STATE OF NEW HAMPSHIRE
SUPREME COURT

Case No. 2018-700

IN THE MATTER OF MATTHEW KAMIL AND ROBIN KAMIL

BRIEF OF RESPONDENT, ROBIN KAMIL

APPEAL FROM 7TH CIRCUIT – FAMILY DIVISION – DOVER

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10. Whether the trial court erred in failing to make findings or provide a rationale for its orders described in the preceding paragraphs. (Ms. Kamil's Appendix, Page 70).

STATEMENT OF CASE AND FACTS

The parties were married on September 3, 2007. (Mr. Kamil's Brief, Page 66). Mr. Kamil (Dr. Kamil is referred to as Mr. Kamil in this brief as the Trial Court referred to him as Mr. Kamil in its Order) filed for divorce on February 2, 2015. *Id.* With respect to the parenting issues, on April 16, 2015, the Trial Court awarded temporary primary residential responsibility over the parties two minor children, Cassidy (DOB 1/30/2010) and Cory (DOB 2/23/2012) to Mr. Kamil and limited Ms. Kamil to supervised visits for a minimum of eight hours per week. *Id.* Ms. Kamil's supervised visits

expanded on June 3, 2015, which was further expanded and allowed to move to her apartment on April 7, 2016. *Id.* On October 23, 2017, the Court retained Kathy Forbes-Fisher as a parenting coordinator. *Id.* at 67. On January 12, 2018, the Court ordered supervised visitation for Ms. Kamil at a supervised visitation center in Dover. *Id.* at 72. On January 30, 2018, the Court appointed Tracy Tucker to serve in a scripted reunification capacity. *Id.* On May 30, 2018, the scripted reunification process was cancelled after a disagreement with Tracy Tucker, wherein Tracy Tucker recommended that Ms. Kamil work on developing concrete skills to engage and be more present with her children, as well as to address the issues that are preventing her from making choices that provide her with more time with her children. *Id.* at 73. However, Tracy Tucker also noted that the children and Ms. Kamil had several good moments during their sessions together. *Id.* On August 10, 2018, the Court ordered Ms. Kamil to work with a therapist to address these issues. *Id.* After the Final Hearing, the Court ordered that Mr. Kamil would have sole decision making and residential responsibility, and that Ms. Kamil's reunification with the children could only begin after she is able to demonstrate to Tracy Tucker's professional satisfaction that both Ms. Kamil and the children are prepared to restart their supervised, scripted visitations. *Id.* at 78. Ms. Kamil has not had contact with her children since the meetings with Tracy Tucker ended on May 30, 2018. *Id.* at 76. The Court chose not to bifurcate the parenting issues from the financial issues in the divorce, though Ms. Kamil raised this issue in a timely filed Motion for Reconsideration. (Ms. Kamil's Appendix, Page 18).

With respect to the financial issues, the parties entered into a prenuptial agreement roughly one month before the marriage. (Mr. Kamil's Brief, Page 43). On January 24, 2017, the Trial Court, based on the application of New York law, denied the effort of Mr. Kamil to enforce the parties' prenuptial agreement because the agreement was not contemporaneously executed, signed, and acknowledged by a notary, as is required under New York law. *Id.* at 79. Additionally, the Trial Court ruled that the maintenance provision of the prenuptial agreement was unconscionable and invalid. *Id.* at 61. Regarding the other financial issues, after the Final Hearing, the Court did not award Ms. Kamil any growth in the assets over the course of the marriage nor any interest on her property division share for each day it was not paid to her after the date ordered by the Trial Court. The Court did not award Ms. Kamil an advance on her property division share for post-divorce and appellate legal fees. *Id.* at 83. The Court ordered Ms. Kamil to be share the capital gains taxes on the assets to be sold to provide her with her marital share. *Id.* at 84. Ms. Kamil raised these issues to the Court in a timely filed Motion for Reconsideration. (Ms. Kamil's Appendix, Page 16-31).

In the Final Divorce Decree (the"Decree") the Court did not address the issue of whether there is an irrevocable trust in which Mr. Kamil has an interest . In Mr. Kamil's interrogatory answers he indicated that he was a beneficiary of his parents' trust, but did not produce copies of it. *Id.* at 5. On July 6, 2018, following Ms. Kamil's Motion to Compel a production of a copy of the trust in which Mr. Kamil has an interest , the Court ruled that it did not have jurisdiction to order Mr. Kamil's parents (who live in Florida) to produce the trust document, but ordered Mr. Kamil to use his

best efforts to provide the requested documentation to Ms. Kamil. *Id.* at 9. Ms. Kamil never received a signed copy of the trust. In her first motion for reconsideration and/or clarification, Ms. Kamil asked for a rehearing on the issue of the trust, which the Trial Court declined to do. *Id* at 29, 53. In her second motion for reconsideration, Ms. Kamil attached an unsigned copy of the Harvey and Eileen Kamil 2012 Irrevocable Trust (the "Trust") she previously found on the family computer and again requested that the Trial Court hold a re-hearing. *Id.* at 77-103. No decision was rendered on that request because this appeal stayed the matter at the Trial Court level before a decision could be made. As a result, the Trust remains an undivided asset.

SUMMARY OF ARGUMENTS ON MR. KAMIL'S ISSUES

At the outset, Mr. Kamil's arguments should be rejected because the brief does not comply with Rule 16(3)(b) and Rule 16(9) in failing adequately to cite to the record statements requiring such citations, thus leaving it to the Court to try to find the support in the record. In addition:

I. The Trial Court did not commit error in invalidating the prenuptial agreement, because it properly found that the prenuptial agreement was not executed consistent with the formalities required under New York Law;

II. The Trial Court did not commit error in ruling that the maintenance provision was unconscionable under New York Law at the time of the presumed enforcement of the agreement due to the parties' drastically different earning capacities and assets and because the Trial Court did not rely on the medical records in issuing its

decision, and the Trial Court has broad discretion on evidentiary issues.

III. The Court did not commit error in awarding alimony to Ms. Kamil because of its broad discretion to order alimony and it considered Ms. Kamil's noneconomic contributions to the marriage, and, in the reconsideration process, her updated financial affidavit.

IV. The Trial Court did not commit error in ordering Mr. Kamil to pay the reunification process costs, because it has broad discretion in parenting matters, properly found that Mr. Kamil earns significantly more income than Ms. Kamil, and that he can afford the cost of reunification more than she can.

V. The Trial Court did not commit error in ordering Dr, Kamil to pay the costs of the QDRO's preparation, because it has broad discretion to order such costs, the cost of the preparation of a QDRO is modest, and Mr. Kamil has far greater financial ability to pay the costs than Ms. Kamil.

RESPONSE TO MR. KAMIL'S BRIEF

I. The Trial Court did not commit error in invalidating the parties' prenuptial agreement.

Prenuptial agreements are addressed in New York Domestic Relations Law § 236 (B)(3), which provides: "An agreement by the parties, made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed by the parties, and acknowledged or proven in the manner required to entitle a deed to be recorded."

The prenuptial agreement in this case is invalid because it was not acknowledged or proven in the manner required to entitle a deed to be recorded. Specifically, the prenuptial agreement is invalid because Mr. Kamil did not sign in the presence of a notary who notarized his signature and the notary's certification is invalid because it contains the incorrect date- it is dated August 5, 2007 but was not actually notarized/acknowledged until August 10, 2007. (Mr. Kamil's Brief at 53).

New York courts strictly require and construe an acknowledgement on a prenuptial agreement. In *Matisoff*, the New York Court of Appeals established a "bright line rule requiring acknowledgment in every case," and held an unacknowledged prenuptial agreement invalid. *Matisoff v. Dobi*, 681 N.E. 3d 376, 381 (N.Y. 1997). In its ruling, the Court of Appeals explained that the statute recognizes no exception to the requirement that a prenuptial agreement be executed in the same manner as a recorded deed, and "that the requisite formality explicitly specified in Domestic Relations Law § 236 (B)(3) is essential." *Id.* at 378.

In *Galetta*, the Court noted the following regarding the important purposes of the acknowledgment. First, "The acknowledgment serves to prove the identity of the person whose name appears on an instrument and to authenticate the signature of such person." *Galetta v. Galetta*, 991 N.E.2d 684, 687 (2013). Second, it necessarily imposes on the signer a measure of deliberation in the act of executing the document. Just as in the case of a deed where the law puts in the path of the grantor "formalities to check haste and foster reflection and care." *Id.*

Three provisions of the Real Property Law must be read together to discern the requisites of a proper acknowledgment. Real Property Law §

292 requires that the party signing the document orally acknowledge to the notary public or other officer that he or she in fact signed the document. *Id.* at 687-688. Real Property Law § 303 precludes an acknowledgment from being taken by a notary or other officer "unless he [or she] knows or has satisfactory evidence that the person making it is the person described in and who executed such instrument." *Id.* And Real Property Law § 306 compels the notary or other officer to execute "a certificate . . . stating all the matters required to be done, known, or proved" and to endorse or attach that certificate to the document. *Id.*

The purpose of the certificate of acknowledgment is to establish that these requirements have been satisfied: (1) that the signer made the oral declaration compelled by Real Property Law § 292; and (2) that the notary or other official either actually knew the identity of the signer or secured "satisfactory evidence" of identity ensuring that the signer was the person described in the document. *Id.*

Furthermore, the Court in *Galetta* noted that the acknowledgment requirement imposed by Domestic Relations Law § 236(B)(3) is onerous and, in some respects, more exacting than the burden imposed when a deed is signed. *Galetta v. Galetta*, 991 N.E.2d 684, 687 (2013). "Although an unacknowledged deed cannot be recorded (rendering it invalid against a subsequent good faith purchaser for value) it may still be enforceable between the parties to the document (i.e., the grantor and the purchaser). The same is not true for a nuptial agreement which is unenforceable in a matrimonial action, even when the parties acknowledge that the signatures are authentic and the agreement was not tainted by fraud or duress" *Id.*

Due to these stringent requirements, New York law requires that an acknowledgment of a signature on a prenuptial agreement needs to be contemporaneous with the signature itself. In *Smith*, the Court ruled that a prenuptial agreement was invalid where a party demonstrated by clear and convincing evidence that her signature on a prenuptial agreement was not properly acknowledged where the acknowledgment was not contemporaneous with the signature. *Smith v. Smith*, 263 A.D.2d 628, 630 (1999). The agreement disclosed that the parties' signatures were acknowledged by a notary public on November 7, 1984 in Albany County, but there were different accounts on where the wife had signed the agreement. *Id.* The husband testified that the wife signed the agreement at her home rather than in front of a notary public. *Id.* The notary could not recall either of the parties appearing before her to have her signature acknowledged, but stated that she would not have taken the parties' signatures in Albany County. *Id.* The Court found that the evidence presented strongly suggested that the defendant did not sign the agreement before the notary public, "there is clear and convincing evidence supporting Supreme Court's conclusion that the agreement was not acknowledged in accordance with the requirements of Domestic Relations Law § 236(B)(3) and is, therefore, unenforceable. Contrary to plaintiff's claim, this is not a case involving a mere technical defect in the acknowledgment, rather, the discrepancies involved go to the very issue of whether the agreement was, in fact, signed by defendant in the presence of a notary public and, given the strict construction of this requirement, it may not be overlooked." *Id.* (Emphasis added); *See also Katz v. Katz*, 41 Misc. 3d 1225(A), *9 (Sup. Ct. 2013) (Stating "the controlling case law holds that in the absence of a

contemporaneous acknowledgment an agreement cannot be cured by a subsequent acknowledgment absent both parties engaging in a mutual "reaffirmation" of the agreement with the proper contemporaneous acknowledgments")

Similarly, in *Schoeman*, concerning a legal malpractice claim filed by the losing party in *Matisoff* against his attorneys, the Court held that the client would not prevail even if the client had asked the court to cure a defect in the acknowledgment of the signature in the prenuptial agreement. *Schoeman, Marsh & Updike, LLP v. Dobi*, 264 A.D.2d 572, 574 (1999). The Court ruled that "an insistence on the formalities mandated by the legislature requires the parties have contemporaneously demonstrated the deliberate nature of their agreement. This provides a bright line for distinguishing enforceable and unenforceable agreements, and promotes consistency and predictability." *Id.* at 573-574.

Additionally, in *Stein*, the Court found a prenuptial agreement unenforceable due to the lack of a contemporaneous acknowledgement. *Stein v. Stein*, 14 Misc. 3d 453, 460 (Sup. Ct. 2006). "Here, it is undisputed that plaintiff's signature was not duly acknowledged pursuant to DRL § 236(B)(3) contemporaneous to his execution of the Agreement. Rather, a certificate of acknowledgment was not generated with respect to such signature until March 21, 2005, almost 7 ½ years after the original execution of the document. Accordingly, given the lack of a properly executed contemporaneous certificate of acknowledgment with respect to plaintiff's signature, the court finds that the subject Agreement is unenforceable." *Id.* (emphasis added). Although in the instant matter the acknowledgment was 5 days after Mr. Kamil's signature, a shorter period

of time, the court's analysis in *Stein* did not turn on the length of time between the signature and the acknowledgment, merely on the fact that the two were not contemporaneous. (Mr. Kamil's Brief at 53).

Furthermore, as noted in the Trial Court's decision, there are public policy and common sense reasons to support the requirement of a contemporaneous acknowledgment. The *Matisoff* court emphasized the purpose of the acknowledgment requirement as encouraging deliberation and checking haste. 681 N.E.2d at 381. Furthermore, in *Stein*, the Court pointed out that allowing an acknowledgment to follow an indeterminate amount of time after the execution of a nuptial agreement would essentially transform the agreement from a binding bilateral agreement into an option contract. 14 Misc. 3d at 461. "Were the court to allow the Agreement, which would otherwise be deemed invalid due to the lack of a proper certificate of acknowledgment from the plaintiff, to become enforceable upon the provision of a certificate of acknowledgment generated some 7 ½ years after the initial execution of the document, such Agreement, would, in effect, become enforceable only upon the exercise of plaintiff's "option" to execute a valid certificate." *Id.*

In the instant matter, the parties ultimately agreed at the hearing on the agreement that Mr. Kamil did not obtain a certificate of acknowledgment contemporaneously with his execution of the prenuptial agreement. (Mr. Kamil's Brief at 58). Although Mr. Kamil initially testified that he signed the document at his own attorney's office at the date indicated in the notarization, the notary testified that she did not work on Sundays. *Id.* Several days later, on Friday, August 10, Mr. Kamil had his signature notarized by Ellen Ryan at Attorney Hirschhorm's office. *Id.*

Consequently, Mr. Kamil's certificate of acknowledgment cannot be considered to be contemporaneous with the execution of the prenuptial agreement, rendering the agreement invalid due to a failure to comply with the formalities of New York law.

Furthermore, case law since the Trial Court's invalidation of the agreement cited by Mr. Kamil is distinguishable on the facts from those in this case. *Koegel* and *Rapp*, cited by Mr. Kamil in his brief, differ from this case. Though the courts in those cases allowed for the curing of a defective acknowledgment after the fact, the cases did not involve an acknowledgment that was not contemporaneous with the execution of the signature itself. Consequently, whether an invalid acknowledgment can subsequently be cured is not relevant to this case, since it is undisputed that the execution and acknowledgment did not occur contemporaneously.

Mr. Kamil's argument with respect to standard notary practice is not relevant to this case, because while for standard notary practice it is not essential that a person appear before a notary to sign her name before a notary, the Trial Court properly ruled that NY Real Property Law Section 292 and Domestic Relations law Section 363-B(3), place more stringent requirements on a prenuptial agreement's execution.

II. The Trial Court did not commit error in admitting Ms. Kamil's medical records and made it clear in its Order that it did not rely on said records.

The Trial Court acted within its discretion in admitting Ms. Kamil's medical records into evidence. Traditionally, this Court reviews the decisions of the Trial Court's decision on the management of discovery and the admissibility of evidence under an unsustainable exercise of discretion

standard. *In re Hampers*, 154 N.H. 275, 280 (2006). To meet this standard, the Appellant must demonstrate that the trial court's ruling was clearly untenable or unreasonable to the prejudice of his case. *Id.* New Hampshire's Rules of Evidence do not apply to domestic relations cases within the jurisdiction of the Family Division of the Circuit Court. N.H. Rules of Evidence Rule 1101(d)(3).

Mr. Kamil was not prejudiced by the admission at trial of Ms. Kamil's medical records. At trial, the Trial Court stated the following to an objection raised by Mr. Kamil's Counsel regarding the admission of the exhibits: "I might as well call a spade a spade. I read them; I know what's in them. And I also know they're not particularly prejudicial to your side." (Prenuptial Agreement Trial Transcript, Volume II of II, Page 78, Lines 19 through 21).

Furthermore, in its order following the hearing on the prenuptial agreement, the Trial Court stated that the records "appeared to be less than complete, but they did not prejudice Mr. Kamil or confirm Ms. Kamil's testimony that she cannot work as a physical therapist" and "Aside from Ms. Kamil's own testimony, there was no medical evidence received supporting a finding that she cannot work at this point as a physical therapist." (Mr. Kamil's Brief Page 49). Consequently, where the Court did not rely on the medical records in its finding regarding Ms. Kamil's inability to work, it cannot be said that Mr. Kamil has been prejudiced by the admission of the medical records into evidence, nor that the Trial Court unsustainably exercised its discretion in invalidating the agreement.

With respect to Mr. Kamil's argument that the Trial Court erred in interpreting New York law in deciding that the maintenance provision of

the prenuptial agreement was unconscionable, this issue was not included in Mr. Kamil's notice of appeal and has not been properly preserved for appeal. Consequently, Mr. Kamil's arguments should not be considered by this Court. Nevertheless, Ms. Kamil responds to these arguments as follows.

Mr. Kamil's reliance on the *Christian* decision's requirement of overreaching is flawed. The Trial Court was not required to make findings regarding overreaching in order to rule that the maintenance provision of the prenuptial agreement is unconscionable. *Christian* was decided in 1977, three years before Domestic Relations Law § 236 (B) (3) was enacted. "*Christian* was concerned only with separation agreements between spouses, and its reasoning applied only to married couples who enter into separation agreements; it was not intended to apply to not-yet-married, affianced couples, and there is scant support for extending its application in that way." *Gottlieb v. Gottlieb*, 138 A.D.3d 30, 52 (N.Y. App. Div. 2016).

Unlike the predating *Christian* decision, Domestic Relations Law § 236 (B)(3) does not require overreaching to have occurred in order for a maintenance provision of a prenuptial agreement to be invalidated due to it being unconscionable. Domestic Relations Law § 236 (B)(3) subjects maintenance to the provisions of General Obligations Law § 5-311 (providing that neither party can contract to an agreement where one party is likely to become a public charge), if such terms were fair and reasonable at the time of the making of the agreement and are not unconscionable at the time of entry of final judgment. On the evidence presented the Trial Court found that even if the agreement were "fair and reasonable" when

made, it would be unconscionable to enforce it at this time due to medical causation, disparity of assets, and earning capacity of each partner due to a temporary inability to work-full time combined with the award to Ms. Kamil of only $10,000.00 per year in maintenance for Ms. Kamil under the prenuptial agreement. (Mr. Kamil's Brief Page 58-61).

Mr. Kamil's brief cites *Maddaloni* in support of his argument that a finding of overreaching is required in order to invalidate a maintenance provision. However, a close reading of *Maddaloni* illustrates the opposite. In *Maddaloni*, the trial court's decision to invalidate the maintenance provision of the parties' 1988 prenuptial agreement was upheld where the agreement provided wife at the time of the final judgment with only $50,000 in full satisfaction of all claims. *Maddaloni v. Maddaloni*, 142 A.D.3d 646, 650 (N.Y. App. Div. 2016).

