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STATE OF NEW HAMPSHIRE
SUPREME COURT

2018-0086

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NEW HAMPSHIRE
SUPREME COURT

In the Matter of
CRYSTAL PERRY and JOSHUA NDYAIJA

Rule 7 Discretionary Appeal
FROM 9th CIRCUIT - NASHUA FAMILY DIVISION COURT

BRIEF FOR RESPONDENT

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QUESTIONS FOR REVIEW

1. Whether the trial court by accepting the subject matter jurisdiction over this Matter contravened RSA 458 and RSA 458-A, hence making the initial, exclusive and continuing jurisdiction improper.

Sup. Ct R. 16-A

2. Whether the trial court erred or abused its discretion by not finding Petitioner in Contempt of violating a Paragraph H

MOTION OF CONTEMPT (8/26/2016), *Appendix (Apx) 334*; CONTEMPT HEARING (10/12/2016) *Transcript (CHT)*, *Apx 142*; ORDER (10/13/2016), *Apx 329*; MOTION TO RECONSIDER (10/24/2016), *Apx 318*; ORDER (11/04/2016), *Apx 328*; ORDER ON APPEAL (8/16/2017), *Apx 316*; HEARING ON REMAND (9/28/2017) *Transcript (HRT)*, *Apx 100*; ORDER (10/23/2017), *Brief Supplement (Supp.) 1*, MOTION TO RECONSIDER (11/3/2017), *Apx 283*; ORDER (01/18/2018), *Supp. 5*

3. Whether court erred or abused discretion by denying Respondent's motions seeking orders on restraint, and parental interference.

MOTION TO RESTRAIN (9/18/2017), *Apx 308*;
MOTION: PARENTAL INTERFERENCE (9/18/2017), *Apx 304*, ORDER (10/23/2017), *Supp. 3*

4. Whether court erred or abused discretion by issuing a new Uniform Standing Order (USO) based on *inter alia*, an incomplete financial affidavit, one party's figures not supported by evidence and ordering immediate income assignment payable through DCSS

MOTION TO MODIFY CHILD SUPPORT ORDER (CSO) (9/18/2017), *Apx 279*; RESPONSE TO PETITIONER'S MOTION TO MODIFY CSO (12/19/2017), *Apx 277*, MOTIONS HEARING *Transcript (MHT1: 53-96)* (2/13/2018), *Apx 29*; USO (2/13/2018), *Supp. 28*; MOTION FOR RECONSIDERATION (2/13/2018), *Apx 245*; ORDER (3/07/2018), *Supp. 37*

5. Whether court erred or abused discretion by *inter alia*, unilaterally vacating an agreed-upon provision of the parties' Parenting Plan without statutory authority or consent of parties, or a finding that is in the best interest of the child according to RSA 461-A:11

MOTION TO MODIFY PARENTING PLAN AND PERMANENT STIPULATION (2/13/2018), *Apx 235*; MOTIONS HEARING *Transcript (MHT2)* (5/10/2018), *Apx 4*; ORDER (5/14/2018), *Supp. 38*; RESPONSE TO MAY 14TH COURT ORDERS, AND MOTION FOR RECONSIDERATION (5/25/2018), *Apx 208*; ORDER (6/13/2018), *Supp. 46*

6. Whether court erred or abused discretion in granting Petitioner's motion which interferes with Respondent's rights and responsibilities. The actions, utterances and orders together seem to portray unfairness a process that cannot be trusted.

RESPONSE TO MOTION TO APPROVE
DAYCARE/KINDERGARTEN ENROLLMENT FOR
MINOR CHILD (5/3/2018), *Apx 225*; MOTIONS
HEARING *Transcript (MHT2)* (5/10/2018), *Apx 4*;
ORDER (5/14/2018), *Supp. 41*, RESPONSE TO MAY
14TH COURT ORDERS, AND MOTION FOR
RECONSIDERATION (5/25/2018), *Apx 208*; ORDER
(6/13/2018), *Supp. 46*

STATEMENT OF THE CASE AND STATEMENT OF FACTS

On 7/7/2012 parties were married at Pelham, NH, and thereafter lived in Burlington, MA. Our daughter (Faith) was born at Winchester Hospital, 9/ 2013. Family separation happened on 7/3/2014, after mother obtained a restraining order (RO) from Burlington Police Department (BPD) *see Affidavit HRT, Apx 107-109*, that she extended for a year at Woburn District Court (WDC) on 7/7/2014. She got temporary custody of Faith according to MGL c209A s3(d), *see Apx 381*. Mother modified RO on 8/7/2014, *see Apx 369*. Faith was removed from MA into NH without father's consent or an order of Court in MA, which contravenes MGL c208 s30, *see Apx 381*. Father did not see Faith for 378 days. Father underwent surgery on 7/24/2014, effects of which lasted until March 2015.

BPD filed a child neglect complaint against father at MA Department of Children and Families (DCF), an investigation was concluded as unsupported, *Apx 368*. Unilaterally, mother changed Faith's doctors from MA into NH, removed father from Faith's medical record, instructed the doctor's office to deny father access to any of the Faith's medical. Father petitioned the Probate and Family Court (MA) for an order on custody and visitation (MA Matter), filed in March 2015, served to mother on 5/4/2015 *see Apx 365*.

On 5/5/2015, mother is believed to have retained a lawyer and filed for Legal Separation at the trial court, *see Apx 375*. Mother acknowledged only the RO, but was silent on the MA Matter she had just been served. (More of her actions, *see Supp. 19*.)

Mother's lawyer filed an appearance in the MA Matter and started corresponding with father's lawyer, requesting for a continuance twice. Mother would not agree to returning Faith to MA, and would not allow me to see her, so the concealment continued even after her RO had expired by law, having failed to justify renewal as she had requested. The denial came after a full hearing at WDC on 7/7/2015. Faith and I met at a friend's home in Chelmsford, MA on 7/18/2015.

Father responded to the NH Matter with no lawyer, and no guidance from someone familiar with NH Law. Later, father retained one in NH – who was on the case briefly, she had to withdraw due to health reasons. Father was unable to proceed with two legal teams both in NH and MA due to financial reasons. Though the MA Matter was continued by mother's lawyer, the new filing in NH remained on course.

In October 2015, provided no justification yet required that father only be with Faith under supervision. Court appointed a Guardian ad litem (GAL). Father filed first contempt motion against mother on 11/09/2015 because she continued to restrict father's time with Faith. Due to father not having a lawyer, mother's lawyer became very aggressive to the extent that father filed a complaint with the Attorneys Discipline Office of the NH Supreme Court. This motion was addressed after father retained a lawyer, they agreed on some modifications to the temporary parenting plan.

In February 2016, court appointed a mediator whose efforts led to partial agreement. These were based on a wrong notion that because mother and Faith had been in NH for at least six (6) months, NH was now Faith's home state, *supposedly referring to*

RSA 458-A:12, I-a, *see Apx 385*. The rest was to be heard at the Final Hearing, among these were: life insurance, the parenting and residential schedule, and decision making.

The Final Hearing was on 5/11/2016, the first witness was the GAL. No sooner had he completed than the Marital Master (MM) called for a thirty minutes' recess, *see FHT, Apx 205*. Court never reconvened from the recess, but parties were told that the MM wanted us to agree. The MM's instructions were to lawyers - in their clients' absence, not in open court. Parties discussed both paragraphs G and H, *see Apx 354, 356*, the parenting schedule in light of father being a full time student at the time, life insurance clause (#7), *see Apx 363*, of the permanent stipulation. Parties agreed that meetings were required. The case was closed out on fifteen (15) days later on 5/26/2016.

The parties failed to resolve some issues about parenting, mother refused to meet, and put demands on father that were not part of the agreed plan. In accordance with Fam. Div. R 2.31(2), *Apx 379*, father filed a petition of contempt on 8/26/2016, *Apx 334*. Mother filed an objection, *Apx 330*. A hearing was held on 10/12/2016, *CHT, Apx 142*. Father's petition was denied, Order 10/13/2016, *Apx 329*. Father filed a Motion to reconsider, *Apx 318*. Mother filed an objection, *Apx 325*. Court denied reconsideration, *Apx 328*. Father, through a notice on 10/29/2016 appealed to the Supreme Court – case 2016-0642. The trial court's order was vacated, and remanded for hearing on 8/16/2017, *Apx 316*.

On 3/8/2017, according to Paragraph G, parties met in Chelmsford, MA– mother attended with a friend, Ms. Luther. Father

and Ms. Luther recorded audio at the meeting, with prior agreement. There is a transcript made by father, a copy to the mother, and one which was supposed for the trial court but was returned. (The notice of appeal contains a copy of this transcript, 2018-0086). Parties did not agree to make changes at the time, but agreed to meet again in January 2018, and provide an update to the Court, see *Apx 224*.

On 9/18/2017, father filed four (4) motions: motion to modify child support order (CS), *Apx 279*, motion for recusal (MM), *Apx 312*, motion to restrain, *Apx 308*, and motion for parental interference, *Apx 304*, accordance to Super. Ct. R. 7(g), *Apx 380*. Mother filed a response for motion to modify CS, *Apx 280*, filed objections to each of the other three, *Apx 313, 309, 305* respectively, on 9/27/2018. Recusal denied, *App 312*.

On 09/28/2017, a Hearing on Remand was held, *HRT Apx 100*. MM acknowledged that the previous order had been made without reading the parties' agreed Paragraph H – at *HRT Apx 103*. Court issued an order, 10/23/2017, denying petition for contempt, motion to restrain and motion for parental interference, *Supplement (Supp.) 1*. Father filed for reconsideration on 11/03/2017, *Apx 283*, mother objected on 11/13/2017, *Apx 293*.

Father filed two motions on 11/20/2017, a motion to re-assign: explaining why trust in MM's fairness was questionable, see *Apx 300*, mother objected, see *Apx 302*. *Secondly*, father filed a motion, seeking, *inter alia* clarification on the continued restrictions imposed by mother on Faith and father's movements, *Apx 240*. Mother objected, *Apx 242*. On 12/18/2017, mother filed a motion to modify CS, *Apx 274*, father responded on 12/21/2017, *Apx 277*.

On 1/17/2018, court issued an order on pending motions, denying motion for reconsideration, and motion to re-assign, *see Supp 5*. The MM wrote “The court finds that Respondent’s extreme unhappiness with its orders is the impetus for his motion.” See *Supp. 5*. This led to 2018-0086

On 2/13/2018, Court held a hearing on the motions, a different court official presiding over the hearing, *MHT1, Apx 29*, to modify child support, mother’s at *Apx 274* and father’s at *Apx 279*. Motion at *Apx 240* was also heard on the same day. Court handed out orders immediately after the hearing, *Supp. 28*. New USO, *Supp. 29*, Child Support Guideline Worksheet, *Supp.*

On 2/13/2018, father filed for reconsideration, *Apx 245*. On 2/23/2018 mother filed an objection to motion for reconsideration, *Apx 248*. On 3/7/2018, Court issued an order, denying motion for reconsideration, *Supp. 37*. This led to 2018-0153

On 2/13/2018, father filed a Motion to Modify Parenting Plan and Permanent Stipulation, *Apx 235*. Mother filed an objection on 2/23/2018, *App 237*. The parties current Parenting Plan at *Apx 348*, contains the provision as agreed at *Apx 354*, and updated at *Apx 224* but mother would not agree to meet and revisit the Plan. Father was left with no option.

On 4/26/2018, father emailed mother following up with a question about Faith’s education future since no discussion had been had up to this point, beyond emails supplying private (for profit) day cares and kindergartens in NH chosen by mother asking father to endorse. Same day mother filed a Motion to approve daycare/kindergarten enrollment for minor child, *Apx 231*. On 5/3/2018, Father responded, *Apx 225*.

On 5/10/2018, court held a hearing on the motions, *MHT2*, see *Apx 4*, heard both *Apx 231 & Apx 235*.

On 5/14/2018, Court issued orders granting all of mother's requests, denying all father's requests. Court unilaterally vacated Paragraph G of the parties' Parenting Plan, and found that father's motion was frivolous, awarding attorney's fees to mother, *Supp. 38*

On 5/25/2018, father filed a response and motion for reconsideration *Apx 208*. Mother filed an objection on 6/4/2018, *Apx 218*. Court issued an order on 6/13/2018, denying father's motion for reconsideration, *Supp. 46*. This led to 2018-0398.

Father filed motions at the NH Supreme Court, among which was to add the transcript of the Final Hearing on 5/11/2016, *FHT* see *Apx 164*.

SUMMARY OF ARGUMENT

Having obtained MGL c209A RO from MA, mother gained temporary custody of Faith according to Section 3(d), separated from father, taking Faith into NH, in violation of MGL c208 s30. Mother's commencement of Legal Separation was not statutorily proper, there was no jurisdiction over parties and over the cause, RSA 458:5 and 458:6, *see Apx 382*. Under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), RSA 458-A, Faith was concealed in NH, the six months required to award 'home state' status should not have been applicable in this Matter RSA 458-A:12,I-a, and III, *see Apx 385*. Therefore court should not have accepted this Matter under both statutes. MA had jurisdiction over the family, and any petitions by both the parties regarding divorce or separation would have been accepted under MGL c208 s4 and s5, *see Apx 380, 381*.

Though the trial court has jurisdiction over similar subject matter, under RSA 490-D:2, *see Apx 398*, it does not seem to have obtained subject matter jurisdiction of mother's Legal Separation petition appropriately, it is limited, RSA 458:4 *see Apx 382*. In part, the Family Division's establishment RSA 490:D-1 "...or marital master located in a family division court that is geographically accessible to the family." The family in this Matter never lived in this geographical location.

Subsequently, the father has been involved in the ongoing court situations trying to redeem rights as a father but in a seemingly one sided proceeding. The contempt motion was filed and decided on by the MM, the first time without looking at the clause about parenting disagreement process/resolution

(Paragraph H). When the order was overturned, the MM justified his previous order by denying the motion after the hearing on demand. In justifying the finding of no contempt on the mother, the court redefined the expectation of the clause: there must be an expectation of resolution for the mother to be required to attend meetings. This does not seem to be sanctioned by Paragraph H, the agreed on clause.

With situations and circumstances presented this far at the Family Division, the MM decided to deny father protection under the same law: restraining mother from further interference, both with his parenting time and schedule, and his livelihood. Evidence was reported to have been more than two years old prior to the parties 'agreed' Parenting Plan, this is an error.

The initial/current Parenting Plan foresaw the need to modify—because father was a full time graduate school student, and Faith was younger which required more focus and time on the father. The schedule has since changed and father has been working and able to spend more time with and care for Faith. The request to modify the Parenting Plan is appropriate as the initial Parenting Plan accommodates it, and is statutory based in father's case, RSA 461-A:11, I(h), *see Apx 397*. The denial of the motion, the unilateral vacating of Paragraph G by the Judge, *see Supp.39*, the continued misinformation by mother to the court, *among others*, are reasons to vacate this order. The Judge's statutory authority to modify any section of the parenting plan has to have basis in the best interest of the child, RSA 461-A:11, II, *see Apx 398*. Awarding attorney's fees seems improper and discriminatory, and does not agree with parties permanent stipulation #20.A at *Apx 361*

After filing to modify child support, parties exchanged financial information in October 2017: mother indicated she was earning \$812 monthly, *see Apx 253*. On 2/13/2018, mother presented (among others) a financial affidavit indicating she was earning \$5137, *see Apx 260*. The information mother provided in October 2017 was not notarized. The only supporting documents for the mother's earnings are two paystubs, from different employers: different pay rates, and not enough to establish present income. The lack of sufficient documentation, especially since the Fam. Div. R. 1.25-A, highlighted on the financial affidavit requires full disclosure, also B1(c) *see Apx 379* requires four (4) most recent pay stubs... from each employer.

The court is to carry out a fact finding hearing, that determines the current income of each parent, considers the needs and ability to meet them, consider all circumstances: and then determine the numbers to use in calculating the child support obligation. Payments to the obligee according to the 5/11/2016 USO, *see Apx 357*, was not included in the calculation for arrearage, *see Apx 246*.

