

IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

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31119

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GARRETT ANTHONY GALLARDO,

*Plaintiff and Appellee,*

v.

ESTER ELIZABET GALLARDO,

*Defendant and Appellant.*

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APPEAL FROM THE CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT  
PENNINGTON COUNTY, SOUTH DAKOTA

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THE HONORABLE MATT BROWN  
Circuit Court Judge

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**APPELLANT'S BRIEF**

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Notice of Appeal filed June 18, 2025

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*Plaintiff and Appellee,*

v.

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*Defendant and Appellant.*

### **PRELIMINARY STATEMENT**

Following the guidelines prescribed in SDCL § 15-26A-63, Appellee, Garrett Gallardo, is referred to as "Mr. Gallardo", Appellant Ester Gallardo is referred to as "Ms. Gallardo." Citations to the Certified Record are "R." as referenced in the Clerk's Index. References to Ms. Gallardo's Appendix are App.\_\_ (followed by applicable page numbers).

### **JURISDICTIONAL STATEMENT**

Ester Gallardo, Appellant, appeals from the following Orders.

- i. The Order dated January 7, 2025, wherein the Circuit Court denied Appellant's Motion to decline jurisdiction in South Dakota, based on inconvenient forum; R. 145.
- ii. The Order dated May 12, 2025, finding the Mediation Agreement enforceable. R. 201.

### **STATEMENT OF LEGAL ISSUES AND AUTHORITIES**

#### **I.**

#### **DID THE CIRCUIT COURT ERR IN DENYING THE REQUEST TO DECLINE JURISDICTION IN SOUTH DAKOTA?**

Yes, the Circuit Court found that jurisdiction should remain in the State of South Dakota, because South Dakota was not an inconvenient forum, even though the child and the mother have resided in the State of Texas since 2022. R. 145.

SDCL 26-5B-207

Lustig v. Lustig 1997 SD 24, ¶5, 560 N.W. 2d 239, 241

Miley v. Miley, 1999 SD 96 ¶15, 598 N.W. 2d 228

Langdeau v. Langdeau, 751 N.W. 2d 722, 2008 SD 44

Fuerstenberg v. Fuerstenberg, 1999 SD 35, ¶16, 591 N.W. 2d 798, 804

**DID THE CIRCUIT COURT ERR IN FINDING THAT A MEDIATION AGREEMENT IS ENFORCEABLE?**

Yes, the Circuit Court determined that the Mediation Agreement was enforceable, even though the Appellant did not sign the Agreement and

testified that she did not agree to it after she was able to read and review with her attorney. Further, there was no finding that the agreement was in the child's best interest.

Blasé v. Brewer, SD 7 692 N.W. 2d 785 (2005)

In re Estate of Neiswender, 2000 SD 112, ¶9, 616 NW2d 83, 86

SDCL 53-1-2

**STATEMENT OF THE CASE**

This is an appeal of two issues. The first issue is that Ms. Gallardo believes this case should not be litigated in South Dakota, because Ms. Gallardo and the parties' child, Lyra, left South Dakota shortly after the child's birth. R. 352. Ms. Gallardo argues that South Dakota is an inconvenient and improper forum for this case. Id.

This case was commenced by Mr. Gallardo when he filed a Summons and Complaint in South Dakota. R. 1, 20. Ms. Gallardo was served the pleadings in the State of Texas, almost six months after she left South Dakota. R. 31. The home state of the child was still South Dakota, when Ms. Gallardo was served. Id.

Ms. Gallardo hired attorney Kelly Sanderson, Sturgis, South Dakota to represent her. R. 31. Mr. Gallardo was represented by Rick Ramstad,

Sioux Falls, Sout Dakota. R. 61. After an Answer was filed, the parties agreed to mediate with attorney and mediator, Terri Williams, Williams Law Office, Rapid City, South Dakota, on August 28, 2024. R. 32.

Ms. Gallardo did not attend mediation in person, appearing via zoom, but her attorney appeared personally. R. 352. Attorney Rick Ramstad and Mr. Gallardo both appeared also by zoom for mediation. Id. The mediation lasted until after 7 p.m. in the evening, as the mediator needed to leave to get her son. R. 352. Only one party signed the mediation agreement. R. 182. Weeks later, Rick Ramstad filed a motion to enforce the Stipulation and Property Settlement Agreement. R. 201. Mrs. Gallardo refused to sign and advised her attorney of the same. Id.

In October of 2024, Ms. Gallardo contacted Gina Ruggieri, Southern Hills Law, PLLC, Custer, South Dakota for legal representation. R. 125. Counsel filed her Notice and also filed an Objection to Enforcement of the Agreement and a request for the court to decline jurisdiction over the case. R. 130.

The Court heard the TPO evidence over two days and heard the jurisdictional argument on December 13, 2024, at the end of the TPO hearing. R. 205. Although the Court entered an Ex Parte TPO, it denied a permanent order, finding the violence ended long ago. Id.

The Court also heard the Motion to Enforce the mediated settlement agreement on both December 13, 2024, and April 14, 2025. R. 352, 205.

The Court issued a clarified Memorandum decision on the jurisdiction issue, as counsel needed clarification on the Court's ruling, specifically in reference to Miley.<sup>1</sup> R. 146. The Circuit Court then clarified its ruling in the Memorandum, and denied the request to decline jurisdiction, now citing the factors under SDCL 25-5b-207. Id.

The Court then issued another Order enforcing the mediated agreement, finding that it was a binding contract. R. 201. Notice of Appeal was timely filed and served on June 18, 2025. R. 291.

### **STATEMENT OF FACTS**

The parties were married and have one child together, who's named is Lyra. R. 20. Lyra is now 3 years old. Id. During the marriage, the parties resided in North Dakota and then South Dakota. Id. Mr. Gallardo is in the military and is stationed at Ellsworth Air Force Base in Box Elder, South Dakota. Id.

During their marriage, Garrett Gallardo was physically and mentally abusive to Ester Gallardo. R. 352. Mr. Gallardo stated the violence went on for about 3 years. Id. Ms. Gallardo has testified during her TPO hearing that she was shoved into walls, had a loaded gun held to her head, was slapped repeatedly, punched, kicked, and given a concussion when Mr.

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<sup>1</sup> The bench ruling reflects the court's decision to continue exercising jurisdiction in SD, the court citing the case at hand was very similar to Miley v. Miley. However, in Miley v. Miley the circuit court declined jurisdiction in South Dakota. Undersigned counsel asked for clarification of the bench ruling because the bench decision did not correctly reflect the court's ruling in Miley v. Miley.

Gallardo threw her through into a wall. Id. Mr. Gallardo admitted there was violence, but stated the violence ended in 2021. Id. The Court found that Mr. Gallardo was the person who committed the domestic violence, but in the end, found the domestic violence ended long ago and there was no need for a protection order. Id.; App. At 001.

The parties' child, Lyra, was born in South Dakota, on June 21, 2022. R. 20. Lyra and her mother, Ester Gallardo, left South Dakota on October 22, 2022, for Texas. Id. Mother and child have resided in Texas since October of 2022, to present, and have never returned to the State of South Dakota. Id.

Since October 22, 2022, Father has never had any visitation with his daughter in the State of South Dakota. R. 352. His visits are held either in Anaheim, California at his parent's home, or in the State of Texas. Id. His visits are supervised and have been supervised since 2022. Id.

Mr. Gallardo filed for Divorce almost six months after his child and his wife left South Dakota, but still in the time frame where the home state would still be South Dakota. R. 1, R. 20. Ms. Gallardo hired attorney Kelly Sanderson, Sturgis, South Dakota to represent her. R. 32. Mr. Gallardo later hired Rick Ramstad, Bangs McCullen to represent him. R. 61. Attorney Sanderson did not contest jurisdiction in South Dakota, and scheduled mediation with Mediator, Terri Williams. R. 71. Mediation took place in Rapid City on August 28, 2024. R. 205.

Mr. Gallardo attended mediation personally and his attorney Rick Ramstad appeared via zoom. Id. Attorney Sanderson appeared personally at mediation and Ms. Gallardo attended mediation by zoom from Texas. Id. Mediation was held in Rapid City with Mediator Terri Williams. R. 205. The mediation was long and contentious, with Ms. Gallardo crying a lot. Id. Both Ms. Gallardo and the mediator testified that mediation went into the evening hours, close to 7 p.m. Id. Towards the end of mediation, but before all documents were printed and read, the mediator needed to leave to get her son. Id. Only one party signed the settlement agreement that evening. Id. The next day after Ms. Gallardo fully read her printed property and divorce settlement agreement document, she refused to sign it. R. 182, R. 205.

During the mediation, Ms. Gallardo testified that the mediator put pressure on her, and she did not fully consider Ester's concerns over the domestic violence issues, property issues, and the issue of Ms. Gallardo wanting supervised visitation for Mr. Gallardo. R. 205.

Ms. Gallardo testified that she was crying and highly emotional during mediation. Id. At one point, the mediator, Terri Williams, told Ms. Gallardo she could not "fucking do this anymore." R. 201. Ms. Gallardo testified that there were unresolved property issues in South Dakota that were not addressed by the mediator or her own attorney. Id. Ms. Gallardo testified she never even read the final agreement with her lawyer, Kelly Sanderson,



as mediation went to 7 p.m. and everyone needed to leave. Id. Ms. Gallardo stated she had printing issues and issues with word document on her computer, making it impossible for her to read the document. Id.

Ms. Gallardo stated she was working with her attorney through email, reviewing changes and additions to the stipulation. Id. Ms. Gallardo stated that by the end of mediation, a lot of her issues were never addressed by the mediator. Id. Ms. Gallardo testified when she asked for supervised visits, the mediator would say things like "No Judge in Rapid would agree on that." Id. Ms. Gallardo testified that at around 7 p.m., the mediator said she needed to leave to go pick up her son and then her attorney Kelli Sanderson, also stated she needed to leave so she could go get her children. R. 201. Attorney Sanderson ended up staying at mediation, as the child pick issue got resolved. R. 201.

Ms. Gallardo testified that she was never given the chance to review the final version of the settlement agreement with her lawyer. Id. Ms. Gallardo testified she still had unaddressed concerns and questions for her former lawyer and the lawyer who appeared for her at mediation, Kelli Sanderson. Id.

The last version of the Stipulation was sent to Ms. Gallardo minutes before both her attorney and the mediator, Terri Williams, left. R. 201. Ms. Gallardo was never able to read the final document or discuss its contents with her attorney. R. 201. When pressured if she would agree to the Stipulation, she gave a verbal "yes." Id.



The next day, when Ms. Gallardo was able to read through the entire document, she felt that she could not honestly sign it, because the document had language that stated “that the agreement was fair and that there was no duress or coercion.” App. 006. Ms. Gallardo testified she did not feel that the agreement was fair to her, she felt that she was under a lot of pressure, and felt that she was pushed into saying yes, and for that reason she did not sign it. Id.

### **STANDARD OF REVIEW**

This Court has held that a Circuit Court’s decision whether to exercise jurisdiction over child custody and divorce actions under the abuse of discretion standard. R. 139. Regalado v. Mathieson, 2004 SD 87, ¶ 5, 684 N.W.2d 67, 70 (“reiterating this Court’s application of the abuse of discretion standard to circuit court decisions declining jurisdiction in favor of more convenient forums under the predecessor act to our currently enacted Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA))” (citing Ford v. Ford, 2002 SD 147, ¶ 7, 655 N.W.2d 85, 86; Fuerstenberg v. Fuerstenberg, 1999 SD 35, ¶ 16, 591 N.W.2d 798, 804 (citation omitted)), see also Lustig v. Lustig, 1997 SD 24, ¶ 5, 560 N.W.2d 239, 241.

The other issue asks the court to determine whether or not a contract was formed between Mr. and Ms. Gallardo and if that agreement is enforceable or should be set aside. This Court has held that the ‘existence

of a valid contract is a question of law. \* *In re Estate of Neiswender*, 2000 SD 112, ¶9, 616 NW2d 83, 86. Questions of law are reviewed de novo. *Regalado v. Mathieson*, 2004 SD 87, ¶5, 684 NW2d 67, 70 (citation omitted).

Further, the Circuit Court's factual findings are reviewed under the clearly erroneous standard. *Aguilar v. Aguilar*, 2016 S.D. 20, ¶ 9, 877 N.W.2d 333, 336.

### **ARGUMENT**

#### **I. WHETHER THE CIRCUIT COURT ERRED WHEN IT FOUND THAT SOUTH DAKOTA WAS NOT AN INCONVENIENT FORUM.**

- a. The Circuit Court should have stayed proceedings or, alternatively, declined to exercise jurisdiction over this divorce and custody case, because the child has not lived in South Dakota since 2022.

"Under the Uniform Child Custody Jurisdiction Act (UCCJA), if a court finds it is an inconvenient forum for a custody determination, the court may decline jurisdiction, when another state provides a more appropriate forum". *Lustig v. Lustig*, 1997 SD 24, 560 NW2d 239 (S.D. 1996). Further, the court may also "split" the case and agree to not exercise jurisdiction over the custody portion of a divorce/custody case, in its discretion. SDCL 26-5B-207.

The UCCJEA was designed to produce "jurisdictional certitude" for the benefit of the child. "Deferring a child custody dispute to another forum can assure that the best interests of the child are not subordinated to the

parents' interest in obtaining the best terms of the divorce." Lustig, 1997 SD 24, ¶14, 560 N.W.2d at 245.

A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum. Lustig v. Lustig, 1997 SD 24, 560 N.W.2d 239 (S.D. 1996); SDCL 26-5b-207. "To serve the child's well-being, the UCCJA encourages custody to be decided where the best evidence regarding the child exists and, in the jurisdiction where the child has the closest connections. Lustig v. Lustig, 1997 SD 24, ¶8, 560 N.W.2d 23. Failure to consider the factors under the UCCJEA, is an abuse of discretion. Id.

In Lustig the SD Supreme Court set out the following factors for the circuit court to consider and they are as follows:

- 1) If another state is or recently was the child's home state;
- 2) If another state has a closer connection with the child and his family or with the child and one or more of the contestants;
- 3) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
- 4) If the parties have agreed on another forum which is no less appropriate.

Lustig v. Lustig, 1997 SD 24, 560 N.W.2d 239 (S.D. 1996). SDCL 26-5a-7.

The South Dakota legislature enacted SDCL 26-5b-207 after repealing, SDCL 26-5a-7, and the factors there include the following:

- (a) A court of this state which has jurisdiction under this chapter to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.
- (b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:
  - (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
  - (2) The length of time the child has resided outside this state;
  - (3) The distance between the court in this state and the court in the state that would assume jurisdiction;

- (4) The relative financial circumstances of the parties;
- (5) Any agreement of the parties as to which state should assume jurisdiction;
- (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this chapter if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding. SDCL 26-5B-207.

In *Lustig*, the Court found no abuse of discretion in declining jurisdiction in South Dakota, as the child had lived in Minnesota for ten

years and was enrolled in activities there. There, the court found that most of the witnesses would also be in the state of Minnesota.

Under a Lustig analysis, proper jurisdiction would be in the State of Texas in our case because 1) Texas is the current home state of the child; R. 146. 2) Texas has a closer connection to the child and her primary caretaker, her mother; R. 352. 3) the evidence regarding the child's care and future her is readily available in the State of Texas, where she has resided since October 2022; R. 352, P. 77. and 4) the parties have no agreement on jurisdiction. R. 146.

The Court, in its bench ruling, said it was relying on Miley, and for that reason, it would keep jurisdiction in South Dakota. However, the circuit court's decision in Miley was not to keep jurisdiction but, rather, to decline to exercise jurisdiction in South Dakota, and allow the case to proceed in the child's home state of Arizona. The circuit court ruling was in error, and did not correctly reflect Miley. This is not a case of the right outcome based on flawed reasoning, but rather, the wrong outcome based on wrong reasoning.

Our case is very similar to Miley and under Miley, the jurisdiction should have been declined by the circuit court. In Miley, the circuit court declined to exercise jurisdiction finding South Dakota to be an inconvenient forum. In that case, the initial custody order was from South Dakota, but the children had lived in Arizona for four years. Miley v. Miley, 1999 SD 96 ¶15 598 N.W.2d 228 (S.D. 1999).

Several years later, when a motion to modify was filed, the South Dakota Court declined jurisdiction, citing that the evidence regarding the last four years of the child's life was more available in Arizona than in South Dakota. Miley v. Miley, ¶15, 598 N.W.2d 228. The South Dakota Supreme Court affirmed the circuit court in Miley.

Here, there is no evidence regarding the child, Lyra, in South Dakota. R. 352. Lyra lived 3 months of her infant life in South Dakota, then left, and never returned. Id. The only person left in South Dakota is the father, and he does not see his daughter in this State. Id.

Further, even after the child and mother left South Dakota, father by his own testimony, also left South Dakota to serve overseas in Iraq in 2023 and 2024, further removing the possibility of contact with Lyra in South Dakota. R. 352. Any witnesses, besides father, would be in the State of Texas or in the State of California, where Garrett has exercised only supervised visitation at his parents residence in Anaheim, California, or with Ms. Gallardo, in Texas. R. 352.

If the court decides that Lustig is not a proper analysis and the argument should reflect only on the factors in SDCL 26-5b-207, the Court should still find that Texas is a proper forum for this custody case.

Mother argues that under the statute the following favors staying the case in South Dakota and allowing Texas to assume jurisdiction. R. 352. Mother argues the following under South Dakota's inconvenient forum statute, SDCL 26-5b-207 R. 352.



- A. That there is a history of severe domestic violence between the parties, that went on for 3 years and ended in 2021; *Id.*
- B. The child has resided outside of South Dakota since October, 2022; *Id.*
- C. Factor 3 was not argued, however the Court could have made the finding without any testimony that Texas is not anywhere close to South Dakota;
- D. Factor 4 was not argued, and the Court made no findings;
- E. There is no agreement on jurisdiction; R. 146.
- F. The location of the evidence and the child's future care is in the State of Texas and has been since October 2022; R. 352.
- G. This factor *could not* be argued, as no Texas Court would accept jurisdiction, noting South Dakota had jurisdiction;
- H. This factor *could not* be argued, as no Texas court would accept this case, as the Texas Court knew there was a pending case in South Dakota;

This is a case where Father waited over five months to file his divorce and custody complaint in South Dakota. R. 20. Based on the above argument, and the clear lack of contact this child has had with the State of South Dakota, since October 2022, the Court's findings that South Dakota is not an inconvenient forum, should be reversed. R. 145. Moreover, it is in best interest of the child for Texas to exercise jurisdiction as that is where Lyra has lived since the fall of 2022. *Id.*



**B. The circuit court failed to make the required findings under SDCL 26-5b-207, and, for that reason, it erred.**

SDCL 26-5B-207(b) provides that the circuit court "shall consider" factors including "whether domestic violence has occurred and is likely to continue in the future. Id. This Court has stated "we conclude the Legislature, when it enacted this section of the UCCJEA, intended the circuit court to enter the findings of fact and conclusions of law that we relied upon during appellate review under the predecessor UCCJA, before yielding jurisdiction. "Before determining whether it is an inconvenient forum, the court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction." Langdeau v. Langdeau, 751 N.W.2d 722, 2008 SD 44 (S.D. 2008)

Here, the court heard hours of evidence over the period of two days based on 51TPO 24-774, received pictures and exhibits regarding domestic violence, yet failed to make any detailed findings on the same issue. R. 352. The court also heard evidence regarding other subparts of the inconvenient forum statute, but made no findings or conclusions as to the length of time the child has been out of the state, how far Texas was from South Dakota, or where evidence was more readily available, when the obvious answer is Texas, where the child lives. Id. For this reason, this court should find error in the judgment of the circuit court, because it continued to exercise jurisdiction without making the required findings.

Ms. Gallardo asks that this Court reverse the decision of the circuit court and find that South Dakota is not a convenient forum for the case. R. 145.

**C. The Circuit Court erred in finding that jurisdiction must remain in South Dakota because a Texas court cannot interpret whether or not the parties entered into a settlement agreement, finding that ‘contract’ issue should also control jurisdiction.**

In the court clarified memo decision it stated the following:

“What has been requested from Ester Gallardo is that this Court relinquish jurisdiction to Texas so that a Texas court can rule the issue as to whether the parties reached an enforceable agreement during a South Dakota mediation. R. 132. The analysis of whether an enforceable agreement was reached during a South Dakota led mediation should be decided by a court in South Dakota.” Undersigned counsel has never asked the circuit court to allow a Texas court to interpret if the mediation agreement is enforceable.<sup>2</sup>

It is an error for the court to keep this case, because it believes that South Dakota, not Texas, should decide if the parties entered into a valid settlement agreement. Id. The finding of the court states that counsel asked for the circuit court to decline jurisdiction, to allow Texas to decide a contract issue is in error and is not supported anywhere in the record. Id.

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<sup>2</sup> It should be noted that counsel never asked the circuit court to relinquish the case so that a Texas court can decide if the parties entered into a valid settlement agreement. There is no such request in any transcript or in any motion or request filed. This finding is in error.

It is an error and outside the parameters of the UCCJEA and SDCL 26-5b-207, for the court to continue exercising jurisdiction solely because it believes it first needs to decide if a valid settlement agreement exists. See Lustig, 1997 SD 24, ¶14, 560 N.W.2d at 245. (finding that the best interest of the child should control a jurisdictional decision). Id. Because the court's memorandum seems to infer that it must decide the contract question, before the court decides the jurisdictional question, the court erred, and the decision should be reversed.

**D. The agreement is not in the child's best interest and the court failed to make findings on whether the agreement was in Lyra's best interest. For this reason, it should be set aside.**

SDCL 25-4-61 provides:

The mediator shall reduce to writing any agreement of the parties. The mediator shall inform the parties of their right to review the agreement with counsel before they sign the agreement. After the agreement is signed by the parties, the mediator shall present the agreement to the court. The agreement is not binding upon the parties until approved by order of the court. Blase v. Brewer, 2005 SD 7, 692 N.W.2d 785 (S.D. 2005).

In that case, this court held "the court has a duty to ensure that the agreement is in the best interests of the child." Blase v. Brewer, 2005 SD 7, 692 N.W.2d 785 (S.D. 2005). In Brewer the court stated that "We have often confirmed that children's best interests take 'chief importance and will prevail over any mere preponderance of a legal right.' Pribbenow v. Van Sambeek, 418 N.W.2d 626, 628 (SD 1988).

Here, it is clear that Ms. Gallardo never had a chance to review the written settlement agreement with her former attorney, Kelli Sanderson. R. 205. R. 352. The record indicates that the mediation went until at least 7 p.m. and both attorney Sanderson and Mediator Terri Williams, expressed

issues with needing to leave, due to the late hour. Id. Although the mediator states she believes she did not need to leave to get her son, her testimony is contradicted by Ms. Gallardo, who said things were very rushed toward 7 p.m. hour, with both her lawyer and the mediator. Id.

Her testimony should be found credible, as most mediations do not last that late, and it would be normal to try to quickly wrap things up at that late hour. Here, the statute is unmet because first, Ms. Gallardo did not review her final document with her attorney, Kelly Sanderson, that night, and the agreement was never signed by Ms. Gallardo. Id. Lastly, the agreement is not in the child's best interest and the circuit court never made any findings on the best interests, before enforcing the unsigned agreement against Ms. Gallardo. R. 132.

**A. WHETHER THE CIRCUIT COURT ERRED WHEN IT DETERMINED THAT AN UNSIGNED MEDIATION AGREEMENT IS ENFORCEABLE.**

- a. The circuit court erred when it found that that all material issues were resolved between Mr. and Ms. Gallardo, and that there was a "meeting of the minds" between the parties.

"Findings of Fact on which the trial court based its decision are reviewed under the clearly erroneous standard." Adam v. Adam, 436 N.W.2d 266, 267 (S.D.1989). "The Findings of Fact of the trial court will not be overturned unless this Court is left with a definite and firm conviction that a mistake has been made." Hilbrands v. Hilbrands, 429 N.W.2d 750, 751

(S.D.1988). "The Circuit Court's Findings of Fact, are reviewed under the clearly erroneous standard, and the Findings will not be overturned unless the reviewing court is left with a firm conviction that a mistake has been made." Godfrey v. Godfrey, 2005 SD 101, ¶11, 705 N.W.2d 77, 80.

When interpreting a property settlement agreement that is incorporated into a divorce decree, the court looks at principles of contract law. Steffens v. Peterson, 503 N.W.2d 254, 258 (S.D.1993). The elements essential to the existence of a contract are: (1) parties capable of contracting; (2) their consent; (3) lawful object; and (4) sufficient cause or consideration." SDCL 53-1-2. The parties must have mutually assented to all essential terms to form a contract. Mutual assent is a fact question determined by the words and actions of the parties." Vander Heide v. Boke Ranch, Inc., 2007 S.D. 69, ¶ 20, 736 N.W.2d 824, 832 (quoting Read v. McKennan Hosp., 2000 S.D. 66, ¶ 23, 610 N.W.2d 782, 786).

Here, the evidence supports there was not a meeting of the minds on all essential terms of the divorce and property settlement agreement. R. 205. R. 352.

The testimony of Mrs. Gallardo on December 13, 2024, supports the argument that there was *not* a meeting of the minds between the parties. R. 205. R. 352. The court's findings are erroneous in this regard, and the record supports the same. Id. For example, when Ms. Gallardo was asked

by counsel what happened with the offer, Ms. Gallardo testified “she felt very pressured” and “a lot of the things I wanted to address were *never* addressed. And mostly because the mediator pressured me into not addressing those things. And anything that was brought as part of a compromise, but it was never really a compromise from the other side. She would pressure me into accepting that.” Ms. Gallardo testified that both her attorney and the mediator had to leave mediation close to 7 p.m., as the mediator needed to go get her child. Id. The final stipulation was sent by email to Ms. Gallardo, and she never read it, nor did she get a chance to review it with her lawyer, Kelly Sanderson. Id. When pressured, if she would agree, she testified she gave a verbal “yes.” Id.

Because of the issues Ms. Gallardo was having with her computer and printer, Ms. Gallardo could not fully read the mediation agreement until the next day, and she honestly felt she could not sign it. R. 205. R. 352. She testified that there were things in the agreement that were never addressed on my side “including all of the property in South Dakota, which Garrett got rid of and I was never compensated for.” Id. Ms. Gallardo stated, “All of the things that I wanted to address were never addressed and were completely cut off whenever I asked for them to be addressed.” Id.

They were not addressed in the Stipulation, so I felt like I didn’t want to sign the Stipulation and told Kelly Sanderson that. Id.



When asked by undersigned counsel why she did not sign the mediation agreement, Ms. Gallardo testified on December 13, 2024, as follows:

Q: Did you ever have a chance to review the entire agreement with your attorney?

A: I told her some things -- it was through e-mail technically. Like, we didn't look over it together. Like, she looked over it on her side and I looked over it on my side and I told her the parts in which I didn't agree, and that last part was the main one as well as the other things that weren't ever addressed.

Q: So there were problems the evening of the mediation with the agreement?

A: Yes.

