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2 IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA  
3

4 EMMANUEL ELLIS OSEGUERA,

Appeal No: 31298

5 APPELLANT, PRO SE

6 V.

APPEAL FROM THE CIRCUIT COURT OF  
THE FIFTH JUDICIAL CIRCUIT, BROWN  
COUNTY

7 MADISON MAE CORDIE,

CASE NO. 06-DIV-22-74

8 APPELLEE.,  
9

10 APPELLANT'S BRIEF

11 Submitted by:

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17

18 IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

19 (Appeal from the Fifth Judicial Circuit, Brown County)

20 The Honorable Rachel Dvorak, Presiding Judge  
21  
22  
23  
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27

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

JAN 29 2026

*Shirley A. Johnson Legal*  
Clerk

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## STATEMENT OF THE ISSUES

1. Whether the trial court erred by using criminal records outside the evidentiary record, in violation of judicial canons and constitutional due process.
2. Whether the judge engaged in judicial misconduct by accepting false statements and improper ex parte communications from opposing counsel.
3. Whether the judge displayed actual bias and prejudged Appellant's case, justifying reassignment.
4. Whether the record supports denial of the parenting plan and supervised visitation, despite no allegations of abuse, no assessment findings, and no CPS or DSS involvement.
5. Whether Appellant is entitled to immediate implementation of the agreed-upon parenting plan and make-up parenting time.
6. Whether judicial conduct in this case raises systemic constitutional violations requiring reversal and supervisory relief.

1 STATEMENT OF THE CASE

2  
3 Appellant Emmanuel Ellis Oseguera appeals from an order issued by the Hon.  
4 Judge Rachel Dvorak of the Fifth Judicial Circuit, Brown County, South Dakota, which denied  
5 Appellant unsupervised parenting time with his children and refused to implement a mutually  
6 agreed parenting plan. The court made this determination despite the absence of any criminal  
7 conviction, abuse finding, failed assessment, or expert testimony against the Appellant.  
8  
9

10 The proceedings below involved a series of procedural and constitutional  
11 violations that deprived Appellant of due process and fundamental fairness. Specifically:  
12  
13

14 The trial judge accessed criminal files outside of the record, acting as an  
15 investigator, prosecutor, and witness, in direct violation of In re Murchison, 349 U.S. 133 (1955),  
16 and judicial canons.  
17  
18

19 Opposing counsel made repeated misrepresentations to the court, including claims  
20 about assessment completion, which were refuted by documents from Lutheran Social Services  
21 (LSS).  
22  
23

24 The court ignored undisputed documentation that Appellant had completed and  
25 paid for the assessment in full and had satisfied all conditions.  
26  
27

1           The court relied on dismissed allegations, ex parte communications, and improper  
2 interpretations of LSS protocols to deny visitation.  
3

4  
5           The court failed to make any formal findings of abuse or parental unfitness.  
6

7           Appellant was denied the opportunity to cross-examine or challenge the factual  
8 basis for the denial of rights.  
9

10  
11           Appellant timely filed his Notice of Appeal, citing over 50 pages of documented  
12 legal and procedural errors, and now respectfully submits this Supreme Court brief,  
13 incorporating that record in full and further analyzing the errors committed.  
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## STATEMENT OF THE FACTS

Appellant Emmanuel Ellis Oseguera is the biological father of two young children, Roman Bo Oseguera and Summer Grace Oseguera, born of the parties' prior relationship. After a divorce proceeding, Appellant and Appellee Madison Cordie jointly submitted a proposed parenting plan granting Appellant regular unsupervised parenting time.

Despite the absence of any active criminal case, the trial court sua sponte denied implementation of the plan. In doing so, the court relied on the following improper sources:

- Criminal records from a separate matter in which Judge Dvorak did not preside, violating her judicial obligations under Canon 2 and the precedent set in *Caparros v. Massey Court Co.*, 565 U.S. 868 (2009).
- Unsupported allegations by Petitioner and her attorney, which were never adjudicated, corroborated, or introduced through evidence.
- Ex parte email communications from Attorney Jeffrey Banks to LSS and the court, containing false claims about Appellant's assessment status.
- Mischaracterization of LSS program protocols, falsely suggesting that Appellant had not complied when LSS documentation confirmed otherwise.

1  
2 The trial court's ruling also reflected outright bias. For example, prior to any  
3 evidence being submitted, Judge Dvorak made the following statement on the record:  
4

5  
6 "I find it difficult to believe that no treatment would be recommended."  
7

8 This demonstrates that Judge Dvorak had already formed an opinion, violating  
9 Appellant's right to an impartial tribunal.  
10

11  
12 In addition, the judge incorrectly implied that Appellant had not completed the  
13 required assessments, even though:  
14

15 Appellant paid for and completed the LSS assessment.  
16

17  
18 LSS issued a letter confirming his participation.  
19

20 Appellant attended all court-ordered visitation.  
21

22  
23 Still, the court issued a ruling that imposed conditions not required by statute,  
24 misrepresented LSS policy, and ignored constitutional protections.  
25

26 [Documented in "Notice Of Appeal To The Supreme Court Of South Dakota (06-  
27 DIV-22-74)]

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1 SUMMARY OF THE ARGUMENT

2  
3 The trial court committed a series of grave errors that require reversal under  
4 South Dakota and federal law. Appellant was denied basic due process, equal protection, and  
5 access to a fair tribunal. Without a single abuse finding, assessment failure, or statutory violation,  
6 Appellant's rights were restricted based on unverified allegations and improper communications.  
7 Judge Dvorak's actions not only violated Canon 2 of the South Dakota Code of Judicial Conduct,  
8 but they also stripped Appellant of fundamental parental rights.  
9  
10

11  
12 Moreover, opposing counsel, Attorney Jeffrey Banks, engaged in a pattern of  
13 unethical and improper conduct. He submitted false information regarding the LSS assessment,  
14 interfered with program officials, and contributed to judicial confusion. The judge accepted and  
15 relied upon those falsehoods without requiring evidence or providing Appellant an opportunity to  
16 refute the claim. The facts of this case do not merely reflect judicial oversight—they reflect  
17 systemic misconduct, ex parte communication, and constitutional violations. The South Dakota  
18 Supreme Court must act to reverse these rulings and restore faith in the integrity of the legal  
19 system.  
20  
21

22 Appellant has complied with every directive: completed all assessments,  
23 satisfied all program requirements, attended supervised visits, and filed every document without  
24 the benefit of counsel. He respectfully seeks reversal of the trial court's order, immediate  
25 implementation of the parenting plan, and makeup time for the harm caused to the children.  
26

27 Financial inability to produce printed transcripts—due to costs exceeding \$600—should not  
28  
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1 deprive Appellant of justice, especially when the full record has been documented in motions,  
2 exhibits, and evidence already submitted to the trial court. The rights of children, the  
3 constitutional rights of a father, and the integrity of South Dakota's judiciary demand full  
4 Supreme Court review. This is not only about Appellant—it is about whether family courts in  
5 this state will be held to the law.  
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ARGUMENT

**I. JUDGE DVORAK VIOLATED DUE PROCESS BY ACCESSING  
CRIMINAL RECORDS NOT IN EVIDENCE**

The right to due process of law is enshrined in the Fourteenth Amendment to the U.S. Constitution and Article VI, § 2 of the South Dakota Constitution. A fair trial requires that a judge decide a case solely on the evidence introduced by the parties — not on independent investigations or documents outside the record.

In this case, Judge Dvorak relied on criminal records from a separate matter over which she did not preside and which were never entered into the record. This conduct violated the rule established in *In re Murchison*, 349 U.S. 133 (1955), where the U.S. Supreme Court held that a judge cannot serve as both a fact-finder and investigator without compromising neutrality.

The judge's conduct also violated Canon 2 of the South Dakota Code of Judicial Conduct, which requires that a judge "perform the duties of judicial office impartially, competently, and diligently" and "refrain from conduct that would appear to a reasonable person to be biased." By referencing external records not entered into the case, Judge Dvorak acted as an investigator rather than an impartial adjudicator.