Mother's motion to enroll Faith in day care/kindergarten, and later school was a smoke screen in the continuing attempt at silencing father's participation and rights in Faith's life. There is a law that makes it a duty, of every parent under RSA 193:1, I, *see Apx 380*, to cause child to attend school, at the age of six (6) years. The Judge's order was unnecessary in view of this Statute, and she verbalized the same sentiment, however, she went ahead and made the order. Since there is a Statute addressing school attendance, the court ought not have issued this order: it is an error. This order

makes the Parenting Plan final and permanent, with father's influence or rights significantly diminished. The father loses any constructive dialogue about Faith's education, because decisions will be made, and imposed on father using this order.

Finally, with court's finding that Paragraph H 'may not ever be enforceable' while suggesting that Paragraph G precedes Paragraph H in the process of resolving parenting disagreements, suggests that these two Paragraph were 'designed' to work together as part of RSA 461-A:4 II, (g-h), *see Apx 397*. Current court orders stand opposed to the intent of the parties' Parenting Plan, no willingness to enforce RSA 461-A:11, II(h) and there is no RSA 461-A:11, II(g), this affects RSA 461-A:11. This affects the father, and Faith's relationship. The trial court, does not seem to possess proper jurisdiction and the ability to provide an unbiased judicial venue.

ARGUMENT

I. THE TRIAL COURT'S EXERCISE OF JURISDICTION OVER THIS MATTER APPEARS TO HAVE BEEN OBTAINED IN CONTRAVENTION NH RSA 458 AND RSA 458-A

The trial court has jurisdiction over, among others, legal separation, RSA 490-D:2, *see Apx 398*, but it is limited by RSA 458:4, to grant relief if there is jurisdiction over parties and the cause of action, RSA 458:5 and 458:6 *see Apx 382*. Both are not applicable.

The family lived in MA from July 2012 until July 2014 when mother left with Faith. Mother appears to have violated MGL c208 s30, *see Apx 381*. However, for both parties, MA was the right forum and jurisdiction at the time mother commenced in NH, according to MGL c208 s4 and s5, *see Apx 380, 381*.

The only connection of father, marriage to NH seems to be that parties were married in Pelham, NH. The marriage was lived out in MA, and Faith was born in MA. Mother called BPD asking about child custody *see Apx 208*, the RO obtained from BPD and WDC, *see HRT, Apx 107-109*, the neglect complaint filed with DCF by BPD, the investigation and conclusion by DCF in MA, *see Apx 368*— all these place the origin and point of separation in MA.

The RO obtained by mother from WDC was from a court of limited jurisdiction, it could only award temporary custody of Faith to mother, *section 3(d) see Apx 381*. The Probate and Family Court in MA has jurisdiction over custody and visitation. Therefore, there seems to have been an error in mother's petition for legal separation where she states that she was involved in a court

proceeding to determine child custody, *see Apx 376*. Her return to WDC was to modify her RO to *allow for supervised visitation*.. The Judge explained that this was not court ordered, mother modified her RO, *Apx 369*. Mother would have proceeded to Probate and Family Court to present her complaints, so that the court with proper jurisdiction would hear both sides since the 'emergency' she had reported was taken care of. This grants MA the jurisdiction over all family members: mother, father and Faith.

Mother left MA as as soon as she obtained the RO, *see Apx 371*. Father was unaware of her whereabouts, was ordered no contact, and her address was impounded. Mother did not approach the Probate and Family Court with jurisdiction over the Matter: which appears to have the jurisdiction over both parties for divorce, according to *MGL c208 s4 and s5, see Apx 380, 381*.

At the commencement of this Matter in NH: the family had never lived in NH, father was never personally served in NH, mother had not been domiciled in NH for one year preceding action, this contravenes RSA 458:5, court in NH did not have jurisdiction over the parties, neither did it have jurisdiction over the cause of action, according to RSA 458:6.

Mother's legal separation petition *at Apx 375*, on 5/5/2015, references the RO in MA which was still active at the time, but is silent about the MA Matter *at Apx 365*, she had just been served the previous day in NH until three months later in August 2015 when she files for divorce in NH *at Apx 370*. Answers to both questions 8 and 9 in both petitions, and explanations offered *at Apx 374* seem to have been misleading.

In Matters with children, which involve other States, RSA 458-A, codified: UCCJEA, is Statute that guides. Among the purposes is to “avoid jurisdictional competition and conflict with courts of other States in matters of child custody which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being,” [quotations omitted], **In re McAndrews &Woodson, 193 A.3d 834 (2018)**

At the commencement of this Matter, RSA 458-A:1, V, *see Apx 384* Faith had been concealed in NH since July 2014. Father’s surgery was on 7/24/2014, mother did not return to Probate and Family Court, with appropriate jurisdiction to address custody and visitation. It appears to have been mother’s intention to snatch Faith from father though she was alleging [projecting] fear that father was about to take Faith. It is alleged (by mother) that Faith had been living in NH, for more than 6 months before commencement.

NH would have been Faith’s appropriate home state, according to RSA 458-A, VII, *see Apx 384*. However, with a mother who crossed the State lines and waited to only commence the NH Matter after receiving the MA Matter, a validity issue regarding the jurisdiction of the trial court’s accepting this Matter exists. Having received the petition for legal separation, RSA 458-A:20, I, *see Apx* there was information that indicated mother’s participation in a proceeding in MA. It is unknown if the Family Division examined or contacted the MA courts regarding the information provided, or if it was deemed unimportant at the time. In RSA 458-A:20, III, *see Apx 391* ‘The court may examine parties...’ father does not have a recollection for such a hearing or meeting, or an order pertaining

the determination of MA having no jurisdiction or NH being the proper forum, RSA 458-A:18, *see Apx 388*. If this information was sought, it would have probably revealed that there was the MA Matter filed in March 2015, suggesting simultaneous proceedings meant to be avoided by RSA 458-A:17, *see Apx 388*.

Initial child custody jurisdiction, according RSA 458-A:12, *see Apx 385* would be NH as the home state of Faith and the determination would be valid. However, when there is concealment both of the child and information, the process becomes questionable. By awarding NH the initial child custody jurisdiction means that it also get the 'exclusive, continuing jurisdiction,' the physical presence of Faith in NH for more than 6 months without father's knowledge or consent, RSA 458-A:12, III, *see Apx 385* together with the lack of significant connections to NH – which seems to have been mother's driving force at the increased activity on 5/5/2015: enrollment of Faith at ALC, *see Supp. 19*, a false report to HPD that father had violated the MA RO *Apx 363*, and the filing of this matter is conduct to make NH decline to accept mother's petition, RSA 458-A:19, *see Apx 390*

In re Yaman, 167 NH 82 (2014), an overview of the UCCJEA, purpose number four states "Deter abductions of children." It appears mother orchestrated the abduction, albeit other issues happening at the time. Initial custody of Faith was improperly awarded to NH, the exclusive, continuing jurisdiction is also in error.

A case from West Virginia addressing an interstate forum shopping is **In re Boston, 384 S.E.2d 151 (1989)**, WV "This case, like most child custody matters, involves a collision of principles as

well as of intransigent would-be custodians of the hapless children, innocent subjects of a conflict they can never understand.” Since MA issued the first temporary child custody order, and the father who was left behind initiated the child custody and visitation petition in March 2015 after recovering from surgery, it would appear that MA retained the jurisdiction over the family. Father, and Faith continue to live in same home, Faith (apart from the concealment period of 378 days) continues to have significant connections to MA, it would not be a stretch to argue that MA retains “exclusive, continuing jurisdiction.” **In re McAndrews & Woodson, 193 A.3d 834 (2018)**

Since there was or is no order addressing the jurisdiction questions/determinations that were raised by information supplied by the petitioner at the commencement of this Matter, and since “subject matter jurisdiction can be challenged at any time during the proceeding, including on appeal,” quoting, **In re Gray, 160 NH 62 (2010)**, father urges the court to vacate and or stay this Matter in the trial court to afford a proper determination of initial child custody, personal jurisdiction, subject matter jurisdiction. Faith’s being in NH is not supported by law, and the underlying assumption of the partial agreement for divorce was based on an error due to insufficient guidance from counsel and an incomplete reading of RSA 458-A:12. Father also requests that this Matter be assigned to a court appointed special official unaffiliated with the trial court.

II. THE TRIAL COURT UNSUSTAINABLY EXERCISED DISCRETION BY FAILING TO HOLD PETITIONER IN CONTEMPT

The current Parenting Plan was agreed upon on 5/11/2016, *Apx 348*. Paragraph H, *Apx 356*, was discussed, agreed upon, signed by and submitted to court, *see Apx 210, 290, and 300 –origin of H explained*. Father's motion of contempt, *Apx 334*, expressed the cause as mother's refusal to meet about parenting disagreements as required in Paragraph H. Mother denied she was in contempt by way of motion submitted at the Hearing, *CHT, see Apx 142*. Court denied the motion saying mother was not in contempt of Paragraph G, *see Apx 329*. Father filed a motion for reconsideration, pointing out that the order was not addressing the issue, *Apx 318*, mother objected, *Apx 325*. Father successfully appealed the court's order, Case No. 2016-0642, which vacated and remanded, *Apx 316*.

The agreed mechanism or procedure, *see Supp. 2*, in paragraph H was not allowed to function as designed. First was to be email exchanges, followed by a meeting – if there was no resolution within fourteen days, we would seek the court's help. Father paid a fee to open a closed case because there was no option left, mother had refused to meet, and even had refused to work within the set limits of the paragraph. This is not rigidity to formulae, but ability or willingness to cooperate for the best interests of Faith.

Court says that for mother to be held in contempt for violating paragraph H, there must be evidence that she willfully intended to violate the provision, *Supp. 2*. An email that was shared with the court, *Apx 122, 322, at Supp. 27* asking about *Supp 13* – that

mother, knowing the procedure, appears to violate on purpose: because the attachments A and B, *Supp. 8 – 16*, which were attached by the court to the order came from the lawyer's office on the date, if forwarded to father would have been within the time period as agreed. The mother appears to be deliberately misleading the court, *see Supp. 10*, here on 7/21/2016, mother says to father "... (since you have not been an adequate provider)." However, mother then presents to the court that she does not understand what father is talking about, at *Apx 135*.

It says, *Supp. 2*, that father 'did not agree with the child's treatment...' not sure how court makes this assertion. It also says that, in reference to requiring father to pay at day care, '*There is no provision in the Parenting Plan for such a requirement. Consequently, there appears to be a dispute on this issue.*' The next paragraph of *Supp. 2* says about "make up time" '*There is no provision in the Parenting Plan that requires make-up time. Consequently, the court finds that there can be no dispute over a provision that does not exist.*' In the foregoing examples, there seems to be disparity and a bit of confusion that breaks the trust in the judicial process. Court says the meeting is supposed to address issues not resolved by email, and also an extra step following G, in attempting to resolve disputed issues in parenting prior to court intervention. Paragraph H, as a link to Paragraph G in RSA 461-A:4, II(g), &(h) *see Apx 397*.

In court's view, that step ought not to be part of the agreement, or the order – each party ought to decide what is not agreeable, and bring it to the court. More confusing, however, *Supp 2* "*Petitioner is not in contempt of any of the parenting time provisions. Therefore there was no requirement to meet.*" If understood correctly, there

has to be a finding of contempt prior to requiring a meeting. This does not seem like the intention of the Paragraph H we agreed upon.

“The contempt power is discretionary and the proper inquiry is not whether we would have found the respondent in contempt, but whether the trial court unsustainably exercised its discretion.” **In re Stall, 153 NH 163 (2005)**. It goes on to say “In civil contempt, the punishment is remedial, coercive and for the benefit of the complaining party.” Faith is the ultimate sacrifice, an example is the discussion about the health issue [constipation]. Mother was unwilling to acknowledge the existence of this issue, but when father continued to raise it, the issue has gained recognition. Faith has been able to meet with a pediatric gastroenterologist, and there is an appointment coming up. It might not be resolved by the parties, but a discussion regarding how to manage in both homes where Faith resides is crucial. By court refusing to hold mother in contempt, not only is the court order being ineffective, the judicial process becomes a mockery.

The agreed-upon Parenting Plan included customized Paragraph H, *Apx 356, 347, see RSA 461-A:4*, it deals with how parenting disputes would be resolved. Mother demanded for a professional [mediator], this is not part of the Plan *See Supp. 9, 15*. Paragraph H is “apparently mandatory, mutually agreed-upon obligation to have a neutral third party assist the parents in resolving their disagreements about parenting issues before asking the court to intervene. In future cases, we expect parties to comply with such provisions in parenting plans.” **In re Conner, 156 NH 250 (2007)**

The parties agreed upon Paragraph H does not require resolution of all the parenting disputes, but an attempt on both parties to work together. Therefore, court's finding that "...however, that this dispute would never be resolved by any meeting-with or without a mediator," *Supp. 2*, does not promote necessarily the intention of the order, but adds a sanction that was never intended. Court has abrogated its judicial duty of being a neutral arbiter, *court finds, however, that-as between these parties Paragraph H may not ever be enforceable, at Supp. 3.*

Through the witness of the GAL, mother told court, *see FHT, Apx 198-200*, that father, *see Apx 199* "*—if he doesn't trust her and he won't sit in a room with her, that's why I'm wondering, how are they going to agree on anything? She's willing to make the effort, he's not.*"

III. COURT'S DENIAL OF RESPONDENT'S REQUESTS FOR ORDERS ON RESTRAINT AND PARENTAL INTERFERENCE ARE AN ABUSE OF DISCRETION

A. Motion: To Restrain

Father has expressed concern about potential harm to livelihood, due to mother's behavior and the nature of allegations over time. Some of the allegations have been mere works of fiction yet have been accepted by those in authority, without requiring proof. Father believes that mother with the help of family, friends, and colleagues at work orchestrated the current situation that has span over a few years now.

In father's motion to restrain, *see Apx 308*, instances where mother has been maliciously untruthful: in November 2016, a complaint at DCSS alleging she had not received the ordered child support for May 2016. Father provided information that proved she was misleading. This complaint was closed, and the Division issued a rescission notice. This was the second incident in NH, the first being mother's report to HPD, May 2015, *Apx 364*, of a potential violation of the active RO. Mother said she had called father's school seeking information about father's graduation, *see HRT, Apx 124*. Father's education career is on-hold, and has speculated that his current failure to proceed with his doctoral program might be linked to mother's call.

Father's motion to restrain is supported by RSA 458:16, I, (a) and (b), *see Apx 383*. The Matter in the court is the only reason that father is in NH, and since the court has jurisdiction over the Matter, and mother lives within the jurisdiction of the court, it is incumbent that court issue an order to restrain mother.

Court states that "All the alleged incidents occurred two years prior to the parties' agreed Parenting Plan." This is an erroneous finding since the dates are provided in the timeline of events, attached as *Attachment C, Supp 17*.

B. Motion: Parental Interference

Father filed another motion seeking court to order mother to desist from interfering with his parental rights, *Apc 304*. In this motion, father presents incidents that have become characteristic every time mother approaches a new person in authority – she seems to thrive in instilling fear when she presents father as 'other'

to most people. Mother has continuously used the fact that father was born in Uganda, something that was never an issue before or during the marriage, but now seems to be used to present father as different 'from us.' The motion highlights that bigger part of the underlying interference, the relocation of Faith from MA to NH with no consent from father and or court order. The terms of the RO obtained by mother in MA do not include authorization to relocate or order visitation arrangements. Rather than file proper petition in MA where we lived as a family, mother abducted Faith into NH, and did nothing from July 2014 until May 2015.

Ever since, mother has involved in active parental interference: removal of father from Faith's medical record, changing Faith's doctor's without father's consent. These and many others were presented to the court, *see HRT Apx 118-128*, in all these incidences, father has been trying to regain some of the rights that mother has unilaterally taken away. With the kind of track record that mother has so far, her affidavit to the BPD, *see HRT Apx 107-109*, suggested that mother could come up with any bizarre notion and act upon it, she did present information to the BPD and WDC that she feared father was going to take Faith away from her, and she would be alone. Mother had wanted to use Faith's doctor to file a child neglect complaint against father, but doctor had interacted with father for at least 8 months since Faith's birth as her doctor. Therefore, he did not go along with mother's notion, *see FHT, see Apx 203*, stating that parties were going the right direction. Mother told authorities that father was about to take Faith and run away, even when there was evidence that there was an impending planned surgery.

