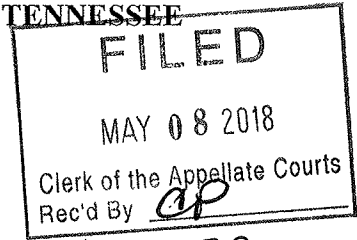


UM 2018-00720-COA-R10-CV
IN THE COURT OF APPEALS FOR THE STATE OF TENNESSEE
FOR THE MIDDLE DIVISION
AT NASHVILLE



PHILIP FOXWELL BERG,)
)
 Father/Respondent,)
)
 v.)
)
 KEIKO SHIGENO BERG,)
)
 Mother/Petitioner.)

No. M2018-00720-COA-R3-CV^{R10}

On Rule 10 application from the
Circuit Court of Davidson County,
Tennessee No. 12D-575

RESPONSE TO RULE 10 APPLICATION

Comes now the Father/Respondent, Philip Foxwell Berg (“Father”), by and through counsel and pursuant to Tennessee Rule of Appellate Procedure 10, and files this Response to the Application for Permission for Appeal filed by the Mother/Petitioner, Keiko Shigeno Berg (“Mother”), on April 24, 2018.

I. INTRODUCTION

A review of Mother’s Application reveals that, at best, Mother has inadvertently omitted material facts and misinterprets certain facts or, at worst, misleads the Court.¹ Father will address the issues raised by Mother in turn and asks the Court to deny the Rule 10 Application. Father asks for his fees incurred in defending the Rule 10 Application.

¹ As will be discussed in detail throughout this Response, Mother represents to the Court that (1) the Rule 35 Report was not admitted to evidence and (2) the March 13, 2018 Order states that “[i]n approximately 60 days, the Court shall set a status conference to determine whether the terms of this Order should be modified and to determine *whether a final order should be set.*” (Rule 10 Application at p. 7) (emphasis in Application). Both of these assertions are incorrect. Of even more concern than these misstatements is a material omission made by Mother. Specifically, the main thrust of Mother’s Application is that she first learned on the morning of March 13, 2018 that “she was at risk to lose all contact with her children[;]” (Rule 10 Application at p 10), however, Mother fails to apprise the Court that Father filed a Proposed Parenting Plan over a month before the final hearing was to resume advising Mother of exactly this request. These misstatements and omissions will be discussed at length in this Response.

This Brief is in response to the Mother's contention that the trial court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review by this Court. Mother's argument to support this conclusion can be distilled to four distinct arguments: (1) that as "[Mother] was given no notice that she was at risk to lose all contact with her children[,]” (Rule 10 Application at p 10.), her due process was violated based on insufficient notice; (2) that the facts did not support a finding that the children would be subject to a likelihood of substantial harm absent a temporary modification of the parties' Permanent Parenting Plan; (3) the trial court erred in suspending her rights of parents as enumerated by Tennessee Code Annotated section 36-6-101; and (4) that the trial court's March 12, 2018 Protective Order concerning the use and dissemination of Dr. Bradley Freeman's March 7, 2018 Report (the "Report") is overly broad and Mother was not allowed to prepare a proper rebuttal to the report.

II. STANDARD OF REVIEW

Unlike Rule 9 appeals, Rule 10 appeals are reserved only for extraordinary departures from the accepted and usual course of judicial proceedings. *See, e.g., Jones v. Vasu*, 326 S.W.3d 577, 578 (Tenn. Ct. App. 2010) (granting extraordinary appeal in a health care liability suit where the trial court denied the defendant's motion to dismiss despite the plaintiff's intentional delay in service of process which had rendered the filing of the complaint statutorily ineffective); *Joiner v. Joiner*, No. E2005-01619-COA-R10-CV, 2005 Tenn. App. LEXIS 673, at *8 (Tenn. Ct. App. Oct. 27, 2005) (granting extraordinary appeal where a trial judge disqualified an attorney from representing a litigant simply because the attorney had announced his candidacy for the judge's position); *Pykosh v. Earps*, No. M2004-01507-COA-R10-CV, 2004 Tenn. App. LEXIS 525, at *1 (Tenn. Ct. App. Aug. 17, 2004) (granting extraordinary appeal where the trial court denied a defendant's motion for a physical examination of the plaintiff, though the plaintiff had been granted the opportunity to have his own doctor testify); *State ex rel. Dean v. Nelson*, 169 S.W.3d 648, 649

(Tenn. Ct. App. 2004) (granting extraordinary appeal in an action to close an adult business where the court issued a temporary restraining order without five days written notice and then allowed the restraining order to remain in effect pending the trial); Korthoff v. Korthoff, No. W2001-01712-COA-R10-CV, 2001 Tenn. App. LEXIS 724, at *2 (Tenn. Ct. App. Sept. 24, 2001) (granting extraordinary appeal where the trial court, absent authority, ordered "a partial distribution of marital property prior to a final adjudication"). "It is important for appellate courts to exercise restraint in granting Rule 10 appeals. Under our Rules, the appellate courts have no authority to unilaterally interrupt a trial court's orderly disposition of a case unless the alleged error rises to the level contemplated by the high standards of Rule 10." Gilbert v. Wessels, 458 S.W.3d 895, 898 (Tenn. 2014).

In this case, there was no extraordinary departure from the accepted and usual course of judicial proceedings; the trial court adhered to established legal standards.

III. PROCEDURAL HISTORY

1. On November 7, 2013, the trial court entered a Final Decree of Divorce incorporating an agreed upon Permanent Parenting Plan in which each party received 182.5 days with each of their minor children, Ellie and Samuel. Mother was named the primary residential parent.

2. On March 28, 2016, Mother filed a Petition to Modify Parenting Plan.²

3. On May 19, 2016, Father filed an Answer to Mother's Petition to Modify Parenting Plan and Counter-Petition to Modify Parenting Plan, in which he requested, among other things,

² Mother would subsequently amend her original Petition; however, the substance of the Petition remained the same—modification of the parties' Permanent Parenting Plan.

to be named primary residential parent and to have sole decision making for each of the parties' minor children. (See Exhibit A; Father's Counter-Petition.)

4. From the filing of Father's Counter-Petition to present, the parties engaged in intensive litigation and discovery concerning the custody of the parties' minor children. (See Exhibit B; True Copy of Rule Docket.) As can be gathered from **Exhibit B** the vast majority of the pleadings and orders concern custody issues.

5. On June 5, 6 and 7, 2017, the parties participated in the first three days of a final hearing on both parties' Petitions concerning modification of the Permanent Parenting Plan. The trial did not conclude during this period.

6. On September 18, 2017, the parties entered into an Agreed Order in which the children would be evaluated by Dr. Bradley Freeman, pursuant to Tennessee Rule of Civil Procedure 35. (See Exhibit C; September 18, 2017 Agreed Order.) The parties subsequently entered into an Agreed Order expanding the scope of Dr. Freeman's evaluation to include the parties and not just the children. (See Exhibit D; October 20, 2017 Agreed Order.)

7. After the entry of the Agreed Order appointing Dr. Freeman as the Rule 35 expert, the parties entered into an Agreed Order setting the final hearing for March 13, 14, 20, and 21 2018.

8. On February 9, 2018, over a month prior to the hearing in which Mother complains that she did not have proper notice, Father filed an Amended Proposed Parenting Plan with the Court in which Mother *would receive no time* with the children and contained the following provision:

Due to Mother's continued behavior designed to alienate the affections of the children against Father, it is in the best interests of the children that Mother have no parenting time with either child pending further orders of the Court.

It is the Court's intent that all contact between Mother and the children be suspended pending further orders of the Court.

Mother is hereby enjoined and restrained from having any contact with the children whatsoever, even contact such as is outlined in the Rights of Parents section of this Parenting Plan, pending further orders of the Court.

(See **Exhibit E**; February 9, 2018 Notice of Filing Proposed Parenting Plan) (emphasis added).³

9. On March 12, 2018, the trial court issued a Protective Order along with Dr. Freeman's Rule 35 Report.

10. On March 13, 2018, Father filed a Motion to Suspend the Mother's Parenting Time the morning that the trial was to resume. That same morning, Mother filed a Motion to Continue the Trial. Both of these pleadings are attached as exhibits to Mother's Application.

11. At the beginning of the resumption of the trial on March 13, 2018, the Court heard argument on both Father's Motion to Suspend Mother's Parenting Time and Mother's Motion to Continue the Trial. Introduced into evidence at trial at that hearing was Dr. Freeman's report and other exhibits. (See **Exhibit F**; Transcript from March 13, 2018); (**Exhibit G**; Dr. Freeman Report); (**Exhibit H**; Other Exhibits From March 13, 2018 Hearing).

12. After considering the exhibits and arguments of counsel, the Court entered an Order both suspending Mother's parenting time and continuing the trial to allow Mother to depose Dr. Freeman and otherwise prepare a rebuttal to Dr. Freeman's report. (See **Exhibit I**; March 13, 2018 Order.)

³ Mother omitted inclusion of this pleading from her Rule 10 Application.

IV. ANALYSIS

A. Mother's procedural due process right to notice was not violated.

1. Mother waived her objection to the hearing proceeding on March 13, 2018.

In what appears to be the crux of Mother's application, she argues that she was not given appropriate notice that her parenting time could be suspended by the trial court at the March 13, 2018 hearing. This argument is procedurally defective, as a review of the March 13, 2018 transcript reveals Mother's counsel did not object to Mr. Berg's Motion being heard on the morning of March 13, 2018 due to insufficient notice. (See Exhibit F.)⁴ As such, the argument is waived. See Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error."); see also Tenn. R. Evid. 103(a)(1) (requiring a timely objection as a prerequisite to a finding of error based on the trial court's admission of evidence); Butler v. Pitts, -- S.W.3d --, 2016 Tenn. App. LEXIS 10 (Tenn. Ct. App. Feb. 12, 2016) ("Appellants did not raise a particular argument before the trial court either in their pleadings or during the hearing, and thus it was waived.").

Mother cannot argue that the trial court ". . . so far departed from the accepted and usual course of judicial proceedings as to require immediate review . . ." for proceeding with the hearing on March 13, 2018 when Mother did not object to the Motion being heard, and, in fact, filed and argued her own Motion, i.e., Motion to Continue, on a similar timeline to Father's Motion.

⁴ Mother certainly argues at the March 13 hearing that the final hearing should be continued as outlined by the Motion to Continue she filed the morning of March 13, 2018. Mother also argues against the substance of Father's Motion to Suspend, i.e., that Mother's parenting time should be suspended. However, she does not argue that she needed a continuance for the hearing on Father's Motion to Suspend.

2. Mother's procedural due process right to notice was not violated.

Even if Mother did not waive her notice argument (which she did), the substance of Mother's Application—that her procedural due process rights were violated as she was not given proper notice that her parenting time could be suspended by the trial court—fails. See, e.g., (Rule 10 Application at p. 10) (“[Mother] was given no notice that she was at risk to lose all contact with her children.”). Neither the facts nor the case law cited by Mother support this contention.

In support of her argument, Mother heavily relies on the Supreme Court's statement that: “It is imperative . . . that a party from whom custody will be removed, even temporarily, be provided with notice sufficient to meet due process requirements.” (Rule 10 Application at p. 7) (quoting Keisling v. Keisling, 92 S.W.3d 374, 380 (Tenn. 2002); see also (Rule 10 Application at p. 8) (citing Keisling). Despite Mother's reliance on these snapshots from Keisling, a review of that case reveals that it contradicts Mother's argument regarding notice.

In Keisling, following the parties' divorce, the parties engaged in post-divorce proceedings in which each party filed a petition regarding parenting issues, including an allegation by the mother that the father sexually abused the children. 92 S.W.3d at 374. The mother's petition was ultimately resolved with a finding that father did not sexually molest the children. The father voluntarily dismissed his petition. After the first set of post-divorce proceedings was completed, on July 11, 2002, the mother in Keisling filed another petition to modify the father's visitation based on an allegation of sexual abuse. Approximately two weeks after the mother's petition was filed, the trial court held an emergency hearing regarding new allegations of child sexual abuse. The father filed no answer, responsive pleading, or counter-petition prior to the time that the trial commenced. At that hearing, the trial court denied the mother's petition and found that the allegation of sexual abuse was unfounded. The trial court also ordered that custody of the children be changed from the mother to the father. The mother objected, arguing that there were “no

pleadings before the court requesting a change in custody.” Id. at 378. In response, “the trial court stated that it based its ruling upon [the father’s] ‘oral petition’ requesting custody. The trial court then directed counsel for [the father] to ‘get our record clear and get your written petition in because you orally moved the Court and I assumed you had a written petition making its way to this file.’” Id. at p. 378. The mother ultimately sought review of the matter by the Supreme Court arguing that the “the trial court erred in transferring child custody from one parent to the other when no petition requesting a change of custody had been filed at the time of the ruling.” Id. at p. 378. As to the issue of notice, the Supreme Court agreed with the mother and explained:

At the time of the challenged ruling, the only formal pleading before the trial court was [the mother’s] petition to modify visitation and child support payments. [The mother] was not served with any pleading notifying her that she could lose custody of her children as a result of the proceeding. We hold that the risk of erroneous deprivation of custody of one’s children is substantial when no pleadings are filed informing the parent that a change in custody is being contemplated by the court.

After a thorough review of the record, we conclude that the issue of a change in custody from [the mother] to [the father] was not expressly or impliedly tried. [The mother’s] petition alleged sexual abuse of the children by [the father]. The hearing focused upon the truth of those allegations. [The father’s] counsel did make statements concerning his client’s request for custody during the discussion of preliminary matters. These statements, at best, evidence an intention to file a petition, which was not done. Had such a petition been filed, [the mother] would have been on notice of [the father’s] intent to try the issue of custody and the allegations concerning [the mother’s] fitness as a parent. At that time, she would have had the opportunity to agree to the trial of the custody issue, or to object and request a continuance. Without such notice, [the mother] could assume that only the issues raised in her pleadings were being tried.

Id. at p. 378-79. The Supreme Court concluded by holding that the mother’s “right to due process was violated because there were no pleadings giving notice that custody would be addressed at the hearing.” Id. at p. 380.

The application of Keisling was discussed by the Court of Appeals in Howe v. Howe, No. E2008-02580-COA-R3-CV, 2010 Tenn. App. LEXIS 57 (Tenn. Ct. App. Jan. 28, 2010). In Howe, the mother filed a complaint for divorce seeking custody of the parties' minor child. The father did not file his Answer until the first day of the parties' trial, and "the father's counsel admitted that when reviewing the pleadings, he realized that he inadvertently failed to respond to the Complaint." Id. at *2. The mother moved for a default judgment, and the trial court denied the motion, noting that the case was "hotly contested on numerous issues since early on." Id. at *3. After the trial in Howe, the trial court named father to be the primary residential parent and awarded the mother 65 days per year with the child. The mother then filed a motion for stay and to amend the parenting time, arguing that she had "no idea that the primary parenting assignment was an issue." Id. at *5. The mother alleged that she was not prepared to defend the parenting issue. The trial court denied the motion, and the mother appealed. On appeal, as relevant to these proceedings, the mother argued that she did not have notice, as required by Keisling, that custody could be changed. The Court of Appeals considered Keisling and rejected her argument:

The mother cites the Keisling case in support of her argument regarding notice, but that case is not similar, because in Keisling the Supreme Court found that there was no notice that custody could be changed, as change in custody was not expressly or impliedly tried. Keisling v. Keisling, 92 S.W.3d 374 (Tenn. 2002). In this case custody was expressly tried, and the father clearly testified that he at least wanted a joint or shared custody arrangement. This was expressed at trial and at a prior motion hearing. At some point early in the trial, the Trial Court made a statement on a relevance objection that all the evidence relating to issues regarding the child, including custody, was relevant.

Id. at *7.

With the actual breadth and applicability of Keisling outlined above, Mother's argument in this case is devoid of any merit as Mother was on notice that custody would be addressed at the hearing on March 13, 2018. Specifically, Mother's own Rule 10 Application shows that Mr.

Berg's Counter-Petition to Modify the Permanent Parenting Plan was filed on May 19, 2016—approximately two years prior to the March 2018 hearing. . (See **Exhibit A.**) In that Counter-Petition, Father asks to be named the primary residential parent with sole decision making authority. (Id.) There can be no argument that there were “no pleadings” giving notice that custody would be addressed at the final hearing on Mr. Berg's Counter-Petition.

Of particular concern is Mother's repeated argument that she “. . . was given no notice that she was at risk to lose all contact with her children” prior to the March 13, 2018 hearing. (Rule 10 Application at p. 10); see also (Id. at pp. 4, 6) (“This motion gave Ms. Berg no notice that, rather than a continuation of the trial which had begun the previous June, all of her contact with the children was now at issue.”); (“. . . [Father] alleged it was suddenly necessary to immediately remove [Mother's] children from all contact with her”). The heart of Mother's argument regarding notice is not that a pleading regarding custody was pending (as discussed in Keisling), but that March 13, 2018 was the first date she received notice “she was at risk to lose all contact with her children.” (Id. at p. 10.) This is misleading to the Court and completely false—on February 9, 2018, over a month before the continuation of trial on March 13, 2018, ***Father filed a Notice of Filing Amended Proposed Parenting Plan attaching a proposed parenting plan in which Mother would receive no time with the children and containing the following provision:***

Due to Mother's continued behavior designed to alienate the affections of the children against Father, it is in the best interests of the children that Mother have no parenting time with either child pending further orders of the Court.

It is the Court's intent that all contact between Mother and the children be suspended pending further orders of the Court.

Mother is hereby enjoined and restrained from having any contact with the children whatsoever, even contact such as is outlined in the Rights of Parents section of this Parenting Plan, pending further orders of the Court.

(See **Exhibit B**) (emphasis added).⁵

Thereafter, on March 13, 2018, the parties attended a trial in which Mother was fully aware that Father would be asking that she have no contact with the children. For Mother to suggest to this Court that she only first learned of Father's request that Mother, as she describes, ". . . lose all contact with her children . . ." on March 13, 2018 is a complete fabrication in an attempt to have this Court grant her relief.

B. The trial court did not depart from the accepted and usual course of judicial proceedings by finding that the children would be subject to a likelihood of substantial harm absent a temporary modification.

Next, Mother attacks the substance of the trial court's finding—that the children would be subject to a likelihood of substantial harm absent a temporary modification. In support of this contention, Mother argues that the information, including the Report, presented to the trial court on March 13, 2018 does not support this finding. However, curiously, Mother does not attach the Report to her Rule 10 Application for this Court's review and, in fact, filed a motion with this Court asking that the Report not be considered. The Court denied the Motion. (See **Exhibit G**; Motion to Exclude Report.) As the Report is quite voluminous, i.e., 60 pages, Father will not restate that report verbatim, but submits the entire report for the Court's review. Mother also raises evidentiary issues with regard to the Report's admissibility. These issues will be addressed in turn.

As a threshold matter, Father must first address a misrepresentation (as similar to her omission of Father's February 9, 2018 Parenting Plan) made to the Court by Mother through her pleadings in this Court. Specifically, on April 25, 2018, Mother filed a Motion asking that the Court not review the Report in addressing her Rule 10 Application, stating, in part: "Bradley Freeman's report has never been entered into evidence in the trial court." (Motion filed April 25,

⁵ Mother filed her own Amended Proposed Parenting Plan on March 2, 2018. (**Exhibit B**.)

2018 at p. 1.) This is a misrepresentation - the Report was in fact, and without objection by Mother's counsel, made an exhibit at the March 13, 2018 hearing:

THE COURT: Mr. Smith, I am going to put in the report in a sealed envelope, which will be Exhibit No. 4.

(WHEREUPON, the above-mentioned document was marked as Exhibit Number 4.)

THE COURT: We will make yours as Exhibit No. 5.

(WHEREUPON, the above-mentioned document was marked as Exhibit 5.)

MS. CLARK: I thought we weren't allowed to copy that.

THE COURT: Well, you're not. I am.

MS. CLARK: Okay

THE COURT: I'm making it part of the record. We will need a sealed envelope, also.

MR. SMITH: You will put the other documents I put in as Exhibit 4?

THE COURT: Yes, this will be 4, and it will be in a sealed envelope.

Attached as **Exhibit D** is the entire⁶ transcript from the March 13, 2018 hearing. Attached as **Exhibit E** is Exhibit 5 from the March 13, 2018 hearing.

1. Admissibility issue related to the Report.

While not directly confronting admissibility issues related to the Report, Mother's Rule 10 Application ostensibly argues that the Report was inadmissible as it "... contains dozens of pages of hearsay" (Rule 10 Application at p. 6.) This potential argument fails for a variety of reasons.

⁶ Mother only attached part of the transcript, which starts at page 44.

First, as Mother's counsel did not object to the Report being made an exhibit at the March 13, 2018 hearing, she has waived any admissibility issues. See Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error."); see also Tenn. R. Evid. 103(a)(1) (requiring a timely objection as a prerequisite to a finding of error based on the trial court's admission of evidence).

Notwithstanding her waiver, Mother's argument has no merit. A cursory reading of the Tennessee Rules of Evidence reveals the flaws in Mother's conclusions. Rule 703 provides that experts⁷ may rely on inadmissible evidence, e.g., hearsay, in forming his or her opinion: "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence." Here, Dr. Freeman's reliance on statements made to him concerning the child at issue certainly meet this criteria and, therefore, need not be admissible under the Rules of Evidence.

Moreover, the Court's expert is permitted to provide his or her report directly to the Court under Rule of Evidence 706, as recognized by the Court of Appeals in Smith v. Smith, No. M2005-01688-CO-R3-CV, 2008 Tenn. App. LEXIS 224 (Tenn. Ct. App. Apr. 9, 2008). In Smith, at the parties' request, the trial court appointed a psychologist to examine the parties' son and to report his findings and conclusion to the trial court. The psychologist filed his reports with the trial court and the parties, and trial court relied on them to set temporary parenting orders. The mother objected to the use of the reports at trial on the ground that she had not been afforded an opportunity

⁷ There can be no dispute that Dr. Freeman is an expert as he was agreed upon by the parties. (**Exhibit C**.)

to depose the expert. The trial court disagreed and relied on the report. The mother appealed and, as relevant to this Motion, argued that the trial court erred in admitting the reports over her objections because Rule 706 reports can purported only be admitted and considered if the parties have an opportunity either to depose the expert or subpoena the expert to trial.

The Court of Appeals disagreed, finding the report to be admissible despite the expert not testifying at trial or via deposition: “The plain language of Tenn. R. Evid. 706 does not state that the only way that a court-appointed expert's opinions may be received into evidence is to call the court-appointed expert as a witness at trial. In this regard, Tenn. R. Evid. 706(a) states that “the [court-appointed] witness's deposition may be taken by any party” and that the “witness shall be subject to examination by each party.” It does not say that a court-appointed expert must be deposed or must be cross-examined at trial before the court may consider the expert's opinions.”

The Report was properly admitted under the confines of Rule 706(a) and Smith.

2. Likelihood of substantial harm absent modification of Permanent Parenting Plan.

As to the substance of the March 13, 2018 hearing, the trial court found that absent a temporary modification the children would be subject to a likelihood of substantial harm. (**Exhibit F.**) Accordingly, the trial court modified the parties’ Parenting Plan.

Here, the basis of the trial court’s finding of substantial harm is formed through the findings made by the *agreed upon* Rule 35 expert—Vanderbilt psychiatrist Dr. Bradley Freeman. (**Exhibit G.**) Dr. Freeman’s Report consists of 60 pages and is based on an intensive evaluation considering 20 interviews, multiple tests, and a review of relevant health care records. (Id.) A totality of the information reviewed by Dr. Freeman can be found on pages two through four of his report. (Id. at pp. 2-4.) Father would note that Mother was tremendously involved in the process as she was reviewed on two occasions and provided records, which were described by Dr. Freeman as

follows: “Ms. Berg provided three binders of information with regard to the children’s activities, health care, and education. The binders contained copious amounts [of] material, messages, and pictures. Each binder was indexed and tabbed in an overly organized fashion. Many of the pages were highlighted and had additional handwriting on them to explain the contents.” (Id. at p. 40.) Mother was very involved in the process (which was agreed upon) and her complaints appear to stem from the fact that the conclusions were not favorable to her.

After the foregoing intensive analysis was conducted by Dr. Freeman, he found, *inter alia*, that that Mother meets criteria for an anxiety disorder, meets the criteria for parent relational conflict, is at an increased risk for depression, and must continue to engage in mental health treatment. (Id. at p. 50-51.) As to Father, he found that he was a safe parent for his children, was engaged in a healthy marriage with his current wife (but that they should engage in couples counseling due to the stress of the contentious custody matter), and did not have a major psychiatric diagnosis. (Id. at p. 51-52.) Dr. Freeman noted that Father needed to adjust his parenting style and become less rigid and continue to work in individual therapy. (Id. at p. 52.) Dr. Freeman also found that “. . . the evidence supports Ms. Berg engaging in alienating Ellie and Samuel from their father . . .” (**Exhibit G** at p. 56.) Dr. Freeman recommend that Ellie should be separated from Mother and that it was “the key to rebuilding the relationship between Ellie and her father.” (Id. at p. 57.)

Father will submit the entirety of the Report to the Court for its consideration and would state that the findings of the Report and the facts supporting those findings certainly buttress the trial court’s decision on March 13, 2018. However, Father would point out one particular string of incidents for the Court’s consideration.

On February 25, 2018, Dr. Freeman interviewed a Ms. Tiffany Davis, who identified herself as a counselor for the parties' children. (Id. at p. 30.) Ms. Davis reported that she first saw Ellie on October 15, 2013 and last saw Ellie in August of 2017. (Id.) Despite Ms. Davis seeing Ellie for almost four years, nowhere in her testimony does she speak to Ellie cutting herself or committing self-harm. (Id.)

Mr. Ronald Shuff, who was also interviewed by Dr. Freeman, stated that “[Mother] has told her she can’t help Ellie and that someone else has to report to DCS. She noted nothing can be done unless she threatens to hurt herself. This goes back to June of ’16. She tells her there is nothing she can do to help her and ‘I can’t report anything to DCS but they won’t do it unless you are telling them you are going to hurt yourself.’” (Id. at p. 9.) Mr. Shuff indicated that Mother had advised her daughter of the foregoing on more than one occasion. In other words, beginning in June of 2016—while the custody matter was being hotly litigated—Mother recommended to her daughter that if she wanted to be removed from Father’s custody, she would need to threaten to “hurt herself.”

Mr. Shuff also reported, among other things, that Mother would read court documents concerning the ongoing custody case with Ellie and that Ellie was “defending her Father” from Mother’s demeaning comments about him until Mother “went through court documents showing what her father wrote about her.” (Id. at p. 9.) With this background in place, i.e., that Ellie never suggested that she had cut herself during four years of counseling with Ms. Davis and Mother suggesting that Ellie threaten to hurt herself, on September 1, 2017, Ellie was admitted to Vanderbilt Psychiatric due to suicidal ideations. (Id. at p. 42.)

Again, the foregoing only represents a small part of the Report, but reveals the severity of the situation presented to the trial court on March 13, 2018. The remainder of the report also shows Mother's troubling behavior and supports the Court's March 13, 2018 ruling.

C. The Court properly found that Mother should not have contact with the children.

For the same reasons as outlined in the Report and briefly set out above, the trial court did depart from the accepted and usual course of judicial proceedings in prohibiting Mother from having contact with the children. To this end, Mother ostensibly argues that all parents are "entitled" to the right enumerated for parents pursuant to Tennessee Code Annotated section 36-6-101. However, a review of the statute, reveals Mother's interpretation to be incorrect as the statute, directly after listing the rights, states: "Any of the foregoing rights may be denied in whole or in part to one or both parents by the court upon a showing that such denial is in the best interests of the child." Tenn. Code Ann. § 36-6-101(a)(3)(C). As the trial court found the terms of the March 13, 2018 Order to be in the best interest of the children, it had the authority to remove the "rights of parents" from Mother.

D. The Protective Order is not overly broad and she is not prohibited from preparing to properly rebut the Report.

Mother's final complaint is that the March 12, 2018 Protective Order is overly broad and that she "should be allowed to continue putting on her evidence, including preparing a proper rebuttal to the report submitted by Bradley Freeman." (Rule 10 Application at p. 10.) The trial court has not prevented her from "putting on her evidence" and the Protective Order is appropriate.

In support of her contention that the Court has "prevented her from putting on her evidence," Mother, again, misrepresents a fact to the Court in her Rule 10 Application. On this occasion, Mother complains that she "has no assurance she will even have a hearing to determine whether she will have access to her children . . ." as the March 13, 2018 Order provides that "[i]n

approximately 60 days, the Court shall set a status conference to determine whether the terms of this Order should be modified and to determine *whether a final order should be set.*” (Rule 10 Application at p. 7) (emphasis in Motion). Mother suggests to this Court that the trial court entered an order in which it would potentially convert its March 13, 2018 Order to a “final order.” This is misleading, as Mother misquotes the March 13, 2018 Order. The Order actually states: “In approximately 60 days, the Court shall set and conduct a status conference to determine whether the terms of this Order should be modified and to determine whether a final hearing should be set.” (**Exhibit F.**) (emphasis added). In other words, in 60 days, the Court will conduct a hearing to determine if the Order should be modified and whether the matter should be set for a final hearing. This was also made clear by the trial court at the actual hearing:

MS. CLARK: And, Your Honor, at the conclusion of that 60 days?

THE COURT: I’m not saying there will be contact. I’m saying we will take a look at it.

MS. CLARK: So we come back in in 60 days?

THE COURT: Come back in at 60 days. We will probably be looking to set the case at some point in the future

(**Exhibit F** at p. 43.) For Mother to suggest to this Court otherwise is simply incorrect.

Moreover, as made readily evident by the trial court on March 13, 2018, the very reason for the trial court granting Mother’s Motion to Continue the trial was for her to be able to potentially rebut the Report. (*Id.*) The very purpose of the trial court’s continuance was to allow Mother to depose Dr. Freeman and gather evidence she deemed necessary. (*Id.*)

Finally, although vague in her basis, Mother takes issue with the Court’s March 12, 2018 Protective Order which was issued along with the Report. (**Exhibit A** to Mother’s Application.) Father is unsure of the reasoning behind this complaint. In short, the subject Protective Order, due

to the sensitivity of the information contained in the Report, provides that the Report shall be provided to counsel for each party but that the contents shall not be disseminated to any other person verbally or in writing without a Court Order. The Order goes on to say that the Report shall not be reviewed by anyone except for the attorneys, the parties, any expert, and staff of the attorneys. Copies shall only be provided to experts who shall be subject to the Protective Order. The Report shall not be made an exhibit to any future discovery or read into evidence at a deposition or made an exhibit to a Court proceeding without prior notice to the parties of an intent to do so and an order allowing use of the Report. Finally, the Protective Order may be modified by motion for just cause.

The foregoing represents a brief recitation of the terms of the Protective Order. Due to the information contained in the Report, the Protective Order is appropriate and within the trial court's ability to issue. Mother can share the Report with any experts retained by her and, upon Motion, may share the Report as she deems necessary. Mother suggests that the Protective Order should be set aside and that she should be able to share the contents of the Report at her discretion. This would be inappropriate.

V. CONCLUSION

Based on the foregoing, Mother's Application should be dismissed and Father should be awarded his attorneys' fees and costs incurred in defending this matter pursuant to Tennessee Code Annotated section 27-1-122 and 36-5-103(c).

Respectfully submitted,



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Attorneys for Father/Respondent

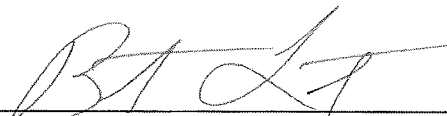
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the following method(s) upon the individual(s) listed below on this 8 day of May, 2018:

Cynthia A. Cheatham, Esq.
4800 Charlotte Avenue
Nashville, TN 37209
ccheathamlaw@gmail.com

Electronic Mail
 U.S. Mail
 Facsimile
 Hand-delivery

Attorneys for Defendant, Ms. Berg



Gregory D. Smith/Brenton H. Lankford

STATE OF TENNESSEE
DAVIDSON COUNTY
20TH JUDICIAL DISTRICT

FILED
MAY 19 PM 2:46

- First
- Alias
- Plurals

PHILIP FOXWELL BERG

Respondent/Counter-Petitioner

Vs.

KEIKO SHIGENO BERG

c/o Brenda Rhoton Clark, Esq. (her attorney)

1230 2nd Avenue South

Nashville, TN 37210

Petitioner/Counter-Respondent

CIVIL ACTION
DOCKET NO. 12D-575

Method of Service:

- Davidson Co. Sheriff
- Out of County Sheriff
- Secretary of State
- Certified Mail
- Personal Service

Counter-Respondent

To the above named ~~Defendant~~

You are summoned to appear and defend a civil action Complaint of Divorce Petition filed against you in the Circuit Court, 1 Public Square, Room 302, P.O. Box 196303, Nashville, TN 37219-6303, and your defense must be made within thirty (30) days from the date this summons is served upon you. You are further directed to file your defense with the Clerk of the Court and send a copy to the Plaintiff's attorney at the address listed below. Also, you are summoned to appear at _____ on the _____ day of _____, 20____, and show cause _____

In case of your failure to defend this action by the above date, judgment by default will be rendered against you for the relief demanded in the complaint.

RICHARD R. ROOKER

Circuit Court Clerk
Davidson County, Tennessee

ISSUED: _____

By: _____

Deputy Clerk

ATTORNEY FOR PLAINTIFF

or

PLAINTIFF'S ADDRESS

Pamela A. Taylor, STITES & HARBISON, PLLC

401 Commerce Street, Suite 800

Address

Nashville, TN 37219 (615-782-2212)

TO THE SHERIFF:

Please execute this summons and make your return hereon as provided by law.

RICHARD R. ROOKER

Circuit Court Clerk

Received this summons for service this _____ day of _____, 20____.

EXHIBIT

SHERIFF



To request an ADA accomm

tabber

A

re at (615) 880-3309.

NM

IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

FILED

2016 MAY 19 PM 2:46

RICHARD W. KOPPEL, CLERK



PHILIP FOXWELL BERG,)
)
 Father/Respondent,)
)
 v.)
)
 KEIKO SHIGENO BERG,)
)
 Mother/Petitioner.)

Case No. 12D-575

**FATHER'S ANSWER TO MOTHER'S PETITION TO MODIFY PARENTING PLAN
AND FATHER'S COUNTER-PETITION TO MODIFY PARENTING PLAN**

Comes now the Respondent, Philip Foxwell Berg ("Father"), by and through his counsel of record, and responds to Mother's Petition to Modify Parenting Plan filed on behalf of Petitioner, Keiko Shigeno Berg ("Mother"). For cause, Father would show as follows:

I. HISTORY OF CASE

Father admits to the facts contained therein.

II. NON-EMERGENCY MEDICAL DECISIONS

Father admits that the parties' Permanent Parenting Plan provides that both parents shall have joint decision-making as to non-emergency medical decisions. Father denies the remainder of the allegations set forth therein.

A. Response to Mother's Qualifications

1. Father admits Mother works as a Nurse Practitioner at the Walgreen's walk-in clinic.
2. Insufficient knowledge to admit or deny the remainder of Mother's allegations set forth therein.

3. Father asserts that although Mother is a mid-level healthcare provider, her actions demonstrate that she puts her healthcare conclusions above those of more qualified physicians and rejects input from Father and pediatric physician specialists.

4. Father further asserts Mother has performed inappropriate treatments on the children herself that should be performed in a surgical setting, without Father's prior knowledge or consent.

B. Response to Mother's Claim that Mother is Already Highly Involved in the Children's Health Care

1. Father denies that Mother is the one who notices and identifies the children's healthcare needs the majority of the time.

2. Father does not have enough information to admit or deny the remainder of allegations set forth therein.

3. Under the terms of the parties' Permanent Parenting Plan, the parties' minor children are with Mother half the time and with Father half of the time.

4. Father does not have difficulty recognizing symptoms such as the ones noted by Mother (sore throat, rashes, stomach ache, nose bleeds, pink eye, etc.). Father takes appropriate action when treating day-to-day illnesses, he keeps mother informed, and takes the children to a medical provider whenever needed.

5. Mother claims she discovered that Samuel had "Aphthous Stomatitis", and that Ellie had "Molluscum Contagiosum" in 2014. These are the Latin terms for, respectively, canker sores, and a type of skin rash. Although Father typically uses the non-Latin terminology, he is capable of identifying health concerns such as rashes and large sores on a child's lip.

C. Response to Father Demonstrates Trust in Mother's Care

1. Father denies that communicating with Mother and asking for her input equates to trust in Mother's healthcare decisions. Father attempts to cooperate with Mother and

keep her updated about the children. Father keeps Mother informed as to the children's health conditions and provides her the opportunity to provide input as a parent. However, Father handles routine health concerns for the children regularly and takes them to independent medical professionals when warranted. Father does not have confidence in Mother's ability to make reasonable objective medical decisions for the children, since he has seen her act contrary to the advice of specialists who are much more qualified than her (e.g. pediatric physicians with specialty training).

2. Father's recollection of the incidents set forth in Mother's petition on August 17, 2014 and October 22, 2014 were that he communicated with Mother in order to keep her in the loop and give her the opportunity to provide input as a parent. Father does not recall the specific incidents set forth in Mother's Petition on December 8, 2014 or January 17, 2015. Father also does not recall asking Mother to bring him a thermometer on December 19, 2014 set forth in Mother's Petition. Father asserts that he has always kept a thermometer and basic first aid supplies at his home. If that happened then it may be that Mother was stopping by his house anyway that day, and he asked Mother to bring along her thermometer because his thermometer battery was low or something along those lines.

3. In response to the December 4, 2015 incident contained in Mother's Petition, Father asserts that he and Mother agreed to let her perform a strep test on Ellie since Ellie had four (4) tests at school that day, and there was not enough time to make an appointment at a clinic. However, Father normally takes the children to an objective third party health care provider when they need a diagnosis or treatment.

D. Response to Issues When Father Does Not Agree with Health Care Providers

Father denies the allegations set forth therein and demands strict proof thereof.

E. Response to Cough

1. Father admits that Dr. Travis Cain has treated Ellie for her cough. However, Father denies that her recurrent cough is merely "seasonal." Father asserts that it persisted in varying degrees in all seasons.

2. Despite Father and Mother following the allergy treatment recommended by Dr. Cain, including oral allergy medicines (Zyrtec), and nasal sprays (Veramyst), Ellie's cough persisted. Accordingly, Father took Ellie back to her pediatrician, Dr. Rothman, on July 22, 2014, with Mother's knowledge and consent, and asked the pediatrician for input as to Ellie's persistent cough.

3. Father denies Mother's claim that "even though Father was aware of Dr. Cain's care, Father did not inform Dr. Rothman or the Vanderbilt pulmonologist that Dr. Travis Cain had previously evaluated, diagnosed and treated Ellie" and would demand strict proof thereof. Father asserts that Dr. Rothman was fully informed about Ellie's prior treatment from Dr. Cain. Dr. Rothman's medical records from the July 22, 2014 appointment say "Reviewed prior notes from allergist, had spirometry in 2012 which per note was normal." Dr. Rothman's notes stated that Ellie had a "Dry, hacking cough."

4. Dr. Rothman thought that there was a good chance that the cough was allergy related, but thought that asthma was also a possibility, and that a consult with a pulmonologist could be worthwhile. Dr. Rothman's medical record notes from that day say, "Discussed with dad that suspect this is allergy related, cannot exclude cough-equivalent asthma." Dr. Rothman wrote: "Let me know how she is doing in 2-3 weeks, if not improving consider referral to pulm, ?PFTs. Let me know sooner if worsening." PFTs stand for pulmonary function test also known as spirometry. Per the medical record, Dr. Rothman was aware of the

prior treatment and tests, including the 2012 spirometry, but still apparently believed that another spirometry may be warranted in 2014 given that the cough had continued.

5. When Ellie's cough persisted after the July 22, 2014 appointment with Dr. Rothman, Father contacted and informed Dr. Rothman, per her instruction. Dr. Rothman recommended that he make an appointment with one of the pediatric pulmonologists at Vanderbilt. Father made the first available appointment, which was with Vanderbilt pediatric pulmonologist Christian Rosas-Salazar, M.D. on August 15, 2014.

6. Mother was aware of the appointment, but declined to go, and told Father that the appointment was a waste of time..

7. Father informed Dr. Rosas-Salazar of the history of Ellie's cough and prior treatments to the best of his recollection. Dr. Rosas-Salazar, because he shares the same electronic medical records system as Dr. Rothman, would have also had access to Dr. Rothman's notes, including Dr. Rothman's note from the July 2014 appointment which said: "Reviewed prior notes from allergist, had spirometry in 2012." Therefore, upon information and belief, Father would assume Dr. Rosas-Salazar was aware that Ellie had previously been treated by the allergist. Dr. Rosas-Salazar did an examination and decided to conduct a respiratory test. He also reviewed prior records. His notes state "I independently reviewed the CXR [chest x ray] done on 8/10/10." His assessment notes state: "Chronic cough, most likely in the setting of asthma based on strong atopic history, other possibility is subclinical GERD based on the nighttime predominance." His assessment also Ellie's "Allergic rhinitis (positive RAST for peanuts, mold, dogs, and cat per paternal report)." In other words, Dr. Rosas-Salazar was aware of Ellie's allergy issues, but still recommended that Ellie try an inhalant to see if it helped with the cough,

in case there was an asthma element to the cough. Mother then refused Dr. Rosas-Salazar's recommendations.

8. Father did not want to leave the cough untreated, nor did he want to start the inhaled Flovent without Mother's consent. Accordingly, Father and Mother agreed to meet again with pediatrician, Dr. Alice Rothman, to try to resolve their differences.

9. Father, Mother and Ellie met with Dr. Rothman on September 10, 2014. Dr. Rothman's medical record notes from that day state, in pertinent part, as follows:

Mom is reluctant to give trial of flovent at this time as she feels that cough will improve/resolve over the next several weeks due to end of ragweed season. This may be true – that does not exclude the possibility of cough equivalent asthma (may be allergy triggered). Given that allergy treatment is not currently being given consistently will try and maximize this first.

10. Because Mother was unwilling to try inhaled flovent for asthma, even on a trial basis, Father agreed to compromise by trying another period of enhanced allergy treatments to see if that would help. In the interest of working cooperatively, and because Mother would not agree to a trial period of using inhaled flovent, and because Mother had not been administering veramyst consistently, Father agreed to a trial period of enhanced allergy treatments. The medical record shows that the reason that the allergy treatment was not being given consistently was because of Mother had not been regularly giving her all of the recommended allergy treatments, even though Mother was the one insisting that allergies must be the only cause for the cough.

11. In light of Dr. Rothman's comments about the possibility of "habitual cough" as a contributing factor for Ellie's cough (i.e. it had become a habit for Ellie cough whenever she felt a slight tickle in her throat), Father asked whether it would be helpful for Ellie

to start carrying around a water bottle on a regular basis and take sips of that when she had an urge to cough. Dr. Rothman agreed that might be helpful as a way to counteract habitual cough.

12. Father denies Mother's description of the process involving Ellie's treatment for cough. Father asserts such claims are completely mischaracterized statements. The medical records from the various consultations with specialists show that Father was seeking the best possible treatment for Ellie, was forthright with Mother and with all the medical providers, and did his best to cooperate with Mother. Mother, by contrast was not cooperative, nor willing to compromise, nor willing to accept input from medical professionals who disagreed with her.

F. Response to Nosebleeds

1. Father admits that Samuel has had nosebleeds from time to time in late 2015 and early 2016.

2. Father admits that Mother took Samuel to the pediatric ENT specialist, David Scott Fortune, M.D., on September 28, 2015. However, Father denies that Dr. Fortune recommended cauterization of Samuel's nostrils at that time, although the notes show that he would consider recommending it if symptoms worsened.

3. Father admits that he took Samuel to his follow up appointment with the ENT, with Mother's knowledge and consent; except Father would state that it was on October 28, 2015.

4. Father denies that he told the ENT specialist anything that was inaccurate. Father simply reported the frequency of nosebleeds that he had observed and asked for the ENT specialist's recommendation. The ENT specialist performed a physical examination and did not find any major concerns. Based on the examination and updated information, the ENT specialist did not recommend cauterization.

5. Following the appointment, Mother texted Father asking about the appointment. Father responded: "Oh he said that the nose looks like it is improving and he recommends continuing the spray and Vaseline at this point rather than cauterizing." Mother responded: "K" (i.e. okay).

6. After Samuel apparently had a few nose bleeds, Mother decided to cauterize his nostrils on her own, against the pediatric ENT specialist's advice, and without consulting with Father in advance.

7. Father denies the frequency and duration of Samuel's nosebleeds set forth in Mother's Petition. There were some months during which Samuel had a handful of minor nose bleeds while at Father's house, and Mother told Father that while at her house Samuel was having nose bleeds all the time and was sometimes gushing blood. Mother said she believed Samuel's nostrils should be cauterized. Father was concerned that Mother had made up her mind about this course of treatment, and was therefore exaggerating the frequency and severity of the nose bleeds to him and health care providers in order to persuade them to agree with her.