Furthermore, the records she accessed involved dismissed allegations and non-convictions, which have no evidentiary value and should not have been considered. In *Caparros*  
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1 v. Massey Court Co., 565 U.S. 868 (2009), the Supreme Court reaffirmed that reliance on  
2 unauthenticated or irrelevant documents to reach a judicial conclusion violates both procedural  
3 and substantive due process.  
4

5  
6 There is no statutory authority under South Dakota law that permits a judge to  
7 incorporate external records without affording the parties notice, opportunity to object, and  
8 opportunity to rebut. Appellant was never notified of the specific criminal records relied upon,  
9 was never shown the documents, and was never given the opportunity to object.  
10

11  
12 The damage from this violation is not theoretical. The judge made explicit  
13 comments reflecting her reliance on those records. As stated earlier, she commented, "I find it  
14 difficult to believe that no treatment would be recommended," demonstrating that she had  
15 formed conclusions based on documents not presented in court.  
16

17  
18 These actions prejudiced Appellant and rendered the proceedings constitutionally  
19 infirm. The denial of unsupervised parenting time — which should only occur in extreme  
20 circumstances under SDCL § 25-5-7.1 — was imposed without findings, without evidence, and  
21 without lawful process.  
22

23  
24 This violation alone justifies reversal.  
25

1 II. THE TRIAL COURT SUBSTITUTED ALLEGATIONS FOR EVIDENCE IN  
2 CONTRAVENTION OF SOUTH DAKOTA LAW  
3

4  
5 The Circuit Court's decision in this case represents a grave departure from  
6 foundational evidentiary principles. The South Dakota Supreme Court has long held that custody  
7 and visitation determinations must be based on "actual evidence in the record" rather than  
8 unsupported assertions or generalized concerns. Yet, Judge Dvorak repeatedly relied on  
9 dismissed allegations and vague fears from the Appellee and her counsel without conducting an  
10 evidentiary hearing or requiring sworn testimony.  
11

12  
13 **A. The Court Treated Dismissed or Unsubstantiated Allegations as Fact**  
14

15  
16 No evidence of abuse, neglect, or unfitness was ever entered into the record  
17 against Appellant Emmanuel Oseguera. The Appellee's attorney, Jeffrey Banks, repeatedly made  
18 claims — often via email or ex parte communications — suggesting that Appellant was  
19 "dangerous," "non-compliant," or "refusing to take responsibility." These assertions were not  
20 only unproven but were factually refuted by documents submitted to the court, including:  
21

22  
23 LSS Documentation confirming Appellant completed the court-ordered parenting  
24 assessment and that no additional treatment was recommended.  
25

26  
27 Kids Konnection Attendance Logs showing consistent compliance with visitation  
28 terms.

1  
2 Payment Receipts and Communication Logs demonstrating Appellant's good  
3 faith participation and financial responsibility.  
4

5  
6 Nonetheless, the judge's orders were premised on the allegations themselves  
7 rather than admissible proof. South Dakota Codified Law requires that decisions restricting  
8 parenting rights must be supported by evidence that the parent "has engaged in conduct  
9 detrimental to the child's welfare." See SDCL § 25-5-7.1. The record lacks such findings  
10 entirely.  
11

12  
13 **B. The Court Refused to Hold an Evidentiary Hearing Despite Factual**  
14 **Disputes**  
15

16  
17 Appellant repeatedly requested a hearing to challenge the factual basis of the  
18 visitation restrictions. These requests were denied without explanation, even though opposing  
19 counsel's claims conflicted directly with the documentary evidence.  
20

21  
22 This constitutes a violation of Appellant's right to a fair hearing. In *Nicholson v.*  
23 *Dell*, 2017 S.D. 60, the South Dakota Supreme Court held that when material facts are in dispute  
24 in custody matters, "the circuit court is required to conduct a hearing and receive testimony and  
25 evidence before issuing findings." Failure to do so renders the decision arbitrary and reversible.  
26

1                   **C. The Judge Relied On Misrepresentations From Counsel Instead of**  
2 **Verified Evidence**  
3

4  
5                   Opposing counsel falsely claimed, in communications directly to LSS and later to  
6 the court, that Appellant had “refused” to participate in assessment and had “not taken any  
7 accountability.” These claims are directly contradicted by:

8  
9                   The official LSS letter stating Appellant “completed the assessment and no  
10 further services were recommended.”  
11

12  
13                  The fact that Appellant paid the \$115 assessment fee and attended all  
14 appointments.  
15

16  
17                  Text messages and email threads filed into the record showing Appellant actively  
18 contacting providers to remain compliant.

19                  Despite this, the court made findings based on these misstatements without giving  
20 Appellant an opportunity to rebut them, thereby denying procedural fairness.  
21

22                   **D. The Use of Hearsay and Ex Parte Submissions Undermines Public**  
23 **Confidence**  
24

25  
26                  The judge’s willingness to rule on the basis of unsworn statements, hearsay, and  
27 private communications from Appellee’s attorney (without disclosure or an opportunity for  
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1 response) undermines the credibility of the judicial process. In family law, where credibility and  
2 trust are paramount, decisions must be made on a transparent record.  
3

4  
5 This Court should reverse the trial court's findings and remand with instructions  
6 that no future visitation or custody determination be made without admissible evidence, full  
7 hearings, and equal access for both parties.  
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1                   **III. PETITIONER'S COUNSEL ENGAGED IN IMPROPER CONDUCT**  
2 **INCLUDING FALSE STATEMENTS AND EX PARTE COMMUNICATIONS**  
3

4  
5           The trial court's proceedings were tainted by a pattern of improper conduct by  
6 attorney, Jeffrey Banks, including repeated misrepresentations to the court, ex parte  
7 communications with third-party service providers, and a blatant disregard for procedural  
8 fairness. These actions materially impacted the outcome and violated both the letter and spirit of  
9 South Dakota's legal and ethical standards.  
10

11  
12                   **A. Opposing Counsel Engaged in Ex Parte Contact With Court-Affiliated**  
13 **Programs**  
14

15           Attorney Jeffrey Banks initiated communications with Lutheran Social Services  
16 (LSS), the parenting assessment provider, and attempted to influence the interpretation of  
17 Appellant's compliance. Emails included in the record demonstrate that:  
18

19  
20           Attorney Banks emailed LSS without copying Appellant or giving him an  
21 opportunity to respond.  
22

23  
24           Banks made assertions to LSS that Appellant had not taken accountability or had  
25 refused services — assertions that were demonstrably false.  
26

1 The results of these communications were cited in court hearings by Judge  
2 Dvorak as justification for denying parenting time, even though they were not part of any  
3 evidentiary hearing.  
4

5  
6 Such contact is in direct violation of the South Dakota Rules of Professional  
7 Conduct and the Code of Judicial Conduct, which prohibits attorneys from using unauthorized  
8 channels of influence or engaging in communication that undermines neutrality.  
9

10  
11 According to the Commentary on Canon 3(B)(7) of the South Dakota Code of  
12 Judicial Conduct:  
13

14 "A judge shall not initiate, permit, or consider ex parte communications or  
15 consider other communications made to the judge outside the presence of the parties outside the  
16 presence of the parties or their lawyers concerning a pending or impending matter, except as  
17 authorized by law or court rule."  
18

19  
20 Despite this clear prohibition, the trial court permitted Attorney Banks' unsolicited  
21 and undocumented communications with LSS to shape the court's understanding of Appellant's  
22 compliance—without Appellant ever being afforded an opportunity to challenge the accuracy of  
23 those claims in open court or through evidentiary hearing.  
24

25  
26 **B. False Statements Were Made to the Court and Not Sanctioned**  
27

1 In addition to ex parte contact, opposing counsel repeatedly made false and  
2 misleading claims in open court and in filings, including:  
3

4  
5 Claiming Appellant had not completed the LSS assessment, even though  
6 documented proof—including payment receipts and assessment confirmation letters from LSS—  
7 was entered into the record.  
8

