THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2021 TERM

OCTOBER SESSION

Case No: 2021-0032 and 2021-0036

In the Matter of Matthew Routhier and Kelly Routhier

Mandatory Appeal Pursuant to Supreme Court Rule 7

Appeal from a Decision of the

6th Circuit-Family Division- Hooksett

ANSWERING BRIEF OF RESPONDENT/APPELLANT

KELLY ROUTHIER

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On the brief

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Question 1 (as set forth within the brief): Whether the trial court erred as a matter of law by barring the Guardian ad Litem from joining the September 2020 final hearings via telephone, barring the issuance of an order relieving her of her duties per RSA 461-A:16 Guardian ad Litem?

Question 2 (as set forth in the Notice of Appeal): Did the trial court commit an unsustainable exercise of discretion and/or error of law by dismissing and/or refusing the hear the Husband's witness who would have provided additional testimony regarding the mental stability of the wife and the inability to co-parent effectively with the husband per RSA 461-A:6.

[1] The questions at page 7 of the Petitioner/Cross-Appellant's brief match those set forth in his Notice of Appeal, but differ from those presented within the Argument section beginning at page 31 of his brief. For clarity, this Answering Brief addresses the questions as presented and developed in the Petitioner/Cross-Appellant's Argument section.

Question 2 (as set forth within the brief): Whether the trial court committed an unsustainable exercise of discretion by refusing to hear the Husband's witness who would have provided additional testimony regarding the mental stability of the Wife and her inability to co-parent affectively [sic] with the Husband per RSA 461-A:6?

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Question 3 (as set forth within the brief): Whether the trial court committed an unsustainable exercise of discretion when assigning the legal residence of the child for school attendance after denying the Husband's Motions for Expedited Hearing Regarding Parenting Responsibilities, Schooling and Residential responsibility on three separate motions, which is a fundamental right under pt. I, art. 2 of the New Hampshire Constitution (2019)?

Question 4 (as set forth in the Notice of Appeal): Did the trial court commit an unsustainable exercise of discretion and/or error of law when assigning the legal residence of the child for school attendance, when evidence and testimony has shown that the wife has made continued attempts to minimize the husband's time with the child and minimize his role as a co-parent directly contradicting the requirements under RSA 461-A:6.

Question 4 (as set forth within the brief): Whether the trial court erred as a matter of law when assigning the legal residence of the child for school attendance, when evidence and testimony has shown that the Wife has made continued attempts to minimize the Husband's time with the child and minimize his role as a co-parent directly contradicting the requirements under RSA 461-A:6.

Question 5 (as set forth in the Notice of Appeal): Did the trial court commit an unsustainable exercise of discretion and/or error of law concerning division of marital property/personal property by ordering Mr. Routhier to pay husband for a firearm purchased by Mr. Routhier and ordering him to relinquish said firearm to the wife, which is a protected right under U.S. Const. amend. 2, N.H. Const. art 2-A (2019) and reaffirmed by District of Columbia v. Heller, 544 U.S. 570 (2008).

Question 5 (as set forth within the brief): Whether the trial court erred as a matter of law concerning the division of marital property/personal property by ordering the Husband to pay the Wife for a firearm purchased by the Husband and ordering him to relinquish said firearm to the Wife, which is a protected right under U.S. Const. amend. 2, N.H. Const. art. 2-A (2019) and reaffirmed by District of Columbia v. Heller, 544 U.S. 570 (2008).

FACTS

The pertinent facts of this case are set out in Appellant's Brief, previously filed, which is incorporated herein by reference and in the narrative portion of the trial court's Final Order.

SUMMARY OF ARGUMENT

The Petitioner/Cross-Appellant has failed to demonstrate that the trial court barred the Guardian *ad Litem* (GAL) from joining the September 2020 hearing. The GAL participated in the September 29, 2020 hearing. Despite her availability, neither party questioned the GAL that day.

The Petitioner/Cross-Appellant was responsible for securing the presence of his witnesses at trial. It is not error on the part of the trial court if a party fails to secure the presence of a desired witness.

The trial court issued an order on parenting after a hearing on the Petitioner/Cross-Appellant's *ex parte* motion. That order was modified slightly after a temporary hearing. Thereafter, the Petitioner/Appellant filed three separate motions for expedited hearing regarding parenting. The trial court considered each motion and ruled that the issues raised would be discussed at the final hearing. Under the facts and circumstances of this case, following multiple days of trial, the court properly acted in the best interest of the child in its final order on parenting.