Q: Okay. And that's why you didn't sign it?

A: Yes. Id.

The record supports that Ms. Gallardo was having issues with what was being proposed by the other side towards the end of mediation, and for that reason, including her computer issues, never went through the agreement with her attorney, and did not read or sign the document. R. 205. R. 352.

The testimony of Mediator Terri Williams supports the fact that this was contentious mediation. On cross, Williams testified as follows:

Q: Okay. Did anything between you and Ester get contentious? Any kind of contentious stuff?

A: I wouldn't say contentious. I would say that she was emotional.

Q: Crying emotional?

A: I don't remember her crying necessarily, but I remember there was a lot of contention with this mediation.

Q: Do you know why?

MS. EDOFF: Objection. Speculation.

THE COURT: Overruled.

A: Well, I believe that Ms. Gallardo had reservations about Mr. Gallardo being involved with their child. There was -- I don't remember if there was a petition or allegations of domestic violence. She wanted him to take some classes. She wanted him to have supervised parenting time. Id.

Later, on rebuttal Ester testified as to the directness of the mediator as follows:

Q: Okay. Was Terri direct with you?

A: Yes.

Q: Explain that.



A: She was overly direct. Whenever she would say something about what would happen if I went down a certain path, like if I wanted there to be supervised visitations, she would say, like, "There's no judge in Rapid City, South Dakota, that would agree to that." I said, okay, well, you know, this is what I want. And she would continue to tell me that there's nobody that's going -- that's not going to happen. Those were the words she said. That's not going to happen. It will not happen. I am telling you this right now that that is -- that's not going to go through. It's not going to settle."

Towards the end of Ms. Gallardo's testimony, the following was exchanged with the Court:

THE COURT: All right. So you believe what you looked at the next day that he had signed, like the day before when the mediation ended, you believe that essentially before he signed it, he or someone changed some things to your final version and that made that, like, not acceptable to you when you looked at it the next day.

THE WITNESS: Yes. That is what I recall.

THE COURT: Okay. All right. I appreciate that clarification.

In sum, Ms. Gallardo credibly testified that she was not able to read the document with her attorney towards 7:00 p.m. on mediation day, and instead, she read it the following day. R. 352. Ms. Gallardo had additional

questions for her attorney. Id. The statute requires that Ms. Gallardo be able to read her stipulation with her attorney, before it is enforceable. Ms. Gallardo never had that chance that evening to review with Attorney Sanderson. When Ms. Gallardo read her final document, she did not agree to the written terms of the agreement. R. 352. She testified that terms were changed and the document was different from the documents being sent to her by email from her attorney. Id.

Ms. Gallardo's conduct supports the position that she did not have a 'meeting of the minds' and she did not enter into a valid contract. First, Ms. Gallardo never signed the agreement and never instructed her attorney to accept the agreement on her behalf. Id. Ms. Gallardo testified she was crying through the mediation and was being pressured not to address issues important to her, like domestic violence. Id. Her testimony supports her position she was not onboard with what was being proposed by the other side. Id. Further, her concerns about supervised visitation were somewhat dismissed by the mediator. Id.

Next, Ms. Gallardo testified she had more questions for her attorney and asked to speak with her lawyer after mediation, since everyone was rushed to leave. Id. Moreover, Ms. Gallardo never got the chance to sit and review her stipulation with her attorney, line by line, like she probably should have. Id.

Even though the mediator testified Ms. Gallardo verbally said yes, that oral “yes” should not bind Ms. Gallardo, when the written document she received the next day, was not the same as to what was being discussed at mediation. For the above reasons, the Circuit Court findings are in error, because Ms. Gallardo did not consent to the written terms of her divorce and property settlement agreement.

### **CONCLUSION**

This case should not be before this Court on appeal, because the Circuit Court should have declined jurisdiction many months ago. The law supports this argument and Lyra’s best interests also support the same argument.

Lyra was born in South Dakota in June of 2022. Ester Gallardo and Lyra left South Dakota when Lyra was less than 3 months old, and have never returned. There is no reason or argument that supports litigation here. Ester Gallardo and Lyra’s extended family live in Texas and all of her future care is in Texas. All visits with her father are in Texas or California and are supervised only. Father has been in Iraq, or overseas, a portion of the time that this matter has been in litigation, so in essence, he is not even here.

There is a history of severe domestic violence between the parties. The only connection to the State of South Dakota is a father who is in the military who never sees the child in South Dakota. To keep this case in

this State defies logic. For all of the arguments cited herein, Ms. Gallardo respectfully asks this Court to find that the Circuit Court erred when it continued to exercise jurisdiction in South Dakota.

Moreover, Ms. Gallardo submits that she never agreed to any settlement agreement because she was never able to fully read the agreement, word for word. She needed time to review the document with her attorney, and should have been afforded that right, and that did not occur until days later.

Ms. Gallardo's actions and conduct show she did not consent to the terms offered by Mr. Gallardo and the two never met minds on all essential aspects of the agreement. If they had, she would have signed the Agreement the next day, but she did not. As much as Ms. Gallardo testified that she was pressured and forced during mediation, undersigned counsel felt that the facts and testimony did not meet the elements of undue influence, and that an argument there, would be without merit, and for that reason, undue influence was not argued to this Court.

Because South Dakota is an inconvenient forum for this case, and because there was never consent or meeting of the minds between the parties, both decisions of the Circuit Court, regarding keeping jurisdiction in South Dakota, and finding the settlement agreement enforceable between Mr. Gallardo and Ms. Gallardo, should be reversed.

Dated this 24th day of July, 2025.

Respectfully submitted,

**GINA RUGGIERI**  
**SOUTHERN HILLS LAW, PLLC**

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**CERTIFICATE OF COMPLIANCE**

I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellant's brief contains 7,144 words.

I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 24th day of July, 2025.

/s/ Gina Ruggieri  
Gina Ruggieri  
Attorney for the Appellant

### **CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that a true and correct copy of the above and foregoing Appellate Brief was filed electronically with the Supreme Court using the Odyssey File and Serve System which sent notification to all parties of interest participating in the South Dakota Courts Electronic Filing System on this 24th day of July, 2025.

/s/ Gina Ruggieri

## APPENDIX A

|   |     |
|---|-----|
| AFFIDAVIT FOR A PROTECTION ORDER 51 TPO 24-774              |     |
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STATE OF SOUTH DAKOTA )  
 )  
COUNTY OF Pennington )

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

Ester Elisabet Gallardo

Petitioner ☐ Check here if under 18

-VS-

Garrett Anthony Gallardo

Respondent ☐ Check here if under 18

TPO NO. 24-774

**PETITION AND AFFIDAVIT FOR A  
PROTECTION ORDER  
(DOMESTIC ABUSE)**

I, Ester Elisabet Gallardo the above named Petitioner, or the Parent/Legal Guardian of the minor child Petitioner (the Filer), being duly sworn upon oath, state and affirm the following:

At least one party to the protection order—Petitioner, Respondent (the person against whom I seek this Protection Order), or a Protected Party (a minor child in my custody also victimized by Respondent)—is a resident of South Dakota. Petitioner resides in Tarrant County, TX (state); Respondent resides in Pennington County, SD (state); and any Protected Parties not residing with Petitioner or Respondent, reside in \_\_\_\_\_ County, \_\_\_\_\_ (state).

☒ Please check this box if there is a custody order in this state or another state regarding the children of Petitioner and Respondent. Please attach a copy of the custody order to this Petition or provide the county and case number. 51DIV23 -000116

The person I am asking the Court to restrain from committing acts of domestic abuse (the Respondent) is, in relation to the Petitioner and any Protected Parties:

(check all that apply):

- ☒ a spouse (married) or a former spouse (divorced);  
☐ in a significant romantic relationship or has recently been in one during the past twelve months;  
☐ has a child or is expecting a child with Petitioner or Protected Parties;  
☐ a parent or child;  
☐ a sibling.

**I AM ASKING THE COURT FOR A PROTECTION ORDER BASED UPON THE FACTS BELOW:**

On or about 9/4/2024, at approximately 9:31 AM,

Respondent committed the following act(s) of domestic abuse against Petitioner (if not me, my minor child who is related to Respondent) and any Protected Parties (other minor child in my custody related to Respondent):

(check all that apply):

- ☐ Respondent caused physical harm or bodily injury.  
☐ Respondent attempted to cause physical harm or bodily injury.  
☐ Respondent's actions inflicted fear in Petitioner and/or any Protected Parties that Respondent was about to cause physical harm or bodily injury to said Petitioner or Protected Party.  
☐ Respondent violated a protection order.



- ☒ Respondent willfully, maliciously, and repeatedly followed Petitioner and/or any Protected Parties.
- ☒ Respondent pursued a knowing and willful course of conduct which seriously alarmed, annoyed, or harassed Petitioner and/or any Protected Parties with no legitimate purpose. The pattern of conduct was a series of acts over a period of time, however short, showing a continuing pattern of harassment.
- ☐ Respondent made a credible threat with intent to cause Petitioner and/or any Protected Parties reasonable fear of death or great bodily injury.
- ☒ The person willfully, maliciously, and repeatedly harassed Petitioner and/or any Protected Parties by means of any verbal, electronic, digital media, mechanical, telegraphic, or written communication.
- ☐ Respondent committed a crime of violence against Petitioner or any Protected Parties.

Provide a detailed description of what happened on the above date:

On the above date, I found out that the Respondent had his personal device connected to my Google account. I tried obtaining an attorney and filing for a Protection Order in Texas immediately. I was told that I could not file in Texas because there was an ongoing case in South Dakota. I was informed to obtain an attorney in South Dakota and file a Protection Order in Pennington County, where the Respondent resides. It took time to understand and follow the correct procedures in Texas and South Dakota. This is why I am currently filing this Protection Order now in Pennington County, SD. I have screenshots of his Galaxy S22 Ultra connected to the WiFi "GWeefee" located by the Union on Berky Dr last connecting to my account on Sep 4, 2023. He had actively used/checked my account less than 20 minutes prior to my discovery. The first sign on was October 4, 2023. In September 2023, the Respondent got sand in his charging port of his phone and needed to purchase a new phone.

(continued...) see ADDENDUM of Incident Description

- |   |  |  |  |
|---|--|--|--|
| <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't Know            | Was law enforcement called?  |
| <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't Know            | Was Respondent arrested for this incident?   |
| <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't Know            | Is Respondent in jail?   |
| <input type="checkbox"/> Yes            | <input type="checkbox"/> No            | <input checked="" type="checkbox"/> Don't Know | Has Respondent violated previous protection orders?                                    |
| <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't Know            | If so, against whom _____  |
| <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't Know            | Has Respondent been found guilty of violating previous protection orders?              |
| <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't Know            | If so, against whom _____  |
| <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't Know            | Give the date of the conviction _____ and the county and state of the conviction _____ |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            | <input type="checkbox"/> Don't Know            | Does Respondent possess guns or weapons?   |
| <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't Know            | Was a weapon used in this incident?  |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            | <input type="checkbox"/> Don't Know            | Has Respondent threatened anyone with a weapon?  |

Provide a detailed description of other similar incidents or actions that Respondent has committed and reasons you believe it will continue:

The Respondent has repeatedly been physically violent towards me & continuously stalks & harasses me. A summary of the things that he has done includes open handed slapping me repeatedly in the face; repeatedly closed fist punching my arms & legs where bruises will not be visible; throwing various items at me & at the walls creating holes in the walls; verbally abusing me with cursing, yelling, manipulation, gaslighting & psychological torture; break chairs, tables, door frames, controllers, walls, & kick in doors through fits of rage; constantly accusing me of cheating on him that would lead to physically abuse; using security cameras in the house with speakers & microphone to yell at me & keep tabs on me while he was on deployment; dragging me across the garage floor by my hair; beating me until my face was bleeding & then going to the bedroom & pointing a gun at his head; pushing into a wall, hand on my neck, back of my head going through the wall causing dizziness, shortness of breath, & leaving a hole in the wall; threatening suicide; wrapping the bed sheet around the closet rod pretending to hang himself; pointing a gun at his head in front of me to see if I cared; holding me hostage in a car while driving around aimlessly until I apologized; holding a loaded gun to my head on 3 separate occasions, one time cocking the gun and re-aiming with

ADDENDUM of Incident Description – A (...continued) description of what happened on the above date:

He upgraded to a Galaxy S22 Ultra and informed me that his new phone was transferred on October 5, 2023. With both of our devices connected to my Google account, the Respondent is able to track my phone at any time. I nearly always have my phone on me, especially when I am away from home. Respondent is also able to access any account log in information, including usernames and passwords, that are synced to my Google account. I had roughly 180 passwords saved to my Google account, including my bank accounts and social media accounts. Respondent also had access to all of my search history, G-mail account, and Google Drive.

### REQUEST FOR HEARING AND PROTECTION ORDER

Based upon this Petition and Affidavit in which I truthfully set forth the details of the domestic abuse, I respectfully ask the Court to set a date to hear this matter and after hearing the evidence, to grant Petitioner and any Protected Parties a Protection Order:

- ☒ 1) To Restrain Respondent from acts of abuse and physical harm, making threats of abuse, stalking or harassment.
- ☒ 2) To Grant the Protection Order for a period of 5 years time (*no longer than 5 years*).
- ☐ 3) To exclude Respondent from Petitioner's residence listed in 4C.
- ☒ 4) To Order that Respondent shall not come within a distance of 1 Mile(s) from the following persons and places:

☒ A. The Petitioner personally

☒ B. The following minor children named as other Protected Parties ☐ More names attached

| Name                          | Date of birth     | Relationship  |
|-------------------------------|-------------------|---------------|
| <u>Lyra Serafina Gallardo</u> | <u>2022-06-21</u> | <u>Mother</u> |
| _____                         | _____             | _____         |
| _____                         | _____             | _____         |

Are any of the children related to the Respondent? If so, how? \_\_\_\_\_

Lyra Serafina Gallardo Father

☐ C. Petitioner's residence (street/apt) \_\_\_\_\_  
(city) \_\_\_\_\_, (state) \_\_\_\_\_, (zip) \_\_\_\_\_

☐ D. Petitioner's place of employment (street) \_\_\_\_\_  
(city) \_\_\_\_\_, (state) \_\_\_\_\_, (zip) \_\_\_\_\_

☐ E. Other places (street/apt) \_\_\_\_\_  
(city) \_\_\_\_\_, (state) \_\_\_\_\_, (zip) \_\_\_\_\_  
(street/apt) \_\_\_\_\_  
(city) \_\_\_\_\_, (state) \_\_\_\_\_, (zip) \_\_\_\_\_  
(street/apt) \_\_\_\_\_  
(city) \_\_\_\_\_, (state) \_\_\_\_\_, (zip) \_\_\_\_\_

☒ 5) To award me temporary custody of our minor child(ren), whose names are Lyra Gallardo

☐ 6) To establish temporary visitation for Respondent with the minor child(ren) named above consisting of:

☐ Existing order in File # \_\_\_\_\_ ☐ Supervised at \_\_\_\_\_  
Jurisdiction: ☐ South Dakota ☐ South Dakota tribe ☐ Other State \_\_\_\_\_ ☐ Other  
☐ Other Visitation:

ADDENDUM of Similar Incidents – A (...continued) description of other similar incidents or actions that the person has committed and reasons you believe it will continue:

followed me around the house recording during fights while I was trying to get away; continued verbally abusing me while I was pregnant and repeatedly calling me a "horrible mother" and that I am "killing the baby" because I was stressed and crying, and said that the child was not his cause he believes I cheated; followed me around the house yelling at me while I was holding our 2 month old; Restricted me from cooking because he had to "provide for me" to the point where any time I did cook, he would cause 3 hour long fights about me making something wrong; he would keep his gun on top of the safe next to the bed instead of in the safe every day after threatening me with it, because he said it was "quicker access", so I bought him a fingerprint safe that took 0.2 seconds to unlock and it sat for 3 weeks+ on the kitchen counter; lock picking doors or taking the handle off of doors when I would go into another room and lock it to get away from him during fights; yell at me through locked doors to continue the fight for up to another hour while I sat on the other side of the door not talking; kicking a fire log into my knee causing multiple bruises and hindered walking for weeks afterwards; pushing me into shelves; keeping me from leaving the house to go to work because he believes I am cheating on him and not going to work even after sending videos and pictures of me at work once I get there; continuously calling me names like "cheating bitch," "heartless cunt," "evil, vindictive person," etc.; leaving notes around the house about "how to be a loving partner" that were manipulative, one-sided, and gaslighting; verbally abusing me while he was drunk and I was pregnant and I was taking care of him at 2am in the morning when I needed to get ready for work at 6am; recording, making harassing comments and saying "boo-hoo" when I said that I still clean the litter box while pregnant when doctors recommend not to; reading through my Facebook messages to my friends on his phone for months and saying that I should not have stayed logged into it on his phone if I did not want him reading my messages; asking me about my day and then calculating the time it should have taken for each task in order to harass me about any "missing time"; swaddling the baby so tight to where she can't move at all that could be the cause of her shoulders and hips still clicking at the age of 2 yrs; continuous blowing, not short bursts or one blow, in the baby's face to stop her from crying because babies hold their breath because it is a natural instinct to possible drowning; getting upset at the baby for crying because he cannot figure out what she wants after "going through the list" of why she is crying; being angry at me for anything, including his dreams, after waking him up at night to help take care of the baby until I stopped waking him up to help; telling me that he understands what the nurses said about "shaking babies" after I asked if I could hold her because he was aggressively rocking her to calm her down, he said that he "felt" something while she was screaming and he couldn't get her to stop; leaving me and the baby alone after she threw up rivers of milk while he went downstairs to sleep on the couch, because I was focused on her and not on him, after she interrupted our intimate time together; making me take birth control pills even though it was causing my cycle to be erratic and chemically imbalance my body because he does not want to wear condoms; road raging when he knew the car was going to come back into our lane and almost hit the side that the baby was on; repeatedly telling me how I am an unfit mother and will never be able to raise our daughter on one income; telling me that I need to tell him where I am going and doing at all times; saying that I need to give him full names and birth dates of any person that our daughter is around so that he can run full background checks; missing the exit 3 times because we were fighting in the car while taking me and our daughter to the airport, holding us hostage while I begged him to take us to the airport so that we could go home; constantly calling and texting me throughout the day while I am at work; getting angry at our daughter because she is not paying attention to him because "there are so many distractions"; getting angry if she doesn't include "dada" in songs or playtime. He was accused of rape in Minot, ND by his girlfriend and co-worker but the case was dismissed because her timeline was off. He told me that him and his first wife would fight so bad that she would end up walking in the middle of the street. We went to counseling with the Base Chaplain on and off for about 2 years. The Chaplain asked "what would it take for you to leave?" he also gave me the number to the Respondent's Shirt to put the Respondent on a suicide watch list, after I had stated that I was too afraid to leave because I thought the Respondent would kill himself. Now, as I was back then, I am terrified for my life and the life of my daughter. Even though we do not live close, I know he is only one flight away from being at our doorstep and enacting any kind of violence/aggravated assault that he has previously shown. The Respondent is a dangerous man who owns at least one pistol and one rifle at least and has a history of violence.



- ☒ 7) To Order that Respondent shall pay temporary (If you are requesting support, you must provide proof of the monthly income of both parties at the hearing.):
- ☒ child support in the amount of \$800.00 a month starting on 2024-12-01 and continuing until further order of the Court;  
*Child support shall be paid to: Division of Child Support*  
*Kneip Building*  
*700 Governors Drive*  
*Pierre, SD*  
*57501*
- ☒ spousal support in the amount of \$200.00 a month starting on 2024-12-01 and continuing until further order of the Court.  
*Spousal support shall be paid to the Clerk of Courts Office in the county this order was filed.*
- ☒ 8) To Order Respondent receive parenting classes approved or provided by the Department of Social Services, SDCL 25-10-5.
- ☒ 9) To Order Respondent to obtain counseling as follows: \_\_\_\_\_  
Anger Management
- ☒ 10) That Respondent be restrained from contact with the Petitioner and any Protected Parties, by any direct or indirect means except as authorized by a court order.
- ☐ 11) To Order other relief which I believe is necessary for Petitioner's protection and any Protected Parties' protection, as follows:

*(If you are requesting an immediate temporary protection order without notice to Respondent and without an opportunity for Respondent to appear, you must state why you believe Petitioner or any Protected Parties will suffer immediate and irreparable injury or damage if you or they have to wait until the hearing.)*

**REQUEST FOR IMMEDIATE PROTECTION ORDER  
WITHOUT NOTICE TO THE OTHER PARTY**

- ☐ I am not requesting an immediate Temporary Protection Order.
- ☒ In addition to what I have requested in sections 1-10 above, I further request that the Court grant Petitioner and any Protected Parties an immediate Temporary Protection Order restraining Respondent from committing acts of domestic abuse based upon the following sworn statements and beliefs:

The reasons Petitioner and any Protected Parties need this order immediately and cannot wait until the scheduled hearing are:

The Respondent continues to harass me through text messages to this day and tries to find new ways to stalk me. I have spent 4 years trying to protect myself from him and only a court appointed Protection Order will keep him from constantly harassing and stalking me. He is also going to be visiting Texas on November 12th, to have parenting time with our daughter. He knows that I am seeking to get a Protection Order, I am afraid of what he may do while he is here, what kind of retaliation may occur. I am fearful that he may decide to never let us go, and try to keep us together by ending all of our lives or that he may kidnap my daughter. Under any circumstances, she is not safe with him. He is unstable and has threatened suicide and murder in the past.

(continued...) see ADDENDUM for Emergency Temporary Protection

ADDENDUM for Emergency Temporary Protection – The (...continued) reasons I need this order immediately and cannot wait until the scheduled hearing:

I fear that the dates will not restrict him either. At any moment he can get on a plane and come directly to my home. He has our address because of the open court case. We are constantly in danger.

☒ I believe that Petitioner, and/or any Protected Parties will suffer immediate and irreparable injury, loss or damage if not granted an immediate Temporary Protection Order without notifying Respondent and his/her attorney or giving Respondent an opportunity to be heard. The immediate and irreparable injury, loss or damage that I believe will be suffered is:

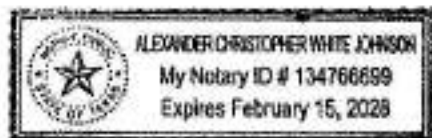
The Respondent continues to torment and harass me. I am in constant fear and anxiety when I have to hear or talk to him in any way because of his manipulation, emotional abuse, and harassment that is a daily thing. I am in constant fear of losing my daughter. I fear that if he ever does get unsupervised visitations that he will harm her like he did me. I cannot and will not let anyone to harm my daughter. No one should ever have to go through what I did. The Respondent still has part of my and my daughters belongings in South Dakota. He has access to get rid of or destroy all of it. He has already gifted some personal items to his friends even after I had asked to receive our belongings last year.

On this 24 day of October, 2024, I swear or affirm under oath that the information I have provided in this Petition and Affidavit are true and correct to the best of my knowledge. I believe Petitioner and any Protected Parties are entitled to the protection I have requested. I am asking for this protection for valid reasons and am not attempting to harass the person I am seeking protection against and am not attempting to abuse or delay the court process or any other legal action.

[Signature]  
Your Signature as ☐ Filer Only / ☒ Petitioner (check one)

Signed and sworn to before me on this 24 day of October, 2024.

(SEAL)



Alex Johnson  
Notary Public/Deputy Clerk of Courts  
Commission Expires: 2-15-28  
Texas, Tarrant

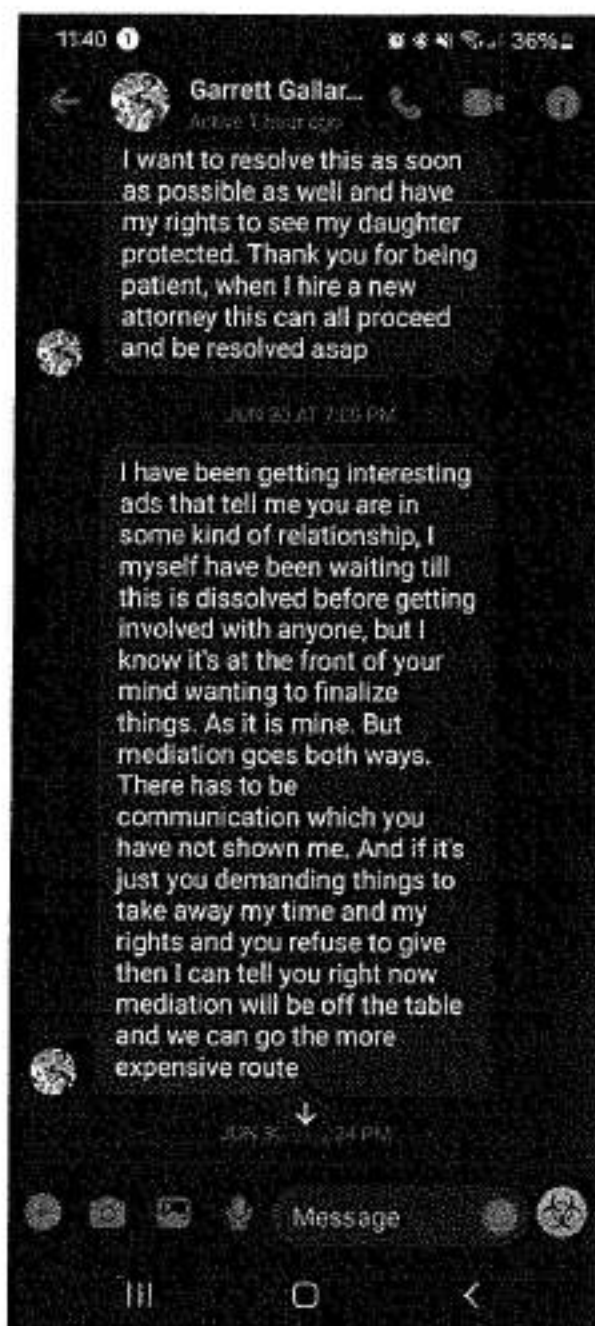
FILED  
Pennington County, SD  
IN CIRCUIT COURT

OCT 29 2024

Amber Watkins, Clerk of Courts  
By [Signature] Deputy

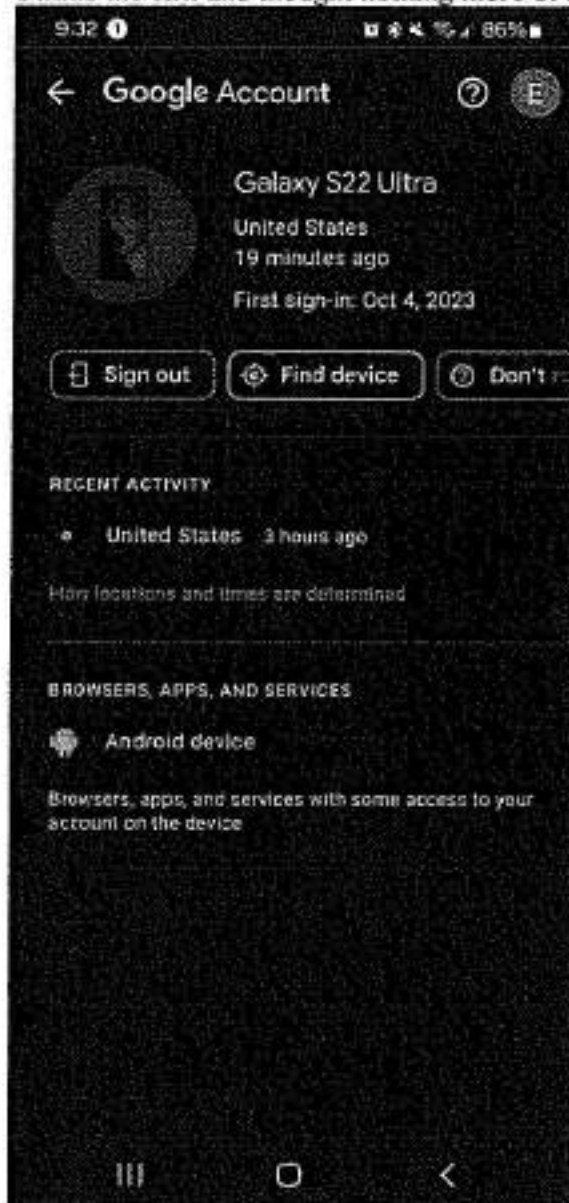


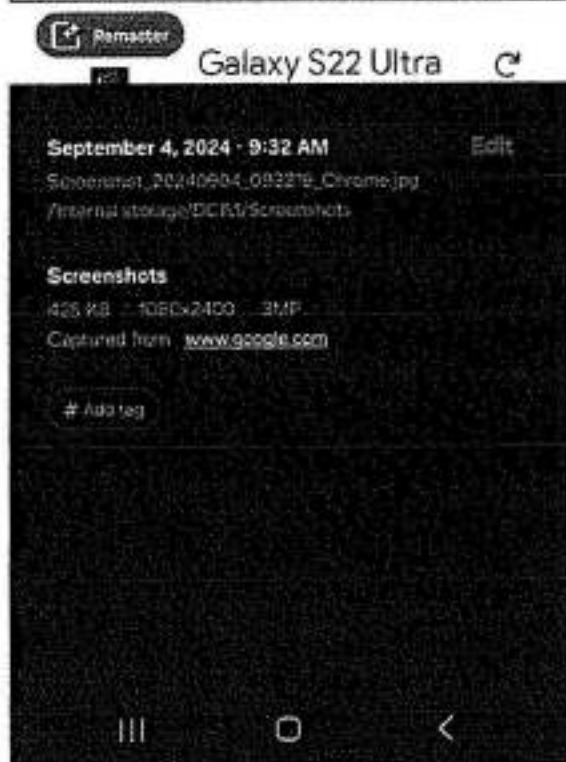
## Essential Evidence for Stalking Abuse



June 30, 2024: Garrett said he was receiving ads about me being in a relationship. I was confused because the ads that I get are centered around animals, therapy, and insurance with a few stray ads here and there. It got me thinking why he would be getting any ads that he would think would be coming from me in the first place. As soon as I moved down to Texas in 2022, I had changed my passwords to all of my main accounts so that he could not stalk me. He had been stalking my Facebook account and admitted that to me mere months before I left in October 2022. He stated that, I should not have logged into my

facebook account on his phone that one time that I needed to, if I did not want him looking at my facebook messages. That is why I changed my passwords. So, I was confused and concerned what he could have possibly be connected to still. But because the type of ad sounded weird to me, I figured he was using a tactic to force me to have a conversation with him or scare me in some kind of way. I decided that was the real reason behind the text and thought nothing more of it.