9  
10 Asserting that Appellant was “terminated” from services at LSS, when in fact the  
11 assessment was completed and no recommendation for treatment was made.  
12

13 Implying that LSS refused further involvement due to Appellant’s conduct, which  
14 LSS itself never stated. In fact, LSS stated that it does not provide treatment services, which  
15 contradicts the court’s reliance on “treatment refusal” as a ground for denying parenting time.  
16

17  
18 These statements are not just inaccurate—they are deliberate misrepresentations  
19 that misled the court and directly contributed to the denial of Appellant’s constitutional parenting  
20 rights.  
21

22  
23 South Dakota law, under *Nicholson v. Dell*, 2017 S.D. 60, reaffirms that attorney  
24 misconduct—including deception of the tribunal—is a ground for judicial sanction or reversal  
25 when it has a material effect on the outcome. The court’s failure to admonish or even question  
26 the accuracy of Banks’ assertions, in light of documented counter-evidence, undermines the  
27 legitimacy of the entire proceeding.  
28

1  
2  
3 **C. Judicial Reliance On These Misrepresentations Amounted To Structural**  
4 **Error**

5  
6 By accepting, referencing, and relying on these unverified and false claims from  
7 opposing counsel, the trial court effectively denied Appellant the ability to challenge accusations,  
8 introduce rebuttal evidence, or exercise his right to procedural fairness. This type of error is  
9 structural in nature because it affects the basic framework of the trial and the adversarial process  
10 itself.  
11

12  
13 As the U.S. Supreme Court held in *In re Murchison*, 349 U.S. 133 (1955), a  
14 proceeding in which "one man is accuser, witness and judge" violates fundamental due process.  
15 Here, the court allowed opposing counsel to functionally occupy all three roles—with no  
16 evidentiary hearing, no testimony, and no challenge permitted by the Appellant.  
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1                   **IV. The Judge Demonstrated Actual Bias And Failed To Recuse Herself**  
2 **Despite Repeated Judicial Misconduct**

3                   **A. Legal Standard: Judges Must Avoid Both Actual and Apparent Bias**  
4

5  
6                   The South Dakota Code of Judicial Conduct, Canon 2, requires that “a judge shall  
7 perform the duties of judicial office impartially, competently, and diligently.” A judge must  
8 disqualify herself in any proceeding in which her impartiality “might reasonably be questioned.”  
9 including when:  
10

11  
12                  The judge has personal knowledge of disputed evidentiary facts.  
13

14                  The judge has a bias or prejudice concerning a party.  
15

16  
17                  The judge has served as an investigator or prosecutor in the matter.  
18

19                  In this case, the Honorable Judge Rachel Dvorak repeatedly demonstrated actual  
20 bias and failed to uphold her duty to recuse herself despite multiple triggers requiring it. Her  
21 statements, conduct, and rulings reflect not only an appearance of partiality but actual  
22 prejudice and misconduct.  
23

24  
25                  **B. The Court Prejudged Appellant Before Evidence Was Entered**  
26

1 The most direct example of prejudgment came when Judge Dvorak, without any  
2 testimony or expert recommendation, said on the record:

3  
4  
5 "I find it difficult to believe that no treatment would be recommended."  
6

7 This statement reveals that Judge Dvorak had already formed a belief that  
8 Appellant required treatment—before seeing any evidence, before hearing from LSS, and despite  
9 LSS's own documentation stating no recommendation for treatment was made. This prejudgment  
10 violates Appellant's right to a neutral and detached magistrate under Tumey v. Ohio, 273 U.S.  
11 510 (1927).  
12

13  
14 **C. Judge Dvorak Accessed Outside Information and Acted as Her Own**  
15 **Witness**  
16

17  
18 As shown in prior sections and documented in the original Notice of Appeal.  
19 Judge Dvorak accessed and relied upon information from a separate criminal case—one in which  
20 she did not preside—and used that information to form opinions about Appellant's credibility  
21 and parenting suitability. This action constituted judicial misconduct and a due process violation  
22 for the following reasons:  
23

24  
25 Appellant was not permitted to object to or challenge the use of these outside  
26 records.  
27

1 The records were not entered into evidence and were not subject to adversarial  
2 testing.

3  
4  
5 The court failed to provide notice or disclose its intent to use them before issuing  
6 its ruling.

7  
8 When a judge becomes a source of evidence in the matter before her, the  
9 constitutional framework collapses. As the U.S. Supreme Court in *In re Murchison* emphasized,  
10 "no man can be a judge in his own case." Here, Judge Dvorak essentially became a fact witness  
11 to her own reasoning, relying on private, non-evidentiary documents and records that were never  
12 entered into the trial record.  
13

14  
15 **D. The Cumulative Conduct Requires Disqualification and Reversal**  
16

17  
18 Whether viewed in isolation or as a pattern, Judge Dvorak's conduct—accepting  
19 false representations from counsel, conducting her own investigation, substituting her own  
20 assumptions for LSS findings, and openly prejudging the case—satisfies the legal threshold for  
21 disqualification and reversal. Her failure to recuse herself, when reasonable questions of  
22 impartiality arose, undermines the integrity of the judicial system and deprived Appellant of a  
23 fair hearing.  
24

1 Appellant respectfully requests that this Court not only reverse the lower court's  
2 decision, but also issue supervisory guidance to prevent future litigants from enduring similarly  
3 compromised proceedings. Judicial neutrality is not aspirational—it is a constitutional mandate.  
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1                   **V. No Evidence Supported the Denial of Parenting Time; Court Relied on**  
2 **Dismissed Allegations and Unsupported Claims**

3                   **A. The Standard for Denying Parenting Time Requires a Clear Showing of**  
4 **Harm or Unfitness**

5  
6  
7                   Under South Dakota law, specifically SDCL § 25-5-7.1, both parents are entitled  
8 to reasonable parenting time unless there is a showing—by clear and convincing evidence—that  
9 contact would seriously endanger the child's physical, mental, or emotional health. This burden  
10 was not met. In fact, no credible evidence was presented to justify a limitation of Appellant's  
11 rights, and no finding of harm, abuse, or neglect was ever made.  
12

13  
14                   The trial court, instead of following this legal framework, substituted speculation  
15 and mischaracterized documents from outside the record. This led to the unconstitutional  
16 deprivation of Appellant's parenting time based on:  
17

18  
19                   Dismissed allegations never proven in court.  
20

21                   Hearsay assertions from Appellee's counsel unsupported by testimony or  
22 documentary evidence.  
23

24  
25                   Fabricated claims that Appellant failed to comply with LSS assessments, which  
26 were directly refuted by LSS documentation and payment receipts.  
27

1                   **B. The Court Ignored Factual Evidence Proving Appellant's Full**

2 **Compliance**

- 3
- 4
- 5                   • Despite the trial court's repeated assertions, Appellant:
- 6
- 7                   • Fully completed the LSS assessment.
- 8
- 9
- 10                  • Provided receipts showing payment in full
- 11                  • Attended all supervised visits as required.
- 12
- 13                  • Received a letter from LSS stating no further treatment was
- 14                    recommended.
- 15
- 16
- 17                  • Filed multiple motions requesting enforcement of the parenting plan.
- 18

19                  Appellee's claims that the assessment was incomplete or that treatment was

20                  required were directly contradicted by LSS. No witness from LSS testified. No sworn statement

21                  from LSS was ever introduced. Instead, the court relied solely on mischaracterized emails from

22                  Appellee's attorney, including statements made without Appellant's knowledge or opportunity to

23                  respond.