There was no finding of overreaching with respect to the 1988 prenuptial agreement or its maintenance provision, illustrating that overreaching is not required for a maintenance provision to be found invalid. Overreaching was found only with respect to the parties' 2011 amendment to the prenuptial agreement due to the defendant's actions in presenting the amendment directly to the plaintiff for execution during the pendency of this action notwithstanding that she was represented by counsel. *Id.*

Similarly, *Barocas* provides that a maintenance provision may be found to be unconscionable and unenforceable even without a finding of overreaching. In *Barocas*, the Court found that there was no issue of fact as to whether overreaching occurred, but found that an issue of fact existed as to whether the maintenance waiver was unconscionable based on the current circumstances of the parties at the entry of final judgment. *Barocas*

v. Barocas, 94 A.D.3d 551, 551-552 (2012). If overreaching were required, as Mr. Kamil asserts, there would be no reason to take up the analysis as to whether the maintenance provision was unconscionable, despite a lack of overreaching. *See also Anonymous v. Anonymous*, 123 A.D.3d 581, 587, (N.Y. App. Div. 1st 2014) (stating that when a prenuptial agreement is not set aside in its entirety based on fraud or unconscionability, specific provisions of it may still be stricken. This is because Domestic Relations Law § 236B(3) dictates that extra scrutiny be given to maintenance and child support provisions of marital agreements (defined as agreements "made before or during the marriage.")

Furthermore, there is no requirement that the Court make a finding that one of the parties is likely to become a public charge in order for a maintenance provision to be ruled invalid. The test for the upholding of a maintenance provision under New York Domestic Relations Law § 236(B)(3) requires that (1) a party not be likely to be become a public charge and that (2) the provisions are fair and reasonable at the time of signing and (3) at the time of execution. If even one of these three is not true, the maintenance provision cannot be upheld. *See Werther v. Werther*, 9 Misc. 3d 1114(A), *5 (Sup. Ct. Nassau County 2005) (Holding that a maintenance provision was unenforceable and stating "However, the maintenance provisions of the agreement are not deemed fair and reasonable. General Obligations Law § 5–311 provides that the parties to an agreement may relieve one another from the ability of support provided neither party is likely to become a public charge. While the Court acknowledges that defendant's waiver of maintenance would likely not result in her becoming a public charge, the waiver is not fair and reasonable

in view of the current and prospective financial circumstances of the parties, same which are disparate. Accordingly, that portion of the agreement waiving maintenance is set-aside.")

Consequently, even without a finding of overreaching by Mr. Kamil, the Trial Court acted within its discretion and pursuant to New York Law by ruling that the maintenance provision of the parties' prenuptial agreement is unenforceable.

III. The Trial Court did not commit error in awarding alimony to Ms. Kamil.

The Trial Court did not err in awarding alimony to Ms. Kamil. Trial courts have broad discretion in determining and ordering the payment of alimony. *In re Nassar*, 156 N.H. 769, 772, (2008). Absent an unsustainable exercise of discretion, the Supreme Court will not overturn the factual findings of a trial court. *Id.*

Under the statute in effect at the time of the final hearing (RSA 458:19(2018)), the Trial Court was permitted to award alimony if it found that the party in need lacks sufficient income, property, or both to provide for such party's reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage, that the party from whom alimony is sought is able to meet reasonable needs while meeting those of the party seeking alimony, taking into account the style of living to which the parties have become accustomed during the marriage; and the party in need is unable to be self-supporting through appropriate employment at a standard of living that meets reasonable needs. In determining the amount of alimony, the court may consider the value of economic and non-economic contributions to the family unit, and shall

consider the length of the marriage; the age, health, social or economic status, occupation, amount and sources of income, the property awarded ..., vocational skills, employability, estate, liabilities, and needs of each of the parties; the opportunity of each for future acquisition of capital assets and income.

There is nothing in the alimony statute obligating the Court to rely on or a party to submit a financial affidavit at a final hearing in order to demonstrate a need for alimony. Consequently, the Trial Court acted within its discretion in relying on a previous financial affidavit from only five months before the hearing. Additionally, the Court did hear evidence relevant to the issue of alimony in that Ms. Kamil, through her cross-examination of Mr. Kamil, demonstrated her non-economic contributions to the family unit, specifically through her role as the primary caretaker for the children during the marriage. (Mr. Kamil's Brief Page 77). Furthermore, on objection to Mr. Kamil's Motion for Reconsideration on this issue, Ms. Kamil provided the Court with an updated financial affidavit which the Trial Court had the opportunity to consider. (Ms. Kamil's Appendix, Page 62-64). Based on the foregoing, the Court acted within its discretion in awarding alimony to Ms. Kamil in the amount of $1,000.00 per month for 42 months.

IV. The Trial Court did not commit error in ordering Mr. Kamil to be responsible for the costs of the reunification process.

The Trial Court did not err in ordering Mr. Kamil to pay for the costs of its ordered therapeutic reunification process for Ms. Kamil and the minor children. The Supreme Court affords trial courts broad discretion in determining parenting matters and should not overturn the trial court's

decision absent an unsustainable exercise of discretion. *In re Heinrich*, 160 N.H. 650, 655 (2010).

Given the importance of the presence of both parents in children's lives, the Court properly viewed the reunification process as very important to the parties' children as well as Ms. Kamil. RSA 461-A:2 provides a legislative statement of purpose for it to be the policy of the State of New Hampshire for both parents to have a stable and meaningful involvement in their children's lives. Where the Legislature has stated as its policy that there be frequent and continuing contact between both parents and their children, the Court properly has given Ms. Kamil another chance to continue reunification efforts. Although there were issues associated with the reunification process, Tracy Tucker noted there was a bond between Robin and the children and that Robin brought activities suited to each children's interest to each session, and that the children do want to see their mother. (Mr. Kamil's Brief Page 73).

It was a reasonable exercise of the Court's decision to require the party with vastly more assets and substantially more income to pay costs which are a minute part of the net assets awarded to him. Ms. Kamil's income and assets, while not insignificant, pale in comparison to Mr. Kamil's. (Mr. Kamil's Brief Page 82-84). Simply stated, he can afford the costs of reunification more than Ms. Kamil can.

Although Mr. Kamil is a party opponent to Ms. Kamil, they are still co-parents and still share their children's best interests as a purpose and goal. Mr. Kamil benefits from the reunification process as he should want the reunification process to work so that his children will benefit by having two parents in their life. Consequently, it is not unreasonable to require

that he support the reunification efforts financially.

V. The Trial Court did not commit error in ordering that Mr. Kamil be responsible for the costs of the QDRO or other vehicle to divide the assets.

The Trial Court did not err in ordering Mr. Kamil to pay for the costs associated with a qualified domestic relations order or other vehicle to properly and appropriately divide the marital assets. The Supreme Court affords trial courts broad discretion in determining matters of property distribution in fashioning a final divorce decree and should not overturn the trial court's decision absent an unsustainable exercise of discretion. *In the Matter of Crowe and Crowe*, 148 N.H. 218, 221 (2002).

It is not uncommon for actuarial professionals such as Pension Appraisal Services Associates of Woburn, Massachusetts, Edward Foley, Michael Foley, Mary Donaghey, etc., to prepare QDROs. PASA charges $600. (Ms. Kamil's Appendix Page 55). There are also online services which prepare QDROs for approximately $300. *Id.* Consequently, the cost of preparation is relatively modest. Furthermore, the Court's order does not prevent the parties from obtaining independent counsel to advise him or her concerning a draft QDRO. Given the vast disparity in the parties' assets and incomes, it is not unreasonable that Mr. Kamil be responsible for paying the modest fees associated with a QDRO or QDROs.

SUMMARY OF MS. KAMIL'S ARGUMENTS IN SUPPORT OF HER CROSS-APPEAL

1. The Trial Court committed error because Mr. Kamil failed to disclose the Harvey & Eileen 2012 Irrevocable Trust (the "Trust") to Ms. Kamil as he was required and able to do, resulting in an

undivided asset in the divorce.

2. The Trial Court committed error because it failed to provide Ms. Kamil with her growth of her share of the share of the parties' investment and retirement accounts awarded her accruing between the valuation date and the date of the Decree three and a half years later and it is illogical and prejudicial that Mr. Kamil should benefit from the growth on Ms. Kamil's awarded share of these accounts.

3. The Trial Court committed error in not providing Ms. Kamil statutory interest on her property division share for each day after the ordered 120 day deadline for payment, because it is illogical and prejudicial that Mr. Kamil should benefit from a delay in payment of Ms. Kamil's awarded share.

4. The Trial Court committed error in ordering the parties to split the capital gains taxes on transactions Mr. Kamil chooses to make to raise more than half of the amount he is ordered to pay Ms. Kamil because he is in a much better financial position to pay said taxes, has sole control over how to raise the money, including by engaging in transactions which would produce no capital gains and thus no taxes to be borne by Ms. Kamil, and because Mr. Kamil is incentivized to sell assets resulting in the highest capital gains taxes so he can spread the tax load between him and Ms. Kamil.

5. The Trial Court committed error in providing Ms. Kamil with no opportunity to see her children, even at a supervision center, as it conflicts with New Hampshire's legislative purpose for parenting plans and is tantamount to terminating her parental rights.

6. The Trial Court committed error by delegating its judicial function

to Tracey Tucker, a non-judicial third party.

7. The Trial Court committed error in not awarding Ms. Kamil her personal property located at the marital home, despite requesting said property and illustrating that Mr. Kamil does not have a need for said property.

8. The Trial Court committed error in failing to bifurcate the divorce by making its parenting orders temporary because the standards for modifying final parenting orders are not compatible with the reunification protocol ordered by the Trial Court, while the standards for modifying temporary parenting orders are compatible with a reunification protocol.

9. The Trial Court committed error in failing to provide Ms. Kamil with an advance on her property division share because Ms. Kamil demonstrated she is in need of an advance, it amounts to only about 4% of her awarded share and the Trial Court did not provide findings or a rational basis for denying the request.

10. The Trial Court committed error in failing to make adequate findings and a rationale supporting the orders Ms. Kamil challenges in this appeal.

MS. KAMIL'S APPEAL

1. **The Trial Court unsustainably exercised its discretion in denying Ms. Kamil's request on reconsideration to require Mr. Kamil to obtain and provide Ms. Kamil a complete copy of the Harvey & Eileen Kamil 2012 Irrevocable Trust ("the Trust"), which he failed to disclose as an asset during the case, with associated accountings**

and records and to hold a hearing to take evidence to determine whether the Trust is a marital asset, and , if so, its value and how to divide it.

In her Motion to Compel production of the Trust dated June 21, 2018, Ms. Kamil alleged that Mr. Kamil was the remainder beneficiary of the Trust. (Ms. Kamil's Appx., p. 4-9)

In his objection to that motion, Mr. Kamil stated: "Then in the first instance, while Petitioner certainly cannot deny the existence of the Harvey & Eileen Kamil 2012 Irrevocable Trust, the remaining allegations in Respondent's Motion to Compel represent a clear misunderstanding on the Respondent's part relative to the structure of the aforementioned trust." (Ms. Kamil's Appx., p 11-12).

Mr. Kamil's quoted statement is an admission that the Trust is a valid trust. While Mr. Kamil claimed in his Objection that the Trust was a generation-skipping trust and that therefore it was too contingent an interest to count as a "marital asset", the Trust speaks for itself. The language of the Trust makes clear that it is not a generation-skipping trust, but rather a trust in which Mr. Kamil is a primary remainder beneficiary (that is, the first to take after the death of the parent beneficiaries). That remainder beneficiary interest is thus a marital asset which should have been disclosed and should have been divided by the Trial Court. See *Flaherty v. Flaherty*, 138 N.H. 337 (1994).

Further, in its order on the motion to compel, the Trial Court stated that "...Matthew Kamil is ordered to produce all requested documentation in his possession (which included the Trust document) and to exercise his best efforts to obtain all other requested documentation". (Ms. Kamil's

Appx., p. 9)

It is undisputed that at no time has Mr. Kamil provided Ms. Kamil a signed copy of the Trust.

Ms. Kamil filed a Motion for Reconsideration and/or Clarification and for Re-Hearing on Trust Issue and a memorandum in support thereof (hereinafter referred to as "first motion for reconsideration" and "Memorandum I"). Upon the Trial Court's denial of her first motion for reconsideration, she filed a Motion to Reconsider Order on Motion for Reconsideration and/or Clarification and for Re-hearing on the Trust Issue and a supporting memorandum (hereinafter "second motion for reconsideration" and "Memorandum II"). The Trial Court held a hearing on that second motion to reconsider, but did not rule on it, due to the filing of Mr. Kamil's appeal. It is, however, part of the record in this case. (Ms. Kamil's Appx., p. 68-103).

In her dated 13, 2018 Affidavit submitted with Memorandum II, Ms. Kamil stated: that she discovered on her computer an unsigned 2012 irrevocable trust document (the Trust) in email to Mr. Kamil; that in 2012, after Mr. Kamil's father sold his company, Mr. Kamil told Ms. Kamil that his father, Harvey Kamil, was coming from Florida to New Hampshire to sign papers and go to the bank to do banking; that she believed that the unsigned Trust document is valid and that her husband was referencing to the signing and execution of the Trust; that the Trust is different from the generation-skipping trusts Mr. Kamil to which he referred in his objection to her first motion for reconsideration; that the parties' prenuptial agreement refers to Mr. Kamil having a $40 million inheritance; and that she believes the Trust likely houses assets amounting at least that $40

million. *Id.* at 81

Significantly, in the Trust Mr. Kamil is named as a trustee. Also of significance is that it states it is to be construed under Florida law. It states in applicable parts: "All references in this Agreement: ...to a "child of the Grantor" or the "Grantor's children" refer to the Grantor's children, Matthew F. Kamil and Susan M. Kamil ...Upon the death of the survivor of Harvey Kamil and Eileen Kamil, the remaining principal of the trust, as the same shall then consist (including any accrued income and any undistributed income), shall be divided into as many equal shares as shall be necessary to set aside one such share for each child of the Grantor then living and one such share for each child of the Grantor who is not then living but shall have left issue who are then living (each such child and any additional descendants of the Grantor for whom a trust is created under this Paragraph shall be referred to as a "Beneficiary")." *Id.* at 82-84.

Under *Flaherty*, Mr. Kamil's primary remainder interest in the Trust constitutes marital property subject to division.

It is undisputed that Mr. Kamil has never provided Ms. Kamil any documentation of the Trust, or any information about its assets.

As the qualified beneficiary of an irrevocable trust, under Florida law, Mr. Kamil has the right to require the trustee (to include himself) to provide a complete copy of the Trust, a trust accounting at least annually and, upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the Trust and particulars relating to administration. See Florida Trust Code s.736.0813. See particularly, subsection (1)(c):

> **"736.0813 Duty to inform and account.—** The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.
>
> (1) The trustee's duty to inform and account includes, but is not limited to, the following:
>
> **(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument. "** (emphasis added).

As a trustee of the Trust Mr. Kamil had no acceptable reason not to provide Ms. Kamil with the Trust. Even if he were not a trustee, as a beneficiary, he had the right to compel a trustee to obtain a complete copy of the Trust, relevant financial information about it and then a duty under the motion to compel order to provide same to Ms. Kamil. As argued in her Memorandum I, Mr. Kamil's defense against the claim that he violated the Trial Court's order by failing to disclose the Trust is that it is a "generation-skipping trust" and so his interest is so remote it is not to be considered marital property, has no merit because the Trust language makes clear that is not true.. (Ms. Kamil's Appx., p 47).

Moreover, by the time Mr. Kamil filed his objection to the motion to compel, he had been represented in this case for three years; there is no excuse for him to have failed to disclose a marital asset arising out of a legal document on the basis of his (incorrect) "lay understanding" of the Trust document. Further, even without legal advice, anyone with a reasonable command of the English language who read the Trust would see that the beneficiaries of the trust are the parents and that when they die the

Trust assets will vest in their children, including Mr. Kamil. Further, there is no reference to generation-skipping in the Trust or to making the Grantor's grandchildren (the parties' children) beneficiaries of the trust. *Id.* at 82-103.

In sum, while declining to obtain the Trust, Mr. Kamil acknowledged its existence, yet violated the order to use his best efforts to obtain the requested documents (including the Trust); in fact, he did nothing to obtain it

All of this was set forth in Ms. Kamil's Memoranda I and II. (Ms. Kamil's Appx, p. 18-31 and 70-80). Further, Ms. Kamil requested therein that Mr. Kamil promptly obtain and provide to her a complete signed copy of the Trust, together with annual accountings of the Trust commencing with the year 2015 to present and for various other documents and the scheduling of a hearing for the purpose of the Trial Court's evaluating the Trust as a marital asset and making an equitable division of Mr. Kamil's remainder interest in it. Instead, the Trial Court denied the first motion to reconsider, which included a request for reconsideration of the Trust issue and for a hearing on it, "...for the reasons set forth in Mr. Kamil's objection and 'for many others'". (Ms. Kamil's Appx, p. 53). The Trial Court's reliance on "many others (reasons)" did not constitute a finding or provide an articulable rationale for the order.

Nor did Mr. Kamil offer a meritorious rationale for refusing to provide the Trust and associated financial information. He argued that Ms. Kamil waived her right to seek a reconsideration of the trust issue by failing to submit documents at the final hearing and by leaving during it. However, as pointed out in Ms. Kamil's Memorandum II, Ms. Kamil did not waive

her right to an equitable division of property and the Trial Court properly did not find that she did. (Ms. Kamil's Appx, p. 77-79). Second, he argued that he could not get the Trust because his parents refused. However, that ignores that under Florida law he had the right to obtain it (not to mention the right to provide it lies with the trustees, not the Kamil parents as beneficiaries). Third he claimed that the Trust is not a marital asset because he "understands" it is a generation skipping Trust. The Trust language is clear that is not true. In sum, the Trial Court did not provide a reasonable rationale or make findings supporting its denial of Ms. Kamil's requests regarding the Trust and on that basis alone unsustainably exercised its discretion

Mr. Kamil also argued in his objection to Ms. Kamil's first motion for reconsideration that Ms. Kamil should be foreclosed from a further hearing and from the Trial Court's reconsidering its order denying her requests regarding the Trust in her Memorandum I, because she was aware of it and failed to perform discovery. That argument was rejected in *Shafmaster*, 138 N.H. at 465. There, though Ms. Shafmaster did not undertake discovery regarding Mr. Shafmaster's year old opinion of value of an asset, the Court held that Mr. Shafmaster fraudulently induced Ms. Shafmaster to sign the property settlement and under those circumstances and Ms. Shafmaster did not have a duty to conduct discovery or further investigate his representations. *Id.* at 467. The circumstances of that case are similar to those here, where Mr. Kamil represented that the Trust was not a marital asset and therefore there was no need for disclosure.

The decision whether to receive further evidence on a motion for reconsideration rests in the sound discretion of the trial court. See *Farris v.*

Daigle, 139 N.H. 453 (1995). In *Farris*, the Court held that the trial court abused its discretion in failing to consider on reconsideration a signed copy of a document which had been submitted at trial unsigned. *Id.* at 455. The Court held that on reconsideration the trial court should have determined the validity of the signed document as part of its decision making and remanded it for determination of the validity of the signed, faxed document. *Id.* In Justice Thayer's dissenting opinion, he noted that the signed, faxed document in question was in the possession of the party seeking reconsideration at the time of the original hearing but that party had failed to present it to the trial court. *Id.* at 466. While acknowledging that the majority was correct that the trial court was empowered to consider the new evidence, Justice Thayer stated that the trial court sustainably exercised its discretion not to consider the new evidence because the failure to present the evidence at the proper time was attributable solely to the party seeking reconsideration (the Plaintiff in *Farris*). *Id.* The majority rejected that reasoning, stating that the trial court abused its discretion by failing to consider the new evidence. *Id.* at 455. Mr. Kamil's argument mirrors the dissent's in *Farris* and this Court should reject it, as it did in *Farris*.

