

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2021-0587

In the Matter of Brianna Kauble and William Kauble
*Appeal pursuant to Rule 7 from a judgement of the 10th Circuit Court, Brentwood
Family Division*

BRIEF FOR WILLIAM KAUBLE

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(no time requested)

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STATEMENT OF FACTS AND THE CASE

The parties, Brianna Novell Kauble (hereinafter “Brianna”) and William Kauble (hereinafter “William”) were married on March 15, 2010. The parties lived in Arizona until early 2018. At that time, the parties jointly decided to relocate to New Hampshire. Brianna and the children drove from Arizona to New Hampshire on or about May 29, 2018. The parties planned for William to follow at a later date to join the family. During the final hearing, Brianna testified non-credibly to the court that she moved from Arizona to New Hampshire to escape an abusive relationship with William. TR. At 122. The parties jointly planned that upon their arrival in New Hampshire, that they would reside with Brianna’s father, Herbert Novell (hereinafter “Mr. Novell”). Brianna followed through with this plan and resided with Mr. Novell for six months in East Kingston before moving into separate residence in Exeter, where she and William entered a lease. Brianna filed for divorce on June 7, 2019 after she and William decided that they were not able to remain in a marital relationship.

While the divorce proceedings were pending, Mr. Novell filed an intervenor action for grandparent visitation rights on or about January 6, 2021. During the pendency of the divorce proceedings, William asked the court for the appointment of a guardian ad litem to make determinations regarding the parenting plan, specifically regarding a vacation and routine schedule for the children, since he had

become estranged from his children due to Brianna's alienation of him from the children. The court ordered that William pay for the guardian ad litem since that representative was to be advising the court on the best parenting schedule for him and the children. The guardian ad litem instead made recommendations regarding time to be spent with Mr. Novell and did not touch on time or a plan that should be made for the children to spend with William. William not been reimbursed for any cost of the guardian ad litem.

The parties came to final agreements regarding the divorce settlement and the parenting plan. The parties have withdrawn all past actions for contempt under the temporary orders. William continues to be denied all parenting time and communication with the children.

The time that had initially been reserved for the parties to adjudicate their divorce on October 4, 2021, was dedicated to the intervenor action of Mr. Novell. Brianna and Mr. Novell each had approximately 3 hours to present their cases. At the final hearing, William took no position regarding grandparent visitation as any schedule that would or would not be ordered by the court would likely not greatly affect his parenting time.

ARGUMENT

The United States Supreme Court has found that there is “a constitutional dimension to the right of parents to direct the upbringing of their children.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). New Hampshire RSA 461-A:13, II governs the ability for grandparents to have scheduled visitation rights, and any petition for visitation rights must consider: 1) Whether visitation would be in the best interest of the child, 2) whether visitation would interfere with the parent-child relationship or with a parent’s authority over the child, 3) the nature of the relationship between the grandparent and the child, including but not limited to, the frequency of contact, and whether the child has lived with the grandparent and the length of time of such residence, and when there is no reasonable cause to believe that the child’s physical and emotional health would be endangered by such visitation or lack of it, 4) the nature of the relationship between the grandparent and the parent of the minor child, including friction between the grandparent and the parent, and effect such friction would have on the child, and 5) circumstances which resulted in the absence of a nuclear family, whether divorce, death, relinquishment or termination of parental rights or other cause.

The family court granted parenting time for Mr. Novell one Saturday per month with additional time around the birthdays of the children and the Christmas holiday. By agreement, the parenting time for William is to grow as William can

come to New Hampshire to visit with the children. There is no limit on his parenting time after compliance with supervised visitation and guidance regarding reunification of the children with William. William has the opportunity for future parenting time in Arizona with the children. William is to have phone calls with the children every Sunday at 4:00pm EST. William continues to be denied all parenting time and phone calls. William continues to be denied photographs of the children. However, even if William had all scheduled parenting time, the court ordered grandparent visitation time would not infringe on his ability to exercise his time.

Since the scheduled grandparent visitation time does not interfere with William's scheduled parenting time or possible future parenting time, William takes no stance on the grant of grandparent visitation time. William defers to the ruling of this court regarding the statutory and common law regarding this issue and its application to the case at hand. William only requests that this court issue an order expressly stating, in dicta, that Brianna should be following the agreed upon parenting plan and cease alienating the children from William since that alienation is not in the best interest of the children.

CONCLUSION

William respectfully requests that this court issue an order that is in the best interests of the children and an order that will limit the alienation of the children from him so that he may take an active roll in parenting the children.

RULE 12(11) STATEMENT

This brief contains approximately 938 words, within the 9500-word limit.

Respectfully Submitted,
William Kauble
By his attorney:

Date: July 21, 2022

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Certificate of Service

I hereby certify that this Brief has been forwarded this day to Herbert Novell, who is not a registered e-filer, by email and first class mail.

/s/ M. Chantal Crawley, Esq. #266340