The precedent that the court's order establishes is both an abuse of discretion, and fundamentally flawed. Ignoring information that has been presented, that contains both past and current incidences, as occurring "two years prior the parties' agreed Parenting Plan," is unsustainable. The lack of an express order to bar mother from engaging in unhealthy behavior will soon have dire consequences either to father or Faith, if not both. Court has heard that mother not only took my parenting time in 2016, but also in 2018, *see Apx 214*, father's character and rights are continuing to be maligned as court aligns itself with mother albeit denying the observation, *at Supp 5*.

Father's request to the court is not a violation of mother's rights, or a punishment as has been viewed by mother *see Apx 138*, it is enshrined in the NH Constitution part I, article 14, and recognized as "a sanctity in the union of parent and child that transcends economics and deserves the utmost respect." **In re Plante &Engel, 124 NH 213 (1983)**. However, with no protection for father's rights to Faith, the abduction of Faith into NH continues to affect this "fundamental" and "natural" right.

When court fails to consider information provided by a parent, especially if the intention is to redeem or regain rights, the narrative that court is looking out for the best interest of the child becomes mere talk. This cannot be healthy, and the trial court seems to have decided to mute all information. This silence is not only on mother's false allegations that led her into this court, but also '*her willful interference with my relationship with Faith,*' paraphrasing a scenario observed in **In re Young, 628 N.Y.S.2d 957(1995)**.

Mother seems to have benefited from her behavior, concealing Faith in NH, while continuing to interfere with parental rights –both physically, and emotionally. When the court ignores the context, and only considers a small portion of time, though probably well intentioned, the decision effectively condones mother’s willful alienation of Faith from father. “Its ruling sends the unacceptable message that others might, with impunity, engage in similar misconduct... decision would nullify the principle that the best interests of the child are furthered through a healthy and loving relationship with both parents.” **In re Miller & Todd, 161 NH 630 (2011).**

Paragraph H is enforceable, the mother’s conduct is against the best interests of the child, she ought to be held in contempt of court, and ordered restrained from further injurious behavior both to character and livelihood of father, and to stop any interference with Faith and father’s relationship.

IV. THE TRIAL COURT ABUSED DISCRETION BY ISSUING A NEW UNIFORM STANDING ORDER (USO) BASED ON INSUFFICIENT FACTS AND AN INCOMPLETE FINANCIAL AFFIDAVIT

Father was a full time graduate student at the time of the divorce, the details *see App 357*. Both parties filed motions to modify child support, *see Apx 274, 279*. Based on information shared in October 2017 and February 2018, both parties appear to have had substantial change of circumstances. Mother’s documents from October 2017 reveal that she was earning monthly

\$812, *see Apx 252,253*. The new information which was only available at the hearing shows that mother's monthly income is \$5,137 monthly.

Father's motion to modify asked the court to remove the child support obligation (CSO), with the belief that as parents of Faith we have the obligation to identify and meet her needs. This was not addressed at the hearing on February 13th, 2018. Court unsustainably exercised discretion in the USO *at Supp.29*, in the following ways:

A. Weekly CSO Was Based On Incomplete Financial Affidavit

The Financial Affidavit (FA) can be found on the trial court's website. The form provides general instructions, *see Apx 379*. Relevant parts are Instruction A, which lays out when the form **must** be filled out and filed with the court, Instruction C, addresses the importance of the oath, that information provided **must** be true, accurate, **and complete**.

Mother's FA from October 2017, *at Apx 253*, lacked both a signature and was not notarized. She provided an updated FA to father and court at the start of the hearing on 2/13/2018, *see Apx 260*. However, the financial affidavit appears incomplete. Mother affirms compliance with mandatory disclosure, *see Apx 379*:

(c) The four (4) most recent pay stubs (or equivalent documentation) from each current employer, and the year-end pay stub (or equivalent documentation) for the

calendar year that concluded prior to the filing of the action. Fam. Div. R. 1.25-A, B-1(c)

Mother provided one paystub from employer2, *Apx 259*, and another from employer1, *see Apx 257*. This is not complete disclosure according to the requirements of the rule above or the oath taken while filling the FA. Therefore for the trial court to accept the FA as complete, and use the information therein is an unsustainable use of discretion.

The documentation provided by mother does not appear to be enough to establish some of the information supplied in other documents. “The duty of full disclosure is mandatory and cannot be waived by either of the parties or by the court.” *In re Rohdenburg*, 149 N.H. 276 (2003). The trial court is granted broad discretion, but *Rohdenburg* also says “they must have all information relevant to that determination before exercising that discretion.”

B. CSO Was Based On Figures Provided by Mother

A CSO establishment or modification is supposed to be fact based and though the parties provide figures to the court, the court determines what figures to use for the calculation. The trial court has the responsibility to merge the information it receives, but must also consider the needs and abilities of the parties.

The current USO *at Supp. 29* was handed to the court by the mother’s attorney which says ‘Metabolix Inc.’ *see Supp. 30*, is father’s employer, an error. The \$274 at 4.1 comes from mother’s

child support guideline's worksheet *Supp.* 36. The mother's worksheet also reports father's monthly gross income at \$7,794, which was done, as explained by mother's attorney: taking my hourly rate, multiplying it by 40 hours per week, making it \$1800. To obtain the monthly gross income, multiplied by 4.33, yielding \$7,794. Father raised the position being contractual hence no steady pay, this was rejected by court. Father presented a brief history of the income from this position, by way of a plot and data, *App* 264. Father provided four (4) current paystubs, that were not all at \$1,800, *Apx* 267, child support guideline worksheet, *Apx* 266, FA with mother's reported earnings in October 2017, *at Apx* 271.

Mother's reported new monthly income \$5,137. "When calculating a parent's child support obligation, the court must first determine the parent's "present income." ***In re Gray, 160 NH 62 (2010)***. Mother's paystubs were different at every level, the figure the court incorporated in the child support guideline is unclear. ***Gray***, continues to say "It is up to the trial court to decide what income figures should be used based upon the facts presented at the hearing." [quotations omitted]. Looking at *Apx* 257, pay rate of \$30 an hour, a 40 hour week would yield \$1,200 which when multiplied by 4.33 would give \$5,196 as gross monthly income, this figure does not include pay from second employment reflected on pay stub *Apx* 259.

The child support guideline worksheet figures provided by mother were incorporated without testing their accuracy. The figures are not supported by the record provided by mother, ***In re Hampers, 154 N.H. 275 (2006)***, this court vacated a trial court order that had been established with figures from one party which

were not supported by the record, this case bears similarities. "The credibility and forthrightness of the noncustodial parent in disclosing income is a factor to be considered in accepting evidence of net income." [quotations omitted], ***In re Crowe*, 148 NH 218 (2002)**. *Crowe*, also "the trial court must first determine each parent's present income." It must be noted here, mother is the custodial parent currently.

The worksheet does not reflect MA State tax that is paid by mother *at Supp. 36*, neither is there evidence for the child's health insurance of \$417. The trial court's child support order is unsustainable.

C. Existence And Calculation Of Total Arrearage

Before, during and after divorce proceedings, father tried to agree with mother to identify and meet Faith's needs, *See Supp 24*. When needs have been identified, father has obliged.

Arrearage is defined by RSA 458-B:1, I, as

"the total amount of unpaid support which has accrued since the effective date of a legal order which stipulates a periodic support amount due, and shall include any amount of unreimbursed assistance accumulated prior to the issuance of the legal order of support."

During the pendency of the motions to modify child support, there was a legal order of support which father continued to comply with, paying to the mother. It would appear unfair to hold father responsible for not paying an amount that was not defined during

the pendency, while he was compliant with the current USO. The definition does seem to require some proof that there was assistance accumulated, that needs to be reimbursed.

Father had not been employed since October 2014 until September 2017, partly due to health issues and being a full time student. However, the period between 9/2017 after filing to modify the CSO until 2/2018, father continued to meet his ordered obligation. This monthly payment was not reflected in the calculated arrearage amount submitted by mother, and accepted by the court.

Prior payments to mother ought to have been included in the calculation of arrearages. Mother did not include it in her request, neither did court when raised, *see Apx 246*.

In re Laura & Scott, 161 N.H. 333 (2010) credits for previous payments were allowed when a trial court “directed DCSS to calculate Laura’s arrearages... minus any credits for payments made.” *Laura & Scott* goes on to say that “the child support award is a standing order from the trial court,” and that “orders for child support are modifiable by a court” [quotation omitted]. Court did not seem interested in considering “the financial circumstances and income of each party,” [quotations omitted], ***In re Folley, 149 N.H. 393 (2003)***. This makes the court’s order an abuse of discretion.

D. Deviation From CS Guidelines Under Special Circumstances

Father requested court to deviate from the CS guideline calculation when the motion to modify was filed. At the hearing,

father brought to the attention of the court various situations that bear heavy a financial burden on him. The belief that court requires parties to file monthly expenses so as to compare, and understand each parties financial circumstances. The full disclosure of parties finances, and ability of court to assess the credibility of each parent in disclosing income and finances should be part of the guiding principles.

“In calculating the amount of support, the court was entitled to account for the financial circumstances and income of each party.” *In re Folley*, 149 N.H. 393 (2003), among these circumstances are the expenses presented to the court, which are all economical in nature. Father has brought to court’s attention before, *HRT*, *Apx 113*, that the reason he still maintains the home that the family lived in together is for Faith’s best interest. When this was presented to court on 2/13/2018, court rejected it stating “No. Everybody has rent. Everybody has a phone bill. Everybody—those aren’t extraordinary, unusual expenses to you.” *MHT1*, at *Apx 69*. Based on information presented at the hearing, not *everyone has rent*, court’s response for deviation based on RSA 458-C:5, see *Apx 396* was inappropriate.

RSA 458-C:5, I- *relevant part* says “Special circumstances, including, but not limited to... shall be considered...” By using the word shall meant that court was under obligation to consider the circumstances. Court refused to consider father’s expenses, especially rent, personal and government loans, as “other special circumstances” as requested on RSA 458-C:5, I-j, see *Apx 396*. Father was not negotiating to avoid supporting Faith, but that his living situation would be part of the consideration to a final order of

supporting Faith. “Except for subsection j, all of the special circumstances listed in RSA 458-C:5, I, are economic in nature and relate to the impact of a parent’s financial condition upon his or her ability to meet a child’s needs. As a result, the “other special circumstances” that a court may consider under subsection j must similarly involve economic factors.” **In re Carr &Edmunds, 156 NH 498 (2007).**

The record reveals that, mother since leaving father has been living at home with her mother. Court’s refusal to carry out a fact finding hearing, that compares the financial needs of both parents is an abuse of discretion, maybe it would have been able to observe that mother does not have an economic issue related to rent, whereas father does.

“The plain meaning of "including, but not limited to" is that other circumstances, not enumerated or described, may be considered.”[dissent opinion], **In re Plaisted, 149 NH 522 (2003).** Although not necessarily ending up in an adjustment, consideration of all circumstances ought to have been done.

E. Ordering Immediate Income Assignment Payable to NH DCSS

The hearing was to modify an existent USO, and father has been compliant, no issue has been raised by mother, save for the fraudulent complaint at the NH DCSS in November 2016.

Mother’s submitted USO had checked off for payments to continue going directly to obligee. However, unprompted, court made a change and ordered payable through Division, *see MHT, Apx 77-84, Supp. 31*. The ensuing conversation on record reveals

father's objections both to immediate income assignment, and paying through DCSS.

When mother left MA, she has presented that she returned to NH according to the record. Father believes that her familiarity with DCSS, as a former beneficiary, and the court system in NH is playing a role in her actions towards father. Severally, father requested that the parties open a checking account for Faith back in 2015, but mother rejected the idea.

By requesting for an immediate income assignment while maintaining the payments go directly to her would have allowed father an opportunity to study and get familiar. RSA 458-B:2, I-, *see Apx 392*, says in part, "If the state is paying public assistance for the benefit of the minor children, the assignment shall be required and shall take effect immediately." If Faith is on public assistance, mother has not disclosed this information. Mother has been rejecting an idea acceptable to court: "If the obligee is unwilling to agree to the use of a direct deposit dedicated checking account, the court shall inquire as to the reason for the obligee's objection." *RSA 458-B:2, I-b, see Apx 392*. Court should have found good cause not to require immediate income assignment as requested by mother based on "Proof of the obligor's timely payment of any previously ordered support." *RSA 458-B:2, I-c(2), see Apx 393*.

Therefore, mother's request for immediate income assignment, court's implicit suggestion to make payable through DCSS, and court's sua sponte approval of both, although purports to satisfy RSA 458-B:9, *see Apx 395*, denies father due process by taking away the periods of notice, RSA 458-B:5, *see Apx 393* and

opportunity to contest (with understanding), RSA 458-B:7, *see Apx 395*. Father who is self represented not because of confidence but because of financial challenges, is left with a sham process carried out by the Division.

V. THE TRIAL COURT'S ORDER ON MOTION TO MODIFY PARENTING PLAN AND PERMANENT STIPULATION IS ERRONEOUS AND AN UNSUSTAINABLE ABUSE OF DISCRETION

F. Because The Order Has Reversible Errors

Designation of parties in the trial court are guided by Fam. Div. R. 2.3-C, *see Apx 379* at the beginning of the legal action. These same designations remain on appeal, according to Sup. Ct. R. 28(1)(a), *see Apx 380*. Father's motion, *Apx 235*, does confirm Respondent asked court for relief A, B, C, and D. The court erroneously assigns these prayers to Petitioner, and denies relief to all of them, *Supp. 39*.

This error was brought to court's attention in father's response to May 14th court orders and motion for reconsideration *see Apx 208, 213*. The request for reconsideration was denied, hence the error(s) remain.

Court seems to address father by name, while committing another error of fact but then recovers during additional findings and orders specifically Respondent to pay attorney fees. Father opines this error appears to have been made deliberately to appear as though court was being fair to both parties in exercising discretion. Petitioner's proposed orders, *see Ap 221*, are what

became the court's order. "For an error to require reversal on appeal, "it must [have been] prejudicial to the party claiming it." [quotations omitted], **In re Giles, 136 N.H. 540 (1992)**.

The error of fact mentioned above is court's statement that "the Court disagreed and imposed an obligation on both parties to secure their child support obligation with a life insurance policy." *Supp 39*. This is new, and is not supported by the record, especially seeing that there is no courtroom record of the discussion about life insurance, *Apx 210*. It is inaccurate to say this was imposed on 'both parties' when the mother had already purchased a policy that named her mother as the beneficiary. The language seems to indicate both [as intent], but it was targeting the father.

Also the assertion that this was to 'secure [their] child support obligation' is unsupported. Paragraph 7 of the decree "*Both parties shall obtain life insurance for the benefit of Faith if such life insurance is available through their employer.*" *Apx 363*. This was a message sent by Marital Master DalPra after meeting with the lawyers. The MM interrupted father's lawyer, *see FHT, Apx 188*, on asking the lawyers to approach the bench, indicating he wanted to do very little, and then suddenly called for a recess. When father could have heard the lawyer's argument about life insurance, to notice that the religious objection had not been included, the court was never reconvened, instead there was a 'forced' agreement by the Master's design. Court is projecting interpretation on this paragraph, however, "the intent of the [parties] as expressed in the language of the stipulation," [quotations omitted], *In re Georgakilas, 157 NH 662 (2008)*, ought to be considered.

In Re Regan, 48 A.3d 920 (2012), this Court stated, “The stipulation makes no reference to life insurance constituting security for child support and we decline to read such a construction into the stipulation,” [quotation omitted]. This was and is a contested issue, the trial court’s order is new and outside of the parties’ permanent stipulation, both an error and an abuse of discretion.

G. Court Did Not Have Statutory Authority to Unilaterally Vacate Paragraph G

The [Initial Permanent] Parenting Plan, *see Apx 348*, was agreed-upon, and it is the guiding document so far. The inclusion of Paragraph G(2), *App 354*, means it is neither final nor permanent. The parties met as agreed, and contrary to what court states *at Supp. 39*, both parties recorded audio for the meeting. Mother had brought along with her two friends, but we ended up agreeing to have one of them in that meeting. By email notification, and consent, parties recorded the meeting, and agreed to update the court, *see Apx 224*.