8. On December 8, 2015, when Father stopped by Mother's house in the morning for the children's drop-off/pick-up, Mother told Father that she thought they should schedule another ENT appointment so that the ENT doctor could cauterize Samuel's nostrils again. Mother said that she had cauterized Samuel's nostrils already once and it seemed to help to a certain extent, but she thought the ENT doctor could do it better. Father was shocked to hear that Mother had cauterized Samuel's nostrils by herself without consulting him, and outside a doctor's office. Mother then tried to downplay the significance of the cauterization. She showed him a silver nitrate stick (which is used for the cauterizations, and which father thought looked somewhat like a fireworks "sparkler") and made comments indicating that it was not a big deal.

As noted above, the medical record from September 28, 2015 indicates that the ENT specialist had already told mother that this procedure, if performed, should be performed in a surgery center setting, and that each nostril should be cauterized three (3) months apart.

9. Mother did, however, send Father a text on December 9 saying “I left a message with ENT office. Samuel has had about 5 nosebleeds since Monday when he is with me he has at least several nose bleeds a week, since we have already been there twice I asked him do we need to “follow up” or just scheduled cauterization...” Father responded: “Can you conference me in when you get the pediatric ENT on the phone, so I can hear his input directly? I’m not inherently opposed to cauterization if that is the doctor’s recommendation, but I just want to hear it from him directly.”

10. Father sent that text because, among other things, he was concerned that Mother seemed so insistent on getting a cauterization scheduled that she would exaggerate the symptoms when speaking with the pediatric ENT’s nurse. Mother did not include Father in her call with the ENT specialist’s office. Instead she wrote him back: “Nurse just called me before I got u text said sounded like he does need one of his nostrils cauterized so he was going to check with dr and if he approves have a scheduler call me to scheduled cauterization procedure for L nostril.”

11. Mother’s text message description to Father of her call with the ENT specialist indicates that they recommended cauterization. By contrast, in the medical record notes from that call, the ENT specialist office nurse wrote: “Mom wants to proceed with nasal cautery.”

12. Mother’s email to Father that day said: “Nurse was reading his notes which said if bleeding does not stop recommend cauterization. He was dripping/pouring blood.”

13. Later that evening Mother texted to Father that compared to other kids at church club, "Samuel looks pale, I am going to give him kids vitamin supplement. Worried he may be a little anemic from all of the blood loss."

14. Father believes Mother exaggerated her description of Samuel's symptoms to the ENT office to try to get the office to agree with her diagnosis that surgery was needed. The ENT office agreed to schedule a cauterization as Mother requested without an initial exam, although a date was not set at first. Later, the appointment was set for December 22, 2015.

15. Father called the ENT office on Friday, December 18, 2015, and explained that he had not seen any recent nose bleeds by Samuel, and asked if the ENT specialist should do an in-person exam of Samuel before proceeding to nose cauterization. Father was not insistent on any particular course of treatment, but just wanted to make sure that the ENT specialist was recommending doing the procedure based on accurate information. The nurse's notes on the medical record after Father's call state: "**He [Father] is wondering if an eval would be recommended** before surgery to determine if it is still needed. **He said it is OK if you [Dr. Fortune] still prefer to do surgery.**" (emphasis added). The office called back and said that they would cancel the surgery for the next Tuesday, and recommended a consult with both parents. Father thought about it over the weekend. On Monday, December 21, 2015, he sent Mother an email stating: "Kei, I called Dr. Fortune the pediatric ENT on Friday and spoke with his nurse Wendy about the cauterization surgery that you scheduled for tomorrow. I explained that I had not seen Samuel have any nose bleeds since you cauterized his nostrils, and wondered if it would be better for Dr. Fortune to take one more look during an office visit before proceeding with surgery. The nurse spoke with Dr. Fortune and said he would be fine with seeing Samuel for another office visit before deciding whether to proceed with surgery. She said he'd like both of us

to be there for the next office visit so we can make sure that we're all on the same page about the best course of treatment. So she took Samuel's procedure off the appointment schedule for tomorrow. Please let me know when would be a good time for you for all of us to go to an appointment with Dr. Fortune. Or if you'd prefer to keep an eye on nosebleeds through Christmas/New Years and then decide please let me know. In the meantime I think we should keep up with applying the Vaseline to the inside of his nostrils like the doctor suggested. Thanks”.

16. Initially Mother did not schedule a follow-up appointment with Dr. Fortune. On February 3, 2016 Mother sent Father an email saying: “FYI Samuel had a pretty heavy bloody nose last night from his left nostril last night.” Father responded: “Okay thanks for letting me know. He did not have any bloody noses this past week with me. Nor the previous week with me. Let's be sure to keep applying Vaseline inside his nostrils every day.”

17. Father denies that cauterization is “a very simple procedure.”

18. Mother decided to make another ENT appointment on March 14, 2016. Despite that Samuel had not had any recent nosebleeds, Mother insisted on keeping the appointment. Father attended the appointment with Mother. The ENT specialist again recommended *against* cauterization. Mother pressed the ENT specialist to tell her what specific number of nosebleeds in one week would be the amount that would warrant cauterization. The ENT specialist declined to give her a certain number, and said that there are other factors too, including the physical exam. After Mother’s persistent questions about when cauterization would be warranted, the ENT specialist said that she could request a second opinion at Vanderbilt’s pediatric ENT.

19. Since the March 14, 2016 appointment, Samuel has had only two very minor nosebleeds when at Father's house.

G. Response to Ellie's Vision

1. Father denies that Mother became concerned about Ellie's vision in the Spring of 2015 and that it was confirmed on September 30, 2015 during the sports physical exam with Ellie's pediatrician. In fact, the medical records indicate that Mother did not express concern about Ellie's vision at that time nor request a vision screen.

2. Mother made an appointment at Anderson Eye Care in Hermitage on Martin Luther King Day, January 18, 2016 at 1:30 p.m. Mother informed Father that she had vision insurance, and offered to take Ellie to the appointment. Father had no objection whatsoever to the appointment. In fact, Father brought the children to the appointment and attended.

3. Father denies that he told Mother that "regardless of what the optometrist said, Ellie was not getting glasses because she did not need them" and demands strict proof thereof. Father asserts that he has no objection to Ellie receiving good ophthalmologic care. Father knew that a likely and/or possible result of such a visit would be glasses for Ellie.

4. At the end of the January 18, 2016 eye exam noted above, Ellie went to look at the options for frames for her glasses. The average price of frames, per the office, is between \$120 and \$175. Insurance would pay for up to \$200. Ellie found several sets of frames that she liked, all of which were under \$200. Father said that he thought any of them would be fine if Ellie liked them. However, Mother found a set of frames that she liked better, which was over \$200. Ellie resisted and said she did not like those frames. Mother continued to pressure Ellie for nearly an hour, telling Ellie that the frames Ellie liked looked bad, and that the frames Mother liked were better. Father felt bad for Ellie and he said he thought any of the options she

liked were fine, but Mother would not relent. At one point when Ellie was wearing the pair that she liked best (and that the optometry assistant thought looked fine) Mother said to Ellie, “Those glasses make you look mean.” Ellie responded, “You’re the one being mean.” Eventually, Ellie relented and agreed to the more expensive frames that Mother had insisted on. Father told Mother, out of Ellie’s hearing, that he thought if she was insisting on the expensive fashion frames, against Ellie’s wishes, Mother ought to pay the extra amount for them.

5. The ophthalmologist prescribed glasses for Ellie and suggested that sometime in the future they *might* consider contact lenses, or Corneal Refractive Therapy (CRT) as an option for Ellie. Father and Mother were both interested in CRT as a possible future option for Ellie and asked the Ophthalmologist a number of questions. The Ophthalmologist did not push CRT as an immediate need for Ellie by any means, and commented that if she does do it someday, it might be a good idea to start the process during the summer when school is not in session. When Father was working on his personal budget plan in spring of 2016 he planned to most likely do the CRT lenses for Ellie and included that in his budget for the year.

6. On Monday, March 14, 2016, two months after their prior appointment, Mother informed Father by text that she had made another appointment with the ophthalmologist, Dr. Anderson, for that Thursday, March 17, 2016 at 3:00 p.m. to discuss CRT. Father informed Mother that he was not free on Thursday at 3:00 p.m., and in any case he did not need to see the ophthalmologist again already to discuss CRT since they had just seen the ophthalmologist to discuss it two (2) months prior, and Father had agreed to revisit the idea in the summer after they had seen how Ellie did with glasses for a while. Father said it was fine for Mother to take Ellie back to the ophthalmologist for glasses, since she had misplaced the glasses

that were purchased two (2) months ago, and it was increasingly looking like they were permanently lost.

7. Father called the ophthalmologist's office and asked about the price of replacement frames for Ellie. He was told that the cheapest pair of frames is \$45.00, and the average is between \$120.00 and \$175.00. Father was concerned that Mother would again pressure Ellie to buy expensive frames beyond the insurance covered amount. So Father told Mother he would pay his proportional share of frames costing up to \$140.00 (i.e. approximately average price). Father noted, "If Ellie would like to get a pair that is above that amount then I think it would be a good life lesson if she pays the extra." Father did not think that Ellie would want to buy an especially expensive pair (unless pressured by her Mother to do so) but thought that it was fair to give Ellie the chance to pay a little extra for above-average expense frames if she wanted to. Mother responded "I am not sure if you have a choice. This is Ellie's medical care and under the divorce decree you have to pay..." Father responded, "This is an opportunity for Ellie to learn a life lesson. If you lose a pair of \$200+ glasses then you might have to settle for replacement frames that aren't your favorite. It will help her not lose them again in the future. Or if it matters enough to her she can pay a little bit of the cost herself. The glasses themselves are required medical care. Buying above-average priced frames for style purposes is not medical care so that is beyond the scope of the parenting plan requirement. You may think you're being a better parent by shielding her from all consequences of her actions but I happen to disagree. If you decide to pay the extra cost above that amount that's up to you." Mother responded: "...I do not understand you who are a great bass, Berry sims attorney have to be so stingy. Show some grace to your own daughter."

H. Response to Dental Cleaning

1. Father admits that Mother took Samuel to the dentist on March 7, 2016. Father denies that he told Mother he was uncomfortable with fluoride treatment, Father was simply confused by Mother's hurried description of the fluoride treatment, and thought that she was talking about the one-time treatments that are given every six-months at the regular teeth cleaning. Father politely asked Mother a couple of clarifying questions. However, Mother became exasperated and would not answer his questions. So Father asked if he could speak with the dentist for an explanation.

2. Father asserts that he has had Samuel use the fluoride treatment at home as directed. Father did not create any drama or inconvenience for any healthcare/dental professionals nor question their professional judgment. He simply asked Mother a couple of questions and she dramatically declined to answer them.

3. Prior to the parties' divorce in 2013 both parents agreed to start taking the children to regular counseling appointments with Ms. Tiffany Davis, L.C.S.W. Counseling continued after the divorce on a regular basis, although the frequency gradually declined. Both parents took turns taking the children to appointments. On Sunday, May 24, 2015, Father mentioned to Mother in a text message that he had taken Ellie to one of her appointments two (2) days earlier, on Friday, May 22nd. Mother then asked about the appointment and Father explained that counseling is just one from a long time ago that had to be cancelled and when he tried to re-scheduled there were no free days for quite some time. He apologized that he forgot to tell Mother the re-scheduled date and offered to fill her in by phone or suggested that she could call Ms. Davis and ask her directly.

III. EXTRACURRICULAR ACTIVITIES

This section contains a prayer for relief and no answer is required. To the extent that any allegation requiring an answer is made, Father would deny and demand strict proof of any such allegation.

A. Response to Ellie's Piano at Blair Discontinued

1. Father admits to the facts in the first paragraph under Ellie's Piano at Blair Discontinued.

2. Father expressed to Mother that he felt that the cost of the lessons was excessive, and did not think it was helpful for the kids to spend so much time sitting in the car. Ellie's piano lessons at Vanderbilt were approximately \$1,500 per semester (\$3,000 per year) and did not even continue during summers or holidays. In addition, the lessons took place after school on a weekday, and required commuting to and from Vanderbilt during rush hour, which was very time intensive. Also Samuel would normally come along for the lesson, which meant he might spend the entire time from after school until dinnertime in the car or at his sister's lesson. Mother pushed hard for Ellie to continue taking lessons at Blair. Father noted the commuting difficulty and Mother said that she could help with child pick-up on lesson days (since she did not work that day) in order to make it work. In the interest of continuity for Ellie in the aftermath of the divorce, and as an accommodation to Mother, Father agreed to let Ellie continue taking lessons at Vanderbilt for one more year (the 2014 – 2015 school year) and to pay half of the cost. But Father made it clear that he did not see it as a long term helpful arrangement. As Mother noted in her Petition, she did not think the cost was worth paying if she had to pay it alone.

3. Father did find an alternate local piano teacher named Julie Lopez through online searching. She had very good reviews and Mother agreed to start using her to teach both

children piano. Ms. Lopez has been the children's teacher and comes to the home of Father or Mother on their respective weeks since August 2015, and gives lessons to both Samuel and Ellie. This gives both children the opportunity to take piano, eliminates the need to drive, and is cheaper than Blair. Mother has made no indication that she is dis-satisfied with Ms. Lopez's teaching.

B. Response to Swimming and Tennis Veto

1. During the summer of 2014, Father and Mother agreed to sign the children up for swimming and tennis lessons throughout the summer on days both of their weeks with the children. Father paid for half of those lessons. In 2015 Father decided to explore some different summer options. He signed up the children for a number of fun and educational camps during his weeks with the children, including an equestrian/horse camp at YMCA's camp Widjiwagan for both children, a science camp at the Adventure Science Center for both children, and a Nike basketball camp for Ellie. Mother wanted to sign up the children for swimming and tennis lessons during her weeks with the children. Father had no objection. Mother wanted Father to pay for half of the swimming and tennis lessons even though they were only occurring during her weeks with the children. Father declined, but said he would be willing to pay for half of those if Mother would pay for half of the camps that they did during his weeks (which were far more expensive). Mother was upset and declined.

2. Mother argued that Father should pay for the swimming lessons out of concern for safety for the children, but they had both been swimming for years, and in fact Mother just wanted to improve Samuel's swimming form. Father and Samuel already swam together regularly at Nashville Shores and other swimming venues.

C. Response to Samuel's Gymnastics Discontinued

1. Father asserts Mother and Father jointly agreed to cancel Samuel's gymnastics lessons due to scheduling issues as Mother, herself, admits in the section titled "Soccer" of her Petition. There was no way for either of them, on their respective weeks, to pick up Ellie from school and then Samuel and get Samuel to a gymnastics lesson on time. Father looked into possible options for a shuttle from Samuel's school to the gymnastics class on the days and times that lessons for his age group were offered, but there was no space available. Mother and Father agreed that Father should cancel Samuel's gymnastics enrollment so that they would not continue paying monthly fees for nothing.

D. Response to Samuel's Soccer Veto

1. Samuel had previously participated in spring soccer in 2015 at the YMCA and Father was supportive. However, Father did not feel that it was necessary for Samuel, at age 7, to be enrolled in soccer year round, and the children's schedules at the time were busy. Accordingly, he said no to soccer for the fall of 2015 and yet she signed him up anyway.

E. Response to Ellie's School Basketball Veto

1. Ellie had been interested in basketball for some time and had previously participated in a local "Upward" basketball sports league in elementary school. Father was supportive of that. Father also wanted to support Ellie in trying out for her school team as a 6th grader (2015-2016 season) and explored that option thoroughly. Unlike Mother, Father did all of the legwork to talk to the coach and other players and parents to get more information and determine whether it was feasible.

2. Father did not tell Mother or Ellie that he was certain Ellie could play; only that he was looking into it. Father learned that practices take place every day and would result in Ellie not getting home until nearly dinnertime. She might get home even later on game

nights. This would mean that Samuel would need to stay in YMCA after-school care for over two (2) hours on many days. This would also mean that Ellie would likely need to temporarily drop one of her musical instruments (she has violin lessons after school one week, and piano lessons after school another week) since the coach said that he would allow students to miss at most one basketball practice per week. In addition, Father wanted to allow time for family bonding activities with himself, Ellie, Samuel, and his wife, Cathy, who he married in July of 2015. Father kept Mother informed of these various considerations as he was learning more facts. Based on the considerations noted above, Father determined that it was not a good year to allow Ellie to try out for the school basketball team. Ellie was disappointed, but understood when Father explained the rationale.

3. Father then researched other options for Ellie to do basketball on a less-intensive scale. He looked into YMCA and "Upward" league girls basketball. He researched and made calls to coaches of both leagues. Father sent Mother an email on November 6, 2015 explaining what he had learned, and saying that he would like to register Ellie for Upward basketball. Mother did not object so Father signed Ellie up. Contrary to Mother's false statement in her petition, Father did not demand that Mother pay for Ellie's Upward basketball registration. He paid for it himself and bought Ellie a pair of basketball hightop shoes. Ellie had a good season doing Upward and enjoyed it.

4. Father intends to allow Ellie to try out for the school basketball team as a seventh (7th) grader. Father believes that Ellie is gradually learning to organize her time better (she is becoming faster at completing her homework, showering, etc.) and should be better able to handle the scheduling challenges if she makes the basketball team as a seventh (7th) grader. Father is signing Ellie up for a Nike basketball camp, at her request, again for the summer of

2016 as he did in 2015, and Father shoots baskets with Ellie in the park adjacent to his back yard as a father-daughter activity. Father denies that he is attempting to needlessly veto Ellie's desires in this area.

F. Response to Ellie's Fiddle Veto

1. Father admits that Ellie took violin lessons before the parents' divorce and continued to take lessons after the divorce.

2. Father takes Ellie to violin lessons on Tuesday afternoons during his weeks, and Mother takes Ellie to violin lessons on Tuesday afternoons during her weeks. When the violin teacher mentioned the idea of Ellie joining a fiddling group in addition to her regular violin lessons, Mother thought that it would be a good idea, but Father thought that Ellie's schedule was already too full.

3. He wrote Mother an email on January 15, 2016 saying:

In my opinion Ellie's schedule is too full, since she already has piano lesson Mondays, Violin lesson Tuesdays, Awana [church group] Wednesdays, Upward basketball practice Thursdays, and Upward basketball games on Fridays. If you disagree and choose to sign her up for Fiddlesticks [the group fiddle class] during the weeks that she is with you then that is between you and Ellie. 9 out of 10 of the Fiddlesticks practices and events for the Spring Semester are on days that Ellie is with you. Thanks, Phil

4. In other words, Father did not agree that joining the fiddle group class was a good idea, but given that 9 out of 10 of the scheduled lessons happened to fall during Mother's days with Ellie, in the interest of being cooperative Father did not prevent Mother from signing Ellie up. The one out of ten lessons that occurred during Father's week with Ellie was on March 10, 2016. Ellie had a dentist appointment that day which Father took her to, so Father could not have taken Ellie to the fiddle group that day unless the dentist was changed.

G. Response to Samuel's Musical Veto

1. Father recalls discussing the school musical with Mother, and discussing the fact that there were transportation and scheduling obstacles to Samuel participating in the musical. Neither party came up with a solution to the transportation and scheduling challenges, and Mother did not pursue it. Father has no objection to permitting Samuel to participate in school musical and acting performances in the future, schedule permitting. Father signed Samuel and Ellie up for a dance camp at a local dance and gymnastics studio during the summer of 2014, and discussed with Samuel's piano teacher the possibility of having her give Samuel vocal coaching lessons in the future. Father is a member of the Nashville Barbershop Harmony Society singing group called "Music City Chorus" and has brought Samuel with him once to a rehearsal, and several times to a performance. Father encourages music and the arts, and seeks to balance that with also giving Samuel down time to relax and play with friends.

H. Response to Piano

1. Father denies that that Mother takes both children to their piano lessons the majority of the time this past school year.

2. Father admits that Mother may have hosted a few more piano lessons at her house than Father simply because of vacations and scheduling adjustments, often at Mother's specific request for Father to help her with childcare. On at least two occasions in the fall of 2015 (September 17th and October 15th) Father agreed to watch the children for Mother on a Thursday to accommodate her work schedule, and in return she offered to watch the children on a Monday (which happens to be their piano lesson day, resulting in more lessons at her house). On another occasion, November 11, 2015, Father agreed to watch the children for Mother on a Wednesday so that she could get engagement pictures with her fiancé, and in return Mother offered to watch the children for Father on a Monday (piano lesson day). Mother uses these

favors that were offered by Father to help her as a grounds to say that she spends more time with the children on Mondays and deserves greater time with them and control of their extracurricular activities.

3. Father denies that the children are often not as prepared for their piano lessons on the weeks we have been with Father. Father asserts that Ellie's violin and piano skills exceed those of both Mother and Father, and she is capable of practicing without significant parental oversight.

I. Response to Violin

1. Insufficient knowledge to admit or deny whether or not Mother or her husband often plays the piano or guitar while Ellie practices or enforces regular practices. Father asserts that Ellie's violin skill has now far exceeded that of Mother or Father, so while they are able to provide pointers, it is not necessary for either to be violin experts.

2. Father denies that he was not encouraging when Ellie first signed up for school orchestra. Father initially had some reservations after speaking with the orchestra conductor. He learned that a majority of the students would have started learning their instruments for the first time ever in middle school, whereas Ellie had been playing for many years. Ellie said she wanted to try it anyway so Father said that was fine, but suggested that they revisit it if Ellie felt that it was too boring and not helpful. Over the course of her 6th grade year Ellie has at times said it was boring and below her skill level, but in general has said that she enjoyed the opportunity to play with the other students. So Father has had no objection to letting her continue to be a part of the school orchestra, and he has attended every one of her quarterly performances.

J. Response to Tennis/Swimming

1. See Father's response to "Swimming and Tennis Veto" set forth above.

Father has no objection to Mother arranging special tennis and swimming lessons for the kids during her weeks with the children. Similarly, Father arranged for some other summer activities during his weeks and paid for those.

K. Response to Soccer

- See Father's response to "Samuel's Soccer Veto" set forth above.

L. Response to Basketball

1. See Father's response to the section titled "Ellie's School Basketball Veto" set forth above.

2. Mother states she felt "compelled" to file this Petition so that Ellie could try out for the school basketball season in 2016-17. In fact, Father already told Mother that he intends to allow Ellie to try out for basketball for the 2016-2017 season. On March 8, 2016 Mother and Father had the following email exchange: Mother: "I hope you will allow Ellie to play basketball this winter." Father: "I'm planning to let Ellie try out for basketball this winter." Mother: "And if she makes the team, will you let her play?" Father: "Yes that is my plan. It would be busy, but more feasible this time because Cathy will have more flexibility to pick up Samuel after school."

IV. EDUCATION

A. Education Decisions.

1. Father denies that Mother should have sole decision making for education.

B. Response to Concerning Comments by Father

1. Father admits during a parent teacher conference for Ellie at Meigs Magnet School in November of 2015, they met with Ellie's social studies/science teacher, math teacher and literacy teachers and that they all commented what an excellent student Ellie was.

2. Father admits that they had a discussion regarding The School for Science and Math program at Vanderbilt (“SSMV”).

3. Father does not have enough information to admit or deny what is said on the SSMV website, but would assert that the website speaks for itself.

4. Father denies that he immediately vetoed the idea and that he said he would not allow her to go. Father asserts that he simply voiced that they should think carefully about not over-extending Ellie. Ellie’s homework load at Meigs is significant, and her homework load at Hume Fogg (the high school that her school will feed into) is not likely to go down. Father expressed concern to Mother that it may not be feasible for Ellie to be doing 2 or more hours of homework per night, plus violin, plus piano lessons, plus Church, plus potentially a time intensive basketball team, plus this additional academic program.

5. Father values academic excellence for the children. Father graduated with honors with an undergraduate degree from the University of Chicago, attained a Masters of business administration (MBA) from Vanderbilt University, and a law degree (JD) from Vanderbilt University. Mother attended school in Japan as a child, went to Wheaton College in Illinois for her undergraduate degree, and her masters degree in nursing from Vanderbilt. Father values education, and also helps the children with their education as appropriate and seeks to help them thrive. However, Father also seeks to balance academic priorities with other priorities, and to avoid putting undue pressure on the children. Father alleges that Mother puts excessive and undue pressure on the children to achieve academic perfection, demands that Father and the children comply with her wishes with respect to education in all cases, and does not voluntarily compromise.

C. Response to Mother's Allegation, Father Has Not Been Involved or Has Been Minimally Involved with Education or Made Choices That Children Did Not Like

1. Father denies that he has not been involved or has been minimally involved with education or made choices that children did not like.

2. The divorce occurred in November of 2013, instead of November of 2012 as stated in Mother's Petition.

3. Father asserts that Mother was the one who pushed for the children to start attending Mt. Juliet Montessori originally.

4. Mother made many negative comments about Andrew Jackson Elementary in front of Ellie to poison her attitude toward the school and recruit Ellie to try to persuade Father that Ellie should change schools. Father ultimately agreed to transfer Ellie to Mt. Juliet Montessori School. Later, Mother became dissatisfied with the Montessori school and wanted to send Ellie back to Andrew Jackson. So Mother began making many negative comments about the Montessori school in front of Ellie to persuade Ellie to become dissatisfied and make her want to transfer back to Andrew Jackson.

5. During the summer of 2013, Mother wanted to change the children's schools during the divorce case. Father thought that it was better to give the children stability during the divorce. The Court agreed. Ellie had a great year at the Montessori school in the 2013-2014 school year.

6. After the divorce was final and Father had moved, Father and Mother agreed that the children could transfer to Metro Schools so that Ellie could attend Meigs Middle Magnet. Samuel transferred to Andrew Jackson Elementary school in the spring of 2014 right before Mother moved out of the marital residence, so that he could take advantage of the zoning opportunity. Mother requested this and Father agreed.

7. Father has been willing to be flexible with Mother. Also it is interesting that Mother claims in her header that Father “made choices that children did not like.” Unlike Mother, Father does not think that good parenting means that any time a child demands something it should be given to him/her.

D. Response to Not Providing Necessary School Equipment

1. Father denies Mother’s allegations herein. Father asserts that he has two computers available for Ellie to use at his home. Prior to July 2015, Father may have asked Mother on a few occasions to print something out for Ellie. Since Father was able to print papers at work for Ellie, this was seldom necessary. Furthermore, the majority of Ellie’s online or computer-based assignments did not require printing. Lastly, Metro did not require students to purchase any special electronic tools for school and it has not been necessary.

2. Mother bought Ellie a Kindle as a gift. Mother also bought Ellie an iPhone as a gift despite Father’s objection. Father thought that as an eleven (11) year old, it was not a good idea to give Ellie a smart phone with unlimited internet access.

E. Response to Failure to Supervise and Manage School Related Matters

1. Father admits that Samuel forgot his school backpack on the dates contained in Mother’s Petition. However, Father asserts the dates noted are almost all during the first few months of school when Mother and Father were getting used to a new routine of sharing ride responsibilities (i.e. Mother would take Samuel to school every day, and Father would take Ellie to school every day, regardless of whose week it was). Since Samuel was still getting used to the new routine, he on a few occasions forgot to bring his backpack in the car, even though Father reminded him. Now it is a routine and Samuel has no difficulty. Mother only noted one date that this occurred in the past 18 months. Samuel also has forgotten items at Mother’s house, but Father has not felt the need to keep records of these day to day incidents.

2. The dates that Mother says Father was forgetting to turn in school supplies were all dates that the children were with Mother, although Father took Ellie to school. Mother had picked up a few general class supplies (such as tissue boxes and wet wipes) to donate to Ellie's class. She gave them to Ellie and Father so that Ellie could take them into her class. August 6 (Wednesday) was a half day of school, August 7 was a no-school day. Father's recollection is that he and Ellie were not sure of the process for when and where the supplies should be dropped off, so Ellie left them in the car on purpose on Wednesday, August 6, 2014 and Friday, August 8, 2014, until they found out when and where the supplies should be dropped off. August 9, 2014 and August 10, 2014 were both on the weekend. Father's recollection is that he and Ellie may have forgotten to send the supplies in with her from the car when he dropped her off on Monday, August 11, 2014, but did send them in with her the next day. Father denies that Ellie's grades were ever in jeopardy due to a possible couple-of-days timing difference in delivering donated tissues and wet wipes.

3. Father requires that the children complete their homework every night, and answers their questions whenever needed. The children are both getting straight A's in school. Mother states that there were three incidents over the course of 18 months in which Ellie failed to turn in a homework assignment during one of her weeks with Father. If this is correct, that averages out to only one instance each six months in which a middle school student forgot to do one of her homework assignments. Mother mentions one incident of Samuel not turning in a homework assignment during that eighteen (18) month period. Father did not record whether during Mother's weeks with the children they may have forgotten to do a single assignment over the course of an entire semester.

4. The remainder of the allegations contained herein are denied.

F. Response to Daily Behavior Chart for Samuel.

1. Mother mentions just two incidents approximately eighteen (18) months ago where Father allegedly did not initial Samuel's behavior chart. Samuel received almost exclusively "good" or "excellent" scores in his behavior chart. Father tries to cooperate and get along and does not keep a list of every minor issue, so he does not have a record of any specific dates in which Mother might have forgotten to initial a behavior chart or other similar incident. Father denies the remainder of the allegations contained therein.

G. Response to Reading With Samuel

1. The school provided an optional reading chart that could be filled out if parents wanted to keep track of each book that was read. Father reads to Samuel so often that he does not feel it necessary to keep a score card, and it was not a school requirement. He tries to make reading enjoyable for Samuel and not just a chore. Samuel is an excellent reader who gets straight A's in school.

2. Father denies that Samuel's reading scores have significantly improved each year due to Mother's enforcement of daily reading.

H. Response to Gradespeed

1. Father has and continues to be actively involved in the children's education. He not only checks Samuel's school assignment notebook that he brings home, but also helps make sure that they complete their homework every night.

2. Father also assists Ellie in studying for her tests and quizzes her to prepare for tests, such as spelling and vocabulary.

I. Response to Parent Teacher Conference

1. This incident, in fact, showed Mother's unwillingness to cooperatively parent after Father went out of his way to take the kids early for purposes of Mother's work schedule. Mother scheduled a parent teacher conference for Samuel on Tuesday, November 3,

2015 at 10:20 a.m., but was scheduled to work that afternoon. Accordingly, Mother asked Father if he could pick up the kids early, at 1:00 p.m. rather than 3:00 p.m. as required by the parties' Permanent Parenting Plan so she could make it to work on time. Father agreed to help Mother out in that way.

2. On Monday morning, November 2, 2015, the day before the conference, Father texted Mother stating "For Samuel's parent teacher conference tomorrow since I'll be getting the kids from you at 1:00 p.m. I'm going to go into the office early. So I'd like to join the 10:20 a.m. meeting with Samuel's teacher remotely. Would you mind putting your cell phone on speaker during that meeting so I can participate?" However, Mother did not respond.

3. Ultimately, Mother did not allow Father to conference in and join the parent teacher conference by her cell phone. Father called the school's main office, which transferred him to the teacher's classroom, and the teacher conferenced him in to participate in the parent-teacher conference by phone that way.

J. Response to Mother's Allegation, Skipping School in the Middle of the Semester In Spite Of Mother's Objection

1. Father denies Mother's allegations to the extent her description contains distortions and incorrect statements. The actual facts of the incident demonstrate her unwillingness to work cooperatively with Father.

2. Children in Metro schools are allowed up to five (5) unexcused absences each school year for family vacations or other events.

3. Mother, herself, has previously caused the children to take unexcused absences so that she could take them on vacation and Father did not object.

4. In February of 2016, Father planned a trip with the children to Chicago so that they could visit their cousins and see their grandparents, who live overseas, and were going

to be back in the U.S. for a short time. Father planned the four (4) day trip for President's Day weekend (which had a Monday holiday), so that they would have time for the long drive to Chicago, only miss one day of school, and still have two full days with the relatives in Chicago. This is the only time before or since the entire school year that Father made use of one of the 5 permitted unexcused absences. Father emailed Ellie's and Samuel's teachers before the trip to let them know that the children would miss one day of school and to find out if there were any assignments they needed to work on while they were gone. None of the teachers had any objections and did not assign any special homework for the children to take along.

5. Father admits he originally cancelled Ellie's violin lesson for Tuesday. However, Father denies that he did not notify Mother. Mother objected, and demanded that Father bring Ellie back before her 4:30 p.m. lesson. Father complied and woke the children up extra early on Tuesday morning and got them back to Mother's house just after 4:00 pm on Tuesday, which was plenty of time for Ellie to get to her violin lesson, as Mother had requested.

6. Prior to their trip (before Mother had demanded that Father have the children back before Ellie's violin lesson) Father had let the violin teacher know that they would probably have to re-schedule Ellie's February 16th lesson. On February 10th the violin teacher emailed both Father and Mother saying that she understood Ellie would miss her lesson on the 16th and asking about makeup dates. Mother did not respond. On February 15th, the violin teacher emailed Father and Mother again to confirm that they would still not be able to do the lesson on the 16th and to ask about make-up dates. Mother responded to the email the morning of the 16th that Father would be bringing the children home in time for the lesson so she wanted to proceed with the lesson. The violin teacher responded only fifteen (15) minutes later that it was too late and she had filled the slot. Mother apparently did not see the response and went to the lesson

anyway. Mother sent an email to the teacher later and said: "Unfortunately I didn't see your email until we already went to DCA for the lesson, my bad."

7. Father denies that Ellie's absence on February 16th placed her at a disadvantage with her schoolwork. When Ellie returned to school on Wednesday the 17th, one of her teachers gave her some extra make-up work even though Father had emailed the teacher the prior week but he had not assigned extra homework at that time. Ellie later told Father that she was not required to actually complete that homework on Wednesday night the 17th and could have turned it in on a later day. However, Mother made Ellie stay up that night until it was completed.

K. Response to Mother's Involvement with Education

1. Father denies Mother's allegation herein and asserts that her comment appears to be deliberately misleading in that it comes in the context of education, but the numbers she cites refer to the children's "religious and academic education". Therefore it appears that Mother is including every time that she volunteered at a church function as well as a school function. Mother, like Father, volunteers at the children's church group functions regularly and is apparently counting each of those incidents in her totals. During the 2014-2015 school year Father and Mother volunteered at Ellie's church Sunday School class on Sunday mornings on alternating weeks depending on whose parenting time it was. In addition, they both volunteered at church on Wednesday nights (Mother in Ellie's class, and Father in Samuel's class). This accounts for the majority of the "volunteer" dates noted by Mother above.

2. Father has also volunteered at many school activities. For example, Father has volunteered at Samuel's school field day each of the past two years. He has volunteered at Ellie's school "Carnival Day" each of the past two years. He has had lunch with Samuel at school, and attended a picnic lunch with Ellie and her classmates at a nearby park. He has

attended the school dance party and auction with Samuel each year. He has attended Immigration Day at Ellie's school. He also did a number of volunteer activities when the children were students at Mt. Juliet Montessori.

L. Response to Meigs Magnet Middle School

1. Father denies the terminology that he was resistant to Ellie attending Meigs Magnet School. Father takes careful consideration when making educational decisions for the children. Father denies that he only agreed it was a good choice for Ellie after speaking with Terry Atkinson. Father researched Meigs Middle Magnet School, attended a tour of the school for prospective parents, spoke with the school principal and orchestra director, and met for lunch with a friend whose children had attended Meigs. Father had some concerns about the fact that the school would require a significant commute and a heavy homework load for the kids. Therefore, Father thought it was important to weigh other options, including private school possibilities. In the end, Father concluded that it was the best choice for Ellie. Father denies the remainder of allegations contained in this section.

M. Response to Andrew Jackson Elementary School.

1. Mother had previously insisted Ellie transfer from Andrew Jackson Elementary School to Mt. Juliet Montessori School, then insisted that they transfer back to Andrew Jackson Elementary School. Father thought that the children should stay at their current school during the divorce. During a hearing before Judge Philip Smith in 2013, Judge Smith agreed with Father and ordered that the children stay at Mt. Juliet Montessori school during the divorce proceedings. Mother was upset about that. At a parent meeting that was supposed to be a welcome to the new Montessori teacher in Ellie's class, Mother made other parents uncomfortable by voicing numerous complaints about the Montessori school and grilling the new teacher with rude questions. After the meeting, the new teacher asked Father if she should try to

show Mother that it could be a very good school year for Ellie, or she should give up on trying since it appeared that Mother had made up her mind already. Father said he did not know how Mother would react, but he encouraged the teacher to keep trying and not give up on Mother. Ellie had an outstanding 4th grade year at Mt. Juliet Montessori socially and academically. Mother eventually acknowledged that fact.

2. Some months after the divorce was finalized, Mother again approached Father about the idea of transferring Samuel to Andrew Jackson Elementary School. At that point Father was comfortable that because the children's home situation had stabilized, it would be less emotionally difficult for Samuel to transfer. Father also recognized that if they waited until the following school year to transfer then Mother would be zoned for a less desirable school district. Therefore Father agreed at that point to let Samuel transfer to Andrew Jackson before it was too late. Ellie happily and successfully finished out her school year at Mt. Juliet Montessori school and then began at Meigs Magnet the following year. This incident demonstrated Father's willingness to compromise with Mother when appropriate. Mother, by contrast, has not been willing to agree to deviate from her educational agenda unless ordered by the court.

3. Father denies the remainder of allegations in this section.

N. Response to Mother's Other Educational Activities.

1. Father admits that Mother is very proactive with the children's school activities. In fact, Father asserts that she is overly proactive and has a tendency to "helicopter parent" and micromanage almost all of the children's activities.

2. Father has been heavily involved in the children's school activities. He also arranges for social activities and play dates between the children and their friends from school and church.

3. Father does not have enough information to admit or deny whether or not Mother volunteered for the activities contained in Mother's Petition.

4. Father does not have enough information to admit or deny when or if Mother has had lunch with Samuel as set forth in Mother's Petition.

5. Father denies that Mother has been solely responsible for both of the children's school supply shopping. Mother offered to pick up from Target some school supplies at the beginning of the school year and pay for it from the joint account that is used by both parents. Father said that was fine.

6. Father further denies that she is solely responsible for purchasing supplies and preparing the children for their events. Father and his wife also help the children with school projects and activities. Recently, Ellie had an "ancient Greece" day at school and Father and his wife helped Ellie with a Greek costume, and helped her make a Greek dessert item.

7. Father has seen no indication that the children do better on their homework or quizzes during their weeks with Mother.

8. Father does not have enough information to admit or deny Mother's claims regarding the children's extra assignments.

9. Father drives Ellie to school at Meigs Academic Magnet School for about thirty-five (35) minutes every weekday (including on Mother's days with the children). During their drives if Ellie has an upcoming test Father often asks her questions to help her prepare. Father values academic excellence. Unlike Mother, Father does not micromanage excessively or put undue pressure on the children to achieve academic perfection. As noted earlier both children are getting straight A's in school and do not require Mother's "helicopter parenting" in order to

continue to thrive academically. Father believes the children should have some independence and to learn from any mistakes they make on their own.

10. Father has demonstrated a willingness to work with Mother and be flexible about parenting decisions. On the other hand, Mother is unwilling to compromise and demands that everything be done her own way. Therefore Father should be given sole decision making on educational decisions.

V. MODIFICATION OF PARENTING TIME

This section is a prayer for relief and no answer is required. To the extent that any allegation requiring an answer is made, Father would deny and demand strict proof of any such allegation.

VI. FACILITATING A GOOD RELATIONSHIP WITH THE OTHER PARENT

1. Father denies that Mother has *always* encouraged and fostered a good and loving relationship between the children and their father. On a number of occasions, Mother has been hostile toward Father, including in front of the children. Mother's hostility has increased since she filed the Petition to Modify Parenting Plan in March of 2016. Mother has refused to accept "no" for an answer when Father declines her help with picking up the children, and Mother has threatened to call the police on Father's wife in the presence of the children.

2. Father denies that he takes Ellie's iPhone away in order to keep her from communicating with her Mother and her family. Mother told Father that she wanted Ellie to have an iPhone for her eleventh (11th) birthday. Father said that he thought Ellie was still too young to have a smart phone with full internet access at her age. He did not deny a phone but suggested a "call only" phone. Mother bought Ellie the iPhone anyway, and also bought her a Kindle. Father explained that he would agree for Ellie to bring the iPhone and Kindle with her to his house, but

at his house it would be according to his house rules for electronics. Father allows Ellie to use the phone when she wants to call Mother, or when Mother asks to talk to Ellie (unless they have gone to bed already, etc.). Father allows Ellie to use the iPhone or Kindle when she needs either one for homework. Father also lets Ellie use his computer or his wife's computer if needed. Father does not believe the children should have unrestricted and unmonitored access to an internet-accessible phone or Kindle as he does not think it is necessary or safe. He monitors their computer and internet use and the children know and respect this.

3. Mother has tried to impose and interject herself into Father's household in inappropriate ways after the divorce, and does not stop when Father politely declines. For example, Mother has tried to buy decorations for the children's bedrooms at Father's house (e.g. a full length mirror for Ellie, and a collage of pictures for Samuel's room, including family pictures from before the divorce) even though she knows that he does not want her interference and that the children's bedrooms are already nicely decorated. Mother has attempted to give those items to Father in the presence of the children to pressure Father to accept them. The "housewarming gift" that Mother gave Father was a set of pictures that she wanted him to hang in his house.

VII. MODIFICATION

This section is a prayer for relief and no answer is required. To the extent that any allegation requiring an answer is made, Father would deny and demand strict proof of any such allegations.

VIII. CHILD SUPPORT MODIFICATION

1. Father admits that he has worked at Bass Berry & Sims since 2004. Due to the very heavy work schedule that limited his family time, Father began to talk with Mother in

2007 and 2008 about possibly taking a modified 80% work schedule that was offered by the firm and was used by a number of other associates. This involved a reduction in billable hour requirements by 20%, and a corresponding reduction in salary. In 2010, three (3) years prior to the divorce, Father exercised this option and began working at the 80% rate, still as an associate. Even at 80%, the workload as an associate at Father's firm requires 40 or more hours of work every week, but it allows Father a little more flexibility to have time with the children. In 2015 Father was promoted to "Senior Healthcare Attorney." This entailed a raise in salary to \$156,000 per year before taxes, plus possible bonus, and allows Father to continue to have more time with the children since he continues to have the same 80% of hours billable expectation.

2. Father denies that he is voluntarily under-employed, has not cut back on his work hours since 2010 and has gotten a raise since then.

3. At the time of the children's divorce, Father was working on paying off a large amount of legal fees and a house loan that he had agreed to absorb as a result of the divorce settlement. Father also had a \$1,000.00 per month Alimony obligation and \$694.00 per month child support obligation. Father asserts that he was being cost conscious.

4. Father did not make Ellie quit piano at Blair the first year after the divorce in the interest of continuity, but after that he explained to Mother that he believed they could find a suitable local replacement rather than paying the roughly \$3,000 annual price tag for piano lessons at Blair and fighting Vanderbilt area traffic during rush hour every week.

5. Father denies that he has often not contributed to the children's extracurricular activities. Father already pays for fifty percent (50%) of the children's piano and violin lessons. Father paid for one hundred percent (100%) of Ellie's most recent basketball team sport. Father paid for 50% of Samuel's soccer team enrollment in Spring 2015 he agreed to it,

but did not pay for soccer team enrollment when Mother signed him up against Father's wishes in Fall 2015.

6. Mother bought Ellie a Kindle of Mother's own initiative as a gift. Ellie mostly uses it for pleasure reading, and only occasionally will download a novel for her language arts class. At other times Father has purchased such books that are needed for school or checked them out from the library. Father has no objection to paying 50% of the cost of purchasing a given novel that is purchased electronically on the Kindle for school purposes, but does not see a reason he should pay for any subscription costs for a gift that Mother purchased for Ellie.

7. Father did not object to the \$23.00 extra dollars for Ellie's eyeglasses in January 18, 2016 because he was trying to be stingy. Rather he objected that even though Ellie loved a set of glasses that was much cheaper, Mother badgered Ellie for about an hour to choose the pair of glasses frames that Mother liked better, and eventually pressured her into choosing a more expensive set that exceeded the amount that the insurance company would pay and that Ellie lost within a few months.

8. Father has been more than cooperative and flexible with Mother in co-parenting decisions, as noted above.

9. Father denies that the children's counselor, Tiffany Davis, recommended a co-parenting counselor in November of 2015. Mother only asked for the co-parenting counselor on November 2nd after she had been bombarding Father with text messages demanding that he permit Ellie to try out for the school basketball season, even though he had already researched it thoroughly, discussed it with Mother extensively, and arranged a compromise option (local "Upward" girls basketball league).

10. Mother has a history of demanding that the parties see a new counselor if her wishes or desires are not being met. Father and Mother went to at least six (6) different marriage counselors. When the counselors would not take Mother's side, she would become upset and look for a new counselor.

This section is a prayer for relief and no answer is required. To the extent that any allegation requiring an answer is made, Father would deny and demand strict proof of any such allegation.

All allegations not admitted or denied are hereby denied as fully as if set forth herein.

AFFIRMATIVE DEFENSE

Petitioner/Mother has failed to state a claim upon which relief may be granted.

FATHER'S COUNTER-PETITION TO MODIFY PARENTING PLAN

And now having fully answered, Father assumes the role of Counter-Petitioner and states as follows:

A. Modification of the parties' Permanent Parenting Plan

1. Father requests this Court under Tenn. Code Ann. § 36-6-101 (a)(2)(C) and § 36-6-106(a) to modify the parties' Permanent Parenting Plan to reflect a reduction in Mother's parenting time. Further, Father requests this Court under Tenn. Code Ann. § 36-6-407 (c) to modify the parties' Permanent Parenting Plan to reflect that he have sole decision making regarding the parties' minor child's educational decisions, non-emergency healthcare, religious upbringing and extracurricular activities.

