

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 30910

JOSEPH D. LEFORS,

Plaintiff and Appellee,

vs.

KRISTA M. LEFORS,

Defendant and Appellant.

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

THE HONORABLE JOHN FITZGERALD
CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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Notice of Appeal filed November 22, 2024

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2. Whether the trial court erred in finding that the 15-year-old daughter's refusal to eat dinner with her father was a willful violation by Krista.	
3. Whether the trial court abused its discretion in assessing \$14,000 in sanctions against Krista due to the 15-year-old daughter's refusal to speak to her father during parenting time and without considering Krista's financial situation as a single mom with two children, one of which has special needs.	
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PRELIMINARY STATEMENT

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

JURISDICTIONAL STATEMENT

Krista respectfully appeals the Honorable John Fitzgerald’s Order for Sanctions Following August 12, 2024 and September 17, 2024 hearing filed on October 24, 2024. SR 4656. Notice of entry was filed on October 29, 2024. SR 4662. Krista timely served the Notice of Appeal on November 22, 2024. SR 4673. The Order for Sanctions Following August 12, 2024 and September 17, 2024 is a final order of the Circuit Court and is appealable as a matter of right, pursuant to SDCL § 15-26A-3 and SDCL § 15-26A-4.

LEGAL ISSUES ON APPEAL

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

Most relevant cases and statutes:

Fuerstenberg v. Fuerstenberg, 1999 S.D. 35, ¶ 30, 591 N.W.2d 798.

Price v. Price, 2000 S.D. 64, ¶ 37, 611 N.W.2d 425.

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

- 2. Whether the trial court erred in finding that the 15-year-old daughter's refusal to eat dinner with her father was a willful violation by Krista.**

Most relevant cases and statutes:

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

Hiller v. Hiller, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548.

- 3. Whether the trial court abused its discretion in assessing \$14,000 in sanctions against Krista due to the 15-year-old daughter's refusal to speak to her father during parenting time and further without considering Krista's financial situation as a single mom with two children, one of which has special needs.**

Most relevant cases and statutes:

SDCL § 25-4A-5(3)

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

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

STATEMENT OF THE CASE

A divorce case was initiated by Joseph in January of 2019. SR 7. This is the third appeal following the Court's decisions in *LeFors v. LeFors*, 2023 S.D. 24, 991 N.W.2d 675 and *LeFors v. LeFors*, No. 30544, 2024 S.D. LEXIS 113 (Sep. 3, 2024). Krista counterclaimed, alleging a claim for Separate Maintenance. SR 174. A two-day trial was held by the Circuit Court on June 17 and 18, 2020. On April 8, 2021, Judge Kevin Krull signed Findings of Fact and Conclusions of Law and issued a Decree of Separate Maintenance. SR 813 and 832. A Notice of Appeal was filed on May 27, 2021. SR 910. This Court entered its decision affirming in part and reversing and remanding in part. See

LeFors, 991 N.W.2d 675. A remanded trial was held on September 28 and 29, 2023. A Judgment and Decree of Divorce was issued on October 27, 2023. SR 3374. A Notice of Appeal related to the Judgment and Decree of Divorce was filed on November 21, 2023. SR 3406. This Court entered its decision affirming in part and reversing in part on September 3, 2024. The Circuit Court entered an Order Discontinuing Family Therapy and Scheduling Father's Parenting Time on February 26, 2024. SR 3974. A Motion Hearing was held on May 10, 2024, to address Joseph's request to find Krista in contempt and to order sanctions. The Circuit Court entered its Findings of Fact and Conclusions of Law and Order for Sanctions, Attorneys Fees and Parenting Time on June 17, 2024. SR 4309. Notice of Entry was filed on June 18, 2024. SR 4313. Motion Hearings were held on August 12, 2024 and September 17, 2024 to address Joseph's request for additional sanctions against Krista. The Circuit Court entered its Order for Sanctions Following August 12, 2024 and September 17, 2024 Hearing on October 24, 2024. SR 4656. Krista timely filed a Notice of Appeal on November 22, 2024. SR 4673.

STATEMENT OF THE FACTS

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

This matter was initially brought by Joseph who filed for divorce in January of 2019. SR 7. The issues of custody and parenting time have been heavily litigated throughout this matter. Judge Kevin Krull initially presided over this matter and granted a

Decree of Separate Maintenance. SR 966. Judge Krull granted the Decree of Separate Maintenance on the grounds of extreme cruelty as defined by SDCL § 25-4-4 based off of Joseph's abuse. SR 813, pg. 3. Judge Krull designated Krista as the primary custodian of the children and ordered shared legal custody. *Id.* at 4. Judge Krull found that the children have "resisted visits with their father". *Id.* He also found that both children represented that "their mother has encouraged them to go with their father, but they fear for their safety due to past physical abuse and alcohol abuse". *Id.* at 5. The past history of physical abuse and alcohol abuse was found to constitute harmful parental misconduct by Joseph. *Id.* at 5-6. Following the issuance of the Decree of Separate Maintenance, Joseph appealed. SR 966. The Supreme Court Opinion in *LeFors v. LeFors*, *supra* was issued on May 24, 2023. SR 2618.

Throughout these proceedings Joseph has claimed that parental alienation has been occurring. While Judge Krull was presiding over this matter he entered Findings of Fact and Conclusions of Law and Order where he specifically found and concluded that there was insufficient evidence to find alienation. SR 2593. He further found that the relationship between the children and Joseph was damaged almost to the point of no repair. SR 2593. Judge John Fitzgerald took over this matter while the first appeal was pending.

Following receipt of the Supreme Court Opinion, Judge Fitzgerald entered a Scheduling Order for Remanded Trial. SR 2669. The remanded trial was held on September 28 and 29, 2023. SR 3374. A Judgment and Decree of Divorce was issued on October 27, 2023. SR 3374. The Court granted Krista a divorce on the grounds of extreme cruelty as defined by SDCL § 25-4-4. *Id.* Custody and parenting time were not

litigated at the divorce trial. A Notice of Appeal related to the Judgment and Decree of Divorce was filed on November 21, 2023. SR 3406. This Court entered its decision affirming in part and reversing in part on September 3, 2024.

A hearing was held on February 6, 2024, to address family counseling and Joseph's parenting time. The Court spoke in camera with both children. See App. 010-049, Transcript of In Camera Proceeding with Both Children, February 6, 2024. While in camera Kyden told Judge Fitzgerald that "I just don't want to see him because of the things he's has done to me" *Id.* at 029 referring to Joseph. Kyden went on to outline the abuse he endured by Joseph, "He would grab me by the back of my neck and he would force me to the ground. He would then yell at me and call me names" *Id.* at 031. Kaelyn similarly stated that Joseph had abused her, "Because he abused me and he's with my aunt." going on to tell the Court that "I don't want to meet with him. I don't want anything to do with him." *Id.* at 032. Joseph is remarried to Krista's brother's ex-wife. Judge Fitzgerald asked Kaelyn about forgiving Joseph for his past actions and she stated that she was not able to forgive him because of the abuse. See *Id.* at 033. Judge Fitzgerald asked Kaelyn if she is afraid of Joseph. See *Id.* at 035. Kaelyn states that she is "because he abused us." *Id.* Judge Fitzgerald went on to ask Kaelyn if she would feel safe at a public place with Joseph such as Olive Garden; Kaelyn responded that she would not feel safe. See *Id.* at 036. Judge Fitzgerald then asks Kaelyn, "Well, where would you feel the most comfortable and the most secure to meet with your dad, Joe?" Kaelyn responded "Nowhere". *Id.* at 040. Judge Fitzgerald later asked Kaelyn, "So what would you like me to do as the judge in this case? Kaelyn?" to which Kaelyn responded, "I don't want anything to do with Joe so I don't want visitation or anything with him." *Id.* at 043.

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

Joseph filed an Affidavit on April 18, 2024, requesting that Krista be sanctioned for failing to encourage Kaelyn enough surrounding Joseph's parenting time. SR 4151. Krista responded to Joseph's affidavit with her own affidavits outlining all of her attempts to encourage Kaelyn to speak to Joseph. SR 4162 and 4170. During this time, Krista would drop Kaelyn off at the designated restaurant as ordered and would leave the area and Kaelyn would then refuse to speak to her father or share a meal with him. SR 4170 pg. 2. Following the hearing, Judge Fitzgerald entered a Findings of Fact and Conclusions of Law and Order for Sanctions, Attorney's Fees and Parenting Time. SR 4309. Judge Fitzgerald found that although Krista was taking Kaelyn to the restaurants each week that she was not doing enough to encourage the relationship between Kaelyn and Joseph. *Id.* He then sanctioned Krista with a fine for each of the parenting times totaling \$2,000 and \$2,000 in repayment of Joseph's attorney's fees. *Id.* Krista timely

appealed this Order which is currently pending before this Court in Supreme Court Appeal No. 30766.

Motion Hearings to address additional sanctions were held on August 12, 2024 and September 17, 2024 again requesting that Krista be sanctioned because Kaelyn was unwilling to interact with Joseph during the set parenting times. SR 4656. The August 12, 2024 hearing began by addressing the withdrawal of Krista's previous attorney Ms. Watson due to her retirement. App. 004. The Circuit then took up the issue of the Motion requesting additional sanctions filed by Joseph. *Id.* During this hearing, Krista appeared pro se. Opposing Counsel questioned Krista about visitation and asked Krista "Is it your position that you have no control over whether your daughter goes or does not go to visitations" and Krista responded "She goes to visitation. I drop her off and I walk her inside and I know she's in there, but I have no control when I leave. I am not there." *Id.* at 10. Krista went on to testify that the minor child is always walking toward Joseph before Krista leaves and then she leaves the area as required by the Order. *Id.* The Court addressed sanctions from the August 12th hearing at the September 17th hearing and found that Krista would be required to participate in either counseling and/or parenting educational classes. App. 110. The Court further reserved its ruling related to sanctions until positions were submitted by both Counsel. *Id.* at 111. The Circuit Court then entered its formal Order for Sanctions Following August 12, 2024 and September 17, 2024 Hearing on October 24, 2024 where \$12,000 in sanctions for the time period of May 14-August 7 and \$2,500 for the time period of August 7-September 17. SR 4656. Krista timely filed a Notice of Appeal on November 22, 2024. SR 4673.

STANDARD OF REVIEW

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

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

ARGUMENT

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

South Dakota law recognizes that adolescents who are of a sufficient age and who can intelligently state a preference may be given consideration by the trial court of their preference in determining their custody and visitation schedule. See SDCL § 25-4-45. "It is especially important to give attention to the needs and wishes of children either

approaching or in adolescence.” *Fuerstenberg v. Fuerstenberg*, 1999 S.D. 35, ¶ 30, 591 N.W.2d 798, 809. “A child’s parental preference deserves some consideration.” *Price v. Price*, 2000 S.D. 64, ¶ 37, 611 N.W.2d 425, 434. “In most circumstances, it will be in the best interests of children that they receive the love, affection, training, and companionship of their noncustodial parent. This is not true, however, where the evidence establishes that exercise of visitation will be harmful to the welfare of the children; in this event, the right of the noncustodial parent to visit with his children can be limited, or, under extreme circumstances, prohibited altogether. *Weber v. Weber*, 529 N.W.2d 190, 191 (S.D. 1995).

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

In this case, Kaelyn has expressed to Judge Fitzgerald her direct concerns with exercising parenting time with Joseph very clearly in the in-camera interview that took place. Kaelyn has also expressed the same to her counselor, Melanie Torno. Both Judge Fitzgerald and Ms. Torno have discussed Kaelyn’s intelligence and ability to clearly communicate with them. The Circuit Court’s Order ignore Kaelyn’s concerns completely and instead places the burden on Krista to get Kaelyn to act in a specific way without giving her any direction on how to accomplish this. Krista cannot control Kaelyn after

Kaelyn leaves her care. Kaelyn has very clearly stated her preferences and her concerns for exercising parenting time with Joseph and they have been completely disregarded.

Kaelyn's actions during parenting time are consistent with her concerns and preferences that she has voiced to Judge Fitzgerald. The Circuit Court has completely failed to make any findings related to Kaelyn's preferences and has failed to recognize that this situation is out of Krista's control. Further, the Circuit Court has failed to establish how it is in the best interests of Kaelyn to continue having parenting time with someone who has been found to be abusive. Krista was granted a divorce based off of extreme cruelty. The children witnessed Joseph's actions towards Krista. The children lived through how Joseph treated them.

Most concerning is that Judge Fitzgerald met again in chambers with Kaelyn on August 12, 2024 and refused to make a record of that meeting. On the record, Judge Fitzgerald, stated:

Yeah, and I don't want to talk to her and her just tell me that it's of her own free will and accord that she's not going to go see her dad because that's kind of what happened the last time, and I'm really reluctant to record our conversation, I don't think it's necessary. It's in no one's best interests for me to talk to the child and then have a record made the could potentially be used one way or the other. I'm not going to keep a record of it, and I'll try to keep it brief. And again, you know, the expectation shouldn't be that she's just going to tell me everything's wonderful but I'm not going to go meet with dad, because that's unacceptable and I think—the last time we had court on July 18th, I looked up into the records, and I thought we were dealing with the issues from the July 3rd affidavit and so I kind of let it be known how I viewed the evidence and the law, and now I'm left with a situation where it doesn't sound like anything has worked since then either.” App 044.

It is extremely troubling that the Court was specifically concerned with having this recorded because it would essentially go against the Court's ruling which places the blame for this situation on Krista. The lack of findings related to why the Court's ruling is in the best interests of the child is a grievous error. Above all else the best interest

standard must be upheld and in this case the focus has shifted from the child's best interests to what Joseph would like to see occur. The Circuit Court's decision to sanction Krista for Kaelyn's actions is in error.

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

The Circuit Court has erred in finding that Kaelyn's refusal to speak to Joseph constitutes a willful violation by Krista. SDCL § 25-4A-5 allows for sanctions "for the express purpose of punish[ing] the offender[.] Therefore, a circuit court's findings relating to necessity are sufficient so long as they adequately support the determination that the offending party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree[.] *Hiller v. Hiller*, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548, 556.

Here the Circuit Court made findings that "the daughter is an independent-minded and bright young lady." APP 117. Where "the daughter does not have a relationship with her Father." *Id.* Further finding, "that despite being a teenager and Mother's claim that she cannot control what her daughter does, Mother continues to not do enough to encourage her to have a relationship with her Father". *Id.* The Circuit Court failed to consider the steps that Krista has taken to try to better foster this relationship. At the Motion Hearing held on May 10, 2024, Krista testified extensively about the steps that she has taken to encourage this relationship. Krista continues to have the minor child attend regular counseling to address the relationship between Father and child and nothing has worked. Krista has taken the minor child to each visit as required by the

Court Order what happens when she drops Kaelyn off is outside of her control. Each visit has occurred.

At the Status Hearing held on September 17, 2024, Krista testified about how she had changed tactics at the dinner visits where she actually accompanied the minor child into Olive Garden and sat down and got a table for all three of them after the minor child stated that she was going to run. App. 058. After sitting down at the table with the minor child, Joseph refused to follow them from the hostess stand and instead remained in the lobby throughout the duration of the visit. App. 060. Krista made attempt via text to get him to join them. *Id.* At the next supper visit, Krista again accompanied the child to Culvers and had her sit down and eat an ice cream, again neither Kaelyn nor Joseph spoke a word to each other. App. 061. At the next Culvers visit, Krista tried to facilitate the visit to no avail. App. 065. Again, Joseph made zero effort to actually speak to Kaelyn. *Id.* Krista also testified about the phone calls between Kaelyn and Joseph. App. 074-076. These phone calls all occurred but were unsuccessful. Neither Kaelyn nor Joseph ever spoke to each other. *Id.* The Circuit Court has erred in finding Kaelyn's refusal to actively participate in each visit to be within Krista's control. This is a teenager who has been deeply hurt by her Father and continues to experience disappointment and trauma related to these visits. Krista should not be sanctioned for Kaelyn's actions during these visits.

- III. The Circuit Court erred by sanctioning Krista \$14,000 for the minor child's actions and further erred by not considering Krista's financial situation as a single parent caring for two children, one of which has special needs.**

The plain language of the SDCL § 25-4A-5(3) reads “To require the offender to pay a civil penalty of not more than the sum of one thousand dollars;”. A trial court may include “any sanction the court deems appropriate to the facts and circumstances of the case.” *Metzger v. Metzger*, 2021 S.D. 23, 958 N.W.2d 715, 718. “While SDCL § 25-4A-5 allows for the modification of custody as a sanction for the willful violation of a custody order, this remedy does not supplant the traditional best interests of the child standard that applies in custody disputes involving parents. Rather, the best interests standard remains preeminent, and the court shall remain fixed upon it.” *Jensen v. Horton*, 2 N.W.3d 20 (S.D. 2024).

Here, the Circuit Court has erred by sanctioning Krista a sum greater than one thousand dollars. The Circuit Court has failed to keep the minor child’s best interests at the forefront of this case. No consideration was given for how this sanction would impact the minor child and Krista’s ability to care for the minor child and the elder child who Krista supports solely due to his special needs. The Court must consider reasonableness of sanctions while keeping the children’s best interests at the forefront of every decision. The Circuit Court made no findings and therefore there is no basis for determining the reasonableness of this sanction. The award of \$500 per visit is excessive and will negatively impact both the minor and adult child who are predominantly supported by Krista.

CONCLUSION

The Circuit Court has erred in finding Krista in contempt for the actions of Kaelyn. Krista has clearly complied with the requirements of the Court Order in this matter. Krista has ensured that Kaelyn is at each supper visit for one hour and has left the vicinity of the restaurants. Krista has done everything that she can to encourage the

relationship between Joseph and Kaelyn. At this point, Joseph must take responsibility for his lack of a relationship with Kaelyn. He is solely responsible for repairing the relationship with his daughter. The evidence did not substantiate that Krista had the ability to make Kaelyn eat dinner with Joseph. Kaelyn is a very strong-willed intelligent teenager who has on several occasions made it very clear how she feels about parenting time with Joseph. The decision to continue to force parenting time with Joseph is not in the best interests of Kaelyn. The sanctions that were ordered are excessive and will negatively impact the children in this case. Krista respectfully requests that this Court reverse the Order of the Circuit Court and vacate the award for sanctions and remand this matter so that an order may be issued that is consistent with the best interests of the minor child.

Dated this 18th day of February, 2025.

Respectfully submitted,

SANDERSON LAW

/s/ Kelly J. Sanderson
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WAIVER OF ORAL ARGUMENT

Krista waives oral argument on this Appeal.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of February, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via

Odyssey Electronic Filing System, and further certifies that the foregoing document was also served via Odyssey Electronic Filing System and mailed via U.S. Mail, postage prepaid thereon to:

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

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

SANDERSON LAW

/s/ Kelly J. Sanderson
Kelly J. Sanderson

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point font. This brief is 14 pages in length, not including the Appendix. The word processor used to prepare this brief indicates there are 3,829 words in the body of this brief.

SANDERSON LAW

/s/ Kelly J. Sanderson
Kelly J. Sanderson

APPENDIX

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STATE OF SOUTH DAKOTA)
)
 COUNTY OF MEADE)

IN CIRCUIT COURT
 FOURTH JUDICIAL CIRCUIT

JOSEPH D. LEFORS,
 Plaintiff,

vs.

KRISTA M. LEFORS,
 Defendant.

Motions Hearing
 46DIV19-8

BEFORE: **THE HONORABLE JOHN FITZGERALD**
 Circuit Court Judge
 Sturgis, South Dakota
 August 12, 2024 at 3:00 p.m.

APPEARANCES:

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

For the Defendant: Krista LeFors, Pro Se
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I N D E X

WITNESS:

PAGE NO.

KRISTA LEFORS

Direct Examination - By Ms. Smith

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JOSEPH LEFORS

Direct Examination - By Ms. Smith

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Redirect Examination - By Ms. Smith

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Recross Examination - By Ms. LeFors

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EXHIBITS: None.

1 (WHEREUPON, the following proceedings were duly
2 had:)

3 THE COURT: This is the time and place set for a motion
4 hearing in Meade County's divorce file 19-08, LeFors vs.
5 LeFors. Ms. Krista LeFors is present without counsel, and
6 Joseph LeFors is present along with his attorney, Ms.
7 Smith.

8 Earlier today, I did receive from Deb Watson, it's a
9 document titled Notice of Withdrawal of Counsel For
10 Defendant in Fourth Judicial Circuit Court, and this does
11 not come as some news because I believe that the last time
12 that we were on the record she said that she was retiring
13 from the practice of law and that she was going to keep the
14 aspect of an appeal in your case, Ms. LeFors, but that she
15 was otherwise retiring from practicing law. Maybe there's
16 some other appeals she's doing, but that's what she said.
17 So again, when I saw this, I wasn't shocked that it was
18 here. So the way that lawyers withdraw from cases, even
19 when they retire, is they give notice and then it's up to
20 the Court to allow or disallow it. So I would ask you, Ms.
21 LeFors, do you have any objection to your lawyer basically
22 retiring and not representing you any further?

23 MS. LEFORS: No.

24 THE COURT: All right. Then I'm going to grant her motion.
25 And so then we're going to move on to the other aspects of

1 this case which I'm somewhat familiar with because this
2 case has been before me more than once.

3 So I have hard copies of two documents. One is a
4 motion for additional sanctions against the mother and to
5 address custody and lack of parenting time, and it says
6 that Mr. LeFors through his attorney submits this motion
7 and in support has submitted an affidavit which I'm
8 familiar with, but it was written on July 3rd, so about a
9 month ago. And then there is also signed by Ms. Smith a
10 notice of hearing that basically gives notice that this,
11 August 12th at 3 o'clock, which is the time, is the time
12 for counsel to be heard on the motion that was mentioned.
13 So I guess with that, we're ready to proceed, Ms. Smith.

14 Do you have anything you want to say, Ms. LeFors?

15 MS. LEFORS: I'm just asking for permission for my daughter
16 for her to either talk to you or to testify today on her
17 point of view of everything.

18 THE COURT: Okay. Well, I think I would take that under
19 advisement, but I think we'll let Ms. Smith address the
20 motions that she's noticed up, because as I recall, the
21 last hearing that we had, there was an affidavit that had
22 been submitted, and if I was to summarize it, I would say
23 that Mr. LeFors has indicated that nothing has really
24 changed since the last time that we had a court hearing
25 other than perhaps the daughter was going into the

1 restaurant but wouldn't sit with him and wouldn't converse
2 with him. It certainly wasn't what was intended to occur,
3 and then there was another oral motion at the last hearing
4 which was to give Mr. LeFors more significant parenting
5 time, because as you're aware and I'm aware that there are
6 these guidelines that set forth in a perfect world how much
7 time each parent should have with their children and I had
8 denied that, and I think I had indicated that -- and if I
9 didn't, I'll amplify it -- that my concern would be that if
10 I was to do that, that there could be unintended
11 consequences. This young gal, your daughter, that I have
12 met on more than one occasion, I would guesstimate she's
13 about 14 or 15 years of age?

14 MS. LEFORS: 15.

15 THE COURT: 15. And so what I'm talking about unintended
16 consequences is if we struggle to get her to sit down and
17 have a meal with her father, if I were to order that she
18 have all these other visitations, this could cause an
19 unintended consequence of causing your daughter to run away
20 and then I do not want to have that occur because I think
21 there's more issues, more perplexing issues when children
22 of this age feel like they have no control over the
23 situation and then they try to show kind of who's in charge
24 by acting out and not following the rules and then things
25 that we don't intend to occur could happen.

1 But I also remember that Mr. LeFors had said -- and I
2 don't know if it was in his affidavit or he said it at a
3 hearing or both -- that he doesn't have any alternative
4 left to him because he wants to have visitation with his
5 daughter and there's no other avenue that he can pursue.
6 There's no other way to accomplish this outside of the
7 court system. So he's frustrated in the respect that this
8 is the only thing that he has available to him and it's not
9 working out the way that it should.

10 So with that, Ms. Smith, you can proceed.

11 MS. SMITH: Thank you, Judge. I just have some brief
12 testimony and I would call Krista LeFors.

13 THE COURT: Okay. Ms. LeFors, I'll give you the oath.

14 **KRISTA LEFORS,**

15 called as a witness, being first duly sworn, testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. SMITH:

19 **Q** Ma'am, would you state your name?

20 **A** Krista LeFors.

21 **Q** And you are the mother of Kaelyn LeFors, correct?

22 **A** I am.

23 **Q** Okay. During our last hearing before the court in July,
24 you had provided my office some documents in relation to a
25 subpoena. Do you recall that?

1 **A** Yes.

2 **Q** And these were communications between you and your
3 daughter, correct?

4 **A** Yes.

5 **Q** Okay. Quite a few of them?

6 **A** There was -- I just sent Deb screenshots and she forwarded
7 them on, but there was quite a few pictures.

8 **Q** Okay. And those included iMessage communications?

9 **A** Yes.

10 **Q** Facebook messages between you and Kaelyn?

11 **A** Yes.

12 **Q** And emails?

13 **A** Yes.

14 **Q** Okay. And in those communications, ma'am, there were two
15 emails between you and Kaelyn about trying to have a better
16 relationship with Kaelyn and her father. Do you recall
17 those?

18 **A** The emails, I believe there's at least three of them.

19 **Q** Okay. And those would have been in January of this year?

20 **A** They could be, I'm not sure of the dates.

21 **Q** Okay.

22 MS. SMITH: May I approach, Your Honor?

23 THE COURT: Yes, you may.

24 **Q** (BY MS. SMITH) To refresh your recollection, ma'am, do you
25 recall these two emails dated January 17th and

1 January 24th?

2 **A** Yes, that's when they were doing the family counseling with
3 Mike and Melanie.

4 **Q** And these would have been sent just prior to some of those
5 counseling sessions, correct?

6 **A** It might have been about an hour or so before.

7 **Q** Okay. And the communications you provided my office would
8 have been based on what I received from January of this
9 year to May of this year?

10 **A** The Facebook ones go back further, but the iMessages
11 automatically delete about 30 days out, so either 30 or
12 45 days out, so it would have been whichever ones were on
13 there.

14 **Q** And in the entirety of the communications you provided your
15 attorney, these two that I have are the only evidence or
16 communication with your daughter referencing Joe?

17 **A** It could be.

18 **Q** Okay. Do you have anything here today or that you have not
19 provided your prior lawyer that would indicate anything
20 different?

21 **A** What do you mean by that?

22 **Q** Do you have any additional messages or communications with
23 -- between you and your daughter concerning encouraging a
24 relationship between her and her father?

25 **A** Well, we talk about that in person most of the time.

1 Q Okay. So just confirming, the bulk of the messages between
2 you and your daughter, none of it, besides the two emails,
3 references her father?

4 A No.

5 Q Okay. But you talk about quite a bit of other things?

6 A She sends a lot of videos and I guess they're reels from
7 Facebook is what most of them are, and then through
8 iMessage she just asks questions every now and then. We
9 don't really talk that way very often.

10 Q Well, you remind her she needs to go to bed if she's up
11 late, right?

12 A If it's in there, I could have.

13 Q Okay. Talk about what you're eating for dinner and those
14 sorts of things?

15 A Normally it will be lunch if they didn't ask the night
16 before.

17 Q Okay. And you talk about track and sports schedules?

18 A Could be.

19 Q Okay. But not once do you reference her father?

20 A She doesn't normally talk about him, no.

21 Q But you don't offer up the opportunity to send her a text
22 or an iMessage that tells her that she needs to work on her
23 relationship with her father?

24 A I used to in the past. She will ignore them. Just like
25 she did those emails, she won't respond to them because --

1 Q And you believe it's your responsibility to just allow her
2 to initiate that conversation?

3 A No, that's why we talk about it in person.

4 Q Is it your position, ma'am, that you are attempting to
5 repair the relationship between Kaelyn and her father?

6 A I can't repair it. It is something that both Joseph and
7 Kaelyn have to do together.

8 Q Let me rephrase that. Do you believe that you are
9 encouraging -- to what you are responsible for as the
10 primary parent, do you believe you are doing enough to
11 encourage that relationship?

12 A Yes.

13 Q And what evidence do you have, ma'am, to prove that?

14 A You could ask my daughter.

15 Q Okay. And you believe parading her in court litigation is
16 in her best interest?

17 A No, not necessarily.

18 Q Is it your position that you have no control over whether
19 your daughter goes or does not go to visitations?

20 A She goes to visitation. I drop her off and I walk her
21 inside and I know she's in there, but I have no control
22 when I leave. I am not there. I leave the area.

23 Q Let's talk about those visits at the restaurant. You walk
24 in there and you walk just far enough to where your
25 daughter goes into the restroom, right?

1 **A** No.

2 **Q** You leave before that?

3 **A** No. When he's in Culver's, he sits in the very back row of
4 the one that's over in Rushmore Crossing. We walk in, we
5 take a right and go down and he's normally in one of those
6 last ones. I stop at the corner there, he looks at me, I
7 look at him. I don't feel comfortable myself getting
8 close. It's -- I don't like to be close to him, and I
9 stand there, I give her a hug and a kiss. He sees her and
10 I guide her that way and then I leave. She walks up to his
11 table as I'm leaving. That's all I see from there. I
12 leave.

13 At Olive Garden, he'll be sitting in one of the
14 couches and I'll walk in the door, most of the times I'll
15 look at him. Now I make sure he sees me so that he does
16 know that she's there after the time he didn't see her, and
17 I give her a hug, tell her to have fun and I leave, and
18 she's walking towards him when I leave.

19 **Q** But you know, ma'am, from our prior hearings that your
20 daughter, majority of the time, goes into the bathroom and
21 sits for 30 to 45 minutes, right?

22 **A** She told me she does not sit in there that long. That
23 she'll go in and go to the bathroom and she comes out and
24 she said a lot of times he'll be on the phone and he
25 doesn't even see when she comes out of the bathroom.

1 **Q** Okay. There's nothing prohibiting you from standing
2 outside the restaurant and making sure that your daughter
3 sits at the booth, right? There's nothing preventing you
4 from doing that?

5 **A** I am court ordered to drop her off and leave.

6 **Q** Right.

7 **A** So I leave the area as soon as I drop her off.

8 **Q** And so you are just doing the bare minimum of what the
9 court requires of you to simply drop off your daughter and
10 everything after that is not on you, right?

11 **A** No, I am doing what I'm court ordered to do. I am court
12 ordered to leave. If I was to stay there longer, then he
13 would take pictures of me and claim that I didn't leave.
14 We've been through this before on prior visitations. So
15 that is why we have that court order that nobody's supposed
16 to take pictures and that I am supposed to drop off and I
17 am supposed to leave. That's why even the original ones I
18 wasn't even walking her in because I was supposed to leave
19 right away.

20 **Q** Okay. So my question is, there's nothing prohibiting you
21 from walking into the restaurant with your daughter, making
22 sure that she finds her seat next to her father and tell
23 her, "Kaelyn, you are going to sit here with your father
24 for one hour and I will pick you up and you're not going to
25 leave that seat," right? Nothing's prohibiting you from

1 doing that?

2 **A** The court order that tells me I have to leave.

3 **Q** Right, and you would leave right after that?

4 **A** But then I'm not following the court order that I'm
5 supposed to drop her off and leave.

6 **Q** Ma'am, the court order says that you are to encourage these
7 visits to happen?

8 **A** I do that when I drop her off.

9 **Q** So just to confirm, you have done nothing other than go to
10 the restaurant, drop her off, walk in, and leave once
11 you've made eye contact with Joe, correct?

12 **A** No, we talk about it. I encourage her to go and do all
13 that. I could tell her to go sit down, but she's going to
14 turn around and walk away from me too and then you're going
15 to have two --

16 **Q** Well, you haven't done that yet though?

17 **A** You're right, I haven't, but she -- when I tell her
18 everything, it's the same time -- every time she'll tell me
19 the same thing; she'll run away, she'll run away from me,
20 she'll run away from him.

21 **Q** And you've imposed zero consequences on Kaelyn for not
22 doing what she's supposed to do? From the last hearing
23 that we had in May, tell the Court what consequences,
24 disciplines, things that -- the privileges that she's had,
25 what has been taken away from Kaelyn to make sure that she

1 understands that this is important?

2 **A** She doesn't go with her friends as much as she would be,
3 but other than that, I'm at work all day, so she knows
4 she's not supposed to be on her iPad other than but if she
5 needs to talk to me like when they ask for lunch and stuff
6 during the week, but I am not there. I do not have cameras
7 in my house.

8 **Q** So she still has her phone?

9 **A** She doesn't have a phone, but she does have an iPad and --
10 well, she has an old phone that doesn't have -- it has
11 Wi-Fi to the house.

12 **Q** She's still in sports?

13 **A** Not in the summer she has not been in sports, no.

14 **Q** But in the spring and fall she does sports?

15 **A** She does.

16 **Q** And is it your position that you're not responsible to
17 force these visits upon Kaelyn?

18 **A** I am forcing the visits on her. I am taking her. I am
19 walking her in and I am dropping her off, and then I come
20 back and get her. So she does not want to go period, so
21 yes, I do have to force her to get into the car to go.

22 **Q** Kaelyn's not the type of child that sways from rules or --
23 she's a good kid?

24 **A** Yeah, with an attitude.

25 **Q** But she's never been in trouble with school or otherwise?

1 **A** No, not really.

2 **Q** And you had told the children about the sanctions that you
3 received under the last order, correct?

4 **A** I told the kids that I could get in trouble if they did not
5 go with their dad.

6 **Q** So it's your testimony under oath that they're not aware of
7 the order that this court entered in June?

8 **A** I did not tell them about it, no.

9 **Q** Do they know about it?

10 **A** As far as I know, no, other than the fact that I could get
11 in trouble. Unless Joseph has said something to them, I
12 don't know, but I don't ask them questions of everything he
13 says to them so I don't -- we don't tend to talk about any
14 of it.

15 **Q** Ms. LeFors, you understand that Joe is frustrated because
16 you come into court and you testify that you're trying to
17 do all of these things, yet your conduct outside of court
18 is something different? You understand that that's his
19 position?

20 **A** I understand that he's frustrated, but it is something that
21 him and Kaelyn have to work together. It doesn't have to
22 do with me. I'm not the one impeding it and I'm not the
23 one that can fix it.

24 **Q** Okay. Let's talk about that. There was a state track meet
25 that Joe went to. Do you recall that?

1 **A** Just this last one in Sioux Falls, yes.

2 **Q** Okay. And Joe attempted to go up to Kaelyn to congratulate
3 her on her event?

4 **A** I believe he walked up to her a couple times, yes.

5 **Q** Okay. And when you saw him coming over, you told Kaelyn,
6 "Here comes Joe," to alert her he was coming?

7 **A** No.

8 **Q** You did not say any of that?

9 **A** I did not.

10 **Q** Okay. What did you say, if anything?

11 **A** If I was talking to her, it would have been telling her the
12 good job that she did. After her last race, she was really
13 shaky, she was crying, not doing very good and I'll console
14 her, but I did not say anything about Joseph, and if I do
15 talk to the kids, I call him "dad".

16 **Q** Okay. So in that scenario, you could have said, "Hey,
17 Kaelyn, I see your father over there. It would be great if
18 you went and had a conversation with him?"

19 **A** If I see him coming, just like when he tells her good job,
20 I do, and it's not just me, my whole family, they will tell
21 either of the kids to tell -- that they can tell their dad
22 thank you.

23 **Q** At this specific track meet, you are testifying you said
24 nothing? During that great opportunity for the -- for
25 Kaelyn and Joe to connect, you did nothing?

1 **A** I didn't see him coming. When he tells her good job, I do
2 tell her to tell her dad "thank you," but he's gone right
3 away. If he comes up any time and he'll say whatever,
4 "good job," you know, whatever he wants to say,
5 "congratulations," however he says and I'll tell the kids,
6 "You can tell him thank you," you know, depending on what
7 he says, but -- and then he's gone. It's --

8 **Q** But you knew he was there at the track meet that weekend?

9 **A** Yes.

10 **Q** And you're testifying that at no point during the weekend
11 track events did you encourage Kaelyn to go find her dad
12 and have a conversation with him?

13 **A** She knew where her dad was. I did tell her --

14 **Q** Is it a yes or no, ma'am?

15 **A** Yes, I did tell her to -- that she could go talk to him,
16 but he was with his new wife and she will not go up there
17 or go talk to him.

18 **Q** Did you ever make an effort when Joe came up or attempted
19 to come up to Kaelyn to guide her towards him or anything
20 of that sort?

21 **A** It's -- the way the track meet's laid out, you can't really
22 guide anybody. You're kind of just like sardines trying to
23 get out.

24 **Q** Yes or no?

25 **A** I couldn't. So if I could have, I would have, but you

1 can't the way it is.

2 **Q** Father's Day. You knew that Joe had requested Father's Day
3 shortly after the last hearing, correct?

4 **A** No.

5 **Q** You had not seen the proposed order from my office to your
6 prior attorney?

7 **A** I didn't really glance much at it. Deb took care of that
8 stuff.

9 **Q** Okay. But you saw it?

10 **A** After the fact, yes.

11 **Q** Okay. But it's not surprising that Joe would want to see
12 his kids on Father's Day?

13 **A** It would be the first time that he's asked.

14 **Q** So on Father's Day, Joe had requested some time at the
15 restaurant, correct?

16 **A** Yes.

17 **Q** And your response was "you do not control me or my life.
18 It's not in the court order," and basically that you were
19 allowing him to see her, just you were being nice?

20 **A** You missed a big chunk out of middle of it, of the
21 conversation.

22 **Q** Okay. You guys were talking about scheduling and all those
23 things, but you believe you were being nice for going
24 outside of the court order and providing him only
25 45 minutes on Father's Day?

1 **A** Well, I offered him an hour, but I have -- there are
2 trainings for work for different programs and I have them
3 scheduled on Sunday afternoons and I have to be on there by
4 a certain time. I have to be logged on, and so that's why
5 I tried to do it in the middle of the day because I have
6 all of these scheduled on days that we don't have
7 visitation so that it doesn't interfere with anything, and
8 Sunday afternoons are normally the easiest days of the week
9 to be able to do them.

10 **Q** And you make sure you reference that "today being Father's
11 Day is not a scheduled day, I am being nice." Right?

12 **A** Without seeing them, I couldn't say yes or no.

13 **Q** And you had no intent on allowing him to see your daughter
14 that day absent his request?

15 **A** If he asked, I did. If not, I probably would have just
16 went and did my work. It's a Sunday and normally I just
17 clean in the morning and then I get on and do my trainings
18 in the afternoon.

19 **Q** And you believe if it's not scheduled or court ordered, you
20 have no further obligations to facilitate additional visits
21 or figure out ways to encourage?

22 **A** With the conflict -- with the conflict that we have, it's a
23 lot easier to follow court ordered days and court ordered
24 times. We do do make up, but it is very hard to find days
25 between the two of us.

1 **Q** Does Joe continue to call your phone to talk with the
2 children?

3 **A** He does.

4 **Q** Okay. And when he calls, you answer, right?

5 **A** I do.

6 **Q** Okay. And then you mute the phone and hand it to the
7 children?

8 **A** No, I hand it straight to the kids. I don't mute it.
9 It's -- Kaelyn is standing there by 7 o'clock. They know
10 what days and what time he calls. She's always standing
11 next to me when I answer the phone. If she does something
12 once she's out of the -- wherever I answer the phone, if
13 I'm in the living room or kitchen, I don't know, I do not
14 follow her.

15 **Q** Okay. So it's your testimony that on these calls, you are
16 not in -- within ear's reach or to hear what the children
17 are telling him?

18 **A** There might be a couple here and there if we are in the car
19 travelling, like when we're on vacation or stuff, but other
20 than that, no, I am not.

21 **Q** And I -- and Joe will have a different understanding of
22 these calls, but you understand that the children are
23 calling him some pretty nasty things?

24 **A** I -- as far as I know, I don't think they call him any
25 names. I do know my daughter references wife not nice, but

1 as far as I know they don't call their dad any names.

2 **Q** Well, you had read Joe's affidavit of July 3rd that was
3 filed on -- well, the same day, July 3rd. Do you recall
4 receiving this from your lawyer?

5 **A** I do.

6 **Q** Okay. Did you read it?

7 **A** Yeah, back at the beginning of July when I received it.

8 **Q** Okay. So you were aware that Joe on the calls is stating
9 that the kids say, "Bye, Joe, and the home wrecking ho,"
10 and some other nasty things?

11 **A** I did ask her about that and she did say that she said
12 that.

13 **Q** Okay. And then what consequences or discussions did you
14 have with the children?

15 **A** We have -- it's Kaelyn that says it and not Kyden. Me and
16 her talked about it. She knows that it's not appropriate.
17 It is how she feels. I do believe she got a -- hopefully
18 did a few that she did not say that because we talked about
19 it. I do not know if she still is saying it.

20 **Q** She continues to use some vulgar language with her father,
21 so she's either not listening to you or you're not
22 discussing it with her?

23 **A** I assume she's not listening.

24 **Q** What repercussions for this type of behavior have you
25 discussed with the children?

1 **A** With Kaelyn?

2 **Q** Yes.

3 **A** She doesn't get her iPad during the week. There's not much
4 more that I can take from her. She knows what she's
5 supposed to do, but it's very hard when it's her feelings
6 and I can't tell her she can't feel a certain way.

7 **Q** So, ma'am, it's your testimony that when you hand over the
8 phone and at least on one occasion to Kaelyn, you didn't
9 tell her "sorry," like sorry you have to talk to your
10 father?

11 **A** No. I mean, if we're in a gathering you might hear other
12 people in the background and stuff, but no, they know that
13 he calls and I just hand the phone over.

14 MS. SMITH: That's all I have, Your Honor.

15 THE COURT: Okay. Krista, is there anything that you want
16 to say because you're representing yourself?

17 MS. LEFORS: There's not much more I guess I could say.

18 THE COURT: Okay. Step down.

19 Ms. Smith, do you have additional witnesses?

20 MS. SMITH: Yes, Your Honor, I would call Joseph LeFors.

21 **JOSEPH LEFORS,**

22 called as a witness, being first duly sworn, testified as
23 follows:

24

25

DIRECT EXAMINATION

BY MS. SMITH:

Q Sir, would you state your name for the record?

A Joseph Daniel LeFors.

Q And, Mr. LeFors, you had submitted an affidavit to the court dated July 3rd. Do you recall that?

A I do.

Q Okay. Is everything contained in that document true and correct?

A Yes.

Q And you had signed it under oath?

A Correct.

Q Okay. Tell the Court -- since our last hearing on May 10th, okay, tell the Court specifically about parenting time at the restaurants. Give the Court a summary of what has occurred.

A Since the last hearing that the discussion took place about contempt, things had changed. Krista, the first day that we had parenting time, Krista walked Kaelyn into Olive Garden and pointed towards the bathroom. Kaelyn then went into the bathroom as Krista turned and walked out. Kaelyn sat in there for approximately 45 minutes and then came out and went directly outside and sat on the bench.

Q Why would she, Krista, point to the bathroom?

A Due to the fact that it's 45 minutes sitting in there, it's

1 showing her where to go to sit.

2 **Q** That's your opinion?

3 **A** Yes.

4 **Q** And in your affidavit you provide that since May 10th, and
5 this was as of July 3rd, there was approximately 13
6 unsuccessful visitations?

7 **A** Correct.

8 **Q** Each week when you have the visits at the restaurant, is it
9 pretty much always the same where she goes into the
10 bathroom for a bit and then goes outside?

11 **A** Correct, it's always the same.

12 **Q** Okay. And has that been the case since July?

13 **A** Yes.

14 **Q** Okay. Do you continue to show up hoping that something
15 will change?

16 **A** Yes.

17 **Q** Do you ever witness Ms. LeFors making any additional
18 attempts to get Kaelyn to sit down with you?

19 **A** No. Krista walks in, Kaelyn starts walking towards the
20 bathroom or towards me and then Krista walks out.

21 **Q** Would you have any issue if Ms. LeFors tried to guide her
22 to your booth and sit down and tell her, "Hey, you're going
23 to have a dinner with your dad," and then leave?

24 **A** No.

25 **Q** Have there been any changes since the last hearing in

1 attempts to encourage the relationship with you and your
2 daughter?

3 **A** There has been no changes at all.

4 **Q** You explain in your affidavit that Krista continues to
5 believe that it is not her responsibility to foster a
6 relationship between you and the children for forced
7 visitations. Can you explain that?

