

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

NO. 2019-0027

AMANDA COLBURN

V.

WAYNE SAYKALY, JR.

&

NICHOLAS SAYKALY

**Discretionary Appeal Pursuant to Rule 7 from a Final Decision
of Goffstown District Court**

**BRIEF FOR THE APPELLANT
NICHOLAS SAYKALY**

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**(Fifteen Minutes Oral Argument
Requested by Attorney Winters)**

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
RELEVANT STATUTORY PROVISIONS.....	4
QUESTION PRESENTED	7
STATEMENT OF FACTS AND STATEMENT OF THE CASE	8
SUMMARY OF THE ARGUMENT	11
ARGUMENT.....	12
I. THE COURT ERRED BY FINDING THAT THE LANDLORD-TENANT COURT WAS THE CORRECT FORUM TO DETERMINE MR. SAYKALY’S RIGHT TO RESIDE AT 23 ARROWHEAD DRIVE AFTER THE FAMILY DIVISION ALREADY ORDERED THAT HE COULD.	12
CONCLUSION	16
DECISION BELOW THAT IS BEING APPEALED	17
REQUEST FOR ORAL ARGUMENT AND CERTIFICATIONS.....	18
FINAL ORDER.....	19
APPENDIX	A1-A27

TABLE OF AUTHORITIES

NEW HAMPSHIRE CASES

<i>Close v. Fissette</i> , 146 N.H. 480 (2001)	14
<i>Hemenway v. Hemenway</i> , 159 N.H. 680 (2010)	12
<i>Holliday v. Holliday</i> , 139 N.H. 213 (1994).....	12
<i>In the Matter of Goulart and Goulart</i> , 158 N.H. 328 (2009).....	12, 15
<i>In the Matter of Mallett and Mallett</i> , 163 N.H. 202 (2012)	13
<i>In the Matter of Muller and Muller</i> , 62 A.3d 770 (2013)	13
<i>Simpson v. Calivas</i> , 139 N.H. 1 (1994)	12

NEW HAMPSHIRE STATUTES

RSA 458:16	14
RSA 458:16, I.....	11, 12
RSA 458:16-a	13
RSA 458:16-a, I.....	11, 12
RSA 458:16-a, II.....	12
RSA 490-D:2	13
RSA 540-A:1	16
RSA 540-A:1, I.....	16
RSA 540-A:1, I.....	16

FEDERAL CASES

<i>Metcalf Bros. & Co. v. Barker</i> , 187 U.S. 165 (1902).....	12
<i>Sullivan et al. v. Algrem et al.</i> , 160 F. 366 (8th Cir. 1908)	12, 13, 14

OTHER STATE CASES

<i>Giuffrida v. Giuffrida</i> , 649 N.Y.S.2d 773 (N.Y. 1996)	15
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RELEVANT STATUTORY PROVISIONS

RSA 458:16—Temporary Relief and Permanent Restraining Orders.

I. After the filing of a petition for divorce, annulment, separation or a decree of nullity, the superior court may issue orders with such conditions and limitations as the court deems just which may, at the discretion of the court, be made on a temporary or permanent basis.

Temporary orders may be issued ex parte. Said orders may be to the following effect:

- (a) Directing any party to refrain from abusing or interfering in any way with the person or liberty of the other party.
- (b) Enjoining any party from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result.
- (c) Enjoining any party from contacting the other party at, or entering, the other party's place of employment or school.
- (d) Enjoining any party from harassing, intimidating or threatening the other party, other party's relatives regardless of their place of residences, or the other party's household members in any way.
- (e) Determining the temporary custody and maintenance of any minor children as shall be deemed expedient for the benefit of the children; provided, however, that no preference shall be given to either parent in awarding such custody because of the parent's sex.
- (f) Ordering a temporary allowance to be paid for the support of the other.
- (g) Enjoining any party from transferring, encumbering, hypothecating, concealing or in any way disposing of any property, real or personal, except in the usual course of business or for the necessities of life, and if such order is directed against a party, it may require such party to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.
- (h) Ordering the sale of the marital residence provided that both parties have previously filed a written stipulation with the clerk of the court explicitly agreeing to the sale of the property prior to the final hearing on the merits. If the parties have not so stipulated, the sale of the marital residence shall not be ordered prior to the final hearing as long as the court deems the party residing within the marital residence to have sufficient financial resources to pay the debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due.

II. (a) Ex parte orders may be granted without written or oral notice to the adverse party only if the court finds from specific facts shown by affidavit or by the verified petition, that immediate and irreparable injury, loss, or damage will result to the applicant, the children, or property before the adverse party or attorney can be heard in opposition.

(b) No ex parte order shall be granted without:

(1) An affidavit from the moving party verifying the notice given to the other party or verifying the attempt to notify the other party.

(2) A determination by the court that such notice or attempt at notice was timely so as to afford the other party an opportunity to be present.

(c) If temporary orders are made ex parte, the party against whom the orders are issued may file a written request with the clerk of the superior court and request a hearing thereon. Such a hearing shall be held no later than 5 days after the request is received by the clerk for the county in which the petition for divorce, annulment, separation or decree of nullity is filed.

III. When a party violates a restraining order issued under this section by committing assault, criminal trespass, criminal mischief, stalking, or another criminal act, that party shall be guilty of

a misdemeanor, and peace officers shall arrest the party, detain the party pursuant to RSA 594:19-a and refer the party for prosecution. Such arrests may be made within 12 hours after a violation without a warrant upon probable cause whether or not the violation is committed in the presence of a peace officer.

RSA 458:16-a—Property Settlement.

I. Property shall include all tangible and intangible property and assets, real or personal, belonging to either or both parties, whether title to the property is held in the name of either or both parties. Intangible property includes, but is not limited to, employment benefits, vested and non-vested pension or other retirement benefits, or savings plans. To the extent permitted by federal law, property shall include military retirement and veterans' disability benefits.

II. When a dissolution of a marriage is decreed, the court may order an equitable division of property between the parties. The court shall presume that an equal division is an equitable distribution of property, unless the court establishes a trust fund under RSA 458:20 or unless the court decides that an equal division would not be appropriate or equitable after considering one or more of the following factors:

- (a) The duration of the marriage.
- (b) The age, health, social or economic status, occupation, vocational skills, employability, separate property, amount and sources of income, needs and liabilities of each party.
- (c) The opportunity of each party for future acquisition of capital assets and income.
- (d) The ability of the custodial parent, if any, to engage in gainful employment without substantially interfering with the interests of any minor children in the custody of said party.
- (e) The need of the custodial parent, if any, to occupy or own the marital residence and to use or own its household effects.
- (f) The actions of either party during the marriage which contributed to the growth or diminution in value of property owned by either or both of the parties.
- (g) Significant disparity between the parties in relation to contributions to the marriage, including contributions to the care and education of the children and the care and management of the home.
- (h) Any direct or indirect contribution made by one party to help educate or develop the career or employability of the other party and any interruption of either party's educational or personal career opportunities for the benefit of the other's career or for the benefit of the parties' marriage or children.
- (i) The expectation of pension or retirement rights acquired prior to or during the marriage.
- (j) The tax consequences for each party.
- (k) The value of property that is allocated by a valid prenuptial contract made in good faith by the parties.
- (l) The fault of either party as specified in RSA 458:7 if said fault caused the breakdown of the marriage and:
 - (1) Caused substantial physical or mental pain and suffering; or
 - (2) Resulted in substantial economic loss to the marital estate or the injured party.
- (m) The value of any property acquired prior to the marriage and property acquired in exchange for property acquired prior to the marriage.
- (n) The value of any property acquired by gift, devise, or descent.
- (o) Any other factor that the court deems relevant.

III. If either or both parties retain an ownership interest in an education savings account held on

behalf of a child of the marriage, including a qualified tuition program under 26 U.S.C. Section 529, the court may, in its discretion, preserve the account for its original purpose or may treat the account as property of the marriage subject to equitable division under this section.

IV. The court shall specify written reasons for the division of property which it orders.

RSA 490-D:2—Jurisdiction.

Notwithstanding any law to the contrary and except for the limited need to allow an existing case to proceed with the same judge who had presided over it before the implementation of the judicial branch family division, following implementation of the division at a division site in accordance with RSA 490-D:5, jurisdiction over the following matters shall be exclusively exercised through the judicial branch family division as procedurally jurisdiction was previously exercised in the superior, district, and probate courts:

I. Petitions for divorce, nullity of marriage, alimony, custody of children, support, and to establish paternity.

II. Actions for support or custody for children of unwed parties.

III. Actions under RSA 169-B, relating to delinquent children except for concurrent jurisdiction with the district court to enter temporary detention orders under RSA 169-B:11, III and 169-B:12, IV(b).

IV. Actions under RSA 169-C, relating to abused and neglected children except for concurrent jurisdiction with the district court to enter orders under RSA 169-C:6, VI and RSA 169-C:6-a.