2. Father incorporates by reference, as if stated verbatim herein, the incidents set forth above in his Response to Mother's Petition to Modify Parenting Plan. As demonstrated in Mother's own Petition, Mother is obsessive and controlling. Father is concerned that Mother's obsessive behavior is unhealthy for the minor children, who already pressure themselves.

3. Father would show that the joint custody plan has been frustrating at times due to Mother's demands and lack of cooperation when she does not get her way. It is in the best interest of the children to give Father sole decision making authority without interference by Mother.

4. Father would further show that the parties have great difficulty reaching decisions due to Mother's controlling tendencies. Mother's medical requests and the like for the children are never negotiable with Mother. Accordingly, the children are the ones who are at risk of suffering.

5. Father works collaboratively and cooperatively with Mother in making childcare decisions. At times he and Mother have not agreed on appropriate health care decisions. Mother does not tolerate disagreement with her opinions, even if they come from other more qualified health care professionals, and is herself responsible for unnecessary complications.

6. Mother has failed to abide by the advice of qualified medical professionals on multiple occasions.

7. Mother went so far as to perform a nostril cauterization procedure on Samuel herself, even though the pediatric ENT specialist had advised her that it was not necessary, and had advised her that it is the type of procedure that should be performed in a surgery center, under anesthesia, and should involve spacing out the procedures three months between each nostril treatment.

8. The children's pediatrician, Dr. Rothman, recommended on November 15, 2013, per the medical record that it "May be best for children to sleep in their own room every night." Nevertheless, children continued to sleep with Mother routinely at her house after that

appointment. When the children sleep at Father's house, they each sleep in their own beds. In contrast, both children slept in Mother's bed routinely in 2014 and 2015. Ellie gradually stopped sleeping with Mother of her own volition and now sleeps in her own bed when at Mother's house, but Samuel continued to frequently sleep with Mother. Even after Mother was re-married in January of 2016, Samuel occasionally still sleeps in Mother's bed.

9. Father would show that making joint decisions regarding the children's extracurricular activities has been an ongoing struggle. As evidenced by Mother's Petition, Mother tends to push the children to overextend themselves by participating in an outrageous amount of extracurricular activities.

10. When making decisions regarding the children's extracurricular activities, Father looks after the children's best interest by researching and making sure the children are balanced.

11. Father is committed to giving the children a rich and diverse experience of extra-curricular activities. Unlike Mother, Father has demonstrated a willingness and ability to thoughtfully weigh the pros and cons of involvement, and is willing to at times say no to some activities in order to prevent the children from becoming over extended.

12. Father has demonstrated a willingness to listen to Mother and be flexible to accommodate her wishes, whereas Mother has refused to listen to Father's wishes and has signed up the children for extra-curricular activities against Father's wishes simply because she disagrees.

13. Father has noticed and is concerned that Mother worries obsessively about grades, and transmits that pressure and worry onto the children, especially Ellie. Ellie's most recent set of grades for her 6 classes were, respectively: 97%, 98%, 100%, 98%, 97%, and 99%.

All very strong A's. But in spite of that, due to pressure from Mother, Ellie expressed to Father her disappointment that her grades were not higher. On routine quizzes or homework assignments Ellie has occasionally gotten a low score, but her teachers permit re-takes and Ellie has always made sure to prepare for and complete the re-takes, and has always done well. Ellie asks Father questions about homework questions or test-retake items that she did not understand and Father works with her to help her understand, and reminds her that the important thing is that she understands the material, and not that she achieve perfect scores on every quiz. Mother checks Ellie's grades online so often that Mother almost immediately sends messages about the scores to Father and Ellie, and pressures Ellie to do much better on the re-take. However, this simply adds unnecessary pressure since, in each of those instances, to Father's recollection Ellie was already aware of the scores and planning and preparing for the re-take herself, without the excessive pressure from Mother.

14. Father values academic excellence for the children. However, Father also seeks to balance academic priorities with other priorities, and avoid putting undue pressure on the children. Mother puts excessive and undue pressure on the children to achieve academic perfection, and demands that Father and the children comply with her wishes with respect to education in all cases, and does not voluntarily compromise.

15. Mother interferes with Father's relationship with the minor children by imposing and interjecting herself into Father's household in inappropriate ways after the divorce, and does not stop when Father politely declines.

16. Mother has tried to buy decorations for the children's bedrooms at Father's house, even though she knows that he does not want her interference and that the children's bedrooms are already nicely decorated.

17. Mother attempts to give to Father in front of the children to pressure Father to accept them. The “housewarming gift” that Mother gave Father was a set of pictures that she wanted him to hang in his house.

18. Mother has also been hostile toward Father and his household on a numerous occasions, including in the presence of the children. Mother’s hostility has increased since she filed the Petition to Modify the Parenting Plan in March of 2016. Mother has refused to accept “no” for an answer when Father declines her help with picking up the children, and Mother has threatened to call the police on Father’s wife in front of the children.

19. On Wednesday, April 6, 2016, Mother texted Father asking if she could pick up Samuel from school and take him to Father. Father declined, as he was already on his way to pick up Samuel from school as usual. Mother had gone to the school to watch Samuel do a running event after school. However, she did not put him back in his YMCA program after school, and instead, kept him with her at her car. Father asked Mother not to pick Samuel up but instead to leave him at the YMCA after-care program. Mother became irrational and sent Father over ten (10) more text messages.

20. On Wednesday, April 13, 2016, Mother sent Father 8 unsolicited emails, telling him that he was not supervising Ellie’s piano and violin lessons properly and that he was not applying skin cream to Samuel as frequently as she thinks he should.

21. On Friday, May 6th Mother sent Father three unsolicited emails telling him that he was not adequately supplying clothing for the children and telling him their clothing and shoe sizes (which he had already told her that he knows).

22. One afternoon, when Father’s wife, Cathy, arrived to pick up Samuel from the YMCA, she asked Samuel to get in her car. Mother demanded to know where the car seat

was. Samuel was seven (7) years and ten (10) months old at the time and above average in height and weight for his age and would be riding in the back seat. Mother proceeded to threaten Cathy, in the presence of Samuel, that she would call the police on Cathy for not having a car seat in her car, and began taking pictures of Cathy's car with her phone. This was all in the child's presence. So Cathy parked her car and took Samuel back inside the YMCA so that Father could come back and get him later with a car seat. Mother then called the Mt. Juliet Police Department to report Cathy, and Mother texted Father that she was also going to a Metro police department.

23. Mother's obsessive behavior causes the children anxiety and is ultimately not in their best interest.

24. Father is constantly trying to meet Mother's demands to preserve the peace for the parties' children.

25. Father would show he is able to sufficiently provide the parties' children with food, clothing, medical care, education, and other necessary care, and, in fact, he has done so since the parties' divorce.

26. Father would show his home life is very stable and conducive to raising the parties' minor children.

27. Father would show that he is in good mental and physical health.

28. Father would show living in Father's home will in no way negatively affect the parties' children's school and extracurricular activities. The continuity and stability of the parties' children's life will be maintained. He will encourage the children to have a good relationship with their Mother.

29. Father would show he has demonstrated significant past and potential capacity for performance of his parenting responsibilities, including his willingness and ability to

facilitate and encourage a close and continuing parent-child relationship between the parties' children and Mother.

30. Father asserts that it would be in the best interest of the parties' children for the Permanent Parenting Plan to be modified to give the parties' children a more predictable and stable life, grant Father sole decision making authority for the children.

31. Father further asserts it is in the parties' children's best interest to primarily reside with Father as their primary caregiver.

32. The welfare of the parties' children is best served by placing sole decision making authority with Father without troublesome interference by the Mother.

33. Pursuant to Tenn. Code Ann. § 36-6-224, Father submits that the children reside in Davidson and Wilson Counties. He further submits the following information:

34. That the children have resided in Davidson and/or Wilson Counties for the last six (6) years.

35. That with the exception of the original divorce action and the pending action by Father, all under the above style and docket number, the parties have not participated in any other custody action involving these children in this state or any other state.

36. That with the exception of the current action, there is no pending custody litigation involving these children in this state or any other state.

37. That there are no other persons who have any claim for custody or visitation with the children.

38. That the Permanent Parenting Plan should be modified so that Father be granted sole decision making authority as well as more parenting time with the parties' minor

children. Father would show that such a modified Plan is in the children's best interest pursuant to Tenn. Code Ann. § 36-6-405.

39. This is an appropriate case in which to end the joint decision making arrangement set forth in the parties Permanent Parenting Plan, based on Mother's hostility toward Father and her unwillingness to engage in productive joint decision-making for the children's benefit.

RELIEF SOUGHT

The above premises considered, Father prays:

1. That this Petition be served on Mother or her counsel of record by permission of her counsel;
2. That Mother be required to answer this Petition in the time and manner required by law;
3. That the Court find that there has been a substantial and material change of circumstance that justifies a modification of the Permanent Parenting Plan;
4. That the Court adopt a Parenting Plan specifically naming Father the primary residential parent of the minor children and increasing Father's parenting time with the parties' minor children;
5. That the Court find that Father should be awarded sole decision-making authority for the children;
6. That Mother's Petition to Modify Parenting Plan be dismissed and that she be responsible for Father's attorney fees and court costs for with responding to the same;
7. That the Court award Father his fees and expenses for this Counter-Petition; and

Respectfully submitted,



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Attorneys for Father/Respondent

OATH

STATE OF TENNESSEE)
COUNTY OF Davidson)

I, **PHILIP FOXWELL BERG**, after being first duly sworn according to law, do make oath and affirm that I am the Petitioner in the foregoing Counter-Petition and that the facts and matters alleged therein are true and correct to the best of my knowledge, information, and belief.

Philip Foxwell Berg
PHILIP FOXWELL BERG

Sworn to and subscribed before me
this 18 day of May, 2016.

Leslee G. Rose
Notary Public

My Commission Expires Jan 2019

FILED - 02.22.12

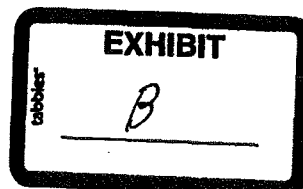
DAVIDSON COUNTY CIRCUIT COURT

NAR

(1) 1 BERG, PHILIP FOXWELL SHIGENO
DOCKET # 12D575 vs. DIVORCE COMPLAINT- CHILD 184544*1
(1) 1 BERG, KEIKO SHIGENO

BALANCES: C: 257.50 J: I: TOT: 257.50

LINE	DATE	CODE	DESCRIPTION	COURT #:
1	02.22.12	DC	DIVORCE COMPLAINT- CHILD 184544*1 530719	
2	02.22.12	TI	TEMPORARY INJUNCTION OF P1	
3	02.22.12	PPL	PARENTING PLAN (PROPOSED)	
4	02.22.12	SI	SEALED STATISTICAL INFORMATION	
5	02.22.12	SP	SUMMONS PERSONAL SERVICE-D1 W/DC, PSO, TI, PPL	
6	02.24.12	R	RETURN OF SERVICE-D1-SERVED RT-02.22.12	
7	03.23.12	NAP	NOTICE OF APPEARANCE (MARLENE E. MOSES) FOR D	
8	04.02.12	SEM	SEMINAR FOR DIVORCING PARENTS KEIKO S. BERG 3.29.12	
9	08.24.12	SEM	SEMINAR FOR DIVORCING PARENTS 08.02.12/PHILIP BERG	
10	09.24.12	SPAP	SUBPOENA ISSD PERSONAL-W1 552126	
11	09.24.12	N	NOTICE OF D OF SUBPOENA DUCES TECUM	
12	09.24.12	E	EXHIBIT AS "A" COPY SUBPOENA (TO NOTICE)	
13	09.26.12	ASPA	AFFIDAVIT SERVICE SPA-W1-SERVED RT-09.24.12	
14	09.28.12	M	MOTION 10.12.12 - OF P FOR MEDIATION	
15	10.01.12	SPAP	SUBPOENA ISSD PERSONAL-W1 552849	
16	10.05.12	ASPA	AFFIDAVIT SERVICE SPA-W1-SERVED RT-10.01.12	
17	10.12.12	C	CONTINUANCE 10.26.12 - OF P FOR MEDIATION 09:00 - 4	
18	10.26.12	O	ORDER MEDIATION SCHEDULED FOR 12.19.12	
19	11.30.12	M	MOTION 12.14.12 - OF P FOR VACATION TIME AND MEDICAL REVIEW	
20	12.14.12	C	CONTINUANCE 01.04.13 - OF P FOR VACATION TIME AND MEDICAL REVIEW 09:00 - 4	
21	12.20.12	AO	AGREED ORDER ON SUBSTITUTION OF D1'S COUNSEL FOR CYNTHIA J BOHN	
22	12.20.12	AO	AGREED ORDER ON VACATION TIME	
23	01.03.13	AO	AGREED ORDER TO RE-SET MEDIATION ON 01.30.13 & 01.31.13	
24	01.04.13	C	CONTINUANCE 01.11.13 - OF P FOR VACATION TIME AND MEDICAL REVIEW 09:00 - 4	
25	01.18.13	M	MOTION 02.01.13 - OF P ON MEDICAL CARE AND FOR RESTRICTIONS WITH CHILDREN	
26	01.24.13	M	MOTION 02.08.13 - OF D TO ENJOIN AND RESTRAIN FROM INTERFERING WITH TENNIS	
27	01.24.13	M	MOTION 02.08.13 - OF D TO CLARIFY ROLE AS MUSIC EDUCATION OVERSEER	
28	01.24.13	E	EXHIBIT AS "A-B" LETTERS (TO MOTION)	
29	01.25.13	M	MOTION 02.08.13 - OF P TO COMPEL DISCOVERY RESPONSES	
30	01.25.13	E	EXHIBIT AS "A" COPY DISCOVERY (TO MOTION)	
31	02.01.13	C	CONTINUANCE 02.08.13 - OF P ON MEDICAL CARE AND FOR RESTRICTIONS WITH CHILD	
32	02.01.13	MDA	MARITAL DISSOLUTION AGREEMENT SIGNED BY BOTH PARTIES	
33	02.01.13	E	EXHIBIT AS "A" PROPERTY LIST (TO MDA)	
34	02.01.13	PPL	PARENTING PLAN (PROPOSED) SIGNED BY BOTH PARTIES	
35	02.01.13	E	EXHIBIT CHILD SUPPORT WORKSHEET (TO PPL)	
36	02.01.13	NIC	NOTICE INSURANCE COVERAGE OF THE PARTIES	
37	02.05.13	N	NOTICE OF RULE 31 REPORT (R. JACKSON, MEDIATOR) 01.30.13	
38	02.06.13	OSM	ORDER TO SET 02.06.13 - 4 - NON-CONTESTED DIVORCE	
39	02.08.13	M	MOTION 02.22.13 - OF P FOR REIMBURSEMENT OF CHECKS	
40	02.08.13	E	EXHIBIT AS "1" COPY EMAIL (TO MOTION)'	
41	02.08.13	M	MOTION 02.22.13 - OF P TO ENFORCE MARTIAL DISSOLUTION AGREEMENT AND PARENT	
42	02.14.13	RESM	RESPONSE OF D TO P MOTION FOR REIMBURSEMENT OF CHECKS	
43	02.15.13	M	MOTION 03.01.13 - OF P FOR RESTRAINING ORDER	
44	02.22.13	C	CONTINUANCE 03.01.13 - OF P FOR REIMBURSEMENT OF CHECKS 09:00 - 4	
45	02.22.13	C	CONTINUANCE 03.01.13 - OF P TO ENFORCE MARTIAL DISSOLUTION AGREEMENT AND PA	



46	02.26.13	RESM	RESPONSE OF D TO P MOTION FOR RESTRAINING ORDER
47	02.26.13	E	EXHIBIT AS "1-2" COLOR PHOTOS (TO RESPONSE)
48	03.01.13	C	CONTINUANCE 03.08.13 - OF P FOR RESTRAINING ORDER 09:00 - 4
49	03.01.13	C	CONTINUANCE 03.08.13 - OF P FOR REIMBURSEMENT OF CHECKS 09:00 - 4
50	03.12.13	M	MOTION 04.05.13 - OF D FOR RULE 35 PSYCHOLOGICAL EXAMINATION
51	04.03.13	RESM	RESPONSE OF P TO D MT FOR RULE 35 PSYCHOLOGICAL EVALUATION
52	04.05.13	M	MOTION 04.26.13 - OF D FOR CHILDREN TO ATTEND METROPOLITAN PUBLIC SCHOOL
53	04.05.13	M	MOTION 04.19.13 - OF P TO SET SPECIFIC DATE OF HEARING
54	04.05.13	M	MOTION 04.19.13 - OF P FOR DECISION ON EDUCATION
55	04.08.13	O	ORDER AS TO P1 MOTIONS FOR RESTRAINING ORDER AND REIMBURSEMENTS
56	04.08.13	O	ORDER AS TO P1 MOTION TO ENFORCE MEDIATION AGREEMENTS/RO/REIMBURSEMENTS/D1
57	04.15.13	RESM	RESPONSE OF D TO P MT FOR DECISION ON EDUCATION
58	04.15.13	E	EXHIBIT AS "A-F" COPY (TO RESPONSE)
59	04.16.13	RESM	RESPONSE OF D TO P MT TO SET SPECIFIC DATE FOR HEARING
60	04.23.13	O	ORDER AS TO PSYCHOLOGICAL EVALUATION OF BOTH PARTIES
61	04.30.13	AC	AMENDED COMPLAINT (& SUPPLE) OF P FOR DIVORCE
62	05.10.13	M	MOTION 05.24.13 - OF D TO BE REIMBURSED FOR MARITAL EXPENSES OUT OF JOINT
63	05.10.13	E	EXHIBIT AS "A-H" COPY RECEIPTS/TEXTS (TO MT)
64	05.10.13	M	MOTION 05.24.13 - OF D TO RESTRAIN AND ENJOIN FROM INTERFERING WITH MAIL
65	05.10.13	E	EXHIBIT AS "A-E" COPY MAILING DOCS (TO MT)
66	05.24.13	C	CONTINUANCE 06.21.13 - OF D TO BE REIMBURSED FOR MARITAL EXPENSES OUT OF JO
67	05.24.13	C	CONTINUANCE 06.21.13 - OF D TO RESTRAIN AND ENJOIN FROM INTERFERING WITH MA
68	06.05.13	M	MOTION 06.21.13 - OF D FOR COUNSELOR FOR CHILDREN
69	06.05.13	E	EXHIBIT AS "A" COPY LIST OF PROVIDERS (TO MT)
70	06.07.13	RESM	RESPONSE OF P TO D MT TO RESTRAIN & ENJOIN FROM MAIL INTERFERENCE
71	06.07.13	E	EXHIBIT AS COPY MAIL RECEIPTS (TO RESP)
72	06.07.13	M	MOTION 06.21.13 - OF P FOR THE COURT TO APPOINT A COUNSELOR FOR THE CHILDREN
73	06.07.13	E	EXHIBIT AS COPY E-MAIL (TO MT)
74	06.07.13	MDS	MOTION FOR DEFAULT 06.21.13 - OF P AND TO SET
75	06.07.13	M	MOTION 06.21.13 - OF P TO PUT HOUSE ON MARKET FOR SALE
76	06.07.13	E	EXHIBIT AS COPY E-MAIL (TO MT)
77	06.19.13	ACC	ANSWER AND COUNTER COMPLAINT OF D FOR DIVORCE 578784
78	06.19.13	RESM	RESPONSE OF D IN OPP TO P MOTION TO PUT HOUSE ON MARKET
79	06.19.13	E	EXHIBIT AS "A" PHOTO (TO RESP)
80	06.19.13	RESM	RESPONSE OF D TO P MT FOR CT TO APPOINT A COUNSELOR FOR CHILDREN
81	06.20.13	RESM	RESPONSE OF P IN OPP TO D MT FOR CERTAIN REIMBURSEMENT-JOINT CHECKING
82	06.27.13	A	ANSWER OF P TO D COUNTER-COMPLAINT FOR DIVORCE
83	07.03.13	CR	CERTIFICATE OF READINESS OF BOTH PARTIES - 2 DAYS
84	07.15.13	OSM	ORDER TO SET 08.06.13 - 4 - NON-CONTESTED DIVORCE
85	07.29.13	SPAP	SUBPOENA ISSD PERSONAL-W2 583035
86	07.30.13	SPAP	SUBPOENA ISSD PERSONAL-W3 583159
87	08.01.13	ASPA	AFFIDAVIT SERVICE SPA-W2-SERVED RT-07.29.13
88	08.01.13	ASPA	AFFIDAVIT SERVICE SPA-W3-SERVED RT-07.30.13
89	08.06.13	RESM	RESPONSE PLEADING STRICKEN FROM RECORD PER 11.07.13 ORDER.
90	08.06.13	E	EXHIBIT PLEADING STRICKEN FROM RECORD
91	08.06.13	MDA	MARITAL DISSOLUTION AGREEMENT SIGNED BY BOTH PARTIES
92	08.06.13	E	EXHIBIT AS "A" COPY PROPERTY LIST (TO MDA)
93	08.09.13	M	MOTION 08.23.13 - OF P TO STRIKE MEMORANDUM IN OPPOSITION TO MOTION TO ENF
94	08.20.13	RESM	RESPONSE OF D TO P MT TO STRIKE D MEMO IN OPP TO P MT TO ENFORCE
95	08.20.13	E	EXHIBIT AS CITED CASE (TO RESP)
96	08.22.13	O	ORDER TO APPROVE MDA OF 8.6.13
97	09.06.13	M	MOTION 09.20.13 - OF D TO RESTRAIN THE RECORDING OF EACH OTHER
98	09.06.13	M	MOTION 09.20.13 - OF D TO APPOINT DR. BRADLEY FREEMAN TO CONDUCT CHILD CUST
99	09.16.13	O	ORDER JUDICIAL SETTLEMENT CONF 11.5.13 @10AM
100	09.18.13	RESM	RESPONSE (FAX) OF P IN OPP TO D MT TO RESTRAIN THE RECORDING

101	09.18.13	RESM	RESPONSE OF P TO D MT TO APPOINT DR.FREEMAN TO CONDUCT CHILD CUSTODY
102	09.19.13	O	ORDER AS TO D1 MOTIONS FOR REIMBURSEMENTS/COUNSELLING/MAIL AND P1 MOTION TO
103	09.23.13	AF	AFFIDAVIT OF PAMELA A.TAYLOR OF EXPENSES
104	09.23.13	E	EXHIBIT AS COPY ATTORNEY'S FEES INVOICE (TO AF)
105	09.24.13	AO	AGREED ORDER SET JUDICIAL SETTLEMENT CONF 11.5.13/SET TRIAL
106	09.24.13	CD	COURT DATE 01.14.14 - 4 - CONTESTED DIVORCE
107	11.06.13	AO	AGREED ORDER SET FINAL HEARING FOR 11.6.13 @7:45AM
108	11.07.13	O	ORDER TO STRIKE D1 MEMORANDUM OF LAW AND TRANSCRIPT
109	11.07.13	FDD	FINAL DIVORCE DECREE 37 PGS (PARENTING PLAN)
110	11.07.13	NE	NOTICE OF ENTRY
111	11.07.13	COP	COPIES
112	11.07.13	CLOS	CLOSE CASE - COSTS SPLIT BETWEEN P1.D1 UNCONTESTED/DEFAULT
113	01.16.14	P	PAYMENT RECEIVED FROM PHIL AND KEIKO BERG FOR D1 599507
114	01.30.14	CK	TAYLOR,PAMELA ANDERSON 6775 105847
115	03.28.16	PM	PETITION/MOTION TO MODIFY R1 OF D1 PARENTING PLAN 673708
116	03.28.16	SP	SUMMONS PERSONAL SERVICE-P1 W/PM
117	03.29.16	SPAP	SUBPOENA ISSD PERSONAL-W4 673764
118	03.31.16	R	RETURN OF SERVICE-P1-SERVED RT-03.30.16
119	03.31.16	ASPA	AFFIDAVIT SERVICE SPA-W4-SERVED RT-03.30.16
120	04.28.16	NAP	NOTICE OF APPEARANCE (FAX) (P.TAYLOR/B.LANKFORD) FOR P
121	04.29.16	M	MOTION 05.13.16 - OF P FOR EXTENSION
122	05.19.16	ACPT	ANSWER AND COUNTER PETITION OF P TO D PET TO MOD PPL 678641
123	05.19.16	SP	SUMMONS PERSONAL SERVICE-D1 W/ACPT
124	05.23.16	R	RETURN OF SERVICE-D1-SERVED RT-05.20.16
125	06.15.16	M	MOTION 07.01.16 - OF D FOR LEAVE TO FILE AMENDED PETITION TO MODIFY PARENT
126	06.15.16	E	EXHIBIT AS "A" COPY AM PET TO MODIFY PARENTING PLAN (TO MT)
127	06.16.16	M	MOTION - OF P1 (EMERGENCY EX PARTE) FOR TEMPORARY RESTRAINING ORDER
128	06.16.16	E	EXHIBIT COLLECTIVE (TO MT)
129	06.16.16	AF	AFFIDAVIT OF PHILIP FOXWELL BERG
130	06.16.16	AF	AFFIDAVIT (RULE 65.03) OF PAMELA TAYLOR IN SUPP OF P MT FOR TRO
131	06.16.16	ROM	RESTRAINING ORDER A/G D1
132	06.16.16	CD	COURT DATE 06.30.16 - 4 - 9:00AM 10MIN/SIDE FOR PROOF
133	06.16.16	SP	SUMMONS PERSONAL SERVICE-D1 W/ROM,CD
134	06.16.16	A	ANSWER OF D TO COUNTER PETITION
135	06.21.16	R	RETURN OF SERVICE-D1-SERVED RT-06.21.16 CT-06.30.16
136	06.23.16	M	MOTION 07.08.16 - OF D TO COMPEL DISCOVERY
137	06.23.16	E	EXHIBIT AS "A-B" COPY EMAILS BETWEEN ATTYS/DISCOVERY (TO MT)
138	06.24.16	SPAP	SUBPOENA ISSD PERSONAL-W5 681792
139	06.24.16	M	MOTION 07.08.16 - OF P TO APPOINT COUNSELOR AND REQUIRE PARTIES TO ATTEND
140	06.28.16	RESM	RESPONSE OF D IN OPP TO P EMERGENCY MT FOR EX PARTE TEMP R/O
141	06.28.16	AF	AFFIDAVIT OF KEI SHIGENO IN RESP TO P MT (AS "A" TO RESP)
142	06.28.16	E	EXHIBIT AS "1-4" COPY TEXT MESSAGES/LTR/BILL DETAILS (TO AFF)
143	06.28.16	AF	AFFIDAVIT OF RONALD LAMAR SHUFF JR IN RESP TO P MT (AS "B" TO MT)
144	06.28.16	E	EXHIBIT AS "A-B" COPY TEXT MESSAGES (TO AFF)
145	06.28.16	AF	AFFIDAVIT OF TIFFANY DAVIS (AS "C" TO RESP)
146	06.28.16	E	EXHIBIT AS COPY PROGRESS NOTES (TO AFF)
147	06.29.16	RESM	RESPONSE OF P IN OPP TO D MT FOR LEAVE TO FILE AND AM PET TO MODIY
148	06.29.16	E	EXHIBIT AS "A" COPY DOC COMPARISON/AM PPL (TO RESP)
149	07.01.16	M	MOTION - OF P P1 EMERGENCY TO SUSPEND MOTHER'S PARENTING TIME
150	07.01.16	AF	AFFIDAVIT OF PHILIP FOXWELL BERG
151	07.01.16	AF	AFFIDAVIT RULE 65.03
152	07.01.16	C	CONTINUANCE 07.08.16 - OF D FOR LEAVE TO FILE AMENDED PETITION TO MODIFY PA
153	07.01.16	RESM	RESPONSE (FAX) OF D IN OPP TO P EMERGENCY MT TO SUSPEND PARENTING
154	07.01.16	E	EXHIBIT AS COPY TEXT MESSAGES (TO RESP)
155	07.01.16	RESM	RESPONSE (FAX) (AMENDED) OF D TO P EMERGENCY MT TO SUSPEND

156	07.01.16	ROM	RESTRAINING ORDER EACH SIDE 10 MIN PROOF
157	07.01.16	SP	SUMMONS PERSONAL SERVICE-D1 W/M,E,O
158	07.05.16	RESM	RESPONSE OF D TO P MT APPOINT COUNSELOR AND REQUIRE COUNSELING
159	07.05.16	AF	AFFIDAVIT OF KEI SHIGENO BERG (AS "A" TO RESP)
160	07.05.16	E	EXHIBIT AS "A-E" COPY EMAIL/FOREWORD (TO AFF)
161	07.05.16	RESM	RESPONSE OF D TO P EMERGENCY MT TO SUSPEND PARENTING TIME
162	07.05.16	AF	AFFIDAVIT OF KEIKO SHIGENO (AS "A" TO RESP)
163	07.05.16	E	EXHIBIT AS "A-B" COPY TEXT MESSAGES (TO AFF)
164	07.05.16	AF	AFFIDAVIT OF RONALD LAMAR SHUFF JR (AS "B" TO RESP)
165	07.05.16	E	EXHIBIT AS "A-B" COPY MESSAGES WITH ELLIE BERG/FACEBOOK (TO AFF)
166	07.08.16	C	CONTINUANCE 07.22.16 - OF D FOR LEAVE TO FILE AMENDED PETITION TO MODIFY PA
167	07.12.16	M	MOTION 07.29.16 - OF D FOR PROTECTIVE ORDER
168	07.12.16	E	EXHIBIT AS "A-C" COPY SUBPOENA/EMAILS (TO MOTION)
169	07.13.16	ROM	RESTRAINING ORDER P1.D1 RESTRAINED FROM DESTROYING EVIDENCE;DISCUSSING CASE
170	07.18.16	M	MOTION 08.05.16 - OF D FOR RESTRAINING ORDER
171	07.18.16	E	EXHIBIT A
172	07.18.16	M	MOTION 08.05.16 - OF D FOR RESTRAINING ORDER
173	07.18.16	E	EXHIBIT A
174	07.22.16	C	CONTINUANCE 08.05.16 - OF D FOR LEAVE TO FILE AMENDED PETITION TO MODIFY PA
175	07.25.16	R	RETURN OF SERVICE-D1-SERVED RT-07.18.16 CT-07.08.16
176	07.29.16	CNC	CONTINUANCE NC 08.05.16 - OF D FOR PROTECTIVE ORDER 09:00 - 4
177	08.01.16	NH	NOTICE OF HEARING 08.05.16 - OF D FOR LEAVE TO FILE AMENDED PETITION TO MOD
178	08.01.16	NH	NOTICE OF HEARING 08.05.16 - OF D FOR PROTECTIVE ORDER 09:00 - 4
179	08.01.16	NH	NOTICE OF HEARING 08.05.16 - OF D FOR RESTRAINING ORDER 09:00 - 4
180	08.05.16	C	CONTINUANCE 09.02.16 - OF D FOR PROTECTIVE ORDER 09:00 - 4
181	08.05.16	C	CONTINUANCE 09.02.16 - OF D FOR LEAVE TO FILE AMENDED PETITION TO MODIFY PA
182	08.05.16	C	CONTINUANCE 09.02.16 - OF D FOR RESTRAINING ORDER 09:00 - 4
183	08.05.16	C	CONTINUANCE 09.02.16 - OF D FOR RESTRAINING ORDER 09:00 - 4
184	08.17.16	AO	AGREED ORDER DEFT TO ANSWER INTERROGATORIES;CONT MOTION TO APPT COUNSEL
185	08.17.16	CNC	CONTINUANCE NC IND - OF P TO APPOINT COUNSELOR AND REQUIRE PARTIES TO ATTEN
186	08.22.16	SEM	SEMINAR FOR DIVORCING PARENTS KEIKO S. BERG 08.18.16
187	08.22.16	C	CONTINUANCE 08.25.16 - OF 9:00AM 10MIN/SIDE FOR PROOF 09:00 - 4
188	08.24.16	AO	AGREED ORDER CONT SCO HEARING TO 08.25.16 @ FOURTH CIRCUIT
189	09.01.16	M	MOTION 09.16.16 - OF D TO PRODUCE TELEPHONE FOR INSPECTION
190	09.01.16	M	MOTION 09.16.16 - OF D TO ALLOW CHILDREN TO PARTICIPATE IN EXTRACURRICULAR
191	09.02.16	M	MOTION 09.16.16 - OF D TO COMPEL ATTENDANCE AT PARENTING SEMINAR
192	09.02.16	N	NOTICE OF RULE 31 REPORT (D. SCOTT PARSLEY, MEDIATOR) 6.9.16
193	09.09.16	AP	AMENDED PETITION OF D TO MODIFY PARENTING PLAN
194	09.14.16	RESM	RESPONSE (FAX) OF P IN OPP TO D MT TO ALLOW CHILDREN TO PARTICIPATE
195	09.15.16	AO	AGREED ORDER PROTECTIVE ORDER
196	09.20.16	SEM	SEMINAR FOR DIVORCING PARENTS FOR PHILIP BERG 9.15.16
197	09.30.16	M	MOTION - OF P FOR PROTECTIVE ORDER
198	09.30.16	E	EXHIBIT AS "A-B" COPY DISCOVERY DOCS (TO MT) 5
199	10.04.16	M	MOTION 10.21.16 - OF D FOR SCHEDULING ORDER
200	10.06.16	NH	NOTICE OF HEARING 10.21.16 - OF P FOR PROTECTIVE ORDER 09:00 - 4
201	10.13.16	M	MOTION 10.28.16 - OF D (2ND) TO PRODUCE TELEPHONE FOR INSPECTION
202	10.13.16	E	EXHIBIT AS "A-C" COPY EMAILS (TO MT)
203	10.13.16	M	MOTION 10.28.16 - OF D FOR RESTRAINING ORDER
204	10.13.16	E	EXHIBIT AS "A" COPY EMAILS (TO MT)
205	10.13.16	M	MOTION 10.28.16 - OF D (2ND) FOR RESTRAINING ORDER
206	10.13.16	M	MOTION 10.28.16 - OF D FOR LEAVE TO FILE AN AMENDED PETITION TO MODIFY PAR
207	10.13.16	M	MOTION 10.28.16 - OF D TO RESTRAIN FROM EXPOSING CHILDREN TO TREE NUTS
208	10.13.16	E	EXHIBIT AS "A-B" COPY EMAILS BETWEEN PARTIES (TO MT)
209	10.13.16	M	MOTION 10.28.16 - OF D TO RESTRAIN FROM SENDING SAMUEL TO SCHOOL IN CLOTHE
210	10.13.16	E	EXHIBIT AS "A-B" COPY PHOTO OF KINDS AT SCHOOL/EMAIL (TO MT)

211	10.13.16	M	MOTION	10.28.16 - OF D TO COMPEL DISCOVERY RESPONSES
212	10.13.16	E	EXHIBIT	AS "A-B" COPY DISCOVERY DOCS/EMAIL TO PAM(TO MT)
213	10.17.16	RESM	RESPONSE	OF D TO P MT FOR PROTECTIVE ORDER
214	10.21.16	C	CONTINUANCE	10.28.16 - OF P FOR PROTECTIVE ORDER 09:00 - 4
215	10.21.16	C	CONTINUANCE	10.28.16 - OF D FOR SCHEDULING ORDER 09:00 - 4
216	10.21.16	M	MOTION	11.04.16 - OF P FOR PROTECTIVE ORDER
217	10.21.16	E	EXHIBIT	AS "A" COPY ISSUED SUBPOENA TO HR FOR BASS, BERRY(TO NT)
218	10.26.16	RESM	RESPONSE	(FAX)OF P TO D MT TO RESTRAIN FROM SENDING SAMUEL
219	10.26.16	RESM	RESPONSE	(FAX)OF P TO D MT FOR RESTRAINING ORDER
220	10.26.16	RESM	RESPONSE	(FAX)OF P TO D MT TO RESTRAIN FROM EXPOSING TO TREE
221	10.26.16	E	EXHIBIT	AS "A" COPY LAB CORP NUT RESULTS(TO RESP)
222	10.31.16	RESM	RESPONSE	(FAX)OF D TO P MT FOR PROTECTIVE ORDER
223	10.31.16	E	EXHIBIT	AS "A-C" COPY AVG HRS PER DAY DOC/SALARY DOCS(TO RESP)
224	11.28.16	AO	AGREED ORDER	P1.D1 TO ATTEND CO-PARENTING COUNSELING
225	12.02.16	M	MOTION	12.16.16 - OF D FOR TIME DURING WINTER BREAK
226	12.02.16	E	EXHIBIT	AS "A" COPY EMAILS BETWEEN PARTIES(TO MT)
227	12.12.16	AO	AGREED ORDER	TO CONT MOTIONS HEARD ON 07.08.16
228	12.12.16	AO	AGREED ORDER	ON PARENTING CLASS;MOTION TO COMPEL STRICKEN
229	12.12.16	CNC	CONTINUANCE NC	STRIKE - OF D TO COMPEL ATTENDANCE AT PARENTING SEMINAR 4
230	12.12.16	O	ORDER	ON BICYCLE HELMETS
231	12.12.16	AO	AGREED ORDER	ON MOTIONS HEARD ON 10.28.16
232	12.15.16	RESM	RESPONSE	(FAX)OF P IN OPP TO D MT FOR TIME DURING WINTER BREAK
233	12.22.16	WE	NOTICE OF WITNESSES/EXHIBITS	(FAX) (WITNESS LIST ONLY)
234	12.28.16	O	ORDER	ON RULE 26.03 MOTION
235	12.28.16	O	ORDER	AS TO INSPECTION OF D1'S AND MINOR CHILD'S ELECTRONICS
236	12.28.16	O	ORDER	ON ALLERGIES AND DRESS CODE
237	12.28.16	O	ORDER	ON INSPECTION OF P'S IPHONE
238	12.29.16	M	MOTION	01.13.17 - OF D TO COMPEL COOPERATION IN RENEWING ELLIE BERG'S U.S.
239	12.29.16	E	EXHIBIT	AS "A-C" COPY 2016-2017 MNPS CAL/EMAILS(TO MT)
240	12.29.16	M	MOTION	01.13.17 - OF D TO COMPEL A COPY OF THE INFORMATION AND DATA FROM I
241	12.29.16	M	MOTION	01.13.17 - OF D (2ND)TO PRODUCE TELEPHONE FOR INSPECTION
242	12.29.16	M	MOTION	01.13.17 - OF D TO ALLOW TRIP TO JAPAN
243	12.29.16	E	EXHIBIT	AS "A-C" COPY SIGNED AGREEMENT/EMAILS(TO MT)
244	01.05.17	M	MOTION	02.20.17 - OF D TO COMPEL DISCOVERY
245	01.05.17	E	EXHIBIT	AS "A-B" COPY 4TH SET OF DISCOVERY DOCS/EMAIL(TO MT)
246	01.13.17	C	CONTINUANCE	01.20.17 - OF D TO COMPEL A COPY OF THE INFORMATION AND DATA FR
247	01.13.17	C	CONTINUANCE	01.20.17 - OF D TO ALLOW TRIP TO JAPAN 09:00 - 4
248	01.13.17	C	CONTINUANCE	01.20.17 - OF D (2ND)TO PRODUCE TELEPHONE FOR INSPECTION 09:00
249	01.13.17	C	CONTINUANCE	01.20.17 - OF D TO COMPEL COOPERATION IN RENEWING ELLIE BERG'S
250	01.13.17	M	MOTION	01.27.17 - OF P FOR PROTECTIVE ORDER
251	01.20.17	M	MOTION	02.03.17 - OF P TO COMPEL MOTHER TO FULLY RESPOND TO SECOND SET OF
252	01.26.17	O	ORDER	SCHEDULING ORDER
253	01.27.17	A	ANSWER	OF D TO AM PET TO MODIFY PARENTING PLAN W/COUNTER
254	01.27.17	A	ANSWER	(FAX) (AM)OF P TO AM PET TO MODIFY PARENTING PLAN
255	01.27.17	M	MOTION	02.10.17 - OF D TO COMPEL DISCOVERY RESPONSES TO 4TH SET
256	01.27.17	E	EXHIBIT	AS "A-C" COPY TEXT MESSAGES(TO MT)
257	01.27.17	C	CONTINUANCE	02.03.17 - OF P FOR PROTECTIVE ORDER 09:00 - 4
258	01.31.17	RESM	RESPONSE	(FAX)OF D TO P MT TO COMPEL ANSWERS TO 2ND SET OF INTER
259	01.31.17	RESM	RESPONSE	(FAX)OF D TO P MT FOR PROTECTIVE ORDER RE:RESP RELATED
260	01.31.17	AO	AGREED ORDER	ON MOTIONS HEARD 01.13.17
261	02.01.17	SPAP	SUBPOENA ISSD PERSONAL-W6.W7	699642
262	02.03.17	M	MOTION	02.17.17 - OF P TO TAKE DEPOSITION OF CARRIE PENTEL OUTSIDE PARAMET
263	02.10.17	C	CONTINUANCE	02.17.17 - OF D TO COMPEL DISCOVERY RESPONSES TO 4TH SET 09:00
264	02.17.17	C	CONTINUANCE	02.24.17 - OF D TO COMPEL DISCOVERY RESPONSES TO 4TH SET 09:00
265	02.17.17	CR	CERTIFICATE OF READINESS	(FAX)OF BOTH PARTIES-7 DAYS

266	02.24.17	C	CONTINUANCE	03.03.17 - OF D TO COMPEL DISCOVERY RESPONSES TO 4TH SET 09:00
267	02.27.17	AO	AGREED ORDER	TO TAKE DEPOS OUTSIDE THE SCHEDULING ORDER
268	02.27.17	AO	AGREED ORDER	TO STIPULATE AS TO AUTHENTICATION OF EVIDENCE FROM LOGIC FORCE
269	03.01.17	ASPA	AFFIDAVIT SERVICE SPA-W6-SERVED	RT-02.01.17
270	03.01.17	ASPA	AFFIDAVIT SERVICE SPA-W7-SERVED	RT-02.01.17
271	03.10.17	SPAP	SUBPOENA ISSD PERSONAL-W8	702975
272	03.14.17	ASPA	AFFIDAVIT SERVICE SPA-W8-SERVED	RT-03.13.17
273	04.13.17	AO	AGREED ORDER	SET JUDICIAL CONF 05.15.17;CT DT 06.05.17
274	04.13.17	CD	COURT DATE	06.05.17 - 4 - CONTESTED
275	05.22.17	SPAP	SUBPOENA ISSD PERSONAL-W9	709260
276	05.22.17	N	NOTICE (FAX)OF P	OF FILING INTENT TO USE AUDIO/VISUAL RECORDING
277	05.23.17	N	NOTICE (FAX)OF D	OF FILING INTENT TO USE AUDIO/VISUAL RECORDING
278	05.25.17	SPAP	SUBPOENA ISSD PERSONAL-W10.W11.W12.W13.W14.W15.W16.W17.W18.W19	709527
279	05.25.17	SPAP	SUBPOENA ISSD PERSONAL-W20	709549
280	05.30.17	M	MOTION - OF P (NON-PARTIES)	TO QUASH SUBPOENAS FOR ATTENDANCE AT HEARING
281	05.30.17	E	EXHIBIT AS "A"	COPY ISSUED SUBS-JENKINS/REISZ/FRENCH(TO MT)
282	05.30.17	ME	MEMORANDUM (INC IN MT)	OF P IN SUP OF MT TO QUASH SUBPOENAS
283	05.31.17	B	BRIEF (TRIAL)OF D	
284	05.31.17	WE	NOTICE OF WITNESSES/EXHIBITS	OF D
285	05.31.17	B	BRIEF (PRE-TRIAL)OF P	
286	05.31.17	E	EXHIBIT AS "A-B"	COPY EMAILS/JAN 2017 CALENDAR(TO BRIEF)
287	05.31.17	WE	NOTICE OF WITNESSES/EXHIBITS	OF P
288	06.23.17	M	MOTION 07.07.17 - OF D	FOR RESTRAINING ORDER
289	06.23.17	E	EXHIBIT AS "A-E"	COPY DR.BERG NOTES/LTR/ORDER(TO MT)
290	07.07.17	C	CONTINUANCE 08.11.17 - OF D	FOR RESTRAINING ORDER 09:00 - 4
291	07.19.17	AO	AGREED ORDER	2017 SUMMER SCHEDULE;PARENTING TIME
292	08.11.17	C	CONTINUANCE 09.01.17 - OF D	FOR RESTRAINING ORDER 09:00 - 4
293	08.14.17	OSM	ORDER TO SET 10.02.17 - 4 -	CONTESTED
294	09.01.17	C	CONTINUANCE 09.15.17 - OF D	FOR RESTRAINING ORDER 09:00 - 4
295	09.05.17	SPAP	SUBPOENA ISSD PERSONAL-W21	717921
296	09.06.17	M	MOTION - OF D (EMERGENCY)	FOR TEMP RESTRAINING ORDER TO SUSPEND FATHER'S P
297	09.06.17	AF	AFFIDAVIT (RULE 65.03)OF	BRENDA RHOTON CLARK(TO MT)
298	09.06.17	E	EXHIBIT AS "A-E" (COLLECTIVE)	(TO MT)
299	09.06.17	RESM	RESPONSE (FAX)OF P TO D	EMERGENCY EX PARTE MT FOR R/O
300	09.07.17	RESM	RESPONSE OF P IN OPP TO D	MT FOR EMERGENCY RESTRAINING ORDER
301	09.07.17	E	EXHIBIT AS "A-I" COLLECTIVE	(TO RESP)
302	09.08.17	SPAP	SUBPOENA ISSD PERSONAL-W22.W23	718322
303	09.13.17	RESM	RESPONSE (FAX)OF P TO D	MT FOR RESTRAINING ORDER
304	09.18.17	AO	AGREED ORDER FOR RULE 35.01	PSYCHOLOGICAL EVALUATIONS OF MINOR CHILDREN
305	09.18.17	AO	AGREED ORDER FOR TREATMENT	BY DR SUZANNA QUASEM
306	09.20.17	M	MOTION - OF D (2ND) (EMERGENCY)	TO SUSPEND PARENTING TIME
307	09.20.17	AF	AFFIDAVIT OF KEIKO SHIGENO	BERG(AS "A" TO MT)
308	09.20.17	E	EXHIBIT AS "B-K" COPY LTR/	EMAILS/ANXIETY INTRO(TO MT)
309	09.20.17	AF	AFFIDAVIT OF BRENDA RHOTON	CLARK(TO MT)
310	09.21.17	RESM	RESPONSE (FAX)OF P TO D	2ND EMERGENCY MT FOR RESTRAINING ORDER
311	09.21.17	E	EXHIBIT AS "A" COPY SOCIAL	WORK PROGRESS NOTE(TO RESP)
312	09.21.17	ASPA	AFFIDAVIT SERVICE SPA-W22-SERVED	RT-09.08.17
313	09.21.17	ASPA	AFFIDAVIT SERVICE SPA-W23-SERVED	RT-09.08.17
314	10.06.17	M	MOTION 10.20.17 - OF P	TO EXPAND SCOPE OF DR.FREEMAN'S EVALUATION
315	10.20.17	AO	AGREED ORDER EXPANDING	SCOPE OF RULE 35.01 EVALUATIONS
316	12.12.17	OSM	ORDER TO SET 03.13.18 - 4 -	CONTESTED
317	02.09.18	SPAP	SUBPOENA ISSD PERSONAL-W10.W11	730750
318	02.09.18	SPAP	SUBPOENA ISSD PERSONAL-W12	730759
319	02.09.18	SPAP	SUBPOENA ISSD PERSONAL-W16.W21	730826
320	02.09.18	N	NOTICE OF P OF FILING AM	PROP PARENTIN PLAN/CH SUPP WKSHT

