

THE STATE OF NEW HAMPSHIRE SUPREME COURT

**In the Matter of Matthew Routhier and Kelly Routhier**

Case No. 2021-0032 & 2021-0036

Due: September 16, 2021

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Rule 7 Appeal of the Final Decision of the  
6th Circuit- Family Division – Hooksett

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**Brief of Petition/Cross Appellant, Matthew Routhier**

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Respectfully Submitted,

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On the Brief and Oral Argument

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## QUESTIONS PRESENTED FOR REVIEW

### Appellant Questions Presented in Opening Brief

1. Whether the trial court erred as a matter of law in interpreting RSA 458:16-a when it found that the statute precluded division of the husband's share of property owned by him and his parents.
2. Whether the trial court erred as a matter of law when it found that that the mother's gross monthly income was 52% of the father's, yet awarded child support which deviated from the child support guidelines in his favor?
3. Whether the trial court erred as a matter of law when it denied wife's request for alimony without providing a basis as required by RSA 458:19-a,VI(b)?
4. Whether the trial court erred as a matter of law when it failed to state sufficient findings to support its decisions as required by RSA 491:15, while declining to review wife's proposed findings and rulings?

### Cross-Appellant Questions

1. Did the trial court commit and unsustainable exercise of discretion and/or error 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.
2. Did the trial court commit and unsustainable exercise of discretion and/or error of law by dismissing and/or refusing to hear the Appellant's witness who would have provided additional testimony regarding the mental stability of the wife and her inability to co-parent effectively with the husband per RSA 461-A:6.
3. Did the trial court commit and unsustainable exercise of discretion and/or error of law when assigning the legal residence of the child for school attendance after denying the husband's motions for expedited rearing 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).
4. Did the trial court commit and 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.
5. Did the trial court commit and 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).

## STATEMENT OF THE CASE

The Parties were married on October 26, 2013, in Sanborton, NH. The husband and wife have one child, a six-year-old daughter. The husband filed a petition for divorce on July 30, 2018, at the 6<sup>th</sup> Circuit - Family Division - Hooksett. Husband alleged fault grounds and alternatively on irreconcilable differences. A cross-petition for divorce was filed by the wife on August 10, 2018, at the 10<sup>th</sup> Circuit - Family Division – Brentwood, alleging irreconcilable differences. The cases were consolidated and heard at the 6<sup>th</sup> Circuit - Family Division - Hooksett. The parties had no joint real estate at the time of the petition for divorce filings.

An emergency *ex-parte* motion was filed by the husband on September 7, 2018, requesting parenting time every Tuesday from 5pm until Wednesday at 8am and every Friday at 5pm until Sunday at 5pm, with his time extending on the first and third Sunday of every month from Friday at 5pm until Monday at 8am (Apx. pg. 95). An *Ex-Parte* hearing was held on September 7, 2018, with a subsequent order issued on September 25, 2018, granting shared decision making and the husband parenting time every Tuesdays, from 5pm to Monday at 8am and every other weekend from Friday at 5pm to Monday at 8am (Apx. pg. 98).

On January 4, 2019, a temporary hearing was held, and a temporary order was issued on January 17, 2019, which included the order, temporary decree, uniform support order and child support guidelines worksheet (Apx. pg. 104). A complete parenting plan was not provided as part of the order as required per Circuit Court of the State of NH- Family Division Rule 2.26 A (2). The court found that the parenting schedule per the *Ex-Parte* Order dated September 14, 2018, should remain or a schedule with a slight modification, shall remain until such time as the GAL can conduct and investigation or upon further agreement of the parties. In addition, the court found the wife was only working part time and that she can work a full-time schedule or closer to



that and Ava can attend daycare, as necessary (Apx. pg 105). The court also required the husband to pay for health insurance for the wife and their daughter, paying guideline support, seventy percent of the uninsured medical expenses for their daughter, seventy percent of the GAL fees and he would be required to carry life insurance for the daughter's benefit with wife named as trustee beneficiary.

On January 31, 2018, an order on the appointment of a GAL was issued appointing Courtney Curran Vore to investigate residential responsibilities and parenting time bond between parent and child and maternal grandmothers' role in the child's life (Apx. pg. 99).

On March 6, 2019, a subsequent order was issued appointing GAL, Deborah Mulcrone (Apx. pg. 99), who would remain throughout the matter until dismissal via phone on September 23, 2020.

On April 19, 2019, an order regarding the husband's motion to compel in camera review of therapy records or guardian ad litem review of therapy records and husband's motion for ruling on property division in-light-of short-term marriage and preclusions was issued. the motion for in camera review of therapy records or guardian ad litem review of therapy records was denied with reconsideration if issues were raised by the Gal in conjunction with her investigation. the order regarding the motion for ruling on property division in-light-of short-term marriage and preclusions was issued, scheduling a 30-minute hearing on Offers of Proof on April 17, 2019 (Apx. pgs. 122-133)

On May 16, 2019, an order was issued regarding a motion on ruling and a motion to intervene, regarding subpoenas filed on behalf of the husband against Elliot Health Systems, the wife regarding her parent's trust (The Howard Family Trust) and a motion to compel. A hearing was scheduled for a hearing on motions to be addressed on June 14, 2019 (Apx. pgs. 134-137)

On June 5, 2019, an order was issued regarding the wife's motion to compel that the husband's firearms to be appraised, as well the appraisal of the property owned by the husband's parents in Dunbarton, NH. The order required that the guns, etc. shall be appraised and parties shall cooperate in having same accomplished in a timely manner. The Dunbarton appraisal issue was reserved for the next hearing (Apx. pgs. 138-137).

On June 14, 2019, a hearing was held regarding subpoenas for the minor daughter's health records from Elliot Hospital, the Howard Family Trust and a motion to compel wife's health records, rental payments and rule 1.25-A discovery requests. A subsequent order was issued on July 24, 2019, quashing the subpoenas regarding Elliot and the Howard Family Trust (Apx. pg. 146). The order also contained orders regarding a multitude of other motions, including the husband's motion to correct the record (granted) (Apx. pgs 156-157), motion to compel collectible values (Granted, ordering wife to provide a list and photos of her sports memorabilia, jewelry, and collectables) (Apx. pgs. 149-151), expedited hearing regarding parenting responsibilities, schooling and residential Responsibility Schedule (denied, issue reserved for final hearing) (Apx. pgs. 152-155), motion for late filing of response (granted), Gal motion to request authorization to the wife's medical and mental health records and providers for the past five years and petitioners (granted with stipulations), objection to motion to compel firearms Appraisal (denied fees).

On November 21, 2019, an order was issued regarding the husband's second motion/request for expedited hearing regarding parenting responsibilities, schooling and residential responsibility schedule (to be discussed at continuation of final hearings November 27, 2019) (Apx. pgs 169-172), GAL motion to exceed (granted) and motion for extension of final report (granted).

On November 21, 2019, an order was issued regarding the husband's motion for contempt regarding discovery violations. The order required that the wife shall provide

requested discovery except for proof of legal payments, Dunbarton, NH appraisal payment, and payment of uninsured dental expenses of \$300 per month as stated on her financial affidavit (Apx. pgs 177-179).

On March 3, 2020, an order was issued regarding the wife's motion to compel and for sanctions. The motion was denied in part and required both parties to comply discovery as required (Apx. pgs. 187-192).

On June 30, 2020, a telephonic scheduling hearing was held for counsel only. attendees included the GAL, wife and wife's counsel (Apx. pg. 443). The husband's counsel was unable to connect to the conference call after numerous attempts. (Apx. pgs. 445-446) and the GAL was supposed to be on the September 23, 2020, hearing (Apx. pg. 446) after agreeing to attend the hearings telephonically (Trial Tr. 3, Ins. 13-22, June 30, 2020).

On July 15, 2020, an order was issued by the trial court regarding the husband's third motion/ request for expedited hearing regarding parenting responsibilities, schooling and residential responsibility Schedule. The order stated it would be discussed at Final Hearing (Apx. pgs 180-186).

On July 16, 2020, the husband filed an objection to the wife's response to pending pleadings regarding the Third Motion/Request for Expedited Hearing (Apx. pgs-447-450)

On October 2, 2020, the husband filed finding of facts and rulings of law (Apx. pgs. 468-475). The wife filed finding of facts and rulings of law (Apx. pgs. 453-467) on that same day as well. A response to the wife's finding of facts and rulings of Law were filed by the husband (Apx. pgs. 476-491). The wife filed an objection to the husband's responses (Apx. pgs. 492-494).

A final decree and order were issued by the trial court on November 10, 2020. Both parties filed motions for reconsideration. The husband's motion included a request for clarification/correction of the record regarding the husband's current address and the two-week parenting schedule (Apx. pgs. 506-510). The husband filed a subsequent Objection in Part, to the wife's Motion for Reconsideration (Apx. pgs. 514-517) The wife filed a motion for reconsideration (Apx. pgs. 496-505) and subsequent partial objection to husband's motion for Reconsideration (Apx. pgs. 512-513)

On January 4, 2021, the trial court issued a new court order correcting the Husband's address, altering the original ordered Parenting schedule to begin on Sunday at 6pm in lieu of the original Monday at 6pm and including stipulations for grandparents to help facilitate child exchanges. A complete parenting plan was not provided in the January 4, 2021, order nor references to the more complete parenting plan as ordered on November 10, 2020.

On January 29, 2021, wife filed an appeal with this court which was docketed as case number 2021-0032. Subsequently the husband filed an appeal with this court which was docketed as 2021-0036. The two appeals were consolidated under case number 2021-0031.

### **STATEMENT OF THE FACTS**

Evidence and testimony were provided in this matter over a period of two-years and ten hearings, which included six days of Final Hearings. The following is a summation of facts based on testimony and exhibits as presented to the trial court which were relevant to the issues as filed in the appeal and cross-appeal. Transcript references are to the Transcripts of the temporary hearing, request for property division

hearing, motion hearing, scheduling hearing and Volumes I through II and Volumes I through IV of the final hearing.

The parties met in 2013 (Trial Tr. Vol. 1 of 2, 130, In. 17). In July of 2004, husband purchased a two-family home on Vinton Street in Manchester, NH with his sister Judith in which they were joint tenants with rights of survivorship (Trial Tr. vol. 1 of 2, 131, Ins. 3-5). The home was a two-story cape, and the husband occupied the second-floor apartment which was 700-square feet (Trial Tr. Vol. 1 of 2, 134, Ins. 19-21). The wife moved in with the husband approximately three-months later (Trial Tr. Vol. 1 of 2, 130, In. 24), after he finalized renovations. The husband and wife got engaged on April 30, 2011 (Trial Tr. vol. 3 of 4, 363-364, Ins. 25 & 1) and married on October 26, 2013 (Trial Tr. vol. 1 of 2, 215, In. 15). They have one child, a daughter, born on March 22, 2015

The husband and sister listed the Vinton Street property for sale in 2015 but removed it from the market prior to the birth of the husband and wife's daughter (Trial Tr. Vol. 1 of 2, 160, In. 17-21). In 2017, the Vinton Street property was again listed, by the wife's stepfather who was a real estate agent. The Vinton Street property was sold on October 30, 2017 (Trial Tr. Vol. 1 of 2, 138, Ins. 22-23). The profits from the sale of the Vinton Street property were split evenly between the Husband and his sister, Judith. The husband then split his proceeds approximately in half and gave it to the wife (Trial Tr. Vol. 1 of 2, 131, Ins. 8-24). During the husband and wife's time residing at the Vinton Street property, the wife did not contribute to the value of the property (Trial Tr. Vol. 1 of 2, 132, Ins. 2-9). Prior to and after marriage the husband and wife maintained separate bank accounts (Trial Tr. Vol. 1 of 2, 132, Ins. 16-25). All bills for the Vinton Street property were in the husband's name prior to and after the marriage (Trial Tr. Vol. 1 of 2, 133, Ins. 16-18). Prior to the marriage, the husband and wife did not hold themselves as a married couple (Trial Tr. Vol. 3 of 4, 185, Ins. 3-7).

After the sale of the Vinton Street property, the wife and daughter moved into the wife's parents' home on the lake in Hampstead, New Hampshire and the husband and the family dog moved in with his parents' into the Gray Street property in Manchester, New Hampshire (Trial Tr. Vol. 1 of 2, 138-139, Ins. 25 & 1-3). The husband resided with his parents until February of 2018, when he rented an apartment in Hooksett, New Hampshire (Trial Tr. Vol. 1 of 2, 129, Ins. 1-3). The wife and daughter resided with the Husband at the Hooksett, New Hampshire apartment from February 27, 2019, (Trial Tr. Vol. 3 of 4, 383, Ins. 1-2) until July 1, 2018 (Trial Tr. Vol. 3 of 4, 383, In. 9), after which they returned to the Wife's parents' home in Hampstead. The Wife testified that she was living on the lake and that the daughter and her had separate bedrooms with beds and their own bathroom across from the bedrooms with a door to separate their rooms from the rest of the house (Trial Tr. Vol. 3 of 4, 369, Ins. 5-15). At the time of the September 2019 hearing, the Husband had returned to live with his parents at their Gray Street property in Manchester. The Wife testified that the daughter stated the Husband was blowing up an air mattress (Trial Tr. Vol. 4 of 4, 420, In. 18). The Husband testified that their daughter had his old bedroom in the home, and he was sleeping on an air mattress in the living room (Trial Tr. Vol. 3 of 4, 330, Ins. 3-8). The wife testified that she did not plan on continuing to live with her mother but that her mother had two multi-family properties, one in Hampstead and one in Derry, NH that had tenants at will (Trial Tr. Vol. 3 of 4, 384, Ins. 1-9) or that her mother would buy a third duplex for her and the daughter (Trial Tr. Vol. 3 of 4, 384, Ins. 1-9) The Husband testified her would like to move to the Dunbarton property in the future and provide a retirement place for his parents per their mutual agreement (Trial Tr. Vol. 3 of 4, 383, Ins. 14-18).

Husband filed a petition for divorce on July 31, 2018, in the 6<sup>th</sup> Circuit Court-Family Division – Hooksett (Apx. pg. 83) and the wife filed a cross petition for divorce on August 10, 2018, at the 10<sup>th</sup> Circuit - Family Division – Brentwood (Apx. pg. 90)

Husband filed an *ex-parte* motion on September 7, 2018 (Apx. pg. 95), seeking parenting every Tuesday from 5pm until Wednesday morning at 8am and every Friday at 5pm until Sunday at 5pm, with his parenting time extending on the first and third Sunday of every month, his parenting time would then extend until Monday at 5pm. An immediate order was provided pending a formal hearing. The Husband was granted parenting time every Tuesday from 5pm to Wednesday morning at 8am and every other Friday at 5pm until Monday morning at 8am beginning on September 14, 2018. Additional provisions included provisions that the child exchanges would take place at a gas station located in Auburn and that each parent would be allowed unmonitored telephone or FaceTime calls on the evenings that the minor child was with the other parent (Apx. pg. 93). An *Ex-Parte hearing* was held on September 20, 2018, with both parties and their counsel present. The wife argued that the husband should only have one overnight (Trial Tr., 23, Ins. 25 & 12-15, September 20, 2018) The trial court granted the motion. The order more particularly stated "The court finds husband has been a loving and engaged parent who is very attentive to his daughter's needs. The daughter (Name withheld) should have the benefit of spending time with each parent and the husband should not be denied parenting time or have his time restricted due to any off-hand remark about his ability to keep their daughter beyond the time stated by the wife. The court also does not find sufficient evidence to restrict husband's time to just one overnight every other weekend. If there were any difficulties initially getting their daughter to relax while in his care, that discomfort should ease based on Ava getting into a routine and schedule with both parents" (Apx. pg. 98).

