

**THE STATE OF NEW HAMPSHIRE  
SUPREME COURT**

No. 2020-0125

DUSTIN MORRIS,

*Plaintiff-Appellant,*

V.

ALLI MORRIS ,

*Defendant-Appellee.*

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ON APPEAL FROM THE 7<sup>TH</sup> CIRCUIT – FAMILY DIVISION –  
ROCHESTER

**PLAINTIFF – APPELLANT’S  
PRINCIPAL BRIEF**

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David J. Bobrow, Esq. (NH Bar No. 18077)  
BEDARD & BOBROW, P.C.  
9 Bradstreet Lane  
P.O. Box 366  
Eliot, Maine 03903  
(207) 439-4502

Dated: November 20, 2020

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## STATEMENT OF PROCEDURAL HISTORY

The Appellant Dustin Morris is the biological father of Wesley Morris. See Order; Case Summary (index #107). The biological mother is deceased. See Order; Case Summary (index #107). Dustin Morris was married to Appellee Alli Morris on January 3, 2013. See Joint Petition; Case Summary (index #1). The parties filed a Joint Petition for Legal Separation and Annulment on March 3, 2017. See Joint Petition; Case Summary (index #1). On August 8, 2017 this matter was placed on hold due to reconciliation of the parties. See Order Placing Case on Hold; Case Summary (index #27). On November 6, 2017 Alli Morris reopened the divorce process. See Motion to Re-open; Case Summary; (index #30). On May 7, 2018 a Telephonic Conference was held and Judicial Officer Michael Alfano issued an Order Appointing Nancy Blais as Guardian *ad Litem* (hereafter ‘GAL’) for the minor children, including Wesley. See Order Appointing GAL; Case Summary (index #60). The GAL filed a report on December 5, 2018. See GAL Report; Case Summary (index #67). On January 24, 2019 the parties participated in Mediation with a Mediation Report docketed as ‘settled in part’. See Mediation Report; Case Summary (index #71). A final divorce hearing was scheduled for May 22, 20219. See Case Summary date 04/30/2019. On May 20, 2019 Dustin Morris filed a Motion to Enforce Mediation Agreement. See Motion to Enforce Mediation Agreement; Case Summary (index #86). On May 20, 2019 Dustin Morris filed a proposed Parenting Plan and Divorce Decree. See Proposed Decree; Case Summary (index #92). On May 22, 2019 Alli Morris submitted a Proposed Parenting Plan and Proposed Divorce Decree. See Proposed

*Parenting Plan and Proposed Decree; Case Summary (index #96 and #97).* On July 3, 2019 a Final Hearing was held. See Case Summary date 07/03/2019. On July 5, 2019 a Parenting Plan and Order were entered on the docket by Judicial Officer Michael Alfano. See Parenting Plan; Case Summary (index #106) and Order; Case Summary (index #107). On July 12, 2019 Dustin Morris filed a Motion to Reconsider. See Motion to Reconsider; Case Summary (index #110). On July 16, 2019 Alli Morris filed an Objection to Dustin Morris' Motion to Reconsider. See Objection to Motion to Reconsider; Case Summary (index #112). On August 26, 2019 Dustin Morris filed a Proposed Order on the Motion to Reconsider. See Proposed Order; Case Summary (index #113).<sup>1</sup> A hearing on the Motion to Reconsider was held on August 28, 2019. See Case Summary date 08/28/2019. On August 29, 2019 Judicial Officer Michael Alfano issued the final Order on the Motions for Reconsideration. See Order; Case Summary (index #115). On September 4, 2019 Dustin Morris filed a Motion to Reconsider Final Order on Motion to Reconsider See Motion to Reconsider; Case Summary (index 119). On September 17, 2019, the Court denied this as untimely filed. See Case Summary; Appendix. at 119. On September 25, 2019 Dustin Morris filed a Motion for Reconsideration the Denial of Motion to Reconsider as untimely filed. See Motion to Reconsider; Case Summary (index #123). This Motion was also denied as untimely filed. See Order dated November 4, 2019; Appendix at 121. On September 30, 2019 Dustin Morris filed this appeal with the New

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<sup>1</sup> The proposed Order never was placed in the file so another copy was provided to the Court, explaining why the documents indexed as 113 and 114 are the same document.



Hampshire Supreme Court. See Notice of Appeal to Supreme Court; Case Summary (index #124).

### STATEMENT OF UNCONTESTED FACTS

- 1) The minor child, Wesley Morris, is the biological son of Father. *July 3, 2020 Transcript at 116, lines 12-13* (hereafter ‘*July Trans.*’)
- 2) Wesley’s biological mother is deceased. *Appendix (hereafter ‘Appx.’) at 86.*
- 3) The parties were married January 3, 2013. *July Trans. at 112, lines 20-22.*
- 4) Wesley was never adopted by Mother. *Id. at 14-15.*
- 5) At the time of the separation, Father initially remained in the marital residence, but at a separate portion of the duplex. He eventually moved out. *Appx. at 30-31.*
- 6) A Guardian *ad Litem*, Nancy Blais, was appointed to make recommendations regarding the best interest of the minor children, including Wesley. *Appx. at 24-27.*
- 7) There was a short period of time where visits between Father and the children were supervised but they were unsupervised by the time of the divorce hearing. *July Trans. at 114, lines 22-23.*
- 8) Father and the Guardian *ad Litem* believed that interim agreement was reached that would allow for Wesley to finish the school year with Mother and have additional time with Father in anticipation of Wesley residing with Father at the end of the 2019 school year. *July Trans. at 53, 54, lines 10-24, 1-6.*

- 9) This matter appeared before this Court for final hearing on May 22, 2019. *May 22, 2019 Transcript at 2* (hereafter ‘*May Trans.*’)
- 10) At that hearing, Father attempted to enforce a mediated agreement. *Id. at 2-21*. The Court declined and the matter was rescheduled for final hearing. *Id.*
- 11) Father requested a final hearing as soon as possible. *Id. at 13, lines 3-4*.
- 12) Father addressed concerns regarding perpetual delay. *Id. at 16, lines 13-14*.
- 13) A final hearing was scheduled to occur on July 3, 2019. *July Trans. at 1*.
- 14) Father filed a proposed Order and proposed findings of facts and conclusions of law. *Appx. 51-69*.
- 15) The final hearing occurred on July 3, 2019. *July Trans. at 23*.
- 16) During that hearing, Father argued that Mother did not have standing nor had filed a necessary Motion to request custody of the minor child, whom she had not adopted. *Id. at 34, lines 3-13*.
- 17) Father requested that he be immediately granted custody of his biological son, Wesley Morris. *Id. at 36, 37 lines 19-25, 1-3*.
- 18) The GAL testified as to her recommendations that the minor child Wesley, reside with Father and further stated that Wesley expressed a strong desire to live with Father. *Id. at 41, lines 13-16*.
- 19) The GAL reiterated Wesley’s wishes. *Id. at 42, lines 18-20*.
- 20) The GAL Report had been admitted into evidence. *Id. at 45, lines 18-21*.
- 21) The GAL stated that Wesley was old enough to make a allow his

input to be taken into consideration and further that “{Wesley} was absolutely presenting to me genuinely and has though a great deal about it, and it wasn’t something he was influenced by ... I mean he felt pretty strongly about it {residing with Father}. *Id. at 47, lines 1-9.*