Since neither of the parties requested court to vacate Paragraph G of our parenting plan, the only statutory authority would be RSA 461-A:11, II, *see Apx 398*, “based on the best interest of the child.” However, court’s finding that it is both unnecessary and unlikely to produce any meaningful agreements of the parties is not grounds for vacating an agreed clause in parental rights and responsibilities. More so, court found G “to be more a source of conflict than a means by which conflict can be avoided.” This is

both incorrect, and prejudicial towards father. The narrative in this order is biased, and compares with another court official's presentation of facts, *FHT, Apx 183*.

Not only did the trial court not have statutory authority, but it did not have jurisdiction over the Paragraph vacated, *Supp. 2*, because H is at the Supreme Court. If this court order is allowed to stand, both Paragraph H and G will no longer be part of the Parenting Plan, RSA-461:A-4, II, *Apx 397*. The trial court received the meeting transcript, but returned it to father, meaning the evaluation of conflict was only what was told to the court by mother. We did not agree on a specific part of the Plan to change, but as stated and submitted to court, we agreed to meet in January 2018.

In re Georgakilas, 157 NH 662 (2008), "the intent of the parties as expressed in the language of the stipulation," would require a meeting be held, this is not about the feelings of the parties, but for the best interest of the child. This Matter has been contested, as many others, mother told court through the GAL that father is refusing to work [meet] together: this is all a projection of a different reality, as father tries to get some more time with Faith, the court has chosen to align with mother.

H. Father's Prayers And Proposed Parenting Plan Had Justification And Legal Basis In RSA 461-A:11, I-h

"If one parent's allocation or schedule of parenting time was based in whole or in part on his or her work schedule and there has been a substantial change in that work

schedule such that the existing order is not in the child's best interest.”

As has been established already, father was a full time graduate student at the time of the final divorce hearing. Also, Faith had been removed for over a year by mother, and even when the negotiations/mediation was ongoing, she was still restricting father's interaction. Faith was 2 year old baby at the time, compared to now. Father's school schedule was put into consideration, and RSA 461-A:11, I-h, is sufficient legal ground to petition for more parenting time with Faith, it is in the best interests of Faith to spend more time with father, as with mother.

The agreement foresaw that parents needed to adjust the current schedule, especially for Faith and father's sake to be able to spend more time together, and the provision was added into the making of the Parenting Plan. Mother through her attorney repeatedly asserted that father did not have or indicate any basis in law to modify, and she did not read RSA 461-A:11 as she pressed the issue, *MHT2, App 16*. Her submission was incomplete, as father pointed out the basis as relating to his school [work] schedule, RSA 461-A:11, I-h, at the time of the agreement, but also paragraph G would be sufficient to overcome her argument since it is an agreed provision.

In mother's challenge to father's request for vacation time, she misled the trial court, stating in part “the child is five years old, and he's asking for two consecutive weeks of vacation. My client would testify that she's too young to be away from either parent for that period of time...” *MHT2, App 18. Supp. 1, 2* show there has already

been issues with vacation requests. Second, Faith was taken from father at the age of 9 months for more than a year so the notion that ‘she’s too young to be away from...’ is misleading. Third, the current Parenting Plan’s paragraph B-1(b), *at Apx 349*, creates a scenario for father where Faith is away for two weeks consecutively. Father requesting for two consecutive weeks for year 2018 was not unreasonable, though at this point, moot.

I. Awarding Attorney Fees Was An Abuse Of Discretion

Parties agreed on future attorney’s fees and included in their permanent stipulation a provision #20-A, *Apx 361*, stating that each party would be solely responsible for his or her attorney’s fees. The exception “Any party that unreasonably fails to comply with this decree or other court orders shall be responsible... for attorney’s fees...”

In the normal scenario, father approached court for assistance regarding the enforcement of the court orders that mother appears to be flouting. The mechanism put in place for dealing with parenting disagreements was not allowed to work as designed, by mother, which is part of this appeal. The second attempt, as expressed by the trial court’s order, *Supp. 2*, at dealing with parenting disputes would be paragraph H after G. The court awarded attorney fees to the party who appears to be in violation of both parties’ agreement and court order.

Mother asked court to find father’s motion frivolous, *MHT2, Apx 17*, citing Harkeem v. Adams, 117 N.H. 687 stating in part “This is not the first time we’ve come to court needing to address an issue

that there's no basis in law to modify." There was legal basis in Paragraph G of the Parenting Plan, also in RSA 461-A:11, I-h, and the parties' agreement. Neither the judge nor the mother's lawyer had context of this Matter, *Apx 5, 6, 30, 32*.

This has been a difficult Matter for father, the fact that he has to go into another State to redeem his God given rights as a father. The narrative has been setup to frustrate his rights, yet the court, which is expected to be fair, and a custodian to fairness, seems to be aligned with one parent over the other.

In re Martel, 157 NH 53 (2008), "[w]here an individual is forced to seek judicial assistance to secure a clearly defined and established right" and the opposing party has acted in bad faith." [quotation omitted], from **Harkeem**, where mother through her attorney suggests that she sought judicial assistance to secure a clearly defined and established right. Father opines that this would appear to be the reverse.

Kukene v. Genualdo, 145 NH 1 (2000), defines a frivolous claim [as one that] lacks "any reasonable basis in the facts provable by evidence, or any reasonable claim in the law as it is, or as it might arguably be held to be." It continues to say: "If the trial court's sole rationale for finding bad faith was the plaintiffs' continuation of their suit after being denied a preliminary injunction, it would have been incorrect." Father's motion was not frivolous, the finding of bad faith is unjustified, the award of attorney's fees ought to be vacated.

**VI. COURT'S ORDER APPROVING
DAYCARE/KINDERGARTEN ENROLLMENT FOR MINOR
CHILD WAS UNNECESSARY AND AN ABUSE OF
DISCRETION**

The context of this case is very important in understanding father's contention with the trial court's order, *Supp 44*. Paragraph G of the Parenting Plan gives both parents an opportunity to make changes in agreement with Faith's best interest, it is supposed to empower both parents, by encouraging them to work together.

Considering mother's motion, *Supp. 45*, paragraph (4) of her request would not be in accordance with RSA 461-A:4, VI, *see Apx 397* – Faith does not have 'primary' residency with either of us, and the mother's motion was simply written as a power grab albeit through the court system. Mother sought to use father's momentary financial constraints as a way to take away his rights, paragraphs #8, 10, 14, *Supp. 46,47*.

NH RSA 193:1,I, *Apx 380* has established a parent's duty towards the child. The order suggests albeit implicitly that father is opposed to Faith's education, this is far from the truth. Although father does not practice law in any capacity, mother's lawyer would have known that the above statute is mandatory, there was no need for an order for Faith's enrollment.

However, father opines that this was mother's way of making sure that Paragraph G of the Parenting Plan is rendered ineffective since she would be able to present this document so as to claim that Faith cannot be enrolled in another district, where mother is not. Mother has enrolled Faith in Day Care before, as expressed

earlier in this brief. This motion was either seeking something more sinister, or was totally unnecessary. Therefore father opines that for court to entertain and rule on the motion was an abuse of discretion, it is not in Faith's best interest, but as stated in paragraph 12, court seems to protect "wishes of the Petitioner," relevant text, *Supp. 43*

CONCLUSION

Having accepted the mother's legal separation petition, the trial court did not determine that both RSA 458 and RSA 458-A did not confer authority to exercise jurisdiction over the Matter. Information submitted according to the UCCJEA affidavit indicated that there was an RO in MA, though it should have also indicated that father had initiated proceedings at the Probate and Family Court (MA). Therefore, this failure both on the court and the mother taints the decisions that have been made this far, these have been costly on the father.

Father requests that the Matter be stayed at the trial court for proper jurisdiction determination for both the parties and Faith. Father requests that the Matter be removed from the trial court, either to allow a special court appointed official(s) to evaluate or forward it to the Federal authorities that will handle across State lines, the trial court does not have jurisdiction over father, Faith and the whole docket from commencement.

Father having laid out the ways the trial court failed to carry out a fact finding hearing to modify the child support order, requests that a hearing be afforded that will take into account all circumstances of the parties so as to determine what each ought to contribute as child support obligation for Faith. The new USO ought to be vacated, and recalculation done based on true facts.

Father requests that the order on modification of parenting Plan and permanent stipulation be vacated hence reinstating Paragraph G, and nullifying the award of attorney's fees. Also, mother should be ordered to honor agreement based in both Paragraphs G and H.

Father also requests that mother be held in contempt based on her refusal to meet in accordance with Paragraph H. The orders on restraint and parental interference ought to be heard and determined, so that father will be assured of freedom and liberty, rather than walking in fear that another allegation(s) and bad behavior from mother could harm his life.

Father requests that the order for approving day care/kindergarten for Faith be found unnecessary and vacated. Faith can go to day care, kindergarten, and school in the location that the law and the parents agree with.

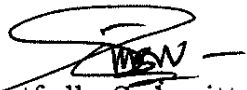
ORAL ARGUMENT

Father waives oral argument.

CERTIFICATIONS OF APPEALED DECISIONS

I hereby certify that the orders being appealed are in writing and are appended to this brief as a supplement below.

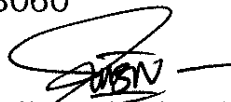
Date: Feb. 4, 2019


Respectfully Submitted:
Joshua Ndyaija, Pro Se

CERTIFICATIONS OF SERVICE

I hereby certify that a copy of the foregoing and its accompanying appendix have today been delivered to Attorney Shepard's office at 47 Factory Street, Nashua, NH 03060

Date: Feb. 4, 2019


Respectfully Submitted:
Joshua Ndyaija, Pro Se

SUPPLEMENT

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THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

Ninth Circuit-Family Division-Nashua

Docket No. 659-2015-DM-00311

In the Matter of: Crystal Perry and Joshua Ndyaija

ORDER

In October 2016 the court conducted a hearing on Respondent's petition seeking a finding of contempt against Petitioner. The court issued an order dismissing the petition. Subsequently, Respondent perfected an appeal to the NH Supreme Court. That court vacated and remanded the order, citing that the court applied the wrong paragraph (G instead of H) of the parties' Parenting Plan. The court conducted a hearing on the remand on September 28, 2017.

The parties were divorced in May 2016 by agreement. They executed a Parenting Plan that the court approved on May 11, 2016. Respondent was to have routine parenting time on a two of three weekend rotating schedule. Provisions were also made for holiday and vacation time.

Pursuant to Paragraph H of the Parenting Plan the parties were to "attempt to resolve any disagreement through email exchanges. If there has been no resolution within 14 days the parties shall seek the assistance of an individual(s), each party shall have the option of bringing one person to a meeting to try to resolve the issue. That meeting shall occur within 14 days of notice by one party that an email resolution has not been reached. In the event the meeting does not resolve the issue the parties may seek assistance of the court." (Paragraph H of Parenting Plan). A short summary of the allegations in the petition follows.

Respondent alleged that Petitioner has not met with him to discuss "disputes" pursuant to Paragraph H of the Parenting Plan; failed to provide a "make up" weekend for a weekend he missed due to Petitioner's vacation; rejected his request for the second summer vacation week; and was not forthcoming regarding the cost of day care for a week in which he was to take the child on vacation. During the hearing, he also alleged that Petitioner somehow allowed the child's medical records to be altered. Petitioner denied that she was in contempt. She had counsel. Respondent was self-represented.

Respondent presented a litany of allegations claiming that Petitioner made false statements to persons and officials regarding Respondent's care of the child. Virtually all of these allegations predated the parties' agreed Parenting Plan. The court did not consider any allegations or incidents that predated the parties' agreement.

The evidence disclosed that, within days of the court's approval of the Parenting Plan, Respondent emailed Petitioner with 12 "thoughts." Either in that email or a subsequent one that followed soon after, Respondent brought up subjects including: the child's constipation issues; some other (unspecified) health concerns; day care; medications; and a variety of other issues. A copy of that email is attached to this Order (Attachment A). Petitioner responded, apparently addressing all the concerns. Her answers were not satisfactory to Respondent. They are also attached to this Order (Attachment B). Respondent perceived that a "dispute" had arisen.

The Respondent's petition alleged that Petitioner refused to have the meeting following his notification that there has been a dispute on parenting issues. During the course of the hearing, as well as a review of the emails and pleadings, it is clear that Petitioner attempted to answer Respondent's inquiries. Respondent did not agree with the child's treatment-even though he was informed that the pediatrician had seen the child, made recommendations for her treatment and Petitioner was following those recommendations. The court finds that any "dispute" regarding the child's care is with the pediatrician and not with Petitioner.

Respondent also alleged that Petitioner required him to pay for the child's day care fee for any week that he took the child for parenting time. There is no provision in the Parenting Plan for such a requirement. Consequently, there appears to be a dispute on this issue. The court finds, however, that this dispute would never be resolved by any meeting-with or without a mediator.

Respondent alleged that Petitioner refused to allow "make-up time for a switch in weekend parenting time. There is no provision in the Parenting Plan that requires make-up time. Consequently, the court finds that there can be no dispute over a provision that does not exist.

Respondent alleged that Petitioner rejected his request for a specific week of parenting time for the summer in 2016. The Parenting Plan clearly states that, in the event of a dispute over summer vacation weeks, Petitioner's selection shall govern in even numbered years. (See Paragraph 4 (b) 3 of Parenting Plan). Petitioner is not in contempt of this provision.

A review of the email exchanges between the parties clearly shows a couple who cannot effectively communicate with one another. The evidence disclosed that some of Respondent's concerns were answered by the Petitioner (digestive issues; following medical advice regarding them). Petitioner argued that Respondent constantly would disagree upon the most mundane issues in order to force a meeting. The court has reviewed the emails, the pleadings and the documents Respondent submitted-both at the original hearing in 2016 and at the remand hearing in September 2017.

Paragraph H of the Parenting Plan describes a procedure the parties are to follow when there are "disputes" than cannot be resolved. Since the section is part of the Parenting Plan "disputes" obviously refer to parenting disputes. As written elsewhere, Respondent's petition cited three principal areas of "dispute". The first cited Petitioner's alleged refusal to replace a weekend of Respondent's parenting time. Petitioner wished to have parenting time with the child for a trip to West Virginia. Respondent agreed and requested to switch a weekend. The switch apparently did not occur. The second concerned a week of vacation parenting time (each party is to have two non-consecutive and uninterrupted weeks of parenting time in the summer) Respondent alleged he did not receive. The third was a dispute of question regarding payment for day care during a week the child would be away from day care due to parenting time with one party or the other. A fourth (non-parenting dispute) concerned the QDRO.

Paragraph H is intended to be a mechanism whereby disputes not resolved by email are to be addressed at a meeting between the parties and third and fourth parties. It serves as an extra step (following Paragraph G) in attempting to resolve disputed issues prior to court intervention. In order for the court to determine whether Petitioner is in contempt for violating Paragraph H, there must be evidence that she willfully intended to violate the provision. Petitioner is not in contempt of any of the parenting time provisions. Therefore there was no requirement to meet. There was a dispute regarding the payment for the day care week the child may miss due to the exercise of parenting time. However, the evidence disclosed that the payment issue was never in play as the expense was not incurred.

The court finds that Petitioner did not act willfully or with malice by not agreeing to meet with the Respondent. She was under the reasonable belief that there were no issues that needed resolution.

The court notes that no finding in this Order should be construed that either party acted with bad faith.

The court notes that neither party requested that Paragraph H be vacated, so the court shall not deal with that extraordinary measure. The court finds, however, that-as between these parties- Paragraph H may not ever be enforceable.

RECOMMENDED:

1. Petitioner has not violated any provision of the Parenting Plan. There is insufficient evidence to prove that she acted unreasonably, willfully or with malice.
2. Petition for Contempt is dismissed.
3. Respondent's Motion for Parental Interference is denied. All the alleged incidents occurred two years prior to the parties' agreed Parenting Plan.
4. Respondent's Motion to Restrain is denied. All the alleged incidents occurred two years prior to the parties' agreed Parenting Plan.
5. The Clerk shall schedule Respondent's Motion to Change Child Support as the docket permits. 30 minutes are allotted.