V. Actions under RSA 169-D, relating to children in need of services except for concurrent jurisdiction with the district court to enter orders under RSA 169-D:8, I, RSA 169-D:9-a, and RSA 169-D:10.

VI. Actions under RSA 173-B, relating to protection of persons from domestic violence except for concurrent jurisdiction with the district division to enter temporary protective orders under RSA 173-B:4.

VII. The adoption of children in abuse and neglect cases pursuant to RSA 169-C, termination of parental rights cases pursuant to RSA 170-C, and guardianships of the person of minors pursuant to paragraph VIII. Jurisdiction over private, agency, and international adoptions shall remain with the probate court.

VIII. The guardianship of the person of minors. In cases involving the guardianship of both the person of a minor and the estate of the same minor, jurisdiction shall remain with the probate court.

IX. The termination of parental rights.

X. The change of names of persons who apply therefor in matters relating to jurisdiction in paragraphs I-IX.

RSA 540-A:1—Definitions.

As used in this subdivision:

I. "Landlord" means an owner, lessor or agent thereof who rents or leases residential premises including manufactured housing or space in a manufactured housing park to another person.

II. "Tenant" means a person to whom a landlord rents or leases residential premises, including manufactured housing or a space in a manufactured housing park.

III. "Premises" means the part of the landlord's property to which the tenant is entitled exclusive access for living or storage as a result of the rental or lease agreement.

QUESTION PRESENTED

1. Did the court err by finding that the Landlord-Tenant Court was the correct forum to determine Mr. Saykaly's right to reside at 23 Arrowhead Drive after the Family Division already ordered that he could?

Issue preserved by Mr. Saykaly's objection to the Landlord-Tenant Court's jurisdiction, T. at 8, 10, 11, Ms. Colburn's argument that jurisdiction is proper, T. at 17–18, 24, and the Landlord-Tenant Court's final decision, Final Order at 19.¹

¹ Citations to the record are as follows:

“App.” refers to the Appendix to this Brief.

“T.” refers to the hearing on the merits that occurred on December 6, 2018.

The Goffstown District Court's final decision is appended to this Brief and uses this Brief's page numbers.

STATEMENT OF FACTS AND STATEMENT OF THE CASE

Amanda Colburn and Nicholas Saykaly were married on July 11, 2009 in Goffstown, New Hampshire. App. at A2. The marital estate includes two residential properties: 1) a home located at 11 Arrowhead Drive, Goffstown, New Hampshire that was the marital residence prior to the parties' separation; and 2) a residential property located at 23 Arrowhead Drive, Goffstown, New Hampshire. *Id.* Ms. Colburn is the sole owner of 23 Arrowhead Drive, and acquired it prior to the marriage. T. at 4. The parties lived at 23 Arrowhead Drive with their children from around 2009 until 2013. *Id.* at 14. Mr. Saykaly's brother Wayne Saykaly began renting the property from Ms. Colburn in 2013, when Ms. Colburn, Mr. Saykaly, and their children moved to 11 Arrowhead Drive.. *Id.* at 12.

On March 26, 2018, Ms. Colburn filed a petition for divorce, commencing divorce action 638-2018-DM-44 in the Goffstown Family Division. *See* App. at A2. The Honorable Suzanne M. Gorman has presided over the divorce action. *See* T. at 9. Following a temporary hearing, Judge Gorman, in her capacity as a judge for the marital proceeding issued a temporary decree. *See* App. at A1. The temporary decree awarded Ms. Colburn exclusive use and possession of 11 Arrowhead Drive, ordering her to pay all utilities, regular maintenance, and expenses other than mortgage, insurance, and taxes, for which Mr. Saykaly was obligated to pay. *Id.* at A4, A6. The temporary decree further ordered that Mr. Saykaly "shall temporarily be permitted to reside at the residence located at 23 Arrowhead drive" with Wayne Saykaly, who "currently rents said premises." *Id.* at A6. While the temporary decree did not order Mr. Saykaly to pay rent on 23 Arrowhead Drive, it did order that Ms. Colburn shall be awarded all rents and management responsibilities of 23 Arrowhead Drive. *Id.* In addition to the mortgage, insurance, and taxes on the marital home, the temporary decree ordered Mr. Saykaly to pay guideline child support. *Id.* at A17. The temporary decree contained the usual language restraining the parties from "selling transferring, encumbering, hypothecating, concealing or in any manner whatsoever disposing of any property, real or personal, belonging to either or both parties" except by written agreement of both parties, for

reasonable and necessary living expenses, or in the ordinary and usual course of business. *Id.* at A6–A7. Additionally, the temporary decree ordered that neither party shall enter the premises where the other resides without written consent. *Id.* at A7.

On October 15, 2018, Ms. Colburn served Mr. Saykaly with an eviction notice to remove him from 23 Arrowhead Drive. On December 6, 2018, Judge Gorman presided over the hearing on the merits of the eviction in Landlord-Tenant Court, 438-2018-LT-95. *See* T. at 3. At the hearing, Ms. Colburn presented a warranty deed listing her as the sole owner of the property. T. at 4. She said that the tenants had made a complaint to her regarding the quality of the water at the premises. *Id.* Thereafter, Ms. Colburn had an analysis of the water done, which indicated the presence of E. coli. *Id.* Ms. Colburn received an estimate of \$14,597 to repair the water issue. *Id.* at 5. Ms. Colburn argued she commenced the eviction action in order to “remove the danger to her occupants,” by taking 23 Arrowhead Drive off the market until she could complete the repairs. *Id.* at 6. She argued that the court’s temporary decree awarded her full management authority of the premises; thus, she would be entitled to commence an eviction action against the occupants. *Id.*

On the other hand, Mr. Saykaly argued that the eviction action was brought in the wrong venue because the Family Division had exercised jurisdiction over 23 Arrowhead Drive in the divorce proceedings, and had made temporary orders allowing Mr. Saykaly to live at the property. *Id.* at 10. Mr. Saykaly argued that only the Family Division may “adjudicate the rights of Nick Saykaly to have use and possession of [23 Arrowhead Drive] and determine who stays with him on a temporary or permanent basis until the assets are split up according to the marital court.” *Id.* at 12. Mr. Saykaly argued that because the parties’ children lived at 23 Arrowhead Drive, the property belonged in the marital proceedings. *Id.* at 11. Mr. Saykaly also provided evidence that the water issue was not as cost prohibitive as Ms. Colburn made it seem. *See id.* at 14 (“They sought advice from the local plumber, and he, at points, treated it or showed them how to treat it using chlorine.”).

Mr. Saykaly's brother testified at the hearing that he has been paying rent since 2013. *Id.* at 12.² Mr. Saykaly never paid rent. *Id.* Ms. Colburn did not present evidence at the hearing that Mr. Saykaly signed a lease agreement to reside at 23 Arrowhead Drive or that he was responsible for paying rent.

On December 13, 2018, the court issued an order granting judgment to Ms. Colburn, finding that the property is unrestricted property, that she gave proper notice in accordance with RSA 540:3, II and III, and that the property is being removed from the rental market. Final Order at 19. The court granted a Writ of Possession to Ms. Colburn. *Id.* However, the order specifically noted, "[t]his order is without prejudice to any rights and responsibilities of Amanda Coburn and Nicholas Saykaly in case [number] 638-2018-DM-44." *Id.* Mr. Saykaly now brings this appeal.

² Based on the context surrounding the testimony, the transcript misidentifies the speaker as the Appellant, when, in fact, Wayne Saykaly provided testimony as to renting the property since 2013 and paying the rent.

SUMMARY OF THE ARGUMENT

Once a divorce petition is filed, the Family Division has statutory authority to divide marital property as defined by RSA 458:16-a, I. Prior to a final decree, the Family Division may make temporary orders that it deems just. RSA 458:16, I. This includes the inherent authority to allocate rights and responsibilities regarding the use of marital property. Once a court exercises jurisdiction over property, it has exclusive authority over that property until its purpose is completed. Here, this means the Family Division had exclusive jurisdiction over 23 Arrowhead Drive as to the marital litigants once Ms. Colburn filed a divorce petition. The Family Division actually exercised jurisdiction by issuing a temporary decree. The Landlord-Tenant Court's issuance of a Writ of Possession over the same property was therefore improper as to Mr. Saykaly. Furthermore, Mr. Saykaly and Ms. Colburn did not have a landlord-tenant relationship and so the Landlord-Tenant Court lacked jurisdiction regardless.

ARGUMENT

I. THE COURT ERRED BY FINDING THAT THE LANDLORD-TENANT COURT WAS THE CORRECT FORUM TO DETERMINE MR. SAYKALY’S RIGHT TO RESIDE AT 23 ARROWHEAD DRIVE AFTER THE FAMILY DIVISION ALREADY ORDERED THAT HE COULD.

