

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 30766

JOSEPH D. LEFORS,

Plaintiff and Appellee,

vs.

KRISTA M. LEFORS,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
MEADE COUNTY, SOUTH DAKOTA

THE HONORABLE JOHN FITZGERALD
CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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PRELIMINARY STATEMENT

Citations to the settled record will be referred to as "SR" followed by the title and the page number. Citations to the transcripts will be referred to as "TT" followed by the title, date, and page number. Reference to materials in the Appendix to this brief will be referred as "App." followed by title and page number. Reference to the Findings of Fact will be referred to as "FOF" followed by the page number. Reference to exhibits will be designated as "EX" followed by the exhibit number or letter. Plaintiff/Appellee Josheph Daniel LeFors shall be referred to herein as "Joseph" or "Father". Defendant/Appellant Krista Mac LeFors shall be referred to herein as "Krista" or "Mother".

JURISDICTIONAL STATEMENT

Krista respectfully appeals the Honorable John Fitzgerald's Findings of Fact and Conclusions of Law and Order for Sanctions, Attorney Fees and Parenting Time that was filed on June 17, 2024. SR 4309. Notice of entry was filed on June 18, 2024. SR 4313. Krista timely served the Notice of Appeal on July 22, 2024. SR 4332. The Findings of Fact and Conclusions of Law and Order for Sanctions, Attorney Fees and Parenting Time is a final order of the Circuit Court and is appealable as a matter of right, pursuant to SDCL § 15-26A-3 and SDCL § 15-26A-4.

LEGAL ISSUES ON APPEAL

- 1. Whether the trial court erred in holding Krista in contempt of the parenting time Order without the requisite motion, affidavit, and Order to Show Cause.**

Most relevant cases and statutes:

Fienup v. Rentto, 74 S.D. 329, 52 N.W.2d 486, (1952)

Metzger v. Metzger, 2021 S.D. 23, 958 N.W.2d 715

Thomerson v. Thomerson, 387 N.W.2d 509, 512 (SD 1986)

SDCL § 15-6-5(b)

- 2. Whether the trial court erred in finding that Krista could control their 15-year-old daughter's refusal to eat dinner with her father.**

Most relevant cases and statutes:

Fuerstenberg v. Fuerstenberg, 1999 S.D. 35, 591 N.W.2d 798

Price v. Price, 2000 S.D. 64, 611 N.W.2d 425

Weber v. Weber, 529 N.W.2d 190, (S.D. 1995)

SDCL § 25-4-45

- 3. Whether the trial court erred in finding that the 15-year-old daughter's refusal to eat dinner with her father was a willful violation by Krista of the Court Order and whether the trial court erred in assessing sanctions against Krista for the daughter's refusal to eat dinner with her father.**

Most relevant cases and statutes:

Metzger v. Metzger, 2021 S.D. 23, 958 N.W.2d 715

- 4. Whether the trial court abused its discretion in assessing sanctions of \$500 for four parenting times when their daughter refused to eat dinner with her father without considering Krista's financial situation as a single mom with two children, one of which has special needs.**

Most relevant cases and statutes:

Jensen v. Horton, 2 N.W.3d 20 (S.D. 2024)

Metzger v. Metzger, 2021 S.D. 23, ¶ 12, 958 N.W.2d 715, 718

SDCL 25-4A-5

5. **Whether the trial court abused its discretion in assessing Krista with \$2,000 of attorney's fees with no consideration of her financial situation and without specific findings as to the factors required for an award of attorney's fees.**

Most relevant cases and statutes:

Goff v. Goff, 2024 S.D. 57

Urbaniak v. Urbaniak, 2011 S.D. 83, 807 N.W.2d 621

STATEMENT OF THE CASE

A divorce case was initiated by Joseph in January of 2019. SR 7. This is the third appeal following the Court's decisions in *LeFors v. LeFors*, 2023 S.D. 24, 991 N.W.2d 675 and *LeFors v. LeFors*, No. 30544, 2024 S.D. LEXIS 113 (Sep. 3, 2024). Krista counterclaimed, alleging a claim for Separate Maintenance. SR 174. A two-day trial was held by the Circuit Court on June 17 and 18, 2020. On April 8, 2021, Judge Kevin Krull signed Findings of Fact and Conclusions of Law and issued a Decree of Separate Maintenance. SR 813 and 832. A Notice of Appeal was filed on May 27, 2021. SR 910. This Court entered its decision affirming in part and reversing and remanding in part. See *LeFors*, 991 N.W.2d 675. A remanded trial was held on September 28 and 29, 2023. A Judgment and Decree of Divorce was issued on October 27, 2023. SR 3374. A Notice of Appeal related to the Judgment and Decree of Divorce was filed on November 21, 2023. SR 3406. This Court entered its decision affirming in part and reversing in part on September 3, 2024. The Circuit Court entered an Order Discontinuing Family Therapy and Scheduling Father's Parenting Time on February 26, 2024. SR 3974. A Motion Hearing was held on May 10, 2024, to address Joseph's request to find Krista in contempt and to order sanctions. The Circuit Court entered its Findings of Fact and Conclusions of Law and Order for Sanctions, Attorneys Fees and Parenting Time on June

17, 2024. SR 4309. Notice of Entry was filed on June 18, 2024. SR 4313. Krista timely filed a Notice of Appeal on July 17, 2024. SR 4332.

STATEMENT OF THE FACTS

Krista incorporates, by this reference, the facts contained in the Supreme Court Opinion of *LeFors v. LeFors, supra*. The parties were married on June 4, 2002. Two children were born as a result of this marriage, Kyden LeFors, born July 2, 2006 and Kaelyn LeFors, born May 29, 2009. Kyden has reached the age of majority and is no longer at issue in this matter. Kaelyn is 15 years old at the time of this appeal. Krista is the primary physical custodian of Kaelyn and has been since this case was initiated.

This matter was initially brought by Joseph who filed for divorce in January of 2019. SR 7. The issues of custody and parenting time have been heavily litigated throughout this matter. Judge Kevin Krull initially presided over this matter and granted a Decree of Separate Maintenance. SR 966. Judge Krull granted the Decree of Separate Maintenance on the grounds of extreme cruelty as defined by SDCL § 25-4-4 based off of Joseph's abuse. SR 813, pg. 3. Judge Krull designated Krista as the primary custodian of the children and ordered shared legal custody. *Id.* at 4. Judge Krull found that the children have "resisted visits with their father". *Id.* He also found that both children represented that "their mother has encouraged them to go with their father, but they fear for their safety due to past physical abuse and alcohol abuse". *Id.* at 5. The past history of physical abuse and alcohol abuse was found to constitute harmful parental misconduct by Joseph. *Id.* at 5-6. Following the issuance of the Decree of Separate Maintenance, Joseph appealed. SR 966. The Supreme Court Opinion in *LeFors v. LeFors, supra* was issued on May 24, 2023. SR 2618. Judge John Fitzgerald took over this matter while the first appeal was pending.

Following receipt of the Supreme Court Opinion, Judge Fitzgerald entered a Scheduling Order for Remanded Trial. SR 2669. The remanded trial was held on September 28 and 29, 2023. SR 3374. A Judgment and Decree of Divorce was issued on October 27, 2023. SR 3374. The Court granted Krista a divorce on the grounds of extreme cruelty as defined by SDCL § 25-4-4. *Id.* Custody and parenting time were not litigated at the divorce trial. A Notice of Appeal related to the Judgment and Decree of Divorce was filed on November 21, 2023. SR 3406. This Court entered its decision affirming in part and reversing in part on September 3, 2024.

A hearing was held on February 6, 2024, to address family counseling and Joseph's parenting time. The Court spoke in camera with both children. See App. 010-049, Transcript of In Camera Proceeding with Both Children, February 6, 2024. While in camera Kyden told Judge Fitzgerald that "I just don't want to see him because of the things he's has done to me" *Id.* at 029 referring to Joseph. Kyden went on to outline the abuse he endured by Joseph, "He would grab me by the back of my neck and he would force me to the ground. He would then yell at me and call me names" *Id.* at 031. Kaelyn similarly stated that Joseph had abused her, "Because he abused me and he's with my aunt." going on to tell the Court that "I don't want to meet with him. I don't want anything to do with him." *Id.* at 032. Joseph is remarried to Krista's brother's ex-wife. Judge Fitzgerald asked Kaelyn about forgiving Joseph for his past actions and she stated that she was not able to forgive him because of the abuse. See *Id.* at 033. Judge Fitzgerald asked Kaelyn if she is afraid of Joseph. See *Id.* at 035. Kaelyn states that she is "because he abused us." *Id.* Judge Fitzgerald went on to ask Kaelyn if she would feel safe at a public place with Joseph such as Olive Garden; Kaelyn responded that she would not feel

safe. See *Id.* at 036. Judge Fitzgerald then asks Kaelyn, “Well, where would you feel the most comfortable and the most secure to meet with your dad, Joe?” Kaelyn responded “Nowhere”. *Id.* at 040. Judge Fitzgerald later asked Kaelyn, “So what would you like me to do as the judge in this case? Kaelyn?” to which Kaelyn responded, “I don’t want anything to do with Joe so I don’t want visitation or anything with him.” *Id.* at 043.

Following the in-camera interview a hearing was held. Judge Fitzgerald entered an Order which discontinued family therapy and scheduled parenting time for Joseph. App. 003-005, Court Order Discontinuing Family Therapy and Scheduling Father’s Parenting Time; SR 3974. Judge Fitzgerald required Krista to drop the children off at either Olive Garden or Culvers to have dinner with Joseph twice a week for one hour from 6:00 to 7:00 p.m. on Tuesdays and Wednesdays each week. *Id.* The Court further required that Krista would drop the children off at the restaurant and leave the vicinity. *Id.* A review hearing was held on March 19, 2024. Following this hearing, Kyden was released from any obligation to have parenting time with Joseph due to him graduating from high school and reaching the age of majority in the near future.

Joseph filed an Affidavit on April 18, 2024, requesting that Krista be sanctioned for failing to encourage Kaelyn enough surrounding Joseph’s parenting time. SR 4151. Krista responded to Joseph’s affidavit with her own affidavits outlining all of her attempts to encourage Kaelyn to speak to Joseph. SR 4162 and 4170. During this time, Krista would drop Kaelyn off at the designated restaurant as ordered and would leave the area and Kaelyn would then refuse to speak to her father or share a meal with him. SR 4170 pg. 2. Following the hearing, Judge Fitzgerald entered a Findings of Fact and Conclusions of Law and Order for Sanctions, Attorney’s Fees and Parenting Time. SR

4309. Judge Fitzgerald found that although Krista was taking Kaelyn to the restaurants each week that she was not doing enough to encourage the relationship between Kaelyn and Joseph. *Id.* He then sanctioned Krista with a fine for each of the parenting times totaling \$2,000 and \$2,000 in repayment of Joseph's attorney's fees. *Id.* Krista timely appealed this Order.

STANDARD OF REVIEW

The standard of review for findings of fact is "under the clearly erroneous standard of review." *Schieffer v. Schieffer*, 2013 S.D. 11, ¶ 15, 826 N.W.2d 627, 633. A trial court's findings of fact will not be overturned "unless a complete review of the evidence leaves this Court with a definite and firm conviction that a mistake has been made." *Giesen v. Giesen*, 2018 S.D. 36, ¶ 24, 911 N.W.2d 750, 756. Conclusions of law are reviewed de novo. *Hill v. Hill*, 2009 S.D. 18, ¶ 5, 763 N.W.2d 818, 822.

Any matter of judicial discretion including awards of attorney fees and remedies for contempt are reviewed for an abuse of discretion. See *Hiller v. Hill*, 2018 S.D. 74, ¶ 19, 919 N.W.2d 548, 554; *Brosnan v. Brosnan*, 2013 S.D. 81, ¶ 12, 840 N.W.2d 240, 246 (attorney fees); *Sazama v. State ex rel. Muilenberg*, 2007 S.D. 17, ¶ 9, 729 N.W.2d 335, 340 (contempt). Abuse of discretion "is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary and unreasonable." *Thurman v. CUNA Mut. Ins. Soc'y*, 2013 S.D. 63, ¶ 11, 836 N.W.2d 611, 616. Findings of fact are reviewed for clear error and will only be overturned "when we are definitely and firmly convinced a mistake has been made." *Lakota Cmty. Homes, Inc. v. Randall*, 2004 S.D. 16, ¶ 9, 675 N.W.2d 437, 440.

ARGUMENT

I. The Circuit Court erred in finding Krista in contempt without requiring Joseph to file and serve the proper motion for order to show cause, affidavit, and order to show cause.

A finding of contempt requires that procedural safeguards must be observed and strictly complied with. See *Thomerson v. Thomerson*, 387 N.W.2d 509, 512 (SD 1986). Civil contempt carries the possibility of a number of punishments including monetary fines or imprisonment or both. “A prosecution for civil contempt, as distinguished from criminal contempt, involves features of a formal trial including the making of a charge based on an affidavit and the giving of notice to the contemner.” *Id.* See also *Fienup v. Rentto*, 74 S.D. 329, 332, 52 N.W.2d 486, 488 (1952). “Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation.” *Id.* at 513. See also *In re Oliver*, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948). SDCL § 15-6-5(b) requires “personal service of an order to show cause directing a party to show why the party should not be held in contempt” *Metzger v. Metzger*, 2021 S.D. 23, ¶ 15, 958 N.W.2d 715, 719. See also *In re Gillespi*, 397 N.W.2d 476, 477-78 (S.D. 1986); see also *First Nat’l Bank of Omaha v. Kolucek*, 2008 S.D. 37, ¶ 8 n.3, 750 N.W.2d 472, 474 n.3.

Krista was not served an Order to Show Cause. This came before the Circuit Court on an Affidavit of Joseph with the request that sanctions be ordered against Krista. SR 4151. No Motion was filed by Joseph. Nor was an Order to Show Cause requested or submitted. No pleading was personally served on Krista. The Affidavit was served on Krista’s attorney, Debra Watson, via Odyssey File & Serve. Yet, the Circuit Court in its’

Findings made specific findings on the four factors needed to find someone in contempt. SR 4309. The Circuit Court cannot choose which aspects of the law of contempt it wishes to follow.

Following the hearing, Ms. Watson objected to the Plaintiff's Proposed Findings of Fact and Conclusions of Law and Order for Sanctions, Attorneys Fees and Parenting Time in part because Joseph did not follow the proper procedure for contempt. SR 4294. The proper civil procedure was not followed in this case. An Order to Show Cause with service of the same personally on Krista was required before the Court could find Krista in contempt and award sanctions against her.

II. The Circuit Court erred in finding that Krista could control the actions of a 15-year-old.

South Dakota law recognizes that adolescents who are of a sufficient age and who can intelligently state a preference may be given consideration by the trial court of their preference in determining their custody and visitation schedule. See SDCL § 25-4-45. "It is especially important to give attention to the needs and wishes of children either approaching or in adolescence." *Fuerstenberg v. Fuerstenberg*, 1999 S.D. 35, ¶ 30, 591 N.W.2d 798, 809. "A child's parental preference deserves some consideration." *Price v. Price*, 2000 S.D. 64, ¶ 37, 611 N.W.2d 425, 434. "In most circumstances, it will be in the best interests of children that they receive the love, affection, training, and companionship of their noncustodial parent. This is not true, however, where the evidence establishes that exercise of visitation will be harmful to the welfare of the children; in this event, the right of the noncustodial parent to visit with his children can

be limited, or, under extreme circumstances, prohibited altogether. *Weber v. Weber*, 529 N.W.2d 190, 191 (S.D. 1995).

These principles are based off of the recognition that as children age, they become more difficult to control, and should they state a preference and give sound reasoning behind why they hold that preference that the court should give that preference consideration. These principles have been established by cases similar to the one at hand that relate directly to when parents are threatened with sanctions by the other parent when they can no longer physically force their teenagers to comply with court orders related to parenting time.

In this case, Kaelyn has expressed to Judge Fitzgerald her direct concerns with exercising parenting time with Joseph very clearly in the in-camera interview that took place. Kaelyn has also expressed the same to her counselor, Melanie Torno. Both Judge Fitzgerald and Ms. Torno have discussed Kaelyn's intelligence and ability to clearly communicate with them. The Circuit Court's Findings of Fact and Conclusions of Law ignore Kaelyn's preferences completely and instead place the burden on Krista to get Kaelyn to act in a specific way without giving her any direction on how to accomplish this. Krista cannot control Kaelyn after Kaelyn leaves her care. Kaelyn has very clearly stated her preferences and her concerns for exercising parenting time with Joseph and they have been completely disregarded.

Kaelyn's actions during parenting time are consistent with her concerns and preferences that she has voiced to Judge Fitzgerald. The Circuit Court has completely failed to make any findings related to Kaelyn's preferences and has failed to recognize that this situation is out of Krista's control. Further, the Circuit Court has failed to

establish how it is in the best interests of Kaelyn to continue having parenting time with someone who has been found to be abusive. Krista was granted a divorce based off of extreme cruelty. The children witnessed Joseph's actions towards Krista. The children lived through how Joseph treated them. The Circuit Court's decision to continue parenting time in light of Kaelyn's in-camera interview is in error.

III. The Circuit Court erred in finding that the daughter's actions were a willful violation by Krista and erred in ordering sanctions because of these actions.

A finding of contempt must be supported by clear evidence of a party's refusal to follow an order of the Court. A civil contempt proceeding, requires proving the following four elements: "(1) the existence of an order; (2) knowledge of the order; (3) ability to comply with the order; and (4) willful or contumacious disobedience of the order."

Metzger, 958 N.W.2d 715, 715. The review of a trial court's findings related to contempt are done so under a clearly erroneous standard. *Id.* at 719.

The Circuit Court made findings that there was a valid order, knowledge of the order, and the ability to comply with the order. SR 4309, App. 007. The Circuit Court also found that "Mother has not encouraged the relationship and visitations to the degree expected of her as a parent. The Court finds that her conduct constitutes a willful failure to comply with the Order" *Id.* at 008. The Order in this case requires that Krista drive Kaelyn to the designated restaurant twice a week and then leave the vicinity of the restaurant. SR 3974 pg. 1, App. 003-004. Nowhere in the Court Order is there a requirement that Krista encourage the relationship. Nonetheless, Krista provided evidence of the steps that she has taken to encourage the relationship including bringing up past happy memories, reminding Kaelyn that she enjoys eating at these restaurants,

and working with Kaelyn's counselor to come up with ideas to help better the relationship between Kaelyn and Joseph. TT, Motions Hearing May 10, 2024, pgs. 45-49; App. 074-078. Krista also submitted her handwritten journal outlining what she did to encourage the relationship between Kaelyn and Joseph during the time at issue which included: telling Kaelyn her father loves her, reassuring Kaelyn that she is safe at the restaurant, encouraging Kaelyn to share her feelings with her father, asking Kaelyn how she can help her, encouraging Kaelyn to write a letter to her father, encouraging and reminding Kaelyn that her father wants to have a relationship with her. Exhibit 3, App. 050-062.

At the hearing, the child's counselor, Melanie Torno, also testified. TT, Motions Hearing May 10, 2024 pgs. 34-42; App. 065-073. Ms. Torno was asked "Do you believe that there is anything that mother can be doing differently to encourage this relationship?" to which Ms. Torno responded "I don't think it has anything to do with Mother. I think it has to do with the relationship between the father and the child, and the child's expectations of dad taking accountability of the relationship and repairing the things within the relationship." TT, 37; App. 068. Ms. Torno also testified that she has not observed anything to indicate that Kaelyn is being coached related to her feelings about Joseph. TT, 36; App. 067. Ms. Torno described Kaelyn as "a very serious person, stubborn, determined. She's very focused on certain things that she would like. She's a very intelligent young girl." TT, 36; App. 067. The Circuit Court completely disregarded the testimony provided by Ms. Torno and did not even mention the testimony in the Findings of Fact and Conclusions of Law from the hearing.

The Circuit Court has based the entirety of the contempt violation off of the actions of Kaelyn following Krista dropping her off for the visits. Krista has no control over Kaelyn's actions. Krista is not even allowed to be in the vicinity of the restaurant. In order to find someone in contempt, there must be a willful or contumacious disobedience of an order by one of the parties. Krista has complied with the Court Order completely. She has taken Kaelyn to every visit and left the area as required by the Order. A party cannot be found in contempt for the actions of another individual. The Circuit Court has failed to properly consider everything that Krista has done to help foster this relationship. The Circuit Court is punishing Krista because Joseph does not like how Kaelyn is treating him. Rather than Joseph taking responsibility for his own actions and how they have impacted his children he has suggested that Krista has control over Kaelyn and has the ability to force Kaelyn to speak to him at these visits. The Circuit Court has agreed with this notion by sanctioning Krista for Kaelyn's actions. The Circuit Court's ruling must be overturned for failing to properly examine the evidence presented.

IV. The Circuit Court abused its discretion by sanctioning Krista \$500 per visit without considering Krista's financial situation.

A trial court may include "any sanction the court deems appropriate to the facts and circumstances of the case." *Metzger*, 958 N.W.2d 715, 718. "While SDCL 25-4A-5 allows for the modification of custody as a sanction for the willful violation of a custody order, this remedy does not supplant the traditional best interests of the child standard that applies in custody disputes involving parents. Rather, the best interests standard remains preeminent, and the court shall remain fixed upon it." *Jensen v. Horton*, 2 N.W.3d 20 (S.D. 2024).

In the instant case, the Circuit Court made no finding related to how the Court determined that the sanction should be \$500 per visit. The Circuit Court made no findings related to the reasonableness of this sanction nor did they make any findings related to how the \$500 per visit would impact Krista's financial situation and her ability to support the minor children. The Court must consider reasonableness of sanctions while keeping the children's best interests at the forefront of every decision. The Circuit Court made no findings and therefore there is no basis for determining the reasonableness of this sanction nor how this sanction could harm the children. The award of \$500 per visit is excessive and will negatively impact the children who are predominantly supported by Krista.

V. The Circuit Court erred by awarding attorney fees without making any findings related to the factors required for awarding attorney fees.

A Circuit Court must examine the necessity of an award for attorney fees and the reasonableness of such an award by considering the following:

"First, the court must determine what constitutes a reasonable attorney's fee. This requires consideration of (1) the amount and value of the property involved, (2) the intricacy and importance of the litigation, (3) the labor and time involved, (4) the skill required to draw the pleadings and try the case, (5) the discovery utilized, (6) whether there were complicated legal problems, (7) the time required for the trial, and (8) whether briefs were required. Second it must determine the necessity for such fee. That is, what portion of that fee, if any, should be allowed as costs to be paid by the opposing party. This requires consideration of the parties' relative worth, income, liquidity, and whether either party unreasonably increased the time spent on the case." *Goff v. Goff*, 2024 S.D. 57, ¶ 26 (quoting *Urbaniak v. Urbaniak*, 2011 S.D. 83, ¶ 31, 807 N.W.2d 621, 628).

Furthermore, an award for attorney fees requires specific findings by the trial court and requires the trial court to enter a findings of fact and conclusions of law detailing how they arrived at their findings and conclusions. See *Urbaniak*, 807 N.W.2d 621, 628.

Here, the Circuit Court has failed to make any specific findings related to the reasonableness or the need for attorney fees. The Circuit Court did not consider the financial situations of the parties, in particular it failed to consider Krista's financial situation where she is supporting both children. The Circuit Court failed to consider that Krista supports the eldest son, even though he has reached the age of majority, because of his disabilities. The Circuit Court did not consider that Joseph owes arrears for child support and alimony. The attorney fees would deprive Krista and the children of the equivalent of two months of child support. The Circuit Court has committed error by failing to make these specific findings.

CONCLUSION

The Circuit Court has erred in finding Krista in contempt for the actions of Kaelyn. Krista has clearly complied with the requirements of the Court Order in this matter. Krista has ensured that Kaelyn is at each supper visit for one hour and has left the vicinity of the restaurants. Krista has done everything that she can to encourage the relationship between Joseph and Kaelyn. At this point, Joseph must take responsibility for his lack of a relationship with Kaelyn. He is solely responsible for repairing the relationship with his daughter. The evidence did not substantiate that Krista had the ability to make Kaelyn eat dinner with Joseph. Kaelyn is a very strong-willed intelligent child who has on several occasions made it very clear how she feels about parenting time with Joseph. The decision to continue to force parenting time with Joseph is not in the best interests of Kaelyn. The Circuit Court did not require Joseph to follow the proper civil procedure in requesting that Krista be found in contempt of the Order which is in error. Nor did the Circuit Court properly weigh the factors required in awarding attorney fees. The sanctions that were ordered are excessive and will negatively impact the

children in this case. Krista respectfully requests that this Court reverse the Order of the Circuit Court and vacate the award for sanctions and remand this matter so that an order may be issued that is consistent with the best interests of the minor child.

Dated this 31st day of October, 2024.

Respectfully submitted,

SANDERSON LAW



Kelly J. Sanderson
Attorney for Appellant/Defendant
1102 Junction Ave.
Sturgis, SD 57785
(605) 720-8660
kelly@sandersonlawsd.com

WAIVER OF ORAL ARGUMENT

Krista waives oral argument on this Appeal.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 31st day of October, 2024, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey Electronic Filing System, and further certifies that the foregoing document was also served via Odyssey Electronic Filing System and mailed via U.S. Mail, postage prepaid thereon to:

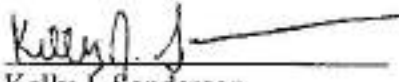
Hollie Smith
Clayborne, Loos & Sabers, LLP
PO Box 9129
Rapid City, SD 57709-9129

The undersigned further certifies that the original copy of the Appellant's Brief in the above-entitled action was mailed to the Clerk of the Supreme Court, 500 East Capitol Avenue, Pierre, SD 57501, on the date written above.


Kelly J. Sanderson

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point font. This brief is 16 pages in length, not including the Appendix. The word processor used to prepare this brief indicates there are 4,122 words in the body of this brief.


Kelly J. Sanderson

APPENDIX

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STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

JOSEPH DANIEL LeFORS,)
)
Plaintiff,)
)
vs.)
)
KRISTA MAE LeFORS,)
)
Defendant.)

FILE #46DIV19-000008

**COURT ORDER FROM
HEARING ON PARENTING TIME**

A Court Hearing was held in the above-captioned action at 9:00 a.m. on Thursday, December 21, 2023, before the Honorable John H. Fitzgerald, Circuit Court Judge, in Courtroom No. 1 of the Meade County Courthouse in Sturgis, South Dakota. Plaintiff Joseph Daniel LeFors [hereafter "Joe"] appeared in person together with his attorney, Hollie L. Smith. Defendant Krista Mae LeFors, [hereafter "Krista"] appeared in person together with her attorney, Debra D. Watson. The Children's Counselor, Melanie Torno, and the Family Counselor, Michael Wheaton, were also personally present. The Court met with Counsel for both parties, the Children's Counselor and the Family Counselor in the Court's chambers before the formal hearing began and, based on discussions with counsel and the professionals, the Court finds good cause to grant the following relief:

IT IS HEREBY ORDERED That due to the extenuating circumstances of the teenage children refusing contact with their father, this Court's Order on Motion to Address Plaintiff's Parenting Time dated August 18, 2023 is hereby vacated;

IT IS FURTHER ORDERED That the Family Counseling by Michael Wheaton and the Children's Individual Counseling with Melanie Torno shall continue as scheduled by the counselors;

IT IS FURTHER ORDERED That both Joe LeFors and Krista LeFors are both ordered to follow the recommendations of the Counselors;

IT IS FURTHER ORDERED That Krista LeFors shall encourage the children to cooperate with the Family Counselor in the reunification plan to improve their relationship with their Father, Joseph LeFors;

IT IS FURTHER ORDERED That Joseph LeFors' motion for sanctions against Krista LeFors is hereby denied;

IT IS FURTHER ORDERED That the Children's Counselor and the Family Counselor shall submit a progress report to the Court and Counsel within thirty (30) days (on or before January 31, 2023); and

IT IS FURTHER ORDERED That this Court shall conduct a 2½ hour hearing on parenting time on Tuesday, February 6, 2024, from 9:00 a.m. to 11:30 a.m. in Courtroom No. 1 of the Meade County Courthouse in Sturgis, SD.

1/4/2024 10:29:18 AM

Attest:
Karlson, Stephany
Clerk/Deputy



BY THE COURT:


Honorable John M. Fitzgerald
Circuit Court Judge

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

JOSEPH DANIEL LeFORS,)
)
Plaintiff,)

vs.)

KRISTA MAE LeFORS,)
)
Defendant.)

FILE #46DIV19-000008

COURT ORDER DISCONTINUING
FAMILY THERAPY AND SCHEDULING
FATHER'S PARENTING TIME

A Court Hearing was held at 9:00 a.m. on Tuesday, February 6, 2024, before the Honorable John H. Fitzgerald, Circuit Court Judge, at the Meade County Courthouse in Sturgis, South Dakota. Plaintiff Joseph LeFors personally appeared with his attorney, Hollie L. Smith. Defendant Krista LeFors personally appeared with her attorney, Debra D. Watson. The Court took judicial notice of the court file, considered the reports and testimony of the children's therapist, Melanie Torno, and the family therapist, Michael Wheaton, the in camera meeting with the parties' teenage children, Kyden and Kaelyn, and the argument of counsel. Based thereon, the Court finds that it is in the best interests of the children to grant the following relief:

IT IS HEREBY ORDERED That Krista will drop the children off at the restaurant to have dinner with their father twice a week for approximately one hour from 6:00 p.m. to 7:00 p.m., or thereabouts, on Tuesday and Wednesday of each week beginning Tuesday, February 13, 2024, with the first dinner at Olive Garden restaurant. The schedule of dinners are as follows:

February 13: Olive Garden
February 14: Qdoba at Rushmore Crossing
February 20: Olive Garden

February 21: Culvers at Rushmore Crossing
February 27: Qdoba at Rushmore Crossing
February 28: Texas Roadhouse
March 4: Culvers at Rushmore Crossing
March 7: Olive Garden
March 12: Qdoba at Rushmore Crossing
March 13: Culvers at Rushmore Crossing;

IT IS FURTHER ORDERED That Krista shall transport both children to the restaurant, encourage the children to attend dinner, leave the vicinity and then return an hour later to retrieve the children;

IT IS FURTHER ORDERED That the parenting time shall only include Joseph and his two children, Kyden and Kaelyn;

IT IS FURTHER ORDERED That the family reunification counseling shall immediately terminate; and

IT IS FURTHER ORDERED That a Review Hearing shall be held at 9:15 a.m. on March 19, 2024, to review the progress and determine any changes to father's parenting time. One hour has been set aside for the hearing.

2/26/2024 8:40:06 AM

Attest:
Karlson, Stephany
Clerk/Deputy



BY THE COURT:


John H. Fitzgerald
Circuit Court Judge

Codified Laws

Home > Codified Laws > 25 > 4A > 5

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25-4A-5. Sanctions for violation of custody or visitation decree.

If the court finds that any party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree, the court shall impose appropriate sanctions to punish the offender or to compel the offender to comply with the terms of the custody or visitation decree.

The court may enter an order clarifying the rights and responsibilities of the parents and the court's order. The court may order one or more of the following sanctions:

- (1) To require the offender to provide the other party with make up time with the child equal to the time missed with the child, due to the offender's noncompliance;
- (2) To require the offender to pay, to the other party, court costs and reasonable attorney's fees incurred as a result of the noncompliance;
- (3) To require the offender to pay a civil penalty of not more than the sum of one thousand dollars;
- (4) To require the offender to participate satisfactorily in counseling or parent education classes;
- (5) To require the offender to post bond or other security with the court conditional upon future compliance with the terms of the custody or visitation decree or any ancillary court order;
- (6) To impose a jail sentence on the offender of not more than three days; or
- (7) In the event of an aggravated violation or multiple violations, the court may modify the existing visitation or custody situation, or both of any minor child.

The provisions of this section do not prohibit the court from imposing any other sanction appropriate to the facts and circumstances of the case.

Source: SL 1994, ch 195, § 5; SL 2008, ch 125, § 1; SL 2018, ch 155, § 3.

25-4A-5.1. Copy of § 25-4A-5 attached to order for parenting time.

Any order of the court for parenting time shall have attached a copy of § 25-4A-5.

Source: SL 2018, ch 155, § 1.

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF MEADE)

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

JOSEPH DANIEL LEFORS, Plaintiff, vs. KRISTA MAE LEFORS, Defendant.	46DIV19-000008 FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER FOR SANCTIONS, ATTORNEYS FEES AND PARENTING TIME
------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------

A Motions Hearing was held on May 10, 2024 at 9:00 a.m. before the Honorable John Fitzgerald, Circuit Court Judge, at the Meade County Courthouse in Sturgis, South Dakota. Plaintiff, Joseph LeFors, personally appeared and with his attorney, Hollie L. Smith. Defendant, Krista LeFors, personally appeared and with her attorney, Kelly Sanderson. The Court considered the testimony of both parties, Melanie Torno, the pleadings on file and the entire record, and based upon such, the Court hereby enters the following Findings of Fact and Conclusions of Law and Order regarding the same:

1. That any finding of fact more appropriately considered a conclusion of law should be considered as such for purposes of the record.
2. That pursuant to SDCL § 25-4A-5, if the court finds that any party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree, the court shall impose appropriate sanctions to punish the offender or to compel the offender to comply with the terms of the custody or visitation decree.

The court may enter an order clarifying the rights and responsibilities of the parents and the court's order. The court may order one or more of the following sanctions:

- (1) To require the offender to provide the other party with make up time with the child equal to the time missed with the child, due to the offender's noncompliance;
- (2) To require the offender to pay, to the other party, court costs and reasonable attorney's fees incurred as a result of the noncompliance;

- (3) To require the offender to pay a civil penalty of not more than the sum of one thousand dollars;
- (4) To require the offender to participate satisfactorily in counseling or parent education classes;
- (5) To require the offender to post bond or other security with the court conditional upon future compliance with the terms of the custody or visitation decree or any ancillary court order;
- (6) To impose a jail sentence on the offender of not more than three days; or
- (7) In the event of an aggravated violation or multiple violations, the court may modify the existing visitation or custody situation, or both of any minor child.

The provisions of this section do not prohibit the court from imposing any other sanction appropriate to the facts and circumstances of the case.

3. That there was a valid Order entered by this Court on February 26, 2024 wherein Father would be entitled to parenting time with the children for one hour on April 1, 2, 8, 10 at certain restaurants. The children, or at least the youngest child, was to have dinner with Father for one hour on each of those designated dates. Ms. Lefors had knowledge of the Court's Order and had the ability to comply with the same.

4. The Court heard the testimony of both parties and determined the credibility of each witness. The Father showed up to have dinner at the respective restaurants each week, and for a majority of the visitations, the youngest daughter refused to even go inside the restaurant to have a meal with her Father. Father then would follow the daughter outside where he would try to have a conversation with her on a bench or table, but she refused to engage at all with him.

5. There was testimony relating to a scheduled visitation where there was some confusion or misinformation about the dates and where parenting time would be following the April 10th date. The Court finds that there was simply a miscommunication in scheduling. Despite this, the Court finds Mother's testimony to be disingenuous for her to be critical of Father not showing up to one or two of the dinners, given what had occurred on the prior occasions.

6. The Court finds after hearing testimony from the Father, that his level of frustration at this point in the litigation is warranted based upon the children's refusal to engage with visitations. The only remedy or recourse that the Father has to receive parenting time and have a relationship with his children is to seek court intervention. Consistent with S.D. Codified Laws §

25-5-7.6, “[e]ach parent sharing joint legal custody of their child shall foster the other parent's relationship with the child”.

7. The Court having considered the credibility of the witnesses at the evidentiary hearing and in light of the history of this case, the Court finds that Mother certainly has the ability to comply with the Order and has not made efforts sufficient enough to encourage parenting time to occur. The Court determines that in light of the testimony, affidavits and facts presented in this case, Mother has not encouraged the relationship and visitations to the degree expected of her as a parent. The Court finds that her conduct constitutes a willful failure to comply with the Order.

8. The Mother has the opportunity to comply with the Order and encourage these visitations as she is the primary parent and the child lives with her primarily all of the time.

9. The youngest daughter is a very bright and intelligent young lady. If the Court were to believe that Mother has done what is expected of her as parent in this situation, then the Court could not also believe that she would not be able to discourage her daughter from getting involved in the temptations that exist in life and I think that Mother has done that.

10. The Court heard testimony relating to the children's desire to change their name. The Court finds that the Mother is not encouraging a relationship with their Father when she is not discharging the daughter from being in a track meet using the name of Knudson instead of Lefors. It is reasonable that the Father is concerned that he shows up to the children's events and his daughter is participating under a different name than his name and the daughter has no right to be doing that.

11. Mother is fully capable of encouraging the children to meet with her Father and she has failed to do it to the degree required by law. The Court recalls that Mother testified to being a daddy's girl, and so Mother is very well equipped to encourage a relationship of some sort with Father and the daughter, and she has not done that.

12. It is not lost on the Court that the expectation for this parenting time was that of a gradual parenting plan wherein the meals and visitations would be expanded over time with Father. The Court believes that the one-hour designated meal times is not a difficult visitation and the Court considers that under these findings, Mother did not encourage the daughter to sit down and do a very simple task which was to sit with her Father at dinner for one hour and engage in conversation.

13. In light of the findings above, the Court consistent with SDCL § 25-4A-5, sanctions Mother \$500.00 for each of the April occasions, for a total of \$2,000.00. In addition, Father shall be awarded \$2,000.00 in attorney's fees and costs in having to seek court intervention for her noncompliance with the Order. This shall be designated as a money judgment in favor of Father and against Mother.

14. The Court reiterates that sanctions and attorney's fees against the Mother could increase and get worse if there is continued noncompliance.

15. As for ongoing parenting time, beginning the week of May 3, 2024, Father shall have parenting time with the children twice per week on Tuesdays and Wednesdays for one hour at Olive Garden and Culvers, with the parties alternating the restaurants. This parenting time shall continue this arrangement for a period of 90 days. Due to Kaelyn LeFors having a banquet dinner on the 28th and that Father would like her to participate, Father's dinner will be rescheduled to a make-up day.

16. The Court, however, reiterates that track and other extracurricular activities come second to Father's parenting time, absent an agreement otherwise.

17. Father will be out of town June 9th through June 15th, 2024, and makeup time will be granted. The parties shall communicate directly on scheduling the proper make-up time for parenting time.

18. Mr. Lefors shall have Kaelyn on June 16, 2024 for Father's Day for one hour.

Attest:
Moistad, Stephany
Clerk/Deputy



6/17/2024 3:16:00 PM

BY THE COURT:


HONORABLE JOHN FITZGERALD
Circuit Court Judge

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

3
4 _____)
5 **JOSEPH D. LEFORS,**)
6 Plaintiff,)
7 vs.)
8 **KRISTA M. LEFORS,**)
9 Defendant.)
10 _____)

In Camera Proceedings With
Both Children

46DIV19-8

11
12 BEFORE: **THE HONORABLE JOHN FITZGERALD**
13 Circuit Court Judge
14 Sturgis, South Dakota
15 February 6, 2024 at 9:00 a.m.

16 (These proceedings were audio recorded.)
17
18
19
20
21
22
23
24
25

1 (WHEREUPON, the following proceedings were audio
2 recorded via computer in chambers with the Court, Court
3 Reporter, and Kyden LeFors and Kaelyn LeFors, present:)

4 THE COURT: My name is John Fitzgerald and I'm a circuit
5 court judge, but before I was a judge, I was the state's
6 attorney in Deadwood where I served up there for a number
7 of years, that's what I did. I've got three grown children
8 and then I have six grandchildren. Tammy is a court
9 reporter and my assistant and apparently she's met with you
10 guys once before.

11 COURT REPORTER: Yep.

12 THE COURT: And I kind of know your mom and dad just from
13 court, but I've just heard about you guys, but I've never
14 met you. So let me see, Kyden, is that how it's
15 pronounced?