A temporary hearing was held on January 4, 2019. The husband's financial affidavit reflected costs associated with enrolling the daughter in daycare which he felt was important for their daughter's socialization (Trial Tr., 6, Ins. 8-15, January 4, 2019). The husband's financial affidavit also showed expenses he was paying for both parties as well as paying voluntary child support in the amount of \$276.00, biweekly since the ex-

parte hearing. The husband also provided a lump sum payment of \$625.00 based on his 2018 commission rate (Trial Tr., 8, Ins. 2-14, January 4, 2019). The trial court issued an order on January 17, 2019 (Apx. pg. 104). The trial court maintained the previous parenting schedule from the *ex-parte* order which consisted of every Tuesday from 5pm to Wednesday morning at 8am and every other Friday at 5pm until Monday morning at 8am. The order included provisions that the parents shall share decision-making; the minor daughter shall live primarily with the wife; Parenting exchanges shall be at the Auburn gas station; parents may contact the daughter without supervision or monitoring once in the evenings when she is with the other parent; The parents shall communicate through text or email (except in an emergency) regarding the minor daughter only; third parties may assist in parenting exchanges to the extent necessary but shall not engage in any negative comments, behaviors, etc. in minor daughter's presence. The trial court ordered the husband to pay child support of \$421.00 bi-weekly, maintain health insurance for the wife and daughter with the husband paying the premiums, that Husband maintain a \$50,000 life insurance policy on himself with the wife designated as trustee, and pay 70% of the daughters uninsured medical expenses. The trial court denied the Wife's request for \$1,000.00 a month in alimony (Trial Tr., 18, Ins. 22-14, January 4, 2019). The trial court's reasoning for denying alimony was based on the wife working limited hours.

The husband testified that in 2011 he was looking for a property with his parents to move to with them to alleviate the maintenance and care of their home on Gray Street in Manchester, as their health was declining. The plan as agreed upon with his parents was that the husband would build a home with an in-law apartment. The husband would normally take care of his parents' property at Gray Street in Manchester for them (Trial Tr. vol. 1 of 2, 146, Ins. 16-24). In July of 2011, the husband's parents purchased a property at 1209 Montalona Road in Dunbarton, New Hampshire for \$105,000 (Trial Tr. vol. 1 of 2, 19, In. 16). The property was purchased with funds that



the Husband's parents obtained by taking out an equity line of credit (HELOC) on their primary home at 244 Gray Street in Manchester, NH. Neither the Husband nor Wife contributed anything to the purchase of the property (Trial Tr. vol. 1 of 2, 93-94, Ins. 22-25 & 1-2). After the purchase of the property, the husband and wife discussed having their wedding there and obtaining financing to build a house with an in-law for his parents (Trial Tr. vol. 1 of 2, 152, Ins. 13-25). The ability for the Husband to obtain a construction loan was hampered by his ownership of the Vinton Street property in Manchester, so the husband and wife wed in a barn wedding in Sanbornton. The husband paid \$15,000.00 towards the wedding (Trial Tr. vol. 1 of 2, 180, Ins. 3-9) The Husband's name was included in the deed to the Dunbarton property to facilitate contractors and obtain costs for construction due to his background in construction and his parents' age (Trial Tr. vol. 1 of 2, 93, Ins. 4-12). The trial court reserved the issue of whether the Dunbarton property was to be considered a marital asset and allowed the parties 30-days to file memorandums of law which were not filed per the order dated July 24, 2019 (Apx. pg. 147).

An appraisal of the Dunbarton property was conducted by the wife, without a court order, and with testimony provided by her appraiser on September 11, 2019. An extensive number of exhibits and financials were covered showing that the husband's parents provided all the funds for the purchase of the property, paid nearly all of the expenses associated with the Dunbarton property and nearly all of the improvements done to the property as highlighted in husbands exhibits 1 through 15 (Apx. pgs. 323-442).

The husband filed three motions for an expedited hearing regarding parenting responsibilities, schooling and residential responsibility schedule following the temporary hearing on January 4, 2019, and the order assigning the guardian ad Litem on March 6, 2019 (Apx. pgs. 116-121). The first motion by the husband was filed on July 10,

2019, as the temporary order dated January 17, 2019, stated that the parenting schedule would remain per the *ex-parte* until the "GAL could conduct an investigation or a further agreement of the parties". The GAL's final report was filed on September 10, 2019, in which she expressed concern regarding the ability of the wife to co-parent effectively with the husband and her attempts to minimize his position as a father (Apx. pg. 267 par. 3 & pg. 268 par. 1 & 2). The GAL stated that her background and education, consisted of a degree in law, a Bachelor's degree in Psychology, a Bachelor's degree in Education and a Master's degree in counseling (Trial Tr. vol. 2 of 4, 90 & 91, Ins. 11-25 & 1-7). The GAL testified that the husband was involved in the daughter's upbringing from the start, as he stayed home one day a week on Tuesday for eighteen months and worked from home (Trial Tr. vol. 2 of 2, 247, Ins. 19-24) and that the daughter should enjoy 50/50 parenting time with each parent (Trial Tr. vol. 2 of 2, 254, Ins. 24-25). The GAL testified that she had concerns about the father being minimized as a father and co-parent (Trial Tr. vol. 2 of 2, 255, Ins. 8-9). The GAL also testified that the school enrollment process for the daughter was initiated in March of 2019 and that her discussion with the Principal of Hampstead Central School indicated that someone initiated that process and that the information provided online only included the wife's information (Trial Tr. vol. 2 of 2, 261, Ins. 16-23). The GAL testified that the wife had changed three dental appointments for the daughter based on her discussion with the dental practice manager (Trial Tr. vol. 2 of 2, 265, Ins. 3-5). It was the testimony of the GAL that the greatest concern was the wife's ability to co-parent and that the wife did not support 50/50 parenting time. (Trial Tr. vol. 2 of 2, 271, Ins. 19-21). She noted concerns regarding Hampstead as the residence for school due to the wife's family ties there and minimization of the husband and recommended it not be Hampstead (Trial Tr. vol. 2 of 2, 280, Ins. 16-25 & 1-9) and that she was more concerned about what was going on at home and that it did not appear that the daughter needed to attend school in Hampstead in order to meet her academic and social needs (Apx. pg. 236, par.

3). The GAL felt that the equity in parenting and co-parenting weighed heavily and recommended the daughter's residence for school be with the husband and that he make appointments for the daughter for the first year (Trial Tr. vol. 2 of 2, 280, Ins. 18-22). The GAL recommended therapy for the daughter and the parties.

The Wife has been a certified pharmacy technician twenty years and was employed with Northern New England Benefit Trust (Teamsters Local 633) prior to the marriage where she obtained a company funded pension which she is fully vested in and is entitled to \$1,800.00 per month beginning at age sixty-four. (Trial Tr. vol. 4 of 4, 503, Ins. 7-13). At age sixty-four she will begin collecting \$21,000 a year which may or may not include cost of living adjustments from the defined benefit pension (Trial Tr. vol. 4 of 4, 505, Ins. 6-7). The Wife worked for Option Care pharmacy in Bedford, NH (Walgreen's subsidiary) up until the Friday preceding the birth of their daughter. She worked 32-hours a week, working eight hours a day on Monday, Tuesday and Friday and four hours a day on Wednesday and Thursday and worked at Catholic Medical Center, in Manchester per diem on Weekends (Trial Tr. vol. 4 of 4, 425, Ins. 11-12). Childcare was provided on Monday, Wednesday and Friday by the wife's mother, Tuesday by the husband and Thursday by the Husband's mother. The wife was given 12-weeks of maternity leave per the policy of Walgreens/Option Care according to the Family Medical Leave Act.

There were complications during the delivery which resulted in the Wife having an extended stay in the hospital (Trial Tr. vol. 3 of 4, 327, Ins. 21-22). The Wife returned to work and worked 32-hours a week until February 12, 2017 (Trial Tr., 26-27, Ins. 24-25 & 1-2, January 4, 2019). In 2017, Husband and Wife had an agreement that the Wife would work nights and weekends for Catholic Medical Center solely while the Husband was home to watch their daughter (Trial Tr. vol. 3 of 4, 241, Ins. 6-14). The Wife worked minimally on the advice of her mother (Trial Tr. vol. 3 of 4, 240, Ins. 21-22) The Wife was

given the opportunity to work as many hours as she wanted and whatever times she wanted by her boss (Trial Tr. vol. 3 of 4, 241, Ins. 6-14).

During the final hearing on September 29, 2020, the Wife testified that there were full time jobs available at Catholic Medical Center, but she couldn't or wouldn't put their daughter in daycare in order to work more (Trial Tr. vol. 4 of 4, 490, Ins. 7-25). She also testified that when their daughter was in school, she could possibly work more (Trial Tr. vol. 4 of 4, 491, Ins. 1-7) and that she had not looked for a full-time job (Trial Tr. vol. 4 of 4, 493, Ins. 5-6). The Wife's proposed parenting plan (Apx. pg. 236) proposed fewer overnights with the Husband than what had been ordered in the temporary hearing (Trial Tr. vol. 4 of 4, 491, Ins. 17-19).

The wife's financial affidavit dated July 20, 2018, with supporting paystubs (Apx. pgs. 196-199) was filed with the petition for divorce on August 10, 2018, at the 10<sup>th</sup> Circuit - Family Division – Brentwood. The affidavit specified an hourly rate of \$19.94 per hour under the additional information section. The wife's September 4, 2019, financial affidavit and pay stubs (Apx. pgs. 120-206) show an hourly increase to \$22.00 per hour or an hourly increase of \$2.06 over the year. Additionally, the wife's 2020 financial affidavit did not include child support of \$915.00 monthly in her calculations (Trial Tr. vol. 4 of 4, 494-495, Ins. 24-25 & 1-8). Based on the pay stubs included with the wife's 2018 and 2019 financial affidavits, there were multiple pay rates, depending on whether the wife worked a double, Weekends, Evenings, weekdays in charge/shift leader, weekends in charge/shift leader regular pay retroactive, holiday charge, holiday, weekend retroactive and holiday retroactive, which were not included in either financial affidavit. If the year-to-date earnings were compiled and divided by the number of months, it would equal a monthly income larger than represented on the financial affidavit provided in 2018 and 2019. The wife agreed that if she worked 40-hours per week at a base rate of \$22.00 an hour that she would make approximately \$880.00 per

week or about \$3,800.00 a month gross (Trial Tr. vol. 4 of 4, 492, Ins. 1-9), not including child support of \$914.00 per month, which would come to \$4,714.00 a month. This total does not consider any rate increases as highlighted above. The trial court stated in its final decree and order dated, November 10, 2020, that "The court declines to find the wife voluntarily underemployed *at this time* due to the impact on a wide range of careers due to the pandemic. It is also hard to impute income to her based on the state of the evidence on the issue". In the final order dated November 10, 2020, the circuit court stated that there would be a discrepancy of income of almost \$2,000.00 per month between the parties, but the wife's 2020 financial affidavit and paystubs (Apx. pgs. 311-314), showed a new base rate of pay at \$22.22 an hour. If the wife worked 40-hours it would result in \$3,848.50 which did not include the current child support payments of \$915.00 per the January 29, 2019, temporary order, which would total \$4,764.00 a month.

While the wife stated that Catholic Medical Center was experiencing financial issues due to the pandemic (Trial Tr. vol. 4 of 4, 544, Ins. 4-6) and freezing pay increases (Trial Tr. vol. 4 of 4, 544, Ins. 4-6), her pay stub ending in August of 2020, showed an increase in work hours. The local news sources at the time stated that the hospitals were furloughing clerical staff and stopping elective procedures to reduce costs.

The wife's 2020 financials submitted to the court contained a 2019 tax return (Apx. pgs. 215), where the Wife claimed a Head of Household tax exemption while paying her mother \$500.00 in monthly rent (Trial Tr. vol. 4 of 4, 422, In. 16). The Wife testified she is listed as a trustee under, "The Howard Family Trust" (Trial Tr. vol. 1 of 2, 93, Ins. 4-12). And that she would get the lake house where she resides with the daughter (Trial Tr. vol. 4 of 4, 507, Ins. 4-10).

The trial court further found that the Husband should provide health insurance for the wife for a period of three years which would result in a monthly value of

approximately \$427.00 a month, with half being paid by the husband and the other by his employer. Based on the husband's September 21, 2020, financial affidavit (Apx. pg. 313). The wife's 2019 Uniform Support Order (Apx. pg. 324). stated that the wife was not eligible for health benefits which was false (Trial Tr. 12, Ins. 7-25, January 4, 2019).

The trial court ordered the Husband to reimburse the wife her investment of \$2,300.00 in the Dunbarton property, which was her only investment in that property or the Vinton Street property (Trial Tr. vol. 1 of 2, 131 & 132, Ins. 25 & 1). The husband was also ordered to maintain life insurance of \$100,000.00 with the wife as beneficiary until the daughter reaches eighteen years of age. The husband must pay the Wife \$765.00 for the value of two firearms and relinquish the MCP firearm which the Wife will be obtaining monetary value for as well. The husband must also divide his American Funds Simple IRA based on the time the parties were married until the time the petition for divorce was filed according to the Hodgins Formula which only pertain to a pension, not a Simple IRA The Simple IRA was started in 2013 and has not had funds deposited into it since the Husband left his prior job at Northpoint Engineering, LLC in May of 2016 (Apx. pg. 306).

Both parties filed requests for finding of facts and rulings of law (Apx. pgs. 452 & 468). The court amended/clarified the residence of the daughter for school as being Hampstead and addressed the concerns of the parenting schedule as brought up by the Wife, altering the two-week schedule to begin at 6pm on Sunday in the narrative, but then providing a parenting plan changing the parenting schedule to begin on Sunday at 5pm until 8am Wednesday, then Wednesday at 8am to Friday at 8am, then Friday from 8am to Sunday at 5pm in the January 4, 2021 order. The schedule change completely altered the previously ordered parenting schedule from the November 10, 2020, order.

The wife signed up the daughter for gymnastics in 2018 without notifying the husband and provided the grandmother's name and address as the emergency contact

(Trial Tr. vol. 3 of 4, 229, Ins. 13-15). The wife' signed up the daughter for school again in 2020, without joint approval from the Husband (Trial Tr. vol. 4 of 4, 546, Ins. 10-12) which was against the January 29, 2019, temporary order. The order specifically allowed for enrollment in daycare only (Apx. pg. 105). Hampstead Central School begins at 9am and is located 29-34 minutes away from Manchester.

Both parties filed motions for reconsideration (Apx. pgs. 495 & 506) and objections to motions for reconsideration (Apx. pgs. 511 & 514).

The appeals followed.

### **SUMMARY OF ARGUMENT**

#### **Appellant Summary of Argument**

The trial court did not err as a matter of law by precluding the division of the husband's interest in the Dunbarton Property. Under applicable law, the property is owned by the Husband's parents, a third party. The purchase and debt for the property is assigned to Citizens Bank under a HELOC that list the Husband's parents as the responsible party for repayment. The Husband has no ownership interests until the parent's death as deed and title list them all as joint tenants with right of survivorship.

The trial court did not err as a matter of law as the record supports the unwillingness of the ife to obtain additional work hours and/or work, while taking into consideration that the 50/50 shared parenting time would decrease the wife's costs associated with childcare since the wife's mother can provide childcare and future housing options for the Wife. The increased parenting time for the husband will have a direct impact on his expenses for childcare, travel expenses related to school and future housing options.

