ensued. It is difficult for this court to assign culpability in these episodes. The mother initiated the dispute by failing to communicate and the father aggravated the situation when appearing. The mother's failure to communicate has greater credence as the cause of these unnecessary incidents.

The failure to communicate by the mother colors other incidents. The couple's youngest daughter needed medical attention when she fell. The mother did not consult with the father and did not promptly inform the father that the treating physician recommended that the child be monitored for neurological symptoms while the child spent a weekend with her father. The child suffered no further complications. The father asked for further information and the mother refused to accept a certified letter from him on the incident.

The couples' middle daughter also became a focal point for parent controversy involving an ankle injury sustained during volleyball. The father alleges that the mother let the child go to a concert the night of the injury (hardly the first child to choose a concert over minor

pain) and then the mother claimed the injury justified the child declining to travel with her father a week later, even though the child actually went on the trip with her father and enjoyed it. The father also claims that he never found out that one daughter had pneumonia until a month after it was manifest,[FN22] but, the father's comment seems a bit out of the ordinary. The child was present in [*12]the father's home repeatedly during that month-long period and there is no evidence that he discussed the medical condition with his daughter.

The court finds that these health-related decisions by the mother - apparently without consulting the father beforehand - violated the joint custody provisions of their agreement. In particular, these allegations - combined with the mother's notes and comments when her daughter visited a psychologist - requires this court to pause in considering the mother's ability to serve the best interests of the children. The incidents - the trip to pediatric office, the disputed "bronchial infection" and the failure to notify the father of the youngest child's fall - are also failures by the mother in her joint custody obligations. However, as noted earlier, these mistaken judgments and unilateral actions must be viewed against the backdrop of complex active lives of these young girls. These violations, taken in total, do not equate to "extreme or outrageous" conduct and are not alone sufficient on which to sustain a case for parental alienation.

(d) Miscellaneous Squabbles

The father also alleges that the mother created unneeded conflict when the oldest daughter wanted to retrieve her bike from her father's house and the father did not permit his daughter to do so. The father alleges that the mother brought the child to father's house and allowed the daughter to take the bike, despite his objection. He alleges that this incident created "unnecessary conflict in the presence of the children," a fact that he attributes to the mother even though his own conduct (declining to allow his teenaged daughter to use her bike) may have contributed to the incident. Regardless, there is no evidence that this incident impacted the daughter's relationship with her father.

(e) The Activities of the Daughters

The major source of conflict in this family stems from these very active children. Each child has abundant activities. The agreement provided that each child was entitled to three activities. The mother admits that she signed up at least one daughter for a fourth activity, but she contends that the father "rejected all" activities. In particular, the mother signed one daughter up for tennis lessons and another for swimming lessons and a field trip, and the father alleges that he never consented to these activities. The parents also quibble over

whether these activities impact the children's performance in school and/or their homework. There is no evidence in this long hearing that activities of any sort have adversely impacted these children in their education. The father argues that the activities crimped his time with his daughters, but he can produce no evidence of any particular time that he lost as a consequence of the activities and there is ample undisputed evidence that he attends his daughters' activities and games. Furthermore, and most importantly, there is no evidence that the father's refusing to agree to his daughters' activities caused any change in the relationship between him and his daughters.[FN23]

In short, while the signing up for activities caused consternation between the parents, there is no evidence that ill-will spilled over to the children or caused ill-feelings between the children and their father. This court credits the father's version of the enrollment of the children in activities. The court finds that the mother did enroll her daughters in at least two activities that the father did not know about or approve. In that respect, the father has proven by the [*13]preponderance of the evidence that the mother violated the joint custody provisions of the agreement.

However, the court finds that the father has failed to prove by the preponderance of the evidence that the activities of the children lessened his parenting time with them or impacted his relationship with them. Because the father shared time with his daughters - he had half of the parenting time each week - he had ample time to interact and nurture them. There is no evidence that the father was routinely foreclosed from any of his selected pursuits as a result of his daughters' activities. On the contrary, the proof amply demonstrates that he encouraged his daughter's activities, attended them, and applauded their success. Based on these conclusions, the father has failed to prove that the children's activities, even if dictated by the mother without input from him, alienated his daughters from him.

(f) Other Conduct by the Mother

In his litany of the mother's alleged alienating conduct, the father also alleges that the mother interferes with his access to the children via cell phone. He contends that the mother gives the youngest daughter advice on what to say to her father during phone calls. He also alleges, and the mother acknowledges, that she examined texts between the children and their father. The father also claims that the alienating conduct includes the mother's comment to the children about the lack of a rule in the father's home regarding his daughter's watching television, that she encouraged the daughters to report details of the father's girlfriend to her and that she laughed when the daughters mocked the girlfriend.[FN24]

The father also objects because he claims that the mother over-empowered the daughters when she admitted that she believed that her daughters should be able to visit their father whenever they want, which the father claims is evidence that the "decision rests squarely in their hands." The father states that the mother used "poor judgment" when she suggested to them that "going to court" was the only avenue to make changes in the parenting scheme unless their father agreed. The father claims that when the daughters asked their mother whether they "could force dad" to change the schedule, she told them that "we" can "ask the court to reduce it." The father also alleges that the mother was told by her daughters that they did not want to live with their father or, in one daughter's case, go away on vacation with him.[FN25] The daughters offered the lack of shampoo and conditioner in the shower and the lack of "toilet paper on a roll" at their father's house as justifications to live with their mother rather than their father. These flimsy reasons, the father agues, are evidence that the mother has poisoned the children against spending time with him.

In this court's view, these comments by the daughters are evidence that they would prefer to reside with their mother during school weeks; they are not evidence that the daughters have [*14]"rejected" their father. In fact, by all accounts, they have continued to visit with their father as their parents agreed to nearly five years ago, and there is no evidence that the daughters ever intended to stop visiting with their father.

(g) The Father's Description of his Relationship with his Daughters

To meet his burden of proof, the father must establish, as a threshold, that prior to the allegedly alienating conduct, the daughters had a positive relationship with him and now they do not; and that the father did not abuse or engage in activities that alienated his daughters. The proof establishes that the daughters had a positive prior relationship with their father prior to the divorce. He described the relationship as "free of strife, free of difficulties." The children have a similar view of their father. They have an assortment of minor complaints about his "strictness," but they do not impact the relationship. The premise that the relationship has changed for the worse has only the father's impressions to support it. He claims that his daughters are "cooler" to him than when they were younger, that they are often sullen when they come to his home, and that they do not immediately warm up to him when they arrive for visitation; although they eventually overcome their cooler disposition and then warmly embrace him after time with him. Like many teenagers, they are not always in accord with the father's direction. He claims that the once close relationship between the nanny and the daughters has been altered since she became his girlfriend. Unsurprisingly, in the father's testimony he never suggests that the

change might have something to do with his own conduct and the change of the nanny's role (from nanny to his girlfriend).[FN26]

The mother, in a defensive posture, argues that the father's conduct contributed to family tensions and may be responsible for the daughters' moods in dealing with their father. She cites his calling the police on allegedly six different occasions to serve an order of protection and accuse her of theft (including one time when the children were with her); delivering the order of protection to parents of the children's friends and a church minister; preventing the children from visiting the mother's California relatives when they were with him; confiscating one of the daughter's phones to prevent her from calling her mother; blocking the mother's emails to him; suggesting that the mother may suffer from munchausen by proxy;[FN27] recording conversations with the children and having his girlfriend record conversations as well. There is evidence in this record to support these allegations, but little evidence to suggest that the father's conduct, while aggressive, boorish, insensitive to his family's desires, and inappropriate, has caused alienation from his children.[FN28] This post-separation conduct — without question — irritated the mother and realistically exacerbated her anger and fueled her behavior against the father. This evidence further obscures the post-divorce family dynamic in this case. The father portrays a clear landscape, with the mother's alienating conduct as the dominant feature. The mother paints a murkier picture of competing parents, engaged in a tug of water, pushing and pulling against [*15]each other with the children trapped in the middle. She contends culpability for the deterioration of the relationship between father and daughters, if it exists, can be apportioned to both parents.

Even crediting all the complaints and allegations, there is no evidence of any drastic change in the relationship between the father and his children, and no evidence of confrontations between the father and his daughters when they reside with him. He argues that he can best provide for the children, reduce conflict, and support the mother-and-daughter relationship. He admits that he could be a better parent and asks this court for additional time with his daughters to allow him that opportunity. However, in considering the conduct of the mother and the father in their interactions with each other, the Court acknowledges the lack of any drastic change in the daughters' inter-personal relationship with their father.[FN29]

Expert Testimony on The Couple's Conduct in this Case

The previous court permitted four experts to testify on whether the conduct, as described at hearing, in documents, or deposition testimony constituted parental alienation by the mother. In each case, the expert testified on their accepted definition of parental alienation

as the "unjustified rejection of a parent by a child." While this definition was accepted and advocated by these experts, this court, as noted above, has articulated a more exacting legal definition of parental alienation. Nonetheless, a review of the expert testimony is justified in determining whether there is proof of parental alienation through a preponderance of the evidence.

One critical fact hovers over all the expert opinions in this case: even under the definition advanced by these experts, the "rejection" that is the subject of their analysis originates in the children (the child rejects one parent because of the alienating conduct of the favored parent), but in this case, none of the proffered experts ever interviewed or talked to any of the three daughters.[FN30] The father's experts, weighing facts relayed through sources, other than the daughters themselves, including transcripts and prior pleadings, concluded that the mother had alienated the children.[FN31] The lack of evidence from the daughters casts the expert opinions into a [*16]nearly hypothetical context, devoid of any practical significance. While these experts described certain activities by the mother as "alienating strategies," none of the experts ever opined that the strategy actually worked. The absence of this critical conclusion certainly influences the court's analysis of all the expert opinions in this case.[FN32] In addition, another critical factor belays the conclusion that alienation, through any means exists: the father is, by dint of the judgment of divorce, the residential parent, has equal sharing time, and there is no significant evidence that he has ever been denied or thwarted by the mother from any of his access time pursuant to the agreement and divorce decree.[FN33]

Despite these seemingly missing links, a review of the expert testimony is required. The first expert was Dr. Amy Baker and she advanced 17 forms of conduct which she described as suggestive of an alienation strategy by the mother.[FN34] The strategies were:

1. Bad mouthing or saying untrue and inappropriate comments about the father in the presence of the children. These included comments about his mental health status, that he was crazy, and suffered from personality disorders and the like. The most objectionable comments made by the mother were found in a patient intake form when the oldest daughter visited a therapist. The court discusses those allegations in another portion of this opinion. Apart from these allegations, which deserve a detailed analysis, the expert included as a form of bad mouthing that the mother gossiped to her daughters about the father's girlfriend, the daughters' friend and former nanny. This court declines to credit this testimony, as it has an almost sophomoric quality and there is no evidence that this "gossip" about the girlfriend/former nanny caused any rejection of the father.[FN35]

2. Dr. Baker contended that the mother was limiting contact, by over scheduling activities that allowed the mother to dictate the father's time with the children.Dr. Baker suggested that the mother was solely motivated to limit the children's time with their father. In contrast, the proof shows that the daughters all enjoyed their activities and the parents, prior to their separation, had encouraged numerous activities. The mother may have violated the agreement by scheduling an activity without the father's express consent or approval, but her motivation was the same after the divorce as the parents had employed during the marriage; i.e., to keep their daughters active. Furthermore, there is also no evidence that the father lost any time with his children as a result of their crowded activity schedules. There is no evidence that he even discussed the scheduling with his daughters or suggested to them that they not participate. The court declines to find this conduct (even if the failure to obtain the father's consent to activities violates the parties' agreement), as proof of "extreme and outrageous" behavior that leads to alienation.

3. The expert explained that the mother was interfering with communication by the mother when the father called.[FN36] The expert claimed that the mother was limiting the father's telephone contact with his daughters. While the mother did oversee calls, and in some cases - accepting the father's version of the facts - told their youngest daughter what to say, recorded calls, and intercepted others on occasion, there is no evidence that the daughters could not freely communicate with their father - by phone or otherwise - when they wished. [FN37] They had access to phones when they were with their mother. In addition, making this bald statement that the mother interfered with communication between [FN38] the father and his daughters, ignores the fact that the children spent half their time each week with their father. The father never testified that his daughters complained about a lack of access to him. Even crediting all of his testimony and the expert's comments, the interference by the mother on texts and telephone calls was occasional and does not represent any systemic or prolonged interference with the father's communication with his daughters, whom he had overnight half of each week.

4. The expert described the "metaphorical removal" of the father from the daughter's life which the expert described as removing pictures or mementoes of the family's married life from the mother's residence. The expert conceded there was no evidence of that conduct by the mother in this instance.

5. The expert described the "withholding of love" by the mother of the daughters as part of an alienation strategy, but there is not a shred of evidence of that here.