16 KYDEN: Kyden.

17 THE COURT: Kyden, okay. Spell it, Kyden.

18 KYDEN: K-Y-D-E-N.

19 THE COURT: Kyden. What's your middle initial, Kyden?

20 KYDEN: Michael.

21 THE COURT: Michael. And when are you going to turn 18?

22 KYDEN: July 2nd.

23 THE COURT: Oh, wow. Pretty soon. And your name?

24 KAELYN: Kaelyn.

25 THE COURT: Kaelyn?

1 KAELYN: Yep.

2 THE COURT: Kaelyn, what's your middle name?

3 KAELYN: Mae.

4 THE COURT: Mae?

5 KAELYN: Starts with an M.

6 THE COURT: And when's your birthday?

7 KAELYN: May 29, 2009.

8 THE COURT: Oh, it's coming up?

9 KAELYN: Yeah.

10 THE COURT: May's my favorite month.

11 KAELYN: Same.

12 THE COURT: Is it?

13 KAELYN: Yeah.

14 THE COURT: Is it because your birthday is then or just --

15 KAELYN: Yeah.

16 THE COURT REPORTER: Well, and her made middle name is Mae

17 too.

18 KAELYN: Um-huh.

19 THE COURT: Oh, yeah, that's right.

20 KAELYN: Um-huh.

21 THE COURT: Is that a coincidence or is that --

22 KAELYN: Well, I don't actually know, but my mom has a

23 middle name Mae and I think my grandma does too so...

24 THE COURT: Is Mae?

25 KAELYN: Yeah.

1 THE COURT: Oh, that's pretty cool.

2 KAELYN: Yeah.

3 THE COURT: So, Kyden, what grade in school are you in?

4 KYDEN: 12th grade.

5 THE COURT: What -- where do you go to school?

6 KYDEN: Douglas High School.

7 THE COURT: Which one?

8 KYDEN: Douglas High School.

9 THE COURT: Oh, Douglas. I know where that's at. It's up

10 on the base, isn't it, or close to the base?

11 KAELYN: It's close to the base, yeah.

12 THE COURT: How about you, Kaelyn?

13 KAELYN: I go to the same school, but I'm a freshman.

14 THE COURT: Oh. And, Kyden, what do you want to do for a

15 living when you get out of school?

16 KYDEN: Probably work stocking shelves and...

17 THE COURT: Okay. Do you have a job now?

18 KYDEN: Yeah.

19 THE COURT: Where at?

20 KYDEN: At Timmons.

21 THE COURT: What is Timmons?

22 KYDEN: The grocery store that's there.

23 THE COURT: Grocery store that's in where?

24 KYDEN: In Box Elder.

25 THE COURT: In Box Elder. Okay, that's what I thought.

1 Kaelyn, how about you, do you work?
2 KAELYN: No.
3 THE COURT: Okay. What do you want to do when you get
4 older?
5 KAELYN: I don't know. I probably want to be a
6 veterinarian.
7 THE COURT: A veterinarian?
8 KAELYN: Yeah.
9 THE COURT: Well, Tammy, tell them about your husband.
10 THE COURT REPORTER: My husband is a veterinarian.
11 THE COURT: Did you know that?
12 KAELYN: No.
13 THE COURT: Big animals, small animals, or all animals?
14 KAELYN: All of them.
15 THE COURT REPORTER: Good.
16 THE COURT: All of them?
17 KAELYN: Um-huh.
18 THE COURT: Do you see that big animal?
19 KAELYN: Yeah.
20 THE COURT REPORTER: The judge has buffalo.
21 THE COURT: Yeah, that's mine.
22 KAELYN: Oh.
23 THE COURT: I just took that last winter.
24 KAELYN: Oh.
25 THE COURT REPORTER: They're big.

1 THE COURT: That's a bull. I don't know how veterinarians
2 work on animals that big, but I guess they do.
3 THE COURT REPORTER: They do. They're big and scary.
4 THE COURT: So you must love animals?
5 KAELYN: Yeah.
6 THE COURT: Okay. Reminds me of my granddaughter Penny.
7 She loves animals. She has two rabbits.
8 KAELYN: So do I.
9 THE COURT REPORTER: You have two rabbits?
10 THE COURT: You have rabbits? You're kidding.
11 KAELYN: No, I do.
12 THE COURT REPORTER: Cool.
13 THE COURT: Wow. Well, Penny would love that.
14 THE COURT REPORTER: What are your rabbits' names?
15 KAELYN: Hops and Baby.
16 THE COURT: Boys or girls, or do you know?
17 KAELYN: Boy and a girl.
18 THE COURT: Boy and a girl. Where do you guys live at?
19 KAELYN: Antelope ridge.
20 THE COURT: Where?
21 KYDEN: Antelope Ridge.
22 KAELYN: It's Antelope Ridge.
23 THE COURT: Okay. Where's that at?
24 KAELYN: Down Tower Road.
25 THE COURT: Out by the base?

1 KYDEN: Yeah, it's right next to the base. It used to
2 be --

3 KAELYN: It used to be on the base.

4 KYDEN: It used to be part of the base.

5 THE COURT REPORTER: It's old base housing that they turned
6 into --

7 KAELYN: Yeah.

8 THE COURT: Oh, I've probably seen it.

9 KAELYN: Yeah, you probably have.

10 THE COURT: Is it pretty -- I mean, is it a big
11 development, like a lot of houses or just a few?

12 KAELYN: Yeah.

13 THE COURT: Oh, it is?

14 KYDEN: It's got quite a few.

15 THE COURT REPORTER: Like apartments or houses?

16 KAELYN: Houses.

17 THE COURT: So, Kyden, how long have you lived there?

18 KYDEN: I would say since maybe, I believe, 2021.

19 THE COURT: Oh, a couple years?

20 KAELYN: Yeah, I don't even know how many years, but it's
21 been a lot.

22 THE COURT: But before that didn't you live on the base or
23 close to the base?

24 KAELYN: Yeah, we lived on base.

25 THE COURT: So how long have you lived in and around, we'll

1 say the base?

2 KYDEN: I believe like almost like --

3 KAELYN: Ten years.

4 KYDEN: I think like even maybe 13 years.

5 THE COURT: Okay. Most of your lives?

6 KAELYN: Yeah.

7 KYDEN: Um-huh.

8 THE COURT: Kaelyn, where were you born?

9 KAELYN: Idaho.

10 THE COURT: Whoa! How about you, Kyden?

11 KYDEN: Yeah, Idaho.

12 THE COURT: Same place, Idaho?

13 KAELYN: Um-huh.

14 KYDEN: Um-huh.

15 THE COURT: Was your dad on a base or something, or why

16 were you guys in Idaho?

17 KAELYN: I'm pretty sure he was in the military.

18 THE COURT: In the military?

19 KAELYN: And then we got moved here when I was one.

20 THE COURT: So that's probably why you're in Idaho?

21 KAELYN: Um-huh.

22 THE COURT REPORTER: Yeah, do you know the name of that

23 base? Isn't it a different kind of name?

24 KAELYN: I don't know.

25 THE COURT: Was your dad in the Air Force?

1 KAELYN: Yeah.

2 THE COURT: Okay. Are you close enough at Antelope Ridge

3 to hear those big old jets taking off and landing?

4 KAELYN: Sometimes.

5 THE COURT: Sometimes?

6 KAELYN: Yeah.

7 KYDEN: I heard the one crashing.

8 KAELYN: Oh, yeah, we heard the --

9 THE COURT: Oh, I heard about that on the news.

10 KYDEN: I could hear what sounded like bomb shells going

11 off.

12 THE COURT: Yeah, that was just recently.

13 KYDEN: Um-huh.

14 THE COURT REPORTER: That's kind of scary.

15 THE COURT: Well, Kaelyn, if you're going to be a

16 veterinarian, you'll have to do really well at school and

17 go to school for a long time.

18 KAELYN: Yeah.

19 THE COURT: Are you committed to doing that?

20 KAELYN: Yeah.

21 THE COURT: Okay.

22 THE COURT REPORTER: Do you like science a lot?

23 KAELYN: No, I hate science.

24 THE COURT REPORTER: Oops.

25 THE COURT: You'll have to learn to like that a little bit.

1 KAELYN: Yeah, well, I like science on animals. I don't
2 like any other kind of science though.

3 THE COURT REPORTER: Like biology, you like biology
4 probably?

5 KAELYN: Yeah. I don't understand any other kind of
6 science.

7 THE COURT: Okay. Now at Antelope Ridge, do you live in an
8 apartment, a duplex, a single family house? I mean, how do
9 you get to have your rabbits out there?

10 KYDEN: It's a four --

11 THE COURT: Four?

12 KYDEN: -- house. It's got a house and then a house and
13 then a house and then a house.

14 THE COURT: Like a four plex?

15 KAELYN: Yeah.

16 KYDEN: Yeah.

17 THE COURT: Okay. And so you have a backyard then, or do
18 you keep the rabbits inside?

19 KAELYN: We keep the rabbits inside, but we also have a
20 dog.

21 THE COURT: Oh.

22 KAELYN: So, yeah, we have a backyard, but it's not like a
23 really big backyard.

24 THE COURT: How long have you had the rabbits?

25 KAELYN: That's a good question. I think they're going to

1 be four. So I think we've had them for three years.

2 THE COURT: Wow. So I was telling my granddaughter Penny
3 that I had rabbits. This was a few years ago. As an adult
4 I had rabbits, and the first question she asked me is, and
5 she was really like suspicious looking, she says, "And do
6 you eat them?" I said, "No, I wouldn't eat rabbits. They
7 were pets." But she's really an animal lover, so she was
8 concerned that -- but that wasn't true. I just really like
9 rabbits myself, and I have grandkids, but I think even
10 before the grandkids, I just liked to raise rabbits because
11 we lived out of town. They're really a cool animal.

12 KAELYN: Um-huh, I loved -- I've always loved bunnies for
13 like a very long time.

14 THE COURT: Yes. How about you, Kyden, do you like -- do
15 you have animals, or is it just your sister?

16 KYDEN: I have a dog.

17 THE COURT: What's your dog's name?

18 KYDEN: Coa.

19 THE COURT: Coa?

20 KYDEN: Um-huh. We call him Coa Blue because he's got blue
21 eyes.

22 THE COURT: What kind?

23 KYDEN: He's a Husky.

24 THE COURT: Oh, those are pretty dogs.

25 KAELYN: Um-huh.

1 THE COURT: Oh, Tammy and I have this case, it wasn't long
2 ago, where these people that were fighting in a divorce
3 over their dog, Puckey. It was -- the hearing lasted
4 several hours.

5 THE COURT REPORTER: Puckey was cute though.

6 THE COURT: Very interesting. Very interesting. So what
7 else do you like to do besides animals, Kaelyn?

8 KAELYN: I do sports.

9 THE COURT: What kind of sports?

10 KAELYN: Cross country, cheerleading, and track.

11 THE COURT REPORTER: What sport do you do cheerleading for?
12 Football?

13 KAELYN: Basketball.

14 THE COURT: Basketball?

15 KAELYN: Um-huh.

16 THE COURT REPORTER: That's a lot.

17 THE COURT: What's the name of the team? I've been in
18 Douglas's gym before.

19 KAELYN: That's a good question. I think it's just
20 Douglas. I don't really --

21 THE COURT: Does Douglas have like a symbol like --

22 KAELYN: Well, we have like a Patriot.

23 THE COURT: Oh, Patriots, okay. How about you, Kyden, are
24 you in any sports?

25 KYDEN: No.

1 THE COURT: What do you do besides working, or does that
2 keep you busy enough?

3 KYDEN: That keeps me busy enough.

4 THE COURT: How much are you working? Like do you work
5 20 hours or just the weekends, or how --

6 KYDEN: Two and a half hours every week.

7 THE COURT: When?

8 KYDEN: From 2:30 to 5 o'clock.

9 THE COURT: And Timmons is right there in Box Elder, is
10 that right?

11 KYDEN: Um-huh.

12 THE COURT: Okay. Where do you guys like to eat?

13 KAELYN: Olive garden.

14 THE COURT: You too? How much do you like Olive Garden?

15 KAELYN: A lot. I love pasta.

16 THE COURT: You love pasta. Tell me about what you usually
17 get there at Olive Garden.

18 KAELYN: It depends. Sometimes I always share with my mom,
19 but sometimes I'll get like a kids meal which has
20 spaghetti.

21 THE COURT: I've had it. And do you get the meat balls
22 with it?

23 KAELYN: No.

24 THE COURT: No, just the pasta?

25 KAELYN: Yeah, it fills me up enough.

1 THE COURT: Yeah. How often do you get to go there?

2 KAELYN: Not a lot.

3 THE COURT: How about you, Kyden?

4 KYDEN: I get the one soup, the potato one.

5 KAELYN: The Zuppa?

6 KYDEN: Yeah.

7 THE COURT: The what?

8 KAELYN: Zuppa.

9 KYDEN: The Zuppa, the potato soup one.

10 THE COURT: It must be Italian or something, huh?

11 KYDEN: And I get a cheese pasta. Yeah, the raviolis or

12 some sort of --

13 THE COURT: Oh, that's good. Making me hungry.

14 THE COURT REPORTER: I know, me too. I want a breadstick

15 really bad now.

16 THE COURT: Do you guys get like -- don't they have like

17 unlimited salad too?

18 KAELYN: Yeah.

19 KYDEN: Yeah.

20 THE COURT: You get all the salad you want and usually

21 breadsticks too so you can fill up on that?

22 KAELYN: Yeah.

23 THE COURT: All right. How about fast food, where do you

24 like to eat fast food at? McDonald's? Burger King? Taco

25 places? Kaelyn?

1 KAELYN: I don't really like -- I like fast food, but like
2 I don't at the same time. I'd probably pick like
3 McDonald's. And then I can't remember what it's called,
4 but it's a Mexican restaurant.

5 THE COURT: Which Mexican restaurant?

6 KAELYN: I don't remember what it's called.

7 THE COURT: Where's it at?

8 KAELYN: It's by the mall.

9 KYDEN: It's the one that's by that hotel.

10 KAELYN: Yeah, it's by the hotel. I don't --

11 THE COURT: By the mall?

12 KYDEN: Yeah, so the mall, you go up this way on the road
13 that goes to the mall and then the restaurant is right here
14 with a parking lot and there's a hotel.

15 KAELYN: Yeah.

16 KYDEN: And then there's a road that goes that way.

17 KAELYN: I don't remember names of roads and stuff all the
18 way over there.

19 THE COURT REPORTER: Is it Qdoba?

20 KAELYN: No.

21 KYDEN: No.

22 THE COURT: What kind of food do you like at the Mexican
23 restaurants?

24 KAELYN: Enchiladas.

25 KYDEN: Enchiladas.

1 THE COURT: Oh, really? I like those too. Is that your
2 favorite meal, Kyden, is the enchiladas, or is it --

3 KYDEN: No.

4 THE COURT: -- Olive Garden?

5 KYDEN: It depends on. I like them all.

6 THE COURT: You like them all. When's the last time you
7 went to Olive Garden?

8 KYDEN: I believe a month ago.

9 THE COURT: Who did you go with?

10 KYDEN: Our mom.

11 THE COURT: Where does mom work? Krista, right?

12 KAELYN: Yeah. I don't know. It's some like mail place.

13 KYDEN: Um-huh.

14 THE COURT: What town?

15 KAELYN: I think it's --

16 KYDEN: It's between Rapid City and Box Elder.

17 KAELYN: Yeah, I don't really know.

18 THE COURT: Okay. Do you see that big plant?

19 KAELYN: Yeah.

20 THE COURT: That's an Aloe Vera and the story about that
21 one is is that I just brought it in here like a week ago
22 and it was all turning pale because it had been in a place
23 where it wasn't as well heated and it was apparently not
24 getting enough light and it turned green just over the
25 weekend, so anyways...

1 So Olive Garden is both of your favorite places?

2 KAELYN: Um-huh.

3 THE COURT: Okay. And when was the last time you were
4 there, Kaelyn?

5 KAELYN: The same time Kyden was.

6 THE COURT: A month ago?

7 KAELYN: Yeah, something like that.

8 THE COURT: With mom?

9 KAELYN: Yeah.

10 THE COURT: All right. And then Kaelyn likes McDonald's
11 and then Kyden's favorite fast food place is a taco place
12 but we can't remember the name of it where you get
13 enchiladas?

14 KYDEN: It's various. I could eat at McDonald's, or it
15 just depends on --

16 THE COURT: But you do like Mexican food? And are you
17 particular about what taco place you go to, or how about
18 Taco Johns, Taco Bell?

19 KAELYN: I've never been to Taco Johns.

20 THE COURT: Oh, you never have? That's pretty good food.

21 KAELYN: No.

22 THE COURT: How about you, Kyden?

23 KYDEN: I'd go to Taco Bell.

24 THE COURT: Taco Bell. All right, so then is everything
25 going okay at home, Kaelyn?

1 KAELYN: Yeah.

2 THE COURT: Doing okay in school?

3 KAELYN: I have all As.

4 THE COURT: Oh, that's -- wow.

5 KAELYN: Um-huh.

6 THE COURT: That's impressive. Kyden, is everything going
7 all right with you at home?

8 KYDEN: Yeah. My grades are As and Bs. I have an F in
9 math because talking on the phone and seeing Joe makes me
10 stressed and I cannot concentrate.

11 THE COURT: Oh. You talk to him on the phone? You're
12 talking about your dad? You call him Joe or dad?

13 KAELYN: Joe.

14 KYDEN: I call him Joe.

15 THE COURT: Okay.

16 KYDEN: But the only thing I say to him is "good-bye, Joe."
17 More of a -- I don't really care to talk to him because I
18 don't want to talk to him.

19 THE COURT: Because of stuff in the past?

20 KYDEN: Um-huh.

21 THE COURT: Have you ever heard that expression about some
22 things from the past should just stay in the past?

23 KAELYN: Yeah, I've heard that before.

24 KYDEN: Yeah.

25 THE COURT: You've heard that? Where did you hear that,

1 Kaelyn?

2 KAELYN: Probably a movie or something.

3 THE COURT: Oh. Do you think that's true sometimes?

4 KAELYN: Sometimes, yeah.

5 THE COURT: You have a notebook too?

6 KAELYN: Yeah.

7 THE COURT: What's in your notebook?

8 KAELYN: All my stuff.

9 THE COURT: Well, what kind of stuff? School stuff?

10 KAELYN: No, it's like about Joe.

11 THE COURT: Okay.

12 KAELYN: Well, it's like notes and so like I can read it
13 and then like everything comes back to me I guess.

14 THE COURT: Oh, okay.

15 KAELYN: Do you want to hear everything?

16 THE COURT: If you want to read some of it to me, but is it
17 about like mom and dad kind of stuff?

18 KAELYN: Yes.

19 THE COURT: Do you think some of that stuff should stay in
20 the past?

21 KAELYN: Yes.

22 THE COURT: How come?

23 KAELYN: Because like -- I don't know.

24 THE COURT: Well, sometimes memories that aren't pleasant
25 don't conjure up pleasant thoughts and so sometimes it's

1 just better to not always focus on some of the stuff in the
2 past.

3 KAELYN: Yeah.

4 THE COURT: Okay. Kyden, what do you think about that?

5 KYDEN: I just don't want to see him because of the things
6 he's done to me.

7 THE COURT: Well, yeah, but he is your dad, Kyden. He'll
8 always be your dad. Do you think that people can make
9 mistakes in their past?

10 KYDEN: It depends.

11 THE COURT: Have you ever made any mistakes?

12 KYDEN: Yeah.

13 THE COURT: And what -- do you ever learn from them?
14 Because, I mean, I've made them in the past and sometimes I
15 think I get valuable lessons from them.

16 KAELYN: Yeah.

17 THE COURT: How about -- Kaelyn, you'd agree?

18 KAELYN: Yeah.

19 THE COURT: That sometimes you make mistakes and you learn
20 from them?

21 KAELYN: Yeah.

22 THE COURT: Okay. Kyden?

23 KYDEN: Um-huh.

24 THE COURT: You do? Because people do make mistakes, you
25 know, and they can change. Do you think that's true,

1 Kaelyn?

2 KAELYN: Some people can, yeah.

3 THE COURT: Okay. What makes them change?

4 KAELYN: I don't know.

5 KYDEN: Their brain.

6 THE COURT: Well, do you -- what, Kyden?

7 KAELYN: Their brain.

8 THE COURT: Okay. Do you think it takes a commitment

9 sometimes that people change because they commit, they say

10 to themselves I'm going to change and I'm going to take

11 actions to change and I'm going to believe that I can

12 change?

13 KYDEN: Um-huh.

14 THE COURT: How about you, Kaelyn?

15 KAELYN: Yeah.

16 THE COURT: So, Tammy, have anything you want to add?

17 THE COURT REPORTER: I don't think so.

18 THE COURT: Okay. Got any questions for me, Kaelyn?

19 KAELYN: I don't think I have any questions.

20 THE COURT: How about you, Kyden?

21 KYDEN: No.

22 THE COURT: Not any questions?

23 KYDEN: No.

24 THE COURT: Well, let's talk a little bit about your dad,

25 Kyden. You have a notebook there and does that have

1 different things that have happened between you and --
2 well, you call him Joe -- between you and Joe, is that
3 right?

4 KYDEN: Yeah.

5 THE COURT: Do you think that some of those things could
6 stay in the past and that you could at least get to an
7 understanding to see him and maybe have a dinner with him?

8 KYDEN: No.

9 THE COURT: How come?

10 KYDEN: Because he abused me. He would grab me by the back
11 of my neck and he would force me to the ground. He would
12 then yell at me and call me names.

13 THE COURT: Okay. When did that last happen though, Kyden?

14 KYDEN: When he was still with us.

15 THE COURT: Because I think this divorce has been going on
16 since about 2018 or '19, is that about right?

17 KAEALYN: It's been like five years.

18 THE COURT: Five years. All right. Same question to you,
19 Kaelyn?

20 KAEALYN: What was the question?

21 THE COURT: Well, can you put some of what happened in the
22 past with your dad?

23 KAEALYN: No.

24 THE COURT: It's just going to be something that's -- you
25 can't forgive him?

1 KAELYN: No.

2 THE COURT: Okay. Explain why.

3 KAELYN: Because he abused me and he's with my aunt.

4 THE COURT: Okay. Because he's -- all right, so that makes
5 the family dynamics difficult?

6 KAELYN: Um-huh.

7 THE COURT: Explain.

8 KAELYN: Because it like confuses my cousins and they think
9 that we're siblings because their mom is married to Joe and
10 they act different when they're with their mom so...

11 THE COURT: Yeah, but I mean how about just meeting with
12 your dad that wouldn't involve the cousins?

13 KAELYN: I don't want to meet with him. I don't want
14 anything to do with him.

15 THE COURT: When's the last time -- well, you went to
16 counseling sessions with him with -- was it Mr. Wheaton?

17 KAELYN: Yeah.

18 THE COURT: At his office. When was the last time that
19 went on?

20 KAELYN: Wednesday.

21 THE COURT: Last Wednesday?

22 KAELYN: Yeah.

23 THE COURT: How did it go?

24 KAELYN: I don't know.

25 THE COURT: Did you talk to your dad?

1 KAELYN: No.

2 THE COURT: How come?

3 KAELYN: Because I don't want anything to do with him.

4 THE COURT: He doesn't want to have anything to do with
5 you?

6 KAELYN: No, he definitely wants something do with me
7 because he doesn't stop like trying to get counseling and
8 stuff for us.

9 THE COURT: He -- okay. You have kind of a soft voice.

10 KAELYN: Yeah, I was sick, so it's like --

11 THE COURT: He wants to have stuff to do with you or he
12 does not want to?

13 KAELYN: He does, but I don't want anything to do with him.

14 THE COURT: Okay. But you'll always be his daughter.

15 KAELYN: Yeah, I know that.

16 THE COURT: And you don't think that he's deserving of,
17 well, forgiving him for some of the things that he's done
18 in the past?

19 KAELYN: No.

20 THE COURT: Have you done things that you would want to
21 have people forgive you about or not?

22 KAELYN: Yes, but I've never abused somebody. Abuse is
23 kind of hard to forgive.

24 THE COURT: Yeah. But he'll always be your dad.

25 KAELYN: Yeah.

1 THE COURT: And he has a right to ask -- go ahead, Tammy.

2 THE COURT REPORTER: Well, have you guys ever heard of
3 somebody hurting someone's family member and it's horrible
4 for this family because this person hurt their family
5 member, but somehow they eventually forgive that person?
6 Have you guys ever seen that?

7 KAELYN: Yeah.

8 THE COURT REPORTER: I mean, that's pretty amazing, isn't
9 it?

10 KAELYN: Um-huh.

11 THE COURT: What do you think, Kaelyn?

12 KAELYN: I don't know.

13 THE COURT: Well, if you're getting straight As, you're
14 doing pretty well in school?

15 KAELYN: Yeah.

16 THE COURT: And so you have adjusted to whatever situation
17 you found yourself in pretty well, haven't you?

18 KAELYN: I guess.

19 THE COURT: Well, not everyone gets straight As, do they?

20 KAELYN: No.

21 THE COURT: Are you in like the top of your class at
22 school?

23 KAELYN: Yeah.

24 THE COURT: And you must realize that you have to do that
25 to achieve your goals?

1 KAELYN: Yeah.

2 THE COURT: Well, that's a plus. So what happened at the
3 counseling? I mean, did your dad drink in the past?

4 KAELYN: Yeah.

5 THE COURT: Okay. Did he drink when you met with him at
6 the counseling office?

7 KAELYN: Not that I know of.

8 KYDEN: Not that I know of.

9 THE COURT: Okay. Do you know what it smells like,
10 alcohol?

11 KAELYN: Yeah.

12 THE COURT: Did you smell anything like that?

13 KAELYN: I wasn't close enough.

14 KYDEN: No.

15 THE COURT: Well, sometimes -- because I've seen that you
16 can smell it for a long distance away, so I think that he
17 wasn't drinking when he showed up at the counseling
18 session.

19 KAELYN: Yeah.

20 THE COURT: Are you afraid of him?

21 KAELYN: Yes.

22 THE COURT: Okay. Why are you afraid of him?

23 KAELYN: Because he abused us.

24 THE COURT: But that was like -- when was the last time
25 that happened? Was that five years ago?

1 KAELYN: Yeah.

2 THE COURT: Okay. And if you're in a public setting --
3 like what if he was to take you to Olive Garden, you'd be
4 in a public setting eating at a restaurant. Nothing's
5 going to happen there. Wouldn't you agree?

6 KAELYN: No.

7 THE COURT: You wouldn't agree with that?

8 KAELYN: No.

9 THE COURT: How come?

10 KAELYN: Because I still don't feel comfortable or safe.

11 THE COURT: Explain that. Because it just seems like how
12 would you feel uncomfortable when you're in a public area?

13 KAELYN: Because Joe's there.

14 THE COURT: Huh?

15 KAELYN: Because Joe is there.

16 THE COURT: Yeah, no, I know. I know that, but...

17 KYDEN: He could still call us names.

18 THE COURT: Yeah, but when's the last time, Kyden, that
19 he's called you a name?

20 KAELYN: Right before he left.

21 THE COURT: Okay. But we're still talking kind of five
22 years ago, right, Kyden? Do you really think he'd call you
23 a name now, even in a restaurant?

24 KAELYN: Yeah.

25 THE COURT: But don't you think that he really wants to

1 spend some time with you?

2 KYDEN: No.

3 THE COURT: Why do you think that he's asking the court to
4 spend time with you? Kyden?

5 KYDEN: I don't know, probably to abuse me more or call me
6 names because at visitation, Joe would try to -- when we
7 would walk away from him, he would try to get in my head by
8 making me scared and he told me that I would have to move
9 out when I turned 18 and live on my own.

10 THE COURT: Was he angry when he said that?

11 KYDEN: No, he was more (inaudible).

12 THE COURT: But now you know that's not true because you
13 don't even live with him obviously; you live with mom.

14 KYDEN: Um-huh.

15 THE COURT: How about you, Kaelyn?

16 KAELYN: What?

17 THE COURT: Can you forgive him at all?

18 KAELYN: No.

19 THE COURT: Never?

20 KAELYN: Never.

21 THE COURT REPORTER: What if you guys went to Olive Garden
22 and he didn't call you a name and he didn't abuse you,
23 would you go again?

24 KAELYN: No.

25 THE COURT: Well, what would you do if the roles were

1 reversed and you were Joe, your dad, and you really loved
2 your daughter and your daughter was telling you that you
3 made mistakes five years ago, how would you ever get the
4 situation remedied.

5 KYDEN: Get help and take responsibility.

6 KAELYN: I would like take my -- get help, take
7 responsibility from the beginning, and if he still wanted
8 nothing to do with me, then whatever.

9 THE COURT: Yeah, but do you understand that you only get
10 so many kids when you're grown up?

11 KAELYN: Yep.

12 THE COURT: You know, and you can't just go get new ones.

13 KAELYN: Well, he kind of did.

14 THE COURT: No. Biologically you're his offspring.

15 KAELYN: Yeah.

16 THE COURT: Right?

17 KAELYN: Yeah.

18 THE COURT: These other kids are -- are they cousins to
19 you?

20 KAELYN: Yeah.

21 KYDEN: Um-huh.

22 THE COURT: Okay. They're not his biological kids so he
23 doesn't get to get some new ones. But, Kyden, I think you
24 said -- you said take responsibility?

25 KYDEN: Um-huh.

1 THE COURT: What else?

2 KYDEN: Get help.

3 THE COURT: Okay. Well, for what? Like drinking?

4 KYDEN: Yeah, and being abusive.

5 THE COURT: Okay. And if he did that?

6 KYDEN: And if he doesn't -- or if then we still don't have
7 anything to do with him, then he would then have to accept
8 the fact.

9 THE COURT: Well, but I mean, that's almost -- Kyden,
10 that's almost an impossibility there. I mean, it's like
11 you get help, you don't drink, you accept responsibility
12 and then you don't get anywhere because then the child
13 says, well, I still don't want to have anything to do with
14 you, so...

15 KAELYN: It's a little too late now.

16 THE COURT: Huh?

17 KAELYN: My voice is dying.

18 THE COURT: Yeah.

19 KAELYN: It's a little too late now. You should have got
20 help from the beginning.

21 THE COURT: Well, people make mistakes.

22 KAELYN: I know.

23 THE COURT: People ask for forgiveness and they try to move
24 on and sometimes they commit to making changes in their
25 lives. Have you ever seen anyone change, really change?

1 KAELYN: Yes.

2 THE COURT: Who?

3 KAELYN: Well, like not in person, but like in movies

4 people change.

5 THE COURT: Um-huh. Well, I think in real life people do

6 change.

7 KAELYN: Yeah.

8 THE COURT: How about you, Kyden?

9 KYDEN: It depends.

10 THE COURT: Yeah. Well, that's true. But you believe it's

11 true that people do change?

12 KYDEN: Sometimes. It depends on the person.

13 THE COURT: Well, where would you feel the most comfortable

14 and the most secure to meet with your dad, Joe?

15 KAELYN: Nowhere.

16 THE COURT: Well, of all of the places, what strikes you as

17 the place?

18 THE COURT REPORTER: Like you have to pick, let's just say

19 you have to pick a place, what would you pick?

20 KAELYN: I can't pick one.

21 THE COURT: You can't?

22 KAELYN: No.

23 THE COURT REPORTER: Or you won't?

24 KAELYN: I won't.

25 THE COURT: Well, do you think you make my job easier?

1 KAELYN: Yeah, I would.

2 THE COURT: Kyden, how about you?

3 KYDEN: I'd have to agree I wouldn't do that.

4 THE COURT: So then what do you expect Joe to do?

5 KAELYN: Leave us alone.

6 THE COURT: But, you know, he has obligations too.

7 KAELYN: I know.

8 THE COURT: What kind of obligations do you think he has?

9 KAELYN: Like what do you mean?

10 THE COURT: Well, what kind of obligations does your dad

11 have to you? Does -- well, I'll help you out.

12 Financially, do you think he has financial obligations?

13 KAELYN: To us?

14 THE COURT: To you, to the children. When you have

15 children, do you think fathers have responsibilities to pay

16 for --

17 KAELYN: Yes.

18 THE COURT: Okay.

19 KYDEN: Um-huh.

20 THE COURT: Do you think he's doing that?

21 KAELYN: No.

22 THE COURT: Why, what makes you say that?

23 KAELYN: Because mom doesn't have a lot of money.

24 THE COURT: Right. Do you blame him for that?

25 KAELYN: Well, he's the one that's not paying.

1 THE COURT: Okay. What's he not paying?

2 KAELYN: Child support.

3 THE COURT: Okay. So do you think that that would go a
4 ways towards making you more receptive to spending some
5 time with him if he was living up to his financial
6 obligation?

7 KAELYN: No.

8 THE COURT: Well, then how can he win?

9 KAELYN: I don't know.

10 THE COURT: I mean, you expect him to pay what he owes for
11 support?

12 KAELYN: Yep.

13 THE COURT: But then in return do you think that he should
14 be entitled to visitation or --

15 KAELYN: No.

16 THE COURT: No, okay. What makes you feel that way, just
17 because you got mistreated in the past?

18 KAELYN: Yeah, because I don't feel safe with him, nor do I
19 feel comfortable with him.

20 THE COURT: Okay. Now Kyden has articulated, you know, he
21 said to me that he was abusive towards him.

22 KAELYN: Um-huh.

23 THE COURT: What did he do to you to make you feel that
24 way?

25 KAELYN: He mostly abused my mom and Kyden.

1 THE COURT: Okay.

2 KAELYN: He would slap me in the back.

3 THE COURT: How many times did he slap you?

4 KAELYN: I don't know how many times.

5 THE COURT: Well, more than ten?

6 KAELYN: I don't think more than ten.

7 THE COURT: More than five?

8 KAELYN: Probably.

9 THE COURT: Did you do anything -- and I'm not saying that
10 anyone deserves to be spanked, but I mean were you doing
11 anything that caused that in --

12 KAELYN: No.

13 THE COURT: -- his opinion or your opinion?

14 KAELYN: It was like the middle of my back is where he'd
15 slap me and sometimes I'd end up with a mark.

16 THE COURT: But you said this only happened between five
17 and ten times in your whole life?

18 KAELYN: Yeah.

19 THE COURT: Did he apologize for that?

20 KAELYN: No, he acted like it never happened.

21 THE COURT: So what would you like me to do as the judge in
22 this case? Kaelyn?

23 KAELYN: I don't want anything to do with Joe so I don't
24 want visitation or anything with him.

25 THE COURT: So you want me to just tell him he can't ever

1 see you again?

2 KAELYN: Yeah.

3 THE COURT: What if he says no?

4 KAELYN: I don't know.

5 THE COURT: Kyden, what do you want me to tell your dad?

6 KYDEN: That we don't want to see him.

7 THE COURT: Yeah. And what if he says, well, that's not
8 good enough, I think I have a right as Kyden's dad to spend
9 some time with him?

10 KYDEN: Well, I'm almost 18.

11 THE COURT: Yeah, I know that. I think you said your
12 birthday is July 2nd. Kyden, can you think of anything?

13 Well, I always believe in compromise, that, you know,
14 people need to find some kind of a middle ground in a lot
15 of things. Kyden, do you think that's true?

16 KYDEN: Um-huh.

17 THE COURT: How about you, Kaelyn?

18 KAELYN: Yeah.

19 THE COURT: And that judges don't always make decisions
20 that everyone's happy with.

21 KAELYN: Yeah.

22 THE COURT: Do you think that's true?

23 KAELYN: Yeah.

24 THE COURT: How about you, Kyden?

25 KYDEN: Um-huh.

1 THE COURT: Do you think you have to obey a judge when they
2 issue orders in a lawful way in a court proceeding?

3 KAELYN: Yeah.

4 THE COURT: Kaelyn, huh?

5 KAELYN: I've been doing that.

6 THE COURT: Okay. Well, good for you. Kyden?

7 KYDEN: Um-huh.

8 THE COURT: Tammy, any other questions?

9 THE COURT REPORTER: I don't think so.

10 THE COURT: Guys, have anything you want to say to me?

11 KAELYN: I don't think so.

12 THE COURT: Well, it's been a pleasure for me to get to
13 meet you because I hear about you guys all the time in this
14 case that's been going on.

15 KAELYN: Yeah.

16 THE COURT: Ad so it's really a positive for me to get to
17 see you and put a name and a face together. Kyden, it's
18 the same with you, I've heard about you and a lot about you
19 both and it's been a pleasure for me to get to meet you and
20 it really helps me to understand the situation better.

21 KAELYN: Yeah.

22 THE COURT: Now it doesn't mean I do everything that
23 everybody's pleased with, but it helps me, and like I said,
24 I've got six grandchildren, we have five granddaughters and
25 we have one grandson, so I understand, you know, kind of

1 what it's like to grow up these days.

2 KAELYN: Yeah.

3 THE COURT: Have you guys got cell phones?

4 KAELYN: Well, we do, but they only work on the Internet.

5 THE COURT: Oh, okay. Kyden, how about you?

6 KYDEN: They're old ones.

7 THE COURT: You have a cell phone?

8 KAELYN: It's just like mine. They're old.

9 THE COURT: Internet only?

10 KAELYN: Yeah.

11 KYDEN: Um-huh.

12 THE COURT: So are you communicating over like Facebook
13 Messenger?

14 KAELYN: No.

15 KYDEN: Email.

16 KAELYN: Email.

17 THE COURT: Okay. But on this phone, can you get a call?
18 Could somebody call you on it and go, "Hey, Kaelyn?"

19 KAELYN: I don't think so.

20 KYDEN: I don't think so.

21 THE COURT: Okay. Because I think some of those Facebook
22 messages, there are different programs where you can
23 communicate over phones over the Internet.

24 KAELYN: Yep.

25 THE COURT: Well, is there anything, you know, besides

1 phones that you wish you had?

2 KAELYN: I don't think so.

3 THE COURT: Is a phone big deal for you? Well, tell me the
4 truth. I've got a granddaughter and I just was visiting
5 with her yesterday and she's going to be 13 and it's all
6 about telephones. Is that true for you because you're
7 older than her?

8 KAELYN: Not really. I like running.

9 THE COURT: You like running?

10 KAELYN: Yeah.

11 THE COURT: Well, good for you. Do most of the kids your
12 age have phones though?

13 KAELYN: Yeah.

14 THE COURT: You do not have a phone?

15 KAELYN: Nope.

16 THE COURT: Kyden, same question to you, most of the -- you
17 have a phone but apparently it only works over the
18 Internet?

19 KAELYN: Yes.

20 THE COURT: All right.

21 KYDEN: Yeah, most all the kids in my grade have a phone.

22 THE COURT: Well, I don't know if I'll ever get to meet
23 with you guys again, but it's been a pleasure to get to
24 meet you, Kyden and Kaelyn. And you know, pursue these
25 goals that you have because you've got to work at things

1 like that, you know, you just have to work at it, be
2 committed towards obtaining your goals in life and take
3 action.

4 KAELYN: Yeah.

5 KYDEN: Um-huh.

6 THE COURT: I think you already know that. So Tammy,
7 anything else?

8 THE COURT REPORTER: Nope, I think I'm good. Thanks, you
9 guys.

10 THE COURT: All right. Thanks, guys. We'll walk you back
11 out there.

12 (The audio recording was concluded.)

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF MEADE) SS. CERTIFICATE OF
) TRANSCRIBER

3
4 I, TAMMY STOLLE, RPR, Court Reporter, hereby certify
5 that the foregoing pages 1 through 39 were transcribed from
6 an audiotape to the best of my knowledge and ability.

7 Dated at Sturgis, South Dakota, this 21st day of
8 August, 2024.

9
10
11
12
13 /s/ Tammy Stolle
14 TAMMY STOLLE, RPR
15 Official Court Reporter
16 My Commission Expires: 2/2/28
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FILED

MAY 10 2024

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

By _____

3/17/24
@ 5:20 PM

Talked to Kaelyn about court - how now she will go to visitation without Kyden. How her dad said she hasn't talked to him or talked to him about why she doesn't want anything to do with him. We talked about how her dad loves her. How she is safe in the restaurants. I encouraged her to talk to her dad about how she feels. She told me to stop lying to her - she is not happy. She pulled her knees to her chest and sat and cried.

3/20/24
@ 4:15 PM

on the way to school we talked about visitation starting the week of spring break. We talked about how it is at her favorite places to eat. I reiterated that her dad loves her and that she is safe at the restaurants. She wouldn't talk to me - still wasn't happy - dropped off at school.

416 DIV 14-8

EXHIBIT

3

App. 050

3/20/04 I asked her if she had any
5:35pm questions. She didn't want to
talk to me. So I started going
to the kitchen to make dinner.
She followed and sat on her stool.
I started talking to her about
Spring break and lead that into
vacations. We talked about past
places we had been. I brought
up vacations we had been on
with her dad and fun that we
had. She didn't really comment
until I talked about Disney and
all the times we went. She
said the vacations were never
really fun because "Joe" drank
all the time and yelled at everyone.