The trial court did not err as a matter of law regarding the denial of the Wife's request for alimony. The record supports the denial of alimony because the Wife does not lack sufficient income or property to provide for her needs based on the standard of living, she enjoyed while with the husband. The husband has no ability to pay alimony.

The trial court did not err as a matter of law regarding the wife's Finding of Facts and Rulings of Law and her Request for Reconsideration. The the court addressed and/or clarified the husband's address in Manchester, the child's legal residence for school and revised the parenting schedule, removing three-day weekends as highlighted in the wife's Request for Reconsideration.

#### **Cross Appellant Summary of Argument**

The trial court erred as a matter of law by not allowing the Guardian ad Litem to attend the final hearings telephonically as required by statute. The Guardian ad Litem's services shall conclude upon the issuance of an order relieving her of her of services services or at the issuance of the final order.

The trial court committed an unsustainable exercise of discretion when it allowed the Wife's counsel to review the GAL files on the day of a hearing when the files were previously available for review at the GAL's office. This resulted in the wife's cousin who was subpoenaed, being released, and ultimately not showing up to testify during the September 23, 2020, hearing, a year later.

The trial court committed and unsustainable exercise of discretion when it denied the husband's three requests for additional parenting time with his daughter and the opportunity to enroll the daughter in school, allowing the wife to enroll the daughter in the Hampstead School District without a valid court order and further ordering the daughter's school residence to be with the Wife in Hampstead.



The trial court erred as a matter of law when it failed to consider the attempts of the wife to limit the husband's time with their daughter and the wife's attempt to minimize his role as a co-parent which were well documented throughout the course of the matter.

The trial court erred as a matter of law when it ordered the husband to relinquish a firearm to the wife, thus ignoring his Constitutional Rights under the State of New Hampshire and the United States and applicable state and federal law.

## ARGUMENT

### Appellant Questions Presented in Opening Brief

Question 1:

**Whether the trial court erred as a matter of law in interpreting RSA 458:16-a when it found that the statute precluded division of the husband's share of property owned by him and his parents.**

It is undisputed that the Husband's name is on the deed as a joint tenant with rights of survivorship for the Dunbarton, NH property. The joint tenancy denotes that the listed parties are co-owners that are entitled to the whole of the property (RSA 563:1, 1998, 1:1, eff. Jan. 1, 1999). Under joint tenancy, each owner has an undivided interest in the property and the full right to occupy and use all of it. Ownership interest does not transfer to the listed parties until one of the owners die and the other owners absorb the deceased owners' interest. The purpose of the Husband being added as a joint tenant was to facilitate work on the property for his parents due to his experience in construction and engineering. As the record indicates the Husband was to procure a construction loan to build a single-family

home with an in-law apartment for his parents to live in for the remainder of their life. Thus, reimbursing his parent for their investment, per their mutual agreement.

It is well documented throughout the case that the property was purchased prior to the marriage and was secured with a home equity line of credit (Apx. 351-359) obtained by the Husband's parents through Citizen's Bank based on the value of their home in Manchester, NH. This was not a marital home and neither the wife nor the husband occupied the property as it was uninhabitable. The husband and wife did not make payments towards the equity line or expenses associated with the property. Payments for real estate taxes and utilities were paid by the husband's parents and later paid with solar reimbursements and/or rental income as obtained from the abutters pasture lease (Apx. 425-442). At no time during the ownership has the husband had unilateral control or decision making when it came to what work was to be done on the property or monies spent.

The trial court cited two cases, IMO Muller and Muller, 164 N.H. 512 (2013) and IMO Mallett and Mallett, 163 N.H. 202 (2012) and RSA 490-D as reasons for precluding the Dunbarton, NH property from division. The Mallett case dealt with a married couple, in which the husband executed a promissory note to his parents on the marital home. In this case at hand, the debt associated with the property is associated with the HELOC obtained by the husband's parents, a third party and owed to Citizen's Bank. The husband's parents at the time of the trial were only paying interest on the HELOC which has not reduced their financial liability. Under RSA 490-D it clearly states that the Family Court can only divide property that is owned by one or both parties.

The appraised value as indicated by the wife's appraiser of \$145,000 leaves no equity in the property as the property was purchased for \$107,569.00 per the

HUD Settlement agreement (Apx. 355-356) and additional work/improvements were paid for by the husband's parents resulting in negative equity (Apx. 360-402).

The trial court followed the applicable statute and case law as it pertains to the division of third-party properties and ordered the wife be reimbursed her \$2,300.00 for stumping of the property which took place in in 2012, prior to the marriage (Apx. 418). The trial courts have broad discretion in determining matters of property distribution in final divorce decrees and will not be overturned absent an unsustainable exercise of discretion. IMO HAMPERS & HAMPERS, 154 N.H. 275, 284, 285, 911 A.2d 14 (2006) ...

Question 2:

**Whether the trial court erred as a matter of law when it found that the mother's gross monthly income was 52% of the father's, yet awarded child support which deviated from the child support guidelines in his favor?**

Under RSA 458-C:5, I, adjustments to the application of guideline support will be considered if raised by any party. During the January 2019 temporary hearing the court found that the wife could work more of a fulltime schedule and enroll the party's daughter in daycare. As of the September 23, 2020, nearly two years had passed, and the wife had not increased her hours closer to full time at Catholic Medical Center or sought additional employment.

The wife did not seek out childcare for the daughter to allow her to work more, nor agree to provide the father more parenting time with the daughter, which would have provided the wife more time to work. The unwillingness of the Wife to work more and/or obtain child care would qualify as a special circumstance under 458-C:5, I(j)

When questioned during the final hearings, the wife's financial affidavit was called into question, stating that if she worked 40-hours at a minimum hourly rate of \$22.00 that she would make \$880.00 per week or a little over \$3,800.00. These numbers did not consider that her 2020 pay rate had increase to 22.22 and that she had not included any child support in her calculation. Based on her 2020 financial affidavit her gross pay was listed at \$2,917.51, averaging 24-hours per week per her included pay stubs. The husband's income as stated on his 2020 affidavit showed a monthly gross of \$5,615.00 which would equate to the 52% difference or the discrepancy in income of \$2,000 per month. That discrepancy did not consider the Wife working more hours, closer to full time or the child support obligation of \$434.00 per month which would reduce the discrepancy in income.

Under RSA 458-C:5,1(d) it is reasonable to assume that the Husband who works full time will incur more costs associated with the 50/50 parenting schedule due to childcare.

It is also reasonable to assume that under RSA 458-C:5,1(j) that the husband's employment will be affected by a reduction in hours associated with the travel time getting the daughter to and from Manchester to Hampstead for school which starts at 9am.

It is not disputed that the trial court must provide a written finding as to why a special circumstance, pursuant to RSA 458-C:5 justifies an adjustment from the child support guidelines to avoid an unjust or inappropriate result. IMO Forcier & Mueller, 152 N.H. 463, 465 (2005). Barring the need for written findings, the court must not disturb the trial courts rulings regarding child support without confirming an unsustainable exercise of discretion or an error of law. IMO Laura & Scott, 161 N.H. 333, 335 (2010). The record will establish an objective basis sufficient to sustain the decision made by the trial court. State v. Lambert, 147 N.H. 295, 296 (2001).

Question 3:

**Whether the trial court erred as a matter of law when it denied wife's request for alimony without providing a basis as required by RSA 458:19-a, VI(b)?**

The wife worked on average of 32-hours five days a week for Option Care in Bedford and per diem for Catholic Medical Center on weekends up until February of 2017. After February 2017, the wife worked solely for Catholic Medical Center in Manchester. During the January 2019 temporary hearing the court found that the wife could work more of a fulltime schedule and enroll the party's daughter in daycare. As of the September 23, 2020, nearly two years had passed, and the wife had not increased her hours closer to full time, with an average of 24 hours per week (Apx. 211-214).

As with any hospital, they offer shifts throughout a twenty-four-hour period, seven days a week. This provides flexibility and the opportunity to make additional income with varying payment differentials.

The purpose of alimony is to allow both parties to maintain a reasonable standard of living per RSA 458:19-a, I. Under RSA 458:19-a, I(a), alimony is only ordered if the trial court finds the party in need lacks sufficient income, property or both, which includes property apportioned by the trial court during property division, taking into account the marital lifestyle. Under RSA 458:19-a, I(b) a party in need is unable to be self-supporting at a standard of living that meets reasonable needs through appropriate employment.

The Wife has been at Catholic Medical Center since 2012 with 20-years of experience. She is well liked by her employers, and they have offered her flexible hours and provided yearly raises throughout her time with them.

While married, the husband and wife lived in a 700-sf apartment on the second floor of a two-family home owned by the Husband and his sister. Currently

the Wife and daughter reside with the wife's parent in their lake house in Hampstead. The wife and daughter have separate bedrooms and their own bathroom, all which is located over the garage and can be closed off to the rest of the upstairs. The wife also testified on September 29, 2020, that her mother had duplexes that she owned with tenants at will and that her mother would buy an additional duplex if necessary to provide the wife and daughter housing.

The husband currently resides with his parents in a 3-bedroom ranch and is sleeping on an air mattress in the living room, with the daughter occupying his old bedroom. Due to health problems with his parent's, they are sleeping separately in the remaining two bedrooms. The husband has significant debt which was incurred prior to the petition as highlighted in his 2018 financial affidavit for divorce and substantial debt as incurred during the ongoing proceedings as highlighted in his 2020 financial affidavit which included pay stubs (Trial Tr. Vol. 3 of 4, 296, 283 & 284, Ins. 11-21 & 10-25 & 1-8) and (Trial Tr. Vol. 4 of 4, 395, Ins. 9-17).

The Final order required the Husband to pay for the Wife's health insurance for a period of three years, provide a little over \$3,000.00 in cash for reimbursement of funds spent on the Dunbarton property and a firearm, which she also was allotted to receive and to split his simple IRA based on the time they married and the time the petition for divorce was filled, resulting in approximately \$7,000.00.

It is not disputed that the trial court must provide a written finding as to why the trial court denied alimony, pursuant to RSA 458:19-a,VI(b)(1). The trial court has broad discretion to determine and order the payment of alimony. IMO Nassar & Nassar, 156 N.H. 769, 772 (2008).

Question 4:

**Whether the trial court erred as a matter of law when it failed to state sufficient findings to support its decisions as required by RSA 491:15, while declining to review wife's proposed findings and rulings?**

It is not disputed that a court of equity must provide a written finding to support its decisions if they have concurrent jurisdiction per RSA 490-D:14. RSA 491:15 specifically pertains to the Superior Court and Justice in matters of equity under RSA 491:14.

The court addressed and/or clarified the husband's address in Manchester, the child's legal residence for school and revised the parenting schedule, removing three-day weekends as highlighted in the wife's Request for Reconsideration.

### **Cross-Appellant Questions**

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?**

A telephone hearing was scheduled on June 30, 2020, with the wife's and husband's counsels, along with the GAL to discuss the final hearings and scheduling. During the hearing the GAL, stated that she would be available on September 23, 29 and 30 and would not charge to be in attendance telephonically. The trial court ordered that the GAL would be in attendance telephonically for the in-person hearing on the 23<sup>rd</sup>. The trial court did not notify the parties of the dismissal of the GAL, but merely asked if everyone agreed that the GAL had completed her testimony.

Under RSA 461-A:16, I-b, the Guardian ad Litem may participate in hearings and conferences by telephone, except for evidentiary hearings on parenting. There was no issue order by the trial court concluding the services of the GAL, nor did the GAL file a motion for withdrawal. Under RSA 461-A:16(VI), the services of the Guardian ad Litem shall conclude upon the issuance of the final order.

Further testimony could have been obtained from the Guardian ad Litem regarding the statements made by the husband and wife during the final hearings as the last day of the hearings was available for additional testimony, if either party had questions related to the statements made.

The trial court erred as a matter of law by dismissing the GAL without orders or issuance of the final order.

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 with the Husband per RSA 461-A:6?**

The trial court committed an unsustainable exercise of discretion when it allowed the wife's counsel to review the GAL files on the day of a hearing when the files were available for review at the GAL's Office prior. This resulted in the wife's cousin who was subpoenaed, being released, and ultimately not showing up to testify during the September 23, 2020, hearing, a year later. The trial court did not address the inconveniences to the witnesses from either party, which precluded additional testimony that would have provided the court with deeper understanding of the matters before it in-order-to comply with RSA 461-A:6. The witnesses were provided to the trial court prior to the hearing.



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 husband filed an emergency Ex-parte motion in September of 2018, requesting parenting time with his daughter after numerous attempts were made through correspondence with the wife and counsel. The trial court issued an order reducing his proposed parenting time to one overnight every Tuesday at 5pm to 8am Wednesday morning and every other weekend from Friday at 5pm. The order stated that the court finds the husband has been a loving and engaged parent who is very attentive to his daughter's needs. The daughter should have the benefit of spending time with each parent and the husband should not be denied parenting time or have his time restricted due to any off-hand remark about his ability to keep the daughter beyond the time stated by the wife. The court also did not find evidence to restrict the Husband's time to just one overnight and every other weekend.

During the temporary hearing the court stated that the motion for guardian ad litem, as requested in a motion from the husband, had been granted. The temporary order was issue that stated the following: "The court put in place a parenting schedule after a hearing on an *Ex-Parte* in September 2018. The court finds that schedule, or a schedule with a slight modification, shall remain until such time as the GAL can conduct an investigation or upon further agreements of the parties". The temporary order was in direct conflict with the preceding *Ex-parte* order that the daughter should have the benefit of spending time with each parent and not be restricted.

Under RSA 461-A:4 the trial court may develop a parenting plan and further details the provisions of the plan under RSA 461-A:4,II. RSA 461-A:4,IV, specifically states that if the parents have joint decision-making responsibility that the parenting plan shall include the legal residence of each parent. The trial court did not issue a parenting plan as highlighted on the temporary decree, nor detail the residence for the daughter regarding schooling or state joint decision making as previously stated in the *Ex-parte* order. By not providing a parenting plan, the trial court allowed the Wife to sign the daughter up for school in Hampstead on two different occasions.

The husband has a fundamental right as a parent under the Fourteenth Amendment to oversee the care, custody, and control of the child. *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000), The Fourteenth Amendment of the U.S. Constitution also affords equal protection of those rights under section 1. The equal protection clause of the Fourteenth Amendment which prohibits the states from denying any person within its jurisdiction the equal protection of the law based on race, sexual orientation, or gender.

The husband submitted three separate motions requesting motions for expedited hearing regarding parenting responsibilities, schooling, and residential responsibilities schedule. Each of these were pushed off until the next hearing with no written findings or denial without prejudice.

The trial court committed an unsustainable exercise of discretion by not addressing the motions as submitted and further denying the husband his rights as a parent for over two years and after the GAL report had been submitted on September 10, 2019, which was in direct conflict with the temporary order as stated. The court allowed the wife to violate the court order regarding joint decision making on two separate occasions.

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.**

It is well documented throughout this matter that the wife sought to limit the husband's time and interaction with the daughter by her actions, proposed parenting plan and comments. The wife sought to reduce the already limited time the husband was afforded under the *Ex-parte* order. The GAL noted in her report the concern that the wife and her family would minimize the husband's role as the father. The GAL had concerns which were expressed in her report and testimony about the wife's ability to co-parent affectively and how negatively she viewed the Husband. The wife was unable to name an occasion where the husband and wife co-parented effectively contrary to the thoughts expressed by the husband, The GAL referred to the deliberate actions of the wife to hide information from the husband regarding the daughter's dental appointments and changing appointments. After review of some text regarding the dental appointments it raised a strong concern about the wife's willingness and ability to co-parent, which could be seen as interference in the husband's parenting rights. The GAL expressed concerns regarding the potential that a medical provider or professional might not have a complete picture of the child's needs or welfare. The GAL raised concern about the wife's responses and manner of thinking that may impact the interaction for the husband and wife. It was noted that the process for school enrollment was started and that the husband's information was not provided, only the wife's contact information. One of the final noted recommendations from the GAL was that she did not feel that the Hampstead school setting would be an equitable parenting

environment for the parents. It should be noted that the GAL's background and education, consists of a degree in law, a Bachelor's degree in Psychology, a Bachelor's degree in Education and a Master's degree in counseling. This professional training and background allowed her the ability to assess the needs of the daughter in greater depth, regarding the daughters feeling and schooling, while observing the actions of the wife and her responses to situations.