Upon the commencement of a divorce proceeding, the Family Division determines how to equitably distribute property between the parties. RSA 458:16-a, II. “Property shall include all tangible and intangible property and assets, real or personal, belonging to either or both parties, whether title to the property is held in the name of either party or both parties.” RSA 458:16-a, I. Marital property includes any property acquired up to the date of a decree of legal separation or divorce. *See Holliday v. Holliday*, 139 N.H. 213, 215 (1994). After a divorce petition has been filed, the trial court may make temporary orders that the trial court deems just. RSA 458:16, I. This inherently includes the right to allocate rights and responsibilities with regard to use of marital property.

Subject matter jurisdiction is jurisdiction “over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things.” *Hemenway v. Hemenway*, 159 N.H. 680, 683 (2010) (citation and quotations omitted). Subject matter jurisdiction “is a tribunal's authority to adjudicate the type of controversy involved in the action.” *Id.* (citation omitted). Absent subject matter jurisdiction, a court’s order is void. *Id.* at 684 (citing *In the Matter of Goulart and Goulart*, 158 N.H. 328, 332 (2009)). In dealing with questions of conflicting jurisdictions, the “courts must be cautious.” *Metcalf Bros. & Co. v. Barker*, 187 U.S. 165, 166 (1902).

This Court looks to other jurisdictions for guidance when deciding upon issues of first impression. *See Simpson v. Calivas*, 139 N.H. 1, 5 (1994). In a landmark 1908 decision, the Eighth Circuit held:

The legal custody of specific property by one court of competent jurisdiction withdraws it, so far as necessary to accomplish the purpose of that custody, until that purpose is completely accomplished from the jurisdiction of every other court. The court which first acquires jurisdiction of specific property by the lawful seizure thereof, or by the due commencement of a suit in that

court, from which it appears that it is, or will become, necessary to a complete determination of the controversy involved, or to the enforcement of the judgment or decree therein, to seize, charge with a lien, sell, or exercise other like dominion over it, thereby withdraws that property from the jurisdiction of every other court, and entitles the former to retain the control of it requisite to effectuate its judgment or decree in the suit free from the interference of every other tribunal. When a court has by lawful proceedings taken possession of specific property, it has during that possession and as incident thereto jurisdiction to hear and determine all questions respecting the title, possession, and control thereof, and courts of co-ordinate jurisdiction are powerless to render any judgment or decree that will invade or disturb the possession of the property while it is in the custody of the court which has thus first acquired it.

Sullivan et al. v. Algrem et al., 160 F. 366, 369 (8th Cir. 1908). Thus, the court that first exercises jurisdiction over property retains jurisdiction over that property until the purposes of the seizure is accomplished. *Id.*

RSA 490-D:2 states that rulings on divorce petitions “shall be *exclusively exercised* through the judicial branch family division as procedurally jurisdiction was previously exercised in the superior, district, and probate courts” RSA 490-D:2 (emphasis added). Once a divorce action is initiated, the Family Division has inherent authority over all assets held by either spouse, regardless of how the assets are titled. *See* RSA 458:16-a; *see also In the Matter of Muller and Muller*, 62 A.3d 770, 775 (N.H. 2013) (citing *In the Matter of Mallett and Mallett*, 163 N.H. 202, 209 (2012)) (holding that “the overall scheme of the relevant divorce statutes governs issues of, among other things, the division of property,” and the Family Division has the inherent authority to issue equitable orders).

Regardless of the inherent authority, the Family Division in this case did in fact exercise jurisdiction over 23 Arrowhead Drive well prior to the filing of the eviction action in Landlord-Tenant Court. *See* App. at A6. In its temporary decree, the Family Division issued an order allowing Mr. Saykaly to temporarily reside at 23 Arrowhead Drive. *Id.* The temporary decree also enjoined the parties from interfering with or abusing in any way “the person or liberty of the other party,” or from entering the premises where the other resides without written consent, or harassing, intimidating, or

threatening the other party or the other party's relatives or household members. *Id.* at A7. This order, which is still in effect, explicitly gives Mr. Saykaly the right to reside at 23 Arrowhead Drive free from any harassment or interference from Ms. Colburn. *See id.* Simply stated, the Family Division had inherent jurisdiction over 23 Arrowhead Drive. The Family Division actually exercised jurisdiction by issuing its temporary decree, pursuant to its statutory authority. *See* RSA 458:16. Unless and until the Family Division relinquishes jurisdiction over the property, it has exclusive jurisdiction over 23 Arrowhead Drive, with respect to the litigants in the marital proceeding. *See Sullivan*, 160 F. at 369.

Ms. Colburn initiated an eviction action on October 15, 2018, seeking to evict both Mr. Saykaly and his brother Wayne Saykaly. As a matter of happenstance, Judge Gorman was assigned to hear this matter in Landlord-Tenant Court. *See* T. at 3. At the hearing held on December 6, 2018, the Landlord-Tenant Court struggled with its ability to order the eviction of Mr. Saykaly. The Landlord-Tenant Court stated, "I think there's a significant jurisdictional question regarding the Court's determination of property—of possession of property that is at the subject of a marital proceeding." *Id.* at 26. The Landlord-Tenant Court was also quick to note that but for Wayne Saykaly being involved, "we would not be having this conversation at all, because it would be the exclusive jurisdiction [of the Family Division] to determine [what] the marital properties would be in the proceeding." *Id.* at 22. The Landlord-Tenant Court kept referring to its hesitancy to exercise jurisdiction over the proceedings in Landlord-Tenant Court because if it were to do so, "this is just going to happen all the time." *Id.* at 26. The Landlord-Tenant Court expressed its concern that divorce proceedings would turn into eviction battles. *Id.* Surprisingly then, the Landlord-Tenant Court's ultimate ruling cast all these legitimate concerns aside, without comment, and allowed the eviction of Mr. Saykaly.

Ms. Colburn attempted to argue that because Mr. Saykaly did not file a special appearance challenging the jurisdiction of the Landlord-Tenant Court, he had waived his opportunity to argue the issue. *See id.* However, this is an incorrect recitation of the state of the law. *See Close v. Fissette*, 146 N.H. 480, 483 (2001) (holding that a party may

challenge subject matter jurisdiction at any time during a proceeding, including during an appeal). Regardless, Mr. Saykaly did challenge subject matter jurisdiction multiple times during the hearing by arguing that the Landlord-Tenant Court could not interfere with the Family Division's ruling. *See* T. at 8, 10, 11.

A case that provides persuasive authority to this Court is *Giuffrida v. Giuffrida*, 649 N.Y.S.2d 773 (N.Y. 1996). In *Giuffrida*, the Petitioner instituted an eviction against his son, seeking to evict him from marital property, asserting he paid no rent and had no tenancy rights. *Id.* at 774. The son had been living in the house under the permission of the Petitioner's wife. *Id.* The Petitioner also instituted an action for divorce against his wife. *Id.* The son argued that the Landlord-Tenant Court did not have subject matter jurisdiction over him since he was an invitee of his mother, and the Family Court had proper jurisdiction over the proceeding. *Id.* at 775. The Court in *Giuffrida* held that pursuant to statutory authority, when no landlord-tenant relationship between the parties exists, and the son was not a "licensee," the Landlord-Tenant Court did not have subject matter jurisdiction. *Id.* at 776. The Court held, "Beatrice Giuffrida, having the right of possession of the premises as a tenant by the entirety, as well as the right to remain there by virtue of the order of the Family Court, is entitled to have her son, or any other guest, reside with her." *Id.* (citation omitted).

Similarly, in this case, the Family Division granted Mr. Saykaly the right to live on the premise by the temporary decree. *See* App. at A6. He has no landlord-tenant relationship with Ms. Colburn, and the marital proceeding commenced before the eviction action. *Id.* at A3. Like in *Giuffrida*, the Landlord-Tenant Court lacked subject matter jurisdiction to order the eviction of Mr. Saykaly. *See Goulart*, 158 N.H. at 332. Since the Landlord-Tenant Court lacked subject matter jurisdiction over the litigants in the marital proceeding, its Writ of Possession as to Mr. Saykaly is invalid. *See id.*

To the extent this Court perceives a conflict in the statutory jurisdiction conferred upon the Family Division and Landlord-Tenant Courts, a bright-line ruling is necessary. The most sensible rule is that, under the Family Division's inherent authority over marital property, upon the filing of an action in the Family Division, it shall have exclusive

jurisdiction over marital property insofar as the rights and responsibilities of the litigant spouses are concerned. This is not to say, of course, that the Landlord-Tenant Court is not the proper forum regarding third parties. The Family Division, not the Landlord-Tenant Court is best suited to determine the equities of the parties to a divorce.

Additionally, regardless of the Family Division's temporary decree, the Landlord-Tenant Court similarly lacked jurisdiction over Mr. Saykaly due to the fact that no landlord-tenant relationship existed between Ms. Colburn and Mr. Saykaly. RSA 540-A:1 defines a landlord as an owner of a property who "rents or leases residential premises . . . to another person." RSA 540-A:1, I. A "tenant" is defined as "a person to whom a landlord rents or leases residential premises." RSA 540-A:1, II.