3/21/04 Talked about her feelings - how
5:20pm she was feeling - like really feeling.
She said that her anxiety was
really high. We talked about
if she needed to schedule an
appointment with Melanie.
She said not yet.

3/22/24 looked for Disney trip pictures.
@8:10pm Didn't find any with just the kids & Joe
But found some family ones. Showed
them to Kaelyn - Talked about things
we did on the trip. Kaelyn tried
to talk about good memories -
She fought me on it. Said there
was no good memories because
he still drank a lot.

3/22/24 gave it a break today - She is
fighting everything I say.

3/22/24 Making dinner together. I
@5:02 have been encouraging her
to try making new things
but she still likes spaghetti.
I was asking her about sauce
and she picked her favorite.
We talked about when she
used to help make dinner
with me and her dad when
she was younger. She would
help me bake and help her
dad with making spaghetti.
She said she remembers

But didn't care. It's a win because she remembers but didn't really say anything negative

3/28/24
@7:20 PM
Talked to Kaelyn about the week ahead. We talked about how next week she would be eating dinner with her dad - no comment just walked away from me.

3/20/24
@5:20 PM
talked to Kaelyn about what I could do to help her have a good relationship with her father - she told me she didn't want a relationship with him - she said she told him before what she needed and he didn't listen - I encouraged her to talk to him next week when they went to dinner. - she said she would think about it.

3/24/14 @ 4:40 pm
talked to Kaelyn about the first visit coming up at Olive garden. I encouraged her to talk to her dad about everything. We went over the menu and talked about different things she likes there.

3/24/14
Kaelyn had a track meet today and did amazing. We didn't talk about visits today as it was later when she made it home.

3/24/14 @ 8:20 pm
Talked to Kaelyn about if she needed anything from me to help her with the up coming week - she said no I again encouraged her to talk to her dad. I told her she could write him a letter or email if she wanted to open up communication. - she said no.

~~3/20/24~~ Kaelyn came to me to ask why no one listens to what she wants. I told her that I do listen. I told her that her dad loves her too and wants to spend time with her. - She told me no.

3/31/24 Easter

4/1/24 Talked about visitation tomorrow encouraged Kaelyn to talk to her dad & to try and rebuild a relationship. encouraged her to go into the restaurant and eat dinner with him. I reinforced that he loves her and wants to spend time with her. I encouraged her to look at the menu and talked about her favorite meals from there. Encouraged her to have fun and enjoy herself. - She glared at me.

4/12/24
5:30 encouraged her to go inside and have a meal - also to talk with him and that he loves her. After visitation she said that he and her dad got in an argument in front of Olive Garden. She said she told him why she didn't want anything to do with him. They argued about Courtney. He keeps telling her that she's not her aunt - then flip sit her says since she is your aunt and family Kaelyn should want to spend time with her. She said she stayed right in front of Olive garden the whole time.

4/13/24
5:30 encouraged Kaelyn to continue to talk to her dad - to eat dinner with him and that he loves her. After visitation she said she went in and told him she wasn't going to eat with him. She said that they sat at the outside tables, didn't talk at all and he was on his phone the whole time. He also refused to help 2 older ladies. April 13th.

4/4/24 We talked about how the 2
visits went. She said she is
not having any thing to do
with him. I reinforced that
her father loves her - she stated
what he does is not love.
I told her everyone loves differently.
She was not happy with me -
will try again later in the week.

4/5/24 track meet - home later

4/6/24 We talked about the visits
and how she feels. She said
when with people in there
she doesn't feel safe. It
is too confining to her. I
asked her if there was a
better place. She said maybe
the mall but she wasn't
going to forgive him or have
anything to do with him.

4/7/24 talked about visitation tomorrow
encouraged Kaelyn to go inside and
eat - it's her favorite.

4/8/04 encouraged Kaelyn to go in and
530 eat with her dad - to communicate
with him - work on their
relationship - reinforced that her
dad loves her. After visitation
she said they didn't talk
at all - he was on his
phone the whole time and
that they sat on the benches
out side Olive Garden.

4/9/04 talked about the last visit
510 she said she stayed there
on the bench - the last
3 visits she has stayed
there - some progress
but still states she wants
nothing to do with him.

4/10/04 encouraged Kaelyn to go inside and
eat with her dad, to just get ice
cream at least, reinforced that he
loves her and for them to work on
their relationship. After visitation
she said she went inside told him she
wasn't eating then they sat at tables
outside. He was on his phone the whole time. APP. 958

4/11/24
5:15 Talked about maybe writing
her dad a letter or email.
I encouraged her to think
about it. She said no.

4/12/24
6:10 Encouraged Kaelyn again to
write or email her dad -
She said he never listens
anyway. I encouraged her to
try and that he does read them.
She said no all he does is
blame mom and won't get help.

4/13/24 track meet

4/14/24
2:00 pm Talked to Kaelyn about Having dinner
visits with her dad this week -
she was not happy. I told
her I was going to email
my attorney and see about
future dinner visits with
her dad.

Attorney Smith emailed back
that he would like to elect
his time this week on
Tuesday and Wednesday.

4/15/24 510 Encourage Kaelyn to talk to her dad and eat dinner with him. I reinforced that he loves her and wants a relationship with her. We talked about the male and changing it to there. I sent my attorney an email. Joe refused to move the dinners to the male food court.

4/11/24 530 Encourage Kaelyn to go inside and eat dinner with her dad and work on their relationship and that he loves her. After the visit I picked her up, Joseph was a no show - I texted him at 6:01 that I had dropped her off at the door to Olive garden and that we did not see his SUV or truck. and asked if he was there. I got no response from him. Kaelyn sat on the bench outside. A worker came out and checked on her and so did an older gentleman that was leaving.

4/17/24 Encouraged Kaelyn to go get ice cream
580 with her dad. I encouraged her to talk
to her dad and reinforced that her
dad loves her. When I was on my way
to pick her up from her visit with her
dad, he called me to speak to the
children on the phone. I let him know
Kyden was at home and Kaelyn was at
Culvers where he was supposed to be. I
told him he could call back in 5 minutes
and I went and got Kaelyn. Once I picked
her up she said he was on no show again
this week. She sat at the outside tables. The last
6 visits she stayed right outside the restaurants -
she did not run to other stores. I told her that
I was proud of her for staying and that we just
needed to work on her relationship with her dad.
She said no - my cousins are more important to him
then we ever were.
Her cousins are at their moms house this week.

4/18/24 Encouraged Kaelyn to email her dad and try
710 to work on their relationship. She said no.
I told her she could email him and let him
know she has track pictures tomorrow - she
said no, so he can take my pictures and
photo shop them into another fake family
picture. Someone had photo shopped
her and Kyden's school pictures into
his family photo that was given at his
wedding and she seen it on Facebook.

4/19/24 - track photos and hung out
with friends

4/20/24 Encouraged Kaelyn to email her
dad. Asked if she needed
1110 anything from me to help
her with her relationship.
She said no. I reinstated
that he loved her and she
could use my phone to call
him if she wanted.

4/21/24 reinforced that her dad loves
715 her and that I want her to
have a healthy relationship
with her dad.

4/22/24 Encouraged Kaelyn to reach out
515 to her dad and that her dad
loves her. She said no.

4/23/24 track meet - home later.

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MAY 10 2024

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

By _____

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

3
4 _____)
5 **JOSEPH D. LEFORS,**)
6 Plaintiff,)
7 vs.)
8 **KRISTA M. LEFORS,**)
9 Defendant.)
10 _____)

Motions Hearing
46DIV19-8

11
12 BEFORE: **THE HONORABLE JOHN FITZGERALD**
13 Circuit Court Judge
14 Sturgis, South Dakota
May 10, 2024 at 9:00 a.m.

15 APPEARANCES:

16
17 For the Plaintiff: Hollie L. Smith
18 Attorney at Law
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19 Rapid City, South Dakota 57709

20 For the Defendant: Kelly J. Sanderson
21 Attorney at Law
1102 Junction Avenue
22 Sturgis, South Dakota 57785
23
24
25

I N D E X

WITNESS:		PAGE NO.
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1 MS. SANDERSON: Your Honor, I would like to call Ms. Torno
2 and I'd also like to call my client, but we're running out
3 of time.

4 THE COURT: Well, we can run over and just at 10 o'clock
5 it's an estate hearing that says it's 15 minutes. So at
6 10 o'clock, I'll have to take another hearing, but I'd like
7 to get this concluded this morning, so go ahead.

8 MS. SANDERSON: I agree. Your Honor, I'd call Ms. Melanie
9 Torno.

10 **MELANIE TORN0,**

11 called as a witness, being first duly sworn, testified as
12 follows:

13 **DIRECT EXAMINATION**

14 BY MS. SANDERSON:

15 **Q** Please state your name, your true and correct name for the
16 record.

17 **A** Melanie Torno.

18 **Q** And, Ms. Torno, have you appeared in front of this Court
19 before?

20 **A** Yes, I have.

21 MS. SANDERSON: Your Honor, I would ask that the Court take
22 judicial notice that Ms. Torno has previously been
23 qualified as an expert.

24 THE COURT: Any objection, Ms. Smith?

25 MS. SMITH: No.

1 THE COURT: Will do.

2 Q (BY MS. SANDERSON) Are you currently providing counseling
3 services for Kaelyn Lefors?

4 A Yes.

5 Q How often are you seeing her?

6 A Since the last court hearing, it was requested that I see
7 Kaelyn, and I requested to wait until there were several
8 visits that had occurred, and then since that time I have
9 seen her once.

10 Q Okay. In your last session with Kaelyn, when did that
11 occur?

12 A Last week.

13 Q Okay. And in that session, what method did you use with
14 her?

15 A Just a normal talk therapy. We used some interventions of
16 thought challenging, attempts to thought replacements, and
17 just walking through her thoughts and feelings of various
18 things.

19 Q Okay. And what was your focus of the last session?

20 A The focus of the last session was regarding the dinners and
21 the parenting time with her dad and as well as she's now
22 doing them without the older brother.

23 Q Okay. How would you describe Kaelyn?

24 A A very serious person, stubborn, determined. She's very
25 focussed on certain things that she would like. She's a

1 very intelligent young girl.

2 Q Okay. Do you feel that Kaelyn would be easily swayed by
3 someone else?

4 A No.

5 Q Okay. Do you feel that she's comfortable with you?

6 A Yes.

7 Q Do you feel that she's being coached by anyone?

8 A In my observation, no.

9 Q Have you witnessed anything to suggest that mother is
10 currently trying to alienate father?

11 A I have not.

12 Q And have you witnessed anything that suggests that mother
13 is trying to encourage the relationship?

14 A So on the last session, I did have a check-in to just get
15 an update of how things were going, if there's anything
16 that was new. I always have those conversations in front
17 of -- with the child present, that way everything is out in
18 the open and it's not anything that's hidden and it's more
19 of an interactive conversation that allows for just some
20 updates; visits are occurring, visits aren't occurring,
21 just if there's anything that's different that needs to be
22 discussed, and then the child is then individually -- we
23 discuss those items individually with the child; not with
24 the parents, just with the child.

25 Q And has Kaelyn discussed her feelings about her father with

1 you?

2 **A** Yes.

3 **Q** What are they currently?

4 **A** They've been the same as they've been for the last five
5 years, and she's adamant that she does not want to have a
6 relationship.

7 **Q** And how strongly does she make this opinion?

8 **A** At the last session, she has informed me that if she has to
9 go to visits twice a week or however many times for the
10 next three years, then she'll continue to do that and say
11 nothing.

12 **Q** Has she expressed any positive feelings towards these
13 visits with her father?

14 **A** No.

15 **Q** Do you believe that there is anything that mother can be
16 doing differently to encourage this relationship?

17 **A** I don't think it has anything to do with the mother. I
18 think it has to do with the relationship between the father
19 and the child, and the child's expectation of dad taking
20 accountability of the relationship and repairing the things
21 within that relationship.

22 **Q** Okay. Has Kaelyn expressed that she feels forced to have
23 these visits?

24 **A** Yes.

25 **Q** Okay. Do you feel that that's helpful for her?

1 **A** I don't think it's helpful for the relationship.

2 **Q** Okay. Has Kaelyn expressed to you that she's upset with
3 dad about her aunt being at events with him?

4 **A** That has been discussed maybe once or twice out of all of
5 the sessions I have had with her, but that is not the
6 primary focus.

7 **Q** Okay. Do you believe that these visits as currently
8 ordered are detrimental to their relationship?

9 **A** I've said this in this court before, I'm a firm believer
10 that children need to have relationships with both sets of
11 parents, or both parents, but the current state of this
12 relationship is making it very difficult.

13 **Q** What parenting time arrangement do you believe is in
14 Kaelyn's best interest?

15 **A** I'm not sure if I -- if that would be a good question for
16 me to ask or not. I'm -- as the child's therapist, not as
17 a custody evaluator in this case.

18 **Q** Okay. And in your opinion, is there anything that you want
19 to suggest that be done to help improve Kaelyn's
20 relationship with her father?

21 **A** So what I believe that needs to happen is that the core
22 issues -- the issues that are unresolved, they occurred
23 when she was really young -- seven, eight years old --
24 those are still unresolved. That is what is impacting this
25 relationship, and Kaelyn feels like her dad has not done

1 anything to change anything about those situations or to
2 take accountability for that and that is the number one
3 thing that is impacting the relationship.

4 MS. SANDERSON: Okay. Thank you. I have no further
5 questions.

6 THE COURT: Ms. Smith.

7 MS. SMITH: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MS. SMITH:

10 Q Ms. Torno, your opinions in this case have been vastly
11 different than what Dr. Perrenoud had found back several
12 years ago, correct?

13 A That's correct.

14 Q And he had believed that the kids were subject to severe
15 alienation. Do you recall that?

16 A Yep.

17 Q And he actually was one who met with both parents and the
18 children?

19 A At that time.

20 Q And that was back in 2021?

21 A I'm not sure.

22 Q Have you reviewed any court filings in preparation of
23 today's hearing?

24 A I have not.

25 Q Okay. So you didn't review Ms. Lefors' affidavit?

1 **A** So I was -- I received it, and as Mr. Lefors was
2 testifying, I briefly glanced at it.

3 **Q** You're not aware of the fact that mother was trying to
4 change Kaelyn's last name?

5 **A** So I was aware that Kaelyn wanted the name change, that was
6 what was reported to me and that was what -- that is what
7 was discussed at the last counseling session.

8 **Q** And then mother had accepted and wanted to do what Kaelyn
9 wanted to do?

10 **A** What had been discussed with me is that -- what I was
11 informed is that the older brother is almost 18 years old
12 and is choosing to then change his name legally. He was
13 not present during this session, so I'm hearing this from
14 secondhand knowledge, and that Kaelyn was thinking about
15 her track -- she set a school goal that -- or sorry, a
16 school record that she was very proud of and that she was
17 looking at this as college opportunities for scholarships
18 and thinking about when she is 18 she would like to change
19 her name and to be able to have the name reflected in her
20 high school.

21 **Q** In your sessions did you attempt to change her opinion as
22 to --

23 **A** So that's not my job. My job is to help her to process
24 what she's feeling and to understand why, and then question
25 is that a good choice for her or is that not a good choice

1 and what are the consequences either way.

2 Q Right. And because that -- part of that responsibility to
3 influence and not necessarily change feelings, but that's
4 part of the parent's job, right, to influence and guide
5 their kids in the right way?

6 A So generally speaking, yes, parents should guide their
7 children. But my role in this is not to work with the
8 parents. My role in this case is just the child's
9 therapist.

10 Q And at the last hearing, you did not make any
11 recommendations as to parenting time moving forward?

12 A I did not because I -- as I've said from the very first
13 time I've ever testified in this case over many years, they
14 need to -- the core issues need to be addressed, that is
15 the only way that this relationship is going to be
16 repaired.

17 Q Your sessions with Kaelyn are how long?

18 A They are between 53 minutes to 60 minutes.

19 Q And typically in your sessions, you don't start off right
20 out of the gate with some of the harder discussions, right,
21 you get the flow going?

22 A It depends. Sometimes Kaelyn is ready to come in and wants
23 to talk about them right away. Sometimes it's how's
24 school, how's track, those types of things. But Kaelyn is
25 a very serious child and she does -- and she's pretty

1 direct, so if there's something that is bothering her, she
2 usually is pretty quick to get to it.

3 MS. SMITH: Nothing else, Your Honor.

4 THE COURT: Do you have any redirect?

5 MS. SANDERSON: Just one question, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. SANDERSON:

8 Q Did you ever observe mother encouraging this name change?

9 A I did not.

10 MS. SANDERSON: Okay. No further questions.

11 THE COURT: Anything further, Ms. Smith?

12 MS. SMITH: No.

13 THE COURT: Okay. The witness can step down. We probably
14 should take about a ten-minute recess for this other case.
15 It may not take that long, but we've been going for an
16 hour, then we'll come back.

17 MS. SMITH: Your Honor, I do have to be back in Rapid
18 fairly soon. I'm not sure if the Court needs to hear from
19 Ms. Lefors.

20 THE COURT: Well, I don't want to stop -- you can step
21 down. I don't want to prohibit Ms. Lefors from testifying,
22 but I realize we had only an hour. I definitely wanted to
23 judge the credibility and the demeanor of Mr. Lefors and
24 I've had that opportunity. That was important to me.

25 But let's take a short recess. Sometimes these estate

1 **A** It did not.

2 **Q** So to your understanding there's no reason why he shouldn't
3 have received these text messages?

4 **A** Correct.

5 MS. SANDERSON: Your Honor, I'd move to admit both 1 and 2.

6 THE COURT: Any objection?

7 MS. SMITH: No objection.

8 THE COURT: Received.

9 **Q** (BY MS. SANDERSON) What did you observe about Kaelyn
10 following dad not showing up at these visits?

11 **A** When I picked her up, she just kind of got in the car. She
12 let me know that he wasn't there, and then she was pretty
13 silent on the way back.

14 **Q** Okay. Do you think that this negatively impacted their
15 relationship further?

16 **A** She did not state. I think it could, but I think there's a
17 lot more to it than this incident.

18 **Q** Have you ever reached out to Joe regarding additional
19 visits with Kaelyn?

20 **A** I did. I texted him on Sunday asking if he wanted her
21 Monday and Wednesday of this week, and I did not get a
22 response back.

23 **Q** Okay. So since this order has gone into place, when you
24 are transporting Kaelyn, what do you typically talk about
25 in the car on the way to visits?

1 **A** We talk about where we're going. I tell her that she needs
2 to talk to her dad. Culver's, she really likes the ice
3 cream, so I tell her even if she's not going to eat to get
4 an ice cream with him. You know, to listen to what he's
5 got to say, that she needs to tell him how she feels. You
6 know, they can't fix it without, you know, him knowing.
7 Sometimes she'll listen to me. Sometimes she'll just turn
8 her head and look out the window, but -- and then like
9 Olive Garden, we'll talk about her favorite food, you know,
10 like you can tell him or if you want me to, I can text him,
11 you know, and -- but...

12 **Q** Okay. Do you feel that there is anything that you can be
13 doing more than what you're currently doing to encourage
14 the relationship?

15 **A** No.

16 **Q** Okay. We've heard testimony earlier about being at that
17 booster meeting. Did you purposely try to keep Kaelyn away
18 from dad?

19 **A** I did not.

20 **Q** Okay. Did you request that that other child go and get
21 Kaelyn's food?

22 **A** I did not.

23 **Q** Okay. And then what's marked as Exhibit 3 up there was
24 also attached to your affidavit. Is this a journal that
25 you have kept?

1 **A** It is.

2 **Q** Okay. And so do you just jot down notes every time that
3 you make an attempt to encourage the relationship?

4 **A** Yep. After she would walk away, I would write it down so
5 she didn't see what I was doing.

6 **Q** Why did you not give this to counsel before today, or
7 before the affidavit? Were you supposed to?

8 **A** Not that I'm aware of.

9 **Q** Okay. Did you purposely keep this journal away from dad?

10 **A** No.

11 **Q** Okay. And if you would have known, would you have provided
12 it weekly?

13 **A** Yes.

14 **Q** Okay. And going forward, if the Court requires that of
15 you, will you comply?

16 **A** Yes.

17 **Q** Okay. So let's go through what this court order requires
18 of you. The first provision of this requires that dad have
19 those visits for one hour twice a week. Have you
20 transported Kaelyn to every visit?

21 **A** Yes.

22 **Q** Okay. And have you retrieved her from every visit?

23 **A** Yes.

24 **Q** The next provision requires that she attend dinner and that
25 you encourage that. Do you feel that you have encouraged?

1 **A** Yes.

2 **Q** When you talk about past happy memories, what's your
3 purpose of bringing in those happy memories?

4 **A** For her to remember and not be so hateful about it.

5 **Q** Okay. And when you talk about those happy memories, does
6 it ever get through to her that she could be happy again in
7 the future with dad?

8 **A** No.

9 **Q** And then as far as when you go to drop her off, have there
10 been times where you have seen her walk away from dad
11 immediately?

12 **A** I have not seen her walk away from dad.

13 **Q** Okay. And if you would have seen that, what would you have
14 done?

15 **A** I would have drove away.

16 **Q** And is that because of the court order?

17 **A** Yes.

18 **Q** Do you feel that you had the ability to stop and have any
19 interactions with her during his hour?

20 **A** No.

21 **Q** And so let's talk about the other attempts that you have
22 made to encourage the relationship. Have you worked with
23 Ms. Torno to come up with ideas to help better this
24 relationship?

25 **A** Yes.

1 Q And have you implemented them?

2 A Yes.

3 Q And have they been successful?

4 A No.

5 Q Okay. Do you feel that there's anything else that you can
6 do to convince your daughter that she should have this
7 relationship?

8 A I don't.

9 Q Okay. Do you feel that you fully cooperated with the
10 Court's order?

11 A I do.

12 Q Okay. And then do you -- as far as the last name goes,
13 let's talk about that a little bit. Did you tell Kaelyn
14 that she could change her name?

15 A No.

16 Q Okay. Do you currently use Lefors for all of your name?

17 A I do.

18 Q Okay. Did you ever tell her track coach that you were the
19 one that wanted the name changed?

20 A No.

21 Q How did the name change come about?

22 A Kaelyn asked the coach about it who then had her go to the
23 athletic director about it. He told her he would look into
24 it. The following day, I assume the athletic director
25 talked to the coach, but the coach went up to Kaelyn and

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF MEADE) SS. CERTIFICATE

3
4 I, TAMMY STOLLE, RPR, an Official Court Reporter and
5 Notary Public in the State of South Dakota, Fourth Judicial
6 Circuit, do hereby certify that I reported in machine
7 shorthand the proceedings in the above-entitled matter and
8 that pages 1 through 69, are a true and correct copy, to
9 the best of my ability, of my stenotype notes of said
10 proceedings had before the HONORABLE JOHN FITZGERALD,
11 Circuit Court Judge.

12 Dated at Sturgis, South Dakota, this 23rd day of May,
13 2024.

14
15
16
17
18 /s/Tammy Stolle
19 TAMMY STOLLE, RPR
20 Registered Professional Reporter
21 My Commission Expires: 2/2/28
22
23
24
25

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

APPEAL NO. 30766

JOSEPH D. LEFORS,

Plaintiff and Appellee

vs.

KRISTA M. LEFORS,

Defendant and Appellant

Appeal from the

Fourth Judicial Circuit

Meade County, South Dakota

The Honorable John Fitzgerald, Circuit Court Judge

APPELLEE'S BRIEF

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PRELIMINARY STATEMENT

References to the settled record will be cited as "SR" followed by a page number and, where relevant, a particular line, paragraph, or finding. References to Findings of Fact will be cited as "FF", and references to Conclusions of Law will be cited as "CL". References to documents in the Appendix will be cited as "App" followed by a page number. The Trial Court's June 17, 2024 order which is the subject of this appeal will be referred to as the "Order". References to the transcript will be cited as "TT" following by the page number. Plaintiff/Appellee will be referred to as "Father" or "Joseph", and Defendant/Appellant will be referred to as "Mother" or "Krista".

JURISDICTIONAL STATEMENT

Krista appeals the Honorable John Fitzgerald's Order signed on June 17, 2024. Notice of Entry was filed on June 18, 2024. Krista served the Notice of Appeal on July 22, 2024. The Order executed is a final order of the Circuit Court and is appealable as a matter of right, pursuant to SDCL § 15-26A-3 and SDCL § 15-26A-7.

WAIVER OF ORAL ARGUMENT

Joseph waives oral argument for purposes of this appeal.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I. Whether The Circuit Court Erred In Holding Krista In Contempt Of The Parenting Time Order Without the Requisite Motion, Affidavit, And Order To Show Cause.

The Circuit Court issued sanctions against Krista for willfully violating the custody order pursuant to SDCL § 25-4A-5.

Relevant Law:

Hiller v. Hiller, 2015 SD 58, 866 N.W.2d 910

SDCL § 25-4A-5

II. Whether The Circuit Court Erred In Finding That Krista Could Control Their 15-Year-Old Daughter's Actions During Father's Parenting Time.

The Circuit Court held that Krista as the primary parent did not encourage the child to attend parenting time despite her refusal to attend the same.

Relevant Law:

Fuestenberg v. Fuestenberg, 2004 SD 57, ¶ 8

Price v. Price, 2000 SD 64, ¶¶ 39–40

Hiller v. Hiller, 2015 SD 58, 866 N.W.2d 910

III. Whether The Circuit Court Erred In Finding That The 15-Year-Old Daughter's Refusal To Eat Dinner With Her Father Was A Willful Violation

The Circuit Court held that Krista had the ability to control and encourage parenting time between the child and Joseph and the child's refusal to attend the same was evidence of her willful violation.

Relevant Law:

SDCL § 25-4A-5

Hiller v. Hiller, 2015 SD 58, 866 N.W.2d 910

IV. Whether The Circuit Court Abused Its Discretion in Assessing Sanctions of \$500 For Parenting Time.

The Circuit Court held that Krista was sanctioned \$500 for each parenting time that was unsuccessful for a total sanction of \$2,000.

Relevant Law:

SDCL § 25-4A-5

V. Whether The Circuit Court Abused Its Discretion in Assessing Krista with \$2,000 Of Attorney's Fees.

The Circuit Court awarded Joseph \$2,000 in reasonable attorney fees for Krista's willful violation of the custody order.

Relevant Law:

SDCL § 15-17-38

Hiller v. Hiller, 2015 SD 58, 866 N.W.2d 910

STATEMENT OF THE CASE

This is the third appeal involving the parties and the first addressing the issues of custody and parenting time. Joseph initiated a divorce action in January 2019, at which time he requested joint legal and physical custody of the children. (SR 7). Over the past five years, custody, visitation, and Joseph's relationship with the children have been extensively litigated¹.

A two-day divorce trial was held in June 2020. On April 8, 2021, Judge Krull issued Findings of Fact and Conclusions of Law, awarding joint legal custody to both parties, with Krista receiving primary physical custody. (SR 813).

For purposes of this specific appeal, Joseph filed a request for sanctions against Krista for violating custody orders on November 30, 2023. (SR 3474). A hearing to address the same took place on December 21, 2023 with the circuit court issuing an Order

¹ For purposes of a concise and brief statement of the case, many of the evidentiary hearings and subsequent orders that occurred are specifically omitted from reference. As a matter of judicial notice, approximately 11 court hearings addressing custody and parenting time took place between the 2020 divorce trial and the filing of this appeal, in addition to several hearings held in 2019.

on January 4, 2024 instructing the parties to participate in renunciation counseling. (SR 3900).

A hearing took place on February 6, 2024, to address family counseling and Joseph's parenting time. The circuit court conducted in-camera interviews with both children. (App. 010-049). Judge Fitzgerald subsequently issued an order discontinuing family therapy and scheduling parenting time for Joseph. (SR 3974).

Joseph filed an affidavit on March 18, 2024, providing an update to the court as to the ongoing unsuccessful parenting time since its February 6, 2024 hearing which reiterated his request for sanctions against Krista. (SR 4069). On March 19, 2024, the circuit court again held a status hearing to address the progress of parenting time. On March 26, 2024, the circuit court held its order for sanctions against Krista in abeyance to allow her additional opportunity to encourage visitation the children to have visitation with Joseph. (SR 4076).

On April 18, 2024, Joseph filed an affidavit once again requesting sanctions against Krista for failing to encourage Kaelyn to participate in parenting time. (SR 4151). Krista filed a responsive affidavit on May 9, 2024. (SR 4170). A hearing on Joseph's request for sanctions was held on May 10, 2024, with both parties testifying, along with therapist, Melanie Torno. Following the hearing, the circuit court issued Findings of Fact, Conclusions of Law, and an Order for Sanctions, Attorney's Fees, and Parenting Time. (SR 4309). The order sanctioned Krista \$2,000 for missed parenting time and awarded Joseph \$2,000 in attorney's fees. *Id.*

STATEMENT OF THE FACTS

The parties were married on June 4, 2002, and separated on or about January 7, 2019. (SR 7). During the marriage, Krista and Joseph had two children: Kyden Michael Lefors, born July 2, 2006, and Kaelyn Mae Lefors, born May 29, 2009. *Id.* At the time of the parties' separation, Kyden and Kaelyn were approximately 12 and 9 years old, respectively.

As early as April 2019, Joseph began asserting that Krista was alienating the children and withholding visitation from him. (SR 53). Over the course of the litigation, the alienation worsened, driven in large part Krista's dislike of Joseph's romantic relationship, whom he later married along with Krista's allegations of unsubstantiated abuse. (TT 58). The last meaningful parenting time Joseph was able to exercise occurred in 2019. (SR 3474). Since that time, Krista's alienation has resulted in Joseph having no meaningful relationship with either child, despite his repeated request for court intervention for nearly five years.

In June 2021, the circuit court appointed clinical psychologist Dr. Perrenoud to conduct reunification counseling with the family. (SR 998). Dr. Perrenoud issued numerous letters to the circuit court that summarized his attempted efforts for reunification and his unequivocal finding that alienation had occurred by Krista. (App. 050 – 056). Dr. Perrenoud further recommended a change of primary custody due to the seriousness of the alienation. *Id.* The letters described Krista as hurt and vengeful, all while portraying herself as the "victim," whereas Joseph attempted to maintain relationships with both of his children. *Id.* The children and Krista disapproved of Joseph's relationship and refused to resume a relationship with him as long as it

continued. *Id.* Expert Dr. Perrenoud believed the children had been misinformed about their father, including false claims regarding his alcohol use, violence towards their mother, and being a potential threat to the children. *Id.* Although Krista appeared to comply by bringing the children to appointments, the psychologist suspected she covertly encouraged the children's alienation from their father. *Id.*

Dr. Perrenoud recommended that Krista take a firmer stance with the children to ensure they spent time with their father. *Id.* He further believed that time spent with Joseph could help the children form a more realistic and unbiased opinion of him. *Id.* It was concluded that the children's unwillingness to give their father an opportunity reflected the alienation they had experienced. *Id.* In addition to Dr. Perrenoud's opinions, therapists Tamara Ulmer, and Michael Wheaton, both had similar findings with respect to alienation and lack of effort portrayed by Krista to foster a positive relationship. (App. 057-065).

Despite Joseph's efforts to address the alienation through counseling and court intervention Krista was never sanctioned or punished for her role in diminishing the children's relationship with Joseph until the trial court's findings subject to this appeal, three years subsequent to Dr. Perrenoud's findings.

Krista repeatedly made false claims that the children were afraid of Joseph and that was the reason for the children's refusal to attend parenting time. However, the circuit court issued multiple orders finding that Joseph posed no threat or harm to his children and in fact the record more clearly aligns with efforts of the court and counselors to provide Joseph with more visitation. (SR 998; 2154).

In December 2023, the circuit court appointed therapists Melanie Torno and Michael Wheaton to facilitate parenting time and reunification. When these efforts failed, the circuit court entered an order on February 26, 2024, discontinuing family therapy and scheduling parenting time for Joseph. (SR 3974). The order required Krista to drop the children off at Olive Garden or Culver's twice a week on Tuesdays and Wednesdays from 6:00 to 7:00 p.m. for one-hour dinners with Joseph. *Id.* This arrangement followed recommendations from the therapists to begin visits in a public setting for short durations, with the intent to gradually and aggressively expand the parenting time over time. *Id.*

A review hearing was held on March 19, 2024, during which Kyden was released from any obligation to participate in parenting time with Joseph, despite not turning 18 until July 2024. However, on March 26, 2024, the circuit court held an order for sanctions against Krista in abeyance to provide her yet another opportunity to comply with the custody order and encourage parenting time to occur before executing on the Order. (SR 4076).

After the parenting time was not being encouraged with Kaelyn, Joseph requested the court to enforce its order and issue its sanctions against Krista. (SR 4151). Krista submitted a responsive affidavit on May 9, 2024, acknowledging that while she dropped Kaelyn off at the designated restaurants, Kaelyn refused to participate in parenting time. (SR 4170). Instead, Kaelyn would sit outside the restaurant, refuse to eat dinner with Joseph, or leave the area entirely. (SR 4309). It is Krista's position that she was in substantial compliance with the court's order by transporting the daughter to parenting time that she ultimately had no control over whether Kaelyn participated and that she is a "strong-willed" child. (SR 4170). Krista claimed she has no control over her daughter's

feelings. *Id.* She further alleged that it was not her responsibility to repair the relationship between Kaelyn and her father but it is somehow on Joseph to “show that he has made positive changes in his life”. *Id.* This theme remained consistent throughout Krista’s testimony since 2019 through the May 9th hearing (TT 57). She continued to portray herself as a victim while deflecting any responsibility for the daughter’s negative feelings toward her father. (SR 4170). Krista further claimed that Joseph’s persistent efforts to enforce parenting time were actually hurtful and had a detrimental impact on her own relationship with the children. *Id.*

The circuit court determined that in light of the entire record and history of the case, it was not convinced that Krista had done enough to encourage meaningful parenting time to occur. The circuit court provided Krista with ample opportunity to comply (after holding its prior Order in abeyance which included a sanction of \$500 for each parenting time that did not occur). (SR 4076). The Court further criticized Krista and considered her to be disingenuous for being critical of Joseph’s nonattendance to parenting time due to scheduling conflicts. (SR 4309). It is particularly concerning that Krista went so far as to request her fees for Joseph’s absence during parenting time, despite the clear miscommunication regarding the parenting schedule. (SR 4170).

The Court acknowledged Joseph’s frustration due to the children’s refusal to engage in visitations and concluded that his only recourse was to seek court intervention. (SR 4309). The Court found that Krista, as the primary parent, had the ability to facilitate the visitations but failed to do so to the expected degree.²

² As of the date of this appeal, as a matter of judicial notice, Krista continues to appeal the sanctions issued against her with the most recent being filed on November 22, 2024

Further, the circuit court noted that Kaelyn was capable of participating in the visitations and that Krista, given her own experience as a "daddy's girl," should have been more supportive in fostering the relationship. (SR 4309). The circuit court highlighted Krista's lack of encouragement for the children's relationship with their Father, including an incident where the daughter participated in a track meet under a different last name, which further raised concerns about Krista's direct role in discouraging the relationship. *Id.*

The circuit court carefully considered the evidence and testimony presented, and its findings regarding Krista's failure to comply with the court's orders are supported by the record. The Court determined that Krista, despite having the ability to encourage the children's relationship with Joseph, willfully failed to do so. The Court's decision to sanction Krista was based on a thorough assessment of the record and authority of SDCL § 25-4A-5. There was no abuse of discretion in its findings or in the sanctions imposed. Therefore, the trial court's decision should be affirmed.

STANDARD OF REVIEW

Matters of judicial discretion, such as an award of attorney fees or the court's remedy for contempt, are reviewed for an abuse of discretion. *Brosnan v. Brosnan*, 2013 S.D. 81, ¶ 12, 840 N.W.2d 240, 246 (attorney fees); *Sazama v. State ex rel. Muilenberg*, 2007 S.D. 17, ¶ 9, 729 N.W.2d 335, 340 (contempt). An abuse of discretion "is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary and unreasonable." *Thurman v. CUNA*

and December 20, 2024 relating to findings issued by the trial court for her failure to comply with parenting time orders. (App. 066-069).

Mut. Ins. Soc'y, 2013 S.D. 63, ¶ 11, 836 N.W.2d 611, 616. Findings of fact are reviewed for clear error and will only be overturned "when we are definitely and firmly convinced a mistake has been made." *Lakota Cmty. Homes, Inc. v. Randall*, 2004 S.D. 16, ¶ 9, 675 N.W.2d 437, 440; *Hiller v. Hiller*, 2018 S.D. 74, ¶19.

This standard of review reflects both the primacy of the court's fact-finding role and the Court's inclination to reverse only those findings that are clearly erroneous. *See McCollam v. Cahill*, 2009 S.D. 34, ¶ 6, 766 N.W.2d 171, 174. In this regard, "[t]he credibility of the witnesses, the weight to be accorded their testimony, and the weight of the evidence must be determined by the circuit court and we give due regard to the circuit court's opportunity to observe the witnesses and the evidence." *Id.* *Hiller v. Hiller*, 2018 S.D. 74, ¶ 22.

ARGUMENT

I. The Circuit Court Properly Exercised Its Authority to Issue Sanctions Against Mother Under SDCL § 25-4A-5 Without Strict Procedural Formalities.

Krista contends that reversal is warranted due to Joseph's failure to file a formal motion for contempt and personally serve an Order to Show Cause. However, such procedural requirements are not applicable under SDCL § 25-4A-5, which operates independently of the law of contempt. Joseph's affidavit specifically sought sanctions pursuant to the relevant statute, rather than a finding of contempt. (SR 4151). Unlike contempt proceedings, the statute permits the imposition of sanctions, including attorney fees, without the procedural formalities required for civil contempt. Krista's argument confuses the distinct procedural frameworks for contempt and sanctions under SDCL § 25-4A-5.

Civil contempt is designed to compel compliance with court orders for the benefit of an opposing party. The elements of contempt include the existence of an order, knowledge of that order, ability to comply, and willful disobedience. *Hiller v. Hiller*, 2015 S.D. 58, ¶ 13, 866 N.W.2d 910, 914. In contrast, SDCL § 25-4A-5 specifically allows sanctions as a means of punishing a party for willfully violating or failing to comply with custody or visitation provisions. *Id.* The sanction statute outlines several sanctions that a court may impose for noncompliance with custody or visitation decrees. These sanctions include make-up time with the child, payment of court costs and attorney fees, civil penalties, participation in counseling or education classes, posting bond, jail sentences, and modification of custody or visitation arrangements. *Id.* The statute also allows the court to impose any other appropriate sanctions based on the case's facts and circumstances. *Id.* Thus, while contempt and sanctions may overlap factually and are utilized to compel compliance with custody orders, the procedural requirements for contempt are not strictly applicable in this case.

Krista asserts that by failing to abide by the contempt service requirements, his recovery should be barred. This is further despite her ongoing notice and opportunity to participate in the litigation. Joseph filed numerous affidavits requesting sanctions be imposed which provided her adequate notice of the allegations and were all properly served through her attorney. Krista filed responses to each allegation and the most relevant being the affidavit that she filed on May 9, 2024. (SR 4170). Krista proceeded to subsequently participate in the evidentiary hearing defending the request for sanctions. Nowhere in Krista's responsive pleading did she assert the alleged insufficient filings or service upon her, or that the same somehow prejudiced her in her defense. She simply

objects to not being served a formal Order to Show Cause, albeit not a contempt proceeding. Krista's full participation in the hearing without objection and failure to plead the procedural deficiencies in her responsive pleading constituted a waiver.

Oesterling v. Oesterling, 354 N.W.2d 735 (S.D. 1984).

Krista contends that the circuit court's findings included elements akin to contempt and therefore, it proceeds that the court and parties are bound by the procedural requirements for contempt. Again, to the contrary, Joseph plead his request as a sanction under SDCL § 25-4A-5 and the circuit court cited the sanction statute directly in its findings. The circuit court's thorough findings regarding notice, opportunity and willful conduct merely solidify the court's decision. These findings do not invalidate the imposition of sanctions under SDCL § 25-4A-5 as the law provides some overlap in the burden and language necessary to establish elements of contempt, as well as sanctions.