Under RSA 461-A:6 the determination of parental rights shall be guided by the best interest of the child. The trial court erred as a matter of law when it failed to accurately characterize the wife's deliberate actions and intention against the Husband. Specifically the trial court erred when presenting its finding under RSA 461-A:6, I(e), RSA 461-A:6, I(f), RSA 461-A:6, I(g) and RSA 461-A:6, I(h), by providing equal rate and or rating to both the husband and wife. In addition, the trial court altered the November 10, 2020, parenting plan changing the parenting exchange times to the morning which is in direct conflict with the Hamstead Central School start time.

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 US Supreme Court has held that the Second Amendment protects an individual's right to possess a firearm unconnected with a militia and to use that firearm for any lawful purpose. *District of Columbia v. Heller*, 554 U.S. 570 (2008) The Justices went further and concluded that the Fourteenth Amendment's Due Process Clause incorporated the Second Amendment right recognized in *Heller*. *Pp. 10-11, 33-44*

This decision was more recently decided McDonald v. Chicago, 561 U.S. 742 (2010)

Under RSA 458:16-a,I, property settlement shall include all tangible and intangible property and assets, real or personal, belonging to either or both parties. The husband asserts that under this applicable statute that any item considered an asset can be included in the property settlement, but the statutory scheme must be reviewed in its entirety. N.H. Right to Life v. Dir., N.H. Charitable Trusts Unit, 169 N.H. 95, 103, 143 A.3d 829 (2016).

One does not have to look far to see that under the state statutes that firearms are highly regulated and a right which is protected. There is a common statutory theme that is reiterated repeatedly in the State of New Hampshire Statutes as well as the U.S. Code. These statutes preclude the removal of firearms from an individual unless they have committed a crime or have been adjudicated for mental illness. RSA 159:3-A,I, relates to crimes and a removal of rights from individuals to own or possess firearms.

Under RSA 173-B:5X(a), an individual under a protective order has the right to request a motion to the trial court for the return of any and all firearms held by a law enforcement agency prior to the expiration of the protective order. If the individual under the protective order is found not to be subject to any state or federal law or court order precluding the ownership or possession of firearms, the court order directs the law enforcement agency to return the requested firearms to the defendant of such order. Under RSA 650-C:1,I, it specifically states that nothing in this RSA shall reduce or limit any existing rights to purchase and own firearms .

RSA 159:26,I allows the State of NH to have authority and jurisdiction over the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms as long as it consistent with federal law.

Under 42 U.S. Code § 5207(c)(1), Any individual aggrieved by a violation of this section may seek relief in an action at law, suit in equity, or other proper proceeding for redress against any person who subjects such individual or causes such individual to be

subjected to the deprivation of any of the rights, privileges, or immunities secured by this section. 42 U.S. Code § 5207(c)(2), goes on further to state, In addition to any existing remedy in law or equity, under any law, an individual aggrieved by the seizure or confiscation of a firearm in violation of this section may bring an action for return of such firearm in the United States district court in the district in which that individual resides or in which such firearm may be found.

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.

The trial court erred as a matter of law concerning the division of marital property when it included that the husband's firearm should be given to the Wife in addition to the cash value. The husband's protected rights to own firearms under the N.H. State Constitution, U.S. Constitution and 14<sup>th</sup> Amendment Due Process Clause precludes the trial court from infringing on his 2<sup>nd</sup> Amendment right.

### **CONCLUSION**

Based on the information and arguments provided herein, the final orders regarding, dismissal of the Guardian ad Litem without an order and prior to Final Orders, Legal Residence of the child for school attendance, witness testimony and property division the matter must be remanded for further consideration by the trial court.

REQUEST FOR ORAL ARGUMENT

The Cross Appellant, Matthew Routhier, respectfully requests to be heard on oral argument on this matter. It is estimated that the time required for the Cross Appellants' oral argument will be fifteen minutes

09-16-2021

DATE:

*Matthew R. Routhier*

Matthew Routhier, Pro Se  
244 Gray Street  
Manchester, NH 03103  
603-759-5773

**CERTIFICATION**

I hereby certify that the foregoing brief of Cross Appellant contains 10,820 words exclusive of pages containing the table of contents, tables of citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters.

09-16-2021

DATE:

*Matthew R. Routhier*

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**CERTIFICATE OF SERVICE**

I, hereby certify that I have this date forwarded a copy through the Court's Electronic Filing System of the foregoing to:

Keri J. Marshall, Esq. Marshall Law Office, PLLC 47 Depot Road East Kingston, NH 03827	Deborah Mulcrone, Esq. Mulcrone Law PLLC 37 Salmon Street Manchester, NH 03104	Kevin G. Collimore, Esq. CullenCollimore, PLLC 10 East Pearl Street Nashua, NH 03060
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09-16-2021

DATE:

*Matthew R. Routhier*

Matthew Routhier, Pro Se  
244 Gray Street  
Manchester, NH 03103  
603-759-5773



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

6th Circuit - Family Division - Hooksett  
101 Merrimack Street  
Hooksett NH 03106

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

**NOTICE OF DECISION**

**PATRICIA M. LAFRANCE, ESQ  
THE BLACK LAW GROUP LLC  
61 SPIT BROOK RD STE 407  
NASHUA NH 03060**

Case Name: **In the Matter of Matthew Routhier and Kelly Routhier**  
Case Number: **647-2018-DM-00111**

Enclosed please find a copy of the Court's Order dated December 31, 2020 relative to:

**Order  
Parenting Plan**

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

This matter will become final on 02/05/2021 known as the Judgment Day, if no objections or appeals are filed. Objections must be filed with this court within 10 days of the date of the Notice of Decision, appeals to the Supreme Court within 30 days.

January 04, 2021

Nancy E. Ringland  
Clerk of Court

(647292)

C: Keri J. Marshall, ESQ; Deborah Mulcrone; Kevin G. Collimore, ESQ

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

Merrimack County

6<sup>th</sup> Circuit – Family Division -  
Hooksett

**MATTHEW ROUTHIER and KELLY ANN ROUTHIER**

**Docket # 647-2018-DM-0111**

**ORDER**

Each party has filed requests for reconsideration or clarification. The court will address the issues in which clarification or reconsideration is granted. The court denies all other requests not addressed specifically.

**Matthew's address:**

Matthew pointed out that his address in the final Parenting Plan (index #103) is incorrect. The court mistakenly used a template proposed final Parenting Plan he submitted for the final hearing. The court did not realize a mistake was made and his address will be corrected.

Ava is ordered to attend school in the Hampstead School District where her mother Kelly lives. That inconsistency between the Parenting Plan and narrative Order will also be corrected.

The schedule shall also be amended to reflect that exchange times end/begin on Sunday at 6pm and not Monday.

The court is also adjusting the schedule so as to make consistent times/dates for the Christmas and New Year's holiday periods. The court understands Kelly disagrees with this schedule but she will have the advantage of the schedule every other year. That is only fair.

The court is also adding that grandparents can assist in the exchanges of Ava if the parents are precluded from attending due to work or another obligation that cannot be rescheduled.

A new Parenting Plan will issue correcting these mistakes.

**Guns:**

Matthew expressed concern in regard the court's award of firearms to each of the parties. He argued Kelly has not been through the extensive background check that he has and he is uncomfortable with providing her with firearms. The court finds there is no requirement for Kelly Ann to submit to a background check for the purposes of being awarded certain firearms pertaining to the Final Decree and Order.

The court stands by the amount in the final Order in respect to the difference between the firearms awarded to each party.

Findings and rulings: Kelly Ann asked the court to reconsider and review her proposed findings and rulings. Making a finding on a specific request is not required if the court finds the narrative or other orders amply support the decisions made. The court therefore declines to review the findings and rulings submitted again stating they are voluminous. Despite the fact there is no rule limiting the number of requests, the court has discretion in this area. See Harrington v. Town of Warner, 152 N.H. 74 (2005) and Geiss v. Bourassa, 140 N.H. 629 (1996).

**So Ordered.**

12/31/2016

Date



Lucinda V. Sadler, Judge

# THE STATE OF NEW HAMPSHIRE

## JUDICIAL BRANCH

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

Court Name: 6th Circuit - Family Division - Hooksett

Case Name: In the Matter of Matthew Routhier and Kelly Routhier

Case Number: 647-2018-DM-00111

### PARENTING PLAN

This parenting plan is: **(Choose one)**

Agreed upon  Proposed by \_\_\_\_\_  Developed by Court  
(parent's name)

This parenting plan is: **(Choose one)**

Temporary: The completed paragraphs apply until the case is concluded. If you are requesting a temporary order on parenting issues, you should include as many of these parenting plan topics as you will need to carry your family through until all parenting issues are resolved.

Final: All completed paragraphs shall be incorporated in the Court's final order.

Changing a prior final Parenting Plan or a prior permanent order on parental rights and responsibilities.

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

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

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

- (a) Support frequent and continuing contact between each child and both parents.
- (b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.
- (c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, unless there is evidence of domestic violence, or child abuse/neglect.
- (d) Grant parents and courts the widest discretion in developing a parenting plan.
- (e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.

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

This parenting plan is for the following child born to, or adopted by, the parties:

Full Name

Date of Birth

Ava Marie Routhier

March 22, 2015

**A. Decision-Making Responsibility:**

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

(a) Joint Decision-Making: Both parents shall share in the responsibility for making major decisions about the child.

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

Legal Residence of: Matthew Routhier (parent's name)

244 Gray Street Manchester NH 03103

Legal Residence of: Kelly Ann Routhier (parent's name)

20 Abbie Lane, Hampstead, NH 03841

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

3. Other Provisions: \_\_\_\_\_

**B. Residential Responsibility & Parenting Schedule:**

1. Routine schedule:

(a) Set forth the detailed parenting schedule for the child specifying periods when each parent has residential responsibility or non-residential parenting time (such as dinners or other parenting time that is not overnight).

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

Week One:

With Matthew-Sunday at 5pm to Wednesday at 8am

With Kelly-Wednesday at 8am to Friday at 8am

With Matthew from Friday at 8am to Sunday at 5pm

Week Two:

With Kelly-Sunday at 5pm to Wednesday at 8am

With Matthew-Wednesday at 8am until Friday at 8am

With Kelly-Friday at 8am until Sunday at 5pm

2. Holiday and Birthday Planning:

(a) No holiday and birthday schedule shall apply. The routine schedule set forth above shall apply.

(b) Holiday and birthday parenting time shall be as the parties agree.

(c) The holidays and birthday(s) listed below should be shared as described. Specify start and end times and days/dates as necessary. (For example, Thanksgiving: One parent—even years, other parent—odd years, starting on the Wednesday prior to Thanksgiving at 6pm, ending the Friday after Thanksgiving at 6pm). Parenting time on holidays and birthdays which are not checked and described shall be according to the routine schedule set forth above.

Mother's Day \_\_\_\_\_

Father's Day \_\_\_\_\_

July 4<sup>th</sup> \_\_\_\_\_

Thanksgiving \_\_\_\_\_

Christmas Eve \_\_\_\_\_

Christmas Day \_\_\_\_\_

Child's Birthday(s) \_\_\_\_\_

One Parent's Birthday \_\_\_\_\_

Other Parent's Birthday \_\_\_\_\_

Other religious, civil and family celebrated special occasions:

Easter—whoever has Ava for that weekend will have her until noon on Easter Sunday. Then the other parent shall have Ava from noon continuing into the regular schedule.

Halloween-Kelly even years, Matthew odd years: 3 hours on chosen day, with notice to be given 10 days in advance. Other parent to provide notice 3 days after of their 3 hours.

New Years Eve/Day: Matthew even years, Kelly odd: 9am on 12/31 to 2pm on 1/1

3. Three-day weekends:

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

(b) The parent exercising parenting time on the weekend before a Monday holiday shall have parenting time on that Monday holiday.

(c) The three-day weekends listed below should be shared as listed and described. Parenting time on three-day weekends which are not checked and described shall be according to the routine schedule set forth above.

M. L. King Jr. Civil Rights Day \_\_\_\_\_

Presidents' Day \_\_\_\_\_

Memorial Day \_\_\_\_\_

- Labor Day \_\_\_\_\_  
 Columbus Day \_\_\_\_\_  
 Other \_\_\_\_\_

4. Vacation Schedule:

(a) December Vacation:

(i.) No December vacation schedule shall apply. The routine schedule set forth above shall apply.

(ii.) The parent exercising parenting time with the child on Christmas Eve (as outlined above) shall have the following additional parenting time with the child over the December vacation:

The parent exercising parenting time with Ava on Christmas Day shall have the following additional parenting time from December 26<sup>th</sup> at 7am until January 1 at 6pm

The parent exercising parenting time with the child on Christmas Day (as outlined above) shall have the following additional parenting time with the child over December vacation:

(iii.) The above choices do not fit this parenting situation. Instead, the residential schedule for the child's December vacation shall be as follows:

(b) February, April, and Summer Vacations. Specify the day of the week vacation starts and ends, if necessary.

(i.) No February, April, or summer vacation schedule shall apply. The routine schedule set forth above shall apply.

(ii.) The child shall reside with \_\_\_\_\_ in even years, Kelly in odd years (parent's name) during February vacation, except for the following days and times when the child shall be with the other parent:

The child shall reside with \_\_\_\_\_ in even years, with Matthew in odd years (parent's name) during April vacation, except for the following days and times when the child shall be with the other parent:

Again vacation times are considered Saturday at 9am until Saturday at 6pm

The child's summer residential schedule shall be as follows:

Two non-consecutive weeks for each parent with Ava. Weeks considered Saturday at 9am until Saturday at 6pm. Parents select their dates by March 1 each year with Matthew having preference in even years and Kelly in odd years

(iii.) The above choices do not fit this parenting situation. Instead, the residential schedule for the child's February, April, and summer vacations shall be as follows:

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(c) Other Vacations - describe the schedules for any other vacations:

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5. Supervised Parenting Time:

(a) Not applicable.

(b) The residential schedule is subject to the restrictions or limitations set out as follows:

(i.) All parenting time of \_\_\_\_\_ (parent's name(s)) shall be at a supervised visitation center that uses a metal detection device and has trained security personnel onsite.

(ii.) Other:

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6. Other Parental Responsibilities:

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

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

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

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

(b) If a parent requires child care by some person who does not reside in his or her residence, for a period reasonably expected to last longer than 5 hours, then the other parent shall be offered the opportunity to parent the child. This section does not apply to regularly scheduled day care.

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

(d) Each parent shall be responsible for ensuring that the child attend regularly scheduled activities, including but not limited to sports and extra-curricular activities, while the child are with that parent.

(e) As the child get older, their individual interests may impact the parenting schedule set forth in this parenting plan. Each parent shall be flexible in making reasonable adjustments to the parenting schedule as the needs and interests of their maturing children require.