6. The expert then described, through what can only be described as psychological [*17]circumlocution, that if the mother signed up the daughters for activities and then tells

the daughters that their father does not approve the activities, that is evidence that the mother wants the daughters to think that their father does not love or care for them. The father, in his summation, claims that the mother's conduct in over-scheduling activities was a boundary violation.[FN39] In considering this suggestion, the court notes that there is no evidence that the mother ever told the children that the father did not support their activities or denied them access to activities. There is ample evidence that the mother and father quarreled over the activities and the father, having negotiated for limitations in the separation agreement, insisted on enforcing the limitation. At one point in his description of enforcing the limitation on activities, the father testified that "they [the children] shouldn't just be going to school and doing activities. I don't think that's life." He added: "they should have free time, down time, free play time . . . time to do homework, talk to their friends, socialize, be with their extended family."[FN40] While these disagreements infuriated the parents, it had little to no effect on the children. Based on the transcript of the Lincoln hearing, this court is confident that if the father denied one of the older daughter's time to participate in an activity, they would have taken that issue up with her father. There is no evidence that any conversation occurred between the older daughters and their father over the extent of their activities. In view of that conclusion, this court declines to find any evidence of alienation in the mother's signing up the daughters for activities.

Parenthetically, the expert's claim that over-scheduling can be interpreted as an alienating strategy is a demonstration of the need for a more exacting definition of parental alienation. Signing up a child for an activity that the child enjoys and may have previously participated in hardly seems "outrageous or egregious." This court is not naive: a mother may over-schedule a child with activities to slice into the father's time with his children. But, if there is a dual motivation — please the child and diminish the father's time with the child and a past history in which the parents scheduled numerous activities prior to the divorce that limited both parents [*18]active contact with their children — how does this court decipher which predominates? The refined definition of parental alienation helps resolve the dilemma. If the underlying conduct is outrageous, then even a beneficial motivation does not preclude the court from considering it as having an "alienating consequence." In this instance, the conduct - aggressive scheduling of the children to consume large amounts of free time — is not "outrageous" and there is no evidence that it substantially reduced the father's interactions and time with his children. It is undisputed that the two older daughters, carrying complicated scheduling demands, are excellent students and there is no evidence that their activities had any negative collateral consequence to them or their relationship with their father. For that reason, this court

declines to consider the scheduling of activities as evidence of alienation, even if the decision to sign them up violated the terms of the couple's agreement.

7. The expert testified that there was evidence that mother portrayed the father as "dangerous" to the children which was further proof that she intended to alienate the children from the father. The expert claims that giving the oldest daughter a cell phone to use when staying with her father is evidence that the mother wanted her daughter to not trust her father and to consider her time with him to be unsafe. The mother does not deny that she told the oldest child to call her from her father's residence if she felt uncomfortable. There is evidence of repeated calls between mother and daughter when the daughter was at her father's residence. There is also evidence that the mother came and picked up the child from the father's residence — at least once in nearly four years. This court declines to infer that giving a teenaged daughter a cell phone or picking her up once when the daughter asked her to was planting a suspicion in her daughter's mind that her father was a "danger" to her. The child custody agreement allowed the daughter to have a cell phone. There is no evidence that the father repeatedly disciplined the daughters for talking on a cell phone with their mother or that the calls prevented the father from engaging in any interaction or activity with his daughters.

The allegation that the mother sought to portray the father as "dangerous" is buttressed by evidence that the mother, when presenting her oldest daughter to a psychologist and filling out an intake form, accused the father of abuse that harmed the daughter. This allegation is troubling, but needs to be examined closely. First, the mother's concern about self-harm by the daughter was an understandable motivation to seek healthcare. This court will not criticize a mother who takes a teenaged daughter to seek attention if there is any evidence or even suspicion of self-harm. Even though the seeking of treatment was justified, the fact that the mother never notified the father of either the suspected self-harm or the appointment with the psychologist is troubling. It suggests that the mother was clandestinely attempting to build a case of abuse against the father.[FN41]

Second, the allegations of abuse are contained in the "Patient and Family Information Form" completed by the mother in February 2014, three months after the divorce was final. Initially, the form asked for reasons why the parent was seeking help for the child. The mother wrote: "She is burning and scratching herself. When she is with her father." Strangely, the mother put a period after the word "herself," suggesting that the words connecting the alleged harm to time "with her father" was a strategic add-on, intending to point the psychologist to the father as the cause. The mother also admitted, under cross-examination, that the alleged "burning" described on the form occurred while the couple

were still living together. This intentional and fabricated smearing of the father as the cause, at the outset of the responses by the mother, strongly suggests a motivation to have the treating professional link any adverse findings to the father.[FN42]

The form asked the mother whether the child had "experienced a violent or otherwise traumatic event" and the mother checked the box "no." In the very next section of the form, in response to the inquiry of whether the daughter had been a victim of abuse, the mother circled the words "verbal" and "emotional" and apparently wrote the words "by father" next to it. The next inquiry asked whether the child had "witnessed domestic violence" and the mother checked the response "yes" and added "by father — witnessed as a child two years old — father strangled pregnant mother."

This court is cognizant that a false allegation of abuse - sexual or emotional - can be a telltale sign of alienation. However, several facts undercut that conclusion in this case. First, based on the testimony credited by the court, there is no evidence that the mother made that allegation in the presence of the child or that the child read the intake form. [FN43] There is no evidence that either the mother or the treating psychologist reviewed the form and its contents with the daughter during the appointment. Second, there is no evidence that the daughter ever heard the mother make this allegation to her or her sisters and no evidence that the treating psychologist repeated the comment to the daughter or ever asked the child whether she had observed her father abusing her mother. Third, there is no evidence that the mother ever discussed the alleged "abusive incident" with her daughter in another context. Fourth, the father testified that he had no evidence that the mother ever made that allegation to anyone else. Fifth, there is no evidence in this record that the underlying emotionally-charged incident — the father strangling his pregnant mother — ever occurred. Finally, there is no evidence that the mother ever suggested to her daughters that their father was dangerous or someone to be feared.

The intake form is also the site of further comments by the mother that raise issues regarding her temperament and intentions regarding the relationship between the father and his children. When asked whether there was anything that might be "important" to the treating psychologist, the mother wrote: "Father is an extremely belligerent and controlling person . . . extremely angry and bitter about the divorce . . believed to have OCD (obsessive compulsive disorder), narcissistic personality disorder and asbergers (sic) . . ."[FN44] The first two comments are the obvious opinions of a frustrated and angered former spouse. While the comments seem wholly unnecessary in this context, this court does not view them as portraying the father as "dangerous." They are intemperate and ill-advised, but cannot be construed as suggesting the father is dangerous. In addition, there is no evidence

that the mother made these comments to her daughters and even if the court were to draw a conclusion that these remarks were repeated to the daughters in other contexts, there is no evidence that the daughters agreed with their mother's assessment.[FN45]

The more troubling comments, which the father argues are a window to the mother's true motivation in all these contexts, relate to the allegations regarding the father's mental status. These comments were clearly designed by the mother as an attempt to influence the treating psychologist and lead her to the conclusion that the father was responsible for the daughter's condition upon consultation. There is no evidence in this record that the father had ever been diagnosed with any of the alleged conditions. In a damaging admission, the mother admitted in cross-examination that she had no evidence that the father had ever been diagnosed with any of the disorders. Even the form of her admission casts doubt on her motivation. When asked whether it was "responsible" to list these unfounded diagnoses, the mother seemed to parse out the question and eventually answered "I don't believe they are patently false." She focused on the words "believed to have" which precede the listed disorders and argued that she had been "told by others" that the father suffered from these personality disorders. The court rejects her explanation. She hedged her comments and blamed the origin of the "disorder" comment on someone else. This evasion fails here; the mother knew or certainly should have known that the psychologist would focus on the disorders and not the words "believed to have."The mother, a skilled lawyer, knew that these seemingly-authoritative but unfounded and untruthful comments about the father's mental status were red flags to the psychologist. The comments are striking evidence of her animosity and disregard for the father's relationship with his daughter.

These comments, in writing by the mother, tempt the court to conclude that the mother engaged in a widespread and lengthy campaign of unfounded and intensely personal commentary to the daughters about their father's personality and character, with the ultimate goal of estranging or alienating them from him. The father's suspicion that such a campaign existed [*19]is understandable. But, while tempting to accept the father's suspicions, the court's fealty to the credible proof at hearing and the requirement for a preponderance of the evidence to establish the necessary facts dictates otherwise. In the absence of any evidence that these comments were communicated to the daughters or for that matter were repeated to anyone else, it is impossible for this court to conclude that the mother's commentary on the treating psychologist's intake form made the children consider their father as "dangerous."[FN46] This conclusion does not excuse the mother's incendiary, irresponsible, and potentially destructive lies, her complete lack of judgment and her equivocations on the witness stand, but this court concludes that there is insufficient proof to justify the conclusion that the mother's comments on the intake form,

standing alone and never repeated, made the father seem dangerous in the eyes of his children.[FN47]

8. The expert also testified that conveying the notion that a child's time with a parent is "discretionary" is also evidence of alienation. The mother does not deny that she told the children that they could see their father "whenever they wanted." But, from her perspective, the comment was not designed to restrict the children's choice; it was intended to make it clear that if they wished to visit with their father, the mother would accord with their wishes.The undisputed proof in this case is that the daughters almost always - with a few minor exceptions - went with their father as the agreement and subsequent orders instructed. There is no evidence that the mother in this case ever told her daughters that they did not need to or should not participate in visitation with their father. There is no evidence that the mother "permitted' the children to decide. In fact, the children followed their parents' wishes, as set forth in the separation agreement, almost exactly.

9. The expert testified that alienation occurs when the mother incites the children to reject the father. In describing the norms of parental alienation, the expert states that the father, faced with rejection by a child, gets angry with the children, a reaction that worsens their alienation from him. In this case, there is a paucity of evidence of conflict between the father and his daughters. This court can find no evidence of disciplining the children by the father, except his occasional demand that the daughters go to sleep on time. There is no evidence of any other significant conflict with the daughters when they are with their father.

10. Dr. Baker testified that the mother keeping secrets with her daughters would be evidence of alienation, except there is no evidence of any such secrets here.

11. Dr. Baker also suggested that the mother's use of the daughters to spy on the father was evidence of an alienation against him. In that regard, the father alleges that the mother got "ongoing reporting" from the daughters about the father's relationship with his girlfriend. The proof establishes that the daughters did talk to their mother about the father and his girlfriend. But, it is inconceivable to this court that three young girls, who spend substantial time with their father and knew that their father's girlfriend was their former nanny, would not talk to their mother about this relationship. It would negate any common sense understanding of young nearly-teenage children that they would spend substantial time with their father and his girlfriend and not discuss it with their mother.[FN48] But, in this case, while there is an acknowledgment that such conversations occurred, there is no evidence that they were routinely initiated by the mother or so pervasive as to influence the daughters. The father, in his summation, suggests that the mother should have instructed

her daughters that gossip on this issue was "inappropriate" and a "modeling of bad behavior." This stance ignores the interaction of a mother - former wife - and curious children who are exposed to their father's amorous relationship with their former nanny. The question of whose conduct regarding the girlfriend is "inappropriate" is left to the children, but this court declines to draw an inference that the mother's occasional discussion with their maturing daughters about their father's post-separation personal life is a form of alienation.

12. Dr. Baker testified that the mother's confiding facts of the court process or other facts [*20]of the mother and father's personal or financial relationship with the children was evidence of alienation. The proof establishes that the mother discussed the order of protection with her daughters, apparently because it impacted where the mother could sit in relation to the father at sporting and other events. The mother also told the children that they could contact their attorney to change the visitation schedule and used the word "we" to describe the legal effort to change the schedule. The mother also used the word "defendant" to describe the father. The evidence does suggest that the mother had a loose tongue and talked frequently with her children about the couple's legal issues, a fact that seems inescapable given that the mother is an attorney. There is evidence that the older daughters occasionally voiced objection to visiting or spending time with their father in the mother's presence. But there is also evidence that the father complained to his daughters about the payment of child support, and the mother's use of "his money," and on several occasions called the police to intervene in family squabbles. Both parents injected legal issues into discussions with their daughters.

From the children's perspective, the legal fight between their parents occupied a large part of the family's interaction. There were repeated calls to the police, proceedings in court, and repeated conferences between the children and their attorney. Combine these facts with their mother's career as an attorney and this court can easily understand that the mother made legal-tinged comments to the children. Furthermore, the children asked a raft of legal questions that needed answers and, at times, made unsolicited comments to their mother about spending time with their father. The fact that the mother responded does not constitute alienating conduct. An attorney mother, confronted by curious children about legal topics and their implications in their lives, faces Hobson's Choice. Saying nothing suggests indifference to the daughters' inquiry, while responding decisively - and honestly, but in emotional manner as might befit a former spouse - sounds rude and alienating, and responding with bromides such as "your father needs you and needs your love and affection," as one expert suggested, is unrealistic and, pollyanna-ish. However, even if this court credits the testimony that the mother heard the children make comments

about their father and their desire to spend less time with them, there is simply insufficient evidence of a regular and consistent course of these comments to draw the conclusion that the mother was encouraging the daughters' discontent with their father.