321	02.09.18	PPL	PARENTING PLAN (PROPOSED) OF P
322	02.09.18	E	EXHIBIT AS CPY CHILD SUPPORT WORKSHEET (TO PPL)
323	02.13.18	ASPA	AFFIDAVIT SERVICE SPA-W10-SERVED RT-02.09.18
324	02.13.18	ASPA	AFFIDAVIT SERVICE SPA-W11-SERVED RT-02.09.18
325	02.13.18	ASPA	AFFIDAVIT SERVICE SPA-W12-SERVED RT-02.09.18
326	02.16.18	SPAP	SUBPOENA ISSD PERSONAL-W24.W25 (ISSUED 02.15.18) 731358
327	02.23.18	ASPA	AFFIDAVIT SERVICE SPA-W25-SERVED RT-02.20.18
328	02.23.18	ASPA	AFFIDAVIT SERVICE SPA-W24-SERVED RT-02.19.18
329	03.02.18	SPAP	SUBPOENA ISSD PERSONAL-W26 732631
330	03.06.18	SPAP	SUBPOENA ISSD PERSONAL-W27 732976
331	03.06.18	N	NOTICE OF D OF FILING AMENDED PROPOSED PARENTING PLAN
332	03.06.18	PPL	PARENTING PLAN (AMENDED/PROPOSED) OF D (TO NT)
333	03.06.18	WE	NOTICE OF WITNESSES/EXHIBITS (SUPPLEMENTAL) RULE 29.01 OF D
334	03.09.18	ASPA	AFFIDAVIT SERVICE SPA-W27-SERVED RT-03.07.18
335	03.12.18	ASPA	AFFIDAVIT SERVICE SPA-W16-SERVED RT-03.12.18
336	03.12.18	ASPA	AFFIDAVIT SERVICE SPA-W21-SERVED RT-03.12.18
337	03.12.18	O	ORDER PROTECTIVE ORDER
338	03.13.18	M	MOTION - OF P TO SUSPEND MOTHER'S PARENTING TIME
339	03.13.18	E	EXHIBIT COLLECTIVE AS "A" (TO MOTION)
340	03.13.18	MC	MOTION TO CONTINUE - OF D TRIAL SCHEDULED TO RESUME 03.13.18
341	03.15.18	O	ORDER SUSPEND D1'S PARENTING TIME; SUSPEND C/S; PASSPORT; MINOR CHILD'S PHONE
342	03.15.18	CNC	CONTINUANCE NC IND - OF CONTESTED 4
343	03.23.18	M	MOTION 04.06.18 - OF D FOR CLARIFICATION OF THE MARCH 15, 2018 ORDER
344	04.03.18	M	MOTION - OF P (EMERGENCY) TO EXTEND LENGTH OF SUSPENDED PARENTING TIME AND
345	04.03.18	E	EXHIBIT AS "A-C" CPY TEXT MSG/ORDER/TRANSCRIPT (TO MT)
346	04.03.18	N	NOTICE OF P OF PROPOSED COUNSELORS
347	04.03.18	E	EXHIBIT AS "A-F" COLLECTIVE (TO NT)
348	04.04.18	RESM	RESPONSE OF P IN OPP TO D MT FOR CLARIFICATION OF 3.15.18 ORDER
349	04.04.18	E	EXHIBIT AS "A-B" CPY MED SUMMARY/EMAIL (TO RESPONSE)
350	04.06.18	C	CONTINUANCE IND - OF D FOR CLARIFICATION OF THE MARCH 15, 2018 ORDER 4
351	04.06.18	O	ORDER DEFT TO ATTEND COUNSELING
352	04.09.18	AO	AGREED ORDER SUBSTITUTION OF D'S COUNSEL W/CYNTHIA CHEATHAM
353	04.13.18	N	NOTICE OF PLTF OF AMENDMENT TO EMERGENCY MOTION TO EXTEND
354	04.13.18	M	MOTION 04.27.18 - OF D TO STRIKE BRADLEY FREEMAN'S EX PARTE COMMUNICATION
355	04.16.18	OSM	ORDER TO SET 05.03.18 - 4 - 9:00AM @ FOURTH CIRCUIT (MT TO EXTEND LENGTH OF
356	04.19.18	N	NOTICE OF DEFT OF FILING TRANSCRIPT OF 03.13.18
357	04.19.18	T	TRANSCRIPT
358	04.23.18	CAPL	PLEADING COA.TRAP 10 FILED (M2018-00720-COA-R10-CV)
359	04.24.18	M	MOTION - OF P (EMERGENCY) FOR RELIEF FROM PROTECTIVE ORDER
360	04.24.18	E	EXHIBIT AS "A" RULE 10 APP TO TN CT OF APPEALS (TO MT)
361	04.25.18	APO	APPELLATE ORDER DENY D'S MT FOR STAY&REPORT (M2018-00720-COA-R10-CV)
362	04.26.18	RESM	RESPONSE OF P IN OPP TO MT TO STRIKE B.FREEMAN EX PARTE COMM
363	04.26.18	E	EXHIBIT AS CITED CASE (TO RESPONSE)
364	04.27.18	APO	APPELLATE ORDER D TO SUPPLEMENT TRAP 10 APP w/TRIAL CT ORDER
365	05.01.18	NH	NOTICE OF HEARING STRIKE - OF P (EMERGENCY) TO EXTEND LENGTH OF SUSPENDED PA
366	05.01.18	M	MOTION - OF D (EMERGENCY) FOR NEW COUNSELOR
367	05.01.18	E	EXHIBIT (FAX) AS "A-B" COPY LETTER/C.V. (TO MT)
368	05.02.18	M	MOTION - OF D (EMERGENCY) TO RE-ESTABLISH PARENTING TIME, TO CLARIFY PROTE
369	05.02.18	E	EXHIBIT AS COLLECTIVE "A-B" (TO MT)
370	05.02.18	O	ORDER ON P1'S EMERGENCY MT FOR RELIEF FROM PROTECTIVE ORDER
371	05.04.18	NH	NOTICE OF HEARING 05.18.18 - OF D (EMERGENCY) TO RE-ESTABLISH PARENTING TIME
372	05.04.18	NH	NOTICE OF HEARING 05.18.18 - OF D (EMERGENCY) FOR NEW COUNSELOR 09:00 - 4
373	05.04.18	NH	NOTICE OF HEARING 05.18.18 - OF D FOR CLARIFICATION OF THE MARCH 15, 2018 O
374	05.04.18	MS	MOTION TO SET 05.18.18 - OF P FINAL HEARING

I hereby certify that this is a true copy
of original instrument filed in my office
this 7th day of MAY 2018

RICHARD R. ROOKER Clerk

By [Signature]
Deputy Clerk

copy

IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

FILED

2017 SEP 18 PM 2:08

PHILIP FOXWELL BERG,

Father,

v.

KEIKO SHIGENO BERG,

Mother.

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)
)
)
)
)

RICHARD R. BOGGER, CLERK

No. 12D 575

[Signature] D.C.

AGREED ORDER FOR RULE 35.01 PSYCHOLOGICAL EVALUATIONS

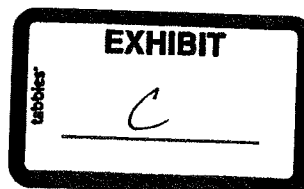
This matter came on to be heard on the 15th day of September, 2017, before the Honorable Philip E. Smith. The parties announced that they are in agreement for the minor children, Ellie Aileen Berg (DOB 09-29-2004) and Samuel Justin Berg (DOB 06-11-2008), to submit to a Rule 35.01 psychological evaluation by Dr. Bradley Freeman. The Court finds that the appointment of Dr. Freeman is in the best interest of the minor child and is hereby approved.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the minor children, Ellie Aileen Berg and Samuel Justin Berg, shall submit to a Rule 35.01 psychological evaluation by Dr. Bradley Freeman. Each party is ordered to fully cooperate with all requests made by Dr. Freeman. The scope of the evaluation shall be determined at the discretion of Dr. Freeman. The evaluations will be sent by Dr. Freeman directly to the Court for review by the Judge and counsel for each party. Copies of the reports shall then be made available to counsel and counsel shall allow their client to review, but copies of the reports shall not be shared by counsel, although they may discuss the content with each party. Each party shall pay one-half of the cost of the evaluations, subject to reallocation at the final hearing.

ENTERED this 18th day of September, 2017.

[Signature]

JUDGE PHILIP E. SMITH



Copy

APPROVED FOR ENTRY:

Brenda Clark

BRENDA RHOTON CLARK, BPR # 10588
Attorney for Mother
1230 Second Avenue, South
Nashville, TN 37210
615.244.2445 telephone

Brenton H. Lankford by BC w/

BRENTON H. LANKFORD, BPR # 30223 *permission*
PAMELA A. TAYLOR, BPR # 12264
STITES & HARBISON PLLC
401 Commerce Street, Suite 800
Nashville, TN 37219-2490
615.244.5200 telephone

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been forwarded by U. S. Mail, postage prepaid to Brenton H. Lankford, Stites & Harbison, PLLC, 401 Commerce Street, Suite 800, Nashville, TN 37219-2490, and by email to brenton.lankford@stites.com, on this 18th day of September, 2016.

Brenda Clark

IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

PHILIP FOXWELL BERG,

Plaintiff,

v.

KEIKO SHIGENO BERG,

Defendant.

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Case No. 12D-575
NOTICE OF ENTRY
REQUESTED

2017 OCT 20 PM 2:42
RICHARD...
[Signature]
D.C.

AGREED ORDER EXPANDING SCOPE OF RULE 35.01 EVALUATIONS

This matter is before the Court upon the Motion to Expand Scope of Dr. Freeman's Evaluation filed by the Father/Counter-Petitioner, Philip Foxwell Berg ("Father"), on October 6, 2017. It appears to the Court, as evidenced by the signatures of counsel below, that the parties have reached an agreement on the Motion. The Court approves this agreement. It is therefore,

ORDERED, ADJUDGED, AND DECREED that the Rule 35.01 evaluation currently being conducted by Dr. Bradley Freeman on the parties' minor children shall be expanded to include the parties.

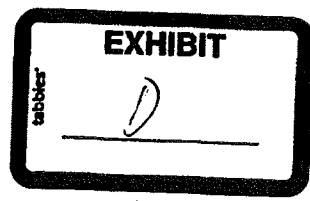
It is further **ORDERED, ADJUDGED, AND DECREED** that all terms of the Court's September 18, 2017 Order regarding the children's evaluation shall apply to the evaluations of the parties.

It is so **ORDERED**.

Dated this 20th day of October 2017.

[Signature]

JUDGE PHILIP E. SMITH



APPROVED FOR ENTRY:

[Handwritten signature]

Pamela A. Taylor (Sup. Ct. No. 012264)
Brenton H. Lankford (Sup. Ct. No. 030223)
STITES & HARBISON PLLC
SunTrust Plaza
401 Commerce Street, Suite 800
Nashville, TN 37219-2490
Telephone: (615) 782-2200
Pamela.taylor@stites.com
Brenton.lankford@stites.com

Attorneys for Plaintiff, Mr. Berg

B. Clark ^{by} *per PHL #0223*

Brenda Rhoton Clark (Sup. Ct. No. 010588)
1230 Second Avenue South
Nashville, TN 37210
Telephone: (615) 244-2445
Brenda@brendaclarlaw.com

Attorneys for Defendant, Ms. Berg

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the following method(s) upon the individual(s) listed below on this 18 day of October, 2017.

Brenda Rhoton Clark
1230 Second Avenue South
Nashville, TN 37210
Brenda@brendaclarlaw.com

- Electronic Mail
- U.S. Mail
- Facsimile
- Hand-delivery

Attorneys for Defendant, Ms. Berg

P. Taylor ^{by} *per PHL*
Pamela A. Taylor *#0223*

FILED
2018 FEB 17 3:30
IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

PHILIP FOXWELL BERG,

Father/Respondent,

v.

KEIKO SHIGENO BERG,

Mother/Petitioner.

RG

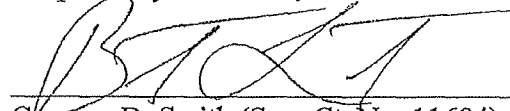
D.C.

Case No. 12D-575

HUSBAND'S NOTICE OF FILING

Comes the Father/Respondent, Philip Foxwell Berg, by and through his attorneys of record and hereby gives notice of filing his Amended Proposed Permanent Parenting Plan and Child Support Worksheet, attached hereto.

Respectfully submitted,



Gregory D. Smith (Sup. Ct. No. 11684)
Brenton H. Lankford (Sup. Ct. No. 30223)
STITES & HARBISON PLLC
401 Commerce Street, Suite 800
Nashville, TN 37219-2490
Telephone: (615) 782-2200

Attorney for Father/Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the following method(s) upon the individual(s) listed below on this 9 day of February, 2018:

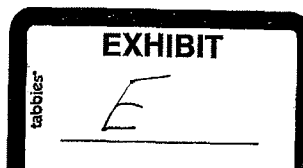
Brenda Rhoton Clark
1230 Second Avenue South
Nashville, TN 37210
Brenda@brendaclarklaw.com

- Electronic Mail
- U.S. Mail
- Facsimile
- Hand-delivery

Attorneys for Defendant, Ms. Berg



Gregory D. Smith/Brenton H. Lankford



STATE OF TENNESSEE	COURT FOURTH CIRCUIT	COUNTY DAVIDSON <i>ru</i>
AMENDED PERMANENT PARENTING PLAN ORDER		FILE NO. 12D-575 DIVISION _____
<input checked="" type="checkbox"/> PROPOSED BY FATHER		
PLAINTIFF/RESPONDENT	DEFENDANT/PETITIONER	
PHILIP FOXWELL BERG	KEIKO SHIGENO BERG	
<input type="checkbox"/> Mother <input checked="" type="checkbox"/> Father	<input checked="" type="checkbox"/> Mother <input type="checkbox"/> Father	

The mother and father will behave with each other and each child so as to provide a loving, stable, consistent and nurturing relationship with the child even though they are divorced. They will not speak badly of each other or the members of the family of the other parent. They will encourage each child to continue to love the other parent and be comfortable in both families.

This plan is a new plan.
 modifies an existing Parenting Plan dated November 6, 2013.
 modifies an existing Order dated _____.

Child's Name	Date of Birth
Ellie Aileen Berg	09/29/2004
Samuel Justin Berg	06/11/2008

I. RESIDENTIAL PARENTING SCHEDULE

A. RESIDENTIAL TIME WITH EACH PARENT

The Primary Residential Parent is Father.

Under the schedule set forth below, each parent will spend the following number of days with the children:

Mother 0 days Father 365 days

B. DAY-TO-DAY SCHEDULE

Due to Mother's continued behavior designed to alienate the affections of the children against Father, it is in the best interests of the children that Mother have no parenting time with either child pending further orders of the Court.

It is the Court's intent that all contact between Mother and the children be suspended pending further orders of the Court.

Mother is hereby enjoined and restrained from having any contact with the children whatsoever, even contact such as is outlined in the Rights of Parents section of this Parenting Plan, pending further orders of the Court.

This parenting schedule begins _____ or date of the Court's Order.
Day and Time

C. HOLIDAY SCHEDULE AND OTHER SCHOOL FREE DAYS

Mother shall have no holiday, vacation or other school-free days of parenting time with the children.

II. DECISION-MAKING

A. DAY-TO-DAY DECISIONS

Each parent shall make decisions regarding the day-to-day care of the children while the children are residing with that parent, including any emergency decisions affecting the health or safety of the children.

B. MAJOR DECISIONS

Major decisions regarding each child shall be made as follows:

Educational decisions	<input type="checkbox"/> Mother	<input checked="" type="checkbox"/> Father	<input type="checkbox"/> joint
Non-emergency health care	<input type="checkbox"/> Mother	<input checked="" type="checkbox"/> Father	<input type="checkbox"/> joint
Religious upbringing	<input type="checkbox"/> Mother	<input checked="" type="checkbox"/> Father	<input type="checkbox"/> joint
Extracurricular activities	<input type="checkbox"/> Mother	<input checked="" type="checkbox"/> Father	<input type="checkbox"/> joint

III. FINANCIAL SUPPORT

A. CHILD SUPPORT

Father's gross monthly income is \$13,333.33

Mother's gross monthly income is \$8,261.58

1. The final child support order is as follows:

- a. The mother father shall pay to the other parent as regular child support the sum of \$1,272.00 weekly monthly twice per month every two weeks. **The Child Support Worksheet shall be attached to this Order as an Exhibit.***

If this is a deviation from the Child Support Guidelines, explain why:

-
2. Retroactive Support: No retroactive support is owed by either party from the date of filing of Mother's Petition in June 2016 through the date of final hearing in this matter.

3. Payments shall begin on the 1st day of April, 2018.

This support shall be paid:

directly to the other parent.

to the Central Child Support Receipting Unit, P. O. Box 305200, Nashville, Tennessee 37229, and sent from there to the other parent at: 311 Sword Lane, Mt. Juliet, TN 37122.

A Wage Assignment Order is attached to this Parenting Plan.

by direct deposit to the other parent at _____ Bank for deposit in account no. _____.

income assignment not required;
Explanation: _____.

other: _____.

The parents acknowledge that court approval must be obtained before child support can be reduced or modified.

*Child Support Worksheet can be found on DHS website at <http://www.state.tn.us/humanserv/is/jsdocuments.html> or at your local child support offices.

B. FEDERAL INCOME TAX EXEMPTION*

The Mother Father is the parent receiving child support.

The Mother shall claim the following child: _____

The Father shall claim the following children: Ellie and Samuel Berg

The Mother Father may claim the exemptions for the child so long as child support payments are current by the claiming parent on January 15 of the year when the return is due. The exemptions may be claimed in: alternate years starting _____ each year other: _____.

The Mother Father will furnish IRS Form 8332 to the parent entitled to the exemption by February 15 of the year the tax return is due.

C. PROOF OF INCOME AND WORK-RELATED CHILD CARE EXPENSES

Each parent shall send proof of income to the other parent for the prior calendar year as follows:

- IRS Forms W-2 and 1099 shall be sent to the other parent on or before February 15.

* NOTE: The child support schedule assumptions in the guidelines (1240-2-4-.03 (6)(b)) assume that the parent receiving the child support will get the tax exemptions for the child.

- A copy of his or her federal income tax return shall be sent to the other parent on or before April 15 or any later date when it is due because of an extension of time for filing.
- The completed form required by the Department of Human Services shall be sent to the Department on or before the date the federal income tax return is due by the parent paying child support. *This requirement applies only if a parent is receiving benefits from the Department for a child.*

The parent paying work-related child care expenses shall send proof of expenses to the other parent for the prior calendar year and an estimate for the next calendar year, on or before February 15.

D. HEALTH AND DENTAL INSURANCE

Reasonable health insurance on the children will be:

- maintained by the mother
- maintained by the father
- maintained by both

Proof of continuing coverage shall be furnished to the other parent annually or as coverage changes. The parent maintaining coverage shall authorize the other parent to consult with the insurance carrier regarding the coverage in effect.

Uncovered reasonable and necessary medical expenses, which may include but is not limited to, deductibles or co-payments, eyeglasses, contact lens, routine annual physicals, and counseling will be paid by mother father pro rata in accordance with their incomes. After insurance has paid its portion, the parent receiving the bill will send it to the other parent within ten days. The other parent will pay his or her share within 30 days of receipt of the bill.

If available through work, the mother father shall maintain dental, orthodontic, and optical insurance on the minor children.

E. LIFE INSURANCE

If agreed upon by the parties, the mother father both shall insure his/her own life in the minimum amount of \$250,000.00 by whole life or term insurance. Until the child support obligation has been completed, each policy shall name the children as sole irrevocable primary beneficiary, with the other parent other _____, as trustee for the benefit of the children, to serve without bond or accounting.

IV. PRIMARY RESIDENTIAL PARENT (CUSTODIAN) FOR OTHER LEGAL PURPOSES

The children are scheduled to reside the majority of the time with the Mother Father. This parent is designated as the primary residential parent also known as the custodian, **SOLELY** for purposes of any other applicable state and federal laws. If the parents are listed in Section II as joint decision-makers, then, for purposes of obtaining health or other insurance, they shall be considered to be joint custodians. **THIS DESIGNATION DOES NOT AFFECT EITHER PARENT'S RIGHTS OR RESPONSIBILITIES UNDER THIS PARENTING PLAN.**

V. DISAGREEMENTS OR MODIFICATION OF PLAN

Should the parents disagree about this Parenting Plan or wish to modify it, they must make a good faith effort to resolve the issue by the process selected below before returning to Court. *Except for financial support issues including child support, health and dental insurance, uncovered medical and dental expenses, and life insurance*, disputes must be submitted to:

- Mediation by a neutral party chosen by the parents or the Court.
- Arbitration by a neutral party selected by parents or the Court.
- The Court DUE TO ORDER OF PROTECTION OR RESTRICTIONS.

The costs of this process may be determined by the alternative dispute process or may be assessed by the Court based upon the incomes of the parents. It must be commenced by notifying the other parent and the Court by written request certified mail other: _____.

In the dispute resolution process:

- A. Preference shall be given to carrying out this Parenting Plan.
- B. The parents shall use the process to resolve disputes relating to implementation of the Plan.
- C. A written record shall be prepared of any agreement reached, and it shall be provided to each parent.
- D. If the Court finds that a parent willfully failed to appear without good reason, the Court, upon motion, may award attorney fees and financial sanctions to the prevailing parent.

VI. RIGHTS OF PARENTS

Under T.C.A. § 36-6-101 of Tennessee law, both parents are entitled to the following rights:

- (1) The right to unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations. The parent exercising parenting time shall furnish the other parent with a telephone number where the child may be reached at the days and time specified in a parenting plan or other court order or, where days and times are not specified, at reasonable times;
- (2) The right to send mail to the child which the other parent shall not destroy, deface, open or censor. The parent exercising parenting time shall deliver all letters, packages and other material sent to the child by the other parent as soon as received and shall not interfere with their delivery in any way, unless otherwise provided by law or court order;
- (3) The right to receive notice and relevant information as soon as practicable but within twenty-four (24) hours of any event of hospitalization, major illness or injury, or death of the child. The parent exercising parenting time when such event occurs shall notify the other parent of the event and shall provide all relevant healthcare providers with the contact information for the other parent;
- (4) The right to receive directly from the child's school any educational records customarily made available to parents. Upon request from one parent, the parent enrolling the child in school shall provide to the other parent as soon as available each academic year the name, address, telephone number and other contact information for the school. In the case of children who are being homeschooled, the parent providing the homeschooling shall advise the other parent of this fact along with the contact

information of any sponsoring entity or other entity involved in the child's education, including access to any individual student records or grades available online. The school may require a written request which includes a current mailing address and may further require payment of the reasonable costs of duplicating such records. These records include copies of the child's report cards, attendance records, names of teachers, class schedules, and standardized test scores;

- (5) Unless otherwise provided by law, the right to receive copies of the child's medical health or other treatment records directly from the physician or health care provider who provided treatment or health care. Upon request from one parent, the parent who has arranged for such treatment or health care shall provide to the other parent the name, address, telephone number and other contact information of the physician or healthcare provider. The keeper of the records may require a written request which contains a current mailing address and may further require payment of the reasonable costs of duplicating such records. No person who receives the mailing address of a parent as a result of this requirement shall provide such address to the other parent or a third person;
- (6) The right to be free of unwarranted derogatory remarks made about the parent or his or her family by the other parent to the child or in the presence of the child;
- (7) The right to be given at least forty-eight (48) hours' notice, whenever possible, of all extracurricular school, athletic, church activities and other activities as to which parental participation or observation would be appropriate, and the opportunity to participate in or observe them. The parent who has enrolled the child in each such activity shall advise the other parent of the activity and provide contact information for the person responsible for its scheduling so that the other parent may make arrangements to participate or observe whenever possible, unless otherwise provided by law or court order;
- (8) The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than forty-eight (48) hours, an itinerary which shall include the planned dates of departure and return, the intended destinations and mode of travel and telephone numbers. The parent traveling with the child or children shall provide this information to the other parent so as to give that parent reasonable notice; and
- (9) The right to access and participation in the child's education on the same bases that are provided to all parents including the right of access to the child during lunch and other school activities; provided, that the participation or access is legal and reasonable; however, access must not interfere with the school's day-to-day operations or with the child's educational schedule.

VII. NOTICE REGARDING PARENTAL RELOCATION

The Tennessee statute (T.C.A. § 36-6-108) which governs the notice to be given in connection with the relocation of a parent reads in pertinent part as follows:

If a parent who is spending intervals of time with a child desires to relocate outside the state or more than fifty (50) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail.

Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

- (1) Statement of intent to move;
- (2) Location of proposed new residence;
- (3) Reasons for proposed relocation; and
- (4) Statement that the other parent may file a petition in opposition to the move within thirty (30) days of receipt of the notice.

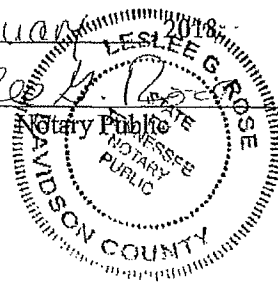
VIII. PARENT EDUCATION CLASS

This requirement has been fulfilled by both parents mother father neither.
Failure to attend the parent education class within 60 days of this order is punishable by contempt.

Under penalty of perjury, I declare that this plan has been proposed in good faith and is in the best interest of each minor child and that the statements herein and on the attached child support worksheets are true and correct. (A notary public is required if this is a proposed plan by one parent rather than one agreed by both parents.)

Philip Berg Nashville, TN Feb. 8, 2018
Father Date and Place Signed

Sworn to and subscribed before me this 8 day of February, 2018.
My commission expires: Jan. 8, 2019 Leslee G. Rose



APPROVED FOR ENTRY:

B H L
Gregory D. Smith (Sup. Ct. No. 11684)
Brenton H. Lankford (Sup. Ct. No. 030223)
Attorneys for Father
STITES & HARBISON, PLLC
401 Commerce Street, Suite 800
Nashville, TN 37219
Telephone: (615) 782-2200

Note: The judge or chancellor may sign below or, instead, sign a Final Decree or a separate Order incorporating this plan.

COURT COSTS (if applicable)

Court costs, if any, are taxed as follows:

It is so ORDERED this the _____ day of _____, 2018.

JUDGE PHILIP E. SMITH

Jun. 2016 - Mar. 2018

Part I. Identification

Indicate the status of each parent or caretaker by placing an "X" in the appropriate column	Name of Mother:	Keiko Shigeno Berg	PRP	ARP	SPLIT
	Name of Father:	Philip Foxwell Berg	X		
	Name of non-parent Caretaker:			X	
	TCSSES case #:				
	Docket #:	12D-575			
	Court name:	Davidson County Fourth Circuit			

Name(s) of Child(ren)	Date of Birth	Days with Mother	Days with Father	Days with Caretaker
Ellie Aileen Berg	9/29/2004	182.5	182.5	
Samuel Justin Berg	6/11/2008	182.5	182.5	

Part II. Adjusted Gross Income

	Mother \ Column A	Father \ Column B	Nonparent Caretaker \ Column C
1 Monthly Gross Income	\$ 8,261.58	\$ 13,333.33	
1a Federal benefit for child	+	+	
1b Self-employment tax paid	-	-	
1c Subtotal	8,261.58	13,333.33	
1d Credit for in-home children	- 0.00	- 1,023.00	
1e Credit for not-in-home children	- 0.00	- 0.00	
2 Adjusted Gross Income (AGI)	\$ 8,261.58	\$ 12,310.33	
2a Combined Adjusted Gross Income	\$20,571.91		
3 Percentage Share of Income (PI)	40%	60%	

Part III. Parents' Share of BCSO

4 BCSO allotted to primary parent's household	\$ 2241.00	\$ 0.00	\$ 0.00
4a Share of BCSO owed to primary parent	\$ 0.00	\$ 1344.60	
5 Each parent's average parenting time	N/A	182.5	
6 Parenting time adjustment	\$ N/A	\$ -896.40	
7 Adjusted BCSO	\$ 0.00	\$ 448.20	

Part IV. Additional Expenses

	Mother \ Column A	Father \ Column B	Nonparent Caretaker \ Column C
8a Children's portion of health insurance premium	\$ 516.82	\$	\$
8b Recurring uninsured medical expenses	\$	\$	\$
8c Work-related childcare	\$	\$	\$
9 Total additional expenses	\$ 516.82	\$ 0.00	\$ 0.00
10 Share of additional expenses owed	\$ 0.00	\$ 310.09	
11 Adjusted Support Obligation (ASO)	\$ 0.00	\$ 758.29	

Part V. Presumptive Child Support Order

	OBLIGATION	
12 Presumptive Child Support Order (PCSO)	\$ 0.00	\$ 758.00
* Enter the difference between the greater and smaller numbers from Line 11 except in non-parent caretaker situations		
Low Income? <input type="checkbox"/> N (N=15% Y=7.5%)		
Current Order Flat %? <input type="checkbox"/> N (N / Y)		
13a Current child support order amount for the obligor parent	\$	\$ 694.00
13b Amount required for significant variance to exist	\$ 0.00	\$ 104.10
13c Actual variance between current and presumptive child support orders	\$ 0.00	\$ 64.00

Part VI. Deviations and FCSO

Deviations must be substantiated by written findings in the Child Support Order	14 Deviations (Specify):	\$	\$
	15 Final Child Support Order (FCSO)	\$ 0.00	\$ 694.00
	16 FCSO adjusted for Federal benefit, Line 1a, Obligor's column.	\$ 0.00	\$ 694.00

Comments, Calculations, or Rebuttals to Schedule

Preparer's Use Only

Name: Arant Limited BT JS Date: 2/6/2018
 Title: Attorney for Husband

Part I. Identification

		PRP	ARP	SPLIT
Indicate the status of each parent or caretaker by placing an "X" in the appropriate column	Name of Mother:	Keiko Shigeno Berg		
	Name of Father:	Philip Foxwell Berg		
	Name of non-parent Caretaker:			
	TCSSES case #:			
	Docket #:	12D-575		
	Court name:	Davidson County Fourth Circuit		

Part II. Other Children

If a parent is claiming more than five children on line 3 or line 7, use the Additional Credit sheet to list information for each child.

Mother	Father
--------	--------

Parent Income Information

1	Applicable gross income from CS worksheet	\$ 8,261.58	\$ 13,333.33
---	-------------------------------------------	-------------	--------------

In-Home Children

2 Below, list qualified children living in the parent's home (if none, skip to line 6):

Name(s) of Child(ren) for Mother	Date of Birth	Name(s) of Child(ren) for Father	Date of Birth
		Lila	8/5/2016

3	Number of qualified children living in the parent's home	# 0	# 1
4	Theoretical child support order (this parent's income on CS Schedule for number of children from line 3)	\$ 0.00	\$ 0.00
5	75% of theoretical child support order from line 4	\$ 0.00	\$ 0.00

Not-In-Home Children

6 Below, list qualified children not living in the parent's home (if none, skip this Part):

Name(s) of Child(ren) for Mother	Date of Birth	Name(s) of Child(ren) for Father	Date of Birth

7	Number of qualified children not living in the parent's home	# 0	# 0
8	Average documented monetary support over last 12 months	\$	\$
9	Theoretical child support order (this parent's income on CS Schedule for number of children from line 7)	\$ 0.00	\$ 0.00
10a	75% of theoretical child support order from line 9	\$ 0.00	\$ 0.00
10b	Allowable credit for not-in-home children	\$ 0.00	\$ 0.00

Part I. Identification

Indicate the status of each parent or caretaker by placing an "X" in the appropriate column	Name of Mother:	Keiko Shigeno Berg	PRP	ARP	SPLIT
	Name of Father:	Philip Foxwell Berg	X		
	Name of non-parent Caretaker:				
	TCSSES case #:				
	Docket #:	12D-575			
Court name:	Davidson County Fourth Circuit				

Name(s) of Child(ren)	Date of Birth	Days with Mother	Days with Father	Days with Caretaker
Ellie Aileen Berg	9/29/2004	0	365	
Samuel Justin Berg	6/11/2008	0	365	

Part II. Adjusted Gross Income

	Mother \ Column A	Father \ Column B	Nonparent Caretaker \ Column C
1 Monthly Gross income	\$ 8,261.58	\$ 13,333.33	
1a Federal benefit for child	+	+	
1b Self-employment tax paid	-	-	
1c Subtotal	8,261.58	13,333.33	
1d Credit for in-home children	- 0.00	- 1,358.25	
1e Credit for not-in-home children	- 0.00	- 0.00	
2 Adjusted Gross Income (AGI)	\$ 8,261.58	\$ 11,975.08	
2a Combined Adjusted Gross Income	\$20,236.66		
3 Percentage Share of Income (PI)	41%	59%	

Part III. Parents' Share of BCSO

4 BCSO allotted to primary parent's household	\$ 0.00	\$ 2215.00	\$ 0.00
4a Share of BCSO owed to primary parent	\$ 908.15	\$ 0.00	
5 Each parent's average parenting time	0	N/A	
6 Parenting time adjustment	\$ 171.68	\$ N/A	
7 Adjusted BCSO	\$ 1,079.83	\$ 0.00	

Part IV. Additional Expenses

	Mother \ Column A	Father \ Column B	Nonparent Caretaker \ Column C
8a Children's portion of health insurance premium	\$	\$ 469.36	\$
8b Recurring uninsured medical expenses	\$	\$	\$
8c Work-related childcare	\$	\$	\$
9 Total additional expenses	\$ 0.00	\$ 469.36	\$ 0.00
10 Share of additional expenses owed	\$ 192.44	\$ 0.00	
11 Adjusted Support Obligation (ASO)	\$ 1,272.27	\$ 0.00	

Part V. Presumptive Child Support Order

	OBLIGATION		
12 Presumptive Child Support Order (PCSO)	\$ 1,272.00	\$ 0.00	

* Enter the difference between the greater and smaller numbers from Line 11 except in non-parent caretaker situations

Low Income? N (N=15% Y=7.5%)
 Current Order Flat %? N (N / Y)

Modification of Current Child Support Order

13a Current child support order amount for the obligor parent	\$	\$	
13b Amount required for significant variance to exist	\$ 0.00	\$ 0.00	
13c Actual variance between current and presumptive child support orders	\$ 0.00	\$ 0.00	

Part VI. Deviations and FCSSO

14 Deviations (Specify):	\$	\$	
Deviations must be substantiated by written findings in the Child Support Order			

15 Final Child Support Order (FCSSO)	\$ 1,272.00	\$ 0.00	
16 FCSSO adjusted for Federal benefit, Line 1a, Obligor's column.	\$ 1,272.00	\$ 0.00	

Comments, Calculations, or Rebuttals to Schedule

Preparer's Use Only

Name: _____ Date: 2/8/2018
 Title: _____

Part I. Identification

Indicate the status of each parent or caretaker by placing an "X" in the appropriate column	Name of Mother:	<u>Keiko Shigeno Berg</u>	PRP	ARP	SPLIT
	Name of Father:	<u>Philip Foxwell Berg</u>	X		
	Name of non-parent Caretaker:				
	TCSSES case #:				
	Docket #:	<u>12D-575</u>			
Court name:	<u>Davidson County Fourth Circuit</u>				

Part II. Other Children

If a parent is claiming more than five children on line 3 or line 7, use the Additional Credit sheet to list information for each child.

	Mother	Father
--	--------	--------

Parent Income Information

1	Applicable gross income from CS worksheet	\$ 8,261.58	\$ 13,333.33
---	-------------------------------------------	-------------	--------------

In-Home Children

2 Below, list qualified children living in the parent's home (if none, skip to line 6):

Name(s) of Child(ren) for Mother	Date of Birth	Name(s) of Child(ren) for Father	Date of Birth
		Lila	8/5/2016
		Julia	12/12/2017

3	Number of qualified children living in the parent's home	# 0	# 2
4	Theoretical child support order (this parent's income on CS Schedule for number of children from line 3)	\$ 0.00	\$ 1,811.00
5	75% of theoretical child support order from line 4	\$ 0.00	\$ 1,358.25

Not-In-Home Children

6 Below, list qualified children not living in the parent's home (if none, skip this Part):

Name(s) of Child(ren)	Date of Birth	Name(s) of Child(ren)	Date of Birth

7	Number of qualified children not living in the parent's home	# 0	# 0
8	Average documented monetary support over last 12 months	\$	\$
9	Theoretical child support order (this parent's income on CS Schedule for number of children from line 7)	\$ 0.00	\$ 0.00
10a	75% of theoretical child support order from line 9	\$ 0.00	\$ 0.00
10b	Allowable credit for not-in-home children	\$ 0.00	\$ 0.00

BERG

vs.

BERG

TRANSCRIPT OF PROCEEDINGS

March 13, 2018



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EXHIBIT

F

IN THE FOURTH CIRCUIT COURT
FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

PHILIP FOXWELL BERG,

Father/Respondent,

vs. Case No. 12D-575

KEIKO SHIGENO BERG,

Mother/Petitioner.

PROCEEDINGS

BE IT REMEMBERED that the above-captioned cause came on for hearing, on this, the 13th day of March 2018, before the Honorable Philip E. Smith, when and where the following proceedings were had, to wit:

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(615)595-0073

* * *

PROCEEDINGS

(WHEREUPON, the above-captioned matter was heard in open court as follows:)

THE COURT: Okay. Before we get started, I believe there are a couple of preliminary matters.

Ms. Clark?

MS. CLARK: May it please the Court, we have asked the Court to continue the trial.

THE COURT: Hold on just a second. If you'll bend the mic down just a little bit.

MS. CLARK: I'm sorry, I have been congested for a few weeks now.

THE COURT: That's okay. It's the system, not you. Okay.

MS. CLARK: Okay.

THE COURT: We're up. Thank you.

MS. CLARK: May it please the Court, mother has asked the Court through a motion to continue trial scheduled to resume today in just a few moments for a number of reasons.

May it please the Court, as the Court knows, yesterday the parties were delivered a copy

A P P E A R A N C E S

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1 of the comprehensive parenting time evaluation by
2 Dr. Bradley Freeman. And such a late delivery --
3 and I understand Dr. Freeman is a busy man, but that
4 late delivery foreclosed me from having the ability
5 to take the deposition of Dr. Freeman. It
6 foreclosed me from having the ability to look at
7 alternate avenues of proof, to show that certain
8 statements made that Dr. Freeman relied on that he
9 was told by different parties, to show that those
10 statements were not true. And that they had
11 prejudiced, or potentially prejudiced, the findings
12 by Dr. Freeman.

13 One of such, Your Honor, is the
14 estranged husband, Ron Shuff, of Ms. Berg. Mr.
15 Shuff had initially indicated he was not going to be
16 involved in this proceeding. However, six days
17 after, he went to the residence in February pursuant
18 to a Court order to get some of his belongings. He
19 broke the agreement and protocol, went into the
20 house, started going into the children's rooms. He
21 went into different areas, bedrooms of the house.
22 He played the piano. And he banged on the door for
23 a period of time because the -- in consultation with
24 the special master, we had agreed, through counsel,
25 that he would not take the piano that day until

1 further discovery occurred on that. He was angry
2 about that.

3 Six days later, Your Honor, he speaks
4 with Dr. Freeman and maligns my client and tells Dr.
5 Freeman all sorts of things that my client allegedly
6 did that she denies.

7 THE COURT: Well, let me ask you, Ms.
8 Clark, don't you think Dr. Freeman probably -- he
9 has got a lot of experience at this and knows that
10 when a couple is going through a divorce, like Ms.
11 Berg and her current husband are, that it might be
12 the goal of the other spouse to sabotage her
13 relationship with the minor children.

14 MS. CLARK: And I do think that he has
15 the -- I do think that is something within his
16 knowledge. I don't know that he had the -- the
17 background to understand the breadth of the lying.

18 For instance, one of the verifiable lies
19 is he tells Dr. Freeman that they went to five
20 counselors, marriage counselors. They didn't. He
21 says that -- and we can prove that. He says that --
22 that they went to so many, essentially, because Ms.
23 Berg would get dissatisfied with the counselor and
24 terminate or barge out. That didn't happen. They
25 had coparenting counseling with Tammy Daughtry and

1 days after Mr. Shuff was extremely angry at Ms.
2 Berg, that he went and started making all of these
3 scurrilous allegations against her.

4 THE COURT: Well, I doubt seriously that
5 Mr. Shuff was the only thing that Dr. Freeman relied
6 on.

7 And I will tell you, Ms. Clark, I have
8 never seen Dr. Freeman so -- be so emphatic in his
9 -- in his evaluation -- in his evaluation of
10 somebody as he was in this report as it relates to
11 Ms. Berg.

12 MS. CLARK: Dr. Freeman spoke with
13 Tiffany Davis, who had counseled with the children.
14 Ms. Davis said that she had no indication that
15 Ellie -- or the children knew about the litigation
16 during her counseling.

17 THE COURT: Well, I mean --

18 MS. CLARK: So there --

19 THE COURT: -- there may be several
20 things -- I doubt you're going to get to change Dr.
21 Freeman's mind. But I am very concerned about what
22 is in that report.

23 And Mr. Smith and Mr. Lankford have a
24 motion to suspend mother's parenting time. And if I
25 am going to continue this case, that is something

1 her husband Jay Daughtry, and he left the
2 counseling, and he didn't return.

3 That shows that there is some element of
4 lie there that I can verify.

5 THE COURT: Well, you say you would like
6 the opportunity to take the deposition of the
7 marriage counselors, but isn't that privileged?

8 MS. CLARK: I think the marriage
9 counselor can indicate -- that there is no marriage
10 counseling. That has ended.

11 THE COURT: Sure. But would it still be
12 privileged? Otherwise, I would have marriage
13 counselors in here testifying all the time. And you
14 know, the purpose of the privilege is to ensure that
15 people will be forthcoming and talk freely about
16 their marital issues without it becoming public, you
17 know, in a setting such as a courtroom.

18 MS. CLARK: Well, my client would
19 certainly sign an appropriate release. And I think
20 that, just as to the issue of whether she quit going
21 to counseling or whatever, could certainly be
22 something that would not betray any kind of
23 confidence or privilege. But it is important to
24 understand -- and, unfortunately, Dr. Freeman didn't
25 have the benefit of knowing that it was only six

1 that I will strongly consider.

2 MS. CLARK: Your Honor, and I will -- I
3 will address that. But the other thing that I
4 didn't have time -- because I was trying to put my
5 motion together and do other things late yesterday,
6 but I do think there is a -- there is some
7 discrepancy within the psychiatric community as to
8 whether or not a parental alienation syndrome or --

9 THE COURT: I don't look at it as a
10 syndrome, Ms. Clark. I'll tell you, I look at it as
11 something that has been around from time eternal.
12 And it's been around since I first started
13 practicing, since you started practicing, since Mr.
14 Smith started practicing. We just have a name for
15 it now; whereas, we didn't in the past. And so, I
16 mean, I've had that argument. I don't think there's
17 that much disagreement on it.

18 There again, I will tell you, I noticed
19 this behavior out of Ms. Berg early on in the many
20 hearings that we've had. Now, I don't know anything
21 about this case other than what I have seen in this
22 courtroom, but I have seen Ms. Berg do everything
23 she can to disrupt the relationship that Mr. Berg
24 has. And I've seen it in this courtroom.