8 **A** Just like Krista stated on the stand, it's not her job to
9 mend the relationship, therefore she doesn't think it's her
10 responsibility as the parent who is to encourage it. She
11 doesn't put any effort to make sure that that could happen.

12 **Q** And as the primary parent, that is primarily her job,
13 right?

14 **A** That's one hundred percent her job.

15 **Q** Tell the Court about Kyden's graduation. I understand he
16 is 18 and graduated now. May 19th, that would have been
17 after the court hearing. Tell the Court about what
18 happened.

19 **A** So I went to Kyden's graduation and I was sitting up in the
20 bleachers. Kyden was sitting down on the basketball court
21 in the chairs with the other students, and the ceremony had
22 finished. Well, Krista and her family had known we were
23 there because they walked past and they were looking at us
24 occasionally during the ceremony, and when we finished the
25 ceremony, Kyden walked out and walked back in. When Kyden

1 walked back in, I went down to go meet him and congratulate
2 him on his accomplishment, and my wife, which I have
3 pictures of, watched as Krista's father, Mike, ran across
4 the basketball court and intercepted Kyden before I could
5 talk to him and dragged him away.

6 **Q** Why is this significant?

7 **A** Because this is the type of behavior from Krista and her
8 family that happens every single time I try to interact
9 with my children.

10 **Q** So it's not just Krista; it's extended much beyond that?

11 **A** Exactly, to the extent of on record I have a police report
12 where I had to call the cops because her dad got in my face
13 when I tried to pick up my children.

14 **Q** You heard the testimony from Krista relating to the track
15 meet?

16 **A** Yes.

17 **Q** The state track meet. Was that recount truthful?

18 **A** No.

19 **Q** Tell the Court about what happened.

20 **A** After the track meet, Kaelyn had finished her final race.
21 She didn't have any more for the day, and by myself, I went
22 to go find Kaelyn and congratulate her on the work she did
23 accomplish, and as I walked towards her, Krista muttered
24 the words "Joe's coming" and I know for a fact that Kaelyn
25 and her boyfriend received it because both of them looked

1 at me as I walked up, and I was a little bit of a distance
2 from them so I know for a fact that it was relating to me
3 as both children looked over at me.

4 **Q** Okay. And then what happened?

5 **A** Kaelyn turned her back towards me and Krista just stood
6 there silently.

7 **Q** Did nothing further to either guide her or --

8 **A** She didn't say anything. She didn't do anything.

9 **Q** And she saw you?

10 **A** Yes.

11 **Q** Walking towards the children?

12 **A** Krista was the first one to notice me.

13 **Q** This type of behavior by Krista outside of court, tell the
14 Court about your frustrations with what Krista testifies to
15 here, her behavior, and then what is seen outside?

16 **A** Inside the courtroom she paints a very pretty picture of
17 what she is doing to meet the court order, but that's the
18 very bare minimum. She won't make any efforts outside of
19 that because she has no desire for my daughter and I to
20 have a relationship. This has gone on over four years and
21 it's been fighting to see my kids with their mother.

22 **Q** When she says "here comes Joe" at the track meet, is that a
23 way to alert the children, "Hey, he's coming, you need to
24 leave," or why does she say that?

25 **A** It's to alert the children that I'm coming so either

1 they'll react a certain way or will avoid talking to me.
2 The conversation will stop. It's at every single -- not
3 just track meets, it's at every single meet or every
4 occurrence that takes place out in public, it doesn't
5 matter.

6 **Q** What is your expectation of her as the primary parent in
7 that scenario?

8 **A** To encourage Kaelyn to have a relationship, to encourage
9 her to talk, to --

10 **Q** What does that look like though specifically? Give me some
11 examples.

12 **A** You need to talk to your father or -- I'll give you an
13 example if I was the primary parent. If I saw the other
14 parent walking up, I would encourage the child, you know,
15 you need to speak to your mother, she's coming up, you need
16 to have a conversation with her, and if that didn't take
17 place, right after that then I would instill discipline.
18 Okay, you had an opportunity, you should have made an
19 effort, no more screen time, and I wouldn't just leave it
20 at, "Oh, well, I'm not there so I can't keep control of
21 it." I would shut down the Internet, so the kids -- I can
22 ensure that that discipline is instilled and make sure that
23 they understand, "Okay, well, I didn't follow what I was
24 supposed to do so maybe next time I should change my
25 behavior," and I would continue on that path. "Here comes

1 your mom, have a conversation. I'm going to reach out to
2 your mom and you guys are going to go spend time together
3 today. I understand the court order says an hour Tuesdays
4 and an hour Wednesdays, but you're going to go on Thursday
5 and you're going to spend time with him because you deserve
6 to see that other parent."

7 **Q** And none of that is happening here?

8 **A** No.

9 **Q** Tell the Court about Father's Day this year.

10 **A** So we submitted the motion requesting Father's Day, and the
11 morning of Father's Day I actually reached out and texted
12 Krista because there was nothing said about she was going
13 to drop her off at Olive Garden or Culver's and so I
14 reached out, and then I didn't receive a text message back
15 until later in the afternoon that Father's Day was not on
16 the court order, and so I -- I don't remember the exact
17 words I used. I stipulated that, you know, it's Father's
18 Day, that I'm to have parenting time, and Krista suggested
19 she couldn't do it at 6 o'clock. At 2 something in the
20 afternoon, at 2:45 she finally said that she could do
21 parenting time at 3:30 which I wasn't able to make it at
22 3:30 and I established with Krista over text, and she said,
23 "Well, if you don't show up and she's only with you for
24 45 minutes, that's on you."

25 **Q** Basically blaming you for not being able to be on her time

1 line?

2 **A** Yes.

3 **Q** And then limiting 45 minutes or you get no time?

4 **A** Exactly.

5 **Q** Krista had testified that you had never asked for Father's
6 Day in the past, is that true?

7 **A** Not at all.

8 **Q** Explain that.

9 **A** I've asked for Father's Day to include several holidays in
10 the past to see the children and it's always "that's not on
11 the court order."

12 **Q** Even though you are entitled to that day?

13 **A** One hundred percent.

14 **Q** You continue to call Krista's phone for telephone calls
15 with the children?

16 **A** Yes.

17 **Q** Tell the Court about those.

18 **A** Krista answers the phone and it will either be -- she'll
19 either be home, she'll be out somewhere or she'll be in the
20 car, and nothing changes in the sense of what Kaelyn or
21 Kyden said. Kaelyn will get on the phone and say, "Bye,
22 Joe, and the home wrecking ho," and it could be within
23 seconds of Krista passing the phone off or even in the
24 vehicle that Krista is driving, so she hears it on a
25 regular basis.

1 **Q** So when she answers, it's within seconds that the children
2 are saying this?

3 **A** It could be within seconds. It could be 30 seconds if she
4 has to walk to give the phone to Kaelyn, which specifically
5 I have described in one incident, then it will take
6 30 seconds to hand off the phone, but by the time the phone
7 unmutes, there's no way that Krista's not within the
8 vicinity of hearing Kaelyn scream, "Bye, Joe, and the home
9 wrecking ho."

10 **Q** So Krista's testimony that you heard that she somehow
11 doesn't hear the kids say these things, what's your
12 response to that?

13 **A** That's not possible. She would have to be further than a
14 football field away to not hear Kaelyn scream into the
15 phone.

16 **Q** And you said some of these phone calls are in the car when
17 Krista is there?

18 **A** Yes, more specifically when she was driving back from her
19 last vacation, I called and they were on the phone and
20 Kaelyn screamed it.

21 **Q** Did you hear anything else after that from Krista?

22 **A** No.

23 **Q** No "hey, knock it off, you don't talk that way?"

24 **A** No.

25 **Q** There was a phone call May 31st of this year, you called to

1 speak with the children where you heard Krista say "sorry"
2 to Kaelyn. Can you describe that phone call?

3 **A** I called, asked to speak to the children. I always ask to
4 speak to the children, and she muted the phone. I know it
5 muted because it's silence. I knew she was in a crowded
6 area because I could hear people talking and it muted. The
7 talking stopped, so it muted. But either she unmuted it or
8 it unmuted itself. I could hear Krista walking. I could
9 hear the footsteps and then I could hear "sorry" in
10 Krista's voice, it was as clear as day, hand the phone to
11 Kaelyn and say, "Say it, but don't yell." And Kaelyn got
12 on the phone and said, "Bye, Joe, and the home wrecking
13 ho."

14 **Q** So when she says -- when Krista says, "Say it but don't
15 yell it," she's basically --

16 **A** She's encouraging Kaelyn to say those things.

17 **Q** Okay. And you know for certain it was Krista's voice?

18 **A** Yes.

19 **Q** And when she hands the phone to Kaelyn and says "sorry,"
20 meaning "sorry you have to talk to him?"

21 **A** Yes.

22 **Q** And, Joe, there has been no other progress or attempts by
23 Krista to ensure that these visits at the restaurant occur?

24 **A** No, there is not.

25 **Q** What -- let me go back. And we'll get to what you would

1 like the Court to do, but had Krista made some efforts and
2 shown that she was committed to encouraging this
3 relationship, would you be here?

4 **A** No, I wouldn't be here right now.

5 **Q** Even if it was the phone calls got better?

6 **A** Yes.

7 **Q** Would you have some hope?

8 **A** Yes.

9 **Q** If it was a ten-minute sit-down at a restaurant that you
10 were able to have ten minutes instead of an hour?

11 **A** If there was a change, yes.

12 **Q** What would you like the Court to do going forward with
13 sanctions and custody, parenting time?

14 **A** I feel that we're at a point right now -- excuse me, a
15 point right now where it's not viewed that this is
16 important. I think stricter sanctions need to be in place,
17 even up to include jail. I think that specifically the
18 parenting time stipulate in accordance with the law that
19 this is to be followed if both parties disagree, that this
20 is to be put in place. Not once has it been put into place
21 this entire four years, and we discussed parenting time. I
22 think we need to follow what's in the parenting guidelines
23 which stipulates every Wednesday over night and every other
24 weekend.

25 **Q** And you have some other children that your wife has that's

1 Kaelyn's cousins?

2 **A** Yes.

3 **Q** You have them every other weekend?

4 **A** Yes.

5 **Q** Would it make sense to have her there with her cousins?

6 **A** It would. It would have some semblance of individual kids
7 that she could relate to and talk to.

8 **Q** Now the Court has some concerns of how this would pan out.
9 You heard that?

10 **A** Yes.

11 **Q** Okay. What is your proposal or understanding of how a
12 guideline visitation would occur?

13 **A** Can you repeat that question?

14 **Q** How do we practically get Kaelyn to have visits with you
15 every other weekend?

16 **A** I know the Court is nervous and had spoke to running away,
17 which is a valid thing, but we live in a society where it's
18 the parents' responsibility to discipline a child and I
19 have ways and means to do that. If a regular child runs
20 away, we don't just ignore it. There's ways to discipline,
21 whether that's juvenile detention, which I don't even think
22 we'd have to get to that. Kaelyn is an upstanding child
23 who follows authority because she does well in school. She
24 listens to everything and can stay home alone all day when
25 her mom's at work. I'm sure there could be a worry of that

1 taking place, but in every other aspect she's an upstanding
2 child.

3 **Q** Because in the past with parenting times not at a
4 restaurant, Kaelyn would simply walk home?

5 **A** Correct.

6 **Q** And Krista would have the door open?

7 **A** The door would be open, and even instances of Krista being
8 inside, I would message Krista to send Kaelyn out and she
9 would say, "Email her. It's up to you; it's not my job."

10 **Q** So you believe the barrier is not so much consequences of
11 running away, but what?

12 **A** It's Krista not encouraging it. Krista's enabling that.

13 **Q** So how do we get there?

14 **A** We hold Krista responsible. If she cannot do what she is
15 supposed to do within the realm of the law, then she's to
16 be held accountable.

17 **Q** And you feel that if there is enough consequence, that
18 visits will happen?

19 **A** Yes.

20 **Q** Has Kaelyn ever run away from home?

21 **A** Never.

22 **Q** Has she been into trouble with the law or at school?

23 **A** Never.

24 **Q** So tell the Court how this -- how you envision it in your
25 mind on how a weekend would be in both scenarios; so one

1 where she comes and stays, and one where you anticipate
2 Kaelyn's refusal?

3 **A** One in which Kaelyn would stay, her cousins would be there
4 and they like playing Minecraft together. They actually
5 get along very well, and maybe she won't talk to me right
6 off the bat. She may segregate herself downstairs to play
7 video games, but she would at least be playing video games
8 with the kids and I envision that taking place that she
9 would be playing video games with her cousins and/or eating
10 dinner at the table with the rest of us. I think that
11 she'll get along just fine.

12 **Q** In a scenario where like in the past Krista would drop her
13 off at your house and she starts walking back home, what
14 happens?

15 **A** I would message Krista to make sure that she informs Kaelyn
16 that she needs to go with me for parenting time. If Krista
17 refuses, then we'd either end up back here or I would be
18 calling the police to enforce it.

19 **Q** There is an option for the Court to hold jail time over
20 parents who continually disregard court orders?

21 **A** Correct.

22 **Q** So there would be an option for the Court to say these
23 visits will occur or these weekends will occur, and if not,
24 you know, give an opportunity to comply, right?

25 **A** Correct.

1 Q So essentially having a jail sentence over her head?

2 A Correct.

3 Q And additional sanctions?

4 A Correct.

5 Q It would be pretty hard for Kaelyn to go back home if
6 Krista simply didn't allow her to come back into the house?

7 A Correct.

8 Q Probably not uncommon for a teenager to be told not to come
9 in and do what you're supposed to do, right?

10 A Very typical.

11 Q Is there anything else, Joe, that you would like to provide
12 to the Court?

13 A No, I don't think so.

14 MS. SMITH: That's all I have, Judge.

15 THE COURT: All right. Do you have questions?

16 MS. LEFORS: I do.

17 CROSS EXAMINATION

18 BY MS. LEFORS:

19 Q So you don't think that it's your responsibility at all
20 that you and Kaelyn do not have a relationship?

21 A Can you repeat that question?

22 Q You don't think that it's your responsibility at all that
23 you and Kaelyn don't have a relationship?

24 A Is it my responsibility that I don't have a relationship
25 with her?

1 Q Yes.

2 A No.

3 Q So you did not do anything wrong at all for you and Kaelyn
4 to not have a relationship at all?

5 A No.

6 Q Okay. So she hasn't told you why?

7 A No.

8 Q So in family counseling when Melanie testified that she did
9 tell you why she didn't have a relationship with you,
10 you're saying that Kaelyn didn't tell you?

11 A I don't remember what Melanie testified to.

12 Q So if Melanie testified that Kaelyn had stated she didn't
13 have a relationship with you because of your alcohol abuse
14 and the relationship with your now wife?

15 A No.

16 Q And the kids have -- or Kaelyn has never said that?

17 A Not ever.

18 Q So Kyden's graduation, was it really busy?

19 A Can you define what "really busy" is?

20 Q Was there enough seats for everybody to sit? Did some
21 people have to stand along the walls, up at the very top
22 because it couldn't be outside because of the weather?

23 A I can't -- I don't -- I can't answer that. I don't know.

24 Q So when all of kids were done graduating and everybody was
25 walking out, was there a group of people everywhere where

1 people could get lost, hard to move around, took a long
2 time to get out of the gym if you were trying to get out?

3 **A** No.

4 **Q** No? Have you ever cancelled any of your kids' meetings for
5 other reasons?

6 **A** Can you elaborate?

7 **Q** Did you cancel Kyden's IEP meeting because your
8 stepchildren had doctors appointments?

9 **A** No.

10 **Q** You did not, okay.

11 **A** No.

12 **Q** Can you tell the difference between mine and Kaelyn's voice
13 on the phone?

14 **A** Yes.

15 **Q** Are you aware that she has answered the phone a few times?

16 **A** She never answered the phone.

17 **Q** When the phone calls first started, did the kids used to
18 talk to you for a while, tell you about stuff, play music,
19 keep you on the phone for 30 minutes, sometimes even the
20 full hour?

21 **A** Yes.

22 **Q** Why did it change?

23 **A** I don't know.

24 **Q** Were you listening to what they were telling you --

25 **A** Yes.

1 Q -- when they were on the phone? Okay, you talk about
2 guideline and parenting a lot. Do you know that there is a
3 section in there about teenagers?

4 A Yes.

5 Q And that they have the right to tell the other parent why
6 they don't want to see or go with the other parent?

7 A Yes.

8 Q You stated that Kaelyn was never in trouble?

9 A Yes.

10 Q Is Kaelyn a straight A student?

11 A Yes.

12 Q So you think that it would be in her best interest to upend
13 her life and possibly send her to juvenile detention?

14 A Yes.

15 MS. LEFORS: I have no further questions.

16 THE COURT: Okay. Any redirect, Ms. Smith?

17 MS. SMITH: Yes, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. SMITH:

20 Q Joe, would you just like the opportunity to discuss the
21 discord between you and Kaelyn?

22 A Yes.

23 Q So air out each of your grievances?

24 A Yes.

25 Q And you simply have not even had the opportunity?

1 **A** Never, not even in the phone calls that are being referred
2 to. Calling me Joe or no or nope does not describe what
3 the grievances are.

4 **Q** When were those longer phone calls? When were those?

5 **A** It was prior to an order being made to have one-hour phone
6 calls because they stopped out of nowhere.

7 **Q** How many -- I mean, was this the beginning of the
8 litigation?

9 **A** This was beginning of litigation.

10 **Q** Like 2019, 2020?

11 **A** 2020.

12 **Q** Okay. So they were okay and then an order was put in place
13 allowing you one-hour phone calls and then they stopped?

14 **A** They stopped prior to having to request and order the phone
15 calls take place.

16 **Q** Are you aware of the -- I'm sure you've read the guidelines
17 front to back?

18 **A** Yes.

19 **Q** Is there a section in the guidelines that provide that
20 children's denial of parenting time alone is not cause for
21 you not to have parenting time?

22 **A** Correct, it's also in the law.

23 **Q** Okay. Krista's continued attempts to get Kaelyn to express
24 her wishes and explain why she doesn't want to have visits
25 with you, what does that say about her commitment to

1 encouraging a relationship?

2 **A** It says to me that Krista's not committed and she's happy
3 with the fact that Kaelyn doesn't have a relationship with
4 me. It suits her best.

5 **Q** And she -- from all your accounts, she would be fine with
6 having no visits? When I say her, Krista.

7 **A** Yes, even to the fact that Krista and her prior attorney
8 requested no parenting time at all in the last few
9 hearings. That's not encouragement.

10 MS. SMITH: Nothing further.

11 THE COURT: Okay. Krista, do you have any recross? That
12 means another opportunity to ask questions that are related
13 to what Ms. Smith brought up.

14 RECROSS EXAMINATION

15 BY MS. LEFORS:

16 **Q** So for the phone calls, you're saying that the long phone
17 calls happened before there was a court order?

18 **A** Yes.

19 **Q** So you're saying that you called my phone before we had a
20 court order for you to talk to the kids?

21 **A** Yes, to the best of my knowledge.

22 MS. LEFORS: That's it.

23 THE COURT: Okay. Witness can step down. Do you have any
24 additional witnesses, Ms. Smith?

25 MS. SMITH: No, Your Honor.

1 THE COURT: Ms. LeFors, do you have any witnesses you want
2 to call?

3 MS. LEFORS: I just have my daughter.

4 THE COURT: I think the rule is basically that we shouldn't
5 be involving children in testifying in contested matters
6 like this, so I don't think that's a good idea. I would
7 entertain talking to her.

8 MS. LEFORS: That's fine.

9 THE COURT: But not when her parents are present and being
10 cross-examined.

11 MS. LEFORS: I would actually prefer that way.

12 THE COURT: Ms. Smith, do you have any objection to me
13 talking to the daughter?

14 MS. SMITH: I understand the Court's position and desire to
15 talk to the child. I have an objection, but my client
16 would just like the daughter to go into chambers without
17 any notebooks or anything, if that --

18 THE COURT: Yeah, and I don't want to talk to her and her
19 just tell me that it's of her own freewill and accord that
20 she's not going to go see her dad because that's kind of
21 what happened the last time, and I'm really reluctant to
22 record our conversation, I don't think it's necessary.
23 It's in no one's best interest for me to talk to the child
24 and then have a record made that could potentially be used
25 one way or the other. So I'll talk to her, but I'll have a

1 witness. I'm not going to keep a record of it, and I'll
2 try to keep it brief. And again, you know, the expectation
3 shouldn't be that she's just going to tell me everything's
4 wonderful but I'm not going to go meet with my dad, because
5 that's unacceptable and I think -- the last time we had
6 court was on July 18th, I looked up into the records, and I
7 thought we were dealing with the issue from the July 3rd
8 affidavit and so I kind of let it be known how I viewed the
9 evidence and the law, and now I'm left with a situation
10 where it doesn't sound like anything has worked since then
11 either.

12 So, yeah, I'm willing to talk to her, sure. I'll keep
13 it short, you know, 10 minutes, 15 minutes, but I don't see
14 any reason not to talk to her. With a witness, I will.

15 MS. SMITH: And, Your Honor, just for the record, I would
16 request some expectations moving forward if the Court's
17 going to talk with her that, you know, her mother says that
18 this is the court order, that it's going to be followed
19 and --

20 THE COURT: Well, that's what I expect too.

21 MS. SMITH: Okay.

22 THE COURT: Is that these court orders be followed and that
23 this man have visitation with his daughter, and that you
24 encourage that to the greatest extent humanly possible
25 because this is just unacceptable as far as I'm concerned.

1 That's why I'm willing to talk to her. I'm not going to
2 have a recording made because I think it will be inhibited,
3 but I will listen to what she has to say and then I'll come
4 back in and hear arguments and make a decision and we'll
5 move on. So I think -- where is she, Krista?

6 MS. LEFORS: Right outside this door.

7 THE COURT: Do you want to just bring her in? I'll bring
8 her into the back. I'll take off this robe and Tammy, the
9 court reporter, and I will speak to her in my office.

10 (In camera proceedings held. Kaelyn LeFors, Judge
11 Fitzgerald, and Tammy Stolle, court reporter, were
12 present.)

13 THE COURT: All right. We're back on the record. Myself
14 and the court reporter had an opportunity to talk to your
15 daughter for the last 20 minutes it seemed like and so
16 we're ready then to proceed. Do you have closing
17 statements you want to make, Ms. Smith?

18 MS. SMITH: I don't believe I have anything further. I
19 think the Court knows my client's position and what he
20 would like to see going forward.

21 THE COURT: Ms. LeFors?

22 MS. LEFORS: I just ask that the Court hold off on any
23 actions pending the appeal.

24 THE COURT: Okay, that will be denied. If I were to hold
25 off on taking actions every time an appeal got filed, then

1 we would never have the ability to settle disputes in
2 divorce actions like this because one party could appeal it
3 and then the other party would be without a remedy, so that
4 will be denied. But do you have anything else more on
5 point about the sanctions that they're asking that be
6 imposed upon you? Because now is the time to defend
7 yourself, and I realize you're self-represented, so I'm
8 encouraging you to tell me what you want to tell me because
9 you don't have any lawyer that's going to speak for you.

10 MS. LEFORS: I do not think that I'm at fault. I have told
11 her she -- hopefully when you talked to her she told you
12 that. I do encourage her, but she is of her own sound
13 mind. She makes the decisions whether he's there, I'm
14 there. She makes her own decisions.

15 THE COURT: Well, I'll give you that because she's pretty
16 independent minded and she seems to be quite bright.

17 I think my computer went to sleep, so I'll just have
18 to recall it as best I can. From reading the appendix
19 again of those guidelines, they talk about how children
20 will benefit from having a relationship with both parents,
21 and I'm finding as a fact, so far, that your daughter is
22 not having any type of a relationship with her father and
23 that he has been acting responsible in his obligations as a
24 father because he shows up for the visitation. He's
25 exercising his rights, or trying to exercise his rights in

1 the appropriate sphere by taking you to court to have you
2 sanctioned. He's not doing anything outside of what would
3 be expected, and as he said, and I've repeated that, you
4 know, this is the only place that he can go to try to have
5 some sort of a relationship with his daughter. And so I am
6 finding as a fact that you have not done enough to
7 encourage her to have a relationship with her father and so
8 you should be sanctioned for not doing that.

9 Specifically there are a number of items that have
10 been testified to by Joseph, your ex-husband, where he has
11 been unable to have any meaningful time with his daughter,
12 let alone the son who's now 18, and specifically I believe
13 that he said since May 10th, there have been 13 episodes
14 where he has gone to the restaurant and your daughter has
15 gone in and then basically ignored him and made a beeline
16 to the bathroom and not had any time at all with her
17 father, that you're the one that is with your daughter more
18 or less a hundred percent of the time, and if there's
19 anybody on this earth that could encourage your daughter to
20 have time spent with her father, it's you. It's not me.
21 It's nobody else besides you. And so to encourage means
22 that you have to do absolutely everything in your power to
23 persuade her that if she feels like her father has done
24 things five years ago that were negative, that some of
25 those things have to be just left in the past and you have

1 to encourage her to move on to strive to have some sort of
2 relationship with her father because this is going to
3 impact her negatively as far as her relationships in the
4 future with adult men that she does not have a good
5 relationship with her father. This needs to come to an end
6 and you have not done enough to encourage her. There is no
7 reason on earth that we had an order in effect in May, you
8 came back July 18th and we talked about the affidavit and
9 here we are, it's August 12th and the testimony and the
10 facts are that your daughter is not having any meaningful
11 time at all. Walking into a restaurant and then beelining
12 it to the bathroom and then after you've been in the
13 bathroom, going out and sitting on a park bench outside of
14 the restaurant is not at all what her father is entitled to
15 by law for visitation, and there is not a genuine effort
16 being made by you to encourage meaningful exercise of
17 visitation.

18 Now, if you believe that somehow you are under a court
19 order that you can't sit in the same restaurant when your
20 daughter is in that restaurant, I will eliminate that
21 order, and you can actually -- I'm sure it would be too
22 much to sit at the same table, but you are not prohibited
23 from going into the restaurant and having a seat somewhere
24 else so you can actually watch that your daughter is
25 following what you have encouraged, which is to sit down at

1 the table at a restaurant with your ex-husband, her
2 biological father, and that's what I'm going to order that
3 you do, that you encourage her, so we don't have any more
4 of these hearings.

5 Now Ms. Smith has made a motion and your ex-husband
6 has given his impressions of enforcing more in the way of
7 visitation at this time. I believe that we could get into
8 a territory of unpredictable outcome, unforeseen negative
9 consequences by your daughter, who it's very difficult to
10 get into a situation of having visitation with her father,
11 so I'm not going to order at this time that there be
12 further visitation.

13 But the whole part about this squabble, Ms. LeFors,
14 with your ex-husband about him exercising visitation on
15 Father's Day is negative. Of any day in the year, he
16 should be entitled to have quality visitation with his
17 children where he's not a custodian, it should be on
18 Father's Day, and yet I hear testimony that it turned into
19 some argument about whether he could or not. So I'm going
20 to sanction you and we'll need to have some sort of a
21 method to keep this on the forefront so that the order is
22 followed from here on out.

23 You have a very independent daughter, but that's not
24 good enough to just say that. Results need to occur and
25 I'm holding you responsible, Ms. LeFors, to see to it that

1 this not -- we not have another hearing like this where
2 this is the testimony.

3 And additionally, you need to encourage her to have at
4 least weekly phone contact with her father. Now I realize
5 I can't make her speak, but I can make you encourage her to
6 speak and I can judge how much encouragement you've made by
7 the results that we see with your daughter. She is very
8 bright. There's just no way that you could fail if you
9 really put your mind to encouraging her to do these things
10 that are very small in comparison to what your ex-husband
11 really is entitled to under the guidelines as far as
12 visitation, but I can't see at this point with this much
13 frustration and this little of efforts that somehow I can,
14 with magic powers, give additional visitation and
15 everything's going to be hunky-dory and it's going to work
16 out so blessedly. I don't think that's realistic. But I'm
17 going to sanction you and we'll continue to do this.

18 How much are you asking for, Ms. Smith, and do you
19 want this taken off how much he owes her?

20 MS. SMITH: Yes, Your Honor, if we could just stay with the
21 same amount that was in the prior order. I think it was --
22 I think it was 500 a visit, and so in my proposed order, I
23 will make sure I have the correct dates of the visitations
24 and lay those out for the Court.

25 THE COURT: All right. Well, I will review it when I get

1 it. Please serve Ms. LeFors with a proposed order and then
2 you have five days to object to it. I'm not saying that if
3 you object I will not sign it, but you need to be given an
4 opportunity to object and state your reasons for it. Do we
5 need to set another hearing?

6 MS. SMITH: My client is indicating yes.

7 THE COURT: Okay. Maybe it would be more cost efficient to
8 just put one on the calendar and then we could revisit the
9 situation and hopefully I will believe that it will be
10 better.

11 MS. SMITH: Hopefully there will be better news to report.
12 Is your calendar up, or do we need to --

13 THE COURT: I can get it up. It just went to sleep here.
14 I've got my calendar. Right now, Thursday, September --
15 well, wait, there's something there. September 17th which
16 is a Tuesday, I'm available for a hearing any time after
17 10:00 a.m. that day.

18 MS. SMITH: That works for me, Judge.

19 THE COURT: Ms. LeFors?

20 MS. LEFORS: I don't know, I don't have a calendar or
21 anything with me.

22 THE COURT: What times are the least convenient for you,
23 mornings or afternoons?

24 MS. LEFORS: Probably more mornings.

25 THE COURT: So, Ms. Smith, would an afternoon hearing that

1 day work better, or work okay?

2 MS. SMITH: Yes, that would be fine.

3 THE COURT: All right, 1:15 then on September 17th which is
4 a Tuesday at 1:15. And we'll just call that perhaps a
5 status hearing. But if there's a request for additional
6 sanctions, then I would request that to be in writing and
7 served and filed ten days before the hearing.

8 MS. SMITH: Yes, Your Honor.

9 THE COURT: All right. If there's nothing further, we're
10 in recess.

11 MS. SMITH: Thank you.

12 (This hearing was concluded.)
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1 STATE OF SOUTH DAKOTA)
2 COUNTY OF MEADE) SS. CERTIFICATE

3
4 I, TAMMY STOLLE, RPR, an Official Court Reporter and
5 Notary Public in the State of South Dakota, Fourth Judicial
6 Circuit, do hereby certify that I reported in machine
7 shorthand the proceedings in the above-entitled matter and
8 that pages 1 through 52, are a true and correct copy, to
9 the best of my ability, of my stenotype notes of said
10 proceedings had before the HONORABLE JOHN FITZGERALD,
11 Circuit Court Judge.

12 Dated at Sturgis, South Dakota, this 26th day of
13 August, 2024.

14
15
16
17
18 /s/Tammy Stolle
19 TAMMY STOLLE, RPR
20 Registered Professional Reporter
21 My Commission Expires: 2/2/28
22
23
24
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STATE OF SOUTH DAKOTA)
)
 COUNTY OF MEADE)

IN CIRCUIT COURT
 FOURTH JUDICIAL CIRCUIT

JOSEPH D. LEFORS,
 Plaintiff,

vs.

KRISTA M. LEFORS,
 Defendant.

Status Hearing
 46DIV19-8

BEFORE: **THE HONORABLE JOHN FITZGERALD**
 Circuit Court Judge
 Sturgis, South Dakota
 September 17, 2024 at 1:15 p.m.

APPEARANCES:

For the Plaintiff: Hollie L. Smith
 Attorney at Law
 2834 Jackson Boulevard, Suite 201
 Rapid City, South Dakota 57709

For the Defendant: Kelly J. Sanderson
 Attorney at Law
 1102 Junction Avenue
 Sturgis, South Dakota 57785

I N D E X

WITNESS:

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JOSEPH LEFORS

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EXHIBITS:

	OFFERED	RECEIVED
Defendant's Exhibit A	20	20
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1 (WHEREUPON, the following proceedings were duly
2 had:)

3 THE COURT: This is the time and place set for a hearing.
4 It's in the computer as a status hearing, but as I recall,
5 there was a motion filed September 3rd seeking additional
6 sanctions against mother and to address custody and lack of
7 parenting time.

8 So with that, I will allow Ms. Smith to call witnesses
9 or proceed in any manner you want.

10 MS. SMITH: Yes, Your Honor. I would proceed by calling
11 Krista LeFors.

12 THE COURT: Sure.

13 **KRISTA LEFORS,**

14 called as a witness, being first duly sworn, testified as
15 follows:

16 THE COURT: And we have one hour reserved for this case.

17 MS. SMITH: Yes, Your Honor.

18 **DIRECT EXAMINATION**

19 BY MS. SMITH:

20 **Q** All right. Ma'am, would you state your name for the
21 record?

22 **A** Krista LeFors.

23 **Q** And, Krista, you were at the last hearing in this matter.
24 Do you recall when that was?

25 **A** Last month.

1 Q August 12th approximately?

2 A Yes.

3 Q Okay. After that hearing, the two of you, you and Joe,
4 continued to do parenting time or attempted to do parenting
5 time at these restaurants, correct?

6 A Yes.

7 Q And since that time, my client still has not had any
8 meaningful time with Kaelyn, correct?

9 A By his choice, yes.

10 Q And you continue to believe that it is Joe's responsibility
11 to foster a relationship between him and Kaelyn?

12 A I believe that it's Joseph's responsibility to repair the
13 relationship between him and Kaelyn.

14 Q And he is not able to do that unless he has meaningful time
15 with Kaelyn?

16 A That's what they tried to do in counseling and he refused
17 to participate and do that.

18 Q Well, he attended every counseling appointment that was
19 scheduled, correct?

20 A As far as I know. I was not in them.

21 Q At these restaurant visits, a few of them you had joined --
22 well, you had shown up and walked into the restaurant,
23 correct?

24 A The first two I walked her in because I could not clear my
25 stuff that I had to do for work, but the rest of them I

1 accompanied her to the restaurants.

2 **Q** Okay. So the first two you dropped her off and left the
3 area, correct?

4 **A** I dropped her off, made sure she was in front of her dad
5 before I left and then I left.

6 **Q** Okay. There was a parenting time scheduled on August 20th
7 at Olive Garden. Do you recall that?

8 **A** Is that the first one I was at?

9 **Q** Yes, you walked in and you requested a table for three?

10 **A** Um.

11 **Q** Yes or no?

12 **A** After I had texted him, yes.

13 **Q** Okay. And you had asked him to reserve a table or do you
14 have a table yet, right?

15 **A** Not in those words, no.

16 **Q** But generally requesting that you all three sit down at
17 dinner together?

18 **A** I asked him if he could get a table for three because
19 Kaelyn already said she was going to run and I was trying
20 to diffuse the situation and trying to get her into the
21 restaurant.

22 **Q** But your response to Joe during those communications was
23 that the court somehow ordered that the three of you have a
24 meal together, that was your understanding?

25 **A** It was that we could eat together separately at different

1 tables. Olive Garden, I'm not eating, I can't get a table
2 just to sit in there, and she had already said that she was
3 going to get up and leave. I was trying to do anything
4 that I could possibly do to get her to sit at a table with
5 him whether I was there or not. I was -- the main goal was
6 trying to get her and him to be in that same vicinity to
7 start with.

8 **Q** At some point things got pretty heated at the Olive Garden
9 restaurant and you had yelled at Joe, "No, the court said
10 we will all sit down together and eat dinner?"

11 **A** No.

12 **Q** So it's your testimony you didn't say that to him?

13 **A** No. I would have told him what was said at court. I
14 didn't holler at him. All I did was walked up and asked
15 him if he had gotten a table because he hadn't responded to
16 my text.

17 **Q** So you're saying you didn't yell at him after he said you
18 were making a scene, quote, "Making a scene? You want me
19 to make a scene, I'll make a scene?"

20 **A** I don't recall saying that and I did not holler anything.
21 If I would have hollered something, somebody would have
22 asked us to leave.

23 **Q** And then you said, "Well, if I get another table, you're
24 going to pay for my food."

25 **A** No. I did ask him if he was going to pay for my meal, but

1 I didn't tell him he was going to pay for it because he
2 told me to sit at a different table and eat, and I told him
3 I didn't plan on eating and asked him if he was going to
4 pay for my meal if I had to get a table at Olive Garden.

5 **Q** And you proceeded to sit down at a table with Kaelyn?

6 **A** I asked for a table for three after I told him I was going
7 to do it and we followed the server. He did not get up and
8 follow us. I did let him know where the table was, and we
9 did not order until, I want to say we were sitting 30 or
10 40 minutes before she ordered a meal.

11 **Q** So you sat there for an hour with Kaelyn and did what?

12 **A** Texted Joseph waiting for him to come sit at the table so
13 we could try and get him and her at the same table so we
14 could try and do a conversation so we could try and get
15 anything rolling.

16 **Q** And at no point did you coax or attempt to get Kaelyn at
17 the same table where he was sitting?

18 **A** Joseph was not at a table. He sat on the couch the whole
19 time.

20 **Q** So you sat at the table for an hour and you didn't take
21 Kaelyn into the waiting room and try and facilitate a meal
22 with him and his daughter without you being there?

23 **A** I did not get up from the table, no, because I didn't want
24 them to think that I was, you know, drinking something,
25 about to order and to leave the restaurant.

1 **Q** The next visit was at Culver's on a Wednesday. You showed
2 up a little late?

3 **A** Not that I recall, but Kaelyn is the one that's driving me
4 to visitation every time.

5 THE COURT: Ms. Smith, do you have a date just for my
6 notes?

7 MS. SMITH: Yes, and my client did file an affidavit.

8 THE COURT: Yes, I've read it.

9 MS. SMITH: Yes, sir. I am referring to August 21.

10 THE COURT: Thank you.

11 **Q** (BY MS. SMITH) You accompanied Kaelyn at Culver's that
12 day?

13 **A** Yes.

14 **Q** Okay. You sat down at the table?

15 **A** I did.

16 **Q** Okay. And you ordered some food and sat down and remained
17 there during the duration?

18 **A** I ordered her an ice cream, yes.

19 **Q** Did any point you attempt to have Kaelyn walk over to the
20 table where Joe was sitting?

21 **A** I tried to get her to sit at his table. She refused. I
22 put her in the chair directly across from him. She's
23 probably sitting about, maybe a little bit farther than you
24 are from him, so she was directly across from him so that
25 they could try and talk. I did tell her to talk to him

1 numerous times. I got a lot of eye rolls. I texted him.
2 He pushed himself further into the booth so he was even
3 farther away from her and he'd read his phone but he would
4 not respond.

5 **Q** So it's your testimony that you had conversations with
6 Kaelyn at the restaurant telling her that she needed to sit
7 down with her father and have dinner?

8 **A** I did.

9 **Q** And you would have been close enough to where Joe would
10 hear these conversations?

11 **A** I don't know if Joseph would hear me, but he would hear
12 anything that Kaelyn says. I was farther back and there's
13 a wall that kind of separates it that was behind him.

14 **Q** So you're sitting there texting Joe to tell him to go over
15 to Kaelyn at their table? At your table?

16 **A** No, I'm telling him to turn and talk to her, to start a
17 conversation. He could have asked her anything, like how
18 was your day, so then I could try to prompt her to answer.
19 I was trying everything with her and with him to try to get
20 some sort of conversation, some sort of something out of
21 either one of them.

22 **Q** August 27th, it would have been a visit at Olive Garden,
23 correct?

24 **A** Yes.

25 **Q** You again requested a table for three and that it -- you

1 told Joe that it was on him for not sitting at the table
2 with you and Kaelyn?

3 **A** I'd have to look at the message, but I did let him know
4 that at some point something's got to give. I'm trying
5 everything possible. I don't feel comfortable there. I
6 don't want to be there any more than he wants me to be
7 there, but I am trying everything to get her to talk to
8 him, but he's being just as stubborn as she is.

9 **Q** During that August 27th, was Joe sitting at a separate
10 table?

11 **A** Is that at Olive Garden?

12 **Q** Yes.

13 **A** No, he sat on the couch. Every Olive Garden visit we had,
14 he did not move from the couch.

15 **Q** So then when you're sitting at the table and having these
16 alleged conversations with Kaelyn, you did not at any point
17 come into the waiting room to try and facilitate her at his
18 table?

19 **A** He was at a couch.

20 **Q** I'm sorry, the couch.

21 **A** And I didn't leave the table because when you have food or
22 anything coming, I didn't want them to think that I was,
23 you know, up and dashing and not paying for things because
24 it's just me and her at a table, so both of us would have
25 had to get up. I did tell her to go talk to him. The last

1 visit I do know she went to the bathroom and she walked by
2 him and it looked like he said something to her. I'm not
3 sure if she responded to him.

4 **Q** But to be clear, at this August 27th visit, Joe's in the
5 waiting room, you're at the table the entire time texting
6 him telling him he needs to come to the table?

7 **A** I am trying to encourage him to help me out. He's --

8 **Q** Okay. That -- you answered the question.

9 August 30th then was at Culver's?

10 **A** Yes.

11 **Q** During that time, the two of you, Kaelyn, were at a table
12 together again?

13 **A** Possibly. Is that the second Culver's, or is that the
14 third Culver's one? I don't have a calendar in front of
15 me.

16 **Q** Well, do you recall Kaelyn sitting on her phone and
17 sleeping at the table?

18 **A** Kaelyn was never on the phone. She might have --

19 **Q** That was you on the phone?

20 **A** It might have been me on the phone. If I get text messages
21 or emails or things from work, I do respond to them. She
22 might have put her head down here or there. I get an a lot
23 of eye rolling, a lot of ignoring, a lot of facial
24 expressions from her of her nonhappiness, so she could have
25 put her head down at the table for a second or so.

1 Q Okay. So it's your testimony that she was not sleeping?

2 A No, she was not sleeping.

3 Q Okay. And at any point during that visit, did you attempt
4 to encourage Kaelyn to go and sit with her father?

5 A I did. I also encouraged her to turn because she was
6 directly across from him -- again, we were in the same
7 booth, same table -- to try to get her to talk to him. I
8 tried to text him to get him to say something to her so we
9 could try and get a conversation going, and again, he
10 pushed himself as far into the booth as possible and did
11 not respond to me.

12 Q Because it's your position that it's on him to facilitate
13 this?

14 A I'm not saying it's on him to facilitate. It's on him to
15 repair. I am trying to facilitate, but when he's refusing
16 to even try to talk to her or anything, it's very hard.

17 Q And at no point did you walk up from the table and take
18 Kaelyn's hand and walk her over to Joe's table?

19 A I walked her --

20 Q Yes or no, ma'am?

21 A -- at the beginning, but I wasn't holding her hand. We
22 walked by and I told her to sit by him and she refused.

23 Q September 3rd would have been at Olive Garden, and same as
24 other visits, there was no dinner that occurred with Kaelyn
25 and Joe?

1 **A** He did not move from the couch, no.

2 **Q** So you sat at that table with Kaelyn and had a meal?

3 **A** I did not have a meal, no. She has had a meal or ice cream
4 at every one.

5 **Q** September 4th would have been at Culver's. Do you recall
6 Joe entering the restaurant and waving at Kaelyn?

7 **A** I do not. Joseph was already in the restaurant when I
8 walked in.

9 **Q** And upon seeing Joe at a table, you began laughing and
10 pointing at Joe to Kaelyn?

11 **A** I did not.

12 **Q** And September 4th at Culver's, you continued to sit at a
13 table with Kaelyn for that hour?

14 **A** On September 4th when we got our ice cream and went to go
15 sit down, he had moved from his table and was in the
16 bathroom for a little bit. Me and her had sat down on the
17 table that was across from his like we normally do. When
18 he came back in, he walked all the way around us and went
19 and sat in the very back corner.

20 **Q** Phone calls have not changed?

21 **A** I believe they are at least five minutes. I don't know if
22 she's talking to him on them, but she did tell me that she
23 would talk to him longer, but again, I don't -- I'm not in
24 the same room so I don't know what's said.

25 **Q** Well, 90 percent of the calls are while you are in the car

1 with Kaelyn, are they not?

2 **A** No, I don't think this last month there has been any calls
3 with Kaelyn in the car.

4 **Q** Are you aware that she continues to call Joe "the home
5 wrecking hoe?"

6 **A** As far as I know, she does not call her father that. I do
7 know she had started saying "good-bye, Joe." I do not know
8 if she had referenced back to it for sure.

9 **Q** Kaelyn continues to use the last name "Knudson" for school
10 activities, correct?