In conclusion, the circuit court's authority to impose sanctions under SDCL § 25-4A-5 is not contingent on the procedural requirements of contempt. Krista's arguments regarding procedural deficiencies lack merit, as she was provided notice, an opportunity to respond and defend the allegations made against her. The sanctions imposed by the trial court were appropriate with the record before it and were not an abuse of discretion.

II. The Circuit Court Properly Found Mother's Actions to Be Willful and That She Retained the Ability to Enforce Parenting Time.

Krista argues that the circuit court abused its discretion by disregarding the minor child's expressed preference to not attend parenting time with her father. She asserts that the circuit court's order fails to explicitly address the child's preference or identify facts outweighing it, thus warranting reversal. However, this argument is not logical and

ignores the absolute discretion given to trial courts in enforcing custody orders and matters that involving visitation.

As the trier of fact, the circuit court interviewed the children, observed witnesses, and was in the best position to determine the relevance and weight of the child's preference. *Olson v. Olson*, 438 N.W.2d 544, 547 (S.D. 1989).

The court's decision is supported by a comprehensive record spanning five years of custody litigation, involving multiple counselors, psychologists, and numerous evidentiary hearings. The majority of the proceedings were initiated by Joseph in an effort to address the harm caused by Krista's alienation and to attempt to rebuild a meaningful relationship with his children. These hearings addressed reunification therapy, counseling, phone calls and Krista's ongoing interference with Joseph's parenting time. When the court issued its sanctions order on June 17, 2024, it had carefully considered the substantial record before it.

Contrary to Krista's assertion, the law does not require the circuit court to defer to an adolescent's preference in parenting time matters. While a court may consider a child's preference if the child is of sufficient age to form an intelligent preference, it is not bound to prioritize that preference over the child's best interests. *Hathaway v. Bergheim*, 2002 SD 78, ¶ 30; *Fuestenberg v. Fuestenberg*, 2004 SD 57, ¶ 8. In cases like this, where the record demonstrates a history of alienation and a lack of good faith effort to encourage parenting time, a child's expressed preference cannot be afforded significant weight³. The best-interest standard remains paramount. Even at age 15, a child may not

³ Krista contends that the circuit court disregarded the testimony of counselor Melanie Torno. However, trial courts are afforded broad discretion to accept or reject expert testimony in custody determinations. This discretion is grounded in the principle that trial

always understand what is in their best interest. *Price v. Price*, 2000 SD 64, ¶¶ 39–40.

While there are practical difficulties in compelling a teenager to comply with a parenting plan, Krista was still obligated to make reasonable, good-faith efforts to ensure compliance and the circuit court did not believe she was doing enough to satisfy her parental obligations given the entirety of the record.

Courts have consistently held that a parent is not a “powerless bystander” in the decisions and actions of a child. Instead, the parent has an obligation to take affirmative steps to encourage compliance with visitation orders and parents have an obligation to attempt to overcome the child’s resistance to visitation. *Dean v. Cook*, 2017 COA 51, ¶ 22, 413 P.3d 246, 251; *In re Marriage of Marez*, 2014 MT 333, ¶ 28, 340 P.3d 520, 527 (Mont. 2014) (quoting *In re Marriage of Rideout*, 150 Wn.2d 337, 77 P.3d 1174, 1182 (Wash. 2003)). Krista’s efforts fell short of these obligations. The record reflects a consistent pattern of alienation and a failure to encourage parenting time with Joseph.

The circuit court’s Findings of Fact and Conclusions of Law establish that Krista, as the primary parent, who had spent 100% of the time with the children could comply with the custody order and encourage parenting time with the father. Specifically, the circuit court found:

7. The Court having considered the credibility of the witnesses at the evidentiary hearing and in light of the history of this case, the Court finds that Mother certainly has the ability to comply with the Order and has not made efforts sufficient enough to encourage parenting time to occur. The Court determines that in light of the testimony, affidavits and facts presented in this case, Mother has not encouraged the relationship and

courts are in the best position to assess the credibility and weight of testimony, including that of expert witnesses. Moreover, findings of fact will not be set aside unless they are clearly erroneous, with due regard given to the trial court’s ability to evaluate the credibility of witnesses. *Crouse v. Crouse*, 1996 SD 95, ¶ 6.

visitations to the degree expected of her as a parent. The Court finds that her conduct constitutes a willful failure to comply with the Order.

8. The Mother has the opportunity to comply with the Order and encourage these visitations as she is the primary parent and the child lives with her primarily all of the time.

9. The youngest daughter is a very bright and intelligent young lady. If the Court were to believe that Mother has done what is expected of her as parent in this situation, then the Court could not also believe that she would not be able to discourage her daughter from getting involved in the temptations that exist in life and I think that Mother has done that.

11. Mother is fully capable of encouraging the children to meet with their Father and she has failed to do it to the degree required by law. The Court recalls that Mother testified to being a daddy's girl, and so Mother is very well equipped to encourage a relationship of some sort with Father and the daughter, and she has not done that.

(SR 4309).

The circuit court further noted that Krista's argument that she lacked control over her daughter, Kaelyn, was contradicted by the evidence. Kaelyn is a high-achieving, straight-A student with no behavioral issues. The court explicitly found that Krista had the ability to discourage negative influences in Kaelyn's life and could, similarly, encourage parenting time with Joseph if she chose to do so. (SR 4309).

Despite this, Krista has maintained that her obligations under the custody order were limited to transporting Kaelyn to and from parenting time, without regard to whether Kaelyn participates in the visits. The circuit court repeatedly found Krista's testimony regarding her efforts to encourage parenting time to be not credible and even noted them to be "disingenuous". (TT 61). The sanctions were not imposed because Krista was "unable" to control Kaelyn, as she asserts. Rather, they were a direct response to her refusal to fulfill her legal and parental obligation to encourage a relationship between Kaelyn and her father. Despite Krista's claims of "substantial compliance" with

the custody orders, the circuit court found ample evidence of her willful noncompliance. Her failure to meaningfully encourage parenting time justified the court's imposition of sanctions.

III. The Circuit Court Acted Within Its Discretion in Sanctioning Mother \$500 for Each Unsuccessful Parenting Time.

Krista contends that the circuit court abused its discretion by failing to consider the child's best interest when imposing the sanctions and without further explanation for the reasonableness of the \$500 amount. However, the court acted well within its statutory authority under SDCL § 25-4A-5, which provides broad discretion to impose "any other sanction appropriate to the facts and circumstances of the case."

The sanctions were designed to encourage a parent like Krista to comply with court-ordered parenting time. The \$500 sanction visitation was reasonable, especially considering the court's authority to impose harsher sanctions including civil fines of up to \$1,000 for similar violations and jail time. *Id.*

Krista's argument that the court failed to assess the reasonableness of the amount is unpersuasive. As with the award of attorneys' fees under SDCL § 25-4A-5, the statute does not require the circuit court to evaluate a party's financial condition, such as relative worth, income, or liquidity, when imposing sanctions against a parent. The focus instead is on the appropriateness of the sanction in light of the specific circumstances of the case.

The circuit court noted that the court ordered visitation was a simple and straightforward task—a one-hour meal where the daughter could engage in conversation with her father. (TT 66). Krista's refusal to facilitate even this minimal interaction was central to the court's decision to impose sanctions.

The circuit court's \$500 per missed visitation sanction was reasonable, supported by the record, and well within its discretion under SDCL § 25-4A-5. The court appropriately considered the best interest of the child and tailored its sanctions to encourage compliance while addressing Krista's repeated noncompliance. In light of Joseph's years of missed parenting time, the \$2,000 sanction was within the circuit court's discretion and, from Joseph's perspective, a modest remedy compared to the significant loss of his relationship with his children.

IV. The Circuit Court Properly Awarded Attorneys' Fees to Father for Mother's Willful Violations.

Krista also challenges the circuit court's award of attorneys' fees, arguing that it lacked proper justification. However, SDCL § 25-4A-5 explicitly authorizes trial courts to impose sanctions, including attorneys' fees, for willful violations or noncompliance with custody or visitation orders.

Unlike general statutes such as SDCL § 15-17-38, which require a two-step analysis for awarding attorneys' fees, SDCL § 25-4A-5 operates independently and imposes no such procedural requirement. Further, the trial court is not required to analyze the parties relative net worth or financial situation.

This case is widely similar to *Hiller*, where the record supported the decision to exercise its discretion and sanction the former husband \$4,082 for his failure to comply with the terms of the visitation order because the court was not required to engage in a standard, multi-factored assessment relating to the necessity of an award since it awarded attorney fees as a specific sanction to punish the husband for his willful noncompliance with a visitation order. *Hiller v. Hiller*, 2018 SD 74, 919 N.W.2d 548, 2018 S.D. LEXIS

128 (S.D. 2018). Further provided in *Hiller* on the issue of attorney's fees further supports the circuit court's authority in this case:

The text of SDCL § 25-4A-5 allows the sanction of attorney fees for the express purpose of "punish[ing] the offender[.]" Therefore, a circuit court's findings relating to necessity are sufficient so long as they adequately support the determination that the offending "party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree[.]" See *id.* Even though this discrete statutory authority to sanction or punish a party is, strictly speaking, unconnected to the law of contempt, the elements of civil contempt feature overlapping factual considerations. Here, for instance, the circuit court's contempt finding that James willfully "failed to comply" with the court's visitation order necessarily satisfies SDCL § 25-4A-5's statutory requirement of willful violation or noncompliance with the provisions of a visitation order.

Nevertheless, James asserts the attorney fees award is infirm because the circuit court "did not give any analysis or give the required consideration to the financial information of each party." However, given the specific purpose underlying the statutory authority of SDCL § 25-4A-5, an inquiry into a party's relative worth, income, or liquidity is not required or relevant to this analysis. This approach is consistent with other cases in which we have upheld an award of attorney fees as a sanction imposed pursuant to statutes or rules. See, e.g., *Coloni v. Coloni*, 2017 S.D. 66, ¶ 10, 903 N.W.2d 745, 748 (affirming attorney fees award pursuant to SDCL § 15-6-37(a)(4)(A) where circuit court's findings "sufficiently justified the imposed sanctions"); *Hobart v. Ferebee*, 2009 S.D. 101, ¶ 28, 776 N.W.2d 67, 75 (affirming attorney fees award for frivolous or malicious filing under SDCL § 15-17-51 where circuit court's findings detailed conduct of party who persisted in advancing legal arguments that had been previously rejected).

Of course, an attorney fees award under SDCL § 25-4A-5(2) must still be reasonable. In addition to our precedent that requires this determination, the text of SDCL § 25-4A-5(2) limits an attorney fees award to "reasonable attorney's fees incurred as a result of the noncompliance[.]" Here, the court was keenly aware of the complex and contentious nature of this case. It considered the "significant management of the communications[.]" the "deep history of the dispute[.]" the necessity for an ongoing review of the relationship, the "litigious nature of the parties". *Hiller v. Hiller*, 2018 S.D. 74, ¶¶ 28-30, 919 N.W.2d 548, 556.

The circuit court's findings in this case support its decision to award attorneys' fees and are analogous to *Hiller*. The record reflects over five years of contentious litigation driven largely by Krista's continued refusal to comply and foster a positive relationship. In light of the protracted litigation and the substantial effort required to enforce Joseph's limited parenting time, the attorneys' fees award was reasonable and directly attributable to Krista's willful violations.

CONCLUSION

Joseph respectfully requests that the Court affirm the Findings of Fact and Conclusions of Law and Order For Sanctions, Attorneys Fees and Parenting Time dated June 17, 2024.

Dated this 2nd day of January, 2025.

CLAYBORNE, LOOS & SABERS, LLP

/s/ Hollie L. Smith

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of January, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey E-Filing System, and further certifies that the foregoing document was also mailed via U.S. Mail, postage prepaid thereon, to:

KELLY J. SANDERSON
Sanderson Law
1102 Junction Avenue
Sturgis, SD 57785

The undersigned further certifies that the original copy of the Appellee's Brief in the above-entitled action was mailed to Ms. Shirley A. Jameson-Fergel, Clerk of the Supreme Court, State Capitol, 500 East Capitol, Pierre, SD 57501, by United States mail, first class, postage thereon prepaid, on the date written above.

/s/ Hollie L. Smith

HOLLIE L. SMITH

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL § 15-26A-66(b)(4), Hollie L. Smith, counsel for the Appellee, does hereby submit the following:

The foregoing brief is 20 total pages in length. It is typed in proportionally spaced typeface in Times New Roman 12 point. The word processor used to prepare this brief indicates that there are a total of 5,932 words, and 31,383 characters (no spaces) in the body of the Brief.

/s/ Hollie L. Smith

HOLLIE L. SMITH

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1 STATE OF SOUTH DAKOTA)
2 COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

3
4 _____)
5 **JOSEPH D. LEFORS,**)
6 Plaintiff,)
7 vs.)
8 **KRISTA M. LEFORS,**)
9 Defendant.)
10 _____)

In Camera Proceedings With
Both Children

46DIV19-8

11
12 BEFORE: **THE HONORABLE JOHN FITZGERALD**
13 Circuit Court Judge
14 Sturgis, South Dakota
15 February 6, 2024 at 9:00 a.m.

16 (These proceedings were audio recorded.)
17
18
19
20
21
22
23
24
25

(WHEREUPON, the following proceedings were audio recorded via computer in chambers with the Court, Court Reporter, and Kyden LeFors and Kaelyn LeFors, present:)

THE COURT: My name is John Fitzgerald and I'm a circuit court judge, but before I was a judge, I was the state's attorney in Deadwood where I served up there for a number of years, that's what I did. I've got three grown children and then I have six grandchildren. Tammy is a court reporter and my assistant and apparently she's met with you guys once before.

COURT REPORTER: Yep.

THE COURT: And I kind of know your mom and dad just from court, but I've just heard about you guys, but I've never met you. So let me see, Kyden, is that how it's pronounced?

KYDEN: Kyden.

THE COURT: Kyden, okay. Spell it, Kyden.

KYDEN: K-Y-D-E-N.

THE COURT: Kyden. What's your middle initial, Kyden?

KYDEN: Michael.

THE COURT: Michael. And when are you going to turn 18?

KYDEN: July 2nd.

THE COURT: Oh, wow. Pretty soon. And your name?

KAELYN: Kaelyn.

THE COURT: Kaelyn?

1 KAELYN: Yep.

2 THE COURT: Kaelyn, what's your middle name?

3 KAELYN: Mae.

4 THE COURT: Mae?

5 KAELYN: Starts with an M.

6 THE COURT: And when's your birthday?

7 KAELYN: May 29, 2009.

8 THE COURT: Oh, it's coming up?

9 KAELYN: Yeah.

10 THE COURT: May's my favorite month.

11 KAELYN: Same.

12 THE COURT: Is it?

13 KAELYN: Yeah.

14 THE COURT: Is it because your birthday is then or just --

15 KAELYN: Yeah.

16 THE COURT REPORTER: Well, and her made middle name is Mae

17 too.

18 KAELYN: Um-huh.

19 THE COURT: Oh, yeah, that's right.

20 KAELYN: Um-huh.

21 THE COURT: Is that a coincidence or is that --

22 KAELYN: Well, I don't actually know, but my mom has a

23 middle name Mae and I think my grandma does too so...

24 THE COURT: Is Mae?

25 KAELYN: Yeah.

1 THE COURT: Oh, that's pretty cool.

2 KAELYN: Yeah.

3 THE COURT: So, Kyden, what grade in school are you in?

4 KYDEN: 12th grade.

5 THE COURT: What -- where do you go to school?

6 KYDEN: Douglas High School.

7 THE COURT: Which one?

8 KYDEN: Douglas High School.

9 THE COURT: Oh, Douglas. I know where that's at. It's up

10 on the base, isn't it, or close to the base?

11 KAELYN: It's close to the base, yeah.

12 THE COURT: How about you, Kaelyn?

13 KAELYN: I go to the same school, but I'm a freshman.

14 THE COURT: Oh. And, Kyden, what do you want to do for a

15 living when you get out of school?

16 KYDEN: Probably work stocking shelves and...

17 THE COURT: Okay. Do you have a job now?

18 KYDEN: Yeah.

19 THE COURT: Where at?

20 KYDEN: At Timmons.

21 THE COURT: What is Timmons?

22 KYDEN: The grocery store that's there.

23 THE COURT: Grocery store that's in where?

24 KYDEN: In Box Elder.

25 THE COURT: In Box Elder. Okay, that's what I thought.

1 Kaelyn, how about you, do you work?
2 KAELYN: No.
3 THE COURT: Okay. What do you want to do when you get
4 older?
5 KAELYN: I don't know. I probably want to be a
6 veterinarian.
7 THE COURT: A veterinarian?
8 KAELYN: Yeah.
9 THE COURT: Well, Tammy, tell them about your husband.
10 THE COURT REPORTER: My husband is a veterinarian.
11 THE COURT: Did you know that?
12 KAELYN: No.
13 THE COURT: Big animals, small animals, or all animals?
14 KAELYN: All of them.
15 THE COURT REPORTER: Good.
16 THE COURT: All of them?
17 KAELYN: Um-huh.
18 THE COURT: Do you see that big animal?
19 KAELYN: Yeah.
20 THE COURT REPORTER: The judge has buffalo.
21 THE COURT: Yeah, that's mine.
22 KAELYN: Oh.
23 THE COURT: I just took that last winter.
24 KAELYN: Oh.
25 THE COURT REPORTER: They're big.

1 THE COURT: That's a bull. I don't know how veterinarians
2 work on animals that big, but I guess they do.
3 THE COURT REPORTER: They do. They're big and scary.
4 THE COURT: So you must love animals?
5 KAELYN: Yeah.
6 THE COURT: Okay. Reminds me of my granddaughter Penny.
7 She loves animals. She has two rabbits.
8 KAELYN: So do I.
9 THE COURT REPORTER: You have two rabbits?
10 THE COURT: You have rabbits? You're kidding.
11 KAELYN: No, I do.
12 THE COURT REPORTER: Cool.
13 THE COURT: Wow. Well, Penny would love that.
14 THE COURT REPORTER: What are your rabbits' names?
15 KAELYN: Hops and Baby.
16 THE COURT: Boys or girls, or do you know?
17 KAELYN: Boy and a girl.
18 THE COURT: Boy and a girl. Where do you guys live at?
19 KAELYN: Antelope ridge.
20 THE COURT: Where?
21 KYDEN: Antelope Ridge.
22 KAELYN: It's Antelope Ridge.
23 THE COURT: Okay. Where's that at?
24 KAELYN: Down Tower Road.
25 THE COURT: Out by the base?

1 KYDEN: Yeah, it's right next to the base. It used to
2 be --

3 KAELYN: It used to be on the base.

4 KYDEN: It used to be part of the base.

5 THE COURT REPORTER: It's old base housing that they turned
6 into --

7 KAELYN: Yeah.

8 THE COURT: Oh, I've probably seen it.

9 KAELYN: Yeah, you probably have.

10 THE COURT: Is it pretty -- I mean, is it a big
11 development, like a lot of houses or just a few?

12 KAELYN: Yeah.

13 THE COURT: Oh, it is?

14 KYDEN: It's got quite a few.

15 THE COURT REPORTER: Like apartments or houses?

16 KAELYN: Houses.

17 THE COURT: So, Kyden, how long have you lived there?

18 KYDEN: I would say since maybe, I believe, 2021.

19 THE COURT: Oh, a couple years?

20 KAELYN: Yeah, I don't even know how many years, but it's
21 been a lot.

22 THE COURT: But before that didn't you live on the base or
23 close to the base?

24 KAELYN: Yeah, we lived on base.

25 THE COURT: So how long have you lived in and around, we'll

1 say the base?

2 KYDEN: I believe like almost like --

3 KAELYN: Ten years.

4 KYDEN: I think like even maybe 13 years.

5 THE COURT: Okay. Most of your lives?

6 KAELYN: Yeah.

7 KYDEN: Um-huh.

8 THE COURT: Kaelyn, where were you born?

9 KAELYN: Idaho.

10 THE COURT: Whoa! How about you, Kyden?

11 KYDEN: Yeah, Idaho.

12 THE COURT: Same place, Idaho?

13 KAELYN: Um-huh.

14 KYDEN: Um-huh.

15 THE COURT: Was your dad on a base or something, or why

16 were you guys in Idaho?

17 KAELYN: I'm pretty sure he was in the military.

18 THE COURT: In the military?

19 KAELYN: And then we got moved here when I was one.

20 THE COURT: So that's probably why you're in Idaho?

21 KAELYN: Um-huh.

22 THE COURT REPORTER: Yeah, do you know the name of that

23 base? Isn't it a different kind of name?

24 KAELYN: I don't know.

25 THE COURT: Was your dad in the Air Force?

1 KAELYN: Yeah.

2 THE COURT: Okay. Are you close enough at Antelope Ridge
3 to hear those big old jets taking off and landing?

4 KAELYN: Sometimes.

5 THE COURT: Sometimes?

6 KAELYN: Yeah.

7 KYDEN: I heard the one crashing.

8 KAELYN: Oh, yeah, we heard the --

9 THE COURT: Oh, I heard about that on the news.

10 KYDEN: I could hear what sounded like bomb shells going
11 off.

12 THE COURT: Yeah, that was just recently.

13 KYDEN: Um-huh.

14 THE COURT REPORTER: That's kind of scary.

15 THE COURT: Well, Kaelyn, if you're going to be a
16 veterinarian, you'll have to do really well at school and
17 go to school for a long time.

18 KAELYN: Yeah.

19 THE COURT: Are you committed to doing that?

20 KAELYN: Yeah.

21 THE COURT: Okay.

22 THE COURT REPORTER: Do you like science a lot?

23 KAELYN: No, I hate science.

24 THE COURT REPORTER: Oops.

25 THE COURT: You'll have to learn to like that a little bit.

1 KAELYN: Yeah, well, I like science on animals. I don't
2 like any other kind of science though.

3 THE COURT REPORTER: Like biology, you like biology
4 probably?

5 KAELYN: Yeah. I don't understand any other kind of
6 science.

7 THE COURT: Okay. Now at Antelope Ridge, do you live in an
8 apartment, a duplex, a single family house? I mean, how do
9 you get to have your rabbits out there?

10 KYDEN: It's a four --

11 THE COURT: Four?

12 KYDEN: -- house. It's got a house and then a house and
13 then a house and then a house.

14 THE COURT: Like a four plex?

15 KAELYN: Yeah.

16 KYDEN: Yeah.

17 THE COURT: Okay. And so you have a backyard then, or do
18 you keep the rabbits inside?

19 KAELYN: We keep the rabbits inside, but we also have a
20 dog.

21 THE COURT: Oh.

22 KAELYN: So, yeah, we have a backyard, but it's not like a
23 really big backyard.

24 THE COURT: How long have you had the rabbits?

25 KAELYN: That's a good question. I think they're going to

1 be four. So I think we've had them for three years.

2 THE COURT: Wow. So I was telling my granddaughter Penny
3 that I had rabbits. This was a few years ago. As an adult
4 I had rabbits, and the first question she asked me is, and
5 she was really like suspicious looking, she says, "And do
6 you eat them?" I said, "No, I wouldn't eat rabbits. They
7 were pets." But she's really an animal lover, so she was
8 concerned that -- but that wasn't true. I just really like
9 rabbits myself, and I have grandkids, but I think even
10 before the grandkids, I just liked to raise rabbits because
11 we lived out of town. They're really a cool animal.

12 KAELYN: Um-huh, I loved -- I've always loved bunnies for
13 like a very long time.

14 THE COURT: Yes. How about you, Kyden, do you like -- do
15 you have animals, or is it just your sister?

16 KYDEN: I have a dog.

17 THE COURT: What's your dog's name?

18 KYDEN: Coa.

19 THE COURT: Coa?

20 KYDEN: Um-huh. We call him Coa Blue because he's got blue
21 eyes.

22 THE COURT: What kind?

23 KYDEN: He's a Husky.

24 THE COURT: Oh, those are pretty dogs.

25 KAELYN: Um-huh.

1 THE COURT: Oh, Tammy and I have this case, it wasn't long
2 ago, where these people that were fighting in a divorce
3 over their dog, Puckey. It was -- the hearing lasted
4 several hours.

5 THE COURT REPORTER: Puckey was cute though.

6 THE COURT: Very interesting. Very interesting. So what
7 else do you like to do besides animals, Kaelyn?

8 KAELYN: I do sports.

9 THE COURT: What kind of sports?

10 KAELYN: Cross country, cheerleading, and track.

11 THE COURT REPORTER: What sport do you do cheerleading for?
12 Football?

13 KAELYN: Basketball.

14 THE COURT: Basketball?

15 KAELYN: Um-huh.

16 THE COURT REPORTER: That's a lot.

17 THE COURT: What's the name of the team? I've been in
18 Douglas's gym before.

19 KAELYN: That's a good question. I think it's just
20 Douglas. I don't really --

21 THE COURT: Does Douglas have like a symbol like --

22 KAELYN: Well, we have like a Patriot.

23 THE COURT: Oh, Patriots, okay. How about you, Kyden, are
24 you in any sports?

25 KYDEN: No.

1 THE COURT: What do you do besides working, or does that
2 keep you busy enough?

3 KYDEN: That keeps me busy enough.

4 THE COURT: How much are you working? Like do you work
5 20 hours or just the weekends, or how --

6 KYDEN: Two and a half hours every week.

7 THE COURT: When?

8 KYDEN: From 2:30 to 5 o'clock.

9 THE COURT: And Timmons is right there in Box Elder, is
10 that right?

11 KYDEN: Um-huh.

12 THE COURT: Okay. Where do you guys like to eat?

13 KAELYN: Olive garden.

14 THE COURT: You too? How much do you like Olive Garden?

15 KAELYN: A lot. I love pasta.

16 THE COURT: You love pasta. Tell me about what you usually
17 get there at Olive Garden.

18 KAELYN: It depends. Sometimes I always share with my mom,
19 but sometimes I'll get like a kids meal which has
20 spaghetti.

21 THE COURT: I've had it. And do you get the meat balls
22 with it?

23 KAELYN: No.

24 THE COURT: No, just the pasta?

25 KAELYN: Yeah, it fills me up enough.

1 THE COURT: Yeah. How often do you get to go there?

2 KAELYN: Not a lot.

3 THE COURT: How about you, Kyden?

4 KYDEN: I get the one soup, the potato one.

5 KAELYN: The Zuppa?

6 KYDEN: Yeah.

7 THE COURT: The what?

8 KAELYN: Zuppa.

9 KYDEN: The Zuppa, the potato soup one.

10 THE COURT: It must be Italian or something, huh?

11 KYDEN: And I get a cheese pasta. Yeah, the raviolis or

12 some sort of --

13 THE COURT: Oh, that's good. Making me hungry.

14 THE COURT REPORTER: I know, me too. I want a breadstick

15 really bad now.

16 THE COURT: Do you guys get like -- don't they have like

17 unlimited salad too?

18 KAELYN: Yeah.

19 KYDEN: Yeah.

20 THE COURT: You get all the salad you want and usually

21 breadsticks too so you can fill up on that?

22 KAELYN: Yeah.

23 THE COURT: All right. How about fast food, where do you

24 like to eat fast food at? McDonald's? Burger King? Taco

25 places? Kaelyn?

1 KAELYN: I don't really like -- I like fast food, but like
2 I don't at the same time. I'd probably pick like
3 McDonald's. And then I can't remember what it's called,
4 but it's a Mexican restaurant.

5 THE COURT: Which Mexican restaurant?

6 KAELYN: I don't remember what it's called.

7 THE COURT: Where's it at?

8 KAELYN: It's by the mall.

9 KYDEN: It's the one that's by that hotel.

10 KAELYN: Yeah, it's by the hotel. I don't --

11 THE COURT: By the mall?

12 KYDEN: Yeah, so the mall, you go up this way on the road
13 that goes to the mall and then the restaurant is right here
14 with a parking lot and there's a hotel.

15 KAELYN: Yeah.

16 KYDEN: And then there's a road that goes that way.

17 KAELYN: I don't remember names of roads and stuff all the
18 way over there.

19 THE COURT REPORTER: Is it Qdoba?

20 KAELYN: No.

21 KYDEN: No.

22 THE COURT: What kind of food do you like at the Mexican
23 restaurants?

24 KAELYN: Enchiladas.

25 KYDEN: Enchiladas.

1 THE COURT: Oh, really? I like those too. Is that your
2 favorite meal, Kyden, is the enchiladas, or is it --

3 KYDEN: No.

4 THE COURT: -- Olive Garden?

5 KYDEN: It depends on. I like them all.

6 THE COURT: You like them all. When's the last time you
7 went to Olive Garden?

8 KYDEN: I believe a month ago.

9 THE COURT: Who did you go with?

10 KYDEN: Our mom.

11 THE COURT: Where does mom work? Krista, right?

12 KAELYN: Yeah. I don't know. It's some like mail place.

13 KYDEN: Um-huh.

14 THE COURT: What town?

15 KAELYN: I think it's --

16 KYDEN: It's between Rapid City and Box Elder.

17 KAELYN: Yeah, I don't really know.

18 THE COURT: Okay. Do you see that big plant?

19 KAELYN: Yeah.

20 THE COURT: That's an Aloe Vera and the story about that
21 one is is that I just brought it in here like a week ago
22 and it was all turning pale because it had been in a place
23 where it wasn't as well heated and it was apparently not
24 getting enough light and it turned green just over the
25 weekend, so anyways...

1 So Olive Garden is both of your favorite places?

2 KAELYN: Um-huh.

3 THE COURT: Okay. And when was the last time you were
4 there, Kaelyn?

5 KAELYN: The same time Kyden was.

6 THE COURT: A month ago?

7 KAELYN: Yeah, something like that.

8 THE COURT: With mom?

9 KAELYN: Yeah.

10 THE COURT: All right. And then Kaelyn likes McDonald's
11 and then Kyden's favorite fast food place is a taco place
12 but we can't remember the name of it where you get
13 enchiladas?

14 KYDEN: It's various. I could eat at McDonald's, or it
15 just depends on --

16 THE COURT: But you do like Mexican food? And are you
17 particular about what taco place you go to, or how about
18 Taco Johns, Taco Bell?

19 KAELYN: I've never been to Taco Johns.

20 THE COURT: Oh, you never have? That's pretty good food.

21 KAELYN: No.

22 THE COURT: How about you, Kyden?

23 KYDEN: I'd go to Taco Bell.

24 THE COURT: Taco Bell. All right, so then is everything
25 going okay at home, Kaelyn?

1 KAELYN: Yeah.

2 THE COURT: Doing okay in school?

3 KAELYN: I have all As.

4 THE COURT: Oh, that's -- wow.

5 KAELYN: Um-huh.

6 THE COURT: That's impressive. Kyden, is everything going
7 all right with you at home?

8 KYDEN: Yeah. My grades are As and Bs. I have an F in
9 math because talking on the phone and seeing Joe makes me
10 stressed and I cannot concentrate.

11 THE COURT: Oh. You talk to him on the phone? You're
12 talking about your dad? You call him Joe or dad?

13 KAELYN: Joe.

14 KYDEN: I call him Joe.

15 THE COURT: Okay.

16 KYDEN: But the only thing I say to him is "good-bye, Joe."
17 More of a -- I don't really care to talk to him because I
18 don't want to talk to him.

19 THE COURT: Because of stuff in the past?

20 KYDEN: Um-huh.

21 THE COURT: Have you ever heard that expression about some
22 things from the past should just stay in the past?

23 KAELYN: Yeah, I've heard that before.

24 KYDEN: Yeah.

25 THE COURT: You've heard that? Where did you hear that,

1 Kaelyn?

2 KAELYN: Probably a movie or something.

3 THE COURT: Oh. Do you think that's true sometimes?

4 KAELYN: Sometimes, yeah.

5 THE COURT: You have a notebook too?

6 KAELYN: Yeah.

7 THE COURT: What's in your notebook?

8 KAELYN: All my stuff.

9 THE COURT: Well, what kind of stuff? School stuff?

10 KAELYN: No, it's like about Joe.

11 THE COURT: Okay.

12 KAELYN: Well, it's like notes and so like I can read it

13 and then like everything comes back to me I guess.

14 THE COURT: Oh, okay.

15 KAELYN: Do you want to hear everything?

16 THE COURT: If you want to read some of it to me, but is it

17 about like mom and dad kind of stuff?

18 KAELYN: Yes.

19 THE COURT: Do you think some of that stuff should stay in

20 the past?

21 KAELYN: Yes.

22 THE COURT: How come?

23 KAELYN: Because like -- I don't know.

24 THE COURT: Well, sometimes memories that aren't pleasant

25 don't conjure up pleasant thoughts and so sometimes it's

1 just better to not always focus on some of the stuff in the
2 past.

3 KAELYN: Yeah.

4 THE COURT: Okay. Kyden, what do you think about that?

5 KYDEN: I just don't want to see him because of the things
6 he's done to me.

7 THE COURT: Well, yeah, but he is your dad, Kyden. He'll
8 always be your dad. Do you think that people can make
9 mistakes in their past?

10 KYDEN: It depends.

11 THE COURT: Have you ever made any mistakes?

12 KYDEN: Yeah.

13 THE COURT: And what -- do you ever learn from them?
14 Because, I mean, I've made them in the past and sometimes I
15 think I get valuable lessons from them.

16 KAELYN: Yeah.

17 THE COURT: How about -- Kaelyn, you'd agree?

18 KAELYN: Yeah.

19 THE COURT: That sometimes you make mistakes and you learn
20 from them?

21 KAELYN: Yeah.

22 THE COURT: Okay. Kyden?

23 KYDEN: Um-huh.

24 THE COURT: You do? Because people do make mistakes, you
25 know, and they can change. Do you think that's true,

1 Kaelyn?

2 KAELYN: Some people can, yeah.

3 THE COURT: Okay. What makes them change?

4 KAELYN: I don't know.

5 KYDEN: Their brain.

6 THE COURT: Well, do you -- what, Kyden?

7 KAELYN: Their brain.

8 THE COURT: Okay. Do you think it takes a commitment

9 sometimes that people change because they commit, they say

10 to themselves I'm going to change and I'm going to take

11 actions to change and I'm going to believe that I can

12 change?

13 KYDEN: Um-huh.

14 THE COURT: How about you, Kaelyn?

15 KAELYN: Yeah.

16 THE COURT: So, Tammy, have anything you want to add?

17 THE COURT REPORTER: I don't think so.

18 THE COURT: Okay. Got any questions for me, Kaelyn?

19 KAELYN: I don't think I have any questions.

20 THE COURT: How about you, Kyden?

21 KYDEN: No.

22 THE COURT: Not any questions?

23 KYDEN: No.

24 THE COURT: Well, let's talk a little bit about your dad,

25 Kyden. You have a notebook there and does that have

1 different things that have happened between you and --
2 well, you call him Joe -- between you and Joe, is that
3 right?

4 KYDEN: Yeah.

5 THE COURT: Do you think that some of those things could
6 stay in the past and that you could at least get to an
7 understanding to see him and maybe have a dinner with him?

8 KYDEN: No.

9 THE COURT: How come?

10 KYDEN: Because he abused me. He would grab me by the back
11 of my neck and he would force me to the ground. He would
12 then yell at me and call me names.

13 THE COURT: Okay. When did that last happen though, Kyden?

14 KYDEN: When he was still with us.

15 THE COURT: Because I think this divorce has been going on
16 since about 2018 or '19, is that about right?

17 KAEALYN: It's been like five years.

18 THE COURT: Five years. All right. Same question to you,
19 Kaelyn?

20 KAEALYN: What was the question?

21 THE COURT: Well, can you put some of what happened in the
22 past with your dad?

23 KAEALYN: No.

24 THE COURT: It's just going to be something that's -- you
25 can't forgive him?

1 KAELYN: No.

2 THE COURT: Okay. Explain why.

3 KAELYN: Because he abused me and he's with my aunt.

4 THE COURT: Okay. Because he's -- all right, so that makes
5 the family dynamics difficult?

6 KAELYN: Um-huh.

7 THE COURT: Explain.

8 KAELYN: Because it like confuses my cousins and they think
9 that we're siblings because their mom is married to Joe and
10 they act different when they're with their mom so...

11 THE COURT: Yeah, but I mean how about just meeting with
12 your dad that wouldn't involve the cousins?

13 KAELYN: I don't want to meet with him. I don't want
14 anything to do with him.

15 THE COURT: When's the last time -- well, you went to
16 counseling sessions with him with -- was it Mr. Wheaton?

17 KAELYN: Yeah.

18 THE COURT: At his office. When was the last time that
19 went on?

20 KAELYN: Wednesday.

21 THE COURT: Last Wednesday?

22 KAELYN: Yeah.

23 THE COURT: How did it go?

24 KAELYN: I don't know.

25 THE COURT: Did you talk to your dad?

1 KAELYN: No.

2 THE COURT: How come?

3 KAELYN: Because I don't want anything to do with him.

4 THE COURT: He doesn't want to have anything to do with
5 you?

6 KAELYN: No, he definitely wants something do with me
7 because he doesn't stop like trying to get counseling and
8 stuff for us.

9 THE COURT: He -- okay. You have kind of a soft voice.

10 KAELYN: Yeah, I was sick, so it's like --

11 THE COURT: He wants to have stuff to do with you or he
12 does not want to?

13 KAELYN: He does, but I don't want anything to do with him.

14 THE COURT: Okay. But you'll always be his daughter.

15 KAELYN: Yeah, I know that.

16 THE COURT: And you don't think that he's deserving of,
17 well, forgiving him for some of the things that he's done
18 in the past?

19 KAELYN: No.

20 THE COURT: Have you done things that you would want to
21 have people forgive you about or not?

22 KAELYN: Yes, but I've never abused somebody. Abuse is
23 kind of hard to forgive.

24 THE COURT: Yeah. But he'll always be your dad.

25 KAELYN: Yeah.

1 THE COURT: And he has a right to ask -- go ahead, Tammy.

2 THE COURT REPORTER: Well, have you guys ever heard of
3 somebody hurting someone's family member and it's horrible
4 for this family because this person hurt their family
5 member, but somehow they eventually forgive that person?
6 Have you guys ever seen that?

7 KAELYN: Yeah.

8 THE COURT REPORTER: I mean, that's pretty amazing, isn't
9 it?

10 KAELYN: Um-huh.

11 THE COURT: What do you think, Kaelyn?

12 KAELYN: I don't know.

13 THE COURT: Well, if you're getting straight As, you're
14 doing pretty well in school?

15 KAELYN: Yeah.

16 THE COURT: And so you have adjusted to whatever situation
17 you found yourself in pretty well, haven't you?

18 KAELYN: I guess.

19 THE COURT: Well, not everyone gets straight As, do they?

20 KAELYN: No.

21 THE COURT: Are you in like the top of your class at
22 school?

23 KAELYN: Yeah.

24 THE COURT: And you must realize that you have to do that
25 to achieve your goals?

1 KAELYN: Yeah.

2 THE COURT: Well, that's a plus. So what happened at the
3 counseling? I mean, did your dad drink in the past?

4 KAELYN: Yeah.

5 THE COURT: Okay. Did he drink when you met with him at
6 the counseling office?

7 KAELYN: Not that I know of.

8 KYDEN: Not that I know of.

9 THE COURT: Okay. Do you know what it smells like,
10 alcohol?

11 KAELYN: Yeah.

12 THE COURT: Did you smell anything like that?

13 KAELYN: I wasn't close enough.

14 KYDEN: No.

15 THE COURT: Well, sometimes -- because I've seen that you
16 can smell it for a long distance away, so I think that he
17 wasn't drinking when he showed up at the counseling
18 session.

19 KAELYN: Yeah.

20 THE COURT: Are you afraid of him?

21 KAELYN: Yes.

22 THE COURT: Okay. Why are you afraid of him?

23 KAELYN: Because he abused us.

24 THE COURT: But that was like -- when was the last time
25 that happened? Was that five years ago?

1 KAELYN: Yeah.

2 THE COURT: Okay. And if you're in a public setting --
3 like what if he was to take you to Olive Garden, you'd be
4 in a public setting eating at a restaurant. Nothing's
5 going to happen there. Wouldn't you agree?