25 And when I saw the report, I was a

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1 little surprised by how strong Dr. Freeman's
2 opinions were, but I was not surprised at his
3 findings.
4 MS. CLARK: And, of course, Your Honor,
5 I know you are going to keep an open mind through
6 the proof, but --
7 THE COURT: And I will. But you have to
8 understand, I don't just -- and no judge just --
9 when there have been many preliminary hearings,
10 motion hearings, we just can't cut out what we have
11 seen in those motion hearings or what we have heard
12 in those motion hearings in formulating an opinion.
13 I never reach an opinion until I hear all of the
14 proof.
15 At the same time, it's not in any way
16 prejudicial for me to start making judgment calls on
17 credibility, on whether one parent is -- is doing
18 right by the other parent with the children, whether
19 one parent may be hiding money. All of these
20 issues, we just can't put that out of our mind. So
21 -- but I can assure you, I will not make up my mind
22 finally until I hear all the proof.
23 At the same time, I've got a report out
24 here that according to Dr. Freeman says that the
25 relationship with Ms. Berg between these two

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1 children should be severed.
2 MS. CLARK: Well, it -- it there's an
3 option six.
4 THE COURT: I got it. I understand.
5 MS. CLARK: And, Your Honor, I think
6 what's important also is to keep in mind that --
7 that Ellie's current treatment team -- her
8 psychiatrist Dr. Quasem and her therapist Danielle
9 McDonough have both indicated that they are
10 concerned that an immediate separation between Ellie
11 and her mother would result in Ellie self-harming
12 potentially. I think that's a legitimate concern --
13 THE COURT: Well, wait a minute.
14 MS. CLARK: -- and I think there's a way
15 to fix that.
16 THE COURT: Look, Ms. Clark, I
17 understand it is a tough decision I will have to
18 make, a very tough decision, one you may not agree
19 with or one you may agree with. I don't know. But
20 this has been going on a long time. This case was
21 continued once before because of Ellie's condition.
22 Now, I have got this report from an
23 independent psychiatric examiner. Somebody y'all
24 agreed on. Somebody you agreed to do this report.
25 And it raises in my mind a substantial threat of

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1 harm if these children are left in her care right
2 now.
3 Now, what you're doing is you are asking
4 to continue the case but for me to disregard those
5 findings. Ms. Clark, that, I will not do.
6 MS. CLARK: Your Honor, if the Court is
7 inclined not to do that, I would urge the Court to
8 consider what an immediate complete separation --
9 what could happen.
10 THE COURT: I will --
11 MS. CLARK: And I would ask that the
12 therapist be consulted and that there be a way to
13 make sure that that separation period or that period
14 back with father is not harmful to Ellie.
15 THE COURT: Well, I mean, I've got a
16 situation, here, where according to Dr. Freeman, who
17 I have a lot of confidence in -- y'all know that --
18 y'all agreed to use him. But this report is saying
19 if I don't do something, then the relationship that
20 Ellie has with Mr. Berg, which is almost
21 non-existence, will be irretrievably broken.
22 And the son -- I can't remember his
23 name.
24 MS. CLARK: Samuel.
25 THE COURT: Samuel is -- is beginning to

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1 get caught in the trap now.
2 Or I've got the situation if I -- if I
3 don't do anything -- or if I do remove the child and
4 put the child in Mr. Berg's care, then I've got the
5 situation with the threat of Ellie and self-harming.
6 That is a decision no judge ever wants to be put in.
7 I don't know whether my decision will be right or
8 whether it will be wrong. I don't have a crystal
9 ball. You know, I wish I did. I wish I could look
10 into a crystal ball and determine whether my --
11 whether my decisions will be right or wrong in the
12 future.
13 But what I have right now is a
14 suggestion by an independent psychiatric examiner
15 that gives me grave concern. So, I mean, I will
16 probably grant your motion to continue, but that
17 child -- those children will be going home with Mr.
18 Berg.
19 I've thought long and hard about this
20 last night. These motions weren't filed, but I
21 figured they were coming.
22 MS. CLARK: Your Honor, how would you
23 propose that looks like? How would that be
24 achieved?
25 THE COURT: Well, I don't know. I want

1 to hear from Mr. Smith or Mr. Lankford before I
2 finalize my decision.

3 But I do know the lateness in this
4 report being received. And we received it Friday
5 afternoon. And I debated over the weekend. I was
6 going to go over it with you guys myself. And then
7 I decided Sunday, no, I probably don't need to do
8 that. There may be some questions raised that I
9 need to answer in the courtroom. So I asked
10 Ms. Williams on Sunday to go over it with you.

11 Mr. Smith?

12 MR. SMITH: Thank you, Your Honor.

13 Greg Smith with Brent Lankford
14 representing Mr. Phil Berg. Stephanie McCarty is
15 also present with us.

16 Your Honor, this case presents a T.C.A.
17 36-6-405(b) question, extraordinary circumstances.
18 That statute states that in a proceeding for
19 modification of a permanent parenting plan, the
20 existing schedule shall not be modified prior to a
21 final hearing unless the parties agree or the Court
22 finds there is a likelihood of substantial harm
23 absent the temporary modification.

24 Ms. Berg has asked for a continuance,
25 and, Your Honor, we do not oppose that continuance

1 for a couple of reasons: No. 1, you'll see in our
2 motion, and I am going to get into the heart of
3 that, and what I propose the Court think about in
4 granting the motion and terminating contact between
5 Ms. Berg and both of these children.

6 And if the case needs to go on, and they
7 need to do their discovery and that sort of thing,
8 they can certainly do that, but she needs to not be
9 communicating or having any contact with these
10 children until there is some counseling for these
11 children and counseling for Ms. Berg.

12 When this report came in yesterday, I
13 was reminded of a case that had been heard right
14 next door, right across the hall. It's called the
15 Bottorff case.

16 THE COURT: I'm familiar with it from
17 factually, not necessarily by name, from discussing
18 it with Judge Robinson.

19 MR. SMITH: Well, if I could, Your
20 Honor, I made copies of the orders. I don't think I
21 have the very first order that was issued in that
22 case, but I made copies for the Court, the orders
23 that have been issued in that case.

24 THE COURT: I think I've got a copy of
25 it here in this motion.

1 MR. SMITH: Yes. The first order is
2 attached, Your Honor, to our motion. But the
3 other -- I have copies of the other orders that were
4 entered by the Court, but I think the Court asked
5 the question or was going to think about how you do
6 this. And this was a case in which there were an
7 awful lot of similarities between our case and the
8 Bottorff case.

9 Now, I would say to you, in the Bottorff
10 case the Court had not found and did not find -- now
11 it hadn't been tried fully -- but did not find that
12 the mother had set out to alienate the children from
13 their father. But what the Court found instead was
14 that the mother had passively permitted the daughter
15 to the treat the father with such contempt and such
16 hatred, and that the son was being pulled into it,
17 that it was appropriate to terminate Ms. Bottorff's
18 time while the father and the daughter and son --
19 primarily the father and the daughter -- went into
20 an intense counseling session.

21 The Court gave Mr. Bottorff in that case
22 the authority to go out and seek the counseling he
23 thought was necessary. And, in fact, it was
24 interesting to me that then Dr. Freeman's report, he
25 mentioned seeking out counseling with Bridges. That

1 was one of the two programs that was mentioned in
2 Bottorff, in that case. Mr. Bottorff elected to go
3 with a program called Foundations. And it was a
4 program that was specifically designed to help
5 alienated children, you know, reunite with the
6 parent.

7 Now you look at the findings in what I
8 just handed to you, that order that was filed July
9 the 11th of 2017, are the basis for the petition.
10 And you will see that one of the exhibits showed
11 that the child had begun cutting herself out of
12 photographs, which included her father and her
13 brother and father. That she stopped using her
14 father's name at school. That she made statements
15 to the father, never wanted to see him again. That
16 they had an audio tape in which there were some
17 discussions. There were other things such as the
18 child, I remember in this case, saying that she
19 hoped her father got hit by a bus and that she was
20 the one driving the bus. She called him an idiot, a
21 waste of space, a pathetic excuse for a man. She
22 said, I hope you die in your surgery, and a number
23 of other things. That's all part of that.

24 Now, when you look at this case and the
25 things that have been disclosed by the -- by a

1 number of witnesses, not just Mr. Shuff, but
2 including Mr. Shuff, there are repeated statements
3 about what this daughter has said to the father.

4 Ms. Berg herself told Dr. Freeman that
5 quote, Ellie was homicidal towards her father, close
6 quote.

7 Mr. Shuff said that Ms. Berg can be
8 demeaning in everyday conversations, that she --
9 Ellie used to defend her father until Ms. Berg sat
10 down with her and shared the court documents in
11 which there were writings about her father.

12 Mr. Shuff said he found her reading
13 court documents with Ellie at least three times,
14 that he caught her on multiple occasions coaching
15 the kids on what to say to their counselor.
16 Sometimes she would tell them good things, but then
17 she would get them to complain about their father in
18 counseling.

19 Mr. Shuff told Dr. Freeman that Ms. Berg
20 had told Ellie that nothing could be done unless
21 Ellie threatened to hurt herself.

22 Now, we've got other records. And in
23 five years of treatment with one counselor, she
24 never said she was threatening to hurt herself, nor
25 did she ever say there were any sexually improper

1 was in this court.

2 Ms. Berg has called the police on Mr.
3 Berg when he tried recently to go watch his
4 daughter's piano recital and had the police come to
5 remove him from the piano recital.

6 Ellie, with Ms. Berg's assistance,
7 according to this report, forwarded to Ms. Berg
8 E-mails that Mr. Berg had had with his prior lawyer.

9 THE COURT: I recall that.

10 MR. SMITH: We have these E-mails with
11 us. But not only do we have these E-mails with us,
12 we have in these E-mails that once she got caught
13 forwarding these E-mails, then she -- Ellie
14 memorizes the E-mails, comes back, and tells her
15 mother what she has read. And her mother then takes
16 her to her counsel's office so she can tell her
17 counsel what was read. And this is in an E-mail
18 from Ms. Berg.

19 Ellie has told Dr. Freeman, herself,
20 that dad doesn't like me and we have a bad
21 relationship. She has described dad to Mr. -- or to
22 Dr. Freeman as mean, unfair, abusive, cruel,
23 narcissistic, a liar, and a very good actor. Those
24 are her descriptions to Dr. Freeman.

25 She also has said that he used to be

1 pictures being taken of her, but after that report
2 came in and after those records came in and after
3 Ms. Berg got the idea that these things were
4 necessary if Ellie wanted to get away from her
5 father, Ellie began reporting those things to a more
6 recent individual.

7 Mr. Shuff said that her mother told
8 Ellie that I can't report anything to DCS, but they
9 won't do it unless you are telling them you are
10 going to hurt yourself.

11 With regard to Samuel, Mr. Shuff told
12 Dr. Freeman that Samuel, still sleeping with his
13 mother at age ten, I believe, maybe 11, but ten or
14 11.

15 But he wasn't the only one that had
16 these things to say. There was -- he interviewed
17 Mr. Berg. Mr. Berg told him, as he would tell the
18 Court, that Ms. Berg has called the police on him
19 one time for not having a car seat for the child.
20 The child was seven years and 11 months old.
21 Required, perhaps, by law to be in a car seat if he
22 was a certain weight until he was eight years old.
23 Ms. Berg called the police on Mr. Berg because there
24 wasn't a car seat available. And I think that was
25 when Mr. Berg's wife had picked the child up. This

1 nice to her when she was three years old. She's
2 told him that her father needs to get amnesia and
3 become a new person. That he needed to be a
4 completely different person in order for her to
5 build a relationship with him.

6 These are not things that are coming
7 from Mr. Shuff. They are not things that are coming
8 from these counselors. They are coming from Ellie
9 herself to Dr. Freeman.

10 She says she told Dr. -- she told Dr.
11 Freeman she becomes suicidal if dad's home. That
12 she sleeps well when she takes Benadryl and
13 melatonin. This is a child being given Benadryl and
14 melatonin to sleep.

15 She has described her step mom, Mr.
16 Berg's wife, as bad, mean --

17 Let me stop for just a second. I'm
18 speaking too loudly I think. I know that -- I will
19 try keep it down.

20 She has described her step mom as bad,
21 mean, and same stuff as Phil. She says she told the
22 Dr. Freeman, that mom was scared of dad when they
23 were married. That mom had told her that dad had
24 dragged her around and abused her. She has told Dr.
25 Freeman that she's fearful of her sister Lila, the

1 younger sister, half sister. She told Dr. Freeman
 2 that, quote, Dad would try to take a picture of me
 3 when I was seven in the bathtub. She's told him
 4 that with regard to dad, nothing is real. He is
 5 always fake.
 6 She has told Dr. Freeman that her step
 7 mom once told Ellie that she should drown herself.
 8 She has also said that Sam, Samuel, uses Zyrtec and
 9 melatonin to sleep.
 10 Now those are things that were said by
 11 -- said by Ellie to Dr. Freeman.
 12 Other folks, Meredith Wilson and Ashley
 13 Smith, who work at the Rogers Facility with -- the
 14 child was being treated there, said that Ms. Berg
 15 was fixated on Ellie's relationship with her father.
 16 They said that Ms. Berg would slight the father
 17 regularly in front of Ellie. They said that -- this
 18 was brought up multiple times by Ms. Berg on a
 19 regular basis.
 20 They said something that would echo in
 21 this courtroom, and that was that Ms. Berg has tried
 22 at least on one occasion, and maybe two, to record
 23 sessions at the treatment facility when dad was
 24 present, tape record sessions.
 25 You recall in the divorce case Ms. Berg

1 tape recorded the mediation with Mr. Bobby Jackson.
 2 And that was sought by her counsel to introduce that
 3 tape into evidence at this trial, in the original
 4 thing.
 5 And she was hoping -- that these
 6 treatment providers said that they have spoken many
 7 times to Ms. Berg about not recording conversations.
 8 They also said that Ellie herself could
 9 list many reasons why dad was evil but could not
 10 list one reason about how he was not evil.
 11 This is not an estranged ex-husband
 12 that's giving this. This is the treatment provider
 13 at the Rogers Facility.
 14 She also -- they also said that if Ellie
 15 continues to work and be with her mother, she would
 16 not be able to grow into a self-sustaining adult and
 17 work independently.
 18 Ashley Smith at Rogers said that Ellie
 19 had reported urges to self-harm and suicidal
 20 ideations at Rogers. She said that Ms. Berg's
 21 heightened response and level of anxiety was
 22 palpable to everyone, including Ellie.
 23 They also said that Ms. Berg's behavior
 24 conveyed a mistrust of team members, not just of dad
 25 but of team members. They said that Ms. Berg was

1 pushing the idea that Ellie has PTSD from experience
 2 with her father. You know, these are things coming
 3 from folks at the Rogers facility, Your Honor.
 4 And, you know, we also have E-mails from
 5 both Ms. Berg and from her counsel to the Rogers
 6 Memorial Hospital, in which Ms. Berg urges the
 7 hospital to find that -- to find that the child
 8 should not see her father.
 9 THE COURT: Do you have one of those?
 10 MR. SMITH: I do, Your Honor.
 11 THE COURT: Show it to Ms. Clark. I
 12 would like to see that.
 13 MR. SMITH: I said E-mails. Let me make
 14 sure with --
 15 THE COURT: Sure. Take minute.
 16 (An off-the-record discussion was
 17 held.)
 18 MR. SMITH: That's right. I got you.
 19 I'm sorry.
 20 These are the notes from the treatment
 21 facility. Here you go.
 22 (Document passed to counsel and the
 23 Court.)
 24 MR. SMITH: And these were provided to
 25 all the parties, Your Honor, by Rogers Memorial

1 Hospital.
 2 And, Your Honor, if I can draw your
 3 attention -- I want to make sure I'm handing you the
 4 right thing. I thought I was.
 5 But I have got -- I've got a set of
 6 these that I've got starred. There is a Family
 7 Contact Note, and it's dated Bates Stamped 150.
 8 THE COURT: 150?
 9 MR. SMITH: 000150.
 10 THE COURT: Got it. Got it.
 11 MR. SMITH: And you will see, as a
 12 Family Contact Note, Family Note, Who Was Contacted:
 13 Mother. And it says that mother requested the team
 14 make a recommendation to the Court that the patient
 15 remain in the care of the mother. The team
 16 explained that we do not make custody
 17 recommendations.
 18 Are you where I am? Do you see where I
 19 am reading from?
 20 THE COURT: I got it. Yeah.
 21 MR. SMITH: Said her mother had her own
 22 attorney reach out to our director of operations and
 23 asked us to make a recommendation that the patient
 24 remain in the care of the mother. And the attorney
 25 was notified that we do not have a release to speak

1 with her about this patient, and that generally
2 speaking, we do not make custody recommendations.
3 It goes on to say that the mother
4 continued to insist that we sign a release for her
5 attorney.

6 Now, the next note -- the next note,
7 000151, do you see that Family Contact Note
8 entered --

9 THE COURT: Right.

10 MR. SMITH: -- on 9/21/2017.

11 And it states, quote, Spoke with Ellie's
12 mother's attorney, Brenda Clark, today around
13 4:40 p.m. She stated that a motion was filed with
14 the court for Ellie to remain with the mother until
15 the treatment team determined which parent would be
16 most fit for Ellie to live with in regards to her
17 safety. It was explained to the attorney I could
18 not confirm or deny that the patient was in
19 treatment as no ROI was in place. I also stated
20 that I was unable to give information out but would
21 listen. Brenda Clark called to request that the
22 treatment team here recommend that it would be
23 better for Ellie to reside with her mother because
24 reportedly her dad triggers suicidal ideations.

25 Said, Brenda Clark stated no court order

1 would be easier if dad would die. This is Ellie
2 telling these treatment people this. This is on
3 Page 40 of the -- of the report. She also said that
4 Ms. Berg wanted us to recommend dad not be allowed
5 to come to Ellie's basketball games and other
6 events.

7 And, Your Honor, this is all -- these
8 are things that we've heard, you know, from the
9 report.

10 We've -- I talked to -- with other
11 things, we've got E-mails from the father -- or to
12 the father from Ellie, in case there's any doubt
13 about whether or not these statements are accurate,
14 from the treatment providers or from Dr. Freeman --
15 from Dr. Freeman's work.

16 If I could, Your Honor, ask you to look
17 at the -- just briefly look at the first several of
18 those which you will see are from Mr. Berg to his
19 daughter, you know, telling her, Good job on your
20 cross country runs.

21 The next one, Hope you have a wonderful
22 birthday.

23 Next one, Good luck at your cross
24 country meet.

25 And then the fourth document in there

1 was made for Rogers to make a recommendation, but
2 that was -- she was hoping that this was something
3 we could do, as dad stated that he would follow the
4 recommendations of the treatment team.

5 And it goes on to say, Brenda Clark
6 stated that Ellie was scheduled to have
7 psychological testing with Dr. Freeman in a couple
8 of weeks, as well as her sibling.

9 Now, those are two of those things in
10 which both mom and her lawyer are calling Rogers
11 Memorial Hospital, treatment provider, and urging
12 them to make the recommendations regarding this
13 child.

14 We also have in Dr. Freeman's report,
15 the -- from Danielle McDonough -- and you'll
16 remember that in Ms. Clark's statement to the Court,
17 she stated she referred to Ms. McDonough, who is a
18 therapist -- and referred to Ms. McDonough as
19 suggesting that this would be a bad idea what we are
20 recommending. Ms. McDonough states on Page 39 that
21 re-uniting with the father would be rough, but she
22 would get through it, based on her observation.

23 She also noted that Ms. -- that the
24 child had -- had described, quote, being with father
25 is a fiery hell. Fiery hell. She said that life

1 begins, E-mails from Ellie Berg to her father and
2 the subject, she says, is stop. She calls him by
3 his first name, Phil, stop this fakeness. I do not
4 want anything to do with you, so leave me alone.
5 You are cruel and mean and evil, and I got another
6 panic attack today because of seeing you last week.
7 Leave me alone. I don't want anything to do with
8 you.

9 The next one, again, to her father, she
10 says, Love, you don't know the meaning of that word.
11 You are a liar, and you are being fake.

12 Last sentence, I'm sick and tired of
13 being your pathetic slave and actress. And I'm done
14 with that now, so leave me alone.

15 And that's in response to his E-mails to
16 her, asking, you know, her about a cross country run
17 and also asking her about some -- some other things.

18 Ellie wrote on Sunday, October 15th,
19 Phil, honey, what happened to the sad person,
20 miserable girl, bully, liar, mean, rude, selfish
21 crowd of bad examples, someone with no future,
22 someone who should drown themselves because they are
23 that bad a person. Honey is quite a change from
24 that. You and liars. Stop this fakeness and
25 deception. You and Kathy are cruel. Leave me

1 alone.

2 Another one where she just refers to her
3 father as Phil, repeatedly referring to her father
4 as Phil.

5 The next one which is October 15th,
6 2017, at 5:56 p.m., just a few months ago, Phil,
7 stop signing your E-mails as Daddy. I stopped
8 thinking of you that way years ago. I have been
9 calling you Phil in my head, but when I try to refer
10 to you as it, you ignore me.

11 And it goes on to talk about these
12 different things and negative statements and all --
13 each one of these, Your Honor, in this document, in
14 these documents essentially convey the same thing.

15 On November 9th, he -- he writes her a
16 note. He said, I would love to go watch you perform
17 if you're okay with that. Talking about something
18 at the gym. And she said, Don't come at all. I
19 don't want you anywhere near me. Leave me alone.
20 Stay away from my school.

21 So, Your Honor, I can read those. I
22 think you get the gist of them. I don't need to --
23 I don't need to bore the Court. But if there is any
24 question about whether or not Dr. Freeman got this
25 right, I do not believe that -- that that's going to

1 that's one of the treatment methods on, you know,
2 folks in this type of situation. I've had to use it
3 before in cases. I don't like it. But I've had to
4 use it before.

5 MR. SMITH: But what you will see in the
6 Bottorff case -- and again I think this case is far
7 more serious than the Bottorff case.

8 But what you will see in the Bottorff
9 case, Your Honor, is that the -- it had the desired
10 effect. The child has gone -- has gone from having
11 similar feelings about her father in that case, to
12 what Ellie feels about her father in this case, to
13 having a pretty warm relationship with the father
14 and is back to having a relationship with the mother
15 as well and having, you know, unsupervised time with
16 the mother.

17 But, right now, Your Honor, we -- I
18 don't think this Court can afford for her to have
19 unsupervised time. I mentioned earlier, I want to
20 give you just a couple more documents, if I could,
21 Your Honor, because I think this goes to the heart
22 of the question that you're asking about there.

23 THE COURT: Mr. Smith, I am going to put
24 in the report in a sealed envelope, which will be
25 Exhibit No. 4.

1 be --

2 THE COURT: Well, Mr. Smith, let me ask
3 you -- I assume you're right. He looks at so many
4 sources. But, if -- if the roles were reversed,
5 wouldn't you want some time to look into this and
6 maybe try to question some of the statements that he
7 relied on?

8 MR. SMITH: Your Honor, yes, if the
9 roles were reversed, I might be sitting up here
10 asking you for the same thing. Except, Your Honor,
11 I think that this child is at such risk during
12 whatever period of time that Ms. Berg is trying to
13 discredit Dr. Freeman's report, that this child
14 should not be in her care during that period of
15 time. Should not be in her care. And I think --

16 THE COURT: Now, are you saying no
17 contact?

18 MR. SMITH: No contact. I'm saying
19 exactly what the Court said in the Bottorff case.
20 No contact. This means not going to the school
21 events, not going to any other events, no telephone
22 calls, nothing, just nothing.

23 And, you know, I will tell you, Your
24 Honor, as you read those orders --

25 THE COURT: Well, I know, that's --

1 (WHEREUPON, the above-mentioned
2 document was marked as Exhibit Number 4.)

3 THE COURT: We will make yours as
4 Exhibit No. 5.

5 (WHEREUPON, the above-mentioned
6 document was marked as Exhibit Number 5.)

7 MS. CLARK: I thought we weren't allowed
8 to copy that.

9 THE COURT: Well, you're not. I am.

10 MS. CLARK: Okay.

11 THE COURT: I'm making it part of the
12 record.

13 We will need a sealed envelope, also.

14 MR. SMITH: You will put the other
15 documents I put in as Exhibit 4?

16 THE COURT: Yes, this will be 4, and it
17 will be in a sealed envelope.

18 MR. SMITH: Your Honor, this is an
19 E-mail from Ms. Berg to Tiffany Davis. Tiffany
20 Davis, being one of the treating professionals. And
21 in this E-mail, you will see at the bottom there was
22 some discussion. And this is one of the reasons I'm
23 so concerned about any kind of contact.

24 She talks up at the top about -- she
25 talks in this -- it's regarding some information

1 that Ellie had sent to her. And you will see that
2 she states that they were scheming ways to make
3 Ellie unlock her phone so they could download the
4 contents and get it analyzed.

5 Now you can only imagine why Ellie has
6 been so traumatized. These are a few of the
7 contents Ellie sent me. And that's -- you can't
8 really read -- I can't read these attachments, but
9 she says, I didn't tell her to do this. She did it
10 on her own while we were talking on his phone.

11 In other words, what was happening was,
12 Ellie was using Mr. Berg's phone to make a phone
13 call. And while she was on the phone making that
14 phone call to her mother, she was downloading and
15 E-mailing to her mother -- or texting to her mother
16 these attachments.

17 She said, But her discovery of what she
18 had been finding of her father and his attorney
19 started on June 4th, 2016, during her parenting time
20 without father -- with father, without my presence.
21 And then she says this, She has memorized most of
22 the content and verbally told myself, my attorney,
23 and other trusted adults, but we never saw the
24 actual E-mails. I hope you can see now why Ellie is
25 so traumatized and distressed.

1 So what she's doing with this -- from
2 Ms. Berg, what she is telling this treatment
3 professional, Tiffany Davis, is that Ellie would
4 memorize the content of E-mails between her father
5 and his lawyer and then disclose those contents to
6 mom and her attorney and what she said was other
7 trusted adults.

8 We have a -- the similar type of
9 concerns with the way that she deals with her father
10 and his contact with Ellie. I'm going to tell you
11 that Mr. Berg has had very little contact with Ellie
12 during the -- for the last several months. He has
13 not because Ms. Berg had -- he's -- been saying that
14 this child is having suicidal ideations and cutting
15 herself. And so Mr. Berg is trying to keep the
16 daughter out of this dispute, but he has tried to
17 see his daughter on occasion.

18 And Ms. Berg says, Well, you can come in
19 the house, but I can't make the daughter come and
20 see you. And that will not happen.

21 There is too much of this, Your Honor.
22 It is so -- it has so many echos of the Bottorff
23 case and some of these other cases.

24 And what I would say to the Court, Your
25 Honor, we've got -- we do have the notes of Ms.

1 McDonough in the records, from Dr. Freeman, that
2 says, It will be tough on Ellie, but I think she
3 will get through this.

4 There is a need -- and it's repeatedly
5 expressed, not just by Dr. Freeman but other people
6 that he has interviewed, that you have to break that
7 bond between Ellie and her mother in order for Ellie
8 to have a productive and loving relationship with
9 her father. And, I think I have -- I have tried to,
10 at least, explain to the Court why we feel so
11 strongly about this.

12 And I have to say, you know, this is not
13 a divorce case. So we are not worried about people
14 being -- hanging on and going through the long
15 divorce, by continuing whatever we are doing here.
16 What we are trying to do is to have a period where
17 we can try to break this bond, and that bond is --
18 is -- we want Ellie to love her mother. We want
19 Samuel to love his mother.

20 But we can't let this continue, and we
21 can't take the chance. We can't take the chance
22 that this -- Ms. Berg will leave this courtroom and
23 go back and disclose to this child what we've talked
24 about in this court. And she will spend the next
25 however many months it's going to take for her to

1 take all these depositions that she wants to take,
2 spend the next several months continuing to ply her
3 daughter with what we can see in the record from Dr.
4 Freeman about this.

5 I would say, Your Honor, that we -- we
6 have a chance to maybe save this situation, and we
7 need to take it.

8 I would also say there is no question,
9 no question, that there is a likelihood of
10 substantial harm, absent the modification that we
11 are requesting under 36-6-405(b), no question.

12 I mean, we were here before. There were
13 some statements being made by the Court. Those get
14 passed back to Ellie, and, suddenly, Ellie is
15 cutting herself, having suicidal ideations. She saw
16 one counselor for five years, Your Honor, and that
17 counselor does not have anything in her records
18 about Ellie having suicidal ideations or cutting
19 herself.

20 And, yet, when she gets a message that's
21 from her mother, That unless you say these things,
22 you're going to have to keep seeing your dad, or DCS
23 is not going to step in, she starts saying these
24 things.

25 Now let's assume for just a second that

1 those things are actually happening, that this child
 2 has gone from just, not liking her father, to
 3 despising her father, to now cutting herself and
 4 having suicidal ideations. We are not sure that
 5 that's true, but if it is true, then this child
 6 needs to get away from mom immediately.
 7 I'm not talking about tomorrow or the
 8 next day. I'm talking about Mr. Berg picking these
 9 children up from school and going ahead and doing
 10 what's necessary and being given the same authority
 11 that Mr. Bottorff was in his case to figure out how
 12 to make this happen.

13 I would ask the Court to do a couple of
 14 things: I would ask the Court to, as part of this
 15 order, to make Mr. Berg the sole arbiter or sole
 16 decision maker with regard to medical and school
 17 related issues and extra curricular issues while
 18 they work through this. I would also ask the Court
 19 to have Ms. Berg today surrender the passports that
 20 she has for the children so we can make sure there's
 21 no effort to try to remove these children from this
 22 Court's control.

23 There's some other things that might be
 24 necessary, but I probably ought to let opposing
 25 counsel respond to this. But I appreciate the

1 Court's time. I think it's necessary to do.

2 THE COURT: Ms. Clark?

3 MS. CLARK: May it please the Court,
 4 first let me start out, there were some statements
 5 in Mr. Smith's presentation regarding statements I
 6 had made or my involvement in certain things.

7 I did speak with the director at Rogers
 8 and asked if they could make a recommendation as to
 9 whether Ellie should remain in her mother's care or
 10 not. The note does not fully reflect our
 11 conversation. I completely understand that I cannot
 12 ask a medical provider to make a certain finding. I
 13 was trying to inquire, is this something that is
 14 within the scope of -- of what they can inform the
 15 Court what they think would be in the best interest
 16 of this child. So I take issue with that note that
 17 I was trying to influence them.

18 With respect to the E-mail, June 17th,
 19 2016, I didn't talk to Ellie about any E-mail she
 20 read about anything with her father. I think that
 21 Ms. Berg knew that I would talk -- that I had talked
 22 to Ellie and probably assumed that I had.

23 But as I subsequently told her, I could
 24 not have any information regarding the E-mail
 25 content. And the E-mails that were forwarded by

1 Ellie, I did not read. I immediately turned them
 2 over to Ms. Taylor. So I did not do anything
 3 inappropriate in that regard.

4 THE COURT: Let me ask you, Ms. Clark,
 5 in reading this E-mail, it says, They were scheming
 6 ways to make Ellie unlock her phone so that they can
 7 download the content and get it analyzed. Now you
 8 can imagine why Ellie has been so traumatized.
 9 There were few of the contents Ellie sent me on
 10 June 13th, 2016, because apparently she wanted me to
 11 see or believe how bad what she was reading/found
 12 was. I didn't tell her to do it. She did it on the
 13 phone -- or she did it on her own while we were
 14 talking on -- all caps -- his phone. But her
 15 discovery of what she has been finding of her father
 16 and his attorney started on June 4th, 2016, during
 17 her parenting time with father without my presence.
 18 She memorized most of the content and verbally told
 19 myself. And then it goes on, My attorney and other
 20 trusted adults, but we never saw the actual E-mails.

21 Now, let me say, this has been going on
 22 since June the 4th. She's on a phone conversation,
 23 and she's accepting these E-mails.

24 MS. CLARK: May it please the Court --

25 THE COURT: I mean, Ms. Clark, how can

1 you defend that behavior by Ms. Berg?

2 MS. CLARK: May it please the Court,
 3 when my client is permitted to present her proof on
 4 that, she will testify that she was out walking the
 5 dog. She was talking on the phone with Ellie. She
 6 was getting repeated dings on her -- showing that
 7 she was getting texts. She wasn't paying attention
 8 to the dings. There was no conversation with Ellie
 9 that Ellie was sending these things to her. She got
 10 off the telephone. And when she looked to see who
 11 had been texting her, she saw it was Ellie sending
 12 things. And she immediately began trying to call
 13 back to tell Ellie to stop.

14 THE COURT: Well, I mean, reading this
 15 correspondence indicates to me that that's a story
 16 she wants to tell the Court, but it doesn't read
 17 this way in this E-mail.

18 MS. CLARK: Well, I think this is a
 19 cryptic version of that conversation she would relay
 20 to the Court in testimony.

21 THE COURT: Well, let me -- let me say
 22 something. I have watched Ms. Berg in this case.
 23 Don't get me wrong. I've got issue with both
 24 parties here. I think Mr. Berg has fallen into the
 25 trap several times. He smarter than that, but he

1 has fallen into her trap.
 2 I have seen her attempts to alienate
 3 these children from right here in this seat right
 4 here in this courtroom. I did not need a report
 5 from Dr. Freeman for me to realize what I have seen.
 6 I knew what I was seeing. Now, that report backs up
 7 what I have thought.
 8 Now, I am going to tell you in reading
 9 the E-mail that -- where you were mentioned in it, I
 10 am going to ask you to think about this when you're
 11 away from the court and away from this courtroom,
 12 but, Ms. Clark, are you too close in this case?
 13 MR. SMITH: I don't --
 14 THE COURT: No, I'm not asking you to
 15 answer. I am asking you to think about it.
 16 Now with that said, I am going to find
 17 at this point that leaving possession of these
 18 children in the care of Ms. Berg will present a
 19 likelihood of substantial harm to both of these
 20 children.
 21 Ms. Berg, you are enjoined and
 22 restrained from contacting these children, from
 23 going to their school, from trying to contact these
 24 children, from discussing anything -- from having
 25 any phone contact with these minor children, from

1 allowing any relative or third party on your behalf
 2 to have any contact with these children.
 3 Does Ellie have a cell phone? I believe
 4 that was an issue at one point. Does she have a
 5 cell phone at this point?
 6 MS. KEIKO SHIGENO BERG: (Nodding head
 7 affirmatively).
 8 THE COURT: She will surrender that cell
 9 phone her to father. He will turn it off. He will
 10 bring it to his counsel. And, Mr. Smith, you will
 11 get that to Ms. Clark.
 12 She is to surrender her passport --
 13 passports for these children within the next three
 14 hours to the clerk of the circuit court. Actually,
 15 bring it up to the courtroom, and then bring the
 16 order, and we will surrender it. We will put them
 17 in a sealed envelope.
 18 The Court does find based on its
 19 observations, as well as the report of Dr. Freeman,
 20 that failure to act will result -- not likely
 21 result -- but will result in substantial irreparable
 22 harm to these minor children.
 23 Mr. Berg, you are to pick these children
 24 up at their school today, timely, and you are to
 25 keep these children for 60 days, during which period

1 Ms. Berg will have no contact with these minor
 2 children.
 3 MS. CLARK: And, Your Honor, at the
 4 conclusion of that 60 days?
 5 THE COURT: I'm not saying there will be
 6 contact. I'm saying we will take a look at it.
 7 MS. CLARK: So we come back in in 60
 8 days?
 9 THE COURT: Come back in at 60 days. We
 10 will probably be looking to set the case at some
 11 point in the future.
 12 You should at that point in time have
 13 talked to these witnesses. I will tell you, Ms.
 14 Clark, I suspect Dr. Freeman is right in his
 15 analysis. I'm not making that finding. I'm saying
 16 I suspect that.
 17 And the goal of this Court is to try to
 18 re-establish the relationship between Ellie and her
 19 father and improve the relationship between Samuel
 20 and his father.
 21 Now, this Court has thought long and
 22 hard about this. I thought about it overnight. I
 23 thought about it early this morning. There is no
 24 absolute right answer in my mind. Yes, Ellie may
 25 risk hurting herself, cutting herself, but the

1 experts -- or the former therapist that Dr. Freeman
 2 consulted even made the statement that she thought
 3 Ellie would get through this.
 4 I have to do something. This is
 5 Draconian. I don't like doing it, but it's got to
 6 be done. And I make my finding based on the best
 7 interest of these two minor children.
 8 MS. CLARK: May I --
 9 THE COURT: Hold on a minute.
 10 Ms. Berg, you need some serious, serious
 11 counseling. I don't like where you are as a mother
 12 to these children. My thought is there's a lot of
 13 accuracy in Dr. Freeman's report, but I'm
 14 withholding judgment. Be that as it may, you have
 15 to get in some very intensive counseling.
 16 And I will order it. I'm going to order
 17 -- I'm going to ask Mr. Smith and Mr. Lankford to
 18 submit those names that were submitted to Judge
 19 Robinson in the Bottorff case. Counseling for Ms.
 20 Berg as well as counseling for these children, two
 21 separate lists of counselors.
 22 MR. SMITH: Counsel, for Ms. Berg and
 23 with the children, two separate?
 24 THE COURT: Yes.
 25 MS. CLARK: Your Honor, I think Ms. Berg

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1 has been seeing Tammy and Jay Daughtry.
2 THE COURT: We are going somewhere else
3 at this point because they have not done Ms. Berg
4 any good. This has continued to go on.
5 MS. CLARK: And will the children
6 continue seeing -- or will Ellie continue seeing Dr.
7 Quasem and Danielle --
8 THE COURT: That will be Mr. Berg's
9 decision. As long as he has exclusive possession of
10 these minor children, he will be best with sole
11 decision making authority on all categories.
12 MS. CLARK: What about counseling for
13 Samuel?
14 THE COURT: That will be up to Mr. Berg.
15 This is a decision I do not like making.
16 This is a decision that could have unintended
17 consequences, and I'm aware of that.
18 MS. CLARK: Your Honor, will the
19 children continue going to their present schools?
20 THE COURT: We are going to keep them in
21 the same schools.
22 But you are not to attempt to visit them
23 there. You are not to attempt to contact them
24 there. And, Ms. Berg, if I find out you do that,
25 you try to attempt to contact them or see them in

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1 any way, then, ma'am, this is going to be a lot
2 longer period.
3 Do you understand?
4 MS. KEIKO SHINGENO BERG: Yes, sir.
5 THE COURT: Okay. They will go to the
6 same schools.
7 All right, Mr. Smith, will you draw the
8 order?
9 MR. SMITH: I would, Your Honor. Can I
10 address two more things?
11 THE COURT: Sure.
12 MR. SMITH: Your Honor, I would
13 appreciate -- I understand that Ms. Clark may need
14 to speak with these providers as part of her work,
15 but we would like for there to be a no contact
16 between Ms. Berg and the providers, the teachers,
17 the coaches, so that we don't have that in the
18 background.
19 THE COURT: I will -- I agree with that.
20 MR. SMITH: I would also tell the Court
21 that Mr. Berg has looked at -- already looked at
22 some potential avenues, the Bridges program and some
23 other programs. The Bridges program is
24 extraordinarily expensive. It's 25, \$26,000.
25 THE COURT: I understand, and I want the

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1 cost in there, but I want to some detail about that.
2 I want to sit back and read those and see. And I
3 may call and inquire.
4 MR. SMITH: What I was going to ask the
5 Court to do is while he -- he will do that, do you
6 want us to notify the Court as to what choices he
7 finds?
8 THE COURT: Well, yeah. Notified in
9 writing, send Ms. Clark a copy.
10 MR. SMITH: Okay.
11 THE COURT: And give a description.
12 And, you know, and -- of each program and the cost.
13 And I'm going to get an order right out immediately.
14 MR. SMITH: Okay. And you will allocate
15 the cost as well of that?
16 Or the one thing I would like the Court
17 to do, since there will be significance costs, is to
18 suspend his child support during the period he's got
19 them in case he needs to use that --
20 THE COURT: That goes without saying, of
21 course. That is suspended, not terminated.
22 MR. SMITH: No, I understand. I'm not
23 asking you to terminate it at all.
24 To suspend it during this 60-day period
25 or whatever else might follow.

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1 THE COURT: Well, and I have to be
2 mindful of Ms. Berg who is going through a divorce
3 right now. And, financially, I'm probably going to
4 need an income and expense statement for both
5 parties for the allocation of costs.
6 MS. CLARK: May it please the Court, my
7 client when she heard the cost of Bridges, just
8 wrote me a note "I can't afford that."
9 THE COURT: Then we have to do -- we
10 have to go with what we can financially.
11 MR. SMITH: We will be submitting --
12 I'll assert to the Court, I don't think my client
13 can afford Bridges financially. It was -- what was
14 it, \$26,000 for a four-day program? That's
15 incredible. But I know that in the -- the case in
16 Judge Robinson's court, they used something called
17 Foundations and --
18 THE COURT: I want the information on
19 that, also.
20 MR. SMITH: We will do it, Your Honor.
21 THE COURT: Okay.
22 MR. SMITH: Thank you, your Honor.
23 THE COURT: All right. Will you draw
24 the order?
25 MR. SMITH: I will draw the order.

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1 THE COURT: Okay. All right. Let's put
 2 the report --
 3 MS. CLARK: May it please the Court, may
 4 I --
 5 THE COURT: Yeah. Hold on just a
 6 second.
 7 In a sealed envelope. I would just say
 8 in a sealed envelope. That goes in a sealed
 9 envelope. Put an exhibit sticker on the outside of
 10 it, too.
 11 I'm sorry?
 12 MS. CLARK: May it please the Court,
 13 just in terms of no contact rule, the children's
 14 maternal grandparents are here. They are in the
 15 courtroom, as they were prior to, in June. Does --
 16 does this -- does this no contact order include --
 17 THE COURT: Absolutely.
 18 MS. CLARK: -- not allowing them --
 19 THE COURT: I said relatives, yes.
 20 I don't like doing this, but I have to
 21 do it. This is a drastic situation. And you
 22 know -- when you read that report, Ms. Clark, you
 23 knew I'm sure deep in your heart of hearts that the
 24 Court was going to have to take some action.
 25 MS. CLARK: I do know that in the past

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1 there haven't been any kind of discord or
 2 disagreement between the maternal grandparents and
 3 Mr. Berg, and they have, I think, been very
 4 respectful and kind of one another.
 5 I just wonder --
 6 THE COURT: Well, if Ms. Berg wants to
 7 allow it, then he can make that decision. It will
 8 be up to him.
 9 MS. CLARK: Thank you.
 10 MR. SMITH: Your Honor, I'm sorry just
 11 one more question about this.
 12 Mr. Berg has some concern about whether
 13 or not this child is going to go with him when he
 14 gets to school to pick the child up because,
 15 obviously, the child has resisted him being there.
 16 I would like to include in the order that he would
 17 be able to have the assistance of police or school
 18 officials.
 19 THE COURT: Sheriff's department.
 20 MR. SMITH: Sheriff's department to pick
 21 the child up.
 22 THE COURT: You know, any law
 23 enforcement officer, including the Metro police or
 24 the Davidson County Sheriff's Department to ensure
 25 that this child goes with him. If the child does

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1 not go with him, then those officers are instructed
 2 to take the child to juvenile court and provide for
 3 -- you know, hopefully, they will provide for the
 4 child overnight. At that point, then, we will get
 5 involved tomorrow morning.
 6 MR. SMITH: We will do that. We will
 7 try to get this court order over to you in the next
 8 couple of hours --
 9 THE COURT: I'll be here.
 10 MR. SMITH: -- if that's okay, Your
 11 Honor?
 12 THE COURT: I'll be here.
 13 MR. SMITH: Thank you.
 14 MS. CLARK: May it please the Court,
 15 could I ask the Court to consider -- I think Ellie
 16 has a good relationship with her counselor, the
 17 guidance counselor at school. Perhaps to avoid
 18 exacerbating the conflict here with Ellie and having
 19 law enforcement and juvenile detention and all
 20 that --
 21 THE COURT: Where does Ellie go to
 22 school?
 23 MS. CLARK: She goes to Meigs Middle
 24 School?
 25 MR. SMITH: Yes.

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1 THE COURT: Why don't --
 2 Mr. Smith, why don't you and Ms. Clark
 3 go down and meet with the guidance counselor?
 4 MR. SMITH: That's fine, Your Honor.
 5 THE COURT: And, you know, this
 6 exchange, Mr. Lankford, you can work on the order
 7 and get the order over. But let the -- let the
 8 guidance counselor know. If I need to get on the
 9 phone with the guidance counselor, I will, but it
 10 seems like that may be an avenue to maybe avoid law
 11 enforcement getting involved in this.
 12 MS. CLARK: And in front of all of her
 13 peers.
 14 THE COURT: Yeah.
 15 MS. CLARK: And it would be a really
 16 traumatic event.
 17 THE COURT: Okay.
 18 MR. SMITH: Thank you, Your Honor.
 19 THE COURT: Thank you.
 20 MS. CLARK: Your Honor, Ms. Berg, just
 21 notified me, Ellie has her first track meeting today
 22 after school. So somehow it needs to -- that's
 23 her -- her expectation is going to be going to
 24 track.
 25 THE COURT: I understand. But y'all may

1 have to change that expectation. If she wants to
2 go, she can. But Mr. Berg is there. Ms. Berg is
3 not to be at any of those events.