Mr. Saykaly did not rent or lease 23 Arrowhead Drive from Ms. Colburn. The Family Division's temporary decree merely specified that Mr. Saykaly "shall temporarily be permitted to reside at the residence located at 23 Arrowhead Drive . . . with his brother, who currently rents said premises." App. at A6. There was no landlord-tenant relationship between the parties, which is required for the Landlord-Tenant Court to have jurisdiction. Therefore, the decision granting a Writ of Possession to Ms. Colburn as to Mr. Saykaly must also be reversed and remanded for that reason alone.

CONCLUSION

In accord with the foregoing, this Court should reverse the decision of the Goffstown District Court, remand the case for dismissal, and grant such other further relief as this Court deems fair and just.

DECISION BELOW THAT IS BEING APPEALED

Appellant respectfully requests that this Court review the decision of the Goffstown District Court. I hereby certify that this decision is in writing and is appended to this Brief.

Respectfully submitted,
Nicholas Saykaly
By and through his attorneys,
Cohen & Winters, PLLC

May 10, 2019

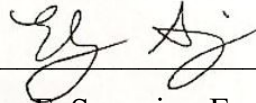
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REQUEST FOR ORAL ARGUMENT AND CERTIFICATIONS

Counsel for Appellant Nicholas Saykaly requests that Attorney Andrew Winters be given fifteen (15) minutes for oral argument because the issues in this case should be decisively determined in this jurisdiction.

I hereby certify a copy of the foregoing has been delivered through the electronic filing system on May 10, 2019 to Attorney Sean Curran, Counsel for Appellee, and via first class mail, postage paid to Wayne Saykaly, Jr.

Pursuant to Rule 26(7), I hereby certify that this Brief contains 3,257 words, which complies with Rule 16(11).

May 10, 2019

Date



Andrew S. Winters, Esquire

FINAL ORDER

RECEIVED
DEC 17 2018

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

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64 N STATE ST
CONCORD NH 03301**

Case Name: **Amanda Colburn v. Wayne Saykaly, JR, Nicholas Saykaly et al**
Case Number: **438-2018-LT-00095**

Enclosed please find a copy of the Notice of Judgment dated December 13, 2018.

Lynn R. KillKelley
Clerk of Court

(939)

C: Wayne Saykaly, JR; Sean E. Curran, ESQ

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

9th Circuit - District Division - Goffstown
329 Mast Road
Goffstown NH 03045

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

**LANDLORD/TENANT ACTION FOR OTHER THAN NON-PAYMENT OF RENT
JUDGMENT**

Case Name: **Amanda Colburn v. Wayne Saykaly, JR, Nicholas Saykaly et al**
Case Number: **438-2018-LT-00095**

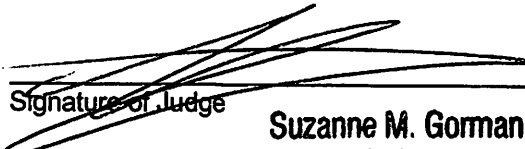
After a hearing on the merits, judgment is awarded to the landlord. Further, the court finds:

Property is unrestricted property. Landlord gave notice in accord
with RSA 540:3, II and III. Unit is being removed from
rental market. This order is without prejudice to any rights
and responsibilities of Amanda Colburn and Nicholas Saykaly
in case # 638-2018-DM-44.

- ☒ Writ of Possession will issue on the eighth calendar day from the date the notice of judgment is provided to the parties, unless the appealing party:
- A. Files a Notice of Intent to Appeal within seven days;
 - B. Completes a Supreme Court appeal within 30 days; and
 - C. If the appealing party is the tenant, pays to the plaintiff all rent becoming due from the date of the Notice of Intent to Appeal is filed with the Circuit Court.

SEE APPEAL INFORMATION ON PAGE TWO

12/13/18
Date


Signature of Judge
Suzanne M. Gorman
Judge
Printed Name of Judge

Notice of Judgment to parties:

- ☐ In Hand to parties on _____
☒ Mailed to parties on 12/14/2018

Writ of Possession to be issued on 12/26/2018

(939)

C: Sean E. Curran, ESQ; Andrew S. Winters, ESQ

LANDLORD/TENANT ACTION FOR OTHER THAN NON-PAYMENT OF RENT

APPEAL INFORMATION

THE JUDGMENT IN A LANDLORD/TENANT ACTION FOR OTHER THAN NON-PAYMENT OF RENT MAY BE APPEALED ON QUESTIONS OF LAW TO THE SUPREME COURT BY EITHER PARTY. PLEASE NOTE THE FOLLOWING:

- A. Within seven calendar days of the date of this notice, the party appealing must file with the Circuit Court a NOTICE OF INTENT TO APPEAL TO THE SUPREME COURT (NHJB-2085-DP).
- B. If the tenant is the party appealing, the tenant shall pay into Circuit Court or the landlord as the court directs, all rents becoming due from the date the NOTICE OF INTENT TO APPEAL (NHJB-2085-DP) is filed with the Circuit Court.
- C. If the tenant is the appealing party and the duty to pay rent or a portion thereof is in dispute, the tenant shall, after the NOTICE OF INTENT TO APPEAL (NHJB-2085-DP) is filed with the District Division, pay to the District Division such portions of the rent in an amount directed by the court. During the time that the appeal is pending, this rent or portion thereof is payable as it becomes due. Such amounts shall be held by the court in escrow until a final decision is rendered.
- D. Within 30 days of the NOTICE OF JUDGMENT, the party appealing must file a NOTICE OF APPEAL with the Supreme Court.
- E. When the final decision on appeal is rendered by the Supreme Court, any escrowed monies paid into the Circuit Court shall be apportioned between the landlord and tenant based upon the finding of the rent actually due.

APPENDIX

APPENDIX—TABLE OF CONTENTS

FAMILY DIVISION’S TEMPORARY DECREE A1–A27

FAMILY DIVISION'S TEMPORARY DECREE

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

AUG 16 2018

9th Circuit - Family Division - Goffstown
329 Mast Road
Goffstown NH 03045

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

NOTICE OF DECISION

**ANDREW S. WINTERS, ESQ
COHEN & WINTERS
64 NORTH STATE STREET
CONCORD NH 03301**

Case Name: **In the Matter of Amanda Colburn and Nicholas Saykaly**

Case Number: **638-2018-DM-00044**

Enclosed please find a copy of the Court's Order dated July 02, 2018 and August 13, 2018 relative to:

**Temporary Order
Temporary Decree
Temporary Parenting Plan
Temporary Uniform Support Order
Child Support Guidelines Worksheet
Order on Appointment of Guardian Ad Litem
Motion: Continuance & Order to Access Funds to Hire Legal Counsel**

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

August 15, 2018

Lynn R. KillKelley
Clerk of Court

(758)

C: F. Michael Keefe, ESQ; Deborah Mulcrone

STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

County of Hillsborough

9th Circuit - Goffstown Family Division

Case No. 638-2018-DM-44

In the Matter of Amanda Colburn and Nicholas Saykaly

TEMPORARY ORDER

The court held a temporary hearing on July 2, 2018. Amanda Colburn (mother) and Nicholas Saykaly (father) appeared and were represented by counsel. Based on the offers of proof/testimony the court finds and orders as follows.

The parties were married on July 11, 2009. They have two children, Jackson (DOB 4/9/10) and Callie (DOB 7/24/12). Mother also has another child, age 14. The parties own two properties, one titled to mother, which is a rental property, and the other titled to father, which is the marital residence. Mother current resides in the marital home and father resides in the rental property with his brother. During the marriage father has worked as an electrical lineman. He is currently employed with Eversource. Father has had period of time during the last year when he has been out of work, including a significant portion of 2018. Mother has not been working outside the home and is not self-supporting. She has historically received money from her family, which has been spent for vacations, costs associated with the children's activities, and other expenses.

Mother requests that the court order that father pay the mortgage, taxes and insurance on the marital home as well as guideline child support. The court finds that father has the ability to make payment on the marital home while paying child support. However, this situation does not appear to be sustainable for the long term, particularly if his brother moves out of the rental property. The court maintains what is essentially the status quo regarding the parties' finances. At this juncture the court does not find that mother is voluntarily unemployed, as this was the parties' arrangement during the marriage. Therefore, the court does not impute income to her. However, mother is capable of working and it is anticipated that mother will seek employment prior to the final hearing. Father provides health insurance coverage for the family. He previously had it available through the electrical union. This is no longer available but he has access to insurance with his new employer.