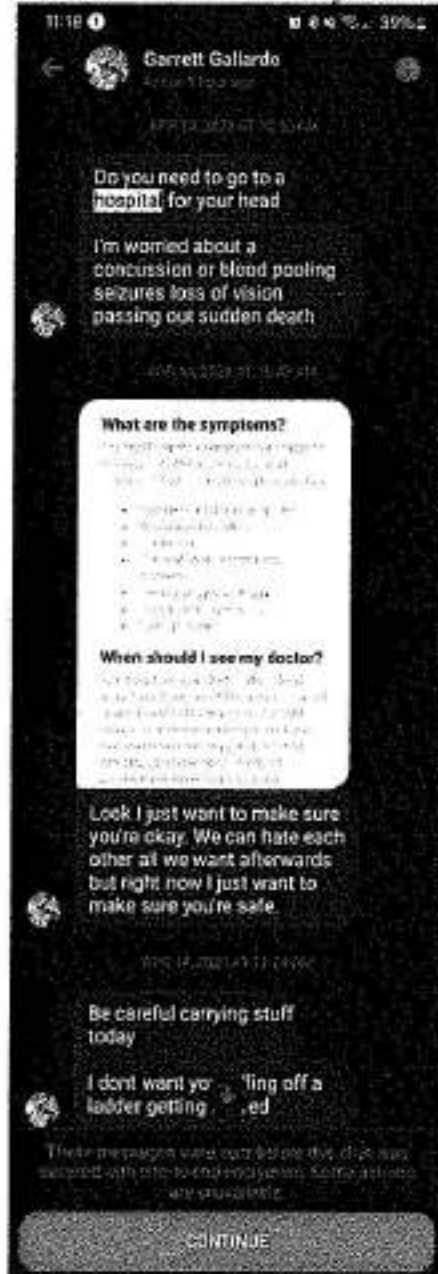




September 4, 2024: I decided to do a full change of passwords on my accounts again so that Garrett could not have access to anything just in case. I started with my main accounts: Google, Yahoo, Facebook, Samsung. As soon as I tried changing my Google password, I saw a familiar phone that was not my own. I looked into this phone that was currently still connected to my account even though I already knew whos phone it was. My phone is an Android Galaxy S21 Ultra 5G. Garrett's phone is the next one up from that since he got his after mine. Garrett's phone is an Android Galaxy S22 Ultra. I left Garrett in October 2022. I changed my passwords that month and in the remaining months of 2022. Garrett had a visitation in California in September 2023 in which he got sand in his phone. The audio for the video calls was incredibly bad and full of static. He also could

not charge his phone without the phone saying that it had moisture in the port. Garrett recieved a new phone in October 2023. This Android Galaxy S22 Ultra was purposely signed into my Google account on October 4, 2023. The device was actively using my account within half an hour before I disconnected this device from my account on September 4, 2024. The above photo shows the devices location in Box Elder, South Dakota next to Ellsworth, AFB. A closer photo shows Berky Dr and The Union. The device is connected to the wifi name: "GWeeFee".

#### Essential Evidence for Physical Violence



April 13, 2020:

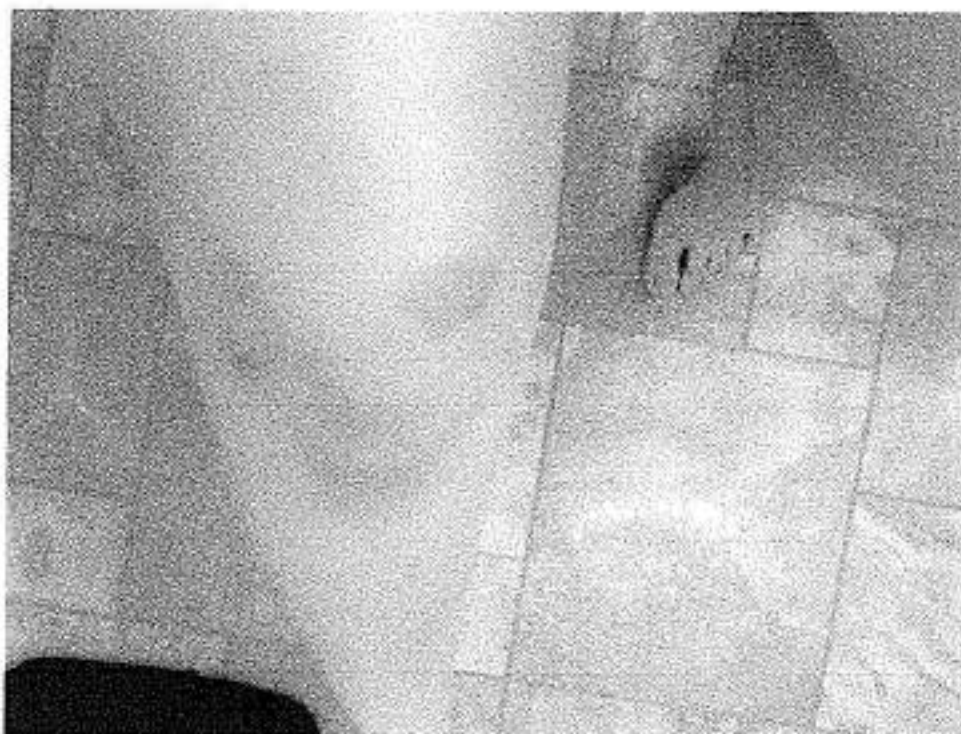
An incident that happened in Minot North Dakota. We had been fighting for a long time. I don't remember what the fight was about. He told me to apologize and fix it over and over again. At one point he had slapped me, so I got up from the couch and moved away from him to put distance between us. I was standing near the staircase next to a closet door in our living room. He remained sitting on the couch while we continued fighting. I was facing him when he stood up from the couch and went after me, closing the distance in an instant. He grabbed my neck and pushed me against the wall with extreme force. I instantly fell to the ground and I sat there crying. He went back and sat on the couch and continued paying attention to the TV. I sat there staring at the floor. I could see him in my peripheral at first, but my gaze went slowly towards my lap and I began to feel so dizzy and sick. I said, "I can't breathe." He said that I was fine and that I needed to stop crying. I said, "I feel really sick." He told me I needed to stop crying. I didn't say anything after that. I was quiet for a while so that I could focus on trying not to pass out. My vision was going blurry and I felt nauseous. I knew I could stand up, and I knew if I went to sleep I'd be fine. I said "I'm sorry." I stood up crying, walked up the stairs, and went to sleep. The next day he texted me and asked me if I was okay at work. I didn't respond. He later told me that he saw the hole in the wall where my head went through the wall and realized that I was not "faking it" last night. When we moved out of the apartment in Minot, ND, Garrett had to buy paint, supplies, and orange peel spray to fix the hole in the wall that he pushed me through, a hole above that where he threw my gaming controller that he was using that smashed into pieces, and a hole in the kitchen where he threw a water bottle.





August 21, 2021:

I was trying to cheer Garrett up after a fight, and he said, "You are so fake." I screamed, "I am not fake!" He instantly slapped me across the face. I walked away holding my cheek and cried in the bathroom. Garrett continued to yell at me through the bathroom door, since this was not one of the times in which he kicked down the door and had to replace the trim. He replaced, fixed, and painted the trim to the bathroom door twice in our apartment in Box Elder, South Dakota after kicking the door in when I would seek refuge in the bathroom.



August 28, 2021:

The last morning of our Yellowstone trip, we were packing up and everything was okay for a while. After we got the car packed we were going to make a fire and make breakfast so we didn't put any of those items away. While Garrett was trying to get the fire ready, I came over to try and help him. I sat next to him on his left side, right next to the fire pit. He was visibly upset. He asked me why I was talking to his brother the whole time instead of talking to him, and asked if I had some kind of thing for his brother. I said it wasn't necessarily that it was his brother, I just didn't want to talk to Garrett because we had been fighting. I was trying to talk to whoever was not him so that I could have some space from Garrett. He said, "well you went all the way up to the front to talk to him". I said, "I went up to be as far away from you as I could. Your brother just ended up being up there [at the front]". He continued to tell me that I was lying and being fake, and that I had "something" going on with his brother. I continued to tell him that was not true. He got so furious that he kicked the fire log towards me that had been standing between us. I was only about a foot away from him. The log went right into my knee. I fell to the floor, clutching my knee and crying. I tried not to cry out loud as much as I could. He got up, walked away, and started packing the other things for breakfast into the car. I tried to crawl to the car because I didn't want anybody else seeing. I didn't want anyone to call the police. We had woken up early to leave, so no one else was awake yet in the surrounding area. While I was crawling on the floor to get to the car, holding my knee and crying, Garrett said "stop crying," as he walked past me and packed the rest of the things into the car. On our quiet drive home, I drove my share with my hurt knee. Luckily, I didn't have to move it much. Before we got home, we stopped at a gas station and I went to the bathroom. There were purple marks on my knee already visible. I took a picture that I later deleted because I was under the impression that partners don't keep evidence against

each other as Garrett had pointed out before. After I got home, there were three huge bruises that covered my knee, and a little one under my knee. I sat and reclined my leg on the couch. I got some ice after a while of resting to ice my knee. Once Garrett saw my knee, he said he didn't realize it was that bad and thought that I was just exaggerating. The next day was my day off. I rested my knee all day and barely left the couch. We ended up in another fight. I got off the couch to go get some snacks in our pantry. My back was turned from him with most of my weight on one leg while we were yelling and fighting. He pushed me, with both hands onto my back. I fell into the shelves and recycling that we had in the pantry. My hands had snacks in them and I was protecting my knee from hitting anything, so most of my fall was protected by my arms. My arm got a big cut on it. I walked away and didn't say a word to him. I told everyone at work that I fell on some rocks on a hike. Which was true but not the reason my leg was full of bruises. I couldn't walk right for weeks after.

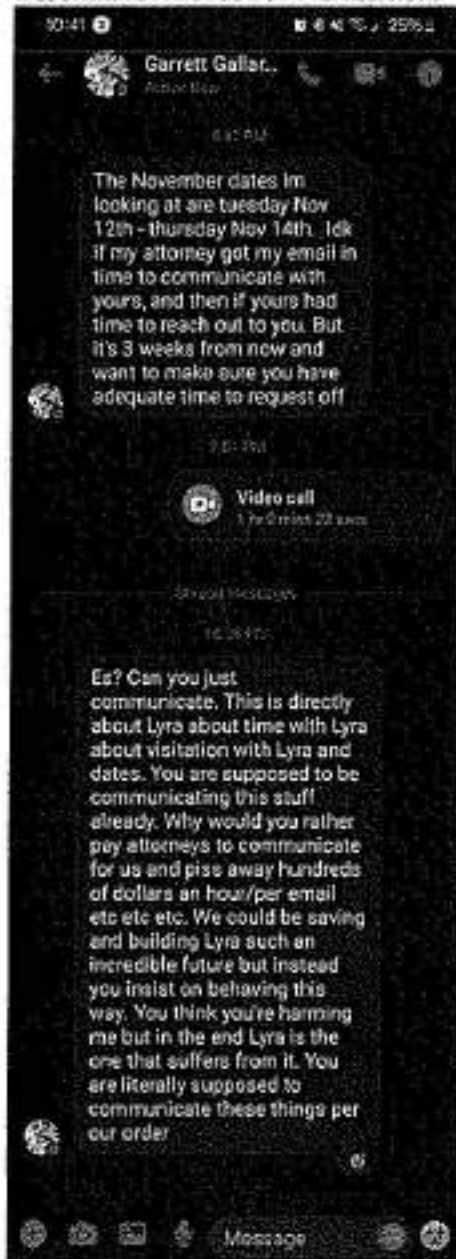


Sept. 23, 2021:

After one of our fights in which Chloe had bit me. On the right, you can see a fresh bite. On the left, you can see another fresh bite that is almost overlapping an older bite that has not yet healed from the last time Chloe attacked me. During our fights, Garrett refuses to stop Chloe from biting me and also tells me that it is my fault she attacks me because I am yelling and screaming. Chloe has attacked me during multiple fights and continued to go after me after Lyra was born. Garrett told me to stop acting like a psychopath, (freaking

out and running away, or throwing a blanket at her to stop her from getting closer) everytime Chloe started to bark and lung towards me.

#### Essential Evidence for Harassment



12:37

13%



Garrett Gallardo



FEB 14, 2024 AT 3:43 AM



Video call

1 hr 1 min

CALL BACK



Goodness 1 year ago already,  
I hope she gets her flowers.  
I'm glad she loves her music  
globe thing



Please do not contact me  
unless necessary, thank you

FEB 14, 2024 AT 12:10 PM



Did Lyra get her flowers???

Es, aren't you tired of  
behaving so childish... can  
you please realize Lyra will be  
better off if her parents are  
civil and communicate freely  
about anything with her ?



FEB 14, 2024 AT 12:36 PM

These messages were sent before this chat was  
secured with end-to-end encryption. Some actions  
are unavailable.

CONTINUE

Uses Lyra as an excuse to try to open communications with me after I have repeatedly begged him to only contact me about essential calls or visitations. Continues to tell me that I am ruining Lyra's future because I am choosing to communicate to my attorney instead of to him.

#### Essential Evidence for Suicidal Actions











November 2, 2019

These messages are during a fight in which I was walking to his home because I was concerned about his mental well being and I thought that he was going to hurt himself if he was left alone that night.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF PENNINGTON

SEVENTH JUDICIAL CIRCUIT

☒ DOMESTIC ☐ STALKING  
☒ EX PARTE TEMPORARY ☐ PERMANENT  
☐ MODIFICATION

**ORDER FOR PROTECTION**TPO NO. 51TPO24-000774**PETITIONER**ESTER ELISABET GALLARDO

First Middle Last

By (name and DOB):

On behalf of a minor child by parent/guardian.

V.

**RESPONDENT**GARRETT ANTHONY GALLARDO

First Middle Last

Relationship to Petitioner:

Former spouse

Respondent's Address:

396 BERKY DR APT 120  
BOX ELDER, SD 57719CAUTION: ☐ Weapon Involved**PETITIONER IDENTIFIERS:**02/09/1995

Date of Birth of Petitioner

Other Protected Persons (name and DOB):

GALLARDO, LYRA SERAFINA 06/21/2022

(See also 2B Additional Orders.)

**RESPONDENT IDENTIFIERS:**

| SEX               | RACE | HEIGHT        | WEIGHT  |
|-------------------|------|---------------|---------|
| M                 | O    | 5'10"         | 135     |
| EYES              | HAIR | DATE OF BIRTH |         |
| BRO               | BLK  | 09/26/1995    |         |
| DRIVERS LICENSE # |      | STATE         | EXPDATE |
| 01972294          |      | SD            |         |

Distinguishing Features:

**THE COURT FINDS:**

That it has jurisdiction over the parties and subject matter, and the Respondent has been provided with reasonable notice and opportunity to be heard, and that in the case of an ex parte order, the Respondent will be provided with reasonable notice and opportunity to be heard sufficient to protect the Respondent's due process rights.

**THE COURT ORDERS:**

That the Respondent is restrained from acts of abuse and physical harm, attempted or threatened abuse and physical harm, stalking or harassment.

That the Respondent is restrained from contact with the Petitioner by any direct or indirect means except as authorized in this order.

Additional findings and orders are on the following pages.

This order shall be effective 10/28 2024 through 11/20 2024  
Month/Day Year Month/Day Year

Or if a permanent order is issued, until that order is served.

Only this Court can change this order.

**VIOLATION OF THIS PROTECTION ORDER IS A CRIMINAL OFFENSE.**

**WARNING TO RESPONDENT:** This order shall be enforced, even without registration, by courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. §2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. §2262).

Having considered the Petition and Affidavit presented by the Petitioner, this Court FINDS:

- A. That jurisdiction and venue are properly before this Court;
- B. That the above-named Petitioner is eligible for a protection order pursuant to SDCL Ch. 25-10.
- C. That the Petitioner has alleged that the Respondent has committed one or more acts of domestic abuse as defined by law; and
- D. That the Petitioner alleges that he/she will suffer immediate and irreparable injury, loss, or damage before the Respondent or the Respondent's attorney can be heard in opposition.

**ADDITIONAL ORDERS:**

- ☐ 1) The Respondent is excluded from the Petitioner's residence listed in 2C.
- ☒ 2) That the Respondent shall not come within a distance of 100 Yard(s) from the following persons and places:

☒ A. The Petitioner personally

☒ B. The following minor children named as other protected persons:

| Name                    | Date of birth | Relationship |
|-------------------------|---------------|--------------|
| GALLARDO, LYRA SERAFINA | 06/21/2022    | Daughter     |

☐ C. The Petitioner's residence

☐ D. The Petitioner's place of employment

☐ E. Other places

This distance restriction applies unless otherwise specified in this order.

- ☒ 3) The Petitioner shall have temporary custody of the minor child(ren), whose names are:

LYRA GALLARDO

- ☐ 4) Temporary visitation for the respondent with the minor child(ren) named above shall consist of:

☐ Existing order in File #

☐ Supervised at or by

Jurisdiction: ☐ South Dakota ☐ South Dakota tribe ☐ Other State

☐ Other

☐ Other Visitation:

- ☐ 5) The Respondent shall pay temporary:

☐ child support in the amount of \_\_\_\_\_ a month starting on \_\_\_\_\_ and continuing until further order of the Court;

*Child support shall be paid to: Office of Child Support Enforcement  
Kneip Building  
700 Governors Drive  
Pierre, SD 57501*

☐ spousal support in the amount of \_\_\_\_\_ a month starting on \_\_\_\_\_ and continuing until further order of the Court.

*Spousal support shall be paid to the Clerk of Courts Office in the county this order was filed.*

- ☒ 6) Phone calls, emails, third party contact, including correspondence, direct or indirect, are not permitted, to a protected person except as follows:

NO EXCEPTIONS

- ☐ 7) The Respondent shall receive parenting classes approved or provided by the Department of Social Services, pursuant to SDCL 25-10-5, and that a Certificate of Completion of that instruction the parenting classes be filed by Respondent no later than \_\_\_\_\_;
- ☐ 8) Respondent is ordered to immediately turn over all weapons and ammunition to local sheriff.
- ☐ 9) Other relief as follows:

**WARNING TO RESPONDENT:** You can be arrested for violating this protection order even if any person protected by the order initiates the contact or invites you to violate the order's prohibitions. Only the court can change the order; the protected person cannot waive any of its provisions. You may also be held in contempt for ignoring the terms of this protection order.

**AND IT IS FURTHER ORDERED THAT:** the Petitioner shall, immediately upon the granting of this Order, deliver two copies of this Order and two copies of the Petition and Affidavit to the sheriff of this county. One copy of each shall be personally served by the sheriff upon the Respondent.

DATED: 10/28/2024



Service of this order is authorized on any day including Sunday.

*Matt Brown*  
JUDGE MATT BROWN

/s/ AMBER WATKINS, Clerk of Courts

By: JSRC10223

, Deputy

**NOTICE OF ENTRY OF ORDER AND  
ACKNOWLEDGMENT OF PERSONAL SERVICE**

**I acknowledge receipt of a copy of this Temporary Order of Protection.**

ESTER ELISABET GALLARDO, Petitioner

Date

GARRETT ANTHONY GALLARDO, Respondent

Date

**UNDER A PERMANENT PROTECTION ORDER:** You may be subject to the following federal laws: (1) Effective immediately, you may not possess, carry, ship or transport any firearm or ammunition that has been transported in interstate or foreign commerce while this Protection Order is in effect. Title 18 United States Code Section 922(g)(8). (2) If you violate this Protection Order and are convicted of an offense of domestic violence, you may be forbidden for life from possessing, carrying, shipping or transporting, any firearm or ammunition that has been transported in interstate or foreign commerce. Title 18 United States Code Section 922(g)(9). Violation of these federal laws carries a maximum penalty of ten years in prison, a \$250,000 fine, or both.

FILED  
Pennington County, SD  
IN CIRCUIT COURT

OCT 29 2024

Amber Watkins, Clerk of Courts  
By *JSRC* Deputy

STATE OF SOUTH DAKOTA  
COUNTY OF PENNINGTON

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

ESTER ELISABET GALLARDO  
Petitioner

-VS-

GARRETT ANTHONY GALLARDO  
Respondent

TPO NO. 51TPO24-000774

ORDER DISMISSING  
PROTECTION ORDER  
(DOMESTIC ABUSE)

**THIS CASE IS DISMISSED:**

- ☐ 1. Based upon the request of the Petitioner.
- ☐ 2. Based upon the request of the Respondent.
- ☐ 3. Based on the failure of the Petitioner to appear at the hearing that was set when the Petitioner applied for the Order of Protection.
- ☒ 4. Based on the Court's finding that the Petitioner failed to provide sufficient evidence to support, by a preponderance of the evidence, a finding that "domestic abuse" between "parties in a relationship" has occurred as defined by SDCL ch. 25-10.
- ☐ 5. Other \_\_\_\_\_

DATED 12/13/2024.

  
Judge Matt Brown

Attest: /s/ Amber Watkins, Clerk of Courts


by jsrc10206, Deputy



FILED  
Pennington County, SD  
IN CIRCUIT COURT

DEC 13 2024

APP 003

Amber Watkins, Clerk of Courts  
By  Deputy



STATE OF SOUTH DAKOTA )  
 )ss  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

GARRETT ANTHONY GALLARDO,

51DIV23-000116

Plaintiff,

vs.

ESTER ELISABET GALLARDO,

Defendant.

**ORDER REGARDING  
DEFENDANT'S MOTION TO  
DISMISS AND TRANSFER  
JURISDICTION TO TEXAS**

This matter came before the Court for a hearing on December 13, 2024. For the reasons stated on the record at that hearing and in the Court's Memorandum Decision/Clarification of Oral Ruling, Defendant's Motion to Dismiss and request to transfer the case to the State of Texas is DENIED. The Court finds that it had jurisdiction to make an initial custody determination in this case, that the Court has exclusive continuing jurisdiction, and that South Dakota is not an inconvenient forum.

1/7/2025 2:41:19 PM

By the Court:

  
\_\_\_\_\_  
Hon. Matt Brown  
Circuit Court Judge

Attest:  
Fagerland, Melinda  
Clerk/Deputy



## **Seventh Judicial Circuit Court**

P.O. Box 230  
Rapid City SD 57709-0230  
(605) 394-2571

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### **CIRCUIT JUDGES**

Robert Gusinsky, Presiding Judge  
Matthew M. Brown  
Jeffrey R. Connolly  
Joshua Hendrickson  
Heidi L. Liengren  
Stacy Wickre  
Scott Roetzel  
Eric Kelderman

### **MAGISTRATE JUDGES**

Scott M. Bogue  
Todd J. Hyronimus  
Sarah Morrison  
Janki Sharma

### **COURT ADMINISTRATOR**

Liz Hassett

### **STAFF ATTORNEY**

Laura Hilt

January 6, 2024

Gina Ruggieri  
Southern Hills Law, PLLC  
40 N. 5<sup>th</sup> Street, Suite B  
Custer, SD 57730  
Sent via mail and email

Olivia Edoff  
Sent via email and inter-office mail

Re: RE: Gallardo v. Gallardo DIV23-116 Memorandum Decision/Clarification of Oral Ruling  
Counsel,

The Court has held a hearing in this matter and in TPO24-774 on December 13, 2024. At the conclusion of the respective hearings on the matters the Court entered oral rulings on a number of issues that arose, ultimately dismissing the TPO (not granting a permanent order) and ruling on jurisdictional issues in the divorce file. The ultimate issue of whether the Court would be enforcing the unsigned (by Ms. Gallardo) stipulation "agreement" was held in abeyance for another day, which has now been set in February of 2025.