24

1                   **C. The Court's Use of Dismissed Charges and External Allegations Was**  
2 **Improper**

3  
4  
5           No findings of abuse were made by the court. Child Protective Services (CPS), or  
6 any mental health professional. Yet the court improperly drew conclusions from dismissed or  
7 unrelated matters:  
8

9  
10          The court referenced Appellant's criminal case, which had no bearing on the  
11 custody dispute and resulted in no conviction.  
12

13          There were no claims that Appellant harmed or endangered his children.  
14

15          Allegations used to delay parenting time were not only unproven—they were  
16 factually disproven through Appellant's filings and compliance.  
17

18  
19          This practice directly violates *Nicholson v. Dell*, 2017 S.D. 60, where the South  
20 Dakota Supreme Court ruled that "custody and visitation decisions must be supported by  
21 sufficient findings based on the evidence presented, not assumptions or speculation."  
22

23  
24                   **D. The Court's Decision Lacked Proper Findings and Disregarded the Best**  
25 **Interests of the Children**  
26

1 Judge Dvorak failed to make detailed findings explaining why parenting time was  
2 denied. Instead, she issued orders that lacked clarity, rationale, and any reference to the statutory  
3 standard. There was no analysis of the children's best interests, no review of bonding with  
4 Appellant, and no mention of the harm that prolonged supervised visitation was causing to the  
5 children and their father-child relationship.  
6

7  
8 This failure undermines the doctrine of parental rights as fundamental, as  
9 reaffirmed in *Troxel v. Granville*, 530 U.S. 57 (2000), and in South Dakota precedent, which  
10 protects a parent's right to parent absent compelling proof of harm.  
11

12  
13 **E. Appellant's Ongoing Compliance and Good Faith Must Be Acknowledged**  
14

15 Appellant has met every requirement ordered by the court. He has:  
16

17  
18 Attended parenting classes.  
19

20 Passed assessments.  
21

22 Continued employment to support his children.  
23

24  
25 Sought court relief via proper motions.  
26

27 Appealed through appropriate channels.  
28

1  
2           There is no justification under South Dakota law to continue denying him  
3 unsupervised parenting time. The lower court's ruling was not merely erroneous—it was  
4 arbitrary, punitive, and unsupported by any legal or factual basis.  
5  
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1                   **VI. The Parenting Plan Must Be Implemented Immediately; The Children**  
2 **Suffered Ongoing Harm**

3                   **A. A Valid, Mutually Agreed Parenting Plan Was Submitted and Approved**  
4 **in Substance**

5  
6  
7           The record clearly shows that both parties—Appellant Emmanuel Ellis Oseguera  
8 and Appellee Madison Cordie—negotiated and submitted a parenting plan that included  
9 expanded unsupervised parenting time. The plan aligned with the best interests of the children,  
10 Roman and Summer, and was unopposed at the time of filing. The plan was not contested  
11 through any formal objection, evidentiary challenge, or counter-motion.  
12

13  
14           Yet, despite this mutual agreement and Appellant's demonstrated compliance  
15 with every requirement imposed—including supervised visitation, a completed LSS assessment,  
16 and parenting classes—the court has refused to implement the parenting plan.  
17

18  
19           This refusal is in direct violation of SDCL § 25-4A-10, which establishes the  
20 standard for implementing parenting plans and emphasizes the necessity of ensuring both parents  
21 remain actively involved in the lives of their children unless compelling reasons are proven  
22 otherwise. No such reason has ever been established.  
23

24  
25                   **B. The Children Have Been Denied a Stable and Meaningful Relationship**  
26 **With Their Father**

1           The failure to implement the parenting plan has caused demonstrable emotional  
2 harm to the children:

3  
4  
5           Roman and Summer have gone an substantial amount of time without meaningful  
6 parenting time outside of a supervised setting.

7  
8           Holidays, birthdays, and key developmental moments have been missed, as  
9 documented in numerous motions and communications filed with the lower court.  
10

11  
12          The supervised visitation environment has caused confusion, emotional distance,  
13 and hindered natural parent-child bonding.  
14

15          Appellant has requested to celebrate his children's birthdays, take them to church,  
16 be present for doctor appointments, and attend school events. These basic parental activities are  
17 being unjustly withheld, despite Appellant having no criminal convictions, no finding of abuse,  
18 and no active threat.  
19

20  
21          South Dakota courts have repeatedly held that "meaningful contact with both  
22 parents is presumed to be in the best interests of the child," yet the trial court's ruling has  
23 effectively erased the father's role without legal justification.  
24

25  
26                   **C. The Parenting Plan Must Be Ordered With Make-Up Time and Potential**  
27 **Reimbursement**

1  
2 Appellant respectfully requests this Court to order the immediate implementation  
3 of the mutually agreed parenting plan, to restore stability and continuity for the children.  
4

5  
6 In addition, Appellant requests that this Court:  
7

8 Order make-up parenting time to compensate for the numerous months of denied  
9 visitation, which directly resulted from judicial error and opposing counsel's misrepresentations.  
10

11  
12 Order reimbursement or restitution, if allowed by law, for supervised visitation  
13 fees, transportation costs, and other out-of-pocket expenses incurred due to the improper  
14 withholding of unsupervised time—especially where Appellant was in full compliance with  
15 court orders and the assessment provider confirmed no further treatment was needed.  
16

17  
18 Appellant's inability to afford private legal counsel or the \$600+ cost of  
19 transcripts should not deny him justice, nor should it result in the prolonged alienation of his  
20 children. The Fourteenth Amendment to the U.S. Constitution guarantees due process and equal  
21 protection. That promise must mean something for pro se litigants as well.  
22

23  
24 **D. Denial of the Parenting Plan Creates a Dangerous Precedent**  
25

26 Should the Court allow this denial of a lawful parenting plan to stand, it sends a  
27 dangerous message across the state: that trial judges may override agreed-upon parenting  
28  
APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, BROWN COUNTY CASE NO.  
06-DIV-22-74 - 34

1 arrangements, ignore statutory protections, substitute their own opinions for expert findings, and  
2 treat indigent parents differently from those with legal representation.  
3

4  
5 The Court's failure to act quickly will only deepen the harm to the children, who  
6 deserve a full relationship with both of their parents. The law provides no support for indefinite  
7 supervised visitation in this case—and the Supreme Court of South Dakota must now correct the  
8 lower court's failure to uphold that law.  
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1                   **VII. This Case Presents Systemic Judicial Misconduct That Requires**  
2 **Reversal To Prevent Ongoing Injustice**

3                   **A. The Court Demonstrated a Pattern of Disregarding Evidence and Law**

4  
5  
6                   Throughout the proceedings in Brown County Circuit Court, Judge Dvorak  
7 displayed a pattern of judicial behavior that transcends mere legal error and enters the realm of  
8 systemic misconduct. This is evidenced by:

9  
10  
11                   Reliance on ex parte communications and unauthorized emails submitted by  
12 opposing counsel.

13  
14                   Repeated mischaracterization of the Appellant's compliance status, even when  
15 contradicted by certified documentation from Lutheran Social Services (LSS).

16  
17  
18                   Unexplained refusal to adopt an uncontested parenting plan.

19  
20                   Use of outside criminal records never entered into evidence—records over which  
21 Judge Dvorak did not preside, as outlined in the Appellant's initial Notice of Appeal and  
22 confirmed in court transcripts.

23  
24  
25                   When a judge ignores clear evidence in the record, misstates the facts, substitutes  
26 conjecture for findings, and deprives a parent of time with their children based on

1 unsubstantiated or previously dismissed claims, such conduct erodes the very foundation of due  
2 process.