6 KAELYN: No.

7 THE COURT: You wouldn't agree with that?

8 KAELYN: No.

9 THE COURT: How come?

10 KAELYN: Because I still don't feel comfortable or safe.

11 THE COURT: Explain that. Because it just seems like how
12 would you feel uncomfortable when you're in a public area?

13 KAELYN: Because Joe's there.

14 THE COURT: Huh?

15 KAELYN: Because Joe is there.

16 THE COURT: Yeah, no, I know. I know that, but...

17 KYDEN: He could still call us names.

18 THE COURT: Yeah, but when's the last time, Kyden, that
19 he's called you a name?

20 KAELYN: Right before he left.

21 THE COURT: Okay. But we're still talking kind of five
22 years ago, right, Kyden? Do you really think he'd call you
23 a name now, even in a restaurant?

24 KAELYN: Yeah.

25 THE COURT: But don't you think that he really wants to

1 spend some time with you?

2 KYDEN: No.

3 THE COURT: Why do you think that he's asking the court to
4 spend time with you? Kyden?

5 KYDEN: I don't know, probably to abuse me more or call me
6 names because at visitation, Joe would try to -- when we
7 would walk away from him, he would try to get in my head by
8 making me scared and he told me that I would have to move
9 out when I turned 18 and live on my own.

10 THE COURT: Was he angry when he said that?

11 KYDEN: No, he was more (inaudible).

12 THE COURT: But now you know that's not true because you
13 don't even live with him obviously; you live with mom.

14 KYDEN: Um-huh.

15 THE COURT: How about you, Kaelyn?

16 KAELYN: What?

17 THE COURT: Can you forgive him at all?

18 KAELYN: No.

19 THE COURT: Never?

20 KAELYN: Never.

21 THE COURT REPORTER: What if you guys went to Olive Garden
22 and he didn't call you a name and he didn't abuse you,
23 would you go again?

24 KAELYN: No.

25 THE COURT: Well, what would you do if the roles were

1 reversed and you were Joe, your dad, and you really loved
2 your daughter and your daughter was telling you that you
3 made mistakes five years ago, how would you ever get the
4 situation remedied.

5 KYDEN: Get help and take responsibility.

6 KAELYN: I would like take my -- get help, take
7 responsibility from the beginning, and if he still wanted
8 nothing to do with me, then whatever.

9 THE COURT: Yeah, but do you understand that you only get
10 so many kids when you're grown up?

11 KAELYN: Yep.

12 THE COURT: You know, and you can't just go get new ones.

13 KAELYN: Well, he kind of did.

14 THE COURT: No. Biologically you're his offspring.

15 KAELYN: Yeah.

16 THE COURT: Right?

17 KAELYN: Yeah.

18 THE COURT: These other kids are -- are they cousins to
19 you?

20 KAELYN: Yeah.

21 KYDEN: Um-huh.

22 THE COURT: Okay. They're not his biological kids so he
23 doesn't get to get some new ones. But, Kyden, I think you
24 said -- you said take responsibility?

25 KYDEN: Um-huh.

1 THE COURT: What else?

2 KYDEN: Get help.

3 THE COURT: Okay. Well, for what? Like drinking?

4 KYDEN: Yeah, and being abusive.

5 THE COURT: Okay. And if he did that?

6 KYDEN: And if he doesn't -- or if then we still don't have
7 anything to do with him, then he would then have to accept
8 the fact.

9 THE COURT: Well, but I mean, that's almost -- Kyden,
10 that's almost an impossibility there. I mean, it's like
11 you get help, you don't drink, you accept responsibility
12 and then you don't get anywhere because then the child
13 says, well, I still don't want to have anything to do with
14 you, so...

15 KAELYN: It's a little too late now.

16 THE COURT: Huh?

17 KAELYN: My voice is dying.

18 THE COURT: Yeah.

19 KAELYN: It's a little too late now. You should have got
20 help from the beginning.

21 THE COURT: Well, people make mistakes.

22 KAELYN: I know.

23 THE COURT: People ask for forgiveness and they try to move
24 on and sometimes they commit to making changes in their
25 lives. Have you ever seen anyone change, really change?

1 KAELYN: Yes.

2 THE COURT: Who?

3 KAELYN: Well, like not in person, but like in movies
4 people change.

5 THE COURT: Um-huh. Well, I think in real life people do
6 change.

7 KAELYN: Yeah.

8 THE COURT: How about you, Kyden?

9 KYDEN: It depends.

10 THE COURT: Yeah. Well, that's true. But you believe it's
11 true that people do change?

12 KYDEN: Sometimes. It depends on the person.

13 THE COURT: Well, where would you feel the most comfortable
14 and the most secure to meet with your dad, Joe?

15 KAELYN: Nowhere.

16 THE COURT: Well, of all of the places, what strikes you as
17 the place?

18 THE COURT REPORTER: Like you have to pick, let's just say
19 you have to pick a place, what would you pick?

20 KAELYN: I can't pick one.

21 THE COURT: You can't?

22 KAELYN: No.

23 THE COURT REPORTER: Or you won't?

24 KAELYN: I won't.

25 THE COURT: Well, do you think you make my job easier?

1 KAELYN: Yeah, I would.

2 THE COURT: Kyden, how about you?

3 KYDEN: I'd have to agree I wouldn't do that.

4 THE COURT: So then what do you expect Joe to do?

5 KAELYN: Leave us alone.

6 THE COURT: But, you know, he has obligations too.

7 KAELYN: I know.

8 THE COURT: What kind of obligations do you think he has?

9 KAELYN: Like what do you mean?

10 THE COURT: Well, what kind of obligations does your dad

11 have to you? Does -- well, I'll help you out.

12 Financially, do you think he has financial obligations?

13 KAELYN: To us?

14 THE COURT: To you, to the children. When you have

15 children, do you think fathers have responsibilities to pay

16 for --

17 KAELYN: Yes.

18 THE COURT: Okay.

19 KYDEN: Um-huh.

20 THE COURT: Do you think he's doing that?

21 KAELYN: No.

22 THE COURT: Why, what makes you say that?

23 KAELYN: Because mom doesn't have a lot of money.

24 THE COURT: Right. Do you blame him for that?

25 KAELYN: Well, he's the one that's not paying.

1 THE COURT: Okay. What's he not paying?

2 KAELYN: Child support.

3 THE COURT: Okay. So do you think that that would go a
4 ways towards making you more receptive to spending some
5 time with him if he was living up to his financial
6 obligation?

7 KAELYN: No.

8 THE COURT: Well, then how can he win?

9 KAELYN: I don't know.

10 THE COURT: I mean, you expect him to pay what he owes for
11 support?

12 KAELYN: Yep.

13 THE COURT: But then in return do you think that he should
14 be entitled to visitation or --

15 KAELYN: No.

16 THE COURT: No, okay. What makes you feel that way, just
17 because you got mistreated in the past?

18 KAELYN: Yeah, because I don't feel safe with him, nor do I
19 feel comfortable with him.

20 THE COURT: Okay. Now Kyden has articulated, you know, he
21 said to me that he was abusive towards him.

22 KAELYN: Um-huh.

23 THE COURT: What did he do to you to make you feel that
24 way?

25 KAELYN: He mostly abused my mom and Kyden.

1 THE COURT: Okay.

2 KAELYN: He would slap me in the back.

3 THE COURT: How many times did he slap you?

4 KAELYN: I don't know how many times.

5 THE COURT: Well, more than ten?

6 KAELYN: I don't think more than ten.

7 THE COURT: More than five?

8 KAELYN: Probably.

9 THE COURT: Did you do anything -- and I'm not saying that

10 anyone deserves to be spanked, but I mean were you doing

11 anything that caused that in --

12 KAELYN: No.

13 THE COURT: -- his opinion or your opinion?

14 KAELYN: It was like the middle of my back is where he'd

15 slap me and sometimes I'd end up with a mark.

16 THE COURT: But you said this only happened between five

17 and ten times in your whole life?

18 KAELYN: Yeah.

19 THE COURT: Did he apologize for that?

20 KAELYN: No, he acted like it never happened.

21 THE COURT: So what would you like me to do as the judge in

22 this case? Kaelyn?

23 KAELYN: I don't want anything to do with Joe so I don't

24 want visitation or anything with him.

25 THE COURT: So you want me to just tell him he can't ever

1 see you again?

2 KAELYN: Yeah.

3 THE COURT: What if he says no?

4 KAELYN: I don't know.

5 THE COURT: Kyden, what do you want me to tell your dad?

6 KYDEN: That we don't want to see him.

7 THE COURT: Yeah. And what if he says, well, that's not
8 good enough, I think I have a right as Kyden's dad to spend
9 some time with him?

10 KYDEN: Well, I'm almost 18.

11 THE COURT: Yeah, I know that. I think you said your
12 birthday is July 2nd. Kyden, can you think of anything?

13 Well, I always believe in compromise, that, you know,
14 people need to find some kind of a middle ground in a lot
15 of things. Kyden, do you think that's true?

16 KYDEN: Um-huh.

17 THE COURT: How about you, Kaelyn?

18 KAELYN: Yeah.

19 THE COURT: And that judges don't always make decisions
20 that everyone's happy with.

21 KAELYN: Yeah.

22 THE COURT: Do you think that's true?

23 KAELYN: Yeah.

24 THE COURT: How about you, Kyden?

25 KYDEN: Um-huh.

1 THE COURT: Do you think you have to obey a judge when they
2 issue orders in a lawful way in a court proceeding?

3 KAELYN: Yeah.

4 THE COURT: Kaelyn, huh?

5 KAELYN: I've been doing that.

6 THE COURT: Okay. Well, good for you. Kyden?

7 KYDEN: Um-huh.

8 THE COURT: Tammy, any other questions?

9 THE COURT REPORTER: I don't think so.

10 THE COURT: Guys, have anything you want to say to me?

11 KAELYN: I don't think so.

12 THE COURT: Well, it's been a pleasure for me to get to
13 meet you because I hear about you guys all the time in this
14 case that's been going on.

15 KAELYN: Yeah.

16 THE COURT: Ad so it's really a positive for me to get to
17 see you and put a name and a face together. Kyden, it's
18 the same with you, I've heard about you and a lot about you
19 both and it's been a pleasure for me to get to meet you and
20 it really helps me to understand the situation better.

21 KAELYN: Yeah.

22 THE COURT: Now it doesn't mean I do everything that
23 everybody's pleased with, but it helps me, and like I said,
24 I've got six grandchildren, we have five granddaughters and
25 we have one grandson, so I understand, you know, kind of

1 what it's like to grow up these days.

2 KAELYN: Yeah.

3 THE COURT: Have you guys got cell phones?

4 KAELYN: Well, we do, but they only work on the Internet.

5 THE COURT: Oh, okay. Kyden, how about you?

6 KYDEN: They're old ones.

7 THE COURT: You have a cell phone?

8 KAELYN: It's just like mine. They're old.

9 THE COURT: Internet only?

10 KAELYN: Yeah.

11 KYDEN: Um-huh.

12 THE COURT: So are you communicating over like Facebook
13 Messenger?

14 KAELYN: No.

15 KYDEN: Email.

16 KAELYN: Email.

17 THE COURT: Okay. But on this phone, can you get a call?
18 Could somebody call you on it and go, "Hey, Kaelyn?"

19 KAELYN: I don't think so.

20 KYDEN: I don't think so.

21 THE COURT: Okay. Because I think some of those Facebook
22 messages, there are different programs where you can
23 communicate over phones over the Internet.

24 KAELYN: Yep.

25 THE COURT: Well, is there anything, you know, besides

1 phones that you wish you had?

2 KAELYN: I don't think so.

3 THE COURT: Is a phone big deal for you? Well, tell me the
4 truth. I've got a granddaughter and I just was visiting
5 with her yesterday and she's going to be 13 and it's all
6 about telephones. Is that true for you because you're
7 older than her?

8 KAELYN: Not really. I like running.

9 THE COURT: You like running?

10 KAELYN: Yeah.

11 THE COURT: Well, good for you. Do most of the kids your
12 age have phones though?

13 KAELYN: Yeah.

14 THE COURT: You do not have a phone?

15 KAELYN: Nope.

16 THE COURT: Kyden, same question to you, most of the -- you
17 have a phone but apparently it only works over the
18 Internet?

19 KAELYN: Yes.

20 THE COURT: All right.

21 KYDEN: Yeah, most all the kids in my grade have a phone.

22 THE COURT: Well, I don't know if I'll ever get to meet
23 with you guys again, but it's been a pleasure to get to
24 meet you, Kyden and Kaelyn. And you know, pursue these
25 goals that you have because you've got to work at things

1 like that, you know, you just have to work at it, be
2 committed towards obtaining your goals in life and take
3 action.

4 KAELYN: Yeah.

5 KYDEN: Um-huh.

6 THE COURT: I think you already know that. So Tammy,
7 anything else?

8 THE COURT REPORTER: Nope, I think I'm good. Thanks, you
9 guys.

10 THE COURT: All right. Thanks, guys. We'll walk you back
11 out there.

12 (The audio recording was concluded.)

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF MEADE) SS. CERTIFICATE OF
) TRANSCRIBER

3
4 I, TAMMY STOLLE, RPR, Court Reporter, hereby certify
5 that the foregoing pages 1 through 39 were transcribed from
6 an audiotape to the best of my knowledge and ability.

7 Dated at Sturgis, South Dakota, this 21st day of
8 August, 2024.

9
10
11
12
13 /s/ Tammy Stolle
14 TAMMY STOLLE, RPR
15 Official Court Reporter
16 My Commission Expires: 2/2/28
17
18
19
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21
22
23
24
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March 2, 2021

Hollie Smith
Clayborne, Loos, and Sabers
2834 Jackson Boulevard, Suite 201
Rapid City, SD 57702

Re: Joseph LeFors, in the interest of Kyden LeFors, DOB: 07.02.06, and Kaelyn LeFors (11)

Dear Attorney Smith:

Joseph LeFors, the father to Kyden and Kaelyn LeFors, and I twice regarding wanting his children, Kyden and Kaelyn, to return to counseling. Mr. LeFors came to me with his concern as I had seen his son, Kyden, in late 2011. His goal is to have his sons and daughter be more positively involved with him during his visitation/parenting time with them. He believes the children will not return to counseling unless it is under a Court order. The children had been in counseling until September 2020, when their counselor closed her counseling practice because of her military deployment. Unfortunately, there is essentially no communication between these parents. They have participated in some legal mediation. These parents wanted to undergo a custody study, but this has been financially prohibitive.

Mr. LeFors states that prior to his separation from the children's mother he had a positive relationship with Kyden and Kaelyn. The children's parents, Joseph and Krista, remain separated since July 2019 and have shared custody. The children and their father are to have visits two times a week. They have exchanges at the Box Elder Police Department parking lot. Mr. LeFors makes a case that the children may be influenced by parental alienation from him. Although their mother brings them to the visits, the children sometimes refuse to get out of the vehicle. Other times they leave the vehicle but walk away from their father and at most say one sentence to him. They walk approximately six blocks and their mother picks them up. Most recently he tried to just walk with them and they still evaded him. Krista is observed to not encourage the children to engage with their father and make the most of their visitation time.

Some of the other indications of possible parental alienation by the children's mother are that it appears she told the children false reasons for why Joseph separated from her and there have been false allegations of abuse. The children might believe their father is dangerous. It is reasonable that it would be in the children's best interest to have them come to counseling to identify their reasons for not being involved with their father during their visitation time and how

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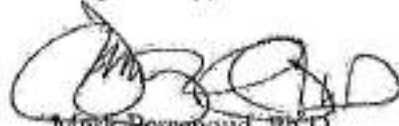
Psychological Associates of the Black Hills, LLC
1818 W. Fulton St., Suite 201
Rapid City, South Dakota 57702
FAX # (605) 341-7409

APP. 050

to improve this time together. If that counseling were to be with me, it would be my plan to involve their mother regarding her position on the separation and visitations and meet with the children together and individually regarding their positions on visitation and their beliefs and feelings towards their father.

Mr. LeFors will discuss with you presenting this matter to the Court. Please contact me should you need any additional information. Thank you for your consideration of this request.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark Perreault', written over a horizontal line.

Mark Perreault, Ph.D.
Licensed Psychologist

Professional Staff
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September 3, 2021

Honorable Kevin J. Krull
Fourth Judicial Circuit Court
P.O. Box 939
Sturgis, SD 57785

Re: Daniel LeFors v. Krista Mac LeFors, File No. 46 DIV. 19-8

Dear Judge Krull:

I have been authorized and requested to update the Court regarding Joe LeFors' efforts to increase his parenting time with his children, Kyden (15) and Kaelyn (12). I initially met with Mr. LeFors and had a brief meeting with Krista LeFors regarding their perspectives on this current family problem. I then met with the children together but without their mother. On August 5th we had our first visit in which the children were to meet in my office with their father. It is significant that Kyden, who has Autism Spectrum Disorder, largely follows his sister and mother's lead. Kaelyn has said she has no intention of re-establishing a relationship with her father, so there is no need to cooperate with counseling. In our first visit with their father, Kaelyn and Kyden left the office and building when I went to get their father to join us and refused to meet with him. The next week they did remain in the office and we had a visit with the children saying nothing. On the third and fourth visits the children refused to enter the office and Kaelyn again left the building. In the third visit we met with Kyden in the waiting room, as he had remained in the building. The children are saying very little in their visits. Other than the children being in the same room with their father, which they have not done for some time, we have not made any progress.

This is obviously a very complicated family issue. It involves not only this family of four but the children's aunt, uncle, and cousins. Ms. LeFors is hurt and vengeful. Mr. LeFors is trying to have both his relationship with Courtney and a relationship with his children. His children (as well as their mother) are of the opinion that his relationship with Courtney is wrong and they will not resume a relationship with him if he continues his relationship with Courtney.

It is my opinion that the children have been lied to about their father's alcohol use being problematic, that he was often violent towards their mother, and that he is a physical threat to the children. The children claim when they "visit" their father they think it possible he would try to harm them, even with a weapon.

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FAX # (605) 341-7409

To her credit, Krista LeFors has brought the children to each of their appointments and conveys wanting the children to have a relationship with their father. As ordered, Mr. LeFors began his visitation time in August. The children immediately run off from him. He regularly makes his phone calls and if the children speak to him it is largely to say they will not speak to him.

It is my opinion that Joseph is making a true effort to try to re-establish his relationship with his children. They are clearly not giving him an opportunity. Most children are very tolerant of their parents' flaws and extend many opportunities to a faulty parent to prove themselves. Kaelyn and Kyden not being willing to do this reflects the alienation they are subject to. I am of the opinion that Ms. LeFors is trying to look compliant on the surface and underneath it all has given messages to the children that they are not to re-establish a relationship with their father. Ever the victim, she tries to convey herself as powerless to make the children make an unwanted effort with their father. She needs to be firm with them about the need to stay present and spend time, even five minutes, with their father.

Working with this family has exceeded my strength and skills, and I am not sure I have much more to offer them. My recommendations are that consideration be given to the visits taking place at United Families where the children, if they get inside, cannot so easily run from their father. Joe will try writing more to the children to see if they will begin communicating this way. I will include their mother in the visits at the office. Krista needs to be firm with the children that they will spend time with their father. I believe that if the children do spend some time with him it will help them develop a more realistic opinion of him and hopefully overcome their current biased opinion.

Respectfully,



Mark Perrenoud, Ph.D.

Licensed Psychologist

cc: Debra D. Watson, Attorney at Law

Hollie Smith, Attorney at Law

Professional Staff
Margaret D. Kelsey, Ph.D. (Carver-Grupp, Inc.)
Jennifer J. Kozel, Ph.D., Inc.
Trisha T. Miller, Ph.D., Inc.
Mark Perrenoud, Ph.D., Inc.
Lynette R. Quast, Ph.D.



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Custer - (605) 348-6500

November 3, 2021

RECEIVED

NOV 05 2021

Honorable Kevin J. Krull
Fourth Judicial Circuit Court
P.O. Box 939
Sturgis, SD 57785

Re: Joseph LeFors v. Krista Mae LeFors, File No. 46 DIV. 19-8

Dear Judge Krull:

I am writing to update the Court regarding my involvement with Joseph LeFors and his children, Kyden and Kaelyn, since the last hearing in September 2021. I have not seen Kyden or Kaelyn or Ms. LeFors since September 2, 2021. Krista LeFors cancelled the children's appointment with me on September 23rd. When I later asked her by telephone for her plans about rescheduling the children, she indicated she needed to clarify with her attorney if these were necessary. Her question was whether the visitations at United Families were equivalent to the children's counseling because it involved them being with their father. I explained my understanding that seeing their father at United Families would be considered a parenting time visitation. I thought otherwise meeting with me, which often would include their father, was considered counseling. Ms. LeFors has never rescheduled the children.

I have had two meetings with Joseph LeFors, largely for him to provide updates of his visitation/parenting time with Kyden and Kaelyn. Unfortunately, they are not making any effort to engage with their father in spite of encouragement and accommodations by the United Families staff. The United Families summary notes that in the first ten visits the children knew they could refuse to be in the same room with their father. The visit could end and their mother could pick them up. To date the most successful parenting time has been when Mr. LeFors walks with them from the Box Elder police station parking lot to their home as they try to evade him. Mr. LeFors continues to have email communication with Kaelyn in spite of her continuing to be quite critical of her father and stating she wants no involvement with him.

I see no indications that there are any efforts to reduce the parental alienation that has occurred. It is my recommendation that Ms. LeFors be involved and in the room during both the parenting time visits and counseling visits. However, she should not be present once the phone call between Joe and either child has begun. The parents need permission to not follow the Court Orders so rigidly that it is counter-productive.

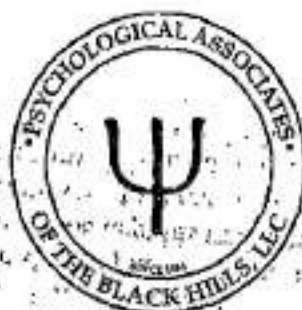
Respectfully,


Mark Perrenoud, Ph.D.
Licensed Psychologist

Send Correspondence to:

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Stacy L. Keyser, LPC-MH, Inc.
Jennifer J. Kozel, Ph.D., Inc.
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September 1, 2022

Honorable Kevin J. Krull
Fourth Judicial Circuit Court
P.O. Box 939
Sturgis, SD 57785

Re: Joseph LeFors v. Krista Mae LeFors, in the Interest of Kyden and Kaelyn LeFors,
File No. 46 DIV. 19-8

Dear Judge Krull:

I am writing again the update the Court and other parties regarding my counseling with the LeFors family. I last wrote on June 30, 2022 and indicated that I was closing my office in Rapid City and working only in Custer. I made a referral to Rapid City Counseling as I think they are the one provider that could work with this difficult family. Joe kept his initial appointment in which the parent pays \$150 out of pocket for an initial telehealth visit to screen their fit for counseling there. Krista LeFors refused to have an initial appointment, stating it is unaffordable. I agree with Joe LeFors that this excuse is not valid and another excuse to not engage in further counseling and show that the children are a priority. I believe the family's insurance would cover additional visits if accepted into counseling.

The other matter that my last letter addressed was the meeting point for the beginning of parenting time. Krista would not meet Joe at McDonald's to exchange the children. Upon my recommendation, Joe agreed to meet Krista at WaTiki rather than McDonald's to facilitate the beginning of visits. Kaelyn has begun cross-country after school. Kyden is not in after-school activities. Krista does not bring him to WaTiki at 4:00 p.m. Krista has insisted Joe meet the children at Douglas Middle School at 4:45 p.m. to begin their parenting time. Their visits continue with the children still walking home, trying to elude and not communicate with their father. With a late start and shorter walk, Joe has much less time to spend with them. While in some respects this may be a more convenient place for the exchange, it is not Krista's position to deem where the visits begin and that the time can be shorter.

Krista makes frequent references to Joe that he is not co-parenting with her. However, she makes this accusation out of convenience and is herself not making efforts to facilitate Joe's time with the children. I believe that it has become her lifestyle to create obstacles to Joe reestablishing a relationship with his children. She acts as though she will not be held accountable. In contrast, Joe continues to work hard at having better visits with the children. He has been open to and tried my recommendations. Krista continues to tell the children their father is morally wrong to be with Courtney and is dangerous.

Send Correspondence to:

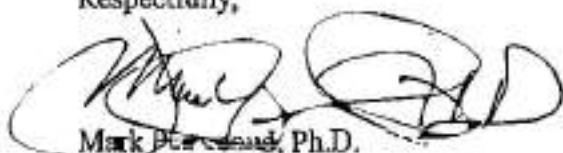
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FAX # (605) 341-7409

APP. 055

Krista also indicated to Joe he needed to text her in order to have the next scheduled visit. This seems like an unnecessary level of effort to control the situation. At times, she does not have the children dressed properly for the weather or appropriate footwear for the long walking that they choose to do during parenting time.

I make the following recommendations. With a new Judge, that the Court exert more control and consequence for violation of Orders. The families establish therapy with Rapid City Counseling or another provider. Ms. LeFors must make up Joe's missed parenting time. I have recommended to Mr. LeFors that he have a third-party substance-use assessment and assessment of whether his level of anger and risk of being violent is problematic, as Ms. LeFors claims. It is my opinion these assessments will reflect that Joe does not have these problems. I also recommend that both parents receive personality testing, such as the Minnesota Multiphasic Personality Inventory-3 (MMPI-3) and Millon Clinical Multiaxial Inventory-IV (MCMI-IV) and that the results be provided to their future counselor. Mr. LeFors has already agreed to doing these assessments. Ms. LeFors should not make the effort to observe when Joe is picked up for his ride to his vehicle at the end of the visitation time. The children are then home safely and not in his care. Ms. LeFors' ongoing alienation of the children from their father still warrants consideration of a reversal of the current primary custody.

Respectfully,



Mark B. Cloud, Ph.D.

Licensed Psychologist

cc: Debra Watson, Attorney at Law
Hollie Smith, Attorney at Law
Krista LeFors
Joseph LeFors



September 22, 2023

Honorable Judge John H. Fitzgerald
Forth Judicial Circuit Court
PO Box 939
Sturgis, SD 57785

Re: LeFors v. LeFors, Reunification Counseling (Case: 46DIV19-000008)

Dear Honorable Judge Fitzgerald:

As directed in the *Order On Motion To Address Plaintiff's Parenting Time* dated 08/18/2023, I have been asked to attempt to facilitate reunification counseling between Joseph LeFors and his two children; Kyden LeFors (dob: 07/02/2006) and Kailyn LeFors (dob: 05/29/2009). The following is a summary of this effort to date.

On August 28, 2023 I met with the two children and their mother, Krista. Krista attended at the beginning of the session and the end but the majority of the session was just the two children. Kaelyn did most of the talking and acts mature for age. Both children were reasonably cooperative with Kyden providing short answers when addressed directly. Both children expressed that they did not want a relationship with their father. They claimed that "Joe," as they call their father, had abused Kyden and their mother physically before the marital separation several years ago. They described the abuse to Kyden as grabbing the back of his neck and holding him down. I worked with the children to identify the roadblocks to a relationship with their father and they settled on three.

1. Father's relationship with their aunt (Mother's brother's ex-wife).
2. Father's alcohol use.
3. Father's abuse toward Kyden and mom (Krista).

Based on the concerns about abuse this therapist then setup an appointment with the children's father, Joseph LeFors, alone for the next session to try to assess risk and his willingness to address the above concerns. This appointment was held on August 30. Joseph acknowledges having drank alcohol but denies any problem with alcohol or use of alcohol around visitation with the kids. Joseph claims that when he would put his hand on the back of Kyden's neck it was to help him calm down when he was dysregulated. He acknowledges that he is in a relationship with the person that the children identify as their aunt but does not believe this is a problem since

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she is no longer in a relationship with their uncle. He has no intention of ending that relationship. He did indicate that he was willing to talk to the kids about these things and listen to their feelings about it all. This therapist also had no indication that he would be a threat to the children in session, so we planned to meet together with the children next.

On September 6 a session was held with Joseph and Kaelyn. This therapist chose to just have Kaelyn meet with Joseph this session since she was the leader of communication and I wanted to work on the individual relationships between the kids and their father as a starting point to see how they would respond to each other. She initially would not come into the office and after briefly opening the door and seeing him in the waiting area stood outside. This therapist had Joseph enter the meeting room then talked to her outside to convince her to come in and give me a chance to help them. She was cooperative and interactive in the session. We were able to address all three roadblocks, though no resolution was attained or really expected at this point. They discussed their different perspectives on what Kaelyn believes was abuse of her mother and Joseph describes as an incident of her mother blocking the door and then falling when he pushed through the door to leave the house. Regarding the alcohol use, they discussed this and Kaelyn's concerns that she could smell alcohol on his breath at the visits. He denied drinking before the visits and claims to have done breathalyzers after the accusations to prove he had not been drinking. He acknowledged to her that has drank alcohol other times when not responsible for the kids but denies that it has been a problem. Kaelyn did talk about wanting her father to come back home initially after the separation and being mad at him for not trying harder to save the family. She described him helping with the nighttime routines including bath and reading before the separation. When asked what changed between when she wanted to have a relationship with him and have him come home and now not wanting anything to do with him, she pointed to finding out about him being in a relationship with her aunt. He disputes the timing of this.

The next appointment was scheduled for September 13 and was supposed to be with Joseph and Kyden. Kyden came to the door of the office but refused to come into the office, repeatedly stating that he did not want a relationship with his father. After about 10 minutes of talking to him on the sidewalk this therapist asked him about coming with his sister next week and he said he would come with her but would not come in if his father was here.

An appointment was scheduled for September 18 for both children to meet with their father. Again, they came up to the door and Kaelyn opened it briefly and indicated again that she did not want a relationship with her father and said something about being uncomfortable. They stood outside the door of the office on the sidewalk and this therapist talked to them for about 10 minutes. Shortly into this time this therapist asked their father to go to his vehicle which he did. Even after he was in his vehicle across the parking lot, they continued to refuse to come into the office to talk with this therapist. I reassured them that I would not ask him to come back into the office without their permission, but nothing worked so this therapist went back into the office and they went to their mother's vehicle and left.

This is a complicated and messy situation with a lot of disputed facts and a long history of court intervention. This therapist does not have all the history and is in no position to sort out the facts of the case. I am only able to report what I have observed to this point and what has been reported or said to me by the parties. This therapist does not know what else to do at this point if



the children are not going to be required to attend therapy or cooperate with parenting time. Since the father has had little to no time with the children in years and has very little influence over the children it seems that it would be up to the mother to facilitate their cooperation with counseling and visitation. While she has cooperated in bringing them to therapy it is not clear if there is any effort toward or consequences for their refusal to cooperate. If the children are truly scared of their father, then maybe an effort needs to be made to utilize a supervised visitation setting with video where a third party can ensure their safety and record the interactions to have record of any concerns and evidence of any progress. It is reported that in the past they have refused to attend supervised visitation and were allowed to not see their father even in that setting.

The next session is tentatively scheduled for October 4 with both children and their father. Since there has been no consequence for the children's refusal to cooperate with the court order it is expected that they will again refuse to join the session. This therapist may resort to trying again to meet with them separate from their father to see if any progress can be made but otherwise this therapist does not know what else to do. This therapist has discussed the case with Melanie Torno, who has been the children's therapist, and she said she believes that it is in the best interest of the children to have a relationship with their father which this therapist also supports but without their cooperation in counseling or any other time it is not clear how a relationship can be facilitated. Any direction or assistance from the court would be appreciated.

Sincerely,

Michael E. Wheaton

Michael E. Wheaton, MA
LMFT, QMHP

Cc: Debra D. Watson, Hollie E. Smith, Krista LeFors, Joseph LeFors (all by email)



February 3, 2024

Honorable Judge John H. Fitzgerald
Forth Judicial Circuit Court
PO Box 939
Sturgis, SD 57785

Re: LeFors v. LeFors, Reunification Counseling (Case: 46DIV19-000008)

Dear Honorable Judge Fitzgerald:

As discussed at the hearing on December 21, 2023, Melania Torno and I (Michael E. Wheaton) have continued to attempt to facilitate reunification counseling between Joseph LeFors and his two children; Kyden LeFors (dob: 07/02/2006) and Kailyn LeFors (dob: 05/29/2009). Both parents and the children were present for all scheduled appointments as requested.

There have been 3 meetings between the children and their father, with the planned 20 minutes with Torno to prep, then about 20 minutes with their father and I, followed by a debrief with Torno. I have only been present with the children for the time the children were with their father.

Other than being present for the meetings, the children have continued to be largely uncooperative. Even being resistant to simple requests by Torno like pulling back a hood or placing cards on a pile when playing a card game. Over the past 4 or 5 years they have learned that they can control the interaction with their father in these situations by stonewalling and refusing to interact. There have been no consequences for this behavior, so they have been able to continue it and further the rupture in the relationship. At this time, the children have almost all the power in the relationship. Their refusal to interact with their father prevents any positive corrective experiences to heal any past injuries in the relationship.

It is this therapist's perspective that the one session that happened in the fall between Kaclyn and her father when she did interact was the only productive interaction that has occurred. Since that session the children have refused any meaningful interaction with their father and any progress has been lost. This therapist does not understand what changed between that session when she was willing to interact and discuss the issues to now stonewalling and refusing to engage. The father believes that it is due to the mother's interference with the therapy process. This therapist has no way to prove if it is the children under their own volition, or if the mother is involved in the change.

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Either way, it seems that the only way to change the experience between the children and their father is for them to have more time with him to create the opportunity for positive corrective experiences to offset the negative narrative that has been left largely unchallenged. This therapist has no idea how to enforce time between the children and their father. Unless the court has reason to believe that the children's father is a danger to them it is generally accepted that it is best for children to have a relationship with both parents. This is generally accepted to be true even if the children don't, at the current time, want such relationship. Unfortunately, after the many years of separation from the father this is a much more challenging bridge to rebuild. One option may be extended visitation with the father where the children and their father have time to work out their differences together and learn to cooperate.

It is this therapist's opinion that continued therapy sessions are a waste of time and resources as long as the children are allowed to stonewall and avoid interaction with their father. Therapy could be beneficial if the children are required to participate and interact with their father to address past concerns and build new positive experiences. It is not clear to this therapist how to get this cooperation. Meeting for less than an hour per week is not likely to create meaningful change in this situation. At the same time, if this is the only way for the father to have contact with the children then it may be necessary even if they continue to refuse to cooperate.

In conclusion, I do not know what to recommend other than if the court believes that the father should have a relationship with his kids that it is going to require more time with the kids than has been provided thus far.

My session notes are enclosed/attached for your review.

Sincerely,

A handwritten signature in cursive script that reads "Michael E. Wheaton".

Michael E. Wheaton, MA
LMFT, QMHP

Cc: Debra D. Watson, Hollie E. Smith, Melanie Torno, Krista LeFors, Joseph LeFors (all by email)

Sevel Psychological and Counseling Services, Ltd
2902 W. Main St. Suite 2, Rapid City, SD 57702 Phone (605)721-8822, (605)721-8928
Mailing Address: PO Box 387, Rapid City, SD 57709

Tamara Ulmer, LCSW, LPC-MH, QMHP

Mr. Lefors,

I am writing this letter of observation for you to use at your discretion. I began providing family therapy to yourself and children on 24 March 2020. The family sessions began with telehealth communications due to COVID-19 and to build rapport. The first face to face family session was held on 31 March 2020. The second face to face family session was held on May 8, 2020. Third session via observation and telehealth on 28 May 2020. The following is the observation of the family sessions:

Session 1

This session consisted of yourself, son, and daughter. I requested that the son not participate in the family sessions due to his Dx of Autism and my not having any contact with him prior. I felt that I needed to build more rapport with him prior to engaging him in family sessions. He was however present and occupied with a therapy dog provided by this therapist. The daughter did participate in the session. This was a session to establish a base line evaluation of the family functioning between father and daughter. I requested that the mother drop her children off and then leave the area to reduce any triangulation and bias. The mother agreed to bring the children but choose to remain in the parking lot at the meeting site. During the session, the daughter reflected being afraid of her father. She indicated that the father yells and hits her. Therapist inquired about the incidents of the verbal and physical aggression. The daughter was unable to offer specifics, and when she did offer specifics, they were vague and anchored with the statement of "I can't remember when, but I was maybe eight or five." I validated her statements and reinforced that she was safe with me. At which time I invited the father to join the session. The daughter addressed the father directly, without fear and said to him that he "needed to fix the family and come home. She also indicated that she did not want to have anything to do with him until he "got help." When asked what help her father needs, she indicated that he needed to stop drinking and come home. During this time, the father listened intently to the daughter and reassured her that he loved her and that he wants to be a part of her life. He also indicated that he has not had a drink on over a year. The father inquired how he could make their relationship better and attempted once again to establish a connection. She was closed to this conversation. At this point therapist and daughter meet privately and explored her resistance. She indicated that the only way she would engage in a relationship with him is if he came home. When asked about her concerns of safety she reflected that when he is home, she is not afraid. Therapist explored how she needs both parents in her life for support and her response was "mommy needs support to and he needs to come home to fix

it." This allowed for conversation about adult relationships and adult topics. Therapist discussed how she should not be worried, concerned, or involved in the relationship of her parents, that her major concern is to be a daughter to both and enjoy both. We then developed a plan for enhanced connectedness, which the daughter came up with. Her plan was for her father to facetime her and her brother every week on Weds at 430 pm.

Session 2

This session was for the father, Son, and Daughter. The mother once again was in the parking lot and refused to leave citing that the children would not do the session unless she was there. The son refused to participate in the session, simply reflected that he hated "Joe" and was mad at him. Did not offer any further explanation. The daughter indicated the same thing but wanted to give him a letter that she had written to him. Both children did not or could not offer any reason why they were angry. When therapist inquired if any verbal, or physical aggression had occurred they both indicated no. She requested that the therapist not read the letter. I indicated that today's session we were going to do artwork and because of that they did not have to say anything to the dad. They were quick to correct me with his name. Despite the activity suggestion they both indicated not wanting to be there. I invited the father to join the session and requested that the son tell his father his refusal to attend session. The son reflected word for word his reasoning to his father: "I hate Joe and am mad at him." The daughter simply handed him the letter and said she did not want to be around "Joe" until he came home, and she was mad at him. Both children then proceeded to go to the parking lot where their mother was waiting. Therapist continued session with the father and reinforced that it will take time to reengage. He was clear about wanting a relationship with his children and felt as if their mother was preventing any opportunity for that to happen, and the only way that would happen if he was to come home. He described a toxic relationship in which his wife engaged in strategies that would harm his mental wellbeing and potential career. After time the daughter decided to join the session indicating that she wanted to do chalk art. She along with the therapist and her father prepared the stencil, chalk, and found a location. The task for the art was to stencil out a word or phrase. As we engaged in this activity therapist notes that she, became more willing to accept different stencil letters, chalk, and sponges from her father. Therapist also notes that her phrase of "I love mommy and her brother, while excluding her father was a form of punishment to him. The father expressed he was glad she loved her mom and brother, she replied with a yes. Time ran out of session she went to the car retrieved her phone to photograph it. She did reflect that she was upset of not being able to finish it with the next line of "not Joe." Therapist validated her hurt with the family dynamic and reminded her of topics and relationships of adults are between the adults.

Session 3

The session was conducted via telehealth with observation of the interaction of the children and father at the predetermined pick up site. This was a request of Joe to therapist in order to get a better understanding of the interactions between them, and guidance of how to increase engagement. Upon arrival I noted that the father and mother were in their perspective vehicles. The mother appeared to be communicating with the children. The mother, son and daughter exited her vehicle at which time she gave them hugs. She got back in the car and left. The children walked over to the father's truck. Therapist notes that the father said hello, to the children and there was no response. The daughter then

began to do something on the telephone. Therapist encourage the father to offer the birthday card and cupcake he got for the daughter. She did not accept or engage in communication as she was still on the phone. After a few minutes the children left their father. Therapist encouraged the father to exit his vehicle and once again attempt to give his presents to her and request that they get into the car. She yelled back no. As he walked towards the children they began to run. He stopped. The son and daughter looked back. The son had a smile on his face and the daughter seemed angry. The father got back in his vehicle and began to follow them to ensure safety. At this time he requested that I continue to stay on the phone with him. He offered his perspective and reflected his level of hurt and frustration that he is unable to spend time with his children. When the children arrived home approximately 40 minutes later, the father indicated that he sits in his car, while they wait in their drive way. Therapist suggested that he tell his daughter he was sorry about not being able to go to her picknick on her birthday due to the current circumstances. Joe reflected that sentiment and also indicated that he hopes to do something special with them. After some time, he reflected to the children that he was not allowed to stay in front of their home and needed to leave.