22)The GAL did not believe there was any issue in Father’s parenting. *Id.at lines 18-22.*

23)The GAL testified there had been an agreement at mediation awarding custody of Wesley to Father at the end of the school year which is why she withdrew. *Id. at 47,48, lines 23-25, 1-10.*

24)The GAL testified that Wesley was craving additional time with his Father. *Id. at 50, lines 10-11.*

25)The GAL testified that “both parents are loving parents,” and specifically stated that “I’m trying to simply to ... respect Wesley’s feelings of wanting that connection with his dad. I think it’s legitimate, and I think it’s ... it was thoughtful.” *Id. at 51, lines 17-24.*

26)Father clearly objected to Wesley remaining with his step-mother. *Id. at 154, lines 16-22.*

27)There was no testimony suggesting that Father was an unfit parent. *Trans, generally.*

28)There was no testimony suggesting that the Wesley was in danger with Father. *Id.*

29)Father’s uncontroverted testimony was that he had changed his work schedule to allow for weekly parenting time with Wesley. *Id. at 153, 154 lines 21-25, 1-11; 155 lines 5-25, 156 lines 1-25, 157 lines 1-17.*

- 30) According to the GAL Report, Father is functioning normally. *Appx. at 37.*
- 31) On July 5, 2019, the trial court issued a final Order. *Appx. at 86-98.*
- 32) In that final Order, the trial court awarded custody of Wesley to Mother. *Id.*
- 33) The trial court made no finding that Father was an unfit parent or Wesley was in danger with Father. *Id.*
- 34) Father filed a Motion for Reconsideration on July 12, 2019. *Appx. 99-104.*
- 35) Mother filed an Objection to the Motion for Reconsideration. *Appx. 107-110.*
- 36) The Court issued a scheduling order requiring the parties to draft proposed orders for a hearing on reconsideration. *Appx. at 106.*
- 37) Father filed a proposed Order on August 26, 2019. *Appx. at 111-114.*
- 38) Mother did not file a proposed Order. *August, 28, 2019 Transcript (hereafter 'August Trans.')* at 3, lines 10-11.
- 39) The Court conducted a hearing on the Motion to Reconsider on August 28, 2019. *Id. at 1.*
- 40) At that hearing, Father argued that the *Bordalo* case controlled and that custody of Wesley to a non-biological parent could not be awarded absent a finding of danger or unfitness. *August Trans. at 4, 5, lines 5-25, 1-25.*
- 41) On August 29, 2019, the trial court issued an Order on the Motion for Reconsideration. *Appx. at 115-116.*
- 42) In the Order, the trial court relied upon *Stanley D. v. Deborah D.*, 124 N.H. 138 (1983) and *RSA 461-A:6 V* for its holding. *Id.*

- 43) The trial court specifically used the best interest of the child standard for its award of custody to a step-parent. *Id.*
- 44) Father filed a Motion for Reconsideration with Requested Findings of Facts and Conclusions of Law on the Order on Reconsideration on September 4, 2019. *Appx. at 117-121.*
- 45) Father's Motion for Reconsideration with a request for Findings of Facts and Conclusions of Law of the Order on Reconsideration was denied on September 17, 2019 as untimely filed. *Appx. at 121.*
- 46) Father filed a Motion to Reconsider that denial as untimely filed on September 25, 2019. *Appx. at 122-123.*
- 47) The trial court denied that Motion to Reconsider as untimely filed. *Appx. at 123.*
- 48) This appeal was timely filed on September 30, 2019. *Appx. at 124-127.*

## ISSUES PRESENTED

- I. **DID THE TRIAL COURT ABUSE ITS DISCRETION IN USING THE 'BEST INTEREST OF THE CHILD' STANDARD WHEN AWARDING CUSTODY OF THE MINOR CHILD TO THE STEP-PARENT**
- II. **EVEN IF 'BEST INTEREST OF THE CHILD' WAS THE PROPER STANDARD, WAS IT AN ABUSE OF DISCRETION IN AWARDING CUSTODY OF THE MINOR CHILD TO THE STEP-PARENT BASED ON THE EVIDENCE PRESENTED**

## ARGUMENT

### I. THE TRIAL COURT ABUSED ITS DISCRETION IN USING THE 'BEST INTEREST OF THE CHILD' STANDARD WHEN AWARDING CUSTODY OF THE MINOR CHILD TO THE STEP-PARENT

A trial court's findings on children's best interests is reviewed for an abuse of discretion. *Richelson v. Richelson*, 130 N.H. 137, 144, 536 A.2d 176, 181 (1987). An abuse of discretion exists when a trial court misapplied the proper law. *Sanborn v. Sanborn*, 123 N.H. 740, 465 A.2d 888, (1983) citing *Munoz v. Munoz*, 79 Wash.2d 810, 813-14, 489 P.2d 1133, 1135 (1971)("It is axiomatic that the trial courts of this State, no less than this tribunal, are bound by the strictures of the Federal Constitution, and that violation of its precepts constitutes the most basic form of abuse or discretion.")

In this matter, the trial court held that it had authority to grant a custody award to a step-parent using the best-interest standard. *Statement of Uncontested Facts (hereafter 'Facts')* at 43. When doing so, the trial court relied upon this Court's holding in *Stanley D. v. Deborah D.*, 124 N.H. 138 (1983) and RSA 461-A:6 V. *Facts* at 42.

A. The Court's Reliance on Stanley D. v. Deborah D was Improper Because That Holding was Based Upon a Repealed Statute

The trial court relied upon *Stanley D. v. Deborah D.*, 124 N.H. 138 (1983) for its holding that the Court in a divorce may award custody to a step-parent in preference to a natural parent based on the best interests of the child. *Facts at 41-42*. In that matter, this Court cited to a now-repealed statute holding the “power in the present case is granted by RSA 458:17 (Supp.1981)” which provided:

In all cases where there shall be a decree of divorce or nullity, the court shall make such further decree in relation to the support, education and custody of the children as shall be most conducive to their benefit, and may order a reasonable provision for their support and education." *Stanley D. v. Deborah D.*, 124 N.H. at 141.

That statute, RSA 458:17, was repealed by 2005, 273:20, II, eff. Oct. 1, 2005. – and replaced by RSA 461-A:6.

RSA 461-A:6 V provides that:

“{i}f the court determines that it is in the best interest of the children, it shall in its decree grant *reasonable visitation privileges* to a party who is a stepparent of the children or to the grandparents of the children pursuant to RSA 461-A:13. Nothing in this paragraph shall be construed to prohibit or require an award of parental rights and responsibilities to a stepparent or grandparent if the court determines

that such an award is in the best interest of the child.” (*emphasis added*).