11 **A** No, she does go by LeFors. That is her legal name and it
12 is her school name. When they go to run, or it might even
13 be basketball, I'm not sure. She doesn't do basketball.
14 They are allowed to write -- if they want to change their
15 first or last names, there are multiple people that she has
16 that are on her cross team even that they change their
17 names. They call them stage names.

18 **Q** Okay. And so she's being announced or otherwise referred
19 to as a name that she would like to be called?

20 **A** They are not announcing anything in cross. They don't
21 announce their names for anything, but she does want to go
22 by that last name when she's an adult, yes.

23 **Q** Okay. And you've not contacted the school or prohibited
24 her from using "Knudson?"

25 **A** It is not up to me through the school. She does go by

1 LeFors, that is her last name for the school and for things
2 that have to do with the school.

3 **Q** Since the last hearing, you haven't invited Joe to any
4 additional activities or suggested additional visitations
5 with Kaelyn?

6 **A** I have tried to do makeup, but sometimes he'll write me
7 back, sometimes he'll pick days that he knows that we're
8 out of town, but I do try to respond to him to try to make
9 up the time missed.

10 **Q** I'm not talking about makeup. I'm talking about additional
11 visitations outside of the normal schedule or inviting him
12 to different events for Kaelyn?

13 **A** He has her cross country schedule. Most of them are during
14 work, so I'm not sure how that works, but additional ones,
15 no, we're still trying to find times that work with his
16 schedule and mine to do makeups.

17 **Q** Do you recall Meet the Teachers Night?

18 **A** I do.

19 **Q** Do you recall seeing Joe there?

20 **A** I did see Joe, Courtney and my niece and nephew, yes.

21 **Q** When you saw Joe at Meet the Teachers Night, you told --
22 well, Kaelyn would have been with you, right?

23 **A** Kaelyn was with me, a friend of hers and a friend's parent,
24 yes.

25 **Q** Okay. And when you saw Joe, you told her, "Keep walking

1 forward. Just walk?"

2 **A** No. Actually we were walking towards her English room and
3 all of a sudden Kaelyn took off running because she was
4 walking in front of me with her friend and she went down
5 the hallway, and I turned towards the corner of the hallway
6 and kind of gave her a funny look because I didn't know
7 what she was doing, and so she walked back over to me and I
8 didn't see Joseph or anybody at this time, and so I told
9 her, "Well, just keep going in." And she was trying to
10 tell me, and here he come out -- my niece and nephew
11 actually came out first with their heads down looking at
12 the ground and then him and Cortney came out of her English
13 classroom.

14 **Q** During this night, did you attempt to go up to Joe and have
15 a conversation?

16 **A** I did not.

17 **Q** Okay.

18 **A** It's very awkward.

19 **Q** That's a no?

20 **A** No.

21 **Q** It seems like you have an excuse or explanation as to every
22 visit on why conversations aren't happening, is that
23 correct?

24 **A** I don't feel comfortable going up by my ex-sister-in-law
25 and I don't like to put my niece and nephew in a position

1 they're already in.

2 **Q** Okay. But you had the opportunity during Meet the Teachers
3 Night to at least give Kaelyn an opportunity to say hi to
4 her dad?

5 **A** I did not. They walked out so fast that I seen my niece
6 and nephew and I smiled and did a little wave, and they
7 were already past by the time I looked up and I did not see
8 him again or her or the kids again that night.

9 **Q** But don't you think that if Kaelyn saw your efforts to have
10 a conversation with just Joe as parents, that it would
11 assist with fostering that relationship?

12 **A** I don't.

13 **Q** Okay. So you don't believe that she would mirror some of
14 your behavior, is that your position?

15 **A** I do not think she would, no.

16 **Q** Okay. Well, she clearly understands and knows the two of
17 you don't get along?

18 **A** Not really.

19 **Q** She thinks that you guys are sunshine and rainbows and --

20 **A** Well, no.

21 **Q** -- like each over?

22 **A** But she doesn't know the extent of why we don't get along
23 and everything else. She knows that we do talk, that we do
24 text back and forth and we make up schedules for whether it
25 would be a phone call, or you know, visitation, but I don't

1 think she knows to the effect of what everything is.

2 **Q** So it's your position that if you took efforts to have
3 conversations with Joe while she was around that it
4 wouldn't help the situation?

5 **A** I don't think so. I don't.

6 **Q** But you haven't tried it?

7 **A** I did the first time we went to Olive Garden, I did walk up
8 to him and try to talk to him.

9 **Q** You have not provided anything here today or otherwise
10 filed evidencing your efforts to encourage these visits or
11 a relationship, outside of your testimony today?

12 **A** No.

13 MS. SMITH: That's all I have.

14 THE COURT: Ms. Sanderson.

15 MS. SANDERSON: Thank you, Your Honor. May I approach my
16 witness?

17 THE COURT: Yes.

18 CROSS EXAMINATION

19 BY MS. SANDERSON:

20 **Q** Krista, I'm handing you a packet of exhibits. The first
21 one there marked as Exhibit A, can you tell me what that
22 is?

23 **A** Photos from the visits.

24 **Q** So let's go through these. What is the date on that first
25 page of photos?

1 **A** August 20th.

2 **Q** And where would this have been then?

3 **A** Olive Garden.

4 **Q** And was this the first night that you attempted to have a
5 supper with the three of you?

6 **A** Yes.

7 **Q** Okay. Now turning to that second page, where was this
8 photo taken?

9 **A** That was also taken the same night.

10 **Q** Okay. And who is in this photo?

11 **A** That is Kaelyn, my daughter.

12 **Q** Okay. Now I'd ask that you turn to that third page. Where
13 is this photo taken?

14 **A** This is taken at Olive Garden. Or I mean Culver's, sorry.

15 **Q** And what was the date that this photo was taken?

16 **A** August 21st.

17 **Q** And who do you see in this photo?

18 **A** On the very right you can see Joseph pushed all the way
19 against the wall, and on the left is Kaelyn.

20 **Q** And did you take these photos?

21 **A** I did.

22 **Q** Okay. Now turning to that next page, when was that photo
23 taken?

24 **A** August 27th.

25 **Q** And where was this photo taken?

1 **A** Olive Garden.

2 **Q** And what does this photo depict?

3 **A** It's somewhat blurry but in the middle top you can see
4 Joseph sitting on the couch.

5 **Q** Okay. And now I'd ask that you turn to that last page.
6 When was this photo taken?

7 **A** August 30th.

8 **Q** Where was this photo taken?

9 **A** Culver's.

10 **Q** Who do you see in this photo?

11 **A** You see Joseph on the right pushed up against the wall, and
12 then Kaelyn is on the left looking out the window.

13 **Q** And when was this photo taken?

14 **A** August 30th.

15 MS. SANDERSON: Your Honor, I would move to admit
16 Defendant's Exhibit A into evidence.

17 THE COURT: Any objection?

18 MS. SMITH: No objection.

19 THE COURT: They are received.

20 **Q** (BY MS. SANDERSON) So now, Krista, just to go through
21 these in a little bit better detail now that they've been
22 received. How far of a distance would you say on page
23 three that the two were sitting at Culver's?

24 **A** I would say maybe about as far as you and Hollie are from
25 each other. Maybe three feet. It's just a small walkway.

1 It's pushed in the back.

2 **Q** And did Joe ever turn to Kaelyn and try to speak with her?

3 **A** No.

4 **Q** And so therein again on page five, are these the same
5 tables that we saw on page three?

6 **A** Yes.

7 **Q** And therein again, did Joe ever turn and talk to Kaelyn?

8 **A** No.

9 **Q** Now, Krista, I'd ask that you turn to that Defendant's
10 Exhibit B. Do you recognize this exhibit?

11 **A** Yes.

12 **Q** What is it?

13 **A** They are all the phone calls from Joseph to Kaelyn.

14 **Q** Are these screenshots that you took?

15 **A** They are screenshots of after the phone calls, yes.

16 **Q** Okay. And when do these photos start?

17 **A** Well, these -- the first date is August 16th.

18 **Q** Okay. When is the second page from?

19 **A** August 18th.

20 **Q** And how long was the phone call there?

21 **A** Five minutes.

22 **Q** And the 1-208-599-3119, whose phone number is that?

23 **A** That's Joseph's cell phone.

24 **Q** Now on page three of that exhibit, when was that phone call
25 from?

1 **A** August 23rd.

2 **Q** And how long did it last?

3 **A** Six minutes.

4 **Q** Okay. And the next page, when did this phone call occur?

5 **A** August 25th.

6 **Q** And how long did it last?

7 **A** Six minutes.

8 **Q** Okay. Next page, when did that phone call take place?

9 **A** August 28th.

10 **Q** Okay. And how long did it last?

11 **A** Five minutes.

12 **Q** Okay. When was the next phone call?

13 **A** September 1st.

14 **Q** Okay. And how long did that phone call last?

15 **A** Eight minutes.

16 **Q** Okay. And then turning to the next page, when was
17 that phone call?

18 **A** September 6th.

19 **Q** And how long did it last?

20 **A** Five minutes.

21 **Q** And then turning to the next page, when was that?

22 **A** September 8th.

23 **Q** Okay. And how long did that phone call last?

24 **A** Six minutes.

25 MS. SMITH: Your Honor, just to speed up the process, I

1 have no objection to these exhibits and it sounds like that
2 speak for themselves.

3 THE COURT: Are you offering B?

4 MS. SANDERSON: I am, Your Honor.

5 THE COURT: It will be received.

6 MS. SANDERSON: Just for clarification, Hollie, do you have
7 any objection to C or D, or do you want me to go through
8 the foundation on those?

9 MS. SMITH: No objection.

10 **Q** (BY MS. SANDERSON) So, Krista, now let's turning to
11 Exhibit C. Since foundation has been waived, I'm just
12 going to ask you to get into the thick of it here. So do
13 these messages span from Saturday, July 6th until
14 September 16th?

15 **A** They do.

16 **Q** Okay. And are these a true and correct depiction of every
17 message between you and Joe?

18 **A** They are.

19 **Q** And so I'd ask that you turn to that fifth page there. Let
20 me know when you get there. The fifth page of Exhibit C.

21 **A** Okay.

22 **Q** And when are these text messages from on page five?

23 **A** August 13th and August 20th.

24 **Q** Okay. And would these have been when you were at Olive
25 Garden?

1 **A** The one for August 20th, yes.

2 **Q** And was that the first time that you had tried to have a
3 table for three?

4 **A** Yes.

5 **Q** Okay. And so the messages that we see here, are these your
6 attempts at getting Joe to come to the table?

7 **A** Yes.

8 **Q** Okay. Do you feel that you could have done anything more
9 on that night to try to get them to eat together and have a
10 conversation?

11 **A** No, I cannot control if he won't co-parent with me.

12 **Q** And now I would ask if you would turn to the August 21st
13 date which I believe it begins on page eight.

14 **A** Okay.

15 **Q** And was this when you were at Culver's?

16 **A** Yes.

17 **Q** And did Joe say, "As a reminder, you, yesterday, per the
18 judge, you are not to sit at the table with me and Kaelyn?"

19 **A** Yes.

20 **Q** Okay. And did you respond accordingly?

21 **A** Yes.

22 **Q** Okay. Do you feel that there's anything that you could
23 have done differently at that visit to try to get them to
24 communicate with each other?

25 **A** No.

1 MS. SANDERSON: Your Honor, I would move to admit
2 Defendant's Exhibit C into evidence.

3 THE COURT: D?

4 MS. SANDERSON: C.

5 THE COURT: C. And I already heard there was no objection?

6 MS. SMITH: Correct.

7 THE COURT: It's received, and I thought you had no
8 objection to D either, is that right, Ms. Smith?

9 MS. SMITH: Correct.

10 MS. SANDERSON: Then I would offer that.

11 THE COURT: I'll receive them both.

12 MS. SANDERSON: Thank you, Your Honor.

13 **Q** (BY MS. SANDERSON) All right. And now I would ask that
14 you turn to the second to the last page of that Exhibit C
15 and therein again, were you at Olive Garden that evening?

16 **A** For September 3rd, yes, at the top.

17 **Q** And did Joe ever correspond with you at all while you were
18 at that visit?

19 **A** No.

20 **Q** And again, did you encourage him to come to your table so
21 that he could be a part of the conversation that you were
22 having with Kaelyn?

23 **A** I did.

24 **Q** And you never received any response from him whatsoever?

25 **A** None.

1 Q Okay. And did you see Joe have his phone that day at Olive
2 Garden?

3 A Yes.

4 Q Did you believe that he was receiving these messages?

5 A I do.

6 Q And then as far as the September 10th and 11th days, did
7 you have any parenting time those days?

8 A No.

9 Q Okay. And why is that?

10 A He called -- or sent a message that he had to reschedule.

11 Q Okay. And now I would ask that you turn your attention to
12 that Defendant's Exhibit D. What is this a screenshot of?

13 A It is a screenshot of Kaelyn's portal or student portal
14 that we see as parents.

15 Q Okay. And in it does it state that her name is Kaelyn Mae
16 LeFors?

17 A It does.

18 Q And is this how all of the staff and administrative staff
19 are to relate to Kaelyn in class?

20 A That is what they see, yes.

21 Q Do you feel that the visits that you guys are currently
22 utilizing at Culver's and Olive Garden are helping this
23 relationship?

24 A I don't.

25 Q Do you think that there's any better solution that the

1 Court could consider?

2 **A** They could potentially try with counseling again.

3 **Q** And why do you think that that could benefit them?

4 **A** Because Kaelyn would have the support of Melanie, and with
5 everything else going on, I think that she would be able to
6 work more on helping their relationship than anybody else
7 can.

8 **Q** Do you feel that there's anything that you can be doing
9 differently at home to try to encourage this more?

10 **A** I don't.

11 **Q** Do you feel that if things continue on the route that they
12 are on, that it will further damage their relationship?

13 **A** Yes.

14 MS. SANDERSON: Your Honor, I have no further questions for
15 her.

16 THE COURT: I have a couple before I turn it over to Ms.
17 Smith for redirect.

18 This is kind of an open-ended question, Krista, but
19 how do you influence your daughter to avoid the temptations
20 that come along with being a teenager these days, like with
21 drugs and picking people who are bad influences or making
22 bad choices about her life?

23 THE WITNESS: She's very headstrong and knows what she
24 wants in life. She already knows what she wants to be.
25 All of that, it's kind of her personality more than it is

1 with me. I've talked to her about different things like if
2 she chooses in life before she's 18 that she wants to have
3 sex or anything else to talk to me, but she's a straight A
4 student. She does that on her own, and she's very focussed
5 and driven. She kind of just knows what she wants and
6 succeeds at it very well.

7 THE COURT: Next question. Do you give your ex-husband Joe
8 credit for putting up with what I will call being
9 disrespected by his daughter and kind of cruel and
10 unnecessary behavior by your daughter?

11 THE WITNESS: I do talk to her about it. She knows that it
12 is not appropriate. It's -- we talk about it a lot at home
13 and I try to bring in the different things that she has
14 done with her dad throughout the years trying to get her to
15 remember different things about him. I do know she's --
16 like when he was at the school thing with her cousins, that
17 is very hard on her and she took that very hard, but she
18 has been disciplined for it. She is told not to say it.

19 I do not know what she says to her friends obviously,
20 but she does not say anything at home bad about him. It's
21 more of, to be honest, she ignores him. She just won't say
22 anything if that makes sense.

23 THE COURT: Okay. Have you paid the attorney's fees of
24 \$2,000 that I ordered back in June to Joe?

25 THE WITNESS: It was to be out of the money that he owed

1 me.

2 THE COURT: Okay. So that's how it was credited?

3 THE WITNESS: That's -- yeah.

4 THE COURT: And has he paid you the alimony and the child
5 support that was ordered?

6 THE WITNESS: There is still some that has not been paid,
7 but he is paying the monthly stuff.

8 THE COURT: That's all the questions I had. So, Ms. Smith,
9 you can go ahead.

10 REDIRECT EXAMINATION

11 BY MS. SMITH:

12 Q Kaelyn continues to be able to do all of the activities
13 that she's normally involved in?

14 A No. She does do band which is a class through school, and
15 she does do cross country right now, but that is it.

16 Q Okay. So cross country, she -- you allow her to do that
17 sporting event despite her refusal to do these visits?

18 A I allow her to do cross country because she's trying to get
19 a scholarship for college.

20 Q So the answer is yes, you're allowing her to continue --

21 A I allow her to do sports, yes.

22 Q As far as phone calls go, you don't initiate any phone
23 calls to Joe for him to talk with Kaelyn?

24 A I don't. He just calls, or if we have to make up, I just
25 send him a text and ask him if he -- let him know that he

1 can call at seven, or let him know, "Hey, if you want to
2 call this time on a different day."

3 **Q** Are you -- do you have this Exhibit B in front of you? The
4 text messages. Page six.

5 **A** So C?

6 **Q** I'm sorry, C.

7 **A** Okay.

8 **Q** Page six?

9 **A** Yes.

10 **Q** And I'm looking at the text that you sent to Joe where you
11 say, "If you refuse to come sit and try to have a
12 conversation with our daughter, that is on you," right?

13 **A** You said page six?

14 **Q** Yes.

15 **A** Okay, yep. I can't make him come back and sit there. I
16 can't make Joseph do anything.

17 **Q** Right. And so you still continue to believe that it is
18 Joe's responsibility to initiate and come sit at the table?

19 **A** If Joseph wants a relationship with his daughter, he's
20 going to do everything in his power. I am sitting here
21 trying to help him have a relationship, but I cannot make
22 him get up off of a couch and walk over there and talk to
23 her. All I can do is put an olive branch out trying to get
24 him to co-parent with me so that it can be resolved. I
25 can't make her do anything. If she doesn't want to do it,

1 she's going to run away. We all that know. She's done it.
2 I can't make Joseph do anything. Both of them are
3 extremely stubborn. And then I'm sitting here in the
4 middle getting her to the table which is what was ordered.
5 I have her at a table, and then I'm trying to get him at a
6 table.

7 **Q** And you're getting upset because these visits are
8 exhausting for you?

9 **A** I'm not getting upset because they're exhausting. It's
10 more because I have two stubborn people who refuse to do
11 anything.

12 **Q** So you're saying he hasn't done anything in terms of trying
13 to facilitate this relationship, is that your position?
14 Yes or no?

15 **A** In the last few weeks, no, he has not done anything.

16 **Q** And you would like the visits to end, essentially?

17 **A** It's not that I want them to end. I would like for them to
18 go maybe a route with a counselor, somebody who can repair
19 it, because I can't. He refuses to respond to my text
20 messages, to talk to me, anything. I can't facilitate and
21 fix or do anything when I don't have the support from him
22 to even do anything with her. I think a counselor would be
23 a better bet because she'd be able to work with Kaelyn and
24 work with him.

25 **Q** And we've done that in the past through this litigation

1 upwards of four to five counselors, correct?

2 **A** I think with Melanie and Mike was the only one that we
3 really tried the whole visits through.

4 MS. SMITH: I have nothing further, Your Honor.

5 THE COURT: Okay. Ms. Sanderson?

6 MS. SANDERSON: Yes, just briefly.

7 RECROSS EXAMINATION

8 BY MS. SANDERSON:

9 **Q** Do you feel that it would be in Kaelyn's best interest to
10 punish her by taking away cross country?

11 **A** I don't.

12 **Q** What do you think would happen if you did do that?

13 **A** I think she would probably be very angry and go down a
14 wrong path.

15 MS. SANDERSON: No further questions, Your Honor.

16 THE COURT: Witness can step down. Do you have additional
17 witnesses, Ms. Smith?

18 MS. SMITH: Yes, briefly. Joseph LeFors.

19 THE COURT: All right.

20 **JOSEPH LEFORS,**

21 called as a witness, being first duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MS. SMITH:

25 **Q** Joe, you had submitted an affidavit to the court

1 September 11th. Do you recall that?

2 **A** Yes.

3 **Q** Everything that you provided in the affidavit, was that
4 true and correct?

5 **A** Correct.

6 **Q** Okay. Since the last hearing before the court, have you
7 had any meaningful time with Kaelyn?

8 **A** No.

9 **Q** After the hearing, it would have been the first week after
10 the last hearing, right?

11 **A** Correct.

12 **Q** You had a visit. Do you recall where the first visit was?

13 **A** The first visit was at Olive Garden.

14 **Q** And what happened at Olive Garden?

15 **A** Krista walked Kaelyn in. She went to the bathroom, and
16 then when she came out of the bathroom, she walked outside
17 and we both sat outside on the bench.

18 **Q** Were there any conversations that were had?

19 **A** No.

20 **Q** Did you try asking Kaelyn questions and initiate?

21 **A** I did. "How's school going? Are you excited for cross
22 country?" Just asked her questions about her life and...

23 **Q** And on that visit, did Krista -- did you see Krista make an
24 effort to get Kaelyn inside and have a dinner with you?

25 **A** No.

1 Q She dropped her off and then left?

2 A She dropped her off and left, yes.

3 Q Okay. The same thing happened again at Culver's on
4 August 14th?

5 A Correct. She walked Kaelyn inside. Kaelyn walked past the
6 table. I smiled at Kaelyn. Kaelyn kept walking, went into
7 the bathroom. Krista walked out, and then when Kaelyn came
8 out of the bathroom, she walked outside and sat at a table
9 and then I walked outside and sat at a table.

10 Q So you followed Kaelyn out --

11 A Yes.

12 Q -- side? Just let me finish my question.

13 A Sorry.

14 Q So Tammy doesn't get upset at us.

15 What types of things did Kaelyn do during these
16 visits?

17 A Just sat there. Looked around. I guess people watched is
18 the best way to put it.

19 Q Okay. Tell the Court about Meet the Teachers Night on the
20 19th of August.

21 A So Meet the Teachers, Cortney, my wife, was there and
22 Isabella and Kaleb were there as well. We were in the
23 English teacher's classroom. As we came out, Kaelyn did
24 not run away. She stood there right next to her mom.
25 Krista ushered her in the door as soon as Kaelyn saw me and

1 said, "No, keep walking. Just walk forward." At no point
2 did Kaelyn leave Krista's side. I smiled at Kaelyn and
3 Krista pushed her into the classroom past us.

4 **Q** And you were -- you would have been within ear's distance
5 to hear?

6 **A** I wasn't any further than where everyone is sitting at the
7 table in front of this bench.

8 **Q** Okay. Krista testified about possibly seeing you again
9 during that night?

10 **A** Correct.

11 **Q** Okay. What happened?

12 **A** Krista stood there. We walked past, and Krista didn't do
13 anything. She just watched us walk past -- watched me walk
14 past and didn't even have Kaelyn say anything to me.
15 Didn't encourage her to come see me. Just stood there.

16 **Q** What's your understanding of Kaelyn's relationship with her
17 cousins?

18 **A** She has an outstanding relationship with her cousins. The
19 fallacy that's portrayed here is inaccurate. Kaelyn
20 teaches Isabella how to do cheer. They spend nights over
21 at each other's houses. Isabella and Kaleb will say hi to
22 Kaelyn if Krista's not around because they're afraid that
23 Krista's going to scream at them. Specifically an instance
24 that I've done an affidavit to the court where at cross
25 country, Krista saw us and said, "I see you brought the

1 home wrecking hoe," and told Isabella and Kaleb to get out
2 of here.

3 **Q** Krista testified that it makes Kaelyn upset seeing her
4 cousins and you with Cortney. Have you seen any indication
5 of that?

6 **A** No, not at all.

7 **Q** Does she act scared when she sees you?

8 **A** No. She'll look at me, but she doesn't run away. She
9 doesn't clammer up.

10 **Q** She doesn't seem uneasy when you're having these bench
11 discussions?

12 **A** No, we're sitting as close as we are right here.

13 **Q** The parenting time on August 20th which would have been at
14 Olive Garden, can you tell the Court about that visit the
15 first time Krista asked for a table for three?

16 **A** So I was already inside the restaurant. I typically show
17 up 15, 20 minutes early so that I can be there when Kaelyn
18 comes in, or when Kaelyn arrives. And I was sitting at the
19 couch waiting to get a table because often it can be busy
20 and so when the Kaelyn shows up, then I can ask for a table
21 for two. Krista sent a text message as she stood outside
22 waiting to come in. Well, she came into the building. She
23 was late. I don't know the exact time that she showed up,
24 but it was after 6 o'clock.

25 When she came inside, she walked up to me with Kaelyn

1 next to her and said, "Did you get a table for three yet?"
2 I did not respond right away because Kaelyn's standing
3 there and Krista's tone was very aggressive, so I didn't
4 say anything right away, and she said, "Did you get a table
5 for three?" I said, "No, I didn't. We're not getting a
6 table for three." And then that's which Krista said,
7 "Well, the judge said that we are going to sit down and eat
8 dinner together," and I said, "You are more than welcome to
9 get your own table and eat, but I'm going to be getting a
10 table for Kaelyn and I to eat dinner." That's when Krista
11 started raising her voice. There were three teenage girls
12 at the hostess stand and a manager, and Krista starting
13 raising her voice and said, "I'm not going to get another
14 table otherwise you're going to pay for my dinner." And I
15 said, "You're welcome to eat your own dinner, but you're
16 not going to sit at a table with me and Kaelyn." And she
17 yelled at me again, and I said, "You're causing a scene,"
18 and that's when Krista said, "Causing a scene? You want me
19 to cause a scene? I'll cause a scene." The manager looked
20 right at us.

21 Kaelyn was in the bathroom at some point during that
22 conversation and Krista said, "I'm going to go check on
23 Kaelyn," and she came back, both of them came back out and
24 Krista said, "Did you get a table for three?" I said,
25 "We're not getting a table for three. I'm going to get a

1 table with Kaelyn and I. You're more than welcome to stay
2 in the restaurant and sit at a table, but Kaelyn and I are
3 going to eat dinner together." Krista then walked up and
4 said "Well, I'm going to get a table for three. If you
5 don't come sit at the table, that's on you."

6 As soon as the hostess took Krista to her table, the
7 manager came back out, walked up to me and asked if
8 everything was okay, and I said, I had to explain to her,
9 I'm court ordered, I'm here with my daughter to eat dinner.
10 You know, we're having a discussion that she was not going
11 to sit at the table with us, and she's like, "Okay, is
12 everything okay?" I said, "Yeah, you know, it's fine," and
13 she's like, "Okay," and then the manager walked back off.

14 **Q** Okay. And did Krista sit at the table then the entire time
15 with Kaelyn?

16 **A** Yes.

17 **Q** Okay. Did she come to you to try and facilitate the
18 dinner?

19 **A** No.

20 **Q** Culver's would have been on Wednesday, August 21st. Did
21 you witness Krista at all try to encourage the meal
22 together with you and Kaelyn?

23 **A** I witnessed the lack thereof.

24 **Q** Okay. Well, what did you --

25 **A** So no, she didn't encourage anything.

1 Q Okay. Would you have been within a distance to be able to
2 hear what they were having a conversation about?

3 A Yes.

4 Q Did --

5 A As a matter of fact, I believe that was the parenting time
6 where the only thing that was said after the storm passed
7 around 6:30, the sun came back out, Kaelyn covered her eyes
8 and Krista said, "Did somebody open the blinds," and that's
9 the only thing that was said to Kaelyn that night.

10 Q Okay. So Krista testifying that during the restaurant
11 meals she's trying to encourage, are you hearing any of
12 that?

13 A No, she's not doing any of that.

14 Q Okay. Joe, why don't you go up to the table across the
15 hall and try and facilitate her to come over to your table?

16 A Because if I do that, that takes away Krista's stance. She
17 doesn't have to encourage. If I go show up to the table,
18 then she's doing what she's supposed to.

19 Q When you say "do what she's supposed to," what do you mean
20 by that?

21 A That she doesn't have to do anything. I mean, that she's
22 doing what she is attempting to do and not encourage a
23 relationship and it's following suit with her. "It's not
24 my responsibility; it's his."

25 Q Okay. So you're saying Krista believes it's not her

1 responsibility, and so if --

2 **A** If he comes to the table, then, okay, we're making
3 progress. That, okay, you know, everything is okay now,
4 we're able to move forward with this. That's not at all
5 what this is. She's not -- still not encouraging a
6 relationship. None of the conversations that are ever had
7 during the parenting times are about you need to go spend
8 time with your dad. Nothing whatsoever.

9 **Q** Why is it important for her to show Kaelyn when she's with
10 her at the restaurants an opportunity to go over to your
11 table to encourage the meal? Why is that important in
12 terms of Kaelyn being present watching her mom?

13 **A** One, that's creating normalcy. All right, so if a child is
14 standoffish to begin with, they'll mimic the behavior of
15 the parent, because all kids grow up mimicking the behavior
16 of their parents, and if you create some normalcy there,
17 it's going to create the child to be comfortable that then,
18 you know, they could go out and be open-minded to do the
19 same thing.

20 **Q** Were you aware that she was taking photos during these
21 visits?

22 **A** No, which I find funny because it was brought up that that
23 shouldn't be happening specifically by the defense, that
24 that's unacceptable.

25 **Q** Okay. The subsequent visits at Culver's and Olive Garden,

1 did those remain the same as far as Krista getting a table
2 and sitting there?

3 **A** Yes. The only difference though is Krista did not walk
4 Kaelyn past me. That's inaccurate. What happened was
5 Krista walked in, got Kaelyn food, then walked her to their
6 table and sat down. Never did she walk past me.

7 **Q** Okay.

8 **A** Even --

9 **Q** And then --

10 **A** Sorry. Even to the extent when I was sitting where I was,
11 they walked around the back side so that Kaelyn did not
12 walk past me.

13 **Q** At any visit, did Krista attempt to walk Kaelyn to your
14 table?

15 **A** No.

16 **Q** She just texted you asking you to?

17 **A** Yes.

18 **Q** Why does she continue to request that you initiate that
19 conversation?

20 **A** Because she still thinks she doesn't have to encourage a
21 relationship.

22 **Q** Or that it's on you?

23 **A** One hundred percent.

24 **Q** On September 4th, you were at Culver's. You discuss in
25 your affidavit about her laughing and pointing?

1 **A** Yes.

2 **Q** Can you tell the Court about that?

3 **A** So on that instance, just like I said, she walks her up to
4 get food first. In Culver's there's big window area
5 openings in the dining room and Krista walked up, saw me
6 sitting down, and then I waved and smiled at Kaelyn because
7 Kaelyn was looking at me. Krista pointed at me and started
8 laughing as I was smiling and waving at Kaelyn.

9 **Q** This visit, was she on her laptop the entire time?

10 **A** Yes.

11 **Q** If she's on her laptop, how is she trying to encourage the
12 visit?

13 **A** She's not. So if you look at priorities, right, the
14 priority here during parenting time is encouraging a
15 relationship. Your work stuff can wait for an hour. Your
16 text messages to other people can wait for an hour. Your
17 phone calls can wait for an hour. All you have to do is
18 look at the priorities here. The priorities do not lie in
19 encouraging Kaelyn and I to have a relationship.

20 **Q** At one visit was Kaelyn sleeping on the table?

21 **A** Yes.

22 **Q** Krista testified that she had just maybe put her head down
23 for a second or two?

24 **A** No. During that parenting time, Kaelyn was looking sleepy.
25 Her eyes were slowly closing, and a little bit after that

1 is when Kaelyn laid her head down on the table and didn't
2 get up for, I don't know the exact amount of minutes, but
3 she sat there for a while.

4 **Q** Did Krista attempt to wake her up and do anything?

5 **A** No. She sat there on her phone.

6 **Q** Tell the Court about the phone calls.

7 **A** Phone calls remain the same. Yes, is there a five-minute
8 phone call, but what was not identified was the fact that
9 these five minute phone calls, four and a half to five
10 minutes of those phone calls is sat on mute before Kaelyn
11 gets on that phone. Not to mention 90 percent of those
12 phone calls are in the car, so -- and the only reason I
13 know that is you can tell when somebody's driving a vehicle
14 and they've got it on speaker. Kaelyn's not sitting on
15 those phone calls trying to have a conversation. Krista
16 gets on the phone, mutes it, it sits there for four and a
17 half to five minutes, because there are some that were six
18 minutes. Kaelyn gets on the phone, "Bye, Joe, and the home
19 wrecking hoe." Krista is still in the vicinity of Kaelyn
20 doing this.

21 **Q** And Kaelyn isn't driving?

22 **A** No.

23 **Q** And you're calling Krista's phone?

24 **A** Yes, I'm always calling Krista.

25 **Q** Okay. So she would be there hearing Kaelyn say these

1 things?

2 **A** Yes, they're in a vehicle together.

3 **Q** Does it shock you to hear her testimony as it relates to
4 the phone calls?

5 **A** No, it does not shock me. I expect a lot of this stuff.

6 **Q** What about Kaelyn's last name, what's the issue with that?

7 **A** So it was brought up before and it was seen as
8 inconceivable that a daughter would want to change her last
9 name to a name that's not even both her parents' last name
10 to which it was testified that, "Well, it's not me, it's
11 Kaelyn." But two individuals that work for the school
12 stated that the mother requested --

13 MS. SANDERSON: Your Honor, I'm going to object. That's
14 speculation.

15 THE COURT: Well, it might be hearsay, so I'll sustain it.

16 **Q** (BY MS. SMITH) So you can't testify to what somebody else
17 said. But what's your understanding of the school's
18 policy?

19 **A** That if a parent asks for it to be changed then it can be
20 changed.

21 **Q** How do you know that Kaelyn is requesting her name to be
22 changed at activities? Is there an announcement, or how do
23 you know this?

24 **A** I know that the parent -- I deal with the same things with
25 the school parent portal, so I know the parent has to be

1 the one that asks for it. The child is a minor. Until
2 Kaelyn is 18, she cannot make decisions like that for
3 herself.

4 **Q** What are you seeing in the portal?

5 **A** I'm not seeing anything in the portal, but on cross country
6 her name is still Knudson.

7 **Q** Where?

8 **A** It's in her records for athletic.net.

9 **Q** Okay. So in her record that the meets are posted, it's
10 Knudson?

11 **A** Correct.

12 **Q** Did --

13 **A** As well as pictures. I had to have the last name on
14 pictures changed because the picture's name were Knudson.

15 **Q** Like cross country pictures?

16 **A** Yes.

17 **Q** How does one order cross country pictures?

18 **A** I fill out a form and I fill out the child's name on it.

19 **Q** Okay. And this year who would have filled out the cross
20 country form?

21 **A** Krista.

22 **Q** How did you get a copy of the cross country photos?

23 **A** I requested them myself.

24 **Q** Joe, what would be your response to additional counseling?

25 **A** Melanie sat here and testified herself on record that she

1 does not want to do family counseling. She's here for
2 Kaelyn to help her cope through counseling. We have gone
3 through six counselors that have said they don't want to do
4 the group counseling anymore. I think it's time to stop
5 kicking the can down the road and blaming other people and
6 placing other responsibility on other individuals to do
7 something that by law the parent is required to do.

8 **Q** What would you like the Court to do in terms of your
9 requested -- requests in the motion?

10 **A** I would request stricter sanctions, possible jail time and
11 change of custody.

12 **Q** Okay. The Court has indicated a concern of change in
13 custody and how practically that works. What would be your
14 response to that?

15 **A** I know we can sit here and discuss what ifs, but we're not
16 going to know until something happens, right? I think I
17 can say tomorrow Kaelyn will want to be an astronaut but
18 until she comes out and she says she wants to be an
19 astronaut, that's not factual.

20 **Q** Okay. So your request would be additional sanctions and
21 potentially jail time pursuant to the statute?

22 **A** Correct.

23 **Q** Okay. Would it be your recommendation that the Court could
24 hold, say, a jail sentence over her head if these visits do
25 not occur?

1 **A** Yes, I think so. The Court has full extent of the law to
2 impose sanctions, so one hundred percent I do.

3 MS. SMITH: That's all I have, Your Honor.

4 THE COURT: Ms. Sanderson.

5 MS. SANDERSON: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MS. SANDERSON:

8 **Q** As far as the cross country photos go, when were those
9 photos from?

10 **A** They were from last cross country season.

11 **Q** So would that have been last year?

12 **A** Yes.

13 **Q** So before this was an issue that was litigated?

14 **A** No.

15 **Q** So all of the past six months of talking about the last
16 name, that was before this, correct, before that was all --

17 **A** Before the photos?

18 **Q** Yes.

19 **A** Yes.

20 **Q** All right. So now I recollect that the last hearing that I
21 was at, and bear with me because I know Ms. Watson and I
22 have flip-flopped here a little bit, but my recollection
23 was that the judge looked at Krista and said, "You can come
24 into the visits, do whatever you need to do to get this to
25 happen." Do you recollect that?

1 **A** Not in the same definition, no.

2 **Q** So as an adult, why are you not the one turning and looking
3 at Kaelyn and saying, "Hey, how was your day? I missed
4 you. I am so excited that you're here today?" Why haven't
5 you done that?

6 **A** I have done that every single time I see my daughter.

7 **Q** So you're saying and you're testifying that from
8 August 20th all the way to September 4th, you have looked
9 at your daughter and tried to communicate with her at these
10 visits?

11 **A** Yes, ma'am. Yes.

12 **Q** So your testimony today is that you have talked to your
13 daughter at these visits?

14 **A** Not talked, but body language is a form of communication,
15 smiling and waving.

16 **Q** Okay. So I would draw your attention to those photos from
17 these visits where your back is turned to her. How is that
18 good body language for your child?

19 **A** I just see me sitting in a booth. I don't see what you're
20 seeing.

21 **Q** Okay. So you're just saying that your body language is how
22 you can tell her that you're friendly and wanting to
23 communicate, but your back is to her, correct?

24 **A** I have to sit that direction. I was sitting there first.

25 **Q** So you're saying that as an adult, you can't move or try to

1 do anything, it's out of your power?

2 **A** I'm sure I could, yes.

3 **Q** In your affidavit marked as Exhibit 4, is this a picture
4 that you -- do you recollect that and is it a photo that
5 you took during visitation?

6 **A** Yes. If that's the same one where Kaelyn was laying down?
7 Yes.

8 **Q** So you're talking about priorities and how Krista is not
9 prioritizing these -- being at the visit and communicating
10 to Kaelyn that she needs to be present, is that correct?

11 **A** Correct.

12 **Q** Okay. Now you're on your phone during these visits too,
13 correct?

14 **A** I was one time, yes.

15 **Q** Okay. And how is that prioritizing you communicating with
16 your daughter?

17 **A** I go to court to see my daughter. The only way I can do
18 that is have evidence and I think there's proof enough that
19 there's no encouragement taking place.

20 **Q** Okay. How is it in your children's best interest to have
21 their mom put in jail?

22 **A** I think that shows children in order to be a responsible
23 law abiding citizen, there are consequences. I think that
24 my children both know -- my son's 18, but he's still my
25 child -- both know that there's certain laws that need to

1 be followed in order to keep society civil. So I think if
2 Krista goes to jail, there's a reason for it. I'm not
3 making that judgment. We're both sitting here and is being
4 heard today. If she goes to jail, it's because she didn't
5 do what she was supposed to according to the law.

6 **Q** But how do you think that's going to impact the mental
7 health of your daughter?

8 **A** I'm sure she'll be upset, but that doesn't mean we ignore
9 any judgment against people for breaking the law because
10 it's going to cause a stressful event.

11 **Q** Do you feel that these visits as ordered are working?

12 **A** Can you be more specific? That seemed encompassing all of
13 them.

14 **Q** Do you feel that they are working towards having a
15 relationship with your daughter that's healthy?

16 **A** Not with Krista, no.

17 **Q** So what do you think we can do differently? What do you
18 think could impact this so that we can turn this around?

19 **A** Sanctions.

20 **Q** But how do the sanctions help that relationship?

21 **A** It encourages Krista to do what she's supposed to do.

22 **Q** But how does it encourage your daughter to actually speak
23 with you?

24 **A** I don't think there's an issue there.

25 **MS. SANDERSON:** Okay. No further questions, Your Honor.

1 THE COURT: Okay. Do you have any brief redirect, Ms.
2 Smith?

3 MS. SMITH: One question.

4 REDIRECT EXAMINATION

5 BY MS. SMITH:

6 Q Joseph, are you current on your child support?

7 A Yes.

8 Q You pay every month?

9 A Yes.

10 MS. SMITH: That's all.

11 THE COURT: Okay. Ms. Sanderson, any brief?

12 MS. SANDERSON: No, Your Honor. Thank you.

13 THE COURT: You can take your seat.

14 Ms. Sanderson, do you have any witnesses?

15 MS. SANDERSON: No, Your Honor.

16 THE COURT: Well, both sides having rested and I'm not
17 trying to hurry it along because we can go into the other
18 hearing's time to some degree, but Ms. Smith, what are your
19 requests?

20 MS. SMITH: Yes, Your Honor. My client, as testified, is
21 seeking harsher sanctions for missed parenting time. He
22 does not want Krista sitting there at the meals with him.
23 I understand that the Court instructed Krista to do
24 everything she could to encourage it, and my client
25 understood that to mean walk her to the table, sit at a

1 nearby table to try and facilitate that. It's difficult
2 for my client to have meaningful conversation with Krista
3 sitting there and not having that privacy to engage with
4 Kaelyn.

5 I understand that my client is requesting something in
6 the form of jail time or a sanction where it would hold
7 that over Krista's head with the understanding that, look,
8 this is serious, something needs to change and it -- if
9 something isn't changed, then, you know, an arrest warrant
10 could be put forth.

11 He's also requested a form of a custody change as he
12 has testified. So that would be my client's position and
13 requests.

14 THE COURT: Okay. And so as a result of the last hearing
15 on August 12th, there was an order drafted by Ms. Smith
16 that asked for the sum of \$13,000 for monetary sanctions.
17 I have not signed that. Ms. Sanderson became involved in
18 the case shortly after it was issued, so I sent it to her
19 so that she could respond to it.

20 Are you asking for additional monetary sanctions as a
21 result of what's occurred since the last hearing on August
22 12th, Ms. Smith?

23 MS. SMITH: Yes, so in addition to that and my client's
24 attorney's fees.

25 THE COURT: Which are how much?

1 MS. SMITH: I can provide the Court an affidavit following
2 this hearing and submit it to Ms. Sanderson.

3 THE COURT: I would assume it's over a thousand dollars?

4 MS. SMITH: Yes, Judge.

5 THE COURT: Ms. Sanderson, you can respond.

6 MS. SANDERSON: Perfect. Your Honor, what I find most
7 alarming by this case is that Mr. LeFors has a complete
8 lack of responsibility for any of this. He absolutely
9 could have sat down at these tables and he could have seen
10 what happened, but he didn't, and at this point, I find it
11 just absolutely alarming to suggest jail time or further
12 sanctions. This is a child who by all means is completely
13 estranged from a parent, has one parent that they rely on
14 and to take that away is not in a child's best interest,
15 and honestly, I think would have very catastrophic results
16 that I think needs to be looked at in detail because we
17 don't want children to commit suicide, we don't want
18 children to run away, and I think if you continue to push
19 this child, that's going to be the end result.

20 Krista has done everything that she could to encourage
21 this relationship. At this point it's up to Kaelyn to
22 speak with her dad, and it's up to her dad to respond and
23 speak to her. If things continue on this route, I just
24 don't ever see a healthy relationship coming out of this,
25 and that is why my client would ask that the counseling be

1 resumed so that professionals can be the ones handling
2 this, because obviously we're not making any progress with
3 the three of them, and so, Your Honor, we would just ask
4 that the Court consider changing this to therapy instead.

5 THE COURT: What about the request for the \$13,000 in
6 sanctions from the last go-around where we held the hearing
7 on August 12th and then respond to more sanctions
8 monetarily since then, because --

9 MS. SANDERSON: Your Honor, I did have the time to go over
10 that order and I haven't quite had time to submit a written
11 objection, but in speaking with my client, there were only
12 21 total visits and in this proposed order there's more
13 than that. So we would just ask that it be based off of
14 the actual visits that were missed.

15 THE COURT: You think it should be \$500 per missed visit?

16 MS. SANDERSON: Your Honor, no, we don't believe it should
17 be that high, but at the last hearing that's my
18 understanding what the Court contemplated, and so do I
19 think that that's appropriate? No. Do I think that it is
20 excessive? Yes. But ultimately it's in this Court's
21 discretion to decide what that dollar amount should be.

22 MS. SMITH: Your Honor, may I just briefly?

23 THE COURT: Briefly, yes.

24 MS. SMITH: I think one of the issues from my client's
25 stance is these sanctions are being credited toward what he

1 owes her in alimony and that sort of thing, so he's in a
2 position where while she's being sanctioned but nothing is
3 out of her pocket, and so that's why maybe stricter
4 sanctions that would require her to actually pay out of
5 pocket for these things. I just wanted to let the Court
6 know about that.