3  
4  
5 **B. The Judge Failed to Recuse Herself Despite Actual Bias and Prejudice**  
6

7 The South Dakota Code of Judicial Conduct (Canon 2, Rule 2.11) requires recusal  
8 when a judge's impartiality "might reasonably be questioned." In this case:  
9

10 Judge Dvorak made early statements revealing her prejudgment of Appellant's  
11 fitness as a parent ("I find it difficult to believe that no treatment would be recommended").  
12

13 The judge disregarded documentation submitted by the Appellant showing  
14 assessment completion and falsely credited opposing counsel's claims instead.  
15  
16

17 When Appellant raised concerns about improper communications and  
18 misrepresentations, Judge Dvorak did not investigate, acknowledge, or address them—further  
19 compounding the appearance of bias.  
20  
21

22 Actual bias is established when a judge's behavior goes beyond legal  
23 interpretation and begins to show favoritism or antagonism that makes fair judgment impossible  
24 (In re Murchison, 349 U.S. 133 (1955)). That standard is met here.  
25  
26

1                   **C. The Conduct of Opposing Counsel Was Unchecked and Abused the**

2 **Process**

3  
4                   Appellee's attorney, Jeffrey Banks, submitted false representations to the court,  
5 including:  
6

7  
8                   Stating that Appellant had not completed the LSS assessment, when in fact he had  
9 done so and had submitted proof.  
10

11  
12                  Claiming that LSS recommended treatment when the official documentation said  
13 otherwise.  
14

15                  Communicating directly with LSS and the court in a manner resembling ex parte  
16 contact, with no opportunity for Appellant to object or correct the record in real time.  
17

18  
19                  Despite this, Judge Dvorak neither sanctioned the misconduct nor allowed  
20 Appellant to present rebuttal evidence in a fair hearing.  
21

22                   **D. The Integrity of the Judiciary Is At Stake**

23  
24  
25                  This appeal is not merely about correcting a parenting schedule—it is about  
26 restoring faith in the legal system. The judicial conduct in this case presents a blueprint for how  
27

1 courts can sidestep due process, override expert documentation, and silence indigent pro se  
2 litigants, all while invoking the rhetoric of “child protection” without substantiation.

3  
4  
5 Appellant has taken every lawful step, completed every requirement, and  
6 responded to every concern raised by the court. Yet he remains barred from spending meaningful  
7 time with his children—while the judiciary rewards the tactics of procedural sabotage and  
8 distortion.

9  
10  
11 **E. Supreme Court Supervisory Authority Is Warranted**

12  
13 Pursuant to SDCL § 15-26A-3, the South Dakota Supreme Court possesses the  
14 authority to “review, modify, affirm, reverse, or remand any judgment, order or decree of the  
15 circuit court.” Where, as here, a lower court acts outside of its discretion, based on  
16 misinformation and personal bias, the Supreme Court has both the authority and duty to  
17 intervene.  
18

19  
20 Appellant respectfully requests the Court to:

- 21  
22
- 23 • Reverse the lower court’s refusal to implement the parenting plan;
  - 24
  - 25 • Order immediate make-up parenting time;
  - 26
- 27

- Issue a supervisory ruling admonishing the conduct of the presiding judge and counsel;
- Reassign the case to a neutral judicial officer on remand, to ensure impartiality and fairness moving forward.

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## CONCLUSION

This case is not just about scheduling parenting time—it is about the integrity of the judicial system and the constitutional rights of a father who has complied with every order, completed every assessment, and presented every required document. Despite this, the circuit court refused to implement a parenting plan agreed upon by both parties, without any findings of abuse, neglect, or unfitness. The court relied on materials outside the record, unproven allegations, and the misleading statements of opposing counsel—all of which eroded the foundation of due process and impartiality.

I, Appellant, Emmanuel Ellis Oseguera, have not brought this case to the South Dakota Supreme Court not because I desire a second opinion. I respectfully asks the Court to consider the full record, including all motions, responses, court-ordered assessments, verified compliance documents, and the extensive pattern of bias and misconduct demonstrated below.

This Court's ruling can serve as a precedent to ensure that South Dakota family law respects fairness, constitutional protections, and the rights of fathers to parent their children without prejudice or obstruction. Appellant cannot afford counsel or transcripts totaling over \$600, but has presented a thorough, legally grounded appeal based on the available record and good-faith compliance with every request made.

Accordingly, Appellant respectfully requests:

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, BROWN COUNTY CASE NO. 06-DIV-22-74 - 41

- Reversal of the circuit court's orders denying unsupervised parenting time;
- Immediate implementation of the parenting plan;
- Make-up parenting time for all wrongfully denied visits;
- Reimbursement of any court-ordered costs or services if permitted by law;
- Assignment of the matter to a different judge on remand;
- Any further relief the Court deems just and proper under SDCL § 15-26A-54.

Justice demands correction. The children deserve the presence of a father who has demonstrated commitment, responsibility, and love—unhindered by legal error and judicial prejudice.

Respectfully submitted,

Emmanuel Ellis Oseguera, Pro Se

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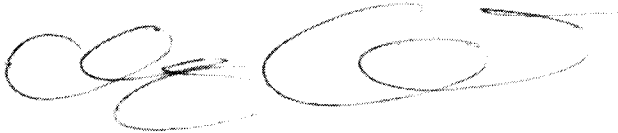
[oseguera.emmanuel@gmail.com](mailto:oseguera.emmanuel@gmail.com)

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of SDCL § 15-26A-66. This brief was prepared in 12-point Times New Roman font and contains approximately 5648 words, excluding tables of contents, tables of authorities, certificates, and appendices.

Executed on: December 29, 2025

Emmanuel Ellis Oseguera



Pro Se Appellant

CERTIFICATE OF SERVICE

I certify that on this 29th day of December, 2025, I served a true and correct copy of the foregoing Appellant's Brief upon the following parties by electronic service:

Jeffrey Banks

Attorney for Appellee Madison Cordie

jell@bluehaederbanks.com and maddiecordie9@gmail.com

Executed on: December 29, 2025

Emmanuel Ellis Oseguera

Pro Se Appellant

A handwritten signature in black ink, appearing to read 'Emmanuel Ellis Oseguera', is written over the printed name. The signature is stylized with loops and a long horizontal stroke.

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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No. 31298

---

EMMANUEL ELLIS OSEGUERA,  
Defendant and Appellant,

vs.

MADISON MAE CORDIE,  
Plaintiff and Appellee.

Appealed from the Circuit Court  
Fifth Judicial Circuit, Brown County, South Dakota  
The Honorable Julia Dvorak, presiding

---

**APPELLEE'S BRIEF**

---

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APPELLANT

Notice of Appeal filed November 14, 2025

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### **SOUTH DAKOTA STATUTES:**

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## **PRELIMINARY STATEMENT**

The Plaintiff and Appellee, MADISON MAE CORDIE, will be referred to as “Appellee”. The Defendant and Appellant, EMMANUEL ELLIS OSEGUERA, will be referred to as “Appellant”. References to documents will be as follows:

November 7, 2025 Order ..... Order  
Settled Record.....SR

All documents will be followed by their appropriate page number(s).

## **JURISDICTIONAL STATEMENT**

Appellant appeals from an Order Denying Respondent’s Motions entered on November 7, 2025, by the Honorable Julia Dvorak, Circuit Court Judge, for the Fifth Judicial Circuit, in Brown County, South Dakota. (SR 435-438). The Order is a final order and is appealable as a matter of right pursuant to SDCL 15-26A-3. The Notice of Appeal was filed on November 14, 2025.

## **LEGAL ISSUES**

Appellant’s issues presented in the Notice of Appeal can be more precisely stated as follows:

1. Did the Circuit err in Denying Respondent’s Motions, specifically with respect to not allowing unsupervised parenting time.
2. Did the Circuit Court commit judicial misconduct when it contacted Lutheran Social Services.
3. Did Appellee’s counsel commit misconduct during the course of the proceedings.

### Relevant Authority:

*Dunham v. Sabers*, 2022 S.D. 65

*Pieper v. Pieper*, 2013 S.D. 13

## STATEMENT OF THE CASE

The parties were married on December 11, 2020, in Aberdeen, and have two minor children. Appellee filed a Complaint for Divorce on August 3, 2022. A trial before the Honorable Tony Portra (Ret.) was held on January 26, 2023, at which time the Court ordered the Appellant to undergo a "DV assessment" before he could have unsupervised parenting time. Appellant has failed to undergo said assessment.

## ARGUMENT

### **I. The Circuit Court did not err in Denying Respondent's Motions.**

The standard of review of custody orders is abuse of discretion. Dunham v. Sabers, 2022 SD 65 ¶ 23. "An abuse of discretion is 'a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.' " Pieper v. Pieper 2013 SD 13, ¶ 11 (citation omitted). The best interests of the children are paramount in custody and visitation orders. Id. at ¶ 24.