The Defendant in the Divorce case is Ms. Ester Gallardo. The testimony regarding her case was that she is currently married to Mr. Garrett Gallardo, and that the parties separated physically some time before the divorce was filed by Garrett. Ester and Lyra (the child of the parties) moved to Texas. Approximately four (4) days before Ester and Lyra (two years old as of today's date) had lived in Texas for 6 months Garret filed for divorce in Rapid City, SD. The Court used this filing date and the date Ester and Lyra moved from South Dakota to Texas to establish that South Dakota was appropriate to handle the child custody question as part of the divorce. The Court cited SDCL 26-5B-201(1) in making that initial ruling.

It should also be noted that on June 2, 2023 the Court entered an Order for Interim Parenting time, further cementing South Dakota as the forum having exclusive and continuing jurisdiction over custody issues regarding Lyra.

The Court also ruled that although Ester and Lyra continued to live in Texas since the original date of separation from Garrett, and that Garrett had continued to live in South Dakota the entire

time post-separation, that South Dakota is the appropriate forum to have decisions made regarding Lyra. Included in the issues pending in the divorce file is Plaintiff's Motion to Enforce an Unsigned Agreement filed by Garrett on September 11, 2024. The Motion requests the court rule on whether the parties have an enforceable agreement which would finalize both the property/debt division and child custody issues between them.

It should be further noted that Ester, on October 28, 2024, after attempting to file a TPO in Texas against Garrett and being told to file it in South Dakota, filed a TPO against Garrett in South Dakota which included barring Garrett from having contact with Lyra.

On December 13, 2024, in finding that South Dakota was an appropriate forum to handle the exclusive and continuing jurisdiction of Lyra, the Court cited SDCL 26-5B-202. The Court also cited two South Dakota Supreme Court cases, *Miley v. Miley*, 598 N.W.2d 228, 1999 SD 96; and *Furstenberg v. Furstenberg*, 591 N.W.2d 798, 1999 S.D. 35. Counsel for Ester Gallardo has requested the Court clarify its reliance on *Miley*, and generally clarify its rationale for finding South Dakota has exclusive and continuing jurisdiction over Lyra's custody.

The Court first notes that it has involved itself in an initial (although interim) custody determination in this file by signing the June 2, 2023 Interim Order which directly addresses Lyra's custody/visitation between the parents in this file. Three months later, after the parties had gone to mediation and had reached (or not reached, depending on whose side is arguing) a stipulation (unsigned by Ester) regarding the divorce/custody arrangement in this file, a Motion was filed to have this court determine whether an enforceable agreement had been reached. As noted earlier, Ms. Gallardo did not sign the stipulation and argues there is no agreement between the parties. The basis of Ms. Gallardo's argument is that she was being pushed into signing the agreement by the mediator, who lives and works in Rapid City, where mediation took place. The mediator is to be called at the next scheduled hearing in this matter.

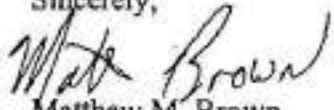
The Court relied on *Miley*, to support its ruling that it had continuing jurisdiction over child custody determinations in this matter. It specifically relies on the language noting that, "the trial court was correct in its conclusion that it had continuing jurisdiction under the UCCJA since it had entered the original South Dakota custody decree and Mother, one of the parties, continues to reside here. *Miley* at ¶12. This Court did not comment further, or acknowledge the *Miley* trial court had declined its jurisdiction because the *Miley* trial court found that it was an inconvenient forum and that a court of another state was a more appropriate forum. *Miley* at ¶13. Here is where a clarification from this court is necessary.

This Court does not find that South Dakota is an inconvenient forum. Although Mother and child live and have lived in Texas for some time, father still lives in South Dakota. The parties engaged in mediation in South Dakota and had a written agreement created that, allegedly, comprised the details of how the couple would disburse their debts and assets and how they would handle the custody/visitation of Lyra. The remaining argument from the party asserting that an agreement was not reached is that the mediator took a strong hand in the matter and that Ester didn't feel comfortable in signing the final agreement. That issue is still being litigated in *this* Court. What has been requested from Ester Gallardo is that this Court relinquish jurisdiction to Texas so that a Texas court can rule the issue as to whether the parties reached an enforceable agreement during a South Dakota mediation. The analysis of whether an enforceable agreement was reached during a South Dakota led mediation should be decided by a court in South Dakota. This is a preliminary decision before any further discussion of child custody needs to be dealt with.

If this Court determines an agreement has been reached via mediation, then the issues *currently* before the Court *are resolved*. The Court simply has to enforce the agreement. However, if the Court does not find an agreement is reached, then the Court may re-examine the factors found in SDCL 26-5B-207.


The Court further finds the evidence presented by Ms. Gallardo at the hearing of December 13, 2024 was insufficient for a ruling that South Dakota is an inconvenient forum. Besides hearing testimony and argument that the mother and child have lived in Texas for some time, and some ancillary evidence of domestic violence if the record in 51TPO 24-774 was considered, the remaining non-exclusive factors in SDCL 26-5B-207(3), (4), (6), (7), and (8) were not addressed by Ms. Gallardo. From the scant record that was made, there is no factual or legal basis for the Court to find South Dakota is an inconvenient forum.

Sincerely,

  
Matthew M. Brown  
Circuit Court Judge  
Seventh Judicial Circuit

FILED  
Pennington County, SD  
IN CIRCUIT COURT

JAN -7 2025

Amber Watkins, Clerk of Courts  
By  Deputy

Please file - exhibit 5  
entered April 14,  
2025

STATE OF SOUTH DAKOTA )  
  : SS  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

GARRETT ANTHONY GALLARDO,

Plaintiff,

v.

ESTER ELISABET GALLARDO,

Defendant.

51DIV23-000116

**STIPULATION  
AND  
AGREEMENT**

This Stipulation and Agreement is made and entered by and between the above-named Plaintiff, Garrett Anthony Gallardo (hereafter also referred to as "Husband" or "Father"), and Defendant, Ester Elisabet Gallardo (hereafter also referred to as "Wife" or "Mother"), on this 28<sup>th</sup> day of August 2024.

**WHEREAS**, the parties hereto were married on the 24<sup>th</sup> day of February, 2020, in Minot, North Dakota, and ever since have been and now are husband and wife; and

**WHEREAS**, the Defendant was served with the Summons, Complaint and a copy of the South Dakota Parenting Guidelines on the 2<sup>nd</sup> day of May, 2023, as evidenced by the Affidavit of Service filed with the Clerk of Courts; and

**WHEREAS**, the Summons and Complaint were filed with the Clerk of Courts office on the 7<sup>th</sup> day of April, 2024; and

**WHEREAS**, more than 60 days have elapsed following service of the Summons and Complaint; and

FILED  
Pennington County, SD  
IN CIRCUIT COURT

APR 15 2025

Amber Watkins, Clerk of Courts  
By ME Deputy

APP 006



**WHEREAS**, by reason of circumstances and conditions between the parties, they are now separated and living apart, and the above-entitled action for dissolution of the marriage is now pending in the Circuit Court, Seventh Judicial Circuit, County of Pennington; and

**WHEREAS**, Plaintiff and Defendant contend that it is the purpose of this Stipulation and Agreement is to resolve issues concerning child custody and parenting time; to establish child support; and to make a complete and final settlement of settle all rights and claims that each may have against the other, to provide fairly and adequately for their maintenance, to memorialize the separation of the parties and their agreement to finalize the division of property owned by them or either of them, and all other rights of property otherwise growing out of the marriage relationship that either of them now has or may hereafter have or claim to have in any property of every kind, nature and description, real or personal, now owned or which may hereafter be acquired by either of them, and acknowledgment by the parties that this agreement is subject to the approval of the Court, and that if the Court finds grounds for and makes a Decree of Divorce for either party the terms of this agreement, or any part thereof, may be incorporated in the Judgment and Decree of Divorce, as the Court shall deem necessary; and

**WHEREAS**, the Plaintiff is represented by Rick L. Ramstad, Attorney at Law, of Sioux Falls, South Dakota. The Defendant is represented by Kelly Sanderson, Attorney at Law, of Sturgis, South Dakota.



NOW THEREFORE, in consideration of the promises herein contained, and mutual benefits to be derived therefrom, it is hereby stipulated and agreed by and between the parties hereto, subject to the approval of this Court as follows:

1. **Purpose.** The sole purpose of this Stipulation and Agreement is to establish adjust and settle any and all controversies and/or issues of custody, child support, division of property, assumption of financial obligations, and spousal support, and nothing herein shall be construed as an agreement that a divorce will be obtained, or that either party is assisting the other in obtaining a divorce. The terms of this agreement may be incorporated by reference in any Judgment and Decree of Divorce that may be entered.

2. **Jurisdiction.** The parties hereby acknowledge that the Defendant resided in Tarrant County, Texas at the time this divorce action was commenced but that she resided in Pennington County, South Dakota for all times relevant to this proceeding. The parties further acknowledge no other person has claimed a right to custody and/or parenting time in this or any other state and there is no other action concerning custody and/or parenting time of the minor child in this or any other state.

A. **Custody and Parenting Time.** There has been one (1) child born as issue of this marriage between Wife and Husband, who is a minor child at the time of this divorce, namely: Lyra Serafina Gallardo, DOB: 6/21/22.

B. **Custody:** The parties agree that the parties shall share joint legal custody, and mother shall have primary physical custody of the minor child, subject to the father's parenting time. Further, the parties agree Mother shall be vested

with the ability to make decisions concerning Lyra's educational, religious and medical needs upon conferring with Father.

**C. Parenting Time:**

- a. Father shall be able to exercise parenting time with Lyra for seven (7) consecutive overnights four times a year. Father may allocate this parenting time in a manner which is consistent with his military obligations and accrued leave. Mother shall accommodate such a parenting schedule upon Father providing at least three (3) weeks' notice.
- b. During the two (2) remaining visits in 2024, Father's parenting time shall be supervised and occur in the state of Texas in the Dallas/Fort Worth area.
- c. Father shall obtain an Anger Management Evaluation and share the recommendations of the evaluator with Mother. Further, shall provide documentation establishing compliance with the recommendations provided by the evaluator.
- d. Two (2) of the four (4) annual visits shall occur in Texas and the other two (2) shall occur at locations designated by Father.
- e. The noncustodial parent shall be allowed to have video calls with Lyra every Monday through Thursday at 6:00 p.m. MT and every Saturday morning at 9:00 a.m. MT. The calls during the workweek shall be no more than one-half hour and the weekend calls may be up to one hour. During the video calls both parents



shall be fully clothed and shall be in a quiet area of their home with no other people present.

- f. The parents agree to adhere to the general rules of the South Dakota Parenting Guidelines, unless stated to the contrary herein.
- g. The parents agree a parenting schedule shall be re-evaluated as Lyra is scheduled to commence kindergarten. Either parent may commence the reevaluation by filing a motion with the Court.

**D. Travel.** Both parents shall share in the travel costs of Lyra's travel for Father's parenting time. Specifically, if Lyra is traveling by air, the parents will share in her airplane ticket. If the parents are meeting via a half-way point, they shall share in fuel expenses, utilizing the IRS mileage rate.

**E. Our Family Wizard.** The parents agree to utilize the Our Family Wizard application, including the plan for video conferencing. Each party shall be responsible for the costs of their own account.

**F. Holidays.** The parents have identified the following celebrations as holidays to celebrate with Lyra, in addition to regularly scheduled parenting time:

| HOLIDAY   | Even Years | Odd Years |
|---|------------|-----------|
| Easter- Thursday before Good Friday through Friday morning of the week following Easter Sunday. | Mother     | Father    |
| Thanksgiving- Wednesday before Thanksgiving through Thursday following Thanksgiving             | Mother     | Father    |

|  |        |        |
|--|--------|--------|
| Christmas – December 22 and conclude December 29 | Father | Mother |
|--|--------|--------|

The parents agree to coordinate a schedule wherein they will share the celebration of Lyra's birthday together.

In the event Father is deployed, missed parenting time shall be made up during the six (6) months following his return. Should the parenting time not be made up within the six (6) months then it shall be considered waived.

G. **Relocation**. Pursuant to SDCL § 25-4A-17, if Mother intends to change her principal residence, she shall provide reasonable written notice by certified mail or admission of service to the other. Reasonable notice is notice that is given at least forty-five (45) days before relocation or a shorter period if reasonable under the specific facts giving rise to the relocation. Proof of the notice shall be filed with the court of record unless notice is waived by the court.

No notice need be provided pursuant to this section if:

1. The relocation results in the child moving closer to the non-moving parent; or
2. The relocation is within the boundaries of the child's current school district; or
3. There is an existing valid protection order in favor of the child or the moving parent against the non-moving parent unless the non-moving parent has a valid order for parenting time established either in the protection order file or another custody proceeding subsequent to the entry of the protection order; or
3. Within the preceding twelve months, the non-relocating parent has been convicted of violation of a protection order, criminal assault, child abuse, or other domestic violence and either the child or the relocating parent was the victim of the crime or violation unless the non-moving parent has a valid order for parenting time established subsequent to the conviction.

The notice required in this section shall contain the following:

1. The address and telephone number, if known, of the new residence;
2. The purpose for relocating;
3. Why the relocation is in the best interest of the child; and
4. The relocating party's proposed visitation plan for the non-relocating parent upon relocation.

At the request of the non-relocating parent, made within thirty (30) days of the notice of relocation, the court shall hold a hearing on relocation. If no request for hearing is made within thirty (30) days of notice, the relocation is presumed to be consented to by the non-relocating parent.

**H. Cooperation of Parents.** The parties recognize that the dissolution of their marriage is an emotionally difficult experience not only for them, but particularly also for the minor child. As a result, the parties will do their utmost to maintain open, complete, candid, and positive communication between themselves regarding the child's health, education, and well-being.

In addition, the parties shall strive to maintain complete, regular, and ongoing communication between the child and the other parent. The minor child shall be free to communicate with either parent at the minor child's discretion within reason, and neither parent will do anything to inhibit or prevent such communication.

The parties shall keep each other advised of the minor child's health and progress in school and also keep each other advised of the extracurricular activities

in which the child may be involved or desire to be involved in through the Our Family Wizard App. Neither parent is required to notify the other parent of appointments, activities, conferences, grade reports, extracurricular activities schedules or other similar information if the same is provided or accessible by the other party.

Father shall continue to have access to Family Album app which Mother shall update regularly throughout the month.

Both parties will also at all times keep the other party advised of their current residence and work addresses and telephone numbers.

Further, the parties recognize that upon entry of the Decree of Divorce, their marriage relationship will be dissolved, and each shall have the right to live separate and apart, one from the other thereafter; but such decree shall not dissolve their rights and obligations as parents and at all times hereafter they will so conduct themselves in recognition of their ongoing parental obligations. The parties desire that this Stipulation and Agreement be so interpreted as to foster the parent-child relationship of both parties whenever and however possible.

The child may call, text, email, or use similar technology to communicate with either parent, at reasonable hours and with reasonable frequency. Neither parent shall read, censor, record or monitor such communications unless specifically authorized by the Court.

**I. Sanctions.** Pursuant to SDCL § 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 makeup time with the child equal to the time missed with the child, due to the offenders' 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.

**4. Child Support.** The parents recognize child support shall be determined per the South Dakota Child Support Schedule.

5. Insurance. The minor child is currently covered under Tricare, due to Father's status as an active-duty member of the United States Air Force. If the minor child should no longer be eligible for this coverage the parties will work together to determine what options are available through their respective employers and obtain health insurance coverage for the minor child. The parties shall insure that they have provided the other party updated insurance cards for the minor child, or copies thereof. All healthcare-related expenses for the minor child which are not covered by insurance, including medical, dermatology, dental, orthodontic, optometry, counseling, or pharmaceutical expenses, including deductibles, shall be shared by the parties based on their pro rata shares of income. Mother shall be responsible for the first Two Hundred Fifty Dollars (\$250) of out-of-pocket expenses each year, the remaining amount shall be split, based upon respective pro rata shares.

6. Tax Dependency Exemption. Commencing with tax year 2024 and continuing thereafter, Mother shall be allowed to claim the minor child on an annual basis the income tax exemption.

7. Parties' Insurance. Upon entry of Judgment and Decree of Divorce, Wife and Husband shall each be responsible for the purchase and maintenance of their own respective insurance policies including, but not limited to, health, dental, vision, life insurance and automobile insurance policies.

8. Real Property. The parties do not own any real property.

9. Personal Property. Wife shall retain as her sole and separate property all her personal clothing and effects, and all household goods, gifts from her family and such other items of personal property as are in her possession.



Further wife may retrieve the items of personal property found in Exhibit A within sixty (60) days of Notice of Entry of Judgment and Decree of Divorce, excluding the items stricken as contested. The parties agree such contested items of personal property may be further addressed by the Court. Any items not retrieved in those sixty (60) days will be considered abandoned and Husband shall be able to dispose of them. Likewise, the Husband shall retain as his sole and separate property all personal clothing and effects, and all household goods, appliances, gifts from his family, and such other items of personal property as are in his possession.

Any encumbrance(s) relating to, accompanying, or attached to an item of personal property shall be the sole responsibility of the party retaining such property and that party shall save and hold harmless the other therefrom. The parties shall sign the title or other documents necessary to effectuate the transfer of title to any item of personal property.

10. **Motor Vehicles.** Wife shall be awarded the Subaru Forrester in her possession as her sole and separate property, free and clear of any claim by the Husband. Husband shall be awarded the Toyota 4-Runner in his possession as his sole and separate property, free and clear of any claim by the Wife. Any encumbrance(s) relating to, accompanying, or attached to a motor vehicle shall be the sole responsibility of the party retaining such property and that party shall save, indemnify, and hold harmless the other therefrom. Any encumbrance against a motor vehicle that is in the name of both parties shall be refinanced within thirty (30) days after the entry and filing of the Judgment and Decree of Divorce by the party retaining the vehicle so as to remove the other party from such



encumbrance(s). The parties shall sign the title or other documents necessary to effectuate the transfer of title within thirty (30) days from the entry and filing of the Judgment and Decree of Divorce.

11. **Life Insurance.** The parties shall each retain any life insurance policy for which he or she is the named insured as his or her own sole and separate property.

12. **Retirement and Investment Accounts.** Except as otherwise provided herein, Wife and Husband shall each retain his or her own retirement benefits, pension funds, stock purchase plans, savings plans, and profit-sharing from his or her respective employments as well as any other investment account for which he or she is the titled owner of as his or her own sole and separate property, free and clear of any claim by the other.

13. **Checking and Savings Accounts.** The parties will each retain the funds in their individual checking and/or savings accounts, for each is own exclusive ownership, use, and benefit.

14. **Debts.** The parties hereby agree that each party shall be solely responsible for his or her own debts which appear in his or her own respective names which were incurred prior to or during the marriage or which are incurred from and after the date of the entry and filing of the Judgment and Decree of Divorce, except as otherwise specifically stated herein.

15. **Spousal Support.** Each party waives any claim for alimony from the other, either past, present, or in the future.

16. **Attorney Fees.** The parties agree that each will be responsible for their own attorney's fees, costs, and sales tax incurred as a direct result of this divorce action.

17. **Name Change.** That pursuant to SDCL 25-4-47, the Defendant's name prior to marriage was Ester Elisabet Rodriguez. The parties agree that said name shall be restored to her upon entry of the Judgment and Decree of divorce herein.

18. **Tax Consequences.** The parties acknowledge that they have been separately advised by their respective counsel that there may be certain consequences pertaining to this Stipulation and Agreement, that neither attorney has furnished tax advice with respect to this Stipulation and Agreement, that each party has been directed and advised to obtain independent tax advice from a qualified tax accountant or tax counselor prior to signing this Stipulation and Agreement and that they have had the opportunity to do so.

19. **Property Intentionally or Inadvertently Left Out.** It is understood and agreed by and between the parties that this Stipulation and Agreement applies to all of the property known to the parties at this time, and that any property or property rights not contemplated or known at the time of this Stipulation and Agreement that have been deliberately withheld from the knowledge of the other, and/or not accounted for at the time of this Agreement, shall be considered to be the common property of the parties hereto, and shall be divided equally between the parties, but any and all property or property rights acquired subsequent to the date of this Stipulation and Agreement shall be the separate

property of the party acquiring the same and neither party shall have any right or claim in and to said subsequently acquired property.

20. **Waiver of Estates.** Except as otherwise set forth in this Stipulation and Agreement, Wife and Husband hereby mutually release and waive any and all right, title and interest accruing by operation of law or under any statute now or hereafter in force, or otherwise, to participate in the separate estates and property of each other, whether such property be real or personal or wheresoever located, and whether acquired before or subsequent to their marriage, and whether acquired before or subsequent to the date hereof, including any right of election to take against any Last Will and Testament of each other, and any right to the administration of the estate of each other, except only as provided by Will or Codicil executed after the date of this Stipulation and Agreement.

21. **Execution of Documents.** Each of the parties agrees to execute or have properly executed in legal form any documents of title, certificates, or other instruments necessary to affect any of the provisions of this Agreement.

22. **Grounds for Divorce.** The parties hereto agree and consent that the above-entitled Court may find that there exist irreconcilable differences causing the irremediable breakdown of the marriage as the grounds for granting the anticipated Judgment and Decree of Divorce herein.

23. **Interference.** The parties shall hereafter live separate and apart. Each party shall be free from interference, authority, or control, direct or indirect, of the other party. Each party may, for his or her separate benefit, engage in any employment, business, or profession he or she may select. The parties shall not

molest or interfere with each other in any aspect of their personal or professional lives.

24. **Representation of the Parties.** Wife and Husband have been advised of their discovery rights and the foregoing terms of this Stipulation and Agreement are based upon the representation of the parties to each other. Each party states they have made a disclosure of their assets, liabilities, and overall financial positions, and each acknowledges that this Agreement is being executed in reliance on the validity of said information without formal discovery.

Both parties have read the foregoing Stipulation and Agreement and have signed the same with full knowledge of its contents and each acknowledges receipt of a copy of said Agreement.

25. **Conflict of Laws.** This Stipulation and Agreement shall be construed in accordance with the substantive laws of the State of South Dakota.

26. **Waiver of Notice.** The parties hereto agree that Findings of Fact and Conclusions of Law may be waived, and the respondent hereby waives notice of any trial or hearing brought on the claims set forth in Plaintiff's Complaint and Husband's Counterclaim.

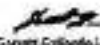
27. **Fairness of the Agreement.** This Agreement is deemed to be fair by both parties and not the result of any fraud, duress or undue influence exercised by either party upon the other or by any person or persons upon either.

28. **Partial Invalidity.** If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions of this Agreement shall nevertheless continue in full force and effect.

29. **Modification and Waiver.** A modification or waiver of any provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as waiver of any subsequent default of the same or similar nature.

30. **Entire Agreement.** Wife and Husband agree that this Stipulation and Agreement constitutes the entire agreement of the parties and is a full and complete property settlement between the parties and no other or further agreement, oral or otherwise, constitutes part of the settlement.

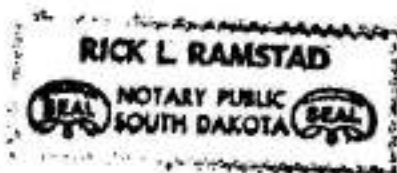
Dated this 28 day of August, 2024.

  
\_\_\_\_\_  
Garrett Anthony Gallardo, Plaintiff

State of South Dakota     )  
  ss.  
County of Pennington     )

On this 28 day of August, 2024, before me, the undersigned Notary Public, personally appeared Garrett Anthony Gallardo, known to me or satisfactorily proved to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and seal.



(SEAL)

  
\_\_\_\_\_  
Notary Public – South Dakota  
My Commission Expires: 11/2/2027

\_\_\_\_\_  
Ester Elisabet Gallardo, Defendant

State of South Dakota       )  
  ss  
County of Pennington       )

On this \_\_\_\_ day of August, 2024, before me, the undersigned Notary Public, personally appeared Ester Elisabet Gallardo, known to me or satisfactorily proved to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and seal.

\_\_\_\_\_  
Notary Public – South Dakota  
My Commission Expires: \_\_\_\_\_

## Personal Property List

### Ester Gallardo

#### Clothes

Shirts, pants, shorts, underwear, bras, socks,  
dresses, swimsuits, jackets, etc.

#### Shoes

Boots, sneakers, flip flops, heels, etc.

#### Blankets

#### Pregnancy pillow and case

#### P- Touch

#### ~~Oculus~~

Headset, controllers, case, comfort headset,  
regular headset, foam cover, glasses cover

#### Xbox

#### Xbox games

#### Xbox controllers

#### Gaming headphones

#### Kinect

#### DVDs

#### CDs

#### Arts and crafts items

#### ~~Cat supplies~~

Food, treats, supplements, litter boxes, litter  
scoop, cat tree, clothes, toys, etc.

#### Boxes in basement that contain miscellaneous items

#### ~~Board games~~

#### ~~Hygiene products~~

#### Ramen bowls

#### Chopsticks

#### Small white air fryer

#### Yellow Jacket target

#### Bow

#### Arrows

#### Rose crystal pyramid

#### Printer

#### Printer Ink

#### ~~Knives~~

#### Dragon short sword and sheath

#### Backpack

#### Hiking fanny pack and water bottles

#### Plant seeds

#### ~~Fabric planter~~

#### Miscellaneous items "to be sold" on left side of garage

Dresser, envelopes, flask

Exhibit

1



Type-C to aux converter  
Black power strip  
Books

**Lyra Gallardo**

Stroller  
Bottle sterilizer  
~~Grey blanket~~  
Dreft laundry detergent  
Bottles  
Bottle brushes  
Infant Tylenol  
Pacifiers  
~~Graco swing~~  
Fetus monitor  
Tummy time play mat  
Bathtub  
Faucet cover  
Horse rocker  
Walker  
~~Crib~~  
~~Mattress~~  
Stuffed animals  
Stool  
Big stuffed animals  
Miscellaneous baby items in crib shelves  
Box of baby items in closet  
Hangers  
Clothes  
Shoes  
Socks, mittens, bows  
Bookshelves  
Books  
Baby toys  
Toy chest  
~~Wall paintings/ decorations for nursery~~

STATE OF SOUTH DAKOTA  
COUNTY OF PENNINGTON

)  
)SS.  
)

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

FILE NO: DIV23-116

ESTER ELISABET GALLARDO,  
  
Plaintiff,  
vs.  
GARRETT ANTHONY GALLARDO,  
  
Defendant.

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MEMORANDUM OPINION  
ON MOTION TO ENFORCE MEDIATION  
AGREEMENT

At issue before the Court is whether the parties in this action reached a binding agreement during mediation that took place on August 28, 2024. The Court heard testimony from various witnesses before this decision was issued, and finds the mediation session did result in a legally binding and enforceable agreement between the parties.