Other conduct by the mother - including copying the older daughter on certain emails between the parents and both parents recording phone calls with the children - was foolish and immature. But there is no evidence that the sum of all of these actions by the mother created "contempt, fear or disgust at the targeted parent" as the experts suggested.

13. There is no evidence that the children called their father any name other than "dad." The mother used the phrase "defendant" to describe the father, but there is no evidence the daughters repeated it.

14. The mother did not replace the father in the children's lives.

15. The children's names were never changed.[FN49]

16. A major factor, highlighted by Dr. Baker, involves the mother's withholding information from the father. As noted earlier, the mother failed to tell the father about several [*21]doctor appointments, when the youngest daughter fell, the middle daughter hurt her ankle and had a "bronchial infection" or "pneumonia" (depending on who you believe), and about the oldest daughter's "self-harm." These facts are established and violate the couple's joint custody agreement. There is no dispute that the mother's conduct in this sphere kept the father "in the dark" and, her conduct subjected the children to possibly more difficult medical conditions. But this court declines to make the quantum leap to the conclusion that this conduct made it appear to the daughters that their father was "uncaring or incompetent." There is no evidence that any one of the daughters complained about their health when visiting their father and no evidence of any adverse consequences of the mother's neglect in notifying the father. There is no evidence that the daughters were even aware of their mother's neglect in that regard - their father never discussed it with them and he never complained to them about their mother's conduct. The daughters, in their discussion with the court, never gave any hint that they considered their father "uncaring or incompetent."

17. As a final ingredient in parental alienation, the expert stated that the mother suggesting that the father's television viewing rules mimic her own "undermines his authority." The proof establishes that the mother did inform her daughters and the father that they should not be watching television at certain times. The mother also sent electronic messages regarding the daughters' personal hygiene. If this conduct is evidence of alienation, and

evidence that the father's authority has been undermined, it will be news to his daughters, who acknowledge that their father had his own rules in his house and, like a many a teenager before them, they have, at times, reluctantly and with objection, followed them. Even so, the father cannot point to any rule or requirement of his household that his daughter have failed to follow. There is no evidence that he has lost his authority or been diminished in his daughters' eyes.[FN50]

When all is said and done, a scorecard for these touchstones of alleged "parental alienation" reveals a mishmash of contested facts. There is no overwhelming evidence of any of the 17 alleged signs of alienation that the experts presented. While there is evidence of unacceptable conduct by the mother, the only unequivocal conduct involves a few violations of the agreement and orders, withholding medical information, and discussing the girlfriend and the court proceedings. On the other 13 allegations, there is either no evidence of the conduct or there is no correlation between the conduct and the daughters' views about their father.[FN51]

Importantly, the father's view of his alienation from his daughters does not comport with [*22]the model of "rejection" advanced by Dr. Baker.He described how he has experienced "alienation" from his children:

There has been a change in their behavior that I've observed. I've seen them hugging me less, kissing me less, talking to me less, opening up to me less, spending time less time with me, and this has gradually increased since the time of the divorce and has accelerated dramatically in the past six months, and I'm referring primarily to Chiara and Gemma, and it's not every day and even on an individual day. It's not all day. There's a period of time when they come to me after an exchange where it seems like they're frozen or icy. They don't show affection to me. I do not see affection shown to me. There's a thawing-out period, and after this period, things are different. They're more affectionate. They hug me, they come up to me, they kiss me, they do things with me. They don't just hide in their rooms, and then when it comes time for - comes time an exchange again, there's a recertification. Something changes in them. All of a sudden, it goes back to the way it was before the exchange.When they're in the presence of [the mother], they don't come to me. I've witness them locking eyes with me. They turn away. They won't come to me. They won't kiss me. They do not say hello, good-bye, anything like that when [the mother] is present. Those are some of my observations.

The father in this case sees "rejection" in the emotional reaction of the children to him and acknowledges that the children, based on the time they spend with him, eventually show no

signs of rejection. He admitted that time with his children is not the crux of his complaint. "That's not the problem," he testified. Instead, he complains that his older daughter is "rude" when he tells her to put her phone away until she is done with her homework. His middle daughter is "disrespectful" when she is told to do chores. In this court's view, there is no equivalence between teenagers being "rude" or "disrespectful" to a parent - an irritating, but maturing ritual for teenagers - and "alienation" of a child from that parent. The father also seems acutely overly sensitive and jealous that when his daughters are with their parents in public, the children tend to favor and gravitate to their mother. In this court's view, these behaviors by the daughters are not evidence of rejection of their father. Maturing teenaged daughters can easily have a greater affinity for their mother without rejecting their father. Less-tender behaviors of hugging and kissing, cited by the father as evidence of alienation, can be just as credibly equated with normal growth and development of teenage daughters. In addition, there is no evidence in this record that the mother ever violated the visitation agreement and no evidence — with the minor exception of the sprained ankle incident - that she ever advised her daughters not to visit their father.

The other experts offered by the father reiterated many of the observations of Dr. Baker, but not surprisingly, most of their observations related to the dangers of alienation in the future. A licensed social worker, Linda Gottlieb, described her conclusions as "counterintuitive," which she described as "no matter how convinced you are that your correct using your intuition, it's going to get it wrong."[FN52] Based on this counterintuitive process, she detailed what to this court [*23]can only be described as a "half-empty-glass-view-from-35,000-feet-up" form of analysis.[FN53] She introduced her testimony by describing a book she wrote about classic symptoms of alienation that "were so classic that I began to know what the children were gonna say before they said it." She testified that she had reviewed medical records and pleadings and deposition testimony that "described the children very thoroughly." She testified she made credibility findings regarding the observations and testimony of the parents and assessed the parents' behaviors to determine "normal parenting." She testified that a strong bond between parent and child may not be healthy, but can be an "indication of psychological enmeshment." A child with good grades can still be ensnared in the web of an alienating parent she theorized and added that alienated children are poor reporters of "their true desires."[FN54] When asked about the seemingly well-adjusted and academically proficient children in this case "does that mean they are doing well psychologically?" Ms. Gottlieb answered unequivocally, "No. Absolutely not." She then went into a psychological dissertation over maladjusted children without any reference to the daughters in this case. Her hyperbole in response to this question alone casts doubt about her entire testimony. She described the mother's actions, in some contexts, as "bizarre," and that her

"brainwashing actions" meant the children were "moderate or severe" alienated. Ms. Gottlieb described the mother's conduct as "brainwashing by the severely alienating parent." Despite these conclusions, she admitted under cross-examination that the daughters communicate with their father, spend time with him, go out to dinner with him, were planning on going to dinner with him to celebrate his birthday on the day Ms. Gottlieb testified, go on vacation with him, and do not refuse to talk with him. In response to these questions, the expert said the children "somewhat" have contact with their father even though the proof shows that they spent more than half their time with the father. Ms. Gottlieb's characterization that the children's undisputed consistent access to their father was nonetheless evidence of being "somewhat alienated" strongly suggests that this expert had no actual proof that the children are alienated from their father.[FN55]

For this court, the expert's comment, at times, reached almost the apex of foolishness: she testified that a mother who tells her children that she misses them when they are gone is guilty of alienating conduct and manipulation. If so, every mother in the world needs reprogramming.[FN56] She adds:

So, now, we need to think of parenting as proactive; not reactive. It's - Parenting is - Quality parenting is what you don't do and what you do do. So what non-alienating parent would run out and file a petition for sole custody because the children dictated it, teenagers dictating 'Let's force Dad to give up his parenting time' A non-alienating parent is going to say to the children, 'Number one, you are not in power to make such a decision. This is a parental decision. I don't know how you got the idea that you can decide to dictate the family relationships, but whatever is happening with your father happens to be a surprise to me 'cause it came of a sudden. If you have legitimate issues with your dad, I'm calling him up, and we will talk about it and we will get it resolved. You need two loving parents in your life and there is nothing that your father has done to warrant you not to want to have your ongoing equal relationship with him.' That's what a normative parent would do, a parent who truly respects the relationship that the - and the important of having the other parent meaningfully in their lives. But, what did [the mother] do? She tells the children 'Well, legally, you could ask the court to do something.' Who tells a thirteen - and fifteen-year - old to go to the court and file a petition? I mean, this, to me, is kind of bizarre. But, in any case, then she instructs the children to call her attorney. Then the children, presumably, go information, they asked 'How old do you have to be before I can make my own decision'? She tells them 'Thirteen or fourteen.' I'm not sure where she got that from, but the answer is 'You don't make this decision.' You don't give the child the authority to make a decision about [*24]family relationships. So she was doing everything in her power to sabotage and minimize the relationship between the children and their father.

The expert went a step further, when asked to react to how a mother should talk to the daughters about their interaction with the father's girlfriend: A non-alienating parent would say 'Listen, this is ridiculous. This is - Your father has a right to move on. She's always had a loving relationship with you girls. I don't accept this. Now, cut this out. This is nonsense. You will go there, and you will show her respect, and you will continue to get along with her, and just as she treated you before, you're gonna respond that way.'

When the daughters told the mother that their father broached with them the subject of the father and his new girlfriend - the former nanny - might have a child, the expert said that a non-alienating mother would respond as follows to the inquiring child: . . . the child said, according to [the mother's deposition] testimony, that she said 'How could Daddy have another baby? He doesn't know how to take care of us. Why should he have another baby? And if they have another baby, I'm never gonna live with him again.' Now, again, a non-alienating mother will say 'That's ridiculous. We don't do that in this family. We're - You know, that is not a reason not to have a relationship with your father.' That's if he truly supported that relationship and recognized how important [the nanny] was to the children for three years.

She added the mother should also say to her daughters, in that situation: "You will respect that parent, and you will get along, and all I care about is that the parent treats you nicely." This suggestion that this expert's rendition of what a parent should say in these instances would be "normative" and that the inference that anything less hospitable is evidence of alienation further undercuts the entire testimony of this witness.[FN57] In this Court's 10-year experience on the bench, a normative parent - having struggled through a difficult and expensive divorce, with the knowledge that the former spouse was living with the couple's former nanny, and facing curious intelligent, perceptive teenage children - would never react with the halo-inspired comments articulated by this expert as "normative." The comments described above, if made by a spurned spouse to her nearly-teenaged daughter, are worthy of mythical ex-spousal sainthood, not evidence of normal parenthood. These suggested comments by this expert - alone - strongly suggest that this expert, perhaps well-versed in the clinical textbooks of "normative parenting," has no idea what occurs in the real world of post-divorce parenting in high-conflict cases. To suggest that any deviation from the expert's instructions - instructing mythical children on how they should behave and what they should do - constitutes alienation shows a detachment from reality that leads this court to conclude that these comments - and much of this expert's analysis -

[*25]while perhaps advancing an ideal to which parents should aspire, is unworthy of credit.[FN58]

This conclusion is further bolstered because this expert (and all the other experts who testified) is missing a critical link: she never interviewed the daughters and her entire description of the horrors of parental alienation is speculative as a result.[FN59] This court refuses to accept this therapist interpretation of the evidence - that decision rests with this court and no one else. This court alone must review the hearing evidence and determine - not through intuition or counterintuitive thinking - whether alienation has occurred and impacts the daughters' lives.[FN60]

A third expert, Robert Evans, was qualified. This witness, when asked about alienation, first focused on the fact that the children's friends visited them at their mother's house, but he suggested their friends were not permitted to go to their father's. He conceded almost immediately that there was no evidence the friends were not permitted to go the father's house. He found evidence of "character assassination" in the fact the mother had friends in the courtroom at the start of the trial this matter but there was no evidence that the daughters knew about this fact and equating a divorced mother bringing friends to a court hearing as a form of "character assassination" is an unwarranted exaggeration, at the least. He found that the mother's comments, made on the daughter's intake form described at length earlier, were "bizarre" behavior and "spread to others." Later, he testified that the mother was "on multiple occasions . . . telling everyone" about the father's mental health, an obvious exaggeration because there is no evidence in this record that the mother told anyone - other than the therapist - about the father's mental health, and there is no evidence that it was communicated to the children. He interpreted the mother's failure to inform the father about flu shots as being interpreted - presumably by the children - as the father "not caring about them" even though there is no evidence the children knew about the mother's failure to inform the father or that they held that belief regarding their father. He also acknowledged that children in difficult divorces can experience transition problems as they move between the homes of divorced parents without any evidence of alienation. (He said, "in many cases, yes.") At another point, he suggested that if this court listens to the opinions of the children on their preference on spending time with a [*26]parent, "the court is inadvertently empowering the children, just like the mother's been empowering the children." This suggestion, that the court might have a role in causing alienation of a parent if it concluded that changing the residency schedule as the daughters had requested was in their best interests, is far-fetched and directly contrary to New York law. Much of this expert's testimony had a hypothetical quality to it; he seemed to take broad brush concepts and try to adapt them to this case.He repeatedly makes reference to what the children

believe, comments that the children "ultimately will have no respect for their father." When asked whether the children's reaction to their father might have anything to do with the father's behavior toward them, the expert acknowledged "it's certainly possible," but he admitted that he had never reviewed any evidence of the father's behavior toward the daughters. As to whether the daughters could express a preference in the absence of any alienation by this mother in this case, the expert testified, "In most cases I would say that's a possibility. I don't know if that's accurate in this case." In short, he admitted that these children could have a preference for their mother over their father - even though they spend more time with their father - and he was unsure whether that justiciable preference existed in this matter. Finally, he admitted that anxiety, anger, sadness, oppositional behavior, and loyalty conflict - many of the children's behaviors as described by their parents in this case - occur in high conflict divorces.[FN61]

Dr. Evans ultimately concluded that the mother was imposing a "moderate level" of alienation. Importantly, this expert, as those who testified before him, acknowledged that he did not interview the children. He testified that reviewing and assessing documentation enabled him to offer "a forensic opinion with a reasonable degree of clinical certainty for parental alienation." Nonetheless, this expert sought to undercut this court's consideration of any testimony from the children. He testified that "no one can determine if a child is not telling the truth or expressing a genuine opinion." In short, never having met or interviewed the children in this case, this expert suggested this court should not credit their testimony. This slim rationalization for his failure to interview the children and consider whether their mother's alienating strategies have succeeded before reaching his conclusions is rejected by this court. The court also rejects this expert's suggestion that because child reporting of abuse has a low reliability, an expert can use information - other than interviewing the children - to determine that alienation has occurred. This court can read the transcript of an interview with the children and, using its own judgment, determine whether the alienation factors described by Dr. Evans are present in any of the three children.

