

April 8 2009

¹
E. Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

IN THE MATTER OF PARENTING AND)	
SUPPORT OF:)	
)	
K.S.K.,)	
)	
)	Minor Child,
)	
JASON KIDDER,)	No. DR 06-108
)	
)	Petitioner,
)	
and)	
)	
SHONDELLE LYNN GEISS,)	
)	
)	Respondent.
)	

TRANSCRIPT OF PROCEEDINGS

Courtroom - Dept. No. 4
Yellowstone County Courthouse
217 North 27th Street
Billings, Montana
May 26, 2006 - 9:07 a.m.

HON. GREGORY R. TODD, PRESIDING JUDGE
Respondent's Motion for Hearing on Interim Parenting Plan

COUNSEL APPEARING:

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PROCEEDINGS

THE COURT: Court's in session. You may be seated.

This is Cause No. DR 06-108, Jason Kidder and Shondelle Lynn Geiss.

MS. GEISS: Mm-hmm.

THE COURT: So we had a hearing not that long ago, and this is a motion for an interim parenting plan; is that right?

MR. TOMICICH: Correct, Your Honor.

THE COURT: We have -- Mr. Tomicich, we have a trial set for October 24th. So I guess it's your motion, you may proceed then, Mr. Tomicich.

MR. TOMICICH: Thank you, Your Honor. The respondent calls Jason Kidder.

JASON T. KIDDER,
being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. TOMICICH:

Q. Good morning, Mr. Kidder.

A. Good morning.

Q. My name is Greg Tomicich, I'm Shondelle's lawyer.

Would you please state your name and

1 address for the record.

2 **A.** Jason T. Kidder, 1811 Baxter Drive, Bozeman,
3 Montana, 59718.

4 **Q.** You recently moved to Bozeman, correct?

5 **A.** We did.

6 **Q.** When did you do that?

7 **A.** We moved at the end of April.

8 **Q.** Now, at the time of your move, there was an
9 interim parenting plan in place, right?

10 **A.** Yes, sir.

11 **Q.** And that parenting plan, correct me if I'm
12 wrong, basically gave Shondelle Tuesdays and Thursdays?

13 **A.** Yes, sir.

14 **Q.** And every other weekend?

15 **A.** Yes, sir.

16 **Q.** You believe that to be an impractical plan?

17 **A.** With me moving to Bozeman, yes.

18 **Q.** On April 4th your attorney wrote me a letter
19 and said you would be sticking to that plan.

20 **A.** Okay. Our intent was to try to stick with it.
21 With traveling time --

22 **Q.** Okay.

23 **A.** -- it was hard on Kobe.

24 **Q.** What is your occupation?

25 **A.** Service department manager for Dick Walter

1 Subaru.

2 Q. When did you get that job offer?

3 A. I was offered the job at the end of March.

4 Q. Okay.

5 A. And I -- my first day was middle of April.

6 Q. You're making about ninety, \$100,000 a year
7 now?

8 A. Yes, I am.

9 Q. Which is it?

10 A. It's about a hundred thousand a year.

11 Q. So any child support should be based on you
12 making \$100,000 a year, correct?

13 A. Yes, it should be.

14 Q. Where were you working when you were in
15 Billings?

16 A. Incredible Kia.

17 MR. TOMICICH: May I approach the witness,
18 Your Honor?

19 THE COURT: Yes.

20 Q. (By Mr. Tomicich) I'm going to hand you what's
21 been marked Petitioner's Exhibit -- excuse me, Respondent's
22 A and ask you if you've ever seen this letter.