In conclusion, the Trial Court unsustainably exercised its discretion in denying Ms. Kamil's requests on reconsideration to compel Mr. Kamil to obtain a complete copy of the Trust, provide accountings and financial records of the Trust and to schedule a hearing to take evidence regarding it to determine if it is a marital asset and, if so, its value and how to divide it.

2. The Trial Court unsustainably exercised its discretion in denying Ms. Kamil's request on reconsideration to award her the market gains and/or interest on the share of the parties'

investment accounts it awarded her from and after the "valuation date" the Trial Court chose some three and a half years before the date of the Decree

In the exercise of its discretion, the Trial Court awarded Ms. Kamil 15% of the parties' investment accounts. (Mr. Kamil's Brief, p. 84) and two retirement accounts but failed to award her the growth oh same between the period of the valuation date and the Decree three and a half years later, though it acknowledged that the accounts has grown substantially by market forces during that time. Mr. Kamil's Brief, p.80. While a disappointingly disproportionate share of 15% of these accounts was awarded her, Ms. Kamil is mindful of the wide discretion accorded trial courts to make an equitable property division and does not challenge the Trial Court's exercise of discretion to make the 85/15 division. However, having found that it was fair and equitable that Ms. Kamil be awarded 15% of the parties' investment and two retirement accounts, amounting to a total of $505,391.13 as of February 2015, logic and fairness would seem to dictate that she be awarded the fruits of that award, being the increases in her share over a long period until payment to her. Further, the Trial Court made no findings and provided no rationale supporting its denial to Ms. Kamil of the substantial growth of her share until the date of the Decree.

If Ms. Kamil had received her 15% share of the investment and retirement accounts on the valuation date, she would have been able to enjoy the same increases to her share over a three and a half year period, which, under the current Trial Court's orders, Mr. Kamil will exclusively enjoy on not only his share but her share, as well. This is illogical and prejudicial. This Court should correct the orders denying award to Ms.

Kamil of the increases in her share of the investment and retirement accounts and order that she receive the total of the balances of her shares of those accounts as of the date of the Decree.

3. The Trial Court unsustainably exercised its discretion in not awarding Ms. Kamil statutory interest on her property division share for each day her share is not paid after the date the Trial Court designated as a deadline for payment in the Decree.

The Trial Court erred in denying Ms. Kamil's request on reconsideration that she be awarded statutory interest on her property division share for each day her share is not paid after the 120 days for payment ordered in the Divorce Decree ("Decree"). Like the Trial Court's failure to award Ms. Kamil the increase by market changes and/or interest on the share of the investment and retirement accounts awarded her since the valuation date, its failure to order statutory interest after the 120 day deadline for paying Ms. Kamil her property division share of $1,011,359. (plus interest on the amount of the growth on her share of the investment and retirement accounts to the date of the Decree, if she is ultimately awarded same) during what is likely to be a long period of time after the 120 day deadline until Ms. Kamil's property division is paid is illogical and prejudicial to Ms. Kamil. As such, it represents an unsustainable exercise of discretion.

As pointed out in Ms. Kamil's Memorandum I, that while the Trial Court ordered Ms. Kamil's property division share to be paid within 120 days, payment might be made much later due to a likely appeal and consequent stay of the obligation to make the payment. (Ms. Kamil's Appx, p. 24-27). She requested the Trial Court to order statutory interest on her

share for each day payment was delayed beyond 120 days, so she would not be prejudiced by a delay. *Id.* Not surprisingly, Mr. Kamil did appeal, which has already resulted in Ms. Kamil not receiving her share within 120 days of the Decree. The question, then, is who should receive the benefit of the use of Ms. Kamil's property division share after the 120 deadline for payment.

The Trial Court made clear its intention that Ms. Kamil be paid her awarded share within 120 days. Logically, it follows the Trial Court anticipated that Ms. Kamil would receive her share within 120 days and then would be able to make use of it, including gaining interest on it. It is illogical and prejudicial to Ms. Kamil that Mr. Kamil be permitted to take advantage of the fact of this appeal to receive the ongoing benefit of use of the money awarded Ms. Kamil after the date on which it was ordered paid. Thus, the Trial Court unsustainably exercised its discretion in denying Ms. Kamil the statutory interest. It also erred in failing to make adequate findings and provide an adequate rationale for its denial.

4. The Trial Court unsustainably exercised its discretion in ordering Ms. Kamil to pay one-half of the capital gains taxes arising from Mr. Kamil's sale of his awarded assets to pay Ms. Kamil's property division share, even though Mr. Kamil has sole control over how to raise the money and an incentive to liquidate accounts resulting in the highest capital gains taxes.

In its Decree, the Trial Court ordered that each party pay one-half of any and all capital gains arising out of Mr. Kamil's transactions- presumably liquidation of one or more of the parties' investment accounts- to raise the money needed to pay part of Ms. Kamil's property division share and denied

Ms. Kamil's request on reconsideration to order that Ms. Kamil not be responsible for same. (Mr. Kamil's Brief, p. 84). These orders represent an unsustainable exercise of discretion, because they are illogical and prejudicial to Ms. Kamil.

Given the Trial Court's orders Mr. Kamil can choose which of his investments to liquidate to pay Ms. Kamil. This incentivizes him to liquidate those assets which will result in the highest amount of capital gains, in order to spread the resulting tax burden- a burden that otherwise he alone would have to bear when the accounts/assets were eventually liquidated- between him and Ms. Kamil. For example, he is incentivized to withdraw from investment accounts which have grown the most in the shortest time and so will generate the most capital gains taxes, or withdraw from retirement accounts, resulting in substantial federal income taxes on the transaction, because Ms. Kamil will be required to pay half of the tax burden. He will be least incentivized to liquidate those investment accounts which will result in more modest capital gains. Under the Trial Court's orders, Ms. Kamil is required to share in the capital gains, yet has no say in which assets will be sold or liquidated and so no control over the resulting tax liability.

Ms. Kamil argued in her Memorandum I that given the vast disparity in the parties' wealth, as decreed by the Trial Court, incomes and future opportunity to acquire capital assets, it would be fair and equitable for the Trial Court to require Mr. Kamil to pay capital gains on monies he chooses to raise from his accounts or other capital gains producing asset transactions to pay Ms. Kamil's property division share. (Ms Kamil's Appx, p. 27-28). As Ms. Kamil pointed out in that Memorandum, Mr.

Kamil has a mortgage free home worth $1.3 million according to the Trial Court's findings and that he could choose to borrow money at the relatively low current interest rates in order to raise the amount needed to reach the $1.1 M. dollars after paying over her 15% of the investment and retirement accounts.. *Id.* He would incur no capital gains on the borrowing and would get favorable tax treatment for the mortgage interest payments. *Id.* Accordingly, Mr. Kamil need not incur substantial capital gains taxes from raising the money to pay Ms. Kamil's property division share. Again, however, the Trial Court's orders incentivize him not to do this, but instead to liquidate assets carrying the highest capital gains tax burden.

Ms. Kamil continued in Memorandum I that if the Trial Court were unwilling to reconsider its order that Ms. Kamil share in payment of such capital gains taxes it should at least require him to raise the money to pay Ms. Kamil such that the least amount of capital gains result. *Id.* The Trial Court denied that request without providing any rationale for it other than those in Mr. Kamil's Objection to Ms. Kamil's Motion for Reconsideration. *Id.* at 53. However, Mr. Kamil did not even address the issue in his Objection. *Id.* at 40-48.

It is respectfully submitted that it is extremely rare for divorce decrees to require a party receiving their property division share to pay capital gains taxes on transactions that the obligor decides in his or her discretion to make, with the receiving party having no input into which transactions should be made to raise the money and, therefore, how much capital gains tax the receiving party will be responsible to pay. There is no logical or reasonable basis to order the receiving party to do that. Further, such an order is clearly prejudicial to Ms. Kamil, because it requires her to

pay taxes for transactions dictated solely by Mr. Kamil and where he has a mortgage free million plus dollar home against which he could borrow the money. (Mr. Kamil's Brief, p. 82-84). This Court should vacate the Trial Court's order that Ms. Kamil be responsible to pay income or capital gains taxes on transactions Mr. Kamil chooses to make to raise the money to pay out Ms. Kamil's property division share.

5. The Trial Court unsustainably exercised its discretion in ordering that Ms. Kamil be awarded no parenting time with the children - even at a visitation center.

The Trial Court committed error in ordering that Ms. Kamil be awarded no parenting time with the children, even at a visitation center. Pursuant to RSA 461-A:2, it is the legislative purpose of this state to support frequent and continuing contact between each child and both parents. Although the Ms. Kamil has had issues with the reunification process, Tracey Tucker noted in her report that "there is bond with Robin and her children. The children were excited to see Robin at each visit and the kids had several good moments during these sessions. When Robin read books to the children, they were very responsive and very connected. In addition, Robin consistently brought activities suited to each child's interest, such as reading and coloring for Cassidy and Legos for Cory. The children do want to see their mother." (Mr. Kamil's Brief Page 73).

Prior to 2015, Ms. Kamil was the primary caretaker of the children. (Mr. Kamil's Brief Page 77). At that time, Cory had no behavioral issues in preschool. *Id.* The housekeeper had not expressed concerns about Ms. Kamil. *Id.* No concerns were expressed by Cassidy's teachers or the children's pediatrician's. *Id.* The children had hit all of their

developmental milestones while in Ms. Kamil's care. *Id.* An order of no visitation, even supervised at a visitation center with security, where there are notetakers is tantamount to terminating Ms. Kamil's parental rights, a right that is considered fundamental by the United States Supreme Court. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000) (stating that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children.") Where there are mechanisms, such as supervised visitation center, which would allow the children to meet with their mother in a safe environment, consistent with the State's legislative purpose, the Court erred in not allowing Ms. Kamil to have any visitation whatsoever.

6. The Trial Court erred in requiring Ms. Kamil to demonstrate to a non-judicial third party's (Tracey Tucker) satisfaction that she has acquired certain skills in order to have any visitation with the children.

The Trial Court erred in ordering and then failing to reconsider its order requiring Ms. Kamil to demonstrate to Tracey Tucker, a non-judicial third party, that Ms. Kamil had acquired certain skills in order to have any parenting time with the children.

> "If and when Ms. Kamil can demonstrate to Tracey Tucker's professional satisfaction that both Ms. Kamil and the children are prepared to restart their supervised, scripted visitations, Tracey Tucker shall restart the process as originally envisioned by Mr. Garber."

In her Memorandum I, Ms. Kamil pointed out that in ordering Ms. Kamil to demonstrate her acquired skills to Ms. Tucker's satisfaction

before her parenting rights might increase, the Trial Court impermissibly delegated its judicial authority to Ms. Tucker. In *Gould*, when deciding whether the actions of the Legislature violated the New Hampshire Constitution with respect to delegation of powers, the Court discussed the notion of delegation of judicial authority.

> "And without a well established ground of exception, the Senate and House are as incapable of delegating their legislative power, as the governor and council are of delegating the power of pardon, or the court of delegating the power of deciding the constitutional question raised in these cases. All power is derived from the people, and all magistrates and officers of government are their agents, and at all times accountable to them. Bill of Rights, Art. 8. And these agents have not a general authority to avoid their official responsibility by relegating their duties to their assignees." *Gould v. Town of Raymond*, 59 N.H. 260, 276 (1879).

Placing Ms. Tucker in the role of fact finder and decision maker as to how and when Ms. Kamil may progress towards seeing her children constitutes an avoidance of official judicial responsibility and an impermissible delegation of it to a private citizen.

In her Memorandum I, Ms. Kamil requested that the Trial Court schedule periodic review hearings to determine the progress Ms. Kamil had made in her efforts to reunify with the children and that the first review hearing be scheduled in four months, with Tracey Tucker to submit a report as to what has occurred in the interim, so that the Trial Court could decide whether to modify its parenting orders. (Ms Kamil's Appx, p. 27-28). That construct would place Ms. Tucker in an appropriate role – like a Guardian

ad Litem making recommendations to the Trial Court, rather than being a decision maker, as the Trial Court made her in its Decree. Presumably, no one with knowledge of domestic relations law would argue that a Guardian ad Litem might permissibly be vested with authority to make substantive parenting orders, but the Trial Court's orders regarding Tracey Tucker have the same effect.

The Trial Court also erred in relying for its denial of Ms. Kamil's requests regarding Tracey Tucker upon Mr. Kamil's arguments in his objection to Ms. Kamil's first motion for reconsideration.. His argument was that Ms. Tucker's role was to give input to the Trial Court, by no means dispositive or binding on the Trial Court, and then the Trial Court would remain free to adopt, modify or disregard any such input in the exercise of its wide range in discretion. *Id.* at 43. If that is how the Trial Court

had constructed its order, there would be no issue. However, the Trial Court did not do that. Instead, it made the following order: "If and when Ms. Kamil can demonstrate to Tracey Tucker's professional satisfaction that both Ms. Kamil and the children are prepared to restart their supervised, scripted visitations, Tracey Tucker shall restart the process as originally envisioned by Mr. Garber." (Mr. Kamil's Brief, p. 77). Again, the Trial Court's reliance on Mr. Kamil's arguments for its denial of Ms. Kamil's requests concerning the role it ordered for Ms. Tucker was misplaced and represents error. It should have made adequate findings and provided an adequate rationale for its orders regarding Ms. Tucker.

Accordingly, the Court should vacate that part of the Decree, order that Ms. Tucker's role be limited to making recommendations and that the

Trial Court is the decision maker regarding when and if Mr. Kamil's parenting time and conditions associated with it may be modified.

7. **The Trial Court erred in deciding not to award Ms. Kamil any of her personal property located in the marital residence and only awarding her the personal property in her possession at the time of the final decree.**

In her Memorandum 1, Ms. Kamil requested specific items of personal property, as the Court only awarded her the personal property in her possession and none of her personal property at the marital home. (Ms Kamil's Appx, p. 28). Ms. Kamil specifically requested the following items of personal property which Mr. Kamil has no use for: children's clothes and baby gear the children have outgrown, toddler bed, high chair, strollers, baby seats, breast pumps, baby carriers, hiking carrier, bamboo seat, pack and play, bouncy seat, infant and toddler toys, bottles, and feeding gear for the babies. *Id.* Ms. Kamil has use for these items, as she is expecting a child now, whereas Mr. Kamil does not. *Id.* Furthermore, there was no logical reason for the Court not to award Ms. Kamil her other personal property at the marital home. Accordingly, the Court should order that Ms. Kamil be awarded these items and her other personal items located at the marital property.

8. **The Trial Court erred in failing to bifurcate the divorce by making its parenting orders temporary, instead of final orders, considering that the modification standards applicable to final parenting orders are not compatible with the reunification protocol ordered by the trial court.**

In her Memorandum and also her Memorandum in Support of her

Motion for Reconsideration and/or Clarification and for Re-Hearing on Trust Issue Ms. Kamil requested that the Trial Court reconsider making its parenting orders in the Decree final orders, as opposed to temporary orders. (Ms Kamil's Appx, p. 18). The Trial Court erred in not so ordering in the Decree and in denying Ms. Kamil's request on reconsideration that the parenting orders be temporary orders.

In its Decree, the Trial Court did not set forth a graduated parenting schedule. The only reference made to potential expanded parenting time is in Paragraph number 10 on Page 13 of the Decree, which states: "If and when Ms. Kamil can demonstrate to Tracey Tucker's professional satisfaction that both Ms. Kamil and the children are prepared to re-start their supervised, scripted visitations, Tracey Tucker shall re-start the process as originally envisioned by Mr. Garber." (Mr. Kamil's Brief Page 77).

As a result of the Trial Court's failure to establish a graduated schedule, any changes in the schedule set forth in the Final Divorce Decree would require an order of modification. This is particularly troublesome in this case, where the Court ordered no parenting time to begin with.

Mr. Kamil objected to Ms. Kamil's request to make the parenting orders temporary orders, arguing that the Legislature cannot envision every circumstance and that the Trial Court has latitude to modify the parenting schedule without having to be shoe horned into one of the modification standards in RSA 461-A:11.

> "18. Courts must, by necessity address situations involving egregious parenting deficits (alcohol abuse, drug abuse, physical and sexual abuse of children among others), some of which

> result in prolonged separation and/or incarceration by a deficient parent. The Court's paramount interest in such situations must be the best interest and safety and security (physical and emotional) of the children who are involved in NH divorces.
>
> 19. In such situations, it is not at all uncommon for Courts to implement graduated expansions of parenting time and schedules within any final order, subject to completion and confirmation of remedial steps necessary to correct the underlying parental deficiency and to insure it does not recur...." (Ms Kamil's Appx, p. 42-43).

First, contrary to Mr. Kamil's claim about graduated expansions of the parenting schedule in an order, the Trial Court did not set forth a graduated schedule of parenting time or any parenting times, for that matter. If it had, it would be another matter, but in failing to do so, the Trial Court set up a situation where each request for more parenting time would be subject to the modification standards for final order.

In parental/child reunification situations, typically, there is little or no initial contact between parent and child - thus the need for reunification. Typically, as in this case, the Court sets forth a plan or a protocol for the parent to earn their way back to the frequent and continuing contact with the child, which RSA 461-A states is New Hampshire's policy

The difficulty, however, is that by definition a reunification plan, if successful, will result in a series of changes in the parenting schedule towards the goal of establishing frequent and continuing contact between the parent and the children. Each one of those changes in the schedule is a

modification of the parenting schedule. If the parenting schedule is a final parenting schedule, then the Supreme Court has made it clear that the trial court must find that one of the grounds enumerated in RSA 461-A:l l must be established.

> RSA 46 l-A:ll, I, simply does not allow a party to seek modification of an existing parenting plan when, as in this case, none of the circumstances listed therein exists. While this problem may regrettably prevent a trial court from reassessing the best interests of a child in circumstances where the parents are not interfering and where the child's current environment is not detrimental, it is not up to the court to solve it or to speculate as to how the legislature might choose to do so. *In re Muchmore*, 159 N.H. 470, 474 (2009).

The only ground for modification in RSA 461-A:11 which might possibly apply to a reunification plan would be subsection (f): "the modification makes either a minimal change or no change in the allocation of parenting lime between the parents, and the Court determines that such change would be in the best interests of the child." lt appears that this ground was added to address situations where a schedule could be reorganized without much change to the schedule (Tuesday becomes Wednesday, e.g.) because for, example, a parent's work schedule changed. The language of the subsection makes it clear that there is to be minimal or no change in the schedule. Conceivably, this subsection could be read to permit a series of incremental changes to a parenting schedule, eventually adding up to a substantial change from the initial supervised or no parenting time scenario, the goal of a reunification plan However, it is not clear that

this subsection was intended to apply to a progressing parenting schedule based upon reunification efforts. The best solution would be for the Legislature to remedy the problem of modification of schedule in a reunification scenario, but we do not have that luxury here.

In her Memorandum I, Ms. Kamil argued that the best way to handle the problem would be for the Trial Court to make the parenting orders further temporary orders, because if so, the rigid criteria set forth in RSA 461-A:11 would not obstruct the progress of the reunification plan and the goal of increases in the reunifying parent's parenting time. (Ms Kamil's Appx, p. 18).