B. The Court’s Reliance on RSA 461-A:6 V was Improper Because that Statute Specifically Omitted the Term Custody

In matters of statutory interpretation, this Court is the final arbiters of the legislature's intent as expressed in the words of the statute considered as a whole. *Tonnesen v. Town of Gilmanton*, 156 N.H. 813, 814, 943 A.2d 782 (2008). The directive is to look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. *Id.* This Court will interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. *Id.*

As a backdrop, *RSA 461-A:6 V* was enacted by the New Hampshire Legislature following the United States Supreme Court’s holding in *Troxel v. Granville* which recognized that the right of a biological parent to raise their child absent Governmental interference “is perhaps the oldest of the fundamental liberty interests recognized” by the Court. 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). This was a clarification of a long-held recognition of the biological parent’s autonomy in New Hampshire. See, e.g., *In re Father 2006-360*, 155 N.H. at 95, 921 A.2d 409 (as to the private interest of the parents, we have consistently recognized that the right to raise and care for one's children is a fundamental liberty interest protected by the State Constitution); *In the Matter of Jeffrey G. & Janette P.*, 153 N.H. 200, 203, 892 A.2d 1234 (2006); *Petition of Kerry D.*, 144



N.H. 146, 149, 737 A.2d 662 (1999); "[P]arental rights are natural, essential, and inherent rights within the meaning of the State Constitution," and "[t]he loss of one's children can be viewed as a sanction more severe than imprisonment." *In re Baby K.*, 143 N.H. 201, 205, 722 A.2d 470 (1998)(quotation omitted).

Further, "a parent's desire for and right to the companionship, care, custody, and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection." *Lassiter v. Department of Social Services*, 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981). The right of parents to raise and care for their children is a fundamental liberty interest protected by Part I, Article 2 of the New Hampshire Constitution. *In the Matter of Nelson & Horsley*, 149 N.H. 545, 547, 825 A.2d 501 (2003). Similarly, the United States Supreme Court has recognized that "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. at 66.

The plain and ordinary meaning and intent of the Legislature in changing the verbiage from custody in RSA 458:17 to 'reasonable visitation privileges' is defeated if that latter portion of the statute is still interpreted to allow for an award of custody using the best interest standard.<sup>2</sup> The presumption is the legislature intended to confine a statute's scope within constitutional limits. *Appeal of Public Serv. Co. of N.H.*, 122

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<sup>2</sup> While Mr. Morris acknowledges that the second clause of the statute states "{n}othing in this paragraph shall be construed to prohibit or require an award of parental rights and responsibilities to a stepparent or grandparent if the court determines that such an award is in the best interest of the child," this would be surplusage if it is read to enact more legal authority than the first clause.

N.H. 919, 922, 451 A.2d 1321 (1982). The goal is to apply statutes in light of the legislature's intent in enacting them and in keeping with the policies sought to be advanced by an entire statutory scheme. *Appeal of Manchester Transit Auth.*, 146 N.H. 454, 458 (2001).

C. This Court's Interpretation of RSA 461-A:6 V is Not a Best Interest Standard for the Award of Custody to a Step-Parent

Father is the biological parent of Wesley. *Facts at 1*. There was no evidence presented that Father was an unfit parent or that Wesley was in danger in Father's care. *Facts at 7, 20, 22, 27, 28*. "In this State, biological and adoptive parents are presumed to be fit parents until they are found to be unfit under either RSA chapter 169-C (abuse and neglect proceedings) or RSA chapter 170-C (termination of parental rights)." *In the Matter of Bordalo*, 164 N.H. at 314. This holding was expanded in the unpublished opinion *In re Guardianship of M.R.; In the Matter of Tammy Desilets & a. and Natasha Duby & a.*, No. 2017-0075. In that matter, the Court affirmed the denial of custody to the grandparents stating "{m}oreover, we have adopted the Troxel presumption that fit parents are presumed to act in the best interest of their children. See *Troxel v. Granville*, 530 U.S. 57 (2000)." Provided that a parent is fit, there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *In re Guardianship of Reena D.*, 163 N.H. 107, 111-12 (2011). Father also clearly objected to his biological son being placed with Mother. *Facts at 26*. The trial court impermissibly equated Mother and

Father as having equal liberty interests to Wesley. *In re Shelby R.*, 148 N.H. 237, 242, 804 A.2d 435, (2002)(court does not imbues stepparents with the same fundamental liberty interest in a child as natural or adoptive parents).

The “award of custody to a stepparent or grandparent over the objection of a fit natural or adoptive parent would not be constitutional if it were simply based on a finding that the stepparent or grandparent “would best provide for the child's welfare.” *In re R.A.*, 153 N.H. 82, 103 891 A.2d 564, 583(2005). Yet, this is exactly what the trial court did in holding that “any purported agreement for Wesley to live with Father and to go to school in {father’s} school district as not in the child’s best interest.”<sup>3</sup> *Appx. at 88*. The Court in *In re Bordalo* further expanded on this by holding that “although the court in *In the Matter of R.A.* was divided both as to whether {RSA 461-A:6 V} was constitutional on its face and, as to the majority's judgment that it was, what standard should be employed to make it so, *all five justices agreed that it could not be applied simply using a best-interests standard.*” 55 A.3d 982, 986 164 N.H. 310, 315(N.H. 2012)(emphasis added).

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<sup>3</sup> The trial court attempted to distinguish *Bordalo* by suggesting that it was a case solely addressing Grandparent’s Rights however the *Bordalo* Court’s direct cited to *In re: R.A.*, a case that discussed the standards for custody to non-biological parents.

**II. EVEN IF ‘BEST INTEREST OF THE CHILD’ WAS THE PROPER STANDARD, IT WAS AN ABUSE OF DISCRETION IN AWARDING CUSTODY OF THE MINOR CHILD TO THE STEP-PARENT BASED ON THE EVIDENCE PRESENTED**

**A. The Trial Court Applied the Incorrect Standard in Its Analysis**

In order to award custody to Mother in this case, the trial court was required to apply the clear and convincing standard for its determination as to the need to interfere with Father’s fundamental right to parent his biological child. *In re Guardianship of Nicholas P.*, 162 N.H. 199, 205 27 A.3d 653, 658 (2011)(“Our statute, however, safeguards a parent's fundamental rights by imposing a high evidentiary standard— that is, by requiring a non-parent seeking a substitute guardianship to establish the need for it by clear and convincing evidence.”) Yet, the trial court acknowledged that it applied a ‘preponderance of the evidence’ standard to its factual findings. *Appendix at 115* (“{t}he court found by a preponderance of the evidence ... .”) This was clearly a misapplication of the correct legal standard. *See Petition of Preisendorfer*, 143 N.H. 50, 55, 719 A.2d 590 (1998)(“Because proof by a preponderance of the evidence requires that the litigants share the risk of error in a roughly equal fashion, it applies only in situations where the parties' interests are equally important to society.”)