The mother, in her defense, produced a rebuttal expert, Dr. Peter Favaro,[FN62] who [*27]questioned the scientific reliability of the father's experts, suggesting that the failure to conduct an evaluation of the entire family - including interviews with the mother and the children - was open to "confirmation bias"[FN63] and of "limited utility." He cited the American Psychological Association ("APA") guidelines that an evaluator "should not testify about someone you have not met." He was sharply critical of the analysis performed by the father's experts. He suggested that Dr. Baker's analysis was "pre-scientific" without interviewing either the mother or the children. He said that the opinions of Ms. Gottlieb

and Dr. Evans suffered from the same deficiency - they failed to interview either the mother or the daughters in this case.[FN64] He added:

Because without having access to both parties and without having the ability to perform multiple methods of analysis on data, it becomes very, very difficult to fact check what one person says about the other. The testimony becomes very, very open to something called confirmation bias. The testimony is speculative at that point and would be nonscientific.

When asked whether he was biased in favor of the mother, he replied, "I'm biased with respect to finding methodological flaws and issues that the previous experts have testified to." During an extensive cross-examination, the mother's expert, when asked whether certain circumstances could result in alienation of a child repeatedly said, "it depends" and then he recited a series of factors that any therapist would need to evaluate and review before reaching that conclusion. For example, when asked whether alienation could occur even though a child still visited with the non-favored parent, Dr. Favaro replied: "I suppose it's a possibility, but I would have to have a lot of facts in front of me." Much of the cross-examination was consumed in asking hypothetical questions of whether certain behaviors could cause alienation. Dr. Favaro's answers were peppered with confirmations that certain behaviors could cause alienation, but he added that he would need additional facts before he could confirm the onset of alienation. He also responded during cross-examination to a question seeking to differentiate the attitude of teenagers toward parents in any circumstance: Q: What about if that child continued to have contact with the parent, but was defiant, uncooperative, disruptive, would you consider that to be a healthy and bonded relationship between the parent and child?A: It could very well be a healthy and bonded relationship if you're talking about, say, a teenager who is asserting themselves. I mean, there are plenty of intact families where kids who are transitioning from preteen to teens fulfill all those criteria. They are disrespectful, they have a smart mouth, you know, they are defiant. So the fact that a [*28]child may be disrespectful or defiant to a parent, you can't draw a straight line between that and parental interference because it occurs under so many other circumstances.

This court substantially credits Dr. Favaro's insights regarding the methodology of the father's experts. He concluded that the father's experts — without a chance to interview the daughters or the mother — could only advance speculative conclusions regarding whether alienation existed in this case. The father's experts, in essence, argue that based on the acknowledged conduct by the mother, and the daughters changed interactions with their father, alienation must exist. Dr. Favaro, in challenging the father's experts lack of a face-to-face discussion with the children or their mother, suggested that those experts can only

presume that it exists. In this court's view, the father's experts' testimony, missing this critical link, fails to prove by the preponderance of the credible evidence that alienation exists or that it has damaged, in any reasonable way, the relationship between father and his children. In addition, Dr. Favaro, in his answer to cross-examination questions, painted the complex picture of teenaged and pre-teenaged children reacting to their parents. These would-be adults are often hostile or inappropriate with parents, but such behaviors have nothing to do with alienation.

4. The Lincoln Hearing

At the conclusion of the hearing, the trial court held a Lincoln hearing and met individually with all three children. The daughters were, at that time, ages, 15, 13 and 7. (As previously noted, this court did not interview the daughters — the prior Supreme Court judge who heard the case conducted the interviews.) From this court's point of view, the goal of a Lincoln hearing, whether confirming a child's preference, or corroborating the accounts of the various disputed incidents, remains elusive. This court cannot violate the confidences of these three mature and intelligent young ladies. In addition, by referring to the various incidents, this court is mindful not to draw these girls into the vortex of the brass-knuckles contest between their parents. The children are smart, dedicated, and industrious and this court fails to comprehend why it must make disclosures, even in as oblique a fashion as possible, of their observations of their parents conduct and their attitude toward them, based on a nearly half-century old judicial opinion decided without an iota of psychological or therapeutic proof.[FN65]

The children agree that they spent most of their early years with their mother. While reluctant to offer any account of the discussion, the hearing affirms that the advocacy from the attorney for these children equates with their preferences. Simply put, the children, in a majority sentiment, would prefer to minimize disruptions and stay with their mother for a full week during the school year. They believe that attending school from one location during the week would be less disruptive and reduce complications in their busy lives. They all downplay or have only faint recollection of the alleged "alienating" incidents discussed at length in the trial: the furniture removal ("it wasn't as rough as it sounds"), the order of protection ("I think my dad [*29]told me — or both of them said something about it"), calling the police, the driveway incident ("that was a long time ago"), and the episodes in the doctor's offices (faint recollection of the father being present, but with no recollection of any of the alleged particulars - which are the casus belli for much of this application.) They each have a critique of their parent's parenting styles - flexibility in scheduling, handling homework, occasional "strictness," occasional comments about money, or stubbornness of

the other parent - and this court finds that they are sincere and credible in those accounts of their parents. They offered only mild complaints about living with their father ("sometimes it is harder to focus when nobody is in the house"), but while they would prefer to stay at their mother's during the week in school, they each "really like" their dad and have "a good relationship" with him, watching movies and even asking for flexibility to stay with him more than their allotted time. They describe both parents as "stubborn" and "controlling." They have some complaints that both parents say "negative" things about the other. They sense that their mother has greater flexibility in varying the visitation schedule (it would be easier for the mother to give extra time with their father than vice versa). They exchange nightly telephone calls to each parent. In many ways, the daughters' observations are age-appropriate insights about parents with widely divergent personalities and child-rearing skills, but at their heart, they love both parents and enjoy being with them. One described her life "as pretty perfect."[FN66]

There is not an iota of evidence that anyone of three daughters are alienated from their father.[FN67] None of the three children expressed any adverse reactions to the incidents that the [*30]father alleges are evidence of alienation: the driveway incident, the pediatrician office escapade, the repeated court proceedings, the police involvement, the over-scheduling, the bad-mouthing, the limiting of contact, or any of the other supposed "alienation criteria" outlined in the expert testimony in this case. The children have some complaints against isolated parts of their parents' personalities involving flexibility and strictness, ability to confide in them on all subjects, and there is ample proof in the record to support these conclusions regarding the parent's behavior and child-rearing in this matter. The clear and indisputable picture that emerges from the Lincoln hearing is that all three children want to spend time with their father and mother and enjoy spending time with each of them.[FN68] From this court's perspective, an amazing occurrence - undiagnosed by all the experts - overwhelms all the other evidence in this case: despite the war-like, win-at-all-cost animosity between these parents, and their intent on convincing the court of their righteousness in child rearing, they have (together during their marriage and as separated parents after it) raised three remarkable daughters who love them.

Based on the court's review of all of these facts, this court concludes that the father has failed to prove by a preponderance of the evidence that the mother has engaged in alienation of their children against him. The mother's conduct, while in some instances, violating their agreement or the order of protection or otherwise intemperate or boorish, is not "outrageous and egregious" or "so inconsistent" to justify a finding required by the court's accepted test. The mother's intention, in many of the alleged alienating strategies, has an underlying legitimacy, such as the scheduling of activities for highly-active and

industrious daughters or providing a cell phone to keep in touch with the older daughters. There is no evidence that the mother solely intended that these activities alienate the daughters from their father. There is also no causal connection between the mother's conduct and the daughter's rejection of their father. For example, if the comments on the intake form - the mothers' suggestion regarding the father's mental health status or his "harm to the child" - were intended to make the father "dangerous" in his older daughter's eyes, it would seem that the daughter would contemporaneously react and seek to be immediately sheltered from interactions with her father. Similarly, if the mother was continuously badmouthing the father over the period from the divorce to the hearing - nearly three years - there would be some evidence of the daughters increasingly and more persistently declining to see their father. There is no proof that either occurred and thus no evidence to support any causal connection between the mother's conduct and the children's changed relationship with their father. Finally, there is no proof of rejection. The father has noticed that his relationship with his daughters is different from when he was married to their mother. The mere difference in evolving relationships in this case does not equate with alienation. The father's complaints about his daughters' adjustments when visiting him are insignificant when weighed against his daughters' professed love and fondness for him. The mother's conduct — [*31]violating the agreement and the order of protection, comments made to the daughters, her conduct at the psychologist's office — could have resulted in alienation and, in other cases, similar conduct could lead to a child's rejection of a parent. But, in this case, even if the mother intended to alienate these children from their father, she failed. This court has no doubt that parental alienation - destroying a parent in the eyes of a child - exists and should not be tolerated. But it does not exist for these children.

Before concluding, a final aspect of this claim requires comment. The father's experts stated that the mother's conduct resulted in a form of "moderate alienation," which they seemed to suggest was a lesser included offense of "severe alienation." Under the latter, a child completely refuses to visit with the father, but under the former, the child just has a chilly reaction to contact with the targeted parent and a changed, less-loving relationship. "Moderate alienation," according to father's experts, was predicted to be the tip of an iceberg, leading to more pronounced rejection by the child in the future if the alienating conduct continues. This court declines to apply a "moderate alienation" standard in this case. There is no support for a finding of "moderate alienation" or "partial rejection" of a parent in New York cases. In addition, this court cannot fine tune the concept to apply it with any accuracy. If the child visits with a parent, but has a cool or sullen attitude when in the parent's presence, how can this court determine what portion of that attitude is caused by conduct of the favored parent? The determination would unnecessarily plunge the court

into the vagaries of child psychology, nuances of child and adolescent growth and development, and parent-child interaction. Finally, despite the suggestion of "moderate alienation" in this case, there is no evidence that the children have "moderately" rejected their father in any sense. As noted above, the father admits that the children, despite some "distant" feelings when they arrive at his house, warm up to him and he establishes a good relationship during his time with them. There is also no current evidence upon which to speculate that these children will engage in a more pronounced rejection of their father in the future even if the current parenting time plan continues to exist.

The father's claim for a change in circumstances, based on alienation conduct by the mother, is dismissed.

5. The Consequence of the Alleged Change in Circumstances

This conclusion does not end the Court's work. The parties have both acknowledged that the breakdown in the parent's communication constitutes a change in circumstances sufficient to require a re-examination of the couple's custody and parenting time. At this stage, the court must resolve the best interests of the daughters under the test of Eschbach v. Eschbach, 56 NY2nd 167 (1982). Both parents have provided a stable home environment. The daughters have remarkable grades in school, excel at sports, and have well-rounded activities, including some involving a church group. The parent's past performance can only be considered exceptional - the children have thrived, despite the contentious nature of the parent's relationship. In considering parental fitness, this court, as noted above, declines to find sufficient proof of alienation to disqualify the mother as a "fit parent." Both parents have an ability to guide the children's well-being. This court can easily conclude, after the Lincoln hearing, that the daughters have acquired qualities from both highly-skilled and accomplished parents - a rigor in their studies, serious attention to sports and extracurriculars, and a sensitivity to their relationship with both parents. The only apparent deficient factor is whether each parent can "foster a relationship with the other parent." The evidence reveals that despite hiccups after the divorce, the parents here have worked to permit each other to develop relationships with their [*32]children. Both parents have ample access to the children. Both parents can communicate with their daughters. The daughters have strong relationships with both parents, although it is apparent that their bond with their mother - perhaps related to the mother's at-home status when they were young, and her working at home during the last few years - is stronger than the bond with their father. In addition, the mother has taken steps to nurture the bonds between the children and the father - inviting the father to events at her home (including the youngest daughter's birthday) and allowing the father to have time with the children even during her

parenting time. The father has not always reciprocated; for example, not allowing the children to visit their mother's California relatives on his parenting time. A final factor - the mother works from home and is available when the children come home from school - weighs in the mother's favor. In short, on this issue, the facts suggest the mother, despite the claims that she has attempted to alienate the children, has worked harder to foster a relationship between the daughters and their father than the father has worked to foster the relationship between the daughters and their mother. The only other factor in the Eschbach test is the daughter's preference or wishes. There is no dispute that the older children, both directly and through their attorney, want to reside during school weeks with their mother. Their rationale is one of convenience and consistency. While seemingly minor factors - the mother makes their lunches, location of shampoo - may be articulated, these factors have a real life day-to-day significance for the daughters. The daughters oppose the mid-week transitions and, even the father admits that it causes some dispirited reactions by his daughters.