Mother has been the children's primary caretaker, including during a period when father left the state in search of employment. From time to time father is also away working long hours during inclement weather depending on the needs of his employer. Mother requests that the court limit father's parenting time to one overnight every other week and several evenings. The court declines to restrict his parenting time to this degree. The court recognizes that father has exercised extremely poor judgment at times with respect to the children. For example, there is evidence that he made disparaging statements in their presence regarding mother. Mother installed a lock on the door to the parties' residence to keep father from entering the residence. Rather than addressing the issue with mother, he removed the lock while at least one child was present. He also installed a camera in the marital residence without the knowledge of mother, substantially escalating the conflict between the parents. These behaviors only serve to escalate the conflict between the parties, causing more confusion and distress for the parties' children.

Nevertheless, the children need to have regular and meaningful contact with both parents including some down time where they are able to relax and enjoy weekend activities together. That

will not happen in the absence of a regular parenting schedule that enables both parents to spend weekend time with the children as well as some time during the week handling routine matters in the period between the end of school and bedtime. At this juncture the court does not find that the children are at risk if father has regular parenting time including overnight parenting time, provided the parties avoid unnecessary contact, particularly during exchanges.+ The court assigns father parenting time every other weekend and alternating weekday evenings. Both parents must refrain from disparaging the other parent to the children or engaging the children in adult conversations regarding the parties' relationship. Failure to comply with this requirement may result in a modification of parenting time for the offending parent.

The parties are residing in homes that are within walking distance. In the event the conflict between the parties rises to the level of actions, they are likely to be observed by the children to their detriment. The court has vacated an order for protection in a separate domestic violence proceeding. However, the court enters an order pursuant to RSA 458:16 prohibiting either party from abusing or interfering in any way with the person or liberty of the other party, or entering the premises wherein the other party resides, and harassing, intimidating or threatening the other party, the other party's relatives regardless of their place of residences, or the other party's household members in any way.


Despite the conflict, the court orders joint decision making authority. The court is concerned that removing father from the decision making process is not in the children's best interest. Based on the level of mistrust between the parties, if father is removed from all decision making it will only serve to alienate him from the children. In addition, it is likely that he will end up using the children as a conduit for the transfer of information, which is not in their interest. Both parties need to remove the children from the litigation, except as specifically ordered by the court or as necessary to carry out court orders. Unless otherwise recommended by the guardian ad litem and agreed by the parties, communication between the parents shall be in writing and limited to those communications necessary to carry out court orders or co-parent the children.

Given the history of this case, the court appoints a guardian ad litem, with the cost to be shared by the parties.

A temporary decree, uniform support order, and parenting plan are attached.

So Ordered.

8/13/18
Date


Suzanne M. Gorman
Judge

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

9th CIRCUIT COURT
GOFFSTOWN FAMILY DIVISION

IN THE MATTER OF:

AMANDA COLBURN AND NICHOLAS SAYKALY

DOCKET NO.: 638-2018-DM-00044

TEMPORARY DECREE

1. **Type of Case:** Divorce

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

The attached Parenting Plan and Uniform Support Order are incorporated by reference herein.

3. **Tax Exemptions for Children:**

Amanda shall be entitled to claim Callie as a dependent for state and federal income tax purposes each year.

Nicholas shall be entitled to claim Jackson as a dependent for state and federal income tax purposes each year.

In order for Nicholas to claim Jackson as a dependent for state and federal income tax purposes, he must be current with any and all support obligations as of December 1st.

4. **Guardian ad Litem Fees:** ~~Not requested at present but Petitioner reserves the right to request the appointment of a Guardian ad Litem in the future if necessary.~~ *See order of appointment.*

5. **Alimony:** In lieu of alimony, the Respondent shall be temporarily responsible for payment of the mortgage, taxes, and insurance on the property located at 11 Arrow Head Drive. Respondent shall provide verification of payment to the Petitioner through counsel.

6. **Health Insurance for Spouse:**

A. Medical: The Respondent is temporarily responsible for maintaining health insurance for the Petitioner and her daughter

Alexandra and shall be responsible for payment of any and all costs associated with said insurance.

- B. Dental: The Respondent shall be responsible for maintaining the current dental insurance policy for the benefit of the Petitioner and her daughter Alexandra and shall be responsible for the costs associated with said insurance.
- C. Uninsured expenses: Each party shall be temporarily responsible for any uninsured medical and dental expenses incurred on their own behalf.
7. **Life Insurance:** The parties shall maintain any and all life insurance policies on a temporary basis, making no changes to benefit or beneficiary.
8. **Motor Vehicles:**
- A. Each party is temporarily awarded the motor vehicle currently in his/her possession.
- B. Each party shall temporarily be solely responsible for all expenses associated with his/her respective vehicles to include, but not limited to loans, insurance, repairs, maintenance, registration and the like and shall indemnify and hold the other party harmless for same.
9. **Furniture and Other Personal Property:** Each party is temporarily awarded the furniture and furnishings currently in their possession.
10. **Retirement Plans and Other Tax-Deferred Assets:** Each party is temporarily restrained from selling, transferring, encumbering, or otherwise hypothecating any retirement accounts, IRA's, Certificates of Deposits, mutual funds and related accounts without a change in beneficiary pending further order of the Court. Respondent may withdraw up to \$10,000 for atty's fees. He shall be responsible for all fees and taxes. Court may consider any manner whatsoever disposing of any property, real or personal, withdrawn at a final hearing.
11. **Other Financial Assets:**
- A. Bank Accounts: Each party is temporarily awarded any bank accounts currently established in their respective names.
- B. Stocks and Bonds: Each party is restrained from selling, transferring, encumbering, hypothecating, concealing or in any manner whatsoever disposing of any property, real or personal, belonging to either or both parties except (1) by written agreement

of both parties, or (2) for reasonable and necessary living expenses or (3) in the ordinary and usual course of business.

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

13. **Division of Debt:**

- A. The parties shall each be responsible for any debt in their respective names and for debt incurred since the parties' separation.
- 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 temporarily awarded exclusive use and possession of the marital home located at 11 Arrowhead Drive, Manchester, New Hampshire. *She shall pay all utilities, regular maintenance, and*
- B. See paragraph 5, *infra*, incorporated by reference herein. *expenses other than mortgage,*

15. **Other Real Property:**

- A. The Petitioner is the owner of income property located at 23 Arrowhead Drive, Manchester, New Hampshire. *insurance and taxes.*
- B. The Respondent shall temporarily be permitted to reside at the residence located at 23 Arrowhead Drive, Manchester, New Hampshire with his brother, who currently rents said premises.
- C. The Petitioner shall be temporarily awarded all rents and management responsibilities related to the 23 Arrowhead Drive property.
- D. The Petitioner shall be temporarily responsible for payment of the mortgage, taxes and insurance associated with the 23 Arrowhead Drive property. *To the extent that rents are insufficient to address said costs, the Respondent shall be responsible for same and shall pay any such expenses within 72 hours of notification by Petitioner's counsel.*

16. **Restraints against the Property:** Each party is restrained from selling, transferring, encumbering, hypothecating, concealing or in any manner

whatsoever disposing of any property, real or personal, belonging to either or both parties except (1) by written agreement of both parties, or (2) for reasonable and necessary living expenses or (3) in the ordinary and usual course of business.

17. **Restraining Order:** ~~There is a temporary restraining order in place, issued by this Court in the Matter of Amanda Colburn and Nicholas Saykaly, Docket Number 638-2018-DV-18. A final hearing on that matter is scheduled for August 6, 2018.~~ Neither party shall abuse or interfere in any way with the person or liberty,
18. **Other Requests:** of the other party, or enter the premises where the other resides without written consent or
1. **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. harass or intimidate
 2. **Change in address or employment:** Each party shall promptly notify the court and the other party of any change in his/her address or telephone number, and notify the other party 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. threaten the other party or the other party's
 3. **Miscellaneous:** Not applicable. relatives or household members.

RECOMMENDED.

Marital Master

Date: _____

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

RECOMMENDATION APPROVED,
SO ORDERED.



Presiding Justice

Date: 8/13/18

Suzanne M. Gorman

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

9th CIRCUIT COURT
GOFFSTOWN FAMILY DIVISION

IN THE MATTER OF:

AMANDA COLBURN AND NICHOLAS SAYKALY

DOCKET NO.: 638-2018-DM-00044

PARENTING PLAN

This parenting plan is proposed by the Petitioner.

This parenting plan is: Temporary. All completed paragraphs shall be incorporated in the Court's Temporary Decree.

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. As you complete the Parenting Plan, please bear in mind this state's policy (below) 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 child 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.
- (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.

RECEIVED
NH CIRCUIT COURT
9TH CIRCUIT GOFFSTOWN
2018 JUL -2 A 11:04

This is a parenting plan for the following children:

<u>Name</u>	<u>DOB</u>
Jackson Edward Saykaly	04/09/2010
Callie Mackenzie Saykaly	07/24/2012

A. Decision-Making Responsibility:

1. Major Decisions: These include, but are not limited to decision about the child's education, non-emergency health and dental care, and religious training:

- Parties shall have joint authority*
- a. ~~Amanda shall have sole decision making~~ for making 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, and to act as custodial parent in order to give authorization for the provision of emergency medical treatment for a child. In the event of any serious illness or accident of a child, the parent with whom the child is then staying shall notify the other parent as soon as possible.