(f) Other Parenting Responsibilities:

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**C. Legal Residence of a Child for School Attendance:**

1. The parties agree that, as allowed by RSA 193:12, II(a)(2) their child's legal residence for school attendance purposes shall be \_\_\_\_\_ (parent's name) residence. See the attached Agreement and Parenting Plan Order Designating School District (NHJB 2763-F). Each parent shall furnish a copy of the Agreement to the school district in which the parent resides.

2. The court orders that the child shall attend school in the \_\_\_\_\_ school district where parent \_\_\_\_\_ (parent's name) resides.

3. The child shall attend school in the school district where the parent with sole residential responsibility resides. Under this plan, that parent is \_\_\_\_\_

4. Other provisions regarding school:

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**D. Transportation and Exchange of the Child:**

1. Transportation arrangements for the child between parents shall be as follows: Halfway point between residences. The grandparents can assist in transportation as required based on availability of the parents (if any work or other obligations that cannot be rescheduled prevent them from attending the exchange).

2. Unless both parents agree upon a different meeting place, the exchange of the child shall be at:

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3. Transportation costs shall be shared as follows:

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4. Other: \_\_\_\_\_

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

Unless there is a court order stating otherwise:

Both parents have equal rights to inspect and receive the child's school records, and both parents are encouraged to consult with school staff concerning the child's welfare and education. Both parents are encouraged to participate in and attend the child's school events.

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

Both parents have equal rights to consult with any person who may provide care or treatment for

the child and to inspect and receive the child's medical, dental or psychological records, subject to other statutory restrictions.

Each parent has a continuing responsibility to provide a residential, mailing, or contact address and contact telephone number to the other parent.

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

**1. Parent-Child Telephone Contact:**

The children shall be given privacy during their conversations with either parent. While the child reside with one parent, the other parent shall be permitted to speak by telephone with the child:

- (a) At reasonable times.
- (b) At the following times only: nightly at 7:30pm
- (c) Other: to the other parent and can be made through FaceTime or similar video chat application

**2. Parent-Child Written Communication:**

- (a) Both parents and child shall have the right to communicate in writing or by e-mailing during reasonable hours without interference or monitoring by the other parent.
- (b) Specific agreements/orders regarding written or e-mail access between child and parent(s):  
\_\_\_\_\_  
\_\_\_\_\_

**F. Relocation of a Residence of a Child:**

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

2. This parenting plan shall expressly govern the relocation issue as follows:  
In addition to the provisions of RSA 461-A:12, this plan shall include the following relocation details:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**G. Procedure for Review and Adjustment of Parenting Plan:**

1. The parents shall meet as set out below to review this parenting plan and the well-being of the child. Any agreed-on changes shall be written down and shall include the grounds for modification from those listed in RSA 461-A:11. (Found at: <http://www.gencourt.state.nh.us/rsa/html/XLIII/461-A/461-A-11.htm>) Any agreement shall be signed by both and filed with the court. (Each should keep a copy.) Choose (a), (b), (c), or (d).

(a) Meetings shall be in \_\_\_\_\_ (month).

(b) Meetings shall be yearly.

(c) Meetings shall be every 2 years.

(d) Meetings shall not be on a set schedule but shall be as often as necessary for the benefit of the child.

2. Other: \_\_\_\_\_

**H. Method(s) for Resolving Disputes:**

1. In the future, if the parents have a disagreement about parenting issues, the parents shall try to work it out in the best interest of the child. They are encouraged to seek the help of a neutral third party to assist them. If the parents are unable to work out the disagreement they may ask the court to decide the issue.

2. Other: \_\_\_\_\_

**I. Other parenting agreements important to the parents or child are listed below or are set forth in the \_\_\_\_\_ number of attached pages.**

**So Ordered:**

Date

12/31/2016

Signature of Judge



LUCINDA V. SADLER

Printed Name of Judge

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

6th Circuit - Family Division - Hooksett  
101 Merrimack Street  
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**NOTICE OF DECISION**

**PATRICIA M. LAFRANCE, ESQ  
THE BLACK LAW GROUP LLC  
61 SPIT BROOK RD STE 407  
NASHUA NH 03060**

Case Name: **In the Matter of Matthew Routhier and Kelly Routhier**  
Case Number: **647-2018-DM-00111**

Enclosed please find a copy of the Court's Order dated November 10, 2020 relative to:

**Final Decree and Order  
Parenting Plan  
Uniform Support Order  
Child Support Guidelines Worksheet**

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

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

This matter will become final on 12/11/2020 known as the Judgment Day, if no objections or appeals are filed. Objections must be filed with this court within 10 days of the date of the Notice of Decision, appeals to the Supreme Court within 30 days.

November 10, 2020

Nancy E. Ringland  
Clerk of Court

(6471012)

C: Keri J. Marshall, ESQ; Deborah Mulcrone

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

6th Circuit - Family Division - Hooksett  
101 Merrimack Street  
Hooksett NH 03106

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

**NOTICE REGARDING COMPLETION OF CASE**

**PATRICIA M. LAFRANCE, ESQ  
THE BLACK LAW GROUP LLC  
61 SPIT BROOK RD STE 407  
NASHUA NH 03060**

Case Name: **In the Matter of Matthew Routhier and Kelly Routhier**  
Case Number: **647-2018-DM-00111**

Before your case can be completed, the following documents must be on file with this office. These documents may be printed from the court's website or picked up at the Family Division.

- Petitioner's Financial Affidavit
- Respondent's Financial Affidavit
- Child Support Guideline Worksheet
- Uniform Support Order
- Petitioner's Certificate of Attendance at Child Impact Program (CIP)
- Respondent's Certificate of Attendance at Child Impact Program (CIP)
- Typewritten/Word Processed Certificate of Divorce (Vital Statistics Report)
- Affidavit of Non-Cohabitation
- Affidavit of Military Service
- Affidavit of Impossibility
- Final Parenting Plan
- Final Decree
- Other \_\_\_\_\_

November 10, 2020

(6471012)

C: Keri J. Marshall, ESQ

  
\_\_\_\_\_  
Nancy E. Ringland, Clerk of Court

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

Merrimack County

6<sup>th</sup> Circuit – Family Division -  
Hooksett

**MATTHEW ROUTHIER and KELLY ROUTHIER**

**Docket # 647-2018-DM-00111**

**FINAL DECREE and ORDER**

The parties and counsel appeared for a final hearing in the above captioned divorce over the course of several days<sup>1</sup>. The GAL appeared for part of the final hearing and testified regarding the best interest of the parties' daughter in respect to parenting rights and responsibilities. Matthew presented two witnesses as well as his own testimony<sup>2</sup>: his father Guy Routhier and his sister Ann Crooker. Kelly presented one additional witness beside her testimony: real estate appraiser Louis Manias. After a review of the credible evidence, the court finds and rules as follows in regard to the items necessary for this Final Decree and Order.

**Brief Background:**

The parties met in 2003 and began living together in October 2004. Matthew purchased a property on Vinton Street in Manchester with his sister Judith earlier in 2004<sup>3</sup> and the parties occupied that property before and after their marriage. After moving in together the parties kept their finances separate; each paying certain items. The Vinton Street property was sold in 2018 with Matthew, Kelly and Judith splitting the profits. Matthew and Kelly split one-half and Judith received her half.

The parties married in October 2013 in Sanbornton, NH.<sup>4</sup> Their daughter Ava was born in March 2015. Kelly experienced serious complications after Ava's birth and was transferred to the ICU for 48 hours. She remained in the hospital for about a week after Ava's delivery. When Ava was about 5 weeks old she was acting fussy and not eating properly so the parties sought medical advice. After two visits to the doctor it was discovered Ava suffered from a heart issue. Luckily at this time Ava is doing very well.

**Type of Case:**

This is a divorce case. The 6<sup>th</sup> Circuit Court-Family Division-Hooksett received Matthew's Petition for Divorce on July 31, 2018 and it was entered in August 2018<sup>5</sup>. The court finds this to be a long term

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<sup>1</sup> The days were conducted in person at the courthouse on 9/11/2019, 9/17/2019, 9/25/2019, 9/23/2020 and 9/29/2020. The continuation of the hearing was affected by the COVID restrictions in place.

<sup>2</sup> Matthew's testimony was bi-furcated to accommodate testimony from the GAL.

<sup>3</sup> The deed to Vinton Street noted Matthew and Judith held the property as joint tenants with right of survivorship.

<sup>4</sup> See Petition for Divorce at index #1.

<sup>5</sup> The Petition was entered in August

marriage. As such an approximately equal division of the marital estate is deemed equitable barring any special circumstances.<sup>6</sup> Not only had the parties been married almost five years prior to the filing of the Petition(which the court determines to be long term) but the court also considers the extended amount of time the parties lived together prior to the actual marriage. While the court recognizes the parties kept separate accounts for their finances, they shared expenses of their life together, lived together as a married couple would, planned for their future together and invested time, energy and funds into the acquisition of assets. The court finds consideration of the length of pre-marital cohabitation to be relevant to the division of the limited assets in the divorce under the applicable statute.<sup>7</sup>

Matthew alleged fault grounds in his Petition for Divorce: treatment by Kelly as to seriously injure his health or reason.<sup>8</sup> The court does not find evidence sufficient to sustain fault as the grounds for the divorce. Kelly received actual notice of the Petition for Divorce on August 21, 2018 when she picked up the service packet at the courthouse.<sup>9</sup> Before Matthew's divorce Petition was entered, Kelly filed a Petition for Divorce in the 10<sup>th</sup> Circuit Court-Family Division in Brentwood on August 10, 2018 which was entered on August 13, 2018.<sup>10</sup> Kelly's case was transferred to Hooksett and consolidated with the current case. In her Petition, Kelly reserved alleging fault grounds and asked for a divorce based on irreconcilable differences.

Based on the evidence a decree of divorce is granted to Matthew based on irreconcilable differences that have caused the irremediable breakdown of the marriage.

#### **Parenting Plan:**

As noted above Ava was born in March 2015. Upon her release from the hospital she lived with her parents at the Vinton Street home until the home was sold in 2018. After the Vinton Street home sold the parties physically separated: Matthew moved into his parents' home on Gray Street in Manchester while Ava and Kelly moved in with the maternal grandmother and step-grandfather in Hampstead. Matthew was invited to live with his family in Hampstead but he would not be able to bring his dog as Kelly's mother Lorrie is highly allergic. Matthew opted to live with his parents and the dogs until the family could be reunited. Matthew obtained a residence in Hooksett so Kelly and Ava could live with him and they joined him but soon thereafter Kelly moved out and the parties separated for good. Kelly returned to her family in Hampstead and Matthew returned to his family in Manchester. They each then filed for divorce.

In September 2018 Matthew filed an *Ex-Parte* Motion<sup>11</sup> seeking orders regarding Ava. Matthew alleged Kelly suffered mental instability, she removed Ava from the home "against his wishes", he had been prevented by Lorrie from contacting Ava and she limited his physical contact with his daughter, Ava exhibited concerning behavior during his time with her and he believed Ava was being emotionally harmed by the situation. The court issued an *Ex-Parte* Order granting Matthew parenting time on a set schedule until a hearing could be held.<sup>12</sup> Kelly filed an Objection<sup>13</sup> to the Motion. After a hearing on the

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<sup>6</sup> See NH RSA 458:16-A II

<sup>7</sup> See NH RSA 458:16-a and see Munson and Beal, 169 N.H. 274 (2016).

<sup>8</sup> See NH RSA 458: 7 V

<sup>9</sup> Index #6

<sup>10</sup> See docket #618-2018-DM-338

<sup>11</sup> Index #12

<sup>12</sup> Index #13

<sup>13</sup> Index #19

*Ex-Parte* Motion the court instituted a parenting schedule expanding Matthew's time from the original *Ex-Parte* Order. Ava would remain primarily with Kelly but have time with Matthew on a set schedule.

In respect to a final parenting schedule, Matthew proposes<sup>14</sup> approximately equal shared parenting of Ava on a two week rotating schedule: during week one Ava would be with him from Sunday to Wednesday, then with Kelly from Wednesday to Friday, then with him Friday to Monday. During week two Ava would be with Kelly from Monday to Wednesday, with him from Wednesday to Friday and then with Kelly from Friday to Sunday. On this schedule Matthew would be granted a Sunday overnight that Kelly would not enjoy. Matthew believes Kelly's family will exclude him from Ava's life or at the very least minimize his relationship with her to the extent that he would have no role other than to see her every other weekend. To support his fear around alienation he testified as to Lorrie's increasing importance in decisions for Ava and being a primary contact when he should be, access to Ava's records by Kelly's aunt<sup>15</sup>, Kelly's failure to advise him of Ava's appointments and her interference with his calls with Ava. He believes he was and is as engaged with Ava when she is with him as Kelly is and he is equally capable of raising their daughter. He testified that after Ava's delivery he tried to be home with Ava and Kelly after work but would occasionally have to attend Board meetings for the three organizations to which he belonged. He also testified he took an extended period of time off when Ava had her heart issue diagnosed and if he could not be home he would be in constant contact with Kelly to check on them during the day.

Kelly proposes a schedule where Ava would live primarily with her and see Matthew on Wednesday evenings (expanded to overnights in the summer) and every other Friday to Sunday. She disputes Matthew's engagement with Ava starting with Ava coming home from the hospital after birth. Kelly testified Matthew did not spend much time with her and Ava after they came home from the hospital despite the fact Kelly was still suffering the effects of surgery after Ava's birth. She indicated Matthew worked outside the home and leaving early in the morning and he did not return most nights until after Ava was in bed (due to his visiting his parents after work before coming home). Kelly stated Matthew also attended meetings and social engagements with friends during the week and spent most weekends with his parents taking Ava only occasionally.

The GAL filed an extensive report<sup>16</sup> after a detailed investigation and testified during the trial. She recommends an essentially shared schedule during the week and alternating weekends. She notes the difficulties each parent has with the other and her concerns about a shared schedule are well documented. She also notes the concerns regarding co-parenting and decision-making but ultimately opines decision-making and the parenting schedule should be shared.

Decision-making is always best and less problematic when the parents engage in cooperative, respectful communication on the issues to be addressed. This does not apply to these parents: their dislike for each other is well documented by the case file and their testimony of the various allegations they leveled against each other. Unfortunately there is insufficient evidence upon which the court could justify awarding one parent decision-making authority over the other parent. Therefore the court will try to craft an Order which allows the parents the opportunity to communicate effectively on issues involving Ava. The court will do so by requiring the parents to utilize a program such as Our Family Wizard to document scheduled appointments and communication between the parties. The program will be paid

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<sup>14</sup> See Proposed Parenting Plan at index #103

<sup>15</sup> See exhibit #29

<sup>16</sup> See index #99



for by Matthew (due to the disparity in income) and the program must include monitoring for improper or inappropriate language. The parents must note any appointments for Ava immediately upon the scheduling of same which will allow access by the other parent to such information. In any emergent situation the parents can text each other regarding Ava.

For any medical, dental, counseling appointments, school or other programs in which Ava will participate each parent must be listed as a contact with identifying information. Third parties should only be used as a last resort if neither parent can be contacted. If they wish each parent can contact the providers and request separate notification on events, appointments, etc so they are not dependent on the other parent. That being said the court is requiring the use of a scheduling program to document appointments, when made, by whom and to allow the other parent notice for participation.

School attendance: Kelly advocated for Ava to attend the Hampstead Schools as they are smaller, the teacher to student ratio is better, the physical facilities are more up to date and the schools are community based. She does not like the Manchester Schools due to their age and size and she does not believe Ava's best interests are served by attending that school district. Kelly testified she advised Matthew she wanted to enroll Ava in kindergarten and did so when she received no response from him. She indicated Ava was "heartbroken" because her friends in the neighborhood were going and she could not.