7 THE COURT: I've reviewed the divorce findings and I had
8 ordered alimony from November 15th of 2023 for a
9 three-month period of \$1,000 per month, and I had found in
10 the findings that there was a large amount of resources
11 from his work that your client was able to garner versus
12 what Krista was able to come up with and that was part of
13 the reason for the alimony was because there was a
14 discrepancy in their income, and then also I factored in
15 that Krista had been very helpful to your client in his
16 education and helped him succeed to the point that he has
17 succeeded and so I don't want to take anything away from
18 the accomplishment at that point of Krista, but this is
19 just unique.

20 I find Joe is very credible when he describes that
21 this created a scene, as he said, at the Olive Garden. I
22 find that this man is reasonable, that he is patient beyond
23 the patience of many people, that he's dedicated to having
24 some relationship with his daughter, he's committed to
25 that, and he is very tenacious about pursuing his right as

1 a father to have some contact with his daughter. I find
2 him credible when he says that he calls his daughter up on
3 the phone and either she's not responding or it's on mute
4 for the absolute vast majority of the five minutes that are
5 documented in the exhibits. I find that credible. I find
6 it credible that when the conversation ends, it's actually
7 with a derogatory statement from his daughter towards him
8 and his new wife. It shows some real strength of character
9 that this man can endure what he endures.

10 And again, as I've said before, Krista has Kaelyn more
11 or less one hundred percent of the time. She is described
12 as a straight A student. I've met her. She is
13 intelligent. She's bright. She is not involved with some
14 of the bad influences and temptations that come along with
15 being a teenager these years and I credit both her parents
16 for that, but Krista, you're with her a hundred percent of
17 the time. You've done a great job in that respect, but it
18 also indicates how much influence you have over your
19 daughter and you are not doing enough to encourage her to
20 have meaningful parent time with her father, and she's
21 missing out and he's missing out and this is irreplaceable
22 and so it's hard to put a value on it.

23 So I find that, and conclude, that financial sanctions
24 really are the best mechanism here. I have been involved
25 in putting people in jail for a long period of time and I

1 don't want that to occur in this case, Krista, but your
2 husband -- ex-husband, excuse me, Joe, he's incurring all
3 of these attorney fees to try to get you to do more to
4 encourage your daughter to allow him just really a small
5 amount of the visitation that he's actually entitled to and
6 you are not doing your part and you are not encouraging her
7 and exerting the influence that you're able to do.

8 So one thing for sure is that I'm going to order,
9 Krista, you're going to participate and complete counseling
10 and/or parenting education classes if you haven't already
11 done that. I don't know if I've offered that in the past.
12 We've been in court more than once, but you're ordered to
13 do that and do it immediately.

14 The amount of money that I'm going to award as far as
15 a sanction, I think that I owe it to Ms. Sanderson to give
16 her an opportunity because she's late to arriving in your
17 case, an opportunity to respond as to that, but I've
18 already decided I'm going to award more money to Joe as
19 sanctions because I think that's appropriate.

20 I do not believe that changing custody is anything but
21 going to a great degree of experimenting with the welfare
22 of a child who's obviously got some issues that are
23 interrelated with the difficult divorce that her parents
24 went through. You know, and I guess when's the next time
25 that Joe has a visit with his daughter?

1 MS. SMITH: Today.

2 THE COURT: Today? Well, that's the ruling. I'm reserving
3 how much until I've heard from Ms. Sanderson, but should we
4 have another hearing scheduled or should we just try to --

5 MS. SMITH: Yes, Your Honor, if we could.

6 THE COURT: Let's do that. Okay, that's my ruling. And,
7 Ms. Sanderson, how long do you need to respond?

8 MS. SANDERSON: Your Honor, I can have it done by the end
9 of the week easily.

10 THE COURT: Okay. I don't want -- you're new to this case
11 and some of the dimensions are unique in this. How about
12 Monday, would Monday work?

13 MS. SANDERSON: That would be perfect. Thank you.

14 THE COURT: Okay.

15 MS. SANDERSON: Your Honor --

16 THE COURT: The only thing I'd pass along as far as advice
17 to parents, and I don't know if I should be as a judge
18 giving advice, but I'll tell you, I've raised three
19 children myself, and when I was a young parent, I always
20 believed that when my children turned 18 that I was done
21 with all the difficulties and the hardships that go along
22 with being a parent and that's not true.

23 October 24th?

24 MS. SMITH: What day of the week is that?

25 THE COURT: Thursday.

1 MS. SANDERSON: Your Honor, I am in court in Custer that
2 morning. I could do late afternoon back in Sturgis, but...

3 THE COURT: Yeah. Would that work for you, Ms. Smith?

4 MS. SMITH: Yes, Your Honor.

5 THE COURT: Ms. Sanderson, late afternoon?

6 MS. SANDERSON: Your Honor, I should be back --

7 THE COURT: 3 o'clock?

8 MS. SANDERSON: Yeah, that would be fine, yep.

9 THE COURT: Does that work for you, Ms. Smith?

10 MS. SMITH: Yes.

11 THE COURT: That would be the next hearing.

12 MS. SANDERSON: Your Honor, can I have a just a moment for
13 clarification sake?

14 THE COURT: Yes.

15 MS. SANDERSON: Okay. Do you expect that Krista leave, do
16 you expect her to have -- what can we do?

17 THE COURT: Well, I think -- you know, I re-read the
18 transcript and there had been some dispute at the last
19 hearing about Krista felt like she couldn't even go into
20 the restaurant and that she thought that that would
21 facilitate it. So I said, well, if you feel that way, I'm
22 lifting that ban. You can go into the restaurant just like
23 anybody else could go into the restaurant, but sitting at
24 the table, that would be up to Joe because that would just
25 be like if Joe were sitting in the restaurant and an airman

1 came into the Olive Garden and said, "Yeah, Master
2 Sergeant, you know, I haven't seen you for a long time and
3 you're here with your daughter, but I just want to
4 basically sit here for the next hour and take up all your
5 time." He would have the right to say, "No, excuse me, you
6 know, nice to see you, but I've got to reserve this for my
7 daughter." And so he's well within his rights to say no
8 that -- you know, it would be -- in an ideal world, it
9 would be nice to say that these three could sit together
10 and do that, but this has not been ideal, and so for
11 clarity sake, she can go into the restaurant obviously, but
12 if Joe believes that it would interfere with his ability to
13 have this limited precious time to him with his daughter,
14 then he can veto it and say no. Krista, you're free to sit
15 in the restaurant at a different place, have a soda, watch
16 it, whatever you want to do, but you cannot be at the table
17 if -- it's just like with anybody else, it would be his
18 right and you'd be interfering with his time, and as I've
19 said, it's precious to him. It's very obvious to me that
20 it's precious time and I don't blame him. But he needs to
21 get this time with your daughter. It's both of yours
22 daughter. It will always be both of yours daughter. So I
23 hope that I've made myself clear.

24 MS. SANDERSON: That does help. Thank you, Your Honor.

25 MS. SMITH: Thank you, Your Honor.

1 THE COURT: We're in recess.

2 (This hearing was concluded.)

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

3
4 I, TAMMY STOLLE, RPR, an Official Court Reporter and
5 Notary Public in the State of South Dakota, Fourth Judicial
6 Circuit, do hereby certify that I reported in machine
7 shorthand the proceedings in the above-entitled matter and
8 that pages 1 through 61, are a true and correct copy, to
9 the best of my ability, of my stenotype notes of said
10 proceedings had before the HONORABLE JOHN FITZGERALD,
11 Circuit Court Judge.

12 Dated at Sturgis, South Dakota, this 20th day of
13 December, 2024.

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

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

STATE OF SOUTH DAKOTA) DEC - 2 2024) IN CIRCUIT COURT
COUNTY OF MEADE) *Shirley A. Johnson-Lepel*)
Clerk) FOURTH JUDICIAL CIRCUIT

JOSEPH D. LEFORS,) 46DIV19-000008
)
PLAINTIFF,)
) **ORDER FOR SANCTIONS FOLLOWING**
v.) **AUGUST 12, 2024 AND SEPTEMBER 17,**
) **2024 HEARING**
KRISTA M. LEFORS,)
)
DEFENDANT.)

A Motions Hearing was held on August 12, 2024 and September 17, 2024 before the Honorable John Fitzgerald, Circuit Court Judge, at the Meade County Courthouse in Sturgis, South Dakota. Plaintiff, Joseph LeFors, personally appeared and with his attorney, Hollie L. Smith. Defendant, Krista LeFors, personally appeared *pro se* at the August 12, 2024 hearing and with her attorney Kelly Sanderson on September 17, 2024.

1. The Court makes these specific findings after consideration of the totality of the testimony heard, the credibility of witnesses, and the entire record before the Court, including a 4.5-year litigation wherein allegations of alienation against the Mother have occurred. The Court has carefully taken into consideration the testimony of prior counselors as well as multiple in-chamber discussions with the children.

2. That pursuant to SDCL § 25-4A-5, if the court finds that any party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree, the court shall impose appropriate sanctions to punish the offender or to compel the offender to comply with the terms of the custody or visitation decree. The court may enter an order clarifying the rights and responsibilities of the parents and the court's order. The court may order one or more of the following sanctions:

- (1) To require the offender to provide the other party with make-up time with the child equal to the time missed with the child, due to the offender's noncompliance;
- (2) To require the offender to pay, to the other party, court costs and reasonable attorney's fees incurred as a result of the noncompliance;
- (3) To require the offender to pay a civil penalty of not more than the sum of one thousand dollars;
- (4) To require the offender to participate satisfactorily in counseling or parent education classes;

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Order For Sanctions Following August 12, 2024
and September 17, 2024 Hearing

- (5) To require the offender to post bond or other security with the court conditional upon future compliance with the terms of the custody or visitation decree or any ancillary court order;
- (6) To impose a jail sentence on the offender of not more than three days; or
- (7) In the event of an aggravated violation or multiple violations, the court may modify the existing visitation or custody situation, or both of any minor child.

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

3. The Court finds that the daughter is an independent-minded and bright young lady. The Court has reviewed the South Dakota Parenting Guidelines several times, and it is noted throughout, and the Court agrees that it is in the children's best interest that the children benefit from having a relationship with both parents.

4. The daughter does not have a relationship with her Father. Still, the Court finds that he has acted responsibly in his obligations as a Father and has done his part in trying to have a relationship, including showing up for every visitation, attending counseling, and attempting phone calls every week.

5. Father continues to exercise his rights, or at least tries to exercise his rights in the appropriate sphere by taking Mother to Court to have her sanctioned. The Court finds that he is not doing anything outside of what would be expected by this Court.

6. The Court finds that despite being a teenager and Mother's claim that she cannot control what her daughter does, Mother continues to not do enough to encourage her to have a relationship with her Father and ensure that the Court-Ordered visitations occur. The Court believes her conduct to be a willful disobedience of the Court's Order.

7. Specifically, there are a number of items that have been testified to by the Father where he has been unable to have any meaningful time with his daughter, let alone the son who's now 18 years old.

8. The Court believes that since the last hearing on May 10, 2024, the visitations have not occurred in a meaningful manner and during the visits, the daughter goes into the restaurants and then basically ignores him, making a beeline to the bathroom without spending any time with her Father.

9. Mother is the sole parent with whom the daughter spends more or less 100% of the time. It is Mother's duty and responsibility to ensure that the daughter has a relationship with her Father. It is not this Court's responsibility, but only the Mother's.

10. There was some testimony concerning Father's Day and the difficulty of scheduling time on that day. Of any day of the year, Father shall be entitled to have quality visitation with his children on Father's Day and the Court is frustrated that Mother argued with Father on whether he was entitled to such time on that day.

11. The Court finds that going forward, Mother shall do everything necessary to encourage this relationship, and this includes ensuring that allegations and statements from the parties past relationship must be buried as Mother's fixation on the past is hindering the relationship and Father's attempts to exercise his rights. The Court has concerns, based on the current situation, of the potential negative impact that may stem from this for any future relationships with men and the Court is cognizant of that.

12. In sum, the Court finds that the Mother has made no genuine effort to encourage meaningful exercise of visitation with the Father. It is noted that the Court made its prior Order clear at the May 10, 2024 hearing and then again at the July 18, 2024, hearing with no real change in circumstances or efforts made by the Mother.

13. The Court does not find Mother's testimony to be credible in her attempts to facilitate parenting time with the Father. It appears from the Court that based upon the evidence presented, the Mother's conduct and testimony at the hearings wholly contradicts what is occurring outside of the Court's presence, particularly with specific activities the children are involved in where Father is present and attempts to engage conversation and involvement with the children. In the Court's view, Mother is insincere as to her belief of what she is required to do and what she has been doing. Mother on several occasions has testified that it is not her job to repair the relationship between Father and the daughter, and the Court believes that Mother continues to falsely believe this notion.

14. Mother shall encourage the daughter to have at least weekly phone contact with her Father. The Court understands that it cannot force the daughter to speak, but Mother shall encourage her to have these conversations with her Father and the Court will be able to determine the progress and encouragement Mother has made by the results that the Court sees with the child.

15. The Court does not believe what it is asking of Mother is a difficult task and it is in the Court's view impossible for her to fail at what is being requested. Particularly the small comparison of what a Father is entitled to under the South Dakota Parenting Guidelines.

16. Mother continues to willfully deny the parenting time Order and has had prior violations for the same and the Court has taken that into consideration with the sanctions imposed below.

17. The Court notes, that these findings by the Court are statutorily authorized by SDCL 25-4A-5, which has come before this tribunal through a formal Motion and Affidavit by Father. Strictly speaking, this sanction is unconnected to the law of contempt and therefore Father is not procedurally required to file a formal Motion for Contempt and have Mother served with an Order to Show Cause. The Court recognizes the ongoing nature of this litigation, so it simply does make sense for the Court to require the Father to file a formal contempt motion to seek compliance of his Court-Ordered parenting time each time the Court conducts a hearing.

18. Both parties had knowledge of the Court's intent to address the Father's parenting time on an ongoing basis and to address the Mother's efforts to facilitate the same. Again, both parties were aware of the Court's intent to increase Father's parenting time in a somewhat aggressive manner given the history of the case. Certainly, Mother knew that hearings would be ongoing to ensure that such would occur. The Court made findings in its June 17th Order that sanctions and attorney's fees against the Mother could increase and get worse if there is continued noncompliance. In sum, the Court finds that the Father's procedural method of requesting the remedy satisfies the statutory requirements with the Court's finding of willful disobedience of the Order.

19. Here, the Court's finding that Mother willfully failed to comply with the court's visitation order satisfies SDCL 25-4A-5's statutory requirement of willful violation or noncompliance with the provisions of a visitation order. See *Hiller v. Hiller*, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548, 556. In addition to the Court's authority to issue sanctions under subsection (3), these findings are in the context of the Court's authority to impose "any other sanction appropriate to the facts and circumstances of the case", which the Court has carefully considered in light of the litigious nature of this matter and Father's continued efforts to seek Court intervention to have a relationship with his children. The Court finds that this sanction is

imposed against Mother to seek compliance, as the Court believes at this juncture that is the most appropriate remedy.

20. Since the last Order entered by this Court on June 17, 2024, Father has been denied meaningful weekly visitations between May 14th -September 17, 2024.

IT IS HEREBY ORDERED, that in light of the findings above, together with the evidence presented at the hearing, the Court consistent with SDCL § 25-4A-5, sanctions Mother \$500.00 for each parenting time and/or visitation that Father has been denied. Therefore, the Mother is sanctioned and shall be obligated to pay the sum of \$12,000 for the visitations between May 14th-August 7th, 2024. This shall be designated as a money judgment in favor of Father and against Mother. However, \$8,000 of the \$12,000 sanctions for violations occurring between May 14, 2024, and August 7, 2024, will be suspended, provided that Ms. LeFors complies with the Court's Order moving forward; it is further

ORDERED that an additional sanction be imposed against Ms. Lefors in the amount of \$2,500.00 as a result of Mother's willful noncompliance with the Court's Order shown and demonstrated by the evidence at the last hearing on September 17, 2024. This additional sanction covers the denied parenting time between August 7, 2024-September 17th, 2024; and it is further

ORDERED that trial courts may award attorney fees in cases involving divorce, support, or alimony under SDCL 15-17-38. The Court intends to address the issue of Father's request for attorneys fees and costs at the next hearing consistent with the factors as required by law; and it is further

ORDERED that Ms. Lefors participate satisfactorily in counseling or parenting education classes and shall provide the Court and counsel with the certification of completion.

10/24/2024 3:39:35 PM

BY THE COURT:

Attest:
Molstad, Stephany
Clerk/Deputy



STATE OF SOUTH DAKOTA
Fourth Judicial Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as the
same appears on file in my office on this date:


HONORABLE JOHN FITZGERALD
Circuit Court Judge

NOV 27 2024

Linda Keetler
Meade County Clerk of Courts

By 

Lefors v. Lefors 46DIV19-08
*Order For Sanctions Following August 12, 2024
and September 17, 2024 Hearing*

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App. 120

Filed on: 10/24/2024 Meade County, South Dakota 46DIV19-000008

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

APPEAL NO. 30910

JOSEPH D. LEFORS,

Plaintiff and Appellee

vs.

KRISTA M. LEFORS,

Defendant and Appellant

Appeal from the

Fourth Judicial Circuit

Meade County, South Dakota

The Honorable John Fitzgerald, Circuit Court Judge

APPELLEE'S BRIEF

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PRELIMINARY STATEMENT

References to the settled record will be cited as "SR". References to Findings of Fact will be cited as "FF", and references to Conclusions of Law will be cited as "CL". References to documents in the Appendix will be cited as "App" followed by a page number. The Trial Court's October 24, 2024 Order which is the subject of this appeal will be referred to as the "Order". References to the transcript for the August 12, 2024 and September 17, 2024 hearing will be cited as "Aug. 12 Tr." and "Sept 17 Tr." Followed by the page and line number. Plaintiff/Appellee will be referred to as "Father" or "Joseph", and Defendant/Appellant will be referred to as "Mother" or "Krista".

JURISDICTIONAL STATEMENT

Krista appeals the Honorable John Fitzgerald's Order signed on October 24, 2024. Notice of Entry was filed on October 29, 2024. Krista served the Notice of Appeal on November 22, 2024. The Order executed is a final order of the Circuit Court and is appealable as a matter of right, pursuant to SDCL § 15-26A-3 and SDCL § 15-26A-7.

WAIVER OF ORAL ARGUMENT

Joseph waives oral argument for purposes of this appeal.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I. Whether the Circuit Court erred in finding that Krista could control their 15-year-old daughter's refusal to eat dinner with her father.

The Trial Court Correctly Found That Krista LeFors Could Control Her Daughter's Refusal to Eat Dinner with Her Father.

Relevant Law: *Hiller v. Hiller*, 2015 SD 58, 866 N.W.2d 910

SDCL § 25-4A-5

II. Whether the Circuit Court erred in finding that the 15-year-old daughter's refusal to eat dinner with her father was a willful violation by Krista.

The Trial Court Properly Found That the Daughter's Refusal Constituted a Willful Violation by Mother.

Relevant Law:

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

SDCL § 25-4A-5

III. Whether the Circuit Court abused its discretion in assessing \$14,000 in sanctions against Krista due to the 15-year-old daughter's refusal to speak to her father during parenting time and without considering Krista's financial situation as a single mom with two children, one of which has special needs.

The Trial Court Did Not Abuse Its Discretion in Imposing Sanctions Against Mother.

Relevant Law:

SDCL § 25-4A-5

STATEMENT OF THE CASE

This is the third appeal involving the parties and the second addressing the issues of custody and parenting time. Joseph incorporates by reference the Statement of Facts set forth in Appellee's Brief filed on January 2, 2025 in Appeal No. 30766. For the sake of judicial efficiency and to avoid repetition, to the extent the procedural posture is not restated herein. Joseph initiated a divorce action in January 2019, at which time he requested joint legal and physical custody of the children. (SR 7). Over the past five years, custody, visitation, and Joseph's relationship with the children have been extensively litigated.

Joseph filed a request for sanctions against Krista for violating custody orders on November 30, 2023. (SR 3474). A hearing to address the same took place on December 21, 2023 with the circuit court issuing an Order on January 4, 2024 instructing the parties to participate in renunciation counseling. (SR 3900). A hearing took place on February 6, 2024, to address family counseling and Joseph's parenting time. The circuit court conducted in-camera interviews with both children. Judge Fitzgerald subsequently issued an order discontinuing family therapy and scheduling parenting time for Joseph. (SR 3974).

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

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

On July 29, 2024, Joseph filed a Motion for Additional Sanctions Against Mother and to Address Custody and Lack of Parenting Time. (SR 4355). A Motions hearings as held on August 12, 2024, and September 17, 2024, to address the pending requests for sanctions and parenting time.

On October 24, 2024, the court entered its findings and Order for Sanctions Following August 12th and September 17th hearings. (SR 4656). The order imposed \$12,000 in sanctions for the missed parenting time that occurred from May 14th, 2024 through August 7, 2024 and \$2,500 in sanctions for the missed parenting time from August 7th, 2024 through September 17th, 2024¹. Krista's appeal follows.

STATEMENT OF THE FACTS

Joseph incorporates by reference the Statement of Facts set forth in Appellee's Brief filed on January 2, 2025 in Appeal No. 30766. For the sake of judicial efficiency and to avoid repetition, previously stated facts are not repeated herein.

The parties were married on June 4, 2002, and separated on or about January 7, 2019. (SR 7). During the marriage, Krista and Joseph had two children: Kyden Michael Lefors, born July 2, 2006, and Kaelyn Mae Lefors, born May 29, 2009. *Id.* At the time of the parties' separation, Kyden and Kaelyn were approximately 12 and 9 years old, respectively. As of the date of the Order applicable to this appeal, Kaelyn was 15 years old and Kyden was 18.

¹ Additional hearings to address lack of parenting time following the Order subject to this appeal include a hearing held on December 12, 2024 on Joseph's Motion for Additional Sanctions; Order Following December 12, 2024 Hearing filed on February 5, 2025 with an award of attorney's fees of \$2,000; Motion for Sanctions Against Mother and Change of Custody filed on February 21, 2025 resulting in an additional \$2,000 in attorneys fees. Currently Krista has appealed each order for sanctions issued against her to include appeal No's 30766, 30943, and 31025.

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

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

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

After the parenting time was not being encouraged with Kaelyn, Joseph requested the court to enforce its order and issue its sanctions against Krista. (SR 4151). Krista submitted a responsive affidavit on May 9, 2024, acknowledging that while she dropped Kaelyn off at the designated restaurants, Kaelyn refused to participate in parenting time. (SR 4170). Instead, Kaelyn would sit outside the restaurant, refuse to eat dinner with Joseph, or leave the area entirely. (SR 4309). It is Krista's position that she was in substantial compliance with the court's order by transporting the daughter to parenting time that she ultimately had no control over whether Kaelyn participated and that she is a "strong-willed" child. (SR 4170). Krista claimed she has no control over her daughter's feelings. *Id.* She further alleged that it was not her responsibility to repair the relationship between Kaelyn and her father but it is somehow on Joseph to "show that he has made positive changes in his life". *Id.* This theme remained consistent throughout Krista's testimony since 2019 through the May 9, 2024 hearing. She continued to portray herself as a victim while deflecting any responsibility for the daughter's negative feelings toward her father. (SR 4170). Krista further claimed that Joseph's persistent efforts to enforce parenting time were actually hurtful and had a detrimental impact on her own relationship with the children. *Id.*

For purposes of the subject of this appeal, motions hearings were held on August 12, 2024, and September 17, 2024, to address Joseph's request for additional sanctions. At the August hearing, Krista appeared *pro se*. During examination, Krista testified "*She goes to visitation. I drop her off and I walk her inside and I know she's in there, but I have no control when I leave. I am not there. I leave the area.*" (Aug. 12 Tr. 10:24–11:1).

"I stop at the corner there, he looks at me, I look at him... I guide her that way and then I leave. She walks up to his table as I'm leaving. That's all I see from there. I leave."(Aug. 12 Tr. 11:6–12). Krista maintained throughout her testimony that she had fulfilled her obligations by delivering Kaelyn to the visitation location and that what occurred thereafter was outside of her control. However, the trial court rejected this characterization, finding her efforts insufficient and not credible in light of the ongoing pattern of failed visits. The court concluded that Krista had *"not done enough to encourage [Kaelyn] to have a relationship with her father"* and emphasized that *"to encourage means that you have to do absolutely everything in your power to persuade her"* to participate in visitation as ordered (Aug. 12 Tr. 47:22–48:6). At the conclusion of the September 17, 2024 hearing, the court ordered Krista to participate in parenting education and counseling and took the matter of further sanctions under advisement.

On October 24, 2024, the court entered its Order for Sanctions following the August 12, 2024 and September 17, 2024 hearings (SR 4656). The order imposed \$12,000 in sanctions for the missed parenting time from May 14, 2024 to August 7th, 2024, and an additional \$2,500 in sanctions for the missed parenting time from August 7th, 2024 through September 17th, 2024. Krista filed a Notice of Appeal on November 22, 2024. (SR 4673).

Throughout proceedings, Joseph testified and the court continues to find his efforts to engage with his daughter and participate in parenting time. He described numerous occasions in which Kaelyn either did not sit with him or refused to speak, despite his presence at every scheduled visit. During the hearings, the trial court made oral findings that Joseph was credible, patient, and committed to maintaining a

relationship with his daughter. The court further noted that Kaelyn's responses during phone calls included derogatory statements and that Krista was present during many of these calls. The court concluded that Krista retained exclusive custody, control and influence over her daughter but had not used her position to foster Kaelyn's relationship with her Father.

As of the date of submitting this brief, Krista has a total of \$30,500.00 of imposed sanctions against her for failing to adhere to a custody order and to effectively foster a relationship between the daughter and Father².

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

STANDARD OF REVIEW

Matters of judicial discretion, such as an award of attorney fees or the court's remedy for contempt, are reviewed for an abuse of discretion. *Brosnan v. Brosnan*, 2013 S.D. 81, ¶ 12, 840 N.W.2d 240, 246 (attorney fees); *Sazama v. State ex rel. Muilenberg*,

² The record in this matter reflects not only Krista's repeated noncompliance with court-ordered visitation, but also a sustained course of conduct that has imposed significant financial and emotional strain on both the court system and Father. Rather than working in good faith to promote a resolution or facilitate the father-daughter relationship as ordered, Krista has instead utilized her financial resources to appeal each sanction order—as a means of delay, obstruction, and avoidance, causing already additional financial burdens upon Father. Instead of satisfying her court ordered sanctions and attorneys fees, she continues to use her resources to further appeal.

2007 S.D. 17, ¶ 9, 729 N.W.2d 335, 340 (contempt). An abuse of discretion "is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary and unreasonable." *Thurman v. CUNA Mut. Ins. Soc'y*, 2013 S.D. 63, ¶ 11, 836 N.W.2d 611, 616. Findings of fact are reviewed for clear error and will only be overturned "when we are definitely and firmly convinced a mistake has been made." *Lakota Cmty. Homes, Inc. v. Randall*, 2004 S.D. 16, ¶ 9, 675 N.W.2d 437, 440; *Hiller v. Hiller*, 2018 S.D. 74, ¶19.

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

ARGUMENT

I. The Trial Court Correctly Found That Krista LeFors Could Control Her Daughter's Refusal to Eat Dinner with Her Father.

Under South Dakota law, custodial parents have a continuing duty to foster the child's relationship with the noncustodial parent. SDCL 25-4-45 affirms that the best interests of the child include maintaining meaningful relationships with both parents. The trial court correctly found that Krista LeFors failed to meet this obligation by taking minimal and ineffective steps to support court-ordered parenting time.

Krista contends that she could not be held responsible for Kaelyn's refusal to participate in visitation due to the child's age and resistance. However, South Dakota law imposes a clear duty upon custodial parents to actively facilitate parenting time. In *Hiller v. Hiller*, 2018 S.D. 74, ¶28, 919 N.W.2d 548, the Court emphasized that a parent cannot abdicate this obligation simply because the child resists. Further, SDCL § 25-4A App. A of the South Dakota Parenting Guidelines references that “[p]arents shall not deny parenting time with the other parent solely based on the refusal of the children”. The trial court found Krista's failure to encourage visitation constituted a direct breach of her obligation, particularly where she had custody of the daughter 100% of the time.

Krista heavily relies on Kaelyn's stated refusal to engage with her Father. However, South Dakota law recognizes that a child's preferences, while relevant, are not dispositive. In *Weber v. Weber*, 529 N.W.2d 190 (S.D. 1995), the Court held that a child's preference may be limited or overridden where necessary to avoid harm or protect legal rights. The trial court properly concluded that Krista's conduct contributed to the ongoing estrangement between Kaelyn and her father. Her assertion that she lacked control once Kaelyn entered the restaurant was not accepted as a credible excuse for continued visitation failure. The court emphasized that Krista had “*not done enough to encourage [Kaelyn] to have a relationship with her father*” and clarified that “*to encourage means that you have to do absolutely everything in your power to persuade her*” (Aug. 12 Tr. 47:22–48:6). The court further rejected the notion that Kaelyn's mere preference not to visit was sufficient to relieve Krista of her statutory duty to facilitate parenting time. As the trier of fact, the trial court was in the best position to assess the evidence, observe witness demeanor, and evaluate credibility, particularly after a

prolonged history of hearing testimony from both children, their counselors, and family therapists. It was thus within the court's discretion to determine whether the child's resistance was based on an "intelligent" or legitimate reason or was the product of external influence. Given the absence of any credible evidence of harm and the consistent failure to facilitate visitation despite court orders, the trial court's conclusions were both factually and legally sound.

The trial court has broad discretion in matters concerning the custody of minor children and the enforcement of visitation rights. As such, its decision may only be reversed upon a clear showing that it abused that discretion. *Dunham v. Sabers*, 2022 S.D. 65, ¶ 23, 981 N.W.2d 620, 632–33. In exercising this discretion, the court is guided by a singular, paramount consideration: the best interests of the child. *Pieper v. Pieper*, 2013 S.D. 98, ¶ 15, 841 N.W.2d 781, 785. As the South Dakota Supreme Court has long recognized, "[i]n most instances, it will be in the best interests of children that they receive the love, affection, training, and companionship of their noncustodial parent." *Pieper*, 2013 S.D. 98, ¶ 15, 841 N.W.2d at 786 (quoting *Chicoine v. Chicoine*, 479 N.W.2d 891, 893 (S.D. 1992)).

At the August 12, 2024 hearing, the trial court explicitly found that the minor child, Kaelyn LeFors, was not maintaining any meaningful relationship with her father, despite Joseph's consistent efforts to engage her. The court stated: "*I'm finding as a fact, so far, that your daughter is not having any type of a relationship with her father*" (Aug. 12 Tr. 46:20–21), and further observed that "*he has been acting responsible in his obligations as a father because he shows up for the visitation*" (Aug. 12 Tr. 47:8–10). The court also determined that Krista failed to encourage the relationship and should be

sanctioned: “*You have not done enough to encourage her to have a relationship with her father and so you should be sanctioned for not doing that*” (Aug. 12 Tr. 47:17–19). The record showed thirteen failed visits since May 10, 2024, during which Kaelyn either ignored or avoided her father entirely (Aug. 12 Tr. 47:21–25). Joseph’s testimony substantiated the trial court’s findings. He recounted a series of incidents, beginning with the first visit following the prior hearing, where Krista brought Kaelyn into Olive Garden, pointed her to the restroom, and Kaelyn remained there for 45 minutes before leaving without any interaction (Aug. 12 Tr. 23:23–25; 24:1–3). This was representative of thirteen failed visits (Aug. 12 Tr. 24:11–16), during which Krista never attempted to support or initiate any interaction between Kaelyn and her father (Aug. 12 Tr. 24:17–25). Joseph testified that Krista consistently disclaimed responsibility, stating: “*That’s one hundred percent her job*” (Aug. 12 Tr. 25:14), and affirming that she did not believe it was her duty to foster the relationship (Aug. 12 Tr. 25:5–12).

Additional testimony illustrated Krista’s persistent failure to facilitate contact. At Kyden’s graduation, Krista’s father allegedly intercepted the child before Joseph could greet him (Aug. 12 Tr. 25:19–25; 26:1–5). At a state track meet, Krista was overheard warning Kaelyn, “*Joe’s coming,*” prompting the child to turn away from him (Aug. 12 Tr. 26:19–25; 27:1–10). Joseph testified that Krista “*paints a pretty picture*” in court, but does the “*bare minimum*” in practice (Aug. 12 Tr. 27:21–25; 28:1). On Father’s Day, Krista offered a 45-minute last-minute visit and texted: “*If you don’t show up and she’s only with you for 45 minutes, that’s on you*” (Aug. 12 Tr. 29:20–25; 30:1–2). During phone calls, Kaelyn routinely ends conversations by saying: “*Bye, Joe, and the home wrecking ho*” (Aug. 12 Tr. 30:21–25; 31:1–5). Joseph testified that Krista must hear it, as

the phone is unmuted and she is physically present. On May 31, 2024, Krista was heard instructing Kaelyn: *"Say it but don't yell"* (Aug. 12 Tr. 32:1–10).

At the September 17, 2024 hearing, the trial court reaffirmed its earlier findings and directly addressed the credibility and strength of Joseph testimony. The Court found Plaintiff to be a patient and tenacious father, stating: *"I find Joe is very credible... patient beyond the patience of many people... committed to having some relationship with his daughter... and very tenacious about pursuing his right as a father"* (Sept. 17 Tr. 56:8–12). The Court credited testimony that Kaelyn remains largely unresponsive during calls, which are frequently muted, and often end with derogatory statements directed at him and his spouse (Sept. 17 Tr. 56:13–17). The Court concluded that such endurance by Joseph reflected *"real strength of character"* (Sept. 17 Tr. 56:18–19). As for Krista, Judge Fitzgerald again emphasized that while she handles Kaelyn's daily care, her influence had not been appropriately exercised to promote the father-daughter relationship. The Court noted that Krista has Kaelyn *"100 percent of the time,"* yet her control had not translated into compliance with court intent (Sept. 17 Tr. 56:23–25). The Court held: *"You are not doing enough to encourage her to have meaningful parent time with her father... and this is irreplaceable"* (Sept. 17 Tr. 56:25–57:5) and that she was *"not doing [her] part"* and failing to *"exert the influence that [she is] able to do"* (Sept. 17 Tr. 57:10–12). In its October 24, 2024 Order for Sanctions, the Court formalized these findings. (SR 4656). The Court confirmed that it had considered all evidence and testimony from both hearings and concluded that Kaelyn's refusal to comply with parenting time *"could not be separated from Krista's ongoing conduct and lack of support"*. *Id.* the Court emphasized that Krista, as custodial parent, *"held the position of*

greatest influence” and bore the duty to encourage, model, and enforce appropriate behavior and “*Krista’s efforts have been minimal at best and have not satisfied her obligations under prior court orders,*” and found that the testimony offered by Joseph was “*credible and compelling.*” *Id.*

Krista challenges the trial court’s decision to conduct an in-camera conversation with Kaelyn on August 12, 2024, without a formal transcript or audio recording. However, South Dakota law grants trial courts significant discretion in custody and visitation matters, including procedures to protect the best interests of the child. The court’s choice to conduct a private, unrecorded conversation with the minor child was not improper under these circumstances.

SDCL § 25-4-45.1 allows for the consideration of a child’s preference, it does not mandate that those preferences be placed on the record, particularly where the court determines that doing so could harm the child or compromise the integrity of the proceedings.

The Court has previously explained that the trial court’s discretion in child custody and visitation matters necessarily extends to its assessment of the evidence: “[t]hat broad discretion includes discretion as to what evidence the trier of fact will rely on.” *Pieper*, 2013 S.D. 98, ¶ 29, 841 N.W.2d at 788. The trial court is in the best position to make those determinations because it observes the witnesses firsthand. As this Court reaffirmed in *Baun v. Estate of Kramlich*, “[t]he credibility of witnesses, the import to be accorded their testimony, and the weight of the evidence must be determined by the trial court, and we give due regard to the trial court’s opportunity to observe the witnesses and examine the evidence.” *Baun v. Estate of Kramlich* 2003 S.D. 89, ¶ 21, 667 N.W.2d 672,

677; accord *Van Duysen v. Van Duysen*, 2015 S.D. 84, ¶ 12, 871 N.W.2d 613, 616. This discretion includes the manner in which a court gathers evidence, particularly from minors.

Here, the trial court articulated clear and compelling reasons for declining to create a formal record of its conversation with the child. Judge Fitzgerald expressly stated that making a transcript could deter the child from speaking honestly and might lead to her statements being misunderstood, misquoted, or "used one way or the other" in future proceedings. The court explained: "*I'm really reluctant to record our conversation, I don't think it's necessary. It's in no one's best interest for me to talk to the child and then have a record made that could potentially be used one way or the other.*" (Aug. 12 Tr. 43:22–44:2).

This reasoning reflects a sound and protective judicial approach, recognizing the need to shield the child from further litigation stress and preserve the integrity of the interview. The court also ensured due process by noting that a witness (the court reporter) would be present for the in-camera discussion, even if the conversation would not be formally transcribed.

Contrary to Krista's assertion, the absence of a transcript does not amount to error. Rather, it demonstrates the court's careful balancing of the child's emotional wellbeing against the demands of the adversarial process. As the trier of fact, the court was in the best position to assess the child's demeanor, evaluate the context of her statements, and make informed credibility findings.

Importantly, the trial court's factual findings and sanctions did not hinge exclusively on the content of the unrecorded interview. Rather, they were supported by a

broad evidentiary record, including testimony from both parents, documented visitation failures, and repeated judicial observations of Krista's insufficient efforts to promote parenting time.

The trial court also previously conducted a fully recorded in-camera interview with Kaelyn on February 6, 2024. Thus, the court was already familiar with the child's views and utilized the August 12, 2024 conversation to assess whether progress had been made—without relying solely on its content to support rulings.

Krista further relies heavily on the in-camera statements of the children alleging past abuse in an attempt to justify noncompliance with court-ordered visitation. However, these statements have never been corroborated by objective evidence or substantiated through credible testimony. To the contrary, prior counselors and mental health professionals involved in the case have either discredited the allegations or characterized them as exaggerated and inconsistent. The record reflects that these disclosures often lacked specificity, were temporally distant from the events in question, and were made in the context of high parental conflict—raising legitimate concerns about suggestibility, external influence, or emotional reactivity rather than reliable recollection.

II. The Trial Court Properly Found That the Daughter's Refusal Constituted a Willful Violation by Mother.

SDCL 25-4A-5 authorizes courts to impose sanctions for willful violations of custody or visitation orders. A custodial parent's obligation to facilitate visitation is not diminished by a child's reluctance.

Krista's minimal engagement in fostering the relationship was well-documented. She was physically present for hand-offs but made no consistent efforts to ensure meaningful interaction. In multiple instances, she sat at a separate table or texted Joseph rather than facilitating communication. As the trial court found, such actions were inadequate. In *Hiller*, the custodial parent was sanctioned despite the child's reluctance because she failed to affirmatively promote parenting time. The trial court here made similar findings, noting Krista's actions were not in good faith and did not meet the legal threshold for facilitation.

Krista attempts to emphasize her compliance with the order to drop Kaelyn at the restaurants but ignores that the trial court found her efforts to be hollow and noncommittal. The record shows she made no real effort to ensure Kaelyn remained at the table or engaged in meaningful visitation. She refused to impose consequences for Kaelyn's refusal (Aug. 12 Tr. 13:14–14:4) and minimized her own role, asserting that it was “*not her responsibility*” (Aug. 12 Tr. 10:10–12). This conduct directly supports the trial court's finding of willful noncompliance.

Joseph testified that if Krista had made any genuine effort to support visitation, he would not have brought the motion (Aug. 12 Tr. 33:1–14), stating that even “*ten minutes*” of meaningful parenting time would have given him hope (Aug. 12 Tr. 33:10–14). He requested stricter sanctions, including jail time and standard guideline parenting time (Aug. 12 Tr. 33:15–25; 34:1–2), and suggested supervised weekends with cousins to provide a comfortable environment for Kaelyn (Aug. 12 Tr. 34:3–10). In response to concerns about Kaelyn running away, Joseph stated: “*We don't just ignore it. There are*

ways to discipline... [but] Kaelyn is an upstanding child” (Aug. 12 Tr. 34:22–25; 35:1–6), and emphasized that Krista was enabling Kaelyn’s refusal (Aug. 12 Tr. 35:21).

Kaelyn’s preferences were known and weighed, but the court concluded that the mother’s influence, passivity, and unwillingness to enforce court orders were the root issue—not the child’s independent will.

Appellant relies heavily on prior findings issued by Judge Krull, asserting that he found “*insufficient evidence to find alienation.*” However, that ruling occurred prior to further evidentiary development, including the multiple post-remand hearings that Judge Fitzgerald presided over. The absence of a finding of alienation in the earlier phase does not foreclose the court’s subsequent recognition of a clear and ongoing pattern of undermined parenting time, especially where the custodial parent has sole influence and the noncustodial parent is effectively frozen out.

The court’s oral and written findings confirm that Krista’s noncompliance was not passive or incidental, but part of a pattern that the court deemed willful and contrary to her legal obligations.

III. The Trial Court Did Not Abuse Its Discretion in Imposing Sanctions Against Mother.

The trial court imposed monetary sanctions totaling \$12,000.00 and awarded \$2,500.00 in attorney’s fees (Sept. 17 Tr. 52:21–53:3). These sanctions are fully authorized under SDCL 25-4A-5, which permits financial penalties to compel compliance with court-ordered custody and visitation arrangements. Contrary to Krista’s narrative, the court did not impose sanctions lightly. It did so only after a long history of documented failure and multiple failed visits. Sanctions were imposed only after the

court had exhausted lesser remedies and providing her opportunities with suspending sanction, parenting classes and counseling.

While Krista argues that the sanctions are excessive and do not account for her financial situation, the trial court has broad discretion in determining the appropriate remedy for noncompliance. The court considered the context and importance of enforcing visitation orders, emphasizing that financial sanctions are often a necessary and effective mechanism to secure compliance from a party who has demonstrated an ongoing pattern of resistance.

The record demonstrates that the trial court had extensive knowledge of Krista's financial circumstances, having presided over the parties' remanded divorce trial. The same judge had previously issued findings on Krista's monthly income, as well as the alimony, child support, and retirement benefits she was receiving at the time.

In fact, during the course of those proceedings, the court received and reviewed detailed financial disclosures and heard testimony on Krista's earning capacity, her entitlement to federal retirement benefits, and the support payments she was receiving from Joseph. As a result, the court was fully informed and equipped to assess her ability to pay when issuing sanctions.

Krista's financial position at the time of these hearings included approximately \$6,000 in net income per month including sources from wages, Joseph's military retirement, alimony and child support. (SR 3358, 3942,3969). In sum, Krista was certainly not without resources or financially desolate. Her combined sources of support provided her with a consistent and known monthly income stream, and there was no evidence presented that she lacked the basic means to comply with the court's orders or

to make reasonable efforts to support the father-daughter relationship. Indeed, the trial court could reasonably conclude that Krista's ongoing noncompliance was not the result of poverty or incapacity, but rather of unwillingness. Given this financial background and Krista's ongoing noncompliance, the trial court was justified in concluding that monetary sanctions were appropriate.

The record reflects that Krista had not made any out-of-pocket payments toward prior sanctions. At the September 17, 2024 hearing, she testified that the \$2,000 in attorney's fees previously ordered had not been paid but instead was "*to be out of the money that [Joseph] owed me*" (Sept. 17 Tr. 45:5–9). When asked directly whether she had paid the fees, she confirmed it had simply been offset against another obligation (Sept. 17 Tr. 45:5–9).

The trial court expressed concern over this improper crediting, and Plaintiff's counsel emphasized that Krista had faced "*no actual financial consequence*" for her noncompliance, as the sanctions were not personally paid but absorbed through offset (Sept. 17 Tr. 55:4–12). These facts supported the trial court's decision to impose additional sanctions to ensure accountability and deter continued defiance of its orders. The imposition of such sanctions is not only aimed at addressing past violations but also serves an important deterrent function to prevent future noncompliance and protect the custodial rights of noncustodial parents and the best interests of the child. The sanction was a cumulative response to years and years of repeated failures to comply. The trial court's decision was not rendered arbitrarily or without consideration of all factors.