B. The Evidence Presented Did Not Establish the ‘Broderick Standard’ for Awarding Custody to Mother

In custody cases to a step-parent, this Court adopted the so-called ‘Broderick Standard’ which states that an award of custody to a stepparent or a grandparent over the objection of a fit natural or adoptive parent is not unreasonable or unduly restrictive of parental rights only if the petitioning party can show by clear and convincing evidence that: (1) the custody award would specifically be in the child's best interest because of a significant psychological parent-child relationship; (2) the custody award only be allowed where the family is already in the process of dissolution; (3) there is some additional overriding factor justifying intrusion into the parent's rights, such as a significant failure by the opposing parent to accept parental responsibilities and 4) the custody award must be necessary for the State to enforce its compelling interest in protecting the child from the emotional harm that would result if the child were forced to leave the significant psychological parent-child relationship between the child and the stepparent or grandparent. *In re R.A.*, 153 N.H. at 101.

In the matter of *In re Guardianship of Nicholas P.*, the Court showcased just how high the standard is when interfering with the custodial rights of a biological parent. 162 N.H. 199, 204 27 A.3d 653, 658 (2011) (“Nicholas and the respondent have not had regular, sustained contact, either in person or by telephone, since the respondent left the family in 2007. Nicholas stated that he did not know his mother and would be afraid to live with her. The trial court found that he is angry with her, does not feel safe in her "environment," and suffers from anxiety, sleeplessness, and headaches over

the possible move. The respondent does not contest that Nicholas told " the Guardian *ad litem*, his therapist and his teacher, consistently and repeatedly, that he does not want to {reside with his mother})." The *Nicholas P.* Court found those facts allowed for the placement with a non-parent. The facts presented in this matter are not even close to comparable.

While Father concedes that a trial court could properly conclude that there was a psychological parent-child relationship between Mother and Wesley, no evidence was presented that the custody award would specifically be in the child's best interest because of that significant psychological parent-child relationship. *Trans., generally.* Additionally, there was no evidence presented that the custody award was necessary for the State to enforce a compelling interest in protecting Wesley from the emotional harm that would result if custody was not awarded to Mother. *Id.* Finally, there was very limited testimony as to any additional overriding factor justifying intrusion into Father's rights as the custodial parent, such as a significant failure to accept parental responsibilities.<sup>4</sup> Based on the facts presented, the trial court's decision could not possibly meet the 'Broderick *clear and convincing* Standard.' Therefore, the trial court abused its discretion in its findings.

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<sup>4</sup> The trial court did reference that 'Father has not been historically present ... and that he will not be present in the future.' The evidence presented, however, would not allow a trial court to make those conclusions by clear and convincing evidence nor was this disputed evidence suggestive that he had a significant failure to accept parental responsibilities. And the Court specifically stated that it reached such conclusion "by a preponderance of the evidence." *Discussed supra.*

### CONCLUSION

For the reasons set forth herein, the Appellant respectfully requests that this Honorable Court reverse the 7<sup>th</sup> Circuit Court Family Division of Rochester's decision based on its abuse of discretion and award Dustin Morris primary custody of his biological son, Wesley.

In the alternative, Appellant asks that this Court remand this case with an order and direction regarding the correct burden and standard of law as should be applied.

### ORAL ARGUMENT

The Appellant, Dustin Morris, requests fifteen (15) minutes of oral argument in this case. Attorney David J. Bobrow will present oral argument on behalf of the Appellant.

### CERTIFICATION

Counsel for the Appellant hereby certifies that the appealed decision of the New Hampshire 7<sup>th</sup> Circuit Family Division Rochester Court was produced in writing and that a copy has been appended to the instant brief. A copy of the Decision on Motion for Reconsideration is also appended to the instant brief. This Brief does not exceed 9,500 words.

RESPECTFULLY SUBMITTED,  
DUSTIN MORRIS, APPELLANT

By His Attorney,  
David J. Bobrow, Esq.  
Bar Number 18077  
BEDARD AND BOBROW, PC  
9 Bradstreet Lane  
P.O. Box 366  
Eliot, Maine 03903  
(207) 439-4502

Date: November 20, 2020

/s/ David J. Bobrow, Esq.  
David J. Bobrow, Esq.



CERTIFICATE OF SERVICE

I, David J. Bobrow, Attorney for the Appellant, hereby certify that I have on this day sent by email and US Mail, postage prepaid, to the following:

Attorney for the Appellee:  
KEVIN CHISHOLM, Esq.  
Chisholm Law Office  
195 Elm Street  
Manchester, NH 03101

Dated at Eliot, Maine this 20<sup>th</sup> day of November, 2020

/s/ David J. Bobrow, Esq.  
David J. Bobrow, Esq., NH Bar #18077  
Bedard and Bobrow, PC  
P.O. Box 366  
Eliot, ME 03903  
(207) 439-4502

# **STATE OF NEW HAMPSHIRE**

**7th Circuit—Family Division—Rochester at Strafford County Building  
Case No. 619-2017-DM-00143**

**In the Matter of Alli Morris (Mother) and Dustin Morris (Father)**

## **ORDER ON MOTIONS FOR RECONSIDERATION**

On August 28, 2019, the Court held a hearing on both parties' motions to reconsider the Court's July 5, 2019 final narrative divorce order. Both parties appeared and were represented by counsel. The children involved in the case are Grayeson, dob 8/6/2012, RayeLaia, dob 4/22/2014, Brayeden, dob 2/8/2011, and Wesley, dob 3/16/2005.

For the reasons that follow, Father's motion for reconsideration is respectfully **DENIED**.

First, the Court finds Father's reliance on The Matter of Bordalo, 164 N.H. 310 (2012) in support of his claim for custody and school district for Wesley to be misplaced. Bordalo set the standard for a grandparent to request custody of a minor child. In this case, the Court awarded custody and school placement to Mother, who is the child's step-parent. These cases are distinguishable.

New Hampshire law provides that the court in a divorce may award custody to a step-parent in preference even to a natural parent based on the best interests of the child. See Stanley D. v. Deborah D., 124 N.H. 138 (1983). See also RSA 461-A:6 V, giving the court authority to grant a custody award to a step-parent using the best interest standard.

Father has not presented any facts to challenge the Court's findings on the custodial issue. The court found by a preponderance of the evidence that Father has not been historically present for the child, and that he will not be present in the future. Both Father and his significant other travel around the country installing playgrounds. Father and his significant other have a trailer/camper, and have been and will be gone weeks at a time. The Court found Father's representations to the contrary to not be credible. The parties live more than an hour from each other, in two different school districts.

Second, the Court respectfully denies Father's request to change the 2 year refinancing provision, as well as the rulings on debt. Father is ordered to pay the debt in his own name, if he chooses to do so.