The trial court acted in the best interest of the child in assigning the mother's home the child's legal residence of the child for schooling purpose.

The trial court did not violate the Petitioner's Second Amendment rights by awarding one firearm to the Respondent.

ARGUMENT

Question 1: Whether the trial court erred as a matter of law by barring the Guardian ad Litem from joining the September 2020 final hearings via telephone, barring the issuance of an order relieving her of her duties per RSA 461-A:16 Guardian ad Litem?

The record demonstrates that the Guardian *ad Litem* was not barred from joining the hearings, and the transcripts reflect the Guardian was present over multiple days.

RSA 461-A:16 I-b provides that the Guardian *ad Litem* may participate in hearings and conferences by telephone, except for evidentiary hearings on parenting. RSA 461-A:16 VI provides that, unless otherwise ordered by the court or by agreement of the parties, the services of the Guardian *ad Litem* shall conclude upon the issuance of the final order.

The trial transcript confirms that the Final Hearing in this matter occurred over six days: September 11, 2019, September 17, 2019, September 25, 2019, November 27, 2019, September 23, 2020, and September 29, 2020. The Guardian *ad Litem* had submitted a final report dated September 9, 2019. (See page 254 of Petitioner/Cross-Appellant's Appendix). The transcript of Day 1 of the Final Hearing shows that the Guardian *ad Litem* was present in person and the transcripts show she testified on September 17,

2019 for approximately six hours and again on November 27, 2019. Her testimony included direct testimony, cross examination by counsel for the Petitioner/Cross-Appellant, redirect and re-cross examination.

A telephonic scheduling conference was held on June 30, 2020. Notice of that conference was sent by the court to both counsel and to the Guardian *ad Litem*. (See copy of Notice at page 28 of this brief; Petitioner's Appx. 443). The transcript of that conference confirms that counsel for the Respondent, the Respondent, and the Guardian *ad Litem* were all present telephonically. Neither the Petitioner/Cross-Appellant nor his counsel participated. (Tr. June 30, 2020, 1:13[2])

During the telephonic conference, the Guardian *ad Litem* stated that she had relocated to Indiana and that it was her understanding that her testimony was complete. She indicated that she could be available telephonically on any or all of the three dates proposed by the trial court for the final hearing. The trial court afforded telephonic testimony for the Guardian *ad Litem* and ordered that it would limit her testimony to September 23, 2020. (Tr. June 30, 2020, 3:19-22)

Following that conference, the trial court issued a Scheduling Order dated June 30, 2020. (See copy of Order at page 31 of this brief; Petitioner Appx. 446). That Order states that the final hearing was scheduled for September 23, 29 and 30. The Order further

[2] References to transcripts are of the form Tr. Date, Page:Line

states that the hearings will be in person hearings with the exception of any testimony necessary from the Guardian *ad Litem*, who would testify telephonically on September 23rd if she is required to testify. Copies of that Scheduling Order were sent to both counsel and the Guardian *ad Litem* on July 2, 2020. (See Notice of Decision at page 30 of this brief; Petitioner Appx. 445).

The trial transcript for September 23, 2020 does not list the Guardian *ad* Litem's presence. (Tr. Sept. 23, 2020, 164:12-20). The trial transcript for the last hearing, held on September 29, 2020, indicates that the Guardian *ad Litem* was present, but it does not indicate whether she was in person or telephonic. (Tr. Sept. 29, 2020, 392:18). The trial transcript of that hearing indicates that neither party asked the Guardian *ad Litem* any further questions. The Petitioner/Cross-Appellant's argument regarding possible testimony of the Guardian *ad Litem* is purely speculative. He states in his brief that "[f]urther testimony could have been obtained from the Guardian ad Litem regarding the statements made by the husband and wife during the final hearings…" There is no evidence suggesting that the Guardian *ad Litem* would comment on statements made by the parties during the trial or that such comments, if any, would have been admissible or dispositive.

The Final Order was issued by the trial court on November 10, 2020.

It is apparent from the record that the Guardian *ad Litem* filed a final report, testified in person on two of the days of the final hearing and was in attendance on the sixth day of the final hearing

at which time neither party asked the Guardian *ad Litem* any questions. There is no indication in the transcript or the court orders of any order or agreement of the parties to retain the services of the Guardian *ad Litem* beyond the issuance of the Final Order. There is nothing in the record showing that the Petitioner requested the Court to permit additional testimony of the Guardian ad Litem and nothing to suggest that the Petitioner objected to the matter being decided without additional testimony from the Guardian *ad Litem*.