Having found a change that triggers the Court's ability to alter aspects of their custody and parenting agreement, this court, faced with seemingly minor complaints against each parent, proceeds cautiously. The court is reluctant to change the joint custody to which the parents agreed to four year ago. Each parent has a role to play in their child's development, and despite their differences, the parents have largely succeeded in being joint custodial parents. The children are mature, intelligent and responsible. Both parents negotiated for and still deserve a say in their children's activities, schooling, and their medical care. The parents fashioned an elaborate plan for joint decision-making. The evidence establishes that while there have been violations of parts of that agreement, the requirement that the parents make joint decisions has kept both parents in close contact with their children. In that regard, the father admitted in the hearing that he and the mother "agree on so many things. We're very compatible, actually, in the foundational basis of what we believe for the children, what we want for the children." The father suggested that the "conflict" between him and the mother was "manufactured." This court agrees with the father. The conflict is "manufactured" as a result of the inappropriate - if not petulant - behavior of both adults. [FN69] The behavior that needs to change in this matter is not the [*33]children's, it is the adults. Both parents have contributed to this "manufactured" tension, even though there is no evidence that it has impacted the lives of their daughters. The best interests of the children would be served if the adults acted like parents rather than psychological gladiators. This court declines to change the couple's joint custody plan. Both parents, seemingly hoping to "win" that issue, must retreat to their neutral corners and accept that both of them will have a substantial role in their children's future sharing joint custody.

This court also declines to impose any "zone of interest" analysis, as suggested by the temporary order from the court. These parents wanted to have a detailed involvement with their children and structured their agreement to handle almost every potential aspect of their children's lives. The court is unwilling to change that aspect of the detailed plan, carefully sculpted only a few years ago, especially when it appears that the children are thriving and whatever disputes the parents allege, there is no evidence that the children have been adversely impacted. This court has held that the mother violated the joint decision-making requirements in taking the children to certain doctor's visits, but the court declines to remove her from future medical decisions as a consequence.

The final issue is the residency plan, which is a close question for this court. The older daughters' wishes have real potency. The court concedes their desire for the convenience and consistency that they envision in their mother's residence, but their objections to residing with their father are minimal. There is no suggestion that travel to school from the father's is more difficult or time-consuming or that their academic and extracurricular accomplishments are impinged by spending half of one week with their father. In this court's view, these parents made a conscious and prudent choice to keep their children close to each parent by dividing their time during each week, with an understanding that these children would encounter transition difficulties and inconveniences because of the split-week format. Both parents believed then that the children needed access to them each week in order to benefit from their style of parenting, even if it conflicted with the style of the other parent. The parents made the calculation that shared time — splitting every week — was in their daughters' best interest less than four years ago. In that respect, even though there is acrimony between the parents, it has not deteriorated to the point where the "cooperation for the good of the children is impossible." Matter of Deyo v. Bagnato, 107 AD3rd 1317 (3rd Dept 2013). If, as one child remarked, their life is "pretty perfect," then this court finds that joint custody, with shared visitation as provided in the agreement, has worked. This court is loath to change it simply because their parents have a "win-at-all-cost" attitude. While the temporary order changed the schedule, this court, based on its findings, directs that the parents revert to their agreed plan in the separation agreement. The court notes that the parents could have implemented changes - dividing it as the daughters suggested, but have not agreed on any changes and this court declines to upend the parent's determination that split-weeks were in the children's and their best interests. The request for a change in the visitation schedule, sought by the mother on behalf of the children, is denied.

In reaching this conclusion, the Court does not strip the parents of their right to jointly decide the residency schedule for their children. Since the date of the temporary order,

more than a year ago, the children have had a week on/week off schedule, which may have proved to be beneficial to the children. If the parents agree that the temporary schedule has worked and is [*34]in the best interests of their children, the parents, as the ultimate authority for determining their children's best interests, can change it by agreement.

6. Violations of the Agreement/Judgment and a Finding of Contempt

While almost all of this Court's analysis has focused on the claims of parental alienation, there is ample evidence that the mother violated the custody agreement. She committed the daughters to extra activities on at least two occasions without the father's approval, as the agreement required. She also failed to communicate with the father regarding injuries and illnesses that the daughters encountered, in violation of the agreement's joint custody provisions and put her daughters unnecessarily at risk of further complications. The father has sustained his burden of proof on these claims. The father also alleges that the mother violated the agreement's non-disparagement clause, but despite the court finding evidence that the mother made misrepresentations about the father to healthcare professionals, there is no evidence of disparagement of the father by the mother in the children's presence as the agreement requires. The court finds that there is clear and convincing evidence that the mother willfully violated the consultation and activities provisions of the agreement and the judgment of divorce. A finding of contempt with an appropriate penalty is required. In considering available penalties, this court concludes that the mother forfeits her right to the Spring/March break in 2019 and pays a fine in the amount of the father's costs and expenses up to $2,500. NY JUD. §773. Rech v Rech, 162 AD3rd 1731 (4th Dept 2018). As discussed below, the mother is also subject to an award of attorney's fees in favor of the husband as a result of the contempt finding. Matis v. Matis, 17 AD3rd 547 (2nd Dept 2005); Ahmad v. Naviwala, 14 AD3rd 819 (3rd Dept 2005).7. Attorney's Fees

After the financial carnage of a lengthy hearing, both parents seek an award of attorney fees. In considering the request for fees, this court notes that the court that conducted the hearing, when issuing its temporary decision, noted that the mother had substantial retirement assets (including pre-marital accounts and accounts derived from her marital share of the husband's retirement accounts). The court properly noted that the "lesser-moneyed spouse" under the Domestic Relations Law was not synonymous with the "lesser-income spouse" when considering a presumptive award of fees. DRL § 237(a) (a presumptive entitlement to fees to the lesser-moneyed spouse). The legislature did not direct whether either income or assets — or a combination of the two — would be the basis for an award. In addition, the legislature did not provide any guidance on how much the "lesser-moneyed spouse" would have in income or assets to be presumed entitled to an

award of fees. Presumably, the legislature intended that if the disparity in incomes was substantial, then the lesser-moneyed spouse should be granted substantial fees. Conversely, if both parties have significant assets, then the imperative to award substantial fees to the lesser-moneyed spouse would be diminished (unless other factors — dilatory tactics, obstreperous courtroom conduct — intervened). Kimberly C. v Christopher C., 155 A.D.3rd 1329 (3rd Dept 2017); Valitutto v Valitutto, 137 A.D.3rd 1526 (3rd Dept 2016) (no fees awarded to the lesser-moneyed spouse because the litigant maintained unreasonable stances, veering into personal and irrelevant attacks aimed at the husband and his counsel at times, that unnecessarily prolonged the litigation). The goal is to "level the playing field" when couples litigate matrimonial related matters. R.S. v L.F.S., 2018 NY Misc. LEXIS 3848 (Sup.Ct. Westchester Cty 2018); L.G. v C.G., 2018 NY Misc. LEXIS 1134 (Sup.Ct. Kings Cty 2018). And while the "playing field" should be "level," both parties need "skin in the game." Sykes v. Sykes, 41 Misc 3rd 3061 (Sup.Ct. New York Cty 2013)

The game metaphor applied to this case produces an uneven conclusion. The father has the burden of proof to impute additional income or prove the mother has more assets available to finance the litigation. Davis v Davis, 117 AD3rd 672 (2nd Dept 2014) (the party seeking to have income imputed must prove by a preponderance of the evidence that the party, against whom imputation is sought, is underemployed, has spurned employment, or is otherwise responsible for reporting less income than his or her earned income potential). The mere suggestion that some imputation is justified does not meet the burden. Rossiter v Rossiter, 56 AD3rd 1011 (3rd Dept 2008) (competent evidence must be submitted to support such a finding). There is no dispute that the mother has less income than the father. The disparity is substantial - the father makes in excess of $250,000, and the mother makes less than $100,000. The father alleges that the mother, an Ivy-league trained attorney, could earn more and did earn more when she worked in Washington, and that she turned down a higher paying job and instead went to work at home doing legal work for an out-of-state law firm. He also argues that the mother has trust funds available and substantial equity in her home. Based on these allegations, the father disputes the mother's status as the "lesser-asset" spouse, asserts that she is "underemployed," and claims that fees are unwarranted.

This court finds that the father failed to meet his burden of proof on the issue of imputed income.[FN70] There is no independent evidence of the mother's income potential, and no expert testimony on her skills or her potential income in the legal job market in Rochester or elsewhere. The mere fact that she was paid a higher salary in another job market does not justify imputing income to her. This court declines to consider the mother's access to other assets including trust accounts. There is no evidence that she has drawn funds from

trust accounts, or the exact nature of those accounts, or her access to them. And, there is no evidence of any on-going or routine support of the mother from her family. Finally, the fact that she has assets — albeit less than the father — does not disqualify her from an award of fees. Grassi v. Grassi, 35 A.D.3rd 357 (2nd Dept 2006); Gallousis v. Gallousis, 303 A.D.2nd 363 (2nd Dept 2003) (fact that the plaintiff has sufficient assets to pay her counsel does not disqualify her from an award of counsel fees); Matter of Talty v Talty, 75 A.D.3rd 648 (2nd Dept 2010) (the fact that the mother has some assets does not disqualify her from an award of counsel fees). The mother here should not be expected to exhaust all, or a large portion, of the finite resources available to her. Brody v Brody, 137 AD3rd 832 (2nd Dept 2016). For all these reasons, an imputation of a higher income to the mother for purposes of calculating her entitlement to attorney fees is unwarranted and the fact that she has assets, even significant assets, does not preclude an award.

However, the court rejects the mother's allegations that the father should pay more fees because he abused process in this matter. The court that conducted the hearing considered the mother's argument to dismiss the claim of parental alienation before the hearing, and denied her request. That denial of summary judgment was never appealed, and it remains the law of the [*35]case. In essence, the court concluded that the allegations in the pleadings established a prima facie case for parental alienation, which required a hearing to determine the truth of the allegations. See Wells Fargo Bank N.A. v Grover, 2018 NY APP. Div. LEXIS 7169 (3rd Dept 2018). In addition, as an ingredient in any claim for abuse of process, the mother would have to prove by the preponderance of the evidence that the father's litigation conduct — subpoenaing numerous documents, including the mother's employment records, the children's medical and mental health treatment records, police reports, and hiring three experts (all of whom were permitted by the trial judge to testify as experts over the mother's counsel's objections) — was without any excuse or justification. Perry v McMahan, 2018 NY App. Div. LEXIS 6219 (2nd Dept 2018) (even frivolous litigation requiring a party to expend legal fees is not a sufficient basis for a cause of action sounding in abuse of process). The proof in this matter falls far short of meeting that burden. While this court holds that the father did not meet his burden of proof on the parental alienation claim, it holds that he did meet it on the contempt claims. The fact that the father did not meet his burden of proof on parental alienation does not now allow the court to hold that the entire proceeding was without justification.

The fee awards — to both sides — in this matter do not level the playing field but they re-balance the costs of litigation, giving each party "skin in the game," and holding them financially accountable.[FN71] The mother, as the lesser-moneyed spouse, is presumed to be awarded attorney's fees. DRL § 237 (a); Belilos v Rivera, 2018 NY App. Div. LEXIS 6192

(2nd Dept 2018).[FN72] The father has a claim for fees as well. His application to find the mother in contempt for violation of the agreement and the judgment of divorce is granted and he is entitled to fees for his efforts on that application. The fees for progressing the contempt application through a hearing in this hotly contested matter would require substantial time and effort, but no expert testimony. This court awards the father $10,000 as the reasonable attorneys' fees for that effort as part of the finding of contempt.

The court declines to award the husband any fees for his alienation claims, which consumed most of the hearing time and attorney effort. In this court's view, these claims were an unwarranted attempt to make an alienation mountain out of a series of irritating molehills. The father, in progressing those claims, admitted that his children had never missed any significant time with him in the interval between the divorce and the hearing. He never had any proof that his children rejected him as the experts predicted they would. While this court has repeatedly [*36]noted that his experts never interviewed the children to determine if they were victims of alienation, the father had an almost daily opportunity to assess whether this daughter's reactions to visiting with him were evidence of alienation and he failed to do so. His latent animosity to his former wife colored his perception of his relationship with his daughters, and he misread their cooler teenaged reactions to him and his girlfriend, the former nanny. In short, the father's expenses in prosecuting the alienation claim do not merit any further award of fees to him.