Matthew advocated for Ava to attend the Montessori school in Manchester. He testified the school is private and engages in a different model of learning than the public schools. He stated Kelly didn't like the school and questioned the curriculum. She testified the school is not "accredited" and when they visited the environment was chaotic. She also testified she and Matthew had a conversation about schools during the marriage and Matthew indicated small town schools had advantages over Manchester and they specifically targeted the Dunbarton area<sup>17</sup>, in part, based on schools.

The court finds, based on Kelly's decision to remain in the Hampstead area as her town of residence that Ava will attend that school district. Matthew currently lives with his parents and it is unclear how long that arrangement will last and where he will go if he decides to secure a residence on his own after the divorce; he may relocate to Dunbarton if that property becomes habitable. While he advocated for Ava attending private elementary school in Manchester, the school only goes to a certain level and it is unclear if Ava would attend with friends as she would if she attends in Hampstead. The court finds the smaller class size, teacher to student ratio and the consistency of friends and education tilts in favor of Hampstead. Kelly shall be allowed to enroll Ava in kindergarten in Hampstead. Thereafter Ava can attend schools serving the Hampstead town of residence.

Parenting schedule: In respect to the parenting schedule itself, the court must consider certain factors in reaching the final schedule. The factors and findings are as follows:

<b>Factor under 461-A:6</b>	<b>Dad</b>	<b>Mom</b>	<b>Court finds:</b>
(a) The relationship of the child with each parent and the ability of each parent to provide the child with nurture, love, affection, and guidance.	√	√	The court finds each parent equally capable in these areas.

<sup>17</sup> Where family property is located.

(b) The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.	√	√	The court finds each parent equally capable in regard to their ability to meet Ava's necessary needs.
(c) The child's developmental needs and the ability of each parent to meet them, both in the present and in the future.	√	√	Ava is five years old presently. The court finds each parent equally capable of meeting her developmental needs now and in the future.
(d) The quality of the child's adjustment to the child's school and community and the potential effect of any change.	√	√	Ava will be starting kindergarten soon in the community she now shares with Kelly and her extended family. She will remain in this area except for the times she is with her dad.
(e) The ability and disposition of each parent to foster a positive relationship and frequent and continuing physical, written, and telephonic contact with the other parent, including whether contact is likely to result in harm to the child or to a parent.	√	√	Each parent has concerns about Ava when in the other parent's care. Each parent will be allowed telephone/FaceTime (or similar program) contact with Ava during the other parent's time without interference, interruption or distraction. This time should be spent with Ava and not to communicate between the parents.
(f) The support of each parent for the child's contact with the other parent as shown by allowing and promoting such contact, including whether contact is likely to result in harm to the child or to a parent.			Each parent has shortcomings in this area: Kelly twice called the GAL for a welfare check on Ava seemingly without just cause. Matthew has engaged video recordings and a Private Investigator to track Kelly and document the exchanges.
(g) The support of each parent for the child's relationship with the other parent, including whether contact is likely to result in harm to the child or to a parent.	√	√	Each parent seems to understand the importance of the other parent in Ava's life but their actions in respect to each other are not entirely supportive.
(h) The relationship of the child with any other person who may significantly affect the child.	√	√	The maternal and paternal grandparents and extended family are very important to Ava and her stability and development.
(i) The ability of the parents to communicate, cooperate with each other, and make joint decisions concerning the children, including whether contact is likely to result in harm to the child or to a parent.			Each parent is lacking in this area as noted above. The court is ordering a third party communication program to try to eliminate some direct contact which tends to lead to conflict
(j) Any evidence of abuse, as defined in RSA173-B:1, I or RSA169-C:3, II, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.			N/A
(k) If a parent is incarcerated; the reason for and the length of the incarceration, and any unique issues that arise as a result of incarceration.			N/A
(l) Any other additional factors the court deems relevant.			See narrative order

The court finds an approximately shared schedule to be in Ava's best interest at this time. The court finds each parent equally important to Ava, her stability, growth and development. The court does not find sufficient evidence to support that one parent should have substantially more time with Ava than the other despite the allegations raised at the hearing and during the course of this case. The problem is not the parents with Ava, the problem is the parents with each other.

SEE PARENTING PLAN

### **Child Support**

The court ordered an essentially shared schedule for parenting. Under the terms of the relevant statute, the court can consider the parenting schedule in determining the appropriate amount of child support and deviating from the guideline amount.<sup>18</sup> The parenting schedule alone does not justify a deviation however it is a factor.<sup>19</sup> The court can also consider the disparity in the parents' income.<sup>20</sup> Such consideration leads to a discussion of whether Kelly is voluntarily underemployed as raised by Matthew.

Matthew argued Kelly can and should work more hours either at her current job or find another position that would give her more hours. He estimated she works about 24 hours per week and there is no reason she cannot work more especially if he has shared time with Ava.

Kelly works in the pharmacy at Catholic Medical Center in Manchester, NH. According to her most recent financial affidavit<sup>21</sup> she earns a base wage of just under \$2700 per month<sup>22</sup>; she gets a shift differential added if she works certain hours<sup>23</sup>. Kelly explained this differential is not added to her base hourly wage but is only added after multiplying the differential to hours worked during the additional shifts.<sup>24</sup> Kelly testified she tries to work the weekends when Ava is with Matthew. This brings her income to just over \$2900 per month. She works an average of 25 to 30 hours per week currently.

Kelly testified there are no full time positions available in the pharmacy at CMC. She indicated she did not seek additional employment elsewhere (supplemental hours) but did not rule out the possibility when Ava starts attending school full time. She does not rule out daycare to give her more time to work but stated she and Matthew could not agree on a daycare so Ava was not enrolled. Lorrie cares for Ava on Mondays and Wednesdays when Kelly works. Kelly also testified the financial strength of CMC is unknown at this time due to the impact of the pandemic and staff may be laid off. She hopes to be at CMC for the rest of her career.

Ava will be six years old in March 2021. She should start attending school in Hampstead in the fall of 2021 which would open up additional opportunities for Kelly to either find supplemental opportunities or additional hours at CMC. She should start exploring those opportunities now that Ava will be on a shared schedule with Matthew.

<sup>18</sup> See NH RSA 458-C: 5 I

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* and see In the matter of: *Silva and Silva*, 171 NH 1 (2018).

<sup>21</sup> Index #133

<sup>22</sup> Her per diem wage is \$22.22 per hour.

<sup>23</sup> The shift differential is \$2.50 for hours worked that shift.

<sup>24</sup> IE: she would not earn \$24.72 per hour for the week but would get \$2.50 x 16 hours if she worked that amount of additional time.

The court declines to find Kelly voluntarily underemployed *at this time* due to the impact on a wide range of careers due to the pandemic. It is also hard to impute income to her based on the state of the evidence on the issue.

Based on this finding, the court orders some child support from Matthew due to the disparity in income and to allow Ava to enjoy "a similar or approximately equal style" to that she enjoys with Matthew.<sup>25</sup> The court recognizes that both parents currently live with their parents so they are not currently supporting their own households but they will be in the near future. Kelly testified about plans to rent part of a duplex owned currently, or soon to be purchased, by her mother in Hampstead. Matthew indicated he hopes to move from his parents, perhaps to the Dunbarton property. The timeframe on that is unclear as the property is in serious disrepair.

Matthew shall continue to provide health insurance for Ava.

SEE USO.

**Dependents:**

The parties shall claim the minor child Ava as dependent for income tax purposes, in the following manner:

Matthew, if otherwise qualified under federal/state law, shall be entitled to claim Ava as tax dependent for all even years.

Kelly, if otherwise qualified under federal/state law, shall be entitled to claim Ava as tax dependent for all odd years.

**Post-Secondary Educational Expenses:**

Not applicable

IMPORTANT NOTE: The court cannot order parties to pay for college or other educational expenses beyond the completion of high school unless BOTH parties agree. However, if the parties agree to contribute to these expenses by checking the boxes in Section 4, below, this agreement will become an enforceable order of the court.

**Guardian Ad Litem fees:**

See Order on Appointment of Guardian *ad Litem*.

**Alimony:**

Kelly requested Matthew pay her monthly alimony until April 2023.<sup>26</sup> Matthew objects and argued Kelly could be more self-sustaining if she were to work a full time job. The court finds, even at her current hourly rate, if she were to increase her hours to full-time (40 hours) there would still be a disparity in income of almost \$2000 per month between the parties.

<sup>25</sup> RSA 458-C: 5 I (h), 2 (C).

<sup>26</sup> See proposed Uniform Alimony Order at index #90.

That being said the court denies the request for alimony. The court will obligate Matthew to provide health insurance for Kelly for a period of three years (see below).

**Health Insurance for Spouse:**

The continuation of Matthew's employer-sponsored group medical health insurance benefits on behalf of shall be governed by RSA 415:18. VII-b, COBRA, or other applicable law. Matthew shall maintain health insurance for the benefit of Kelly. This obligation shall terminate in three years. Matthew shall be responsible for payment of the premiums.

Kelly shall maintain dental insurance for the benefit of Matthew. This obligation shall terminate in three years. Kelly shall be responsible for payment of the premiums.

Each party shall be responsible for his/her own unreimbursed medical, dental, optical, and other expenses not otherwise covered by insurance.

**Life Insurance:**

Each party shall maintain a life insurance policy in the minimum amount of \$100,000.00 designating the other parent as trustee for the benefit of the child. This obligation shall continue until Ava reaches the age of eighteen years and is no longer considered a minor.

Parties shall exchange proof of continued life insurance coverage as described above each year on or before January 31<sup>st</sup>.

**Motor Vehicles:**

Matthew is awarded the 2018 Chevy Equinox free and clear of any interest of Kelly.

Kelly is awarded the 2018 GMC Terrain free and clear of any interest of Matthew.

Each party shall be responsible for all expenses as to his/her vehicles, including car payments, maintenance, registration and insurance.

**Furniture and other personal property:**

Matthew and Kelly each requested they be awarded specific items of property in their proposed orders. The court notes they are each asking for certain items so the court will rule on those items separately:

Gun safe and firearms: The evidence shows Matthew purchased two firearms before his relationship with Kelly. He purchased the Ruger P-90 pistol in 2001 and the Mossberg 500 in 1995.<sup>27</sup> The court finds these two firearms fall outside inclusion in the marital estate.

Kelly has specifically asked for the AR-15<sup>28</sup>, the MCP 22 rifle, the Ruger P-90 and the Mossberg 500. As the last two firearms have been excluded from division this leaves the AR and the MCP. The AR was appraised by Stateline at \$1000 while Shooters Outpost appraised it at \$1025. Similarly the

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<sup>27</sup> Exhibit #21

<sup>28</sup> The appraisals note this as an AR-10-exhibits I and 21

MCP was appraised by Stateline at \$199.99 while Shooters Outpost appraised the gun at \$300.<sup>29</sup> The court is awarding Matthew the gun safe but will divide the two firearms between the parties. Kelly is awarded the MCP while Matthew is awarded the AR. Matthew shall pay Kelly \$765 representing the difference between the average values of the guns.<sup>30</sup>

Ava items: both parents want the Thomas toy box. This shall be awarded to Matthew as the court is awarding Kelly the Peppa Pig, Minnie Mouse and PetNet items listed on her proposed Order.

Pet items: Matthew shall be awarded Max's ashes and the picture of Max and Sadie. The court finds Matthew was devoted to the dogs and he should be able to have these items as remembrances of them. The court makes this finding based on the fact that he did not want to leave Max despite having to be separated from his family. While Kelly may fault him for that the court does not.

Matthew shall provide Kelly copies of any photos he possesses of Kelly and Ava while Kelly shall provide Matthew with copies of any photos she possesses of Matthew and Ava. Kelly shall also be awarded the disc of wedding photos, her jewelry cabinet and the photo of her and Ava in the ICU.

Matthew testified about a boat. He lists the boat on his financial affidavit.<sup>31</sup> He shows a value of \$4,250 with related debt of \$3,090.

The court is awarding Kelly her collectibles. The court will not require Kelly to pay Matthew a 50% share of any value as the court awarded him the value of the boat.

#### **Retirement and Other Tax-Deferred Assets:**

Matthew lists an American Funds retirement account on his financial affidavit. As of September 21, 2020 the value was in excess of \$17,000. The statements provided by Kelly show the account value of between \$15000 and \$16000 in 2018.<sup>32</sup> Kelly is awarded one-half of Matthew's pension which accrued between the date of the marriage and the date of the filing of the petition for divorce pursuant to the Hodgins formula. A Qualified Domestic Relations Order (QDRO) shall be prepared by Matthew within 60 days of the date of the notice of this decision.

Kelly has a pension account with the New England Teamsters.<sup>33</sup> The contributions to the fund were all generated before the marriage and thus will not be considered a marital asset.

#### **Other Financial Assets:**

The parties are awarded their respective checking and/or savings bank accounts, credit union accounts, certificates of deposits and the like, and all similar accounts as shown on their individual financial affidavits filed with the court.

<sup>29</sup> See exhibits I and 21.

<sup>30</sup> The court assesses the value of the AR at \$1015 and the MCP at \$250 thus the difference of \$765.

<sup>31</sup> Index #135

<sup>32</sup> Exhibits A & B

<sup>33</sup> Exhibit F

**Business Interest of the Parties:**

Matthew is awarded all right, title, and interest in the business known as Routhier Land Consulting and Inspection LLC free of any claim or interest of Kelly. Matthew shall be solely responsible for all debts of the business and shall be entitled to receive all profits from the business.

**Division of Debt:**

The parties shall each be responsible for any debt they have incurred after the date of separation, holding each other harmless of the same.

**Marital Home:**

N/A

**Other Real Property:**

Matthew's parents Guy and Frances Routhier live in the family home where they raised their four children on Gray Street in Manchester<sup>34</sup>. Currently Matthew lives with them and Ava visits there during Matthew's parenting time. In June 2011 Guy and Frances secured a mortgage on their Gray Street home in the maximum amount of \$154,800 from Citizen's Bank.<sup>35</sup> Guy testified they used the funds to pay off a car loan, bills and other debt but most of the funds were used to purchase property located at 1209 Montelone Road in Dunbarton, NH in July 2011<sup>36</sup>. The purchase price according to the Purchase and Sales agreement was \$105,000.00<sup>37</sup>. The deed to the property listed Guy, Frances and Matthew Routhier. According to Guy, the plan was for Matthew to build a residence on the property for his family (Kelly and Ava) with an in-law apartment for his parents. This would allow them to eventually move out of Manchester.

When the family had the property surveyed, they discovered a neighboring horse farm encroaching on the property by approximately an acre. An agreement was reached where the farm would lease the acre of the Routhier property on an annual basis<sup>38</sup>. Guy indicated the funds from the lease were to be used toward the taxes on the property.

At the time of the purchase of the Dunbarton property Matthew and Kelly lived together but were not married. Neither Matthew nor Kelly contributed to the purchase price of Dunbarton. Guy and Frances made the payments on the home equity loan used to purchase Dunbarton. Kelly testified she worked with Matthew and his family to clear some of the land and she paid for the removal of approximately 18 trees from the property. Matthew decided to install solar panels on the property and his parents paid for the installation.<sup>39</sup>

Matthew argued that the appraisal by Manias is incomplete and should not be given much weight. It was pointed out by opposing counsel that Matthew would not agree to an appraisal and did not cooperate in that process. In fact Matthew's position, stated by his counsel before trial, was that if

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<sup>34</sup> The family has lived at this address since 1976.

<sup>35</sup> Exhibit #1

<sup>36</sup> Exhibit #2

<sup>37</sup> A deposit of \$5000 was required with the rest due at closing.