23 A. (Reviewing document.) I have seen that letter.

24 Q. Okay.

25 MR. TOMICICH: We'd move for admission of

1 Respondent's 1, Your Honor.

2 THE COURT: A.

3 MR. TOMICICH: A, excuse me.

4 THE COURT: Any objection?

5 MR. RINDAL: None, Your Honor.

6 THE COURT: A is admitted.

7 Q. (By Mr. Tomicich) Now, Jason -- excuse me. Is
8 it okay if I call you Jason?

9 A. Absolutely. Can I call you Greg?

10 Q. Sure.

11 A. All right.

12 Q. You asked for a bunch of days because you're
13 getting married, correct?

14 A. Yes.

15 Q. Extra parenting days with Kobe --

16 A. Yes.

17 Q. -- correct?

18 And as this letter indicates, we didn't
19 necessarily agree to that, correct?

20 A. We had a time frame, because of the traveling
21 and so forth, we had asked for a response at the end of the
22 week. And in that letter that we had asked for the response
23 by the end of the week, we just said if we didn't hear a
24 response we would assume that it was okay.

25 Q. But your attorney did give a response?

1 **A.** And her and I had a conversation, it's
2 different what she told me on a couple different
3 conversations and what you and my attorney spoke with were
4 different. I was confused.

5 **Q.** You were confused?

6 **A.** Absolutely.

7 **Q.** So basically, even though you objected, you
8 just took your days?

9 **A.** We didn't hear an objection for a week
10 afterwards, and meanwhile her and I had already had a
11 conversation that it was okay, that we would do this, and
12 there would -- we would trade days. She actually even spoke
13 about Labor Day weekend, and then we had a conversation
14 about mother's day weekend.

15 **Q.** Now, on Mother's Day weekend, she was supposed
16 to have Friday, the 19th with Kobe, correct?

17 **A.** Actually she asked just to have Sunday, and I
18 offered for her to have the full weekend.

19 **Q.** And you brought him down Friday, correct?

20 **A.** Correct.

21 **Q.** And you dropped him off, correct?

22 **A.** I did.

23 **Q.** And then you yanked him out of the home,
24 correct?

25 **A.** That was not Mother's Day weekend. That was

1 this last weekend, and the reason I did that if you would
2 really like to know.

3 Q. I do.

4 A. Because I dropped -- I asked her Thursday if it
5 would be okay if we come up Saturday morning rather than
6 break up Kobe's routine, so he didn't have to eat in the
7 car, I didn't have to leave work early, if it would be okay
8 if she had him Saturday morning. She said absolutely not,
9 she had to have him Friday night, had to. So we do that, we
10 had -- he has to eat a sandwich in the car. We get into
11 Billings around 7:30, I dropped him off, gave him loves, he
12 waved us bye, normal routine, I left.

13 About an hour later, I call Shondelle's
14 phone to say good night like I do every night that I don't
15 have him, and I could hear something in the background.
16 There was people partying, loud voices. I said, "May I
17 speak with Kobe? May I say good night?" "Well, I don't
18 know if he's awake. I need to run upstairs." I said,
19 "Okay. I'll wait." "Well, my phone's going to go." This
20 whole elaborate story, her phone is going to go dead, I
21 don't know if he's awake, all these things. And she was
22 speaking really loud, slurring her words, sounded
23 intoxicated. I was with her for two years, I know what she
24 sounds like when she's intoxicated.

25 We were on her way to pick up her

1 grandmother to go get some coffee. We were on 32nd and
2 King, and she lives on Central and 32nd. We turned right
3 around, went right to the house. Because what had happened,
4 I get -- she hangs up on me. Three months later I get a
5 phone call from a different cell phone, which is her live-in
6 boyfriend, Nick. He -- it was Kobe saying good night, and
7 it was pure quiet, so obviously it was a different home. I
8 said, "Hey, what are you do?" Right then he said, "Mommy's
9 at a party," right then. So I turn right around, and I was
10 obviously upset. I mean I think that my son deserves better
11 than that. On the whole way from Bozeman to Billings, we
12 were talking about, oh, you get to see your mom. We do that
13 all the time. We build it up, you know, just to build some
14 excitement in, and she doesn't spend an hour with him and
15 she leaves.