CONCLUSION

The Appellant's claims fail under established South Dakota law. The trial court's findings were supported by the evidence and reflect careful balancing of the child's best interests, parental obligations, and the need for accountability. The decision to impose sanctions and enforce visitation was lawful, discretionary, and necessary.

For these reasons, Appellee respectfully requests that this Court affirm the trial court's decision in its entirety.

Dated this 18 day of April, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of April, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey E-Filing System, and further certifies that the foregoing document was also mailed via U.S. Mail, postage prepaid thereon, to:

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

/s/ Hollie L. Smith

HOLLIE L. SMITH

CERTIFICATE OF COMPLIANCE

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

The foregoing brief is 22 total pages in length. It is typed in proportionally spaced typeface in Times New Roman 12 point. The word processor used to prepare this brief indicates that there are a total of 6,353 words, and 33,577 characters (no spaces) in the body of the Brief.

/s/ Hollie L. Smith

HOLLIE L. SMITH

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 30910

JOSEPH D. LEFORS,

Plaintiff and Appellee,

vs.

KRISTA M. LEFORS,

Defendant and Appellant.

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

THE HONORABLE JOHN FITZGERALD
CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

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Notice of Appeal filed November 22, 2024

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STATEMENT OF THE FACTS

Krista incorporates by reference the Statement of Facts set forth In Appellant's Brief in Appeal No. 30910 and 30766 and the Reply Brief filed in Appeal No. 30766.

REPLY

1. The Circuit Court abused its discretion by finding Krista had violated the visitation order based off the minor child's action.

In her opening brief, Krista maintained that she was not able to control the actions of her 15-year-old daughter during Joseph's parenting time. Krista argued that South Dakota law has long recognized that a child's parental preferences should be given consideration when the child is mature enough to express such preferences. The Circuit Court made findings related to Kaelyn's intelligence and maturity. Yet, gave no deference to her clearly stated preferences. Kaelyn's actions have consistently shown her discomfort and unwillingness to participate during parenting time with Joseph. All of which have been ignored.

Joseph contends that Krista has failed to actively facilitate parenting time and has failed to do enough to encourage the relationship between himself and Kaelyn. Attempting to place the blame for Kaelyn's actions and feelings on Krista. Particularly, as it relates to Kaelyn ending phone calls by saying "Bye, Joe, and the home wrecking ho". Joseph has failed to recognize that his actions have directly led to the feelings that Kaelyn has consistently expressed. Joseph married Kaelyn's aunt who had previously been married to her maternal uncle. The Circuit Court and Joseph have failed to understand how difficult this has been for Kaelyn and how it adds more trauma for her. Instead, Kaelyn's feelings are deemed inappropriate and the blame for her feelings is placed on Krista.

The Circuit Court has failed to find that Kaelyn's actions are her own. Rather, this case has been treated as though Kaelyn is a small child rather than an incredibly intelligent teenager who is nearing adulthood who has formed her own beliefs. Blame has been placed on Krista for these behaviors; yet no testimony has ever been received that shows Krista encourages this behavior. To the contrary, Krista testified specifically about Kaelyn saying these things to her father at the hearing held on August 12, 2024. TT 4529 Where Krista acknowledged that it is not an appropriate way for Kaelyn to speak to Joseph and testified about how she discussed the same with Kaelyn placing focus on how her language was not appropriate. *Id.*

Joseph further contends that prior counselors and mental health professionals have either discredited the allegations of abuse or characterized them as exaggerated and inconsistent. Brief of Appellee, Appeal No. 30910, pg. 16. This is a misstatement of facts. Ms. Torno has validated the children's feelings and recollections of past events. SR 2438, pg. 82. The only professional who has discredited past events was Dr. Perrenoud who testified in front of Judge Krull on this matter. SR 2593. Judge Krull was not persuaded by Dr. Perrenoud's opinions on this case. *Id.*

Further, the Decree of Separate Maintenance and Decree of Divorce were granted on a finding of extreme cruelty. In Judge Krull's Findings of Fact and Conclusions of Law following the Separate Maintenance trial he found "the testimony regarding Joseph's abuse of alcohol during the marriage to be credible and a cause of the marital conflict. The Court further finds that the sworn testimony of Krista regarding several instances of domestic abuse by Joseph resulting in bruising, red marks and damage to the residence, which was supported by photographs, to be credible, despite the fact that Krista never

filed a report with any law enforcement agency. Joseph's abuse of alcohol and domestic violence was witnessed by the children and constitutes wrongful parental misconduct. Joseph acknowledged his failings as a spouse in notes and cards apologizing to Krista for his wrongful behavior. The Court finds that Joseph has inflicted emotional and physical abuse on Krista during the marriage constituting extreme cruelty as defined in SDCL § 25-4-4." SR 813 and SR 832. Judge Krull also made extensive findings on the children's fear for their safety due to Joseph's past physical abuse and alcohol abuse. *Id.* at 5. Judge Krull specifically found Krista encouraged the relationship between Joseph and Kaelyn. *Id.*

Joseph further speculates that the children's disclosures of abuse raise concerns of external influence. Brief of Appellee, Appeal No. 30910, pg. 11 and 16. However, Ms. Torno has testified extensively about seeing no signs of outside influence on the children. SR 2438, pg. 82. The Circuit Court failed to consider the affirmative steps that Krista did take to try to get the minor child to speak or eat with Joseph. "The parent has an obligation to take affirmative steps to encourage compliance with visitation orders and parents have an obligation to attempt to overcome the child's resistance to visitation." *Dean v. Cook*, 2017 COA 51, ¶ 22, 413 P.3d 246, 251; *In re Marriage of Marez*, 2014 MT 333, ¶ 28, 340 P.3d 520, 527 (Mont. 2014) (quoting *In re Marriage of Rideout*, 150 Wn.2d 337, 77 P.3d 1174, 1182 (Wash. 2003)). The Circuit Court never inquired into the steps that Joseph was taking to repair his relationship with his daughter and instead placed all of the burden on Krista alone.

Krista provided a number of things that she did to try to help this relationship. See Appendix to the Brief of Appellant, Appeal No. 30766, at 050-062. Furthermore, the

Court has been unwilling to give her any guidance on what more she can do to help Joseph's relationship with their daughter. The Circuit Court has ignored the professional guidance of Melanie Torno who believes Joseph needs to take steps to better the relationship. *Id.* at 068. The Court has failed to properly weigh the evidence before it. Krista has been sanctioned for doing exactly what the Court Order requires of her. Which is to drop the minor child off at Culver's or Olive Garden and leave. The Circuit Court completely disregarded the expert testimony of Melanie Torno who found no evidence of alienation and has found nothing to suggest that Krista is to blame for the relationship between Father and child. Krista has taken all reasonable steps to foster the relationship between Kaelyn and Joseph. Krista should not be held responsible for Kaelyn's actions, especially in light of the well documented history of physical and alcohol abuse by Joseph which was witnessed by the children.

2. The Circuit Court erred in finding that Kaelyn's actions were a willful violation by Krista.

In her opening brief, Appellant argued that Kaelyn's actions should not be considered a willful act by Krista. Joseph responded by arguing that "A custodial parent's obligation to facilitate visitation is not diminished by a child's reluctance." Appellee's brief 16. Krista agrees with this point completely which is precisely why she has always ensured that she gets Kaelyn to the location where the visit is set to occur. Krista has consistently satisfied her burden as custodial parent by getting Kaelyn to each visit. Krista should not be sanctioned for Kaelyn's refusal to interact with Joseph once his parenting time begins. Krista has encouraged this relationship; she has ensured that Kaelyn is dropped off at visits. Krista has been sanctioned by the Circuit Court because the Circuit Court does not like how Kaelyn is acting. The Circuit Court has erred by finding Kaelyn's actions

constitute a willful act of Krista. Krista has complied with the Circuit Court's Orders for Joseph's parenting time.

3. The Circuit Court erred by sanctioning Krista \$14,000 for the minor child's actions.

The best interests of the child remains the guiding principal in all cases revolving around minor children. See *Jensen v. Horton*, 2N.W.3d 20 (S.D. 2024). The Court did not make any findings related to how the sanction of \$14,000 would impact the minor child and the adult child who Krista is financially responsible for. Krista is the main provider for these children. Although the oldest son is now an adult Krista supports him completely. The Circuit Court failed to make any findings on how these sanctions would impact the minor children and Krista's ability to support them which is in error.

Further the Court has imposed \$14,000 which is over the \$1,000 authorized by statute. The plain language of the statute reads "To require the offender to pay a civil penalty of not more than the sum of one thousand dollars;" SDCL § 25-4A-5(3). It does not authorize the Court to award sanctions in excess of one thousand dollars. The Circuit Court has erred by awarding a sanction of \$14,000 which is excessive and will negatively impact the children.

CONCLUSION

The Circuit Court has erred in imposing sanctions against Krista for the minor child's unwillingness to speak to Joseph. Krista has complied with the Court Order. The Circuit Court erred in sanctioning Krista more than the one thousand dollars allowed by statute. Krista respectfully requests that the Order of the Circuit Court be reversed.

Dated this 19th day of May, 2025.

Respectfully submitted,

SANDERSON LAW

/s/ Kelly J. Sanderson

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The undersigned hereby certifies that on the 19th day of May, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey Electronic Filing System, and further certifies that the foregoing document was also served via Odyssey Electronic Filing System and mailed via U.S. Mail, postage prepaid thereon to:

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

/s/ Kelly J. Sanderson

Kelly J. Sanderson

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point font. This brief is 5 pages in length, not including the Appendix. The word processor used to prepare this brief indicates there are 1493 words in the body of this brief.

/s/ Kelly J. Sanderson
Kelly J. Sanderson

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

JOSEPH D. LEFORS,	)	APPEAL NO. 30910
)	
PLAINTIFF/APPELLEE,)	
)	
v.	)	MOTION FOR ATTORNEY FEES
)	
KRISTA M. LEFORS,)	
)	
DEFENDANT/APPELLANT.)	

COMES NOW, the Plaintiff/Appellee, Joseph LeFors, by and through his attorney of record, and respectfully submit this Motion for Attorney Fees requesting this Court award attorney fees pursuant to SDCL § 15-26A-87.3 and SDCL§ 15-17-38. A verified Affidavit and itemized statement of legal services rendered, exclusive of costs allowable, is attached hereto and incorporated herein by this reference.

Dated this 5th day of May, 2025.

LOOS, SABERS & SMITH, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2025, I served a true and correct copy of the foregoing *Motion for Attorney Fees* to the following:

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

JOSEPH D. LEFORS,

PLAINTIFF/APPELLEE,

v.

KRISTA M. LEFORS,

DEFENDANT/APPELLANT.

APPEAL NO. 30910

**AFFIDAVIT OF HOLLIE L. SMITH
FOR ATTORNEY'S FEES**

State of South Dakota

County of Pennington

)
)ss
)

Attorney Hollie L. Smith, being first duly sworn on oath states as follows:

1. I am the attorney for the above-named Appellee, Joseph LeFors, in the above-entitled action.
2. I am an attorney duly licensed to practice law in the State of South Dakota and a member in good standing of the South Dakota Bar; that I have been practicing primarily in the area of domestic relations for seven (7) years.
3. I submit this Affidavit in Support of Appellee's Motion for Attorney's Fees.
4. That your Affiant's hourly rate of Two Hundred Seventy-Five Dollars (\$275.00) plus sales costs is reasonable and within the range of a fees customarily charged in the Black Hills area in appeal matters.
5. That the amount of attorney fees and tax incurred in handling this appeal totals Three Thousand One Hundred Thirty-Five Dollars and Fifty-Six Cents (\$3,135.56).
6. Plaintiff/Appellee respectfully requests that the Court approve said sum as reasonable and necessary in handling the appeal on behalf of the Appellee. Attached hereto is a true and correct copy of the attorney fee statement.

Submitted this 5th day of May, 2025.

Hollie L. Smith

Hollie L. Smith

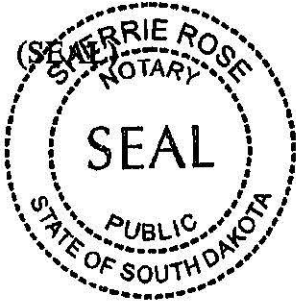
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Subscribed and sworn to before me this 5th day of May, 2025.

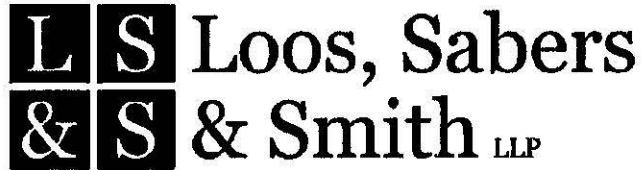
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04/16/2025	HLS	Initial Draft of appellee brief file No. 30910 and legal research re: same	5.50	\$275.00	\$1,512.50
04/17/2025	SAR	Make revisions to Appellee's Brief.	2.00	\$90.00	\$180.00
04/18/2025	SAR	Final and file Appellee's Brief.	4.00	\$90.00	\$360.00
04/18/2025	HLS	Continued draft and finalize appellee brief No. 30910	3.00	\$300.00	\$900.00
				Subtotal	\$2,952.50
				SD Sales Tax (6.2%)	\$183.06
				Total	\$3,135.56

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 30943

JOSEPH D. LEFORS,

Plaintiff and Appellee,

vs.

KRISTA M. LEFORS,

Defendant and Appellant.

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

THE HONORABLE JOHN FITZGERALD
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Notice of Appeal filed December 20, 2024

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PRELIMINARY STATEMENT

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

JURISDICTIONAL STATEMENT

Krista respectfully appeals the Honorable John Fitzgerald’s Findings of Fact and Conclusions of Law, and Order Following October 24, 2024 Hearing filed on November 20, 2024. SR 4669. Notice of Entry was filed on December 20, 2024. SR2 65 Krista timely served the Notice of Appeal on December 20, 2024. SR2 67. The Findings of Fact and Conclusions of Law, and Order Following October 24, 2024 Hearing is a final order of the Circuit Court and is appealable as a matter of right, pursuant to SDCL § 15-26A-3 and SDCL § 15-26A-4.

LEGAL ISSUES ON APPEAL

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

Most relevant cases and statutes:

Fuerstenberg v. Fuerstenberg, 1999 S.D. 35, ¶ 30, 591 N.W.2d 798.

Price v. Price, 2000 S.D. 64, ¶ 37, 611 N.W.2d 425.

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

- 2. Whether the trial court erred in finding that the 15-year-old daughter's refusal to eat dinner with her father was a willful violation by Krista.**

Most relevant cases and statutes:

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

Hiller v. Hiller, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548.

- 3. Whether the trial court erred in assessing attorney fees of \$6,000 without requiring an invoice showing how the attorney fees were incurred and without reviewing the same for reasonableness.**

Most relevant cases and statutes:

SDCL § 25-4A-5

Hiller v. Hiller, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548.

- 4. Whether the trial court abused its discretion in granting Father additional parenting time given the child's fear of Father and testimony by the child's counselor that additional parenting time would not be in the child's best interests.**

Most relevant cases and statutes:

SDCL § 25-4-45

Lindley v. Lindley, 401 N.W.2d 732, (S.D. 1987)

Zepeda v. Zepeda, 2001 S.D. 101, 632 N.W.2d 48.

STATEMENT OF THE CASE

A divorce case was initiated by Joseph in January of 2019. SR 7. This is the third appeal following the Court's decisions in *LeFors v. LeFors*, 2023 S.D. 24, 991 N.W.2d 675 and *LeFors v. LeFors*, No. 30544, 2024 S.D. LEXIS 113 (Sep. 3, 2024). Krista

counterclaimed, alleging a claim for Separate Maintenance. SR 174. A two-day trial was held by the Circuit Court on June 17 and 18, 2020. On April 8, 2021, Judge Kevin Krull signed Findings of Fact and Conclusions of Law and issued a Decree of Separate Maintenance. SR 813 and 832. A Notice of Appeal was filed on May 27, 2021. SR 910. This Court entered its decision affirming in part and reversing and remanding in part. See *LeFors*, 991 N.W.2d 675. A remanded trial was held on September 28 and 29, 2023. A Judgment and Decree of Divorce was issued on October 27, 2023. SR 3374. A Notice of Appeal related to the Judgment and Decree of Divorce was filed on November 21, 2023. SR 3406. This Court entered its decision affirming in part and reversing in part on September 3, 2024. The Circuit Court entered an Order Discontinuing Family Therapy and Scheduling Father's Parenting Time on February 26, 2024. SR 3974. A Motion Hearing was held on May 10, 2024, to address Joseph's request to find Krista in contempt and to order sanctions. The Circuit Court entered its Findings of Fact and Conclusions of Law and Order for Sanctions, Attorneys Fees and Parenting Time on June 17, 2024. SR 4309. Notice of Entry was filed on June 18, 2024. SR 4313. Motion Hearings were held on August 12, 2024 and September 17, 2024 to address Joseph's request for additional sanctions against Krista. The Circuit Court entered its Order for Sanctions Following August 12, 2024 and September 17, 2024 Hearing on October 24, 2024. SR 4656. A Status Hearing was held on October 24, 2024 to address additional sanctions against Krista. The Circuit Court entered its Findings of Fact and Conclusions of Law, and Order Following October 24, 2024 Hearing on November 20, 2024. SR 4699. Krista timely filed a Notice of Appeal on December 20, 2024. SR2 67.

STATEMENT OF THE FACTS

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

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

Throughout these proceedings Joseph has claimed that parental alienation has been occurring. While Judge Krull was presiding over this matter he entered Findings of Fact and Conclusions of Law and Order where he specifically found and concluded that

there was insufficient evidence to find alienation. SR 2593. He further found that the relationship between the children and Joseph was damaged almost to the point of no repair. SR 2593. Judge John Fitzgerald took over this matter while the first appeal was pending.

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

A hearing was held on February 6, 2024, to address family counseling and Joseph's parenting time. The Court spoke in camera with both children. TT, In Camera Proceedings, February 6, 2024. While in camera Kyden told Judge Fitzgerald that "I just don't want to see him because of the things he's has done to me" *Id.* at 029 referring to Joseph. Kyden went on to outline the abuse he endured by Joseph, "He would grab me by the back of my neck and he would force me to the ground. He would then yell at me and call me names" *Id.* at 031. Kaelyn similarly stated that Joseph had abused her, "Because he abused me and he's with my aunt." going on to tell the Court that "I don't want to meet with him. I don't want anything to do with him." *Id.* at 032. Joseph is remarried to Krista's brother's ex-wife. Judge Fitzgerald asked Kaelyn about forgiving Joseph for his past actions and she stated that she was not able to forgive him because of

the abuse. See *Id.* at 033. Judge Fitzgerald asked Kaelyn if she is afraid of Joseph. See *Id.* at 035. Kaelyn states that she is “because he abused us.” *Id.* Judge Fitzgerald went on to ask Kaelyn if she would feel safe at a public place with Joseph such as Olive Garden; Kaelyn responded that she would not feel safe. See *Id.* at 036. Judge Fitzgerald then asks Kaelyn, “Well, where would you feel the most comfortable and the most secure to meet with your dad, Joe?” Kaelyn responded “Nowhere”. *Id.* at 040. Judge Fitzgerald later asked Kaelyn, “So what would you like me to do as the judge in this case? Kaelyn?” to which Kaelyn responded, “I don’t want anything to do with Joe so I don’t want visitation or anything with him.” *Id.* at 043.

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

Joseph filed an Affidavit on April 18, 2024, requesting that Krista be sanctioned for failing to encourage Kaelyn enough surrounding Joseph’s parenting time. SR 4151. Krista responded to Joseph’s affidavit with her own affidavits outlining all of her attempts to encourage Kaelyn to speak to Joseph. SR 4162 and 4170. During this time, Krista would drop Kaelyn off at the designated restaurant as ordered and would leave the

area and Kaelyn would then refuse to speak to her father or share a meal with him. SR 4170 pg. 2. Following the hearing, Judge Fitzgerald entered a Findings of Fact and Conclusions of Law and Order for Sanctions, Attorney's Fees and Parenting Time. SR 4309. Judge Fitzgerald found that although Krista was taking Kaelyn to the restaurants each week that she was not doing enough to encourage the relationship between Kaelyn and Joseph. *Id.* He then sanctioned Krista with a fine for each of the parenting times totaling \$2,000 and \$2,000 in repayment of Joseph's attorney's fees. *Id.* Krista timely appealed this Order which is currently pending before this Court in Supreme Court Appeal No. 30766.

Motion Hearings to address additional sanctions were held on August 12, 2024 and September 17, 2024 again requesting that Krista be sanctioned because Kaelyn was unwilling to interact with Joseph during the set parenting times. SR 4656. The August 12, 2024 hearing began by addressing the withdrawal of Krista's previous attorney Ms. Watson due to her retirement. TT, Motions Hearing, August 12, 2024 pg. 4. The Circuit then took up the issue of the Motion requesting additional sanctions filed by Joseph. *Id.* During this hearing, Krista appeared pro se. Opposing Counsel questioned Krista about visitation and asked Krista "Is it your position that you have no control over whether your daughter goes or does not go to visitations" and Krista responded "She goes to visitation. I drop her off and I walk her inside and I know she's in there, but I have no control when I leave. I am not there." *Id.* at 10. Krista went on to testify that the minor child is always walking toward Joseph before Krista leaves and then she leaves the area as required by the Order. *Id.* The Court addressed sanctions from the August 12th hearing at the September 17th hearing and found that Krista would be required to participate in either

counseling and/or parenting educational classes. TT, Status Hearing, September 17, 2024 pg. 57. The Court further reserved its ruling related to sanctions until positions were submitted by both Counsel. *Id.* at 58. The Circuit Court then entered its formal Order for Sanctions Following August 12, 2024 and September 17, 2024 Hearing on October 24, 2024 where the Court ordered \$12,000 in sanctions for the time period of May 14-August 7 and \$2,500 for the time period of August 7-September 17. SR 4656.

A Status Hearing was held on October 24, 2024 to address Joseph's request for additional sanctions against Krista. Following this hearing, Judge Fitzgerald ordered that Krista be required to pay \$6,000 in Joseph's attorney fees with \$500 per month being withheld by Krista's employer. Judge Fitzgerald also awarded Joseph additional parenting time consisting of an overnight every other weekend. SR 4699.

STANDARD OF REVIEW

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

"The trial court exercises broad discretion in awarding custody of children, and its decision will be reversed only upon a clear showing of an abuse of discretion." *Matter of Guardianship of Janke*, 500 N.W.2d 207, 211 (S.D. 1993) (citing *Anderson v. Anderson*, 472 N.W.2d 519, 520 (S.D. 1991)). Any matter of judicial discretion including awards of attorney fees and remedies for contempt are reviewed for an abuse of discretion. See

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

ARGUMENT

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

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

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

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

In this case, Kaelyn has expressed to Judge Fitzgerald her direct concerns with exercising parenting time with Joseph very clearly in the in-camera interview that took place. SR 4489. Kaelyn has also expressed the same to her counselor, Melanie Torno. SR 4220. Both Judge Fitzgerald and Ms. Torno have discussed Kaelyn's intelligence and ability to clearly communicate with them. The Circuit Court's Order ignores Kaelyn's concerns completely and instead places the burden on Krista to get Kaelyn to act in a specific way without giving her any direction on how to accomplish this. Krista cannot control Kaelyn after Kaelyn leaves her care. Kaelyn has very clearly stated her preferences and her concerns for exercising parenting time with Joseph and they have been completely disregarded.

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

establish how it is in the best interests of Kaelyn to continue having parenting time with someone who has been found to be abusive. Krista was granted a divorce based off of extreme cruelty. SR 3374. The children witnessed Joseph's actions towards Krista. The children lived through how Joseph treated them.

Most concerning is that Judge Fitzgerald met again in chambers with Kaelyn on August 12, 2024 and refused to make a record of that meeting. On the record, Judge Fitzgerald stated:

Yeah, and I don't want to talk to her and her just tell me that it's of her own free will and accord that she's not going to go see her dad because that's kind of what happened the last time, and I'm really reluctant to record our conversation, I don't think it's necessary. It's in no one's best interests for me to talk to the child and then have a record made the could potentially be used one way or the other. I'm not going to keep a record of it, and I'll try to keep it brief. And again, you know, the expectation shouldn't be that she's just going to tell me everything's wonderful but I'm not going to go meet with dad, because that's unacceptable and I think—the last time we had court on July 18th, I looked up into the records, and I thought we were dealing with the issues from the July 3rd affidavit and so I kind of let it be known how I viewed the evidence and the law, and now I'm left with a situation where it doesn't sound like anything has worked since then either.” App 044.

It is extremely troubling that the Court was specifically concerned with having this recorded because it would contradict the Court's ruling which places the blame for this situation on Krista. The lack of findings related to why the Court's ruling is in the best interests of the child is a grievous error. Above all else the best interest standard must be upheld and in this case the focus has shifted from the child's best interests to what Joseph would like to see occur. The Circuit Court's decision to sanction Krista for Kaelyn's actions is in error.

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

The Circuit Court has erred in finding that Kaelyn's refusal to speak to Joseph constitutes a willful violation by Krista. SDCL § 25-4A-5 allows for sanctions "for the express purpose of punish[ing] the offender[.] Therefore, a circuit court's findings relating to necessity are sufficient so long as they adequately support the determination that the offending party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree[.] *Hiller v. Hiller*, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548, 556.

Here the Circuit Court made findings that "the daughter is an independent-minded and bright young lady." SR 4656. Where "the daughter does not have a relationship with her Father." *Id.* Further finding, "that despite being a teenager and Mother's claim that she cannot control what her daughter does, Mother continues to not do enough to encourage her to have a relationship with her Father". *Id.* The Circuit Court failed to consider the steps that Krista has taken to try to better foster this relationship. At the Motion Hearing held on May 10, 2024, Krista testified extensively about the steps that she has taken to encourage this relationship. TT Motion Hearing May 10, 2024 pg. 45-49. Krista continues to have the minor child attend regular counseling to address the relationship between Father and child and nothing has worked. Krista has taken the minor child to each visit as required by the Court Order what happens when she drops Kaelyn off is outside of her control. Each visit has occurred.

At the Status Hearing held on September 17, 2024, Krista testified about how she had changed tactics at the dinner visits where she actually accompanied the minor child into Olive Garden and sat down and got a table for all three of them after the minor child stated that she was going to run. TT, Status Hearing September 17, 2025, pg. 5. After

sitting down at the table with the minor child, Joseph refused to follow them from the hostess stand and instead remained in the lobby throughout the duration of the visit. *Id.* at 7. Krista made attempt via text to get him to join them. *Id.* At the next supper visit, Krista again accompanied the child to Culvers and had her sit down and eat an ice cream, again neither Kaelyn nor Joseph spoke a word to each other. *Id.* at 8. At the next Culvers visit, Krista tried to facilitate the visit to no avail. *Id.* at 12. Again, Joseph made zero effort to actually speak to Kaelyn. *Id.* Krista also testified about the phone calls between Kaelyn and Joseph. *Id.* at 21-23. These phone calls all occurred but were unsuccessful. Neither Kaelyn nor Joseph ever spoke to each other. *Id.* The Circuit Court has erred in finding Kaelyn's refusal to actively participate in each visit to be within Krista's control. This is a teenager who has been deeply hurt by her father and continues to experience disappointment and trauma related to these visits. Krista should not be sanctioned for Kaelyn's actions during these visits.

III. The Circuit Court erred in assessing attorney fees of \$6,000 without requiring an invoice showing how the fees were incurred and without reviewing the invoice for reasonableness.

An award for attorney fees must be reasonable based off of an inquiry of how the fees were incurred. A Circuit Court must examine the necessity of an award for attorney fees and the reasonableness of such an award by considering the following:

“First, the court must determine what constitutes a reasonable attorney's fee. This requires consideration of (1) the amount and value of the property involved, (2) the intricacy and importance of the litigation, (3) the labor and time involved, (4) the skill required to draw the pleadings and try the case, (5) the discovery utilized, (6) whether there were complicated legal problems, (7) the time required for the trial, and (8) whether briefs were required. Second it must determine the necessity for such fee. That is, what portion of that fee, if any, should be allowed as costs to be paid by the opposing party. This requires consideration of the parties' relative worth, income, liquidity, and whether either party unreasonably increased the time spent on the case.”

Goff v. Goff, 2024 S.D. 57, ¶ 26 (quoting *Urbaniak v. Urbaniak*, 2011 S.D. 83, ¶ 31, 807 N.W.2d 621, 628).

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

SDCL 25-4A-5 allows sanction of attorney fees for the “express purpose of punishing the offender.” *Hiller v. Hiller*, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548, 556 “Therefore, a circuit court’s findings relating to necessity are sufficient so long as they adequately support the determination that the offending party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree.” *Id.* at 551. However, even under this Statute, attorney fees must still be reasonable and must have been incurred solely as a result of the noncompliance. See *Id.* at 551.

Here the Circuit Court made findings related to the reasonableness of Attorney Smith’s hourly billing rate but did not inquire into how the fees were incurred. There is no question that Attorney Smith’s hourly rate is reasonable given her experience. An Affidavit of Hollie L. Smith for Attorney’s Fees and Costs was filed on October 23, 2024. SR 4653. In the Affidavit, Counsel lumps attorney fees into two categories. App. 005. Fees earned from February 1, 2024 until October 18, 2024 and fees earned from August 12, 2024 to October 24, 2024. *Id.* An invoice was attached which placed the fees into the two categories without any breakdown in how those hours were incurred. *Id.* at 003. No evidence was received related to how these attorney fees were incurred and whether they were incurred as a direct result of the requests for sanctions or for other legal services provided. Without sufficient evidence showing how these fees were incurred the Circuit Court cannot find them reasonable.

IV. The Circuit Court erred in granting Father additional parenting time.

All child custody determinations must be in the best interests of the child. SDCL § 25-4-45 allows the court to make decisions revolving around the custody, care, and education of children whenever necessary.

In awarding the custody of a child, the court shall be guided by consideration of what appears to be for the best interests of the child in respect to the child's temporal and mental and moral welfare. If the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question. SDCL § 25-4-45.

The court as *parens patriae* of the children must insist that more be done when the children's best interests are at stake. See *Williams v. Williams*, 425 N.W.2d 390, 393 (S.D. 1988). "It is the trial court's duty to see that the children are protected at every turn. . . ." *Jeschke v. Wockenfuss*, 534 N.W.2d 602, 605 (S.D. 1995). "Our brightest beacon remains the best interests of the child." *Zepeda v. Zepeda*, 2001 S.D. 101, 13, 632 N.W.2d 48, 53. When interests are balanced, "[t]he best interests of the child[] must always prevail." *In re W.G.*, 1999 S.D. 85, 22, 597 N.W.2d 430, 434; see *Jasper v. Jasper*, 351 N.W.2d 114, 117 (S.D. 1984) (stating "the welfare and best interests of the children are paramount to all other considerations").

"The best interests of the child [even] prevail over the noncustodial parent's privilege of visitation." *Lindley v. Lindley*, 401 N.W.2d 732, 736 (S.D. 1987). In most instances, "it will be in the best interests of children that they receive the love, affection, training, and companionship of their noncustodial parent." *Chicoine v. Chicoine*, 479 N.W.2d 891, 893 (S.D. 1992) (quoting *Roberts v. Roberts*, 22 Ohio App. 3d 127, 22 Ohio B. 328, 489 N.E.2d 1067, 1069 (Ohio 1985)). This is not always true, "where the evidence establishes that exercise of visitation will be harmful to the welfare

of the children; in this event, the right of the noncustodial parent to visit with his children can be limited, or, under extreme circumstances, prohibited altogether.” *Id.* (emphasis added) (quoting *Roberts*, 489 N.E.2d at 1069); see *In re Termination of Parental Rights of P.A.M.*, 505 N.W.2d 395, 398 (S.D. 1993) (“The court which granted the divorce and determined custody . . . may deny Father any visitation rights.”). See also *Wolt v. Wolt*, 2010 ND 26, 778 N.W.2d 786, 799 (N.D. 2010) (“A non-custodial parent’s visitation may be ‘curtailed or eliminated entirely if it is likely to endanger the child’s physical or emotional health.’” (quoting *Marquette v. Marquette*, 2006 ND 154, 719 N.W.2d 321, 324 (N.D. 2006)).

Ms. Torno testified about the current state of the relationship between Father and Kaelyn at the May 10, 2024 hearing. When asked about whether the two supper visits each week were detrimental to Kaelyn and Joseph’s relationship, Ms. Torno stated: “I’ve said this in this court before, I’m a firm believer that children need to have relationships with both sets of parents, or both parents, but the current state of this relationship is making it very difficult.” TT Motion Hearing May 10, 2024 pg. 38. Ms. Torno was also asked what could be done to improve the relationship between Kaelyn and Joseph she stated: “So what I believe that needs to happen is that the core issues—the issues that are unresolved, they occurred when she was really young—seven, eight years old—those are still unresolved. That is what is impacting this relationship, and Kaelyn feels like her dad has not done anything to change anything about those situations or to take accountability for that and that is the number one thing that is impacting this relationship.” TT Motion Hearing May 10, 2024 pg. 38-39. Throughout this matter, nothing has been done to require these issues to be addressed between Kaelyn and Joseph. Instead, the Court has

ordered parenting time be increased without any regard for Kaelyn's feelings and without any regard for the professional opinion of Ms. Torno. The current parenting time issues have been heavily litigated over the past year with no improvement. Both Joseph and Kaelyn have spoken very few words to each other throughout. The Court, instead of heeding the expert opinion of Ms. Torno, has endeavored to repair this relationship by increasing parenting time and sanctioning Krista. Neither decision has benefited the relationship between Joseph and Kaelyn and neither has resulted in the outcome that the Court is hoping for. Forcing a child to have more contact with a parent when they do not feel safe is not in that child's best interests. Here it is having the exact opposite outcome where the relationship continues to decline. The increase in parenting time is not in Kaelyn's best interests.

CONCLUSION

The Circuit Court has erred in sanctioning Krista for Kaelyn's actions. Kaelyn's refusal to speak to Joseph is not a willful violation of the Court Order by Krista and should not result in sanctions being imposed by the Court against Krista. The Circuit Court did not have enough evidence in the record to find that the \$6,000 in attorney fees was reasonable. The increase in parenting time is not in Kaelyn's best interests and will result in mental harm to Kaelyn. Krista respectfully requests that this Court reverse the Order of the Circuit Court and vacate the award for sanctions and remand this matter so that an order may be issued that is consistent with the best interests of the minor child.

Dated this 24th day of February, 2025.

Respectfully submitted,

SANDERSON LAW

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

WAIVER OF ORAL ARGUMENT

Krista waives oral argument on this Appeal.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of February, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey Electronic Filing System, and further certifies that the foregoing document was also served via Odyssey Electronic Filing System and mailed via U.S. Mail, postage prepaid thereon to:

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

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

SANDERSON LAW

/s/ Kelly J. Sanderson
Kelly J. Sanderson

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point font. This brief is 18 pages in length, not including the Appendix. The word processor used to prepare this brief indicates there are 4,933 words in the body of this brief.

SANDERSON LAW

/s/ Kelly J. Sanderson
Kelly J. Sanderson

APPENDIX

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1. Findings of Fact and Conclusions of Law, and Order Following October 24, 2024
Hearing.....App. 001
2. Affidavit of Hollie L. Smith for Attorney’s Fees and Costs.....App. 005

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

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

JOSEPH D. LEFORS,)
)
 PLAINTIFF,)
)
 v.)
)
 KRISTA M. LEFORS,)
)
 DEFENDANT.)

46DIV19-000008

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW, AND ORDER FOLLOWING
OCTOBER 24, 2024 HEARING**

A hearing was held on October 24, 2024, before the Honorable John Fitzgerald, Circuit Court Judge, at the Meade County Courthouse in Sturgis, South Dakota. Plaintiff, Joseph LeFors, personally appeared with his attorney, Hollie L. Smith. Defendant, Krista LeFors, personally appeared with her attorney Kelly Sanderson. The Court has considered the arguments of counsel at the hearing date referenced above, the entire record including the pleadings filed by both parties, prior testimony, admissible evidence, and the history of the custody issues before the Court. Counsel previously filed proposed Orders and briefs regarding the issue of attorneys fees requested by the Plaintiff for the prior sanctions against Defendant and his unsuccessful parenting time. The Court submits the following finding of fact and conclusions of law:

1. SDCL 15-17-38 provides that attorney's fees can be awarded in all cases of divorce. Awarding attorney's fees is a subject matter largely left to the discretion of the trial court.
2. There are general guidelines set forth in *Rhykus v Rhykus* 319NW2d167 SD 1982. It involves a two step analysis. Step one is to decide what constitutes reasonable attorney fees and the second step is apportionment.
3. To determine the reasonableness of the attorney's fees the court considers the difficulty of the litigation, the amount and time of labor involved, and whether a complicated legal problem existed. According to Ms. Smith's affidavit, since February 2024 including fees ending October 18, 2024 the total is \$14,953. Ms. Smith is an experienced and skilled attorney specializing in family law. Her hourly rate and total time involved are reasonable in amount.
4. Next the trial court must decide what portion of the attorney's fees should be allowed as costs, paid by the opposing party. The court should consider the property owned by the

parties their relative incomes and if one party increase unreasonably the amount of time spent on the case.

5. This case has gone on for years. The mother's actions/ inactions have made it very difficult for father's counsel to obtain even limited visitation between his children and their father. The court finds that the mother has unnecessarily and unreasonably increased the amount of time spent and increased the complexity of the visitation aspect of this action, and the unnecessary and time-consuming litigation that it has caused.
6. Ms. Smith's attorneys fees are reasonable. Though the litigation revolves around an issue of visitation which typically should be rather routine. This case is not. The mother's actions or inactions have made the case difficult to near impossible to resolve. The Court has heard no evidence that mother has tried to have her child counseled for her behavior nor has mother done anything on her own to address how her own issues with this divorce have negatively impacted the fathers very basic right to visitation.
7. Considering the property owned by both parties, the relative income of the parties, the Court finds that the mother earns less than father but does have liquid assets (cash) coming in each month and the ability to pay partially for father's attorney's fees. She is responsible for increasing unreasonably the amount of time and effort spent on this case for father to try and exercise even limited visitation that he is entitled too.
8. As set forth in the appendix to our child visitation guidelines, children generally do better when they have a stable and meaningful involvement of both of their parents in their lives. This has not occurred in this case.
9. Additionally, each parent has different and valuable contributions to make to their children's development. This has likewise not been allowed to occur in this case.
10. Parents should help their children maintain a positive relationship with the other parent. Each parent must support the child's relationship with the other parent and encourage them to enjoy themselves with the other parent. In this case mother has been significantly more involved with the care of the children, and has failed to encourage the children to enjoy time with their father, and failed to support the development of a positive relationship with their father under circumstances where there are no legitimate concerns about the father's capacity to care for his children.

11. Based upon the foregoing, mother is ordered to pay \$6,000.00 of father's attorney's fees in monthly payments of \$500.00 per month starting December 1, 2024, with a like payment on the first of each month thereafter until paid in full. This payment shall be made through wage withholding without further action or proceeding. The Court directs mother's employer to facilitate this Order for wage withholding to be paid directly to father, Joseph Lefors.

Parenting Time

12. Beginning October 24, 2024, Mr. LeFors shall have parenting time with Kaelyn two nights each week between 6-7 p.m. alternating between Culvers and Olive Garden.
13. In addition, Mr. LeFors shall have an overnight with Kaelyn at his residence every other week beginning October 24, 2024 and if no other arrangements between the parties on an alternative schedule, such overnights shall occur on Friday evenings in conjunction when Mr. LeFors has Kaelyn's cousins at his home.
14. The Court recognized that the minor child has a planned vacation in November and therefore, Mr. LeFors will miss November 1st and November 15th for overnights which shall be scheduled for make-up. Mr. Lefors shall have an overnight on the following dates beginning at 6:00 pm and ending at 1:00 pm the following day: November 13th, November 23rd, December 24th, and December 27th. The schedule would continue wherein Mr. Lefors would have the overnight of January 10th, January 24th, and February 7th and February 21st.
15. Ms. LeFors shall be responsible for dropping Kaelyn off at Mr. LeFors home and Mr. LeFors shall drop her back off at her residence at the conclusion of the parenting time.

IT IS HEREBY ORDERED, that in light of the findings above, together with the evidence presented at the hearing, the Court consistent with SDCL § 15-17-38, hereby Orders mother to pay \$6,000.00 of father's attorney's fees in monthly payments of \$500.00 per month starting December 1, 2024, with a like payment on the first of each month thereafter until paid in full. This payment shall be made through wage withholding without further action or proceeding. The Court directs mother's employer to facilitate this Order for wage withholding to be paid directly to father, Joseph Lefors; and

IT IS FURTHER ORDERED, that Mr. LeFors shall have parenting time with Kaelyn two nights each week between 6-7 p.m. alternating between Culvers and Olive Garden and Mr.

LeFors shall have an overnight with Kaelyn at his residence every other week beginning October 24, 2024. Overnights shall occur on Friday evenings in conjunction when Mr. LeFors has Kaelyn's cousins at his home.

11/20/2024 11:42:39 AM

BY THE COURT:

Attest:
Molstad, Stephany
Clerk/Deputy




HONORABLE JOHN FITZGERALD
Circuit Court Judge

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

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

JOSEPH D. LEFORS,

46DIV19-000008

Plaintiff,

v.

**AFFIDAVIT OF HOLLIE L. SMITH
FOR ATTORNEY'S FEES AND COSTS**

KRISTA M. LEFORS,

Defendant.

Attorney Hollie L. Smith, being first duly sworn on oath, deposes:

1. I am the attorney for the Plaintiff in the above-entitled action.
2. This affidavit and notice of application for attorney's fees and costs is made pursuant to SDCL 15-17-38.
3. I am an attorney duly licensed to practice law in the State of South Dakota. Clayborne, Loos & Sabers, LLP represents Joseph Lefors in the above-captioned action.
4. My area of practice is primarily family law.
5. That my hourly rate is \$275.00 in this case. That this rate is within the hourly rate of other attorneys in this area with the same type and kind of experience.
6. Attached to this Affidavit as **Exhibit 1** is my firm's invoice for the total amount of legal work performed specifically on the custody and parenting issues before the Court.
7. I was very conservative in what entries and amounts were claimed and all of those amounts, or entries, bear directly on legal work on the issues before the Court.
8. No time is included for the drafting of this Affidavit.
9. That the total amount of attorney's fees and costs incurred and anticipated by Plaintiff Joseph Lefors beginning February 1, 2024, when the Court began conducting regular hearings to address parenting time and ending October 18, 2024 is **\$11,147.50** (51.3 hours).
10. The total amount of attorneys fees and costs incurred and anticipated by Plaintiff for the hearing that occurred on August 12, 2024 through the hearing that is to be held on October 24, 2024 is **\$3,806.00** (16.8 hours).

Submitted this 23rd day of October, 2024.

Hollie L. Smith

Hollie L. Smith

Attorney for Joseph Lefors

Subscribed and sworn to before me this 23rd day of October, 2024.



Sherrie Rose

NOTARY PUBLIC

My Commission Expires: 4-7-27

Lefors v Lefors

Affidavit of Hollie L. Smith For Attorney's Fees and Costs

46DIV19-000008

App. 005

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 2024, I served a true and correct copy of the foregoing *Affidavit of Hollie L. Smith for Attorney's Fees and Costs* to the following:

<input type="checkbox"/>	First Class Mail	<input type="checkbox"/>	Certified Mail
<input type="checkbox"/>	Hand Delivery	<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Electronic Mail	<input checked="" type="checkbox"/>	Odyssey File and Service

**Kelly J. Sanderson
Sanderson Law
1102 Junction Avenue
Sturgis, SD 57785**

Attorney for Defendant

/s/ Hollie L. Smith

Hollie L. Smith

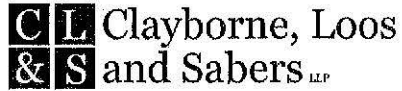
Lefors v Lefors

Affidavit of Hollie L. Smith For Attorney's Fees and Costs

46DIV19-000008

App. 006

The Law Offices of



INVOICE

Clayborne, Loos & Sabers
2834 Jackson Boulevard, Suite 201
Rapid City, SD 57702

Invoice #: 7062
Date: 10-23-2024
Due On: 10-23-2024

Joseph Lefors
1215 Juneau Dr
Box Elder, South Dakota 57719

Matter Number:4141.0001 - Joseph Lefors
Matter Name:Joseph Lefors

Services

Date	Atty	Description	Quantity	Rate	Total
10-23-24	HLS	Attorney Fees to address parenting time. February 1, 2024 - October 18, 2024			
10-23-24	HLS	Attorney Fees and costs incurred and anticipated for hearings. August 12, 2024 - October 24, 2024			

Subtotal	\$14,080.50
Tax	\$873.00
Total	\$14,953.50
Payment	\$0.00
Balance Owing	\$14,953.50

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

APPEAL NO. 30943

JOSEPH D. LEFORS,

Plaintiff and Appellee

vs.