The Petitioner/Cross-Appellant has failed to demonstrate any error of law by the trial court regarding the testimony of the Guardian *ad Litem*. In fact, on September 23, 2020, following the re-cross examination of the Petitioner, the Petitioner rested without mentioning the need for additional testimony from the Guardian ad Litem. (Tr. Sept. 23, 2020, 362:15). Further, the Petitioner/Cross-Appellant has failed to demonstrate that he has adequately preserved this argument for this Court's review. See Lassonde v. Stanton, 157 N.H. 582, 596 (2008); see also Singer Asset Finance Co. v. Wyner, 156 N.H. 468, 472 (2007) ("[A] party must make a specific and contemporaneous objection during trial court proceedings to preserve an issue for appellate review.").

Question 2: Whether the trial court committed an unsustainable exercise of discretion by refusing to hear the Husband's witness who would have provided additional testimony regarding the mental stability of the Wife and her

inability to co-parent affectively [sic] with the Husband per RSA 461-A:6?

It is axiomatic that a party to a divorce matter is responsible for securing the attendance of his/her witnesses at court hearings.

The Petitioner/Cross-Appellant states in his brief that he had subpoenaed the Wife's cousin to testify at an earlier hearing but that she did not testify. He does not state the date of that hearing or provide a transcript reference. He complains in his brief that the Wife's cousin did not appear in court for the final hearing a year later on September 23, 2020; he does not state that he subpoenaed the Wife's cousin to attend that final hearing. There is no reference by Petitioner or his counsel in the September 23, 2020 transcript to a "missing" witness or to any request by Petitioner or his counsel for permission from the court to call that witness at a later hearing date. At best, the transcript shows that Petitioner's counsel was unsure whether a subpoenaed witness (Tabatha Brissin) was present, and ultimately chose not to call her or attempt to determine her attendance. (Tr. Sept. 23, 2020, 182:23-184:4). In fact, on September 23, 2020, following the re-cross examination of the Petitioner, the Petitioner rested his case. (Id., 362:15) It was the Petitioner's sole responsibility to secure the attendance of any witnesses he wanted at the final hearing. It appears that he failed to secure the attendance of the wife's cousin at that hearing. Likewise, he has failed to preserve the issue for this Court's review. See Lassonde v. Stanton, 157 N.H. 582, 596 (2008); see also Singer Asset Finance Co. v. Wyner, 156 N.H. 468, 472 (2007) ("[A] party

must make a specific and contemporaneous objection during trial court proceedings to preserve an issue for appellate review.").

The Husband's failure to secure a witness's attendance cannot be construed as the trial court's unsustainable exercise of discretion. The Petitioner/Cross-Appellant has failed to demonstrate an unsustainable exercise of discretion by the trial court.

Even had the Husband properly preserved the issue (which is not admitted), Ms. Brissin's absence from the hearing was *de minimis*. The Husband's counsel indicated to the trial court that Ms. Brissin was "just a very quick witness" for the sole purpose of entering one exhibit into evidence. (Tr. Sept. 23, 2020, 183:4-8). The court instructed the Husband's counsel to retrieve the witness if she were "essential," and in response the Husband's counsel instead called the Husband. (Id., 184:1-4)

Question 3. Whether the trial court committed an unsustainable exercise of discretion when assigning the legal residence of the child for school attendance after denying the Husband's Motions for Expedited Hearing Regarding Parenting Responsibilities, Schooling and Residential responsibility on three separate motions, which is a fundamental right under pt. I, art. 2 of the New Hampshire Constitution (2019)?

The parties have one child, a daughter, who was three years of age when the matter was initiated in July of 2018. At the commencement of this matter and during its pendency, the minor child resided with the Wife in Hampstead, New Hampshire and

Husband resided in Hooksett, New Hampshire and Manchester, New Hampshire.

By *ex-parte* Motion, dated September 7, 2018, the Petitioner/Cross-Appellant requested parenting time every Tuesday evening until Wednesday morning and every Friday evening until Sunday evening, extending to Monday morning every first and third Sunday of every month. Following a September 20, 2018 hearing held on that motion, the court issued an Order for the child to reside primarily with her mother and granting the father parenting time every Tuesday from 5 pm until Wednesday morning at 8 am and every other Friday from 5 pm until Monday morning at 8 am. The parties were awarded joint decision making regarding their daughter.