The standard for modifying temporary orders is the elastic "best interest" standard, which would be conducive to making changes to a parenting schedule based upon progress of the reunifying parent with the reunification plan. *Id.* at 22. Ironically, in the above quoted language of Mr. Kamil's Objection he asserts that a court's paramount interest in situations like the one in this case is the best interest of the child. Ms. Kamil agrees; that is the standard for the temporary orders and so is the best one to employ for reunifications situation. Unfortunately, it is not the standard for modifying final parenting orders.

While bifurcation of final divorce decrees is not favored by the Supreme Court, the Court has found that in some circumstances it is appropriate. In *Germaine* the trial court bifurcated the divorce decree by awarding the parties a decree of divorce and dividing their property, while leaving the determination of custody and permanent child support to a further hearing. *Germaine v. Germaine*, 137 N.H. 82 (1993), While the

Court noted "... that by this order we do not intend to encourage bifurcation, and caution that discretion to bifurcate should be exercised sparingly.", *Id.* at 84, it did not rule that the bifurcation in *Germaine* was improper. The takeaway from *Germaine* is that discretion to bifurcate should be used sparingly, but there are some cases in which it is appropriate. This is such a case, for the reasons set forth above.

On reconsideration, Ms. Kamil requested the Trial Court to schedule periodic review hearings to determine the progress she had made in her efforts to be reunified with the children; that the first review hearing be scheduled in four months; that Tracey Tucker, who had agreed to stay on in her role in the reunification protocol, be requested to submit a report of what has occurred on or before 10 days before the scheduled Review Hearing; and that the Trial Court notify the parties that upon consideration of the Review Hearing, it may make changes to the schedule and/or the conditions under which Ms. Kamil may have parenting time. (Ms Kamil's Appx, p. 23).

As Ms. Kamil pointed out in her Memorandum I, while finality in a long-disputed parenting case is a beneficial consideration, by the nature of the reunification process, it may take a substantial period of time and so whether the parenting orders are labeled final or temporary, there may be no finality for a long time. *Id.* The only question is which standard should be applied-apply – the rigid standards applied to a final order or the flexible best interest standard applied to modification of temporary orders. The standards for modifying a final parenting plan tie courts' hands and cripple the exercise of judicial discretion to supervise and make modifications to the parenting schedule in recognition of progress in the reunification plan.

Id.

In conclusion, the Trial Court erred by failing to make its parenting orders temporary orders instead of final orders. The benefit of making parenting orders final is that they are more difficult to modify, which discourages modifications and thus bolsters children's stability. However, it is unlikely that there will soon be finality in a reunification case. Further, application of the standards for modifying final parenting orders are not conducive to reunification cases. The Trial Court erred in not recognizing that and denying the request to bifurcate,

9. In light of the vast disparity in the parties' incomes and currently available assets, The Trial Court unsustainable exercised its discretion in declining to award Ms. Kamil an advance on her property division share for post-divorce expenses and legal fees for this appeal and potentially for proceedings relating to the Trust after this appeal.

Ms. Kamil requested on reconsideration a $40,000 advance from her share of the property division. (Ms Kamil's Appx, p. 28-29). With over $1 million awarded to Ms. Kamil, with her need to expend substantial legal fees for this appeal and, potentially, for proceedings, including depositions if necessary, relating to the Trust. There was no reasonable basis for denying her an advance of less than 4% of her awarded share (over 1 Million Dollars). Again, the Trial Court denied the request for the reasons set forth in Mr. Kamil's objection to Ms. Kamil's first motion to reconsider and "for many others". *Id.* at 53.

In his objection to Ms. Kamil's first motion to reconsider, Mr. Kamil stated: "...this Court should not allow this Respondent access to any

more of Petitioner's resources for her legal fees, …". *Id.* at 49. That assumes that the $40,000 Ms. Kamil requested be advanced is Mr. Kamil's money – it is not; it is, in fact, a small percentage of Ms. Kamil's share of the property division. Consequently, Mr. Kamil's argument rests on a false premise and must be rejected as a reasonable basis for the Trial Court's denial of her request for an advance on her property.

Reliance on Mr. Kamil's argument in his objection to the first motion to reconsider to deny Ms. Kamil's request for the advance constitutes a failure to make adequate findings and provide an adequate rationale for denying her request, because the premise upon which Mr. Kamil's argument rested- that the $40,000 is "his" money"- is false. The order is also prejudicial to Ms. Kamil.

Accordingly, the Court should reverse the Trial Court's denial of the request for an advance. If not, then the issue should be remanded for findings and rationale supporting the denial of the advance.

10. The Trial court erred in failing to make findings or provide a rationale for its orders described in the preceding paragraphs.

Ms. Kamil argues in her cross-appeal that on its face, a number of the Trial Court's
orders are illogical and prejudicial and for that reason this Court should reverse them. If this
Court declines to do so on one or more of these issues, however, it should remand the case for the Trial Court to make proper findings and provide a rationale supporting the orders Ms. Kamil challenges.

Where an unequal division of property was made, as in this case, the Trial Court is required to provide a rationale and make findings and rulings

supporting its decision.

> "'[i]f the court concludes that an unequal distribution is ordered, it should state its reasons and make specific findings and rulings supporting its decision.' *Bursey v. Bursey*, 145 N.H. 283, 286, 761 A.2d 491 (2000) (quotation omitted); See RSA 458:16-a,IV (2004). *In the Matter of Peirano and Larsen*, 155 N.H. 738,749 (2007).

While the Trial Court made findings and explained its reasons for making the unequal division, it failed to make findings or provide reasons for the orders Ms. Kamil challenges herein beyond citing the reasons stated in Mr. Kamil's objection to Ms. Kamil's first motion for reconsideration and "many others" [reasons]. "Many others" does not constitute an adequate basis for the Trial Court's orders and Mr. Kamil did not provide meritorious reasons supporting the Trial Court's denial of Ms. Kamil's requests on reconsideration, either. Nor can this Court take guidance from the Trial Court's rulings on Mr. Kamil's Requests for Findings and Rulings, because they do not address the questions Ms. Kamil raises.

While a trial court is required by statute to make findings and provide a rationale for its rulings relating to property division, Ms. Kamil also requested if the Trial Court declined to reconsider and change the orders she challenged, that it make findings and provide a rationale for it denial. (see request in Memorandum I regarding the issues of the growth on her share of the accounts and in Memorandum II regarding the growth issue, the statutory interest issue, the advance of funds issue, the capital gains issue, the Tracey Tucker issue and the bifurcation issue.

Despite Ms. Kamil's requests that the Trial Court make findings and

provide a rationale supporting its decision on the issues she raised on reconsideration and despite the requirement to make findings in R.S.A. 458:16-a,IV, it failed to make findings or provide a rationale for its denial of the Ms. Kamil's requests summarized in the preceding sentence, other than to point to Mr. Kamil's arguments in his objection to Ms. Kamil's objection to her first motion for reconsideration. However, as explained above Mr. Kamil made substantive (as opposed to process arguments such as waiver) arguments on the Trust, Tracey Tucker and advance questions and, as explained in the arguments above on those issues, none of his arguments had merit. That being the case, the Trial Court failed to make adequate findings or provide an reasonable rationale supporting the orders Ms. Kamil challenges. If this Court declines to reverse those orders, it should remand for the Trail Court to make findings and provide rationales for its orders beyond the ones stated in its denial of Ms. Kamil's first motion to reconsider.

CONCLUSION

For the reasons stated above, the Court should affirm the Trial Court's decision on the issues raised in Mr. Kamil's appeal and should rule on the above issues raised by Ms. Kamil as follows:

1. Remand to the Trial Court to order Mr. Kamil to provide the Trust and the requested financial information and associated documents to Ms. Kamil and require the Trial Court to hold a hearing on the division of the trust.
2. Reverse the Trial Court's order denying Ms. Kamil her growth of her share of the retirement and investment accounts awarded her during the

period of the valuation date to the date of the Decree, such that she receives the balance of those accounts as of the date of the Decree..

3. Reverse the Trial Court's order denying Ms. Kamil statutory interest on her awarded property division share from and after 120 days after the Decree..

4. Vacate Trial Court's order that Ms. Kamil be responsible to pay income or capital gains taxes on transactions Mr. Kamil chooses to make to raise the money to pay out Ms. Kamil's property division share.

5. Reverse the Trial Court's order disallowing Ms. Kamil any visitation with her children whatsoever and order that she shall have supervised visitation while she participates int eh reunification protocol.

6. Vacate the part of the decree placing Ms. Tucker in a judicial role order and order that Ms. Tucker's role be limited to making reconsiderations and that the Trial Court is the decision maker regarding when and if Mr. Kamil's parenting time and conditions associated with it may be modified.

7. Reverse the Trial Court's order regarding personal property and order that Ms. Kamil be awarded her personal property located at the marital home and her property requested in her Motion for Reconsideration

8. Vacate the final parenting orders and bifurcate them from the financial issues, making them temporary orders.

9. Reverse the Trial Court's decision not to provide Ms. Kamil an advance on her property share.

10. Remand for findings and provision of rationale supporting those orders Ms. Kamil challenges, but the Court does no reverse.

STATEMENT WITH RESPECT TO ORAL ARGUMENT

Robin Kamil respectfully requests an oral argument by David W. Sayward.

David W. Sayward,
NH Bar #2263

CERTIFICATION

Pursuant to Supreme Court Rule 16(10), I hereby certify that on this day a copy of this brief has been served via the Court's Electronic Filing System to Michael Keefe, counsel for Matthew Kamil

David W. Sayward,
NH Bar #2263

CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 16(11), I hereby certify that this brief does not exceed 14,000 words, exclusive of pages containing the table of contents, tables of citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters.

David W. Sayward,
NH Bar #2263

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

7th Circuit - Family Division - Rochester
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Dover NH 03820

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NOTICE OF DECISION

ROBIN T KAMIL
5 NORTHWAY CIR #4
DOVER NH 03820

Case Name: **In the Matter of Matthew Kamil and Robin Kamil**
Case Number: **632-2015-DM-00045**

Enclosed please find a copy of the Court's Order dated October 31, 2018 relative to:

Final Divorce Decree (Narrative) #465
Petitioner's Proposed Final Decree for Divorce (as modified by the court) #462
Petitioner's Proposed Parenting Plan (as modified by the court) #461

It will cost $40.00 for a certified copy of your decree.

This matter will become final on 12/03/2018 known as the Judgment Day, if no objections or appeals are filed. Objections must be filed with this court within 10 days of the date of the Notice of Decision, appeals to the Supreme Court within 30 days.

November 01, 2018

Cheryll-Ann Andrews
Clerk of Court

(207)
C: F. Michael Keefe, ESQ; Andrea L. Daly, ESQ

JUDICIAL BRANCH
NH CIRCUIT COURT

STRAFFORD COUNTY

7TH CIRCUIT – FAMILY DIVISION – ROCHESTER

In the Matter of:
Matthew Kamil, Petitioner, and Robin Kamil, Respondent
Case No. 632-2015-DM-00045

FINAL DIVORCE DECREE

I. PROCEDURAL BACKGROUND:

This case has been pending since 2/17/15. The parties were married 9/3/07. According to the parameters of Rahn and Rahn, 123 N.H. 222, 225 (1983), this is a not a long-term marriage.

The parties have two children: Cassidy (DOB 1/30/10) and Cory (DOB 2/23/12). Although there have been a prenuptial contest, contested issues over alimony, domestic violence proceedings, and an abuse and neglect case; the divorce proceeding has been dominated by parenting issues and the Court's struggle to keep the children safe while reuniting them with their mother.

Mr. Kamil brought the divorce on fault grounds of treatment to seriously harm health or endanger reason (RSA 458:7, III) and extreme cruelty (RSA 458:7, V). Ms. Kamil filed a timely Cross-Petition, requesting alimony and also claiming fault grounds of extreme cruelty. Neither party presented any evidence of marital fault, and none is found.

Temporary Orders were first issued on 4/16/15, following a four hour Domestic Violence Hearing on Mr. Kamil's Petition. Although Mr. Kamil was found not to have sustained his burden of proof under RSA 173-B, he was found to have proven the following:

> "... chaotic and wildly inappropriate scenes had taken place in their home in front of the children in September and December of 2014 and again on February 4, 2015. The featured events of 2/4/15 included Ms. Kamil throwing and breaking a chair in an angry tirade, which included a wrestling match between the parents and a tragically typical, but equally unacceptable, level of screaming, yelling, and chaos.
>
> I find that both parties played a role in all of those scenes; however, Ms. Kamil's role was by far that of the lead protagonist."

DCYF became involved, and brought an Abuse and Neglect Petition against Ms. Kamil. On 9/15/15, Ms. Kamil was adjudicated to have sexually abused Cassidy and neglected both children. A subsequent *de novo* appeal to the Superior Court resulted in the same outcome. DCYF recommended Ms. Kamil be limited to supervised visitation due to the " ... sexualized component of her parenting style."

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On 4/16/15, I awarded temporary primary residential responsibility to Mr. Kamil and limited Ms. Kamil to supervised visits for a minimum of eight hours a week.

Ms. Kamil's quasi-supervised parenting time was expanded on 6/3/15.

On 11/25/15, I awarded Ms. Kamil $7,000 a month alimony. Although she is a doctorate level physical therapist, she had a back injury. Mr. Kamil is a physician earning significantly more than $250,000 a year.

Regarding parenting issues, the parties had agreed to participate in a Child Centered Family Systems Evaluation performed by Dr. Ben Garber, who issued an 89 page report.

On 4/7/16, I closed the Abuse and Neglect case and Kathy Forbes-Fisher was appointed Parenting Coordinator to fill what was perceived at that time as a decision making void for the children. The children remained in the primary residential responsibility of Mr. Kamil. Ms. Kamil continued to have supervised parenting time, which was allowed to move to her apartment.

On 5/9/16, I ordered that the parties had both agreed to accept Dr. Garber's findings and recommendations, and there was a plan developed to follow Dr. Garber's guided therapeutic path, while minimizing conflict in the courtroom.

By 8/11/16, the litigation had taken a more adversarial turn, in part because of the ongoing *de novo* Abuse and Neglect trial in the Superior Court. I also found in that Order that Ms. Kamil was "... pushing back at every perceived opportunity ..."

By 12/20/16, the litigious nature of the case was again amplified, largely as a result of Ms. Kamil's obvious frustration over the slow pace of therapeutic reunification with her children. Ms. Kamil, however, did not officially ask to be released from her earlier commitment to follow Dr. Garber's reunification plan.

By my Order of 1/24/17, I denied Mr. Kamil's Motion to Enforce the Prenuptial Agreement for the reasons set out in that Order.

By 3/31/17, the parenting evidence was that Ms. Kamil was not allowing the therapeutic reunification plan to succeed:

"More specifically, Kathy Forbes-Fisher expressed the following additional concerns:

Ms. Kamil is not following the supervisor's recommendations most recently. She has not allowed Kathy Forbes-Fisher access to her medical providers. She has frustrated the scheduling of meetings, which need to occur. She has not allowed the Parenting Coordinator to observe visits with the children. She is resorting to threatening e-mails, including engaging in some not so subtle self-help in meeting with the nanny. She has become increasingly defensive, demanding, argumentative, and hostile to the Parenting

Coordinator and the Visitation Supervisor. She appears no longer committed to following the therapeutic goals and process established by Dr. Garber."

On 3/31/17, I admonished Ms. Kamil to follow the path of the Garber reunification plan, as guided by the Parenting Coordinator, Kathy Forbes-Fisher. I found that if she failed to do so, she would lose her supervised contact in the community and have to return to a supervised visitation center. I ordered both parents into recommended specialized counseling.

On 5/11/17, the Supreme Court refused to accept Mr. Kamil's Interlocutory Appeal of my decision invalidating the Prenuptial Agreement, which appeal I had approved on 4/12/17.

On 7/12/17, Ms. Kamil was found in contempt for showing up to see the children at temple on 5/21/17 in violation of my 3/31/17 Order.

On 9/13/17, I declared that the case was at a "crucial crossroads." I took the time to describe the difficult history of the case from a parenting perspective, and I again found Ms. Kamil in contempt for showing up uninvited to Cory's karate lessons on 7/25/17 and then again at the Children's Museum on 7/26/17 and 7/27/17.

"During her testimony on 9/7/17, Ms. Kamil did not claim a misunderstanding. She did not deny being in contempt. She basically asserted that she was desperate to see her children, determined not to be "erased" as their mother, and of the belief that many Orders, limiting her contact with the children, are simply wrong.

I find again here, that Ms. Kamil is in contempt of my Orders of 3/31/17 and 7/12/17.

By my Order of 8/25/17, I denied Ms. Kamil's request for permission to depose the Parenting Coordinator. In doing so, I stated: 'I see this request as an effort to effectively remove the Parenting Coordinator and destroy the therapeutic reunification process, recommended by Dr. Garber and agreed to by the parties.'

On 9/5/17, I deferred specific ruling on Ms. Kamil's 8/25/17 Motion for Expedited Hearing on the issue of parenting, stating as follows:

'I am getting the sense that Ms. Kamil is no longer invested in the therapeutic process, and is now seeking a litigated resolution of parenting issues. If that is indeed the case, and the Supreme Court is not going to be hearing the prenuptial issues on an interlocutory basis, my sense is that this case should be scheduled for a Final Divorce Hearing on all issues. My Case Manager is instructed to notice a Telephonic Structuring Conference for that purpose.'

Ms. Kamil, rather carefully I think, has not come out and asked for the removal of the Parenting Coordinator or the termination of the therapeutic process. Instead, while

refusing to comply with that therapeutic process since at least June of 2017, she has asked for a litigated opportunity to prove she is entitled to unsupervised parenting time:

'I need to prove I am a fit parent and have not had an opportunity to prove it.'

Rather than pay the Visitation Supervisor the $200.00 owed at this time, or pay the Parenting Coordinator a relatively modest sum owed her, Ms. Kamil chose to pay Dr. Garber $2,500.00 to respond to a subpoena and testify on 9/7/17 about doing another assessment of her and the children. Dr. Garber's testimony included the following:

'If this were progressing the way I envisioned, 19 months of supervised visits would be concerning...If things were not progressing as I had envisioned, I would not be surprised if supervised visits were still ongoing.'

Both parties are now asking for a Hearing. Mr. Kamil wants it to be a Final Divorce Hearing. Ms. Kamil wants it to be a Temporary Hearing. Neither party is willing to say the therapeutic process is over. Both agree, however, that it is dead in the water. Of course, they disagreed why that is so.

I find that things are not progressing in the way, which Dr. Garber envisioned. I find that Ms. Kamil is no longer committed to following the therapeutic goals and process established by Dr. Garber. While Ms. Kamil would apparently like Dr. Garber to establish a different process, Ms. Kamil has not generated any confidence in me that she would follow it, any more than she has followed the original process he envisioned. Her actions have evidenced, particularly when she is frustrated, that when confronted with an Order, with which she disagrees, she violates it. When confronted with the structure of a therapeutic process, which she thinks is not moving fast enough, she violates the structure or simply retreats from it.

The parties will both get their hearings, both within the next four months. Notwithstanding the contents of this Order, I will keep an open mind and remain committed to doing what is best for Cassie and Cory."