Third, the Court did not find Zillow or Father's representation of the value of the home to be credible. Neither party provided an appraiser or a real estate expert as a witness. In any event, the Court determines that the award to Father from the equity in the home was fair and equitable under the facts of the case.

Mother's motion for partial reconsideration is granted in part. The Court allows Mother additional time to trade in the suburban. The parties are admonished that they are both responsible for the financial survival of the other, and the children. They are both urged to get the station wagon out of tow and storage. If Mother cannot afford the towing / storage charges, the Court would upon proper motion determine parties' relative responsibility for the storage and tow, and determine

appropriate relief. This was an avoidable situation that damages Mother's ability to survive financially. There may be consequences to one or both parties, so the parties are urged to work together to solve this now. In addition, Mother is awarded the couch, one of the two printers, a 65 inch television, and the arcade games, as she requested.

This is a final order. The Clerk's office is requested to email and to mail this decision to counsel today.

**SO ORDERED.**

8/29/19  
Date

  
\_\_\_\_\_  
Signature of Judge

**MICHAEL L. ALFANO**  
\_\_\_\_\_  
Printed Name of Judge

# **STATE OF NEW HAMPSHIRE**

**7th Circuit—Family Division—Rochester at Strafford County Building  
Case No. 619-2017-DM-00143**

**In the Matter of Alli Morris (Mother) and Dustin Morris (Father)**

## **NARRATIVE ORDER ON FINAL HEARING**

On July 3, 2019, the Court held a final divorce hearing in the above matter. Both parties appeared and were represented by counsel. The children involved in the case are Grayeson, dob 8/6/2012, RayeLaia, dob 4/22/2014, Brayeden, dob 2/8/2011, and Wesley, dob 3/16/2005.

Wesley's biological mother died, and he receives a social security benefit each month. Both parties have other adult children who are not part of this decision. Mother also recently had a baby with her ex-boyfriend, who is or was living in the home that Mother resides in. The parties are not yet divorced.

The parties began their relationship in 2010. They were married on January 3, 2013, and separated in 2016.

Based on the credible evidence at the hearing, the demeanor of the parties, as well as a review of the exhibits and the file, the Court finds and rules as follows:

### **PRELIMINARY MATTERS**

As a preliminary matter, the Court finds that both parties love their children. However, both have challenges. Both parties have made unreasonable decisions that have affected their ability to support themselves and the children. There have been reports of domestic violence, self-harm by Father, and excessive discipline of the children by Mother.

Father has chosen to start his own business with extensive travel requirements, rather than to work a dependable 40 hour per week where he could be available for the children. He reports no income, and a financial loss, for 2018, and income of \$9,000 for the first half of 2019. He is behind in his child support and property payments under the temporary order.

Mother lives in the marital duplex that she turned into a single family home. She does not work, and rented a room to her now ex-boyfriend, who pays no rent. She had a baby with her ex-boyfriend after the parties separated and before this divorce is final. She believes she should continue to drive the Suburban, with its \$831 monthly car payment. She has not turned the home back into a duplex in order to obtain rental income.

Both parties will need to make significant changes for a plan to work. This order is intended to give the parties the best chance to survive financially for the benefit of the children. The parties will have to do the work.

Both parties would benefit from completing a parenting course in non-physical discipline, and are ordered to do so within 60 days. They can contact Families First to see what is available. In any

event, both parties are ordered not to hit, spank, or physically discipline any of the children at any time for any reason. They are also ordered not to enforce excessive punishment on the children, such as standing in the corner for the day. The GAL report, DCYF report, and evaluation of Father contain the facts relied on for this part of the order.

Second, both parties need help in making and keeping a monthly financial budget. Both parties are ordered to investigate where they can receive help in learning how to set and keep a budget. They can start at families first or a community college.

Third, Father needs to be enroll in regular at least monthly counseling and to take his medication as prescribed. He needs a safety plan in case he feels overwhelmed and attempts self-harm again. The facts in the above mentioned documents support his order. Father reports that he is compliant, but the fact the VA counselor gave him the opinion he does not need counseling, and sees him once every six months, is concerning, given the history contained in the documents identified above.

### **NO CONTEMPT FOR SALE OF OKLAHOMA LAND**

Mother's request that Father be found in contempt for the sale of the land in Oklahoma is respectfully denied.

The evidence was that in 2015, Husband entered into a written agreement to sell the land in his sole name in Oklahoma for \$20,000, and to receive monthly payments. The contract for sale was executed prior to the divorce being filed. The parties received \$400 per month under the contract. The undisputed testimony was that the money was primarily used to pay for Mother's education at Empire Beauty School. Later payments were used for family bills. In 2018, the deed to the property was transferred to the buyer upon the final payment, pursuant to the 2015 contract.

On these facts, there is no willful violation of the Court's hypothecation orders, and Mother's motion is respectfully denied.

### **CONTEMPT FOR FAILURE TO PAY SUPPORT AS ORDERED**

The December 1, 2017 temporary child support order required Father to pay child support of \$1,700 per month, with an additional \$200 per month toward the arrearage of \$1,178. The order references Father's part time work of 24 hours per week at \$14 per hour, as well as his pension income and VA disability income.

The evidence in the case is that Father has a BS in secondary education in physics, and a further degree in systems engineering through the US Navy. He provided no evidence why he could not work full time in a 40 hour per week job. He did testify that he had a 100% disability from the VA, which has been reduced to 75%. There was no evidence submitted about how this affects his ability to work or to function.

Mother has a high school education and has been a stay at home mother, although she has worked as a licensed nursing assistant (LNA) and has a certificate in cosmetology. She has not pursued a New Hampshire license in either field.

The Court orders that Mother find reasonable employment. She is devoted to the children, but there is not enough money here for the parties to survive, without her working. The Court imputes

income to her of \$2,000 per month, as she could be working as a LNA or cosmetologist. She testified that the program to become an LNA was a week long. She has a certificate in cosmetology and some equipment.

Father has by his own admission not paid the child support as ordered. He is at least \$5,200 behind in his child support payments. The Court finds that Father's failure to pay the child support as ordered is the result of his decisions. Father receives veterans benefits of 2,300 dollars per month, and pension benefits of approximately \$2,500 per month.

Rather than work a 40 hour a week job for an employer, Father chose to buy a franchise installing playground equipment throughout the United States. As such, he travels to install the equipment, and is away from home and the children frequently, at times for weeks and one time for a month straight. Father reported no income for 2018 from any work or the franchise on his 2018 tax return. He reported a loss. He testified that it took him a while to figure out where he was losing money and then decided to pay \$1,200 per month to rent a camper and skidder equipment for the business. He reports income for 2019 of about \$9,000 for six months, and believes he will earn about \$25,000 this year. This is less than he is capable of earning in a full time job for an employer.

It must be noted that Father's first obligation is to support the children, and therefore the Court finds him in willful contempt of this court's temporary support orders. The fact that Mother also made poor choices, such as not working, not demanding rent or child support from her boyfriend, and having a child with her boyfriend before the divorce was final, are not adequate excuses to not comply with the Court's temporary support orders.