In this case the Circuit Court did not abuse its discretion. The Court, in its Order, carefully demonstrated that it had fully considered the facts and circumstances surrounding the requirement of the DV assessment at the time the divorce was granted, Appellant's efforts to gain unsupervised parenting time despite not having complied with the Court's requirement, and the still existing need of having the assessment completed. In November, 2023, Appellant was found in contempt for not having completed the assessment and was ordered to complete the assessment and follow any counselling and treatment recommendations. SR 435.

The Order further explains the need for the DV assessment due to Appellant's prior history which resulted in a prison term, and that Appellant chose to forego supervised

parenting time in favor of pursuing unsupervised parenting time. The Court found that this behavior and chosen course of action was not in the children's best interests. SR 438.

Finally, the Order articulates the fact that regardless of the documents submitted from LSS, Appellant had not completed the DV assessment, and that he is resistant to an assessment. Id.

The Court's Order is clearly justified by reason and evidence. In order to exercise unsupervised parenting time Appellant must complete a DV assessment. This requirement was in place beginning in January, 2023. It was only in August, 2025 when Appellant made any effort with respect to the assessment but it was not completed. Even the document Appellant submitted to the Court and offers as proof of completion of the assessment states that the assessment "was unable to be completed due to a lack of reports and records." SR 358-370.

The evidence is clear and convincing that Appellant failed to comply with the DV assessment requirement and the Court, taking into consideration all of the facts and circumstances, properly exercised its broad discretion in denying unsupervised parenting time.

## **II. The Circuit Court did not Commit Judicial Misconduct in Contacting LSS.**

The Circuit Court did not engage in *ex parte* communications with LSS, nor did it prejudge the merits of Appellant's Motion, and did not exercise bias against Appellant. The Court's Order makes it clear that it informed the parties at the September 17, 2025, hearing that it could contact LSS to seek clarification on the scope of the records available to it *vis a vis* the assessment. Appellant had no objection to the Court

contacting LSS and all correspondence was entered into the record. It was only after LSS responded to the Court on September 22, 2025, that Appellant objected. The Court then indicated that it would have no further contact with LSS.

The Circuit Court's actions were proper in that it had the consent of the parties prior to contacting LSS, made those communication part of the record and then ceased communication with LSS after Appellant objected.

Similarly the Circuit Court neither exercised prejudgment nor bias against Appellant. The Court's statement in the communication to LSS that "I find it difficult to believe that no treatment would be recommended for someone with Mr. Oseguera's history" comes after it had enumerated that very history and in light of Appellant's representations that there was no recommended treatment. SR 298. The entirety of that communication demonstrates the Court's attempt to enlighten LSS on Appellant's history and learn whether, given that information, LSS could complete the assessment and recommend any treatment based on the assessment. Since the assessment is required and unsupervised parenting time will only be considered once the assessment is completed and any recommended treatment is undertaken, it is in Appellant's best interests to begin the process. That is what the Court's communication to LSS was attempting to accomplish.

### **III. Appellee's Counsel did not engage in misconduct.**

Appellant complains of attorney misconduct due to a lack of communication previously during the proceedings and arguments contained in pleadings that he characterizes as improper or unsupported.

There was a period of time where counsel had instructed staff not to forward phone calls from Mr. Oseguera. This was done because previous phone calls had deteriorated to

the point they were not productive and did not move the parties towards any sort of resolution. It also resulted in Appellant threatening to sue counsel. This occurred prior to Appellant's prison term when his behavior can best be described as erratic. Since Appellant's release from prison in approximately April, 2025 and until the Notice of Appeal was filed, counsel had numerous telephone and email conversations with Appellant in an attempt to produce a resolution. Appellant's behavior had changed and his demeanor can be described as much more calm and polite. Unfortunately no resolution was achieved due to the assessment issue.

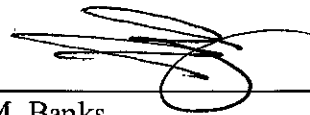
With respect to arguments and pleadings that are improper or unsupported, those pleadings are based on a review of the record, counsel's communication with LSS, and Affidavits of Appellee and counsel's communications with Appellee regarding the issues. They are in no way improper or unsupported and do not demonstrate misconduct of any kind.

### **CONCLUSION**

Appellee respectfully requests that this Court deny Appellant's Appeal.

Dated 16th day of March, 2026.

Respectfully submitted,



---

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Attorney for Plaintiff/Appellee

## **APPENDIX**

1. Order Denying Respondent's Motions dated November 7, 2025.

# FILED

STATE OF SOUTH DAKOTA )

NOV 07 2025

IN CIRCUIT COURT

COUNTY OF BROWN )

SS DAKOTA UNIFIED JUDICIAL SYSTEM  
5TH CIRCUIT CLERK OF COURT

FIFTH JUDICIAL CIRCUIT

By \_\_\_\_\_

MADISON CORDIE,  
Petitioner,

06 DIV 22-74

-vs-

## ORDER DENYING RESPONDENT'S MOTIONS

EMMANUEL OSEGUERA,  
Respondent.

This matter came before the court for a hearing on October 22, 2025. Both parties appeared in person. Ms. Cordie's attorney did not appear with her although he did file a response to Mr. Oseguera's motions. See filing of October 16, Response to Motion to Terminate Supervised Parenting Time. Ms. Cordie explained she did not have the funds to have him appear at every hearing.

This matter was originally filed in August of 2022. A hearing was held on January 26, 2023. After that hearing Judge Portra entered a Decree of Divorce and Custody and Child Support Order. That order directed that Emmanuel Oseguera could exercise in person supervised visitation. Prior to exercising any in person visitation he "must complete, and provide proof of completion, of court-approved parenting classes and Domestic Violence Assessment."

Another hearing was held with Judge Portra on November 15, 2023, on Ms. Cordie's Motion for Contempt. After that hearing Judge Portra found Mr. Oseguera in contempt and in the portion relevant to the current issue, ordered Mr. Oseguera "provide proof of completion of parenting classes and Domestic Violence assessment and follow any counseling and treatment recommendations..."

Judge Portra retired shortly thereafter. This matter was then assigned to this Court. In April 2025, Mr. Oseguera filed a request for recusal of this judge and appointment of another specific judge. Based in part on Mr. Oseguera's previous use of a recusal request and in part on this Court having already entered a child support order in this matter, that request was denied. See this Court's order dated May 1, 2025.

A hearing was then held on June 2, 2025. Ms. Cordie appeared with her attorney and Mr. Oseguera appeared pro se. This Court then entered an order dated June 3, 2025. That order indicated that Mr. Oseguera provide proof of completion of parenting classes. He has done so.

This Court also ordered that he could have weekly supervised visits and that after a period of 2 months he could request a modification of parenting time in the event the parties were unable to agree to a resolution, and if he had complied with all requirements of the Order.

Another portion of that June order, like Judge Portra's previous orders, required that Mr. Oseguera provide proof of completion of a Domestic Violence Assessment and follow through on any requirements of that assessment.

This requirement for a Domestic Violence Assessment stems from protection orders that had previously been in place and Mr. Oseguera's criminal history regarding violating protection orders or no contact orders. These violations and a probation violation ultimately led to Mr. Oseguera serving a term in prison.

After the June hearing, the parties were able to come up with a parenting plan that the court has reviewed and indicated that it would approve. The remaining issue to be resolved is whether Mr. Oseguera has complied with the requirement for a Domestic Violence Assessment. Ms. Cordie contends he has not complied with that requirement. Mr. Oseguera contends that he has.

A further hearing was held in this regard on September 17, 2025. Both parties were present. Ms. Cordie's attorney was not present for that hearing.

In support of his argument that he had complied with the DV assessment, Mr. Oseguera provided a document from LSS dated August 15, 2025. The document indicated the screening tool/predictive tool "was unable to be completed due to a lack of reports and records." Mr. Oseguera said he believed that LSS had access to his criminal records. From the document, however, it was unclear whether LSS had access to any of the criminal records or protection orders when it performed its assessment.

This Court indicated that if LSS had reviewed certain records, then this Court would find that Mr. Oseguera had complied with the Court's directive regarding a DV assessment. This Court also indicated that Mr. Oseguera could reach out to LSS on his own or this Court could reach out to LSS to clarify those matters, with both parties receiving copies of any correspondence. Mr. Oseguera had no objection to this Court reaching out directly.