"[A]n oral settlement is a settlement." *Winegeart*, 2018 S.D. at ¶ 13. An agreement reached through mediation is a settlement agreement which "...is contractual in nature and subject to the same rules of construction as contracts." *Paweltzki*, 2021 S.D. at ¶20 (citing *In re Estate of Neiswender*, 2003 S.D. 50, ¶15, 660 N.W.2d 249, 252.) "Therefore, 'an agreement exists when the following elements are present: (1) the parties are capable of contracting; (2) the parties consent to the agreement; (3) the agreement is for a lawful object; and (4) the parties have sufficient cause or consideration.'" *Id.* (citing SDCL 53-1-2).

The only element in question in the current case is whether the parties consented to the purported agreement. At both the most recent and the original hearing it became clear to the Court that there were no material issues Ester Gallardo disagreed with and that a "meeting of the minds" had been reached between the parties at the end of mediation on August 28, 2024. At the hearing of December 13, 2024 Ester made no specific allegation as to what she did not agree with

after mediation had taken place. When pressed, her explanation was that she decided not to sign the stipulation agreement (marked as Exhibit 5 at the most recent hearing) because she felt "pressured" into signing by the mediator, Terri Williams, and didn't like the way she was treated during the mediation process. There was no indication that material concerns regarding the details of the agreement were unsatisfied. It should be noted that Ester was represented by counsel at the mediation, and although appearing via Zoom or other connection with her attorney and the mediator, there was open discussion between Ester, her counsel, and Terri Williams during the mediation process. There was no evidence from any testimony that mediation was unsuccessful, that further mediation would be necessary, or that any "loose ends" needed to be tied up at a later date.

Given the testimony of all the witnesses at both hearings, it was clear that Ester, her attorney at the time, the mediator, and Garrett Gallardo believed an agreement had been reached. The signature page of the agreement was not signed by Ester not because a meeting of the minds did not take place, but because there was a printer "issue" where Ester was located and she couldn't get the last page of the stipulation to print. But for the printer situation, this Court has no doubt the agreement would have been signed.

The fact that Ester later changed her mind does not effect the fact that a meeting of the minds had taken place, that she and her attorney expressed at mediation that an agreement had been reached, and that such agreement was immediately binding, whether she contemporaneously signed the document or not. The agreement reached at the end of a day of mediation is a binding contractual agreement and binds both parties to its contents.

Dated this 12<sup>th</sup> day of May, 2025.



*[Signature]*  
Clerk of Courts  
By: *[Signature]*

*[Signature]*  
Matthew M. Brown, 7<sup>th</sup> Circuit Judge

FILED  
Pennington County, SD  
IN CIRCUIT COURT

MAY 12 2025

Amber Watkins, Clerk of Courts  
*PP*

STATE OF SOUTH DAKOTA )  
 )ss  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
  
SEVENTH JUDICIAL CIRCUIT

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GARRETT ANTHONY GALLARDO,

51DIV23-000116

Plaintiff,

vs.

**Judgment and Decree of Divorce**

ESTER ELISABET GALLARDO,

Defendant.

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The above-entitled action came before the Court for consideration on the basis of the Stipulation and Agreement of the Parties pursuant to SDCL 25-4-17.3; Defendant being previously represented by Kelly Sanderson and being currently represented by Gina Ruggieri, and Plaintiff being represented by Olivia Edoff of Bangs, McCullen, Butler, Foye & Simmons, L.L.P.; and

It appearing to the Court that the Defendant herein was served with copies of the Summons, Complaint, and SD Parenting Guidelines in this action and that more than sixty (60) days have elapsed since said service; and

The Court being duly satisfied that it has jurisdiction of the parties and other subject matter of this action; and

The parties having filed herein a written Stipulation and Agreement concerning child custody, child support, spousal support, property rights, assumption of financial obligations, and waiving notice of trial; and

It appearing that the parties having agreed to a divorce based on the grounds of irreconcilable differences and that the marriage should be dissolved;

Upon all the files and records submitted and for good cause appearing, the Findings of Fact and Conclusions of Law having been expressly waived in writing by the parties hereto;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The marriage heretofore existing between the parties be, and the same hereby is, dissolved and set aside, and that the parties be, and each of them is, restored to the status, conditions and rights of single persons and that each party is hereby granted an absolute divorce from the other on the grounds of irreconcilable differences.

2. The Stipulation and Agreement dated and signed by Plaintiff on August 28, 2025, determined by this Court to be enforceable in the Court's Memorandum Opinion on Motion to Enforce Mediation Agreement dated May 12, 2025, and attached hereto, is hereby adopted and approved and by this reference made a part of this Judgment and Decree of Divorce and incorporated herein as if fully set forth herein, and the Court allowing and approving the same in all respects.

3. Parties shall submit to a child support referee for determination of child support.

4. Each party shall, at the request of the other, execute and deliver any such instruments as may be required in order to carry out the intentions and provisions of the Court's orders. In the event either party shall fail to execute deeds, titles, or other appropriate instruments of conveyance as required by the Court's orders, this Judgment and Decree shall act in lieu of such conveyance.


5. That the parties are awarded joint legal custody of the minor child, Lyra Gallardo, and, with regard to physical custody of the minor child, the Defendant is awarded primary physical custody subject to the Plaintiff's parenting time, consistent with the terms of the parties Stipulation and Agreement.

6. Defendant shall have her maiden name restored to Rodriguez.

6/6/2025 3:51:31 PM

Attest:  
Fagerland, Melinda  
Clerk/Deputy



  
The Honorable Matt Brown  
Seventh Judicial Circuit  
Circuit Court Judge

**IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA**

Appeal No. 31119

---

**ESTER ELIZABET GALLARDO,**

Defendant/Appellant,

vs.

**GARRETT ANTHONY GALLARDO,**

Plaintiff/Appellee.

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**APPEAL FROM THE CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT  
PENNINGTON COUNTY, SOUTH DAKOTA**

Notice of Appeal filed on June 10, 2025

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The Honorable Matthew M. Brown  
Circuit Court Judge

---

**APPELLEE'S BRIEF**

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Gina Ruggieri  
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## **Preliminary Statement**

In this appeal, Appellant asks the Court to reverse the circuit court's decision to retain jurisdiction over a child custody matter and to enforce a stipulation and agreement reached in mediation. The circuit court correctly found that South Dakota is not an inconvenient forum for the custody proceeding and that the parties mutually consented to terms of a written stipulation and agreement. The stipulation was signed by the Appellee but not the Appellant. This ruling should not be disturbed on appeal.

In this Brief, Appellee will be referenced as "Garrett" or "the Father." Appellant will be referenced as "Ester" or "the Mother." Appellant's Appendix will be identified as "Appellant's App." The Settled Record will be cited as "SR." The stipulation and agreement enforce by the circuit court will be referred to as "the Stipulation." SR 182-200.

## **Jurisdictional Statement**

On December 13, 2024, the circuit court entered an oral ruling on Appellant's motion to dismiss and transfer jurisdiction to Texas. On January 7, 2025, the circuit court entered an *Order Regarding Defendant's Motion to Dismiss and Transfer Jurisdiction to Texas*. The circuit court filed a *Memorandum Decision/Clarification of Oral Ruling* on the same day. In its ruling, the circuit court denied Ester's

request to dismiss the case for lack of jurisdiction or, in the alternative, forgo exercising its continuing exclusive jurisdiction for inconvenient forum. Notice of entry was served January 8, 2025.

On May 12, 2025, the circuit court entered a *Memorandum Opinion on Motion to Enforce Mediation Agreement*, granting Appellee's request to enforce Plaintiff's *Exhibit(s) - 5 - Stipulation and Agreement*. Notice of entry was served on May 13, 2025.

Appellant filed its Notice of Appeal on June 10, 2025. This Court has jurisdiction pursuant to SDCL §15-26A-3(4).

### **Statement of Legal Issues**

- 1. Whether the circuit court erred by finding that South Dakota was not an inconvenient forum?**

The circuit court found that South Dakota was not an inconvenient forum for the proceeding.

#### Most Relevant Authority:

*Miley v. Miley*, 598 N.W.2d 228, 1999 SD 96.  
*Furstenberg v. Furstenberg*, 591 N.W.2d 789, 1999 SD 35.  
*Langdeau v. Langdeau*, 2008 S.D. 44, 751 N.W.2d 722.  
*In re Adoption of H.L.C.*, 2005 S.D. 110, 706 N.W.2d 90.  
SDCL § 26-5B-207

- 2. Whether the circuit court erred by finding that the parties mutually consented to the terms of the stipulation?**

The circuit court found that the parties mutually consented to the terms of the Stipulation and ordered that its terms be enforced.

Most Relevant Authority:

*Winegeart v. Winegeart*, 2018 S.D. 32, 910 N.W.2d 906.

*Paweltzki v. Paweltzki*, 2021 S.D. 52, 964 N.W.2d 756.

*Schutterle v. Schutterle*, 260 N.W.2d 341 (S.D. 1977).

*Stockwell v. Stockwell*, 2010 S.D. 79, 790 N.W.2d 52.

SDCL § 19-13A-7

SDCL § 19-13A-5

**Statement of the Case**

This is an appeal from the Seventh Judicial Circuit, Pennington County, the Honorable Matthew Brown. Appellant challenges the circuit court's decisions in a divorce and custody matter, specifically whether South Dakota is an appropriate forum and whether a stipulation resolving the divorce and custody of one minor child should have been enforced by the court.

On May 21, 2024, the Mother filed a *Motion for Mediation*. SR 59. The parties participated in mediation on August 28, 2024. SR 72. Both parties consented to the terms of the Stipulation, resolving all issues in their pending divorce and all custody issues related to their minor child L.G. SR 211, 441, 443-444. On September 11, 2024, the Father filed a *Motion to Enforce Mediation Agreement and Entry of Judgment and Decree of Divorce*. SR 69-70.

At a hearing on December 14, 2024, the Mother challenged the circuit court's jurisdiction. SR 415-435. First, the Mother argued that South Dakota was not L.G.'s home state, so the circuit court did not have original jurisdiction to make an

initial custody determination. SR 421. Alternatively, the Mother argued that South Dakota was not the “correct forum” for the case to proceed. SR 422. The circuit court issued an oral ruling denying the Mother’s requests. SR 433-435. A written memorandum opinion followed on January 7, 2025. SR 146-149.

The circuit court addressed the Father’s *Motion to Enforce Mediation Agreement and Entry of Judgment and Decree of Divorce* at the December 13, 2024 hearing and at a continued hearing on April 15, 2025. SR 205-244, 352-466. The circuit court heard testimony from the Mother and from Mediator Terri Williams. SR 205-244, 435-466. On May 12, 2025, the court issued a *Memorandum Opinion on Motion to Enforce Mediation Agreement*. SR 201-202. The Court held that the parties mutually assented to terms of the Stipulation and that the Stipulation was enforceable. SR 201-202.

### **Statement of the Facts**

Garrett Gallardo married Ester Gallardo on February 24, 2019 in Minot, North Dakota. SR 32. Garrett is an active-duty member of the United States Airforce. SR 32. After the parties married, Garrett was stationed at Ellsworth Air Force base, bringing the family to South Dakota. SR 33. On June 21, 2022, the minor child L.G. was born to the parties. SR 32. Ester, Garrett, and L.G. continued to

reside in South Dakota until approximately October 11, 2022,<sup>1</sup> when the Mother moved herself and L.G. to Texas. SR 34. Garrett did not consent to the Mother removing L.G. from South Dakota, and Ester gave Garrett no notice of her intention to leave. SR 27. From October 11, 2022 through April 2023, the Mother resided at “temporary” addresses in Texas. SR 34.

On April 7, 2023, the Father filed a *Complaint* asking the circuit court for a decree of divorce and to establish custody and support of L.G.; a *Summons* and the South Dakota Parenting Guidelines were filed the same day. SR 1-23. On April 17, 2023, the Father filed a *Motion for Return of the Child to South Dakota and Motion for Interim Custody* and affidavit in support of the motion. SR 25-30. On June 2, 2023, the circuit court established interim custody, wherein visitation between the Father and L.G. would occur at the home of the paternal grandparents in California. SR 51-52. There is no evidence in the record of the Mother challenging jurisdiction in her Answer or when the Court entered an initial custody order.

On May 21, 2024, the Mother filed a *Motion for Mediation*. SR 59. The parties participated in mediation on August 28, 2024. SR 72. Attorney Terri Williams

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<sup>1</sup> Appellant’s brief states that L.G. lived in South Dakota for less than three months. Appellant’s Brief, p. 27. This is incorrect. The uncontroverted record indicates that L.G. resided in South Dakota from her birth on June 21, 2022 until approximately October 11, 2022, which is three months and twenty days.

served as a mediator. SR 208-209. Both parties were represented by counsel. SR 209. The Mother's attorney, Kelly Sanderson, and Williams attended the mediation in person in Rapid City, SD. SR 209. The Mother voluntarily appeared via Zoom. SR 439, 445-446. Garrett and his attorney, Rick Ramstad, also appeared via Zoom. SR 209.

At the beginning of the mediation, Williams communicated with the parties about whether they wished for her to take a passive or direct role in reaching an agreement. SR 210. The parties directed Williams to be more direct in her discussions with them during mediation. SR 210. As part of that role, Williams indicated she would be frank with the parties about whether she believed any term would be accepted by a court. SR 210-11.

The mediation lasted between eight to nine hours, ending at approximately 7:00 p.m. in the Mother's time zone. SR 439. Williams testified that written drafts are exchanged when there is only fine-tuning left in the mediation. SR 217. The parties exchanged three or four drafts prior to the final Stipulation. SR 444. The Mother had the opportunity to consult with her attorney, in real time, throughout the mediation and reviewed drafts of the proposed stipulation. SR 440. She printed drafts of the stipulation, marked up the physical copy, transcribed notes into electronic communication with her attorney and discussed her thoughts



on each draft. SR 440. There is no indication that Ester was unhappy with her attorney's representation during the mediation.

At the end of the mediation, Ester was provided with a copy of the final Stipulation. SR 441-442. Ester was able to look through it and agreed to sign it. SR 211, 441, 443-444. Ester even attempted to print the Stipulation out in order to sign it. SR 218. She claimed that she could not sign the Stipulation during the mediation, because the last page would not print due to technical difficulties. SR 218.<sup>2</sup> However, she agreed to sign the Stipulation. SR 211, 441, 443-444. This is uncontested by Appellant. It was agreed that Attorney Sanderson would disseminate a signed copy the next day, when Ester's printer was working. SR 218. Garrett signed the Stipulation on August 28, 2024. SR 197.

Ester never signed the Stipulation. SR 198. On September 3, 2024, Sanderson moved to withdraw due to a breakdown in the attorney-client relationship. SR 63. On September 11, 2024, Garrett filed a *Motion to Enforce Mediation Agreement and Entry of Judgment and Decree of Divorce*. SR 69.

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<sup>2</sup> Ester's testimony on this issue varied. At one point, she claimed that page 17 of 17 would not print and that was the signature page. SR 444. Later, Ester claimed that the page that wouldn't print was the page discussing that the Stipulation was "deemed to be fair by both parties and not the result of any fraud, duress or undue influence." SR 444. However, that term appears on page 15 of 17. SR 196. Ester claimed that when she read that term, she could not sign the Stipulation. SR 444-445. However, the term was not unique to the final Stipulation and had been in previous drafts. SR 71-118. She also admitted that she was able to glance through the Stipulation during the mediation before agreeing to sign it. SR 444.

On October 28, 2024, Ester filed a protection order against Garrett which barred Garrett from having any contact with L.G. from October 28, 2024 through December 13, 2024. SR 147, 402. In that TPO, Ester asked that the circuit court award her temporary custody of L.G. with Garrett having no visitation. SR 399. The Honorable Judge Matt Brown presided over the protection order proceeding and ultimately found that Ester failed to provide sufficient evidence to support a permanent protection order and reinstituted visitation with Garrett. SR 413.

Before the protection order was resolved, Ester requested “that the matter be dismissed and that the Court relinquish jurisdiction to the State of Texas [...]” SR 130. This request was addressed at a hearing on December 13, 2024. SR. 415-435. First, Ester argued that South Dakota was not L.G.’s home state, so the circuit court did not have original jurisdiction to make an initial custody determination on June 2, 2023. SR 421. Alternatively, Ester argued that South Dakota was not the “correct forum” for the case to proceed. SR 422. The circuit court issued an oral ruling denying the Mother’s requests. SR 433-435. A written memorandum opinion followed on January 7, 2025. SR 144-158.

The circuit court’s ruling relied on SDCL § 26-5B-202, *Miley v. Miley*, 598 N.W.2d 228, 1999 SD 96, and *Furstenberg v. Furstenberg*, 591 N.W. 2d 798, 1999 SD 35. SR 147. The circuit court’s decision correctly drew focus to the pending *Motion to Enforce Mediation Agreement* and the Mother’s attempt to circumvent the

South Dakota custody case by filing at TPO in Texas after the South Dakota mediation. SR 148. Judge Brown's decision made clear that it was appropriate to resolve the mediation agreement motion in South Dakota. He correctly noted that he had listened to extensive testimony about the parties relationship and history in both the TPO and divorce file, that the mediation took place in South Dakota, that mediator's testimony would be live in South Dakota, and that if the Stipulation were to be enforced, the custody and divorce would essentially be resolved. SR 146-148. Judge Brown ultimately found that evidence and argument presented by the Mother were insufficient to support a finding that South Dakota was an inconvenient forum, at least for the time being. SR 148. If the Stipulation was not enforced, the circuit court offered to readdress the forum issue. SR 152.

The circuit court addressed the Father's *Motion to Enforce Mediation Agreement and Entry of Judgment and Decree of Divorce* at the December 13, 2024 hearing and at a continued hearing on April 15, 2025. SR 205-244, 352-466. The circuit court heard testimony from the Mother and Mediator Terri Williams. The Stipulation later enforced by the circuit court was admitted as Exhibit 5 through Williams' testimony. On May 12, 2025, the court issued a *Memorandum Opinion on Motion to Enforce Mediation Agreement*. SR 201-202.

The circuit court held that the parties mutually assented to terms recorded in a stipulation and agreement and that the agreement was enforceable. Judge Brown

noted that the only element in question was whether the parties mutually consented to the Stipulation. Ester failed to identify any material terms that she took issue with in the Stipulation. SR 201-202. All material issues of the divorce and custody were finalized in the Stipulation. SR 202. Ester and Garrett reached a meeting of the minds, and the only reason the Stipulation was unsigned was due to a “printer” issue. SR 202. Ester intended to be bound by the terms of the Stipulation upon giving her oral agreement, because a written signature was impossible at that particular time. SR 202. Had there been no tech issue with the printer, Ester would have signed the Stipulation. SR 202. The opinion suggests that Ester’s objections to enforcing the Stipulation were rooted in a later change of heart, not from a lack of mutual consent to contract. SR 202.

### **Standard of Review**

“Findings of fact are reviewed under the clearly erroneous standard and questions of law are reviewed de novo.” *Huffaker v. Huffaker*, 2012 S.D. 81, ¶ 11, 823 N.W.2d 787, 790. The standard of review that is applicable for each issue is identified below.

### **Argument**

- 1. The circuit court did not abuse its discretion by finding that South Dakota was not an inconvenient forum.**

“Whether a court is a convenient forum under the Uniform Child Custody Jurisdiction Act (UCCJA) is [...] review[ed] under the abuse of discretion standard.” *Miley v. Miley*, 1999 S.D. 96, 598 N.W.2d 228, 230 (quoting *Fuerstenberg v. Fuerstenberg*, 1999 SD 35 at P16, 591 N.W.2d at 804). “An abuse of discretion is ‘a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.’” *Huffaker*, 2012 S.D. at ¶ 11.

**2. The court’s decision and application of the SDCL § 26-5B-207 factors is supported by the record.**

Appellant has not challenged the circuit court’s jurisdiction to make an initial custody determination or its continuing exclusive jurisdiction on appeal. SR 295 A circuit court “which has jurisdiction under [SDCL § 26-5B] to make a child-custody determination *may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum.*” *Langdeau v. Langdeau*, 2008 S.D. 44, ¶ 27, 751 N.W.2d 722, 731 (quoting SDCL § 26-5B-207(a)) (emphasis in original).

Whether forum is inconvenient is determined by a factor test which analyzes whether it is appropriate for the case to proceed in another state. SDCL § 26-5B-207(b).

[...] For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) The length of time the child has resided outside this state;
- (3) The distance between the court in this state and the court in the state that would assume jurisdiction;
- (4) The relative financial circumstances of the parties;
- (5) Any agreement of the parties as to which state should assume jurisdiction;
- (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

SDCL § 26-5B-207(b).<sup>3</sup>

“When employing factor tests, [the South Dakota Supreme Court] generally do[es] not require courts to analyze every factor in depth.” *In re Name Change of*

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<sup>3</sup> Appellant calls concern to the circuit court’s application of *Miley*, specifically that the *Miley* court was upheld in transferring the case to a more convenient forum. However, the *Miley* case is factually distinguishable in two significant respects. First, forum was transferred at the modification of custody state. 1999 SD at ¶ 3. In the present case, the Court was in the middle of determining whether the Stipulation should be enforced. Second, the parties in *Miley* had consented to the children moving to a new forum. *Id.* at ¶ 4. In the present case, L.G. came to live in a new jurisdiction without the Father’s consent or opportunity to participate in that decision. Additionally, the standard of review allows circuit courts discretion to handle each matter on a case-by-case basis and for their ruling to remain undisturbed, absent an abuse of discretion.

*J.P.H.*, 2015 S.D. 43, ¶ 13, 865 N.W.2d 488, 491. See also *In the Interest of A.D.R.*, 499 N.W.2d 906, 909 (S.D. 1993) (regarding the transfer of a juvenile to adult court).

"The [UCCJEA] was designed to produce jurisdictional certitude for the sake of children. Deferring a child custody dispute to another forum can 'assure that the best interests of the child . . . are not subordinated to the parents' interest in obtaining the best terms of the divorce.'" *Langdeau*, 2008 S.D. at ¶ 31, 751 N.W.2d at 732 (citing *Lustig v. Lustig*, 1997 SD 24, ¶ 14, 560 NW2d 239, 245). The UCCJEA is also meant to prevent forum shopping and to create stability in custody litigation. *In re Adoption of H.L.C.*, 2005 S.D. 110, ¶ 19, 706 N.W.2d 90, 93.

Appellant was given ample opportunity to present the circuit court with information relevant to the question of forum. Ester testified regarding the date that she was served by the Father and the length of time that she resided in Texas. SR 416-420. She did not present evidence as to factors 3, 4, 6, 7, or 8. Appellant's request to the court was based on her absence from South Dakota and that evidence relating to L.G.'s care would be found outside of South Dakota.

The circuit court's decision states that it would "re-examine the factors in SDCL § 26-5B-207" if the mediation stipulation was not enforced, making it clear that Judge Brown considered all factors in reaching his decision. SR 148, The



circuit court correctly assigning appropriate weight to each factor's relevance, and its decision is supported by the record before this reviewing court.

As for factor (1), Appellant did not attempt to present evidence of the parties' domestic violence through Ester's testimony at the hearing on December 13, 2025. Even so, the circuit court listened to two upwards of six hours of testimony about the parties history in the TPO proceeding which was decided on December 13. SR 431. In ruling on the protection order issue, Judge Brown found that both parties were physically violent towards each other at points in their relationship, but the most recent allegation of violence perpetrated by Garrett was over three years old. SR 412. The court ultimately denied Ester's request for a protection order for herself and L.G. Clearly, the court did not feel that any state needed to protect Ester or L.G. from Garrett.

The circuit court considered factors (2) and (3). It acknowledged that L.G. has been absent from South Dakota for a long period and was well aware of L.G. residing in Texas. Given that the court's decision hinged on keeping the file in South Dakota until the mediation issue was resolved, this factor was not given much weight, and rightly so. Custody proceedings specifically allow testimony of witnesses via audiovisual, telephonic, or other means. SDCL § 26-5B-11. The court exercised authority under this statute and allowed the Mother to present

testimony via Zoom without issue. Therefore, the distance posed little to no barrier to the forum remaining in South Dakota.

As to factor (4), Appellant presented no evidence on this issue, and nothing in the record suggests it is a relevant factor. The parties did not reach an agreement that would implicate factor (5). However, it's worth noting that the Mother failed to raise any concerns about the forum of the proceeding over the year and a half that the case was pending. The circuit court's decision suggests that Judge Brown was concerned the Mother's true motive was to select a more favorable forum and avoid enforcement of the mediation agreement. In its opinion, the court noted the timing of the protection order proceeding in relation to the mediation and motion to enforce the resulting Stipulation.

Appellant's argument relies heavily on factor six and concern that evidence related to the child's care, such as daycare, counseling and family ties, would be found in Texas. Appellee disagrees. Ester's desire that Garrett have no contact with his daughter are based exclusively on the nature of their relationship while the parties resided in South Dakota. That issue would be pivotal to all material matters of the divorce and custody, and all evidence of that time period is found in South Dakota.

However, Judge Brown focused on the evidence which would be presented to resolve the *Motion to Enforce Mediation Agreement*.<sup>4</sup> When that motion was resolved in Garrett's favor, all of the evidence discussed by Appellant became irrelevant and would never be presented to any court. On the other hand, the objective testimony of Mediator Williams was located in South Dakota. This weighed in favor of keeping the case in South Dakota, particularly where the Mother's testimony could be facilitated with Zoom. This factor weighed heavily in favor of keeping the case in South Dakota, at least until the mediation motion was resolved. After that, either party or the court could raise the issue of forum again, and Judge Brown advised he would be amenable to hearing that request. SDCL § 26-5B-207.

As for factor seven, Appellant did not present argument on this factor at the hearing. However, the file shows the delay that the South Dakota court experienced in resolving this case. The mediation took place in August of 2024. Defendant almost immediately fired her attorney and sought protection orders that

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<sup>4</sup> Appellant argues that the circuit court erred to continue exercising jurisdiction over the file because the court believed South Dakota should decide the *Motion to Enforce Mediation Agreement*. Appellant's Brief at p. 22. As discussed in Appellee's Brief, the court's decision was clearly based on broader considerations than the mediation agreement, though it was an important and weighty factor in the court's analysis. The practical effect of granting Appellant's motion would be for a Texas court to decide the issue despite that the majority of evidence pertaining to that motion was in South Dakota and that the South Dakota court was more familiar with the record and the parties.

circumvented the court's interim custody order. It took almost nine months for the court to be able to address and resolve the mediation issue. If the case had been transferred to Texas, the Texas court would have had to become familiar with the file and the delay would have been exaggerated.

The last factor undoubtedly weighed in favor of keeping the proceeding in South Dakota. At the time the court addressed forum, Judge Brown had presided over the file for over a year and a half. He had ruled on interim custody and a motion to return the child to South Dakota. He presided over a protection order which raised issues of custody, child support, and alimony. He listened to upwards of six hours of testimony from the parties and made credibility determinations as to both. Lastly, he presided during the pendency of the *Motion to Enforce Mediation Agreement* and was very familiar with the relevant procedural history.