The evidence at the hearing was that Father's heavy travel schedule installing equipment will continue. Father testified that his upcoming jobs are in New York, Massachusetts, and Oklahoma, and he is bidding for more jobs out of state. Father's job choice limits his income and his availability to parent the children.

The finding of contempt is based on two major factors. First, Father has the ability to earn significantly more than he is earning. He could and should be working full time for an employer, and earning a steady income in order to support the children.

Second, Father has chosen to pay other bills and unreasonably high business expenses rather than comply with the Court's temporary orders. He decided to pay \$1,200 per month for the rental of a camper and skidder equipment for the business, rather than pay the child support as ordered. He is at least \$5,200 behind on the child support order, at a time where the mortgage payments are also behind. This is willful contempt.

Father must understand that the Court will continue to impute income to him in the amount of at least \$36,000 per year, or \$3,000 per month. This may increase at future hearings based on the evidence at that time.

The Court finds Father in willful contempt for failure to pay the child support as ordered, and under the statute must award attorneys' fees. Counsel for Mother requested \$500 in attorneys' fees, and that request is granted.

## **PARENTING ISSUES**

The parties acknowledge that Wesley's biological mother has passed away, and that Mother has raised him as her child since 2010. He calls her Mom and considers her to be his mother. Mother has been the primary psychological parent for the children, as Father has been absent from the home for periods of time. Father has also been struggling with mental health, alleged domestic violence, and self-harm issues. Mother as earned the right to be the child's parent.

At the hearing, the parties stipulated that three of the four children, Grayeson, RayeLaia, and Brayden, would spend time with Father every other weekend from Friday at 3:30 pm to Sunday at 3:00 pm, and the remaining parenting time will be with Mother. The exchanges are agreed to be at the Barrington, NH police station, or at such other place as the parties agree. The parties are also free to change the times of the exchanges by agreement.

The disagreement was over Wesley's parenting schedule. Father wants Wesley to live with him. Mother wants Wesley to live with her and to see his Father every weekend if Father is available and is not traveling.

The evidence was that Wesley is desperate to spend more time with his Father and to connect with him. His Father has not been there consistently for him. Father loves his children and wants the best for them, but he also has had issues that have kept him from being able to parent more effectively. Father's chosen new business takes him out of state for weeks at a time installing playground equipment, which takes him away from the children. This is a loss for the children.

Father lives in Northwood, NH and Mother lives in Rochester, NH. They live about one hour and fifteen minutes from each other. They live in two different school districts.

Father's motion to enforce the mediation agreement with regard to Wesley's parenting schedule is respectfully denied. The evidence at the hearing was that the parties attended mediation. Mother had a different lawyer. Counsel for the parties apparently agreed that Wesley would live with his father. This was based on the representation that Father would no longer be traveling with his job.

The undisputed evidence at the hearing was that Father will continue to be traveling significantly for his job installing playground equipment. The GAL's recommendations on parenting time were contingent on Father not continuing to travel with work, and would change if he was going to continue to travel. The Court finds that Father will continue to travel.

The Court finds that the alleged mediation agreement is not enforceable for the following reasons. It is not signed. Mother testified that she did not see the so called agreement until after the mediation, and that she never agreed to it. It is unclear who wrote out the proposed agreement. The agreement was contingent on Father's representation that he would be home and not traveling for work. The compelling evidence was that Father has and will continue to have an extensive travel schedule with his franchise.

If there was an agreement between counsel on where Wesley would live, it was based on a mutual mistake and/or a false representation that Father would be physically present to parent and would no longer traveling as part of his job. Therefore, any mediated parenting agreement is set aside on those grounds.



In any event, the Court rejects any purported agreement for Wesley to live with Father and to go to school in his school district as not in the child's best interests. This is based on the fact that Father travels extensively for work, and would not be physically present for weeks at a time to parent. The testimony was that Father has been gone for a month at a time installing equipment. Father testified to upcoming jobs in New York, Massachusetts, and Oklahoma, and he is looking for more out of state work.

Mother does not have the resources to take Wesley to school in Father's school district, more than one hour away, if Father is not available. Father's girlfriend assists him in the business, and she would also not be available. The court finds that even if Father's girlfriend would be available when Father is traveling, which does not appear to be the case, then the child should be with Mother rather than Father's girlfriend. There was no evidence submitted on the relationship between Wesley and Father's girlfriend.

The Court does find that Wesley wants more time with his Father, and orders that he should spend every weekend with his Father that his Father is physically available to parent him. Absent evidence that Father is home on all weekends, Wesley shall have the same parenting schedule as the other children, which is every other weekend.

The parties are encouraged to allow Wesley to be with his Father as often as possible, but are ordered to have Wesley attend school in Mother's school district. Mother is cautioned to not say negative things about Father to the children, or to scare Wesley that he will never see his Father again as referenced in the GAL report. Mother would continue to receive the child's social security benefit.

### **MARITAL HOME**

The parties own a duplex in Rochester, NH, which has been converted to a single family home by the parties. It can be turned back into a duplex, if the parties choose. Mother's ex-boyfriend, whom she has had a child with after the parties' separation, and after the divorce was filed, had been living on the other side of the home. He has not been paying rent or contributing to the expenses. This has been a point of contention between the parties.

The monthly mortgage payment of USAA is \$1,428, including real estate taxes.

The parties agree that the debt on the home is approximately \$165,000, and the mortgage is one month behind. Mother testified she had no idea what the value of the home was. She represented on her financial affidavit that it was worth \$200,000.

Father testified that the home was worth \$237,000. He relied on a Zillow online value. Zillow lists this home as worth between \$200,000 and \$250,000. The Court does not find Zillow or the testimony of the parties on the value of the home to be credible, other than that the value is between \$200,000 and \$235,000. Based on these facts, the Court determines the value of the home to be \$205,000.

The Court finds that the equity in the home is \$40,000. Father is awarded \$20,000 as his share of the equity, payable to him no later than two years from the date of this order. The payment shall be made sooner at the time of any refinance of the property, or the sale or foreclosure of the property.



The Court orders that Mother has two years to remove Father's name from the mortgage, or the house will be sold. If there is a sale or foreclosure, Father would receive the first \$20,000 from the sale, if any, and Mother the remainder.

Mother's request to sell the home in 30 years and split the equity at that time is unreasonable and is respectfully denied. Mother is ordered to provide written proof each month to Father that she is paying the mortgage. If she falls two months behind on the mortgage, the home is ordered placed on the market with a broker to be chosen by the parties, and sold.

Father is ordered to provide a quitclaim deed to Mother contemporaneously with the removal of his name from the mortgage, or if by sale, a warranty deed to the purchaser.

Mother has the opportunity to turn the home back into a duplex and to rent out the other half. She is encouraged to determine if this is a viable option for her to remain in the home.