The final issue is the amount of attorney's fees that the mother, as the lesser-moneyed spouse, is granted for defending against the alienation claims. A review of the transcript reveals that most of the hearing testimony focused on the father's alienation claims. The mother hired an expert to critique the father's experts and this court found him to be credible and convincing. The court awards her the entirety of the expert fee of $20,000, to be paid by the father. On the question of the amount of attorney fees, this court notes that many of the behaviors which violated the judgment of divorce and the agreement were also described — and defended — at length in the hearing.[FN73] The mother's irresponsible conduct triggered the father's alienation claims and gave him the legal grounds to survive an earlier motion to dismiss the claims prior to the hearing. Under these circumstances, this court, in the exercise of its discretion, awards the mother only a portion of her fees - $50,000. She is also awarded the transcript costs of $4,315. The court considered re-apportioning or requiring reimbursement by a parent for the other parent's payment for the attorney for the children. This court declines to take that step - both parents share some responsibility for this lengthy proceeding and the need for an attorney to intervene on behalf of their children.

Therefore, this court concludes:

(1) the father has proven that the mother violated the terms of the parties' agreement and judgment of divorce by her conduct and as a result, this court fines her the sum of $2,500, which is payable to the father and reduces her time with the children through forfeiture of certain vacation time with the daughters as described above;

(2) the father has failed to prove by the preponderance of evidence that the mother engaged in outrageous and egregious conduct of such a pervasive nature as to result in the alienation of his children from him;

(3) while the parties concede that the breakdown in communication between the parents is a substantial change in circumstances to modify the couple's original agreement, this court, in exercise of discretion, declines to modify the terms of the agreement and henceforth, the terms of the agreement will apply and the children will revert to the parenting times prescribed by the agreement unless the parent's agree otherwise or as otherwise modified by this decision;

(4) the father's request for attorney fees based on a finding of contempt or a violation of the judgment of divorce or custody agreement is granted and he is awarded $10,000 in fees to be [*37]paid within 30 days of the final order;

(5) the mother's claim that the father's legal response and application are frivolous as a matter of law is denied for the reasons set forth above;

(6) as the lesser moneyed spouse, the mother is entitled to an award of legal fees and expert's fees in the amount of $70,000 plus $4,315 in transcript costs to be paid within 30 days of the final order;

(7) all other claims are denied with prejudice.

SUBMIT ORDER ON NOTICE 22 NYCRR 202.48.

Dated: December 6, 2018

Richard A. Dollinger, A.J.S.C. Footnotes

Footnote 1:See Lincoln v. Lincoln, 24 NY2nd 270 (1969). This court has written about the

function of a Lincoln hearing. T. E. G. v. G. T. G., 44 Misc3rd 449 (Sup. Ct. Monroe Cty 2014).

Footnote 2:This "zone of interest" or "sphere of interest" analysis has been embraced by a number of New York courts as an alternative to granting sole custody. Wideman v. Wideman, 38 AD3rd 1318 (4th 2007). Sole custody vests a single parent with the entire power to make decisions for their children, a move that can marginalize a parent and the resulting "complete power imbalance will remove any incentive for the parties to be more inclusive in the decision-making process." J.R. v. M.S., 2017 NYLJ LEXIS 1405 (Sup. Ct. New York Cty 2017)

Footnote 3:Section 21 of the Judiciary Law says either the case has to be retried or the parties can stipulate to have another judge decide the case. Judiciary Law § 21.

Footnote 4:In one respect, parental alienation is the flipside of a concept long used by the New York courts to decide disputed custody matters; i.e., the "willingness to foster a relationship between the child and [the opposite] parent." Matter of Sweeney v Daub-Stearns, 2018 NY App. Div. LEXIS 7923 (3d Dept 2018); Matter of Gottfried v Gottfried, 163 AD3d 966 (2d Dept 2018); Matter of Buckley v Kleinahans, 162 AD3d 1561 (4th Dept 2018). These holdings focus on "interference" by one parent in the other's parent relationship with the children in a manner inconsistent with their best interests. Musachio v Musachio, 137 AD3d 881 (2d Dept 2016). See Matter of Matthew W. v Meagan R., 68 AD3d 468 (1st Dept 2009) (evidence of the father's hostility toward the mother and intentional undermining of her role in the child's life is ample, including his maligning the mother in the child's presence, his failure to abide by the court's directive that there be telephone contact between the child and mother while the child was staying with the father, and his enrolling the child in a school in Westchester County without consulting the mother and without providing the school with the mother's contact information). In these parental alienation cases, conduct by a parent is transformed, by expert testimony, from "interference" to "alienation" and portrayed as intentional, egregious conduct, solely directed to damaging the parent-child relationship.

Footnote 5:The evidence demonstrates "blocked emails," mail that was not picked up at the Post Office and similar failures to communicate; including the failure to inform the other parent of healthcare appointments and events. While the parties dispute the culpability of this breakdown, they both agree that it existed.

Footnote 6:this simple definition were the sole standard for analyzing the facts in this case, the result would be simple. The linchpin of this definition is that the father's access to his children has been frustrated, which the court interprets as evidence that the children have not had "access" to their father. However, there is no evidence that the father has been denied "access" to his children. The record unequivocally establishes that his daughters have followed the agreed visitation plan, with only one or perhaps two minor exceptions during the last few years. In short, the father cannot point to any lost "access" - he has had the time allotted to him under the agreement.

Footnote 7:In Avdic v. Avdic, there are few facts regarding the extent of the alienating conduct by the culpable parent. However, in that case, the Fourth Department cited Amanda B. v. Anthony B., 13 AD3rd 1126 (4th Dept 2004) to support this proposition. In the latter case, the alienating conduct included seven false reports of sexual abuse against the other parent, and refusing to allow visitation at times. The father, in his summation to the court, cites a number of cases to support the extent of culpable conduct that justifies a finding of alienation. Cramer v. Cramer, 143 AD3rd 1264 (4th Dept 2016), cited by the father in his summation, involved a mother who made it clear she did not want the child to have a relationship with the father, routinely denied or obstructed visitation and would not cooperate with visitation supervisors. Similarly, in Matter of Ladd v Krupp, 136 AD3rd 1391 (4th Dept 2016), the court found alienation because the father interfered with the mother's relationship with the child by, inter alia, blatantly and repeatedly violating the court's directive not to discuss the litigation with the child, repeatedly telling the child that the mother was irresponsible and unintelligent, and limiting the mother's access to the child or placing absurd restrictions on such access. In Werner v. Kenney, 142 AD3rd 1351 (4th Dept 2016), the court found the mother interfered with the father's relationship with the child and that she made unfounded allegations of domestic violence against the father, some of which were made in the presence of the child. Importantly, the alleged conduct that links these findings is the denial of access, a factor not present here, or outrageous conduct of falsely reporting sexual abuse or domestic violence, which are also not present here.

Footnote 8:Richard A. Gardner, Recent Trends in Divorce and Custody Litigation, Academy Forum, vol 29, no 2, at 3 -7 (American Academy of Psychoanalysis, 1985).

Footnote 9:During the hearing, the court did not permit the testifying experts to describe the analysis in this case as parental alienation syndrome, as the syndrome has not been recognized in New York. People v. Fortin, 706 N.Y.S. 2nd 611 (Cty Ct. Nassau Cty 2000), aff'd 289 AD2nd 590 (2nd Dept 2001) (County Court was correct in determining that the

defendant failed in his burden of demonstrating that "Parental Alienation Syndrome" was generally accepted in the relevant scientific communities). However, the trial court here did permit expert proof on parental alienation. New York's Third Department Appellate Division has recognized that a court can consider issues of parental alienation even without expert testimony. Matter of Suzanne QQ. v Ben RR., 161 AD3rd 1223, 1225 (3td Dept 2018) (no error in the court's determination that it could consider whether the mother's actions amounted to parental alienation without expert testimony from an individual who had not met any members of this family, because the court was familiar with the topic of the intended expert testimony and there was ample testimony from multiple witnesses who had interacted with the parties and the child). The difference between "parental alienation" and "parental alienation syndrome," while important to psychologists, is not critical to this court. New York courts recognize "parental alienation" in custody/residency disputes and the court's focus is on the parent's behavior and its impact on the children, regardless of its name or classification in the Diagnostic and Statistical Manual 5 ("DSM-V").

Footnote 10:The Fourth Department has recognized that false allegations of sexual abuse have a potent impact in resolving alienation disputes. Matter of Nwawka v Yamutuale, 107 AD3rd 1456 (4th Dept 2013); see also Matter of East v Giles, 134 AD3rd 1409 (4th Dept 2015). Even more recent cases in other departments have included, as part of the findings of alienation, a finding of physical abuse. Matter of Wagner v Villegas, 162 AD3rd 677 (2nd Dept 2018); Matter of Suzanne QQ. v Ben RR., 161 AD3rd 1223 (3rd Dept 2018) (corporal punishment as a factor in alienation). There is no evidence of any physical abuse by either parent in this matter.

Footnote 11:In Mastrangelo, there was ample evidence of rejection. The children's counselor described it as follows: "It's currently a pretty strained relationship, an estranged relationship. From the time I first met the kids, they have felt that their father doesn't listen to them, has been prone to angry outbursts, sarcasm, at times belittling them, making fun of them, has been prone to exposing them to his feelings about the divorce, the losses he experienced, the sacrifices he made throughout the marriage. So, it's been a — they felt that he's not listened to them and not paid sufficient attention to their feelings and concerns." Mastrangelo v. Mastrangelo, 2017 Conn. Super. LEXIS 226 at 8. There is no evidence of even a remotely similar attitude among the children in this case.

Footnote 12:In its decision, the Fortin court was guided in part by a concurring opinion of Chief Judge Kaye of the New York Court of Appeals, in which the chief judge noted: "It is not for a court to take pioneering risks on promising new scientific techniques, because

premature admission both prejudices litigants and short-circuits debate necessary to determination of the accuracy of a technique." People v. Wesley, 633 N.E. 2nd 451, 462 n.4 (NY 1994)

Footnote 13:While this court shares many of the concerns aired by my Maryland colleague on the scientific validity of "parental alienation," this court will not revisit that issue. The court here allowed the experts to opine on the doctrine and its application to this family and hence, that issue is moot.

Footnote 14:This court, in evaluating this concept, acknowledges that there is a running debate whether invocation of parental alienation is the latest chapter in the gender war over children. See Drew, Collaboration and Intention: Making the Collaborative Family Law Process Safe(r), 32 Ohio St. J. On Disp. Resol. 373n (2017) (while the term parental alienation sounds neutral on its face, the application has a disparate impact on women); See also Glenn, Current Legislation, 2017-2018, Father's Rights Movement, April 18, 2018) ("it's absolutely devastating, and sickening that mothers can turn so manipulative and mean, and cause so much pain, using children as a manipulation tactic"). This court rejects any such simplistic analysis. This matter rises and falls n the facts alone.

Footnote 15:The concept of a tort like framework for analyzing parental alienation has been articulated elsewhere.Article: Inappropriate Parental Influence: A New App: A New For Tort Law and Upgraded Relief For Alienated Parents, 61 DePaul L. Rev. 113 (Fall, 2011).

Footnote 16:The continual use of the word "so" in this formulation suggests that other courts have used the word with the meaning "to a great extent or degree," an accepted meaning of the word, but a meaning that implies "extreme and outrageous conduct," of the type that would justify a holding under the tort of intentional infliction of emotional harm. Intentional inflection involves conduct in the general public or as one court intoned, "conduct which so transcends the bounds of decency as to be regarded as atrocious and intolerable in a civilized society." Freihofer v Hearst Corp., 65 NY2nd 135, 143 (1985).

Footnote 17:What strikes this court is that all of this "conduct" could easily occur in a stable and healthy marriage: what spouse hasn't, on occasion, engaged in these minor slights or shown a lack of consideration for their married partner? Certainly, what is often tolerated inside a marriage as a minor character flaw, lack of concentration or poor judgment doesn't become "extreme and outrageous" conduct after the marriage ends.

Footnote 18:In Matter of C.S. v A.L., 2017 NY Misc. LEXIS 1450 (Fam Ct. Bronx Cty 2017), the court summarized the consequences of alienation on the children: a near or complete rejection of one parent in favor of the other; superficial and trumped-up or exaggerated complaints about the rejected parent with little or no substance; and inconsistent and contradictory statements and behaviors. See Stahl, Understanding and Evaluating Alienation in High-Conflict Custody Cases, 24 Wisc. J. Fam. L. 1 (2003).

Footnote 19:As with much of these facts, there is a dispute over when and how the order of protection was served. The mother contends it was served on Halloween when the children were present in her residence. The father disputes the date and time of service. This court declines to offer any comment on this factual dispute except to note that there is no evidence that the daughters were aware of the service, complained about its occurrence or considered the time and circumstances of service in forming their evaluation of either their mother or father.