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.

2. Day-To-Day Decisions: Each parent shall make day-to-day decisions for their child during the time he/she is caring for the child. This includes any emergency decisions affecting the health or safety of their child. A parent who makes an emergency decision shall share the decision with the other parent as soon as reasonably possible.

B. Residential Responsibility & Parenting Schedule:

1. Routine schedule:

a. Amanda shall have primary residential responsibility for the children.

b. During the summer vacation, beginning July 3, 2018, Nicholas shall have the children every other Tuesday and Thursday from 3:30 p.m. until 8:00 p.m. and on alternating weeks, Wednesday from 3:30 p.m. to 8:00 p.m.

c. Nicholas shall have the children every other ~~Saturday from 10:30 a.m. to 8:00 p.m.~~ ^{weekend from Friday 3:30 PM to Sunday 6 PM.} ~~(Saturday parenting time shall take place in the same alternating weeks as the Wednesday parenting time)~~

d. Once school is back in session, Nicholas's shall have the children every other Tuesday and Thursday from 3:30 p.m. until 6:00 p.m. and in alternating weeks on Wednesdays from 3:30 p.m. until 6:00 p.m. His ~~Saturday~~ ^{weekend} time shall remain unchanged (~~Saturday~~ ^{weekend} parenting time shall take place in the same alternating weeks as the Wednesday parenting time).

e. Nicholas shall have additional parenting time with the children at such other times as the parties may agree, through counsel.

2. Holiday and Birthday Planning:

~~No holiday and birthday schedule shall apply at this time. The routine schedule set forth above shall apply.~~ ^{Unless otherwise agreed: Thanksgiving (alternate) even yrs with mother 6 PM Wednesday to 6 PM Thursday; with Father 6 PM Thurs. to 3:30 PM Friday.}

3. Three-Day Weekends:

~~No three-day weekend schedule shall apply.~~ ^{Christmas (alternate) even years with mother 3 PM 12/24 to 1 PM 12/25; with Father}

4. Vacation Schedule:

- a. December School Vacation: The routine schedule shall apply. ^{1 PM 12/25 to noon 12/26}
- b. Winter School Vacation (February): The routine schedule shall apply. ^{except Father's weekday(s) shall be 9 AM to 6 PM}
- c. Spring School Vacation (April): The routine schedule shall apply. ^{except Father's weekday(s) shall be 9 AM to 6 PM}

d. Summer Vacation Schedule: See paragraph B(1)(b)(c).

~~Notwithstanding said schedule, Amanda shall have the children from July 21, 2018 through July 29, 2018 for her vacation. The routine schedule shall apply for all other dates, on a temporary basis.~~

Other summer vacations shall be as agreed by the parties on a temporary basis.

5. Supervised Parenting Time:

Not applicable.

6. Other Parental Responsibilities:

Each parent shall promote a healthy, beneficial relationship between the children and the other parent and shall not demean or speak out negatively in any manner or subject the children 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. If a parent requires child care by some person who does not reside in his or her residence, for a period reasonably expected to last longer than 8 hours, then the other parent shall be offered the opportunity to parent the children. This section does not apply to time being spent with grandparents or regularly scheduled day care.
- c. Each parent shall supply the appropriate clothing for their respective parenting time.
- d. Each parent shall be responsible for ensuring that The children attend regularly scheduled activities, including but not limited to sports and extra-curricular activities, while The children is with that parent.

- e. As The children grow older, their individual interests may impact the parenting schedule set forth in this parenting plan. Each parent shall be flexible in making reasonable adjustments to the parenting schedule as the needs and interests of their maturing children requires.

C. Legal Residence of a Child for School Attendance:

The children shall attend school in the school district where Amanda resides.

D. Transportation and Exchange of the Child:

The children shall walk from one parent's home to the other. The parties shall stand outside to watch the children as they walk to the other party's home, but shall have no other contact whatsoever during these times.

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, and both parents are encouraged to consult with school staff concerning the children's welfare and education. Both parents are encouraged to participate in and attend the children's school events.

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

Both parents have equal rights to consult with any person who may provide care or treatment for the children and to inspect and receive the children's medical, dental or psychological records, subject to other statutory restrictions.

Each parent has a continuing responsibility to provide a residential, mailing, or contact address and contact telephone number to the other parent, including change of name, change of employer or marital status.

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 children's medical needs, as close in time to the emergency circumstance as possible.

Each party shall provide a written itinerary detailing all travel plans to the other party for agreed upon vacations, to include flight information, the name and contact information for accommodations no less than ~~ninety~~ ³⁰ days prior to any planned vacation, ~~otherwise that vacation shall be forfeited.~~

1. Parent-Child Telephone Contact:

The parties shall be permitted to speak with the children at ^{reasonable} ~~such times as~~
~~the parties agree.~~ ^{times.}

2. Parent-Child Written Communications:

Due to The children's age, no orders for written communication are entered on a temporary basis.

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. In general, either parent may move the children's residence if it results in the parents living closer and if it will not affect the children's school enrollment. Prior to relocating the children'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. At the request of either parent, the court shall hold a hearing on the relocation issue.

G. Procedure for Review and Adjustment of Parenting Plan:

No meetings shall be scheduled at this time. Any communication between the parties regarding the children and/or parenting time with the children, shall be done by email only. Said communications to be strictly limited to issues relating to the children.

H. Method(s) for Resolving Disputes:

In the future, if the parents have a disagreement about parenting issues, the parents shall try to work it out in the best interest of the children. Only if the parents are unable to work out the disagreement will they ask the court to decide the issue.

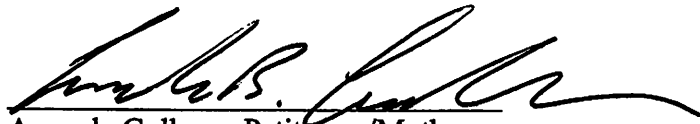
I. Other parenting agreements important to the parents or child are listed below or are set forth in the attached pages.

Amanda shall retain possession of the children's passports. In the event they are needed for a planned vacation, Amanda will allow Nicholas to take the passports, however, they are to be returned to Amanda immediately upon return from vacation.

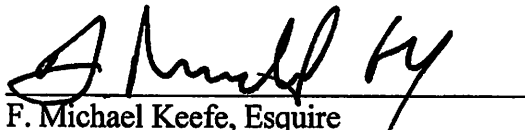
In the Matter of Amanda Colburn and Nicholas Saykaly
638-2018-DM-44
Parenting Plan

Respectfully submitted,

Date: 7/2/18


Amanda Colburn, Petitioner/Mother

Date: 7/2/18


F. Michael Keefe, Esquire
Attorney for Petitioner/Father
Law Offices of F. Michael Keefe, PLLC
40 West Brook Street
Manchester, NH 03101
603-647-4707
NH Bar ID #1322

RECOMMENDED.

Marital Master

Date: _____

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

RECOMMENDATION APPROVED,
SO ORDERED.


Suzanne M. Gorman
Presiding Justice

Date: 8/13/18

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

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

RECEIVED
NH CIRCUIT COURT
9TH CIRCUIT GOFFSTOWN

2018 JUL -2 A 11:05

Court Name: 9th Circuit - Family Division - Goffstown
Case Name: In the Matter of Nicholas Saykaly and Amanda Colburn
Case Number: 638-2018-DM-44
(if known)

UNIFORM SUPPORT ORDER

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

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

Nicholas Saykaly
23 Arrow Head Drive

Amanda Colburn
11 Arrow Head Drive

Manchester, NH 03102

Manchester, NH 03102

D.O.B. Telephone

D.O.B. 2/2/1979 Telephone

E-mail Address

E-mail Address

Employer

Employer

Employer Address

Employer Address

Child(ren) to whom this order applies :

Full Name	Date of Birth	Full Name	Date of Birth
Jackson	4/9/2010	Callie	7/24/2012

The following parties appeared: ☒ Obligor ☒ Obligee ☐ Division of Child Support Services
☐ Other

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

1. This order is entered:

2. This order is a:

☒ after hearing

☒ temporary order

☐ upon approval of agreement

☐ final order

☐ upon default

☐ 3. This order modifies a final support obligation in accordance with :

☐ a three year review (RSA 458-C:7) OR ☐ substantial change in circumstances, as follows :

Case Name: In the Matter of Nicholas Saykaly and Amanda Colburn
Case Number: 638-2018-DM-44

UNIFORM SUPPORT ORDER

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

4.1 ☒ **CHILD SUPPORT:** \$ 445.00 per Week.