<sup>38</sup> Exhibit #5

<sup>39</sup> See exhibit #11

Manias walked onto the property the police would be called and they would seek trespass charges. When brought up again at trial Matthew's counsel argued Matthew did not have the right to agree as it is not his property but the property of his parents. The court does not find Matthew's position to be reasonable and it is contrary to the state of the evidence (he is listed on the deed) thus he is not credible in this regard. The court finds he actively sought to prevent the appraisal and was successful in doing so.

Further Matthew opposed the use of the only appraisal done on the property. Due to the staleness of the information and because it was done before the parties were married, the court disallowed the evidence at Matthew's request. The court does not find the lack of a current full appraisal fatal to determination of this issue. However the court does find granting Kelly a portion of the property is not authorized in this type of case in the Family Court

It is clear from the evidence that Guy and Frances Routhier used the equity in their home on Gray Street to finance the purchase of the Dunbarton property and make some improvements on it. The deed to the property lists the senior Routhiers and Matthew as owners. The court understands Kelly believes she is due the value of some portion of Matthew's ownership interest in the property and she considers his ownership interest to be part of the marital estate ripe for division in this case. However the court disagrees with her position.

In the first interest the Family Court is a court of limited jurisdiction whose powers are statutory.<sup>40</sup> Therefore the Family Court does not have jurisdiction to determine ownership interest in property if there is a third party claim.<sup>41</sup> Further the property division part of the statute<sup>42</sup> only allows the court to include property in the estate that is *owned by one or both parties*; this does not include property with third party ownership.<sup>43</sup>

As this property is beyond the jurisdiction of this court, no division of the value of the property will be included in this Decree. The court does recognize Kelly's contribution to clearing the property of some trees. She invested the funds in anticipation that the family would, at some point, be occupying the property. According to the evidence, she paid \$2300 to clear trees<sup>44</sup> therefore Matthew shall reimburse her this sum as she has not and will not get the benefit of this investment.

#### **Enforceability after Death:**

The terms of this Decree shall be a charge against each party's estate.

#### **Signing of Documents:**

Each party shall, within 30 days of the date of the notice of this Decree and Order, sign and deliver to the other party any document or paper that is needed to fulfill or accomplish the terms of this Decree.

<sup>40</sup> See Mallett and Mallett, 163 N.H. 202 (2012).

<sup>41</sup> See NH RSA 490-D and Muller and Muller, 164 N.H. 512 (2013)

<sup>42</sup> NH RSA 458: 16-a

<sup>43</sup> See Muller at 518.

<sup>44</sup> Exhibit #13



**Restraining Order:**

N/A

**Name Change:**

Kelly Ann Routhier may resume the use of her former name: Kelly Ann Ryan.

**Other Requests:**

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

**Tax Refunds:** Any tax refund due or anticipated by the parties resulting from their having filed a joint federal and/or state income tax return for this or any prior year shall, upon receipt, be endorsed by both parties and equally distributed between them.

**Disclosure of Assets:** The parties warrant that they have fully disclosed all assets within their knowledge on their respective Financial Affidavit, specifically including any pension, profit sharing or retirement account, along with reasonable estimated values of each asset. The financial information contained on each party's Financial Affidavit is accurate and complete and has been relied upon by the other party.

**Compliance With Rule 1.25-A:** The parties have fully complied with Rule 1.25-A; or The parties agreed to limit their document exchange under Rule 1.25-A.

**Mutual Releases:** Other than as set forth in this decree or other order of this court (including "Uniform Support Order") each party releases and agrees to defend, indemnify and hold the other harmless from any and all claims of any nature whatsoever arising out of the marriage.

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

**Change in Address or Employment:** Each party shall promptly notify the other of any change in his/her address or telephone number, and of any material change in employment as long as there are any continuing obligations under this decree. "Material change" will include availability of medical, dental or life insurance and any substantial increase or decrease in earnings or other income.

**FINDINGS AND RULINGS:**

Matthew's requests:

Granted: 2-5, 7, 8, 10, 15, 19-26, 28-32, 35, 36, 38-40, 42-44, 48, 50

Denied: 6, 45, 46, 47, 49

Denied as written: 1, 9, 11-14, 16-18, 27, 33, 34, 37, 41

Kelly's requests:

Kelly submitted 157 requests for findings and rulings. The court finds the requests excessive. As such the court orders findings and rulings consistent with this Order.

IN THE EVENT OF AN APPEAL TO THE NEW HAMPSHIRE SUPREME COURT THIS ORDER SHALL ACT AS A TEMPORARY ORDER PENDING THE DECISION OF THE SUPREME COURT.

**So Ordered.**

Date

2/6/2020



Lucinda V. Sadler, Judge

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

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RECEIVED  
NH CIRCUIT COURT  
6TH CIRCUIT HOOKSETT

Court Name: 6th Circuit – Family Division – Hooksett  
Case Name: In the Matter of Matthew Routhier and Kelly Routhier  
Case Number: 647-2018-DM-00111

RECEIVED  
OCT 10 P 12:30

PARENTING PLAN

This parenting plan is: (Choose one)

- Agreed upon     Proposed by Matthew Routhier     Developed by Court  
(parent's name)

This parenting plan is: (Choose one)

- Temporary. The completed paragraphs apply until the case is concluded. If you are requesting a temporary order on parenting issues, you should include as many of these parenting plan topics as you will need to carry your family through until all parenting issues are resolved.
- Final. All completed paragraphs shall be incorporated in the Court's final order.
- Changing a prior final Parenting Plan or a prior permanent order on parental rights and responsibilities.

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

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

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

- (a) Support frequent and continuing contact between each child and both parents.
- (b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.
- (c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, unless there is evidence of domestic violence, or child abuse/neglect.
- (d) Grant parents and courts the widest discretion in developing a parenting plan.
- (e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.

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

103

Case Name: In the Matter of Matthew Routhier and Kelly Routhier  
Case Number: 647-2018-DM-00111

**PARENTING PLAN**

This parenting plan is for the following child(ren) born to, or adopted by, the parties:

Full Name	Date of Birth	Full Name	Date of Birth
1. <u>Ava Marie Routhier</u>	<u>3/22/2015</u>	2. _____	_____
3. _____	_____	4. _____	_____
5. _____	_____	6. _____	_____

**A. Decision-Making Responsibility:**

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

(a) **Joint Decision-Making:** Both parents shall share in the responsibility for making major decisions about the child(ren).

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

Legal Residence of Matthew Routhier (parent's name)  
27B Harvest Drive  
Hooksett NH 03106

Legal Residence of Kelly Ann Routhier (parent's name)  
20 Abbie Lane  
Hampstead NH

The court finds that there is a history of domestic abuse or stalking or that including such information would not be in the best interest of the child(ren).

(b) **Sole Decision-Making:** \_\_\_\_\_ (parent's name) shall have sole decision-making authority on major decisions about the child(ren).

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

3. **Other Provisions:** The parties shall choose a new primary care physician, outside of the current practice, within 60 days of this decree. *Vicki W*

**B. Residential Responsibility & Parenting Schedule:**

1. **Routine schedule: (Choose one)**

(a) Set forth the detailed parenting schedule for the child(ren) specifying periods when each parent has residential responsibility or non-residential parenting time (such as dinners or other parenting time that is not overnight).

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

Two week schedule

Week One:

With Matthew: Sunday 6 pm through Wednesday 6 pm

With Kelly: Wednesday 6 pm through Friday 6 pm

With Matthew: Friday 6 pm through Monday 6 pm

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**PARENTING PLAN**

Week Two

With Kelly: Monday 6 pm through Wednesday 6 pm

With Matthew: Wednesday 6 pm through Friday 6 pm

With Kelly: Friday 6 pm through Sunday 6 pm

Whoever has residential responsibility shall be responsible for transport to and from daycare/school

*M. Routhier (MS)*

(b) The child(ren) shall reside solely with \_\_\_\_\_ (parent's name).  
Based on the following, the court concludes that frequent and continuing contact between each child and both parents is not in the best interest of the child and makes the following findings in support of this order:

2. Holiday and Birthday Planning: (Choose (a), (b), or (c))

(a) No holiday and birthday schedule shall apply. The routine schedule set forth above shall apply.

(b) Holiday and birthday parenting times shall be as the parties agree.

(c) The holidays and birthday(s) listed below should be shared as described. Specify start and end times and days/dates as necessary. (For example, Thanksgiving: One parent—even years, other parent—odd years, starting on the Wednesday prior to Thanksgiving at 6pm, ending the Friday after Thanksgiving at 6pm). Parenting time on holidays and birthdays which are not checked and described shall be according to the routine schedule set forth above.

Mother's Day \_\_\_\_\_ with Kelly 8 AM to 6 PM

Father's Day \_\_\_\_\_ with Matthew 8 AM to 6 PM

July 4<sup>th</sup> \_\_\_\_\_

Thanksgiving \_\_\_\_\_ Alternating Matthew-odd, Kelly- even yrs: Wed at 5 PM through Thanksgiving at 6 PM

**PARENTING PLAN**

Christmas Eve Alternating Matthew-odd, Kelly- even yrs: 5 pm -12 pm Christmas  
Alternating Kelly- odd, Matthew even yrs:

Christmas Day 12 pm Christmas -7 am December 26

Child(ren)'s Birthday(s) \_\_\_\_\_

One Parent's Birthday \_\_\_\_\_

Other Parent's Birthday \_\_\_\_\_

Other religious, civil and family celebrated special occasions:  
Easter: Whoever has the child for that weekend shall have Ava until noon Easter Sunday. Then the other parent shall have Ava from noon and continuing into the regular schedule.

Halloween: Kelly - even, Matthew - odd years: 3 hours on chosen day, with notice to be given 10 days in advance. Other parent to provide notice 3 days after of their 3 hours.

New Years Eve/Day: Matthew - even, Kelly - odd: 9 AM 12/31 - 2 PM 1/1

3. Three-day weekends: (Choose (a), (b), or (c))

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

(b) The parent exercising parenting time on the weekend before a Monday holiday shall have parenting time on that Monday holiday.

(c) The three-day weekends listed below should be shared as listed and described. Parenting time on three-day weekends which are not checked and described shall be according to the routine schedule set forth above.

M.L. King Jr. Civil Rights Day Matt - even years, Kelly - odd years

Presidents' Day Matt - even years, Kelly - odd years

Memorial Day Matt - odd years, Kelly - even years

Labor Day Matt - even years, Kelly - odd years

Columbus Day Matt - odd years, Kelly - even years

Other The schedule for all 3-day weekends shall be Fri 6 PM - Mon 6 PM

4. Vacation Schedule:

(a) December Vacation: **(Choose one)**

(i.) No December vacation schedule shall apply. The routine schedule set forth above shall apply.

(ii.) The parent exercising parenting time with the child(ren) on Christmas Eve (as outlined above) shall have the following additional parenting time with the child(ren) over the December vacation:

The parent exercising parenting time with the child(ren) on Christmas Day (as outlined above) shall have the following additional parenting time with the child(ren) over December vacation:

Dec 26 at 7 AM through January 2 at 6 PM

(iii.) The above choices do not fit this parenting situation. Instead, the residential schedule for the child(ren)'s December vacation shall be as follows:

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(b) February, April, and Summer Vacations. Specify the day of the week vacation starts and ends, if necessary. (Choose one)

(i.) No February, April, or summer vacation schedule shall apply. The routine schedule set forth above shall apply.

(ii.) The children shall reside with \_\_\_\_\_ (parent's name) during February vacation, except for the following days and times when the child(ren) shall be with the other parent:

The children shall reside with \_\_\_\_\_ (parent's name) during April vacation, except for the following days and times when the child(ren) shall be with the other parent:

The child(ren)'s summer residential schedule shall be as follows:

(iii.) The above choices do not fit this parenting situation. Instead, the residential schedule for the child(ren)'s February, April, and summer vacations shall be as follows:  
February: Saturday 9 AM to Saturday 6 PM - Matthew even, Kelly odd years  
April: Saturday 9 AM to Saturday 6 PM - Kelly even, Matthew odd years  
Summer vacation: 2 non-consecutive weeks, Saturday 9 AM - Saturday 6 PM, with first selection by March 1, Matthew - even, Kelly - odd years.

(c) Other Vacations - describe the schedules for any other vacations:

5. Supervised Parenting Time: (Choose one)

(a) Not applicable.

(b) The residential schedule is subject to the restrictions or limitations set out as follows:

(i.) All parenting time of \_\_\_\_\_ (parent's name(s)) shall be at a supervised visitation center that uses a metal detection device and has trained security personnel onsite.

(ii.) Other:

6. Other Parental Responsibilities:

Each parent shall promote a healthy, beneficial relationship between the child(ren) and the other parent and shall not demean or speak out negatively in any manner that would damage the relationship between either parent and the child(ren).

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

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

**(Choose all that apply)**

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

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(b) If a parent requires child care by some person who does not reside in his or her residence, for a person reasonably expected to last longer than 5 hours, then the other parent shall be offered the opportunity to parent the child. This section does not apply to regularly scheduled day care.

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

(d) Each parent shall be responsible for ensuring that the child(ren) attend regularly scheduled activities, including but not limited to sports and extra-curricular activities, while the child(ren) are with that parent.

(e) As the child(ren) get older, their individual interests may impact the parenting schedule set forth in this parenting plan. Each parent shall be flexible in making reasonable adjustments to the parenting schedule as the needs and interests of their maturing children require.

(f) Other Parenting Responsibilities:

**C. Legal Residence of a Child for School Attendance: (Choose one)**

1. The parties agree that, as allowed by RSA 193:12, II(a)(2) their child's legal residence for school attendance purposes will be the Matthew Routhier (parent's name) residence. See the attached Agreement and Parenting Plan Order Designating School District (NHJB 2763-F). Each parent shall furnish a copy of the agreement to the school district in which the parents resides.

2. The court orders that the child(ren) shall attend school in the \_\_\_\_\_ (parent's name) resides.

3. The child(ren) shall attend school in the school district where the parent with sole residential responsibility resides. Under this plan, that parent is \_\_\_\_\_

4. Other provisions regarding school:

**D. Transportation and Exchange of the Child(ren): (Choose all that apply)**

1. Transportation arrangements for the child(ren) between parents shall be as follows:

2. Unless both parents agree upon a different meeting place, the exchange of the child(ren) shall be at:

Manchester Police Station, 405 Valley Street, Manchester, NH *1/2 way point between residences*

3. Transportation costs shall be shared as follows:



4. Other \_\_\_\_\_

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

Unless there is a court order stating otherwise:

Both parents have equal rights to inspect and receive the child(ren)'s school records, and both parents are encouraged to consult with school staff concerning the child(ren)'s welfare and education. Both parents are encouraged to participate in an attend the child(ren)'s school events.

Both parents have equal rights to inspect and receive governmental agency and law enforcement records concerning the child(ren).

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

Each parent has a continuing responsibility to provide a residential, mailing, or contact address and contact telephone number to the other parent.

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

**1. Parent-Child Telephone Contact: (Choose one)**

The children shall be given privacy during their conversations with either parent. While the child(ren) reside with one parent, the other parent shall be permitted to speak by telephone with the child(ren):

(a) At reasonable times.

(b) At the following times only: 7:30 pm

(c) Other: parents shall speak to Ava through Facetime

**2. Parent-Child Written Communication: (Choose one)**

(a) Both parents and child(ren) shall have the right to communicate in writing or by e-mailing during reasonable hours without interference or monitoring by the other parent.