This therapist notes that there appears to be a high level of influence of the mother to the children and that the child align with the mother wishes. Both children do not appear to be afraid of the father and do not display and behaviors that would be indicative of abuse or neglect. For example, most abused children tend to align with the abusive parent and show them over affection for fear of future abuse. They may have constant worry that they are doing something wrong. They may have low self-esteem and show a lack of interest in friends or activities.

This therapist has reinforced the importance of not having the children involved in the divorce process or what happens in the relationship as that can be detrimental to the family functioning. Therapist indicates that the parents need to reinforce that each parent loves them, that they are glad they get to spend time with the other parent, and to have fun. Each parent is also not to offer any negative comments or information about the other parent.

Even though my involvement with the father and children directly has just begun, I do not feel that the children are in any danger from either parent. The children would benefit from visitation from both parties. It is this therapist opinion that the relationship between the children and mother is to enmesh, as the daughter has reflected feeling responsible for her emotional wellbeing and is determined to remove her affection for her father until he comes home. The son appears to simply parrot his sister's statements. Additionally, the family sessions are progressing in a predictable way and the family would benefit from continued sessions. Finally, this therapist cannot offer any direction of child custody issues as it is in this therapist opinion that a home evaluation be done to determine custody agreement and arrangement. It is clear however that increased engagement between the father and children is needed to enhance the overall family functioning

Tamara Ulmer LPC-MH, MSW LCSW, QMHP

Tamara Ulmer LPC-MH, MSW LCSW, QMHP

Doctorate candidate in Marriage and Family Therapy with specialization of military families and emphasis of trauma

605-786-5141

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
FILE NO. 46DIV19-8

JOSEPH LEFORS, Plaintiff, vs. KRISTA LEFORS, Defendant.	NOTICE OF APPEAL
---------------------------------------------------------------------------------------------------	-------------------------

**TO: PLAINTIFF, JOSEPH LEFORS, AND HIS ATTORNEY OF RECORD,
HOLLIE L. SMITH:**

YOU WILL PLEASE TAKE NOTICE AND BE ADVISED that the Defendant, Krista LeFors, appeals to the Supreme Court of South Dakota from the Circuit Court's Order for Sanctions Following August 12, 2024 and September 17, 2024 Hearing in the above-captioned file, such Order having been filed in the office of the Clerk of Court within and for Meade County, South Dakota, on the 24th day of October, 2024.

Dated this 22nd day of November, 2024.

SANDERSON LAW

/s/ Kelly J. Sanderson
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of November, 2024, a true and correct copy of **Notice of Appeal** was served in the following manner upon the following person, through Odyssey File & Serve:

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STATE OF SOUTH DAKOTA)
) SS
COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

FILE NO. 46DIV19-8

JOSEPH LEFORS, Plaintiff, vs. KRISTA LEFORS, Defendant.	NOTICE OF APPEAL
---------------------------------------------------------------------------------------------------	-------------------------

**TO: PLAINTIFF, JOSEPH LEFORS, AND HIS ATTORNEY OF RECORD,
HOLLIE L. SMITH:**

YOU WILL PLEASE TAKE NOTICE AND BE ADVISED that the Defendant, Krista LeFors, appeals to the Supreme Court of South Dakota from the Circuit Court's Findings of Fact and Conclusions of Law, and Order Following October 24, 2024 Hearing in the above-captioned file, such Order having been filed in the office of the Clerk of Court within and for Meade County, South Dakota, on the 20th day of November, 2024.

Dated this 20th day of December, 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of December, 2024, a true and correct copy of **Notice of Appeal** was served in the following manner upon the following person, through Odyssey File & Serve:

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 30766

JOSEPH D. LEFORS,

Plaintiff and Appellee,

vs.

KRISTA M. LEFORS,

Defendant and Appellant.

APPEAL FROM THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
MEADE COUNTY, SOUTH DAKOTA

THE HONORABLE JOHN FITZGERALD
CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

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Notice of Appeal filed July 22, 2024

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STATEMENT OF THE FACTS

Joseph has claimed that parental alienation has been occurring throughout these proceedings. Dr. Perrenoud was appointed in this matter and did believe that alienation was occurring by Krista. During the same time that Dr. Perrenoud made his findings the children's counselor, Melanie Torno, found that there was no evidence of Krista alienating the children from Joseph. SR 2212 and SR 2438. Ms. Torno disagreed completely with Dr. Perrenoud's findings based off of her interactions with the children. SR 2438, App. 082. Ms. Torno found that the children would often become frustrated with their mother because she was too encouraging of their relationship with their father. App. 045. Ms. Torno testified that Krista never tried to sway her opinion which often times will happen in situations of alienation. App. 083. During these hearings related to alienation, Judge Kevin Krull was presiding over this file. On December 9, 2022 Judge Krull issued Findings of Fact and Conclusions of Law and Order where he specifically found that the children did not trust Dr. Perrenoud and would not speak to him because they did not feel safe with him. SR 2593, App. 100. Judge Krull found and concluded that there was insufficient evidence to find alienation. App. 101. Judge Krull also found and concluded that the relationship between Joseph and the children was damaged to the point that it was almost beyond repair. *Id.*

REPLY

- 1. The Circuit Court abused its discretion by finding Krista had violated the visitation order based off the minor child's action.**

Joseph's brief ignores that Krista did comply with the Court Order by making the minor child attend each visit and instead frames this as missed parenting time. When in fact Krista did comply with the Court Order. She took the child to the restaurant

twice each week and left the area. The Circuit Court similarly failed to recognize that the visits did occur and the minor child was present. Appellant's Brief APP 076-078. The Circuit Court is punishing Krista because Joseph did not like the outcome of how his visits were going and did not like that the minor child was unwilling to speak to him. Krista has not willfully violated the Court Order. She had the child at every supper visit. What occurred after she left was out of her control and should not result in sanctions against her.

The Circuit Court failed to consider the affirmative steps that Krista did take to try to get the minor child to speak or eat with Joseph. "The parent has an obligation to take affirmative steps to encourage compliance with visitation orders and parents have an obligation to attempt to overcome the child's resistance to visitation." *Dean v. Cook*, 2017 COA 51, ¶ 22, 413 P.3d 246, 251; *In re Marriage of Marez*, 2014 MT 333, ¶ 28, 340 P.3d 520, 527 (Mont. 2014) (quoting *In re Marriage of Rideout*, 150 Wn.2d 337, 77 P.3d 1174, 1182 (Wash. 2003)). The Circuit Court never inquired into the steps that Joseph was taking to repair his relationship with his daughter and instead placed all of the burden on Krista alone.

Krista provided a number of things that she did to try to help this relationship. See Appellant's Brief APP 050-062. Furthermore, the Court has been unwilling to give her any guidance on what more she can do to help Joseph's relationship with their daughter. The Circuit Court has ignored the professional guidance of Melanie Torno who believes Joseph needs to take steps to better the relationship. *Id.* at 068. The Court has failed to properly weigh the evidence before it. Krista has been sanctioned for doing exactly what the Court Order requires of her. Which is to drop the minor

child off at Culver's or Olive Garden and leave. The Court completely disregarded the expert testimony of Melanie Torno who found no evidence of alienation and has found nothing to suggest that Krista is to blame for the relationship between Father and child.

2. The Circuit Court abused its discretion by sanctioning Krista.

The best interests of the child remains the guiding principal in all cases revolving around minor children. See *Jensen v. Horton*, 2N.W.3d 20 (S.D. 2024). The Court did not make any findings related to how the sanction of \$500 per visit would impact the minor children. Krista is the main provider for these children. Although the oldest son is now an adult Krista supports him completely. The Circuit Court failed to make any findings on how these sanctions would impact the minor children and Krista's ability to support them which is in error.

Further the Court has imposed \$500 per visit which amounted to \$2,000 total which is over the \$1,000 authorized by statute. The plain language of the statute reads "To require the offender to pay a civil penalty of not more than the sum of one thousand dollars;" SDCL § 25-4A-5(3). It does not authorize the Court to award sanctions in excess of one thousand dollars.

3. Sanctions for Attorney Fees Must be Reasonable.

SDCL 25-4A-5 allows sanction of attorney fees for the "express purpose of punishing the offender." *Hiller v. Hiller*, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548, 556 "Therefore, a circuit court's findings relating to necessity are sufficient so long as they adequately support the determination that the offending party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree." *Id.* at 551. However,

even under this Statute, attorney fees must still be reasonable and must have been incurred solely as a result of the noncompliance. See *Id.* at 551. Here the Circuit Court made no findings related to the reasonableness of the attorney fees ordered. No Affidavit of Attorney Fees nor an invoice was entered into evidence and as such the Circuit Court had no evidence to support a finding of how these fees were incurred or to gauge their reasonableness.

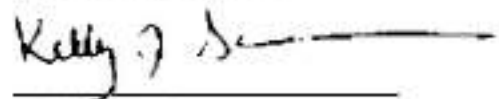
CONCLUSION

The Circuit Court has erred in imposing sanctions against Krista for the minor child's unwillingness to speak to Joseph. Krista has complied with the Court Order. Krista should not be sanctioned. The Circuit Court erred in sanctioning Krista more than the one thousand dollars allowed by statute and erred in awarding attorney fees without making any finding related to the reasonableness of those fees. Krista respectfully requests that this Court reverse the Order of the Circuit Court and vacate the award for sanctions and remand this matter so that an order may be issued that is consistent with the best interests of the minor child.

Dated this 3rd day of February, 2025.

Respectfully submitted,

SANDERSON LAW

A handwritten signature in black ink, appearing to read "Kelly J. Sanderson", is written over a horizontal line.

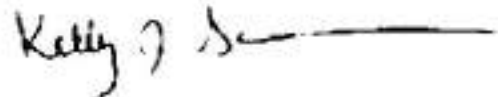
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of February, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey Electronic Filing System, and further certifies that the foregoing document was also served via Odyssey Electronic Filing System and mailed via U.S. Mail, postage prepaid thereon to:

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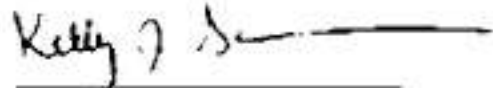
The undersigned further certifies that the original copy of the Appellant's Reply Brief in the above-entitled action was mailed to the Clerk of the Supreme Court, 500 East Capitol Avenue, Pierre, SD 57501, on the date written above.



Kelly J. Sanderson

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point font. This brief is 4 pages in length, not including the Appendix. The word processor used to prepare this brief indicates there are 1102 words in the body of this brief.



Kelly J. Sanderson

APPENDIX

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STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

COUNTY OF MEADE)

FOURTH JUDICIAL CIRCUIT

JOSEPH D. LEFORS,

Plaintiff,

vs.

KRISTA M. LEFORS,

Defendant.

Motions Hearing

46DIV19-8

BEFORE: **THE HONORABLE KEVIN J. KRULL**
Circuit Court Judge
Sturgis, South Dakota
March 8, 2022 at 1:30 p.m.

APPEARANCES:

For the Plaintiff: Hollie L. Smith
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2834 Jackson Boulevard, Suite 201
Rapid City, South Dakota 57709

For the Defendant: Debra D. Watson
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I N D E X

WITNESS:

PAGE NO.

MELANIE TORNO, MS LPC-MH QMHP

Direct Examination - By Ms. Watson

7

Cross Examination - By Ms. Smith

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EXHIBITS:

MARKED

OFFERED

RECEIVED

Defendant's Exhibit A

13

14

1 (WHEREUPON, the following proceedings were duly had:)

2 THE COURT: This is Divorce File 19-8. It's the Lefors
3 matter. The Plaintiff is here with Ms. Smith. The
4 Defendant is here with Ms. Watson. This is the time and
5 place set for basically a continued motions hearing.

6 The last hearing we had was on, I think it was
7 December 21st. We had another one scheduled for January
8 and then I believe Ms. Watson was ill, and so we
9 rescheduled for today. Now the attorneys may have to help
10 me a little bit about procedurally. The last testimony we
11 took was from Dr. Perrenoud, is that correct?

12 MS. WATSON: That is correct.

13 THE COURT: Okay, very good.

14 MS. SMITH: And my client for just a short --

15 THE COURT: Okay, all right. And that was -- all right.
16 Is this Ms. Torno here?

17 MS. WATSON: It is.

18 THE COURT: Okay. Ms. Smith, do you have other witnesses
19 to call today? I'm a little -- I'm not sure whose turn it
20 is I guess is what I'm saying.

21 MS. SMITH: Right. I believe it is Ms. Watson's witness,
22 Ms. Torno, and then depending on time, if Ms. Lefors does
23 not testify, I do not plan on calling my client, but if she
24 does testify, I assume I will want to have my client
25 testify in rebuttal.

1 THE COURT: Okay.

2 MS. SMITH: But that's just sort of my position on that.

3 THE COURT: Any other witnesses besides anybody that's in
4 the courtroom right now?

5 MS. WATSON: Yes, the plan is to have the children --

6 THE COURT: Right, okay.

7 MS. WATSON: -- come up after school.

8 THE COURT: Sure, and approximately 3:45 is when they would
9 arrive?

10 MS. WATSON: That's what we're anticipating.

11 THE COURT: Okay. You know, I've only been doing this for
12 a little over two years. I have met with children in
13 camera. I'm willing to do it in this case. I think I
14 would like to talk to them separately, not just no
15 attorneys and anybody there, but talk to the son and then
16 talk to the daughter separately. I will have my court
17 reporter in there. Well, I don't know, does either party
18 have a position -- I'm not going to be in a room with the
19 door closed with a child alone, okay, that's just my
20 personal policy. I have had my court reporter come in with
21 me when I've done this. I could have her be in there
22 making a record, or I could have her be in there just being
23 in there. Does either party -- and I'll figure that out,
24 but does either party have any position on that?

25 MS. WATSON: Well, I guess my concern is, and maybe we can

1 address this through the children's counselor if that --
2 with Kyden's autism, I think he doesn't say a lot unless
3 his sister's there. I mean, he's just not real talkative,
4 so he would be uncomfortable I think by himself, but I
5 don't know. I mean, I think probably the counselor would
6 be one to address that more than me, but --

7 THE COURT: Okay.

8 MS. WATSON: -- that's what I understand. With his autism
9 he's just not very forthcoming when he's just left all by
10 himself.

11 THE COURT: Okay. Based on what I know about this case,
12 because of Kyden's autism, a lot of times he'll just kind
13 of go along with what his sister said, and if they're both
14 in there, my worry is that I may not hear from him, I may
15 hear him just parroting what his sister says, but maybe we
16 need to hear from Ms. Torno and then I'll make a decision.
17 I'm sorry, Ms. Smith, do you have any position on any of
18 that?

19 MS. SMITH: I think having the court reporter in the room,
20 not making a record, but at least having another female in
21 the room would be helpful, I think, regardless.

22 THE COURT: Yeah, okay. Well, if I did make a record, I
23 would seal it, and then if for some reason somebody wanted
24 to look at it, it would only be accessible by court order.

25 MS. SMITH: And then if it's possible, I would like to talk

1 to you in chambers prior to the -- with just counsel if we
2 could, prior to the children being here.

3 THE COURT: Sure, sure, we can do that.

4 MS. WATSON: And I don't disagree with you that Kyden
5 follows his sister's lead although she's several years
6 younger, and maybe you could visit with him before her.
7 You know, they could be in the same room, but he could talk
8 first, I don't know. But you're right, I mean I do think
9 that with his autism he tends to follow his sister's lead.
10 I mean, I don't know what's the right answer, I guess.

11 THE COURT: Okay. Well, I'll just keep that in the back of
12 my mind and think about it as we go along. So, all right,
13 anything else we need to cover before we call our witness?

14 MS. WATSON: I have nothing further.

15 MS. SMITH: No.

16 THE COURT: Okay. Go ahead, Ms. Watson.

17 MS. WATSON: Thank you. I'd call Melanie Torno.

18 THE COURT: Please come forward, ma'am.

19 **MELANIE TORNO,**

20 called as a witness, being first duly sworn, testified as
21 follows:

22 THE COURT: All right, and ma'am, you've testified in court
23 before, correct?

24 THE WITNESS: Correct.

25 THE COURT: All right, very good. If you sit here, you can

1 hear this hum?

2 THE WITNESS: Yes.

3 THE COURT: I have a little bit of a hearing disability, so
4 I'm going to ask you to speak right into that microphone,
5 okay?

6 THE WITNESS: Okay.

7 THE COURT: All right, so pull it closer to you. All
8 right, very good. Go ahead, Ms. Watson.

9 DIRECT EXAMINATION

10 BY MS. WATSON:

11 Q Good afternoon.

12 A Good afternoon.

13 Q Please state your name, spelling both your first and last
14 name.

15 A Melanie Torno. M-E-L-A-N-I-E. Last name T-O-R-N-O.

16 Q And, Ms. Torno, you were subpoenaed into court today, is
17 that right?

18 A That's correct.

19 Q And tell the Court what your work address is.

20 A My work address is 730 South Street, Rapid City, South
21 Dakota 500 -- or 57701.

22 Q And if you would summarize for the Court your post high
23 school education.

24 A I have my bachelor's degree with a double major in human
25 services and psychology from Black Hills State University.

1 I also have my master's degree, my master's of science in
2 counseling and human resource development from South Dakota
3 State University.

4 **Q** And what year did you get your bachelor's degree?

5 **A** 2001, and my master's was in 2004.

6 **Q** And are you licensed as a professional counselor in South
7 Dakota?

8 **A** Yes, I received my LPC, I believe that that was in 2007, my
9 LPC-MH in 2015, and my QMHP in 2012, I believe.

10 **Q** So you're licensed -- you've been a licensed professional
11 counselor, if my math is right, for about 15 years?

12 **A** Correct.

13 **Q** And what does it take to become a licensed professional
14 counselor in South Dakota?

15 **A** For my first license, it is about a two-year process of
16 seeing -- you have to accumulate around 2,000 hours and you
17 have to be supervised during that time period. You also
18 have to, prior to, I guess, collecting hours for licensure,
19 you also have to pass the NCC which is an examination.

20 **Q** So what does NCC stand for?

21 **A** Oh, wow, all the credentials. National Certified
22 Counselor, I believe. So it's just a -- it is a test that
23 is used through the NBCC which is the National Board of, I
24 think, Credentialing Counselors.

25 **Q** And then you indicated that you also have your QMHP and

1 that's Qualified Mental Health Professional?

2 **A** Correct.

3 **Q** And what is entailed in getting that licensure?

4 **A** For the QMHP, you actually have to have taken a class after
5 you have reached a certain status of licensure and then
6 you're eligible to take that class, and then you take a
7 multiple choice test and then you're granted your QMHP.

8 **Q** And you've had that license for the last ten years?

9 **A** Correct.

10 **Q** And then you indicated that you have -- well, it looks like
11 you're a licensed professional counselor period, and then
12 you're a licensed professional counselor - mental health.
13 What's the difference?

14 **A** Mental health is the -- an LPC-MH is the highest license a
15 master's level can have in the State of South Dakota. It
16 means you've had additional training. It also means you've
17 had additional supervision and you have had 3,000 hours of
18 direct contact with clients while being supervised.

19 **Q** And have you been employed as a professional counselor
20 during the past 15 years?

21 **A** Yes, I worked both in Rapid City School District, as well
22 as Douglas School District as a family counselor, and then
23 I have moved into my own private practice almost ten years
24 ago.

25 **Q** In addition to counseling, have you had training as a child

1 custody evaluator?

2 **A** Yes, I am a -- 4th and 7th Circuit Court, I'm a court
3 approved mediator, parent coordinator, as well as a custody
4 evaluator.

5 **Q** And what training was required in order to qualify you to
6 be a child custody evaluator?

7 **A** I went through a two-week custody evaluation training, and
8 then I also had some additional training supervised by, I
9 worked a lot with Dr. Simpson when he was still practicing
10 and so I shadowed some of his work and gained some
11 knowledge and experience that way as well before I went
12 into my own.

13 **Q** And do you perform child custody evaluations?

14 **A** I do.

15 **Q** And in addition to your counseling and your child custody
16 evaluations, have you also had training as a parenting
17 coordinator?

18 **A** Yes.

19 **Q** And what is that training?

20 **A** So I have received my training through AFCC as a parent
21 coordination, a series of trainings. I did that in
22 Chicago. And then I previously have been a member of AFCC
23 and I have gone to multiple trainings, whether it's on
24 custody evaluation, parent coordination, or mediation, or
25 just all encompassing the whole industry as a whole.

1 Q And are you presently serving as a parenting coordinator?

2 A Yes.

3 Q What do the initials AFCC stand for?

4 A Oh, my gosh, you're asking me the hard questions. I think
5 it's American Family of Con --

6 Q Conciliation --

7 A Yes.

8 Q -- Courts, or something like that?

9 A Yes.

10 Q Yeah, okay.

11 A I'm sorry, acronyms are much easier than saying the whole
12 name.

13 Q Exactly. So in addition to the counseling, child custody
14 evaluation, and parent coordination, you indicate that you
15 also do mediation, right?

16 A Correct.

17 Q And you are trained as a mediator?

18 A Correct.

19 Q Where did you get that training?

20 A I did that through a course in Chicago -- or not -- sorry,
21 and this one was in Colorado, and I did it through
22 Mediators Without Borders. I did a 40-hour course just as
23 a general mediation training, and then I did a specialized
24 additional 40 hours of training that specialized in divorce
25 and custody issues.

1 Q And you also handle mediations?

2 A Correct.

3 Q And are you also certified as a school counselor?

4 A Yes, I have since -- in the last several years I have let
5 my certification lapse, but I was certified as a school
6 counselor as well.

7 Q And have you worked as a school counselor?

8 A I worked in the school districts for eight years, but my
9 official title was a family counselor.

10 Q What's the difference between a school counselor and a
11 family counselor?

12 A School counselors typically will work more with -- in the
13 classroom or do some career counseling, depending on the
14 age level. My job was specific to be the liaison between
15 the school and the home environment, as well as outside
16 agencies, so I kind of played the middleman for that.

17 Q So it sounds like most of your work during the past
18 15 years has involved children?

19 A Correct.

20 Q What percentage of your work currently involves children?

21 A 55 to 60 percent, and that does fluctuate just depending on
22 caseloads at the time.

23 Q Now, Ms. Torno, have we covered your education and training
24 as it relates to your work with children?

25 A Yes.

1 Q And did I request today you provide to me your curriculum
2 vitae?

3 A Yes.

4 Q And did you do so?

5 A I did.

6 MS. WATSON: May I approach the witness, Your Honor?

7 THE COURT: You may.

8 Q (BY MS. WATSON) Ms. Torno, I'm going to hand you what I've
9 marked as Defendant's Exhibit A and ask if you recognize
10 that document?

11 A Yes, I do.

12 Q And tell the Court what that is.

13 A It is essentially my background of licensure certification
14 and specialized trainings and employment to, I guess, just
15 indicate -- and including my education, indicate everything
16 that I have been trained to do.

17 Q Is there anything -- well, let me ask you this. Is
18 everything on your curriculum vitae true and correct?

19 A Yes.

20 Q And is there anything additional that's accrued since you
21 provided that that you'd like to add to that?

22 A No.

23 MS. WATSON: I'd offer Defendant's Exhibit A. A copy has
24 been provided to Ms. Smith.

25 MS. SMITH: No objection.

1 THE COURT: All right. A is received.

2 Q (BY MS. WATSON) Now it appears that in addition to your
3 education and your licensure and your certifications that
4 we've just gone through that you've also had some
5 specialized training?

6 A Correct.

7 Q And those are set forth in your curriculum vitae?

8 A Correct.

9 Q Now I want to talk about a few of those areas. One of the
10 areas that it indicates that you have specialized training
11 relates to divorce and custody issues. If you could just
12 summarize for the Court what your training has been in that
13 regard.

14 A In the divorce and custody areas have obviously been the
15 trainings for mediation, parent coordination, and custody
16 evaluation. I have included a large majority of my CEUs
17 that are required of me biannually. The majority of those
18 have always been geared towards custody and divorce issues,
19 whether it's attending refreshers on custody evaluation,
20 how to conduct them, specialized areas with domestic
21 violence, or I have attended multiple AFCC trainings for
22 three to four days at a time just to continue receiving the
23 newest and latest theories on how to address certain
24 issues, as well as to have collaborations with other
25 like-minded individuals who are in the same field to be

1 able to discuss how to move forward in the most efficient
2 and I guess, productive manner in our industry.

3 **Q** Now I didn't ask you this, but in connection with your
4 licensing as a licensed professional counselor/qualified
5 mental health professional, are you required on an annual
6 basis or otherwise to continue your education?

7 **A** Yes, we are required 40 CEUs biannually, and four of them
8 must be in some form of an ethics class.

9 **Q** And what is a CEU?

10 **A** A continuing education unit.

11 **Q** And have you done that?

12 **A** Yes.

13 **Q** Now you indicated also that you have specialized training
14 in physical and emotional abuse. Does that include
15 children?

16 **A** Yes. I have -- I have gone through CBT trauma focussed
17 therapy. I have also received additional training through
18 EMDR which is a technique that's been around for a while
19 but it's gaining more traction. It's to focus on different
20 types of anxiety. I primarily use EMDR with adults. You
21 can use it with children, but it is a specialty for trauma.
22 So I have done additional trainings that are related to any
23 type of trauma issue, whether it's child abuse, sexual
24 abuse, domestic violence, various types of anxieties, so I
25 have received those trainings.

1 Q And that kind of leads into my next question. You indicate
2 that you've got specialized training in domestic violence?

3 A Correct.

4 Q And what sort of training do you have in that field?

5 A It would go along with some of the CEUs that I have
6 accumulated. What tends to happen is when you go into a
7 training for trauma, we go through many different areas.
8 Some of it is sectioned out into child abuse, some into
9 domestic violence, so it's an all-encompassing, so it goes
10 through each of the different types of trauma in that
11 modality.

12 Q You also indicated in your specialized training that you
13 have training in parental alienation, is that right?

14 A Yes.

15 Q How do you describe parental alienation?

16 A In layman's terms -- I guess in layman's terms, the easiest
17 terms would be if one parent was trying to detrimentally
18 impact the relationship with the children with the other
19 parent.

20 Q And where did you get your training on parental alienation?

21 A Through AFCC.

22 Q Any other training that you've had that relates to our
23 present situation that you know of?

24 A Not that I'm aware of.

25 Q Now did you request that the parents sign a release to

1 authorize you to provide information to Attorney Smith and
2 myself?

3 **A** I did.

4 **Q** And did you get a signed release from Ms. Lefors?

5 **A** Yes.

6 **Q** Did you get a signed release from Mr. Lefors?

7 **A** No.

8 **Q** Do you need the Court's authorization to discuss these
9 children in court today?

10 **A** Yes.

11 MS. WATSON: So we would ask for that.

12 THE COURT: Okay. I'm not sure what requirements you need.

13 THE WITNESS: I received it from the subpoena, so I would
14 -- I think that would suffice.

15 THE COURT: All right. Well, you're authorized to provide
16 such testimony.

17 **Q** (BY MS. WATSON) Now, Ms. Torno, are you the counselor for
18 Kyden and Kaelyn Lefors?

19 **A** Yes.

20 **Q** When did you assume that role?

21 **A** I believe my first session was May 3rd of 2021.

22 **Q** And so you've been their counselor for almost a year?

23 **A** Correct.

24 **Q** And who approached you to do counseling for Kyden and
25 Kaelyn?

1 **A** I believe Krista had called my office.

2 **Q** And if you would just spell Kyden and Kaelyn so we make
3 sure the court reporter knows the spelling.

4 **A** Oh, it's K-Y-D-E-N and K-A-E-L-Y-N.

5 **Q** And when you were contacted by Kyden and Kaelyn's mother,
6 what did she ask you to do?

7 **A** To provide counseling services for both of her children.

8 **Q** And did she tell you why she had thought they needed
9 counseling?

10 **A** From my recollection, it was because the parents had been
11 separated and they were going through a divorce. I don't
12 ask many questions when I speak to set up appointments. I
13 send a follow-up email with paperwork, and there is a
14 client history form that they are -- that they can fill out
15 and provide me with information prior to the sessions.

16 **Q** And did you reach out at all to the children's dad?

17 **A** I did not.

18 **Q** And has he had any contact with you?

19 **A** No.

20 **Q** Now when was the first time that -- the first time you saw
21 the children was May 3rd?

22 **A** Correct.

23 **Q** Okay. So prior to that then, you'd received some
24 information from their mother?

25 **A** Yes, but the client history form appears to be filled out

1 by both of the children.

2 Q Okay. So the information that you received was from the
3 kids rather than from the parents?

4 A The administrative insurance information, those types of
5 things was received from Krista. The client history form
6 was completed. It was signed on the bottom by Kaelyn and
7 Kyden.

8 Q Now when you saw the children, did you see them together or
9 separately?

10 A Separately. I -- well, I saw them separately for the first
11 six sessions, each of them, and then the last four
12 sessions, I have seen them together.

13 Q So before I forget, you understand that the children may be
14 visiting with the judge today?

15 A Correct.

16 Q We want the children to feel comfortable and share with the
17 judge information.

18 A Um-huh.

19 Q So, you know, should they -- should the judge be with them
20 separately, should they be together? What's the best way
21 to make the children feel comfortable so they will talk?

22 A With Kaelyn I don't think you have any concerns. She will
23 -- as long as she feels comfortable, she will answer the
24 questions. I don't foresee any issue of why she would not
25 answer any questions that were asked by the judge.

1 Regarding Kyden, I had -- my first six sessions were
2 individually with him. They were not together, and I did
3 not have any issues with him asking questions about this
4 issue. I think Kyden would probably be okay doing it
5 individually, particularly if there's concerns that he may
6 parrot what Kaelyn says. I have found through the course
7 of working with both of them that Kyden has his own
8 opinions, it is not always the same as Kaelyn, and I think
9 he would be okay speaking with the judge individually.

10 **Q** Okay, great. Thank you.

11 **A** Yes.

12 **Q** Now how often -- what was the frequency that you saw the
13 children?

14 **A** For the first several sessions, it was every couple weeks,
15 two to three weeks, depending on schedule and availability.
16 I requested it to be moved out further just because of the
17 ever-changing things in the relationship with the children
18 and with their father, and so I requested it be on a
19 monthly basis and that has been that case, except for the
20 month of January, but I believe that there was a vacation
21 involved and then I had scheduling conflicts as well, so
22 then as soon as I could get the kids back in, then I did
23 meet with them.

24 **Q** And when you meet with the kids, how long is this session?

25 **A** It's an hour session.

1 Q One hour each, or one hour --

2 A When it was -- for the first six sessions, it was one hour
3 each for each of the children, and then the last four
4 sessions which began end of October -- sorry, beginning of
5 November, it has been one hour together.

6 Q And why did you decide to meet with the kids together?

7 A I didn't know -- how do I say this? The kids were saying
8 very similar things. They also view each other as a
9 support network. I felt like some of the things that we
10 were working on was like safety planning, but it was
11 something that they were both experiencing, so it would be
12 beneficial, and it was repeating the same issues every
13 week, you know, and it didn't feel like it was very
14 productive to meet with them each individually, so I
15 combined it with them meeting together.

16 I also had knowledge that they were meeting together
17 with Dr. Perrenoud and I felt that that might be more
18 appropriate if that was the style that he was utilizing as
19 well.

20 Q Now can you give the Court some idea about how many hours
21 that you've spent with Kyden and Kaelyn?

22 A So six individual hours and then -- so it's been a total of
23 ten hours; six of them have been individual, four of them
24 have been with them together, so a total of ten for each
25 child.

1 Q And when's the last time that you saw Kyden and Kaelyn?

2 A It was last week. I believe it was March 2nd.

3 Q Now when you received this intake from the children, what
4 did they report was concerning to them?

5 A The majority of the things that was reported is the
6 relationship with Joe.

7 Q Were they more specific than that?

8 A They had talked about some things of being afraid, being
9 fearful, not wanting to have a relationship. So a lot of
10 it had to do with just a relationship piece and being
11 fearful of that and past issues that had occurred or they
12 had witnessed.

13 Q Okay. Now I'd like to have you describe Kyden for the
14 Court, his age, personality, so the Court has some idea
15 about Kyden.

16 A So Kyden is a high schooler, a freshman I believe. I
17 started with him in end of May, so I have transitioned --
18 I've had him in more than one grade, but anyway, he's a
19 very sweet boy. He's very direct. His affect is very
20 flat, it's very matter of fact. He tells you what he wants
21 to tell you and then he's done. He comes in with a
22 notebook. He journals his experiences and tells them to
23 me. I ask a few questions and then he's done talking.
24 It's very minimal words, but he can carry on a
25 conversation. I do have good rapport with him. We get

1 along fine.

2 Q How old is Kyden?

3 A I believe he's 15.

4 Q And you indicated that he journals his experiences. Was
5 that something that you requested, or how did he start
6 doing that?

7 A He may have done that prior, but I had requested -- we had
8 talked about how to -- as coping skills, how to deal with
9 things that he was experiencing, and so I had asked him if
10 journalling would be helpful for him, and so he writes down
11 very short experiences that seem to bother him.

12 Q So what sort of experiences did Kyden journal that bothered
13 him?

14 A He talked specifically about some of the visitation that
15 has occurred and specific events. He has journaled about
16 past experiences. He has spoke quite a bit about drinking
17 and then an incident with a gun. He has journaled quite a
18 bit about that, and then it's mostly just his experiences
19 and his thoughts on the interactions that he does have with
20 Joe.

21 And then he also, as of recently, probably the last
22 couple of months, has started journaling about his
23 experiences with the counseling sessions with Dr.
24 Perrenoud.

25 Q So I want to talk about those separately with you. The

1 first thing that you indicated that Kyden talked about his
2 past experiences. You know, one of the past experiences
3 you talked about was drinking. Tell the Court what Kyden
4 told you about that.

5 **A** He has -- he just told me -- now mind you, Kyden has very
6 minimal words, so it's not a lot of detail, and to me, I'm
7 not here to investigate one parent or the other, my job is
8 to help the kids and to be able to deal and cope with that.
9 So Kyden has talked about past drinking. I believe he
10 mentioned Bud Light. He has just talked about how in the
11 past while mom and dad were still together that Joe would
12 drink and that he abused him, and that's what he called it.

13 **Q** And when you say "he abused him," you're talking about that
14 dad abused Kyden?

15 **A** Kyden, correct.

16 **Q** What did Kyden tell you about that abuse?

17 **A** Kyden had told me that he would get yelled at, he would
18 have names called to him. I believe there was an incident
19 where he was grabbed by the back of the neck. He had
20 reported there was an incident where dad had called the
21 police while he was intoxicated about a gun. I don't know
22 all of the details of the situation. Like I said, it's not
23 my job to investigate what had happened; my job is to help
24 the kids to be able to cope with it. And he had talked
25 about those experiences, how he is fearful of seeing Joe

1 and then also is fearful in their home.

2 Q So you indicated that you felt that you had a good rapport
3 with Kyden, right?

4 A Um-huh.

5 Q And tell the Court why you say that.

6 A I've actually seen Kyden smile. So he has communicated
7 about other things too, not just about this. We've talked
8 about his school, activities, he's in track. He does have
9 eye contact with me intermittently. It's not all the time
10 which I wouldn't expect anyone with autism, but he tells me
11 things and he's very pleasant. It's not like he doesn't
12 want to go; however, him and Kaelyn do have a joke on who
13 gets to go first. But other than that, he's always been
14 very polite, friendly, communicates about other things.

15 Q How does Kyden, although he has autism, how does he do in
16 school?

17 A For the most part from my understanding, he does pretty
18 well. There are some areas that are more concerning for
19 him. Homework does take longer, and that has been an issue
20 lately, but previously -- homework does take him probably
21 longer than most people at his age; however, lately he's
22 indicated it's taking much longer for him to complete it.

23 Q And he's on what's called an IEP, an individualized
24 education plan, at school?

25 A Correct.

1 Q Because of his autism?

2 A Yes.

3 Q And you mentioned that he was involved in track?

4 A Correct.

5 Q Have there been any social issues involving Kyden?

6 A Not that I'm aware of. He does say that he has friends.
7 He named one friend for me, and then will tell me he
8 doesn't remember the names of the other people. I don't
9 really believe that a lot of social interaction is
10 important to Kyden, particularly with the autism.

11 Q Okay. And then have you seen changes in Kyden from the
12 time that you first started seeing him about a year ago
13 until now?

14 A The biggest change I've seen in Kyden is he is so tired.
15 He will not make it through an entire session anymore. He
16 will fall asleep. So if I need to communicate with Kyden,
17 I will involve him first and keep him engaged as long as I
18 can, and then he will just -- sitting up, he will fall
19 asleep.

20 Q Why is Kyden so tired, did you ask him that?

21 A According to Kyden, it is because of having to stay up so
22 late for homework, that there have been -- since some of
23 the visitation that has started again, the walking long
24 periods of time from the McDonald's until wherever he is
25 picked up, he has indicated that that has played a role in

1 it, and then he does his homework after the visitation and
2 he's up pretty late making sure his homework is done.

3 **Q** So what did Kyden tell you about his visits with his dad?

4 **A** It depends on the day. He has indicated to me that he
5 doesn't want to go to the visits. He has indicated to me
6 that in the beginning it was from the police department
7 until the home, he would just walk home. I was concerned
8 about that, so we created a safety plan of at least a
9 specific route to where somebody would know which direction
10 they had gone instead of cutting through lawns, just in
11 case, for safety issues.

12 He did talk about then going to United Families, not
13 wanting to participate in the visits. He would walk me
14 through the process of what would happen while he was
15 there, whether he was sitting in the reception area, there
16 were some times that they had moved them into a different
17 room. They had -- the times changed a little bit. They
18 would have to wait for 15 minutes, I believe at first, and
19 then it was an hour. We did talk about he had brought some
20 of his homework with him during that time period.

21 And then as of recently, he had talked about the
22 visits recurring again starting at McDonald's, walking home
23 and he would express to me the events of what had happened,
24 whether Joe had walked with them, what kind of
25 conversations they had had. He reports that he is not

1 communicating to Joe, but just some of the things that were
2 said to him. He indicated to me about walking -- one of
3 the last things, walking home during the cold weather, how
4 his boots were almost frozen when he got home. He had
5 indicated he was concerned that -- he said Courtney was
6 driving by. I never heard Courtney's name before. I had
7 heard the aunt. I asked him. They told me that's who it
8 was, and said that she would drive by, did not stop or have
9 interactions with them, but would drive by, and then he
10 said it was to pick up Joe later.

11 **Q** Did you -- well, I'm assuming that you believe that it's
12 important for the kids to have a healthy relationship with
13 their dad?

14 **A** Correct.

15 **Q** And have you worked with them to try to make that occur?

16 **A** Yes. When they first came in, it was a very hard and fast
17 "I don't want a relationship whatsoever." We have -- I
18 believe it was around December time period, possibly
19 January, but I think it was December, we had talked about
20 what the possibilities would look like, what would they
21 feel comfortable with. The kids feel like they have
22 absolutely no voice. They don't feel like they had -- it
23 feels like a very out of control situation to them. So we
24 started talking about, well, what would feel comfortable,
25 and of course the first answer is always "nothing," but

1 then moving beyond that, I would just keep probing them and
2 we got to the point that they said that they would feel
3 comfortable -- I did not know McDonald's lobby was closed,
4 otherwise I would not have talked about this, but they
5 talked about going inside of McDonald's, sitting down,
6 having fresh fries and a milkshake, starting out with small
7 conversations. We talked about what kind of topic they
8 might feel comfortable with with starting conversations
9 instead of jumping straight into deeper issues. Obviously
10 it's a strained relationship, so looking at where can we
11 start with baby steps to move forward that's not going to
12 create a trauma response for them, and also to be able to
13 help foster the relationship that they have with dad.

14 **Q** So was Kyden willing to do that?

15 **A** Yes.

16 **Q** And what interrupted that plan?

17 **A** Part of it was the walking from McDonald's, from McDonald's
18 until home. There were some comments that have been made
19 to me. I don't remember them all offhand. I don't want to
20 portray them unaccurately. They're in my notes. Talking
21 about -- and part of the reason why they are so resistant
22 now is some of the issues that have occurred with Dr.
23 Perrenoud's office feeling like they are trapped,
24 indicating -- and this is their perception. I -- like I
25 said, my job is not to investigate it. I'm just reporting

1 what they're saying and how they're feeling, but feeling
2 like Joe is placed in front of the door in the counseling
3 sessions. A lot of the comments that are made to them,
4 both Kyden and Kaelyn feel like Dr. Perrenoud speaks badly,
5 they use the words, "He speaks bad of my mom." They also
6 feel threatened like they're either going to go to JSC or
7 they're going to be removed from mom's custody and have to
8 live -- then go live with Joe.