KRISTA M. LEFORS,

Defendant and Appellant

Appeal from the

Fourth Judicial Circuit

Meade County, South Dakota

The Honorable John Fitzgerald, Circuit Court Judge

APPELLEE'S BRIEF

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PRELIMINARY STATEMENT

References to the settled record will be cited as "SR". References to Findings of Fact will be cited as "FF", and references to Conclusions of Law will be cited as "CL". References to documents in the Appendix will be cited as "App" followed by a page number. The Trial Court's November 20, 2024 Order which is the subject of this appeal will be referred to as the "Order". References to the transcript for the October 24, 2024 hearing will be cited as "Oct. 24 Tr." Followed by the page and line number. Plaintiff/Appellee will be referred to as "Father" or "Joseph", and Defendant/Appellant will be referred to as "Mother" or "Krista".

JURISDICTIONAL STATEMENT

Krista appeals the Honorable John Fitzgerald's Order signed on November 20, 2024. Notice of Entry was filed on December 20, 2024. Krista served the Notice of Appeal on December 20, 2024. The Order executed is a final order of the Circuit Court and is appealable as a matter of right, pursuant to SDCL § 15-26A-3 and SDCL § 15-26A-7.

WAIVER OF ORAL ARGUMENT

Joseph waives oral argument for purposes of this appeal.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I. Whether the Circuit Court erred in finding that Krista could control their 15-year-old daughter's refusal to eat dinner with her father.

The Trial Court Correctly Found That Krista LeFors Could Control Her Daughter's Refusal to Eat Dinner with Her Father.

Relevant Law:

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

SDCL § 25-4A-5

II. Whether the Circuit Court erred in finding that the 15-year-old daughter's refusal to eat dinner with her father was a willful violation by Krista.

The Trial Court Properly Found That the Daughter's Refusal Constituted a Willful Violation by Mother.

Relevant Law:

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

SDCL § 25-4A-5

III. Whether the Trial Court erred in assessing attorney fees of \$6,000 without requiring an invoice showing how the attorney fees were incurred and without reviewing the same for reasonableness.

The Trial Court Did Not Abuse Its Discretion in Imposing Attorney Fees Against Mother.

Relevant Law:

Hiller v. Hiller, 2018 S.D. 74, ¶ 35, 919 N.W.2d 548, 558

SDCL § 25-4A-5

IV. Whether the Trial Court abused its discretion in granting Father additional parenting time given the child's fear of Father and testimony by the child's counselor that additional parenting time would not be in the child's best interest.

The Trial Court Did Not Abuse Its Discretion in Allowing Father Additional Parenting Time.

Relevant Law:

STATEMENT OF THE CASE

This is the fourth appeal involving the parties and the third addressing the issues of custody and parenting time. Joseph incorporates by reference the Statement of Facts and Statement of the Case set forth in Appellee's Brief filed on January 2, 2025 in Appeal No. 30766 and 30910. For the sake of judicial efficiency and to avoid repetition, to the extent the procedural posture is not restated herein.

The final order subject to this appeal stems from various sanctions and attorneys fees imposed against Krista from November 2023-October 2024 for failing to abide by the court ordered parenting time and failure to encourage a relationship between the minor child and Joseph.

On October 24, 2024, the court entered its findings and Order for Sanctions Following August 12th and September 17th hearings. (SR 4656). The order imposed \$12,000 in sanctions for the missed parenting time that occurred from May 14th, 2024 through August 7, 2024 and \$2,500 in sanctions for the missed parenting time from August 7th, 2024 through September 17th, 2024.¹

On November 20, 2024, the court entered its Findings of Fact and Conclusions of Law following the October 24, 2024 hearing imposing \$6,000 in attorneys fees against Krista and expanding the parenting time for Joseph. Krista's appeal follows.

¹ Additional hearings to address lack of parenting time following the Order subject to this appeal include a hearing held on December 12, 2024 on Joseph's Motion for Additional Sanctions; Order Following December 12, 2024 Hearing filed on February 5, 2025 with an award of attorney's fees of \$2,000; Motion for Sanctions Against Mother and Change of Custody filed on February 21, 2025 resulting in an additional \$2,000 in attorney's fees. Currently Krista has appealed each order for sanctions issued against her to include appeal No's 30910, and 31025.

STATEMENT OF THE FACTS

Pursuant to SDCL § 15-26A-60(6), Joseph LeFors hereby incorporates by reference the Statement of Facts, arguments, positions, legal analysis, and authority set forth fully in his Appellee Brief filed in Supreme Court Appeal No. 30766 and No. 30910. Joseph respectfully submits that the arguments and positions detailed therein further substantiate the propriety and reasonableness of the trial court's findings, sanctions, attorney's fee awards, and visitation orders challenged in this appeal.

The Order subject to this appeal follows the prior evidentiary hearings and sanctions imposed against Krista from the time period of February 1- October 24, 2024. The trial court heard arguments of counsel at the October 24, 2024 hearing along with the prior affidavits and request for attorneys fees. The court took the matter under advisement and issued its findings thereafter on November 20, 2024. (SR 4669). The court found that Joseph had incurred \$14,953.00 in attorney's fees between February and October 2024, based on the affidavit of his attorney whose hourly rate and time spent were deemed reasonable (Order, pp. 1–2). Applying the two-step analysis from *Rhykus v. Rhykus*, 319 N.W.2d 167 (S.D. 1982), the court concluded that Defendant Krista LeFors had unreasonably increased the time and complexity of the litigation, particularly by obstructing even limited visitation. The court found no evidence that Krista had sought counseling or taken steps to mitigate the negative impact of her conduct on the child's relationship with Joseph (Order, p. 2). The court also found that although Krista earns less than Joseph, she receives monthly liquid assets and has the ability to pay a portion of his fees. She was ordered to pay \$6,000.00 in monthly installments of \$500.00 via wage withholding beginning December 1, 2024 (Order, p. 3).

With respect to parenting time, the court found that meaningful involvement of both parents had not occurred and emphasized that Krista had failed to support the child's relationship with Joseph despite no legitimate concerns regarding his parenting abilities (Order, p. 2). The court ordered that beginning October 24, 2024, Joseph would have parenting time with Kaelyn two evenings per week for dinner (alternating between Culvers and Olive Garden), and one overnight every other week when Kaelyn's cousins would also be present. Specific overnight dates were outlined through February 2025, with make-up time scheduled due to a planned vacation (Order, p. 3). Krista was ordered to deliver Kaelyn to Joseph's residence, and Joseph was to return her at the end of each visit. These findings and remedies were rooted in the best interests of the child and supported by the evidence and record before the court.

STANDARD OF REVIEW

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

This standard of review reflects both the primacy of the court's fact-finding role and the Court's inclination to reverse only those findings that are clearly erroneous. *See McCollam v. Cahill*, 2009 S.D. 34, ¶ 6, 766 N.W.2d 171, 174. In this regard, "[t]he credibility of the witnesses, the weight to be accorded their testimony, and the weight of the evidence must be determined by the circuit court and we give due regard to the circuit court's opportunity to observe the witnesses and the evidence." *Id. Hiller v. Hiller*, 2018 S.D. 74, ¶ 22. "The circuit court's allowance or disallowance of attorney's fees is reviewed for abuse of discretion." *Terca v. Terca*, 2008 S.D. 99, ¶ 18, 757 N.W.2d 319, 324.

ARGUMENT

I. The Trial Court Correctly Found That Krista LeFors Could Control Her Daughter's Refusal to Eat Dinner with Her Father

Under SDCL § 25-4-45, the best interests of the child remain paramount in custodial and visitation matters, and these interests include maintaining a meaningful relationship with both parents. The South Dakota Supreme Court has held that custodial parents have an *affirmative* and *ongoing* duty to facilitate parenting time. As in *Hiller v. Hiller*, 2018 S.D. 74, ¶28, 919 N.W.2d 548, even passive noncompliance—such as failing to ensure a child participates in ordered visitation—may warrant sanctions.

The trial court's October 24, 2024 Findings (SR 4699) reflect its express conclusion that "[i]n this case mother has been significantly more involved with the care of the children, and has failed to encourage the children to enjoy time with their father, and failed to support the development of a positive relationship with their father under circumstances where there are no legitimate concerns about the father's capacity to care

for his children”. (Order p. 2). The court found that “trying to get her to visit with her dad is only something that you [Krista] can do and the only way that I can force you to do it is by sanctioning.” (Oct. 24, 2024 Tr. 6:5–25).

Custodial parents cannot avoid responsibility merely because a child resists; doing so undermines the child’s best interest in maintaining parental bonds. The court reasonably found Krista’s conduct amounted to ongoing and willful interference.

II. The Awarded Attorney’s Fees Were Reasonable and Supported by Findings.

Under SDCL § 25-4A-5, courts may impose sanctions for the express purpose of punishing noncompliance and compelling adherence to custody and visitation orders. Here, the trial court imposed monetary sanctions.

The court found that Krista’s continued noncompliance required the imposition of sanctions beyond previously awarded fines. As in *Hiller*, escalating consequences are appropriate where a parent defies court orders over time. Additionally, the court awarded \$6,000 in attorney’s fees, finding that Krista’s conduct has required the Plaintiff to incur additional attorney’s fees, and as such, those fees are properly assessed against the Defendant (SR 4699; Oct. 24 Tr. 10:6–11:10). The court applied the appropriate multi-factor standard, considering:

- The reasonableness of the hourly rate (\$275), found comparable to market rates for similarly skilled attorneys (Oct. 24 Tr. 10:3–10).
- The causation of additional litigation by Krista’s ongoing noncompliance (*id.*).
- The parties’ financial positions—Krista’s income exceeding \$6,000/month from wages, child support, alimony, and retirement distributions (Oct. 24 Tr. 17:1–17)

Contrary to Appellant's claim, the trial court *did* make detailed findings regarding the reasonableness and necessity of the fees. The court explicitly addressed Krista's financial resources, the cause of litigation, and the reasonableness of the rate and total fee amount (Oct. 24 Tr. 10–12). While the court acknowledged that the affidavit grouped hours into phases, it had full discretion to evaluate that information, especially given Krista's repeated noncompliance and the lack of good faith.

Specifically, the court found:

- This case has gone on for years. The mother's actions/ inactions have made it very difficult for father's counsel to obtain even limited visitation between his children and their father. The court finds that the mother has unnecessarily and unreasonable increased the amount of time spent and increased the complexity of the visitation aspect of this action, and the unnecessary and time-consuming litigation that it has caused. (Order p.2).
- Ms. Smith's attorney's fees are reasonable. Though the litigation revolves around an issue of visitation which typically should be rather routine. This case is not. The mother's actions or inactions have made the case difficult to near impossible to resolve. The Court has heard no evidence that mother has tried to have her child counseled for her behavior nor has mother done anything on her own to address how her own issues with this divorce have negatively impacted the fathers very basic right to visitation. *Id.*
- Considering the property owned by both parties, the relative income of the parties, the Court finds that the mother earns less than father but does have liquid assets (cash) coming in each month and the ability to pay partially for father's attorney's

fees. She is responsible for increasing unreasonably the amount of time and effort spent on this case for father to try and exercise even limited visitation that he is entitled too. *Id.*

- As set forth in the appendix to our child visitation guidelines, children generally do better when they have a stable and meaningful involvement of both of their parents in their lives. This has not occurred in this case. *Id.*
- Additionally, each parent has different and valuable contributions to make to their children's development. This has likewise not been allowed to occur in this case. *Id.*
- Parents should help their children maintain a positive relationship with the other parent. Each parent must support the child's relationship with the other parent and encourage them to enjoy themselves with the other parent. In this case mother has been significantly more involved with the care of the children, and has failed to encourage the children to enjoy time with their father, and failed to support the development of a positive relationship with their father under circumstances where there are no legitimate concerns about the father's capacity to care for his children. *Id.*

Unlike the situation addressed in *Dooley v. Dooley*, 1999 S.D. 136, ¶27, 601 N.W.2d 277, where the requesting party provided no itemization or timeframes to substantiate attorney fees, the present matter differs. In *Dooley*, the court reversed the attorney fee award precisely because it lacked any foundational information regarding the reasonableness and necessity of the fees claimed, stating explicitly that without an itemization or time frame.

In contrast, here, Joseph's attorney did submit an affidavit specifically included fees incurred during two distinct and relevant timeframes. The affidavit delineated fees from February 1, 2024, through October 18, 2024, and from August 12, 2024, through October 24, 2024. This submission allowed the trial court to precisely evaluate the necessity and reasonableness of the fees based on multiple hearings, extensive preparation required for each appearance, and the actual duration and complexity of those hearings. For reference as provided for in the record and was clearly available for the court to review and consider, between February 1, 2024 and October 24, 2024 the following hearings were conducted on the issue of sanctions and parenting time:

- February 6, 2024 (2 hours 23 minutes);
- March 19, 2024 (1 hour 32 minutes);
- May 10, 2024 (1 hour 37 minutes);
- August 12, 2024 (1 hour 47 minutes);
- September 17, 2024 (1 hour 21 minutes);
- October 24, 2024 (29 minutes).

Therefore, it is easily attainable for the court to determine only the time counsel spent at the hearings in light of an hourly rate and in consideration of other costs including travel or preparation in drafting pleadings and preparing witnesses. With a review of the hearings held, the award is able to be cogently reviewed. As noted in *Hiller*, the broad and extensive nature of the record before a trial court can also be considered under the circumstances. *See Toft v. Toft*, 2006 S.D. 91, ¶ 12, 723 N.W.2d 546, 550 (quoting *Swanson & Youngdale, Inc. v. Seagrave Corp.*, 561 F.2d 171, 173 (8th Cir. 1977) (noting that specific findings are not required when "the record itself

sufficiently informs the court of the basis for the trial court's decision on the material issue")). *Hiller v. Hiller*, 2018 S.D. 74, ¶ 35, 919 N.W.2d 548, 558

Further distinguishing this case from *Dooley*, the trial court here not only considered the affidavit but explicitly articulated its reasoning during the October 24, 2024 hearing. The court addressed each prong necessary for awarding attorney fees under *Goff v. Goff*, 2024 S.D. 57, ¶26, and *Urbaniak v. Urbaniak*, 2011 S.D. 83, ¶31, examining (1) the reasonableness of the hourly rate; (2) the financial resources of both parties; and (3) the causation of the litigation due to Krista's repeated noncompliance. Significantly, the trial court also noted the substantial fees actually incurred by Joseph—exceeding \$14,000—and carefully weighed this amount when deciding to impose a substantially lesser and more reasonable amount of \$6,000, payable in monthly installments of \$500. The reduced award evidences the court's careful and nuanced application of the relevant legal standards, mindful of the financial impact on Krista.

Unlike the trial court in *Dooley*, which "failed to make any findings of fact or conclusions of law," here the court's detailed verbal and written findings explicitly addressed the attorney fee issue. Indeed, Judge Fitzgerald carefully considered Krista's actual income (including wages, child support, alimony, and retirement payments), Joseph's incurred legal fees, the extensive litigation history, and Krista's persistent noncompliance in ordering attorney fees. The record clearly reflects that the trial court carefully exercised its discretion, grounded in factual findings and reasoned analysis—exactly what the court in *Dooley* and subsequent cases like *Streier v. Streier*, 2016 S.D. 71, ¶26, 886 N.W.2d 573, and *Nickles v. Nickles*, 2015 S.D. 40, ¶35, 865 N.W.2d 142, require.

Thus, because this case involved precisely the detailed information and careful judicial findings lacking in *Dooley*, the attorney fees awarded by the trial court here are clearly justified and should be affirmed.

III. The Expanded Parenting Time Was a Reasonable and Calibrated Remedy.

A trial court is in a better position to evaluate the facts, and its conclusions on a child's best interests will stand unless there is an abuse of discretion. *Price v. Price*, 2000 SD 64, P18, 611 N.W.2d 425, 430. Here, the trial court thoughtfully assessed the complex, ongoing issues surrounding parenting time, finding explicitly that previous visitation arrangements had consistently failed to achieve meaningful interactions between Joseph and his daughter, Kaelyn. Given the recurring unsuccessful visits—marked by Kaelyn's repeated refusal to engage despite being physically brought to visitation locations—a new, carefully tailored approach was clearly warranted.

At the status hearing on October 24, 2024, Judge Fitzgerald expressly recognized the challenges and emotional barriers inherent in this case. Rather than rigidly enforcing visitation schedules that had proved ineffective, the court opted for a more supportive and nuanced approach. Specifically, the court ordered visitation to occur one overnight every other weekend, intentionally scheduled when Kaelyn's cousins—who share a close familial bond—would also be present (Oct. 24 Tr. 4–5, 13). This deliberate arrangement was designed to provide Kaelyn with a comfortable, familial environment that could ease her anxieties and naturally encourage meaningful interaction with her father.

The court emphasized that while the child is bright and can be independent-minded, she requires strong encouragement from her mother to maintain a relationship

with her father. The judge made it clear that the deterioration of the parental relationship is no justification for the child to lack a meaningful bond with her father. The court stressed that these moments are irreplaceable for the father and that Krista must make a greater effort than she has to date. The judge rejected the notion that the child is simply acting independently and placed responsibility on Krista to actively encourage a positive relationship free from parental conflict or animosity. The judge warned that continued failure to do so would leave the court with no option but to impose further sanctions. (Oct. 24 Tr. 14:1–24).

Further supporting the reasonableness of the trial court's remedy is its thorough consideration of Joseph's demonstrated character and patience. At an earlier hearing on September 17, 2024, the court explicitly found Joseph to be "patient beyond the patience of many people," genuinely "committed to having some relationship with his daughter," and exhibiting "real strength of character" in consistently pursuing visitation despite ongoing obstacles and repeated disappointments (Sept. 17 Tr. 56:8–19). Joseph's persistent efforts underscored the genuine value and sincerity of his desire to rebuild this critically important parental bond, thereby fully justifying the court's decision to implement a visitation schedule designed specifically to encourage incremental, meaningful progress.

Given the entirety of the factual record and the careful reasoning articulated by the trial court, the expanded visitation arrangement is clearly within the bounds of judicial discretion. It represents a measured, compassionate effort to repair a vital family relationship, grounded explicitly in Kaelyn's long-term best interests.

CONCLUSION

The trial court's findings are well-supported by the evidence, consistent with applicable law, and fall squarely within its discretion. The imposition of sanctions, fee award, and modification of parenting time were necessary and lawful responses to Krista Lefors's continued noncompliance and the resulting harm to the father-daughter relationship.

For these reasons, Appellee respectfully requests that this Court affirm the trial court's decision in its entirety.

Dated this 24th day of April, 2025.

LOOS, SABERS & SMITH, LLP

/s/ Hollie L. Smith

HOLLIE L. SMITH

Attorneys for the Appellee/Plaintiff

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(605) 721-1517

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of April, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey E-Filing System, and further certifies that the foregoing document was also mailed via U.S. Mail, postage prepaid thereon, to:

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

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

/s/ Hollie L. Smith

HOLLIE L. SMITH

CERTIFICATE OF COMPLIANCE

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

The foregoing brief is 15 total pages in length. It is typed in proportionally spaced typeface in Times New Roman 12 point. The word processor used to prepare this brief indicates that there are a total of 4,257 words, and 22,544 characters (no spaces) in the body of the Brief.

/s/ Hollie L. Smith _____

HOLLIE L. SMITH

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 30943

JOSEPH D. LEFORS,

Plaintiff and Appellee,

vs.

KRISTA M. LEFORS,

Defendant and Appellant.

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

THE HONORABLE JOHN FITZGERALD
CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

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Notice of Appeal filed December, 2024

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STATEMENT OF THE FACTS

Krista incorporates by reference the Statement of Facts set forth in Appellant's Briefs and Reply Briefs in Appeal No. 30910 and 30766 and the Appellant's Brief filed in Appeal No. 30943.

REPLY

1. The Circuit Court abused its discretion by finding Krista had violated the visitation order based off the minor child's action and by finding that she could control the actions of Kaelyn.

In her opening brief, Krista maintained that she was not able to control the actions of her 15-year-old daughter during Joseph's parenting time. Krista argued that South Dakota law has long recognized that a child's parental preferences should be given consideration when the child is mature enough to express such preferences. The Circuit Court made findings related to Kaelyn's intelligence and maturity. Yet, gave no deference to her clearly stated preferences. Kaelyn's actions have consistently shown her discomfort and unwillingness to participate during parenting time with Joseph. All of which have been ignored.

The Circuit Court has failed to find that Kaelyn's actions are her own. Rather, this case has been treated as though Kaelyn is a small child rather than an incredibly intelligent teenager who is nearing adulthood who has formed her own beliefs. Blame has been placed on Krista for these behaviors; yet no testimony has ever been received that shows Krista encourages this behavior. To the contrary, Krista has testified at length about what steps she has taken to encourage the relationship between Joseph and Kaelyn. See Appendix to the Brief of Appellant, Appeal No. 30766, at 050-062.

Joseph further contends that "there are no legitimate concerns" about his "capacity to care for his children". Brief of Appellee, Appeal No. 30943 at 6-7. Yet, the Decree of

Separate Maintenance and Decree of Divorce were granted on a finding of extreme cruelty. In Judge Krull's Findings of Fact and Conclusions of Law following the Separate Maintenance trial he found "the testimony regarding Joseph's abuse of alcohol during the marriage to be credible and a cause of the marital conflict. The Court further finds that the sworn testimony of Krista regarding several instances of domestic abuse by Joseph resulting in bruising, red marks and damage to the residence, which was supported by photographs, to be credible, despite the fact that Krista never filed a report with any law enforcement agency. Joseph's abuse of alcohol and domestic violence was witnessed by the children and constitutes wrongful parental misconduct. Joseph acknowledged his failings as a spouse in notes and cards apologizing to Krista for his wrongful behavior. The Court finds that Joseph has inflicted emotional and physical abuse on Krista during the marriage constituting extreme cruelty as defined in SDCL § 25-4-4." SR 813 and SR 832. Judge Krull also made extensive findings on the children's fear for their safety due to Joseph's past physical abuse and alcohol abuse. *Id.* at 5. Judge Krull specifically found Krista encouraged the relationship between Joseph and Kaelyn. *Id.*

Joseph further contends that "the Court has heard no evidence that mother has tried to have her child counseled for her behavior". Brief of Appellee, Appeal No. 30943, at 8. Yet, the Circuit Court has heard testimony from Kaelyn's counselor, Melanie Torno on many occasions. Ms. Torno continues to have regular counseling sessions with the minor child. Ms. Torno's expert opinion has been very clear throughout this case that Joseph has to take steps to repair his relationship with his daughter and that he has consistently failed to make amends for his past actions and that until such happens the relationship will not improve. TT Motion Hearing May 10, 2024 pg. 38-39.

Krista has fulfilled the previous Court Order and should not be sanctioned. Krista consistently took Kaelyn to attend the parenting time as ordered. Kaelyn's refusal to participate once there is not a willful act by Krista. Krista has been sanctioned by the Circuit Court because the Circuit Court does not like how Kaelyn is acting. The Circuit Court has erred by finding Kaelyn's actions constitute a willful act by Krista. Krista has complied with the Circuit Court's Orders for Joseph's parenting time.

2. The Circuit court erred by granting Joseph additional parenting time.

The best interests of the minor child is the paramount legal standard in all cases revolving around the custody or parenting time of a minor child. SDCL § 25-4-45; see *Williams v. Williams*, 425 N.W.2d 390, 393 (S.D. 1988). Here the Circuit Court has granted a significant increase in parenting time after witnessing a teenager, who is nearing adulthood, refuse to even speak to Joseph let alone be anywhere near him. The Circuit Court's remedy is not supported by logical reasoning. The Circuit Court has heard hours of testimony by Krista, Joseph, Kaelyn, Kaelyn's counselor, and others close to this case. Throughout all of this testimony each witness has testified to Kaelyn's unwillingness to have anything to do with Joseph. Yet, the Circuit Court has ordered more parenting time, in direct contradiction to the wishes of the minor child. The Circuit Court has failed to order a solution that will actually help this relationship. All of this is based off the Circuit Court's belief that Joseph is entitled to time with Kaelyn simply because he is her natural father which fails to give any credence to Kaelyn's feelings. This increase in parenting time is directly contradictory to the best interests of this child and was in clear error.

The Circuit Court ordered that Kaelyn's overnights coincide with when her cousins are exercising time with their mother who is Joseph's current wife. Joseph contends that this was "designed to provide Kaelyn with a comfortable, familial environment". Brief of Appellee, Appeal No. 30943 at 12. Interestingly, Judge Fitzgerald has failed to give any weight to the fact that Joseph is not even allowed to be alone with Kaelyn's cousins except in public for limited amounts of time. SR 3439 and App. 032-033, Affidavit of Krista Mae Lefors in Support of Motion for Modification of Parenting Time Consistent with Order of April 6, 2021 and Recommendations of Children's Counselor. Yet, the Circuit Court has found that he is suitable for individual parenting time with Kaelyn. The Circuit Court has erred by granting Joseph additional parenting time with Kaelyn and has failed to properly weigh the best interests of the minor child in this case.

CONCLUSION

The Circuit Court has erred in imposing sanctions against Krista for the minor child's unwillingness to speak to Joseph and has erred by finding that Kaelyn's refusal to participate in parenting time constitutes a willful violation by Krista. Krista has complied with the Court Order. The Circuit Court has erred by awarding attorney fees without requiring a detailed invoice to assess the reasonableness of the fees. The Circuit Court has further erred by granting Joseph more parenting time. Krista respectfully requests that the Order of the Circuit Court be reversed.

Dated this 6th day of June, 2025.

Respectfully submitted,

SANDERSON LAW

/s/ Kelly J. Sanderson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of June, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey Electronic Filing System, and further certifies that the foregoing document was also served via Odyssey Electronic Filing System and mailed via U.S. Mail, postage prepaid thereon to:

Hollie Smith
Loos, Sabers and Smith, LLP
2834 Jackson Boulevard, Suite 201
Rapid City, SD 57702

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

/s/ Kelly J. Sanderson
Kelly J. Sanderson

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point font. This brief is 4 pages in length, not including the Appendix. The word processor used to prepare this brief indicates there are 1156 words in the body of this brief.

/s/ Kelly J. Sanderson
Kelly J. Sanderson

APPENDIX

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1. Affidavit of Krista Mae Lefors in Support of Motion for Modification of Parenting Time Consistent with Order of April 6, 2021 and Recommendations of Children’s Counselor.....	App. 001
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STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF MEADE)

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

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

FILE #46DIV19-000008

AFFIDAVIT OF KRISTA MAE LeFORS
IN SUPPORT OF MOTION FOR
MODIFICATION OF PARENTING TIME
CONSISTENT WITH ORDER OF
APRIL 6, 2021 AND RECOMMENDATIONS
OF CHILDREN'S COUNSELOR

KRISTA MAE LeFORS, being first duly sworn upon her oath, deposes and states as follows:

1.

I am the Defendant above-named and make this Affidavit in support of my Motion for Modification of Parenting Time Consistent with Prior Order and Recommendations of Children's Counselor.

2.

Judge Krull entered Findings of Fact and Conclusions of Law and Order regarding the children's parenting time with their father, a copy of which is attached hereto and incorporated herein by this reference. Judge Krull ordered the parties to follow Therapist Torno's recommendations for reintegration contained in her letter dated September 21, 2021. A copy of the letter from Melanie Torno of Torno Mediation is attached hereto and incorporated herein by this reference.

3.

Joe has had parenting time with the children since our separation. Unless Kyden is at work or Kaelyn is at a school sporting activity, I take the children to the exchange place but they refuse to go with their dad. The children then walk almost 10 miles home which takes 3½-4 hours, which I do not feel is safe. Kaelyn has been harassed and the children have been approached by strangers. In the Summer heat and the Winter freeze, it is not healthy for the children and I worry when they arrive home sweating or freezing. Despite my encouragement, the children refuse to go with their dad. The children are unhappy with me for making them go to the parenting exchanges. The children have now seen two individual counselors and three family counselors and appear burned out by the litigation process. Kyden turns 18 on July 2, 2024, less than a year away. Kaelyn is a very mature age 14. I don't think the children should be punished for their feelings. While they don't get to choose their dad's wife, I understand that it is difficult when he makes their aunt their step-mom and their cousins their step-siblings. This is not an easy time for the children and, as teenagers, they do have opinions.

4.

Circuit Judge Jane Pfeifle recently heard the custody case involving the children of Joe's new wife, Cortney Knudson, and ordered that the children are not to be left alone with Joe except for short periods of time in a public place and that there is to be no alcohol on Cortney's residential property and that Joe is not to be listed as an Emergency Contact for his wife's children. Judge Pfeifle found Joe to be ill-equipped to be a parent and not very trustworthy, as reflected in the attached Court's Ruling from Custody Trial. As Judge Krull indicated after hearing the evidence and visiting with our teenagers, Joe's relationship with them is almost nonexistent.

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:SS)	
COUNTY OF MEADE	)	FOURTH JUDICIAL CIRCUIT
<hr/>		
JOSEPH D. LEFORS,	)	46 DIV 19-000008
)	
Plaintiff,)	
)	
v.	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	AND ORDER
KRISTA M. LEFORS,)	
)	
Defendant.)	

FILED

DEC - 9 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

This action was initiated by the Plaintiff filing a Complaint for divorce in January of 2019. Trial was held on June 17 and 18, 2020. The Court entered its Findings of Fact and Conclusions of Law and its Decree of Separate Maintenance on April 6, 2021. Among other things, the Court ordered that the Defendant shall continue as primary custodian of the parties' children, subject to the Plaintiff's reasonable parenting time. Plaintiff appealed that decree. Multiple motions, affidavits, and other documents have been filed since then. The Court held motions hearings on December 21, 2021, and on March 8, 2022. The Court, having reviewed the file, having heard the testimony of the witnesses and the argument of counsel, does hereby enter the following:

FINDINGS OF FACT

1. That any Finding of Fact deemed to be a Conclusion of Law or any Conclusion of Law deemed to be a Finding of Fact should be appropriately incorporated in Findings of Fact and Conclusions of Law as the case may be.
2. The parties' relationship with each other is acrimonious, to say the least.
3. The Plaintiff's relationship with the parties' children is almost nonexistent. The Court has ordered parenting time for the Plaintiff, as well as counseling that involves the Plaintiff and the children, but the children refuse to spend time with their father. Typically, the Defendant drops off the children for visitation with their father, and the children ignore their father and start walking home. The Plaintiff has not been able to re-establish a

relationship with the children. The Plaintiff has accused the Defendant of intentionally alienating the children from him.

4. A significant part of the children's problem with the Plaintiff is that he is in a romantic relationship with the Defendant's sister. The Plaintiff lives with the children's aunt and cousins.
5. During the March 8, 2022 motions hearing, the Court met individually in camera with each of the children without the parties or their attorneys. The court reporter was present for each of the meetings, but no record of the meetings was made. The children's attitudes toward their father was consistent with the testimony of the parties and with the testimony of the other professional and lay witnesses. Neither child expressed any interest in ever establishing any type of relationship with their father. Each child mentioned the father's relationship with their aunt as the reason for their position.
6. Mark Perrenoud, Ph.D., a licensed psychologist from Psychological Associates of the Black Hills in Rapid City, testified at the December 21, 2021 hearing. This court had appointed Dr. Perrenoud to assist in this matter. Dr. Perrenoud has met with the Plaintiff and with the children.
7. Dr. Perrenoud stated that he believes that the Plaintiff has certainly done his part to increase the chances of his visits with the children to be successful.
8. Dr. Perrenoud believes that the children have been alienated against the Plaintiff, and that the Plaintiff's alcohol use and his dangerousness to the children has been overstated.
9. Dr. Perrenoud testified that the Defendant is probably the biggest cause of the alienation of the children against their father, and he called the level of alienation severe. He testified that he believes that the Defendant has not done everything that she could possibly do to facilitate a relationship between the children and the Plaintiff.
10. Dr. Perrenoud testified that, in order to stop the severe alienation by the Defendant, a reversal of primary custody is an option that should be considered.
11. Dr. Perrenoud testified that he did not believe that continued therapeutic counseling as an option for reunification is going to be beneficial at this point.
12. Dr. Perrenoud testified that the children should be informed that if they do not cooperate with parenting with their father, that they should be informed that their mother could be held in contempt of court.
13. Melanie Torno testified at the March 8, 2022 hearing. Ms. Torno has a master's degree and is a licensed professional counselor as well as Qualified Mental Health Professional and a Licensed Professional Counselor – Mental Health.

14. At the time of the March 2022 hearing, Ms. Torno had been the children's counselor for nearly a year.
15. Ms. Torno said that the children have told her that Dr. Perrenoud speaks badly about their mother. Kyden has said that he does not trust Dr. Perrenoud and will not speak to him. Kaelyn has said that she does not trust Dr. Perrenoud, and that she does not feel safe in the counseling sessions with Dr. Perrenoud.
16. Kyden has autism. Ms. Torno testified that the first step in having Kyden building a positive relationship with his father is that Kyden has to feel safe. The same is a requirement for Kaelyn also.
17. In order to make the children feel safe with their father, Ms. Torno stated, "We keep working in counseling. We keep doing baby steps. I would recommend, like I had said before, recommend small baby steps, moving into indoor McDonald's or whatever restaurant is available. Meet him for ice cream, 20 minutes, 30 minutes. Help the kids create lists of topics that they are comfortable with communicating about and not talking about issues that they're not ready to deal with."
18. Ms. Torno testified that she has not seen any parental alienation by the Defendant. She testified that the children have told her that their mom has been encouraging of their relationship with their father and has attempted to get them to have visits with him.
19. Ms. Torno testified that changing primary physical custody to the Plaintiff would be detrimental to the children. The children told Ms. Torno that if such a change was implemented, that they would run away.

Having made the foregoing Findings of Fact, the Court now enters the following:

CONCLUSIONS OF LAW

- 1) Any Finding of Fact or Conclusion of Law that more appropriately belongs in the other category shall be inserted in the appropriate category by this reference.
- 2) This Court has jurisdiction of the parties and the subject matter of this proceeding.
- 3) "Trial courts have broad discretion when considering matters of child custody and visitation." *Chicoine v. Chicoine*, 479 N.W.2d 891, 893 (S.D. 1992). "However, the trial court's exercise of discretion is not uncontrolled and must have a sound and substantial basis in the testimony." *Williams v. Williams*, 425 N.W.2d 390, 393 (S.D. 1988); *Kester v Kester*, 257 N.W.2d 731 (S.D. 1977).
- 4) The South Dakota Supreme Court in *Fuerstenberg v. Fuerstenberg*, 1999 SD 35, set forth the rules which it intended for trial courts to follow in South Dakota. In deciding the best interests of a child in a custody dispute, "the court must consider the child's temporal, mental and moral welfare." SDCL 25-5-10 (additional citations omitted). "In most

circumstances, it will be in the best interests of the children that they receive the love, affection, training, and companionship of their non-custodial parent.” *Weber v. Weber*, 529 NW2d 190 (SD 1995).

- 5) In this matter, the children’s relationship with their father has been damaged to the point that it is almost beyond repair. Dr. Perrenoud places a significant portion of the blame for this on the Defendant. In contrast, Ms. Torno does not believe the Defendant has deliberately alienated the children from their father. While this Court does not possess the expertise of either Dr. Perrenoud or Ms. Torno, and while it is a very close call, this Court does not find or conclude that there is sufficient evidence that the Defendant has engaged in parental alienation.
- 6) The Court concludes that changing custody to give the Plaintiff primary custody would be detrimental to the children. This Court also concludes that ordering additional parenting time with the Plaintiff would be counterproductive at this time.

Having made the foregoing Conclusions of Law, it is hereby

ORDERED that the Plaintiff’s Motion for Temporary Custody or in the Alternative Extended Parenting Time is hereby DENIED. It is further

ORDERED that the parties shall follow Ms. Torno’s recommendations for reintegration contained in Ms. Torno’s letter dated September 21, 2021 letter, which was received into evidence.

Dated this 8th day of December 2022.

BY THE COURT

Attest:
Rude, Jennifer
Clerk/Deputy




Kevin J. Krull
Circuit Court Judge

FILED

DEC - 9 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT



IT IS FURTHER ORDERED That this Court shall retain jurisdiction to ensure compliance herewith and to enter the Judgment and Decree of Divorce.

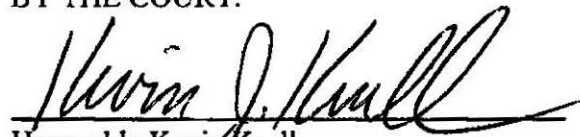
LET JUDGMENT ENTER ACCORDINGLY.

Dated this 6th day of April, 2021.

Attest:
Adams, Denise
Clerk/Deputy



BY THE COURT:


Honorable Kevin Krull
Circuit Court Judge

FILED
APR 08 2021
SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT
By _____



MELANIE TORNO, MS LPC-MH QMHP
730 SOUTH ST RAPID CITY SD 57701
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September 21st, 2021

Re: LeFors children, Kaelyn and Kyden

To Whom It May Concern:

I am writing regarding the LeFors children, Kaelyn and Kyden. I have provided counseling services for each of the children individually. They each have had 6 individual sessions beginning May 3rd, 2021. Sessions in the beginning were scheduled every 2 weeks and are now approximately every one month, which may change depending on the children's needs. We have discussed their parents' separation, visitation with their father, with whom they refer to as Joe, their daily life and activities, their friends and classmates, and interaction with extended family. We have addressed their feelings and thoughts about their parents' separation, coping skills, and communication to advocate for themselves. They have expressed their fear of their father, described the abuse they have witnessed and occurred to them, and the impact those experiences have had on each of them. They have had sleep difficulty since that time and do not feel safe sleeping in their own rooms. They have had fears of their father breaking into their homes. We are working on reducing that fear and to lessen the impact on their daily life.

Kaelyn and Kyden have also discussed their frustration and lack of desire in visitation and counseling with Joe. They have expressed that their voice is not being heard and that they feel unsafe during counseling with Joe. For example, they have indicated that Joe has sat by the door of their counseling sessions and they feel trapped. For counseling with Joe is to be successful, I believe Kaelyn and Kyden need to feel secure and that they can advocate for themselves.

Here are my recommendations for reintegration for Kaelyn and Kyden -

1. Encourage relationships with both parents and extended family.
2. Be honest with the children and provide them with the facts at a level they can understand and is appropriate for their age.
3. Allow them a safe place to state their thoughts and feelings.

4. Continue with individual counseling, as needed, to allow a safe place to express their thoughts and feelings, as well as create strategies for coping skills, thought stopping, self advocacy, and communication skills.
5. Continue with family counseling in a safe environment where they can freely express their concerns and develop a secure therapeutic rapport prior to introducing Joe into the sessions.
6. Family counseling should involve all family members, including both parents and the children for a more successful reintegration by addressing family dynamics and issues that are unresolved.
7. Visitation should be supervised in a secure setting to ensure the children's safety with Joe, as well as to address their refusal. This would be most beneficial to occur in a therapeutic environment.
8. There should be clear goals established, with the help of the children, for each counseling session and topics to discuss at the sessions.
9. Clear expectations of all parties should be established for counseling.
10. The children should feel safe to express their desire to end the session, within reason, and establish a time frame to return to the topic being discussed.
11. All parties also need to keep in mind that one of the children is diagnosed with Autism and both children feel scared and fearful.

If you have any further questions, I am available at 718-3613. Thank you for your times and consideration.

Best regards,



Melanie Torno, LPC-MH QMHP

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
 2 COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

3

4 _____)
 4 **CORTNEY KNUDSON,**) 51DIV19-475
 5)
 5 Plaintiff,)
 6)
 6 vs.) Court's Ruling
 7) from Custody Trial
 7)
 8 **KYLAR KNUDSON,**)
 8)
 8 Defendant.)
 9)
 9 _____)

10

11 BEFORE: **THE HONORABLE JANE WIPF PFEIFLE**
 12 Circuit Court Judge
 12 Rapid City, South Dakota
 13 April 19, 2023, at 2:05 p.m.

14

14 APPEARANCES:

15

16 For the Plaintiff: **MS. TERRI LEE WILLIAMS**
 17 Williams Law, P.C.
 17 4956 5th Street, Suite 1
 18 Rapid City, SD 57701

19

20 For the Defendant: **MS. DEBRA D. WATSON**
 20 Watson Law Office, P.C.
 21 6713 Carnoustie Court
 21 Rapid City, SD 57701

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Filed on: 04/21/2023 Pennington County, South Dakota 51DIV19-000475

App. 011

1 (WHEREUPON, the following proceedings were duly
2 had:)

3 **THE COURT:** All right. We are back on the record. The
4 Court has had an opportunity to review its notes and the
5 exhibits in this matter and take some time to assemble my
6 thoughts.

7 I have a note to myself about Exhibit 3 and that
8 was -- the relevant portion of that was that Kylar had
9 asked Kaitlin to come over when the kids were in the home.
10 And to the extent that has some relevance, the Court will
11 leave the exhibit in.

12 I am going to refer to the parties and folks in this
13 by first name just because I think it's a little bit
14 easier.

15 The Court does find it has jurisdiction, venue's
16 appropriate. The standard, of course, is what is in the
17 children's best interests. I am to consider the
18 Fuerstenberg factors, the credibility of the witnesses, and
19 I have done that.

20 The first question is about fitness and which parent
21 is better equipped. The factors that the Supreme Court
22 suggest I look at include mental and physical health. I
23 find that both parties are equal in that. Both have good
24 physical health and that their mental health is fine as
25 well.

1 I do find that each of them have the capacity and
2 disposition to provide the children with adequate
3 protection, food, clothing, medical care, and their other
4 basic needs. Similarly, I find that both of them are
5 committed to the children's education and that they equally
6 provide love, affection, and guidance to the children.

7 In terms of the willingness to maturely encourage and
8 provide frequent and meaningful contact between the child
9 and the other parent, I think both parents have done
10 relatively well with this to encourage the children to
11 contact the other parent by phone just to check in.

12 Kylar did testify that Cortney was a good mom and he
13 wants the kids to have a relationship there. And he
14 does -- has encouraged them if there's some -- I think
15 Isabelle [sic] was reluctant at one point to go with mom
16 and he said, *You're going to have fun. Go.* Which is
17 exactly normal. Kids frequently have trouble transitioning
18 from one place to the other and by encouraging them to do
19 and it will be fun, it makes a huge difference.

20 Cortney testified Kylar's a good dad. She worked hard
21 to accommodate his work schedule so that he would have
22 sufficient time with the kids. Initially the two of them
23 worked hard to co-parent and, as we know, things fell apart
24 later. But I believe in the past they were able to do it
25 well.

1 Dr. Moss, his opinion was the children were
2 comfortable with both parents and that neither one had
3 anxiety with the other.

4 Some concerns I have, that -- and I'm going to start
5 with Cortney here, but I am getting to the rest of it. I
6 have to say that with Cortney, Kylar, and Joe, in
7 particular, I did have some credibility concerns with each
8 of them at various points in time.

9 Kylar certainly could have -- should have advised
10 Cortney about enrolling the kids in counseling at school.
11 That's a text message, that's sending an email, that's
12 calling and asking in advance.

13 Cortney refusing to respond to his natural request
14 when he asked what happened with this bruise, you can
15 imagine why Kylar was on edge, knowing that Joe was in the
16 home and these allegations had been made. And so by
17 refusing to respond to that perfectly normal request, you
18 created an issue that did not need to be there. And had
19 you simply been courteous and polite and responded would
20 have taken care of that.

21 Now, I contrast that with Joe -- or Kylar being
22 concerned about Joe when these allegations came out, but
23 acknowledge that Joe babysat Kaleb and Izzy when he lived,
24 when Joe lived, with Kylar and Cortney for that period of
25 time. So what is it? Joe's a monster or he's not a

1 monster? Joe is abusive or he's not abusive? But why
2 wouldn't you do whatever you could to put Kylar's concerns
3 at bay? It takes seconds to respond to another parent. By
4 playing hide the ball or gamesmanship, I get that each of
5 you kind of want to jab the other, that you're upset with
6 them, but, really, who it hurts is -- are the kids. That's
7 who it ends up hurting when you behave in that fashion.