A Temporary Hearing was held on January 4, 2019 wherein both parties attended with counsel. Following that hearing the court found, since birth, the child had been in the primary care of her mother. The court further ordered that the parenting schedule issued after the *ex-parte* hearing, with slight modification, shall remain in effect until the GAL conducted an investigation or further agreement of the parties.

By Order dated December 28, 2018, the court appointed a Guardian *ad Litem* who subsequently declined to accept the appointment as she was no longer working as a GAL. By Order dated March 6, 2019, the court appointed Deborah Mulcrone, Esq. as the Guardian *ad Litem*. The GAL submitted a Confidential Report dated September 9, 2019.

Petitioner/Cross-Appellant filed three motions for expedited hearing regarding parenting, schooling, and residential responsibilities. The first dated July 9, 2019, the second dated November 19, 2019 and the third dated June 17, 2020.

With regard to the first motion, by Notice of Decision dated July 24, 2019, the court had considered the motion and marked it "Denied. Issues reserved to final hearing."

With regard to the second motion, the court considered the motion and on November 21, 2019 marked it "Will be discussed at continuation of final hearing scheduled for 11/27/19."

The third motion was considered by the court and on July 10, 2020 it was marked "Will be discussed at final hearing."

The Petitioner/Cross-Appellant argues that by not issuing a parenting plan after the temporary hearing, the trial court allowed the Wife (on two occasions) to register the daughter for school in Hampstead. He further argues that the trial court, by denying his three motions for expedited hearings, violated his constitutional rights under pt.1, art.2 of the New Hampshire Constitution.

The trial court noted in its Final Decree that the Wife had advised Husband that she wanted to enroll their daughter in kindergarten and did so when she received no response from him. Husband subsequently contacted the principal of the school and demanded that his daughter not go there. Wife testified that the child was "heartbroken" because her friends in the neighborhood were going and she could not. (Tr. Sept. 23, 2020, 368:17-24).

Wife further testified at the final hearing that at that time she was homeschooling the child herself. (Id., 367:19).

The Petitioner/Cross-Appellant has failed to demonstrate any connection between the alleged lack of a parenting plan and his unfounded allegation that the Wife signed the child up for school in Hampstead on two separate occasions. He further has failed to demonstrate any prejudice to his case as a result of his allegations.

With regard to the constitutional issue, in 1980 this Court held that in New Hampshire the rights of parents over the family are considered "natural, essential and inherent rights within the meaning of the New Hampshire Constitution, part I, article 2." In re Diana P., 120 N.H. 791 (1980) cert denied 452 U.S. 964, 101 S.Ct. 3116 (1981). The parental interest in raising children without State intervention is not without limitation. The State has a competing interest in the welfare of children within its jurisdiction, and may as *parens patriae*, intervene in the family milieu if the child's welfare is at stake. Parental rights are not absolute, but are subordinate to the State's *parens patriae* power, and must yield to the welfare of the child. See Preston v. Mercieri, 133 N.H. 36, 40 (1990)

Petitioner/Cross-Appellant cites Troxel v. Granville, 530 U.S. 57, 65 (2000) in support of his argument. This Court considered the application of the Troxel case when it decided the case of IMO Nelson and Horsley, 149 N.H. 545, 547 (2003). In Nelson, this Court opined that the best interests of a child guide all custody matters, citing Bodwell v. Brooks, 141 N.H. 508, 512 (1996). In Nelson, this Court held that in the context of a divorce, the superior court may

interfere with parental rights to determine a child's best interests as between two fit parents. See Nelson at 547.

The issue was again considered by this Court in 2005 in IMO Berg and Berg, 152 N.H. 658 (2005). In that case this Court again stated that, in the context of a divorce and custody litigation, the superior court often must weigh the rights of parents against the best interests of the children, referring to RSA 458:17, II, V,VI (2004) *repealed and replaced by* RSA 461-A:6 (Supp. 2005).

In the case at bar, the Petitioner/Cross-Appellant asserts that his constitutional right was violated. Significantly, the trial court found "there is insufficient evidence upon which the court could justify awarding one parent decision-making authority over the other parent." Final Decree, p.3. The trial court found that under RSA 461-A:6 (b) that each parent is equally capable in regard to their ability to meet the child's necessary needs. In other words, in this case, there are two equally fit parents. The Wife (Respondent/Appellant) has the same constitutional rights with regard to parenting as the Petitioner. The trial court, correctly, made its decisions based on the best interests of the child.