4.2 ☐ Arrearage of \$ 0.00 as of payable \$ 0.00 per

4.3 ☐ Medical arrearage of \$ 0.00 as of payable \$ 0.00 per

4.4 ☐ **SPOUSAL SUPPORT (ALIMONY) :** \$ 0.00 per

4.5 ☐ Arrearage of \$ 0.00 as of payable \$ 0.00 per

4.6 ☐ Alimony shall terminate July 2, 2018

5. Payments on all ordered amounts shall begin on

All ordered amounts shall be payable to ☐ Obligee ☒ DCSS ☐ Other

6. ☒ This order complies with the child support guidelines. RSA 458 - C.

☐ This order, entered upon obligor's default, is based on a reasonable estimate of obligor's income. Compliance with the guidelines cannot be determined.

☐ The following special circumstances warrant an adjustment from the guidelines :

7. Support ordered is payable by immediate income assignment.

☐ 8. The Court finds that there is good cause to suspend the immediate income assignment because :

☐ Obligor and obligee have agreed in writing.

☐ Payments have been timely and it would be in the best interest of the minor child(ren) because:

☐ 9A. Obligor is unemployed and **MUST REPORT EFFORTS TO SEEK EMPLOYMENT (See Standing Order 9A).**

☐ 9B. Upon employment the Obligor shall bring the matter forward for recalculation of support. Failure to do so may result in a recalculated support order effective the date of employment.

MEDICAL SUPPORT FINDINGS (Paragraphs 10 through 15)

10. OBLIGOR'S medical support reasonable cost obligation: \$ 346.00 per month.

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

11. Private health insurance coverage ☐ is not available ☒ is available to the OBLIGOR in an amount equal to or less than the amount of the medical support reasonable cost obligation ordered in paragraph 10.

12. ☐ Private health insurance coverage available to the OBLIGOR is not accessible to the child(ren).

Case Name: In the Matter of Nicholas Saykaly and Amanda Colburn

Case Number: 638-2018-DM-44

UNIFORM SUPPORT ORDER

13. OBLIGEE'S medical support reasonable cost obligation: \$ 0.00 per month.

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

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

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

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

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

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

UNINSURED MEDICAL EXPENSES

17. Uninsured medical expenses shall be paid in the following percentage amounts :

Obligor 50 % Obligee 50 % Other

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

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

20. The State of has provided \$ 0.00 in public assistance for the benefit of the minor child(ren) between and for weeks. Obligor is indebted for the assistance in the total amount of \$ 0.00 .

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

Nicholas shall pay 29.04% of any and all overtime/bonus income within five days of receipt of same. Nicholas shall provide a copy of his paycheck stub with said bonus/overtime payments.

Obligor Nicholas Saykaly

Obligee Amanda Colburn

Staff Attorney
Division of Child Support Services

Obligor's Attorney/Witness

Obligee's Attorney/Witness

Date

Date

Date

Case Name: In the Matter of Nicholas Saykaly and Amanda Colburn
Case Number: 638-2018-DM-44

UNIFORM SUPPORT ORDER

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

Recommended:

Date

Signature of Marital Master/Hearing Officer

So Ordered:

Printed Name of Marital Master/Hearing Officer

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

Date

8/13/18

Signature of Judge

Suzanne M. Gorman

Printed Name of Judge

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

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

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

SUPPORT PAYMENT TERMS

- SO-3A. All prior orders not inconsistent with this order remain in full force and effect.
- SO-3B. In cases where the order of another jurisdiction is registered for modification, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing jurisdiction. (See RSA 546-B:49,III.)
- SO-3C. This order shall be subject to review and Court modification three years from its effective date upon the request of a party. Any party may petition the Court at any time for a modification of this support order if there is a substantial change in circumstances. The effective date of any modification shall be no earlier than the date of notice to the other party. "Notice" means either of the following: 1) service as specified in civil actions or 2) the respondent's acceptance of a copy of the petition, as long as the petition is filed no later than 30 days following the respondent's acceptance. See RSA 458-C:7.

NOTE: The July 1, 2013 change to the child support guidelines does not constitute a substantial change in circumstances. 2012, Chapter 248:5, "Applicability" states as follows (emphasis added):

"RSA 458-C:3, I as amended by this act shall apply to any child support order issued on or after July 1, 2013. RSA 458-C:3, I as amended by this act shall not apply to a valid child support order in effect on the effective date of this act until the next scheduled review hearing under RSA 458-C:7 or as otherwise agreed by the parties. This act shall not constitute a substantial change in circumstances for purposes of RSA 458-C:7."

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

Case Name: In the Matter of Nicholas Saykaly and Amanda Colburn

Case Number: 638-2018-DM-44

UNIFORM SUPPORT ORDER

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

Case Name: In the Matter of Nicholas Saykaly and Amanda Colburn
Case Number: 638-2018-DM-44

UNIFORM SUPPORT ORDER

- SO-6. Where the court determines that, in light of the best interests of the child, special circumstances exist that result in adjustments in the application of the guidelines for the child support obligation or the reasonable medical support obligation, the court shall make written findings relative to the applicability of one or more of the special circumstances described in RSA 458-C:5, I.

INCOME ASSIGNMENT

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

REPORT CHANGES OF EMPLOYMENT

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

MEDICAL SUPPORT PROVISIONS

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

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

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

Court Name: 9th Circuit - Family Division - Goffstown
Case Name: In the Matter of Nicholas Saykaly and Amanda Colburn
Case Number: 638-2018-DM-44

RECEIVED
NH CIRCUIT COURT
9TH CIRCUIT GOFFSTOWN

2018 JUL -2 A 11:05

CHILD SUPPORT GUIDELINES WORKSHEET

Child's Name	DOB	Child's Name	DOB
Jackson	4/9/2010	Callie	7/24/2012

1. Total Number of Children	2		
2. Obligor's Reasonable Medical Support Obligation (4% of Obligor's Monthly Gross Income)	346.00	3. Obligee's Reasonable Medical Support Obligation (4% of Obligee's Monthly Gross Income)	0.00

PAYMENT CALCULATIONS	OBLIGOR	OBLIGEE	COMBINED
4. Monthly gross income	8,660.00	0.00	
5A. Court/Admin ordered support for other children	0.00	0.00	
5B. 50% of actual self-employment taxes paid	0.00	0.00	
5C. Mandatory retirement	0.00	0.00	
5D. Actual state income taxes paid	0.00	0.00	
5E. Allowable child care expenses (obligor)	0.00		
5F. Medical support for children (obligor)	0.00		
5G. Total Deductions	0.00	0.00	
6. Adjusted monthly gross income	8,660.00	0.00	8,660.00
7A. Child support guideline amount			1,927.67
7B. Guideline percentage			29.040%
8A. Allowable child care expenses (obligee)		0.00	
8B. Medical support for children (obligee)		0.00	
8C. Total allowable obligee expenses		0.00	
9. Total adjusted monthly gross income	8,660.00	0.00	8,660.00
10. Proportional share of income	100.00%	0.00%	
11. Parental support obligation	1,927.67	0.00	
ABILITY TO PAY CALCULATION			
12. Self-support reserve	1,163.00		
13. Income available for support	7,497.00		
14. Monthly support payable	1,927.67		
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 the same amount as line 14) **ROUND THE RESULT TO THE NEAREST WHOLE DOLLAR**	\$445.00	Frequency (circle one): <input checked="" type="radio"/> Weekly <input type="radio"/> Bi-Weekly <input type="radio"/> Monthly	

PREPARED BY: F. Michael Keefe, Esquire

DATE: 7/2/2018

TITLE: Attorney for Petitioner Amanda Colburn

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

Court Name: 9th Circuit - Family Division - Goffstown
Case Name: In the Matter of Amanda Colburn and Nicholas Saykaly
Case Number: 638-2018-DM-00044
(if known)

ORDER ON APPOINTMENT OF GUARDIAN AD LITEM
(Divorce/Parenting)

Petitioner name: Amanda Colburn D.O.B. 02/02/1979
Address: 11 Arrow Head Dr Manchester, NH 03102
Telephone: Cell: 603-315-0819 E-Mail Address: _____
Respondent name: Nicholas Saykaly D.O.B. 05/24/1983
Address: 23 Arrow Head Dr Goffstown, NH 03045
Telephone: _____ E-Mail Address: _____

The following order shall be entered:

1. The attached Standing Order Relative to Guardian *ad Litem* Appointment (hereinafter referred to as the "Standing Order") is made a part of this order.
2. Name: Deborah Mulcrone Telephone: Work: 603-494-6879,
Fax: 603-218-6399
Address: 37 Salmon Street Manchester, NH 03104

is appointed Guardian *ad Litem* of the child(ren):

Name:	Date of Birth:
Jackson Saykaly	04/09/2010
Callie Saykaly	07/24/2012

*** If you are not currently a board certified GAL you must notify the Court immediately and this order will be vacated. If at any time during appointment your certification lapses, you must notify the Court immediately and file a motion to withdraw.**