8 It's disturbing to me that Cortney got into Kylar's
9 Facebook account and then cried when she didn't like what
10 she saw and turned herself into the victim there. I don't
11 know what the truth is about what happened there, whether
12 his statement to Kaitlin that it really was a handgun and
13 he felt terrible about that, was that true or was it true
14 it was a BB gun? We don't know. We don't have any way to
15 trust -- you can't trust each other because of the way
16 you've conducted yourself.

17 The question I think each parent needs to ask him or
18 herself anytime you're talking about the kids is *Would I*
19 *want to know this? Would I want to know the child has a*
20 *terrible sunburn? And, if so, Why? Would I want to know*
21 *why the child came home with a bruise? Would I want to*
22 *know where my child's at when he or she is not with me?*
23 *Would I want to know who's with my child? I'd suspect the*
24 *answer is yes, you'd want to know all those things and so*
25 *you should share it. Ask yourself, Do I want to know? And*

1 if the answer's yes, you tell the other one, whether it's
2 counseling or bruises, awards, the child's fears or
3 accomplishments. Those are all things that are critical to
4 share. And I suspect you used to do that, but because of
5 the mistrust you started, both, to fail in that critical
6 parenting obligation.

7 The next factor is a commitment to prepare the child
8 for responsible adulthood, as well as to insure the child
9 experiences a fulfilling childhood. It's the view of the
10 Court that you both work really hard at this. That you
11 want the kids to have a good childhood. That you want them
12 to grow up into responsible adults. That you are engaged
13 with them. And I find you both equal there.

14 The next one is exemplary modeling so the child
15 witnesses firsthand what it means to be a good parent, a
16 loving spouse, and a responsible citizen. I think, in
17 large part, you've both demonstrated what it means to be a
18 responsible citizen and good parent. I think you've had
19 some failings on exemplary modeling. Certainly Cortney's
20 relationship with a married man and who's related to the
21 kids is troubling. That she lied about the vacation to
22 Ohio that Joe was there. It's not fair to Kylar to not
23 know who's with his kids and to not be upfront about that.

24 I mentioned getting into the Facebook account. Going
25 over with Joe to pick up the trash and taking the kids

1 along, I'm not sure what message you wanted to convey to
2 the children: That you were on board with being
3 disrespectful to their grandparents; that you were going to
4 make it into a joke. And Cortney's decision to take the
5 children over there to be disrespectful to the
6 grandparents -- and the children didn't have anything to do
7 with throwing the trash, that appears to be a grown man --
8 just was so inappropriate.

9 Kylar had a major failing with that gun with Isabelle.
10 Carelessness with weapons is a huge red flag. I'm not sure
11 how a young child picks up a BB gun or a handgun, we're not
12 sure which, when the parent is in the room. That the child
13 could pick it up and shoot it, no matter what it was, and
14 that Kylar hadn't bothered to put the safety on. That's --
15 I mean, it's the very basics of gun safety. And to have a
16 loaded weapon without the safety on. And Kylar had reason
17 to be concerned because he knew Cortney had talked about it
18 over and over, her concern.

19 His failure to tell Cortney was worse. To not call
20 her immediately caused an enormous amount of mistrust. I
21 appreciate the manner in which she addressed it afterwards.
22 Get the gun safe, that she feels more comfortable, and she
23 had good reason to be concerned. She knew that you kept a
24 gun on top of the refrigerator with kids in the house.
25 That makes no sense to the Court. I have to say I have a

1 distinct recollection of my nearly two year old in less
2 than 30 seconds climbing and sitting on top of the
3 refrigerator. They can get into places and do things that
4 we can't even guess. And so it's unfair to have something
5 that could kill a child within reach.

6 I understood Kylar's testimony, he takes the gun out
7 when he gets home from work and puts it on the counter.
8 That upsets Cortney. Why wouldn't that gun be taken into
9 the bedroom, put in the safe? Putting it down in front of
10 someone was to send a message. So the distrust -- the two
11 of you, by your behavior, has caused this terrible distrust
12 and this poor decision making has contributed to it. So
13 both -- I think both of you have failed in some ways with
14 exemplary modeling.

15 Who can provide a stable and consistent home
16 environment? The first one is the relationship and
17 interaction of the child with the parents, step-parents,
18 siblings and extended families.

19 The child's adjustment to home, school and community.

20 The next one is the parent with whom the child has
21 formed a closer attachment. I don't find that one applies.

22 I do think Kylar has the edge here. Cortney certainly
23 engaged in an emotional affair or emotional infidelity with
24 her husband's brother-in-law. Texting a man when you are
25 married, texting another man, about all the things that you

1 would talk to your own husband about and doing it to such
2 an extent that you're developing this friendship really
3 invades that intimacy that belongs within the marriage.
4 And despite the fact that you allege you hadn't physically
5 consummated that marriage -- I mean, that relationship
6 doesn't change for the Court that that was emotional
7 infidelity.

8 The parties separated November 2019 and within five
9 months Cortney is having -- characterizes a romantic
10 relationship, which I take to mean having sex, with her
11 husband's brother-in-law and then shortly thereafter moves
12 him in with her kids.

13 I agree with Dr. Moss that Cortney lacked insight and
14 judgment over that. She prioritized her desire for a
15 romantic relationship over her young child's interests.
16 She didn't give the kids the benefit of her undivided
17 attention. Within three months she moves into the same
18 apartment building. I don't believe she didn't know Joe
19 was there, given how much they texted, and certainly
20 Box Elder is not that big.

21 How different it would have all have been if she had
22 given herself some time to adjust to not being a married
23 person or even being separated. I mean, she was barely
24 divorced when she jumped into this relationship and she
25 didn't give herself time, she didn't give the kids time,

1 and she certainly didn't give Kylar. Now I understand she
2 had probably little interest in that. But he enters into
3 the stipulation and then finds out you have this really
4 serious relationship with Joe and that is where much of the
5 distrust, in the Court's view, came from.

6 Certainly Dr. Moss -- things might have been very
7 different had you not lied to Dr. Moss about Joe moving
8 out. This elevating form over substance is he doesn't
9 sleep there, he's just there all the rest of the time. And
10 when Joe is there most of the day and most of the evening
11 when the kids are awake creates this facade he's not living
12 there.

13 I also have some concerns about you creating a Tinder
14 account when you're in this relationship with Joe. That --
15 I'm concerned about the stability there. Other than that
16 what appeared to be a short-term flirtation with Kaitlin,
17 Kylar has prioritized the interests of the children. He
18 hasn't introduced a new partner and they do have his
19 undivided attention.

20 When the kids are with mom, they're having to share
21 her with Joe. She's not making time for just the kids
22 because Joe is there. As she said, well, he sleeps over
23 12 to 14 nights and appears to be there all the time. So I
24 just -- I'm concerned about the stability. She jumps from
25 a marriage into this new relationship and while she's in

1 the new relationship starts looking around on a social
2 media site for somebody else. She says she didn't follow
3 up and I'll take her at her word.

4 The other concern I had was that Cortney cut Kylar off
5 from extended family because she didn't like questions he
6 was asking. Kylar testified he lost his wife and someone
7 who was like a brother to him and was spiraling. He
8 probably had a lot of questions and I'm sure it was
9 uncomfortable. And? But to say you can't come back,
10 that's some pretty tough love there.

11 I do appreciate that Kylar works hard to keep the
12 cousins together. That's certainly good for the kids to
13 have that extended family. Because of Cortney's
14 relationship with Joe, she's not able to have that and, of
15 course, the kids can't have cousins when they're with her.

16 So the bigger issue, of course, is Joe. And I am to
17 consider domestic abuse. Typically we see it inside the
18 marriage. The reason we're here is because Cortney
19 established very quickly this relationship with Joe and
20 there were some very concerning allegations about him.

21 I did find the testimony of Michael Knudson and
22 Kaylee Knudson to be credible. Both of them described
23 behaviors by Joe against Joe's son Kyden, frankly, that
24 were pretty difficult to listen to and to imagine what that
25 was like. One can take away that Joe was ill-equipped to

1 deal with a child with autism. Kylar saw some of these
2 actions, but admitted not very many. What's noteworthy to
3 me, though, is that none of the adults did anything more
4 than tell Joe to stop. It wasn't grandpa, it wasn't
5 Aunt Kaylee, it wasn't Uncle Kylar, or Krista. So what do
6 I take that be? I take it to be that they saw it and
7 didn't find it to be abusive but simply poor disciplinary
8 measures by someone who was a poor parent. Someone who was
9 ill-equipped to parent a special needs child.

10 I do certainly think it's a blessing to Kylar -- or to
11 Kyden, rather, that Kylar could step in and listen to his
12 long-involved stories and give him a safe place to be
13 himself. It didn't sound like he had that with his dad.

14 I agree that Joe probably drank too much, but over the
15 number of years it didn't seem significant enough that
16 anyone ever called the police or sought an intervention
17 until Krista and Joe's divorce -- or separate maintenance
18 proceeding.

19 One wonders what kind of person Joe really is. He was
20 treated like a son by Michael Knudson and Joe, in response,
21 records him; dumps trash in his yard. Joe's ex-wife
22 testified -- or ex -- I guess she's not -- she's still his
23 wife testified about her own abuse and that of her child.
24 I understand domestic violence and I understand why women
25 don't leave. It's the income, it's the shelter, it's the

1 kids. But typically what we see is when the kids are being
2 abused, that's when the wife leaves or the abused spouse,
3 not always the wife.

4 The Court is aware that there are significant
5 resources available on the base for members. Her response
6 was to ask Joe to go to AA and anger management. He agreed
7 but he, of course, didn't do it and she didn't follow up on
8 it. The Court was under the impression that Joe says what
9 he thinks people want to hear.

10 She stood by when she believed the child was either
11 being abused or inappropriately disciplined. She had a
12 loving, supportive family who could have helped her out so
13 I have to question what was happening to Kyden. And Kaelyn
14 wasn't -- other than having to watch her dad be a bad
15 parent, she wasn't physically injured and none of the other
16 cousins were physically injured.

17 I do believe that Krista was physically hurt by Joe,
18 but based upon her testimony and the photos, I couldn't
19 agree with Dr. Moss. I think he characterized it as -- it
20 wasn't -- *horrific* wasn't the word he used, but that it was
21 extraordinary, essentially. And I'm not saying any kind of
22 physical abuse is appropriate. I'm not. But it certainly
23 wouldn't land in the horrific.

24 Both Joe and Krista have a high, high conflict
25 relationship. Both involved law enforcement when they

1 shouldn't have. They did it too often. I didn't find
2 Joe's testimony to be credible that they were being evicted
3 only because of Krista. But what does that have to do with
4 these people? What it has to do with is, what is Joe's
5 role here? And it's Joe that has caused the problem and,
6 well, Cortney wanting Joe to be with her.

7 I didn't -- I didn't credit Dr. Perrenoud's position.
8 He was Joe's counselor before they did family counseling,
9 which I think would be inappropriate. The kids don't trust
10 him. And he became a very zealous advocate for Joe. He
11 did urge Joe to apologize to the kids, but it sounded
12 pretty lukewarm. He and Cortney upended two entire
13 families, the family each of them made, and because the
14 families are related, then all the extended family get
15 upended. Joe mostly said, *Well, the kids were in a*
16 *difficult position and they were exposed to conflict.*
17 Their entire worlds were upended, all four of these kids.
18 And to act like that's no big deal is troubling.

19 The -- so I don't know exactly what happened. What I
20 do feel comfortable is that if Joe genuinely abused Kyden,
21 physically abused him, somebody -- please, God, somebody
22 would have stepped in, but nobody did other than to say,
23 *Hey, don't do that.* So what I think it was, was that he
24 was just ill-equipped to be a parent. He's not very
25 trustworthy, of course. He -- it's hard to fathom the

1 amount of betrayal that Joe engaged in and Cortney. Joe
2 was friends and a brother-in-law to Kylar and, of course,
3 raised in his home for part -- or when he was a kid for
4 part of the time. Kylar takes him in when needed. Kylar
5 won't testify because he doesn't want to expose his own
6 wife to cheating with Joe or his sister to learn about
7 that. I also think Kylar didn't want to testify because he
8 didn't see what the sister says and he wanted to please
9 Cortney who, of course, wasn't very interested in him
10 testifying, in large part, because of her relationship with
11 Joe.

12 I do think the grace that Kylar extended to both
13 Cortney and Joe after these betrayals demonstrates the type
14 of man he is. Even after he saw those inappropriate text
15 messages between Joe and Cortney when Joe was in his home,
16 he was going to let him stay that night.

17 As I mentioned, I don't think Joe's testimony is
18 credible. I think he says what he wants someone to hear.
19 Even after all of this, he wouldn't accept the hand of
20 friendship from Kylar. Imagine how very different this
21 would look for Cortney if Joe were a bigger person. If Joe
22 were able to evaluate his behavior.

23 Kylar has rightfully intervened when others are
24 speaking ill of Joe and Krista, not because Joe is having a
25 relationship with Cortney, but because they're Isabelle and

1 Kaleb's aunt and uncle. And whatever their failings,
2 that's adult business and not kid's business.

3 So all that being said -- well, both parties have been
4 primary caretaker. That factor doesn't weigh here.
5 Children are too young to have a preference. I don't think
6 there's harmful parental misconduct. Dr. Moss clarified he
7 didn't think the siblings should be separated. That was
8 a -- appeared to be poor proofreading.

9 The substantial change in circumstances doesn't apply
10 here because the parties had a stipulation.

11 The bottom line is I do find that both parents are
12 suitable, capable people and are good parents. I've
13 expressed my concerns very clearly about Cortney's choices
14 and things Kylar did. I do not find that that is
15 sufficient grounds for me to modify custody. However, if
16 Joe is going to remain in the picture, which I would want
17 to think really hard about if I were Cortney, there can be
18 no alcohol in the home at any time. He cannot be called
19 Jdad or dad or Jad. I don't find it credible that the kids
20 came up with that. He's still their uncle. He can be
21 called Joe or Uncle Joe. If the kids decided to call
22 someone stupid head, we wouldn't tolerate that. The
23 suggestion that we'll accept this because the kids came up
24 with it, in my view, carries no weight. It sounds like dad
25 and he's not their dad. The fact that he left his wife and

1 has no relationship with his kids doesn't mean he gets to
2 pop into Kylar's kids and become a dad there.

3 I strongly disagree with Dr. Moss that dad is just a
4 name. Absent same sex relationships, children have only
5 one dad and one mom, and no other adult gets to take that
6 on. And I find that Joe and Cortney encouraging Jad is
7 inappropriate. It sounds like dad and it's going to be
8 misunderstood that way. I can't imagine how Joe's kids --
9 I'm not here to make a decision about Joe's kids, but I
10 can't help but think about them, how they would react when
11 they would hear Joe be called dad or dad-like names. I
12 think it sets the two groups of kids against each other.

13 Joe is -- certainly appears to be behind on child
14 support; making a decision to go on vacation. And none of
15 that's going to escape the kids and the kids are going to
16 talk. We can't prevent them from talking.

17 I do not believe it's appropriate for Joe to be alone
18 with these children for quite a long time, unless it's in a
19 large public place where there are people around. So, for
20 example, if you're at a concert outside and Cortney has to
21 go to the bathroom, that Joe would stay with the children.
22 But to not -- I don't think it's appropriate for him to be
23 alone. I don't think it's appropriate for Joe to be the
24 emergency contact.

25 I'll take Cortney at her word that she would leave if

1 the children were abused or called names in any way. I
2 would strongly urge her to not engage in that behavior that
3 *Don't tell dad this or This is something that's only at*
4 *mom's house.* I don't think either parent should question
5 the other about mom's house. But if Isabelle comes home
6 and says Hey, guess what we did at mom's house? And then
7 says *Oh, I can't talk about that,* that suggests she's
8 hiding something and it causes a great deal of distrust.
9 And it's, in large part, because of the behaviors you've
10 engaged in why Kylar has so many concerns.

11 I don't take lightly the concerns in what Judge Krull
12 found initially. I think Joe's shortcomings regarding
13 being an abusive parent or inappropriate parent were
14 related to his son. I believe that he has been in therapy
15 so I have fewer concerns, but my concerns are not
16 completely alleviated because of the mistrust and the
17 hiding actions that Cortney has engaged in.

18 I would encourage both of you to stop the
19 gamesmanship, cancelling appointments, not responding to
20 questions about the kids' health. Consult with one
21 another. Teach your children to be good communicators.

22 The stipulated parenting time will stay in place. You
23 reached this agreement pretty fast because you both trusted
24 the other to be a good parent and I think you both believed
25 that the other was a good parent. I think you worked hard

1 at that. I understand that the introduction of Joe with
2 this would-be parental figure caused the problem. I'd urge
3 you to work hard to fix that.

4 And so with that, it's the view of the Court that it
5 is in the children's best interests that the parties
6 maintain joint legal and physical custody with the
7 understanding of those limitations for Joe's contact with
8 Kylar and Cortney's children.

9 Have I missed anything? I'll start with you,
10 Ms. Watson.

11 **MS. WATSON:** So I just had a question. He can stay
12 overnight in the home, just not --

13 **THE COURT:** Well, as I mentioned, this sort of facade that
14 they've created, I think it's a bad idea, but it's been
15 going on for two years and I suspect he has been there and
16 the kids know it. So I'm concerned about that, I don't
17 think it's good, but I'm not going to forbid it.

18 **MS. WATSON:** What about the vacation that she's taking with
19 him, is that --

20 **THE COURT:** Well, it's a surprise to me that he has money
21 to go on a vacation, but say he does, if the kids are
22 seated with him, watching her graduate, that's fine
23 because there's other people around. But he is not alone
24 in a hotel room with them, any of that. She'll have to
25 have some other person present with him.

1 **MS. WATSON:** So she can stay in the same motel room with
2 him?

3 **THE COURT:** Yes.

4 **MS. WATSON:** Okay. The only other thing I had is it may
5 not have been clear from the testimony, but the children
6 were at the grandparents when Cortney came to clean up the
7 trash.

8 **THE COURT:** Oh.

9 **MS. WATSON:** They didn't come with their mom.

10 **THE COURT:** Okay. All right.

11 **MS. WATSON:** At least that was my understanding.

12 **MS. WILLIAMS:** Thank you for that, Ms. Watson.

13 **THE COURT:** Okay. Thank you.

14 And Ms. Williams, anything?

15 **MS. WILLIAMS:** No, Your Honor.

16 **THE COURT:** All right. Well, it would be my sincere hope
17 that the two of you could establish the parenting
18 relationship you had early on because it would be in the
19 children's best interests to see that adults can not be
20 together yet can be respected, honored and revered,
21 frankly, because without the other, you wouldn't have these
22 great kids and they seem like they're pretty fabulous
23 children.

24 All right. We'll be in recess.

25 (Hearing concluded at 2:41 p.m.)

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

3
 4 I, KIMBERLY K. JOHNSON, RPR, an Official Court
 5 Reporter and Notary Public in the State of South Dakota,
 6 Seventh Judicial Circuit, do hereby certify that I reported
 7 in machine shorthand the proceedings in the above-entitled
 8 matter and that Pages 1 through 20, inclusive, are a true
 9 and correct copy, to the best of my ability, of my
 10 stenotype notes of said proceedings had before the
 11 HONORABLE JANE WIPF PFEIFLE, Circuit Court Judge.

12 Dated at Rapid City, South Dakota, this 21st day
 13 of April, 2023.

14
 15 /s/ Kimberly K. Johnson

16
 17 KIMBERLY K. JOHNSON, RPR
 18 Official Court Reporter
 19 My Commission Expires: 6/17/28

20
 21 State of South Dakota } Seventh Judicial
 22 County of Pennington } Circuit Court
 23 I hereby certify that the foregoing instrument
 24 is a true and correct copy of the original as
 25 the same appears on record in my office this:

SEP 18 2023

Amber Watkins
 Clerk of Courts, Pennington County

By BIL Deputy

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON) SS.

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

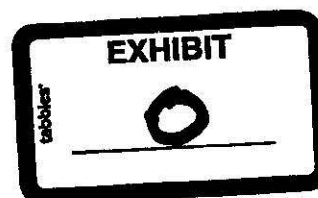
CORTNEY KNUDSON,)
Plaintiff,)
vs.)
KYLAR KNUDSON,)
Defendant.)

FILE #51DIV19-475

**COURT ORDER DENYING DEFENDANT'S
MOTION FOR CHANGE OF CUSTODY BUT
ORDERING LIMITATIONS ON PLAINTIFF
WHEN THE CHILDREN ARE IN HER CUSTODY**

A Court Trial on primary custody of the parties' two minor children was held on April 17, 18 & 19, 2023 before the Honorable Jane Wipf Pfeifle, Circuit Court Judge, in Courtroom C8 at the Pennington County Courthouse in Rapid City, South Dakota. Cortney Knudson appeared in person together with her attorney, Terri Lee Williams. Kylar Knudson appeared in person together with his attorney, Debra D. Watson. The Court considered the testimony of Child Custody Evaluator William Moss, the parties, their witnesses and the exhibits admitted into evidence. The Court finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper. The Court issued oral Findings of Fact and Conclusions of Law from the bench following the conclusion of the evidence, which were transcribed and placed in the Court file as the Court's formal Findings of Fact and Conclusions of Law in this matter. Based thereon,

IT IS HEREBY ORDERED That Defendant's Motion for Primary Physical Custody of the parties' minor children is denied;



IT IS FURTHER ORDERED That the parties' joint legal and shared physical custody of the children, Kaleb and Isabella, shall continue based on the following restrictions upon Plaintiff Cortney Knudson:

1. Joseph LeFors shall not be left alone with Kaleb and Isabella except for short periods of time in a public place;
2. There shall be no alcohol on Cortney's residential property;
3. Cortney is not to allow the children to refer to Joseph LeFors as Jdad, Dad, or Jad or any other assimilation for dad; and
4. Joseph LeFors shall not be listed as an Emergency Contact for Kaleb or Isabella.

IT IS FURTHER ORDERED That this Court's Oral Findings of Fact and Conclusions of Law shall be incorporated herein by this reference; and

IT IS FURTHER ORDERED That based upon the agreement of the parties, Cortney shall reimburse Kylar the sum of \$2,500, one-half of the cost of the child custody evaluation, within ninety (90) days and that each party shall pay his/her own legal fees incurred in this proceeding.

5/8/2023 8:21:45 AM

BY THE COURT:


Honorable Jane Wipf Pfeifle
Circuit Court Judge


Attest:
Colson, Olivia
Clerk/Deputy



State of South Dakota } Seventh Judicial
County of Pennington } Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as
the same appears on record in my office this

SEP 18 2023

Amber Watkins
Clerk of Courts, Pennington County

By  Deputy

Page 2 of 2

Filed on: 05/08/2023 Pennington County, South Dakota 51DIV19-000475

App. 033

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

JOSEPH D. LEFORS,	)	APPEAL NO. 30943
)	
PLAINTIFF/APPELLEE,)	
)	
v.	)	MOTION FOR ATTORNEY FEES
)	
KRISTA M. LEFORS,)	
)	
DEFENDANT/APPELLANT.)	

COMES NOW, the Plaintiff/Appellee, Joseph LeFors, by and through his attorney of record, and respectfully submit this Motion for Attorney Fees requesting this Court award attorney fees pursuant to SDCL § 15-26A-87.3 and SDCL§ 15-17-38. A verified Affidavit and itemized statement of legal services rendered, exclusive of costs allowable, is attached hereto and incorporated herein by this reference.

Dated this 5th day of May, 2025.

LOOS, SABERS & SMITH, LLP

/s/ Hollie L. Smith
Hollie L. Smith
Attorney for the Plaintiff/Appellee
Loos, Sabers & Smith, LLP
2834 Jackson Blvd, Suite 201
Rapid City, SD 57702
(605) 721-1517

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2025, I served a true and correct copy of the foregoing *Motion for Attorney Fees* to the following:

<input type="checkbox"/>	First Class Mail	<input type="checkbox"/>	Certified Mail
<input type="checkbox"/>	Hand Delivery	<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Electronic Mail	<input checked="" type="checkbox"/>	Odyssey File and Service

Kelly J. Sanderson
Sanderson Law
2885 Vanocker Canyon Road
Sturgis, SD 57785
Attorney for Defendant

which is the last known address of the addressee known to the subscriber.

/s/ Hollie L. Smith
Hollie L. Smith

Lefors v Lefors
Affidavit of Hollie L. Smith For Attorney's Fees and Costs
Appeal No. 30943

Submitted this 5th day of May, 2025.

Hollie L. Smith

Hollie L. Smith

Attorney for Joseph Lefors

Subscribed and sworn to before me this 5th day of May, 2025.

Sherrie Rose

NOTARY PUBLIC

My Commission Expires: April 7, 2027



The Law Offices of



INVOICE

Invoice # 51638
Date: 05/05/2025
Due Upon Receipt

2834 Jackson Blvd, Ste 201
Rapid City, SD 57702
United States
Phone: +1 605-721-1517

Joseph Lefors
1215 Juneau Dr
Box Elder, South Dakota 57719

00841-Lefors

Joseph Lefors

Date	Attorney	Notes	Quantity	Rate	Total
04/23/2025	HLS	Initial draft of appellee brief to include legal research appeal no. 30943	4.00	\$275.00	\$1,100.00
04/24/2025	SAR	Review, revise and file Appellee's Brief.	3.00	\$90.00	\$270.00
04/24/2025	HLS	Final draft of appellee brief no. 30943	3.00	\$275.00	\$825.00
				Subtotal	\$2,195.00
				SD Sales Tax (6.2%)	\$136.09
				Total	\$2,331.09

Please make all payments payable to: Loos, Sabers & Smith, LLP

Payment is due upon receipt.

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 31025

JOSEPH D. LEFORS,

Plaintiff and Appellee,

vs.

KRISTA M. LEFORS,

Defendant and Appellant.

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

THE HONORABLE JOHN FITZGERALD
CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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Notice of Appeal filed March 7, 2025

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3. Whether the trial court erred in assessing attorney fees of \$2,000 without requiring an affidavit of attorney fees and without reviewing the same for reasonableness.	
4. Whether the trial court abused its discretion in granting Father additional parenting time given the child's fear of Father and testimony by the child's counselor that additional parenting time would not be in the child's best interests.	
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PRELIMINARY STATEMENT

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

JURISDICTIONAL STATEMENT

Krista respectfully appeals the Honorable John Fitzgerald’s Order Following December 12, 2024 Hearing, filed on February 5, 2025. SR2 129. Notice of Entry was filed on February 6, 2025. SR2 131. Krista timely served the Notice of Appeal on March 7, 2025. SR2 186. The Order Following December 12, 2024 Hearing is a final order of the Circuit Court and is appealable as a matter of right, pursuant to SDCL § 15-26A-3 and SDCL § 15-26A-4.

LEGAL ISSUES ON APPEAL

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

Most relevant cases and statutes:

Fuerstenberg v. Fuerstenberg, 1999 S.D. 35, ¶ 30, 591 N.W.2d 798.

Price v. Price, 2000 S.D. 64, ¶ 37, 611 N.W.2d 425.

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

2. **Whether the trial court erred in finding that the 15-year-old daughter's refusal to eat dinner with her father was a willful violation by Krista.**

Most relevant cases and statutes:

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

Hiller v. Hiller, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548.

3. **Whether the trial court erred in assessing attorney fees of \$2,000 without requiring an affidavit of attorney fees and without reviewing the same for reasonableness.**

Most relevant cases and statutes:

SDCL § 25-4A-5

Hiller v. Hiller, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548.

4. **Whether the Circuit Court abused its discretion in granting Father additional parenting time given the child's fear of Father and testimony by the child's counselor that additional parenting time would not be in the child's best interests.**

Most relevant cases and statutes:

SDCL § 25-4-45

Lindley v. Lindley, 401 N.W.2d 732, (S.D. 1987)

Zepeda v. Zepeda, 2001 S.D. 101, 632 N.W.2d 48.

STATEMENT OF THE CASE

A divorce case was initiated by Joseph in January of 2019. SR 7. This is the fourth appeal following the Court's decisions in *LeFors v. LeFors*, 2023 S.D. 24, 991 N.W.2d 675 and *LeFors v. LeFors*, No. 30544, 2024 S.D. LEXIS 113 (Sep. 3, 2024). Krista counterclaimed, alleging a claim for Separate Maintenance. SR 174. A two-day

trial was held by the Circuit Court on June 17 and 18, 2020. On April 8, 2021, Judge Kevin Krull signed Findings of Fact and Conclusions of Law and issued a Decree of Separate Maintenance. SR 813 and 832. A Notice of Appeal was filed on May 27, 2021. SR 910. This Court entered its decision affirming in part and reversing and remanding in part. See *LeFors*, 991 N.W.2d 675. A remanded trial was held on September 28 and 29, 2023. A Judgment and Decree of Divorce was issued on October 27, 2023. SR 3374. A Notice of Appeal related to the Judgment and Decree of Divorce was filed on November 21, 2023. SR 3406. This Court entered its decision affirming in part and reversing in part on September 3, 2024. The Circuit Court entered an Order Discontinuing Family Therapy and Scheduling Father's Parenting Time on February 26, 2024. SR 3974. A Motion Hearing was held on May 10, 2024, to address Joseph's request to find Krista in contempt and to order sanctions. The Circuit Court entered its Findings of Fact and Conclusions of Law and Order for Sanctions, Attorneys Fees and Parenting Time on June 17, 2024. SR 4309. Notice of Entry was filed on June 18, 2024. SR 4313. Motion Hearings were held on August 12, 2024 and September 17, 2024 to address Joseph's request for additional sanctions against Krista. The Circuit Court entered its Order for Sanctions Following August 12, 2024 and September 17, 2024 Hearing on October 24, 2024. SR 4656. A Status Hearing was held on October 24, 2024 to address additional sanctions against Krista. The Circuit Court entered its Findings of Fact and Conclusions of Law, and Order Following October 24, 2024 Hearing on November 20, 2024. SR 4699. Krista timely filed a Notice of Appeal on December 20, 2024. SR2 67. A Status Hearing was held on December 12, 2024 to address additional sanctions against Krista for Kailyn's refusal to participate in parenting time. The Circuit Court entered an Order

following December 12, 2024 hearing on February 5, 2025. SR2 129. Krista timely filed a Notice of Appeal on March 7, 2025. SR2 186.

STATEMENT OF THE FACTS

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

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

Throughout these proceedings Joseph has claimed that parental alienation has been occurring. While Judge Krull was presiding over this matter he entered Findings of Fact and Conclusions of Law and Order where he specifically found and concluded that there was insufficient evidence to find alienation. SR 2593. He further found that the relationship between the children and Joseph was damaged almost to the point of no repair. SR 2593. Judge John Fitzgerald took over this matter while the first appeal was pending.

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

A hearing was held on February 6, 2024, to address family counseling and Joseph's parenting time. The Court spoke in camera with both children. TT, In Camera Proceedings, February 6, 2024. While in camera Kyden told Judge Fitzgerald that "I just don't want to see him because of the things he's has done to me" *Id.* at 029 referring to Joseph. Kyden went on to outline the abuse he endured by Joseph, "He would grab me by the back of my neck and he would force me to the ground. He would then yell at me and call me names" *Id.* at 031. Kaelyn similarly stated that Joseph had abused her, "Because he abused me and he's with my aunt." going on to tell the Court that "I don't

want to meet with him. I don't want anything to do with him." *Id.* at 032. Joseph is remarried to Krista's brother's ex-wife. Judge Fitzgerald asked Kaelyn about forgiving Joseph for his past actions and she stated that she was not able to forgive him because of the abuse. See *Id.* at 033. Judge Fitzgerald asked Kaelyn if she is afraid of Joseph. See *Id.* at 035. Kaelyn states that she is "because he abused us." *Id.* Judge Fitzgerald went on to ask Kaelyn if she would feel safe at a public place with Joseph such as Olive Garden; Kaelyn responded that she would not feel safe. See *Id.* at 036. Judge Fitzgerald then asks Kaelyn, "Well, where would you feel the most comfortable and the most secure to meet with your dad, Joe?" Kaelyn responded "Nowhere". *Id.* at 040. Judge Fitzgerald later asked Kaelyn, "So what would you like me to do as the judge in this case? Kaelyn?" to which Kaelyn responded, "I don't want anything to do with Joe so I don't want visitation or anything with him." *Id.* at 043.

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

Joseph filed an Affidavit on April 18, 2024, requesting that Krista be sanctioned for failing to encourage Kaelyn enough surrounding Joseph's parenting time. SR 4151.

Krista responded to Joseph's affidavit with her own affidavits outlining all of her attempts to encourage Kaelyn to speak to Joseph. SR 4162 and 4170. During this time, Krista would drop Kaelyn off at the designated restaurant as ordered and would leave the area and Kaelyn would then refuse to speak to her father or share a meal with him. SR 4170 pg. 2. Following the hearing, Judge Fitzgerald entered a Findings of Fact and Conclusions of Law and Order for Sanctions, Attorney's Fees and Parenting Time. SR 4309. Judge Fitzgerald found that although Krista was taking Kaelyn to the restaurants each week that she was not doing enough to encourage the relationship between Kaelyn and Joseph. *Id.* He then sanctioned Krista with a fine for each of the parenting times totaling \$2,000 and \$2,000 in repayment of Joseph's attorney's fees. *Id.* Krista timely appealed this Order which is currently pending before this Court in Supreme Court Appeal No. 30766.

Motion Hearings to address additional sanctions were held on August 12, 2024 and September 17, 2024 again requesting that Krista be sanctioned because Kaelyn was unwilling to interact with Joseph during the set parenting times. SR 4656. The August 12, 2024 hearing began by addressing the withdrawal of Krista's previous attorney Ms. Watson due to her retirement. TT, Motions Hearing, August 12, 2024 pg. 4. The Circuit then took up the issue of the Motion requesting additional sanctions filed by Joseph. *Id.* During this hearing, Krista appeared pro se. Opposing Counsel questioned Krista about visitation and asked Krista "Is it your position that you have no control over whether your daughter goes or does not go to visitations" and Krista responded "She goes to visitation. I drop her off and I walk her inside and I know she's in there, but I have no control when I leave. I am not there." *Id.* at 10. Krista went on to testify that the minor child is always

walking toward Joseph before Krista leaves and then she leaves the area as required by the Order. *Id.* The Court addressed sanctions from the August 12th hearing at the September 17th hearing and found that Krista would be required to participate in either counseling and/or parenting educational classes. TT, Status Hearing, September 17, 2024 pg. 57. The Court further reserved its ruling related to sanctions until positions were submitted by both Counsel. *Id.* at 58. The Circuit Court then entered its formal Order for Sanctions Following August 12, 2024 and September 17, 2024 Hearing on October 24, 2024 where the Court ordered \$12,000 in sanctions for the time period of May 14-August 7 and \$2,500 for the time period of August 7-September 17. SR 4656.

A Status Hearing was held on October 24, 2024 to address Joseph's request for additional sanctions against Krista. Following this hearing, Judge Fitzgerald ordered that Krista be required to pay \$6,000 in Joseph's attorney fees with \$500 per month being withheld by Krista's employer. Judge Fitzgerald also awarded Joseph additional parenting time consisting of an overnight every other weekend. SR 4699.

A Status Hearing was held on December 12, 2024 to address Joseph's request for additional sanctions against Krista and for a change in custody. Judge Fitzgerald ordered that Krista pay \$2,000 of Joseph's attorney fees, that Krista begins counseling, and for Joseph to have parenting time consistent with the South Dakota Parenting Time Guidelines. SR2 129.

STANDARD OF REVIEW

The standard of review for findings of fact is "under the clearly erroneous standard of review." *Schieffer v. Schieffer*, 2013 S.D. 11, ¶ 15, 826 N.W.2d 627, 633. A trial court's findings of fact will not be overturned "unless a complete review of the

evidence leaves this Court with a definite and firm conviction that a mistake has been made.” *Giesen v. Giesen*, 2018 S.D. 36, ¶ 24, 911 N.W.2d 750, 756. Conclusions of law are reviewed de novo. *Hill v. Hill*, 2009 S.D. 18, ¶ 5, 763 N.W.2d 818, 822.

"The trial court exercises broad discretion in awarding custody of children, and its decision will be reversed only upon a clear showing of an abuse of discretion." *Matter of Guardianship of Janke*, 500 N.W.2d 207, 211 (S.D. 1993) (citing *Anderson v. Anderson*, 472 N.W.2d 519, 520 (S.D. 1991)). Any matter of judicial discretion including awards of attorney fees and remedies for contempt are reviewed for an abuse of discretion. See *Hiller v. Hiller*, 2018 S.D. 74, ¶ 19, 919 N.W.2d 548, 554; *Brosnan v. Brosnan*, 2013 S.D. 81, ¶ 12, 840 N.W.2d 240, 246 (attorney fees); *Sazama v. State ex rel. Muilenberg*, 2007 S.D. 17, ¶ 9, 729 N.W.2d 335, 340 (contempt). Abuse of discretion "is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary and unreasonable." *Thurman v. CUNA Mut. Ins. Soc'y*, 2013 S.D. 63, ¶ 11, 836 N.W.2d 611, 616. Findings of fact are reviewed for clear error and will only be overturned "when we are definitely and firmly convinced a mistake has been made." *Lakota Cmty. Homes, Inc. v. Randall*, 2004 S.D. 16, ¶ 9, 675 N.W.2d 437, 440.

ARGUMENT

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

South Dakota law recognizes that adolescents who are of a sufficient age and who can intelligently state a preference may be given consideration by the trial court in determining their preference related to their custody and visitation schedule. See SDCL § 25-4-45. "It is especially important to give attention to the needs and wishes of children

either approaching or in adolescence.” *Fuerstenberg v. Fuerstenberg*, 1999 S.D. 35, ¶ 30, 591 N.W.2d 798, 809. “A child's parental preference deserves some consideration.” *Price v. Price*, 2000 S.D. 64, ¶ 37, 611 N.W.2d 425, 434. “In most circumstances, it will be in the best interests of children that they receive the love, affection, training, and companionship of their noncustodial parent. This is not true, however, where the evidence establishes that exercise of visitation will be harmful to the welfare of the children; in this event, the right of the noncustodial parent to visit with his children can be limited, or, under extreme circumstances, prohibited altogether. *Weber v. Weber*, 529 N.W.2d 190, 191 (S.D. 1995).

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

In this case, Kaelyn has expressed to Judge Fitzgerald her direct concerns with exercising parenting time with Joseph very clearly in the in-camera interview that took place. SR 4489. Kaelyn has also expressed the same to her counselor, Melanie Torno. SR 4220. Both Judge Fitzgerald and Ms. Torno have discussed Kaelyn’s intelligence and ability to clearly communicate with them. The Circuit Court’s Order ignores Kaelyn’s concerns completely and instead places the burden on Krista to get Kaelyn to act in a specific way without giving her any direction on how to accomplish this. Krista cannot

control Kaelyn after Kaelyn leaves her care. Kaelyn has very clearly stated her preferences and her concerns for exercising parenting time with Joseph and they have been completely disregarded.

Kaelyn's actions during parenting time are consistent with her concerns and preferences that she has voiced to Judge Fitzgerald. The Circuit Court has completely failed to make any findings related to Kaelyn's preferences and has failed to recognize that this situation is out of Krista's control. Further, the Circuit Court has failed to establish how it is in the best interests of Kaelyn to continue having parenting time with someone who has been found to be abusive. Krista was granted a divorce based off of extreme cruelty. SR 3374. The children witnessed Joseph's actions towards Krista. The children lived through how Joseph treated them.

Most concerning is that Judge Fitzgerald met again in chambers with Kaelyn on August 12, 2024 and refused to make a record of that meeting. On the record, Judge Fitzgerald stated:

Yeah, and I don't want to talk to her and her just tell me that it's of her own free will and accord that she's not going to go see her dad because that's kind of what happened the last time, and I'm really reluctant to record our conversation, I don't think it's necessary. It's in no one's best interests for me to talk to the child and then have a record made that could potentially be used one way or the other. I'm not going to keep a record of it, and I'll try to keep it brief. And again, you know, the expectation shouldn't be that she's just going to tell me everything's wonderful but I'm not going to go meet with dad, because that's unacceptable and I think—the last time we had court on July 18th, I looked up into the records, and I thought we were dealing with the issues from the July 3rd affidavit and so I kind of let it be known how I viewed the evidence and the law, and now I'm left with a situation where it doesn't sound like anything has worked since then either.” App 044.

It is extremely troubling that the Court was specifically concerned with having this recorded because it would contradict the Court's ruling which places the blame for this situation on Krista.

Each time parenting time was set to occur Krista did take Kaelyn to the location of the visit and after she got her there Kaelyn would react by either running away or not speaking to Joseph. See TT Status Hearing, December 12, 2025, pgs. 5, 8, 20-23. It is completely outside of Krista's ability to control how Kaelyn responds to Joseph. The Circuit Court has erred by finding that Krista can control the behavior of a 15-year-old girl.

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

The Circuit Court has erred in finding that Kaelyn's refusal to speak to Joseph constitutes a willful violation by Krista. SDCL § 25-4A-5 allows for sanctions "for the express purpose of punish[ing] the offender[.] Therefore, a circuit court's findings relating to necessity are sufficient so long as they adequately support the determination that the offending party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree[.] *Hiller v. Hiller*, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548, 556.

Here the Circuit Court made findings that "the daughter is an independent-minded and bright young lady." SR 4656. Where "the daughter does not have a relationship with her Father." *Id.* Further finding, "that despite being a teenager and Mother's claim that she cannot control what her daughter does, Mother continues to not do enough to encourage her to have a relationship with her Father". *Id.* The Circuit Court failed to consider the steps that Krista has taken to try to better foster this relationship. At the Motion Hearing held on May 10, 2024, Krista testified extensively about the steps that she has taken to encourage this relationship. TT Motion Hearing May 10, 2024 pg. 45-49. Krista continues to have the minor child attend regular counseling to address the

relationship between Father and child and nothing has worked. Krista has taken the minor child to each visit as required by the Court Order what happens when she drops Kaelyn off is outside of her control. Each visit has occurred or has been attempted to occur.

At the Status Hearing held on September 17, 2024, Krista testified about how she had changed tactics at the dinner visits where she actually accompanied the minor child into Olive Garden and sat down and got a table for all three of them after the minor child stated that she was going to run. TT, Status Hearing September 17, 2025, pg. 5. After sitting down at the table with the minor child, Joseph refused to follow them from the hostess stand and instead remained in the lobby throughout the duration of the visit. *Id.* at 7. Krista made attempt via text to get him to join them. *Id.* At the next supper visit, Krista again accompanied the child to Culvers and had her sit down and eat an ice cream, again neither Kaelyn nor Joseph spoke a word to each other. *Id.* at 8. At the next Culvers visit, Krista tried to facilitate the visit to no avail. *Id.* at 12. Again, Joseph made zero effort to actually speak to Kaelyn. *Id.* Krista also testified about the phone calls between Kaelyn and Joseph. *Id.* at 21-23. These phone calls all occurred but were unsuccessful. Neither Kaelyn nor Joseph ever spoke to each other. *Id.* The Circuit Court has erred in finding Kaelyn's refusal to actively participate in each visit to be within Krista's control. This is a teenager who has been deeply hurt by her father and continues to experience disappointment and trauma related to these visits.

Krista has ensured that she has gotten Kaelyn to the supper visits and that she has dropped Kaelyn off at Joseph's door. These are all actions supporting Krista's willingness to follow the Court's Orders. Once Krista has completed these actions it is no

longer in her control what happens next. Krista has not willfully violated the Court's Orders. Krista should not be sanctioned for Kaelyn's actions during these visits.

III. The Circuit Court erred in assessing attorney fees of \$2,000 without requiring an affidavit of attorney fees and without reviewing the same for reasonableness.

An award for attorney fees must be reasonable based off of an inquiry of how the fees were incurred. A Circuit Court must examine the necessity of an award for attorney fees and the reasonableness of such an award by considering the following:

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

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

SDCL 25-4A-5 allows sanction of attorney fees for the “express purpose of punishing the offender.” *Hiller v. Hiller*, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548, 556 “Therefore, a circuit court's findings relating to necessity are sufficient so long as they adequately support the determination that the offending party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree.” *Id.* at 551. However, even under this Statute, attorney fees must still be reasonable and must have been incurred solely as a result of the noncompliance. See *Id.* at 551.