The Petitioner/Cross-Appellant has failed to demonstrate that the trial court committed an unsustainable exercise of discretion by not addressing his motions as submitted and by denying his rights as a parent.

Question 4: Whether the trial court erred as a matter of law when assigning the legal residence of the child for school

attendance, when evidence and testimony has shown that the Wife has made continued attempts to minimize the Husband's time with the child and minimize his role as a co-parent directly contradicting the requirements under RSA 461-A:6.

The trial court found that the parents are each equally capable regarding their ability to meet the necessary needs of their child. The trial court noted that decision-making is best and less problematic when the parents engage in cooperative, respectful communication. The trial court found, however, that this does not apply to these parents. The trial court found that their dislike for each other was well documented by the case file and their testimony. The trial court found that each parent had concerns about the child when in the other parent's care; that each parent had shortcomings with regard to support for the child's contact with the other parent; that the actions of each parent are not entirely supportive of the child's relationship with the other parent; and that the maternal and paternal grandparents and extended family are very important to the child and her stability and development. The trial court stated in its Final Order that the problem is not the parents with the child but the problem is the parents with each other. The trial court's findings are well supported by the evidence and testimony in this case and are consistent with the requirements of RSA 461-A:6.

RSA 461-A:2 Statement of Purpose, provides that it is the policy of this state to 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. The safety of the parties was not an issue in this case, therefore, the decisions regarding the child were properly made based on the best interests of the child. Parenting plans are statutorily authorized to include provisions relative to the legal residence of a child for school attendance. RSA 461-A:4, II(c).

The trial court considered the relative merits of the Hampstead school system (preferred by the Wife) and the Montessori School in Manchester (preferred by the Husband). The trial court found that the smaller class size, teacher to student ratio and the consistency of friends and education tilts in favor of Hampstead. The trial court found that based on Wife's decision to live in Hampstead that the child shall be enrolled in kindergarten in Hampstead and shall thereafter attend school in Hampstead.

The record and the order of the trial court regarding residence for school attendance clearly show that the trial court made its order based on the best interests of the child and that the order is properly supported by the evidence and consistent with the requirement of RSA 461-A:6. The Husband cannot establish an error of law.

Question 5: Whether the trial court erred as a matter of law concerning the division of marital property/personal property by ordering the Husband to pay the Wife for a firearm purchased by the Husband and ordering him to relinquish said firearm to the Wife, which is a protected right under U.S. Const. amend. 2, N.H. Const. art. 2-A (2019) and reaffirmed by District of Columbia v. Heller, 544 U.S. 570 (2008).

The trial court granted the Petitioner a divorce based on irreconcilable differences. The court found this to be a long-term marriage and that an approximately equal division of the marital estate would be equitable.

The trial court considered the division of four firearms and a gun safe. The court found that two of the firearms had been purchased by the Petitioner/Cross-Appellant prior to his relationship with the Respondent and that they therefore were not included in the marital estate. The remaining two firearms, the AR-15 and the MCP 22 rifle, were part of the marital estate. The AR-15 was appraised at $1,000.00 by one dealer and $1,025.00 by another dealer. The MCP 22 rifle was appraised at $199.99 by one dealer and $300.00 by another dealer. The trial court awarded the gun safe to the Petitioner/Cross-Appellant. The court awarded the MCP 22 rifle to the Respondent/Appellant and the AR-15 to the Petitioner/Cross-Appellant. The court ordered the Petitioner/Cross-Appellant to pay $795.00 to the Respondent/Appellant, representing the difference between the average values of the two firearms.

The Petitioner/Cross-Appellant argues that the trial court erred as a matter of law by awarding a firearm to the Respondent/Cross-Appellant in addition to a cash payment and he further argues that his protected right to own a firearm under the N.H. Constitution, the U.S. Constitution and the 14th Amendment Due Process Clause precludes the trial court from infringing on his 2nd Amendment right.

RSA 458:a I states that property shall include all tangible property and assets, real and personal, belonging to either or both of the parties.

RSA 458:16-a II provides that when a dissolution of a marriage is decreed, the court may order an equitable division of property between the parties and that the court shall presume that an equal division is an equitable division, unless the court establishes a trust fund under RSA 458:20 or if the court finds one or more of certain listed factors. It is noteworthy that the statute specifically includes animals as property and specifically deals with education savings accounts.

The Petitioner/Cross-Appellant states in his brief that "it is not believed that it was the intent of the Legislature to include firearms in property settlement other than to award a monetary value due to the all-encompassing definition of tangible."