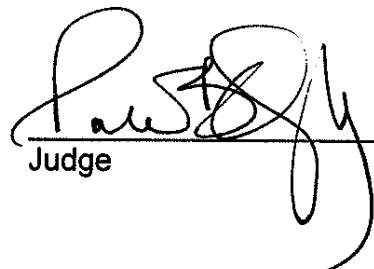
10/23/17
Date


Bruce F. DalPra, Master

I hereby certify that I have read the recommendation and agree that, to the extent that the marital master has made factual findings, he has applied the correct legal standard to the facts determined by the marital master.

So ordered:

10 | 23 | 17
Date


Judge

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

9th Circuit - Family Division - Nashua
30 Spring Street, Suite 102
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

**JOSHUA DEBONGS NDYAIJA
2 HALLMARK GARDENS
UNIT 5
BURLINGTON MA 01803**

Case Name: **In the Matter of Crystal Ndyaija and Joshua Ndyaija**
Case Number: **659-2015-DM-00311**

Enclosed please find a copy of the Court's Order dated October 23, 2017 relative to:
Order on Hearing on Remand

October 24, 2017

Sherry L. Bisson
Clerk of Court

(567)

C: Robert M. Shepard, ESQ

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

Ninth Circuit-Family Division-Nashua

Docket No. 659-2015-DM-00311

In the Matter of: Crystal Perry and Joshua Ndyaija

ORDER

On or about September 28, 2017 the court conducted a hearing on remand. Petitioner had counsel and Respondent was self-represented. Following the hearing the court issued its order. On November 3, 2017 the Respondent filed a motion seeking reconsideration of the order. He took issue with the court's findings, rulings and decision. On November 20, 2017 Respondent filed a pleading entitled "MOTION." His prayers for relief sought "clarification into what authority and under what circumstances does one parent deny documents, demand explanations from the other parent as pertains to the child's information"; sought "clarification into the reasons and restrictions the Petitioner continues to put on the freedom of movement of the daughter and father. Specifically travel outside the United States;" and "requests that the daughter be allowed to obtain identification/travel documents. The court shall determine the custody of the documents, and establish the process for future travel after evaluating the Petitioner's reasons and insinuations."

On the same date Respondent filed a MOTION TO REASSIGN. He alleged that the court made more erroneous findings, citing his motion to reconsider. In another pleading Respondent alleged that the court had allied itself with the Petitioner.

The court has reviewed the allegations described in his Motion for Reconsideration. The court finds that the order issued on October 23, 2017 was based on the consideration of all relevant and reliable evidence. The court certainly has not exhibited favor of one party over the other. Such a complaint is baseless. The court finds that the basis for Respondent's motion seeking reassignment of the court to another judicial officer is his extreme disappointment in the court's order.

RECOMMENDED:

1. Motion for Reconsideration is denied.
2. Motion to Reassign is denied as having no justification. This judicial officer rejects Respondent's allegations that the court is not able to provide a full and fair hearing. The court finds that Respondent's extreme unhappiness with its orders is the impetus for his motion.
3. In spite of the court's findings in Paragraph 2 the court, on its own initiative, recuses from any further hearings regarding the Respondent.
4. This matter, and all future matters concerning the Respondent, is referred to the administrative judge for reassignment.

5. The Clerk shall schedule Respondent's pleading entitled "MOTION" and Petitioner's motion seeking a modification of child support once the administrative judge reassigns this matter as the docket permits.

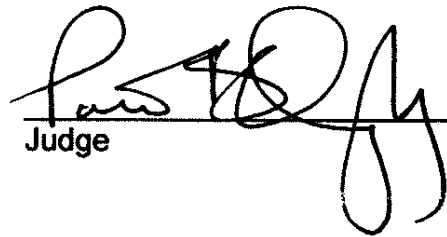
1/17/18
Date


Bruce F. DalPra, Master

I hereby certify that I have read the recommendation and agree that, to the extent that the marital master has made factual findings, he has applied the correct legal standard to the facts determined by the marital master.

So ordered:

1/17/2018
Date


Judge

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

9th Circuit - Family Division - Nashua
30 Spring Street, Suite 102
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

**JOSHUA DEBONGS NDYAIJA
2 HALLMARK GARDENS
UNIT 5
BURLINGTON MA 01803**

Case Name: **In the Matter of Crystal Ndyaija and Joshua Ndyaija**
Case Number: **659-2015-DM-00311**

Enclosed please find a copy of the Court's Order dated January 17, 2018 relative to:
Order on Pending Motions

January 18, 2018

Sherry L. Bisson
Clerk of Court

(567)

C: Robert M. Shepard, ESQ

7

ATTACHMENT A

Jillian R. Walsh

From: Crystal LN <ndycrystal2@gmail.com>
Sent: Friday, September 09, 2016 9:44 AM
To: Jillian R. Walsh
Subject: Fwd: Follow Up
Attachments: Outline of Issues.pdf

----- Forwarded message -----

From: Joshua DN <ayijuka@gmail.com>
Date: Tue, Jul 26, 2016 at 2:41 PM
Subject: Re: Follow Up
To: Crystal LN <ndycrystal2@gmail.com>

Greetings!

You state that 'constipation is not a big issue,' but it is to me. We have gone back and forth for months about this. She improves for some days, and you insist that you don't see the problem. So I am not sure, is it Faith acting out when she is with me or is it something else?

I am attaching an outline -not that we need to start discussing, but many of the things are long overdue. I took time to study some of the emails this year, since January. All the things mentioned, or most, have been occurring or ignored, mostly by you. One thing stands out for me - every time I have asked something unclear about Faith's health or medication, you ask out of the blue "Where do you go to church Joshua?" How's this related to my requests and inquiries, no idea.

You say "If we meet, ...professional," and in light of your confession in an email on March 18th this year, supporting what your lawyer had just said, please feel free to get one. But let us be very clear: the agreement/order has a timeline of how issues should be handled, and it also mentions a 3rd and or 4th party for a meeting - it doesn't define who, we do define these people. If you want a professional aka therapist, you meet the cost, no problem. If you imagine or expect me to contribute, that is not in order. I am willing to meet with you, with an audio recorder or another person of your choice and mine too.

I do not think it is helpful to even discuss what was before the order, but just in case you need context that what you are saying is a bit off line, read an email I sent to you on February 24th asking for 3/4 weekends a months. You rejected the idea - until now that we have something concrete in place? I asked the Judge for all weekends, he gave me what he gave me -and you agreed, so let's move on. The only disturbing situation here is that you are even encroaching on the little time I have with Faith, and you are taking it just like all power belongs to you! If you are choosing to block Faith from being with me on my graduation weekend/celebrations, I can do nothing about that -but to ask the Judge to look into it for me, but that is not a good precedent. Today you were even ordering me about Sunday: because it is your birthday! Even the little time I have with Faith is not giving you peace? You want to take it away? After an entire year of holding Faith away from me? Be kind to your child, and to me too.

We supported Herbert and his family, as a family. He even told me he wanted to thank you, in person for the support - even after we are divorced. I think that is humane. And he wanted to see Faith, was that a bad thing? I am glad he got the opportunity to meet with Faith, and with you.

The(since you have not been an adequate provider) statement sounds like an email I received from you, about someone else on 11/21/2013 - why is it very easy for you to lash out at people when you disagree with them? Disagreeing is not a bad thing, but why paint this picture of doom and gloom? Something I am encouraging you to sincerely think about, now that you have a very smart child -she looks at everything you say, and hears everything you don't say. Your words about your friends and perceived enemies will discredit you, it is just a matter of time.

You know I do not hate you, and you know I do not have time or energy for hating, I just want to raise my child. It is so hard to see you and read or hear what you have to say. Faith sung for me a song recently "Be careful little Dad where you go..." as she looked for me in the house, and paraphrased a common song. And my late Dad also quoted a Scripture for me "Be very careful then how you live..."

Please find attached the outline, with what I intend to send to the Judge if we remain on this trajectory below.

Blessings, Joshua

Items going to the Judge

- One weekend of my PT taken, unwillingness to replace or swap it.
- Hours cut from my PT, due to mother's birthday -which is not part of agreement, but agreeable.
- My vacation week rejected (August 29 - Sept. 5th), even after mine is taken -and not yet replaced.
- My vacation contingent on paying unclear amounts of money, so as to have Faith.
- Finances from QDRO and pictures offered, not claimed close to three months after final decree.

On 21 July 2016 at 03:19, Crystal LN <ndycrystal2@gmail.com> wrote:

Hi Joshua,

Faith is doing well. She enjoyed the trip.

Faith has been pooping daily and had a large formed stool tonight - no sign of blood. The last bit of blood was noted back in April, and since then she has not had any. When she is in the bathroom with me, I read to her. This gives her something to focus on. She does not hold my hands, nor does she shake. She just gets real quiet and poops while she listens to the story. Faith continues to drink lots of fluids and eat a wide variety of fruits and vegetables and some beans. It is my opinion, that the issue of constipation is not a big issue, as long as we stay on top of it. Lately, she has been doing very well. So let's agree to stay vigilant in this matter.

Please clearly outline and specify every issue you would like to discuss. You are saying we need to meet. What specifically do we need to meet about? Please list it so we can begin to discuss it. If we do meet, it should be with a professional.

As for cooperation, I had requested that we keep your weekends the every other schedule, plus adding a weekend on your end, which would allow me to keep my every other weekend position as a private duty nurse. You denied me that, forcing me to find child care for Faith on the weekends I have her and need to work. The

weekend of September 3rd, I have off, we have plans. You have Faith 75% of weekend times, please plan your graduation party on one of those weekends.

In the spirit of cooperation, though in the final agreement, you would get no weekday time with Faith, I jumped through hoops for you to have Faith on the Tuesday your friend Herbert came to visit. You are also welcome to see Faith tomorrow (Thursday) afternoon (after her nap time) if you would like to pick her up and drop her off.

HR@36 lines 11, 12, 13

Faith's appointment on the 1st of September is for WIC (since you have not been an adequate provider). Both Faith and I need to be there with Faith's immunization records in order to obtain food vouchers. I will pick her up from your place at 2:40pm on Thursday the 1st of September, and you can pick her up at 4:15pm at Nashua WIC Clinic, 134 Allds Street, Nashua, NH 3060-0000. As for paying Faith's daycare at the Adult Learning Center during the week she will be with you, the cost is \$225 for the week, please make that check out to them and send it directly to the Adult Learning Center, Attn: Jillian Link, 4 Lake Street, Nashua, NH 03060.

I will pick up Faith on September 2nd at 6pm from your place.

Crystal

On Mon, Jul 18, 2016 at 11:34 PM, Joshua DN <ayijuka@gmail.com> wrote:
Greetings!

I am assuming you are still away in WV, and have had a good time with the Carpenter Family. How's Faith doing?

Couple questions...

- First is about my requested week with Faith. On May 19th you sent me an email explaining why you were asking to be with Faith this past weekend. In it you stated that: "...only happens once a year, and I am not the one who chose the date... But I am requesting her for this weekend, since this is opportunity comes only once a year." In the same email, you provided your interpretation of the paragraph on page 4 of 8, under (b)(3). I do not believe that the word 'conflict' applies to what you did! There would have been a **conflict** if we were both asking to use the same week(s). There was no **conflict**, you requested to use my weekend.

In the spirit of cooperation; I did not stand in your way, I accepted your request. You did not consider to swap with one of your weekends, so my time with Faith has been reduced by one weekend so far. Honestly; this is not a good gesture from you, for the sake of Faith and myself.

This is the last I will make my request about the 1st weekend of September. I have already mentioned that: Aug 31st is graduation, it is a weekday. I am unable to get all my friends and family together. That is why I am requesting that my 1st vacation week includes that weekend - 3rd and 4th September. My viewpoint is that, like you said, this happens once a year... my situation happens only once. The next graduation will not be until a few more years.

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So; since you used my weekend, I am requesting (again) that the week of Aug 29th - September 5th be my vacation. I need Faith to be present with me, and for the party on Saturday 3rd, and Thanksgiving service on 4th. This is a swap for the weekend you just used. Is this acceptable to you?

- I am sure you have read and understood the final agreement and orders therein. For parenting issues, where we are not in agreement, please look over paragraph (H) again. Identify where we are currently, and what I requested for.

- You mentioned that Faith has an appointment on September 1st, what is the appointment and where? That can be arranged, either you pick her up or I bring her to the appointment if I have sufficient time, and details. You wrote that she has her next appointment on 9/20/16 before.

Blessings,
Joshua

PS. Will Faith be available on 21st (or 22nd if she doesn't go to Day Care) for some hours during the day? I'd love to spend time with her, if possible.

||

1. Health

- Constipation
- Doctor's recommendations
- Concerns (OCD, Skin, Right Foot...)
- Documentation (both medical records and records to 'others')
- Delayed communication (e.g. 9/19/14 ER visit, 4/18/16 & 6/17/16)
- Day Care @ALC (so far & future)
- 'dog' scratch ignored
- Medications

2. Communication

- In-person meetings - only 2 of us
- 3rd and or 4th party presence - who they are?
- Final divorce order clarity, discussion of deviations.
- Need my (1) weekend replacement.
- Parent's birthdays not part of final order.
- ALC - need for defining relationship.
- QDRO & baby pictures
- Length of time in my driveway/parking lot.
-

3. Finances

- 'Inadequate provider' clarification
- Court order for child support, insistence.
- Obligation and responsibility to ALC
- Professionals - whoever needs, pays.

4. Education

- How did Faith end up @ALC?
- Current standing
- Future - normal schooling schedule w.r.t agreement/order.

5. Meetings

- Court order clarity about meetings
- Timeline of issues
- ≥6 meeting requests turned down or ignored

ATTACHMENT B

Jillian R. Walsh

From: Crystal LN <ndycrystal2@gmail.com>
Sent: Friday, September 09, 2016 2:32 PM
To: Jillian R. Walsh
Subject: Fwd: July 26 reset

----- Forwarded message -----

From: Joshua DN <ayijuka@gmail.com>
Date: Mon, Aug 1, 2016 at 7:30 PM
Subject: July 26 reset
To: Crystal LN <ndycrystal2@gmail.com>

Greetings!

I am writing to let you know, that following the final agreement, and the communication since May 11th, we have had quite a number of issues. Not that we have out rightly disagreed, but we need to do better.

Several emails have been ignored, and others deflected. I am not the best at communication, but I do believe I have tried to make my thoughts clear.

This is what I think now, we will start counting the 14 days of email resolution starting July 26th. You have requested an outline with specific issues, I have provided it. Let me hear your thoughts, and or ideas. Then I will respond -to all.

If within 14 days we still have issues remaining, then we will engage the next method of resolution - meeting (with 3rd and 4th parties). According to my calculation, I hope to hear from you by August 9th - this is the first days of the next period. After August 22nd - we let Court hear our parenting grievances or disagreements.

Finally, your decision to sit in my parking lot for three (3) hours, even after requesting you to leave and come back later was not a good gesture. For some reason you decided to ignore my email from July 26th, a situation like this needs to be avoided at all costs - for the sake of Faith, hopefully we will do better next time.

Blessings,
Joshua

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1. Health

- ☑ Constipation - Resolved with continued monitoring.
- ☑ Doctor's recommendations – Following these.
- ☑ Concerns (OCD, Skin, Right Foot...) – Doctor was not concerned.
- ☑ Documentation (both medical records and records to 'others') – Please clarify.
- ☑ Delayed communication (e.g. 9/19/14 ER visit, 4/18/16 & 6/17/16) – What about it?
- ☑ Day Care @ALC (so far & future) – I think we do need to discuss this.
- ☑ 'dog' scratch ignored – It was a scratch, not ignored.
- ☑ Medications – We went over this together in the presence of Faith's Allergist.

2. Communication

- ☑ In-person meetings - only 2 of us – Please give more detail, what are you trying to communicate here?
- ☑ 3rd and or 4th party presence - who they are? – I would be comfortable with Lisa and Dave. You?
- ☑ Final divorce order clarity, discussion of deviations. – Please say what you want to say regarding this.
- ☑ Need my (1) weekend replacement. – There is nothing in the orders saying I need to do this. Every weekend where Faith is with me, we have plans to be with family and friends, because that is when family and friends are free. You have seen Faith twice now during the week – even though that has not

been part of the orders. You are not working, if you need more time, let's schedule some time for you to see each other during the week.

☑ Parent's birthdays not part of final order. – Ok, I will remember that on your birthday.