16 Q. Did you know at the time that she was only
17 going to be with her friends for about an hour, hour and a
18 half?

19 A. You know, it's convenient that they say that
20 now, but I obviously did not know.

21 Q. I'm going to hand you what's been marked
22 Respondent's Exhibit's B and ask you if you recognize that.

23 A. (Reviewing document.) I absolutely recognize
24 that.

25 Q. Okay. What is it?

1 **A.** That's a letter that I wrote to her, because
2 just to thank her for working this out with us. Because the
3 difference between -- like, again, what you and my attorney
4 speak with about and what she tells me on the phone, the
5 conversations her and I have, there's a difference. I
6 literally get confused. She -- one second she's happy and
7 willing to work with me and another second she's exact
8 opposite.

9 MR. TOMICICH: Ask for admission of
10 Respondent's Exhibit's B, Your Honor.

11 MR. RINDAL: No objection, Your Honor.

12 THE COURT: B is admitted.

13 Q. (By Mr. Tomicich) I want you to take a look at
14 the second page of that. That's the envelope.

15 **A.** Okay.

16 Q. Sent from Yakima, Washington, on the 20th.

17 **A.** You bet.

18 Q. But the letter is dated the 11th?

19 **A.** We wrote the letter and then we had to fly to
20 Washington to get the marriage license. We had -- we
21 couldn't get a marriage license in the state of Montana
22 because we're getting married in the state of Washington, so
23 we wrote the letter and literally just neglected to mail it.
24 We mailed it from Yakima where we were getting our marriage
25 license. You have to have a marriage license within 60 days

1 of the time you get married and more than three days, so we
2 had to fly an emergency trip to Yakima.

3 Q. So you carried the letter in your backpack
4 literally?

5 A. I absolutely carried -- I have what I call a
6 purse, it's a man purse, I carry everything in there. I can
7 show it to you if you'd like.

8 Q. And sending the letter didn't do anything --
9 have anything to do with the fact that I was objecting to
10 Mr. Rindal that you guys had taken the days?

11 A. I did not know -- her and I had a conversation
12 that everything was going to be okay, that that was going to
13 work out.

14 Q. Let me get this straight now.

15 A. Okay.

16 Q. Ten days prior to that, your attorney filed a
17 motion for contempt against my client. He said she violated
18 the parenting plan, was unreasonable. In your affidavit,
19 she said all these horrible things, that she wasn't going to
20 do you any favors. Totally unreasonable person. Now you're
21 asking the Court to believe that when it came to these days,
22 she was just as sweet as pie. Which is it?

23 A. It's one or the other. What happens is, I
24 could drop him off, and one second she can the nicest,
25 sweetest thing, "Look at these new shoes I bought," and five

1 minutes before she's calling me an F and -- M-F'ing idiot, I
2 mean all the different names you can come up with. It's the
3 difference of where the sun angles on what time of the day.

4 Q. Well, it's pretty convenient for you, that this
5 unreasonable person just happened to sweetly agree to the
6 parenting time that you wanted, isn't it?

7 A. We had agreed on -- because what it comes down
8 to with her, it's not about spending quality time with my
9 son, it's not any of that. I think everybody knows what
10 it's about with her.

11 Q. Then why don't you tell the Court about the
12 time that Kobe was left on your doorstep for a couple hours
13 when you had passed him off to several different friends and
14 DFS was finally called and came to discover him.

15 A. Have you heard the beginning of that day? I
16 bet you have not. 10:00 in the morning she called me up and
17 she says, "I want you to know that I have taken you off the
18 pickup list for day care." I said, "Why did you do that?"
19 "Because I have that right. I'm the mother." That's what
20 she said word for word. I'm sure you haven't heard this
21 because you've been disillusioned.

22 I -- right then I go straight to day
23 care, obviously upset. The only way she could get to me is
24 my son, that's it. For no reason took me off the pickup
25 list. So maybe I overreacted. I think any parent would. I

1 I go down and I grab him and I take him. I had to be back
2 to work.

3 Q. And you gave him to a friend, didn't you?

4 A. I wasn't finished. I have a friend of mine
5 that was a friend of mine's daughter, I did, and at my home,
6 and she made some bad decisions.

7 Q. She is passed him off to another friend?

8 A. She absolutely did.

9 Q. What did that friend do with your son?

10 A. That friend I've never met before that actually
11 getting -- he was arrested and a whole bunch of things,
12 because what he did is he ended up leaving my son on my
13 front porch.