### **CHILD SUPPORT**

Father is offering child support of \$1,325 per month for three children. Mother is requesting child support of \$2,012 per month. The worksheet is for 4 children. It does not impute income to either party.

Mother receives approximately \$1,200 per month in social security benefits for Wesley (and may include a portion for his adult sister who lives with Mother) as a result of his biological mother's death. The Court orders that Mother will continue to receive the social security benefit for Wesley since she is the person primarily responsible for his care. Therefore, the guidelines amount of support will be set for three and not for four children.

The Court is imputing income to both parents. Mother is imputed income of \$2,000 per month. The Court imputes income to Father in the amount of \$3,000 per month. These are conservative imputations. Father has the ability to use his degree and/or to obtain full time employment with a company. Mother needs to get a job and most likely to rent out one half of the duplex in order to survive financially.

The parties agreed that Mother would receive the marital portion of Father's pension. The parties did not identify the pension, or the amount. It is unclear from the evidence whether the pension Father identifies in his financial affidavit that he is now receiving is going to be divided as part of the divorce, or whether the agreement to give Mother her marital share of Father's pension refers to a separate pension.

If the parties intend to divide the pension that Father is now receiving as listed on his financial affidavit, then the child support will have to be recalculated upon the request of either party.

If the agreement refers to another pension payable in the future, then that is not included. The child support guidelines with imputed income for three children is \$2,065 per month.

However, the Court grants Father a downward deviation from that amount. First, Father has some necessary and significant deductions from his benefits. He has an educational loan of about \$500 per month that he testified is taken out automatically. He also has other required deductions.

Moreover, Father is not yet earning any income from his new business. The court has imputed income to him, but he has made work decisions that result in no income for 2018 and less than full income for 2019. He testified he anticipates earning \$25,000 in 2019. Father should consider a 40 hour per week job with benefits.

The Court therefore orders a downward deviation to the child support amount to the temporary child support amount of \$1,700 per month. This shall be reviewed upon the request of either party by new petition in six months, and may change depending on the facts that time.

### **CHILD SUPPORT ARREARAGE**

Father admits that the child support arrearage is approximately \$5,215. The court orders that this amount is immediately due and payable as set forth below.

### **PENSION**

The parties agreed that Mother was entitled to the marital portion of Father's pension. Neither party presented any evidence of what that pension was. Father testified that he suspects it may be a FERS pension. It is unclear whether the pension to be divided is the same pension identified on Father's financial affidavit as the pension he is now receiving, or a different pension that would be payable at a date certain in the future.

The parties are ordered to submit complete information about the identity of the pension that they have agreed to divide, the source, the amount, whether it is vested, whether it is already being paid out, or if not, when, and to draft a QDRO for court approval. The parties have 30 days to do so. Father agreed to draft the QDRO. He is ordered to provide the back up documents to counsel for Mother.

### **JOINT DEBT**

The parties agreed to each be responsible for any debt in his/her own names. With regard to the joint debt, the parties testified to the following joint credit cards:

1. USAA account ending 7090: \$21,809.
2. Visa Signature Alaska Mileage Plan: \$18,231.
3. Visa: \$14,586.

Father offered to be responsible for all of this joint credit card debt payments, except that he wants Mother to be responsible for \$7,000 of the card debt. This is marital debt.

The Court finds that the parties cannot afford to pay this joint credit card debt, and therefore respectfully declines to order either party to pay it. Either party may choose to pay the debt to protect his or her credit.

This is for the following reasons. First, this is not a creditors' proceeding, and the Court will not order the parties to pay creditors whom they cannot afford to pay. See In Re: Beal and Beal, 153 N.H. 349 (2006) (reversing order compelling parties to sell property and use the proceeds to pay creditors).

Second, the parties' obligation is to support the children and to comply with these orders. Each party may voluntarily pay any creditor, but it is secondary to complying with these support orders.

Third, in the event that either party decides to file for bankruptcy in the future, the Court does intend to issue an order to pay joint credit card debt that would be non-dischargeable in bankruptcy. This is debt that the parties cannot afford to pay.

### **VEHICLES**

The parties own a suburban, which is driven by Mother. The monthly vehicle payment, not including vehicle insurance, is \$831 per month. Both parties believe that the Suburban has equity of several thousand dollars. The parties also own a minivan, a motorcycle, VW Beetle, and a pickup truck.

The Court awards the Suburban to Mother, and orders both of the parties to immediately sell or trade the vehicle in within 15 days, and to keep each other informed. The parties cannot afford it. It is in both names. The net proceeds will be credited one half to each party, and Father's share will be held by Mother as security for future child support payments. Mother will provide the paperwork and the amount of the net equity to Father when she receives it.

Mother is awarded the minivan and the motorcycle. Father is awarded the pickup truck, VW Beetle, and any vehicles that he has with his business.

The Court will not order Father to continue to pay for the suburban vehicle that is being driven by Mother. The monthly car payment is \$831, before insurance and registration. This is at least three times more than a reasonable expense. The Court does not order Father to make up the missed payments on the Suburban. He cannot afford to do so. Rather, Mother will have to pay off the entire loan with the sales proceeds, or as part of any trade in. She may keep any net proceeds as security for future child support payments.

The Court respectfully declines to require either party to pay an offset to the other for the value difference in the vehicles. Mother is struggling to survive financially, and Father has chosen a startup business rather than full time employment. Neither party fully disclosed the value of other items on his/her financial affidavit.

### **MICROSOFT STOCK**

Mother has Microsoft stock worth approximately \$22,000 that was given to her by a relative prior to the marriage. The Court finds that the parties have been together since 2010, with children, and considers this to be in substance a long term marriage.

NH RSA 458:16-a provides in relevant part:

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. ..
- (n) The value of any property acquired by gift, devise, or descent.
- (o) Any other factor that the court deems relevant.

In this case, based on all of the factors, including the fact that the parties have been together for over 9 years and raised 5 children together, the Court determines that an equitable division of the value of the stock is just. Thus, Father is credited with \$11,350 from the stock.

However, the Court awards all of the stock to Mother, and Father is ordered to cooperate in signing the stock over to her. The Court finds that Mother is likely going to have to sell the stock and use the money to keep the home.

The Court gives Father credit from his share of the stock value for \$5,200 in back child support, \$500 in attorneys' fees for contempt, and payment of the mortgage arrears, including any payments due for July 2019. Mother will be responsible for the mortgage payments starting August 1, 2019.

The Court therefore orders that Mother may keep all of the stock, with credit to Father as stated above. Mother is responsible to pay the mortgage up to date, and to credit Father from his share of the stock. The remaining amount of the credit will be given to Mother as security for future child support payments, as the Court is concerned that Father will not always pay as ordered. After payment of the arrearage on the mortgage, Mother is responsible for paying the mortgage and taxes effective August 1, 2019.

### **BUSINESS INTERESTS**

The Court awards Father his business and all of the equipment, tools and supplies. He has not listed all of them in his financial affidavit.