On 10/23/17, I gave Ms. Kamil her hearing to establish that she is a "fit parent", who does not require supervised access to her children. I found in my Order of 11/5/17 that she did not succeed in that endeavor:

"Ms. Kamil accurately reminded the Court that Dr. Garber had found that Mr. Kamil was also a very imperfect parent, and that Ms. Kamil had been primarily responsible for raising the children, prior to her being stripped of that responsibility by my orders issued in 2015, which included findings of sexual abuse and neglect. Ms. Kamil also proved again, through Carol James, what I already knew: Up to November of 2016, Ms. Kamil was trying hard and making progress to improve on the parenting limitations, identified by Dr. Garber. However, the 10/23/17 testimony of Carol James also resulted in a refocusing on some incidents, which were not consistent with good parenting. During one supervised

visit, for example, Ms. Kamil was encouraging Cassie to do a flip off a swing, which was arching high. Cassie wanted no part of it, but Ms. Kamil continued to encourage her to do it, even though Ms. Kamil, as the spotter, has a bad back, which she says greatly limits her work capacity. Ms. Kamil refused a one-on-one visit with Cory, while Cassie was in a dance recital. Ms. Kamil quizzed the children about their father's girlfriend.

Kathy Forbes-Fisher, whom Ms. Kamil called as a hostile witness, also reaffirmed Ms. Kamil's good efforts prior to November of 2016: '11/15/16: Robin sets limits for Cassie. A lot of growth has been demonstrated by Robin since supervision started.' Kathy Forbes-Fisher acknowledged good parenting effort by Ms. Kamil and good parenting results on December 16, 2016, January 10, 2017, January 24, 2017, January 27, 2017, January 31, 2017 and March 7, 2017. Kathy Forbes-Fisher reiterated that there have been some behavioral changes by Ms. Kamil, and it has been significant, particularly when compared to the limitations described by Dr. Garber in his report. Nevertheless, Kathy Forbes-Fisher also was very concerned about inconsistency in those good efforts: 'You are inconsistent. You have improved, but you are inconsistent.'

Kathy Forbes-Fisher pointed to ongoing reports and examples of inappropriate and excessive touching. Both Kathy Forbes-Fisher and Carol James testified that during one such visitation on June 2, 2017, Cory put his face in his mother's crotch, and Ms. Kamil either did not respond or did not respond appropriately. Kathy Forbes-Fisher amplified that testimony, stating that while he was putting his face in his mother's crotch, Cory spoke about kissing her penis. Ms. Forbes-Fisher testified on October 23, 2017 that on May 13, 2017, Ms. Kamil's 'fixing' a button over the breast area on Cassie's shirt caused Cassie to ask her to stop. Ms. Forbes-Fisher testified that on that same June 2, 2017 supervised visit referenced above, Cory spoke to Ms. Kamil about her 'booby crack.' After he said that, Ms. Kamil, apparently in an effort to demonstrate to her son that women have breasts and it is not appropriate for Cory to look at them, took off her shirt, leaving some sort of a tank top on underneath. Ms. Forbes-Fisher testified that during that same June 2, 2017 visit, Cory dropped a caterpillar onto Ms. Kamil's 'boobies', and they both laughed. Ms. Forbes-Fisher recounted that the family therapist, Pat Hollick, had a couple of very concerning sessions. On April 2, 2017, Cassie was extremely on edge and said: 'Mom, you touched my butt. Mom, you touched my private parts.' On May 1, 2017, Cassie sobbed uncontrollably over inappropriate touching. Kathy Forbes-Fisher observed that Cassie is overly concerned with sexual issues. It got to the point where Pat Hollick discontinued family therapy altogether.

I am not professionally trained to draw conclusions from these events, some of which I was not previously aware. However, in the context of Dr. Garber's evaluative report, they certainly concern me:

On page 73, Dr. Garber's report, he said that Ms. Kamil was 'enmeshed' in her mother/child relationship. He said that she is unwilling or incapable of establishing and respecting conventional interpersonal boundaries with the children. This '...underlies the sexual abuse findings against Ms. Kamil ...' Dr. Garber said Ms. Kamil appears to be blind to the destructive effects of her parenting practices.

On page 43 of Dr. Garber's report, he also found that despite the neglect adjudication, Ms. Kamil perceived herself as having no difficulty with the demands of parenting, which he found '... in and of itself, startling.'

On October 23, 2017, Kathy Forbes-Fisher testified that Ms. Kamil is still refusing to acknowledge the children's boundaries. Ms. Forbes-Fisher testified from her contact with Ms. Kamil's individual therapist that Ms. Kamil was not using those sessions to focus on her issues and how to improve her parenting. She used those sessions, instead, to complain about the slow moving supervised visitation process.

Ms. Forbes-Fisher testified that she was very concerned about Ms. Kamil telling the children in June 2017 that she would never see them again. 'You were very upset, but it was very inappropriate ... The kids don't know if you mean it or not ...' Now that the children have not seen their mother in months, that confusion is only compounded.

Kathy Forbes-Fisher testified on October 23, 2017 that Ms. Kamil has cancelled visits, refused to meet with the parenting coordinator without her lawyer, and rescinded releases, which Ms. Forbes-Fisher needs to continue serving in her capacity as parenting coordinator. Ms. Kamil has effectively destroyed her own parents' access to the children by insisting that she can use their grandparent visitation time to have unsupervised face time with the children. Ms. Forbes-Fisher testified that Ms. Kamil's behavior has alienated the children's therapists and derailed family therapy.

Consequently, Kathy Forbes-Fisher was unwilling to recommend unsupervised visitation. 'There have been a lot of problems. It raises concerns that explain my efforts to structure a path to the next level of visitation.' Ms. Forbes-Fisher felt that the children still love their mother and deserve regular time with her, and that was not happening under the current structured visitation format. Therefore, rather than just focus on Ms. Kamil being the reason for its failure, Ms. Forbes-Fisher recommended that, while remaining the parenting coordinator, she would withdraw from the supervised visitation component of the process and refer that component to Dr. Denise Leville, who has more experience with what has now become family reunification.

Ms. Kamil's reaction to that proposal was to reassert her immediate right and entitlement to unsupervised visits, starting twice weekly for 4 hours each, and including every other weekend in the presence of one of her parents.

Mr. Kamil objected to yet another layer of therapeutic intervention, necessitated by the contemptuous refusal of Ms. Kamil to comply with the existing plan and associated structure. His counsel argued for what I consider to be a litigation oriented result, that when you live by the sword, you die by the sword. Mr. Kamil asked the Court to simply enforce the existing structured process. If Ms. Kamil continues to refuse to comply and move through it, she effectively does not deserve the parenting time, which she is seeking; and thereby, would forfeit it. I inferred that Mr. Kamil and his counsel anticipate that Ms. Kamil will not comply with the existing process, and that the children would end up with

one parent. That one parent result, Mr. Kamil argued through his lawyer, would be acceptable for a mother with primary care; but not for a father because of what he described as an institutional judicial bias.

I find that, despite Ms. Kamil's recalcitrance, her children deserve one more chance. Such a result is consistent with Dr. Garber's findings on page 79 of his report.

'Both parents have critical and irreplaceable value and meaning to offer their children, ... and both kids need the opportunity to maintain a healthy relationship with both parents.'"

On 10/23/17, I did retain Kathy Forbes-Fisher as Parenting Coordinator, but at her suggestion, I attempted to appoint Dr. Denise Leville as an Evaluative Reunification Therapist.

On 12/7/17, I ordered Mr. Kamil to pay Ms. Kamil $46,893.50 in attorney's fees for the reasons set out in that 12 page Order.

On 1/9/18, I confirmed that Dr. Leville was not able to serve in her appointed capacity.

In my Order of 1/12/18, I refused to stop looking for another qualified mental health professional to serve as Reunification Therapist, envisioned by Dr. Garber. I continued to order supervised visitation for Ms. Kamil at a supervised visitation center in Dover.

On 1/30/18, I appointed Tracey Tucker to serve in an evaluative, structured, scripted reunification capacity, focusing on the children's needs to have safe and appropriate contact with their mother. In 17 paragraphs, I specifically set out the associated process.

On 5/21/18, I granted Mr. Kamil's motion and reduced his alimony obligation to $1,000 a month, effective 6/1/18.

On 5/21/18, I also added the following admonition about discovery:

"If Ms. Kamil does not substantially comply with this and prior Discovery Orders, she shall be sanctioned by restrictions on her ability to present evidence at the Final Divorce Hearing on any matter, into which inquiry has been made but not reasonably answered."

On 8/6/18, I learned that Ms. Kamil's reunification work with Tracey Tucker was cancelled by Tracey Tucker after just four sessions with the children and their mother and Tracey Tucker. In my related Order of 8/10/18, I found that the sessions were cancelled after 5/30/18, when Ms. Kamil made some impulsive and inappropriate comments to Tracey Tucker.

The 6/5/18 Report of Tracey Tucker stated both positively and negatively as follows:

"While I am concerned about Robin's conduct, it is important to note that there is a bond between Robin and her children. The children were excited to see Robin at each visit and

the kids had several good moments during these sessions. When Robin read books to the children, they were very responsive and very connected. In addition, Robin consistently brought activities suited to each child's interests, such as reading and coloring for Cassie and Legos for Corey. The children do want to see their mother."

However, the report of Tracey Tucker was otherwise dominated by her concerning observations and findings:

> On May 30th, I met with Robin with the intent to meet with the kids but canceled the session due to inappropriate behavior on behalf of Robin prior to the children attending the session.
>
> Based upon Robin's behavior at the last session, on May 30th, I am not comfortable providing further scripted sessions for Robin and the kids. Robin was aggressive, threatening, disruptive and highly inappropriate. Despite multiple efforts by me to redirect her, she was incapable of redirecting herself. Moreover, based upon Robin's disparaging comments directed at me during the last session, I have concluded that Robin is not willing to work with me in a constructive fashion to reunify with her children...
>
> Despite these positive observations, I do have serious concerns about how to repair the relationship between Robin and her children. Robin consistently refused to recognize that her behaviors impacted her children negatively. In addition, she did not seem able or willing to accept any responsibility for her behavior or to understand that her behavior impacts her relationship with her children. Her inability to genuinely apologize to the children is but one example of her inability to understand or take responsibility. Throughout the process of court ordered reunification therapy, Robin was not open to feedback. Robin often presented agitated, perseverating on how the court system has been unfair to her. Robin's anger towards the children's father, Kathy Forbes Fisher and myself prevented Robin from being emotionally present with her children. Robin's focus on asking the children why they know the rules, or who told them about the rules further prevented her from reconnecting to the kids. I am also concerned for the children's emotional health, as the time away from their mother without healthy repair will have a significant impact on their future mental health.
>
> I recommend that Robin work with her own therapist to address these issues that are preventing her from making choices that provide her more time with her children. In addition, I think it would be valuable for Robin's therapist to be in contact with both children's therapists and myself in order for her therapist to provide Robin with more concrete skills to engage and be more present with her children. After she has done this work wither [sic] therapist, I recommend that Robin resume supervised reunification therapy."

Based significantly on these comments of Tracey Tucker, I ordered on 8/10/18 that Ms. Kamil continue to work with her own therapist, Dr. Mendoza, to address issues that are preventing her from making choices that provide her more time with her children. I asked Tracey Tucker to monitor that

process, which might also involve Ms. Kamil's therapist interacting appropriately with the children's therapists and all therapeutic professionals interacting with Tracey Tucker.

II. MOTIONS IN LIMINE:

On 10/15/18, Mr. Kamil filed five Motions In Limine, which were heard on the first day of trial on 10/22/18 at 9:00 a.m. Both parties were present. Mr. Kamil had counsel. Ms. Kamil was self-represented. The five motions were as follows:

1. Motion to Exclude Testimony of Dr. Ben Garber, found at court document #450;

2. Motion to Exclude Testimony of Dr. Mendoza, Ms. Kamil's psychiatrist, at court document #451;

3. Motion to Exclude Testimony of Brian Jackson, one of Ms. Kamil's Mental Health Professionals, at court document #452;

4. Motion to Exclude Testimony of any Medical/Mental Health Providers, at court document #452; and

5. Motion to Exclude Certain Witnesses and Exhibits, at court document #455.

In support of at least the first three motions, seeking to exclude expert testimony, counsel for Mr. Kamil pointed to my specific Trial Management Order of 4/26/18, and the mandatory provisions of RSA 516:29-b; which provide that a party **shall** disclose to the other party the significant information and documentation set out in that statute.

Ms. Kamil did not dispute that, contrary to my Order of 4/26/18, she has not provided Mr. Kamil or his counsel with a Witness List. She has not provided an Exhibit List or exchanged any exhibits. She has not exchanged Proposed Orders or an updated Financial Affidavit. There was no dispute Ms. Kamil made no effort to comply with the disclosure provisions of RSA 516:29-b as to Dr. Garber, Dr. Mendoza, Dr. Jackson or anyone else.

I have made it clear over the years I have spent as a judge and marital master, particularly when it comes to discovery, that I favor substance over process. I have demonstrated a willingness to bend procedural rules accordingly. However, given the degree of my efforts to motivate Ms. Kamil's compliance in this case and the degree of her complete non-compliance; I felt I had no equitable choice but to grant all five motions.

I will note here that Ms. Kamil appeared on 10/22/18 for the first day of trial without even one exhibit. She brought no witnesses. She suggested early that morning that she did not intend on staying. I told Ms. Kamil in response to that statement that it was her prerogative to leave, but I encouraged her to remain, listen to the evidence, engage in cross-examination, and talk about her children when it was her turn.

Ms. Kamil did stay until around 1:30 p.m. that first day. She had completed her cross-examination of Mr. Kamil. She stated she was going to leave now. She mentioned having ADHD and a bad back. I told Ms. Kamil she had a right to leave, but I was going to continue to hear the evidence with or without her.

With that, Ms. Kamil politely got up and left.

As it turned out, the evidence had proceeded so quickly on 10/22/18 that counsel for Ms. Kamil had no other witnesses available for the first day of trial, and we recessed until 10/23/18 at 9:00 a.m.

On 10/23/18, we waited until 9:15 a.m. to proceed, but Ms. Kamil did not appear. The only evidence she missed hearing was the testimony of the Parenting Coordinator, Kathy Forbes-Fisher. Thereafter, the case was submitted for my decision making by counsel for Mr. Kamil.

Consequently, it is more specifically ordered as follows:

1. All five motions listed on the front page of this section are granted.

III. **PARENTING:**

In section I above, the procedural history of parenting issues in this case was set out in detail. I learned during the trial from the testimony of Mr. Kamil and Kathy Forbes-Fisher that after Tracey Tucker suspended scripted supervised visitations on 5/30/18, Tracey Tucker has not been contacted by Ms. Kamil or any of her therapists. As also set out in section I above, my 8/10/18 Order required that Ms. Kamil continue to work with her own therapist to address the issues identified in Ms. Tucker's 6/5/18 Report so that Ms. Kamil can acquire more concrete skills to engage with and be more present for her children. I asked Tracey Tucker to remain involved so that she may monitor and interact with Ms. Kamil's therapists and the children's therapists, who were requested to interact with one another in an effort to restart supervised, scripted visitation with the children when Ms. Kamil was able to demonstrate to the professional satisfaction of Tracey Tucker that she has acquired the skills to do so in a way that is in the children's best interest.

I was even more pleased to understand from her 6/5/18 Report and Kathy Forbes-Fisher's trial testimony that Tracey Tucker was apparently still willing to serve in that monitoring capacity, when I also learned from the testimony of Kathy Forbes-Fisher more detail about what happened on 5/30/18. Kathy Forbes-Fisher, of course, got the details from Tracey Tucker. She told it like this:

> Ms. Kamil arrived a little early for her supervised therapeutic session with the children on 5/30/18. Ms. Kamil's attitude was immediately belligerent, aggressive, and condescending. She asked Tracey Tucker where her children were. Then Ms. Kamil questioned Ms. Tucker's professionalism for wearing flip flops. Ms. Kamil asked Tracey Tucker: "Who wrote the script." When Ms. Tucker asked Ms. Kamil to change her tone, which Tracey Tucker stated would be unhealthy for the children, Ms. Kamil grew even more agitated. Tracey Tucker again asked Ms. Kamil to change her tone, reminding Ms. Kamil that she was not in a good frame of mind to see her children. Then believing a

session was not in the children's best interest, Ms. Tucker asked Ms. Kamil to leave her office. Ms. Kamil responded by telling Tracey Tucker that she could write "any f'ing thing" she wanted. Then, Ms. Kamil stated: "If you want me to make this about you, I will." Then Ms. Kamil angrily took Cory's block of wood and gave it a karate chop. Ms. Kamil then ripped open the window blinds, and stormed out of Tracey Tucker's office. Tracey Tucker told Kathy Forbes-Fisher that Tracey Tucker felt personally threatened by Ms. Kamil on 5/30/18.

Otherwise, Kathy Forbes-Fisher testified, serving as the Parenting Coordinator under Dr. Garber's reunification plan, that Ms. Kamil did make progress at first. Ultimately, however, Ms. Kamil had a great deal of difficulty receiving parenting feedback from supervisor, Carol James, or Kathy Forbes-Fisher. Eventually, Ms. Kamil refused to work at all with Carol James by not paying her the outstanding balance on her bill of about $200. Ms. Kamil also ultimately refused to work with Kathy Forbes-Fisher.

As a result, Ms. Kamil had no contact with the children from around June 2017, when she refused to work with Kathy Forbes-Fisher, until around March of 2018, when Tracey Tucker was appointed to monitor therapeutic, scripted, supervised visits. When those visits ended on 5/30/18, so did Ms. Kamil's supervised contact with the children.

Kathy Forbes-Fisher testified at trial that both Cory and Cassidy are doing very well now, both in school and behaviorally. Cory, in particular, is doing much better than last year. Kathy Forbes-Fisher testified that the children went through a couple of rough spots. One was when their visits with their Mother and Tracey Tucker restarted around March of 2018. Cassidy felt a lot of anxiety. Cory started acting out. They had not seen their mother since June 2017, and seeing her again was confusing and difficult for them for reasons that Kathy Forbes-Fisher was unwilling to speculate about.

Kathy Forbes-Fisher emphasized the children's therapists are both reporting that Cassidy and Cory are doing very well now.

While Ms. Kamil refused to continue working with Kathy Forbes-Fisher in June of 2017, Ms. Kamil sent an email to Kathy Forbes-Fisher on 10/19/18, challenging scripted visits, challenging Kathy Forbes-Fisher's competence and ability, and stating, as she often has in my courtroom, that she will not be erased as a mother. Ms. Kamil also stated something to the effect of the following:

> I will be taking action that does not involve the court system. I guarantee you and the judge will be forced to justify all this to the American public.

Kathy Forbes-Fisher supported the plan outlined by Tracey Tucker. Kathy Forbes-Fisher testified that Mr. Kamil has always been cooperative in following Dr. Garber's plan and the recommendations of Kathy Forbes-Fisher.

Mr. Kamil testified that he works four days a week at Frisbie Hospital as an Endocrinologist so that he can be completely available to the children each Friday and all weekend. Otherwise, Mr. Kamil

said he gets the kids up in the morning, Monday through Thursday. They dress themselves. The Nanny, who has been in his employ for three years, arrives at around 6:45 a.m. and stays until 6:45 p.m. Monday through Thursday. The Nanny gets the kids breakfast, makes their school lunches, takes them off to school, and picks them up after school for their afternoon activities.

Mr. Kamil is home by 6:15 p.m. He makes dinner. Gets the kids into their baths, and puts them to bed. Cory is in bed at 8:30 p.m. Cassidy is in bed at 9:00 p.m.