3. The Guardian *ad Litem* shall investigate the following issues and make recommendations to the court thereon:

- ☒ Decision-making responsibilities
☒ Residential responsibilities
☐ Parenting time
☐ Special needs of the child(ren) (specify):

- ☐ Counseling for family/individual counseling for ☐ Petitioner ☐ Respondent ☐ child(ren)
☐ Psychological evaluations of ☐ Petitioner ☐ Respondent ☐ child(ren)

Case Name: _____

Case Number: _____

ORDER ON APPOINTMENT OF GUARDIAN AD LITEM (Divorce/Parenting)

- ☒ Appropriateness of the home environment of ☐ Petitioner ☐ Respondent ☒ both parties
- ☒ Substance abuse: ☐ alcohol ☐ drugs ☒ both ☐ other _____
- ☒ Violence, physical abuse, emotional abuse
- ☐ Sexual abuse of
- ☐ Supervision of parenting time
- ☐ Rights of grandparents to visit
- ☐ Influence of companions of either party on child(ren)
- ☐ Maturity of child(ren) stating a preference
- ☐ Travel arrangements
- ☒ Time, place and manner of exchange for parenting time
- ☐ Assessment of bond between child and each parent and/or between siblings
- ☒ Other issues which the GAL deems relevant based upon the investigation
- ☐ Other (specify): _____

4. The Court sets the maximum fee in this case at \$ _____. The fee may only be exceeded with prior approval of the Court and notice to all parties. Payment of the costs and fees of the Guardian ad Litem shall be made as follows:

A. Percentage of payment:

- ☒ The Petitioner shall pay 50 % of the Guardian ad Litem fees.
- ☒ The Respondent shall pay 50 % of the Guardian ad Litem fees.

B. Payment Orders:

- ☒ Unless otherwise agreed with the Guardian ad Litem, the Guardian ad Litem's hourly rate shall be no more than \$ _____. All parties must cooperate with the Guardian ad Litem's reasonable requests for payment. *as agreed w/ GAL and approved by the court*
- ☒ Unless otherwise agreed with the Guardian ad Litem, a retainer of \$ 1500 shall be paid to the Guardian ad Litem by no later than step in the proportion set forth in the paragraph above. In the event any party's payment is not made in accordance with this Order, the other party or the GAL may request a hearing. The party not in compliance with this Order may be required to appear at the hearing, prepared to show cause why s/he should not be held in contempt of court. Unless otherwise ordered, the Guardian ad Litem is not required to commence an investigation until the retainer is paid in full.
- ☐ Other Payment Orders: _____

5. Other provisions: _____

6. Guardian ad Litem Stipulations to be filed by: 20 days from submission

Case Name: _____

Case Number: _____

ORDER ON APPOINTMENT OF GUARDIAN AD LITEM (Divorce/Parenting)

7. Preliminary Report to be filed by: 90 days

8. Final Report to be filed by: TBD

Recommended:

Date


Signature of Marital Master

Printed Name of Marital Master

So Ordered:

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

4/13/18
Date


Signature of Judge

Suzanne M. Gorman

Printed Name of Judge

STANDING ORDER RELATIVE TO GUARDIAN AD LITEM APPOINTMENT

This order applies to all Guardian *ad Litem* appointments unless its terms are altered by an order entered in a specific case. Any changes in the order or the stipulations must be in writing and filed with the court.

1. GUARDIAN AD LITEM STIPULATION:

In every case in which a Guardian *ad Litem* is appointed, the parties and the Guardian shall file a stipulation as to the following issues:

- a. Expenses for which the Guardian *ad Litem* will be reimbursed;
- b. Guardian *ad Litem* hourly billing rate and the maximum fee established by the court in this case;
- c. Frequency of billing, terms of payment, and payment of retainer;
- d. The names of the individuals requested to be interviewed by the Guardian *ad Litem*, including names, addresses, telephone numbers and relationship to party or child, listed in order of importance. The Guardian *ad Litem* shall have the discretion to decide which individuals to interview;
- e. Manner in which the Guardian *ad Litem* will communicate with each party's references (e.g., office conference, telephone call, letter);
- f. Action(s) the Guardian *ad Litem* will take if unable to contact a reference;
- g. Whether the Guardian *ad Litem* will visit each party's home;
- h. Whether conversations between the Guardian *ad Litem* and the children will be confidential;
- i. Other orders necessary to protect confidentiality; and
- j. Dates by which parties will execute authorizations for reports. Specify records to be requested.

If this stipulation is not filed by the date set forth in the Order on Appointment of Guardian *ad Litem*, the court shall schedule an immediate enforcement hearing at the request of the Guardian *ad Litem* or either party.

Case Name: _____

Case Number: _____

ORDER ON APPOINTMENT OF GUARDIAN AD LITEM (Divorce/Parenting)

2. GUARDIAN AD LITEM FEES:

- a. The Guardian ad Litem shall be compensated at the rate of \$_____ per hour. The maximum fee set by the court (including costs) shall not exceed \$_____ for this case, and shall include attendance at hearings.
- b. Parties, counsel and the GAL shall be aware of the GAL fees and costs and shall take reasonable action to contain those fees and costs. Maximum limits will be strictly enforced.
- c. The maximum fee shall not be exceeded without prior approval of the court after hearing with the parties and the Guardian *ad Litem* present. Any request to exceed the maximum shall be filed with the court in writing and shall set forth in detail the reasons for the request and the amount by which the maximum is to be exceeded.
- d. When the parties are paying the cost of the GAL, the \$_____ per hour rate and the maximum fee set by the court may be waived upon written agreement of the parties and counsel which shall be filed with the court and subject to court approval. The agreement shall set forth the hourly rate and the maximum fee agreed to by the parties.
- e. If counseling, therapy or evaluations are recommended by the GAL, no expenses for those may be incurred without the prior approval of the court after hearing. Notwithstanding the above, the court may enter orders upon motion of either party, or *sua sponte*, to authorize specific additional services with appropriate limits on payment.

3. COMMENCEMENT, SUSPENSION AND RESUMPTION OF WORK:

The Guardian *ad Litem* shall commence an investigation on receipt of the Order of Appointment and, unless otherwise ordered, on receipt of payment of the retainer in full, and shall diligently investigate the case, and prepare a report. If the parties agree to suspend the investigation and preparation of a report for any reason, they shall immediately seek the assent of the Guardian *ad Litem* to such suspension and file with the Court a written agreement to suspend the Guardian *ad Litem*'s work. This agreement shall be signed by all parties, including the Guardian *ad Litem* who shall suspend work on the case on receipt of notice that the Court has approved the agreement.

A party desiring that the Guardian *ad Litem* resume work on the case shall immediately file an appropriate motion and shall send a copy of the motion to the Guardian *ad Litem* who shall resume work in that case only on receipt of the court's notice that the motion has been granted.

4. PLEADINGS AND STIPULATIONS:

Each party shall certify on every pleading that s/he has mailed or delivered a copy of the pleading to the Guardian *ad Litem*.

The parties may agree on any issue concerning the child(ren) or incapacitated adult, and shall certify that s/he has mailed or delivered a copy of the written agreement to the Guardian *ad Litem*. The Guardian *ad Litem* may sign the agreement or file an objection, if appropriate, within ten days from the date of mailing or delivery.

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

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

Clear Form

Court Name: 9th Circuit - District Division - Goffstown

Case Name: Amanda Colburn v Nicholas Saykaly

Case Number: 638-2018-DM-00044
(if known)

MOTION: Continuance & order to access funds to hire legal counsel.

I, Nicholas Saykaly

state the following facts and request the following relief:

- 1) On April 7, 2018, I applied to my union local to take a loan against my 401k annuity to cover living, household and others expenses
- 2) On April 27, 2018, the loan application requiring the approval and signature of Ms. Colburn was forwarded to her counsel (correspondence attached) but to date, it remains unsigned.
- 3 Since May 31, 2018, I have been unable to engage new counsel because my only annuity is the only source of funds I have sufficient to pay the initial retainer fee so an appearance before the court can be filed.
- 4) Pursuant to Clerk KillKelley's order of April 27, I am permitted access to funds "for reasonable and necessary living expenses"; the need to hire counsel seems certainly "reasonable and necessary".
- 5) I respectfully request a motion for continuance and an order from the court so I may access my annuity to hire counsel to provide me with adequate defense in this matter.

Date

Telephone

Signature

Address

I certify that on this date I provided a copy of this document to NICHOLAS KEEFE (other party's attorney) by: ☒ Hand-delivery OR ☐ US Mail OR ☐ E-mail (E-mail only by prior agreement of the parties based on Circuit Court Administrative Order).

Date

Signature

ORDER

☐ Motion granted.

☒ Motion denied. *as to continuance. Withdrawal*

Recommended:

Date

Signature of Marital Master/Referee

Printed Name of Marital Master/Referee

So Ordered:

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

Date

Signature of Judge

Suzanne M. Gorman

Printed Name of Judge