14 Q. But early in the relationship you passed Kobe
15 off a lot, haven't you?

16 A. Absolutely not.

17 Q. When you two were together, Shondelle did
18 everything, she did the cooking, she did the caring for
19 Kobe --

20 A. Absolutely not, untrue.

21 Q. You had a crotch rocket, didn't you --

22 A. I did.

23 Q. -- that you spent time on that.

24 A. I did.

25 Q. You hired a nanny to watch Kobe rather than

1 watch him yourself?

2 **A.** I was literally working probably 60 hours a
3 week. She has other agendas that she's proven even as
4 recently as last weekend.

5 THE COURT: Well, wait a minute here. I'm
6 getting really sick and tired of both here, and I haven't
7 even heard her. But we had a hearing on February 27th where
8 all of this dirt was supposed to come out, or did come out,
9 and I made a ruling. What I thought the scope of this was,
10 and I'm not going to sit here and listen to hours of
11 character assassination, while you assassinate her, and I'm
12 sure she's going to come up and say at least as many things
13 as bad about you.

14 I'm not going to listen to questions from
15 either one of you lawyers while we spew out more and more
16 venom here. What I'm going to decide is what's happened,
17 what should happen with the move to Bozeman. So nobody's
18 gaining point here. You're not gaining points by painting
19 her as black as possible, she's not going to gain points by
20 vice versa. So let's focus the questions, or I'll just kick
21 everybody out. All right. Hopefully that will provide some
22 guidance to the scope of this hearing.

23 MR. TOMICICH: It does, Your Honor, although we
24 have affidavits that we feel compelled to respond to.

25 THE COURT: Well, yeah, but I -- what I expect

1 the --

2 MR. TOMICICH: I understand.

3 THE COURT: We had the interim hearing. And
4 we're going to have a trial at the end, and it probably will
5 be more like an ordeal. But we've got court services, and
6 there's going to be more -- all of this fleshed out. So
7 what I'm going to decide here today is based on what's
8 happened between the end of February and now with the move
9 to Bozeman how much time the child spends with Shondelle and
10 how much time the child spends with Jason.

11 MR. TOMICICH: Very well, Your Honor. I will
12 tailor my questions to that end.

13 THE COURT: And Mr. Rindal will as well.

14 MR. RINDAL: Absolutely, Your Honor.

15 Q. (By Mr. Tomicich) Jason, you have asked for
16 essentially a two-week -- actually, it's about -- it's a
17 23-day block of time during June for your wedding, correct?

18 A. Yes, I have.

19 Q. Is it basically -- if I remember correctly from
20 your letters from your attorney, you have asked that
21 Shondelle give up Kobe from May 28th, two days from now,
22 until June 22nd or 21st?

23 A. 21st I think.

24 Q. That's 23 days when this mother will be
25 separated from Kobe, correct?

1 **A.** Yes.

2 **Q.** Well, then, why shouldn't she get the next 23
3 days?

4 **A.** We haven't spoken about that. I've never
5 objected to that. The reason I don't feel that that is what
6 should happen is because I don't believe that's what's best
7 for Kobe. I don't trust some of the people that she uses to
8 watch him. He'd end up being in day care.

9 **MR. TOMICICH:** Your Honor, I think we're going
10 back down this road again.

11 **THE COURT:** Well, let me follow up with a
12 question then.

13 **THE WITNESS:** I'm sorry.

14 **THE COURT:** If I heard your response to
15 Mr. Tomicich, you want from May 28th to June 21st.

16 **THE WITNESS:** (Nods head.)

17 **THE COURT:** And has that been agreed to?

18 **MR. TOMICICH:** No, Your Honor.

19 **THE COURT:** But the question was then, if
20 you're to get that time, why shouldn't she get the next 23
21 days? And you said you have not objected to that. Does
22 that mean you agree to it?

23 **THE WITNESS:** If that is something that they
24 want to do -- I mean it's never been something that's been
25 thrown at me. I've never had time to think about that.