Mr. Kamil testified that the children are doing much better. Cassidy is doing great in third grade at Berwick Academy. Cory is in first grade in Dover public school, showing much improved behavior. Mr. Kamil said he has learned a lot in therapy about how to be more present for the children. He still goes to therapy. He testified both children are very attached to him. He said they are more secure now. Mr. Kamil said Cassidy talks to him about important things and trusts him completely.

Mr. Kamil said the children have had real emotional and behavioral difficulties when they see their mother so sporadically. Mr. Kamil believes that Ms. Kamil has never resolved her long-standing mental health issues and that the children are not safe in her care. Mr. Kamil asked for sole decision making authority and sole residential responsibility. "She has too much anger toward me."

Mr. Kamil believes supervised visitations have failed, and he wants them terminated. Mr. Kamil does not want them replaced or resumed. He is not in favor of the court providing Ms. Kamil with a path back to safe parenting with the children. Mr. Kamil proposed, instead, that Ms. Kamil have absolutely no contact with the children until Cory is age 13, and the children can better protect themselves.

Ms. Kamil did not testify. In the course of her cross-examination of Mr. Kamil; however, she managed to convey that she will not be erased as a parent and will not accept not having contact with her children. Ms. Kamil got Mr. Kamil to acknowledge the following things:

Prior to February of 2015, she was the children's primary care provider. At that time, Cory had no behavioral issues in preschool. The housekeeper had not reported concerns about Ms. Kamil. No concerns were expressed about Ms. Kamil by Cassidy's teachers or the children's pediatricians. The children had hit all their developmental milestones. Mr. Kamil acknowledged the children love their mother and would like to see her regularly, but he said that is not in their best interest because their contact with their mother has been and will continue to be sporadic at best, which is extremely hard on the children: "It causes them harm. Cassidy would withdraw. She has made a lot of improvement. No contact is unfortunately in their best interest under these circumstances."

I find, as Tracey Tucker and Kathy Forbes-Fisher have recommended, that therapeutically supervised visits need to stop; and Ms. Kamil needs to refocus and work on her own issues in individual therapy. I find it is not in the children's best interest to have even supervised contact with their mother until Ms. Kamil can demonstrate to Tracey Tucker's professional satisfaction that Ms. Kamil has acquired the skills in individual therapy to always be present for the children in an emotionally safe capacity, on a regular and committed fashion, indefinitely. Ms. Kamil needs to be able to demonstrate to Tracey Tucker that she is prepared to accept therapeutically supervised, scripted visitation until she has gained the right to unsupervised visits and eventually more.

At this time, I do not believe that there is a continuing role for Kathy Forbes-Fisher as Parenting Coordinator. The parties are incapable of co-parenting. Mr. Kamil has requested and demonstrated the need for a Protective Order.

It is in the children's best interest, subject to the provisions of RSA 461-A:5 and RSA 461-A:11 modification proceedings, that the children shall be awarded into their father's sole decision making authority and exclusive residential responsibility. I agree, as Mr. Kamil's counsel argued, that it has been Mr. Kamil who has demonstrated over nearly three years, that he is the more remediable parent, and as such, is better able to serve the children's needs. See Dr. Garber's report on page 86.

I do not believe, however, that Ms. Kamil's parenting rights should just be ignored or erased until Cory turns 13. I agree with Ms. Kamil that would be tantamount to an unlawful termination of her parental rights. I believe, and am ordering here, that Ms. Kamil needs to be given the keys to get back into the family courtroom and the children's lives.

Consequently, it is more specifically ordered as follows:

1. The attached Final Parenting Plan, as modified by the Court, is incorporated herein.

2. Mr. Kamil is awarded sole decision making authority and exclusive residential responsibility for the children. In that context, Ms. Kamil is not awarded frequent and continuing contact with the children for all of the reasons set out above.

3. Kathy Forbes-Fisher is excused as Parenting Coordinator with great appreciation.

4. Therapeutic, supervised visits by Ms. Kamil are suspended.

5. Ms. Kamil shall continue work in individual therapy to address the issues that are preventing her from making choices, which are restricting her from having more time with her children and to acquire more concrete skills to engage with and be more present for the children.

6. Ms. Kamil's individual therapists are encouraged to interact with both the children's therapists and Tracey Tucker.

7. The children's therapists are encouraged to interact with both Ms. Kamil's individual therapists and Tracey Tucker.

8. The parties shall execute any and all releases needed to enable the therapeutic professionals to interact as set out above.

9. Tracey Tucker is requested to monitor and participate in the process outlined above. Mr. Kamil shall be exclusively responsible for her fees.

10. If and when Ms. Kamil can demonstrate to Tracey Tucker's professional satisfaction that both Ms. Kamil and the children are prepared to restart their supervised, scripted visitations, Tracey Tucker shall restart the process as originally envisioned by Dr. Garber.

IV. PRENUPTIAL AGREEMENT:

On 1/24/17, based on the application of New York law, I denied the effort of Mr. Kamil to enforce the parties' Prenuptial Agreement. On the first day of the Final Divorce Hearing on 10/22/18, counsel for Mr. Kamil presented me with a seven page Memorandum of Law and three supporting recent New York cases, which he argued justified a reconsideration and reversal of my prenuptial decision. Counsel for Mr. Kamil was appropriately apologetic for the timing of the presentation, explaining that he had learned of these developments under New York law only days prior to the first day of trial. I assumed, without deciding, that the doctrine of the law of the case did not preclude my consideration of this new authority.

The one appellate New York decision cited was In re: William Koegel, 160 A.D. 3d 11 (February 7, 2018). I took a 30 minute recess and tried to assimilate the Memorandum of Law and the Koegel case, in particular. I found and ruled from the bench that Koegel was both factually and legally distinguishable, and I refused to reverse my 1/24/17 decision.

In Koegel, supra, that appellate New York court found that certain statutory flaws in the acknowledgment of prenuptial agreements can be cured thereafter, so as to maintain the enforceability of the agreement. In Koegel, that deviation from the statutory provisions involved the absence of language in the acknowledgement of Mr. Koegel's signature that the notary confirmed the identity of the person executing the document or that the person was the individual described in the document. That statutory flaw was cured at the trial when two notaries testified that they remembered acknowledging his signature and confirmed the identity of the signor. The appellate New York court affirmed the trial court's finding that, with the curing trial testimony, there had been substantial compliance with New York's real property statute.

In Kamil, however, the notary, who testified in an apparent effort to cure any statutory deficiencies in the acknowledgment of Mr. Kamil's signature, could not remember acknowledging his signature. She testified only as to her standard practices.

As a matter of law, Koegel is distinguishable because in that case there was a contemporaneous execution and acknowledgment. In Kamil, Mr. Kamil signed the prenuptial agreement on 8/5/07. The best evidence in Kamil supported a finding that Mr. Kamil did not have his signature notarized until 8/10/07. When the notary testified about her acknowledgment, which probably did not occur until 8/10/07, the notary denied dating the acknowledgment 8/5/07. She said the "5" was not in her handwriting. Therefore, I found that the notary could not testify if she actually notarized the signature of Mr. Kamil on 8/5/07. I found that New York law requires that there be an acknowledgment of a signature contemporaneous to the signature itself. In the acknowledged absence of a contemporaneous signing and acknowledgment, I found the prenuptial agreement unenforceable, and Koegel does not change that finding. The other two cases, cited by counsel for Mr. Kamil, likewise do not change my analysis of governing New York law and the policies requiring contemporaneous execution.

V. ASSET VALUATION DATE:

The general rule in New Hampshire is that the "... appropriate valuation date for equitable division of assets is left to the sound discretion of the trial court ..." 3-A Douglas, N.H. Practice; Family Law,

section 19.28 (4th ed. 2014); Nyhan and Nyhan, 147 N.H. 768, 771 (2002), and Hillebrand and Hillebrand, 130 N.H. 520, 524 (1988).

The two most common choices for such an equitable selection of a valuation date are the date of filing/separation and the date of the issuance of the Decree.

Comparing approximate values as of February 2015 and October of 2018, the real estate has appreciated in value only modestly as a result of market forces. The retirement and investment accounts have grown much more dramatically from approximately $2,855,446.69 as of the February 2015 filing to $3,798,764.03 as of 9/30/18. This growth in asset value has occurred, notwithstanding that three of the accounts, which existed as of the time of separation in February of 2015, totaling approximately $300,000, have been completely spent during the pendency of this matter:

EverBank - $141,137.66
Joint Vanguard money market - $52,615.49
Joint Vanguard Advantage - $108,596.41

The best evidence was that Ms. Kamil spent $179,675 from the marital accounts. In addition, she received from Mr. Kamil, $234,000 of alimony and $46,893.50 for attorney's fees.

The evidence allows me to find that as of the time of the marriage in 2007, Mr. Kamil brought $907,820.72 to the marriage.

I infer from Mr. Kamil and his rather generalized trial testimony that Mr. Kamil has made, during the marriage, a lot of contributions to some of these assets and less or nothing to others. A few of the investment and retirement assets did not exist at the time of the marriage. The Frisbie Memorial Hospital retirement is the best example. It did not exist in 2007. By February 2015, its value had grown to $264,532. By 9/30/18, its value was up to $507,118.90. Mr. Kamil testified that growth was not just because of market growth. Mr. Kamil said he made the maximum contribution to this account, even after filing, until his current attorney told him to stop. Mr. Kamil testified that his parents, believing his separate assets were protected by a prenuptial agreement, made contributions into some of these assets in combined maximum amounts allowed by IRS regulations, while still avoiding federal gift tax. In that regard, Mr. Kamil testified that his mother also waived her interest in some assets inherited from her mother during Mr. Kamil's marriage to Ms. Kamil, so that the inherited assets could pass through to Mr. Kamil and his sister.

Mr. Kamil also testified regarding these valuation dates, that over the years of the marriage, he carefully kept his investments and retirement assets segregated and comingled none of them or their funds with what he regarded as marital funds. Mr. Kamil said he did so to maintain their separate and protected character under the then presumed valid prenuptial agreement.

Therefore, for the following reasons, I have equitably decided to utilize a February 2015 date of asset valuation:

1. There is no disputing that the investment and retirement accounts grew dramatically from February 2015 to September 2018 as a result of market forces.

2. Mr. Kamil and/or his parents also contributed to these assets, at least in some cases believing that the asset and their contributions to it were protected by a prenuptial agreement, which has since been invalidated.

3. Ms. Kamil will be benefiting from the continued existence of over $900,000 of assets, with which she had absolutely nothing to do, when they became part of the marital estate through Mr. Kamil.

4. The marital home was acquired 100% with funds that came to Mr. Kamil in 2010 from his parents. Ms. Kamil is going to benefit significantly from that family helpfulness, mostly because this asset was woven tightly into the fabric of the marital lifestyle. It was where Ms. Kamil cared for the children every day when Mr. Kamil went off to work. While I can easily justify Ms. Kamil's significant sharing in its value for the reasons set out above as of February 2015; I cannot think of a good reason to extend that sharing to another $75,000 of increased value since separation.

5. Given the detailed documentary evidence provided by Mr. Kamil, I can still consider the current value of assets being awarded to Mr. Kamil, even as I use the date of filing/separation as the asset valuation date. Hillebrand and Hillebrand, supra, at 524 (1988).

Consequently, it is more specifically ordered as follows:

1. February 2015, shall be the asset valuation date.

VI. DOVER – FORMER MARITAL RESIDENCE:

It is undisputed that on or around 10/14/10, three years after the parties' married, the parties acquired the real estate at 42 Mallard Lane in Dover. The purchase price was $1.3 million. Mr. Kamil paid cash for the property with money he got from his parents. The property is located on the Cocheco River and has over 5,500 square feet of living space. There is a lack of clarity, however, regarding where specifically the money came from. Mr. Kamil said it came from his parents; but he could not remember, and the other evidence did not allow me to find, whether the money was gifted to him that date or whether it had been otherwise placed in an account or in some entity for Mr. Kamil's use sometime prior thereto. Mr. Kamil just said it was earmarked for him and this home purchase by his parents.

Mr. Kamil did clarify that he could not have gained access to that money without his father's permission.

By the 8/13/18 agreement of counsel for Mr. Kamil and then counsel for Ms. Kamil, I received three appraisals of the property, all performed by the same appraiser. They established its value at the approximate time of separation and filing as $1.3 million. By 4/10/18, the value of the house had appreciated to $1.375 million.

It is more specifically ordered as follows:

1. As set out in section III above, I find the value of the marital home, for purposes of asset allocation, to be $1,300,000.

2. Please see section VII for the allocation of its equity in the amount of $1,300,000.

VII. EQUITABLE ALLOCATION OF MARITAL ASSETS:

As demonstrated in the attached and incorporated Appendix A, the still remaining assets in the marital estate had a total value of $3,203,097.13, as of the date of filing/separation in February 2015.

As set out in section V above, as of February 2015, there were three other assets totaling over $300,000 in value. However, those assets were spent as indicated and are no longer part of the marital estate and subject to allocation. New Hampshire law supports this Court's division of the assets, which exist at the time of the divorce. Assets, which no longer exist as of the time of the divorce, are not available for division and distribution. Holliday and Holliday, 139 N.H. 213 (1994); Hillebrand and Hillebrand, supra, and Sarvela and Sarvela, 154 N.H. 426, 431 (2006).

While RSA 458:16-a, II creates a presumption that an equal division of the marital assets is the most equitable division, that same statute provides a host of factors for the Court to consider where an equal division of the assets would not be appropriate or equitable. This is such a case.

The duration of the marriage is one such factor: RSA 458:16-a, II (a). As set out above, this is not a long-term marriage as envisioned by Rahn and Rahn, supra. Likewise, this is not a short-term marriage of a year or two, in which Rahn encouraged the Court to attempt to just give back property, which the parties brought to the marriage. Rahn and Rahn at 225. However, it is appropriate to note again here that Ms. Kamil brought debt to the marriage; not assets. Mr. Kamil, on the other hand, brought assets to the marriage exceeding $907,000. RSA 458:16-a, II (m). The fact that Mr. Kamil owned these assets before the marriage does not disqualify them as marital assets. It just provides another factor for the Court to consider when equitably dividing the marital assets.

The general rule of law in New Hampshire is that regardless of the source, all assets owned by each spouse at the time of divorce are to be included in the marital estate. Sarvela and Sarvela, 154 N.H. 426, 431 (2006).

"While the Court has discretion to consider when and by whom property was acquired in determining its distribution, the relevant scheme 'does not classify property based upon when or by whom it was acquired, but rather assumes that all property is susceptible to division.' Crowe and Crowe, 148 N.H. 218, 221 (2002)."

Specifically, RSA 458:16-a, II (m) gives this Court the discretion to consider the value of property acquired before the marriage. RSA 458:16-a, II (n) gives the Court discretion to consider the value of property acquired by gift and through inheritance.

RSA 458:16-a, I "does not exclude property gifted to one spouse during the course of the marriage. Harvey & Harvey, 153 N.H. 425, 438 (2006)." Even if an inherited asset is set aside to the inheriting spouse or there is a waiver of that inheritance by the other spouse, the inherited property is "nonetheless a factor to be considered when the Master recommends the property settlement..." Weeks & Weeks, 124 N.H. 252, 256 (1983).

The above referenced gifts during the marriage are also germane to this discussion. Mr. Kamil testified generally as to the generosity and helpfulness of his family. However, in terms of specifics, the evidence allows me to find that the 2010 infusion of $1.3 million into Mr. Kamil for the purchase of the Dover home was such a gift under RSA 458:16-a, II (n). Taking the funds, which Mr. Kamil had before the marriage and the $1.3 million gift to him in 2010, their total is $2,207,820.72. It represents 69% of the value of the entire remaining marital estate of $3,203,097.13 as of February 2015. That mathematical fact and percentage has influence on my choice of what percentage of the assets should be equitably divided and awarded to Ms. Kamil.

In that regard, however, I am disinclined to treat all of the marital assets the same for allocation purposes. For example, as discussed in section V above, the marital home was woven tightly into the fabric of the marital lifestyle from 2010 to 2015. I infer from the evidence that during those five years, Ms. Kamil spent a lot more time in the house than did Mr. Kamil. Consequently, I find that Ms. Kamil is equitably entitled to 50 percent of the $1.3 million equity in that property ($650,000).

Similarly, I find she is equitably entitled to 50% of the Frisbie Hospital retirement as of February 2015 ($132,266). It was established during the marriage. It was completely funded by Mr. Kamil and marital funds and the hospital while Ms. Kamil was home with the children.

Finally, I find that equity requires that Ms. Kamil be awarded 100 percent of her modest Roth IRA ($11,765.25).

The total of Ms. Kamil's specified share in these three assets is $794,031.25. The value of the remaining marital assets as of February 2015 is $2,409,065.88. Fifteen percent (15%) of this $2.4 million dollars is $361,359.88. Thus, Ms. Kamil's total equitable entitlement to the marital assets comes to $1,155,391.13.

As a way of providing a mathematical check on the equity of this methodology, I felt, in general terms under the circumstances of this case, that I might have otherwise awarded Ms. Kamil approximately 33 percent of everything remaining and valued as of February 2015. That figure would have been $1,057,022.05; which is only $98,369.08 less than the $1,155,391.13, which I have found above to be her equitable entitlement. That mathematical check provided the degree of confidence in the fairness of my original approach.

I have attempted to set this out mathematically on the attached and incorporated Appendix B.

Mr. Kamil proposed that Ms. Kamil be awarded one-half of his Frisbie retirement, as valued as of February 2015 and nothing else. I find that is not an equitable outcome for Ms. Kamil. While Ms. Kamil is going to be leaving the marriage with $1.155 million more than she brought to the marriage, and while 69 percent of the total assets were either brought to the marriage by Mr. Kamil or given to it by his parents, there are statutory considerations militating against the meager proposal made by Mr. Kamil:

While Ms. Kamil is a doctorate level physical therapist, Dr. Kamil's occupation, skills, and opportunities to earn income and acquire assets in the future, dwarf those of Ms. Kamil. RSA 458:16-a, II (b) (c).

Ms. Kamil did contribute non-economically to the marriage by virtue of her caring for the children. RSA 458:16-a, II (g).

Consequently, it is more specifically ordered as follows:

1. Mr. Kamil's Proposed Final Decree on Petition for Divorce, as modified by the Court, is incorporated herein.

2. Ms. Kamil is awarded her Roth IRA in its entirety.

3. Ms. Kamil is awarded $132,266 from the Frisbie Hospital retirement asset. It shall be promptly rolled into a retirement asset of her selection. If a QDRO is necessary to effect the rollover, Mr. Kamil shall cause it to be prepared.

4. For Ms. Kamil's equitable share of the remaining assets, all of which are otherwise awarded to Mr. Kamil, Mr. Kamil shall, within 120 days of the Clerk's notice of this Decree, pay to Ms. Kamil the sum of $1,011,359.88 ($1,155,391.13 less $132,266 less $11,765.25=$1,011,359.88).

5. Mr. Kamil is being awarded a home, encumbered by no mortgage, which is now worth $1.375 million. He is being awarded over $3.65 million in retirement and investment assets. His Vanguard investment account alone holds $2,773,753.35. I find Mr. Kamil can afford to comply with the provisions of paragraph 4 within the time allowed.

6. However, I also find that there may be substantial capital gains tax incurred to meet the demands of this section. The parties are hereby ordered to be ultimately equally responsible for that capital gains tax.