Clearly, the record supports Judge Brown's decision. He applied all relevant legal standards and gave thoughtful consideration to whether the proceeding was appropriately kept in South Dakota. His findings were justified by and clearly consistent with reason and evidence. This Court should affirm.

3. **The circuit court entered sufficient Findings of Fact and Conclusions of Law to support its decision.**

Appellant argues that the circuit court failed to make necessary findings under SDCL § 26-5B-207.<sup>5</sup> Appellant's argument is premised on the presumption that the Court must consider each factor in SDCL § 26-5B-207. However, the language of the statute directs the court to consider all "relevant factors." Indeed, factor tests do not require court to assign equal weight to each factor, or even consider every factor listed in a statute. *In re Name Change of J.P.H.*, 2015 S.D. 43, ¶ 13, 865 N.W.2d 488, 491. *See also In the Interest of A.D.R.*, 499 N.W.2d 906, 909 (S.D. 1993) (regarding the transfer of a juvenile to adult court).

Still, the circuit court entered sufficient findings to support its decision, including citing the *Fuerstenberg* case which is pivotal for its recitation of the child's best interest. The court provided an oral decision and later provided a written decision. SR 146-148, 433-435. Both make clear that the court considered all relevant factors under SDCL § 26-5B-207.

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<sup>5</sup> A partial, uncited quote from *Langdeau* is included in support of this argument:

We conclude the Legislature, when it enacted this section of the UCCJEA, intended the circuit court to enter the findings of fact and conclusions of law that we relied upon during appellate review under the predecessor UCCJA, before *yielding* jurisdiction over child custody to another forum.

*Langdeau*, 2008 S.D. ¶ 33 (emphasis added). The court here did not *yield* jurisdiction.

Regarding the domestic violence allegations, the court noted the extensive evidence presented on the parties' relationship in the TPO file. SR 146-147.<sup>6</sup> This evidence could all be considered under factor eight, the familiarity of the court with facts and issues in the pending litigation. This would weigh in favor of the forum remaining in South Dakota and Judge Brown had heard extensive live testimony and made credibility determinations on the domestic violence issue.

Regarding the child's best interest, the circuit court cited legal authority that it relied on in reaching its decision. That authority confirms that the court did consider the child's best interest. It's worth noting that Appellant fails to point to any part of the Stipulation which is not in L.G.'s best interest. Instead, the argument is focused on Ester's experience in the mediation, not the effect of the Stipulation on L.G.

Even if Appellant's position were correct, the remedy would be to remand the case for further findings by the lower court, not reversal.

**4. The circuit court did not error in enforcing the unsigned stipulation and agreement.**

- a. The circuit court could enforce the stipulation, despite that it was unsigned, because the court was presented with admissible,

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<sup>6</sup> Appellant includes lengthy documents in the Appendix to Appellant's Brief which are not part of the record in this appeal, namely: Affidavit for a Protection Order 51 TPO 24-774, Ex Parte Order 51 TPO 24-774, and Order Denying 51 TPO 24-774. Inclusion of these documents at the briefing state violate SDCL § 15-26A, specifically SDCL § 15-26A-56 and SDCL § 15-26A-57. Appellee objects to their inclusion and use.

credible testimony that the parties mutually consented to the terms of the stipulation.

When considering whether to enforce an oral agreement reached in mediation, the South Dakota Supreme Court has first considered whether certain evidence is guarded by confidentiality. *See generally Winegeart v. Winegeart*, 2018 S.D. 32, 910 N.W.2d 906l; *Paweltzki v. Paweltzki*, 2021 S.D. 52, 964 N.W.2d 756. If confidentiality protects the mediation communications, such evidence could not be presented to the court in order to enforce an agreement. *Winegeart*, 2018 S.D. at ¶ 9. However, if confidentiality is waived so that the court is properly presented with evidence that the parties reached a binding agreement in mediation, the court could enforce an unsigned, written agreement. *Paweltzki*, 2021 S.D. at ¶ 29-30. Thus, whether confidentiality protects communications within mediations implicates whether an unsigned agreement can be enforced.

Generally, “[m]ediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State.” *Winegeart*, 2018 S.D. at ¶ 15, 910 N.W.2d at 911 (citing SDCL 19-13A-8). However, there are exceptions to this rule.

- (a) Except as required in subsection (b), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.
- (b) *A mediator may disclose:*



- (1) *whether the mediation occurred or has terminated, whether a settlement was reached and if so the terms thereof, and attendance;*
- (2) a mediation communication as permitted under § 19-13A-6; or
- (3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) may not be considered by a court, administrative agency, or arbitrator

SDCL § 19-13A-7 (emphasis added).

The South Dakota Supreme Court has made clear that SDCL § 19-13A-7(b)(1) “allows mediators to disclose ‘whether the mediation occurred or has terminated, whether a settlement was reached and if so, the terms thereof.’” *Paweltzki*, 2021 S.D. at n. 3. So long as a mediator’s testimony falls within (b)(1), “admission of [the mediator’s] testimony [does] not violate the UMA” and does “not disclose a mediation communication [...]” *Id.*

Here, Appellee’s direct examination of Mediator Williams was limited to the points permitted by SDCL § 19-13A-7(b)(1). Williams testified that mediation occurred between Garrett and Ester, that they reached an agreement, and that the terms of their agreement were those memorialized in the Stipulation submitted to the court as Exhibit 5. This testimony was correctly considered by the circuit court in finding that the parties had reached a meeting of the minds and that the Stipulation was enforceable.

Even if Mediator William's testimony did not fit within the exception, Ester waived confidentiality and consented to Williams' testimony.<sup>7</sup> Under SDCL § 19-13A-5(b), "[a] person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under § 19-13A-4, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure." Similarly, "a privilege 'may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation.'" *Paweltzki*, 2021 S.D. at n. 3 (quoting SDCL 19-13A-5).

Indeed, the concept that confidentiality can be waived, even inadvertently, is well established jurisprudence. The South Dakota Supreme Court has said:

The owner of the privilege of preventing the disclosure of confidential communications cannot, after testifying to or about them, or to or about any substantial part of them, without claiming his privilege, invoke that privilege to prevent other parties to the communications from testifying to them. He cannot by his silence lay down the shield of his privilege, and assail another with the sword of his own testimony to the privileged communications, and, when his adversary essays to defend himself, or by the testimony of other parties or witnesses to such communications, again seize the shield of his privilege and shut out all testimony as to the confidential communications but his own. He has waived his privilege and 'such

---

<sup>7</sup> In *Winegeart*, the Supreme Court acknowledged that the confidentiality of SDCL § 19-13A-7 can be modified. *Winegeart*, 2018 S.D. at ¶15.

waiver is in no sense contrary to public policy; indeed, it is in the interest of truth and justice.’

*Schutterle v. Schutterle*, 260 N.W.2d 341, 353 (S.D. 1977) (quoting *Steen v. First National Bank*, 8 Cir., 298 F. 36, 41), superseded by statute on other grounds as recognized in *State v. Catch the Bear*, 352 N.W.2d 640, 645 (S.D. 1984).

The circuit court first heard argument on the Motion to Enforce the Mediation Agreement on December 13, 2024. SR 435-465. Appellee provided argument to the court without calling Mediator Williams to testify. SR 436-438. Ester then took the stand and testified at length about the mediation. SR 438-445. Her testimony addressed topics such as offers made by both parties, how she communicated with her attorney, documents and drafts she reviewed, who was present at the mediation and how they appeared, her consent to the terms of a final draft of the Stipulation, that she was willing to sign the agreement, that intended to sign the Stipulation until her printer malfunctioned, etc.

At the next hearing on April 14, 2025, Appellant did not object to the admission of Mediator Williams’ testimony. SR 207-208. Because Appellant chose to voluntarily testify about the mediation and failed to invoke any right to confidentiality before or during Williams’ testimony, Williams’ testimony was admission. The circuit court could properly rely on both Ester and Williams’

testimony to determine whether the parties mutually consented to an enforceable agreement.

**5. The circuit court did not error by finding that the parties mutually consented to the terms of the stipulation and agreement.**

“[W]hether the parties had a meeting of the minds is a question of fact” for the circuit court to determine.” *Paweltzki*, 2021 S.D. at ¶ 30, 964 N.W.2d at 765 (2021) (quoting *Melstad v. Kovac*, 2006 S.D. 92, ¶ 21, 723 N.W.2d 699, 707). Findings of facts are reviewed under the clearly erroneous standard. *Id.* “The question is not whether [the reviewing court] would have made the same findings the trial court did, but whether on the entire evidence, ‘[the reviewing court is] left with a definite and firm conviction that a mistake has been made.’” *Stockwell v. Stockwell*, 2010 S.D. 79, ¶ 16, 790 N.W.2d 52, 59 (quoting *In re Estate of Pringle*, 2008 S.D. 38, ¶ 18, 751 N.W.2d at 284).

An agreement reached through mediation is a settlement agreement. *Winegeart*, 2018 S.D. at ¶ 15, 910 N.W.2d at 252. Settlement agreements are “contractual in nature and subject to the same rules of construction as contracts.” *Paweltzki*, 2021 S.D. at ¶ 20 (citing *In re Estate of Neiswender*, 2003 S.D. 50, ¶ 15, 660 N.W.2d 249, 252). “Therefore, ‘[a]n agreement exists when the following elements are present: (1) the parties are capable of contracting; (2) the parties

consent to the agreement; (3) the agreement is for a lawful object; and (4) the parties have sufficient cause or consideration.” *Id.* (citing SDCL 53-1-2).

As was the case in *Paweltzki*, “the only element at issue is whether the parties consented to the purported agreement.” *Id.* at ¶ 29.

Consent of the parties to a contract must be free, mutual and communicated by each to the other. Consent is not mutual unless the parties all agree upon the same thing in the same sense. Thus, there must be mutual assent or a meeting of the minds on all essential elements or terms in order to form a binding contract.

*Id.* at ¶ 29-30 (cleaned up).

The circuit court’s decision was not clearly erroneous and is supported in the record. The circuit court listened to testimony from Ester and Mediator Williams.<sup>5</sup> SR 205-244, 435-465. Mediator Williams testified that the parties reached an agreement in mediation and the terms were memorialized in a written stipulation. SR 211-212. Williams confirmed the terms of Exhibit 5, the Stipulation, were the terms agreed to by both parties. SR 211-212, 218-219.

Mediator Williams testified that an agreement reached in mediation is not reduced to writing until the parties have agreed on the terms of the agreement. SR

---

<sup>5</sup> “On review, [the South Dakota Supreme Court] defers to the circuit court, as fact finder, to determine the credibility of witnesses and the weight to be given to their testimony.” *Hubbard v. City of Pierre*, 2010 S.D. 55, ¶ 26, 784 N.W.2d 499, 511. “[T]he credibility of the witnesses, the import to be accorded their testimony, and the weight of the evidence must be determined by the trial court, and [the Supreme Court will] give due regard to the trial court’s opportunity to observe the witnesses and examine the evidence.” *Id.* See also SDCL § 15-6-52(a).

217. When there is a written agreement, the parties have addressed all terms of the agreement, and are just fine tuning. SR 217. Three or four drafts of the agreement were circulated amongst the parties and their attorneys. SR 444. Ester was able to print those out, redline physical copies, transpose those edits into electronic communication with her attorney, and discuss those edits with her attorney. There was no testimony that the terms of the agreement changed through those drafts.

Instead, Ester testified that only typos or minor mistakes in the timeline of the parties' history were corrected in those drafts. SR 440. She did not identify a single term of the stipulation that changed throughout the drafts. There is no evidence that the property distribution, custody arrangement, child support calculation, or ground for the divorce changed despite her painstaking review with the assistance of her attorney.

When Ester received a final copy of the stipulation, she was able to view it on her computer, print it out all but her signature page, and look over it simultaneous with her attorney. SR 228-229, 44-445. She agreed to its terms, assured her attorney and Williams that she would sign the Stipulation. The mediation then ended, although Ester's attorney stayed for a while after the mediation ended. The record clearly supports Judge Brown's findings that the parties mutually consented to the terms stated in the Stipulation.

The record also supports that Ester's consent was freely given and not the product of undue influence from Mediator Williams. Ester was represented by an attorney through the mediation. She was able to discuss her concerns with her attorney, and she raised no concerns about her attorney's representation during the mediation. She requested that Mediator Williams take a direct, active approach to mediation and Williams did so. Williams testified that she did not pressure Ester or Garrett into reaching an agreement. SR 211.

She also acknowledged that she knew Williams can and would stop the mediation without reaching an agreement if the parties wanted. Neither Ester nor her attorney asked that the mediation end. Had Ester felt pressured by Mediator Williams, she could have simply clicked a button to end her zoom session. She could have even muted Williams if she did not want to listen to Williams' comments on the mediation. She did nothing.

### **Conclusion**

The circuit court did not abuse its discretion when it found that South Dakota was not an inconvenient forum. Similarly, the circuit court was not clearly erroneous when it held that the parties mutually consented to the terms of the Stipulation. Judge Brown correctly enforced the Stipulation.

Appellee respectfully requests the Court affirm the circuit court's ruling on all issues.



Respectfully submitted this 8<sup>th</sup> day of September 2025.

**BANGS, McCULLEN, BUTLER,  
FOYE & SIMMONS, L.L.P.**

By: /s/ *Olivia M. Edoff*

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oedoff@bangsmccullen.com

*ATTORNEY FOR PLAINTIFF/APPELLEE*

### **CERTIFICATE OF COMPLIANCE**

Pursuant to SDCL § 15-26A-66(b)(4), Appellee's counsel states that the foregoing brief is typed in proportionally spaced typeface in Equity A Tab 13 point. The word processor used to prepare this brief indicated that there are a total of 6,124 words in the body of the brief.

By: /s/ *Olivia M. Edoff*  
Olivia M. Edoff

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that September 8, 2025, the foregoing *Appellee's Brief* was filed electronically with the South Dakota Supreme Court and that the original was filed by mailing the same to:

**Sarah Gallagher**  
Clerk, South Dakota Supreme Court  
500 East Capitol  
Pierre, SD 57501-5070  
SCClerkBriefs@uds.state.sd.us

and a true and correct copy of *Appellee's Brief* was provided by eFileSD as follows,  
to:

**Gina Ruggieri**  
Southern Hills Law, PLLC  
8 West Mt. Rushmore Road  
Custer, SD 57730  
***ATTORNEY FOR DEFENDANT/APPELLANT***

***/s/ Olivia M. Edoff***  
Olivia M. Edoff

## APPENDIX

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STATE OF SOUTH DAKOTA )  
 ) ss  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

GARRETT ANTHONY GALLARDO,

51DIV23-000116

Plaintiff,

vs.

ESTER ELISABET GALLARDO,

Defendant.

**ORDER REGARDING  
DEFENDANT'S MOTION TO  
DISMISS AND TRANSFER  
JURISDICTION TO TEXAS**

This matter came before the Court for a hearing on December 13, 2024. For the reasons stated on the record at that hearing and in the Court's Memorandum Decision/Clarification of Oral Ruling, Defendant's Motion to Dismiss and request to transfer the case to the State of Texas is DENIED. The Court finds that it had jurisdiction to make an initial custody determination in this case, that the Court has exclusive continuing jurisdiction, and that South Dakota is not an inconvenient forum.

1/7/2025 2:41:19 PM

By the Court:

  
Hon. Matt Brown  
Circuit Court Judge

Attest:  
Fagerland, Melinda  
Clerk/Deputy



## **Seventh Judicial Circuit Court**

P.O. Box 230  
Rapid City SD 57709-0230  
(605) 394-2571

---

### **CIRCUIT JUDGES**

Robert Gusinsky, Presiding Judge  
Matthew M. Brown  
Jeffrey R. Connolly  
Joshua Hendrickson  
Heidi L. Linnegren  
Stacy Wickne  
Scott Roetzel  
Eric Kelderman

### **MAGISTRATE JUDGES**

Scott M. Bogue  
Todd J. Hyronimus  
Sarah Morrison  
Janki Sharma

### **COURT ADMINISTRATOR**

Liz Hassett

### **STAFF ATTORNEY**

Laura Hilt

January 6, 2024

Gina Ruggieri  
Southern Hills Law, PLLC  
40 N. 5<sup>th</sup> Street, Suite B  
Custer, SD 57730  
Sent via mail and email

Olivia Edoff  
Sent via email and inter-office mail

Re: RE: Gallardo v. Gallardo DIV23-116 Memorandum Decision/Clarification of Oral Ruling

Counsel,

The Court has held a hearing in this matter and in TPO24-774 on December 13, 2024. At the conclusion of the respective hearings on the matters the Court entered oral rulings on a number of issues that arose, ultimately dismissing the TPO (not granting a permanent order) and ruling on jurisdictional issues in the divorce file. The ultimate issue of whether the Court would be enforcing the unsigned (by Ms. Gallardo) stipulation "agreement" was held in abeyance for another day, which has now been set in February of 2025.

The Defendant in the Divorce case is Ms. Ester Gallardo. The testimony regarding her case was that she is currently married to Mr. Garrett Gallardo, and that the parties separated physically some time before the divorce was filed by Garrett. Ester and Lyra (the child of the parties) moved to Texas. Approximately four (4) days before Ester and Lyra (two years old as of today's date) had lived in Texas for 6 months Garret filed for divorce in Rapid City, SD. The Court used this filing date and the date Ester and Lyra moved from South Dakota to Texas to establish that South Dakota was appropriate to handle the child custody question as part of the divorce. The Court cited SDCL 26-5B-201(1) in making that initial ruling.

It should also be noted that on June 2, 2023 the Court entered an Order for Interim Parenting time, further cementing South Dakota as the forum having exclusive and continuing jurisdiction over custody issues regarding Lyra.

The Court also ruled that although Ester and Lyra continued to live in Texas since the original date of separation from Garrett, and that Garrett had continued to live in South Dakota the entire

time post-separation, that South Dakota is the appropriate forum to have decisions made regarding Lyra. Included in the issues pending in the divorce file is Plaintiff's Motion to Enforce an Unsigned Agreement filed by Garrett on September 11, 2024. The Motion requests the court rule on whether the parties have an enforceable agreement which would finalize both the property/debt division and child custody issues between them.

It should be further noted that Ester, on October 28, 2024, after attempting to file a TPO in Texas against Garrett and being told to file it in South Dakota, filed a TPO against Garrett in South Dakota which included barring Garrett from having contact with Lyra.

On December 13, 2024, in finding that South Dakota was an appropriate forum to handle the exclusive and continuing jurisdiction of Lyra, the Court cited SDCL 26-5B-202. The Court also cited two South Dakota Supreme Court cases, *Miley v. Miley*, 598 N.W.2d 228, 1999 SD 96; and *Furstenberg v. Furstenberg*, 591 N.W.2d 798, 1999 S.D. 35. Counsel for Ester Gallardo has requested the Court clarify its reliance on *Miley*, and generally clarify its rationale for finding South Dakota has exclusive and continuing jurisdiction over Lyra's custody.

The Court first notes that it has involved itself in an initial (although interim) custody determination in this file by signing the June 2, 2023 Interim Order which directly addresses Lyra's custody/visitation between the parents in this file. Three months later, after the parties had gone to mediation and had reached (or not reached, depending on whose side is arguing) a stipulation (unsigned by Ester) regarding the divorce/custody arrangement in this file, a Motion was filed to have this court determine whether an enforceable agreement had been reached. As noted earlier, Ms. Gallardo did not sign the stipulation and argues there is no agreement between the parties. The basis of Ms. Gallardo's argument is that she was being pushed into signing the agreement by the mediator, who lives and works in Rapid City, where mediation took place. The mediator is to be called at the next scheduled hearing in this matter.

The Court relied on *Miley*, to support its ruling that it had continuing jurisdiction over child custody determinations in this matter. It specifically relies on the language noting that, "the trial court was correct in its conclusion that it had continuing jurisdiction under the UCCJA since it had entered the original South Dakota custody decree and Mother, one of the parties, continues to reside here. *Miley* at ¶12. This Court did not comment further, or acknowledge the *Miley* trial court had declined its jurisdiction because the *Miley* trial court found that it was an inconvenient forum and that a court of another state was a more appropriate forum. *Miley* at ¶13. Here is where a clarification from this court is necessary.

This Court does not find that South Dakota is an inconvenient forum. Although Mother and child live and have lived in Texas for some time, father still lives in South Dakota. The parties engaged in mediation in South Dakota and had a written agreement created that, allegedly, comprised the details of how the couple would disburse their debts and assets and how they would handle the custody/visitation of Lyra. The remaining argument from the party asserting that an agreement was not reached is that the mediator took a strong hand in the matter and that Ester didn't feel comfortable in signing the final agreement. That issue is still being litigated in this Court. What has been requested from Ester Gallardo is that this Court relinquish jurisdiction to Texas so that a Texas court can rule the issue as to whether the parties reached an enforceable agreement during a South Dakota mediation. The analysis of whether an enforceable agreement was reached during a South Dakota led mediation should be decided by a court in South Dakota. This is a preliminary decision before any further discussion of child custody needs to be dealt with.



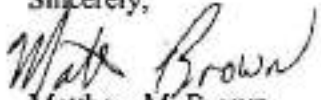
Page 3

January 6, 2025

If this Court determines an agreement has been reached via mediation, then the issues *currently* before the Court *are resolved*. The Court simply has to enforce the agreement. However, if the Court does not find an agreement is reached, then the Court may re-examine the factors found in SDCL 26-5B-207.


The Court further finds the evidence presented by Ms. Gallardo at the hearing of December 13, 2024 was insufficient for a ruling that South Dakota is an inconvenient forum. Besides hearing testimony and argument that the mother and child have lived in Texas for some time, and some ancillary evidence of domestic violence if the record in 51TPO 24-774 was considered, the remaining non-exclusive factors in SDCL 26-5B-207(3), (4), (6), (7), and (8) were not addressed by Ms. Gallardo. From the scant record that was made, there is no factual or legal basis for the Court to find South Dakota is an inconvenient forum.

Sincerely,

  
Matthew M. Brown  
Circuit Court Judge  
Seventh Judicial Circuit

FILED  
Pennington County, SD  
IN CIRCUIT COURT

JAN - 7 2025

Amber Watkins, Clerk of Courts  
By  Deputy

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

ESTER ELISABET GALLARDO,

Plaintiff,

vs.

GARRETT ANTHONY GALLARDO,

Defendant.

)  
)SS.  
)

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

FILE NO: DIV23-116

MEMORANDUM OPINION  
ON MOTION TO ENFORCE MEDIATION  
AGREEMENT

At issue before the Court is whether the parties in this action reached a binding agreement during mediation that took place on August 28, 2024. The Court heard testimony from various witnesses before this decision was issued, and finds the mediation session did result in a legally binding and enforceable agreement between the parties.

"[A]n oral settlement is a settlement." *Winegeart*, 2018 S.D. at ¶ 13. An agreement reached through mediation is a settlement agreement which "...is contractual in nature and subject to the same rules of construction as contracts." *Paweltzki*, 2021 S.D. at ¶20 (citing *In re Estate of Neiswender*, 2003 S.D. 50, ¶15, 660 N.W.2d 249, 252.) "Therefore, 'an agreement exists when the following elements are present: (1) the parties are capable of contracting; (2) the parties consent to the agreement; (3) the agreement is for a lawful object; and (4) the parties have sufficient cause or consideration.'" *Id.* (citing SDCL 53-1-2).

The only element in question in the current case is whether the parties consented to the purported agreement. At both the most recent and the original hearing it became clear to the Court that there were no material issues Ester Gallardo disagreed with and that a "meeting of the minds" had been reached between the parties at the end of mediation on August 28, 2024. At the hearing of December 13, 2024 Ester made no specific allegation as to what she did not agree with

after mediation had taken place. When pressed, her explanation was that she decided not to sign the stipulation agreement (marked as Exhibit 5 at the most recent hearing) because she felt "pressured" into signing by the mediator, Terri Williams, and didn't like the way she was treated during the mediation process. There was no indication that material concerns regarding the details of the agreement were unsatisfied. It should be noted that Ester was represented by counsel at the mediation, and although appearing via Zoom or other connection with her attorney and the mediator, there was open discussion between Ester, her counsel, and Terri Williams during the mediation process. There was no evidence from any testimony that mediation was unsuccessful, that further mediation would be necessary, or that any "loose ends" needed to be tied up at a later date.

Given the testimony of all the witnesses at both hearings, it was clear that Ester, her attorney at the time, the mediator, and Garrett Gallardo believed an agreement had been reached. The signature page of the agreement was not signed by Ester not because a meeting of the minds did not take place, but because there was a printer "issue" where Ester was located and she couldn't get the last page of the stipulation to print. But for the printer situation, this Court has no doubt the agreement would have been signed.

The fact that Ester later changed her mind does not effect the fact that a meeting of the minds had taken place, that she and her attorney expressed at mediation that an agreement had been reached, and that such agreement was immediately binding, whether she contemporaneously signed the document or not. The agreement reached at the end of a day of mediation is a binding

contractual agreement and binds both parties to its contents.

Dated this 12<sup>th</sup> day of May, 2025.

Clerk of Courts


By: 

  
Matthew M. Brown, 7<sup>th</sup> Circuit Judge

2

FILED  
Pennington County, SD  
IN CIRCUIT COURT

MAY 12 2025

Amber Watkins, Clerk of Courts  
By:  Deputy

STATE OF SOUTH DAKOTA                    )  
  )ss  
COUNTY OF PENNINGTON                )       SEVENTH JUDICIAL CIRCUIT

GARRETT ANTHONY GALLARDO,

51DIV23-000116

Plaintiff,

**VS.**

### Judgment and Decree of Divorce

ESTER ELISABET GALLARDO,

Defendant.

The above-entitled action came before the Court for consideration on the basis of the Stipulation and Agreement of the Parties pursuant to SDCL 25-4-17.3; Defendant being previously represented by Kelly Sanderson and being currently represented by Gina Ruggieri, and Plaintiff being represented by Olivia Edoff of Bangs, McCullen, Butler, Foye & Simmons, L.L.P.; and

It appearing to the Court that the Defendant herein was served with copies of the Summons, Complaint, and SD Parenting Guidelines in this action and that more than sixty (60) days have elapsed since said service; and

The Court being duly satisfied that it has jurisdiction of the parties and other subject matter of this action; and

The parties having filed herein a written Stipulation and Agreement concerning child custody, child support, spousal support, property rights, assumption of financial obligations, and waiving notice of trial; and

It appearing that the parties having agreed to a divorce based on the grounds of irreconcilable differences and that the marriage should be dissolved;

Upon all the files and records submitted and for good cause appearing, the Findings of Fact and Conclusions of Law having been expressly waived in writing by the parties hereto;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The marriage heretofore existing between the parties be, and the same hereby is, dissolved and set aside, and that the parties be, and each of them is, restored to the status, conditions and rights of single persons and that each party is hereby granted an absolute divorce from the other on the grounds of irreconcilable differences.

2. The Stipulation and Agreement dated and signed by Plaintiff on August 28, 2025, determined by this Court to be enforceable in the Court's Memorandum Opinion on Motion to Enforce Mediation Agreement dated May 12, 2025, and attached hereto, is hereby adopted and approved and by this reference made a part of this Judgment and Decree of Divorce and incorporated herein as if fully set forth herein, and the Court allowing and approving the same in all respects.