Footnote 20:The father imprudently "published" the order, forwarding it to family friends and the minister at the mother's church.

Footnote 21:This court, reading the transcript, concludes that the mother demonstrated, on a number of issues, a somewhat casual regard for the truth. While the court could, on the basis of its determination that she has not testified truthfully on certain subjects, reject the entirety of her testimony in this matter, the court declines to do so and, instead, makes an evaluation of her credibility on an issue-by-issue basis.

Footnote 22:The father claims the he and the mother had agreed to provide 48 hours notice of an "medical event." However, the agreement contains no such provision.

Footnote 23:There are allegations that the father failed to take his daughters to activities, but there is no evidence that this alleged failure caused friction between the father and his children.

Footnote 24:A fact that is understated by all sides in this case, but nonetheless significant in analyzing the conduct of both the mother and the daughters is that the father's girlfriend is the children's former nanny. While this fact does not, in itself, justify alienating or offensive conduct by anyone, it does color the reaction of the mother and the daughters that someone who worked in the family household is now the father's girlfriend. Human nature, as it animates the life of a divorced mother and her three teenaged daughters,

cannot be ignored by this court.

Footnote 25:The evidence establishes in this case that the children traveled with their father to Cleveland to visit his family and traveled to Niagara Falls, Iceland, Ireland and Aruba with their father.

Footnote 26:Importantly, this court will not consider the relationship between the father's girlfriend and the daughters as a factor in alienation. The only critical fact is whether the daughters are alienated from their father. The relationship between the daughters and his girlfriend is not relevant to that determination.

Footnote 27:See Note 43 infra.

Footnote 28:There is no evidence that the children cared about the extensive litigation between their parents or that the father's aggressive litigation strategy altered their view of him.

Footnote 29:In considering the issues involving the parents communicating over their joint custody rights, both sides submitted a raft of emails which suggest that communications were occurring, albeit sometimes after the fact, and sometimes failing to give information that an inquiring parent would want to know. This court examined the emails but declines to draw any conclusions other than the war between the parents - expressed in emails involving hair styles, brushing teeth, applying ointments, watching television and other points of dispute - flooded their respective email accounts. There is no evidence that the exchanges were ever seen by their children.

Footnote 30:During the proceedings, there was a debate over whether the father had requested an interview between his experts and the daughters prior to the hearing. The father's attorney, in cross-examining the mother's rebuttal expert, asked whether he was aware that the father had previously asked to have the daughters interviewed. The expert answered "no." The mother's attorney objected, arguing that the question assumed a fact not in evidence. The court at the hearing held that the previous request, made by motion before the hearing, to have the father's experts interview the children was not timely, and denied it. The court disregarded the question at the hearing and this court follows that decision.

Footnote 31:There was a dispute between the experts on whether the failure to interview

the children violated norms of psychological analysis and the rules of American Psychological Association ("APA"), a nationwide association. Whether the rules or accepted industry standards permit expert opinions about parental alienation based on documentary evidence alone without interviewing the children is of no moment to this court. The question before this court is whether parental alienation occurred. Any expert conclusion that it did occur without interviewing the children is laden with a level of speculation that undercuts the experts' opinions.

Footnote 32:During cross-examination, counsel for the mother probed the experts on the reliability of their observations and conclusions regarding the alienation in this case despite not talking to the daughters. The experts defended their analysis and argued that they had professional peer support for their analysis and conclusions despite never talking to the daughters. This court will not wade into that controversy, but simply concludes that while the expert opinions may accurately summarize how the mother's conduct may have been part of an intended strategy, they provide no expert evidence that the daughters were actually alienated.

Footnote 33:The mother argues that this case would be the first in New York to find parental alienation by a non-residential parent against the residential parent; i.e., the parent with a larger portion of the actual time with the children. The court declines to comment except to note, as it has repeatedly, that the father has no evidence that the mother's conduct cut short his time with the children.

Footnote 34:Dr. Baker differentiated the concept of parental alienation from "realistic estrangement." The former is a "pathological or unjustified rejection of a parent" and the latter is "a reality-based reason to reject a parent."

Footnote 35:There was also a suggestion that the mother badmouthed the father during drop-offs at the father's house and that the conversation involved discussion of the order of protection with the children. There is no evidence that the children even remembered these comments and no evidence that they were repeated thereafter.

Footnote 36:Neither parent exemplified proper intra-family communication. The father mailed information to the mother and mother declined to pick up her mail at the post office. The father sent automatic responses to the mother's blizzard of emails. The father confiscated one daughter's cell phone. The father complained about his daughters incessant texting while in his residence, and many were texts between the mother and the

children.

Footnote 37:The father also acknowledged that he recorded phone calls.

Footnote 38:In what can only be characterized as a clear demonstration of the divergent perspectives of the parents, the mother testified - without contradiction — that when the school asked the parents to submit "family pictures," the mother sent a picture of the children with their father and mother, while the father sent in a picture of the children with him and his girlfriend.

Footnote 39:In several instances, the father's attorney uses the phrase "boundary violations" to describe the mother's conduct, suggesting that the mother had stepped over some figurative line in the sand of human relationships and suggesting the court should infer that the mother's conduct was inappropriate. This court can find no description of this apparent pop-psychology reference in New York's reported cases on custody or family matters. It is only mentioned once. L.R. v. A.Z., 2009 NY Misc LEXIS 2641 (Sup. Ct. New York Cty 2009).It apparently has been used elsewhere to describe inappropriate behavior in the mental health context or health-related matters. In re Care & Treatment of Clark, 2017 Kan. App. Unpub. LEXIS 1039 (Ct. App. Kansas 2017); Kirchmeyer v. Phillips, 245 Cal. App. 4th 1394 (Ct. App. 4th App. Dit. 2016) (in describing "boundary violations," the trial court said it should not be expected, however, to understand and apply complicated psychoanalytic terminology and procedures without guidance and argument from the litigants). This court declines to subscribe to a relation between "boundary violations" and the "extreme or outrageous" conduct necessary to support a finding of parental alienation. The two are not the same.

Footnote 40:In the Lincoln hearing, there was no evidence that the daughters lacked time to socialize, be with their friends, down time or free time. The daughters had some complaints about getting their homework done when living with their father, but these complaints - from students with uniformly high grades - are minor and of no significance to the court.

Footnote 41:The father argues that the failure to notify him of the appointment violates the agreement. The agreement states that the mother had a duty to notify the father when the child consulted with a healthcare professional. Agreement p. 14. It also requires the parents to consult regarding treatment. Id. at 16. The agreement creates an "affirmative duty" on the mother to "forthwith" notify the father of the treatment. Id. at 17. None of these

sections specify exactly when the notice or consultation must occur. However, applying a reasonable requirement to this obligation suggests that the mother violated the agreement by failing to notify the father of the appointment before its occurrence. The mother, in what can only be considered as a foolish and incredible justification for her violation of the agreement, testified that "she had been told that she did not have to tell him" about the appointment. This comment, alone, dampens the court's confidence in the mother's credibility on this issue.

Footnote 42:The mother's ascribing blame to the father is even more troubling because the therapist concluded there was no evidence of any self-infliction harm and no evidence of any disposition by the daughter to engage in such conduct. The mother admitted there was no evidence of any self-mutilation by the daughter after February 2014.

Footnote 43:The Third Department, in weighing a claim of alienation, noted that while a parent may have said something derogatory about the other parent, "there was no evidence that the revelation was made in the presence of the daughter." Herrera v. Pena-Herrera, 146 AD3rd 1034 (finding no merit in alienation claim).

Footnote 44:The mother's note also contains comments about the order of protection and the father's goal to "seek full custody." These comments are unobjectionable: they are accurate and legal in nature, do not cast any aspersions against the father, and are not evidence suggesting the father was "dangerous."

Footnote 45:The mother's intemperate conduct was paralleled by the father, who, in the same psychologist notes, allegedly accused the mother of munchausen by proxy (a psychological disorder marked by attention-seeking behavior by a care giver through those who are in their care), even though there is no evidence that she had such a disorder.

Footnote 46:Significantly, there is no evidence that the comments on the intake form, even if read or overheard by the oldest daughter, were ever repeated in front of the two younger daughters. Seen in this light, the alleged alienation caused by the children's receipt of this information, as predicted by the expert and feared by the father, never occurred in the two younger daughters.

Footnote 47:The father cites a series of additional individuals to whom he claims the mother told that he had a personality disorders or other mental health maladies. However, the proof is somewhat obscure on these points. The second individual was another

therapist, who had seen the daughter at an earlier time. The testimony at trial does not establish when the mother allegedly made these comments to this family therapist. There is no evidence on whether these comments, which the mother suggested were made initially by the therapist were made before the divorce action or subsequent thereto and no evidence that the daughter ever heard them. The second therapist did not testify at trial and there is no evidence that the second therapist ever repeated the content of these conversations with the mother. The father also points to the mother's admissions in her deposition that she spoke with two others about his mental health. The deposition transcript was admitted in the trial, but it is unclear, based on the transcript, what the admitted deposition would be used for in the trial. See CPLR 3117. The mother's statements in the depositions could be admitted as evidence in chief, if read into the transcript of the hearing, but as best this court can tell, no such proffer was made. Neither of the two witnesses - to whom these adverse comments were made — testified at the hearing. These comments in the deposition transcript suffer from a similar proof problem as described above. While the mother admitted talking to these witnesses about the husband's mental health issues, there is no evidence in the proceeding on when these conversations occurred. Neither witness testified at the hearing and there is no evidence that either witness repeated these comments. This court notes that the mother, when confronted with questions about these conversations with at least one of the witnesses, equivocated, seeking to cast doubt about whether she originated the comments. Her tergiversation casts doubt on her testimony and the court can easily infer, from this evasive response, that she originated these comments. However, even conceding that these comments were made and originated with the mother does not compel the conclusion that they had an alienating consequence in this case. The father cannot pinpoint when they occurred. This court cannot determine whether they were recent - near the time of the separation - or remote. The expert witness did not opine about the impact of pre-divorce comments in evaluating whether alienation had occurred. In the absence of any evidence that these comments were made to these two other parties after the separation of the parties and the fact that this evidence, found in the deposition, was not presented at trial, this court declines to credit the claim that the mother talked to two additional individuals.

Footnote 48:On this issue, one of the father's experts admitted that if teenaged girls found out that their former nanny was their father's new girlfriend the result could be a "negative response" from the daughters.

Footnote 49:For examples of these forms of bald alienation, see Matter of Khan-Soiel v. Rashad, 111 AD3rd 728, 730 (2nd Dept 2013) (having the children call another "daddy" and

changing names on birth certificates)

Footnote 50:The expert claimed that the children resisted contact with their father by not returning his cell phone calls. A teenager not returning a phone call from a parent may be evidence of age-appropriate indifference or sloth but, is not evidence of parental alienation.

Footnote 51:The remainder of the expert evidence does little to widen the scope of these matters. The expert claimed that the children would manifest what they called "lack of ambivalence" and would like one parent and hate the other. There is no evidence that the daughters hate their father. The expert said the alienated children lack remorse in dealing with their father and treat him worse than they treat a stranger, but there is no evidence that the children regard their father in that fashion. Finally, there is no evidence that daughters have engaged in "borrowed scenarios," by mimicking the mother's language or comments and no evidence that the children have rejected anyone close to the father, including maintaining a relationship - albeit an altered one - with their former nanny, now the father's girlfriend.

Footnote 52:At one point, the expert said: "I believe that the children's feelings and love for their father have been undermined and destroyed. I don't see any evidence . . . I have to be able to reason backwards." The first sentence is an unfounded prediction made without ever talking to the children. The second sentence is exactly the opposite of what this court does: the court examines evidence and "reasons forward." These statements undercut the Court's confidence in this expert's opinion.

Footnote 53:The previous court made it clear that while she would permit the expert to offer an opinion regarding whether the children were alienated, the "question about whether those were sufficient documents for her to render that opinion; that's up to me." This court concurs. The credibility and adequacy of the basis of the expert opinion rests with this court.

Footnote 54:At one point in her testimony, the witness suggested the children were "delusional" or beginning to "believe these delusional thoughts" about their father. This court, having read the transcript of the Lincoln hearing, cannot find any evidence that the children - from oldest to youngest - have any hint of "delusion" in their relationship with either parent.

Footnote 55:In cross-examination by the attorney for the children, the expert further

equivocated on a number of responses. She was asked whether seemingly innocent conduct - giving the daughter a cell phone - was evidence of alienation. She was asked whether giving a child a cell phone and telling her to "call me" and "use it for emergencies at your father's" may not be an indication of alienation. The expert said it was "remotely possible" and only after repeated questioning conceded that giving the child a cell phone may not be evidence of alienation. When questioned about whether a child might want to spend more time with one parent - without any alienation existing - the expert again evaded an answer, testifying "it's remotely possible" and adding "I have not seen it." The expert also admitted that while she testified that excessive texting between the children and their mother was evidence of alienation, she had no idea regarding the content of messages passed between the mother and her children. When asked whether the daughters might have reacted negatively to their father's affair with their former nanny, the expert conceded "sure, it's possible" and said further "they might have appreciated it." This court finds this expert's failure to give straightforward answers to the attorney for the children's questions renders her testimony incredible and - and counterintuitive or not - inconsistent with any rational view of the family circumstances in this case.