9 **Q** Let me just stop you there.

10 **A** Yeah.

11 **Q** Where did they get the information?

12 **A** From what they are reporting is that these are comments
13 made during the sessions that they have with Dr. Perrenoud,
14 whether it's with Kyden and Kaelyn together, or whether
15 that is with -- while they're also present there with Joe.

16 **Q** So where are those comments coming about custody and going
17 to JSC and that sort of thing?

18 **A** I'm not sure. They're reporting that those comments are
19 said directly to them by Dr. Perrenoud.

20 **Q** Now has Kyden said anything else about his sessions with
21 Dr. Perrenoud?

22 **A** There were two sessions that in particular he
23 was particularly upset about. One, he was in the session.
24 I believe it was Kyden, Kaelyn and Joe, as well as Dr.
25 Perrenoud. Kyden had put his T-shirt up over his head, and

1 he reports that Dr. Perrenoud told him he had to stop doing
2 that, and Kyden felt very uncomfortable with that,
3 particularly with his autism.

4 There was another time that, I believe Kaelyn had left
5 the session, and then Kyden was sitting in the reception
6 area, and it was reported to me that then Dr. Perrenoud,
7 and I believe Joe was present for some of it, at least
8 that's what was reported, is that they were having an
9 ongoing counseling session in the reception area, not in
10 the privacy of the counseling office, and that was very
11 uncomfortable.

12 He's also indicated in the last session they had a --
13 he had a pillow in front of his face and that was taken
14 away from him as well.

15 **Q** Now is that typical of a child with autism that they would
16 pull their shirt over their head, or have a pillow, I mean?

17 **A** With Kyden, Kyden isolates or shuts down when he is
18 uncomfortable, so we also need to think that Kyden also
19 doesn't have the developmental capacity that a normal
20 15-year-old would have, and so that would be something that
21 a younger child would have. He doesn't have those
22 appropriate skills, and so for him to hide his face or hide
23 behind something would not seem inappropriate for somebody
24 with autism.

25 **Q** So would it be appropriate to take that sort of security

1 away from him?

2 **A** I personally would not.

3 **Q** So has -- forcing Kyden to have these visits, has that been
4 helpful?

5 **A** I don't believe so, but I also believe we need to work
6 towards having a healthy relationship where these can
7 occur.

8 **Q** And then with regard to Dr. Perrenoud, do you think that
9 Kyden's benefitted from those meetings?

10 **A** According to Kyden, I do not believe so. Kyden has stated
11 that he does not trust Dr. Perrenoud and will not speak to
12 him.

13 **Q** So then we get to the question of what can we do in order
14 to get Kyden to move forward with having a positive
15 relationship with his dad?

16 **A** It's baby steps. It's really making -- the first and
17 foremost is Kyden has to feel safe. He also needs to feel
18 like if he says something, that it is validated. It
19 doesn't mean that you have to agree with it, but to be
20 validated, to be told "I hear what you're saying, I
21 understand what you're saying, that must be painful for
22 you." Some of the things that Kyden says, we have to
23 remember, this is also a perception. Just because you
24 report something doesn't always mean that that's exactly
25 how it is. If you have three people in the room, you're

going to have three different perceptions, but this is Kyden's perception and he does not feel safe and that needs to be the first and foremost is to make him feel like he is safe.

Q How do we do that?

A We keep working in counseling. We keep doing baby steps. I would recommend, like I had said before, recommend small baby steps, moving -- having a -- moving into indoor McDonald's or whatever restaurant is available. Meet him for ice cream, 20 minutes, 30 minutes. Help the kids create lists of topic that they are comfortable with communicating about and not talking about issues that aren't -- that they're not ready to deal with.

Q And when you met with the children back in December of last year, they were willing to do that?

A Some reluctance, but they -- we are moving in the -- we were moving in the right direction.

Q Anything else regarding Kyden before we move on to Kaelyn?

A I don't think so.

Q Is your work with Kyden different than your work with Kaelyn?

A Not really. The structure is somewhat the same. With Kyden to build rapport is the only difference is Kyden and I play games sometimes and then would communicate in between taking turns while playing Sorry. Just

developmentally that was more appropriate for him, and it's still the same process, I just meet them where they're at and then meet the needs of whatever they need. I also know that Kyden is also going to be with fewer words and so -- and he wants to get it done right away, so we do it right away and then we move onto other things.

Q What is your goal in counseling with these children?

A My first and foremost goal is to help them have some good coping skills and to help them feel safe, to be able to utilize those skills into whatever environment they are in, and then the goal is also to help them to have a healthy relationship with both families, both parents, as well as deal with their own trauma for the separation of their parents, as well as the issues leading up to the separation, which seems to be the biggest issues that they would consider traumatic for them.

Q Have you observed the children with their mother?

A In my reception area, I have.

Q And what are your observations in that regard?

A They get along good. They follow directions when she asks them to do things. It seems like a pleasant relationship.

Q So next I want to go to Kaelyn. If you would tell the Court, you know, how old she is and a little bit about her personality.

A Okay. Kaelyn, she was 11 when I started seeing her. I

1 believe she has had a birthday since then. Okay, so she is
2 12 now. Kaelyn is athletic, somewhat outgoing, but she's
3 also very reserved. Not very trusting. You definitely
4 have to earn her trust. Pleasant young lady, polite,
5 direct, probably strong-willed.

6 **Q** So if you could also describe the relationship between
7 Kyden and Kaelyn.

8 **A** They are very close. It is almost like Kaelyn has to speak
9 for him at times. It is -- it's almost like they have
10 their own language, even though it's not necessarily a
11 verbal language. They're just very close. I feel like
12 Kaelyn takes on somewhat of a protective role of Kyden just
13 to make sure that what is being said is correct, or --
14 she's never corrected him when speaking with them together,
15 so she doesn't -- she's not overbearing to him, but if he
16 struggles with words, she might help him out with a few
17 words to clarify.

18 **Q** And how does Kaelyn do in school?

19 **A** Good.

20 **Q** What does that mean?

21 **A** From my -- she reports that she doesn't have any issues
22 with school, school is kind of easy for her.

23 **Q** And is she involved in activities?

24 **A** Yes, she is currently in cheerleading and she has been
25 involved in some other activities as well.

1 **Q** So what has Kaelyn told you that are areas of concern for
2 her?

3 **A** The areas that are concerned for her is, number one is the
4 safety factor, feeling safe. She also reports fear. She
5 expresses different things that she has witnessed versus
6 Kyden, so they're not the same incidences. Drinking is
7 still predominantly in the background. Most of the
8 instances occurred when alcohol was in use. She does talk
9 about absolute refusal to have a relationship. We have
10 worked very hard on that to even have that be a
11 possibility, for her to be open to that. I do believe she
12 is open to it in a small way. She has talked about how to
13 express her feelings, her sadness, her anger. There's a
14 lot of different moving pieces in this case, and
15 relationships with cousins, aunts, uncles that have all
16 been impacted, so just trying to move forward on how to
17 navigate those relationships. Also knowing what the rules
18 are and how those rules have changed, and then just her
19 sadness of it.

20 **Q** I want to get a little more clarification on some of those
21 areas, but before that I'd like you to go back in time.
22 Did you get any feel for what the children's relationship
23 was like with their dad before their mom and dad separated?

24 **A** From what I was told by both of children is that Kaelyn and
25 Joe had a very good relationship and that Kaelyn was the

1 favorite child, and that the relationship with Kyden was
2 somewhat strained even before the separation.

3 **Q** And do you know why it was strained?

4 **A** From what -- from my understanding and perception of the
5 children is because he had autism and was different from
6 other children.

7 **Q** And have we discussed how you've observed that Kyden is
8 different?

9 **A** What do you mean?

10 **Q** Yeah, with his autism, how he is different from other kids?

11 **A** He's very socially different than other kids. His demeanor
12 is very flat. It's not -- sometimes it's hard to gauge how
13 Kyden is feeling without directly asking him.

14 **Q** Okay. Then I want to go back and ask you some questions
15 about the issues that you've been working with Kaelyn on,
16 and one of them you said safety. Why doesn't she feel
17 safe?

18 **A** They -- from what Kaelyn has said, she does not feel safe
19 because of a particular incident when there was drinking.
20 She says that she had witnessed mom being shoved into a
21 closet. There were also times where she had been called
22 names while Joe had been drinking. She also reports that
23 there had been a time where she had, she called it getting
24 snacked. I didn't go into a lot of details of it. We were
25 just dealing with how that impacts her and her perceptions

1 of those. So in her mind, she states, "I was abused by
2 Joe," and that's her perception.

3 Q And does she relate to you -- I mean, did you ask her what
4 kind of names she was called?

5 A I believe I did at one time. I did not -- I don't believe
6 I wrote them down. To me the names didn't necessarily
7 matter just because that was -- like I said before, it
8 wasn't my job to investigate it; my job was to help them to
9 be able to deal with it.

10 Q But it was names that she perceived as negative?

11 A Correct.

12 Q And then getting smacked, did you ask her what that meant?

13 A I didn't. I mean, she -- to her it was a physical, some
14 kind of a physical slap.

15 Q Anything else that she had concerns about her safety?

16 A She was concerned that -- there was also, I believe, an
17 incident where Joe had came to the home, and because of
18 that incident, she did not feel safe in her own home.

19 Q This was after the parties separated?

20 A Correct.

21 Q And what happened when her dad came to the house, do you
22 know?

23 A I don't know. I just know that there -- I believe the
24 police were called. There was -- just from her perception,
25 she felt like that Joe was trying to break into the house

1 and that she was fearful that he would harm her and her
2 brother and her mom.

3 Q And do you know when this occurred?

4 A It had -- it occurred prior to me seeing them, so it had to
5 be before May of last year.

6 Q And then you indicated that Kaelyn talked about her dad's
7 drinking. What did she tell you about that?

8 A She told me that he was drunk a lot and that he drank Bud
9 Light.

10 Q And did she tell you what it meant to her -- about what
11 "drunk a lot" meant to her?

12 A That's where she indicated that that's when the fighting
13 would happen, the name calling, the yelling, those types of
14 things, and she had mentioned Crown Royal at one time as
15 well.

16 Q So what does Kaelyn tell you about her visits with her dad?

17 A That she completely shuts down, has no intentions of
18 speaking. She is -- she is cautious of things that -- the
19 changes that Joe is doing, walking along with them, some of
20 the comments. She is somewhat suspicious. She had
21 indicated in my last session that she felt that there was a
22 little square camera on Joe's shoulder. I asked her, I
23 said, did you communicate or ask about that? She said no.
24 We have been working on trying to have some communication
25 skills to at least have somewhat of a dialogue where if she

1 is concerned about something to ask those questions to Joe,
2 to at least open that up. She's not at the point where she
3 is able to do that. She's just fearful of the interactions
4 and what that would entail.

5 **Q** And when you say she's fearful, does her affect match what
6 she's talking about?

7 **A** Yes. She appears sometimes to feel beaten down, like she's
8 not being told -- I mean, not being told. It's that what
9 she is saying doesn't matter. She doesn't feel like she
10 has a voice, and so she's -- it's just like she's
11 withdrawing.

12 **Q** And I'm assuming that's not a good thing?

13 **A** No.

14 **Q** So has Kaelyn said anything about how things are going with
15 Dr. Perrenoud?

16 **A** Yes.

17 **Q** What has she told you?

18 **A** She has indicated that she will not speak to him. I
19 believe from the very first visit, she physically got up,
20 or maybe she didn't even make it into the room and she
21 started walking. Dr. Perrenoud had followed her. She had
22 indicated she was walking down a street where there were
23 trees. I'm not exactly sure how far that was from the
24 building. She has felt that she does not trust Dr.
25 Perrenoud. She does not feel safe in the counseling

1 sessions.

2 She has spoken frequently about a story of wolves that
3 Dr. Perrenoud has told her where he said that mom told them
4 that Joe was the wolf, but in fact mom's the wolf. He's
5 made comments to them about she's mad because dad is now
6 dating the aunt and not with mom, and she said that he has
7 made comments about she's going to have to go live with Joe
8 if she doesn't go see Joe, that she would go to a juvenile
9 facility. He has made comments to Kyden when that -- when
10 Kyden had the shirt over his head and then they had made
11 him take it down, that really upset Kaelyn. She felt very
12 protective. She said that she will not talk to him at all
13 and she doesn't trust him.

14 **Q** Why doesn't she trust him?

15 **A** She feels like he is on Joe's side and that it doesn't
16 matter what they say or do. She's also indicated that Dr.
17 Perrenoud, and this is her perception, has made comments,
18 bad comments about mom multiple times and she doesn't feel
19 comfortable with that.

20 **Q** Now are the forced visits, do you believe, helpful to
21 Kaelyn?

22 **A** No.

23 **Q** So what can we do to make the relationship of Kaelyn -- it
24 sounds like she used to have a good relationship with her
25 dad. How can we get her back to there?

1 **A** We -- the thing is I really feel like with this particular
2 case, we have to start with baby steps. Not that I want a
3 12-year-old or a 15-year-old to be in charge here because
4 that's not at all what I want or would recommend; however,
5 they have to have a say too to feel comfortable -- to be
6 able to feel safe and comfortable. Maybe it's still
7 starting -- I still think there needs to be some
8 interaction with their dad, absolutely there does, but it
9 needs to be on a smaller scale. I don't think the
10 counseling with Dr. Perrenoud is very helpful, and it's --
11 and I'm not saying anything negative regarding Dr.
12 Perrenoud or his skills, but it's the perception of the
13 kids. They don't feel safe there. They have felt like
14 that he has set Joe in front of the door and used their
15 fear of Joe to manipulate them to stay into the session so
16 that way they don't leave, so if they place Joe by the
17 door, then they feel trapped there.

18 I think working in smaller steps. They still need to
19 have an individual therapist and be able to work through
20 their grief and coping skills and helping them to be more
21 open-minded about certain things and see different
22 perceptions, not just theirs, and then working on small
23 things. Twenty minutes at Dairy Queen or thirty minutes at
24 McDonald's, just small steps in places that make them feel
25 comfortable, and in more public places, that's where they

1 feel more comfortable, not walking down the train tracks.

2 **Q** So did Kaelyn buy into that, your plan that you're working
3 with to have a 20- to 30-minute meeting with their dad and
4 have a shake or --

5 **A** It's taken some time, but she had thought that it might be
6 a possibility. She did have rules. She -- now mind you,
7 she is 11 or 12 and girls can be somewhat dramatic at that
8 age. She would make some off comments about being
9 concerned about their food. She wanted to pick up the tray
10 and take it to the table. I said I don't see why that
11 would be an issue. Like we can come up with a safety --
12 like we called it rules, but it's more of a these are
13 expectations of -- with kids, particularly this age and
14 Kaelyn is so smart, is giving her some buy-in and the
15 illusion of some sort of control where she can have an
16 input into it would help with the relationship, I believe.
17 So she wanted to pick up the tray from when it was
18 delivered and take it to the table, and that made a world
19 of difference for her.

20 **Q** So do you believe that if we proceed with these children in
21 baby steps and start out with some shorter visits at a
22 restaurant that's open that they'd want to go to, do you
23 think that eventually you would be able to get them into a
24 positive relationship with their dad?

25 **A** That's the goal. That's always the goal.

1 Q Do the kids love their dad?

2 A They have never said that to me. There was one comment
3 that Kaelyn said to me that she was sad about all of this,
4 not she was sad about the relationship with her dad, and
5 that was recently. But anger is a secondary emotion and
6 that covers up a lot of things, including hurt.

7 Q Now have you had any communication with Dr. Perrenoud?

8 A Dr. Perrenoud called and left me a message. I returned his
9 call twice, and then he returned mine and then I returned
10 his back, and we were never able to communicate with each
11 other.

12 Q Now Dr. Perrenoud has suggested that holding the children's
13 mother in contempt as a means of getting the children to
14 spend time with their dad. Do you think that would be an
15 effective tool in improving the children's relationship
16 with their dad?

17 A I personally do not. They have a close relationship with
18 Krista. I view that they would see that as a manipulation
19 to hurt them to do something that they -- at this point
20 that they're digging their heels in and saying, "I don't
21 want to do this." My fear is if something like that were
22 to occur, that they would dig their heels in even more and
23 not participate.

24 Q Now you talked about your training in parental alienation
25 and you're aware that that's one of the issues that Dr.

1 Perrenoud has talked about?

2 **A** Um-huh.

3 **Q** Have you seen in your work with the children any parental
4 alienation by Krista?

5 **A** I have not. We've had multiple discussions about it.
6 Obviously I didn't use that term to them. I have asked
7 them in indirect questions, direct questions about the
8 responses that they have witnessed from Krista during --
9 before, during, or after visits, or when they're
10 communicating about some of the traumatic events that have
11 occurred. They do have conversations with their mom about
12 their experiences which would be appropriate, especially
13 with the nature of the relationship that they have.

14 **Q** So what do the children tell you in terms of what their
15 mother's expressing to them about their relationship with
16 their dad?

17 **A** They have indicated to me that their mom has been
18 encouraging of the relationship, has tried to get them to
19 have visits with Joe. I believe that there was a Christmas
20 gift that was even purchased and they sat it by the tire of
21 the vehicle at McDonald's. They've also somewhat indicated
22 some frustration with Krista too because she's encouraging
23 them to have a relationship where they don't want to.

24 **Q** So let's talk about that. So their relationship with their
25 mom changed because of the visits and their relationship

1 with their dad?

2 **A** There's been some areas where they haven't been quite happy
3 with what Krista has encouraged them to do.

4 **Q** And what are those areas that they aren't happy with their
5 mom?

6 **A** When she encourages them to go have a visit with Joe or
7 have a nice time, some of those more generic conversations
8 or communications that would be right before a visit.

9 **Q** And have the children indicated that there's been any
10 discipline imposed as a result of walking home?

11 **A** They have not indicated that to me. I know from
12 conversations outside of the children that have occurred,
13 but they have not indicated that to me.

14 **Q** So what do you know about discipline that's been imposed
15 because of walking home?

16 **A** And I don't know if it's been imposed, but I know that it
17 has been discussed of like loss of privileges or
18 electronics, things like that to occur at mom's house based
19 on not participating in the visits with dad.

20 **Q** Anything else other than the loss of the electronic
21 privileges that have been imposed on the children because
22 they won't visit their dad?

23 **A** Not that I'm aware of.

24 **Q** Have the children ever told you that their mom has in any
25 way discouraged them from spending time with their dad?

1 **A** No, quite on the contrary.

2 **Q** What have they told you?

3 **A** They have told me that mom has told them to -- that they
4 should have a relationship with their dad, that they've
5 encouraged the relationship. I've asked them directly
6 about -- and indirectly, just when certain events would
7 happen that they were upset about, I would also ask about,
8 so what is your mom's response, if they had told mom, or if
9 mom had been there, just to get the big picture of seeing
10 what their perceptions are of what Krista's reactions are
11 regarding their relationship with dad, and it's never been
12 anything negative.

13 **Q** Now Dr. Perrenoud has suggested that physical custody of
14 the children change to Mr. Lefors. My question to you, Ms.
15 Torno, is based on your counseling with the children, would
16 that be a good method to improve their relationship with
17 their dad?

18 **A** In this case I think it would actually be detrimental to
19 them. I think you would have a 12- and a 15-year-old that
20 would probably -- they've indicated that if that ever
21 occurred to them, because they have told me that Dr.
22 Perrenoud has said that this is what should happen, and
23 they had indicated to me that they would run away. I think
24 we would then have children that would have never been in
25 trouble in the legal system, that we may have those issues

1 with running away, and I don't believe it would just happen
2 once, I think it would happen continuously.

3 **Q** Now according to the children, Dr. Perrenoud has suggested
4 that if they don't visit their dad, they'll go to the
5 juvenile detention center, is that right?

6 **A** Yes, they made reference to that.

7 **Q** Is that an appropriate method to resolve the conflict
8 between the children and their dad?

9 **A** No, I believe that they're going to dig their heels in even
10 more and resist it even more.

11 **Q** And it sounds like from what you've testified so far is
12 that the children were improving in their, I guess, their
13 desire for a relationship with their dad and now it kind of
14 regressed?

15 **A** Somewhat. I think we can -- I think we can get back to
16 where we were at. I think there's just so much fear that
17 these kids have. There's lots of unknowns, and then the
18 fear of what if this happens, what if this happens. It's
19 constantly living in a state of arousal, and it's -- one,
20 it's not physically good for you and it's not emotionally
21 good for you as well. They need to feel like they can be
22 safe. That is the number one thing. I mean, we even talk
23 about Maslow's hierarchy of needs. Safety is in there.
24 Safety is your foundation, and so they need to be able to
25 feel safe. And if they feel safe, I think we can move

1 forward, and regardless of whether they say that they don't
2 want a relationship, I truly believe that they do. We just
3 need -- they need to be able to feel safe.

4 And it's a good defense mechanism to say you don't
5 want something that you probably really do want because
6 it's painful for you and it doesn't feel safe.

7 **Q** Now as you move forward in working with the children to
8 envision a meeting with their dad and where it would take
9 place and how it would take place, would you be involving
10 their dad in that process, or were you just envisioning
11 continuing to work with the children?

12 **A** So I've had multiple conversations with them. My goal
13 is -- my primary goal is to the children, and so we've had
14 conversations, would you be comfortable if mom was
15 involved, would you comfortable if dad was involved?
16 They're very adamant coming to me, they would like it to be
17 just them and they want it to be their space, that they can
18 deal with whatever's going on, process information, come up
19 with better coping skills. And then ideally what would --
20 what I would envision to be a good solid plan moving
21 forward is having myself and a family counselor, whether
22 it's Dr. Perrenoud or somebody else, to work closely
23 together to have both parties sign releases to where both
24 counselors can work together efficiently to not only help
25 the children, but then also help the family unit, whether

1 it's Kaelyn and Kyden and Joe, whether it's Kaelyn and Joe,
2 whether it's with Krista and whoever needs to be involved
3 in that, but to allow the kids to continue to see me just
4 as their therapist, and then have a close relationship with
5 the family therapist.

6 **Q** Now do you perceive that it's safe for these children to
7 walk home?

8 **A** From the environment that they are explaining to me, no.

9 **Q** Why do you say that?

10 **A** One, I believe they're walking right next to the railroad
11 tracks through Box Elder, and it's for long periods of
12 time. I believe it's, I think they said eight miles or
13 ten miles. It's a long jaunt. When they had been walking
14 previously from when they were meeting at the police
15 department, they were running in between people's homes.
16 So if something were to ever happen, if they fell, if
17 they're accidentally hit by a vehicle or bitten by a dog,
18 nobody would know exactly where they're at.

19 **Q** Now you mentioned that Kyden has been overly tired lately.
20 Have there been issues with Kyden at school recently?

21 **A** I received two letters regarding Kyden saying that he is
22 declining in school, he's falling asleep in school.

23 **Q** What do you attribute that to?

24 **A** Obviously he's tired. It could be anything from emotional
25 stress. He has also indicated that the visits are -- in

1 the past, it would be -- the visits didn't occur as long,
2 so if there was a refusal, then he would walk a certain
3 distance and then from my understanding Joe would text
4 Krista to pick up the children, or the children would be at
5 a closer distance where they would just walk home in a
6 shorter period of time. That plays part of a role in it,
7 and then also the length of miles from McDonald's to all
8 the way home. He had indicated he had walked almost all
9 the way home I believe four times. I don't know, and
10 that's a perception as well, but that does play a -- that
11 plays a role in it, and then he does his homework in
12 addition to that. And that was part of the suggestion of
13 when you start meeting -- like if they were to ever start
14 meeting in smaller spurts of time, work on homework or --
15 because that's part of their daily, everyday life, like
16 just incorporating some of those things, maybe Joe could
17 help with a math problem, or you know, just little small
18 things like that.

19 Q And of course when we set up the visits at McDonald's,
20 nobody knew that McDonald's was closed?

21 A Right.

22 Q That's what, I guess, added some additional --

23 A Stress.

24 Q -- stress to the situation?

25 A Right.

1 Q And of course these children are walking in the wintertime,
2 right?

3 A Correct.

4 Q So, Ms. Torno, you submitted a letter that was dated
5 September 21st which is in evidence before the court, and I
6 want to talk a little bit about your letter. Do you
7 remember that?

8 A I remember. I don't remember exactly what I wrote, but...

9 Q Let me give you a copy of it so you've got it before you.
10 Maybe I didn't have an extra copy, sorry.

11 A That's okay.

12 Q So in your letter of September 21st --

13 MS. SMITH: Your Honor, may I approach? I have an extra
14 copy for her.

15 THE COURT: Yeah, go ahead.

16 MS. SMITH: Except my foot fell asleep and I can't move.

17 THE COURT: I hate when that happens.

18 Q (BY MS. WATSON) Ms. Torno, I'm going to hand you a copy of
19 your letter that Attorney Smith was generous to give us.

20 A Thank you.

21 Q And do you recall that letter?

22 A I do.

23 Q Now in your letter, I'm looking at the first paragraph, you
24 say -- you talked about the sessions and then you said, "We
25 have discussed their parents' separation, visitation with

1 their father with whom they refer to as Joe, their daily
2 life and activities, their friends and classmates, and
3 interaction with extended family." Have you and I covered
4 all of those issues today?

5 **A** Yes.

6 **Q** So referring to their dad as Joe, you would agree that's
7 not appropriate?

8 **A** I would agree, but at the same time when I'm working with
9 them, if I challenge that -- so when we have a session, we
10 use the name "Joe" just because that is where they are
11 currently at.

12 **Q** So how do we get them to call their dad "dad" instead of by
13 his name?

14 **A** We start having -- one, they need to feel safe, and we
15 start having successful positive interactions between Joe,
16 Kyden and Kaelyn.

17 **Q** Is this normal that kids would refer to their dad by name
18 rather than by relationship?

19 **A** Not in most cases, but there's a level of hurt here that --
20 there's lots of issues that need to be addressed. It's not
21 just the divorce and the separation. It's -- we're just
22 compiling issues on top of issues with these two children
23 and they're feeling more and more like what does it matter,
24 my voice isn't going to be heard so this is my way to
25 retaliate. I'm hurting, so I'm going to hurt somebody else

1 and referring to Joe as "Joe" instead of "dad" is one way
2 to do that.

3 **Q** And you said that we're compiling issues. What did you
4 mean by that?

5 **A** In my professional opinion, they have the initial stressful
6 situation of mom and dad separating and then going through
7 the divorce. That would be stressful for any children.
8 But you also have children who have -- there have been
9 events prior to the separation that have never been dealt
10 with that they are now being faced with. You have --

11 **Q** So we're talking -- sorry to interrupt you.

12 **A** That's okay.

13 **Q** But you're talking about the alcoholism and the abuse?

14 **A** Yeah, correct. And then --

15 **Q** So let me just stop you there again.

16 **A** Sure.

17 **Q** So how do we resolve that?

18 **A** We still need to make the kids feel safe first. I mean,
19 the bottom line is they're not going to move forward in
20 anything regarding that issue until they feel safe. It's
21 like ripping off the band-aid. You can't just say we're
22 going to deal directly with this and rip it off and deal
23 with it. There's other things. They have to feel safe.
24 They have to feel warm feelings with Joe and the two kids.
25 They also need to have some positive interactions instead

1 of just the negative of this is what's happening in my
2 visits with "dad" or "Joe," whatever they want to refer to
3 him, and they're just -- it's just intensifying their hurt.

4 **Q** And so they're hurt because of what happened, but they
5 really want a relationship with their dad?

6 **A** I believe that they do, but it's not just with dad. I mean
7 you also have changes in relationships. You have, you
8 know, two families who are impacted. In their perception
9 of this, the relationships with people that they cared
10 about are now different than what they thought that they
11 were, so that's impacted. There's cousins involved that
12 they -- that their relationships have been somewhat
13 impacted as well. So you have many different issues and
14 then you're trying to resolve them and they're in places
15 that they don't feel safe.

16 **Q** So the children, they visited with you about their dad's
17 relationship with their aunt and --

18 **A** Briefly.

19 **Q** Do they believe he's going to marry the aunt?

20 **A** I don't -- I don't know. We have had surface level
21 conversations about the relationship.

22 **Q** I suppose that would be awkward to have your aunt become
23 your step-mother and your cousins become brothers and
24 sisters?

25 **A** That is -- they have expressed that concern.

1 Q So --

2 MS. SMITH: Your Honor, I'm just looking at the time here.
3 I would like an opportunity to get some questions in before
4 the 3:45 time frame.

5 THE COURT: Sure. All right, are you almost done, Ms.
6 Watson?

7 MS. WATSON: I am.

8 THE COURT: All right, go ahead.

9 Q (BY MS. WATSON) So developmentally do children need some
10 time to grieve the parents' separation before they get
11 involved with, you know, other romantic relationships by
12 their parents?

13 A I believe all children should have a grieving process, but
14 they don't all look the same.

15 Q So what do you believe that Kaelyn and Kyden need in order
16 to grieve the loss of, you know, their parents'
17 relationship and move forward with whatever life holds for
18 them?

19 A In this case it's a little different. From my
20 understanding, a relationship was already prior established
21 before the separation between mom and dad, so we're kind of
22 really in a fine line of how do we dictate what a parent
23 does. However, we also need to look at allowing the kids
24 to grieve the loss of the relationship between their
25 parents and even the changes in their own relationship with

1 their parents.

2 I don't have -- like there's not a cookie cutter that
3 says they need this amount of time and then they can move
4 on. In this particular case, I think there's lots of
5 different issues that need to be listed as priorities of
6 how to address them. I feel like the relationship with Joe
7 and I believe Courtney, that would be towards the bottom of
8 the list. There's many other issues that need to be
9 addressed first; the grieving of the divorce, the
10 relationship between Kyden and Joe, Kaelyn and Joe, and
11 then how -- what does that look like moving forward to get
12 some positive interactions, and then introducing different
13 aspects and changes in the family dynamics.

14 **Q** And you talked about priorities. Do the children feel that
15 they're a priority in their dad's life?

16 **A** They've never used that word, but from --

17 **Q** Yeah, that was my word.

18 **A** Okay.

19 **Q** You used the word priority. I guess I'm just wondering,
20 you know, since dad's moved on to another woman, whether
21 that's impacted the children's feelings about how their dad
22 feels about them, I guess?

23 **A** I would speculate that it has. They have not directly said
24 that to me, but I know that they're -- they have indicated
25 concerns about Joe spending time with Courtney, as well as,

1 I believe there's three cousins, and so that time with the
2 three cousins that are younger than them and they don't
3 like it.

4 **Q** Now you talked about baby steps and that the first visit
5 being, you know, a shorter one with a meal, but how do you
6 foresee the future then, where do we go from this first
7 baby step forward, how does this progression work?

8 **A** You start increasing time, longer periods of time, maybe
9 not quite as public places once, you know, trust has been
10 established. I still think you need to have a family
11 therapist involved too that once the kids start having
12 positive interactions, they can open up and start
13 addressing some of these family issues as well and then
14 coming back and dealing with their individual coping skills
15 and responses with me to help foster that relationship in
16 the family counseling.

17 **Q** And are there any things that you believe their mom can do
18 to help that transition, anything that you see that she
19 hasn't done that she could do?

20 **A** I think moving down the line of family counseling. I
21 believe Krista will probably have to be involved in that.
22 I don't know at this point what that would be, but I
23 wouldn't have any additional recommendations.

24 **Q** And what about with regard to the children's dad, what do
25 you believe based upon your work with the children that

1 they feel that they need in order for them to move forward?

2 **A** I just feel like first and foremost they need to feel safe
3 and they need to feel like their voice is being heard. It
4 doesn't mean that anyone has to agree with them. They just
5 feel like they need to be heard.

6 **Q** And, Ms. Torno, other than what you've testified here
7 today, is there any additional recommendations that you
8 have to the court?

9 **A** I don't believe so.

10 MS. WATSON: No further questions. Tender for cause.

11 THE COURT: All right. I will give you your time, we're
12 just going to take about a five-minute break, okay?

13 MS. SMITH: Okay.

14 THE COURT: We will resume in five minutes.

15 (A recess was taken.)

16 THE COURT: All right, we're back on the record in the
17 Lefors matter. Ma'am, I know you've testified before,
18 you're still under oath. I'm not going to have you sworn
19 in again.

20 THE WITNESS: Okay.

21 THE COURT: You understand that, right?

22 THE WITNESS: Yes, I do.

23 THE COURT: Go ahead, Ms. Smith.

24

25

CROSS EXAMINATION

BY MS. SMITH:

Q Good afternoon, Ms. Torno. My name is Hollie Smith. We met earlier. I represent Joseph Lefors. Prior to today's testimony did you review the transcript or the testimony of Dr. Perrenoud?

A I did not.

Q Do you believe you're more qualified than Dr. Perrenoud to make observations in this case?

MS. WATSON: I'm going to object. It's for the Court to make that determination rather than this witness.

THE COURT: Overruled. You can answer.

A I don't -- I believe Dr. Perrenoud actually has more licensure than I do. We just have a different perception, so I'm not going to say that he's less qualified than I am, or I'm not going to say that I'm less qualified either.

Q (BY MS. SMITH) So his observations would be from a professional point of view and based on his experiences and licensure, right?

A Yes, and his perception and experiences in the case as well.

Q And also from a, I would say, scientific based as well because some of your, you know, observations and things like that are from your specific training as it relates to psychology, right?

1 **A** Correct.

2 **Q** Can you as a counselor formally diagnose a client?

3 **A** Yes.

4 **Q** And what's some of the things that you can diagnose?

5 **A** I can diagnose anything in the DSM-5.

6 **Q** Are you able to prescribe anything?

7 **A** I am not.

8 **Q** And you're aware that this Court specifically appointed Dr.
9 Perrenoud as the, I suppose, doctor for the reunification
10 process in this case?

11 **A** From my understanding. And just for the record, I have not
12 read any court orders, transcripts. I have not read any of
13 that information.

14 **Q** You said you currently work for Douglas School District?

15 **A** No, I worked for Douglas School District ten years ago.

16 **Q** You're aware Krista also works for the Douglas School
17 District?

18 **A** Yes.

19 **Q** Does Krista ever show up late with the children to visits?

20 **A** Not that I'm aware of. No, not that I'm aware of. I have
21 not notated any of that.

22 **Q** Are you aware that Krista and the children show up almost
23 an hour late to Dr. Perrenoud's visits?

24 **A** I don't know anything about that.

25 **Q** But they're usually on time for your visits, correct?

1 **A** Correct.

2 **Q** What do you know about your requirements, I suppose your
3 ethical requirements to the board -- I guess who do you
4 report to? Is there a board that you report to?

5 **A** For licensure?

6 **Q** Correct.

7 **A** My board is the board of examiners for the counselors and
8 MFTs, marriage family therapists.

9 **Q** And they oversee the ethical -- some of the ethical
10 complaints and things like that from clients?

11 **A** Correct.

12 **Q** Are you aware of any rule that would require you to
13 withdraw services if you don't get consent from both
14 parties?

15 **A** No. So I did have a conversation regarding that. That is
16 the part of the reason why I had requested -- well, the
17 reason I'd requested a release between both parties is to
18 have better coordinated services. I did inquire about the
19 signature from Mr. Lefors and it was, from my
20 understanding, that mom had the custody, the legal and --
21 or the physical custody, that she could sign for that and
22 that is why I chose not to do that.

23 **Q** So there is a rule that you are required to abide by that
24 requires both parties' consent to continue treatment,
25 correct?

1 **A** I don't know of any such rule. I inquire about it as a
2 courtesy to ensure that if there is like a joint legal
3 custody or if there is something that could cause a
4 conflict in the future, that I would technically get both
5 parents' signatures on this one.

6 **Q** But you continued services despite Mr. Lefors' objection to
7 the treatment?

8 **A** I didn't know of any objection. From my understanding
9 was -- is that Krista could consent for the therapy of the
10 children.

11 **Q** Based on what?

12 **A** From the conversation that I had with Krista regarding who
13 had custody of the children.

14 **Q** Did you inquire on who had legal custody, not just physical
15 custody?

16 **A** I can't remember the exact conversation.

17 **Q** So you had taken Ms. Lefors' word that she was authorized
18 to consent for both parties?

19 **A** There was a conversation regarding that.

20 **Q** And you did not reach out to Mr. Lefors regarding that?

21 **A** I did not.

22 **Q** And in fact, you haven't reached out to Mr. Lefors at all?

23 **A** I have not.

24 **Q** Not met with him?

25 **A** I have not.

1 Q Not reached out to him to get his perspective in this whole
2 dynamic?

3 A I haven't gotten Krista's perspective either. My focus has
4 been the kids. The only time that Krista had came into the
5 session was the first about ten minutes where we go over
6 the consent forms to ensure that the confidentiality was
7 the most important part and that that stayed with the kids.

8 Q You would agree that with this type of reunification the
9 parties must be proactive and aggressive, right, in order
10 for these things to work and not be so far gone that
11 there's no point of repair?

12 A I don't know if I would use the word "aggressive," but
13 proactive.

14 Q And you believe one time a month to see the children for
15 counseling is enough?

16 A That was my recommendation because they had also had family
17 counseling with Dr. Perrenoud.

18 Q And you testified that the first few sessions with the
19 children were not very productive?

20 A No, they were productive.

21 Q You had testified that the first couple of sessions, you
22 didn't do very much with the children? I thought that's
23 what you had testified to.

24 A No, that's not what I had said.

25 Q Regardless of what the children have told you about their,

1 quote, fears of their dad, do you believe that those fears
2 are real?

3 **A** From what the children have said and how they have
4 expressed it, yes.

5 **Q** And that is based on what specific incidences currently or
6 during visitations that you can say?

7 **A** Recently, including the -- well, not including the ones
8 that I've already testified for. Recently there was --
9 Kaelyn was concerned about being videotaped. She had
10 expressed concern about a small square like, almost similar
11 to like a GoPro video camera on Joe's shoulder.

12 There was an incident where they ran into each other
13 at WaTiki and they had expressed their fear and how they
14 had ran away.

15 **Q** But what specifically, ma'am, would cause them to have fear
16 if just -- if my client is just there? I mean specifically
17 what has he done at WaTiki that would cause them to be
18 fearful?

19 **A** It's not just based on the current behavior. It's based on
20 the unresolved past behavior that had occurred, the issues
21 that had happened prior to the separation and then the
22 incidents of whatever had happened at their home with Mr.
23 Lefors.

24 **Q** And that was back in -- well, it would have been in 2018 or
25 prior to that, right, because the divorce action was filed

1 in '19 and they had separated at that point?

2 **A** But you have -- if you have issues that have never been
3 resolved, they're going to still continue to be traumatic.
4 They are what we would call triggers.

5 **Q** But you would agree with me that when you're in counseling
6 with the children and you keep talking about, you know, you
7 just have to feel safe and you just have to have a safety
8 plan, isn't that reintegrating what my client would say or
9 Mr. -- or Dr. Perrenoud would say, an exaggerated feeling
10 of fear, continuing to talk about this safety plan and
11 feeling safe?

12 **A** We talked about the safety plan twice in all of the
13 sessions that we have had, so it's not a continual to talk
14 about it. It's also allowing them to talk about what is
15 concerning them and how to deal with it. So the safety
16 planning has happened twice and that's been more -- and
17 it's not a safety plan of -- it's more a safety plan of
18 keeping them on a path so somebody knows which path they're
19 walking versus having interactions with Joe, because we're
20 not even to that point yet because they're so triggered
21 that they're not able to -- their immediate concern is
22 during the visits.

23 **Q** But you could say, well, let's talk about a different plan,
24 let's talk about a plan that would make you feel more
25 comfortable. I mean, using the word "safe" is just

1 insinuating that --

2 **A** But I didn't use the word "safe" with them.

3 **Q** Well, safety plan and making you feel safe, let's talk
4 about how we can make you feel safe, right?

5 **A** Well, when they tell me that they feel unsafe, I'm going to
6 mirror the same words that they use. That's the same
7 reason why when we talk about dad, they refer to him as
8 Joe. It's mirroring their language.