As this Court indicated at the September 2025 hearing, it is not a mental health professional but multiple violations of protection orders leading to a prison term are concerning to this Court. This Court wanted a mental health professional to review certain records and say whether any treatment was recommended or not.

With permission from Mr. Oseguera this Court sent correspondence to LSS on September 17, 2025. See filing dated September 18, 2025, which also contains the August 15, 2025, LSS document. LSS responded on September 22, 2025. Mr. Oseguera then objected to this Court's actions. As a result, this Court had no further communication with LSS. This

Court also issued an order dated September 23, 2025, indicating the matter was up to the parties to set a hearing on the issue of the DV assessment. Part of that order referenced the question of whether Ms. Cordie “would be satisfied” with Mr. Oseguera completing a program that had been referenced in LSS’s August 15, 2025, document.

Mr. Oseguera filed numerous motions thereafter and a hearing was held on October 22, 2025. Those motions included a Motion to Terminate Supervised Visits, Implement Parenting Plan, Address Attorney Misconduct and Judicial Bias.

Mr. Oseguera was provided opportunity to present testimony and argument at the October 22 hearing in support of his motions.

His contention is that the assessment he obtained from LSS complies with Judge Portra’s and this Court’s requirement for a “court-approved” DV assessment. He filed a Notice of Compliance on October 23, 2025, which includes multiple documents. One of those is a screenshot of a text from Laura Mladenich at LSS. It reveals that he knew before he went in for the “assessment” that LSS would not have access to police reports or other official documents and that she likely wouldn’t be able to make a recommendation after the assessment. He argues that the lack of recommendations was due to the absence of an order in the criminal files. The relevant order, however, comes from this Court. Importantly, he knew before he went in for the assessment that LSS would likely not be able to make any recommendations.

This Court finds the LSS document does not comply with the requirement. LSS has not reviewed or accessed the documents and records that this Court believes are relevant to the issue of whether Mr. Oseguera needs any treatment related to domestic violence. See LSS response to this Court dated September 22 and Ms. Cordie’s October 16<sup>th</sup> filing containing documentation from LLS. The August 15, 2025, assessment is, therefore, not “court-approved.”

Mr. Oseguera’s claim of judicial bias stems from this Court’s letter to LSS along with its order of September 23, 2025. Regarding the Order, Mr. Oseguera believes the reference to whether Ms. Cordie would be “satisfied” demonstrates a lack of impartiality or a bias against him and in favor of Ms. Cordie. As explained to Mr. Oseguera during the October hearing, that reference was raising the issue of whether a certain LSS program might be deemed compliance by Ms. Cordie. If Ms. Cordie felt that program constituted compliance, there would be no reason for the Court to have to rule on the issue.

Mr. Oseguera’s claim of bias regarding the letter is his assertion that the letter demonstrates the Court advocating for Ms. Cordie. This Court must make a decision that is in the best interest of the children in this case. Ms. Cordie contends that the requirement for a DV assessment has not been fulfilled. It then falls on this Court to determine whether it has been fulfilled. For this Court to find an assessment is “court-approved,” it needs to know what

information was considered. This Court finds that the information cited in its September 23, 2025, order should be reviewed by a mental health professional for a DV assessment.

Mr. Oseguera also has indicated that it is improper or illegal to reference the criminal files in this matter. This Court is allowed to take judicial notice on its own of such files and has done so. Mr. Oseguera was made aware of this Court's review of his criminal files at the June 2025 hearing. Moreover, this Court is not making any findings based on those records, only that they should be reviewed by a mental health professional regarding a DV assessment so that this court can rely on the assessment in regard to finding if it is in the best interests of the children to allow unsupervised visits.

Ms. Cordie raised the issue on ongoing visits in her October 16 pleading. At the hearing she indicated, and Mr. Oseguera agreed, that he had not had any visits with the children since the end of August 2025. His reasoning was that he had completed the 2 months of visits set forth by the Court. Mr. Oseguera's decision to not continue supervised visits with his children while working for the opportunity for unsupervised parenting time is concerning to the Court. He had even asked, and the Court agreed, to allow his girlfriend to attend some of those visits. Yet as of October 22, 2025, he had not seen his children since the end of August.

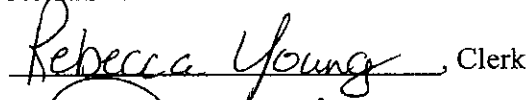
Mr. Oseguera's explanation of why he is resistant to an assessment and any possible recommended treatment is not persuasive nor in the children's best interests. If he complies with the requirement of a "court-approved" DV assessment and any recommendations, this Court is ready to put in place the parties' agreement. The parties have worked out a reasonable agreement with significant and increasing unsupervised parenting time for Mr. Oseguera with his children.

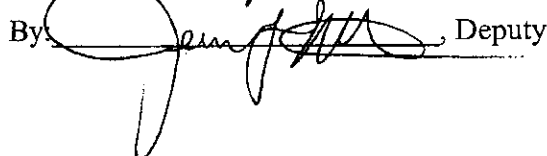
Regarding the claim of attorney misconduct, it is largely based on allegations that Mr. Banks admitted to refusing to respond to Mr. Oseguera years ago when Mr. Oseguera's behavior was allegedly erratic, and Mr. Banks had informed his staff not to send Mr. Oseguera's calls to his office as they were not productive. Mr. Banks has indicated that he will now take calls from Mr. Oseguera and has done so. Mr. Banks' ongoing communication with Mr. Oseguera is evidence by the parenting plan that was filed on September 5, 2025.

Based on all the above, Mr. Oseguera's motions are all denied.

  
Circuit Court Judge

ATTEST:

 Clerk

By  Deputy



IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

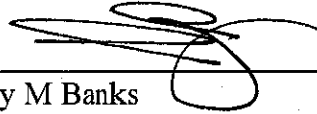
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|                          |   |                                  |
|--------------------------|---|----------------------------------|
| EMMANUEL ELLIS OSEGUERA, | ) |                                  |
| Defendant/Appellant,     | ) |                                  |
| v.                       | ) | <b>CERTIFICATE OF COMPLIANCE</b> |
|                          | ) |                                  |
| MADDISON MAE CORDIE,     | ) | # 31298                          |
| Plaintiff/Appellee.      | ) |                                  |
|                          | ) |                                  |

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The undersigned hereby certifies that the foregoing brief complies with the type volume limitations found in SDCL 15-26A-66(b). It contains 1398 words and 8975 characters.

Dated 16th day of March, 2026.

  
\_\_\_\_\_  
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Huron, SD 57350-1414  
(605) 352-6783  
Attorney for Plaintiff/Appellee

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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|                          |   |                               |
|--------------------------|---|-------------------------------|
| EMMANUEL ELLIS OSEGUERA, | ) |                               |
| Defendant/Appellant,     | ) |                               |
| v.                       | ) | <b>CERTIFICATE OF SERVICE</b> |
|                          | ) |                               |
| MADDISON MAE CORDIE,     | ) | # 31298                       |
| Plaintiff/Appellee.      | ) |                               |
|                          | ) |                               |

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The undersigned hereby certifies that, on the 16th day of March, 2026, a true and correct copy of Appellee's Brief was served by first class mail, postage prepaid, a true and correct copy of the Notice of Appearance upon the following:

Emmanuel Ellis Oseguera  
1224 3<sup>rd</sup> Ave NE #11  
Aberdeen, SD 57401

Dated this 16th day of March, 2026.



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SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

APR 23 2026

*Shirley A. Johnson Legal*  
Clerk

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA  
APPELLANT'S REPLY TO APPELLEE'S R B  
Case No. 31298

Emmanuel Ellis Oseguera

Appellant, pro se

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Aberdeen, SD 57401

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31298

COMES NOW the Appellant, Emmanuel Ellis Oseguera, appearing pro se, and respectfully submits this Reply to the Appellee's Brief.