☑ ALC - need for defining relationship. – You can talk with ALC to learn what your relationship with them is.

☑ QDRO & baby pictures – You can talk with my lawyer, Robert M. Shepard (you have his contact information) to go over QDRO paperwork. I will bring you a thumb drive as you asked the next weekend you see Faith.

☑ Length of time in my driveway/parking lot. – Please explain.

☑

3. Finances

☑ 'Inadequate provider' clarification – When do you plan to start working? What degree do you now have?

☑ Court order for child support, insistence. – Yup.

☑ Obligation and responsibility to ALC – Faith is our child. I have made all payments so far. Would you like to share some of this responsibility?

☑ Professionals - whoever needs, pays. – Ok, then you can pay.

4. Education

☑ How did Faith end up @ALC? – Socialization is a very good for young children, plus I needed time to work and continue my education toward obtaining my Bachelors (which I was looking into before I knew I was pregnant). I felt three days a week was sufficient in order for both Faith to learn to socialize in

within a constructed group, and time for me to work/study. I looked at a total of 6 different daycares in the greater Nashua area, and chose ALC because it is high quality, and affordability.

☑ Current standing – What do you mean?

☑ Future - normal schooling schedule w.r.t agreement/order. -Please clarify this, I don't know what you are saying here.

5. Meetings

☑ Court order clarity about meetings - ok

☑ Timeline of issues - ok

☑ ≥6 meeting requests turned down or ignored – if it's important, I will make time to respond.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

Attachment
C

COURT NAME: 9TH CIRCUIT – FAMILY DIVISION – NASHUA
CASE NAME: IN THE MATTER OF CRYSTAL PERRY AND JOSHUA NDYAIJA
CASE NUMBER: 659-2015-DM-00311

CASE CONTEXT AND FACTUAL BACKGROUND INFORMATION

July 7th, 2012: Parties married at Pelham, NH

September 19th, 2013: Birth of daughter at Winchester Hospital, MA.

June 27th, 2014:

- a). Crystal walks into Burlington Police Department (BPD), MA at 0157Hrs to report, and was provided police escort home.
- b). A child neglect complaint logged in with Department of Children and Families (DCF), MA, by BPD against Joshua.

June 30th, 2014: DCF calls Crystal, about the 51A report.

July 2nd, 2014: Crystal calls DCF back about the 51A report.

July 3rd, 2014:

- a). Crystal calls BPD at 0048Hrs seeking information about child custody.
- b). Crystal calls DCF, schedules a home visit for July 7th – in Joshua's absence (work).
- c). Joshua has a brief discussion with Crystal and leaves for work before 8AM.
- d). DCF calls Dr. Marc Rosenthal – the child's doctor at Harvard Vanguard Medical Associates (HVMA).
- e). Crystal drops off daughter in Waltham MA at the home of Joshua's sister before 3PM, after agreeing that Joshua would pick daughter up after working half day.
- f). Crystal with colleagues at Northeast Rehabilitation Hospital, Salem NH, devises a scheme to take daughter away from Joshua.
- g). Joshua goes to pick up daughter from sister's house, as agreed and arrives first, moments later Crystal arrives unexpectedly.
- h). Joshua secures daughter into her car seat in Crystal's car, both depart for Burlington MA (home) a few minutes apart, Joshua leaving first.

- i). Crystal drives to Burlington PD, files for Restraining Order claiming being placed in 'fear of imminent physical harm.'
- j). Joshua waits for some time, calls Crystal's phone several times with no response, then calls Crystal's mother to find out if she was in New Hampshire, with negative results.
- i). Joshua calls 9-1-1 to report missing persons (Crystal and daughter), the call is redirected to Burlington PD from where information is conveyed that a 209A RO had been secured by Crystal, and officers were on the way to serve it.
- k). Crystal leaves home with daughter, to undisclosed destination, as part of the conditions of the restraining order (RO).

July 5th, 2014: Crystal calls DCF to convey RO information.

July 7th, 2014:

- a). Crystal requests for one-year extension of restraining order, Judge grants it at Woburn District Court (MA). Respondent is Pro Se.
- b). Crystal speaks to DCF post hearing at Woburn District Court – alleges Respondent monitors her phone.

July 21st, 2014:

- a). Joshua is interviewed by DCF at their Cambridge office, as part of the child neglect investigation.
- b). DCF concludes investigation into child neglect complaint against Respondent, finding it unsupported. Case closed.

July 24th, 2014: Joshua undergoes a planned *Subtalor Fusion Surgery* at New England Baptist Hospital (MA).

August 7th 2014: Crystal modified her RO,

- Allowed Communication with Joshua only by email,
- Removes distance restriction and wants to be in mediation (not ordered by court)
- Inserted the name of Caroline Rossi - as supervisor for Joshua to see daughter, replacing Lizzie - a common friend.

- Crystal requests and receives Police escort -second time, to come to Joshua's or former home and collect her belongings, and the daughter's.

August 13th 2014: Crystal -with Police escort comes to pick her property, and carries away everything that came from the wedding

September 11th – 16th 2014: Joshua admitted at Lahey Clinic, Burlington MA.

September 17th 2014*: Crystal presents a document to HVMA in Burlington MA to deny Joshua access to daughter's medical record.

September 19th, 2014: Daughter hospitalized at South New England Medical Center ER.

October 15th, 2014: Joshua **laid off** at Metabolix Inc., while still on medical leave.

January 5th 2015: Joshua undergoes a second surgery: Hardware Correction Surgery at New England Baptist Hospital (MA).

February 18th 2015: Crystal applies for assistance with NH DCSS, stating

- a). Joshua abandoned Crystal and daughter over 90 days from home.
- b). Crystal references daughter's medical record adding "*I'm afraid of him.*"
- c). Joshua has health insurance but is not covering child.

March 1st, 2015: Certificate of health issued by doctor, Joshua released back to normal life.

March 3rd, 2015: Joshua files petition in Middlesex Probate and Family Court, Cambridge MA, for child visitation and custody.

May 4th, 2015: Crystal served paperwork by Hillsborough County Sheriff's office from the Middlesex Probate and Family Court (MA Issue).

May 5th, 2015: Crystal:

1. Files for Legal Separation in Nashua Family Court, NH
2. Enrolls daughter at Day Care* - Adult Learning Center in Nashua, NH.
3. Reports [walk-in] to Hudson Police Department (NH) that she (or her mother) had seen me driving around their house in Hudson NH.

May 12th 2015: Emails to register "As for the police call... I will always be looking to see if it's you."

July 7th, 2015: Crystal comes to MA, applies to extend the RO at Woburn District Court by another year. There's a full hearing, application is DENIED.

July 18th, 2015: Joshua meets daughter for first time, since July 3rd, 2014, at a friend's home 378 DAYS

August 26th, 2015: Crystal modifies Legal Separation application into Divorce proceedings.

September 21st, 2015: Crystal informs child's doctor @PIP that there is still a MODIFIED RO, and grants PERMISSION that Joshua can be given some info about daughter's health info.

October 6th 2015: Crystal calls the office of daughter's doctor @PIP, to inform them that there is **no longer RO**

December 1st 2015: ACTIVE EFFORTS of parental alienation raised with Crystal, her attorney and bringing in the GAL at the time.

- a). Crystal removing Joshua from daughter's medical record on 9/17/2014.
- b). Crystal removing daughter from MA to NH without Joshua's consent.
- c). Crystal's changing the daughter's doctors (PCP & Allergist) without Joshua's knowledge and or input.
- d). Enrolling daughter at (?day care/ school) – no consultation or information.
- e). Plus leaving out Joshua's name, and registering daughter as having no father.
- f). Registering the daughter as WHITE – both at the allergist and PCP.

March 29th 2016: Crystal reports to child's doctor that "Father is wishing... passport for her to travel to his home country... and not bring her back to NH"

May 11th, 2016: Parties come to final agreement, submit paperwork to court, divorce is approved, final court orders issued a few days later.

May 19th 2016: Joshua provides twelve (12) 'thoughts' to Crystal, in detail, by email.

July 26th 2016:

- a). Crystal sends email demanding to have daughter on 7/31 - Crystal's birthday
- b). Crystal receives outline she requested for on 7/21 - for things to discuss.

July 31st 2016: Crystal comes to Burlington MA, sits in my parking lot for three (3) hours – demanding to have the child, who was sleeping at the time. **12:53pm - 15:58pm**

August 1st 2016: Joshua NOTIFIES Crystal about 14 day start from 7/26, end: 8/9

August 10th 2016:

- a). Crystal sends her RESPONSES a day late, by time stamp on email
- b). Joshua NOTIFIES Crystal about need to meet by 8/22, according to paragraph (H)

August 15th 2016: Joshua suggests possible meeting slots to choose from: Wed 8/17, Thur 8/18, Fri 8/19 or Sat 8/20.

August 18th 2016:

- a). Crystal DECLINES meeting, says email exchanges ought to be exhausted, feels they have not. Demands for another set of issues, in detail.
- b). Joshua asks for days that Crystal is available. Reiterates that after 8/22, this issue will go to court.

August 26th, 2016:

- a). Crystal demands for a professional mediator, as a condition to meet about the parenting disagreements.
- b). Motion filed for contempt on Paragraph (H) of Parenting Plan by Joshua.

September 9th 2016: Crystal forwards email that Joshua sent her on 8/1, asking "*will we be seeing you in court?*"

October 12th, 2016: Hearing at Family Court, Nashua NH. Joshua appearing Pro Se.

October 13th, 2016: Ruling made, Crystal is not found in contempt per Paragraph (G) of Parenting Plan. Notice issued October 18th 2016

October 24th, 2016: Joshua files Motion to Reconsider.

November 1st 2016: Ruling made, no reconsideration, motion denied. Notice issued November 4th, 2016.

November 10th 2016: Crystal **reports** to NH DCSS that Joshua did not pay Child Support in May 2016

November 29th 2016: Joshua files Rule 7 – notice of mandatory appeal at the NH Supreme Court (NHSC).

December 12th 2016: Joshua responds to NH DCSS notice, refuting the fraudulent report. But reaches out to Crystal 12/10 by email 1st, no response

December 15th 2016: NHSC advises that Joshua used a wrong form to appeal, and suggested using the discretionary appeal form.

December 23rd 2016: Joshua files Rule 7 – notice of discretionary appeal form at the NHSC.

January 25th 2017: NH DCSS recedes notice to make payable, that was based on fraudulent reporting by Crystal.

January 2th 2017: NHSC issues order accepting Joshua's appeal case.

March 8th 2017:

a). Parties meet in Chelmsford, MA - as agreed and decreed in Paragraph G.

b). Parties agree to meet in **January 2018**, update sent to court on 3/21/17 by Joshua.

March 31st 2017: highlighting calling UML, Joshua REQUESTS Crystal to promise to stay away, in writing.

April 15th 2017:

a). Joshua raises health issue (constipation) again as no progress is observed.

b). Crystal denies constipation, but describes pebbly (which is c) stools.

April 21st 2017: Crystal acknowledges constipation, describing what I had been describing. Takes a unilateral decision to start on MIRALAX for 3 - 6 months treatment.

July 3rd - July 7th 2017: Crystal and daughter travel to Minnesota, last year was to WV.

August 16th 2017: NHSC issues a vacate and remand order to the Family Court's order.

September 12th, 2017: NHSC issues order about costs, awarding \$604.62 to Joshua according to Rule 23.

September 14th 2017: Family Court issues order "Hearing on Remand" for September 28th, 2017 @2PM.

September 18th 2017: Respondent files

- a). Motion for recusal
- b). Motion to restrain
- c). Motion to modify child support
- d). Parental interference

September 26th 2017: Petitioner, through her attorney files objections to motions.

Attachment
D

Joshua /Faith May 19, 2016

1. Faith, as I mentioned, said that she had been attacked by the dog. Any updates about her skin/scar status? Speaking of skin, I never got around to asking you this: why do we give Zyrtec to Faith twice a day? Is this by any chance related to being with or close to a dog?
2. You will find attached a template from Empower Retirement, the plan carrier. You and your attorney can look at it, change the language if need be. Three options (dates): the date you terminated the marriage, the day I agreed to transfer 50% of what was accumulated during the marriage and the day of the divorce. Pending confirmation. It will come back to me, then I will sign and send it back to you, so that it is taken to court to be signed by the Judge. It will come back to me, so as to forward it to the Plan Administrator and the Carrier. This is my understanding from the Carrier.
3. I am also attaching the schedule or what I believe to be the outcome from the agreement on May 11th that we/attorneys/Judge signed, including the weekends and holidays, from my understanding. These are times I am entitled to, together with Faith. If you find a contradiction, please let me know. To be able to work together: I am willing to swap a weekend with yours if you need to use mine. For instance, you mentioned July 16th - and it happens to be mine, according to the schedule. So, in this case, I need to know what weekend you will be swapping with, and if it is okay on my end -but you have already determined that this is to be used as your 'vacation' time with Faith, I am not opposed. Please keep in mind, the time that was granted to me is minimal - and if you are trying to help Faith and I spend more time together, plan within your time, please.
4. Your property: I do believe the quicker we sort out this, the better, especially for me. Please give me a couple slots, and you do not have to come up into the home. I will bring all the items out and down to the place accessible to you. And unless you find something in your belongings that is without question rightfully mine, I do not need anything from you. And, all that you have -that I ever purchased for you with my heart and money, please keep it. I am requesting that your property be removed by July 11th.
5. Please remember, the keys to my home – original, are still missing (in your possession). Numerous emails say you were going to send the keys to the landlord; but did not, because you said recently that you have the keys. I am not sure which is what, I do need those keys. The locks were changed, and stored, to be replaced prior to leaving.
6. Faith's support/upkeep: from what I have heard from your personal experience; and what you have explained to me about your family (mother and biological father), and her treatment and insistence on making life difficult for your biological father, I am asking you to make a difference. Instead of ordering or insisting for child support, I suggest we support Faith fully together. We need to look at the bills and even those that will be coming in the near future. You have 2 degrees, and are working on #3 and you have way more job experience in your profession than myself. I wholeheartedly believe that you are capable of taking care of yourself, meaning, we should focus on Faith's needs solely. If you insist on having the department or court order child support, I do have no problem, for Faith's sake – I will not sit on my hands.

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7. Bank account: I am waiting for you to unjoin your membership from mine as soon as possible, there's no need to have this continue. And going forward, I'll need an account to transfer Faith's upkeep funds into. I do suggest that an account be opened for Faith @DCU, to which I can do transfers into – for paper trail, and easy accessibility for both of us. But it should be one way – I can deposit, but should not withdraw! If not, then we will be doing checks.

8. Currently the schedule for Christmas Eve says whoever has Faith will go up to 8pm, so that the other can pick her up at 8pm! It sounds cumbersome to me, but I would like to offer you a little wiggle room and change the pickup time, on 12/24 this year– would you like to pick her up at 6pm or 7pm? You have enough time to think about this. I am okay with 6pm, that way you are able to travel and get home with some minutes remaining for her to change and go to bed, then I will be picking her up the next day in the evening.

9. Faith's pictures: you requested for pictures you allegedly left on my camera... I am going to give it sometime, and look for them. Most likely I moved them somewhere so as to use the memory card. As soon as I find them, I will let you know, and will most likely put them on a CD or if you want to drop off a USB stick and I transfer them, but I will need to first find them. I will let you know as soon as possible.

10. Going forward, I would kindly request that you restrain yourself from feeding faith with negative information (in general, but specifically about me and) about Uganda as you may not know much about it as a country. Rather leave alone Faith to explore and find out on her own at the right time, and from sources that actually know.

Also let us endeavour to teach her positivity, and love and acceptance, and knowledge about being global citizens, with responsibility towards our nation, US of America in which we live and operate.

11. Faith's pick up: so far I have been picking her up from school, and it works so well. The agreement says pick up will be at 6pm, may I request that in the meantime we leave it for 4pm at her school. In the coming days, when I am unable to pick her up at 4pm, I will let you know in advance. I hope this will not inconvenience you.

12. Faith's supplies: may I please request too, that you make every effort to pack for her things she will need for the weekend. Maybe you should make a list and check off things that you put in her bag, the last time she did not have PJs and shoes... These are things that I will definitely provide, but for now, I am requesting that you provide for her what she already has, and needs. You do not have to send diapers - except to school.