1 Q. (By Mr. Tomicich) But, Jason --

2 A. I would prefer not 23 days at one time. And
3 it's not because of me not being able to see my son, it's --
4 I don't want to get into the -- you know, the only way I can
5 respond to what my reason is, it means I have to tell you
6 why. And if I have to tell you why, it means that I might
7 have to bring up some negative things about Shondelle, and
8 I'm not --

9 Q. (By Mr. Tomicich) But, Jason, you aren't
10 opposed to the idea of overnights, she had Tuesdays and
11 Thursdays. For the first nine months of your relationship
12 she was primary and he was with her most of the time, right?

13 A. Define primary.

14 Q. You were paying child support, weren't you?

15 A. The first nine months, we were together and I
16 was working and she was at home.

17 Q. And it's since February that you've had primary
18 since the last hearing?

19 A. So does that mean because she's the primary, is
20 that because I pay child support? Is that what constitutes,
21 the fact that I pay child support?

22 Q. Well, I'm not going to quibble over that. But
23 the fact is --

24 THE COURT: We're not going to get into some
25 Bill Clinton definitions. If you want to go down that road

1 as well, you're not gaining any ground.

2 THE WITNESS: I just want to know what their
3 definition of primary --

4 Q. (By Mr. Tomicich) Here's the point, and you
5 can disagree with it if you want to. The point is, is it
6 not true that she's perfectly capable of watching her son,
7 she's done it many times in the past for long periods of
8 time, correct?

9 A. Short term, not long term.

10 Q. Now, isn't it also true that you don't have any
11 family in Bozeman.

12 A. Absolutely true.

13 Q. Nobody?

14 A. No, I've got my wife.

15 Q. Down here, Kobe's maternal grandmother lives
16 here, correct?

17 A. You bet.

18 Q. And aunts?

19 A. Yes.

20 Q. And cousins?

21 A. You bet.

22 Q. And Kobe's lived here all his life, all of his
23 young life, hasn't he?

24 A. He has.

25 Q. Well, why isn't it better for him to be around

1 those people until court services decides?

2 **A.** I don't trust her family.

3 Q. You don't trust her and you don't trust her
4 family.

5 **A.** Absolutely not.

6 Q. You said none of this has been discussed,
7 although you don't object to the 23 days, you claim none of
8 this has been discussed. The fact is I've made offers of
9 one week, one week for the summer, I did it in the Judge's
10 chambers, I've done it with Mr. Rindal on numerous
11 occasions. Anything wrong with that for the summer?

12 **A.** After two days of Kobe in his mom's presence,
13 we are in recovery mode. He forgets words like please and
14 thank you. He throws fits. We have discussions about why
15 not to yell and scream after two days. Can you imagine a
16 week?

17 Q. Can you imagine that the Court has heard these
18 kinds of complaints before?

19 **A.** I'm sure he has.

20 Q. Do you realize that that is the mother?

21 **A.** Do you have children?

22 Q. Do you know that this Court has to consider
23 which party is more likely to give the other party
24 visitation, and you don't sound very willing to give
25 visitation?

1 **A.** I'm absolutely -- yesterday we came into town
2 unexpectedly, we didn't expect to come in. I called her and
3 I said, "Hey, we're going to be in town, would you like
4 him?" I have never one time tried to keep him from his
5 mother. His mother needs him, they need each other, I'm
6 aware of that, and I want to maintain that relationship.

7 **Q.** You do?

8 **A.** Absolutely, I do.

9 **Q.** On your terms?

10 **A.** On what's best for Kobe.

11 **Q.** Your definition of what's best for Kobe.

12 **A.** If my definition is what's best for Kobe is to
13 protect Kobe.

14 **Q.** And her definition is that Kobe be with her;
15 wouldn't you agree with that?

16 **A.** That's definitely what she thinks, now.

17 **Q.** Now, I mean, I don't know if the Judge is going
18 to let me or not, but I've got all kinds of witnesses out
19 there. They're go to testify as to her qualities as a
20 mother and the fact that she was primary caregiver during
21 the first part of your -- during your whole relationship.
22 Tasha Neil, who you guys lived with.