(b) Specific agreements/orders regarding written or e-mail access between child(ren) and parent(s):

**F. Relocation of a Residence of a Child: (Choose one)**

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

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2. This parenting plan shall expressly govern the relocation issue as follows: In addition to the provisions of RSA 461-A:12, this plan shall include the following relocation details:

**G. Procedure for Review and Adjustment of Parenting Plan: (Choose one)**

1. The parents shall meet as set out below to review this parenting plan and the well-being of the child(ren). Any agreed-on changes shall be written down and shall include the grounds for modification from those listed in RSA 461-A:11. (Found at: <http://www.gencourt.state.nh.us/rsa/html/XLIII/461-A/461-A-11.htm>) Any agreement shall be signed by both and filed with the court. (Each should keep a copy.) Choose (a), (b), (c), or (d).

(a) Meetings shall be in \_\_\_\_\_ (month)

(b) Meetings shall be yearly.

(c) Meetings shall be every 2 years.

(d) Meetings shall not be on a set schedule but shall be as often as necessary for the benefit of the child(ren).

2. Other: \_\_\_\_\_

**H. Method(s) for Resolving Disputes: (Choose one)**

1. In the future, if the parents have a disagreement about parenting issues, the parents shall try to work it out in the best interest of the child(ren). They are encouraged to seek the help of a neutral third party to assist them. If the parents are unable to work out the disagreement they may ask the court to decide the issue.

2. Other: \_\_\_\_\_

**I. Other parenting agreements important to the parents or the child(ren) are listed below or are set forth in the \_\_\_\_\_ number of attached pages.**

1. Parents shall utilize the parenting App called 2 houses to share child's information schedule and communications about the child and the subscription cost shall be split evenly between the parties. Violated  
LWS

2. Parents shall provide 30-days notice about trips the child will take out of state for more than 24 hours.

3. Child shall maintain a passport for traveling purposes and the cost for application shall be paid by Matthew and then renewal shall be paid by Kelly then alternating between the parties with each renewal. The passport shall be the property of the child and shall be shared between the parents.

Case Name:

In the Matter of Matthew Routhier and Kelly Routhie

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**PARENTING PLAN**

Date

Signature of Petitioner

Date

Signature Attorney/Witness for Petitioner

Date

Signature of Respondent

Date

Signature of Attorney/Witness for Respondent

Date

Signature of Guardian *ad Litem*

**Recommended:**

Date

Signature of Marital Master

Printed Name of Marital Master

**So Ordered:** *as amended*

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

Date

*11/10/2018*

Signature of Judge

**LUCINDA V. SADLER**

Printed Name of Judge

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH

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

Court Name: 6th Circuit - Family Division - Hooksett

Case Name: In the Matter of Matthew Routhier and Kelly Routhier

Case Number: 647-2018-DM-00111

UNIFORM SUPPORT ORDER

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

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

Matthew Routhier

Kelly Ann Routhier

244 Gray Street, Manchester, NH

20 Abbie Lane, Hampstead, NH

D.O.B.: \_\_\_\_\_ Telephone: \_\_\_\_\_

D.O.B.: \_\_\_\_\_ Telephone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Name of Employer: Bedford Design

Name of Employer: CMC

Address of Employer:  
Manchester, NH

Address of Employer:  
Manchester, NH

Child(ren) to whom this order applies:

Full Name

Date of Birth

Ava Marie Routhier

March 22, 2015

The following parties appeared:  Obligor  Obligee  Bureau of Child Support Services  
 Other \_\_\_\_\_

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

1. This order is entered:  
 after hearing  
 upon approval of agreement  
 upon default
2. This order is a:  
 temporary order  
 final order
3. This order modifies a final support obligation in accordance with:  
 a three-year review (RSA 458-C:7) OR  substantial change in circumstances, as follows:  
\_\_\_\_\_
4. Obligor is ORDERED to PAY THE FOLLOWING AMOUNTS (See Standing Orders 4A-4G):  
4.1 CHILD SUPPORT: \$ 200.00 per bi-weekly (week, month, etc.)  
4.2 Arrearage of \$ \_\_\_\_\_ as of \_\_\_\_\_,  
payable \$ \_\_\_\_\_ per \_\_\_\_\_ (week, month, etc.)

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**UNIFORM SUPPORT ORDER**

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

4.4  Alimony is ordered. See the Uniform Alimony Order.  N/A

4.5 Alimony arrearage of \$ \_\_\_\_\_ as of \_\_\_\_\_,  
payable \$ \_\_\_\_\_ per \_\_\_\_\_ (week, month, etc.)

4.6 Alimony shall terminate \_\_\_\_\_

5. Payments on all ordered amounts shall begin on 11/1/2020. All ordered amounts shall be payable to  Obligee  Bureau of Child Support Services  Other \_\_\_\_\_

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

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

The following special circumstances warrant an adjustment from the guidelines (Enter applicable circumstances below. See Standing Order 6):  
shared parenting and expenses for the child. Matthew will also provide health insurance.

7. Support ordered is payable by immediate income assignment.

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

Obligor and obligee have agreed in writing.

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

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

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

**MEDICAL SUPPORT FINDINGS (Paragraphs 10 through 15)**

10. **OBLIGOR'S** medical support reasonable cost obligation: \$ 224.00 per month (week, month, etc.)

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

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

12.  Health insurance coverage available to the **OBLIGOR** is not accessible to the child(ren).

13. **OBLIGEE'S** medical support reasonable cost obligation: \$ 116.68 per month (week, month, etc.)

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

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

15.  Health insurance coverage available to the **OBLIGEE** is not accessible to the child(ren).

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

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

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

**UNINSURED MEDICAL EXPENSES**

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

Obligor 50 % Obligee 50 % Other: \_\_\_\_\_

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

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

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

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

\_\_\_\_\_  
Obligor

\_\_\_\_\_  
Obligee

\_\_\_\_\_  
Staff Attorney  
Bureau of Child Support Services

\_\_\_\_\_  
Obligor's Attorney/Witness

\_\_\_\_\_  
Obligee's Attorney/Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Case Name: In the Matter of Matthew Routhier and Kelly Routhier

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**UNIFORM SUPPORT ORDER**

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

**Recommended:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Marital Master/Hearing Officer

\_\_\_\_\_  
Printed Name of Marital Master/Hearing Officer

**So Ordered:**

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

\_\_\_\_\_  
Date

*11/10/2018*

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

**LUCINDA V. SADLER**

\_\_\_\_\_  
Printed Name of Judge

UNIFORM SUPPORT ORDER

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

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

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

**SUPPORT PAYMENT TERMS**

- SO-3A. All prior orders not inconsistent with this order remain in full force and effect.
- SO-3B. In cases where the order of another jurisdiction is registered for modification, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing jurisdiction. (See RSA 546-B:49,III.)
- SO-3C. This order shall be subject to review and Court modification three years from its effective date upon the request of a party. Any party may petition the Court at any time for a modification of this support order if there is a substantial change in circumstances. The effective date of any modification shall be no earlier than the date of notice to the other party. "Notice" means either of the following: 1) service as specified in civil actions or 2) the respondent's acceptance of a copy of the petition, as long as the petition is filed no later than 30 days following the respondent's acceptance. See RSA 458-C:7.
- SO-3D. No modification of a support order shall alter any arrearages due prior to the date of filing the pleading for modification. RSA 461-A:14, VIII.
- SO-4A. The amount of a child support obligation shall remain as stated in the order until the dependent child for whom support is ordered completes his or her high school education or reaches the age of 18 years, whichever is later, or marries, or becomes a member of the armed services, or is emancipated pursuant to an order of emancipation under RSA 461-B, at which time the child support obligation, including all educational support obligations, terminates without further legal action, except where duration of the support obligation has been previously determined by another jurisdiction, or is governed by the law of another jurisdiction, and may not be modified in accordance with statutory language referenced in SO-3B. If the parties have a child with disabilities, the court may initiate or continue the child support obligation after the child reaches the age of 18. No child support order for a child with disabilities which becomes effective after July 9, 2013 may continue after the child reaches age 21. (See RSA 461-A:14, IV)
- SO-4B. In multiple child orders, the amount of child support may be recalculated according to the guidelines whenever there is a change in the number of children for whom support is ordered, upon petition of any party. In single child orders, the support obligation terminates automatically, without the need for further court action, upon the emancipation of the child. The obligor remains obligated for any and all arrearages of the support obligation that may exist at the time of emancipation.
- SO-4C. If the order establishes a support obligation for more than one child, and if the court can determine that within the next 3 years support will terminate for one of the children, the amount of the new child support obligation for the remaining children may be stated in the order and shall take effect on the date or event specified without further legal action.
- SO-4D. In cases payable through the New Hampshire Bureau of Child Support Services (BCSS), if there are arrearages when support for a child is terminated, payments on the arrearages shall increase by the amount of any reduction of child support until the arrearages are paid in full.
- SO-4E. Pursuant to RSA 161-C:22, III when an assignment of support rights has terminated and obligor and the recipient of public assistance reunite, obligor may request a suspension of the collection of support arrearage owed to the state under RSA 161-C:4. So long as the family remains reunited and provided that the adjusted gross income of the family as defined by RSA 458-C is equal to or less than 185% of the Federal poverty guidelines as set by the United States Department of Health and Human Services, BCSS shall not take any action to collect the support arrearage owed to the State.
- SO-4F. If the collection of a support arrearage pursuant to RSA 161-C:4 is suspended, the obligor shall provide BCSS with a financial affidavit every six months evidencing the income of the reunited family and shall notify his or her child support worker in writing within ten days of any change in income or if the family is no longer reunited. Failure to report changes in income or in the status of the family as reunited or to provide a financial affidavit shall cause the suspension of collection to terminate.



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**UNIFORM SUPPORT ORDER**

- SO-4G. Each party shall inform the Court in writing of any change in address, within 15 days of the change, so long as this order is in effect. Service of notice of any proceeding related to this order shall be sufficient if made on a party at the last address on file with the Court. A party who fails to keep the Court informed of such a change in address, and who then fails to attend a hearing because of the lack of notice, may be subject to arrest.
- SO-5A. If no date appears in paragraph 5 of the USO, the first support payment shall be due on the date this order is signed by the Judge.
- SO-5B. If support is payable through BCSS, a BCSS application for child support services must be submitted before BCSS can provide services in accordance with the order.
- SO-5C. If support is payable through BCSS, BCSS is authorized and directed to collect all sums, including any arrearages, from the obligor and forward the sums collected to the obligee or person, department, or agency providing support to the children named in the USO. Any payment shall be applied first as payment towards the current child and medical support obligation due that month and second towards any arrearages.
- SO-5D. If support is ordered payable directly to the obligee, it can only be made payable through BCSS at a later time if (1) the children named in the USO receive assistance pursuant to RSA 161 or RSA 167; (2) a party applies for support enforcement services and certifies to BCSS that (a) an arrearage has accumulated to an amount equal to the support obligation for one month, or (b) a court has issued a protective order pursuant to RSA 173-B or RSA 461-A:10 which remains in full force and effect at the time of application; or (3) a court orders payment through BCSS upon motion of any party that it is in the best interest of the child, obligee, or obligor to do so. RSA 161-B:4.
- SO-5E. Collection by BCSS on any arrearage may include intercepting the obligor's federal tax refund, placing liens on the obligor's personal and real property including qualifying financial accounts. Federal tax refund intercept and lien remedies shall be used to collect arrearages even if an obligor is complying with the child support orders. Pursuant to 45 CFR 303.72 (h) any federal tax refund intercept shall be applied first as payment towards the past due support assigned to the State.
- SO-5F. In all cases where child support is payable through BCSS, obligor and obligee shall inform BCSS in writing of any change of address or change of name and address of employer, within 15 days of the change.
- SO-5G. In all cases where child support is payable through BCSS, obligor and obligee shall furnish their social security numbers to the New Hampshire Department of Health and Human Services (Department).
- SO-6. Where the court determines that, in light of the best interests of the child, special circumstances exist that result in adjustments in the application of the guidelines for the child support obligation or the reasonable medical support obligation, the court shall make written findings relative to the applicability of one or more of the special circumstances described in RSA 458-C:5, I.

**INCOME ASSIGNMENT**

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

**REPORT CHANGES OF EMPLOYMENT**

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

Case Name: In the Matter of Matthew Routhier and Kelly Routhier

Case Number: 647-2018-DM-00111

UNIFORM SUPPORT ORDER

**MEDICAL SUPPORT PROVISIONS**

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

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH**

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

Court Name: 6th Circuit Court-Family Division-Hooksett  
 Case Name: Matthew Routhier and Kelly Routhier  
 Case Number: 647-2018-DM-0111

**CHILD SUPPORT GUIDELINES WORKSHEET  
Effective April 1 2020**

Child's Name	DOB	Child's Name	DOB
Ava	03/22/2015		
1. Total Number Of Children <input checked="" type="radio"/> 1 <input type="radio"/> 2 <input type="radio"/> 3 <input type="radio"/> 4 +			
2. Obligor's Reasonable Medical Support Obligation (4% Monthly Gross Income, rounded to the nearest dollar) \$224.60		3. Obligee's Reasonable Medical Support Obligation (4% Monthly Gross Income, rounded to the nearest dollar) \$116.68	

<b>PAYMENT CALCULATIONS</b> <small>NOTE: All income and expenses must be converted to monthly amounts (multiply weekly amounts by 4.33; bi-weekly amounts by 2.17).</small>	OBLIGOR (Column 1)	OBLIGEE (Column 2)	Combined (Column 3)
4. Monthly gross income	\$ 5615.00	\$ 2917.00	
5A. Court/Admin. ordered support for other children	\$ _____	\$ _____	
5B. 50% of actual self-employment taxes paid	\$ _____	\$ _____	
5C. Mandatory retirement	\$ _____	\$ _____	
5D. Actual state income taxes paid	\$ _____	\$ _____	
5E. Allowable child care expenses (obligor) <small>(See LINE 8A instructions)</small>	\$ _____		
5F. Medical support for children (obligor)	\$ 127.00		
5G. Total deductions (Add lines 5A through 5F)	\$ 127.00	\$ 0.00	
6. Adjusted monthly gross income <small>(Subtract line 5G from line 4)</small>	\$ 5,488.00	\$ 2,917.00	\$ 8,405.00
7A. Child Support guideline amount <small>(From Guideline Calculation Table)</small>			\$ 1,369.13
7B. Guideline Percentage <small>(From Guideline Calculation Table)</small>			21.11 %
8A. Allowable child care expenses (obligee) <small>(See LINE 8A instructions)</small>		\$ _____	
8B. Medical support for children (obligee)		\$ _____	
8C. Total allowable obligee expenses <small>(Add line 8A and 8B)</small>		\$ 0.00	
9. Total adjusted monthly gross income	\$ 5,488.00	\$ 2,917.00	\$ 8,405.00
10. Proportional share of income	65.29 %	34.71 %	
11. Parental support obligation <small>(Line 10 times line 7A)</small>	\$ 893.97	\$ 475.16	
<b>ABILITY TO PAY CALCULATION</b>			
12. Self-support reserve <small>(From Guideline Calculation Table)</small>	\$ 1,223.00		
13. Income available for support <small>(Subtract line 12 from line 9, column 1)</small>	\$ 4,265.00		
14. Monthly support payable <small>(Enter the smaller of (1) column 1, or line 13, column 1. If line 13, column 1, is less than \$50.00, then a minimum order of \$50.00 is entered.)</small>	\$ 893.97		
15. Presumptive child support obligation <small>(If weekly, divide line 14 by 4.33; if bi-weekly, divide line 14 by 2.17; if monthly, enter same amount as on line 14.)</small>			
<b>** ROUND THE RESULT TO THE NEAREST WHOLE DOLLAR **</b>			
<b>Calculate</b>	Weekly \$206.00	Bi-Weekly \$412.00	Monthly \$894.00

Prepared By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_