Attachment E1



Joshua DN <ayijuka@gmail.com>

A trip with Faith.

Crystal LN <ndycystal2@gmail.com>
To: Joshua DN <ayijuka@gmail.com>

Fri, May 20, 2016 at 12:42 AM

Joshua,

1. Faith was not attacked by the dog. Any medical questions, please call her doctor directly.
2. Please let me know when you've completed the template.
3. The agreement speaks for itself. Regarding vacation time, please refer to page 4 of 8, b3.
4. This Sunday, May 22, 2016, I will come prepared to pick up my things when I come to pick up Faith.
5. Keys were sent to land lord.
6. No
7. It's my membership, it will be done in due time. Checks will be fine.
8. How about you bring her back by 8pm.
9. Thank You.
10. You as well.
11. This Friday is an exception, please pick her up at 6pm at the house. I will give you a box to put my things in before I come on Sunday.
12. When you have adequate supplies for Faith, please let me know.

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Crystal

[Quoted text hidden]

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

9th Circuit - Family Division - Nashua
30 Spring Street, Suite 102
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

**JOSHUA DEBONGS NDYAIJA
2 HALLMARK GARDENS
UNIT 5
BURLINGTON MA 01803**

Case Name: **In the Matter of Crystal Ndyaija and Joshua Ndyaija**
Case Number: **659-2015-DM-00311**

Enclosed please find a copy of the Court's Order dated February 13, 2018 relative to:

**Order on Motion (#110) and Order on Motions to Modify Child
Support Order (#97 and #114)**

Introcaso, J.

February 13, 2018

Sherry L. Bisson
Clerk of Court

(579)

C: Crystal Ndyaija; Tanya L. Spony, ESQ

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**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

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Case Name: **In the Matter of Crystal Ndyaija and Joshua Ndyaija**
Case Number: **659-2015-DM-00311**

Enclosed please find a copy of the Court's Order dated February 13, 2018 relative to:

**Uniform Support Order with Child Support Guidelines
Worksheet**

Introcaso, J.

Any party obligated to pay child support is advised that it is his/her responsibility to keep the Court (and the Division of Human Services if appropriate) advised of his/her current mailing address in writing, until such time as support payments are terminated.

February 13, 2018

Sherry L. Bisson
Clerk of Court

(579)

C: Crystal Ndyaija; Tanya L. Spony, ESQ; Division Of Child Support Services; Melissa S Penson-Mesa, ESQ

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RECEIVED
FEB 13 2018

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 9th Circuit-Family Division-Nashua
Case Name: In the Matter of Crystal Ndyaija (n/k/a Perry) and Joshua Ndyaija
Case Number: 659-2015-DM-00311

UNIFORM SUPPORT ORDER

Name, Residence and Mailing Address of Person
Ordered to Pay Support (Obligor)

Name, Residence and Mailing Address of
Person Receiving Support (Obligee)

Joshua D. Ndyaija
2 Hallmark Gardens, #5
Burlington, MA 01803

Crystal N. Perry
10 Hillendale Drive
Hudson, NH 03051

D.O.B. 12/12/1977 Telephone _____

D.O.B. 7/31/1980 Telephone (603) 577-2000

E-mail Address _____

E-mail Address _____

Name of Employer: Metabolix, Inc.

Name of Employer: Southern NH Health System

Address of Employer:
21 Erie Street
Cambridge, MA 02139

Address of Employer:
8 Prospect Street
Nashua, NH 03060

Child(ren) to whom this order applies:

Full Name Faith Ndyaija Immanuel Date of Birth 9/19/2013

Full Name _____ Date of Birth _____

The following parties appeared: Obligor Obligee Division of Child Support Services
 Other Attorney Tanya Sporny

NOTE: SECTIONS PRECEDED BY ARE ONLY PART OF THIS ORDER IF MARKED.

1. This order is entered: after hearing upon approval of agreement upon default
2. This order is a: temporary order final order

3. This order modifies a final support obligation in accordance with:
 a three-year review (RSA 458-C:7) OR substantial change in circumstances, as follows:

4. Obligor is ORDERED to PAY THE FOLLOWING AMOUNTS (See Standing Orders 4A-4G):

4.1 CHILD SUPPORT: \$ 274.00 per week (week, month, etc.)

4.2 Arrearage of \$ _____ as of 02/12/2018, payable \$ 50.00 per week (week, month, etc.)

Amended Arrearage See \$21

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Case Name: In the Matter of Crystal Ndyaija (n/k/a Perry) and Joshua Ndyaija

Case Number: 659-2015-DM-00311

UNIFORM SUPPORT ORDER

4.3 Medical arrearage of \$ _____ as of _____,
payable \$ _____ per _____ (week, month, etc.)

4.4 SPOUSAL SUPPORT (ALIMONY): \$ _____ per _____ (week, month, etc.)

4.5 Arrearage of \$ _____ as of _____,
payable \$ _____ per _____ (week, month, etc.)

4.6 Alimony shall terminate _____ *first accrual date after*

5. Payments on all ordered amounts shall begin on 09/18/2017. All ordered amounts shall be payable to: Division of Child Support Services Other _____

6. This order complies with the child support guidelines. RSA 458-C.
 This order, entered upon obligor's default, is based on a reasonable estimate of obligor's income. Compliance with the guidelines cannot be determined.
 The following special circumstances warrant an adjustment from the guidelines: (Enter applicable circumstances below. See Standing Order 6):

Court finds no justification for an adjustment. [Signature] 2/13/18

7. Support ordered is payable by immediate income assignment.
 8. The Court finds that there is good cause to suspend the immediate income assignment because:
 Obligor and obligee have agreed in writing.
 Payments have been timely and it would be in the best interest of the minor child(ren) because:

- 9A. Obligor is unemployed and **MUST REPORT EFFORTS TO SEEK EMPLOYMENT.** (See Standing Order 9A).
 9B. Upon employment the Obligor shall bring the matter forward for recalculation of support. Failure to do so may result in a recalculated support order effective the date of employment.

MEDICAL SUPPORT FINDINGS (Paragraphs 10 through 15)

10. OBLIGOR'S medical support reasonable cost obligation: \$ 311.76 per month (week, month, etc.)

10A. The medical support reasonable cost obligation is adjusted from the presumptive amount because of the following special circumstances (Enter applicable circumstances below. See Standing Order 6):

11. Private health insurance coverage is not available is available to the OBLIGOR in an amount equal to or less than the amount of the medical support reasonable cost obligation in paragraph 10.
12. Private health insurance coverage available to the OBLIGOR is not accessible to the child(ren).
13. OBLIGEE'S medical support reasonable cost obligation: \$ 205.48 per month (week, month, etc.)

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Case Name: In the Matter of Crystal Ndyaija (n/k/a Perry) and Joshua Ndyaija

Case Number: 659-2015-DM-00311

UNIFORM SUPPORT ORDER

13A. The medical support reasonable cost obligation is adjusted from the presumptive amount because of the following special circumstances (Enter applicable circumstances below. See Standing Order 6):

14. Private health insurance coverage is not available is available to the OBLIGEE in an amount equal to or less than the amount of the medical support reasonable cost obligation ordered in paragraph 13.

15. Private health insurance coverage available to the OBLIGEE is not accessible to the child(ren).

PRIVATE HEALTH INSURANCE COVERAGE(Paragraph 16A and/or 16B must be completed):

16A. Obligor Obligee is ordered to provide private health insurance coverage for the child(ren) effective Ongoing

16B. Obligor Obligee is/are not ordered to provide private health insurance coverage at this time but is/are ordered to immediately obtain private health insurance coverage when it becomes accessible and available at an amount equal to or less than the ordered medical support reasonable cost obligation.

UNINSURED MEDICAL EXPENSES

17. Uninsured medical expenses shall be paid in the following percentage amounts:
Obligor 50 % Obligee 50 % Other _____

18. Public assistance (TANF) or medical assistance (Medicaid) is or was provided for the children. Copies of pleadings related to medical coverage and child support were mailed to the Division of Child Support Services, Child Support Legal, 129 Pleasant Street, Concord, NH 03301.

19. Obligor Obligee is adjudicated the father of the minor child(ren) named above. The clerk of the city(ies) of _____ shall enter the name of the father on the birth certificate(s) of the child(ren). The father's date of birth is _____ and his state of birth is _____.

20. The State of _____ has provided public assistance for the benefit of the minor child(ren) between _____ and _____ for _____ weeks. Obligor is indebted for the assistance in the total amount of \$ _____

21. Variation to standing order (specify paragraph #), additional agreement or order of the Court:

Parties agreed to reduce Mr. Ndyaija's arrearage to satisfy Ms. Perry's obligation to pay Supreme Court Costs at \$95

Obligor _____ Obligee Crystal Perry

Staff Attorney
Division of Child Support Services

Obligor's Attorney/Witness _____ Obligee's Attorney/Witness _____

Date _____ Date 2/13/18

Date _____

Case Name: In the Matter of Crystal Ndyaija (n/k/a Perry) and Joshua Ndyaija
Case Number: 659-2015-DM-00311

UNIFORM SUPPORT ORDER

All paragraphs of this order (except those that have a check box and have not been selected) and all paragraphs of the Standing Order, (except variations in paragraph 21) are part of this order and apply to all parties.

Recommended:

Date

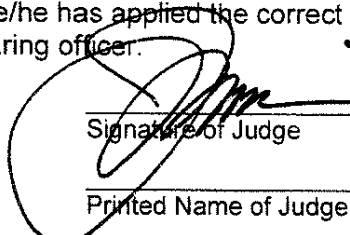
Signature of Marital Master/Hearing Officer

Printed Name of Marital Master/Hearing Officer

So Ordered:

I hereby certify that I have read the recommendation(s) and agree that, to the extent the marital master/judicial referee/hearing officer has made factual findings, she/he has applied the correct legal standard to the facts determined by the marital master/judicial referee/hearing officer.

2/13/18
Date



Signature of Judge
INTRODUCED

Printed Name of Judge

**THE STATE OF NEW HAMPSHIRE
UNIFORM SUPPORT ORDER – STANDING ORDER**

NOTICE: This Standing Order (SO) is a part of all Uniform Support Orders (USO) and shall be given full affect as an order of the Court. Variations to paragraphs of the SO in a specific case must be entered in paragraph 21 of the USO and approved by the Court.

(Paragraph numbers in the SO correspond to related paragraph numbers in the USO. Variations entered in paragraph 21 should reference the related paragraph number.)

SUPPORT PAYMENT TERMS

SO-3A. All prior orders are not inconsistent with this order remain in full force effect.

SO-3B. In cases where the order of another jurisdiction is registered for modification, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing jurisdiction. (See RSA 546-B:49,III.)

SO-3C. This order shall be subject to review and Court modification three years from its effective date upon the request of a party. Any party may petition the Court at any time for a modification of this support order if there is a substantial change in circumstances. The effective date of any modification shall be no earlier than the date of notice to the other party. "Notice" means either of the following: 1) service as specified in civil actions or 2) the respondent's acceptance of a copy of the petition, as long as the petition is filed no later than 30 days following the respondent's acceptance. See RSA 458-C:7.

NOTE: The July 1, 2013 change to the child support guidelines does not constitute a substantial change in circumstances. 2012, Chapter 248:5, "Applicability" states as follows (emphasis added):
"RSA 458-C:3, I as amended by this act shall apply to any child support order issued on or after July 1, 2013. RSA 458-C:3, I as amended by this act shall not apply to a valid child support order in effect on the effective date of this act until the next scheduled review hearing under RSA 458-C:7 or as otherwise agreed by the parties.
This act shall not constitute a substantial change in circumstances for purposes of RSA 458-C:7."

SO-3D. No modification of a support order shall alter any arrearages due prior to the date of filing the pleading for modification. RSA 461-A:14, VIII.

SO-4A. The amount of a child support obligation shall remain as stated in the order until the dependent child for whom support is ordered completes his or her high school education or reaches the age of 18 years, whichever is later, or marries, or becomes a member of the armed services, at which time the child support obligation, including all educational support obligations, terminates without further legal action, except where duration of the support obligation has been previously determined by another jurisdiction, or is governed by the law of another jurisdiction, and may not be modified in accordance with statutory language referenced in SO-3B. If the parties have a child with disabilities, the court may initiate or continue the child support obligation after the child reaches the age of 18. No child support order for a child with disabilities which becomes effective after July 9, 2013 may continue after the child reaches age 21. (See RSA 461-A:14, IV)

Case Name: In the Matter of Crystal Ndyajja (n/k/a Perry) and Joshua Ndyajja
Case Number: 659-2015-DM-00311

UNIFORM SUPPORT ORDER

- SO-4B. In multiple child orders, the amount of child support may be recalculated according to the guidelines whenever there is a change in the number of children for whom support is ordered, upon petition of any party. In single child orders, the support obligation terminates automatically, without the need for further court action, upon the emancipation of the child. The obligor remains obligated for any and all arrearages of the support obligation that may exist at the time of emancipation.
- SO-4C. If the order establishes a support obligation for more than one child, and if the court can determine that within the next 3 years support will terminate for one of the children, the amount of the new child support obligation for the remaining children may be stated in the order and shall take effect on the date or event specified without further legal action.
- SO-4D. In cases payable through the New Hampshire Division of Child Support Services (DCSS), if there are arrearages when support for a child is terminated, payments on the arrearages shall increase by the amount of any reduction of child support until the arrearages are paid in full.
- SO-4E. Pursuant to RSA 161-C:22, III when an assignment of support rights has terminated and obligor and the recipient of public assistance reunite, obligor may request a suspension of the collection of support arrearage owed to the state under RSA 161-C:4. So long as the family remains reunited and provided that the adjusted gross income of the family as defined by RSA 458-C is equal to or less than 185% of the Federal poverty guidelines as set by the United States Department of Health and Human Services, DCSS shall not take any action to collect the support arrearage owed to the State.
- SO-4F. If the collection of a support arrearage pursuant to RSA 161-C:4 is suspended, the obligor shall provide DCSS with a financial affidavit every six months evidencing the income of the reunited family and shall notify his or her child support worker in writing within ten days of any change in income or if the family is no longer reunited. Failure to report changes in income or in the status of the family as reunited or to provide a financial affidavit shall cause the suspension of collection to terminate.
- SO-4G. Each party shall inform the Court in writing of any change in address, within 15 days of the change, so long as this order is in effect. Service of notice of any proceeding related to this order shall be sufficient if made on a party at the last address on file with the Court. A party who fails to keep the Court informed of such a change in address, and who then fails to attend a hearing because of the lack of notice, may be subject to arrest.
- SO-5A. If no date appears in paragraph 5 of the USO, the first support payment shall be due on the date this order is signed by the Judge.
- SO-5B. If support is payable through DCSS, DCSS application for child support services must be submitted before DCSS can provide services in accordance with the order.
- SO-5C. If support is payable through DCSS, DCSS is authorized and directed to collect all sums, including any arrearages, from the obligor and forward the sums collected to the obligee or person, department, or agency providing support to the children named in the USO. Any payment shall be applied first as payment towards the current child and medical support obligation due that month and second towards any arrearages.
- SO-5D. If support is ordered payable directly to the obligee, it can only be made payable through DCSS at a later time if (1) the children named in the USO receive assistance pursuant to RSA 161 or RSA 167; (2) a party applies for support enforcement services and certifies to DCSS that (a) an arrearage has accumulated to an amount equal to the support obligation for one month, or (b) a court has issued a protective order pursuant to RSA 173-B or RSA 461-A:10 which remains in full force and effect at the time of application; or (3) a court orders payment through DCSS upon motion of any party that it is in the best interest of the child, obligee, or obligor to do so **RSA 161-B:4**.
- SO-5E. Collection by DCSS on any arrearage may include intercepting the obligor's federal tax refund, placing liens on the obligor's personal and real property including qualifying financial accounts. Federal tax refund intercept and lien remedies shall be used to collect arrearages even if an obligor is complying with the child support orders. Pursuant to 45 CFR 303.72 (h) any federal tax refund intercept shall be applied first as payment towards the past due support assigned to the State.
- SO-5F. In all cases where child support is payable through DCSS, obligor and obligee shall inform DCSS in writing of any change of address or change of name and address of employer, within 15 days of the change.
- SO-5G. In all cases where child support is payable through DCSS, obligor and obligee shall furnish their social security numbers to the New Hampshire Department of Health and Human Services (Department).
- SO-6. Where the court determines that, in light of the best interests of the child, special circumstances exist that result in adjustments in the application of the guidelines for the child support obligation or the reasonable medical support obligation, the court shall make written findings relative to the applicability of one or more of the special circumstances described in RSA 458-C:5, I.