4 MS. CLARK: Okay.
5 (Whereupon, the proceedings were
6 adjourned.)

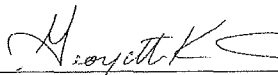
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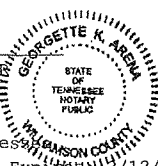
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Comprehensive Parenting Time Evaluation

EVALUÉE NAME: Keiko Berg (mother, dob November 13, 1974)
Philip Berg (father, dob March 25, 1975)
Ellie Berg (daughter, dob September 29, 2004)
Samuel Berg (son, dob June 11, 2008)

DATE OF EVALUATION(S): October 6, 2017, October 27, 2017, January 18, 2018,
January 22, 2018

DATE OF REPORT: March 7, 2018

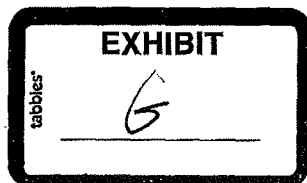
EXAMINER(S) PRESENT: Bradley W. Freeman, M.D.
Associate Professor of Clinical Psychiatry
Vanderbilt University School of Medicine

IDENTIFYING INFORMATION:

Initially, the Fourth Circuit Court for Davidson County, Tennessee, ordered that the Berg children, Ellie and Samuel, be evaluated as they are currently caught in their parents' litigious and contentious custody battle. The parents subsequently agreed to participate in the evaluations themselves such that the entire former family unit is being examined. The parents in this matter were previously evaluated by this examiner in 2013.

NOTICE REGARDING LIMITATIONS OF CONFIDENTIALITY:

Prior to participating in the evaluation, the parents were informed that the evaluation was court ordered, that this examiner worked for Vanderbilt University School of Medicine, and that a report would be written which would be distributed to the court. They were also informed that this examiner could be called to testify about the evaluation in court. The parents were told that the evaluation was not completed for treatment purposes and a doctor-patient relationship will not be established. They were also notified that the evaluation was not confidential and their participation, and allowing the participation of their children, is voluntary. The parents acknowledged understanding this information and agreed to proceed with the interview.



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1. Ms. Berg needs guidance/treatment to help separate her from her children and eliminate the enmeshment.....	55

CLINICAL INFORMATION:

The following is divided into information sections for the mother, father, and children. These sections are followed by a brief record review, psychological testing, and then the conclusions. The previous evaluations of the parents from 2013 were referenced. The conclusions in this report supersede competing opinions from the 2013 evaluations. These evaluations can be reproduced upon approval by the court.

INFORMATION REGARDING KEIKO BERG

Interview with Keiko Berg on October 6, 2017

Ms. Berg reported her divorce from her ex-husband, Phil Berg, was settled outside of court in 2013. She stated their children have had problems afterward. She stated her daughter Ellie has had an increase of her anxiety and insomnia. She stated Ellie was referred to the psychiatric nurse practitioner for further care. She mentioned her daughter has also been seeing a counselor. Ms. Berg noted that prior to her divorce, the children's father was not home much and she mostly managed the children. She stated that since the divorce, her daughter was accepted into a magnet school in Nashville, Tennessee. She stated Ellie's father did not allow her to have internet access at his home. She noted this significantly impacted her education when she exercised visitation with her father. Ms. Berg reported her ex-husband also refused to sign forms indicating that he has been reading with Samuel, their son.

Ms. Berg stated Ellie was recommended to start melatonin, a sleep medication, by her provider, but her ex-husband refused to allow this medication. Ms. Berg stated Mr. Berg has not been giving the children their allergy medication either. She stated, "It just doesn't occur to him I guess." She mentioned Samuel began seeing an ENT physician for epistaxis in 2015. She stated they continued to see the ENT doctor until August 2016. She noted they were fired by one of the doctors because of the difficulty the parents had with their ability to make medical decisions. Ms. Berg stated she sought a second opinion, and they also recommended

cauterization for Samuel's nose bleeding. Ms. Berg indicated her ex-husband suggested that Samuel is just making up the ailment.

Ms. Berg believed she and her ex-husband cannot agree on much of anything. She stated that at one point, cauterization for Samuel was scheduled but "three days before, he [Mr. Berg] cancels it without my knowledge." Ms. Berg provided documentation about the recommendations from these providers.

Ms. Berg reported the evaluation was due to a request for modification of the current parenting plan. She stated the children's extracurricular activities have been difficult to schedule due to Mr. Berg becoming rigid with his schedule. She noted Mr. Berg "took away basketball at the last minute." She continued, "I found her [Ellie] sobbing in her room. That is when I asked him to go to co-parenting with me." She mentioned many of the children's extracurricular activities have been denied by Mr. Berg.

Ms. Berg noted she and Mr. Berg have been involved in co-parenting counseling for approximately two months. She said she is interested in supporting the children but feels constricted due to Mr. Berg's decision making. Ms. Berg noted Mr. Berg allowed her to have additional time with the children prior to March of 2016 when she filed for modification of the parenting plan. She said she had the children approximately 70% of the time over the previous years. Ms. Berg stated she wanted to file for medical decision making as well.

Ms. Berg stated she is requesting medical decision making. She indicated she plans to maintain being the primary residential parent. She said she is also interested in obtaining educational decision making as well. She said Mr. Berg has not been as supportive as he could be for the children. She stated Ellie was invited to the Duke TIP's program but Mr. Berg refused to allow her to participate. Ms. Berg expressed frustration with Mr. Berg regarding assisting the children with their schoolwork.

Ms. Berg indicated Ellie has been cutting herself at her father's home and "holding a knife to her neck on the verge of killing herself at her dad's house." She stated Mr. Berg has been voluntarily giving up his time with Ellie because Ellie cannot contract for safety at this time when she is at his home. Ms. Berg noted Ellie refers to her father as "Phil." Ms. Berg reported Mr. Berg has been destroying his relationship with Ellie. She stated Samuel, their son, has exhibited signs of separation anxiety. She mentioned Samuel is also fearful of his father and that he resists spending parenting time with him.

Ms. Berg mentioned the children believe their stepmother is not interactive with them and they refer to her as being "cruel." Ms. Berg reported Ellie is currently at Rogers Memorial for treatment of obsessive compulsive symptoms. Ms. Berg indicated Ellie does not visit with her father at this point in time. She stated, "She can't even look at his picture." Ms. Berg noted

Samuel spends half of his time with his father. She noted, "The kids miss seeing each other and Samuel gets anxious about not being able to stay with me."

Ms. Berg reported Ellie is 13 years of age and currently in the eighth grade. She stated Ellie is "ambitious, intelligent, spiritual, and has a high moral character." She indicated Ellie is more mature than her peers and she is "respectful and considerate." Ms. Berg stated Ellie was given an award at the school last year for being a leader and a superb student. She noted Ellie is "gifted, musically talented, and athletically talented." She did mention Ellie is somewhat of an introvert with regard to her social functioning.

Ms. Berg reported Samuel was born on June 11, 2008. She stated he is currently in the fourth grade and is 9 years of age. She stated he loves to sing and "he loves being with his friends. He is a true extrovert. He makes friends with anybody. He is sensitive and kind to the point that he is bringing Ellie water at her bedside. He is also a laid back kind of guy." Ms. Berg indicated Samuel is not necessarily a self-initiator.

Ms. Berg reported she feels she is extremely close with her children, especially her daughter. She mentioned she is also very close to her son. Ms. Berg noted Ellie did not communicate her suicidal thoughts with her. She also noted Samuel does not share everything with her either.

Interview with Keiko Berg on January 22, 2018

Ms. Berg reported she has been feeling "numb." She mentioned the most difficult aspect for the judge is that "there are so many lies and distortions, you don't know what the truth is." She mentioned, "He will say one thing and I'll say another." Ms. Berg noted that after she was divorced, her goal was to "work on my heart. I did not want to live in bitterness. I worked on my heart and had a mentor, Gina Sorenson." Ms. Berg indicated she has been working on her attitude toward Mr. Berg. She stated she was disappointed about the parenting plan being 50/50. She noted, "I needed the kids to see that I loved their father. I made it peaceful." She also gave an example of making dinner for him even after the divorce when they were still living together and when he moved out to his own home. Ms. Berg reported she gave him a housewarming gift "which he turned against me."

Ms. Berg reported Mr. Berg was not present during much of the marriage. She noted her "dream was for the kids to have a daddy who was involved. When I saw him taking time off, I was happy. But that slowly decreased." Ms. Berg described some issues she and Mr. Berg had with regard to music practice. She noted he disliked the travel and he asked if Ellie could take lessons closer to home. Ms. Berg also reported their daughter has been struggling with allergies, and she indicated to Mr. Berg that Ellie has been seeing providers for this difficulty because "it was a known issue."

Ms. Berg indicated her ex-husband insisted on seeing a pulmonologist for Ellie. Ms. Berg stated Ellie has already had a thorough workup. She said Mr. Berg wanted to take her to court because of her resistance in allowing Ellie to see a pulmonologist. Ms. Berg reported Mr. Berg has been a barrier to the children getting appropriate medical treatment. She spoke about Mr. Berg refusing cauterization for Samuel's nosebleeds. Ms. Berg noted Samuel has had trouble with nosebleeds for over one year prior to the cauterization. Ms. Berg also noted Mr. Berg is not responsive to their daughter's medical needs, either.

Ms. Berg indicated Mr. Berg has been resistant to extracurricular activities for the children. She stated Mr. Berg told her that the children "should not play all year round." She mentioned he was resistant to allowing Samuel to play soccer. She also noted he would not allow Samuel to join choir because it would interfere with his parenting time. Ms. Berg noted Ellie wanted to do cross country and basketball which Mr. Berg also did not approve. She mentioned he did not want to transport the children because it would interfere with his daily routine.

Ms. Berg said she was frustrated with the decision of Mr. Berg and needed to take him to court. She mentioned Mr. Berg was more permissible for a short period of time after a court hearing. She noted Samuel has been "gaining weight and getting chubby because they can't do anything." Ms. Berg also indicated the schools for the children use online textbooks and online course work. She stated Mr. Berg did not allow computer access for Samuel or Ellie during his parenting time. She stated Mr. Berg does not allow the children to do homework during his parenting time either. She said Mr. Berg has been resistant to allowing the children to access appropriate technology for their class work.

Ms. Berg indicated she has been having a lot of difficulty working with Mr. Berg. She said she contacted the children's counselor and mentioned she was struggling with making decisions for them. Ms. Berg noted the counselor suggested co-parenting between her and Mr. Berg. Ms. Berg said she asked Mr. Berg to join her in co-parenting sometime in November 2015. She noted he refused. Ms. Berg noted she contacted an attorney to help file for a change in the parenting plan because of her inability to effectively work with her ex-husband.

Ms. Berg reported she has been taking care of the children significantly more than Mr. Berg. She stated that after she filed in March 2016, "he no longer allowed me to talk to the children on his time." She said, "I needed to start picking up the kids from a neutral parking lot. The kids were already afraid of him but then he stopped allowing them to talk to me." She stated her daughter's anxiety increased significantly because of this change.

Ms. Berg mentioned Ellie believed "her father was scheming against me." Ms. Berg noted she gave Ellie a phone and Ellie recorded a conversation between her and her father. Ms. Berg stated Mr. Berg discovered the recording and "he thought I planned it." She noted Mr. Berg told Ellie she and her mother were scheming against him while they were at a doctor's office.

Ms. Berg reported she feels "sad" about the difficult and tense relationship between Ellie and her father. She noted, "He scares her and he scares Samuel too." She stated Ellie told her she was not allowed to be around Mr. Berg's younger children.

Ms. Berg reported Samuel is not seeing anyone for psychotherapy at the current time. She noted Mr. Berg controlled the counseling sessions they had with Ms. Tiffany Davis. She stated Ms. Davis "got tangled up in the conflict. She was almost begging that we change therapists." She noted the children's symptoms got worse over the past year. Ms. Berg stated, "Samuel has absolutely nobody and it is pitiful." Ms. Berg noted Ellie has been living exclusively with her since September 2017. She noted Ellie was homicidal toward her father as well as her stepmother. Ms. Berg mentioned the children's relationship with their paternal grandparents has also deteriorated. Ms. Berg reported Ellie likes to be around babies and was frustrated by being restricted from Mr. Berg's younger children.

Ultimately, Ms. Berg indicated she would like Mr. Berg to be present and active with the children. She stated Mr. Berg has not been very engaged with the children's activities. She said she looked through her text messages and found that she is much more active with the children than Mr. Berg. Ms. Berg noted she would like to help Ellie rebuild the relationship with her father. She noted that when Ellie is around her father, Ellie exhibits physical symptoms of anxiety. She stated Ellie had "explosive diarrhea recently and nausea," Ms. Berg believed Ellie has a strong physical response to her father's presence. She stated she asked Mr. Berg if Ellie could have an appointment with a GI specialist but this was declined by Mr. Berg. She stated the last time they saw Ellie's pediatrician, "Phil showed up and Ellie had a panic attack. We were asked to leave."

Ms. Berg stated Ellie has been involved in therapy to help with her anxiety. She noted Mr. Berg does not believe Ellie was having significant anxious symptoms. Ms. Berg stated she has been involved with a co-parenting therapist and has had five sessions. She mentioned they have been seeing Tammy Daughtry for treatment.

Interview with Ron Shuff on February 23, 2018

Mr. Shuff reported he was married to Keiko Berg on January 2, 2016. He stated he left the marriage in 2017. He reported he has had little-to-no communication with the family for the past eight months. He stated, "Kei is a total control freak. If you don't do exactly what she wants and when she wants you will be punished. We saw five different counselors. The marriage was the least important thing on her list." Mr. Shuff stated the marriage counselors did not work out because "she will say all the right things but never do anything." He stated they changed counselors so often because of the poor rapport Ms. Berg had with some of them and also for scheduling reasons.

Mr. Shuff reported Ms. Berg “blew up at some of them and wrote them off as idiots.” He stated Ms. Berg wants to control what others think of her. He stated, “She is trying to manage what others think of her. She is good at manipulating others. She has a gift in her ability to be affectionate. If she wants to make you feel good, you are going to feel fantastic. That is why the kids love her so much because she knows exactly what to do. She uses that trait to manipulate others. She will say or do whatever to get what she wants.”

Mr. Shuff indicated Ms. Berg can be demeaning about Mr. Berg in everyday conversations. He noted Ellie was defending her father at first until Ms. Berg sat down and “went through court documents showing what her father wrote about her. From that point on, Ellie turned against him. Ellie refers to him as Anakin turning into Darth Vader.”

Mr. Shuff stated, “I busted her reading court documents with Ellie at least three times. I confronted her about that.” He noted, “I caught her multiple times coaching the kids on what to say to the counselor. Sometimes she would tell them good things but then she would get them to complain about their dad in counseling. She is very talented in manipulating the kids.”

Mr. Shuff noted, “Kei has told her she can’t help Ellie and that someone else has to report to DCS. She noted nothing can be done unless she threatens to hurt herself. This goes back to June of ‘16. She tells her there is nothing she can do to help her and ‘I can’t report anything to DCS but they won’t do it unless you are telling them you are going to hurt yourself.’” Mr. Shuff indicated Ms. Berg has done this on more than one occasion.

Mr. Shuff noted he is unfamiliar with Mr. Berg, but from what he has heard about him from Ms. Berg, “I don’t believe most of what she said. I do think he is a bit of a lazy dad and he will fight anything that is going to require his time. Even when I have offered to take Samuel to activities he would shut it down. Overall he is the responsible dad. He is helping them grow up and be successful adults in the future. Samuel still sleeps with his mother and would be a perpetual three-year-old unless it was for Mr. Berg.”

Mr. Shuff stated, “I don’t have a clue what you do with Ellie at this point. My family has agreed with the judge about taking the children and putting them with a third party. Samuel still seems to have a good impression of his dad. Most of his negativity comes from his impression from Ellie. Samuel’s number one job is to make mom feel good and his second job is to make his sister feel good. That won’t serve him growing up.” Mr. Shuff stated, “The only thing I see negative about his dad is that he does not let him try enough stuff. He does not play with him enough. He needs extracurricular activities. Socially, Samuel is fantastic.”

With regard to Ms. Berg, Mr. Shuff stated he has not observed her overindulging in alcohol or using illicit substances. He noted, “She has a lot of medicine in her cabinet. I’ve never seen

her out of her mind." He stated Ms. Berg has "screamed at me, hit me, cursed at me. She seems incapable of hearing the word no. This wasn't often but she tried everything from withholding sex, ignoring me...she only hit me two different times and it didn't work. I don't think she is a naturally violent person though."

Mr. Shuff stated Ms. Berg wants to be seen as a "great mom. When she is not being watched she will throw the kids under the bus to get what she wants. Hurting Ellie like that to get what she wants. Giving Phil primary custody and seeing the children every other weekend is needed. She is either fantastic or absolutely horrible." Mr. Shuff indicated Ms. Berg is involved with the children and enjoys doing things with them. He noted she pushes extracurricular activities and she will give up time with them. I think the damage she is causing, however, is not worth that." Mr. Shuff indicated no safety concerns, "just mental concerns." He mentioned being worried about the state of mind Ms. Berg puts Ellie in. Mr. Shuff stated Ms. Berg was constantly attacking Mr. Berg. Mr. Shuff said Ms. Berg is "commonly negative about him [Mr. Berg]. She has these speeches on a regular basis that she tells the kids. She will tell them that 'I want you to love him and pray for him so that he might change one day.'" Mr. Shuff noted Ms. Berg is never supportive of Mr. Berg. He also indicated Samuel has a really great relationship with Mr. Berg. He noted Ellie's relationship was good with him as well until Ms. Berg read her the court documents. He noted Mr. Berg always tried to give them hugs even when they refused.

Interview with Jana Williams, M.D., remains pending

Ms. Berg completed releases for her providers on February 26, 2018, and these were then sent to the provider's offices. This examiner's office has not received records or been able to schedule a phone call with the providers at this time. Ms. Berg was aware of the request to review all mental health records at the outset of the evaluation.

PSYCHIATRIC HISTORY

Ms. Berg reported she is currently taking the antidepressant medication Paxil. She stated that in the summer of 2016, she had a "scare" that she might have ovarian cancer. She reported having had an emergency hysterectomy. She stated she did not speak to Mr. Berg about this but communicated with Ellie, her daughter. Ms. Berg reported she had some complications from the surgery. She noted that during her illness, Mr. Berg did not allow the children to speak to her. She indicated she lost a significant amount of weight. She stated she became severely depressed because "I thought I wasn't going to make it. That really hit hard for me." She noted she increased her antidepressant to 40 mg and she has been on that dose since that time. She denied having suicidal thoughts.

Review of the Tennessee Controlled Substance Monitoring Database revealed a number of prescriptions for Ms. Berg. This system only tracks controlled substances. Ms. Berg has a

rather routine prescription for the anxiolytic medication Xanax and the hypnotic medication zolpidem. The query noted that the majority of prescriptions were written by Dr. Jana Williams. There does not appear to be doctor shopping.

PSYCHIATRIC REVIEW OF SYSTEMS

Ms. Berg was asked questions about symptoms she may have had with regard to psychiatric illness. She was asked about depression. Ms. Berg reported she felt depressed in 2004 because of her postpartum status and her difficult marriage. Regarding the depression, she mentioned the symptoms began in the postpartum period. She mentioned she was feeling overwhelmed with the thoughts of not being depressed. She reported Paxil was helpful but in 2007, "the depression resurfaced due to my relationship issues." She stated they were fostering a child from Japan in 2007 but Ms. Berg felt the child was not a good fit for their family.

Ms. Berg stated there have never been times in the past in which she went several days without the need for sleep or very little sleep. She mentioned her medications helped significantly with her worry. She stated she is having some trouble with her second marriage. She reported she remarried in January of 2016 and then filed three months afterwards for a change in the permanent parenting plan. Ms. Berg noted her second husband had some medical problems as well. She mentioned her second husband left her because "he said there was no marriage. He said I spent too much time with the children." Ms. Berg also noted her second husband started threatening her about "a lot of things. I think he was bipolar. He would yell at me and the children. He was frustrated that I was so focused on the children. He was jealous of my attention to the children." Ms. Berg noted, "He threatened that he would call Phil and tell him whatever it takes to ruin this case. He used to make me cry in front of my kids. He filed for divorce." She noted the divorce is still pending at this time. Ms. Berg stated she is no longer interested in dating and wants to focus exclusively on her children.

With regard to trauma, Ms. Berg stated she was in an abusive relationship while in high school. She noted, "I'm not a good judge of character for men apparently." She stated, "I'm done with men." She denied having current symptoms of PTSD. She mentioned she was physically hurt by Mr. Berg and "he traumatized me the most." She stated she was emotionally and spiritually abused by Mr. Berg.

Ms. Berg stated she is not experiencing symptoms consistent with obsessive compulsive disorder. She denied having symptoms consistent with psychosis or paranoia. She did not endorse having delusional constructs or difficulty with eating issues at this time. She did report having some issues with eating and her weight when she was in her young adulthood. Ms. Berg denied having issues with regard to her focus and attention.

She rated her self-esteem at this time as a 6 out of 10, with 10 being the best. She stated that when she was married to Mr. Berg, it was an 8 out of 10. Ms. Berg reported she lies infrequently to other people. She stated she is "an encourager and a motivator." With regard to guilty thoughts, Ms. Berg denied wanting to change things in the past. She mentioned she felt bad about being unfaithful while the divorce was pending for several years.

Ms. Berg reported she has not been abused in the past. She stated she left home at the age of 15 because she wanted to attend an international school. Ms. Berg stated she came to the United States when she was 18 years old. She mentioned being bullied in Japan because she was "half white" and because she was not Buddhist.

EDUCATIONAL HISTORY

Ms. Berg stated she went to school in Japan and then entered an international school to complete her elementary and high school education. She reported attending Wheaton for college, where she majored in psychology. She also mentioned earning a master's degree in nursing at Vanderbilt University. She denied having to repeat grades or being involved in special education. She denied having behavioral problems in school.

EMPLOYMENT HISTORY

Ms. Berg reported she works for the internal medicine walk-in clinic (beginning in November 2017). She denied having disciplinary issues at work. She provided several emails from her supervisors which reflect outstanding work ethic and professionalism.

FINANCIAL HISTORY

Ms. Berg stated her current source of income is her job. She stated she was on short-term disability during her medical procedures and also on FMLA when Ellie was in care.

SOCIAL HISTORY

Ms. Berg reported she used to have several friends prior to her divorce. She mentioned Mr. Berg would call her friends and tell them about her. She stated, "He controlled me." Ms. Berg stated her closest friends are living in Japan. She mentioned she currently has several friends who have been divorced. She described having close ties with her neighbor. She mentioned she is currently not dating and has a pending divorce action. She stated for her free time she enjoys tennis, running, and gardening.

GENERAL MEDICAL HISTORY

Ms. Berg stated she takes several medications. She mentioned being prescribed Topamax for her migraines and being given Synthroid due to problems with her thyroid functioning after the birth of Ellie. She reported taking Ambien at bedtime and also, as noted above, the

antidepressant Paxil for her mood. She stated she was hospitalized in the summer of 2017 for an emergency hysterectomy. She mentioned having an appendectomy shortly thereafter. The only other surgery she recalled was having a tonsillectomy approximately five years ago. She denied having significant allergic reactions, head trauma involving loss of consciousness, or seizures.

SUBSTANCE USE HISTORY

Ms. Berg stated she does not use alcohol or illicit substances. She then mentioned that she "might drink wine at a party." She denied ever having withdrawal symptoms or problems with her substance use.

LEGAL HISTORY

Ms. Berg reported she has never been arrested.

MENTAL STATUS EXAMINATION

Ms. Berg was dressed appropriately for the evaluation. She was neatly groomed and her hygiene was good. She was alert and oriented to person, place, time, and situation. She was cooperative with the evaluation and maintained good eye contact throughout. She did not exhibit psychomotor agitation or retardation. Her gait was steady. Her speech was of conversational volume and normal rate with average tone. She had good articulation. She described her mood as "like any other day...it's fine." Her affect was appropriate to the situation and congruent with her stated mood. Her thought process was logical and goal-directed. Her thought content was without disorganization or paranoia. She denied having delusional constructs. She did not appear to exhibit psychotic symptoms including responding to internal stimuli or having auditory or visual hallucinations. She denied suicidal and homicidal ideation. On gross examination, her cognitive functioning was intact.

INFORMATION REGARDING PHILIP BERG

Interview with Phil Berg on October 6, 2017

Mr. Berg reported he believed his ex-wife, Ms. Kei Berg, has been alienating the children from him. He stated that once their divorce was settled, "it was relatively peaceful with some challenges but not out of control." He stated he remarried and Ms. Berg also remarried. He mentioned Ms. Berg filed for a change in parenting time because "she was asking for an extra few days and she wanted full decision making rights. She said I was not an involved

educational parent, not letting the kids go to extracurricular activities. She also wanted medical decision making.”

Mr. Berg noted that two weeks later, Ms. Berg called the police department on his wife for not having car seats at the time of the exchange. Mr. Berg noted Ms. Berg has filed for physical and emotional abuse against Ellie by him. Mr. Berg stated he has had even parenting time with the children prior to Ellie’s admission to Vanderbilt Psychiatric Hospital. He stated Ellie’s attitude with him declined since the filing in March 2016. He stated Ellie began forwarding email messages to Ms. Berg that he was having with his attorney. He noted that Ellie would get into his email account and send those messages to her mother. He stated Ellie has also recorded conversations she has had with him and then persisted on hiding the recording. Mr. Berg believed Ms. Berg contacted DCS about this incident and DCS stated, “This was not abusive and that this was a bratty teenager issue.”

Mr. Berg indicated Ellie has been seeing a therapist but was admitted to a psychiatric hospital due to self-harmful statements. Mr. Berg stated, “Ellie won’t have anything to do with me right now.” He believed Ms. Berg has a campaign against him with the purpose of decreasing his parenting time.

Mr. Berg mentioned that prior to the divorce, he was accused of dressing his son up in women’s underwear and taking pictures of him. He described other incidences in which Ms. Berg has misinterpreted his communications and behavior. Mr. Berg noted he has given up his time over the past two weeks due to Ellie reporting being suicidal and self-injurious when she is visiting him at his house. He stated, “I can see Ellie cutting her arm to prove she does not want to be at my house.” He mentioned, “Ellie seems to have sided with Kei and I might have to pull back a little bit. I think my relationship with Samuel is good.”

Mr. Berg stated he is concerned Ms. Berg will continue to poison the children against him despite how much time she has with the children. He also debated allowing Ms. Berg to have as much time as she wants with the children but he was fearful that that still would not be enough. Mr. Berg noted he is not favorable for the all or nothing plan but would like to see if they could co-parent.

Mr. Berg reported Samuel is engaged and cheerful at his home. He noted, “He is not as warm to me as he was in the past. He is not as affectionate as he used to be. He says I love you repeatedly to Kei but still wants to be around me.” Mr. Berg stated there are times when Samuel seems to be more distant. He reported that when Ellie is at the house, “Samuel seems to have to look out for her and takes cues from her.” Mr. Berg believed Samuel is doing “well overall but he is protective of Ellie when she is over.” He mentioned Samuel is currently in the fourth grade at Andrew Jackson Elementary School. Mr. Berg believed Samuel is “more

loyal to his mother from what the counselor says.” He noted Ms. Berg is interested in having more parenting time and having complete decision making authority.

Mr. Berg reported Ellie is currently at the partial hospitalization program at Rogers Memorial Hospital due to her anxiety and obsessive compulsive symptoms. He noted that when Ellie was in the inpatient program, her OCD and anxiety symptoms were identified. Mr. Berg noted Ellie’s providers have had some confusion as to Ellie’s behaviors and how they might be influenced by her mother. He stated Ellie seems to be making some progress with her anxiety and “moving away from her all or nothing thinking.”

Mr. Berg stated that when Ellie spends parenting time with him, “she has her ups and downs.” He noted Ellie has been more “surly and spends most of the time in her room.” Mr. Berg noted Ellie calls him “Phil” and gets triggered from photos of him. He stated he is unsure as to how to mend the relationship with her.

Concerning schooling, Mr. Berg stated Samuel is doing well academically and has several friends. He also noted Ellie is a straight-A student, “just like her brother.” He noted Ellie is socially shy which is unlike Samuel. He stated that when she is in an unstructured environment, she has more problems. Mr. Berg said, “When I see her in school, she seems pretty happy.”

Mr. Berg noted Ms. Berg has claimed that he denies the children medical care and has communicated that to various medical providers. He stated Samuel has had bloody noses from time-to-time but “it was pretty seldom at my house.” He stated the doctor Samuel had seen indicated it was not necessarily significant enough to warrant cauterization but “she kept taking him back and they said it might be okay.” Mr. Berg stated Ms. Berg told him she cauterized Samuel’s nose with silver nitrate. Mr. Berg also reported Ms. Berg was critical of him for not allowing Ellie to see a psychiatrist for panic attacks during testing.

Mr. Berg stated he has never seen Ellie have a panic attack or other significant problems so he refused to allow her to see a psychiatrist for evaluation. He said he would not have objected if he knew about the suicidal behavior. Mr. Berg noted Ellie is currently on an antidepressant medication to help with her anxiety. Mr. Berg noted Ms. Berg has fired the children’s counselor due to her perception that the children have not had much progress with the counselor.

Interview with Phil Berg on January 18, 2018

Mr. Berg indicated his daughter was discharged from Rogers Memorial and is currently seeing Dr. Webb for further care. He stated Dr. Webb has spoken with the previous providers at the Rogers program. He noted Ellie continues to be “hostile and unwilling to work with him [Mr. Berg].” He stated he attended one of her violin recitals and Ms. Berg called the police

because she said he was not supposed to be there. He stated the police did not do anything when they arrived. He mentioned Ms. Berg told Ellie that he was there, and Ellie confronted him while he was sitting in the back of the auditorium. Mr. Berg stated that a week later, he went to a piano recital and "no one called the police." He stated Ms. Berg was acting protective of Ellie, but he noted he had positive interactions with Ms. Berg's extended family. He mentioned her family was at these events.

Mr. Berg stated Samuel has been developing a better relationship with him because "he has not seen Ellie being so hostile and that has been helpful." Mr. Berg stated he and his wife recently had a child on December 12, 2017. Mr. Berg noted he sends Ellie an email once a week in which he supports her accomplishments and invites her to go spend time with him.

Mr. Berg reported Ellie has a trauma reaction when she sees him. He stated he was told Ellie has panic symptoms, diarrhea, and anxiety. Mr. Berg noted Ms. Berg informed him that Ellie has gastrointestinal issues as well including "explosive diarrhea and projectile vomiting." He stated he asked if Ms. Berg had taken Ellie to the pediatrician, and Ms. Berg reported her symptoms are "beyond a pediatrician."

Mr. Berg reported they had a visit with the pediatrician, and the clinic allowed him to sit in a separate room when they were all there. He noted that when Ms. Berg and Ellie arrived, they demanded that he leave the premises before they would leave the nurse's room. Mr. Berg reported Ms. Berg told the pediatrician that Rogers suggested Mr. Berg not to be allowed around Ellie, which was inaccurate according to what Mr. Berg was made aware of upon Ellie's discharge from their program.

Mr. Berg noted that since his divorce from Ms. Berg in November 2013, he has been well. He stated the parenting time was established to be 50/50. He said the children's symptoms were resolving. He said he has his own home now and has begun to settle into a routine at work. He reported Ellie started telling him that she loved him again. However, in the spring of 2014, he began dating and he met his wife that summer. He mentioned they dated for approximately six months prior to being engaged, and then they married in the summer of 2015. He stated he has two children with his current wife.

Mr. Berg noted his wife has been adjusting to being a stepmother in this blended family. Mr. Berg noted Ms. Berg tried to get his wife arrested at one point soon after Ms. Berg filed for a change in the parenting plan. He stated Ms. Berg complained that his wife had forgotten the car seats during a transition. He stated Ms. Berg immediately called the police and took pictures of the car. Mr. Berg noted Ms. Berg has initiated four DCS investigations, none of which have resulted in anything being founded. He stated the most recent DCS referral was for "emotional abuse that I have been telling Ellie she should drown herself in a lake and that we only make her do chores and don't let her talk to her mother."

Mr. Berg stated the 50/50 parenting plan was going reasonably well at one point. He recalled Ms. Berg asking for extra parenting time in front of the children, which he believed placed him in an awkward position. He stated Ms. Berg would involve the children in sports activities prior to getting his approval. Mr. Berg reported that when Ms. Berg is "activated, she will see a lot of medical problems with the kids."

Mr. Berg indicated Ms. Berg remarried in January 2016. He stated that three months after their marriage, she filed for a change in the parenting plan. Mr. Berg reported Ms. Berg filed because "she thought I was being uncooperative with the children's activities and stifling them. It was a 50-page filing."

Interview with Teresa Snyder on January 30, 2018

Ms. Snyder reported she is aware there is concern about the Berg children as well as the parenting. She mentioned she is the children's minister where Mr. Berg attends church. She stated Ms. Berg had previously been at the church when she and Mr. Berg were married. Ms. Snyder reported knowing the family for the past eight years. She stated she sees Mr. Berg and his wife on a weekly basis at church. She noted she goes to Mr. Berg's home and also provides childcare for Samuel and Lila, Mr. Berg's children, approximately once a month. She stated she has provided childcare approximately four times in the past. Ms. Snyder stated Mr. Berg is "gentle and very caring. He is intelligent and very committed. He worked in the children's ministry for several years, and I saw him work with kids every week. He is very committed to his family and church. He has a loving nature."

She stated she has seen Mr. Berg interact with his children. She said Mr. Berg is "patient and soft-spoken with his children. Samuel will tell me about games he and his father play together. I always felt like their relationship was extremely strong. I think he is a little more guarded now because of what has been going on with Ellie." With regard to Ellie, Ms. Snyder believed Ellie had a strong and loving relationship with her father during the marriage to Ms. Berg. She noted that once the divorce began to move forward, "Ellie started to say negative things about her father. I think she was being tainted by hearing adult things from Kei. Kei has some great traits and she loves her kids but I feel that Kei brought some adult things into her relationship. Ellie's perspective of dad was changing."

Ms. Snyder reported she is uncertain if Ms. Berg was intentionally trying to distance Ellie from her father but "it seemed like she was being a little manipulative because of her conversations. I didn't think that was wise and I know she wouldn't want to hurt Ellie that way but it was far too much. I think Samuel has been influenced by Ellie. She has a lot of influence on him." Ms. Snyder believed Mr. Berg has an "amazing relationship with his current wife. It is a beautiful relationship. It is wonderful. He tells me of the creative things Kathy does and...it is very, very solid." Ms. Snyder noted she has never heard Mr. Berg

talking negatively of Ms. Berg. She noted, "All I hear is positive things in front of Samuel. I've even asked Samuel and he said his father never says negative things about his mom."

Ms. Snyder stated she has never known Mr. Berg to overindulge in alcohol or use illicit substances. She does not believe he is a violent or aggressive individual, stating that there is "no hint of that." She stated he is able to make safe and rational decisions for himself and his children. She also believed he is "an absolutely trustworthy person." Ms. Snyder did not believe he needed to improve his parenting skills significantly. She mentioned, "He is reading books and seeking out information to help with the kids. He is trying to figure out how to win back Ellie's heart. His parenting skills are strong." Ms. Snyder noted, "I know both parents love their children. He provides a strong and balanced environment for the kids. I respect him and his wife very much."

Ms. Snyder stated she has seen some irrational behavior from Ms. Berg over the years. Ms. Snyder noted, "She would come by and be very angry at me for times because she believed I was siding with Phil. That was about two years ago. She is trying so hard to hold onto the kids." Ms. Snyder noted that about eight months ago, Ms. Berg was talking about Mr. Berg in front of Ellie. She believed Ms. Berg might benefit from counseling to help her keep adult issues away from the children. She noted, "The healthiest environment is definitely with Phil. I know Kei loves her kids, but it is like an obsession kind of thing. My reservation is with Kei and her seeing things truthfully." Ms. Snyder stated Ellie once reported she had to be a slave at her father's home, and "I asked Samuel about it. He said Ellie hates to sweep the floor." Ms. Snyder reported, "From my perspective, Mr. Berg's home is all very well balanced and healthy." Ms. Snyder reported Mr. Berg took her advice on how to interact with Ellie to try and rebuild the relationship.

Interview with Kathy Berg on January 30, 2018

Ms. Kathy Berg reported she is Mr. Berg's current wife, and they have been married for the past two-and-a-half years. She stated Mr. Berg is "a kind man. He is patient and a good communicator. He is a fun-loving individual. He is focused on other people and willing to help those people that are less fortunate. He is a really good father. He is very involved with the kids. He is appreciative and an understanding individual. The situation we are involved in is emotionally challenging."

With regard to their marriage, she reported, "It has been fantastic. He is an excellent communicator. He is able to sense when I'm upset and he addresses it. He does not want anything to hinder our relationship. He lets me know he is thinking about me. He does not want to let the romance die. We have a healthy and happy marriage."

Ms. Kathy Berg spoke about Samuel. She noted, "He has a good relationship with his father. Phil is intentional about being involved in Samuel's life. Samuel has nightmares at night and

Phil will lay down next to him on his bed and help him get to sleep. Phil is very interactive with him. There have been times when Samuel pushes his father away." Ms. Kathy Berg noted there is no rational reason for Samuel to push back on his father. She said this does not happen in the context of limit setting or other parenting behavior. She indicated that when her husband's parents come to visit, Samuel has been indifferent toward them. Ms. Kathy Berg suspected there is something occurring at Ms. Berg's house which is causing Samuel to "push back."

Ms. Kathy Berg noted the communication between Samuel and his father has been difficult when Samuel is spending time with his mom. She noted Ellie is heard in the background telling Samuel what to say to his father on the phone. Ms. Kathy Berg reported Samuel has a strong attachment to his younger sisters at her home; and "that seems to have made an easier transition." Ms. Kathy Berg believed the relationship between Samuel and his father has deteriorated over the past two years. She noted, "Since Ellie's attitude went south, Samuel's did too." She mentioned Samuel has been "more free to involve himself with the family when Ellie is not at the home."

Ms. Kathy Berg stated Mr. Berg's relationship with Ellie has deteriorated over the past two years. She recalled them having a good relationship, but "it went south once Kei filed for a change in parenting time." She noted Mr. Berg continues to go to Ellie's events because he does not want Ellie to look back and believe he abandoned her. Ms. Kathy Berg stated that in December, Mr. Berg wrote Ellie a supportive email and Ellie returned the communication with "basically saying I hate you and get out of my life." She indicated Mr. Berg went to Ellie's violin recital and Ellie told him to leave. Ms. Kathy Berg also noted Ms. Berg called the police on him at that time, but "there was no restraining order prohibiting him from being there."

Ms. Kathy Berg stated Mr. Berg is responding well, and "he is eternally hopeful that she will come around." Ms. Kathy Berg believed the barrier between Mr. Berg and his relationship with Ellie is "her mom. As long as her mother is speaking badly about him, Ellie is going to be believing that." She noted, "We asked our kids to have chores at our house but we understand Kei does not require them to have chores. Kei once asked the court to allow Ellie not to have chores at the house when she had a broken arm."

Ms. Kathy Berg stated Ellie might be able to have a better relationship with Mr. Berg if "she had an extended amount of time away from her mother so she can generate her own opinion." Ms. Kathy Berg reported Ms. Berg breached the parenting contract but "was able to avoid the consequences." She stated Ms. Berg has taken the children for evaluations without Mr. Berg's consent.

Ms. Kathy Berg was asked about behaviors of Mr. Berg. She stated she has not observed him overindulging in alcohol or using illicit substances. She stated he is not a violent individual and that there has been no domestic violence within their relationship. She believed Mr. Berg is able to make rational and safe decisions for himself and his children. She believed him to be trustworthy and that he has excellent parenting skills. She mentioned he is also "a good communicator." Ms. Kathy Berg stated she has concerns about Ms. Berg retaliating against her and Mr. Berg. She reported, "She is the most malicious person I have ever met. She is constantly harassing us. It is not a healthy situation." Ms. Kathy Berg stated they have not been able to work with Ms. Berg for the benefit of the children.

Phone call with Scott Ericson, Ph.D., on March 2, 2018

Dr. Ericson reported he has been engaged in psychotherapy with Mr. Berg for several years. He most recently spoke with Mr. Berg on September 15, 2017. He reported Mr. Berg is "pretty resilient and teachable. He is a good psychological learner." He noted Mr. Berg "has a tolerance for stress that helps with his ability to maintain his composure. He is patient with his children." Dr. Ericson also noted Mr. Berg avoids conflict and can be passive. He noted Mr. Berg is engaged with his children. He stated Mr. Berg seems to be having problems consistent with an adjustment disorder and some "V code issues." Dr. Ericson noted Mr. Berg has been functioning well through the years.

Dr. Ericson noted closure on the legal process would be very helpful for his stress and his current marriage. He stated the blended family has been difficult for Mr. Berg's wife due to the stress of the process with his ex-wife. Dr. Ericson reported Mr. Berg's difficult relationship with his daughter has been painful. He reported Mr. Berg would like to have a healthy and functional co-parenting process with his ex-wife. He also noted, "Phil would like to reconnect in a meaningful way to Ellie. Some of the dynamics might kick in with Samuel as they have with Ellie."

Dr. Ericson noted, "Phil is just a great guy. He is a good hearted guy with a sensitive heart that is trying to be as good of a husband and a dad as he can. He is not a threat or a liability as far as I can see. I don't think he is contributing to any toxic dysfunction."

PSYCHIATRIC HISTORY

Mr. Berg stated he has not engaged with additional counseling since the previous evaluation. He stated he met with Dr. Scott Ericson approximately once a month prior to his marriage, and he and his wife have engaged in premarital counseling. He stated his wife, Kathy, also sees Dr. Ericson on occasion. He stated there have been no other new providers whom he has seen for mental health purposes. Mr. Berg stated Dr. Ericson suggested he read books about difficult parenting relationships. Mr. Berg stated the children continued to see Ms. Tiffany Davis for counseling until his ex-wife terminated the counseling sessions.

He noted his ex-wife fired Ms. Davis because "she didn't believe Ms. Davis caught Ellie's suicidal ideation and that Ms. Davis has not adequately helped with her issues."

Mr. Berg reported Samuel has a phobia around nuts. He stated Samuel has "the lowest level of allergic responses to two or three different nuts." He stated that when he was married to his ex-wife, "she got so worked up about nut issues." Mr. Berg reported no new health issues with regard to his medical or mental stability.

A query of the Tennessee Controlled Substance Monitoring Database revealed no prescriptions for controlled substances were filled by Mr. Berg in the last year within the state of Tennessee.

PSYCHIATRIC REVIEW OF SYSTEMS

Mr. Berg was asked about a variety of psychiatric symptoms and illnesses. With regard to depression, Mr. Berg stated he felt discouraged at times when his wife had difficulty adjusting to the blended family. He also stated he felt discouraged when his ex-wife continued to file in court. He stated that regardless of his level of depression, he has not lost functional ability due to this stress.

Mr. Berg did not describe having symptoms associated with mania or hypomania. He stated he worries about "the same things as before. I worry about missing a work deadline or something happening to the kids." With regard to trauma, Mr. Berg stated he has not experienced any new traumas since the last evaluation. He stated his childhood was uneventful, but during the divorce years they had given up a child they adopted from Japan. He stated his ex-wife was extremely emotional and he recalled her "screaming she was going to kill herself." He described himself as having some "type A characteristics" but his behaviors and rigidity have not impacted his ability to function according to his report.

Mr. Berg did not endorse symptoms associated with psychosis or paranoia. He denied having delusional constructs or having odd beliefs. He stated he is eating well. Mr. Berg reported having some issues with attention and focus and that he has had to "fight against urges to procrastinate." He stated he is developing skills to help him maintain his organization and keep himself on task.

Mr. Berg stated his self-esteem is currently an 8 out of 10, with 10 being the best. He noted his current wife, Kathy, is very reaffirming. Considering lying, Mr. Berg noted he makes an effort to be truthful but he tells some lies to avoid upsetting his wife. He stated he is usually successful with these lies, as they are minor and fairly inconspicuous. Mr. Berg stated he would have liked to have been on time for the kids' events, as he stated he routinely runs behind. He mentioned that this is a consistent pattern that he would like to change.

DEVELOPMENT HISTORY

Mr. Berg stated he is unaware of his mother having complications or issues with regard to her pregnancy with him. He believed he met his milestones on time. He reported his primary caregivers when he was young were his mother and father. He described having a happy childhood and interacting with good friends. He stated he had two brothers who were close in age. He denied involving himself in delinquent behaviors as a youth. With regard to discipline, Mr. Berg stated he was spanked when he was young, and during his later years he was sent to his room. He denied experiencing trauma as a youth. He stated he left home at the age of 18 to attend college.

FAMILY HOUSEHOLD HISTORY

Mr. Berg reported his parents are still living and married. He said he has a good relationship with both of them. He did not recall his parents ever having issues with criminal behavior or substance use. Mr. Berg stated he has two brothers. His older brother is two years older and his younger brother is two years younger. With regard to his siblings, Mr. Berg stated he has a good relationship with them but that "we don't talk a lot but we talk every few months and when we see each other it is good."

Mr. Berg denied having a history of abuse.