3. Parties shall submit to a child support referee for determination of child support.

4. Each party shall, at the request of the other, execute and deliver any such instruments as may be required in order to carry out the intentions and provisions of the Court's orders. In the event either party shall fail to execute deeds, titles, or other appropriate instruments of conveyance as required by the Court's orders, this Judgment and Decree shall act in lieu of such conveyance.

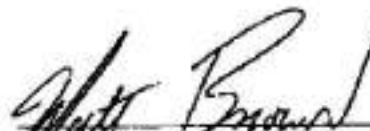
5. That the parties are awarded joint legal custody of the minor child, Lyra Gallardo, and, with regard to physical custody of the minor child, the Defendant is awarded primary physical custody subject to the Plaintiff's parenting time, consistent with the terms of the parties Stipulation and Agreement.

6. Defendant shall have her maiden name restored to Rodriguez.

6/6/2025 3:51:31 PM

Attest:  
Fagerland, Melinda  
Clerk/Deputy



  
The Honorable Matt Brown  
Seventh Judicial Circuit  
Circuit Court Judge

STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

GARRETT ANTHONY GALLARDO,  
Plaintiff,  
vs.  
ESTER ELISABET GALLARDO,  
Defendant.

51DIV23-000116

**MOTION TO ENFORCE  
MEDIATION AGREEMENT AND  
ENTRY OF JUDGMENT AND  
DECREE OF DIVORCE**

COMES NOW the above named a Plaintiff, buying through the undersigned attorney, and moves this Court for entry of a Judgment and Decree of Divorce, under the terms and conditions set forth in a stipulation and agreement of the parties as agreed upon during formal mediation in the above-entitled matter. In support of this motion, attached hereto and incorporated by reference herein is the Affidavit of Rick L. Ramstad.

Dated this 11<sup>th</sup> day of September, 2024.

**BANGS, McCULLEN, BUTLER,  
FOYE & SIMMONS, LLP**



Rick L. Ramstad  
6340 S. Western Ave., Suite 160  
Sioux Falls, SD 57108  
T: 605-339-6800  
[rramstad@bangsmccullen.com](mailto:rramstad@bangsmccullen.com)  
Attorney for Plaintiff

*Certificate of Service*

The undersigned attorney, hereby certifies that on the above date a true and correct copy of the foregoing document was served upon the Defendant by mailing a true and correct copy, by first class mail to:

Ester Elisabet Gallardo  
7913 Harwood Rd. Build 16, Apt 85 F  
North Richland Hills, TX 76180

**BANGS, McCULLEN, BUTLER,  
FOYE & SIMMONS, LLP**



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[rramstad@bangsmccullen.com](mailto:rramstad@bangsmccullen.com)  
Attorney for Plaintiff



STATE OF SOUTH DAKOTA )  
 )ss.  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
SEVENTH JUDICIAL DISTRICT

Garrett Anthony Gallardo,  
Plaintiff,

vs.

Ester Elizabet Gallardo,  
Defendant.

)  
)  
)  
)  
)  
)  
)

51DIV23-116

RESPONSE AND OBJECTION TO  
ENFORCE AN UNSIGNED AGREEMENT

Comes now, Defendant, by and through counsel and hereby objects to the Motion to Enforce the Mediation Agreement, she is not bound to the agreement, pursuant to SDCL SDCL 25-4-61.

That statute provides: The mediator shall reduce to writing any agreement of the parties. The mediator shall inform the parties of their right to review the agreement with counsel before they sign the agreement. After the agreement is signed by the parties, the mediator shall present the agreement to the court. The agreement is not binding upon the parties until approved by order of the court. Blase v. Brewer, SD 7, 692 N.W. 2d 785 (2005).

This agreement was never signed by the defendant, and never approved by the Court. Further, the agreement is not in the best interest of the minor child, due to the violent history of the plaintiff.

Lastly, the defendant asks that the matter be dismissed and that the Court relinquish jurisdiction to the State of Texas, as mother and child have resided in Texas for the last two years.

Wherefore, defendant prays that the Court:

1. Enter a protection order on behalf of her and the minor child.
2. Deny the motion to enforce the unsigned agreement.
3. Relinquish the case to the State of Texas.
4. For an award of attorney fees in the divorce file.

Dated this 15<sup>th</sup> day of November 2024.

SOUTHERN HILLS LAW, PLLC

/s/ Gina Ruggieri  
Gina Ruggieri  
Attorney for Defendant  
40 N. 5<sup>th</sup> St  
Custer, SD 57735

#### CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the above and foregoing Motion for Continuance was filed electronically with the Circuit Court using the Odyssey File and Serve System which sent notification to all parties of interest participating in the SD Courts Electronic Filing System on this 15<sup>th</sup> day of November, 2024. Also sent to Plaintiff's Attorney at the following email address:

Olivia Edoff  
[oedoff@bangsmccullen.com](mailto:oedoff@bangsmccullen.com)

/s/ Gina Ruggieri  
Gina Ruggieri

STATE OF SOUTH DAKOTA     )  
  )ss  
COUNTY OF PENNINGTON    )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

---

ESTER ELISABET GALLARDO,

51DIV23-000116

Plaintiff,  
vs.

GARRETT ANTHONY GALLARDO,  
  
Defendant.

**BENCH BRIEF REGARDING MOTION  
TO ENFORCE MEDIATION  
AGREEMENT AND ENTRY OF  
JUDGMENT AND DECREE OF DIVORCE**

---

COMES NOW, the Plaintiff, Garrett Gallardo, by and through the undersigned attorney, who provides the Court with the following authority regarding Plaintiff's Motion to Enforce Mediation Agreement.

The parties reached an enforceable agreement in mediation. "[A]n oral settlement is a settlement." *Winegeart*, 2018 S.D. at ¶ 13. See also *Harvieux v. Progressive N. Ins. Co.*, 2018 S.D. 52, 915 N.W.2d 697 ("an attorney may orally bind a client to a settlement"); *Melstad v. Kovac*, 2006 S.D. 92, ¶ 10, 723 N.W.2d 699, 703 (recognizing the validity of an oral settlement agreement between the attorney for the plaintiff and the insurer in the context of a personal injury claim).

An agreement reached through mediation is a settlement agreement, which "... is contractual in nature and subject to the same rules of construction as contracts." *Paweltzki*, 2021 S.D. at ¶ 20 (citing *In re Estate of Neiswender*, 2003 S.D. 50, ¶ 15, 660 N.W.2d 249, 252). "Therefore, '[a]n agreement exists when the following elements are present: (1) the parties are capable of contracting; (2) the parties consent to the agreement; (3) the agreement is for a lawful object; and (4) the parties have sufficient cause or consideration." *Id.* (citing SDCL 53-1-2).

There is no dispute that the Plaintiff and Defendant are both capable of contracting or that the agreement is for a lawful object (*i.e.* resolving a divorce and custody matter). In the agreement at issue, both parties are to receive certain property and parenting time, so there is sufficient consideration to form a contract. As was the case in *Paweltzki*, “the only element at issue is whether the parties consented to the purported agreement.” *Id.*

“Consent of the parties to a contract must be free, mutual and communicated by each to the other.” *Id.* ¶ 16 (citing SDCL 53-3-1). “Consent is not mutual unless the parties all agree upon the same thing in the same sense.” SDCL 53-3-3. Thus, “[t]here must be mutual assent or a meeting of the minds on all essential elements or terms in order to form a binding contract.” *Read v. McKennan Hosp.*, 2000 S.D. 66, ¶ 23, 610 N.W.2d 782, 786 (citation omitted).

Whether consent is mutual “is determined by considering the parties’ words and actions[,]” see *Estate of Neiswender*, 2003 S.D. 50, ¶ 20, 660 N.W.2d at 253, and when in dispute, “[w]hether the parties had a meeting of the minds is a question of fact” for the circuit court to determine, see *Melstad v. Kovac*, 2006 S.D. 92, ¶ 21, 723 N.W.2d 699, 707. We therefore review the circuit court’s findings of fact under the clearly erroneous standard of review. *Id.*; *Estate of Neiswender*, 2003 S.D. 50, ¶ 13, 660 N.W.2d at 252.

*Id.* at ¶ 29-30.

The record indicates that the parties mutually consented to all material terms of the agreement. The mediation took place on August 28, 2024. The parties reached an agreement on all material terms, and the mediation ended. At 7:12:19 PM CST on August 28, 2024, Defendant’s counsel sent a proposed Stipulation and Agreement to Plaintiff’s attorney, Rick Ramstad, and mediator, Terri Williams. Affidavit of Rick L. Ramstad, Exhibits 2 and 3. Plaintiff reviewed, signed, and returned the Stipulation and Agreement to Defendant at 8:37 AM on August 29, 2024. Affidavit of Rick L. Ramstad, Exhibits 4 and 5. The Stipulation and Agreement addressed legal and physical custody, child support, grounds for divorce, property and debt distribution, spousal support, relocations, jurisdiction, etc. Clearly, the Stipulation and

Agreement sent by Defendant and accepted by Plaintiff contained all material terms for a divorce and custody action.

One week later, on September 4, 2024, Plaintiff was informed that Defendant refused to sign the Stipulation and Agreement. Defendant's counsel withdrew. Plaintiff's Motion to Enforce Mediation Agreement and Entry of Judgment and Decree of Divorce was filed on September 11, 2024. A Notice of Hearing on the Motion was filed on October 10, 2024, setting the hearing on said Motion for October 25, 2024. Attorney Ruggieri filed her Notice of Appearance on October 21, 2024. Defendant then filed a Petition for *Ex Parte* Temporary Protection Order on October 24, 2024. The effect of the TPO was to circumvent Plaintiff's visitation rights under the Court's interim custody order, entered on June 2, 2024. Indeed, Plaintiff has been unable to exercise visitation over the last month.

Defendant's efforts to avoid enforcement of the Stipulation and Agreement do not circumvent the fact that Defendant consented to the Stipulation and Agreement and entered into a contractual settlement in August 2024. Plaintiff now asks this Court to enforce the Stipulation and Agreement and enter a Judgment and Decree of Divorce consistent with the terms of the Stipulation and Agreement.

Dated this 15<sup>th</sup> day of November, 2024.

**BANGS, McCULLEN, BUTLER,  
FOYE & SIMMONS, L.L.P.**

By: /s/ *Olivia M. Edoff*  
Olivia M. Edoff  
Rick L. Ramstad  
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P.O. Box 2670  
Rapid City, SD 57709-2670  
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[rramstad@bangsmccullen.com](mailto:rramstad@bangsmccullen.com)  
*ATTORNEYS FOR PLAINTIFF*

**CERTIFICATE OF SERVICE**

I certify that on November 15, 2024, I served copies of this document upon each of the listed people by the following means:

|                          |                  |                                     |                      |
|--------------------------|------------------|-------------------------------------|----------------------|
| <input type="checkbox"/> | First Class Mail | <input type="checkbox"/>            | Overnight Mail       |
| <input type="checkbox"/> | Hand Delivery    | <input type="checkbox"/>            | Facsimile            |
| <input type="checkbox"/> | Electronic Mail  | <input checked="" type="checkbox"/> | Odyssey File & Serve |

**Gina Ruggieri, Esq.**  
[Gina.southernhillslaw@gmail.com](mailto:Gina.southernhillslaw@gmail.com)  
*ATTORNEY FOR DEFENDANT*

/s/ *Olivia M. Edoff*  
Olivia M. Edoff

STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

GARRETT ANTHONY GALLARDO,  
Plaintiff,  
vs.  
ESTER ELISABET GALLARDO,  
Defendant.

51DIV23-116

**BENCH BRIEF REGARDING  
ADMISSIBILITY OF MEDIATOR'S  
TESTIMONY**

COMES NOW the above-named Plaintiff, by and through the undersigned attorney, provides the Court with the following authority regarding admissibility of mediator's testimony that agreement was reached and terms of agreement.

The Uniform Mediation Act ("UMA") does not prohibit Terri Williams from disclosing whether Plaintiff and Defendant reached an agreement in mediation, nor does the UMA prohibit Mediator Williams from disclosing the terms of the agreement.

Generally, "[m]ediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State." *Winegeart v. Winegeart*, 2018 S.D. 32, ¶ 15, 910 N.W.2d 906, 911 (citing SDCL 19-13A-8). There are exceptions to this rule.

(a) Except as required in subsection (b), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) **A mediator may disclose:**

- (1) **whether the mediation occurred or has terminated, whether a settlement was reached and if so the terms thereof, and attendance;**
- (2) a mediation communication as permitted under § 19-13A-6; or



(3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) may not be considered by a court, administrative agency, or arbitrator

SDCL § 19-13A-7 (emphasis added).

In *Paweltzki v. Paweltzki*, the South Dakota Supreme Court confirmed the above language is an exception to the general rule of mediations being confidential. 2021 S.D. 52, ¶16, 964 N.W.2d 756, 764. In that case, the mediator was correctly permitted to testify at the trial court regarding whether an agreement was reaching in mediation and what the terms of that agreement was. *Id.* at ¶16. The Supreme Court held, “[the mediator] did not disclose a mediation communication as the term is defined in SDCL 19-13A-2(2). His testimony fit within the parameters of SDCL § 19-13A-7(b)(1), which allows mediators to disclose ‘whether the mediation occurred or has terminated, whether a settlement was reached and if so, the terms thereof[.]’” *Id.* at n. 3 (emphasis added).<sup>1</sup>

It is worth noting that, even if SDCL § 19-13A-7 did not apply, Mediator Williams should be allowed to testify, because Defendant has waived any confidential protections. Under SDCL § 19-13A-5(b), “[a] person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is **precluded from asserting a privilege** under § 19-13A-4, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.”

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<sup>1</sup> It is worth noting that this appears to be a deviation from the Court’s discussion in *Winegart*. In that case, the court discussed that “SDCL 19-13A-7(b)(1) should not be read to permit a mediator to disclose the terms of a purported oral settlement reached during mediation,” but the case ultimately turned on the scope of the confidentiality created by the parties’ own agreement, not the statutory exception. *Winegart*, 2018 S.D. at ¶ 15.

Indeed, the concept that confidentiality of communications can be waived, even inadvertently, is well established jurisprudence. The South Dakota Supreme Court has said:

The owner of the privilege of preventing the disclosure of confidential communications cannot, after testifying to or about them, or to or about any substantial part of them, without claiming his privilege, invoke that privilege to prevent other parties to the communications from testifying to them. He cannot by his silence lay down the shield of his privilege, and assail another with the sword of his own testimony to the privileged communications, and, when his adversary essays to defend himself, or by the testimony of other parties or witnesses to such communications, again seize the shield of his privilege and shut out all testimony as to the confidential communications but his own. He has waived his privilege and 'such waiver is in no sense contrary to public policy; indeed, it is in the interest of truth and justice.'<sup>2</sup>

*Schutterle v. Schutterle*, 260 N.W.2d 341, 353 (S.D. 1977) (quoting *Steen v. First National Bank*, 8 Cir., 298 F. 36, 41), superseded by statute on other grounds as recognized in *State v. Catch the Bear*, 352 N.W.2d 640, 645 (S.D. 1984).<sup>2</sup> In that case, the Court discussed attorney client privilege, but the concept is applicable here.

At the last hearing, Defendant testified extensively about what occurred during the mediation. She discussed a substantial amount of what occurred at the mediation, including but not limited to:

- Offers made by both parties;
- How notes were made to her attorney;
- Documents she reviewed;
- Who was present and how they appeared;
- What documents she reviewed.
- Her allegation that Mediator Williams pressured or unduly influenced her to agree to terms.
- Printing errors.
- That she gave a verbal yes to the last offer.
- That she was willing to sign the document at the cessation of mediation.

---

<sup>2</sup> The Court's discussion of the scope of privilege was nullified when the attorney client privilege statute was later amended, but the Court's discussion of waiver has never been overturned.

This factual circumstance fits squarely within the SDCL § 19-13A-5(b) and the common law waiver rules. She admitted, under oath, that she accepted the terms of the agreement, that she gave her verbal consent to the stipulation, and that she agreed to sign the stipulation. Her only complaint against the enforcement of the agreement is that her consent was the result of undue influence by Mediator Williams. Only Defendant, her attorney, and Mediator Williams have factual knowledge that goes to whether Defendant was unduly prejudiced by the mediation process. Plaintiff will be prejudiced by not being able to call Mediator Williams to testify.

Therefore, this Court can consider testimony from Mediator Terri Williams regarding whether Plaintiff and Defendant reached an agreement in the August 2024 mediation, the terms of that agreement, and whether Defendant was unduly influenced to enter the agreement.

Dated this 17th day of December, 2024.

**BANGS, McCULLEN, BUTLER,  
FOYE & SIMMONS, L.L.P.**

By: /s/ Olivia M. Edoff

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*ATTORNEYS FOR PLAINTIFF*

## Certificate of Service

I certify that, on December 17, 2024, I served copies of this document upon each of the listed people by the following means:

- |   |   |
|---|---|
| <input type="checkbox"/> First Class Mail | <input checked="" type="checkbox"/> Odyssey |
| <input type="checkbox"/> Hand Delivery    | <input type="checkbox"/> Overnight Mail     |
| <input type="checkbox"/> Electronic Mail  | <input type="checkbox"/> ECF System         |

**Gina Ruggieri, Esq.**  
SOUTHERN HILLS LAW PLLC  
40 N 5<sup>th</sup> St. #B  
Custer, SD 57730  
605-673-2503  
Gina.southernhillslaw@gmail.com

/s/ Olivia M. Edoff  
Olivia M. Edoff

Please file - exhibit 5  
entered April 14,  
2025

STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF PENNINGTON )

IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT

GARRETT ANTHONY GALLARDO,

Plaintiff,

v.

ESTER ELISABET GALLARDO,

Defendant.

51DIV23-000116

**STIPULATION  
AND  
AGREEMENT**

This Stipulation and Agreement is made and entered by and between the above-named Plaintiff, Garrett Anthony Gallardo (hereafter also referred to as "Husband" or "Father"), and Defendant, Ester Elisabet Gallardo (hereafter also referred to as "Wife" or "Mother"), on this 28<sup>th</sup> day of August 2024.

**WHEREAS**, the parties hereto were married on the 24<sup>th</sup> day of February, 2020, in Minot, North Dakota, and ever since have been and now are husband and wife; and

**WHEREAS**, the Defendant was served with the Summons, Complaint and a copy of the South Dakota Parenting Guidelines on the 2<sup>nd</sup> day of May, 2023, as evidenced by the Affidavit of Service filed with the Clerk of Courts; and

**WHEREAS**, the Summons and Complaint were filed with the Clerk of Courts office on the 7<sup>th</sup> day of April, 2024; and

**WHEREAS**, more than 60 days have elapsed following service of the Summons and Complaint; and

FILED  
Pennington County, SD  
IN CIRCUIT COURT

APR 15 2025

Amber Watkins, Clerk of Courts  
By ME Deputy



**WHEREAS**, by reason of circumstances and conditions between the parties, they are now separated and living apart, and the above-entitled action for dissolution of the marriage is now pending in the Circuit Court, Seventh Judicial Circuit, County of Pennington; and

**WHEREAS**, Plaintiff and Defendant contend that it is the purpose of this Stipulation and Agreement is to resolve issues concerning child custody and parenting time; to establish child support; and to make a complete and final settlement of settle all rights and claims that each may have against the other, to provide fairly and adequately for their maintenance, to memorialize the separation of the parties and their agreement to finalize the division of property owned by them or either of them, and all other rights of property otherwise growing out of the marriage relationship that either of them now has or may hereafter have or claim to have in any property of every kind, nature and description, real or personal, now owned or which may hereafter be acquired by either of them, and acknowledgment by the parties that this agreement is subject to the approval of the Court, and that if the Court finds grounds for and makes a Decree of Divorce for either party the terms of this agreement, or any part thereof, may be incorporated in the Judgment and Decree of Divorce, as the Court shall deem necessary; and

**WHEREAS**, the Plaintiff is represented by Rick L. Ramstad, Attorney at Law, of Sioux Falls, South Dakota. The Defendant is represented by Kelly Sanderson, Attorney at Law, of Sturgis, South Dakota.

NOW THEREFORE, in consideration of the promises herein contained, and mutual benefits to be derived therefrom, it is hereby stipulated and agreed by and between the parties hereto, subject to the approval of this Court as follows:

1. **Purpose.** The sole purpose of this Stipulation and Agreement is to establish adjust and settle any and all controversies and/or issues of custody, child support, division of property, assumption of financial obligations, and spousal support, and nothing herein shall be construed as an agreement that a divorce will be obtained, or that either party is assisting the other in obtaining a divorce. The terms of this agreement may be incorporated by reference in any Judgment and Decree of Divorce that may be entered.

2. **Jurisdiction.** The parties hereby acknowledge that the Defendant resided in Tarrant County, Texas at the time this divorce action was commenced but that she resided in Pennington County, South Dakota for all times relevant to this proceeding. The parties further acknowledge no other person has claimed a right to custody and/or parenting time in this or any other state and there is no other action concerning custody and/or parenting time of the minor child in this or any other state.

A. **Custody and Parenting Time.** There has been one (1) child born as issue of this marriage between Wife and Husband, who is a minor child at the time of this divorce, namely: Lyra Serafina Gallardo, DOB: 6/21/22.

B. **Custody:** The parties agree that the parties shall share joint legal custody, and mother shall have primary physical custody of the minor child, subject to the father's parenting time. Further, the parties agree Mother shall be vested



with the ability to make decisions concerning Lyra's educational, religious and medical needs upon conferring with Father.

**C. Parenting Time:**

- a. Father shall be able to exercise parenting time with Lyra for seven (7) consecutive overnights four times a year. Father may allocate this parenting time in a manner which is consistent with his military obligations and accrued leave. Mother shall accommodate such a parenting schedule upon Father providing at least three (3) weeks' notice.
- b. During the two (2) remaining visits in 2024, Father's parenting time shall be supervised and occur in the state of Texas in the Dallas/Fort Worth area.
- c. Father shall obtain an Anger Management Evaluation and share the recommendations of the evaluator with Mother. Further, shall provide documentation establishing compliance with the recommendations provided by the evaluator.
- d. Two (2) of the four (4) annual visits shall occur in Texas and the other two (2) shall occur at locations designated by Father.
- e. The noncustodial parent shall be allowed to have video calls with Lyra every Monday through Thursday at 6:00 p.m. MT and every Saturday morning at 9:00 a.m. MT. The calls during the workweek shall be no more than one-half hour and the weekend calls may be up to one hour. During the video calls both parents

shall be fully clothed and shall be in a quiet area of their home with no other people present.

- f. The parents agree to adhere to the general rules of the South Dakota Parenting Guidelines, unless stated to the contrary herein.
- g. The parents agree a parenting schedule shall be re-evaluated as Lyra is scheduled to commence kindergarten. Either parent may commence the reevaluation by filing a motion with the Court.

**D. Travel.** Both parents shall share in the travel costs of Lyra's travel for Father's parenting time. Specifically, if Lyra is traveling by air, the parents will share in her airplane ticket. If the parents are meeting via a half-way point, they shall share in fuel expenses, utilizing the IRS mileage rate.

**E. Our Family Wizard.** The parents agree to utilize the Our Family Wizard application, including the plan for video conferencing. Each party shall be responsible for the costs of their own account.

**F. Holidays.** The parents have identified the following celebrations as holidays to celebrate with Lyra, in addition to regularly scheduled parenting time:

| HOLIDAY   | Even Years | Odd Years |
|---|------------|-----------|
| Easter- Thursday before Good Friday through Friday morning of the week following Easter Sunday. | Mother     | Father    |
| Thanksgiving- Wednesday before Thanksgiving through Thursday following Thanksgiving             | Mother     | Father    |

|  |        |        |
|--|--------|--------|
| Christmas – December 22 and conclude December 29 | Father | Mother |
|--|--------|--------|

The parents agree to coordinate a schedule wherein they will share the celebration of Lyra's birthday together.

In the event Father is deployed, missed parenting time shall be made up during the six (6) months following his return. Should the parenting time not be made up within the six (6) months then it shall be considered waived.

G. **Relocation**. Pursuant to SDCL § 25-4A-17, if Mother intends to change her principal residence, she shall provide reasonable written notice by certified mail or admission of service to the other. Reasonable notice is notice that is given at least forty-five (45) days before relocation or a shorter period if reasonable under the specific facts giving rise to the relocation. Proof of the notice shall be filed with the court of record unless notice is waived by the court.

No notice need be provided pursuant to this section if:

1. The relocation results in the child moving closer to the non-moving parent; or
2. The relocation is within the boundaries of the child's current school district; or
3. There is an existing valid protection order in favor of the child or the moving parent against the non-moving parent unless the non-moving parent has a valid order for parenting time established either in the protection order file or another custody proceeding subsequent to the entry of the protection order; or
3. Within the preceding twelve months, the non-relocating parent has been convicted of violation of a protection order, criminal assault, child abuse, or other domestic violence and either the child or the relocating parent was the victim of the crime or violation unless the non-moving parent has a valid order for parenting time established subsequent to the conviction.

The notice required in this section shall contain the following:

1. The address and telephone number, if known, of the new residence;
2. The purpose for relocating;
3. Why the relocation is in the best interest of the child; and
4. The relocating party's proposed visitation plan for the non-relocating parent upon relocation.

At the request of the non-relocating parent, made within thirty (30) days of the notice of relocation, the court shall hold a hearing on relocation. If no request for hearing is made within thirty (30) days of notice, the relocation is presumed to be consented to by the non-relocating parent.

**H. Cooperation of Parents.** The parties recognize that the dissolution of their marriage is an emotionally difficult experience not only for them, but particularly also for the minor child. As a result, the parties will do their utmost to maintain open, complete, candid, and positive communication between themselves regarding the child's health, education, and well-being.

In addition, the parties shall strive to maintain complete, regular, and ongoing communication between the child and the other parent. The minor child shall be free to communicate with either parent at the minor child's discretion within reason, and neither parent will do anything to inhibit or prevent such communication.

The parties shall keep each other advised of the minor child's health and progress in school and also keep each other advised of the extracurricular activities

in which the child may be involved or desire to be involved in through the Our Family Wizard App. Neither parent is required to notify the other parent of appointments, activities, conferences, grade reports, extracurricular activities schedules or other similar information if the same is provided or accessible by the other party.

Father shall continue to have access to Family Album app which Mother shall update regularly throughout the month.

Both parties will also at all times keep the other party advised of their current residence and work addresses and telephone numbers.

Further, the parties recognize that upon entry of the Decree of Divorce, their marriage relationship will be dissolved, and each shall have the right to live separate and apart, one from the other thereafter; but such decree shall not dissolve their rights and obligations as parents and at all times hereafter they will so conduct themselves in recognition of their ongoing parental obligations. The parties desire that this Stipulation and Agreement be so interpreted as to foster the parent-child relationship of both parties whenever and however possible.