Here Judge Fitzgerald asked Attorney Smith “How much does it cost your client to come here to court today? ... And I don’t need the exact dollar, but can you ballpark, what does it cost your client to come to court to appear at this hearing” TT Status Hearing, December 12, 2025, pg. 41. To which Attorney Smith responded, “Several thousand dollars every time.” Going on to state “I would say \$2,000.” *Id.* at 41-42. The Court never required a sworn statement regarding attorney fees nor did they ask for an invoice. Without these documents the Circuit Court did not have enough information to find the fees were reasonable and incurred directly as a result of the pending motion. The Circuit Court erred by awarding these fees.

IV. The Circuit Court abused its discretion in granting Father additional parenting time given the child’s fear of Father and testimony by the child’s counselor that additional parenting time would not be in the child’s best interests.

All child custody determinations must be in the best interests of the child. SDCL § 25-4-45 allows the court to make decisions revolving around the custody, care, and education of children whenever necessary.

In awarding the custody of a child, the court shall be guided by consideration of what appears to be for the best interests of the child in respect to the child’s temporal and mental and moral welfare. If the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question. SDCL § 25-4-45.

The court as *parens patriae* of the children must insist that more be done when the children’s best interests are at stake. See *Williams v. Williams*, 425 N.W.2d 390, 393 (S.D. 1988). “It is the trial court’s duty to see that the children are protected at every turn. . . .” *Jeschke v. Wockenfuss*, 534 N.W.2d 602, 605 (S.D. 1995). “Our brightest beacon remains the best interests of the child.” *Zepeda v. Zepeda*, 2001 S.D. 101, 13, 632

N.W.2d 48, 53. When interests are balanced, "[t]he best interests of the child[] must always prevail." *In re W.G.*, 1999 S.D. 85, 22, 597 N.W.2d 430, 434; see *Jasper v. Jasper*, 351 N.W.2d 114, 117 (S.D. 1984) (stating "the welfare and best interests of the children are paramount to all other considerations").

"The best interests of the child [even] prevail over the noncustodial parent's privilege of visitation." *Lindley v. Lindley*, 401 N.W.2d 732, 736 (S.D. 1987). In most instances, "it will be in the best interests of children that they receive the love, affection, training, and companionship of their noncustodial parent." *Chicoine v. Chicoine*, 479 N.W.2d 891, 893 (S.D. 1992) (quoting *Roberts v. Roberts*, 22 Ohio App. 3d 127, 22 Ohio B. 328, 489 N.E.2d 1067, 1069 (Ohio 1985)). This is not always true, "where the evidence establishes that exercise of visitation will be harmful to the welfare of the children; in this event, the right of the noncustodial parent to visit with his children can be limited, or, under extreme circumstances, prohibited altogether." *Id.* (emphasis added) (quoting *Roberts*, 489 N.E.2d at 1069); see *In re Termination of Parental Rights of P.A.M.*, 505 N.W.2d 395, 398 (S.D. 1993) ("The court which granted the divorce and determined custody . . . may deny Father any visitation rights."). See also *Wolt v. Wolt*, 2010 ND 26, 778 N.W.2d 786, 799 (N.D. 2010) ("A non-custodial parent's visitation may be 'curtailed or eliminated entirely if it is likely to endanger the child's physical or emotional health.'" (quoting *Marquette v. Marquette*, 2006 ND 154, 719 N.W.2d 321, 324 (N.D. 2006)).

Ms. Torno previously testified about the current state of the relationship between Father and Kaelyn at the May 10, 2024 hearing. When asked about whether the two supper visits each week were detrimental to Kaelyn and Joseph's relationship, Ms. Torno

stated: “I’ve said this in this court before, I’m a firm believer that children need to have relationships with both sets of parents, or both parents, but the current state of this relationship is making it very difficult.” TT Motion Hearing May 10, 2024 pg. 38. Ms. Torno was also asked what could be done to improve the relationship between Kaelyn and Joseph she stated: “So what I believe that needs to happen is that the core issues—the issues that are unresolved, they occurred when she was really young—seven, eight years old—those are still unresolved. That is what is impacting this relationship, and Kaelyn feels like her dad has not done anything to change anything about those situations or to take accountability for that and that is the number one thing that is impacting this relationship.” TT Motion Hearing May 10, 2024 pg. 38-39. Throughout this matter, nothing has been done to require these issues to be addressed between Kaelyn and Joseph. Instead, the Court has ordered parenting time be increased without any regard for Kaelyn’s feelings and without any regard for the professional opinion of Ms. Torno. The current parenting time issues have been heavily litigated over the past year with no improvement. Both Joseph and Kaelyn have spoken very few words to each other throughout. The Court, instead of heeding the expert opinion of Ms. Torno, has endeavored to repair this relationship by increasing parenting time and sanctioning Krista. Neither decision has benefited the relationship between Joseph and Kaelyn and neither has resulted in the outcome that the Court is hoping for. Forcing a child to have more contact with a parent when they do not feel safe is not in that child’s best interests. Here it is having the exact opposite outcome where the relationship continues to decline.

The Circuit Court entered an oral Findings of Fact at the conclusion of the hearing on December 12, 2025. TT Status Hearing, December 12, 2025, pgs. 44-51. Judge

Fitzgerald referred to a letter from Dr. Perrenoud that had been entered into evidence on March 16, 2023. SR 2613. In this letter, Dr. Perrenoud opined that Krista had alienated the children from Joseph. *Id.* Dr. Perrenoud did not offer this opinion in a hearing where he could be cross-examined but instead drafted the letter to the Circuit Court wherein he states that he had not had any contact with the parties or the children in over nine months. *Id.* at 2. The fact that Dr. Perrenoud sent this correspondence after not having any contact with the parties in over nine months is very troubling and calls into question the credibility of his opinion.

During the time when Dr. Perrenoud was working with these parties, Melanie Torno was as well. SR 2593. Ms. Torno's previous testimony from this time directly contradicted Dr. Perrenoud's opinion. *Id.* Ms. Torno actually had contact with the children whereas Dr. Perrenoud based his opinion largely from conversations he had with Joseph. *Id.* The children were not even willing to speak to Dr. Perrenoud because they did not feel comfortable with him. *Id.* During this same time, the Honorable Kevin Krull presided over this matter and refused the request to grow Joseph's parenting time after hearing Dr. Perrenoud testify and found that there was not enough evidence to support a finding that the children had been alienated from Joseph. *Id.* Now, the current judge on this file, Judge Fitzgerald, has relied on hearsay from over two years ago to base his current decision to grow Joseph's parenting time. This is in error. Particularly when considering that Judge Krull found Dr. Perrenoud's position to lack credibility. *Id.*

Circuit Courts as triers of fact have wide discretion in assessing the credibility of witnesses. See *Mash v. Cutler*, 488 N.W.2d 642, 651 (S.D. 1992). Dr. Perrenoud testified in front of Judge Krull. *Id.* Judge Krull found that alienation was not occurring after

hearing Dr. Perrenoud's testimony and weighing the credibility of that testimony. *Id.* Dr. Perrenoud has never appeared in front of Judge Fitzgerald on this matter. In Judge Krull's Findings of Fact and Conclusions of Law that was filed on December 9, 2022 he outlined in detail what Dr. Perrenoud testified to. *Id.*, App 001-004. At the same hearing, the children's counselor, Ms. Torno testified. *Id.* Ms. Torno testified to the children feeling uncomfortable by Dr. Perrenoud. *Id.* at 003. She further testified that Dr. Perrenoud spoke badly about Krista in front of the children and that because of this the children would not speak to Dr. Perrenoud. *Id.* Ms. Torno also testified that she had not seen any evidence of parental alienation. *Id.* She testified that a change in custody would be detrimental to the children. *Id.* Judge Krull denied a request to change custody. *Id.* at 004. Judge Krull found that additional parenting time for Joseph would be counterproductive given the children's feelings. *Id.* For Judge Fitzgerald to go back and use a letter from Dr. Perrenoud to justify his change in parenting time is in clear error.

The Circuit Court did not take a balanced and systematic approach when applying the factors relevant to this proceeding. The Court is required to take a balanced and systematic approach when applying factors relevant to child custody proceedings. See *Roth v. Haag*, 2013 S.D. 48, 834 N.W.2d 337, 340. The Court must gauge the credibility of witnesses and review the traditional factors bearing on the best interests of the child. See *McCarty v. McCarty*, 2015 S.D. 59, ¶ 27, 867 N.W.2d 355, 363. The Circuit Court has ignored the expert testimony of Ms. Torno and has refused to give deference to the minor child's position. The Circuit Court has erred by granting Joseph more parenting time over the express objections of Kaelyn and her counselor Ms. Torno. The growth in

parenting time directly contradicts the evidence that has been received in this file for the past five years.

CONCLUSION

The Circuit Court has erred in sanctioning Krista for Kaelyn's actions. Kaelyn's refusal to speak to Joseph is not a willful violation of the Court Order by Krista and should not result in sanctions being imposed. The Circuit Court did not have enough evidence in the record to find that the \$2,000 in attorney fees was reasonable. The increase in parenting time is not in Kaelyn's best interests and will result in mental harm to Kaelyn. Krista respectfully requests that this Court reverse the Order of the Circuit Court and vacate the award for sanctions and remand this matter so that an order may be issued that is consistent with the best interests of the minor child.

Dated this 12th day of May, 2025.

Respectfully submitted,

SANDERSON LAW

/s/ Kelly J. Sanderson

Kelly J. Sanderson

Attorney for Appellant/Defendant

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kelly@sandersonlawsd.com

WAIVER OF ORAL ARGUMENT

Krista waives oral argument on this Appeal.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of May, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey Electronic Filing System, and further certifies that the foregoing document was

also served via Odyssey Electronic Filing System and mailed via U.S. Mail, postage prepaid thereon to:

Hollie Smith
Loos. Sabers and Smith, LLP
2834 Jackson Boulevard, Suite 201
Rapid City, SD 57702

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

SANDERSON LAW

/s/ Kelly J. Sanderson
Kelly J. Sanderson

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point font. This brief is 20 pages in length, not including the Appendix. The word processor used to prepare this brief indicates there are 5354 words in the body of this brief.

SANDERSON LAW

/s/ Kelly J. Sanderson
Kelly J. Sanderson

APPENDIX

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1. Findings of Fact and Conclusions of Law and Order.....	App. 001
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STATE OF SOUTH DAKOTA)
)
COUNTY OF MEADE :SS)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

JOSEPH D. LEFORS,)
)
Plaintiff,)
)
v.)
)
KRISTA M. LEFORS,)
)
Defendant.)

46 DIV 19-000008

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND ORDER**

FILED

DEC - 9 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

This action was initiated by the Plaintiff filing a Complaint for divorce in January of 2019. Trial was held on June 17 and 18, 2020. The Court entered its Findings of Fact and Conclusions of Law and its Decree of Separate Maintenance on April 6, 2021. Among other things, the Court ordered that the Defendant shall continue as primary custodian of the parties' children, subject to the Plaintiff's reasonable parenting time. Plaintiff appealed that decree. Multiple motions, affidavits, and other documents have been filed since then. The Court held motions hearings on December 21, 2021, and on March 8, 2022. The Court, having reviewed the file, having heard the testimony of the witnesses and the argument of counsel, does hereby enter the following:

FINDINGS OF FACT

1. That any Finding of Fact deemed to be a Conclusion of Law or any Conclusion of Law deemed to be a Finding of Fact should be appropriately incorporated in Findings of Fact and Conclusions of Law as the case may be.
2. The parties' relationship with each other is acrimonious, to say the least.
3. The Plaintiff's relationship with the parties' children is almost nonexistent. The Court has ordered parenting time for the Plaintiff, as well as counseling that involves the Plaintiff and the children, but the children refuse to spend time with their father. Typically, the Defendant drops off the children for visitation with their father, and the children ignore their father and start walking home. The Plaintiff has not been able to re-establish a

relationship with the children. The Plaintiff has accused the Defendant of intentionally alienating the children from him.

4. A significant part of the children's problem with the Plaintiff is that he is in a romantic relationship with the Defendant's sister. The Plaintiff lives with the children's aunt and cousins.
5. During the March 8, 2022 motions hearing, the Court met individually in camera with each of the children without the parties or their attorneys. The court reporter was present for each of the meetings, but no record of the meetings was made. The children's attitudes toward their father was consistent with the testimony of the parties and with the testimony of the other professional and lay witnesses. Neither child expressed any interest in ever establishing any type of relationship with their father. Each child mentioned the father's relationship with their aunt as the reason for their position.
6. Mark Perrenoud, Ph.D., a licensed psychologist from Psychological Associates of the Black Hills in Rapid City, testified at the December 21, 2021 hearing. This court had appointed Dr. Perrenoud to assist in this matter. Dr. Perrenoud has met with the Plaintiff and with the children.
7. Dr. Perrenoud stated that he believes that the Plaintiff has certainly done his part to increase the chances of his visits with the children to be successful.
8. Dr. Perrenoud believes that the children have been alienated against the Plaintiff, and that the Plaintiff's alcohol use and his dangerousness to the children has been overstated.
9. Dr. Perrenoud testified that the Defendant is probably the biggest cause of the alienation of the children against their father, and he called the level of alienation severe. He testified that he believes that the Defendant has not done everything that she could possibly do to facilitate a relationship between the children and the Plaintiff.
10. Dr. Perrenoud testified that, in order to stop the severe alienation by the Defendant, a reversal of primary custody is an option that should be considered.
11. Dr. Perrenoud testified that he did not believe that continued therapeutic counseling as an option for reunification is going to be beneficial at this point.
12. Dr. Perrenoud testified that the children should be informed that if they do not cooperate with parenting with their father, that they should be informed that their mother could be held in contempt of court.
13. Melanie Torno testified at the March 8, 2022 hearing. Ms. Torno has a master's degree and is a licensed professional counselor as well as Qualified Mental Health Professional and a Licensed Professional Counselor – Mental Health.

14. At the time of the March 2022 hearing, Ms. Torno had been the children's counselor for nearly a year.
15. Ms. Torno said that the children have told her that Dr. Perrenoud speaks badly about their mother. Kyden has said that he does not trust Dr. Perrenoud and will not speak to him. Kaelyn has said that she does not trust Dr. Perrenoud, and that she does not feel safe in the counseling sessions with Dr. Perrenoud.
16. Kyden has autism. Ms. Torno testified that the first step in having Kyden building a positive relationship with his father is that Kyden has to feel safe. The same is a requirement for Kaelyn also.
17. In order to make the children feel safe with their father, Ms. Torno stated, "We keep working in counseling. We keep doing baby steps. I would recommend, like I had said before, recommend small baby steps, moving into indoor McDonald's or whatever restaurant is available. Meet him for ice cream, 20 minutes, 30 minutes. Help the kids create lists of topics that they are comfortable with communicating about and not talking about issues that they're not ready to deal with."
18. Ms. Torno testified that she has not seen any parental alienation by the Defendant. She testified that the children have told her that their mom has been encouraging of their relationship with their father and has attempted to get them to have visits with him.
19. Ms. Torno testified that changing primary physical custody to the Plaintiff would be detrimental to the children. The children told Ms. Torno that if such a change was implemented, that they would run away.

Having made the foregoing Findings of Fact, the Court now enters the following:

CONCLUSIONS OF LAW

- 1) Any Finding of Fact or Conclusion of Law that more appropriately belongs in the other category shall be inserted in the appropriate category by this reference.
- 2) This Court has jurisdiction of the parties and the subject matter of this proceeding.
- 3) "Trial courts have broad discretion when considering matters of child custody and visitation." *Chicoine v. Chicoine*, 479 N.W.2d 891, 893 (S.D. 1992). "However, the trial court's exercise of discretion is not uncontrolled and must have a sound and substantial basis in the testimony." *Williams v. Williams*, 425 N.W.2d 390, 393 (S.D. 1988); *Kester v Kester*, 257 N.W.2d 731 (S.D. 1977).
- 4) The South Dakota Supreme Court in *Fuerstenberg v. Fuerstenberg*, 1999 SD 35, set forth the rules which it intended for trial courts to follow in South Dakota. In deciding the best interests of a child in a custody dispute, "the court must consider the child's temporal, mental and moral welfare." SDCL 25-5-10 (additional citations omitted). "In most

circumstances, it will be in the best interests of the children that they receive the love, affection, training, and companionship of their non-custodial parent.” *Weber v. Weber*, 529 NW2d 190 (SD 1995).

- 5) In this matter, the children’s relationship with their father has been damaged to the point that it is almost beyond repair. Dr. Perrenoud places a significant portion of the blame for this on the Defendant. In contrast, Ms. Torno does not believe the Defendant has deliberately alienated the children from their father. While this Court does not possess the expertise of either Dr. Perrenoud or Ms. Torno, and while it is a very close call, this Court does not find or conclude that there is sufficient evidence that the Defendant has engaged in parental alienation.
- 6) The Court concludes that changing custody to give the Plaintiff primary custody would be detrimental to the children. This Court also concludes that ordering additional parenting time with the Plaintiff would be counterproductive at this time.

Having made the foregoing Conclusions of Law, it is hereby

ORDERED that the Plaintiff’s Motion for Temporary Custody or in the Alternative Extended Parenting Time is hereby DENIED. It is further

ORDERED that the parties shall follow Ms. Torno’s recommendations for reintegration contained in Ms. Torno’s letter dated September 21, 2021 letter, which was received into evidence.

Dated this 8th day of December 2022.

BY THE COURT

Attest:
Rude, Jennifer
Clerk/Deputy




Kevin J. Krull
Circuit Court Judge

FILED

DEC - 9 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT



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

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

JOSEPH D. LEFORS,)
)
 PLAINTIFF,)
)
 v.)
)
 KRISTA M. LEFORS,)
)
 DEFENDANT.)

46DIV19-000008

**ORDER FOLLOWING
DECEMBER 12, 2024 HEARING**

A hearing was held on December 12, 2024, before the Honorable John Fitzgerald, Circuit Court Judge, at the Meade County Courthouse in Sturgis, South Dakota. Plaintiff, Joseph LeFors, personally appeared with his attorney, Hollie L. Smith. Defendant, Krista LeFors, personally appeared with her attorney Kelly Sanderson. The Court has considered the arguments of counsel at the hearing date referenced above, the entire record including the pleadings filed by both parties, prior testimony, admissible evidence, and the history of the custody issues before the Court.

1. Mother continues to willfully deny the parenting time Order and has had prior violations for the same and the Court has taken that into consideration.
2. Since the last Order entered by this Court on October 24, 2024, Father has been denied meaningful weekly visitations.
3. The Court's finding that Mother continues to willfully fail to comply with the court's visitation order satisfies SDCL 25-4A-5's statutory requirement of willful violation or noncompliance with the provisions of a visitation order. See *Hiller v. Hiller*, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548, 556. In addition to the Court's authority to issue sanctions under subsection (3), these findings are in the context of the Court's authority to impose "any other sanction appropriate to the facts and circumstances of the case", which the Court has carefully considered in light of the litigious nature of this matter and Father's continued efforts to seek Court intervention to have a relationship with his children. The Court finds that this sanction is imposed against Mother to seek compliance, as the Court believes at this juncture that is the most appropriate remedy.

IT IS HEREBY ORDERED Beginning December 12, 2024, Mr. LeFors shall have parenting time with Kaelyn in accordance with the South Dakota Parenting Guidelines; it is further

ORDERED Mr. LeFors shall have visitation with Kaelyn on December 13th after school at 3:15 p.m. to Monday December 16th at school drop off. And December 23rd at 8:00 a.m. until December 25th at 8:00 a.m.

ORDERED that Mr. LeFors, as parent 2 of the SD Parenting Guidelines, shall have the second half of Christmas break from December 31st at noon through January 8th at school drop off.

ORDERED that Mr. LeFors shall have Kaelyn every other weekend starting on January 10, 2025, and every Thursday overnight from 3:15 p.m., until school drop off Friday morning.

ORDERED, that trial courts may award attorney fees in cases involving divorce, support or alimony under SDCL § 15-17-38. The Court awards Mr. LeFors attorney's fees in the amount of \$2,000.00. The Court incorporates the Court's prior findings dated November 20, 2024 in support of this award and analysis for the same; and it is further

ORDERED that Ms. LeFors shall participate in counseling to address any issues or treatment that may be needed for her past and ongoing alienation towards Mr. Lefors and his daughter Kaelyn; it is further

ORDERED that all other prior Orders of this Court as it relates to sanctions, attorneys fees and obligations to pay the same are in full force and effect and are not modified by this Order.

2/5/2025 4:14:24 PM

BY THE COURT:


HONORABLE JOHN FITZGERALD
Circuit Court Judge

Attest:
Molstad, Stephany
Clerk/Deputy



IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

APPEAL NO. 31025

JOSEPH D. LEFORS,

Plaintiff and Appellee

vs.

KRISTA M. LEFORS,

Defendant and Appellant

Appeal from the

Fourth Judicial Circuit

Meade County, South Dakota

The Honorable John Fitzgerald, Circuit Court Judge

APPELLEE'S BRIEF

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PRELIMINARY STATEMENT

References to the settled record will be cited as "SR". References to Findings of Fact will be cited as "FF", and references to Conclusions of Law will be cited as "CL". References to documents in the Appendix will be cited as "App" followed by a page number. The Trial Court's Order following December 12, 2024 hearing and filed on February 5, 2025 which is the subject of this appeal will be referred to as the "Order". References to the transcript for the December 12, 2024 hearing will be cited as "Dec 12 Tr." or "Tr." Followed by the page and line number. Plaintiff/Appellee will be referred to as "Father" or "Joseph", and Defendant/Appellant will be referred to as "Mother" or "Krista".

JURISDICTIONAL STATEMENT

Krista appeals the Honorable John Fitzgerald's Order signed on February 5, 2025. Notice of Entry was filed on February 6, 2025. Krista served the Notice of Appeal on March 7, 2025. The Order executed is a final order of the Circuit Court and is appealable as a matter of right, pursuant to SDCL § 15-26A-3 and SDCL § 15-26A-7.

WAIVER OF ORAL ARGUMENT

Joseph waives oral argument for purposes of this appeal.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I. Whether the Circuit Court erred in finding that Krista could control their 15-year-old daughter's refusal to eat dinner with her father.

The Trial Court Correctly Found That Krista LeFors Could Control Her Daughter's Refusal to Eat Dinner with Her Father.

II. Whether the Trial Court erred in assessing attorney fees of \$2,000 without requiring an affidavit of attorney fees and without reviewing the same for reasonableness.

The Trial Court Did Not Abuse Its Discretion in Imposing Fees Against Mother.

III. Whether the Trial Court abused its discretion in granting Father additional parenting time given the child's fear of Father and testimony by the child's counselor that additional parenting time would not be in the child's best interest.

The Trial Court Did Not Abuse Its Discretion in Allowing Father Additional Parenting Time.

Relevant Law On All Issues:

Hiller v. Hiller, 2018 S.D. 74, ¶ 35, 919 N.W.2d 548, 558

SDCL § 25-4A-5

STATEMENT OF THE CASE

This is the fifth appeal involving the parties and the fourth addressing the issues of custody and parenting time. Joseph incorporates by reference the Statement of Facts and Statement of the Case set forth in Appellee's Brief filed on May 12, 2025 in Appeal No. 30766, 30910 and 30943. For the sake of judicial efficiency and to avoid repetition, to the extent the procedural posture is not restated herein.

The final order subject to this appeal stems from various sanctions and attorney's fees imposed against Krista from November 2023-December 2024 for failing to abide by the court ordered parenting time and failure to encourage a relationship between the minor child and Joseph.

On February 5, 2025, the court entered its findings and Order following the December 12th hearings. (SR2 129). The order imposed updated visitation granting Joseph parenting time in accordance with the South Dakota Parenting Guidelines, the second half of Christmas break, every other weekend starting January 10, 2025 as well as every Thursday overnight from 3:15 p.m., until school drop off Friday morning. The trial

court further awarded fees totaling \$2,000.00, and for Krista to complete counseling. Krista's appeal follows.

STATEMENT OF THE FACTS

Pursuant to SDCL § 15-26A-60(6), Appellee Joseph LeFors hereby incorporates by reference the factual background, arguments, legal positions, and supporting authorities set forth in full within his Appellee Briefs previously filed in Supreme Court Appeal Nos. 30766, 30910, and 30943. These prior filings and record provide important contextual support for the issues presented in the current appeal and collectively support the trial court's factual findings, imposition of sanctions, awards of attorney's fees, and modifications to parenting time challenged herein.

The Order on appeal arises from an Order following a status hearing held on December 12, 2024, concerning the ongoing custody and visitation issues between the parties. Following that hearing, the trial court issued its written Order on February 5, 2025, having taken the matter under advisement. (SR2 129).

In its ruling, the trial court found that Krista LeFors had continued to willfully and repeatedly deny Joseph LeFors court-ordered parenting time, notwithstanding prior findings of similar violations. (Order, p. 1). The court noted a pattern of noncompliance by Ms. LeFors that had deprived Mr. LeFors of consistent and meaningful visitation with the minor child, Kaelyn, and undermined the stability of the court-ordered parenting plan. (Order, p. 1).

To remedy this continuing denial of access, the court determined that Joseph would be provided Standard Parenting Guidelines and that his visitation schedule be modified to conform accordingly. (Order, p. 2). The court made clear that this remedy

was appropriate to reestablish a reliable and enforceable structure for parenting time, consistent with the child's best interests.

Further, the court addressed the issue of ongoing parental alienation by Krista citing its authority under SDCL § 25-4A-5, the court imposed a sanction requiring Ms. LeFors to participate in counseling to address and correct her alienating behaviors toward both Joseph and his daughter. The court specifically found this counseling necessary to protect the parent-child relationship and to deter continued interference of Joseph's parental rights. (Order, p. 1).

The court also considered the equitable allocation of litigation costs and fees that are suitable to be awarded to either party under violations of custody orders. The court found that Krista's repeated non-compliance and disregard of prior court orders justified a financial sanction. The court accordingly awarded \$2,000 in fees to Joseph (Order, p. 2). This amount was found reasonable and necessary in light of the time and expense incurred by Joseph to enforce his parenting rights. In issuing its ruling, the trial court emphasized that the sole reason that litigation was ongoing, was the actions and alienation that occurred on behalf of Krista.

STANDARD OF REVIEW

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

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

This standard of review reflects both the primacy of the court's fact-finding role and the Court's inclination to reverse only those findings that are clearly erroneous. *See McCollam v. Cahill*, 2009 S.D. 34, ¶ 6, 766 N.W.2d 171, 174. In this regard, "[t]he credibility of the witnesses, the weight to be accorded their testimony, and the weight of the evidence must be determined by the circuit court and we give due regard to the circuit court's opportunity to observe the witnesses and the evidence." *Id.* *Hiller v. Hiller*, 2018 S.D. 74, ¶ 22. "The circuit court's allowance or disallowance of attorney's fees is reviewed for abuse of discretion." *Terca v. Terca*, 2008 S.D. 99, ¶ 18, 757 N.W.2d 319, 324.

ARGUMENT

I. The Trial Court Correctly Found That Krista LeFors Could Control Her Daughter's Refusal to Eat Dinner with Her Father And Such Was Willful.

Appellee respectfully incorporates by reference the legal arguments, factual analysis, and supporting authorities previously submitted in Appellee's Brief filed in Supreme Court Appeal No. 30943, which addressed substantially the same legal and factual issues raised in the present appeal. In the interest of judicial efficiency and to avoid unnecessary duplication, Appellee adopts those arguments as though fully restated herein and supplements them with the following:

Under SDCL § 25-4-45, the paramount consideration in all matters involving custody and visitation is the best interests of the child. A child's best interests are served by maintaining strong, meaningful relationships with both parents unless exceptional circumstances exist. South Dakota jurisprudence consistently recognizes that the custodial parent bears an affirmative, ongoing duty to facilitate and support the child's relationship with the noncustodial parent.

In *Hiller v. Hiller*, 2018 S.D. 74, ¶ 28, 919 N.W.2d 548, the South Dakota Supreme Court affirmed that even passive resistance to court-ordered visitation—such as failing to encourage or require the child's participation—can amount to sufficient noncompliance to justify sanctions. The duty to comply is not discretionary, and the parent's subjective belief that visitation is not in the child's interest does not override binding court orders.

Here, the trial court found that Krista willfully and repeatedly interfered with Joseph's parenting time, resulting in a near-total breakdown of father-child contact. This deeply rooted alienation that has long been occurring, was a direct result of Kaelyn refusing to have any meaningful contact with Joseph. During the December 12, 2024 status hearing, the trial court made express findings from the bench. The court expressed concern over the loss of contact between Joseph and his special-needs child, Kyden, acknowledging that the child is autistic and has not had visitation with his father since July 2019. The court recognized that Joseph had made efforts to rectify this through motions and legal channels, stating:

- “That ship has sailed now and that's really unfortunate for the father because he's got this child... that's autistic, has got some special needs and I can only imagine how much a father would

want to have a relationship and have some role in his son's development..." (Tr. 46:24-47:6).

- "It certainly seems to me that Ms. LeFors, Krista, has these children a hundred percent of the time and that the only way to get any visitation at all is for Krista LeFors to be convinced that it is in her best interest and in the children's best interest that they, at least with Kaelyn, have some visitation with her dad because the clock is ticking." (Tr. 47:22-48:3).

The court further concluded that:

- "At the bottom and the root of a lot of these problems... is the mother's inability to deal with the issues that have occurred in the past... and that she needs to counsel with somebody to determine how she can best get over the issues that she has with the divorce from Joseph." (Tr. 48:25-49:7).

The court also noted the children's unusually intense rejection of their Father and their inability to acknowledge any positive qualities or past experiences with him, calling such behavior "quite unusual for children." (Tr. 45:25-46:7). Further supporting the long-standing alienation that had occurred where the children had fully adopted the ideologies of Mother.

These findings reflect the trial court's careful consideration of the history of this case and are well-supported by the record. The evidence established a pattern of obstruction that cannot be justified by mere claims of child reluctance or parental disagreement. As the Supreme Court stated in *Hiller*, "a custodial parent may not rely on the child's reluctance as an excuse to ignore visitation orders," especially where the custodial parent has contributed to or enabled that reluctance.

Permitting repeated violations when a parent's defense is that they cannot force a child to attend visitation, would not only harm the child's relationship with the noncustodial parent but also erode the authority of the court's orders and incentivize

similar misconduct. The court's ruling reinforces that litigants must obey lawful orders and that parenting time is not subject to unilateral veto.

The record here shows that Joseph consistently attempted to engage with his daughter and to assert his parenting rights, while Krista undermined those efforts either by failing to support visitation or by implicitly encouraging resistance. Such conduct not only violates the letter of the court's orders but runs contrary to the fundamental public policy favoring the child's access to both parents. The trial court was within its discretion to find that Krista had willfully violated her responsibilities and duties as a parent.

II. The Awarded Fees Were Within the Authority of the Trial Court.

Appellee respectfully references and incorporates the arguments, authorities, and citations previously set forth in Appellee's Brief filed in Appeal No. 30943, which addressed the same issues presented in this appeal. To avoid unnecessary duplication, Appellee relies upon and adopts those prior arguments herein, in addition to the arguments set forth below.

The trial court's award of \$2,000 to Joseph was a proper exercise of its statutory authority to impose sanctions under SDCL § 25-4A-5, which provides in relevant part:

"The court may impose any other sanction that the court deems appropriate to the facts and circumstances of the case for a violation of a custody or visitation decree."

The text of S.D. Codified Laws § 25-4A-5 allows the sanction of attorney fees for the express purpose of punishing the offender. Therefore, a circuit court's findings relating to necessity are sufficient so long as they adequately support the determination that the offending party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree. Even though this discrete statutory authority to sanction or punish a party is, strictly speaking, unconnected to the law of contempt, the

elements of civil contempt feature overlapping factual considerations. *Hiller v. Hiller*, 2018 S.D. 74, ¶ 1, 919 N.W.2d 548, 551.

Given the specific purpose underlying the statutory authority of S.D. Codified Laws § 25-4A-5, an inquiry into a party's relative worth, income, or liquidity is not required or relevant to this analysis. This approach is consistent with other cases in which the South Dakota Supreme Court has upheld an award of attorney fees as a sanction imposed pursuant to statutes or rules. *Hiller*, 919 N.W.2d 548, 551.

In the Order subject to this appeal, the trial court expressly referenced its prior findings as a basis for the award of attorney's fees. The long-standing pattern of noncompliance and the extensive record of litigation fully support the necessity and appropriateness of the sanction imposed against Krista without any further requirement of affidavits of attorneys fees or analysis. From the bench, the court made clear:

- “This action has been prolonged, made difficult, continues to come into court because of one person and that's the mother.”
(*Tr. 48:16-18*).

The court did not award attorney's fees as a fee-shifting remedy based on need or prevailing party status. Rather, the award was clearly intended as a sanction for Krista's willful misconduct and to deter continued violations of the parenting plan and court orders. In *Hiller v. Hiller*, such an award under SDCL § 25-4A-5 does not require an inquiry into a party's financial condition. “[A]n inquiry into a party's relative worth, income, or liquidity is not required or relevant to this analysis.” *Hiller*, 2018 S.D. 74, ¶ 1, 919 N.W.2d at 551. The trial court's findings adequately support the conclusion that Krista willfully failed to comply with the terms of the custody and visitation orders, justifying the sanction imposed.

III. The Expanded Parenting Time Was a Reasonable Remedy And in the Child's Best Interest.

Appellee respectfully references and incorporates the arguments, authorities, and citations previously set forth in Appellee's Brief filed in Appeal No. 30943, which addressed the same issues presented in this appeal. To avoid unnecessary duplication, Appellee relies upon and adopts those prior arguments herein, in addition to the arguments set forth below.

A trial court is in a better position to evaluate the facts, and its conclusions on a child's best interests will stand unless there is an abuse of discretion. *Price v. Price*, 2000 SD 64, P18, 611 N.W.2d 425, 430. Here, the trial court thoughtfully assessed the complex, ongoing issues surrounding parenting time, finding explicitly that previous visitation arrangements had consistently failed to achieve meaningful interactions between Joseph and his daughter, Kaelyn. Given the recurring unsuccessful visits—marked by Kaelyn's repeated refusal to engage despite being physically brought to visitation locations—a new, considerate approach was clearly warranted.

South Dakota law guarantees children “reasonable, uninterrupted companionship, society, and comfort of both parents” (SDCL 25-5-13) and authorizes the court to enter any order “consistent with the child’s best interest” (SDCL 25-4A-24). After hearing evidence that Kaelyn has not spent meaningful time with Father since July 2019 and that every recent visit ended with her fleeing while Mother pointed her toward a waiting vehicle, the court concluded that providing Joseph with South Dakota Parenting Guidelines would restore some level of progress and relief to him.

At the status hearing, the trial court expressly recognized the challenges and emotional barriers inherent in this case. Rather than continue to try and enforce approaches obviously not working, the court evaluated fairness and timely matters in determining a new approach. This arrangement was designed to provide Kaelyn and the father with meaningful interaction as to improve their relationship before Kaelyn turns 18.

Further supporting the reasonableness of the trial court's remedy is its thorough consideration of Joseph's demonstrated character and patience. At an earlier hearing on September 17, 2024, the court explicitly found Joseph to be "patient beyond the patience of many people," genuinely "committed to having some relationship with his daughter," and exhibiting "real strength of character" in consistently pursuing visitation despite ongoing obstacles and repeated disappointments (Sept. 17 Tr. 56:8–19). Joseph's persistent efforts underscored the genuine value and sincerity of his desire to rebuild this critically important parental bond, thereby fully justifying the court's decision to implement a visitation schedule designed specifically to encourage incremental, meaningful progress.

The court rejected Krista's repeated allegations that Joseph was a danger to the children, finding them unsupported by evidence. The trial court further undermined Krista's credibility and continued vindictive behavior towards Joseph crediting the prior findings of appointed expert psychologist, Dr. Perrenoud:

- "It is my opinion that this is a case of parental alienation by Ms. LeFors against Joseph. I believe he has much to offer the children and is making strong efforts to try to reestablish a relationship with both of them. He has been open and tried recommendations I have made to him with regards to how to approach the children. It is in the best interest of Kyden and Kaelyn that they have time with

him. My reasons for concluding that this is a case of parental alienation include that Ms. LeFors is clear in her allegations that Joseph was abusive to her and the children, although they tell me they do not remember any specific instances of mistreatment on their own. Ms. LeFors has told the children their father is dangerous and has a substance abuse problem, both for which there is no clear evidence.” (*Tr.45:5-20*)

- “This business of him being dangerous, I just haven’t seen anything like that... If he can be trusted with... national security... I just don’t see how we can make the argument that he’s somehow dangerous to his children. He’s not.” (*Tr. 49:15-23*).

Although Dr. Perrenoud did not formally recommend a custody change at that time, he noted that a reversal “warrants consideration” and concluded that Joseph “could build a relationship with them without their mother’s intrusion.”(*Tr. 46:12-20*)

The court emphasized that Joseph had exhausted all voluntary and conciliatory avenues, even relinquishing rare visitation time to accommodate Kaelyn’s vacation, which the court noted “speaks volumes of him.” (*Tr. 47:15-21.*)

Given the entirety of the factual record and the careful reasoning articulated by the trial court, the expanded visitation arrangement is clearly within the bounds of judicial discretion. It represents a measured, compassionate effort to repair a vital family relationship, grounded explicitly in Kaelyn’s long-term best interests.

CONCLUSION

The trial court’s findings are well-supported by the evidence, consistent with applicable law, and fall squarely within its discretion. The imposition of sanctions and modification of parenting time were necessary and lawful responses to Krista Lefors’s continued noncompliance and the resulting harm to the father-daughter relationship.

For these reasons, Appellee respectfully requests that this Court affirm the trial court's decision in its entirety.

Dated this 26th day of June, 2025.

LOOS, SABERS & SMITH, LLP

/s/ Hollie L. Smith

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of June, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey E-Filing System, and further certifies that the foregoing document was also mailed via U.S. Mail, postage prepaid thereon, to:

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

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

/s/ Hollie L. Smith

HOLLIE L. SMITH

CERTIFICATE OF COMPLIANCE

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

The foregoing brief is 14 total pages in length. It is typed in proportionally spaced typeface in Times New Roman 12 point. The word processor used to prepare this brief indicates that there are a total of 4093 words, and 21,745 characters (no spaces) in the body of the Brief.

/s/ Hollie L. Smith

HOLLIE L. SMITH

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Supreme Court Appeal No. 31025

JOSEPH D. LEFORS,

Plaintiff and Appellee,

vs.

KRISTA M. LEFORS,

Defendant and Appellant.

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

THE HONORABLE JOHN FITZGERALD
CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

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Notice of Appeal filed March 7, 2025

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STATEMENT OF THE FACTS

Krista incorporates by reference the Statement of Facts set forth in Appellant's Briefs and Reply Briefs in Appeal No. 30910, 30766, 30943 and the Appellant's Brief filed in Appeal No. 31025.

REPLY

Krista respectfully requests that the arguments set forth in Appellant's Brief and Appellant's Reply Brief filed in Appeal No. 30943 be incorporated herein, as the issues presented mirror the arguments presented in this current Appeal. Appellant relies upon and adopts these prior arguments in addition to those set forth in this Reply Brief.

The Circuit Court has abused its discretion in ordering additional parenting time for Joseph; "[a]n abuse of discretion occurs in a child custody proceeding when the trial court's review of the traditional factors bearing on the best interests of the child is scant or incomplete." *Flint v. Flint*, 2022 S.D. 27, ¶ 33, 974 N.W.2d 698, 704. Here, the Circuit Court has made no express findings related to the *Fuerstenberg* factors and importantly has justified its Findings on an outdated letter from Dr. Perrenoud which was sent to the previous Judge on this file. The Circuit Court has made scant findings on why this change in parenting time is consistent with the best interests of the child.

The letter referenced in the Circuit Court's Findings was a letter sent to Judge Kevin Krull and the parties. SR 2613. The Circuit Court's oral Findings were a recitation of this letter. When Judge Fitzgerald opined that "because with the passage of time, you can kind of judge things with hindsight, so I'm reading from it." TT Status Hearing December 12, 2024, pg. 45. This letter has no bearing on this case at this time. The letter is severely outdated and the use of it to justify a current position is an abuse of discretion

and is in clear error. Judge Kevin Krull presided over this matter at the time that Dr. Perrenoud was involved with this family and did not find Dr. Perrenoud's opinions to be persuasive given the totality of the evidence presented and given the testimony of the child's counselor, Melanie Torno, who was also actively working with the children at the time. SR 2593.

Judge Krull received testimony from Dr. Perrenoud at the hearings held on December 21, 2021 and March 8, 2022. SR 2593. Following these hearings, Judge Krull made Findings and Conclusions that Dr. Perrenoud's testimony was not sufficient to find parental alienation or to warrant a change in custody. *Id.* at 4. Judge Krull later received the letter from Dr. Perrenoud on March 10, 2023. SR 2613. This is the letter Judge Fitzgerald has relied upon in making his current decision. TT Status Hearing December 12, 2024, pg. 44-51. This letter begins by stating that "My last contact with the children as in July 2022 and I had one contact with Mr. LeFors since then, so I cannot speak to any changes over the past nine months." SR 2613. Dr. Perrenoud then goes on to restate his position on this case. *Id.* Judge Krull who was presiding at this time gave no weight to this letter and did not change his previous rulings. It is in great error for Judge Fitzgerald now to rely on this letter as a justification for his current rulings. This letter is hearsay. No opportunity was afforded to Krista to cross examine Dr. Perrenoud related to this letter. At the time that this letter was sent Dr. Perrenoud's last contact with the children was in approximately June of 2022. Two and half years have gone by since Dr. Perrenoud has had any contact with this family. This is in clear error for Judge Fitzgerald to rely on this letter out of context to justify his current ruling.

Furthermore, the Court had recently heard testimony from Ms. Melanie Torno who has continued to see the minor child in this matter. Ms. Torno had testified before Judge Fitzgerald at the May 10, 2024 hearing. TT Motion Hearing May 10, 2024 pg. 38. Ms. Torno testified about the current state of the relationship between the minor child and Joseph. *Id.* Yet, her expert opinions have been completely ignored by the Circuit Court.

Appellee relies on Judge Fitzgerald finding that “This business of him being dangerous, I just haven’t seen anything like that. I remember I did the divorce trial and I thought I heard evidence that Joseph was at the time a mechanic in the US Air Force and that he was working on these jet engines that are involved in national security, US security, national security. And so if he can be trusted with those matters that are obviously of great importance, I just don’t see how we can make the argument that he’s somehow dangerous to his children. He’s not.” TT Status Hearing December 12, 2024, pg. 49. Yet, going back to the start of this case, Judge Kevin Krull found there had been domestic violence in the home perpetrated by Joseph, which was witnessed by the minor children. SR 813 at 5-6. During the first trial held in this matter the children’s previous counselor Adria Hagg went so far as to recommend supervised parenting time for Joseph due to the children’s fear of Joseph. *Id.* at 5. Judge Fitzgerald’s statement that there has been no abuse fails to recognize the long and settled evidence in this matter and directly contradicts the children’s experiences with Joseph. The Court has not ruled consistent with the best interests of the minor child.

CONCLUSION

The Circuit Court has erred in imposing sanctions against Krista for the minor child’s unwillingness to speak to Joseph and has erred by finding that Kaelyn’s refusal to

participate in parenting time constitutes a willful violation by Krista. Krista has complied with the Court Order. The Circuit Court has erred by awarding attorney fees without requiring a detailed invoice to assess the reasonableness of the fees. The Circuit Court has further erred by granting Joseph more parenting time. Krista respectfully requests that the Order of the Circuit Court be reversed.

Dated this 25th day of July, 2025.

Respectfully submitted,

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/s/ Kelly J. Sanderson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of July, 2025, she electronically filed the foregoing documents with the Clerk of the Supreme Court via Odyssey Electronic Filing System, and further certifies that the foregoing document was also served via Odyssey Electronic Filing System and mailed via U.S. Mail, postage prepaid thereon to:

Hollie Smith

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Rapid City, SD 57702

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

/s/ Kelly J. Sanderson

Kelly J. Sanderson

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), the undersigned hereby states that the foregoing brief is typed in proportionally spaced typeface in Times New Roman 12-point font. This brief is 4 pages in length, not including the Appendix. The word processor used to prepare this brief indicates there are 1015 words in the body of this brief.

/s/ Kelly J. Sanderson
Kelly J. Sanderson