## **APPELLANT'S REPLY BRIEF**

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### **INTRODUCTION**

Appellee's Response Brief fails to meet the minimum requirements of appellate advocacy. It does not identify evidence in the record supporting the restriction of Appellant's parental rights, does not meaningfully apply controlling law to the facts, and does not rebut the core legal errors raised on appeal.

Instead, Appellee relies on generalized assertions, selective citation to legal authority without application, and references to matters outside the record.

This failure is dispositive.

This case presents a fundamental question: whether a court may restrict a parent's constitutional rights based on assertions, extra-record information, and procedural irregularities, rather than evidence and law. Under both South Dakota law and the United States Constitution, the answer is no.

---

### **STANDARD OF REVIEW**

A circuit court abuses its discretion when it acts without evidentiary support, applies incorrect legal standards, or fails to make required findings. *Dunham v. Sabers*, 2022 S.D. 5, ¶ 13, 969 N.W.2d 812.

Constitutional and due process violations are reviewed de novo.

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## **ARGUMENT**

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### **I. APPELLEE’S RESPONSE IS MATERIALLY DEFICIENT AND FAILS TO ENGAGE THE RECORD**

Appellee’s brief contains broad assertions but fails to cite to admissible evidence supporting those assertions, as required by SDCL 15-26A-60(6).

Notably, Appellee does not identify:

- any admitted criminal records,
- any admitted law enforcement reports,
- any expert testimony, or
- any findings of fact supporting the continued restriction of Appellant’s parental rights.

This is not a minor deficiency—it is a complete failure of proof.

Attorney argument is not evidence. *State v. Hauge*, 1996 S.D. 48, ¶ 7.

Where a party fails to support its claims with citations to the record, those claims cannot sustain a judgment on appeal.

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### **II. APPELLEE’S CITED CASE LAW IS MISAPPLIED AND DOES NOT SUPPORT THE RESULT**

Appellee cites general propositions of law regarding discretion and the “best interests of the child,” but fails to apply those cases to the actual facts in the record.

This omission is critical.

The cited authorities stand for the principle that courts have discretion when that discretion is exercised based on evidence and proper findings. They do not authorize:

- reliance on facts outside the record,
- restriction of parental rights without evidence, or
- the absence of required findings.

Appellee does not demonstrate how any cited case supports a decision where:

- no evidentiary basis exists,
- no expert recommendation supports restriction, and
- no findings justify continued supervision.

As such, Appellee's reliance on case law is superficial and legally ineffective.

---

### **III. APPELLEE IMPROPERLY RELIES ON MATTERS OUTSIDE THE RECORD**

Appellee references alleged conduct, history, and circumstances that are not supported by any admitted evidence in the record.

There are:

- no certified criminal records,
- no admitted documentation of alleged incarceration, and
- no evidentiary findings supporting these claims.

Appellate review is confined to the record. *State v. Iron Necklace*, 430 N.W.2d 66.

Arguments based on facts outside the record are improper and must be disregarded.

---

#### **IV. APPELLEE FAILS TO IDENTIFY ANY EVIDENCE OF PRESENT UNFITNESS OR RISK**

Even accepting Appellee's assertions for argument's sake, there is no showing of present unfitness.

This is fatal.

The United States Supreme Court has made clear that parental rights are fundamental and cannot be restricted absent sufficient justification. *Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982).

Appellee identifies no:

- current danger,
- expert recommendation, or
- evidence of harm to the children.

Without such evidence, continued restriction is constitutionally impermissible.

---

#### **V. THE DOMESTIC VIOLENCE ASSESSMENT ARGUMENT IS CONTRADICTED BY THE RECORD**

Appellee asserts noncompliance with a domestic violence assessment. The record reflects otherwise.

Appellant:

- paid for the assessment,
- participated in the process, and
- received no recommendations requiring further action.

There is no evidence of willful noncompliance.

Appellee's argument depends on redefining compliance in a manner unsupported by the record or law and therefore cannot justify continued restriction.

---

## **VI. APPELLEE FAILS TO DISCLOSE OR DEFEND IMPROPER CONTACT WITH LUTHERAN SOCIAL SERVICES (LSS)**

Appellee's brief notably omits any acknowledgment of counsel's independent contact with Lutheran Social Services (LSS).

This omission is significant.

The record reflects that:

- Appellee's counsel initiated contact with LSS outside formal proceedings,
- Appellant was not included in the communication,
- information was sought outside the discovery and evidentiary process, and
- the information was later relied upon in court proceedings.

This conduct deprived Appellant of the ability to:

- review the information,
- challenge its accuracy, and
- cross-examine its source.

Such actions undermine the integrity of the adversarial process and implicate fundamental fairness concerns.

Appellee's failure to address this issue further underscores the absence of a lawful basis for the proceedings below.

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## **VII. THE CIRCUIT COURT'S RELIANCE ON EXTRA-RECORD INFORMATION VIOLATES DUE PROCESS**

The circuit court's reliance on information obtained outside the record—including communications with LSS—constitutes a violation of due process.

A judge may not independently investigate facts and must rely solely on evidence presented in court. S.D. Code of Judicial Conduct Rule 2.9(C).

Due process requires notice and an opportunity to be heard. *In re M.C.*, 527 N.W.2d 290, 293 (S.D. 1995).

Here:

- no sworn testimony was presented,
- no evidentiary foundation was established, and
- Appellant had no opportunity to respond.

A ruling based on such information cannot stand.

---

### **VIII. THE CIRCUIT COURT IMPROPERLY EXPANDED THE DIVORCE DECREE**

The divorce decree required only:

- a parenting class, and
- a domestic violence assessment.

Neither the circuit court nor Appellee identifies any lawful basis for imposing additional requirements beyond those terms.

Modification requires compliance with SDCL 25-5-7.1.

Imposing new conditions without statutory compliance is legal error.

---

### **IX. APPELLEE'S "BEST INTERESTS" ARGUMENT LACKS REQUIRED ANALYSIS**

Appellee invokes the "best interests of the child" standard without applying the statutory factors under SDCL 25-4-45.1.

There is:

- no factor-by-factor analysis,
- no findings tied to evidence, and
- no explanation supporting the conclusion.

Conclusory assertions are insufficient as a matter of law.

---

**X. THIS CASE PRESENTS A RULE-OF-LAW ISSUE, NOT A DISCRETIONARY ONE**

This appeal is not about disagreement with the circuit court's judgment. It concerns whether legal standards governing parental rights were followed.

The record reflects:

- absence of evidence supporting restriction,
- reliance on extra-record information, and
- failure to apply required statutory and constitutional standards.

Discretion does not permit departure from law.

If affirmed, the ruling would stand for the proposition that parental rights may be restricted based on assertions and extra-record information, rather than evidence and due process.

That is not the law.

---

**CONCLUSION**

Appellee's Response Brief fails to provide any evidentiary or legal basis supporting the restriction of Appellant's parental rights and does not cure the fundamental defects present in the circuit court's ruling.

Because the decision below is unsupported by evidence, relies on improper information, and violates due process, it cannot be sustained.

Appellant respectfully requests that this Court reverse the circuit court's decision and grant appropriate relief.

---

Dated: March 18<sup>th</sup> 2026

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'E. Oseguera', written in a cursive style.

Emmanuel Ellis Oseguera  
1224 3<sup>rd</sup> Ave NE #11 Aberdeen, SD 57401  
oseguera.emmanuel@gmail.com 605-838-2450  
Pro Se Appellant

## CERTIFICATE OF SERVICE

I certify that on this date, I served a true and correct copy of the foregoing “Appellant’s Reply to Appellee’s RB” upon the following parties via email, in accordance with Supreme Court Rules:

Jeffrey M. Banks  
Attorney for Appellee  
Blue Haeder & Banks  
Email: jeff@bluehaederbanks.com

Madison Cordie  
Email: maddiecordie9@gmail.com

Dated this 18th day of March, 2026.

Emmanuel Ellis Oseguera

A handwritten signature in black ink, appearing to be 'EEO', with a large, stylized flourish extending from the end.