The child may call, text, email, or use similar technology to communicate with either parent, at reasonable hours and with reasonable frequency. Neither parent shall read, censor, record or monitor such communications unless specifically authorized by the Court.

**I. Sanctions.** Pursuant to SDCL § 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 makeup time with the child equal to the time missed with the child, due to the offenders' 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.

**4. Child Support.** The parents recognize child support shall be determined per the South Dakota Child Support Schedule.

5. **Insurance.** The minor child is currently covered under Tricare, due to Father's status as an active-duty member of the United States Air Force. If the minor child should no longer be eligible for this coverage the parties will work together to determine what options are available through their respective employers and obtain health insurance coverage for the minor child. The parties shall insure that they have provided the other party updated insurance cards for the minor child, or copies thereof. All healthcare-related expenses for the minor child which are not covered by insurance, including medical, dermatology, dental, orthodontic, optometry, counseling, or pharmaceutical expenses, including deductibles, shall be shared by the parties based on their pro rata shares of income. Mother shall be responsible for the first Two Hundred Fifty Dollars (\$250) of out-of-pocket expenses each year, the remaining amount shall be split, based upon respective pro rata shares.

6. **Tax Dependency Exemption.** Commencing with tax year 2024 and continuing thereafter, Mother shall be allowed to claim the minor child on an annual basis the income tax exemption.

7. **Parties' Insurance.** Upon entry of Judgment and Decree of Divorce, Wife and Husband shall each be responsible for the purchase and maintenance of their own respective insurance policies including, but not limited to, health, dental, vision, life insurance and automobile insurance policies.

8. **Real Property.** The parties do not own any real property.

9. **Personal Property.** Wife shall retain as her sole and separate property all her personal clothing and effects, and all household goods, gifts from her family and such other items of personal property as are in her possession.



Further wife may retrieve the items of personal property found in Exhibit A within sixty (60) days of Notice of Entry of Judgment and Decree of Divorce, excluding the items stricken as contested. The parties agree such contested items of personal property may be further addressed by the Court. Any items not retrieved in those sixty (60) days will be considered abandoned and Husband shall be able to dispose of them. Likewise, the Husband shall retain as his sole and separate property all personal clothing and effects, and all household goods, appliances, gifts from his family, and such other items of personal property as are in his possession.

Any encumbrance(s) relating to, accompanying, or attached to an item of personal property shall be the sole responsibility of the party retaining such property and that party shall save and hold harmless the other therefrom. The parties shall sign the title or other documents necessary to effectuate the transfer of title to any item of personal property.

10. **Motor Vehicles.** Wife shall be awarded the Subaru Forrester in her possession as her sole and separate property, free and clear of any claim by the Husband. Husband shall be awarded the Toyota 4-Runner in his possession as his sole and separate property, free and clear of any claim by the Wife. Any encumbrance(s) relating to, accompanying, or attached to a motor vehicle shall be the sole responsibility of the party retaining such property and that party shall save, indemnify, and hold harmless the other therefrom. Any encumbrance against a motor vehicle that is in the name of both parties shall be refinanced within thirty (30) days after the entry and filing of the Judgment and Decree of Divorce by the party retaining the vehicle so as to remove the other party from such

encumbrance(s). The parties shall sign the title or other documents necessary to effectuate the transfer of title within thirty (30) days from the entry and filing of the Judgment and Decree of Divorce.

11. **Life Insurance.** The parties shall each retain any life insurance policy for which he or she is the named insured as his or her own sole and separate property.

12. **Retirement and Investment Accounts.** Except as otherwise provided herein, Wife and Husband shall each retain his or her own retirement benefits, pension funds, stock purchase plans, savings plans, and profit-sharing from his or her respective employments as well as any other investment account for which he or she is the titled owner of as his or her own sole and separate property, free and clear of any claim by the other.

13. **Checking and Savings Accounts.** The parties will each retain the funds in their individual checking and/or savings accounts, for each is own exclusive ownership, use, and benefit.

14. **Debts.** The parties hereby agree that each party shall be solely responsible for his or her own debts which appear in his or her own respective names which were incurred prior to or during the marriage or which are incurred from and after the date of the entry and filing of the Judgment and Decree of Divorce, except as otherwise specifically stated herein.

15. **Spousal Support.** Each party waives any claim for alimony from the other, either past, present, or in the future.

16. **Attorney Fees.** The parties agree that each will be responsible for their own attorney's fees, costs, and sales tax incurred as a direct result of this divorce action.

17. **Name Change.** That pursuant to SDCL 25-4-47, the Defendant's name prior to marriage was Ester Elisabet Rodriguez. The parties agree that said name shall be restored to her upon entry of the Judgment and Decree of divorce herein.

18. **Tax Consequences.** The parties acknowledge that they have been separately advised by their respective counsel that there may be certain consequences pertaining to this Stipulation and Agreement, that neither attorney has furnished tax advice with respect to this Stipulation and Agreement, that each party has been directed and advised to obtain independent tax advice from a qualified tax accountant or tax counselor prior to signing this Stipulation and Agreement and that they have had the opportunity to do so.

19. **Property Intentionally or Inadvertently Left Out.** It is understood and agreed by and between the parties that this Stipulation and Agreement applies to all of the property known to the parties at this time, and that any property or property rights not contemplated or known at the time of this Stipulation and Agreement that have been deliberately withheld from the knowledge of the other, and/or not accounted for at the time of this Agreement, shall be considered to be the common property of the parties hereto, and shall be divided equally between the parties, but any and all property or property rights acquired subsequent to the date of this Stipulation and Agreement shall be the separate

property of the party acquiring the same and neither party shall have any right or claim in and to said subsequently acquired property.

**20. Waiver of Estates.** Except as otherwise set forth in this Stipulation and Agreement, Wife and Husband hereby mutually release and waive any and all right, title and interest accruing by operation of law or under any statute now or hereafter in force, or otherwise, to participate in the separate estates and property of each other, whether such property be real or personal or wheresoever located, and whether acquired before or subsequent to their marriage, and whether acquired before or subsequent to the date hereof, including any right of election to take against any Last Will and Testament of each other, and any right to the administration of the estate of each other, except only as provided by Will or Codicil executed after the date of this Stipulation and Agreement.

**21. Execution of Documents.** Each of the parties agrees to execute or have properly executed in legal form any documents of title, certificates, or other instruments necessary to affect any of the provisions of this Agreement.

**22. Grounds for Divorce.** The parties hereto agree and consent that the above-entitled Court may find that there exist irreconcilable differences causing the irremediable breakdown of the marriage as the grounds for granting the anticipated Judgment and Decree of Divorce herein.

**23. Interference.** The parties shall hereafter live separate and apart. Each party shall be free from interference, authority, or control, direct or indirect, of the other party. Each party may, for his or her separate benefit, engage in any employment, business, or profession he or she may select. The parties shall not

molest or interfere with each other in any aspect of their personal or professional lives.

24. **Representation of the Parties.** Wife and Husband have been advised of their discovery rights and the foregoing terms of this Stipulation and Agreement are based upon the representation of the parties to each other. Each party states they have made a disclosure of their assets, liabilities, and overall financial positions, and each acknowledges that this Agreement is being executed in reliance on the validity of said information without formal discovery.

Both parties have read the foregoing Stipulation and Agreement and have signed the same with full knowledge of its contents and each acknowledges receipt of a copy of said Agreement.

25. **Conflict of Laws.** This Stipulation and Agreement shall be construed in accordance with the substantive laws of the State of South Dakota.

26. **Waiver of Notice.** The parties hereto agree that Findings of Fact and Conclusions of Law may be waived, and the respondent hereby waives notice of any trial or hearing brought on the claims set forth in Plaintiff's Complaint and Husband's Counterclaim.


27. **Fairness of the Agreement.** This Agreement is deemed to be fair by both parties and not the result of any fraud, duress or undue influence exercised by either party upon the other or by any person or persons upon either,

28. **Partial Invalidity.** If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions of this Agreement shall nevertheless continue in full force and effect.

29. **Modification and Waiver.** A modification or waiver of any provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as waiver of any subsequent default of the same or similar nature.

30. **Entire Agreement.** Wife and Husband agree that this Stipulation and Agreement constitutes the entire agreement of the parties and is a full and complete property settlement between the parties and no other or further agreement, oral or otherwise, constitutes part of the settlement.

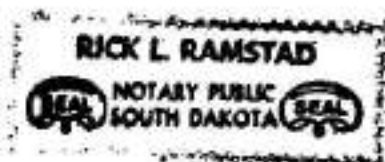
Dated this 28 day of August, 2024.

  
\_\_\_\_\_  
Garrett Anthony Gallardo, Plaintiff

State of South Dakota     )  
  ss.  
County of Pennington     )

On this 28 day of August, 2024, before me, the undersigned Notary Public, personally appeared Garrett Anthony Gallardo, known to me or satisfactorily proved to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and seal.



(SEAL)

  
\_\_\_\_\_  
Notary Public – South Dakota  
My Commission Expires: 11/2/2027

\_\_\_\_\_  
Ester Elisabet Gallardo, Defendant.

State of South Dakota        )  
  SS  
County of Pennington        )

On this \_\_\_\_ day of August, 2024, before me, the undersigned Notary Public, personally appeared Ester Elisabet Gallardo, known to me or satisfactorily proved to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and seal.

\_\_\_\_\_  
Notary Public – South Dakota  
My Commission Expires: \_\_\_\_\_



## Personal Property List

### Ester Gallardo

#### Clothes

Shirts, pants, shorts, underwear, bras, socks,  
dresses, swimsuits, jackets, etc.

#### Shoes

Boots, sneakers, flip flops, heels, etc.

#### Blankets

Pregnancy pillow and case

#### P- Touch

#### ~~Genius~~

Headset, controllers, case, comfort headset,  
regular headset, foam cover, glasses cover

#### Xbox

Xbox games

Xbox controllers

Gaming headphones

Kinect

DVDs

CDs

Arts and crafts items

#### ~~Cat supplies~~

Food, treats, supplements, litter boxes, litter  
scoop, cat tree, clothes, toys, etc.

Boxes in basement that contain miscellaneous items

#### ~~Board games~~

#### ~~Hygiene products~~

Ramen bowls

Chopsticks

Small white air fryer

Yellow Jacket target

Bow

Arrows

Rose crystal pyramid

Printer

Printer Ink

#### ~~Knives~~

Dragon short sword and sheath

Backpack

Hiking fanny pack and water bottles

Plant seeds

Fabric planter

Miscellaneous items "to be sold" on left side of garage

Dresser, envelopes, flask

Exhibit

1

Gallardo v. Gallardo  
Stipulation and Agreement  
51 DIV 23-060116  
Exhibit 1 - page 1

Type-C to aux converter  
Black power strip  
Books

**Lyra Gallardo**

Stroller  
Bottle sterilizer  
~~Gray blanket~~  
Dreft laundry detergent  
Bottles  
Bottle brushes  
Infant Tylenol  
Pacifiers  
~~Grace swing~~  
Fetus monitor  
Tummy time play mat  
Bathtub  
Faucet cover  
Horse rocker  
Walker  
~~Crib~~  
~~Mattress~~  
Stuffed animals  
Stool  
Big stuffed animals  
Miscellaneous baby items in crib shelves  
Box of baby items in closet  
Hangers  
Clothes  
Shoes  
Socks, mittens, bows  
Bookshelves  
Books  
Baby toys  
Toy chest  
~~Wall paintings/ decorations for nursery~~

**15-26A-56. Correction or modification of the record.**

If anything material to either party is omitted from the record, is misstated therein, or is improper, the parties by stipulation, or the trial court, before the record is transmitted to the Supreme Court, or the Supreme Court, on motion by a party or on its own initiative, may direct the record be corrected and if necessary require a supplemental record be approved and transmitted.

**Source:** Supreme Court Rule 79-1, Rule 10 (6); SDCL Supp, § 15-26A-38.

**15-26A-57. Time for transmission of record--Temporary delay--Documents of unusual bulk or weight and physical exhibits--Motion for intermediate orders.**

When the briefs have been served and filed in the Supreme Court, or the time for filing briefs has expired, the clerk of the Supreme Court shall so notify the clerk of the trial court in writing, and the clerk of the trial court shall then forthwith transmit the record on appeal to the clerk of the Supreme Court. Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the Supreme Court. The parties, however, by written stipulation, or the Supreme Court acting through its clerk upon motion of a party may order, for cause shown, a temporary delay in the transmission of the settled record not to exceed thirty days. Such stipulation by the parties shall be subject to review and modification by the Supreme Court upon its own motion and order.

All documents which are, in the determination of the clerk of the trial court, of unusual bulk or weight, all physical exhibits other than documents which are not of unusual bulk or weight, and such other parts of the record as the Supreme Court may designate by rule or order, or the parties may designate by written stipulation, shall not be transmitted by the clerk of the trial court as part of the settled record unless he is otherwise directed to do so in writing by the party or the clerk of the Supreme Court. A party so directing must make advanced arrangement with the clerks of the trial court and the Supreme Court for the cost, transportation, and receipt of exhibits of unusual bulk or weight and those others which he directs to be transmitted.

If prior to the time the record is transmitted, a party desires to make in the Supreme Court a motion for dismissal, for relief, for a stay pending appeal, for additional security on bond on appeal, or on a supersedeas bond, or for any intermediate order, the clerk of the trial court at the request of any party shall transmit to the Supreme Court such parts of the original record as any party shall designate.

**Source:** Supreme Court Rule 79-1, Rule 11 (1); SDCL Supp, § 15-26A-39; Supreme Court Rule 82-11.

**19-13A-5. Waiver and preclusion of privilege.**

(a) A privilege under § 19-13A-4 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

- (1) in the case of the privilege of a mediator, it is expressly waived by the mediator; and
- (2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under § 19-13A-4, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under § 19-13A-4.

**Source:** SL 2008, ch 286 (Supreme Court Rule 07-07), eff. Jan. 1, 2008.

**19-13A-7. Prohibited mediator reports.**

(a) Except as required in subsection (b), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

- (1) whether the mediation occurred or has terminated, whether a settlement was reached and if so the terms thereof, and attendance;
- (2) a mediation communication as permitted under § 19-13A-6; or
- (3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) may not be considered by a court, administrative agency, or arbitrator.

**Source:** SL 2008, ch 286 (Supreme Court Rule 07-07), eff. Jan. 1, 2008.

**26-5B-207. Inconvenient forum.**

(a) A court of this state which has jurisdiction under this chapter to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) The length of time the child has resided outside this state;
- (3) The distance between the court in this state and the court in the state that would assume jurisdiction;
- (4) The relative financial circumstances of the parties;
- (5) Any agreement of the parties as to which state should assume jurisdiction;
- (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this chapter if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

**Source:** SL 2005, ch 137, § 19.



IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

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31119

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GARRETT ANTHONY GALLARDO,

*Plaintiff and Appellee,*

v.

ESTER ELIZABET GALLARDO,

*Defendant and Appellant.*

---

APPEAL FROM THE CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT  
PENNINGTON COUNTY, SOUTH DAKOTA

---

THE HONORABLE MATT BROWN  
Circuit Court Judge

---

**APPELLANT'S REPLY BRIEF**

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ATTORNEY FOR DEFENDANT  
AND APPELLANT

ATTORNEYS FOR PLAINTIFF  
AND APPELLEE

---

Notice of Appeal filed June 18, 2025

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IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

---

31119

---

GARRETT ANTHONY GALLARDO,

*Plaintiff and Appellee,*

v.

ESTER ELIZABET GALLARDO,

*Defendant and Appellant.*

## **INTRODUCTION**

This is an appeal of two issues, one concerning jurisdiction, which we believe should be allowed to proceed in Texas, and the other concerning the fact that Appellant submits she never agreed to the Stipulation, which is signed only by Mr. Gallardo.

Undersigned counsel feels it is necessary to correct an error in the prior brief, as counsel, Ms. Edoff, correctly pointed out that the child lived in South Dakota from date of birth, June 21, 2022 to October 11, 2022, which is more than three months. The Appellant's filed brief states the child lived less than three months in South Dakota, and that is an error that should be corrected.

Appellant submits that based on the inconvenient forum statute and the UCCJEA, South Dakota is an inconvenient forum for the child custody matter.

Ms. Gallardo submits that the unsigned agreement should not be enforceable against her because there was never a meeting of the minds and she never reviewed her final Stipulation with her prior attorney. She should have had the opportunity to review the signed document that Mr. Gallardo sent over by email, with her prior counsel.

## ARGUMENT

- I. **South Dakota is not the proper forum for this divorce and custody case because the child has not had contact with this South Dakota since October of 2022, and Ms. Gallardo was a victim of domestic abuse. The court abused its discretion by keeping the case in South Dakota and not making required findings under SDCL § 26-5b-207.**

“Under the Uniform Child Custody Jurisdiction Act (UCCJA), if a court finds it is an inconvenient forum for a custody determination, the court may decline jurisdiction, when another state provides a more appropriate forum”. *Lustig v. Lustig*, 1997 SD 24, 560 NW2d 239 (S.D. 1996).

The UCCJEA was designed to produce “jurisdictional certitude” for the benefit of the child. “Deferring a child custody dispute to another forum can assure that the best interests of the child are not subordinated to the parents' interest in obtaining the best terms of the divorce.” *Lustig*, 1997 SD 24, ¶ 14, 560 N.W.2d at 245.

The UCCJEA encourages custody to be decided where the best evidence regarding the child exists and, in the jurisdiction where the child has the closest connections. *Lustig v. Lustig*, 1997 SD 24, ¶8, 560 NW2d 23.

Appellant’s brief submits that undersigned counsel did not present evidence of domestic violence at the motions hearing on December 13, 2025. That is not correct. The Court was on record in both the TPO and the Div file on December 13, 2024. The December transcript states “that we were on the record in both 51TPO 24-774 and 51Div 23-116 file”. SR 352. Thus, counsel believed that the hearings, the TPO and the divorce

file, were being conducted simultaneously and that the evidence from the testimony being presented, including domestic violence (which is relevant to jurisdiction) was being considered by the court. Simply put, we had the TPO file, and the custody and the divorce file all going at once, and we were in the courtroom for several hours. The transcript reflects the same. The court should have made findings on domestic abuse and did not under SDCL § 26-5b-207. This is an error.

In hindsight, counsel should have asked the Court to take judicial notice of the TPO when transitioning to the jurisdiction argument. Counsel simply believed the Court would consider all of the evidence regarding the domestic violence it had just heard for many hours.

Counsel submits that factor one (domestic abuse) of SDCL § 26-5b-207, has been presented, but the Court made no findings on it in the memorandum decision when it made some findings in the TPO file, finding that Mr. Gallardo admitted to domestic abuse prior to 2021. SR 152.

The Court could have made a finding on the distance between Texas and South Dakota but did not. The Court knew there was no agreement between the parties, due to the motions filed, but did not make a finding as required under SDCL 26-5b-207.

**A. The Court should not have considered the unsolved contract issue when it issued its memorandum decision, because it is not a factor to be considered under the UCCJEA or SDCL § 26-5b-207.**



The Court's decision in the jurisdictional decision memorandum which reads as follows:

"If this Court determines an agreement has been reached via mediation, then the issues currently before the Court are resolved. The Court simply has to enforce the agreement." SR 146.

Appellant submits that is an incorrect reading of the law regarding the jurisdiction on the case, because no provision in SDCL § 26-5b-207, or the UCCJEA, dictates that a dispute over contract enforcement would become a part of a decision on whether the Court should continue to exercise its jurisdiction. Simply put, the Court added another factor to SDCL § 26-5b-207, by stating in essence, that because we had this additional contract issue hanging out there, the Court needed to resolve that first, and then we would circle back to the inconvenient forum issue.

It is obvious to the appellant that the Court relied heavily on the fact that we had an unresolved contract issue for the Court to hear, and that is one of the reasons the Court denied the motion and argument to release jurisdiction. The Court abused its discretion here, because it relied on something it should not have in deciding to decline Ms. Gallardos' request to release the case, so she could file in Texas and thus, abused its discretion.

**B. Additional factors were submitted to the court through the December 13<sup>th</sup> hearing transcript and the court failed to make findings on those relevant factors, further, the nature and location of the evidence weigh in Mrs. Gallardo's favor.**

The Appellee, Mr. Gallardo, submits that Factor 6, location/nature of the evidence, should weigh in his favor. We disagree. The transcript reflects that the interactions between Mr. Gallardo and his child occurred outside of South Dakota after October 21, 2022. The following is an exchange between Mr. Gallardo and his attorney:

Q: The videos on those exhibits are true and accurate depictions of interactions with you and Lyra?

A: They are, yes.

Q: Do you know approximately the time frame?

A: Yes. So if they're during my visitations, it's after '22. So, it would be first visit was February of 2023, the following visit was June of 2023, and then I believe I had one in September of 2023 prior to my deployment as well as a visitation after deployment, I want to say I believe that was May of 2024.

Q: Lyra was born in 2022. So, all of these would have taken place after June of 2022, correct?

A: Correct.

When asked about his favorite memory with the child, Mr. Gallardo points out something in June of 2024, which would have occurred in either California or Texas, where the following exchange took place:

Q: Garrett, I will just ask you to maybe pick your favorite interaction with Lyra and describe that to the Court.

A: Yes. So, it's a little difficult to choose, but there's one particular where she reaches up, and this is during my visitation in 2024 for her birthday, June.

“So, I discovered during my very first visitation that the hotel room is not going to work. And since then, we’ve been getting Airbnb’s if the visitation takes place in Texas. If it doesn’t, it takes place in my parents’ house in California.”

From Mr. Gallardo’s own testimony, none of the evidence regarding his interaction with his child exists in South Dakota. The child was 3 months old and some days, when she left South Dakota and ever since October 21, 2022, she has lived in Texas. Further, Mr. Gallardo told the Court that after October of 2022, he saw his child in hotel rooms in Anaheim, California, or in Texas.

Mr. Gallardo’s evidence comes from his videos of his child, taken while deployed from Iraq. Moreover, on page 39 of the December transcript, Mr. Gallardo made it clear that in the future he intends to see his child in California (where his parents live) or as per the Stipulation, in Texas, further removing the possibility of future evidence in South Dakota. SR 352.

Finally, Appellee states that the case should remain here in South Dakota, due to the history of domestic abuse. However, the last relevant evidence that Mr. Gallardo discussed (where he admitted kicking a log into Ms. Gallardo’s knee) occurred in Yellowstone Park, in Montana, not in South Dakota. Id.

There is little reason to argue that because of the domestic violence history, we should litigate in South Dakota. The Court already denied the TPO, and advised the parties that history was long ago. Now that

evidence is memorialized by pictures, a transcript, text messages, and videos already presented to the Court and admitted as exhibits. This could easily be presented to a Texas Court.

In sum, the factors under SDCL § 26-5b-207 support declining jurisdiction because there is a severe history of domestic violence; the child has been located in Texas since October of 2022, and any contact, pictures, videos and other exhibits from Father would be either recorded from Iraq, or taken during his visits in Anaheim, California or Dallas, Texas. The only thing father has is physical presence in this state and that is not enough.

The mother and child would submit evidence from the child's last several years in Texas. Factor 6, nature and location of evidence, was presented to the Court throughout the transcript in file TPO 23-774 and DIV 23-116, but the Circuit Court failed to make findings. For this reason, the Court erred. That evidence weighs in Ms. Gallardo's favor.

The Court has abused its discretion not only by not considering the evidence in both files it was on the record in, but by keeping this case in the State of South Dakota, when it is not proper. Further, the Court never considered the best interest of the child when deciding the motion to decline jurisdiction and made no findings on the child's best interests under the required *Fuerstenberg* factors.

Lastly, the Court could have kept jurisdiction over only the divorce and allowed the custody case to be stayed, pending the Appellant filing in Texas under SDCL § 26-5b-207(d). It did not even consider that.

**II. The Court abused its discretion by finding there was a meeting of the minds on all essential elements of the Stipulation and allowing the Stipulation to be adopted when Ester never had the opportunity to review her Stipulation with her counsel.**

"There must be mutual assent or a meeting of the minds on all essential elements or terms in order to form a binding contract." Read v. McKennan Hosp., 2000 S.D. 66, ¶ 23, 610 N.W.2d 782, 786.

Appellant resubmits her arguments on all other issues and respectfully submits that Ester Gallardo did not orally agree to the Stipulation and never had the chance to review the signed Stipulation with her prior attorney.

When undersigned counsel asked Mediator Williams if Ester agreed the following exchange took place:

Q: How do you know she agreed?

A: Because she said as much.

Q: What did she say?

A: I can't tell you specifically what she said. I can tell you that at the end of the day there was an agreement.

Ester further testified that she had concerns after receiving her Stipulation via email the next day and testified to the following:

"During that day, after I came back from work that afternoon, I read over the Stipulation. After reading over the Stipulation, I had a bunch of concerns and questions that I sent to Kelly through e-mail as well. And then it ended up, because we couldn't find time on the 29th, the 30th was -- she sent me an e-mail and was like, Hey, they're putting the

pressure on. Are you going to sign this or not? And so, with that I was like, after looking over everything and after asking you all the questions and getting your answers back, I do not agree to sign this Stipulation.”

Under SDCL § 25-4-61, Ms. Gallardo has a right to review her Stipulation with her prior attorney, Kelli Sanderson, before signing. After reviewing the document Mr. Gallardo had signed, Ester refused to sign the document presented to her by email from her lawyer.

Ms. Gallardo should not be stuck with an agreement she did not freely consent to or have the ability to review with counsel. The Court abused its discretion by finding the unsigned agreement enforceable against her, and the decision should be reversed.

### **CONCLUSION**

There is a long history of domestic violence. The only connection to the State of South Dakota is a father who is here because he is in the military and stationed on an air force base. To keep this case in this State defies logic and is contrary to the child’s best interest.

For all of the arguments cited herein, Ms. Gallardo respectfully asks this Court to find that the Circuit Court erred when it continued to exercise jurisdiction in South Dakota.

Moreover, Ms. Gallardo submits that she never agreed to any settlement agreement because she was never able to fully read the agreement, word for word with counsel. She needed time to review the document with her attorney and should have been afforded that right.

Because South Dakota is not the proper forum for this case and because there was never a meeting of the minds between the parties, both decisions of the Circuit Court, regarding keeping jurisdiction in South Dakota, and finding the settlement agreement enforceable should be reversed.

Dated this 2nd day of October, 2025.

Respectfully submitted,

**GINA RUGGIERI**  
**SOUTHERN HILLS LAW, PLLC**

/s/ Gina Ruggieri  
Gina Ruggieri  
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#### **CERTIFICATE OF COMPLIANCE**

I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellant's brief contains 2710 words.

I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 2nd day of October, 2025.

/s/ Gina Ruggieri  
Gina Ruggieri  
Attorney for the Appellant



### **CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that a true and correct copy of the above and foregoing Appellate Brief was filed electronically with the Supreme Court using the Odyssey File and Serve System which sent notification to all parties of interest participating in the South Dakota Courts Electronic Filing System on this 2nd day of October, 2025.

/s/ Gina Ruggieri  
Gina Ruggieri