EDUCATIONAL HISTORY

Mr. Berg stated he graduated from high school and then attended the University of Chicago. He reported he completed law school and an MBA at Vanderbilt University. He denied ever being involved in special education. He stated his behavior in school was always good and he did not have any suspensions or expulsions. He stated he made good grades throughout his academic career. Mr. Berg indicated he enjoyed going to school.

RELATIONSHIP HISTORY

Mr. Berg stated he married his current wife on July 18, 2015. He stated his marriage is "great. I'm really blown away by how well it is going. She is a really kind person. I think we are both good listeners. We are both able to get up for the baby." He stated his wife has previously been married as well. He said she is staying home with the baby at this time. Mr. Berg indicated his wife worked as a supervisor for a logistics company prior to them having children. He denied their relationship containing any amount of domestic violence.

Mr. Berg stated he has four children, two of which are with his current wife. With his current wife, he stated he has two daughters, Julia Grace and Lila Raine. He stated Julia was born December 12, 2017, and Lila was born August 5, 2016. Mr. Berg indicated his daughter Ellie has not been around the baby since she was born. He noted, "Lila asks for Samuel all the

time.” Mr. Berg noted that when Lila was born, Ellie began losing interest and started not wanting to look at her or hold her.

MENTAL STATUS EXAMINATION

Mr. Berg was dressed appropriately for the evaluation. He was neatly groomed and had good hygiene. He was alert and oriented to person, place, time, and situation. He was cooperative with the evaluation and maintained adequate eye contact. He did not exhibit psychomotor agitation or retardation. His speech was of conversational volume and normal rate with average tone and good articulation. He described his mood as “okay.” His affect was appropriate to the situation and congruent with stated mood. His thought process was logical and goal-directed. His thought content was without thought disorganization or paranoia. He did not display delusional constructs. He did not appear to exhibit psychotic symptoms such as responding to internal stimuli or having auditory or visual hallucinations. He did not endorse suicidal or homicidal ideation. On gross examination, his cognitive functioning was intact.

INFORMATION REGARDING THE CHILDREN, ELLIE BERG AND SAMUEL BERG

Interview with Ellie Berg on October 27, 2017

Ellie was brought to the evaluation by her mother on October 27, 2017, in the early afternoon. Ellie separated from her mother in the waiting room and came back independently for the evaluation. Ellie stated she had not been given reminders about what to discuss or what not to discuss during this interview. She stated she was not told about the purpose of the interview. Ellie was also instructed that only the truth could be discussed, and if she did not know the answer to a question, she could respond that she did not know or did not want to answer.

Ellie stated she is currently in eighth grade at Meigs Middle School and is doing extremely well with her grades. She stated she enjoys reading, basketball, violin, and running. She mentioned being interested in becoming an orthopedic surgeon in the future.

Ellie stated she is currently living with her mother, and she has not seen her father for the past two months. She mentioned that prior to that she enjoyed a 50/50 parenting time with both of her parents. She stated that when she was admitted to the psychiatric hospital, that is when the parenting time changed to 100% with Mom. Ellie stated being somewhat surprised her father has not demanded her back at his home for visitation. She stated, “He doesn’t like me, and we have a bad relationship.” She stated she has a very good relationship with her mother.

With regard to her mother, Ellie stated her mother is intelligent and kind. She stated her mother cares about people, especially Samuel and herself. She stated her mom played violin and piano in the past. She also noted her mom likes to play tennis as well. Ellie then stated she enjoys playing piano and tennis. She was asked if there were some changes her mom needed to make. Ellie stated she would like her mother to “keep us all the time.” She reported she does not know anybody without flaws, but her mother is “pretty close.” She stated her mother gets upset and sad when “something awful happens to Samuel and I.” Ellie was asked what something awful might be, and she stated it was when they would get hurt or get criticized by their father.

With regard to Ellie’s father, she stated he was mean, unfair, abusive, cruel, narcissistic, a liar, and a very good actor. She was asked if he had any positive attributes, to which she stated he plays basketball and enjoys running. She also mentioned he used to be nice to her approximately 10 years ago when she was three years old. Ellie also described her father as intelligent. With regard to changes she would like to see with her father, Ellie stated, “He needs to get amnesia and become a new person.” She believed he needed to be a completely different person in order for her to build a relationship with him.

Ellie was asked about her father and him being mean. Ellie stated, “He would tell me to smile, and he said it looked painful.” She described some of the punishments she had received from her father for not smiling. She said he took 47 of her books and would not allow her to do homework at his residence. She also mentioned he told her she was a bad example to her younger brother. She mentioned he said that she should drown herself at one point during the summer of 2017. She also mentioned her father did not allow her to contact her mother during Christmas.

Ellie reported she was referred to the Vanderbilt Psychiatric Hospital secondary to suicidal ideation approximately two months ago. In addition to safety issues, she expressed problems with depression, anxiety, and obsessive-compulsive disorder. She stated that when she is at her father’s home she becomes suicidal because “they tell me all these negative things about myself. I don’t want to live that way, it’s painful. I self-harmed at his house, but I haven’t done it since I’ve been living with my mom. I held a knife to my neck a couple of times.” Ellie noted she is currently enrolled at the Rogers Behavioral Health program and has transitioned to a less intensive program at this time. She said the program has been helpful for her obsessive-compulsive disorder, which she ascribed as “germaphobia.”

Ellie stated that approximately two weeks ago, she met her father at Rogers Behavioral Health. She said she decided not to let her fear and anger control her any longer. She reported she never feels 100% safe, but that she is safest at school and at her mom’s house. Ellie reported having suicidal ideation recently but not to any significant extent.

Ellie was asked about some symptoms of psychiatric illness. Concerning depression, she stated it feels "heavy." She said she is "consumed by sadness" and has waves of "fear, anger, sadness, and feeling numb. I feel hopeless." She stated the frequency of her depression varies depending upon her situation, but it can last for part of the day, up to several days, but not weeks. She mentioned being alone and reading helps her through her depressive episodes.

With regard to anxiety, Ellie stated she has trouble tolerating crowds and feels overwhelmed when around a large amount of other individuals. She stated she worries about "anything that could go wrong." She stated she is scared talking in front of people. She mentioned "Phil and Kathy" are triggers for her anxious symptoms. She stated that when they criticize her and criticize her brother, she becomes more anxious. Ellie stated she has had anxiety attacks in the past. She mentioned they are "awful." She said they frequently depend on the situation she is in, and they can last up to several hours. She stated reading helps control her panic.

Concerning obsessive-compulsive disorder, Ellie stated she suffers from "germaphobia" and has trouble tolerating when people lick their fingers. She stated she also engages in behavior such as tapping and rubbing things. She has feelings around cleanliness and everything being in order. She also described having counting rituals and symmetry needs. Ellie also mentioned blinking a certain number of times is important to decrease her anxiety, as is avoiding cracks or anything that she feels might be imperfect.

Ellie stated she is sleeping well with Benadryl and melatonin. She stated that prior to using these medications, it would be several hours before she would fall asleep. She mentioned her appetite varies, and it depends on her mood. With regard to auditory hallucinations, she stated she hears voices, but she knows they are not real. She mentioned they increase when her anxiety increases. She says she "hears Phil saying this or Kathy saying that."

Ellie was asked to describe her stepmother, Kathy Berg. She reported Kathy is also "bad, mean, same stuff as Phil." Ellie stated, "Phil hates me mostly, and he doesn't care about Samuel." With regard to Ms. Kathy Berg being mean, Ellie stated her stepmother cussed at Samuel and herself and used the F word. She stated both her father and stepmother were punishing her a lot for behaviors that did not seem to need punishment. Ellie stated, "I don't see her that often, she tries to avoid us. Kathy obviously does not like us."

Ellie was asked what her parents think of one another. She stated, "Phil is always accusing me. He asks me, 'Did Mom tell you awful things about Kathy?' He also asks me if she ever tells me not to smile." Concerning her mother, Ms. Berg, Ellie stated she does not talk about Mr. Berg anymore. Ellie stated, "She was scared of him when they were married, and he trapped her in her room."

Ellie was asked about her medical history. She stated she is currently taking Zyrtec for allergies, Prozac for depression and anxiety, melatonin for sleep, and Benadryl for insomnia, and she stated she has an EpiPen as well as an inhaler available if she has shortness of breath or an allergic reaction. Ellie mentioned that she has an allergy to peanuts and that her father "eats nuts in front of us." She described her asthma as exercise-induced. She denied ever using illicit substances, alcohol, or nicotine. She denied having any legal issues.

Ellie said if she was made to visit with her father she would refuse. She said she could not see herself visiting with her father in the future. Ellie was asked what she would tell someone if they had the power to determine her visitation schedule. She stated she would tell them, "I don't want to go back to Dad's. I would tell them about what he has done to us. I can't go back."

Ellie was asked about her report that Dad was abusive. She mentioned he would abuse her mother and "drag her around." She also mentioned her father would spank her in the past, and he would "try to take a picture of me when I was seven in the bathtub." Ellie then described an incident in the summer of her sixth grade year, in which she found an old cell phone and recorded him. She stated he became upset with her and chased her around the house trying to get the phone back. She stated that after the incident, "He told me how awful I was being." Ellie stated she is fearful of her half-sister, Lila. She says she is scared of Lila because her father and stepmother would punish her for not smiling at her or doing anything that might be dangerous to Lila. She stated she did not believe her father would ever change in the future. She stated that with her father, "nothing is real. He is always fake." Ellie stated she used to see Tiffany Davis for counseling but has not seen her for a long time.

Ellie was asked about her brother. She stated Samuel likes to play piano and sings. She said he is very generous and kind but also unaware of the litigation and the conflict between her parents. Ellie reported she knows about legal matters through her counselor, but her mother and father do not discuss court issues in front of her.

Mental status examination of Ellie was without significance. She was alert and oriented to person, place, time, and situation. Her mood was "tired" and her affect was mildly anxious. She denied having active suicidal ideation but reported "always having that in the back of my mind." She was somewhat fidgety in her chair but was not excessively hyperkinetic. Eye contact was mediocre to good throughout the evaluation. Her concentration was adequate, and she answered questions after giving it an appropriate amount of consideration and thought. She did not express or demonstrate impulsive behaviors. Ellie's thought content did not include delusional constructs or hallucinations. Her judgment was fair and insight was also fair.

When Ellie was brought back to the waiting room, she reunited with her mother without difficulty. There were no signs of anxiety or hostility. She resumed listening to her electronic device and reading.

Interview with Samuel Berg on October 27, 2017

Samuel Berg was brought to the evaluation by his mother. He was easily separated from his mother in the waiting room to come back independently for the evaluation. Samuel reported he was willing to tell the truth and avoid answering questions he did not know. He was encouraged to only tell things that are real, and if he did not know the answer or did not want to answer, he could express that during the interview. Samuel stated he was not given reminders about what to discuss or what to avoid discussing. He stated he was told only that he would be coming to see a doctor this afternoon.

Samuel reported he was born on June 11, 2008, and is nine years old. He stated he is in the fourth grade at Andrew Jackson Elementary School. He reported he likes school and is best with math and reading. He noted having several friends at school and playing soccer occasionally. He said he also enjoys playing piano outside of school.

Samuel was asked about his family members. He stated Ellie is a good sister because she is "nice and kind. She is good at reading and math." There was nothing about Ellie he wanted to change, and there was nothing that he did not like about her.

Samuel was asked about his mother. He reported she is "really nice. She helps me with homework. She plays games and rides bikes with me." Samuel stated there was nothing about his mother he wanted to change. He then stated sometimes she makes him go to bed too early when he is not tired, but otherwise there is nothing he would want his mother to do differently.

Samuel was asked about his father. He stated, "He has Lila. Daddy was mean to Ellie, and Kathy one time cussed at Ellie." Samuel thought Ellie got in trouble because Ellie was "not the only girl and probably older." When asked what he meant, Samuel simply restated, "Not only girl [sic] and probably older." Samuel stated his dad punishes him when he shrugs his shoulders because his father tells him that shrugging your shoulders is "mean." Samuel reported, "One time I shrugged, and he made me wash the windows." Samuel reported he is allergic to nuts, but he sees peanut products and other nut products at his dad's house. With regard to positive things about his dad, he stated he enjoys playing board games with him. He also stated he has a good time when they are playing on the rope swing. Samuel stated he would prefer to stay with his mother.

With regard to his father, Samuel was asked what his father could change so they could have a better relationship. Samuel stated his father could be "nicer to Ellie and do more things. To

not get upset when we shrug and to have no nuts at the house. Also, not scolding us when we don't put the dishes away."

Samuel was asked about his stepmother, Kathy Berg. He stated, "She once cussed at Ellie." Samuel described Ellie as trying to adjust Lila's chair when Lila's leg got caught, which is what prompted Ms. Kathy Berg to curse at her. He stated he once heard Ms. Kathy Berg tell Ellie that "she should drown herself." With regard to positive aspects about his stepmother, Samuel stated he enjoys when they do crafts together and when they go biking.

Samuel was asked about himself. He stated that he likes math and reading. He also reported being with his friends is important. Samuel reported he likes school and does well with his academics. He said he plays with Legos and enjoys playing games with his mom and his sister. He said he gets sad when his father is mean to Ellie and is anxious when he thinks his father might get upset with her. He denied have auditory or visual hallucinations. With regard to sleep, Samuel stated he sleeps well at his mother's house and goes to bed by 9:00 p.m., but when he is at his father's house, he is made to go to bed early at 8:00 p.m. and finds it difficult to go to sleep.

Samuel reported he is eating well but "Kathy has eaten nuts at the table." He reported this causes him a lot of anxiety and worry because of his allergy. With regard to people being abusive to him, he stated he was "scared of nuts." He reported no one has harmed him physically, but "I've seen Daddy push Ellie." Samuel stated he takes Zyrtec for allergies and melatonin for sleep when he has trouble falling asleep at night. He stated he used to speak with Ms. Tiffany Davis for counseling. He mentioned that during their sessions they would talk about "Mom's house and Dad's house."

Samuel stated his mother has told him that his dad is smart and was a very nice person when they were in college. He noted his dad does not say anything about his mother in a positive way. Samuel reported he would like to spend less time with his father, such that he would be with him two to three days a week. He stated if his father did not keep nuts at the house, was nice to Ellie, and played more games, he would be more willing to spend 50/50 parenting time between his parents. Samuel stated he enjoys playing with his half-sister, Lila.

On mental status examination, Samuel's psychological health appeared good. He stated he was in a good mood and was without suicidal or homicidal ideation. He did not describe being a violent or aggressive person. He was alert and oriented to all spheres during the evaluation. He answered questions appropriately and maintained good eye contact throughout. His speech was normal rate, volume, and tone. His vocabulary was better than most children his age. He did not express delusional constructs or describe auditory or visual hallucinations.

At the end of the interview, Samuel was brought back to the waiting room to his mother. He reunited with her without difficulty. There was no anxiety noted. Ms. Berg also was calm and did not react in any type of dramatic fashion upon seeing him again. They did not discuss the interview or ask questions in the lobby about the session. There were no pathological signs of a dysfunctional relationship.

Email from Dr. Susanna Quasem on December 6, 2017

Dr. Quasem sent an email with regard to the Berg children. In the email, Dr. Quasem reported Ms. Berg arrived to her clinic with Samuel for an intake evaluation. She stated Mr. Berg was not supportive of her involvement with Samuel, and therefore she decided not to evaluate him. She mentioned Ms. Berg became upset and told her that Mr. Berg is always interfering and it is difficult for him to consent to treatment for the children. Dr. Quasem instructed Ms. Berg to work these things out between her and Mr. Berg and involve the lawyers as needed. She stated Samuel "seems like a super-sweet kid but could see some anxiety. I took him to get a treat and he was very hesitant about taking any candy (due to nut allergy), was very reserved, polite, hesitant. He probably needs to see someone like us." She indicated Mr. Berg believed Samuel should return to see his counselor, Tiffany Davis, for therapy, but mom felt the therapist was "too allied with dad, didn't spend enough time with the kids, and missed the severity level of the kids' issues."

Phone with Susanna Quasem, M.D., call Feb 6, 2018

Dr. Quasem provided a brief update to her care with Ellie. She noted Ellie was in treatment at Rogers Memorial for several weeks. She indicated Ellie continues to express anxiety with the thought of her father. Dr. Quasem expressed concern that Ellie may not have the necessary coping skills to be alone with her father. She suggested Ellie be reunited with her father gradually and with appropriate support. Dr. Quasem reported she wanted to relay this information to help with the court's decision making in what is in the best interest for Ellie.

Interview with Gina Blair on February 25, 2018

Ms. Blair stated she has known the children during their time at the Montessori school. She stated she has known them for the past seven years. Ms. Blair noted she has a stronger connection with Mr. Berg than with Ms. Berg. She said Mr. Berg is more outgoing and helpful with events at school than Ms. Berg. She described him as "fun loving, a great father, great to other people, and an overall nice guy. He is someone you want to be around." Ms. Blair mentioned Mr. Berg is excellent with his children. She stated, "He is always interacting with his children and making sure they were being taken care of. He was an excellent dad. Kids kind of flock to him."

Ms. Blair indicated she has seen Mr. Berg only through activities at the school or shared activities with the children. She noted, "He was usually the one there who was picking up or dropping them off." She believed the children had a great relationship with Mr. Berg. She noted he was always there at the school and doing things for them. She noted she never felt much of a connection with Ms. Berg. She stated, "I always felt that she was cold and distant." Ms. Blair stated she knows many of the parents because she has worked at the school for such a long period of time.

Ms. Blair was asked questions specifically about Mr. Berg. She stated she has not observed him to overindulge in alcohol or use illicit substances. She did not believe he was a violent or aggressive individual. She noted, "I cannot ever imagine that. He is a positive fun-loving person." She believed he can be safe with his children and can make rational decisions. She believed that he is trustworthy and that he does not lack significant parenting skills with his kids. Ms. Blair stated the children have been affectionate with him in the past. She stated, "As part of the school faculty, we are taught to watch for signs of child abuse and I never witnessed anything like that with his kids. I only remember them running up to him and hugging him."

Ms. Blair had no concerns with regard to Mr. Berg or the children. She stated the only issue was the "cold and distance I felt with the mom. They still went to her the same way they went to him though." She stated, "The one thing that always stands out to me is that he was the first parent to jump into the water balloon fights at the end-of-the-year party. All the kids wanted to be around him. He was a fun, charismatic, and a giving man."

Interview with Tiffany Davis on February 25, 2018

Ms. Davis reported Ms. Berg identified her as a counselor for the children. She stated she began seeing the children prior to Ms. Berg's divorce from Mr. Berg. She reported she first saw Ellie on October 15, 2013, and first saw Samuel on December 3, 2013. She mentioned both parents were involved in the intake process. Ms. Davis stated she last saw Ellie in August of 2017, which was also the last time she saw Samuel.

Ms. Davis stated Mr. Berg informed her that because she did not identify Ellie's suicidal thinking, Ms. Berg did not want to continue having the kids see her. Mr. Berg reported he attempted to bring Samuel back to see her during Ellie's hospitalization, but Ms. Berg rejected the idea. Ms. Davis stated it is possible that Ms. Berg was frustrated with her and with the children's other providers. She stated, "It was a difficult task to find providers that both parents could agree upon. There were times when mom was critical about what I was doing." With regard to Samuel, she stated Ms. Berg believed he was anxious, but "he didn't really present with anxiety." Ms. Davis stated Ms. Berg pressed her to work with him on anxiety issues and to see him more frequently. Ms. Davis noted his functioning at school was

good; and there was a little pushback over mom's request to have Samuel seen more frequently. Ms. Davis stated, "It was really Ellie that she threw me on the defense with." Ms. Davis reported it was becoming evident that "individuation and separation was going to be a tricky process for Ellie and for mom in particular." Ms. Davis stated she tried working on this process from various angles. She mentioned, "Ellie is pretty smart and analytical like her father. She figured out what I was doing in therapy and would work against it." Ms. Davis reported, "Part of our goal was for Ellie to have her own voice and not to have her mother speak for her. I voiced those goals for mom and mom said Ellie was too scared. Ellie would shoot me down as well telling me that her father would not listen or get mad." Ms. Davis stated she presented Ellie with at least 10 other ideas on how to approach the relationship with her father, and Ellie would "shoot down 10 or more ideas. I was frustrated with the firing squad back."

Ms. Davis stated that in the summer of 2017, Ms. Berg came into the office and she wanted Ellie to have a place to talk about everything, but she wanted Ms. Davis to tell Mr. Berg to behave in a certain way. She noted both of the parents are fairly persuasive but in different ways. Ms. Davis stated mom is oppressive in her demands which she could frame as advocating for her children "but it is a bit much." She continued, "My impression was that is how she operated in the marriage, and it would be easier for Phil to go with the flow but in the divorce scenario... when I first saw them, it was really acrimonious. Ellie was very distressed about the divorce. She had suicidal thoughts and I recommended a medication evaluation."

Ms. Davis got the impression that Mr. Berg backed down at the time of the divorce due to the children's distress. She stated that a few months after the divorce, "The parents seemed to be working together and the kids were thriving. They stopped seeing me for a little while. Mr. Berg reported during that time that he acquiesced to Ms. Berg. When she took him back to court she felt like she was already doing extra stuff. She wanted to formalize that she was doing more and to get a little more time. By then, Phil was remarried, and he was done acquiescing."

Ms. Davis stated the level of distress increased with the children. She stated the kids did not seem to be knowledgeable about the court process. She mentioned that in the summer of 2016, there was "some big stuff going down at Dad's. Dad kind of felt like Mom was coaching Ellie to record him with her phone. There was an altercation with the phone and that got DCS involved. He just would get so rigid about dumb stuff, in my opinion."

Ms. Davis noted that according to Ellie, "She would get in trouble for not smiling at the new baby. It seemed like Ellie is stubborn like her father. She is somewhat oppressive and pressing like her mother. I think Mr. Berg had difficulty giving up some parental control as the children aged. They would get stuck in power struggles."

Ms. Davis reported she spoke with the social worker at Rogers Memorial where Ellie was receiving treatment for anxiety and obsessive compulsive symptoms. Ms. Davis stated Ellie was involved in the Rogers Memorial Partial Program for treatment and that the therapist there had seen her for several hours a day, several days during the week. Ms. Davis noted she was told that Ms. Berg once cornered one of the workers in the hall and demanded that Ellie was suicidal and that they "had to do something." Ms. Davis reported the workers went to find Ellie, and when they did, mom was "spooning with Ellie in the room." Ms. Davis reported she did not see that intensity of attachment and separation pathology in the outpatient setting. She stated, "Perhaps Rogers has more insight. It was pretty problematic for Ellie's treatment. It was the picture of not allowing separation."

Ms. Davis stated there was a lot of damage done to Ellie's relationship with her father. She stated that the last time she was aware, Ellie was not exercising her parenting time with her father. Ms. Davis noted, "It is like she didn't have much of a chance to allow the relationship to nurture. As Ellie was getting to be an adolescent, she started to exhibit the same behaviors as her mother." Ms. Davis stated Ellie began to demand more and press. Ms. Davis reported, "Ellie would not accept a limit. Mr. Berg was very rigid and he tried to set limits. Ellie would argue and try to break through the limits."

Ms. Davis reported she believed Mr. Berg was too restrictive with his limits. She stated Ms. Berg and Mr. Berg went through several marriage counselors. Ms. Davis noted Mr. Berg is open to things, but he was not very hopeful that the therapy would work and improve their co-parenting. She noted both of the parents have their strengths. She noted, "They both care about their children. They were amicable in the early stage of their divorce."

Ms. Davis was asked about safety concerns, and she did not identify safety concerns regarding either of the parents. She noted that "Rogers had some concerns about Munchhausen's." Ms. Davis stated she spoke to the children's pediatrician on several occasions, and "mom is invested in the medical model while dad is resistant. Mom is always coming up with different ideas or complaints about Ellie. Mom thought the symptoms were presenting but it was difficult to see." Ms. Davis noted Ms. Berg appeared to be driving much of the issues with the children. She stated Mr. Berg objected to a psychological evaluation when she reported Ellie was having suicidal ideation. Ms. Davis expressed concern about Ms. Berg "getting everybody stirred up." She mentioned Dr. Rothman, the pediatrician, would spend "copious amounts of time with the family. Mom was driving all that. Again, to me it felt like it came to light more in the intensive treatment (at Rogers Memorial)." Ms. Davis noted Ms. Berg would often press her to do something about Mr. Berg and have him change his behavior.

Ms. Davis stated that overall Mr. Berg was too rigid for the children, but Ms. Berg was too demanding about appointment times and other things. With regard to Ellie's relationship with

her father, Ms. Davis noted "There has been a long period without visitation, they might need a step in reentry to that with a counselor's help. Phil is rigid but he is somewhat open and willing to try and work through stuff with a counselor. I am not sure how much he puts into practice but he doesn't present like he is just blowing smoke at you."

Ms. Davis believed Mr. Berg wants a strong relationship with his daughter. She stated, "If there wasn't so much acrimony between the parents that may have helped the relationship as Ellie becomes an adolescent." Ms. Davis noted Ellie will say that Mr. Berg was not around much, but there was a time in which Mr. Berg was around often.

Ms. Davis recalled that Ms. Berg and Mr. Berg had adopted a child from Japan during their marriage. She stated the child was under their care for a couple of years and then "abruptly went back to Japan." She said she found it odd that when she did the intake, "no one ever mentioned that child." Ms. Davis stated she only knew about this adoption through Dr. Rothman. Ms. Davis stated she spoke with Rogers Memorial about this, and Mr. Berg indicated Ms. Berg did not bond with the child and he was doing the majority of the parenting. Ms. Davis stated, "To me, that is a significant family trauma in a couple of different ways. Ellie remembers Isaac. It is strange that Isaac is not presented as part of the history. That stuck out to me."

Ms. Davis reported Mr. Berg is definitely open to having a relationship with Ellie. She stated, "There is some sort of an unspeakable connection between mom and Ellie. I think Ellie was starting to use her voice more but I worried before then that this was a kid who would cut because there weren't other options (to speak out)."

Ms. Davis reported Ellie is a "smart and resilient child. She thrives at school. I think she would be okay if Ellie had to switch to custody with her father. She might be behind in her social and emotional development due to her mom's behavior. I think I know how damaging that is for kids. If we could get through some of that and Phil is willing to seek help with the switch. He is not going to be less rigid but she would be okay." Ms. Davis reported Ms. Berg "loves her kids. Mom loves her kids but I guess it is her pathology. These divorce cases... you just shake your head. Something keeps them engaged at this point. Obviously the children but something else keeps them arguing."

Interview with Meredith Wilson and Ashley Smith on February 27, 2018

Ms. Wilson and Ms. Smith work at Rogers Memorial Behavioral Health where Ellie was treated in the intensive outpatient program. Ms. Wilson stated she worked with Ellie in her capacity as a behavioral specialist. She stated she met with Ellie daily and did check-ins with the mother, and with the father. She noted Ellie's mother attended parent university meetings and her father attended mostly over the phone. Ms. Wilson stated parent university meetings are essentially meetings in which the treatment of the child is discussed with the family.

Ms. Smith reported she has been engaged with Ellie and her family through weekly family therapy sessions. She stated she met with both parents separately but also individually toward the end of treatment. Ms. Smith reported she also facilitated the team meeting about Ellie's care.

The therapists stated Ms. Berg was inconsistent with the treatment team. They noted, "There were some days in which she was more amenable to hearing feedback. There were other times when she appeared to be more activated or defensive and had more difficulty hearing recommendations. She was fixated on Ellie's relationship with her father. She placed a lot of blame on the father." Ms. Wilson stated there were days in which Ms. Berg would come in and seek out multiple staff for a solution to a problem. She described Ms. Berg engaging in splitting behavior in which she would seek other individuals to find the answer to the problem that she, Ms. Berg, wanted.

Ms. Smith stated that in individual sessions, she had some issues with Ms. Berg. She noted Ms. Berg had her own strong opinions as to what diagnosis Ellie met, but "she was open to our suggestions but there were other times in which she would argue about the findings." She noted they spoke about cognitive distortions which Ms. Berg was modeling to Ellie. Ms. Smith stated they worked with Ellie in trying to defeat these distortions. Ms. Smith stated, "In front of Ellie, her mother would engage in all of these distortions" and set Ellie back in her treatment. Ms. Smith believed Ms. Berg was able to identify black-and-white thinking, but "it often came with a disclaimer."

Ms. Smith and Ms. Wilson encouraged Ms. Berg to have better control over her behavior, but "it took a lot of intervention and the director of operations needed to step in to set boundaries with her." The therapists indicated they worked to try and have Ellie develop her own independent decisions. They noted, "It got difficult to know what Ellie's true symptoms were. She would report working several hours on schoolwork and mom's report was difficult to determine what was actually happening in the home." They noted, "Mom would use terms always and never several times in error." The therapists stated they spent a lot of time trying to help mom choose her language differently when she was around Ellie.

With regard to Ellie and her mother, the therapists indicated, "At times, in family meetings, when her mother would start to escalate, Ellie worked as a comforter to her. I think that Ellie sometimes worked as a sounding board. I think also Ellie really wanted to please her mother and make her happy. That is the basis of their relationship. They were more so friends than I would normally see in a parent-and-child relationship." They also reported once finding Ellie and her mother laying on the floor with her mother "petting her." They noted, "It was a pretty enmeshed relationship. We worked a lot with mom to help cure Ellie when she said she needed space to cope and calm down on her own. Mom had a tendency to coddle her. I think Ellie was able to develop that voice here."

The therapists indicated Ellie had a safety plan created, but when they would ask for more details, it was difficult for Ellie to communicate and to get specific. The therapists stated they created a safety plan, but "I did not think Ellie was at high risk. She had self-harmed in the past but I don't think she harmed with us. Mom would bring up the self-harm behavior a lot."

The therapists indicated Ms. Berg would slight the father regularly in front of Ellie. The therapists stated they needed to be very blunt and had to redirect Ms. Berg with those types of comments. They indicated it was brought up by Ms. Berg multiple times on a regular basis. They stated, "It got to the point where we would have to stop talking in session and redirect her."

With regard to Mr. Berg, the therapists stated a lot of what they understood about the relationship between Ellie and her father was "a picture painted my mom. Ellie would often say she did not want to spend time with him." The therapists noted they met with dad on a regular basis. They stated he acknowledged some of the discipline that he provided in the past was inappropriate. They also indicated Mr. Berg was consistent in stating that he wanted a relationship with his daughter. They believed he was open and present for every parent university meeting. They stated he began coming to additional meetings with Ms. Berg, but that created an increased amount of tension and mom reported she could no longer be in the room with him. The therapists indicated he was present and learning new techniques and wanted to apply these things that they had discussed with him. The therapists noted they met with him to prep before family meetings, and "from what I remember, he did a good job following our guidance and suggestions. I think mom's presentation from the get go was very reactive and was fearful that Ellie would harm herself."

The therapists indicated there was a time when mom recorded a session when dad was present. The therapists asked if Mr. Berg and Ellie wanted to talk alone and she left them there. When the therapist came back, they noticed Ms. Berg was sitting on the floor recording the conversation on her phone. The therapists noted Ms. Berg was spoken to many times before about not recording conversations, and she was asked to leave the unit. The therapists stated this was very frustrating "because of the HIPAA violation." They noted, "As far as when Ellie was talking to her dad in person, she was very angry toward him but she stayed in the room and continued the conversation. Her presentation was hard to read as far as anxiety."

The therapists noted Ellie refused to "challenge supporting facts why her father was not evil. She could list many reasons why dad was evil but could not list one reason how he was not evil. We tried to help her balance her reasoning. A lot of the evil reasons were not based on any facts." The therapists noted that toward the end of treatment there was a major shift. The therapist asked Ellie if she would be able to see her dad, and Ellie was very resistant to spending time with him. They noted the next day Ellie came and she said she would be open

and able to meet with her father. The therapists thought this major shift in in such a short period of time was unusual.

The therapists stated they met all together as a family a couple of times. They indicated that when Mr. Berg would come to the unit he would request to see Ellie, and he would take their guidance as far as how to approach her and interact with her. They noted that in one of the last sessions Ms. Berg referenced scars on Ellie, and mom was asked directly if she had seen those scars but she stated she had not and that Ellie covers up the scars so she cannot see. The therapists noted Ms. Berg needed more redirection to an exhaustive degree than many other parents they work with. They stated, "We had to set lots of limits and boundaries with mom on a regular basis. It was creating a barrier to the work Ellie needed from the team. We recommended that she see a therapist and process this on many occasions. She said that she would consider it but she needed to focus all of her energy on Ellie and Samuel." The therapists indicated Ms. Berg told them she was seeing a spiritual counselor as well as Ms. Daughtry for care.

The therapists stated, "It was a challenging case." They noted, "If Ellie continues to work and be with her mother, she would not be able to grow into a self-sustaining adult and work independently. She needs to learn proper boundaries. If she was with her father, I wonder how long it would take her anger toward him to diminish." The therapists indicated one of the things they expressed was for Ellie to do things outside the home and to be involved in extracurricular activities as well as find a balance in life. They believed she needed to engage socially and have a broader experience. They noted, "I think we wanted her to work on people-pleasing behavior and developing healthy boundaries with others." The therapists noted Ellie would ruminate on problems of other people. They stated, "She needs to develop her own individual voice and have some separation to be able to do that. Individual therapy and extracurricular activities would be helpful."

Interview with Ashley Smith on March 1, 2018

Ms. Smith stated she wanted to provide some additional information as a follow-up to the previous interview. She noted Ellie expressed having urges to self-harm while in treatment at Rogers Memorial. She also noted Ellie expressed having passive suicidal ideation when she was thinking about her father. She mentioned there was a time in which Ellie presented with a scratch on her arm, and Ms. Berg insisted it was self-inflicted. Ms. Smith stated Ellie became frustrated with her mother because Ellie was insistent that it was not related to self-harmful behaviors or thoughts. Ms. Smith stated Ellie did not appear to have urges to self-harm around the time that this had happened. Ms. Smith noted Ellie expressed suicidal ideation on one occasion, and mom was good about providing 24-hour supervision.

Ms. Smith stated Ellie would like her father to understand her perception and acknowledge her and validate her. She said Ellie also struggled to hear him when he would try to respond because "she accused him of lying or being fake." Ms. Smith recalled that on one occasion Ellie was supposed to spend time with her paternal grandparents, but this was interrupted by Ms. Berg. Ms. Smith stated Ms. Berg claimed Ellie was too fragile at the time to meet with the paternal grandparents because one of Ellie's peers at church had suicided. The therapist noted Ellie stated she did not know the peer very well, and the church was already providing support for the parishioners. Ms. Smith believed Ms. Berg was interfering with the visitation with the grandparents. She noted there was nothing to indicate that the visit should not have occurred. Ms. Smith stated they informed the father that they did not recommend discontinuing the visit.

Ms. Smith noted Ms. Berg also reported the same incidents that occurred with Mr. Berg over and over again with high emotion. Ms. Smith stated Ms. Berg was "keeping them alive despite them being addressed in therapy. Mom needed continued redirection." Ms. Smith stated Ms. Berg's heightened response and level of alarm was "palpable to everyone, including Ellie." She noted they tried to tell Ms. Berg that her affect could impact Ellie, but her behavior did not change substantially. Ms. Smith reported Ms. Berg's behavior conveyed a "mistrust of treatment team members. She also felt that she was not getting the attention she needed and physically blocked me in the hallway and the director needed to step in and assist." Ms. Smith also noted mom was pushing the idea that "Ellie has PTSD from her experience with her father. We assessed her and concluded she did not have PTSD. Mom also suggested Ellie had ADHD but we didn't feel that was part of the picture either."

Phone call with Amie Crolley on March 2, 2018

Ms. Crolley noted she is the school social worker for Meigs. She reported that Ellie began to see her in December 2016, and she continues to check in with her at school. She noted, "Ellie is a perfectionist. She is really hard on herself and with that perfectionism comes a lot of anxiety. She is concerned about her performance in class or with an instrument. She reported those things are hard for her." Ms. Crolley reported she helps Ellie with finding solutions to stressors at school.

Ms. Crolley described a time when Ellie was very stressed last week and they worked together to help alleviate her anxiety. Ms. Crolley noted Ellie is generally quiet with teachers but open and talkative with peers. She reported she needs to help Ellie speak up in school to her teachers. Ms. Crolley also makes herself available for Ellie when she is in the building.

Ms. Crolley reported she has spoken with both of Ellie's parents to get consent for her presence with Ellie. She spoke with both parents when mobile crisis needed to be called. She

stated both parents provided consent. She stated Ellie's mother has been more vocal but "I have not had an issue with either parent."

For Ellie, Ms. Crolley reported the best thing for her would be "for her parents to get along." Ms. Crolley believed Ellie is greatly affected by the discord with her parents. She noted Ellie "wants to please. It is definitely a struggle." She noted Ellie has not verbalized negative comments about one parent more than the other. She said she is aware that Ellie does not want to visit with her father because his rules and expectations at his house are "unfair." Ms. Crolley believed she did not know enough about the parents to formulate an opinion on them. She mentioned, "If they could put her first and not put her in the middle of their stuff, that would be helpful." She noted the school wants their students to be socially and emotionally healthy in addition to being strong academically.

Interview with Patsy Buckner on March 6, 2018

Ms. Buckner reported she taught Ellie in the sixth grade and "she was very tightly wound. I was trying to get her to calm and relax. She is incredibly bright and driven. During that year, I had little contact with the parents. Mom was more available than dad." She noted she continued to maintain a relationship with Ellie. She noted she helps Ellie "de-stress." She noted she also saw Ellie in the summer when she was in the hospital. Ms. Buckner noted she and Ellie trade messages as well.

Ms. Buckner reported she has helped transport Ellie. She said, "We are close but not close enough to discuss her fears." She stated she has little connection with the parents. She indicated she met her parents this summer when Ellie was at the hospital. She noted she is a sixth grade teacher at the school. Ms. Buckner stated she has not spoken to Ellie's teachers. She said, "Ellie had a friend that mentioned suicide. She has been doing well in her subject areas." She is doing well academically, per Ms. Buckner. She also believed Ellie seems to be doing better since her inpatient treatment and partial treatment. Ms. Buckner noted Ellie does not talk about her parents to her. Ms. Buckner reported Ellie was stressed when her dad was discussing moving out of the school zone which would disqualify her for being at Hume Fogg.

Ms. Buckner reported she does not bring up her parents with her. She indicated she has discussed safety concerns with Ellie but "she has not talked about anything since she was hospitalized." Ms. Buckner noted she is uncertain as to the etiology of Ellie's anxiety. She mentioned she just wanted to Ellie to have a safe place to talk about things. Ms. Buckner believed Ellie will transition well to high school and will have a good social support network. She mentioned Ellie functions well at school.

Interview with Danielle McDonough on March 6, 2018

Ms. McDonough reported she is a therapist for Ellie and noted Ms. Berg brought Ellie in for care on December 23, 2017. She said she sees Ellie weekly. She noted she met with both parents at the initial intake. She reported getting perspectives from each parent which were very different. Ms. McDonough noted Ellie has not been visiting with her father. Ms. McDonough stated, "Ellie is wonderful. She is very intelligent and high achieving. She sets high expectations for herself." She mentioned Ellie participates in violin, basketball, track, and in a book club. She also noted Ellie takes advanced academic courses.

Ms. McDonough identified Ellie as having low self-esteem. She noted Ellie described having social anxiety related to performance but "she also has heightened anxiety when in public places." Still, Ms. McDonough noted Ellie is able to play at recitals in front of people. Ms. McDonough noted Ellie has a lot of thought distortions around her father. She noted, "She will take things and twist them around." She gave an example of how Ellie misinterpreted interactions with her father.

Ms. McDonough noted Ellie labels her father as a "bad person. He will come and take pictures of her when she plays basketball and Ellie believed he posts the pictures on social media to look like a good father." Ms. McDonough noted she had Ellie give her a walk through when she is at her father's house and nothing seemed concerning. She noted Ellie talks poorly of her father but "I haven't seen any evidence of abuse. I asked the maternal grandmother if she had evidence of abuse and she denies that. She said Phil has been appropriate."

Ms. McDonough said Mr. Berg feels Ms. Berg is alienating Ellie from him. She noted Ms. Berg has only ever expressed a desire to have Ellie reunite with Mr. Berg. She noted, "It would make sense if mom is feeding Ellie things but I don't have evidence of that." Ms. McDonough noted Ms. Berg comes across as being incredibly protective of Ellie. She noted Ms. Berg "is like a momma bear and super protective. She could stand to make decisions on her own as she grows."

Ms. McDonough reported she will continue to see Ellie weekly and perhaps begin a group. Ms. McDonough worried about Ellie being safe if she is made to spend time with her father. She noted, "Still, I feel that she could overcome that with the right support." Ms. McDonough noted they have the potential to increase services with Ellie. She mentioned, "I think it would be rough but she would get through it."

Ms. McDonough noted she has tried to encourage Ellie to spend time with her father but "someone would physically have to make her go." Ms. McDonough noted Ms. Berg has tried to help Ellie meet with her father at her office. She noted, "I have no real evidence that Ms. Berg has been supportive." Ms. McDonough reported Ellie's concerns about her father are

“definitely irrational. She describes being with her father as a fiery hell. She has said that life would be easier if dad would die.” She also reported family members related to Ellie’s dad are also not well liked with the exception of one aunt. She noted, “That is the only person she speaks well of.”

Ms. McDonough noted, “There needs to be some intervention to get her to start seeing dad. She refuses and mom doesn’t push it. Kei wanted us to recommend that dad not be allowed to come to basketball games and other events. Kei mentioned Ellie has an increase in stomachaches and doesn’t perform as well when he is there.” Ms. McDonough described Ellie as having a loyalty to her mother. Ms. McDonough noted, “In a perfect world, I would like to see her spend time with both parents equally.”

Ms. McDonough reported Ms. Berg reported Ellie was preparing for court with an attorney. Ms. McDonough mentioned she is concerned that if she relays too much information, Ms. Berg will pull Ellie from care. Ms. McDonough noted mom does not have a current therapist and will “wait until court is wrapped up.” Ms. McDonough noted the maternal grandmother has known Mr. Berg since he was fifteen and she has only known him to be appropriate. Ms. McDonough reported she has not ever been made aware of potential sexual abuse by anyone. She noted Ellie reported her major trauma has been “not being permitted to call her mother on Christmas day and doing chores at her dad’s house.”

Ms. McDonough noted she has not heard much with regard to Samuel. She stated she was aware that there is some concern about a nut allergy. Ms. McDonough reported Ellie talks highly of her half-sisters and it appears she would like to see them and bond with them. Ms. McDonough noted, “Ellie does not have any malice toward them.”

RECORD REVIEW:

Records provided by Kei Berg

Ms. Berg provided three binders of information with regard to the children’s activities, health care, and education. The binders contained copious amounts material, messages, and pictures. Each binder was indexed and tabbed in an overly organized fashion. Many of the pages were highlighted and had additional handwriting on them to explain the contents.

This collection of information represented a seriously concerted effort by Ms. Berg to describe her function as a responsible parent, occasionally to the detriment of Mr. Berg. The records certainly demonstrated Ms. Berg’s attentiveness to her children and how invested she is in their lives.

Records provided by Philip Berg

Mr. Berg provided a variety of information including an updated timeline of events he finds significant with regard to his family. Many of the entries describe Ellie's behavior and interventions. The entries also suggest Ms. Berg has been hostile and a barrier toward him and his relationship with Ellie. Mr. Berg attached communications supportive of these observations and experiences.

Mr. Berg also included a time line predating his divorce from Ms. Berg. Here, Mr. Berg indicated Ms. Berg has been suicidal in the past, requiring inpatient hospitalization and acute assessment. He also asserts that Ms. Berg once complained of being raped by Mr. Berg and called the sexual assault crisis hotline. He also details the time in which he and Ms. Berg adopted a one year old child, Isaac, from Japan, but noted that the adoption was disrupted by Ms. Berg and that she did not bond with Isaac. Ultimately, the child was sent back to Japan and the adoption process was terminated, much to the dismay of Mr. Berg.

Mr. Berg goes on to describe Ms. Berg's behavior throughout their marriage and beyond. She is painted as being volatile, irrational, and abusive toward him. He also describes alienating behaviors of Ms. Berg such as talking badly about him in front of the children. He also asserted that she fired at least two attorneys because of mistreatment. Mr. Berg described incidents of DCS involvement without founded complaints.

Mr. Berg provided communications and other material in support of the information from the timeline. As an example, he offered an email Ms. Berg had written to Ellie in February 2008 in which Ms. Berg is indirectly telling Ellie she is going to commit suicide. He also provided paperwork from Ellie's recent inpatient hospitalization. The note from the social worker indicated Mr. Berg was rational and understanding, but he expressed concern about Ms. Berg feeding the children negativity about him and his family. The note then described Ms. Berg as labile, irrational, and anxious. In the note, the social worker documented Ms. Berg speaking negatively about Mr. Berg and noted Ms. Berg "had visible cringe when team said we would not change parenting plan or make recommendations re this."

Emails from Ellie

Ms. Berg provided two email threads from Ellie. Ellie wrote an email to her paternal grandparents on October 15, 2017. She made several derogatory remarks towards them including "inconsiderate hypocrites," stated that they don't love her, stated that they need an awakening to her father's behavior, and then signed the email with "Your former slave and actress." Ellie also described suicidal behavior and self-injury while blaming them for causing her to self-harm. This was written in response to a message from "grandma Martha" asking Ellie if she and Samuel would like to "go out for dinner or a movie, or breakfast or to the zoo."