This Court has held that in matters of statutory interpretation, this Court is the final arbiter of legislative intent as expressed in the words of the statute considered as a whole. IMO Watterworth and Wattterworth, 149 N.H. 442, 445 (2003). When interpreting statutes this Court first looks at the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. The Court interprets 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. The Court construes all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. The Court does not consider words and

phrases in isolation, but rather within the context of the statute as a whole. Merrimack Premium Outlets, LLC v. Town of Merrimack, Case No. 2020-0358, 2021 N.H. LEXIS 147, decided October 1, 2021.

This Court has also held that it reviews a trial court's determination of what assets constitute marital property de novo. The Court stated that marital property includes "all tangible and intangible property and assets…whether title to the property is held in the name of either or both parties." All marital property is subject to equitable division. An equal division is presumed to be an equitable division unless an equal division would not be appropriate or equitable under the circumstances. IMO Merrill and Merrill, Case No. 2020-0009, 2021 WL 1538884, decided April 20, 2021.

The plain and ordinary meaning of the words "all tangible and intangible property and assets, real or personal, belonging to either or both parties…" is clear on its face. The Oxford English Dictionary defines tangible as "perceptible by touch;" clearly, a firearm is tangible. The Legislature included language regarding intangible property as including employment benefits, vested and non-vested pension or other retirement benefits, and savings plans. The Legislature also included provisions regarding the parties' animals as tangible property and educations savings accounts. (See RSA 458:16-a II and III)

Although it could have done so, the Legislature failed to include any language excluding firearms from the marital estate and this Court cannot add such language. "In matters of statutory

interpretation, [the Court] will not add language that the legislature did not see fit to include." Langevin, v. Travco Ins. Co., 170 NH 660, 667 (2018) (quotation omitted).

The Petitioner/Cross-Appellant cites no authority to support his position that the legislature intended that only the monetary value of the firearms be included in property settlement, and not the firearms themselves. In fact, the trial court has wide discretion in fashioning a property distribution, and may award a particular asset in its entirety to one party. See In the Matter of Letendre & Letendre, 149 N.H. 31, 36 (2002). The trial court's determination of a fair property distribution will not be overturned absent an unsustainable exercise of discretion, and will stand so long as the court's findings can reasonably be made on the evidence presented. In re Hampers, 154 N.H. 275, 285 (2006).

The Petitioner/Cross-Appellant cites District of Columbia v. Heller, 544 U.S. 570 (2008) in support of his claim that the trial court is precluded from awarding the firearms as part of the property settlement, as an infringement on his 2nd Amendment right. It must be noted that the U.S. Supreme Court stated in Heller that "[l]ike all rights, the Second Amendment right is not unlimited." Heller at 626.

The Petitioner/Cross-Appellant's argument ignores the fact that the Second Amendment applies equally to the Respondent/Appellant as well as to the Petitioner/Cross-Appellant. That is, she has the same rights as he. Assuming *arguendo* that the Second Amendment applies to division of marital property, it must be said that each party has an equal right to bear firearms. In this case,

the trial court made an approximately equal division of the firearms, giving one firearm to each of the parties, thus not depriving either party of their Second Amendment right.

The Petitioner/Cross-Appellant has failed to demonstrate that the trial court erred as a matter of law in awarding a firearm to the Respondent/Appellant. He has also failed to provide any authority to support his claim that the Legislature did not intend to include firearms as "tangible property" in RSA 458:16-a.

CONCLUSION

The Petitioner/Cross-Appellant has failed to demonstrate any error of law or unsustainable exercise of discretion regarding any of the five issues raised in his appeal. The trial court's orders on those five issues must be sustained.

Respectfully submitted,
Kelly Routhier,
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by her attorney

Dated: October 14, 2021

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CERTIFICATION

I hereby certify that the foregoing Answering Brief of Respondent/Appellant contains 5460 words.

Dated: October 14, 2021 /s/Keri J. Marshall_____
Keri J. Marshall, Esquire

CERTIFICATE OF SERVICE

I, Keri J. Marshall, hereby certify that pursuant to Supreme Court Rule 16, a copy of the foregoing Brief of Kelly Routhier was served upon Matthew Routhier, pro se, and Deborah Mulcrone, Esq., GAL and Kevin Collimore, Esq., through the Court's Electronic Filing System.

Dated: October 14, 2021 /s/Keri J. Marshall_____
Keri J. Marshall, Esquire