9 **Q** And just continuing that dialogue, right?

10 **A** It is --

11 **Q** And then the next session they're going to say "Joe"
12 because you mirrored that dialogue?

13 **A** This is the dialogue that they have had, that they had long
14 before me. When I had met with them in the beginning, I
15 would use the words "dad," and they would say "Joe." If I
16 wanted to have any kind of a relationship with them,
17 there's certain words that I would have to mirror and
18 that's one of them.

19 **Q** When we are talking about baby steps and maybe an option of
20 having a sit-down at McDonald's for a period of time, are
21 you aware that during the visitations currently in December
22 and January, that Joe had offered that situation to the
23 children, "Hey, kids, let's go inside of this coffee shop
24 across the street and just sit down, that's all you have to
25 do," were you aware of that?

1 **A** No.

2 **Q** Could you have been aware of that by talking to Mr. Lefors?

3 **A** I make it a policy that if parents would like to discuss
4 things with me and give me information, then they can
5 contact me. The confidentiality that I have lies with the
6 children, and if I go outside of that relationship, then it
7 makes the children feel like they can't trust me with the
8 information that we're discussing and helping them to be
9 able to cope and move forward with skills to help them.

10 **Q** But you understand that that could have been helpful in
11 your treatment or your counseling with the children had you
12 known that that was already a suggestion and the children
13 refused, right, had you known that prior to the session?

14 **A** It possibly could be.

15 **Q** And you understand that this Court and the parties and the
16 attorneys have already discussed these, what you call baby
17 steps, to try and rebuild this relationship beginning with
18 family counseling with Dr. Perrenoud, we've talked about
19 other types of baby steps, and you're aware that this Court
20 has tried those in the past, right?

21 **A** I don't know what the Court has tried in the past. Like I
22 said, I have not read any court orders, I have not read any
23 transcripts. My focus has been with the children.

24 **Q** Do you think the children feel trapped with Dr. -- what you
25 say "trapped with Dr. Perrenoud" because he wasn't chosen

1 by their mother?

2 **A** I don't believe so at all.

3 **Q** But it was Krista that reached out to you initially back in
4 May, right?

5 **A** I believe so. I don't remember the whole conversation.

6 **Q** Is there some type of ethical standard within your
7 profession to keep what you hear about other sessions with
8 counselors confidential?

9 **A** What do you mean? Like if the children came to me and had
10 expressed concerns about another --

11 **Q** I suppose if you would hear things within a counseling
12 session with Dr. Perrenoud, either through Dr. Perrenoud or
13 through the children?

14 **A** Would I keep that confidential?

15 **Q** Are you aware of any confidential guidelines as it relates
16 to that?

17 **A** I know we have confidentiality. I know we also -- there
18 needs to be releases to third parties. Any information
19 that I would have spoke with the children, I would not have
20 spoke to anybody unless I had a release or unless obviously
21 I was subpoenaed and that makes me eligible to be able to
22 speak on that.

23 Information that was provided in the counseling
24 session with the kids regarding their counseling with Dr.
25 Perrenoud is based on their perceptions of what occurred,

1 and I have not discussed those with anybody except for here
2 at the court.

3 **Q** And your goal with counseling has never been reintegration
4 with their father, right?

5 **A** No.

6 **Q** And you cannot testify to any observations between the
7 children and their father?

8 **A** No.

9 **Q** So what happens when the Court -- say the Court orders
10 these limited parenting times with the children, say, to
11 sit down at McDonald's and they get up and walk away and
12 refuse like they have the past year, what happens?

13 **A** Then those are things that need to be addressed
14 individually in counseling and through family counseling.

15 **Q** Just like what the parties have been doing?

16 **A** But it hasn't been successful.

17 **Q** But you say counseling with you is going to be successful
18 like they have been doing since September, or I should say
19 May?

20 **A** There's a lot of trauma in this case and it's taken a long
21 time to get to this point of where they're at, and it's
22 also going to take a very long time to make a positive
23 change in this case.

24 **Q** And so the children's father is supposed to just sit
25 patient and say, well, if they're --

1 **A** That's not what I'm saying.

2 **Q** Let me finish my question, ma'am. He is supposed to sit
3 back and say -- and be patient and wait for the children
4 when they're, quote, ready to sit down and have a
5 conversation with him or have some parenting time, right?

6 **A** It's working towards a positive relationship. The more
7 negative interactions that you have, the more that it's
8 going to take a longer period of time to repair that. It's
9 just adding damage to an already damaged relationship.

10 **Q** And when you don't have that interaction, like my client's
11 not getting now, you can't build that positive
12 relationship, right?

13 **A** But it's also -- the interactions that are occurring now
14 are not positive.

15 **Q** Based on the kids' perception?

16 **A** Correct.

17 **Q** What are some signs of parental alienation based on your
18 experience?

19 **A** Extreme loyalty to one parent.

20 **Q** Like the kids to Ms. Lefors?

21 **A** I don't know if I would consider that extreme loyalty.
22 They definitely have a close relationship, but not -- I
23 would not say it's extreme loyalty. You do have your
24 refusals, usually it's based on baseless information. You
25 hear regurgitation of comments, phrases, things that they

1 may hear from outside sources. There would be signs of
2 coaching, and none of -- I don't have those with Kaelyn and
3 Kyden.

4 **Q** But you had testified you've also not seen the exhibits or
5 any other document as it relates to this divorce
6 proceeding, right?

7 **A** Correct.

8 **Q** And you talk about the kids' grieving process through the
9 divorce, and I suppose would that include as a general, you
10 know, professional counselor, would that include Ms. Lefors
11 individually accepting the divorce and the relationship
12 being over?

13 **A** I don't know how that -- I guess my -- as the children's
14 therapist, it would be to focus on their grieving process,
15 not Krista's.

16 **Q** Right, but I'm asking you as just a general professional
17 counselor. Going through a grieving process of a divorce
18 in general would be accepting that the relationship is
19 over, right?

20 **A** I would assume so.

21 **Q** Okay. It would make sense then like in this situation that
22 if Ms. Lefors is not particularly happy about the
23 separation or Mr. Lefors' relationship, that it could
24 trickle down to the children?

25 **A** It would depend on how those interactions trickled down.

1 It would depend on the conversations, the --

2 **Q** Well, let's just assume all of the conversations around
3 this relationship are negative. It would then trickle down
4 to the children, right?

5 **A** It has a possibility, yes.

6 **Q** How specifically have the children not been heard up to
7 this point, even with you being involved in the counseling?
8 I'm just having a hard time understanding the --

9 **A** This is their perception. They feel like they are being
10 forced to do something that they don't want to do. They
11 feel like -- in particular when they reference to Dr.
12 Perrenoud, they have talked about how they have been told
13 that what has occurred to them has not occurred, so it's a
14 denying of certain things that they say have occurred.
15 They also feel like some of the things that they have said
16 just is not being heard either to -- it's almost like it
17 has to be a right or wrong. It's either black or it's
18 white, it's not any in between, and it's not allowing them
19 to state how they feel about it, and that's where they're
20 coming from. It feels like everything that they're saying
21 is being refuted for whatever reason, whether it's a
22 feeling based or fact based. I wasn't saying anything that
23 they said was completely factual. I also said that was
24 their perception, and they're not feeling like their voices
25 are being heard.

1 Q Are you aware that it was Dr. Perrenoud's opinion that the
2 children have overexaggerated their abuse and fear that
3 they are alleging and talking to you about in counseling?

4 A I did not know that.

5 Q And are you aware that Dr. Perrenoud also stated that it is
6 his opinion that Ms. Lefors has exaggerated her abuse as
7 well?

8 A I did not know that.

9 Q Is it fair to say that to understand the reunification
10 process and rebuilding the relationship between the
11 children and their dad, you must understand the entire
12 family dynamic, is that fair?

13 A Some of it, yes.

14 Q And you have made a recommendation based on not having an
15 understanding of their father or even communicating with
16 him?

17 A I made a recommendation based on the perception of the
18 children keeping the children at the focus. It has nothing
19 to do with Krista, and it has nothing to do with Joe.

20 Q Are you aware that when we had tried visitation at United
21 Families, those visitations were supervised, right?

22 A Um-huh.

23 Q It allowed the children the avenue to sit and have that
24 time as much as they wanted, right?

25 A Um-huh.

1 Q Other people --

2 THE COURT: Ma'am, you have to say yes or no.

3 A Oh, I'm sorry. Yes.

4 THE COURT: Go ahead, Ms. Smith.

5 Q (BY MS. SMITH) And other people were present during those?

6 A Yes.

7 Q The children had an opportunity to sit down, play games, do
8 their homework, all those things with their father?

9 A Yes.

10 Q And that was not successful?

11 A It was not.

12 Q I guess I'm trying to understand how that scenario is
13 different than what you've recommended in terms of having
14 this safe space and opportunity for the children to do what
15 they've already had an opportunity to do?

16 A I think the biggest difference is -- yes, I know they're
17 children. Yes, I know that they need to have direction. I
18 understand all of that completely, but they also feel like
19 all of the plans that are being said about them of what
20 they need to do is being told to them instead of how can we
21 make this more successful, how can we make this to where
22 you want to sit down, have a cheeseburger, play a game,
23 work on your homework. It's being told to them, and they
24 feel like they're being forced, which essentially they are,
25 and I understand that they're minor children, I absolutely

1 get that, but they don't have any say in it.

2 Q So it's --

3 A They're not -- their input is -- doesn't feel important to
4 them which I think if they had some input, I believe that
5 would be -- it may be a game changer in this dynamic here.

6 Q So if they say, "Yeah, I'm just not feeling it, I don't
7 really want to sit down with my dad and have a
8 cheeseburger," and as their counselor, you would say,
9 "Okay, well, whenever you feel comfortable, it's fine."

10 A That is not what I was saying. That's not at all what I
11 was saying.

12 Q Okay. How would you approach that?

13 A Well, prior to it happening, we would sit down and talk
14 about what the expectations are, what are they comfortable
15 with, like topics of conversation, have a plan, not just
16 sitting there staring at somebody and feeling
17 uncomfortable. So having a plan of what they plan to do,
18 what they plan to communicate, have a safe word, but also
19 have -- also -- the other thing is we also need to discuss
20 commitment with them. If they commit to do something, what
21 does that look like, what's the -- not just the expectation
22 of Joe, but also the expectation of them as well.

23 Q And some consequences if they don't follow through with
24 what they've committed to?

25 A I think you have to be careful with the consequences. Now

1 I -- it feels very punitive to them and it has not been
2 effective. There needs to be -- absolutely I agree with
3 consequences, but not in a punitive style. It needs to
4 look like, so if you choose to not do this, what do you
5 think we should do next time, and they should have input in
6 it as well. They're developmentally appropriate. I know
7 Kyden has autism; however, he does understand some cause
8 and effect. Kaelyn is 12 years old. She's getting to the
9 point that she should be thinking for herself of cause and
10 effect; if I do this, this is the cause and the -- this is
11 what happens in my behavior. Why not utilize that tool and
12 work with the kids in that way so they still feel like they
13 have a voice in it, but it's holding their feet to the fire
14 if they come up with the consequence instead of someone
15 else saying you're going to lose your electronics, you're
16 going to JSC, where it feels very threatening, very
17 manipulative. Where if they have buy-in to it and they
18 have input, it's going to be more successful.

19 Q You had produced a recommendation letter of September 21st
20 of 2021. Do you still have that in front of you?

21 A Yes, I do.

22 Q I guess, first of all, are you aware that you produced this
23 letter in relation to an illegal subpoena?

24 MS. WATSON: I'm going to object as to what's legal or
25 illegal. It would be the form of the question, she's not

1 qualified to talk about what's legal or illegal.

2 THE COURT: Well, it's irrelevant. Ask your next question,
3 please.

4 Q (BY MS. SMITH) Okay. Well, have you ever been served a
5 subpoena duces tecum before?

6 A Yes.

7 Q Are you aware of certain requirements as it relates to
8 producing documents to subpoenas? Meaning you have to wait
9 to produce the documents if the other side has an
10 objection?

11 A I did not know there was an objection.

12 Q Do you have an insurance carrier through your office?

13 A I do.

14 MS. WATSON: I'm going to object to the question. That's
15 threatening.

16 THE COURT: Overruled. I think she already answered.

17 A Yes, I do.

18 Q (BY MS. WATSON) Have you contacted them at all about this
19 case?

20 MS. WATSON: Again, it's a threat by opposing counsel.

21 MS. SMITH: I am not -- I am not threatening.

22 THE COURT: Just wait. Overruled. You can answer.

23 A I have not contacted them. I didn't -- was unaware that
24 there was any reason to contact them regarding this case.

25 Q (BY MS. SMITH) I'm going to go over some of the

1 recommendations based on your letter. At the bottom you
2 say, "Here are my recommendations for reintegration for
3 Kaelyn and Kyden." In number one, you say, "Encourage
4 relationships with both parents and extended family." You
5 would agree that Joe has not seen the children or had any
6 meaningful contacts with them for over two years, right?

7 **A** I know it's been quite some time.

8 **Q** So that encouragement up to this point would be from either
9 you or Ms. Lefors, right?

10 **A** I'm not sure what you're asking.

11 **Q** Up to this point, that encouragement or -- yeah,
12 encouragement through relationships with both parents and
13 extended family, if encouragement has happened, it's been
14 from Ms. Lefors and her family, right?

15 **A** And it could also be from school personnel or family
16 friends.

17 **Q** Well, you say both parents and extended family.

18 **A** Yeah, it says encourage relationships with.

19 **Q** Right, parents and extended family?

20 **A** Right.

21 **Q** And then number two, you say, "Be honest with the children
22 and provide them with the facts at a level they can
23 understand and as appropriate for their age." And again,
24 because my client has not been able to really have any
25 meaningful conversations, this up to this point would be

1 through Ms. Lefors, or you, or people at school, or their
2 extended family?

3 **A** I would imagine so.

4 **Q** Number three, "Allow them a safe place to state their
5 thoughts and feelings." And it's your opinion that Dr.
6 Perrenoud's office is not a safe space?

7 **A** From their perception, that's correct.

8 **Q** Number four, "Continue with individual counseling as
9 needed." That's been happening, right?

10 **A** Correct.

11 **Q** "Continue with family counseling." And that's been
12 occurring with Dr. Perrenoud despite the perception whether
13 it's being successful from the children?

14 **A** Correct.

15 **Q** "Family counseling should involve all family members,"
16 number six. That's occurred with Dr. Perrenoud, right?

17 **A** I am not sure. I have not talked with Dr. Perrenoud about
18 that. From my understanding, there has been one session
19 where Krista was present, but I don't even know if it was a
20 full session.

21 **Q** And number seven, "Visitation should be supervised in a
22 secure setting." And we've talked about that before, most
23 all these visitations either with United Families or
24 parenting time with Dr. Perrenoud were supervised?

25 **A** Okay.

1 Q And number ten, you say, "The children should feel safe to
2 express their desire to end a session and establish a time
3 frame to return to the topic being discussed." So under
4 this recommendation, the children can voluntarily leave and
5 then if they feel comfortable, they can return?

6 A I think there should be some sort of expectation. It also
7 plays into they're old enough to understand cause and
8 effect. If the expectation is that they return during the
9 session, then we need to have a time line available. This
10 is more for like a cool down period. So if something is
11 emotionally escalated, then they can have a cool down,
12 utilize some of their tools to bring down their emotional
13 responses and then continue with the session.

14 Q Are you aware that during the visits at United Families,
15 there were some discussions about, "Hey, kids, just spend
16 five minutes and then you can leave," that was discussed in
17 terms of setting limitations and also giving them the
18 freedom to leave after that, and maybe some, I don't want
19 to call them rewards, but you know, hey, if you do this,
20 then you can leave or go spend some time with your friends
21 or something like that, are you aware that that occurred?

22 A I'm not.

23 Q And are you aware the children were seeing a counselor
24 named Tamara Ulmer in 2020?

25 A I was not.

1 Q Are you aware that Ms. Ulmer believed that the children
2 were not actually afraid of their father and did not
3 display any behaviors that would be indicative of abuse or
4 neglect?

5 A I did not.

6 Q Are you aware that the children also saw Ms. Haag, I
7 believe it is, Adria. Adria?

8 MR. LEFORS: Yes.

9 Q (BY MS. SMITH) Adria Haag as a counseling?

10 A I was not.

11 Q It's fair to say that it's not productive for children to
12 bounce from counselor to counselor?

13 A I think you need to have a rapport built with children.

14 Q Dr. Perrenoud testified at the last hearing that the
15 children have been subject to alienation, and not just
16 general parental alienation, but severe parental alienation
17 by Ms. Lefors. Do you find that -- do you feel that
18 parental alienation is a form of abuse?

19 A I do.

20 Q Do you disagree with Dr. Perrenoud's assessment of this
21 case in terms of the parental alienation?

22 A From the little information that I have of what Dr.
23 Perrenoud has stated, yes.

24 Q Based on what?

25 A Based on the interaction with the children, the things that

1 have been said, redirecting my questions in different
2 manners to where I'm essentially asking the same thing but
3 in a different form, the rapport that I have built with
4 them, and then also just watching some of the interactions,
5 although briefly, with Krista, but with the children I have
6 not had any -- I guess it --

7 **Q** Ma'am, that's based on --

8 MS. WATSON: I'm going to ask that the witness be able to
9 finish her answer.

10 THE COURT: You can finish your answer, ma'am, if you
11 weren't done.

12 **A** If it had been a parental alienation case, I would have
13 expected documents to be flooded to me of past history. I
14 would have expected that Krista would have tried to have me
15 ally with the children, or with her and the children.
16 Those conversations did not happen. From the very
17 beginning, Krista was there in the first ten minutes of
18 each of the children's sessions to go over consent forms
19 and then the rest of the sessions have been only with the
20 children.

21 **Q** (BY MS. SMITH) Right, your sessions have only been with
22 the children?

23 **A** Correct.

24 **Q** And Dr. Perrenoud has been able to witness the dynamic with
25 all of the family members, right?

1 **A** If that's what's in his records.

2 **Q** And you're aware that Ms. Watson flooded Dr. Perrenoud with
3 court documents, correct?

4 MS. WATSON: I'm going to object. I never flooded Dr.
5 Perrenoud with court documents. I provided him the Court's
6 order and that was it. I guess I think that I gave him the
7 findings and conclusions, and the photographs of abuse
8 because he didn't believe there was any abuse.

9 THE COURT: Okay. Are you aware of any documents that Ms.
10 Watson gave Dr. Perrenoud?

11 **A** No.

12 THE COURT: What's your next question, please?

13 MS. SMITH: That's all I have, Your Honor.

14 THE COURT: Redirect?

15 MS. WATSON: I have nothing further.

16 THE COURT: Okay, it's ten to four. Should we see if the
17 children are here?

18 MS. SMITH: Do you mind, Your Honor, if counsel --

19 THE COURT: No, we'll do that. I haven't forgotten about
20 that.

21 MS. SMITH: Sure.

22 THE COURT: This can be off the record. You may step down.

23 MS. WATSON: May she be excused from her subpoena?

24 THE COURT: Any objections to her release?

25 MS. SMITH: No.

1 THE COURT: Yes, you're released. Thank you, Ms. Torno.

2 (A break was taken.)

3 (The Court met separately in camera with both Kyden
4 and Kaelyn off the record.)

5 THE COURT: All right, we're back on the record in the
6 Lefors matter. The parties and their attorneys are here.
7 The record should reflect that I met individually with each
8 of the two children; Kyden first and then Kaelyn. I had
9 Tammy in there with me, and you know, I'm not trained in
10 any of this, but I -- to put it bluntly, I didn't get
11 anywhere at all. Both children are convinced and
12 resolved -- and I'm sorry to say this, sir, but both
13 children are convinced and resolved that they never want to
14 have a relationship with their dad. It sounded to me as
15 Ms. Torno was testifying that she sees a light at the end
16 of the tunnel. She's way more qualified than I am, but Ms.
17 Torno testified that if not both, at least Kaelyn had -- at
18 some point in speaking with her, that Ms. Torno had Kaelyn
19 say something about, well, maybe in the future something
20 could work out. I didn't even get that.

21 So we have a motion in front. We've heard testimony
22 at two separate hearings. I told the attorneys that I'm
23 not ready to give a decision today. I want to review the
24 testimony, I want to review Dr. Perrenoud's testimony. I
25 don't have any brilliant ideas. So does either party wish

1 to make any type of record today before we recess? Go
2 ahead, Ms. Watson.

3 MS. WATSON: I would just ask, there's a visit on Saturday,
4 that it be scheduled some place that's open. I guess
5 WaTiki will be one option. I mean, I don't know what's
6 open, but having it at some place that's closed isn't going
7 work.

8 THE COURT: Yeah, that doesn't work. Ms. Smith?

9 MS. SMITH: I think WaTiki is fine, but my client would
10 request that Ms. Lefors not be present during visitation.

11 THE COURT: Yeah, that's probably appropriate. I seem to
12 recall that there's been some problems with some of Ms.
13 Lefors' side of the family, there being some discord there.
14 Do we have somebody that can drop off the kids where
15 there's not going to be a problem?

16 MS. WATSON: Well, his girlfriend's been at all the visits
17 too. I mean, it's not one-sided.

18 THE COURT: No, I understand that.

19 MS. WATSON: Yeah, but yeah. So you don't want my client
20 to drop them off and pick them up?

21 THE COURT: Well, that's what you're requesting, right?

22 MS. SMITH: Well, just not at the WaTiki or the vicinity of
23 the visitation.

24 MS. WATSON: But she drops them off and leaves.

25 MS. SMITH: Right, and we would ask that that continue.

1 MS. WATSON: Yeah, we would agree with that.

2 THE COURT: That's fine, that's fine. Do we have a time,
3 do we have a set time?

4 MS. SMITH: I think it's already set in the prior orders,
5 right? Saturday from?

6 MR. LEFORS: Nine to five.

7 MS. SMITH: Nine to five.

8 THE COURT: All right, well, I don't know how it's going to
9 go. I'm not encouraged by the time that I just spent with
10 the two children.

11 All right, like I said, I want to review the testimony
12 and everything before I make any further decisions at this
13 point, so I'm not going to change anything at this point.
14 Anything else for the record, Ms. Watson?

15 MS. WATSON: I don't believe so.

16 THE COURT: Ms. Smith?

17 MS. SMITH: Do you have an anticipated time frame of
18 maybe --

19 THE COURT: Yeah, I don't know. When's the next
20 appointment with Dr. Perrenoud?

21 MR. LEFORS: It's the 17th of March, sir.

22 THE COURT: 17th of March. Well, I don't know that I'll
23 have a decision by then. What I'm saying is let's not
24 change anything at this point.

25 MS. WATSON: If Ms. Torno was able to arrange an

1 independent kind of meeting with the kids, is that okay?

2 THE COURT: Ms. Smith, do you have any objection to that?

3 MS. SMITH: Like an individual family?

4 THE COURT: Yeah, be a little more descriptive. What are
5 you thinking of?

6 MS. WATSON: No, well, what she talked about was arranging
7 a time when the kids would spend 15 or 20 minutes with
8 their dad at a fast food restaurant she talked about and
9 she went through the topics they were going to talk about
10 and how they were going to handle it and that they would
11 stay.

12 THE COURT: Right.

13 MS. WATSON: And she apparently felt they'd bought into it,
14 and you know, if she can do that, I'm all for it, I guess.

15 THE COURT: I am too. I specifically -- well, not
16 specifically, but I asked something like that if they would
17 be willing to do that. Neither child indicated that they
18 would. If she's able to do that, absolutely.

19 MS. SMITH: Yeah, my client obviously wouldn't be opposed
20 to any time that he can get.

21 THE COURT: Sure, no, I understand.

22 MS. SMITH: And I think it would be beneficial for both
23 parties not to have a strict order in place that, you know,
24 it would allow for that flexibility as long as Ms. Lefors
25 is on board with coordinating those parenting times.

1 THE COURT: Yeah, at this point I'm willing to try anything
2 that might help.

3 MS. SMITH: And then just for the record and to confirm,
4 there's been some disagreements that counseling is
5 considered his parenting time, and I think the Court's
6 prior record or orders have indicated that there's
7 counseling and then there's Mr. Lefors' parenting time.

8 THE COURT: I do not consider individual family counseling,
9 whether it's with Melanie Torno or Dr. Perrenoud or anybody
10 like that, I do not consider that parenting time.

11 MS. WATSON: And I guess the other area of conflict is the
12 kids have activities during their scheduled parenting time
13 and that's created more issues. I guess the flexibility is
14 the key there, and if we can get their counselor to work
15 out some times that works for the kids and works for him,
16 my client will drop them off, but --

17 THE COURT: Yeah. No, we talked about that. I talked
18 about that with both kids. She's in cheerleading and he
19 would be in track and he's -- I think he missed track
20 practice today, right? Yeah, I don't want that to happen.
21 So yeah, if we can work around those, that would be fine.
22 Like I said, I'm willing to try whatever.

23 MS. SMITH: But I think there has to be an understanding
24 that that's priority over -- I mean, there's got to be some
25 flexibility, sure, but there's, number one, got to be

1 make-up because I think there's been some disagreements,
2 and Ms. Lefors is unwilling to do some parenting make-up
3 time, so there's got to be some clear instructions on that.

4 THE COURT: All right. Well, so visitation this Saturday 9
5 a.m. to 5. When's the next visitation? Or I can't
6 remember, are we every Saturday or what are we?

7 MS. WATSON: Alternating Saturdays, and then Tuesday and
8 Thursday 4 to 7:30, and they have some activities.

9 THE COURT: So is the 4 to 7:30 conflicting with track and
10 cheerleading?

11 MS. WATSON: Yes. Does it always conflict?

12 THE COURT: Any suggestions?

13 MS. WATSON: Well, flexibility, I guess maybe, you know, if
14 maybe we can have Ms. Torno sit down with them and work out
15 a schedule.

16 THE COURT: That's fine. We could move the visitation
17 from, instead of 4 to 7:30, we could do it 5 to 8.

18 MS. WATSON: Well, they have schoolwork, so it doesn't work
19 very good. It takes Kyden longer with his schoolwork so
20 later really isn't an option, but other days are options,
21 you know.

22 THE COURT: Well, it doesn't sound like it. They've got
23 track five days a week, right?

24 MS. SMITH: Every Saturday could be, since it's now
25 alternating Saturdays.

1 MS. WATSON: Parents can go to activities, you know. It
2 makes it -- but I mean, if we can sit down and look at the
3 kids' schedule and figure out, I think that --

4 THE COURT: All right, why don't we do that. See if you
5 can work it out. If not, then I'll put a schedule in
6 place, but until then, the schedule I've established is the
7 schedule we use.

8 MS. WATSON: So should the kids go to their activities, or
9 do they go to the parenting time?

10 THE COURT: Well, unless you can figure out something else,
11 they need to go to the parenting time.

12 MR. LEFORS: Your Honor, can I make a suggestion?

13 THE COURT: You may.

14 MR. LEFORS: The kids can do their after-school activities.
15 What about I pick them up after their after-school
16 activities? I don't want to detract them from what they're
17 doing, but to continue in place with the parenting time.

18 THE COURT: So then you'd pick them up after track or
19 cheerleading?

20 MR. LEFORS: Yes, sir.

21 THE COURT: That's fine with me.

22 MS. WATSON: Just return them at 7:30 then?

23 THE COURT: Right.

24 MS. WATSON: Okay.

25 MS. SMITH: And then maybe we could schedule a status

1 hearing at some point.

2 THE COURT: Okay.

3 MS. SMITH: I'm sure you're kind of booked out.

4 THE COURT: Yeah, but we're just talking about something
5 for 15 or 30 minutes, right?

6 MS. WATSON: My client hasn't testified. I guess I don't
7 -- you know, and we have this new affidavit and I haven't
8 addressed -- we haven't had it long enough to address it.

9 MS. SMITH: It's not a new affidavit. It's just the reply
10 affidavit.

11 MS. WATSON: Oh, I'm sorry, the reply affidavit.

12 THE COURT: Okay.

13 MS. SMITH: Well, I'm not sure she gets a double reply, but
14 that's fine.

15 THE COURT: Well, I haven't even looked at them, so I'm not
16 sure who gets what. Let's see, we could schedule a status
17 hearing for Tuesday, the 12th of April at 9:30.

18 MS. WATSON: That works for me.

19 THE COURT: Ms. Smith?

20 MS. SMITH: That works for me too.

21 THE COURT: All right. 4/12 at 9:30. We'll set aside half
22 an hour.

23 MS. WATSON: Set aside what?

24 THE COURT: Well, what are we envisioning?

25 MS. SMITH: I think probably just a status update on the

1 parenting time, counseling, that sort of thing. I don't
2 anticipate testimony.

3 THE COURT: Okay. Well, we'll set it for 30 minutes at
4 9:30 on Tuesday, April 12th.

5 All right, anything else, Ms. Smith?

6 MS. SMITH: No, Your Honor.

7 THE COURT: Ms. Watson?

8 MS. WATSON: Nothing further. Thank you, Judge.

9 THE COURT: All right, thanks. We'll be in recess.

10 (These proceedings were concluded.)
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1 STATE OF SOUTH DAKOTA)
2 COUNTY OF MEADE) SS. CERTIFICATE

3
4 I, TAMMY STOLLE, RPR, an Official Court Reporter and
5 Notary Public in the State of South Dakota, Fourth Judicial
6 Circuit, do hereby certify that I reported in machine
7 shorthand the proceedings in the above-entitled matter and
8 that pages 1 through 93 are a true and correct copy, to the
9 best of my ability, of my stenotype notes of said
10 proceedings had before the HONORABLE KEVIN J. KRULL,
11 Circuit Court Judge.

12 Dated at Sturgis, South Dakota, this 11th day of
13 March, 2022.

14
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16
17
18 /s/Tammy Stolle
19 TAMMY STOLLE, RPR
20 Registered Professional Reporter
21 My Commission Expires: 2/2/28
22
23
24
25



MELANIE TORNO, MS LFC/MS QMHP
730 SOUTH ST. RAPID CITY SD 57701
PHONE: 605.371.8361
melanie.torno@tornomediation.com | www.tornomediation.com

September 21st, 2021

Re: LeFors children, Kaelyn and Kyden

To Whom It May Concern:

I am writing regarding the LeFors children, Kaelyn and Kyden. I have provided counseling services for each of the children individually. They each have had 6 individual sessions beginning May 3rd, 2021. Sessions in the beginning were scheduled every 2 weeks and are now approximately every one month, which may change depending on the children's needs. We have discussed their parents' separation, visitation with their father, with whom they refer to as Joe, their daily life and activities, their friends and classmates, and interaction with extended family. We have addressed their feelings and thoughts about their parents' separation, coping skills, and communication to advocate for themselves. They have expressed their fear of their father, described the abuse they have witnessed and occurred to them, and the impact those experiences have had on each of them. They have had sleep difficulty since that time and do not feel safe sleeping in their own rooms. They have had fears of their father breaking into their homes. We are working on reducing that fear and to lessen the impact on their daily life.

Kaelyn and Kyden have also discussed their frustration and lack of desire in visitation and counseling with Joe. They have expressed that their voice is not being heard and that they feel unsafe during counseling with Joe. For example, they have indicated that Joe has sat by the door of their counseling sessions and they feel trapped. For counseling with Joe to be successful, I believe Kaelyn and Kyden need to feel secure and that they can advocate for themselves.

Here are my recommendations for reintegration for Kaelyn and Kyden -

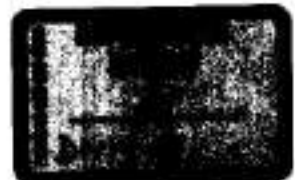
1. Encourage relationships with both parents and extended family.
2. Be honest with the children and provide them with the facts at a level they can understand and is appropriate for their age.
3. Allow them a safe place to state their thoughts and feelings.

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4TH CIRCUIT CLERK OF COURT

By _____



4. Continue with individual counseling, as needed, to allow a safe place to express their thoughts and feelings, as well as create strategies for coping skills, thought stopping, self advocacy, and communication skills.
5. Continue with family counseling in a safe environment where they can freely express their concerns and develop a secure therapeutic rapport prior to introducing Joe into the sessions.
6. Family counseling should involve all family members, including both parents and the children for a more successful reintegration by addressing family dynamics and issues that are unresolved.
7. Visitation should be supervised in a secure setting to ensure the children's safety with Joe, as well as to address their refusal. This would be most beneficial to occur in a therapeutic environment.
8. There should be clear goals established, with the help of the children, for each counseling session and topics to discuss at the sessions.
9. Clear expectations of all parties should be established for counseling.
10. The children should feel safe to express their desire to end the session, within reason, and establish a time frame to return to the topic being discussed.
11. All parties also need to keep in mind that one of the children is diagnosed with Autism and both children feel scared and fearful.

If you have any further questions, I am available at 718-3613. Thank you for your times and consideration.

Best regards,



Melanie Torno, LPC-MH QMHP

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11. All parties also need to keep in mind that one of the children is diagnosed with Autism and both children feel scared and fearful.

If you have any further questions, I am available at 718-3613. Thank you for your times and consideration.

Best regards,



Melanie Torno, LPC-MH QMHP

STATE OF SOUTH DAKOTA)
)
COUNTY OF MEADE :SS)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

JOSEPH D. LEFORS,)
)
Plaintiff,)
)
v.)
)
KRISTA M. LEFORS,)
)
Defendant.)

46 DIV 19-000008

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND ORDER**

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SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

This action was initiated by the Plaintiff filing a Complaint for divorce in January of 2019. Trial was held on June 17 and 18, 2020. The Court entered its Findings of Fact and Conclusions of Law and its Decree of Separate Maintenance on April 6, 2021. Among other things, the Court ordered that the Defendant shall continue as primary custodian of the parties' children, subject to the Plaintiff's reasonable parenting time. Plaintiff appealed that decree. Multiple motions, affidavits, and other documents have been filed since then. The Court held motions hearings on December 21, 2021, and on March 8, 2022. The Court, having reviewed the file, having heard the testimony of the witnesses and the argument of counsel, does hereby enter the following:

FINDINGS OF FACT

1. That any Finding of Fact deemed to be a Conclusion of Law or any Conclusion of Law deemed to be a Finding of Fact should be appropriately incorporated in Findings of Fact and Conclusions of Law as the case may be.
2. The parties' relationship with each other is acrimonious, to say the least.
3. The Plaintiff's relationship with the parties' children is almost nonexistent. The Court has ordered parenting time for the Plaintiff, as well as counseling that involves the Plaintiff and the children, but the children refuse to spend time with their father. Typically, the Defendant drops off the children for visitation with their father, and the children ignore their father and start walking home. The Plaintiff has not been able to re-establish a

relationship with the children. The Plaintiff has accused the Defendant of intentionally alienating the children from him.

4. A significant part of the children's problem with the Plaintiff is that he is in a romantic relationship with the Defendant's sister. The Plaintiff lives with the children's aunt and cousins.
5. During the March 8, 2022 motions hearing, the Court met individually in camera with each of the children without the parties or their attorneys. The court reporter was present for each of the meetings, but no record of the meetings was made. The children's attitudes toward their father was consistent with the testimony of the parties and with the testimony of the other professional and lay witnesses. Neither child expressed any interest in ever establishing any type of relationship with their father. Each child mentioned the father's relationship with their aunt as the reason for their position.
6. Mark Perrenoud, Ph.D., a licensed psychologist from Psychological Associates of the Black Hills in Rapid City, testified at the December 21, 2021 hearing. This court had appointed Dr. Perrenoud to assist in this matter. Dr. Perrenoud has met with the Plaintiff and with the children.
7. Dr. Perrenoud stated that he believes that the Plaintiff has certainly done his part to increase the chances of his visits with the children to be successful.
8. Dr. Perrenoud believes that the children have been alienated against the Plaintiff, and that the Plaintiff's alcohol use and his dangerousness to the children has been overstated.
9. Dr. Perrenoud testified that the Defendant is probably the biggest cause of the alienation of the children against their father, and he called the level of alienation severe. He testified that he believes that the Defendant has not done everything that she could possibly do to facilitate a relationship between the children and the Plaintiff.
10. Dr. Perrenoud testified that, in order to stop the severe alienation by the Defendant, a reversal of primary custody is an option that should be considered.
11. Dr. Perrenoud testified that he did not believe that continued therapeutic counseling as an option for reunification is going to be beneficial at this point.
12. Dr. Perrenoud testified that the children should be informed that if they do not cooperate with parenting with their father, that they should be informed that their mother could be held in contempt of court.
13. Melanie Torno testified at the March 8, 2022 hearing. Ms. Torno has a master's degree and is a licensed professional counselor as well as Qualified Mental Health Professional and a Licensed Professional Counselor – Mental Health.

14. At the time of the March 2022 hearing, Ms. Torno had been the children's counselor for nearly a year.
15. Ms. Torno said that the children have told her that Dr. Perrenoud speaks badly about their mother. Kyden has said that he does not trust Dr. Perrenoud and will not speak to him. Kaelyn has said that she does not trust Dr. Perrenoud, and that she does not feel safe in the counseling sessions with Dr. Perrenoud.
16. Kyden has autism. Ms. Torno testified that the first step in having Kyden building a positive relationship with his father is that Kyden has to feel safe. The same is a requirement for Kaelyn also.
17. In order to make the children feel safe with their father, Ms. Torno stated, "We keep working in counseling. We keep doing baby steps. I would recommend, like I had said before, recommend small baby steps, moving into indoor McDonald's or whatever restaurant is available. Meet him for ice cream, 20 minutes, 30 minutes. Help the kids create lists of topics that they are comfortable with communicating about and not talking about issues that they're not ready to deal with."
18. Ms. Torno testified that she has not seen any parental alienation by the Defendant. She testified that the children have told her that their mom has been encouraging of their relationship with their father and has attempted to get them to have visits with him.
19. Ms. Torno testified that changing primary physical custody to the Plaintiff would be detrimental to the children. The children told Ms. Torno that if such a change was implemented, that they would run away.

Having made the foregoing Findings of Fact, the Court now enters the following:

CONCLUSIONS OF LAW

- 1) Any Finding of Fact or Conclusion of Law that more appropriately belongs in the other category shall be inserted in the appropriate category by this reference.
- 2) This Court has jurisdiction of the parties and the subject matter of this proceeding.
- 3) "Trial courts have broad discretion when considering matters of child custody and visitation." *Chicoine v. Chicoine*, 479 N.W.2d 891, 893 (S.D. 1992). "However, the trial court's exercise of discretion is not uncontrolled and must have a sound and substantial basis in the testimony." *Williams v. Williams*, 425 N.W.2d 390, 393 (S.D. 1988); *Kester v Kester*, 257 N.W.2d 731 (S.D. 1977).
- 4) The South Dakota Supreme Court in *Fuerstenberg v. Fuerstenberg*, 1999 SD 35, set forth the rules which it intended for trial courts to follow in South Dakota. In deciding the best interests of a child in a custody dispute, "the court must consider the child's temporal, mental and moral welfare." SDCL 25-5-10 (additional citations omitted). "In most

circumstances, it will be in the best interests of the children that they receive the love, affection, training, and companionship of their non-custodial parent." *Weber v. Weber*, 529 NW2d 190 (SD 1995).

- 5) In this matter, the children's relationship with their father has been damaged to the point that it is almost beyond repair. Dr. Perrenoud places a significant portion of the blame for this on the Defendant. In contrast, Ms. Torno does not believe the Defendant has deliberately alienated the children from their father. While this Court does not possess the expertise of either Dr. Perrenoud or Ms. Torno, and while it is a very close call, this Court does not find or conclude that there is sufficient evidence that the Defendant has engaged in parental alienation.
- 6) The Court concludes that changing custody to give the Plaintiff primary custody would be detrimental to the children. This Court also concludes that ordering additional parenting time with the Plaintiff would be counterproductive at this time.

Having made the foregoing Conclusions of Law, it is hereby

ORDERED that the Plaintiff's Motion for Temporary Custody or in the Alternative Extended Parenting Time is hereby DENIED. It is further

ORDERED that the parties shall follow Ms. Torno's recommendations for reintegration contained in Ms. Torno's letter dated September 21, 2021 letter, which was received into evidence.

Dated this 8th day of December 2022.

BY THE COURT

Attest:
Rude, Jennifer
Clerk/Deputy




Kevin J. Krull
Circuit Court Judge

FILED

DEC - 9 2022

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App.107