Ellie also wrote an email to her father on October 15, 2017. She stated she “stopped thinking of you that way [as dad] years ago.” She noted, “I see you as my tormentor. You are cruel and mean and unfair and unkind and nothing like how a father should be.” She signed the email “Leave me alone, Phil.” She also informed him that she wants him out of her life. There are additional emails which continue her attack on her father and step-mother. She describes her father as a lazy slave driver and someone who tells her to kill herself.

Vanderbilt Psychiatric records dated September 1, 2017, to September 13, 2017

These mental health records describe Ellie’s inpatient psychiatric treatment. Ellie was admitted due to suicidal ideation and depressive features in the context of a custody dispute between her parents. She was engaged with her care on the unit yet also displayed OCD symptoms as well as depressive features. She was started on an antidepressant medication, Prozac, which she tolerated well. Ultimately, she was diagnosed with major depression, OCD, social anxiety, and generalized anxiety disorder. Upon discharge, she was referred to Rogers behavioral health for further care.

Roger’s Behavioral Health records dated September 19, 2017, through November 29, 2017

These mental health records describe Ellie’s treatment at a partial hospitalization program following her inpatient hospitalization. Ellie was ultimately diagnosed with OCD, generalized anxiety, unspecified depressive disorder, and social phobia. Her antidepressant medication dose was increased but all other medications remained the same. Psychotherapy is the main intervention at Rogers and the documentation is consistent with the information gathered directly from therapists as noted in their interviews above.

The records described Ellie struggling with perfectionism, contamination fears, and other obsessions and compulsions. She also demonstrated the use of cognitive distortions which worsened her symptoms. Various therapies were provided including cognitive behavioral therapy and exposure and response prevention. The team noted that although Ellie developed additional coping skills, “she was highly resistant to applying these skills in her daily life, especially with regard to her relationship with her father.” It was also noted that “Ellie’s perspective of her father did not change over time and she continually labeled him as one dimensional and untrustworthy, despite evidence suggesting otherwise.”

The records also indicated, “Ellie’s mother also experienced cognitive distortions and codependent tendencies.” The treatment counseled Ms. Berg on allowing Ellie to form her own identity and her own voice. The notes indicated Ms. Berg was somewhat responsive to these suggestions but “struggled to shift her language when reflecting on thoughts related to Ellie’s father and Ellie’s academics.” Counseling for Ms. Berg was recommended by Ellie’s treatment team. The team also noted Ellie demonstrated co-dependent behaviors. The team

recommended Ellie step down to the Mood Disorders Intensive Outpatient Program (IOP) for further care.

Ellie began treatment in the IOP on October 26, 2017 and was discharged on November 29, 2017. While in the IOP, it was noted that "When Ellie talks about or engages with Phil without Kei present, she is able to tolerate the situation a lot better than her mother presents." They also noted, "Kei's reporting [of Ellie's responses to her father] appears to be incongruent with Ellie's behavior." Ellie presented with symptoms of depression and mood dysregulation. The notes also indicated that although Ellie has had homicidal thoughts about her father and step-mother "but did not provide any specific detail nor plan to carry out. She reported them to be passive thoughts with no intent to act on them." The team identified a need for Ellie to develop better stress tolerance to avoid harmful behaviors.

The notes indicated Ellie's parents attended parental sessions at the IOP to better understand the needs of Ellie and how they can assist her. The parents received psychoeducation on depression, anxiety, and the parental role in adolescents' lives. The notes indicated Ellie's progress was negatively impacted by her mother informing her of the potential discharge date despite being instructed not to relay such information. The chart noted Ellie was "able to engage in multiple family sessions with Phil... despite mother's reports that Ellie could not be in the same place as dad without having a panic attack."

Outpatient DBT was recommended for Ellie upon discharge from Rogers as was continued exposure and response prevention (ERP) therapy. The team also recommended that the parents attend co-parenting therapy to decrease family conflict which results in additional distress and confusion for Ellie.

PSYCHOMETRIC TESTING:

Testing completed by Joseph Labarbera, Ph.D.

Joseph Labarbera, Ph.D., completed psychological testing on February 26, 2018, on Ellie. Dr. Labarbera is a child psychologist at Vanderbilt. His report was made available to Ms. Berg, who then granted access for this evaluation. Dr. Labarbera indicated the background information came from Ms. Berg and she also brought Ellie to the evaluation. The report suggested Ellie has "deep personal insecurity and self-doubt." He noted she magnified symptoms during the testing by indicating marked anxiety. He described her having difficulty in interpersonal arenas. She charged her father with being verbally and emotionally abusive to her resulting in symptoms consistent with those found in PTSD. She also reported her father has photographed her in "an undressed or insufficiently dressed state" creating sexual discomfort. He indicated Ellie reported hearing voices related to the trauma associated with

her father. Ellie also expressed symptoms of depression with suicidal intent but did not endorse intent or planning. Dr. Labarbera suggested Ellie has difficulty with her focus likely due to her distress. He suggested that generalized anxiety disorder, social anxiety disorder, OCD, PTSD, and major depressive disorder be considered by her providers. Dr. Labarbera noted therapy is likely to be a helpful intervention for Ellie which might focus on improving social skills, discouraging magnification of symptoms, working through negative events, improving trust and engagement, and monitoring for self-harm.

Testing completed by Kimberly Brown, Ph.D., ABPP

Kimberly Brown, Ph.D., ABPP, administered psychological testing on both parents. She did not conduct a clinical interview of them but drew her conclusions strictly from her interpretation of the psychological testing data. Her reports are as follows:

FORENSIC PSYCHOLOGICAL EVALUATION

Name:	Keiko Berg	Date of Assessment:	10/25/2017
Date of Birth:	11/13/1974	Age:	42 years old
Children:	Ellie Aileen Berg	Age:	13 years
	Samuel Justin Berg	Age:	9 years

REASON FOR REFERRAL:

Mr. Keiko Berg, a 42-year-old divorced female, was referred for a psychological evaluation by Bradley Freeman, M.D. of Vanderbilt University Forensic Services. This evaluation is part of a parenting evaluation of Ms. Berg to be completed by Dr. Freeman. I administered the testing to Ms. Berg and scored and interpreted it. I discussed the case with Dr. Freeman, but did not conduct a clinical interview with Ms. Berg.

Mr. Berg was previously evaluated by the undersigned on 4/23/13, also in the context of a parenting evaluation completed by Dr. Freeman.

PSYCHOLOGICAL TESTS ADMINISTERED:

- Personality Assessment Inventory (PAI)
- Michigan Alcoholism Screening Test (MAST)
- Drug Abuse Screening Test (DAST)
- Global Assessment of Recent Stress Scale (GARS)
- Child Behavior Checklist (CBCL)

PSYCHOLOGICAL ASSESSMENT RESULTS:

Personality Assessment Inventory (PAI)

The PAI is a multi-scale self report standardized measure (344 items, 22 scales) of personality. The PAI includes 4 validity scales, designed to assess the test taker's response style.

Ms. Berg responded to the PAI in a consistent manner. This indicates that she generally answered similar questions in consistent ways, comprehended test items, and was paying adequate attention to the test. She responded to the PAI in a highly defensive manner in which she had a tendency to portray herself as relatively free of common shortcomings to which most individuals admit. This tendency was more extreme than it was on the 2013 PAI, suggesting a higher level of defensiveness or positive impression management in the current assessment. While this is not an uncommon profile for individuals in parenting type evaluations, in which they want to make a good impression, this response style means that the PAI is limited in the ability to detect psychological difficulties and personal problems that may exist.

Ms. Berg's PAI profile was within normal limits, although note the caution above as this may not be an accurate reflection of her true functioning. Individuals with responses similar to Ms. Berg's tend to be experiencing mild life stress (although much less than was reported in the 2013 evaluation), which may be resulting in some adjustment issues, such as problems with sleep, appetite, and decreased energy/libido. Her profile is consistent with a passive and unassertive individual who avoids confrontation and displays of anger (e.g., aggression). Her 2013 evaluation overall reflects a higher level of distress and disturbance than the current PAI; however, this could be because she was less defensive on testing and more admitting of problems in 2013.

Michigan Alcoholism Screening Test (MAST)

The MAST is a 24 item self report scale designed to screen for symptoms and problems associated with abuse of alcohol. Ms. Berg obtained a score of 6 on the MAST. However, this is likely due to failure to carefully read items, as she wrote at the top of the form, "I don't drink at all."

Drug Abuse Screening Test (DAST)

The DAST is a 28 item self report scale designed to screen for symptoms and problems associated with abuse of drugs other than alcohol. Ms. Berg obtained a score of 0, which is not suggestive of problematic drug use.

Global Assessment of Recent Stress Scale (GARS)

The GARS is a self-report rating scale designed to assess the amount of change or stress in the past week or so across seven different areas (e.g., financial, occupational, relationship, etc...). It assesses the individual's appraisal of his/her overall level of stress as well.

On the GARS, Ms. Berg endorsed extreme stress related to legal problems. She reported a high degree of stress caused by divorce, financial issues, and change in daily routine. She

reported no stress caused by work, sickness/injury, or unusual happenings. She rated her overall stress in the past week as moderately high or about an 8 on a 10 point scale.

Child Behavior Checklist (CBCL)

The Child Behavior Checklist (CBCL) is a rating form completed by parents/guardians that provides demographic data, descriptive information about the child being rated, open-ended reports of the child, as well as ratings of various problems and psychological symptoms. The scale ratings yield standardized scores to compare children being rated to the normative sample on which the test has been researched.

Samuel Justin Berg:

On the CBCL, Ms. Berg reported that Samuel was having a borderline significant level of attention problems. All other scales including the total, internalizing, and externalizing problems scales were in the normal range. Borderline clinical scales mean that the score on those scales fell short of the clinical range, but were above the 90th percentile, or higher than that for over 90% of children rated in the normative sample.

To provide information about Samuel's social and academic competence, Ms. Berg was asked questions about his activities, interests, friends, and school performance. She reported that he participates in soccer, biking, tennis, and swimming. His hobbies include building Legos, singing, and Ipad games. She reported that he does chores around the house (e.g., collects trash, walks the dog). She indicated that he has 4 or more friends and gets along with others in a mostly above average manner. She noted that he is above average in all academic subjects and does not have any academic problems.

On open ended questions, Ms. Berg indicated that she is most concerned about Samuel having a nut phobia to the point that he avoids all desserts. He also worries, occasionally has difficulty with sleep, and has excessively washed his hands. She wrote that the best things about Samuel include that he is kind, big-hearted, sensitive, and sees the positive in others.

Ellie Aileen Berg:

On the CBCL, Ms. Berg endorsed that Ellie is having clinically significant anxiety symptoms, depressive symptoms, somatic complaints, and thought problems. She rated her as having a borderline level of social problems and attention problems. Internalizing and total problems scales were significantly elevated. The externalizing composite scale was not significantly elevated.

To provide information about Ellie's social and academic competence, Ms. Berg was asked questions about Ellie's activities, interests, friends, and school performance. Ms. Berg said that Ellie participates in basketball, running, and tennis. She also plays violin and piano. She reportedly is in an orchestra and Battle of the Books. She has various chores. Ms. Berg

indicated that Ellie has 4 or more close friends and gets along with others in a generally above average manner. She reportedly excels at school and has no academic problems.

On open ended items of the CBCL, Ms. Berg indicated that she is concerned about Ellie's history of suicidal ideation, self-harm, and low self-esteem. She described Ellie's best traits as being kind, caring, intelligent, and talented with "huge potential."

CONCLUSIONS:

Ms. Berg's personality testing reflected marked defensiveness/positive impression management. She endorsed her son as having mild attention problems and her daughter as having significant problems in multiple areas (particularly internalizing).

FORENSIC PSYCHOLOGICAL EVALUATION

Name:	Philip Berg	Date of Assessment:	10/25/2017
Date of Birth:	3/21/1975	Age:	42 years old
Children:	Ellie Aileen Berg	Age:	13 years
	Samuel Justin Berg	Age:	9 years

REASON FOR REFERRAL:

Mr. Philip Berg, a 42-year-old married Caucasian man, was referred for a psychological evaluation by Bradley Freeman, M.D. of Vanderbilt University Forensic Services. This evaluation is part of a parenting evaluation of Mr. Berg to be completed by Dr. Freeman. I administered the testing to Mr. Berg and scored and interpreted it. I discussed the case with Dr. Freeman, but did not conduct a clinical interview with Mr. Berg.

Mr. Berg was previously evaluated by the undersigned on 5/7/13, also in the context of a parenting evaluation completed by Dr. Freeman.

PSYCHOLOGICAL TESTS ADMINISTERED:

- Personality Assessment Inventory (PAI)
- Michigan Alcoholism Screening Test (MAST)
- Drug Abuse Screening Test (DAST)
- Global Assessment of Recent Stress Scale (GARS)
- Child Behavior Checklist (CBCL)

PSYCHOLOGICAL ASSESSMENT RESULTS:

Personality Assessment Inventory (PAI)

The PAI is a multi-scale self report standardized measure (344 items, 22 scales) of personality. The PAI includes 4 validity scales, designed to assess the test taker's response style.

Mr. Berg responded to the PAI in a consistent manner, indicating that he answered similar questions in consistent ways, comprehended test items, and was paying adequate attention to the test. Similar to the PAI he took in 2013, validity scales were well within normal limits without any significant tendency to minimize or exaggerate problems.

Mr. Berg's PAI is similar to the one he took in 2013. The notable difference is his current profile suggests a significant degree of life stress (significantly higher than in the prior evaluation). His profile is otherwise within normal limits and it does not appear that his life stress is causing any clinically significant symptoms, such as a mood, anxiety, psychotic, or substance use disorder. His PAI is suggestive of a stable, resilient, and optimistic person, who is likely handling stress relatively well. He continues to report strong social support. Much like the prior evaluation, the PAI profile suggests a rather passive and unassuming individual who avoids confrontation and aggression. Such individuals may be unassertive and have difficulty standing up for themselves. There were also mild indications of feeling targeted or treated unfairly, which is not uncommon in long-standing custody battles. Mr. Berg's profile is also suggestive of an individual who is somewhat perfectionistic, detailed oriented, and rule bound. Such individuals prefer things to be orderly and predictable.

Michigan Alcoholism Screening Test (MAST)

The MAST is a 24 item self report scale designed to screen for symptoms and problems associated with abuse of alcohol. Mr. Berg obtained a score of 0 on the MAST, which does not suggest any problems with alcohol use.

Drug Abuse Screening Test (DAST)

The DAST is a 28 item self report scale designed to screen for symptoms and problems associated with abuse of drugs other than alcohol. Mr. Berg obtained a score of 0, which is not suggestive of a history of problematic drug use.

Global Assessment of Recent Stress Scale (GARS)

The GARS is a self-report rating scale designed to assess the amount of change or stress in the past week or so across seven different areas (e.g., financial, occupational, relationship, etc...). It assesses the individual's appraisal of his/her overall level of stress as well.

On the GARS, Mr. Berg endorsed a moderate degree of stress caused by pressure in interpersonal relationships and his job. He reported mild to moderate stress related to financial issues, legal problems, and sickness/injury. He reported no stress due to unusual happenings or change or lack of change in daily routine. He rated his overall stress as moderate or between a 4 and a 5 on a 10 point scale.

Child Behavior Checklist (CBCL)

The Child Behavior Checklist (CBCL) is a rating form completed by parents/guardians that provides demographic data, descriptive information about the child being rated, open-ended reports of the child, as well as ratings of various problems and psychological symptoms. The scale ratings yield standardized scores to compare children being rated to the normative sample on which the test has been researched.

Samuel Justin Berg:

On the CBCL, Mr. Berg did not endorse any clinically significant problems in Samuel. All scales including the total, internalizing, and externalizing problems scales were in the normal range.

To provide information about Samuel's social and academic competence, Mr. Berg was asked questions about Samuel's activities, interests, friends, and school performance. He indicated that Samuel's sports include soccer, bike riding, and tennis. He reportedly enjoys singing in a choir, reading, and piano. His chores include making his bed, cleaning the dishes, and folding his laundry. Mr. Berg reported that Samuel has 2-3 close friends and gets along with others in an average to above average manner. He reportedly is above average in all academic subjects and does not receive any special services in school. On open ended questions, Mr. Berg indicated that he is most concerned about Samuel's attitude towards him and individuals associated with him (e.g., his paternal grandmother and stepmother). He noted that Samuel has become more distant after his mother filed for custody last year. Samuel reportedly refused to smile in pictures at his father's house, stopped responding to "I love you" from his father, and has become increasingly clingy to his mother. Mr. Berg wrote that the best things about Samuel include his being friendly, enthusiastic, fun, creative, and good with babies.

Ellie Aileen Berg:

On the CBCL, Mr. Berg endorsed that Ellie is having clinical significant withdrawal/depression (at a very high level) as well as anxiety symptoms, and thought problems. Symptoms endorsed include Ellie enjoying little, preferring to be alone, seeming sad and withdrawn, not talking, being shy, talking about suicide, being nervous and fearful, feeling unloved, not being able to keep her mind off certain things, having sleep problems, and having strange ideas and behaviors. He reported that she is also having a borderline significant level of social problems and aggressive behavior. Borderline clinical scales mean that the score on those scales fell short of the clinical range, but were above the 90th percentile, or higher than that for over 90% of children rated in the normative sample. Internalizing, Externalizing, and Total Problems scales were all significantly elevated.

To provide information about Ellie's social and academic competence, Mr. Berg was asked questions about Ellie's activities, interests, friends, and school performance. He indicated that Ellie participates in basketball, cross country, and track. Her hobbies include reading,

piano, and violin. Her chores include making her bed, sweeping, and cleaning her bathroom. Mr. Berg indicated that Ellie has no close friends and gets along with her parents and other kids in a below average manner. He reported that she is above average in all subject areas and does not have any academic problems.

On open ended items of the CBCL, Mr. Berg indicated that he is concerned that Ellie has become increasingly distant and hostile towards him and anyone associated with him since her mother filed for increased custody last year. He also expressed concern that she does not have any friends. He noted that the best things about Ellie are that she is a hard worker, intelligent, athletic, and good with younger kids.

CONCLUSIONS:

Mr. Berg responded to testing in a reliable and valid manner. Psychological testing indicates that he is experiencing life stress, but is likely not having significant impairment in functioning or significant psychological symptoms. Mr. Berg rated his son as having good adjustment without any clinically significant problems or symptoms. He rated his daughter as having a very high degree of depressive and anxiety symptoms.

CONCLUSIONS:

The conclusions provided below are given within a reasonable degree of medical certainty.

CONCLUSIONS REGARDING KEIKO BERG

Diagnoses

1. Anxiety disorder, unspecified
2. Major depressive disorder, partial remission
3. Parent-child relational problems
4. Parent-relational conflict

1. Ms. Berg meets criteria for an anxiety disorder

Ms. Berg reported being treated for anxiety and her medication prescriptions substantiate her self-report. She has been prescribed anxiolytic medication which she takes regularly. Additionally, behavioral observations from Ellie's providers support the presence of an anxious condition with Ms. Berg. Ms. Berg's anxiety is strongly tied to her lack of adequate coping skills with regard to stress management. She appears to be overwhelmed with stress, mostly due to the current custody dispute but also from other areas of her life.

2. Ms. Berg must continue to engage in mental health treatment

Ms. Berg should continue to see her provider(s) for treatment. Additionally, she must establish with a psychotherapist (if she has not already done so) as her medication regimen does not appear to be especially effective. This is supported by her continued reliance on benzodiazepine medication for anxiety relief. Ideally, these medications are to be used for a limited amount of time until the patient has developed better coping skills and/or other medication has taken effect.

Ms. Berg cannot wait to tackle her anxiety as this is interfering with her life in rather significant areas. Her anxiety is impacting her ability to function as a responsible parent and in maintaining healthy relationships with significant others. Her worry about her daughter and son consume her thoughts and behaviors.

3. Ms. Berg meets criteria for parent relational conflict

There is ample evidence to suggest Ms. Berg has a contentious relationship with Mr. Berg. From the evidence provided, it appears Ms. Berg is the more aggressive person in this conflictual and unhealthy parenting dyad. Still, Mr. Berg is not without fault and tends to be more passive in his responses to Ms. Berg.

4. Ms. Berg is at increased risk for depression

Ms. Berg has a history of depression and suicidal ideation. She has been hospitalized in the past for self-harmful/suicidal thoughts. Because she lacks sufficient coping skills to handle stress, her risk for depression is increased. Current stressors include the custody dispute, her daughter's self-harmful thoughts/behavior, her marriage difficulties, and recent health scare. Her provider should monitor for depressive symptoms regularly and Ms. Berg should report increased feelings of depression, isolation, sleeplessness, suicidal thoughts, homicidal thoughts, difficulties with concentration, appetite changes, poor motivation, and changes in energy level directly to her medical providers.

CONCLUSIONS REGARDING PHILIP BERG

Diagnoses

1. No significant psychiatric illness
2. Parent-child relational problems
3. Parent-relational conflict (with ex-wife, Ms. Keiko Berg)

1. Mr. Berg does not meet criteria for a major psychiatric diagnosis

There is no evidence to suggest Mr. Berg meets criteria for a major psychiatric disorder. His therapist, collateral sources, his interview, and the psychological testing do not indicate major psychological symptoms or illness. He is under stress with regard to the custody matter, specifically his difficult/absent relationship with his daughter, Ellie.

2. Mr. Berg has a healthy marriage with current wife, Kathy

Evidence from Mr. Berg, his wife, his therapist, and collateral source suggest he has a strong and healthy relationship with his wife. Mr. Berg noted his wife is adjusting to the blended family but a main stressor for her is the impact of Ms. Berg on their relationship. Mr. Berg and his wife have two children together. He indicated Ellie has yet to see her youngest half-sister because of Ellie's refusal to visit with him. Fortunately, Ms. McDonough mentioned Ellie has expressed interest in seeing her half-sisters and that there does not appear to be any malice by Ellie toward them.

3. Mr. Berg is a safe parent for his children

Mr. Berg has not displayed behavior which would amount to abuse or even harsh parenting. He is cognitively intact and has a rational perspective with regard to his involvement with his children. Mr. Berg has been described as non-violent and he does not overindulge in alcohol or engage in illicit drug use. His wife, Kathy, did not report domestic violence or other aggressive behaviors in her individual interview. His children's providers have not described him as being a danger or a threat to the safety of the children or any other person. Ms. Berg has called the police and child protective services several times yet nothing was charged or founded.

4. Mr. Berg needs to adjust his parenting style and become less rigid

Several persons have described Mr. Berg as rigid. Although this may be a response from Ms. Berg's behaviors, he does need to work on being more flexible with the children. His children need new experiences and an opportunity to interact with others outside of the family and school. Ellie is involved in many activities, much to the credit of Ms. Berg.

5. Mr. Berg needs to continue to work with Dr. Ericson in individual therapy

Dr. Ericson has been seeing Mr. Berg for a few years. Mr. Berg has been given guidance with regard to his relationship with his wife as well as with children in addition to other therapeutic interventions. Dr. Ericson noted Mr. Berg is responsive to therapy and believed Mr. Berg is functioning rather well, despite being somewhat rigid. Dr. Ericson identified some increased stress in Mr. Berg's marriage to Kathy because of the legal matter and Ellie's irrational perspective on her father and step-mother.

6. Mr. Berg and his wife should strongly consider couples counseling due to the stress of a blended family and this contentious custody matter

Blended families can be difficult to navigate for parents, especially those in which there are custody disputes or a highly contentious relationship with a previous spouse. Mr. Berg and his wife need to continue to acknowledge their limitations and work to maintain a healthy relationship. With two very young children, this can be challenging. Couples' counseling can be a helpful tool. This intervention does not need to be ongoing but can be provided intermittently. Religious institutions commonly offer programs to help couples build/maintain/rekindle their relationships. All of the children involved need their parents and step-parents to be healthy and happy.

CONCLUSIONS REGARDING ELLIE BERG

Diagnoses

1. Obsessive compulsive disorder
2. Social anxiety
3. Major depressive disorder, in partial remission
4. Parent-child relational problems

1. Ellie meets criteria for obsessive compulsive disorder and social anxiety in addition to major depression

Ellie is an exceptionally smart young woman but struggles with her social interactions. Various mental health professionals have had an opportunity to observe Ellie. She has exhibited symptoms of anxiety on a rather consistent basis but has also been depressed. Her depression appears to be somewhat episodic in nature but should not be confused with acting out behaviors (ie. self-harm in the context of thinking about her father). Ellie has been extensively evaluated by Roger's Behavioral health and she recently has had psychological testing completed. These pieces of information in addition to her outpatient providers support these diagnoses. Other diagnoses have been entertained but not fully supported. These include posttraumatic stress disorder, ADHD, and bipolar disorder.

2. Ellie must continue to see her mental health providers regularly

Ellie is in treatment at this time with a medication provider and therapist. She is involved in individual psychotherapy. These interventions are necessary. Ellie must not change providers unless there are extenuating circumstances (ie. provider is abusive). Ms. McDonough and Dr. Quasem communicate with one another and are invested in Ellie. If she is to be moved to a

new provider, both parents should agree unless, of course, the court decides joint medical decision making is not practical.

3. If Ellie's self-injury/suicidality persists, dialectical behavioral therapy (DBT) is recommended

Dialectical Behavioral Therapy is a specific intervention designed to help individuals maintain safety through mindfulness and being present. This therapy is gold standard treatment for individuals with borderline personality disorder, of which self-harm tends to be a hallmark symptom. DBT can be effective in decreasing the risk of self-harm. This intervention is generally group based but can incorporate individual sessions as well. This can be added to her treatment regimen if needed without having to switch therapists. Ms. McDonough or Dr. Quasem may have preferred providers that the parents can contact if needed. As Ellie progresses in treatment, her therapist can help her parents determine whether or not to seek out this intervention.

4. Ellie would benefit from a safety plan that is consistent between homes

When Ellie spends time in various places, her safety plan should be consistent. She should not be in a location in which she has access to firearms, weapons, household chemicals, or medications. If persons are concerned about her safety, constant observation is warranted. Increased supervision is paramount to providing a safe environment.

CONCLUSIONS REGARDING SAMUEL BERG

Diagnoses

1. No major psychiatric diagnosis
2. Parent-child relational problems

1. Samuel does not meet criteria for a psychiatric condition at this time

The evidence reviewed does not support a psychiatric diagnosis for Samuel at this time. He appears to be doing well with school and friends. He is attentive and does not harbor clinically significant levels of anxiety or depression. Ms. Berg endorsed symptoms surrounding anxious behaviors such as washing hands excessively, some difficulty with sleep, and worrying. Mr. Berg did not endorse these or other symptoms.

2. Samuel's relationship with his father is deteriorating

On interview, Samuel was critical in two specific areas. He mentioned disdain for his father but not to the point of wanting to exclude him from his life. He voiced a preference to live with his mother and noted his father has been "mean to Ellie." He also reported his step-mother cussed at Ellie on at least one occasion. Samuel tried but could not explain why he believed Ellie was being targeted at his father's house. Samuel also reported concern about having a nut allergy. He stated his father and Kathy keep nuts around the house and he feels he will become ill.

Most significant are his comments about his father being mean to Ellie and him. He reported disliking being scolded for not putting the dishes away and for shrugging his shoulders. Samuel appears to be adopting some of the perspectives of Ellie about his father. Samuel looks up to his sister and has very positive things to say about her. He naturally wants to be protective of her. There is concern that Samuel's perspectives about his father are being influenced by those of his mother and Ellie. Fortunately, Samuel is still willing and interested in seeing his father despite his report of wanting to be primarily with his mother.

GENERAL CONCLUSIONS

1. Ms. Berg needs guidance/treatment to help separate her from her children and eliminate the enmeshment

Enmeshment is a pathological condition in human relationship development. This occurs when two or more individuals begin to rely on each other for their emotional well-being in such a way that anxiety ensues when they are separated. Enmeshment can occur for many reasons and is often not an intended goal of the persons involved. In this matter, Ms. Berg and her children notably Ellie, have developed an enmeshed relationship which is unhealthy for both of them.

Ms. Berg must begin to allow Ellie, and to some extent Samuel, to develop their own identity and voice. The therapists at Roger's Memorial who treated Ellie on a daily basis for several weeks identified this need early on in their care. This has also been identified by other individuals including Ellie's current therapist, Ms. McDonough, and her previous therapist, Ms. Davis. Ms. Berg and Ellie identify closely with one another. Ellie's therapists noted Ellie is an emotional support for her mother and soothes her when she is anxious or upset. This is not the responsibility of a child. Additionally, Ms. Berg acts as a protector for Ellie who controls Ellie's environment, sometimes through aggressive means, to limit Ellie's discomfort to real world problems.

Ms. Berg must engage with a therapist to help her unlatch from Ellie. The enmeshment is damaging both of them. This can be done through setting appropriate boundaries with her parenting of Ellie and allowing Ellie to exercise more independence. Mr. Berg's resistance to

extracurricular activities is also a barrier to resolving the enmeshment. Ellie needs to be able to explore, to befriend others, and experience novel environments.

Due to the severity of the enmeshment, each person will have an increase in symptoms of anxiety when the other sets a boundary. This is not unlike a breakup in which a scorned lover becomes distraught, even angry, with the other person.

Fortunately, Ms. Berg's relationship with Samuel has not risen the level of pathology. Samuel, however, has been becoming more distant from his father and tends to side with Ellie and support her when she is distraught. This absolutely must not be allowed to progress. Both parents should remain vigilant with regard to Samuel's behavior and be able to set appropriate boundaries for him. His perception of healthy relationships is still developing. The enmeshed relationship between Ms. Berg and Ellie provides a grossly unhealthy example to Samuel as does Ellie's irrational, cruel connection with her father.

2. Evidence supports Ms. Berg engaging in alienating Ellie and Samuel from their father

Mr. Berg has suggested that Ms. Berg is engaged in alienating behaviors with their children. There are several pieces of evidence that support his assumption. Parental alienation is manifested in a child's irrational beliefs about a targeted parent which results in them refusing visitation. Ellie's therapists, Ellie's email communications, Ellie's behavior toward her father are consistent with an irrational belief that her father is "evil." Ellie has stated she wants her father out of her life permanently. When she was asked about her reasons for disliking and refusing visits with her father, she reported she has to do chores at his home and was not allowed to call her mother from his home on Christmas day.

There are, of course, varying degrees of alienation. Ellie's alienation is severe due to her persistent refusal to see her father, becoming self-injurious when thinking about seeing her father, and refusing to have relationships with her father's side of the family, with the exception of one aunt in Chicago. Ellie is at risk of permanently disrupting the father-daughter bond they once enjoyed many years ago. Additionally, she has begun to incorporate Samuel into her irrational beliefs which must be halted.

Ms. Berg is primarily responsible for the alienation, yet Mr. Berg has also behaved in ways which encouraged a sour relationship with Ellie. Mr. Shuff, Ms. Berg's last husband, indicated he caught Ms. Berg reading court documents to Ellie on at least three occasions. He also described her as manipulative and intensely focused on her children and not her marriage. There are obvious reasons for Mr. Shuff to be biased yet this is not the first time Ms. Berg has been known to allow Ellie to be exposed to court related material. Most disturbing was Mr. Shuff's report that Ms. Berg actively coaches the children on what to say to therapists.

Mr. Berg's parenting behavior, specifically his rigidity, was noted by therapists as well. It was noted that he needs to be more flexible and allow Ellie and Samuel to engage in extracurricular activities. Mr. Shuff stated he does not know Mr. Berg well but commented about how he is unlikely to adjust his schedule so the children can enjoy activities outside of school. This type of behavior from Mr. Berg has helped to perpetuate Ellie's contact refusal but this is certainly not a major reason for the alienation.

Ms. Berg has reported she would like Ellie to reconcile with her father. She has mentioned this in her interview and also with therapists. Ms. McDonough, Ellie's current therapist, reported although Ms. Berg has made those comments, there has been no observable movement to encourage that relationship. Many people have noted Ms. Berg's tendency to talk negatively about Mr. Berg in front of Ellie and Samuel. The therapists are Rogers Memorial indicated that they needed to stop family sessions because Ms. Berg could not be sufficiently redirected or able to control her negative comments.

3. The key to rebuilding the relationship between Ellie and her father is Ellie's separation from Ms. Berg

For children who present with severe forms of alienation, the treatment of choice is separating the child from the alienating parent and reuniting them with the targeted (alienated) parent. Persons familiar with alienation liken this phenomenon to child abuse and it essentially works toward destroying the sacred relationship with the targeted parent. Severe forms include complete refusal to see, do, or acknowledge the targeted parent.

There are programs designed to help with parental alienation. One such program is the Family Bridges program. This is offered in select areas around the country but involves court orders which give full-temporary custody to the targeted parent who also is bestowed with unilateral decision making in all areas of the child's life. This is done so the child and targeted parent can be reunited without the interference of the alienating parent. Additional information on the program can be provided to the family/GAL/court if needed.

Other interventions also involve separation from the alienating parent but in a somewhat less direct fashion. Some children are sent to boarding schools such that they are forced to be independent and think for themselves while the targeted parent is given the same exclusivity as in the Family Bridges program. Boarding schools tend to be a costly investment, but it is difficult, if not impossible, to determine the value of a healthy parent-child relationship. Still other options include placing the child with an extended family member that is neutral/supportive to both parents. Ellie's therapist believed the maternal grandmother is supportive of Mr. Berg. This, again, still bestows the targeted parent with complete decision-making ability.

Some of Ellie's therapists believe she would likely act out in a self-harmful way if she suddenly was sent to live exclusively with her father. Others have seen her tolerate meetings with her father although she was agitated in the beginning. Because of Ellie's history of self-harm and her irrational perspective of her father, she would more than likely act out if she was suddenly thrust into her father's home exclusively. Her therapists, when given this hypothetical situation, noted they could increase services for Ellie to help her with the adjustment thereby lowering, but not excluding, the risk of Ellie engaging in self-harm. Dr. Quasem, who sees Ellie less frequently than the therapists, had reservation about Ellie's ability to remain safe from herself in her father's home. Still, she believed Ellie could make that adjustment over time.

A complete separation from Ms. Berg would also entail Samuel. Samuel, ideally, would follow Ellie for similar reasons. Ellie and Samuel have a positive bond and they can assist one another in making such an adjustment. Ms. Berg would have a tremendously difficult time with this and likely file additional complaints to the court. She will need to work with a therapist to help with her adjustment to this new routine, if enacted.

As noted by Ellie's therapist, with whom Ms. Berg encourage me to speak with, there needs to be an intervention to help Ellie. She believed Ms. Berg will not voluntarily support or force Ellie to spend time with Mr. Berg and that Ellie must be mandated. From the speaking with the sources for the report, many supported an intervention yet most did not know what it would look like.

A complete separation from Ms. Berg is neither intended to be long term nor is it recommended as a final outcome for Ellie. If Ellie is separated from her mother, her providers can help determine when reuniting with Ms. Berg would be appropriate. This generally happens slowly and only if Ms. Berg has been able to grossly demonstrate her ability to maintain control, set appropriate limits, and avoid engaging in alienating behaviors.

4. The two households must have similar, yet not identical, sets of expectations, consequences, and rewards for the children

Consistency is important when children are moving between homes. Consistency includes things such as chores, homework time, bed time, getting up in the morning, meal time, and arriving at school at the same time. They should have access to similar resources. This will lessen the burden on their adjustment when transitioning between households. Granted, not all households are created equal but the parents need to demonstrate a concerted effort to agree on as many things as possible with regard to how their home routines can be structured similarly.

5. Joint decision making is not indicated but Holidays can be split evenly

Due to the volatility of the parents' relationship with one another, joint decision making is not in the children's best interest. Even seemingly obvious choices are problematic with these parents. For instance, medical decision making should be given to the mother due to her background but she appears to be overeager to find health problems with the children. Then again, Mr. Berg appears much too relaxed with regard to the children's healthcare. All things considered, either parent would be appropriate if they agree to follow the recommendations from the children's providers and communicate healthcare information to the other parent in a timely fashion (ie. notification of a non-emergent appointment at least two weeks in advance).

If the court determines that separation from the mother is vital to the children's best interest, then decision making will obviously go to the primary parent. If the court develops another parenting schedule in which time is split, the decision making could be as follows:

- Educational – father
- Extracurricular – mother
- Religious – father
- Medical – mother

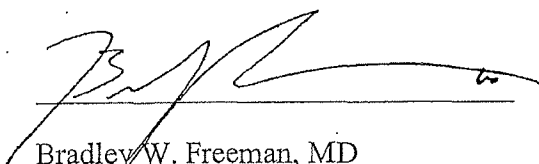
Holidays can be split in the usually manner

6. Parenting time schedules other than complete separation from the mother may be possible

Although the treatment of choice is temporary but complete separation from the alienating parent, some opt for a less drastic measure. This involves immediately beginning visitation with the targeted parent, in this case Mr. Berg. Ideally, the child will maintain their extracurricular activities along with the new schedule. Ellie would spend overnights with her father on an increasing basis with each increase as deemed appropriate by her therapist.

The reason this type of plan is likely to fail is that in extreme cases of alienation, such as this case, the alienating parent cannot control themselves and the alienation continues. Some courts have decided to give this type of schedule a two-month trial while being supervised by a GAL or officer of the court. If the supervisor believes the trial period is failing, then immediately switching to total separation is indicated. This gives the alienating parent a chance to change which would be evidenced by a change in the perspective of the child toward the targeted parent.

The conclusions/opinions contained in this report are based on the accuracy of the information provided. I reserve the right to change my conclusions/opinions if provided with new and compelling information. If you have questions or concerns about this report, you can reach me at (615) 327-7130.



Bradley W. Freeman, MD
Associate Professor of Clinical Psychiatry

3/7/18

Date

Gmail - Per yesterday's conversation

https://mail.google.com/mail/u/0/?ui=2&ik=637f6335d8&view=pt&q=ti...

TRIAL EXHIBIT

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M Gmail

Kei Berg <kelsberg3@gmail.com>

Per yesterday's conversation

1 message

2018 MAR 13 PM 12: 54

RICHARD R. FROST, III

Kei Berg <kelsberg3@gmail.com>

Fri, Jun 17, 2016 at 11:27 AM

To: Tiffany Davis <tiffanyadavis@yahoo.com>

Hi Tiffany,

Per yesterday's conversation, please fax medical records/notes from 6/15/16 that shows that Ellie accidentally discovered Father and his attorney's notes on her own on 6/4/16 etc., to Brenda Clark, my attorney at 615-255-6037.

Also without my knowledge, on 6/13/16, Ellie sent me pictures of Father and his attorney's communication while we were talking on the phone. I only discovered the pictures after we hung up and worried about her safety and called Phil back many times to check on her. I believe this is why his treatment towards her significantly worsened.

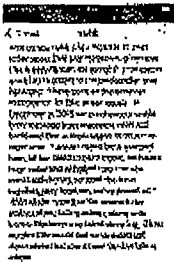
I am attaching what Ellie sent me that day because this is also something Ellie read/discovered on her own,....

TN surveillance and wiretapping Act of 1985 made it illegal for anybody to hack into another person's phone, computer without the other individual's consent. It is a class D felony if you do so. The phone Ellie uses is registered in MY name and Phil and his attorney are aware of this law since they are both attorneys. Phil keylogged me and broke this law when we were still married.

They were scheming ways to make Ellie unlock her phone so they can download the content and get it analyzed. Now you can only imagine why Ellie has been so traumatized. These are few of the contents Ellie sent me on 6/13/16 because apparently she wanted me to see or believe how bad what she was reading/found was. I didn't tell her to do this, she did it on her own while we were talking on HIS phone. But her discovery of what she has been finding of her Father and his attorney started on 6/4/16 during her parenting time with Father without my presence. She "memorized" most of the content and verbally told myself, my attorney and other trusted adults but we never saw the actual e mails. I hope you can now see why Ellie is so traumatized and depressed.

Kei

3 attachments

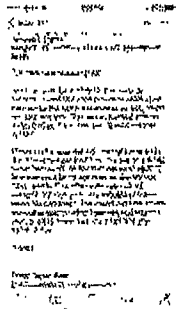


Sleep picture email from Phil.PNG
197K

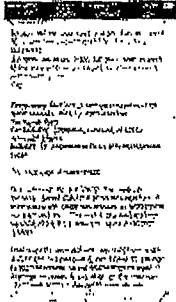
EXHIBIT
tabbies
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Gmail - Per yesterday's conversation

https://mail.google.com/mail/u/0/?ui=2&ik=637f6335d8&view=pt&q=tl...



trying to break Ellie's phone code.PNG
190K



response from Phil's attorney that Ellie read to break her phone code.PNG
205K

IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

PHILIP FOXWELL BERG,

Plaintiff,

v.

KEIKO SHIGENO BERG,

Defendant.

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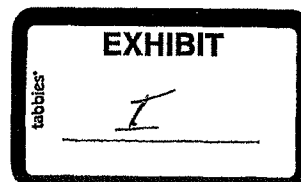
Case No. 12D-575
NOTICE OF ENTRY
REQUESTED

FILED
MAR 15 PM 12:46
NASHVILLE, TENNESSEE
M. Berg

ORDER

This matter came to be heard on March 13, 2018 upon the Respondent's Motion to Suspend Mother's Parenting Time and petitioner's Motion to Continue Trial, based upon a review of the record as a whole, arguments of counsel, and review of the exhibits introduced at the hearing on this matter, the Court finds that both motions are well taken and finds as follows:

1. The final hearing currently set in this matter for March 13, 14, 20 and 21, 2018 is continued indefinitely pending further order of the Court;
2. The Court finds that leaving possession of the parties' minor children with Ms. Berg presents a likelihood of substantial harm and justifies a modification of the parties' Permanent Parenting Plan. In fact, the Court finds that a failure to act will result in a substantial harm to the children and the modification is in the best interest of the minor children.
3. Mr. Berg is immediately awarded exclusive ^(PES) ~~custody and~~ possession of the minor children. Mr. Berg shall either pick Ellie up from school on March 13, 2018 or from her track meet on March 13, 2018. Should Mr. Berg have difficulties in picking up Ellie from either event, if necessary, law enforcement shall take the child to Juvenile Court where she shall remain overnight and the Court will address the issue on the morning of March 14, 2018.



GB

4. Pending further order of the Court, Mr. Berg shall have sole decision making authority for all issues for both children. This includes all treatment options for Ellie and Samuel.

5. Ms. Berg is **ENJOINED** and **RESTRAINED** from contacting the parties' minor children in any fashion either directly or indirectly. This includes, but is not limited to, contacting, either directly or indirectly, the children's therapists, medical providers, teachers, school officials or administrators, or coaches.

6. Ms. Berg is further **ENJOINED** and **RESTRAINED** from directing any third party, including her relatives, from contacting or coming about the parties' minor children.

7. Mr. Berg shall immediately remove any phone possessed or owned by Ellie Berg from her possession. Upon removal, Mr. Berg shall power off the telephone and provide that telephone to his counsel. Mr. Berg's counsel shall then deliver the telephone to Ms. Berg's counsel. Ms. Berg's counsel shall at no time provide the telephone to Ms. Berg or power on the telephone and shall retain exclusive possession of the telephone pending further order of the Court.

8. Ms. Berg shall surrender each child's passport to the Circuit Court Clerk by 4:00 p.m. on March 13, 2018. The ~~Court~~ ^{Circuit Court Clerk (PSS)} shall maintain possession of those passports pending further order of the Court.

9. Mr. Berg's child support obligation shall be suspended pending further order of the Court.

10. Mr. Berg shall identify and explore potential treatment options for Ellie and submit those treatment options and the cost of those options to the Court so the Court may allocate costs between the parties. In addition, in order to assist the Court in allocating costs, each party shall submit an Income and Expense Statement.

11. Ms. Berg shall submit herself to counseling to address the issues discussed at the hearing and found in Dr. Freeman's Rule 35 report. A list of counselors shall be submitted by Mr. Berg for the Court's selection.

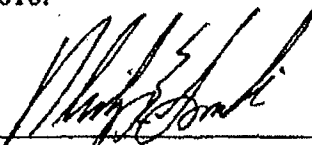
12. Ellie shall attend, in addition to any medical treatment selected by Mr. Berg, counseling. A list of counselors shall be submitted by Mr. Berg for the Court's selection.

13. Pending further order of the Court, the children shall remain in the schools in which they are currently enrolled.

14. This Order shall remain in full force and effect for at least 60 days. In approximately 60 days, the Court shall set and conduct a status conference to determine whether the terms of this Order should be modified and to determine whether a final hearing should be set.


It is so ORDERED.

Dated this 15th day of March 2018.



JUDGE PHILIP E. SMITH

APPROVED FOR ENTRY:



Gregory D. Smith (Sup. Ct. No. 11684)

Brenton H. Lankford (Sup. Ct. No. 030223)

STITES & HARBISON PLLC

SunTrust Plaza

401 Commerce Street, Suite 800

Nashville, TN 37219-2490

Telephone: (615) 782-2200

Attorneys for Plaintiff, Mr. Berg

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the following method(s) upon the individual(s) listed below on this 13 day of March, 2018:

Brenda Rhoton Clark
1230 Second Avenue South
Nashville, TN 37210
Brenda@brendaclarklaw.com

- Electronic Mail
- U.S. Mail
- Facsimile
- Hand-delivery

Attorneys for Defendant, Ms. Berg

GDS ⁶⁷
per BH
Gregory D. Smith *4702022*