Footnote 56:In what this court can only describe as counterintuitive hyperbole, the expert testified that saying "I miss you" is evidence of alienation: [The mother] testified that she told the children she misses them when they're with their father. This is not the message you send to your children. The message is 'I'm perfectly fine. Have a good time. I'm gonna have a good time. I'm gonna do - I'm gonna do my things. I'm gonna meet with my friends, You know, when you are back, I'll be happy to see you.' Never has the phase "I will miss you" - a tender loving expression between any parent and a child - been accorded such negative psychological weight and this expert's lending it that weight in this case seems singularly misplaced.

Footnote 57:The expert also critiqued the mother's handling when one of the daughter's called her father a liar as relayed in the mother's deposition. The expert's explanation of what a normative parent should have said to the daughter in response - "call him up, discuss it with him respectfully, you [the child] cannot call him a liar, I would be glad to help out if you need that" - reflects, in this Court's judgment, a detachment from the reality of struggling parents involved in a difficult and tension-filled divorce.

Footnote 58:This witness also diagnosed the "moving out" issues which are analyzed by the court in an earlier portion of this opinion. This court assesses the expert's opinion on the conduct of the mother in those incidents independently, but, the court draws the same

conclusion: the expert's analysis ignores the reality of this complex and emotionally-laden divorce and the reality "on the ground." The court declines to credit this expert's impressions of that incident as well. The mere failure of the mother in this case to engage in ideal conduct does not mean her conduct is alienating.

Footnote 59:The expert conceded that she reviewed information prior to testifying and that in her original analysis, she analyzed the conduct of the mother and not the condition of the children. "My focus was on the mother," she said, even though she never interviewed the mother.

Footnote 60:This expert also testified that the daughter's objections that the shampoo in the house was not in the right place and toilet paper not properly hung on the roller were examples of "frivolous rationalizations because no child would resist going to a parent for that." The evidence shows that these children, while perhaps complaining about these minor items, did visit their father without interruption, a fact that the expert obviously missed or concluded was not relevant in claiming that the children were alienated from their father.

Footnote 61:Dr. Evans described parental alienation as part of adverse childhood experiences or ACEs. This court has written about this topic in both decisions and articles. See L.M.L. v H.T.N., 2017 NY Misc. LEXIS 3804 (Sup. Ct. Monroe Cty 2017) (Dollinger, J.); Dollinger, Exclusive Use and Domestic Violence: The Pendente Lite Dilemma for Matrimonial Trial Judges, 48 Family Law Review 6 (2016), New York State Bar Association, Family Law Section, Spring/Summer, 2016. This court cannot find any significant evidence in this case comparable to the level of abuse and neglect which underlines most ACE research and the court holds that there is insufficient proof to equate the evolving ACE research, referenced by Dr. Evans, to the facts in this case.

Footnote 62:The expert in this case — Dr. Peter Favaro — has testified in other cases. In D.D. v. A.D., 2017 NY Misc LEXIS 2354 (Sup. Ct. Richmond Cty 2017), he testified that children who see abusive, demeaning or vulgar behavior are likely to imitate it. These is no allegation that any of these children have exhibited abusive, demeaning or vulgar behavior toward their father.

Footnote 63:Dr. Favaro defined confirmation bias as occurring when "someone has a predetermined notion of an outcome and then selectively utilizes only information that supports that prejudgment and eliminates any of the data that refutes it."

Footnote 64:Dr. Favaro did backtrack slightly under cross-examination when he acknowledged that the APA guidelines permitted psychologists to form conclusions on an individual's behavior "even after they have only conducted the examination of one individual or none of the individuals." However, in responding, he added: "under special circumstances and when caveats and limitations are described."

Footnote 65:The Court of Appeals nearly half century-old decision in Lincoln v. Lincoln permits the court to interview children in contested custody matters. The decision to draw children into custody and visitation matters by having them participate in a court interview runs the risk of placing children in direct conflict with parents and impacts the parent-child relationship potentially before the hearing and certainly after it. In this Court's view, the entire concept deserves a re-examination in view of advances in research in child psychology and research in family dynamics over the last 49 years.

Footnote 66:As further evidence of the daughters' condition, there is no proof that any of the daughters have attended counseling or any form of therapy. There is no evidence that the father has ever sought therapy for his daughters or counseling to help them adjust to spending time with their father. See In re Marriage of DeBates, 212 Ill 2nd 489, 520 (Ill. 2004) (as a result of alienation, a child suffered emotional distress requiring therapy).

Footnote 67:The testimony of these children's is light years away from testimony of other children who were alienated by a parent. In J.F. v. L.F., 181 Misc 722 (Fam. Ct. Westchester Cty 1999), the court described the children as follows: [P]articularly when discussing their father and his family, they present themselves at times in a surreal way with a pseudo-maturity which is unnatural and, even, strange. They seem like "little adults." This court finds that they live a somewhat sheltered, cloistered existence with their mother, emotionally and socially. They do not have friends to their home on a regular basis, and they do not go to other children's homes with any frequency. They do not have friends in their mother's neighborhood. The loving way in which the children perceive their mother, and the way in which they uncritically describe her as being perfect, stands in stark contrast to their descriptions of their father. Their opinions about their father are unrealistic, misshapen and cruel. They speak about and to him in a way which seems, at times, to be malicious in its quality. Nothing in the father's behavior warranted that treatment. The psychiatrists testified that the children are aligned in an unhealthy manner with the mother and her family. This is evidenced not only in the testimony of the father, but also in the in camera interview. They repeatedly refer to the mother's family as "my

family," but they do not refer to the father or his family that way. Both children used identical language in dismissing the happy times they spent with their father as evidenced in the videotape and picture album as "Kodak moments." They deny anything positive in their relationship with their father to an unnatural extreme. Id. at 725.

Footnote 68:As noted earlier, these facts are in direct contrast to New York cases which have found parental alienation. See e.g., N.L.G. T.N.C.G., 2017 NYLJ LEXIS 1399, Fam. Ct. Queens Cty 2017) (unexplained, increasing and apparently permanent hostility towards their father who had voluntarily engaged in every service plan and who made every effort to reunite with them).

Footnote 69:At one point in the hearing, the father testified about filing for an order of protection just after testifying that he would be "more likely to foster a relationship with the mother than the mother [would foster a relationship between the children and their father]." The trial court asked: "How did you think filing a family offense petition was going to foster a relationship with mom?" The father responded: "I thought it would reduce conflict that I felt with the violence . . . that's where I thought it was going" But, there is no evidence of any physical violence in this entire hearing and filing a family offense petition, even if the father believed it had some validity, is almost never, in this court's experience, likely to foster a better relationship with the party against whom it is filed.

Footnote 70:This court has been involved in imputing income in other contexts and in another case, an appeals court overturned this court because imputation of income, in the context of determining eligibility for appointed counsel, was not authorized by statute. Carney v. Carney, 2018 NY App. Div. LEXIS 1999 (4th Dept 2018). This court can find no statutory authority to impute income to a spouse when considering her status as a lesser-moneyed spouse for purposes of an award of legal fees.

Footnote 71:This court also declines to consider the mother's retirement funds or any family assistance in considering an award of fees. There is no evidence that the mother is anything but the lesser-moneyed spouse from all perspectives.

Footnote 72:An award of counsel fees lies in the sound discretion of the trial court, and the issue "is controlled by the equities and circumstances of each particular case" after the court has taken into account the equities and circumstances of the particular case including the respective financial circumstances of each party, the relative merit of the parties' positions and whether either party has engaged in conduct or taken positions resulting in a

delay of the proceedings or unnecessary litigation. Papakonstantis v Papakonstantis, 163 AD3rd 839 (2nd Dept 2018). In considering fees in favor of the mother, this court considers her status as the lesser-moneyed spouse as the prime factor, but the husband's failure to prove his claim of alienation also supports an award of fees her.

Footnote 73:The mother also sought fees arguing that the father's alienation claim was frivolous. 22 NYCRR § 130-1.1 (b). In April 2017, the court denied a motion for summary judgment to dismiss the father's alienation claims, which signals to this court that the claims were never considered frivolous by the previous court and this court accepts that ruling as the law of the case. In her summation, the wife's counsel argues that the husband should be penalized for abuse of process. Curiano v. Suozzi, 63 NY2nd 113 (1984). There is no evidence that such a cause of action was ever pled in this matter and the court declines to consider it.

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EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF CLARK
STATE OF NEVADA

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

Case No.: D-18-581444-D

Dept.: U

DEFENDANT'S EX-PARTE APPLICATION FOR AN ORDER SHORTENING TIME ON EMERGENCY MOTION TO ALTER OR AMEND THE ORDERS FROM THE MARCH 22, 2022, HEARING FOR ORDERS FOR THE COURT TO COMPLY WITH THE VIOLENCE AGAINST WOMEN ACT, FOR REHEARING OR RECONSIDERATION OF THE ORDERS FROM THE FEBRUARY 8, 2022, HEARING OR IN THE ALTERNATIVE TO ALTER OR AMEND AND FOR ATTORNEY'S FEES AND COSTS

COMES NOW, Defendant, MINH NGUYET LUONG, by and through her counsel, Fred Page, Esq. and hereby submits her Ex-Parte Application for an Order Shortening Time on Emergency Motion to Alter or Amend the Orders from the March 21, 2022, Hearing, for Orders for the Court to Comply with the Violence

Against Women Act, for Rehearing or Reconsideraton of the Orders from the February 8, 2022, Hearing, or in the Alternative to Alter or Amend and for Attorney's Fees and Costs.

DATED this 5th day of April 2022

PAGE LAW FIRM

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6930 South Cimarron Road, Suite 140
Las Vegas, Nevada 89113
(702) 823-2888
Attorney for Defendant

DECLARATION OF FRED PAGE, ESQ. IN SUPPORT OF EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME

Fred Page, Esq., being duly sworn declares and states as follows:

1. I am the attorney of record for Defendant, MINH LUONG.

2. On March 21, this Court ordered that Jim be awarded sole legal and sole physical custody of the minor children in this case.

3. This Court also ordered that the children attend "Turning Points for Families" and that Minh be sequestered from the children for 90 days.

4. We became aware that on April 5, 2022, that on March 16, 2022, President Biden reauthorized and signed into law, the Violence Against Women Act (VAWA).

5. VAWA contains very specific proscriptions against the Court ordering reunification therapy and against limiting Minh's contact with the children.

6. VAWA states in pertinent part,

> (ii) a court may not, solely in order to improve a deficient relationship with the other parent of a child, restrict contact between the child and a parent or litigating party
>
> (I) who is competent, protective, and not physically or sexually abusive; and
>
> (II) with whom the child is bonded or to whom the child is attached
>
> (iii) a court may not order a reunification treatment, unless there is reunification generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the reunification treatment; reunification.
>
> (iv) **a court may not order a reunification treatment that is predicated on reunification cutting off a child from a parent with whom the child is bonded or to whom the child is attached**; and
>
> (v) any order to remediate the resistance of a child to have contact with a violent or abusive parent primarily addresses the behavior of that parent or the contributions of that parent to the resistance of the child before ordering the other parent of the child to take steps to potentially improve the relationship of the child with the parent with whom the child resists contact.

(Emphasis added).

7. The federal law makes it very clear that reunification and the cutting off of contact as part of that reunification is not to occur.

8. Because the children are scheduled to go to New York on April 8, it is imperative that this Motion be heard on an Order Shortening Time and be heard prior to April 8.

Executed this 5th day of April 2022

FRED PAGE, ESQ.

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Electronically Filed
4/7/2022 8:32 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

James W. Vahey, Plaintiff vs. Minh Nguyet Luong, Defendant.	Case No.: D-18-581444-D Department U

NOTICE OF HEARING

Please be advised that the Defendant's Emergency Motion to Alter or Amend the Orders from the March 22, 2022, Hearing, for Orders for the Court to Comply with the Violence Against Women Act, for Rehearing or Reconsideration of the Orders from the February 8, 2022, Hearing, or in the Alternative to Alter or Amend and for Attorney s Fees and Costs in the above-entitled matter is set for hearing as follows:

Date: May 17, 2022

Time: 9:30 AM

Location: RJC Courtroom 03H
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Brionna Bowen
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Brionna Bowen
Deputy Clerk of the Court

DISTRICT COURT
CLARK COUNTY, NEVADA
****

James W. Vahey, Plaintiff vs. Minh Nguyet Luong, Defendant.	Case No.: D-18-581444-D Department U

NOTICE OF HEARING

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By: /s/ Brionna Bowen
Deputy Clerk of the Court

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By: /s/ Brionna Bowen
Deputy Clerk of the Court