VIII. CHILD SUPPORT AND ALIMONY:

Having seen section II above, one would not be surprised to learn that Ms. Kamil did not file an updated Financial Affidavit on 10/22/18. However, she did file a Financial Affidavit on 5/14/18 when she was represented by counsel, which I relied on when issuing my Order of 5/21/18. I will rely on it again now. As of 5/21/18, for the reasons set out in that Order, I found that with earned income of $5,040 a month, Ms. Kamil demonstrated a need for alimony in the amount of $1,000 a month. At that time, I found that Mr. Kamil earned $318,538 in 2017. His Financial Affidavit of 5/14/18 listed the same earned income of $26,545 a month, which Mr. Kamil also stated as his income on his 10/22/18 Financial Affidavit. His 10/22/18 Financial Affidavit listed monthly expenses of $18,058.00; which reaffirms my 5/21/18 finding that he can afford to pay alimony of $1,000 a month.

Ms. Kamil's guideline child support obligation on these incomes for two children is $1,034 a month. I recognize her statutory obligation to contribute to the support of her children. RSA 458-C:1, I. However, if Ms. Kamil is paying guideline child support, her need for alimony doubles.

Under the new tax law, alimony still earns a deduction in 2018 and beyond for the Payor. In 2018 and beyond, alimony is still taxable to the Payee. The net result as to Ms. Kamil of her paying $1,000 a

month child support and then receiving $2,000 a month alimony, versus her paying no child support and receiving $1,000 a month alimony, are as follows:

1. Under the latter scenario, Ms. Kamil is not parting with any after-tax dollars. She is paying income tax on only $1,000 a month.

2. Under the former scenario, Ms. Kamil is parting with $1,000 of after-tax income and then paying taxes on $2,000 a month.

3. Experience number 2 above, is a relatively negative economic experience for Ms. Kamil.

As to the net economic results of the two scenarios for Mr. Kamil:

1. If Mr. Kamil gets no child support and pays $1,000 a month alimony, he receives no tax free money and gets a deduction for the $1,000 a month payment, which costs him about $750 a month net.

2. If Mr. Kamil gets $1,000 a month child support and pays $2,000 a month alimony, he gets $1,000 of tax free money and gets a deduction for $2,000 a month. Thus, the $2,000 a month alimony payment will cost him about $1,500 a month, two-thirds of which would be covered by tax free money, which he just got from Ms. Kamil. He would be out-of-pocket only about $500 a month.

3. Thus, the party making over $318,000 a year would benefit economically from the scenario set out in number two above to the relative detriment of Ms. Kamil, who makes less than 20 percent of what Mr. Kamil makes.

Consequently, it does not benefit Ms. Kamil to pay child support and get more alimony, because that would actually be a negative economic experience for her, and it would not benefit the children, if and when she is allowed to enjoy their residential care.

In my view, deviating under the guidelines all the way to zero child support, fits within the spirit and intent of RSA 458-C:5, I (1). With his significantly high income as obligee, Mr. Kamil does not need and the children will not significantly benefit from their mother's $1,000 a month payment.

Consequently, it is more specifically ordered as follows:

1. The attached Child Support Worksheet is attached but I have not attached a Uniform Support Order.

2. Neither party will pay child support to the other.
3. Mr. Kamil shall pay $1,000 a month alimony to Ms. Kamil for three-and-a-half years from the Clerk's notice of this Order or 42 months.

4. As to the duration of Mr. Kamil's alimony payment, I find the guidance of RSA 458:19, as amended and soon to be implemented, to be both equitable and consistent with existing law, which offers no objective standard as to the duration of alimony.

This was an intact marriage of approximately seven-and-a-half years. The maximum duration of this "term alimony" under the provisions of the amended statute cannot be for more than approximately three-and-a-half years from the effective date of the Final Decree. Mr. Kamil, therefore, gets no credit, so to speak, for the temporary alimony already paid Ms. Kamil.

5. As to Mr. Kamil's Proposed Findings of Fact and Rulings of Law, they are all granted with the exception of the following, which are denied: 6, 16, 19, 20, 21, 29, 30, 37, 38, 61, and 74.

KAMIL APPENDIX A

MATTHEW	ASSET	ROBIN

Real Estate - 42 Mallard Lane
(1.3 million, free & clear)

Retirement Assets
Frisbee Retirement
($264,532)
Robin Roth IRA
($11,765.25)
Vanguard Traditional IRA
($91,611.78)
Vanguard Simple IRA
($5,071.35)
Schwab Roth IRA
($37,357.83)
20/15 Retirement Subtotal
($410,338.21)

Investment Assets
Vanguard Investments
($1,377,578.79)
Vanguard Advantage
($569,215.64)
Schwab Investment
($132,909.55)
Dodge + Cox Funds
($14,909.82)
E-Trade Investment
($23,510.35)
Fidelity Investment
($17,506.27)
T. Rowe Price
($7,128.49)
Investment Subtotal
($2,142,758.92)

Remaining assets, valued at time of filing in February 2015

TOTAL REMAINING ASSET VALUES AS OF FEBRUARY 2015
($3,203,097.13)

KAMIL APPENDIX B

Value, as of 2/15, of remaining assets:	3,203,097.13
Ms. Kamil's Share of House, her Roth IRA, And Frisbee Retirement	794,031.25
Balance X Equitable 15%	2,409,065.88 x .15 361,359.88 + 794,031.25 1,155,391.13

Compare

Value, as of 2/15, of remaining assets: X 33%	3,203.097.13 x .33 1,057,022.05
	1,155,391.13 - 1,057,022.05 98,369.08

So Ordered.

October 31, 2018
Date

Hon. Robert J. Foley, Judge

STATE OF NEW HAMPSHIRE

STRAFFORD, SS

7TH CIRCUIT COURT
FAMILY DIVISION – ROCHESTER
COMPLEX CASE DOCKET

IN THE MATTER OF

MATTHEW KAMIL AND ROBIN KAMIL

DOCKET NO. 632-2015-DM-00045

FINAL DECREE ON PETITION FOR DIVORCE

~~This decree is PROPOSED BY THE PETITIONER.~~

1. **Type of Case:** Divorce

   A decree of divorce is granted to the Petitioner based upon irreconcilable differences that have caused the irremediable breakdown of the marriage.

2. **Parenting Plan and Uniform Support Order:**

   See Parenting Plan ~~and Uniform Support Order~~ which is attached hereto and incorporated herein by reference.

3. **Tax Exemptions for Children:** Matthew shall be entitled to claim the parties' minor children as dependents for state and federal income tax purposes in each year.

4. **Guardian ad Litem Fees:** Not applicable.

5. **Alimony:** ~~That neither party will pay alimony to or for the benefit of the other party.~~ See narrative Decree

6. **Health Insurance for Spouse:**

   A. Robin shall be entitled to remain on Matthew's group health insurance plan with his employer Frisbee Memorial Hospital for as long as provided in NH RSA 415:18, VII-b , or as long as the plan by its terms may allow.

   B. Robin shall be responsible for payment of premiums associated with continuation of this coverage and shall make all such payments in a timely routine and systematic fashion.

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C. Uninsured expenses: Each party shall be solely responsible for his/her own uninsured medical, dental and other related expenses not otherwise covered by insurance and each party shall indemnify and hold harmless the other party for any costs associated with same.

7. **Life Insurance:**

A. Each party is awarded any and all life insurance policies in his or her own name free and clear of all right, title and interest of the other party.

8. **Motor Vehicles:**

a. Robin is awarded the 2012 Toyota Sienna currently in her possession free and clear of any right, title or interest of Matthew.

b. Matthew is awarded the 2010 Lexus RX450H currently in his possession free and clear of any right, title or interest of Robin

c. Matthew is awarded the leased 2017 Toyota Highlander currently in his possession free and clear of any right, title or interest of Robin.

d. Each party shall be solely responsible for all expenses associated with his/her respective vehicles to include but not limited to loan/lease payments, insurance, repairs, maintenance, registration and the like.

9. **Furniture and Other Personal Property:** Each party is awarded that property currently in his/her possession, free and clear of any interest of the other.

10. **Retirement Plans and Other Tax-Deferred Assets:** See narrative Decree.

A. The Petitioner is awarded 100% interest in assets owned and/or accumulated prior to the parties' marriage, including but not limited to:

I. Inheritance/investments valued at approximately $2,077,237.00 (value fluctuates with the market)

II. ROTH IRA valued at approximately $166,135.00 (value fluctuates with the market).

B. Respondent is awarded one half of the Petitioner's Valic (formerly administered by Frisbee) Retirement Plan 403(B) and 457(B) valued as of the date of the filing of the Petition for Divorce (approximately $234,542.00) less an amount equal to the value of any retirement asset held by the Respondent.

C. The balance of said account shall be awarded to the Petitioner, free and clear of any right, title or interest of the Respondent.

D. Respondent shall be responsible for preparation of any and all QDROs or other forms required to effectuate the transfer of Petitioner's retirement funds to Respondent.

11. **Other Financial Assets:** Except as otherwise provided,

A. Bank Accounts: Each party is awarded their respective checking and or savings accounts as shown on their financial affidavit free and clear of all right, title and interest of the other party. ~~The joint bank account with Everbank shall be divided equally between the parties.~~

Except as otherwise provided,

B. Stocks and Bonds: Each party is awarded any stocks currently held in their individual names, free and clear of any right, title and interest of the property.

C. See narrative Decree.

12. **Business Interests of the Parties:** Not applicable.

13. **Division of Debt:**

A. The parties shall each be responsible for payment of any debt they have incurred in their respective names and for any debt incurred by them since the date of their separation in February of 2015.

B. Each party shall address any such debt in a routine, timely, and systematic fashion, and each party shall further indemnify and hold harmless the other party for any such obligation.

14. **Marital Home:**

A. The Petitioner is awarded all right, title and interest in the former marital residence located at 42 Mallard Lane, Dover, New Hampshire free and clear of any right, title or interest of the Respondent.

C. The Respondent shall execute a quitclaim deed in favor of the Petitioner, ~~within thirty days of the approval of this order~~. Upon the payment to her as required by the Decree

D. The Petitioner shall be responsible for preparation of said quitclaim deed.

E. All liens and encumbrances thereon, existing as of the date of Final Decree, including taxes and insurance, shall be the sole responsibility of the Petitioner and the Petitioner agrees to address any such debt in a routine, timely and systematic fashion, and Petitioner further agrees to indemnify and hold harmless the Respondent for any such obligation.

15. **Other Real Property:** Not applicable.

16. **Enforceability after Death:** The terms of this decree shall be a charge against each party's estate.

17. **Signing of Documents:** Each party shall, within thirty (30) days, sign and deliver to the other party any document or paper that is needed to fulfill or accomplish the terms of this decree.

18. **Restraining Order:** The Respondent shall not contact the Petitioner by mail, email, telephone, text or any other medium, nor shall she enter the Petitioner's residence or place of employment (except for purposes of her own medical care and/or work. At such times, the Respondent shall not make contact with the Petitioner or the parties' children if they happen to be at the Petitioner's place of employment.

The Respondent shall not have any contact with the minor children ~~outside that provided for in her current Level One supervised visitation plan, and any successor plans, restrictions or Court orders as may be necessary and appropriate~~. except as recommended by Tracey Tucker and as subsequently ordered by the Court.

19. **Other Requests:**

A. **Attorney's Fees:** Any party that unreasonably fails to comply with this decree or other court orders (including "Uniform Support Order") shall be responsible to reimburse the other party for whatever costs, including reasonable attorney's fees that may be incurred in order to enforce compliance.

Each party shall be responsible for any and all attorney's fees and costs incurred for any other purpose, including but not limited to representation in the instant divorce action, representation relative to the enforceability of the prenuptial agreement or representation in the abuse and neglect matter.

B. **Change in address or employment:** Each party shall promptly notify the other of any change in his/her address or telephone number, and of any material change in employment as long as there are any continuing obligations under this decree. "Material change" will include availability of medical, dental or life insurance and any substantial increase or decrease in earnings or other income, including wages, bonuses, severance pay, worker's compensation or unemployment awards, personal injury awards.

C. **Name Change:** Robin shall be entitled to resume use of her maiden name, Robin Goodman.

D. **Tax Issues:** Not applicable.

E. **Disclosure of Assets:** The Petitioner warrants that he has fully disclosed all assets within his knowledge on his Financial Affidavit, specifically including any pension, profit sharing or retirement account, along with reasonable estimated values of each asset.

F. **Mutual Releases:** Other than as set forth in this decree or other order of this Court (including "Uniform Support Orders"), each party shall release and defend, indemnify and hold the other harmless from any and all claims of any nature whatsoever arising out of the marriage (including any claim for alimony). In addition, each party shall waive any claims, rights and interest which he or she now has or hereafter acquires in any of the real or personal property of the other, wheresoever situate, by reason of any statute of distribution, decedent estate law or other law or custom, and as beneficiary under any life insurance policy, and each party hereby expressly waives any right of election under the decedent estate law against any last will and testament whatsoever and further renounces any right of administration upon the estate of the other.

G. **Obligations:** Unless specifically mentioned in this decree, each party shall be solely responsible for any bills, obligations or other indebtedness that he or she has charged or incurred before or during the marriage.

H. **Miscellaneous:** Not applicable.

APPROVED,
SO ORDERED.

Presiding Justice

Date: 10/31/18

STATE OF NEW HAMPSHIRE

STRAFFORD, SS

7TH CIRCUIT COURT
FAMILY DIVISION – ROCHESTER
COMPLEX CASE DOCKET

IN THE MATTER OF

MATTHEW KAMIL AND ROBIN KAMIL

DOCKET NO. 632-2015-DM-00045

PARENTING PLAN

~~This parenting plan is proposed by the PETITIONER~~.

This parenting plan is: Final. **All completed paragraphs shall be incorporated in the Court's final order.**

The parental rights and responsibilities statute, RSA 461-A, requires any party in a divorce, legal separation, or parenting (formerly known as "custody") case to file a parenting plan, whether s/he is seeking an order establishing parental rights and responsibilities or an order modifying such rights and responsibilities. The statute also requires that the parenting plan include a detailed parenting schedule for each child, specifying the periods when each parent has residential responsibility or nonresidential parenting time.

As you complete the Parenting Plan, please bear in mind this state's policy as set forth in RSA 461-A:2. This policy will guide the court in making decisions affecting your parental rights and responsibilities.

Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to:

a) Support frequent and continuing contact between each child and both parents.

b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.

c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, unless there is evidence of domestic violence, or child abuse/neglect.

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d) Grant parents and courts the widest discretion in developing a parenting plan.

e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.

However, pursuant to RSA 461-A:6, I-a, if the court concludes that frequent and continuing contact between each child and both parents is not in the best interest of the child, as is demonstrated under the facts and circumstances of this matter, the court shall make findings supporting its order.

This is a parenting plan for the following children:

Name	DOB
Cassidy P. Kamil	01/30/2010
Corey S. Kamil	02/23/2012

A. Decision-Making Responsibility:

Major Decisions: These include, but are not limited to decisions about the child(ren)'s education, non-emergency health and dental care, and religious training:

a. Matthew shall have **sole decision-making authority** on major decisions about the child(ren).

b. Each party shall have the right to consult, and have direct access, without further permission of the other parent, to review medical and dental records of the child(ren), consult with experts providing services to the child(ren) and with any educational institution which the child(ren) is attending

Note: If parents have joint decision-making responsibility, RSA 461-A:4 requires parenting plans to include the legal residence of each parent unless the court finds that there is a history of domestic abuse or stalking or that including such information would not be in the best interest of the child(ren). If the parenting plan includes a parent's residence, the parent shall be responsible for promptly notifying the court and the other parent of any change in residence. The failure to provide such information may result in a finding of contempt of court.

Not applicable under the facts and circumstances of this matter.

2. Day-To-Day Decisions: See Section B. I. b., below.

Matthew shall make any and all decisions regarding emergency care for the children.

B. Residential Responsibility & Parenting Schedule:

1. Routine schedule:

NOTE: Neither parent shall be described as having the child "reside primarily" with him or her or as having "primary residential responsibility" or "custody" or be designated as the "primary residential parent":

a. The children shall reside solely with Matthew.

b. For the safety of Matthew and the children, Robin shall have no contact or parenting time with the children until such time as the youngest child has attained the age of 13. At that time, at Robin's request, the Court shall schedule a hearing to determine if contact between Robin and the children is in their best interests and no longer a risk to their safety. See Narrative Decree as to Robin.

2. Holiday and Birthday Planning:

No holiday schedule shall apply. The routine schedule set forth above shall apply.

3. Three-Day Weekends:

No three-day weekend schedule shall apply. The routine schedule set forth above shall apply.

4. Vacation Schedule:

December School Vacation: No December vacation schedule shall apply. The routine schedule set forth above shall apply.

February, April and Summer vacations: No February, April, or summer vacation schedule shall apply. The routine schedule set forth above shall apply.

5. Supervised Parenting Time: See Narrative Decree.

~~Robin has no contact or parenting with the children at this time.~~

6. Other Parental Responsibilities:

Not applicable at this time. However, in the event parenting time is ordered at some time in the future, the following shall apply:

Each parent shall promote a healthy, beneficial relationship between the child and the other parent and shall not demean or speak out negatively in any manner or subject the child to others who demean or speak out negatively in any manner that would damage the relationship between either parent and the children.

Neither parent shall permit the children to be subjected to persons abusing alcohol or using illegal drugs. This includes the abuse of alcohol or the use of illegal drugs by the parent.

The parties agree to, or the court establishes, the following additional expectations:

a. A parent requesting a temporary change to the parenting schedule shall act in good faith and ask the other parent about such change as soon as possible. The parents are expected to fairly adjust parenting schedules when family situations, illnesses, or other commitments make modification reasonable.

b. Each parent shall supply the appropriate clothing for them for their scheduled time with the other parent. These clothes are to be considered the child's clothes and shall be returned with the child.

C. Legal Residence of a Child for School Attendance:

Under this parenting plan, the children's residence for school purposes shall be with Matthew at 42 Mallard Lane, Dover, New Hampshire.

D. Transportation and Exchange of the Child:

Not applicable.

E. Information Sharing and Access, Including Telephone and Electronic Access:

Unless there is a court order stating otherwise:

Both parents have equal rights to inspect and receive the children's school records. Unless and until decision making authority is modified, Robin shall have no authority to withhold consent, approval or otherwise interfere in any way with the

decisions of school authorities and Matthew regarding the children's educational placement and progress.

Both parents have equal rights to inspect and receive governmental agency and law enforcement records concerning the children.

Both parents have equal rights to inspect and receive the children's medical, dental or psychological records, subject to other statutory restrictions. However, unless and until decision making authority is modified, Robin shall have no authority to withhold consent, approval or otherwise interfere in any way with the decisions of medical, dental or psychological care providers, school authorities, and Matthew regarding the children's medical, dental or psychological care and treatment.

Each parent has a continuing responsibility to notify the other parent of any emergency circumstances or substantial changes or decisions affecting the children, including the child's medical needs, as close in time to the emergency circumstance as possible.

1. Parent-Child Telephone Contact:

   Not applicable at this time.

2. Parent-Child Written Communications:

   Not applicable at this time.

F. Relocation of a Residence of a Child:

The relocation of a child's residence in which s/he lives at least 150 days per year is governed by RSA 461-A:12. Any time after the filing of a parenting or divorce petition, a parent shall not relocate the residence of a child without a court order unless: 1) relocation results in the residence being closer to the other parent, or 2) relocation is to any location within the child's current school district, or 3) relocation is necessary to protect the safety of the parent or child, or both, as later determined by the court. In general, either parent may move the child's residence if it results in the parents living closer and if it will not affect the child's school enrollment. Prior to relocating the child's residence farther from the other parent or in such a way that school enrollment will be impacted, the parent shall provide reasonable notice to the other parent. For purposes of this section, 60 days' notice shall be presumed to be reasonable unless other factors are found to be present or the parents have a written agreement to the contrary. At the request of either parent, the court shall hold a hearing on the relocation issue. Either parent may request that the court issue ex parte orders as provided in RSA 461-A:9 to prevent or allow relocation of the child(ren).