Case Name: In the Matter of Crystal Ndyaija (n/k/a Perry) and Joshua Ndyaija
Case Number: 659-2015-DM-00311

UNIFORM SUPPORT ORDER

INCOME ASSIGNMENT

- SO-7A. Until such time as an income assignment goes into effect, payments shall be made as follows: (1) if the case is not payable through DCSS, directly to obligee, or (2) if support is payable through DCSS by use of payment coupons available at the local DCSS office. An income assignment will not go into effect for self-employed obligors as long as they do not receive income as defined in RSA 458-B:1, paragraph IX. Future income will be subject to assignment if the case is payable through DCSS.
- SO-7B. If a parent is ordered to provide health coverage for Medicaid-eligible child(ren), he or she must use payments received for health care services to reimburse the appropriate party, otherwise his or her income may be subject to income assignment by DCSS. RSA 161-H:2(V).
- SO-7C. Increased income assignment for the purposes of payment on arrearages shall continue until such time as the arrearages are paid in full.
- SO-8. Whenever an income assignment is suspended, it may be instituted if a Court finds obligor in violation or contempt of this order OR after notice and the opportunity to be heard (RSA 458-B-5 & 7), when the Department begins paying public assistance for the benefit of a child OR when an arrearage amounting to the support due for a one-month period as accrued.

REPORT CHANGES OF EMPLOYMENT

- SO-9A. If support is payable through DCSS obligor shall report in writing weekly, or as otherwise ordered by Court, to DCSS, and shall provide details of efforts made to find a job. Efforts to obtain employment shall include registering with New Hampshire Employment Security within two weeks of the date of this order. The obligor shall immediately report employment to DCSS in writing.
- SO-9B. Immediately upon employment the obligor shall report to the obligee, in writing, details of employment, including name and address of employer, the starting date, number of weekly hours and the rate of pay.

MEDICAL SUPPORT PROVISIONS

- SO-10-16B (1). In all cases where support is payable through DCSS, or where the Department is providing medical assistance for the child(ren) under RSA 167, the court shall include the medical support obligation in any child support order issued. RSA 461-A:14, IX(d).
- SO-10-16B (2). The court shall establish and order a reasonable medical support obligation for each parent. The presumptive amount of a reasonable medical support obligation shall be 4 percent of the individual parent's gross income, unless the court establishes and orders a different amount based on a written finding or a specific finding, made by the presiding officer on the record, that the presumptive amount would be unjust or inappropriate, using the criteria set forth in RSA 458-C:5.
- SO-10-16B (3). The court shall determine whether private health insurance is available to either parent at a cost that is at or below the reasonable medical support obligation amount, as established and ordered pursuant to RSA 458-C:3, V, or is available by combining the reasonable medical support obligations of both parents, and, if so available, the court shall order the parent, or parents, to provide such insurance for the child.
- SO-10-16B (4). The cost of providing private health insurance is the cost of adding the child to existing coverage, or the difference between individual and family coverage.
- SO-12, 15. Accessible health insurance means the primary care services are located within 50 miles or one hour from the child(ren)'s primary residence. RSA 461-A:14, IX(b).
- SO-16A-16B A party providing or ordered to provide health insurance for the child(ren) shall give the other party sufficient information and documentation to make sure insurance coverage is effective. If support is payable through DCSS, or if there has been an assignment of medical support rights to DCSS, the information and documentation shall be provided to DCSS. In addition, obligor shall inform DCSS in writing when health insurance is available, obtained or discontinued.

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9th Circuit-Family Division-Nashua

Court Name: _____
Case Name: In the Matter of Crystal Ndyaija (n/k/a Perry) and Joshua Ndyaija
Case Number: 659-2015-DM-00311
(if known)

CHILD SUPPORT GUIDELINES WORKSHEET

Child's name	DOB	Child's name	DOB
Faith Ndyaija Immanuel	9/19/2013		
1. Total number of children	1		
2. Obligor's reasonable medical support obligation (4% monthly gross income)	\$311.76	3. Obligee's reasonable medical support obligation (4% monthly gross income)	\$205.48

PAYMENT CALCULATIONS			
	OBLIGOR (Column 1)	OBLIGEE (Column 2)	COMBINED (Column 3)
<i>Note: All income and expenses must be converted to monthly amounts (multiply weekly amounts by 4.33; bi-weekly amounts by 2.17).</i>			
4. Monthly gross income	\$7,794.00	\$5,137.00	
5A. Court/Admin. ordered support for other children	\$0.00	\$0.00	
5B. 50% of actual self-employment taxes paid	\$0.00	\$0.00	
5C. Mandatory retirement	\$0.00	\$0.00	
5D. Actual state income taxes paid	\$358.00	\$0.00	
5E. Allowable child care expenses (obligor) (See LINE 5E instructions)	\$0.00		
5F. Medical support for children (obligor)	\$0.00		
5G. Total deductions (Add Lines 5A through 5F)	\$358.00	\$0.00	
6. Adjusted monthly gross income (Subtract line 5G from line 4)	\$7,436.00	\$5,137.00	\$12,573.00
7A. Child support guideline amount (From Guideline Calculation Table)			\$1,777.95
7B. Guideline percentage (From Guideline Calculation Table)			19.66%
8A. Allowable child care expenses (obligee) (See LINE 8A instructions)		\$1,012.00	
8B. Medical support for children (obligee)		\$417.00	
8C. Total allowable obligee expenses (Add Lines 8A and 8B)		\$1,429.00	
9. Total adjusted monthly gross income	\$7,436.00	\$3,708.00	\$11,144.00
10. Proportional share of income	66.73%	33.27%	
11. Parental support obligation (Line 10 times line 7A)	\$1,186.43	\$591.52	
ABILITY TO PAY CALCULATION			
12. Self-support reserve (from Guideline Calculation Table)	\$1,156.00		
13. Income available for support (Subtract line 12 from line 9, column 1)	\$6,280.00		
14. Monthly support payable (Enter the smaller of line 11, column 1 or line 13, column 1. If line 13, column 1 is less than \$50.00, then a minimum order of \$50.00 is entered.)	\$1,186.43		
15. Presumptive child support obligation (If weekly, divide line 15 by 4.33; if bi-weekly, divide line 15 by 2.17; if monthly, enter same amount as in line 14.)			
		Frequency (check one): <input checked="" type="checkbox"/> Weekly <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Monthly	
		\$274	

Prepared by: Robert M. Shepard Title: counsel for Petitioner Date: 2/12/2018

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**THE STATE OF NEW HAMPSHIRE
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9th Circuit - Family Division - Nashua
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Nashua NH 03060

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NOTICE OF DECISION

**JOSHUA DEBONGS NDYAIJA
2 HALLMARK GARDENS
UNIT 5
BURLINGTON MA 01803**

Case Name: **In the Matter of Crystal Ndyaija and Joshua Ndyaija**
Case Number: **659-2015-DM-00311**

Please be advised that on February 26, 2018 the Court made the following Order relative to:

Respondent's Motion for Reconsideration

Motion Denied. Judge Julie A. Introcaso

March 07, 2018

Sherry L. Bisson
Clerk of Court

(584)

C: Tanya L. Spony, ESQ

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NOTICE OF DECISION

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Case Name: **In the Matter of Crystal Ndyaija and Joshua Ndyaija**
Case Number: **659-2015-DM-00311**

Enclosed please find a copy of the Court's Order dated May 11, 2018 relative to:

**Order on Motion to Modify Parenting Plan and Permanent
Stipulation (#126)**

Introcaso, J.

May 14, 2018

Sherry L. Bisson
Clerk of Court

(579)

C: Tanya L. Spony, ESQ

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THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

HILLSBOROUGH COUNTY

9TH CIRCUIT – FAMILY DIVISION -
NASHUA

In the Matter of Crystal Perry and Joshua Ndayija
Case No: 659-2015-DM-00311

ORDER ON MOTION TO MODIFY PARENTING PLAN AND PERMANENT STIPULATION (#126)

On May 10, 2018, the Court held a hearing with respect to the above captioned motion wherein the Respondent seeks a multitude of modification to the parties' permanent orders of parenting rights and responsibilities along with a modification to the parties Final Decree.

The Court will address the Respondent's requests in the order in which they appear as prayers for relief in his motion; an objection to these requests was filed by the Petitioner through counsel.

Prayer A – The Petitioner asks the Court to modify Paragraph C of the Parties Parenting Plan without any factual justification or legal basis for the request. The child has not even reached school age and this provision was agreed to by the parties. **This request is DENIED.**

Prayer B – The Petitioner asks the Court to modify the vacation time provisions in the parenting plan without any factual justification or legal basis for the request. This provision was agreed to by the parties. **This request is DENIED.**

Prayer C – The Petitioner request, in essence, that the Court compel the Petitioner's compliance with Paragraph G. of the Parenting Plan – that provision which requires the parents to meet and discuss possible modifications to the plan as the child's needs may require. The parties did meet; Mr. Ndayija recorded the meetings. No agreements were reached.

Paragraph G is found by this Court to be not only unnecessary in this case, but also unlikely to produce any meaningful agreements of the parties. The provision is not statutorily based. **The Court hereby VACATES Paragraph G** of the Parenting Plan her finding it to be more a source of conflict than a means by which conflict can be avoided.

Prayer D – The Petitioner requests that the Life Insurance provision of the Parenting Decree be vacated asserting that the provision requires him to act in violation of his religious beliefs.

Although Mr. Ndayija proposed "no insurance" as a final order, the Court disagreed and imposed an obligation on both parties to secure their child support obligation with a life insurance policy. Mr. Ndayija did not object on religious grounds at the time the disputed issue was argued. He also did not appeal the provision once it was entered as an order of the Court (despite having appealed other issues).

Besides his lack of an appeal, Mr. Ndayjia neither cited a religious doctrine nor indicated to the Court how such a provision ran contrary to his beliefs. This request is DENIED.

Additional findings:

The Court finds that the Respondent's Motion to Modify the Parenting Plan and Permanent Stipulation to be frivolous Motion and without any established legal basis. See Record.

ORDER: The Court hereby assesses attorney's fees against the Respondent in the amount of \$750.00. These attorney's fees shall be paid to the Petitioner by the Respondent within sixty (60) days of the date of this Order.

See also, Order on #134, under separate cover.

So Ordered.

May 11, 2018

Date



Hon. Julie A. Introcaso

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

9th Circuit - Family Division - Nashua
30 Spring Street, Suite 102
Nashua NH 03060

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NOTICE OF DECISION

**JOSHUA DEBONGS NDYAIJA
2 HALLMARK GARDENS
UNIT 5
BURLINGTON MA 01803**

Case Name: **In the Matter of Crystal Ndyaija and Joshua Ndyaija**
Case Number: **659-2015-DM-00311**

Enclosed please find a copy of the Court's Order dated May 11, 2018 relative to:

**Motion to Approve Daycare/Kindergarten Enrollment for Minor
Child**

**"granted. Should there be any expenses involved with daycare,
they should be paid by the party using the service; absent an
agreement otherwise. Prayers A, B & C only are granted".**

Introcaso, J.

May 14, 2018

Sherry L. Bisson
Clerk of Court

(579)

C: Tanya L. Spony, ESQ

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STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS

NH CIRCUIT COURT
9TH CIRCUIT
2018 APR 27 PM 12:05
APRIL 2018

9TH CIRCUIT-FAMILY DIVISION-NASHUA

659-2015-DM-00311

In the Matter of Crystal L. Perry (f/k/a Ndyaija) and Joshua Ndyaija

**MOTION TO APPROVE DAYCARE/KINDERGARTEN
ENROLLMENT FOR MINOR CHILD**

NOW COMES the Petitioner, Crystal L. Perry (f/k/a Ndyaija), by and through her attorneys, Smith-Weiss Shepard, P.C., and moves that the Court approve the daycare and kindergarten enrollment of the parties' minor child, and in support thereof states:

1. The parties' minor child presently attends daycare at the Adult Learning Center in Nashua, New Hampshire.
2. The Adult Learning Center provides daycare, but then has a limited capacity to provide further care and education for minor children.
3. The Petitioner resides in the Town of Hudson, New Hampshire. Hudson does not have full-time kindergarten, but only offers one-half (1/2) day kindergarten.
4. The parties' minor child primarily resides with Crystal and Joshua has parenting time on two (2) consecutive weekends from Friday at 6:00 PM until Sunday at 6:00 PM.
5. Pursuant to the Parenting Plan, the legal residence for the minor child for school attendance purposes is with Crystal.
6. Starting on or about June 25, 2018, Crystal would like the parties' minor child to attend daycare at the Merrimack YMCA.

7. In the fall of 2018, the minor child could also attend kindergarten at the Merrimack YMCA.

8. The current cost of the daycare and the kindergarten at the Merrimack YMCA is \$207.00 per week, which would solely be paid by Crystal.

9. Pursuant to the Parenting Plan, the parties have joint decision-making responsibility.

10. In the present Motion pending before this Court, filed by the Respondent (Motion to Modify Parenting Plan and Permanent Stipulation) the Respondent has indicated that he is unable to participate to consent to the parties' minor child being enrolled in a private school in New Hampshire due partly to financial reasons.

11. The Respondent is proposing that the parties' minor child should simply live with him in Massachusetts and can join the Burlington Public School District.

12. This would be contrary to the Parenting Plan and completely against the wishes of the Petitioner.

13. Because the parties cannot agree on this issue, the Petitioner is seeking an Order approving the enrollment of the parties' minor child in daycare at the Merrimack YMCA and approving the enrollment of the parties' minor child in kindergarten at the Merrimack YMCA.

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14. Further, the Petitioner is seeking an Order from this Court granting her the authority to enroll the parties' minor child in private daycare and then to make education decisions for the parties' minor child when she is enrolled in the public school system in the Town of Hudson or any other town that the Petitioner may live in.

WHEREFORE, the Petitioner, prays:

- A. That the Court order that the parties' minor child may be enrolled by the Petitioner in the daycare at the Merrimack YMCA.
- B. That the Court order that the Petitioner may enroll the parties' minor child in kindergarten at the Merrimack YMCA.
- C. That the Court order that the Petitioner shall have authority to enroll the child in the Hudson Public School District when she enters the first grade.
- D. For such other relief as may be just.

(44)

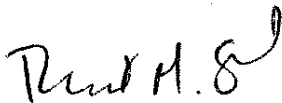
5/11/18 -

Granted. Should there be any expenses involved with daycare, they shall be paid by the party using the service; absent an agreement otherwise. Prayers A, B + C only are granted. *[Signature]* 18

NH DISTRICT
9TH CIRCUIT NASHUA
2018 APR 27 PM 12:05


Respectfully Submitted,
Crystal L. Perry
By Her Attorneys
SMITH-WEISS SHEPARD, P.C.
47 Factory Street; PO Box 388
Nashua, NH 03061
(603) 883-1571
rms@nhlaw-nashua.com

April 26, 2018

By: 
Robert M. Shepard – NH Bar #2326

CERTIFICATE OF COMPLIANCE

I hereby certify that a copy of the within Motion to Approve Daycare/Kindergarten Enrollment for Minor Child has been emailed and mailed this 26th day of April, 2018 to Joshua D. Nydaija, Respondent, *Pro Se*.


Robert M. Shepard – NH Bar #2326

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NOTICE OF DECISION

**JOSHUA DEBONGS NDYAIJA
2 HALLMARK GARDENS
UNIT 5
BURLINGTON MA 01803**

Case Name: **In the Matter of Crystal Ndyaija and Joshua Ndyaija**
Case Number: **659-2015-DM-00311**

Please be advised that on June 07, 2018 the Court made the following Order relative to:

Motion for Reconsideration; Denied

(Introcaso, J)

June 13, 2018

Sherry L. Bisson
Clerk of Court

(567)

C: Robert M. Shepard, ESQ; Division Of Child Support Services; Melissa S Penson-Mesa, ESQ

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