The Court awards Mother all of the equipment she has for her cosmetology and/or other businesses. They are not all listed in her financial affidavit.

Each party is solely responsible for his/her businesses, and may keep the profits, and is solely responsible for the debts, holding the other harmless.

### **PERSONAL PROPERTY**

The parties may each retain the personal property in his/her possession, except that Mother shall deliver to Father within 30 days the items identified below and any other items that they can agree on.

Father provided a list of requested personal property items at the hearing. During his testimony he agreed that some of the items would remain with Mother.

The Court awards the following items to Father. Bose speaker; 65" television, stand, charger for toothbrush, charger for razor, pizel 2 phone, futon and mattress, traction belt, computer monitors, HDMI pro for surface pro, Kirby vacuum, fitbit and charger, his documents including his DD214s and retirement orders, exercise videos, dad's quilt, fishing poles and tackle, charger for ham radio, weights and bench, dresser, water cooler, college textbooks, saxophone, all family items including his father's guitar, electric guitar and stand, father's memorabilia, 2 bikes, air compressor and air tools, heavy bag and gloves, bike trailer, freezer, photos of children prior to marriage, riding mower, 3 couches, arcade machine, 2 printers.

The parties may agree to additional or fewer items, and are expected to act in good faith.

The Court further finds and orders as follows:

1. **DIVORCE:**

By agreement, the Court grants the parties a divorce from each other on grounds of irreconcilable differences that have caused the irremediable breakdown of the marriage.

2. **PARENTING PLAN AND UNIFORM SUPPORT ORDER:** See attached.

3. **TAX EXEMPTIONS FOR CHILDREN:**

The Court orders that Father is awarded all of the tax exemptions / credits/ for all of the children for tax year 2019. The parties did not dispute what was claimed in 2017 or 2018. Mother testified that she does work, have any income, and does not file tax returns. She testified that her ex-boyfriend claimed some of the children for tax year 2018. She states she no longer has a boyfriend.

The issue of exemptions/ credits may be reviewed on a yearly basis by either party filing an appropriate petition with filing fee or waiver request. In the event that Mother files a tax return, the parties are ordered to determine the economic benefit of reallocating the deductions/ credits. If they cannot agree on how to proceed, either party may file a motion, and the Court will decide.

If Mother files a tax return, and is eligible to claim head of household, and meets the legal requirements to do so as to income and custodial time, she may do so in all years separate from the tax exemption/ credit. The parties are ordered to cooperate in any request to sign an IRS form 8332 consistent with this order.

4. POST-SECONDARY EDUCATIONAL EXPENSES: N/A.

5. GUARDIAN AD LITEM FEES: See prior orders, which remain in full force and effect.

6. ALIMONY: N/a.

7. HEALTH INSURANCE:

Father is ordered to maintain medical insurance for the children if it is available through Tri-care or any employer. If it is not, Mother will maintain the children on New Hampshire Healthy Families. The parties will be responsible for any uninsured medical and dental bills for the children, 75% by Father, and 25% by Mother.

The evidence at trial was that Father cannot keep Mother on his insurance after divorce. Therefore, each party shall be responsible for his/her own insurances as well as unreimbursed medical, dental, optical, and other expenses not covered by insurance.

8. LIFE INSURANCE:

Neither party identified by financial affidavit or by testimony the existence of any life insurance. Father is ordered to obtain a term life insurance policy in the minimum amount of \$100,000 designating Mother as the sole trustee for the benefit of the children. Proof of insurance must be provided upon request and no later than 90 days from this order. The obligation shall run so long as there is a child support obligation.

If Father does not qualify for a policy, or if the cost is exorbitant, he may file a motion to change this provision with written proof of the reason he cannot obtain such insurance.

9. MOTOR VEHICLES: see above.

Each party shall be responsible for all costs and expenses for his/her vehicles. The parties will work together to remove the other's name from any title, if applicable, within 30 days. If there is a lien on any vehicle, the title will be exchanged as soon as possible when the vehicle is paid off. If the vehicle with both names is sold or traded in, each party shall promptly comply in signing off on the title upon request.

10. FURNITURE AND OTHER PERSONAL PROPERTY: see above.

11. RETIREMENT AND OTHER TAX-DEFERRED ASSETS: See above.

12. OTHER FINANCIAL ASSETS:

Except for as otherwise provided for in this order, the parties are awarded the financial accounts held in his/her sole individual names, free and clear of any interest of the other. The parties will cooperate in closing any joint accounts.



13. BUSINESS INTERESTS. See above.

14. DIVISION OF DEBT: See above.

15. MARITAL HOME: See above.

16. OTHER REAL PROPERTY:

Mother's financial affidavit discloses a time share, but with no further information. Neither party testified about it or provided any request or proposed order. The Court therefore declines to issue an order on the timeshare.

17. ENFORCEABILITY AFTER DEATH:

The terms of this Decree shall be a charge against the parties' estates.

18. SIGNING OF DOCUMENTS:

Unless otherwise ordered, the parties shall reasonably and promptly sign and deliver to the other any document or paper that is necessary to fulfill the terms of this Order.

19. RESTRAINING ORDER: N/a.

20. NAME CHANGE: Wife is entitled to reclaim her maiden name if she chooses.

21. OTHER PROVISIONS:

A. Attorney's Fees:

Any party who unreasonably fails to comply with this Decree or other court Order may be responsible to reimburse the other for whatever costs, including reasonable attorney's fees that may be incurred in order to enforce compliance.

B. Tax Refunds: N/A.

C. Obligations: Unless specifically mentioned in this Decree, the parties are solely responsible for any bills, obligations or other indebtedness that they have charged or incurred before or during the marriage.

D. Change in Address of Employment: The parties shall promptly notify the other of any change in their address or telephone number, and of any material change in their employment as long as there are any continuing obligations under this Decree. "Material change" will include availability of medical, dental or life insurance and retirement.

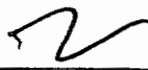
22. Findings. The Court has made specific findings in this order. All requests consistent with this decision are granted. All requests inconsistent with this decision are denied. All other pending requests or motions not specifically addressed in this Decree are denied. Pursuant to RSA 491:15 and applicable case law, Geiss v. Bourassa, 140 N.H. 629, (1996), Holliday v. Holliday, 139 N.H. 213, 219, (1994), and Howard v. Howard, 129 NH 657, (1987), the narrative

set forth in this order, and any proposed findings and rulings actually granted, constitutes the court's findings of fact and rulings of law in this order. Any of the parties' requests for findings and rulings not granted, either expressly or by implication, are determined to be unnecessary for the resolution of this matter in light of the decision rendered.

23. Appeal. By agreement of the parties, in the event of any appeal, the terms of this order shall be deemed temporary in effect and fully enforceable until resolution of the appeal.

**SO ORDERED.**

7/5/19  
Date

  
\_\_\_\_\_  
Signature of Judge

**MICHAEL L. ALFANO**  
\_\_\_\_\_  
Printed Name of Judge