G. Procedure for Review and Adjustment of Parenting Plan: See Narrative Decree.

~~No meetings shall be scheduled at this time. Once the youngest child has attained the age of 13, at Robin's request, the Court shall schedule a hearing to address any requested parenting time.~~

H. Method(s) for Resolving Disputes:

Not applicable at this time.

I. Other parenting agreements important to the parents or child are listed below or are set forth in the attached pages.

None.

Respectfully submitted,

Dated: 10/22/18

Matthew Kamil
Matthew Kamil, Petitioner/Father

Dated: 10-22-18

F. Michael Keefe, Esquire,
Counsel for the Petitioner/Father
NH Bar # 1322
40 West Brook Street
Manchester, NH 03101
(603) 647-4707

APPROVED/SO ORDERED.

Presiding Justice
Date: 10/31/18

STRAFFORD, SS

7TH CIRCUIT COURT
FAMILY DIVISION – ROCHESTER
COMPLEX CASE DOCKET

IN THE MATTER OF

MATTHEW KAMIL AND ROBIN KAMIL

DOCKET NO. 632-2015-DM-00045

REQUESTED FINDINGS OF FACT AND RULINGS OF LAW

NOW COMES the Petitioner, Matthew Kamil, by and through his attorneys, Law Offices of F. Michael Keefe, PLLC and F. Michael Keefe, Esquire, and respectfully requests that this Court make the following findings of fact and rulings of law, and in support thereof, states as follows:

REQUESTED FINDINGS OF FACT

1. That the parties were married on September 3, 2007 in Melville, New York.
2. That two children were born of this marriage, Cassidy Kamil (DOB: 01/30/2010) and Corey Kamil (DOB: 02/23/2012).
3. Petitioner originally filed for divorce on August 1, 2013 and withdrew the petition shortly afterward with the promise from the Respondent that she would obtain mental health treatment in order to keep the family together.
4. That the Petition for Divorce was filed by Petitioner on or about February 12, 2015.
5. That on or about December 8, 2010, the parties purchased the former marital residence located at 42 Mallard Lane, Dover, New Hampshire for One Million Three Hundred Thousand Dollars ($1,300,000.00).
6. That the funds used to purchase the residence were the individual, premarital funds of the Petitioner.
7. That throughout the parties' marriage, the Petitioner was responsible for payment of any and all expenses associated with the home, with little to no financial contribution by the Respondent.

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8. As of April 21, 2016, the former marital residence continued to have an appraised value of $1,300,000.00.

9. That the former marital residence has a current appraised value of $1,375,000.00.

10. That the Petitioner resides in the former marital residence with the parties' minor children and remains responsible for any and all costs associated with the same.

11. From the time of the parties' separation until on or about October 20, 2017, the Respondent had access to various martial funds and joint credit cards, and spent approximately $179,675.00.

12. Although ordered by the Court, the Respondent has never satisfactorily accounted for her expenditure of all of these funds.

13. From the time of the Court's order awarding temporary alimony to the Respondent, Petitioner has paid $234,000.00 and has made each monthly payment in a timely and systematic fashion.

14. Pursuant to this Court's order of December 7, 2017, the Petitioner paid to the Respondent the amount of $46,893.50 as an award to address her ongoing attorney's fees and legal expenses.

15. During the pendency of this matter the Respondent has paid down debt to her parents in the amount of, $40,000.00, as reflected on her financial affidavit of October 17, 2017 (showing $75,000.00 then owing) and of April 20, 2018 (showing a then existing debt in the amount of $35,000.00).

16. That at the time of the filing of the Petition for Divorce, the Petitioner had a 403(b) and 457(b) retirement account with Frisbie Memorial Hospital with a value of $234,542.00.

17. That as of December 31, 2017 (the last statement issued prior to the first missed trial date in January 2018) the Petitioner's 403(b) and 457(b) retirement account (now administered by Valic) had a value of $463,382.52.

18. The Petitioner's retirement account has a current value of $507,118.00.

19. That the Petitioner also has inherited, premarital investment accounts with a current value of $2,168,952.00.

20. That the Petitioner has a Roth IRA with a current value of $201,037.00.

21. That the Roth IRA was a premarital asset with the exception of an $11,000.00 investment/contribution.

22. That an equal investment/contribution of $11,000.00 was made into the Respondent's IRA account at the same time.

23. Both $11,000.00 investments were made from joint marital funds.

24. That the Petitioner is a physician/endocrinologist employed at Frisbie Memorial Hospital.

25. That the Petitioner earns approximately $15,279.00 per month from his employment at Frisbie Memorial.

26. That the Petitioner has further monthly income from self-employment in the average amount of approximately $3,334.00.

27. That the Petitioner earns approximately $4,489.00 per month in interest and dividends.

28. That the Respondent is a Doctor of Physical Therapy and earns approximately $4,800.00 per month, according to her last financial affidavit, filed on April 20, 2018.

29. Petitioner has further failed to prove that she lacks sufficient skills, training, etc. to be self-sufficient.

30. That the Respondent's income is sufficient to provide for her living expenses.

31. That the Respondent's actions and inactions, in failing to comply with comparatively simple discovery requests has resulted in two delays (continuances) in the previously scheduled final hearings in January and May-June of 2018.

32. In the first instance, this matter was scheduled for a final hearing January 9 through January 12, 2018, and the Petitioner fully prepared to conduct that hearing as scheduled, by inter alia, propounding interrogatories and requests for products of documents well in advance of said dates.

33. Respondent filed a last minute request for a continuance (on the eve of trial and not within 10 days of court scheduling) as she did not have the ability to retain counsel to help her answer the pending interrogatories and requests for products of documents issues and to represent her at a final hearing.

34. That the matter was later rescheduled for May 10, 11, 14 and 15. Petitioner's counsel requested a continuance as a result of preplanned/ prepaid out of state travel.

35. The Court then rescheduled the final hearing for May 30, 31, June 4 and June 5, 2018. However, it was determined at the Trial Management Conference that the Respondent, even with counsel, had still not provided the necessary discovery to proceed to final hearing, and as such this matter was further continued to the currently scheduled dates of October 22 through October 26, 2018.

36. That as a result of the unnecessary delays caused by the Respondent's dilatory tactics, the values of the various assets, both individual and joint, have changed.

37. It would be patently unfair to allow the Respondent to, in effect, profit from her dilatory tactics, and hence an earlier date for asset valuation (December 2017) would be appropriate exercise of the Court's discretion under these facts.

38. That the Respondent has repeatedly demonstrated a wanton disregard for this Court's Orders relative to her contact with the parties' children.

39. That despite being awarded only supervised parenting time/contact, the Respondent violated the Court's Orders when she appeared at the parties' daughter's dance recital on May 19, 2017 and at Temple on May 21, 2017, leading to a finding of contempt against her, with an award of attorney's fees to Petitioner.

40. That not at all deterred by the Court's finding of contempt, the Respondent, on July 25, 2017, just days after receipt of the Court's Order on the previous Motion for Contempt (issued July 12, 2017), appeared at Corey's karate class at two separate times, having direct contact with Corey.

41. That further, the Respondent appeared at the Children's Museum on July 26 and 27, 2017, where the parties' son was attending summer camp, which led to a subsequent finding of contempt and award of attorney's fees. The amount of the award was not determined by the Court, and as such was never paid by the Respondent.

42. That additionally, the Respondent refused to pay her portion of the visitation supervisor Carol James' fees of approximately $200.00, claiming an apparent inability to afford said payments.

43. A review of the Respondents' financial affidavit and expenses at that time, (when she was receiving alimony in an amount of $7,000.00 monthly),

revealed a surplus of several thousand dollars each month and did not at all support Respondent's claimed inability to pay.

44. As a result of her refusal to pay fees, the supervision services provided by Carol James were terminated.

45. The Respondent went several months without seeing her children as a direct result of said refusal.

46. The Respondent has been previously ordered to attend and complete DBT therapy, which she has wholly refused and neglected to do.

47. That in further contempt of the Court's Orders, the Respondent refused to sign releases for the Parenting Coordinator.

48. That the Respondent's actions led to the Petitioner filing a Motion for Further Finding of Contempt.

49. That this Court did in fact issue a finding of contempt against the Respondent, and awarded the Petitioner his attorney's fees and costs associated with the same, by its Order dated September 13, 2017.

50. That on December 4, 2017, the Respondent again violated this Court's Orders relative to contact with the parties' children when she appeared, unannounced and without an appointment, and had extended contact with the children in the parking lot of their therapist's office, at a time the children had therapy.

51. That following the filing of the third Motion for Contempt, the Petitioner was forced to request an emergency protective order because the Respondent was parked outside the former marital residence and followed the children when they left with the nanny.

52. That on or about December 14, 2017, the Court granted the Petitioner's request for a protective order on an emergency basis and scheduled the matter for a hearing on December 19, 2017.

53. That following the hearing on the Petitioner's Motion on or about December 19, 2017, the Petitioner's motion was granted pending further or final orders issued by the Court.

54. That the Respondent's actions to date, including her veiled threats and statements made in open court and in pleadings, coupled with the Petitioner's testimony, has served and continues to create a legitimate fear on Petitioner's for his safety and that of his children.

55. Given this history and evidence, the Court finds imposition of a permanent martial restraining order, pursuant to NH RSA 461-A:10 to be warranted and appropriate in this case.

56. That the Respondent has refused to acknowledge any wrongdoing, or accepting any responsibility for her actions that ultimately led to the requirement that her parenting time with the children be supervised.

57. That although the Court has given the Respondent multiple opportunities to work toward reunification and unsupervised contact with the parties' children, the Respondent has failed to adhere to the requisite conditions related to her parenting time.

58. That two separate supervisors have been assigned to oversee the Respondent's parenting time with the children and both have declined to remain involved as a result of Respondent's actions.

59. After considering the factors enumerated in New Hampshire RSA 461-A:6(I), the Court finds that an award of exclusive parenting rights and responsibilities in favor of the Petitioner is warranted and in the best interest of these children.

60. The Court finds that the Petitioner has sustained his burden of proof warranting an award of sole decision making in his favor under the facts of this case. NH RSA 461-A:5.

61. That considering the findings of abuse and neglect entered against the Respondent by this Court and affirmed by the Strafford County Superior Court, and further considering her failure to comply with multiple Court orders and requirements for reunification, the Court makes orders prohibiting any parenting time or further contact with the children by the Respondent, absent further Court order. NH RSA 461-A:6(I)(j).

62. That any interest the Petitioner may have in trusts or LLCs formed by his father Harvey Kamil have not yet been realized (or may never be realized) in Petitioner's favor and will not so realize prior to issuance of final orders in this case.

63. As such any interest of the Petitioner in said assets are not martial property and not subject to distribution by this Court.

REQUESTED RULINGS OF LAW

64. RSA 458:19 states that a when addressing a request for alimony, the Court shall consider "the party in need lacks sufficient income, property, or both, including property apportioned in accordance with RSA 458:16-a, to provide

for such party's reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage; and the party from whom alimony is sought is able to meet reasonable needs while meeting those of the party seeking alimony, taking into account the style of living to which the parties have become accustomed during the marriage; and the party in need is unable to be self-supporting through appropriate employment at a standard of living that meets reasonable needs..."

65. RSA 458:19 further states that in determining the amount of an alimony award that the Court shall consider "the length of the marriage, the age, health, social or economic status, occupation, amount and sources of income, the property awarded under 458:16-a, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income..."

66. In New Hampshire RSA 458:16-a deals with the determination as to what is to be considered marital property and also sets out the Court's standards for distribution of same.

67. Under RSA 458:16-a, I, the trial Court first determines, as a matter of law, what assets are marital property and thus subject to equitable distribution, and then exercises its discretion to make an equitable distribution of those assets. In the Matter of Goodlander & Tamposi, 161 N.H. 490, 495 (2011).

68. Although generally a decree issued by the trial Court does not go to final judgment if a timely appeal is taken, In the Matter of Nyhan &Nyhan, 151 N.H. 739, 745 (2005), the plain language of the statute stops the accrual of marital property when a "dissolution of a marriage is decreed," not when the decree becomes final or effective. RSA 458:16-a, II (emphasis added). Thus, property acquired by either party after the date that the divorce decree is issued is not marital property. In the matter of Enkroate-Breagy and Breagy, No. 2016-0400 Opinion Issued: August 1, 2017 at pgs. 3-4.

69. RSA 458:16-a, I states that "property shall include all tangible and intangible property and assets, real or personal, belonging to either of both parties." Holliday v. Holliday, 139 N.H. 213, 215 (1994).

70. RSA 458:16-a, II sets forth the timing and procedure for the equitable, but not necessarily equal, distribution of marital assets. Id.

71. It is well settled in New Hampshire that the general rule is to leave the determination and distribution of marital assets to the Court's discretion. See RSA 458:16-a, Magrauth v. Magrauth, 136 N.H. 757 (1993) and Holliday v. Holliday, 139 N.H. 213 (1994).

72. Unlike pension benefits, "there is no fixed rule or mathematical formula" to govern the Court's action as the amount of property to be allowed to a spouse depends upon the facts of the particular case." Hoffman v. Hoffman, 143 N.H. 514 (1999) citing Health v. Seymour, 110 N.H. 425 (1970).

73. It has long been established that the primary purpose of an alimony award is rehabilitation. Tishkevich v. Tishkevich, 131 N.H. 404, 407 (1989).

74. Although not all alimony awards need to be rehabilitative, established factors for non-rehabilitative alimony are not present in this case. Henry v. Henry, 129 N.H. 159 (1987). Fowler v. Fowler, 145 N.H. 566 (2000).

75. "The purpose of an order for support is 'not to provide...a life-time profit sharing plan' for the wife". Calderwood.

76. The Court is statutorily required to divide property equitably, not necessarily equally. In re Sarvela, 154 N.H. 426, 431 (2006).

77. An award of sole decision making responsibility will be appropriate if found to be in accordance with the best interests of the child. In re Pasquale, 146 N.H. 652, 656 (2001).

78. Under New Hampshire RSA 461-A:6(I), in determining parental rights and responsibilities, the Court shall be guided by the best interests of the child and consider factors as enumerated within the statue.

79. Factors that may be considered by the Court include but are not limited to the relationship of the child with each parent, the ability of each parent to assure the child receives adequate food, clothing, shelter, medical care and safe environment, the child's developmental needs and the ability of each parent to meet them in the present and future, and the ability of each parent to foster and promote a positive relationship with the other parent, the support of each parent for the child's relationship with the other parent, including whether contact is likely to result in harm to the child or to a parent, and the ability of the parents to communicate, cooperate with each other, and make joint decisions concerning the children, including whether contact is likely to result in harm to the child or to a parent. NH RSA 461-A:6(I).

80. The Court shall also consider any evidence of abuse, as defined in RSA 173-B:1, I or RSA 169-C:3, II, and the impact of the abuse on the child and on the relationship between the child and the abusing parent. NH RSA 461-A:6(I)(j).

81. The Court may consider failure of a parent to take steps to improve her emotional health where such treatment is necessary to protect the best interests of the child. See, e.g., In re Antonio W., 147 N.H. 408 (2002)

(upholding termination of parental rights of mother based on, *inter alia*, evidence that pattern of neglect was partially due to the mother's failure to seek treatment for mental illness issues).

82. In a divorce proceeding, marital property is not to be divided by some mechanical formula but in a manner deemed "just" based upon the evidence presented and the equities of the case. Rahn v. Rahn, 123 NH 222, 225 (1983).

83. Under New Hampshire RSA 458:16-a, II, the Court shall presume that an equal division is an equitable distribution of property, unless the Court decides that an equal division would not be appropriate or equitable after considering one or more factors as enumerated within the statute.

84. Factors that may be considered by the Court include but are not limited to the length of the marriage, the ability of the parties to provide for their own needs, the needs of the custodial parent, the contribution of each party during the marriage, and the value of property contributed by each party. In the Matter of Crowe & Crowe, 148 NH 218, 221 (2002); see NH RSA 458:16-a, II.

Respectfully submitted,
Matthew Kamil
By and through his attorneys,

Date: October 22, 2018

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CERTIFICATE OF SERVICE

I, F. Michael Keefe, Esquire do hereby certify that a copy of the foregoing Requests for Findings of Fact and Rulings of Law has this day been forwarded via ~~(first class US Mail, postage prepaid)~~ (hand delivery) (~~electronic mail~~) to Robin Kamil, Pro Se Respondent.

F. Michael Keefe, Esquire

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

http://www.courts.state.nh.us

Court Name: RFD FDCCD

Case Name: Kamil

Case Number:

CHILD SUPPORT GUIDELINES WORKSHEET
Effective April 1 2018

Child's Name	DOB	Child's Name	DOB
Cassidy	01/30/2010		
Cory	02/23/2012		
1. Total Number Of Children ○ 1 ◉ 2 ○ 3 ○ 4 +			
2. Obligor's Reasonable Medical Support Obligation *(4% Monthly Gross Income, rounded to the nearest dollar)* $201.60		3. Obligee's Reasonable Medical Support Obligation *(4% Monthly Gross Income, rounded to the nearest dollar)* $1,061.80	

PAYMENT CALCULATIONS *NOTE: All income and expenses must be converted to monthly amounts (multiply weekly amounts by 4.33; bi-weekly amounts by 2.17).*	OBLIGOR (Column 1)	OBLIGEE (Column2)	Combined (Column 3)
4. Monthly gross income	$ 5040.00	$ 26545.00	
5A. Court/Admin. ordered support for other children	$	$	
5B. 50% of actual self-employment taxes paid	$	$	
5C. Mandatory retirement	$	$	
5D. Actual state income taxes paid	$	$ 220.00	
5E. Allowable child care expenses (obligor) *(See LINE 5E instructions)*	$		
5F. Medical support for children (obligor)	$		
5G. Total deductions (Add lines 5A through 5F)	$0.00	$220.00	
6. Adjusted monthly gross income *(Subtract line 5G from line 4)*	$5,040.00	$26,325.00	$31,365.00
7A. Child Support guideline amount *(From Guideline Calculation Table)*			$5,593.17
7B. Guideline Percentage *(From Guideline Calculation Table)*			**26.00 %**
8A. Allowable child care expenses (obligee) *(See LINE 8A instructions)*		$ 3904.00	
8B. Medical support for children (obligee)		$ 200.00	
8C. Total allowable obligee expenses *(Add line 8A and 8B)*		$4,104.00	
9. Total adjusted monthly gross income	$5,040.00	$22,221.00	$27,261.00
10. Proportional share of income	18.49 %	81.51 %	
11. Parental support obligation *(Line 10 times line 7A)*	$1,034.06	$4,559.11	
ABILITY TO PAY CALCULATION			
12. Self-support reserve *(From Guideline Calculation Table)*	$1,163.00		
13. Income available for support *(Subtract line 12 from line 9, column 1)*	$3,877.00		
14. Monthly support payable *(Enter the smaller 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.)*	$1,034.06		
15. Presumptive child support obligation *(If weekly, divide line 14 by 4.33; if bi-weekly, divide line 14 by 2.17; if monthly, enter same amount as in line 14.)* ** ROUND THE RESULT TO THE NEAREST WHOLE DOLLAR **			
Calculate	Weekly $239.00	Bi-Weekly $477.00	Monthly $1,034.00

Prepared By: Foley Title: judge Date: 10/25/2018