23 **A.** Okay. Absolutely not true.

24 **Q.** So let's go back to the question. 23 days
25 straight is a long time. It's probably too long for a

1 three-year-old to be without both parents. Can we agree on
2 that?

3 **A.** I definitely agree it's a long time.

4 **Q.** And you've asked for 23 days. You've also said
5 that you don't think 23 days for Shondelle -- that's a long
6 time for you to go without seeing Kobe, too, right? So what
7 is wrong with one week, one week, especially for the summer
8 when most parents get extended visitation anyway?

9 **A.** After two days, again, we are on recovery mode.
10 I am trying to do -- that's how come we're here. That's how
11 come we're in front of a judge, because I cannot reason with
12 her, that's why it's put into somebody else's hands. I've
13 written letters, my attorney's written letters, I've had
14 phone conversations, everything to get to the point where
15 her and I can be functional parents together. It is
16 impossible.

17 **Q.** So your idea is what? What's your suggestion
18 to the Court for a parenting plan?

19 **A.** At this point right now, we are -- we have --
20 during the week, he's in swimming lessons. My wife does not
21 work. There's some normal function.

22 **Q.** Excuse me, are you married?

23 **A.** We get married a week from tomorrow.

24 **Q.** Okay. So right now she's your girlfriend.

25 **A.** She fiancée.

1 Q. Okay. You've got a nice little family unit up
2 there, right?

3 A. We do.

4 Q. Soon-to-be wife, Kobe, sweet. You've got a
5 \$100,000 a year job. Now you want total control over your
6 son, correct?

7 A. It's not about control. It's what's best --

8 Q. It's not about control?

9 A. Yes.

10 Q. You're what's best for Kobe?

11 A. I feel I am definitely more stable for Kobe.

12 Q. Is there anything wrong with Shondelle getting
13 her accounting degree and working while she's doing that?

14 A. No. I'm proud of her for doing that. It's not
15 about a degree. It's not about money. It's not about
16 anything. It's about dysfunction.

17 Q. About what?

18 A. Dysfunction. It's about yelling and screaming
19 and things that her family do that I don't want Kobe around.
20 Alcoholism, drugs.

21 Q. And you don't drink?

22 A. Absolutely not. I might have a drink in a
23 month. I have a couple beers. Her --

24 Q. You didn't throw a kegger for an underage
25 minor -- what's her name? Because I have a witness that

1 says you did.

2 **A.** She was there. It has -- she was there because
3 she was dating my roommate.

4 **Q.** Mallory Johnston?

5 **A.** Yeah, she was dating Dan, my roommate.

6 **Q.** And you didn't cheat on Shondelle with anybody
7 under age?

8 THE COURT: Whoa. We are taking a recess.
9 Both counsel are in chambers.

10 (Whereupon, a brief recess was taken at
11 9:30 a.m. and reconvened at 10:20 a.m.)

12 THE COURT: Court's in session. You may be
13 seated.

14 All right. I guess when we recessed,
15 Mr. Kidder was on the stand and Mr. Tomicich was
16 questioning, so you may continue.

17 THE WITNESS: Your Honor, I apologize.

18 THE COURT: Well, let me say some things here.
19 I spoke with both of your attorneys, obviously I was upset.
20 I was upset for a whole bunch of reasons. But one of the
21 major reasons was, I don't expect -- I don't demand that the
22 two of you settle things. I certainly suggested some
23 parameters upon which you might be able to settle, and the
24 reason -- the major reason for that is, when people appear
25 in the courtroom and they're under oath and we have a

1 situation that's as emotionally charged as this one, and
2 parents can and should care about their children, but when
3 we have the direction that this case was going with the
4 stuff being said, both parties remember every word that's
5 said. And the more and more negative it becomes, the more
6 and more difficult the future is here.

7 You two have a child that is barely three
8 years old. So irregardless of what I do today, and
9 irregardless of what I recommend -- we've got a trial set on
10 this on October 24th. Right now I would say that Osama bin
11 Laden has a better chance of becoming the Pope than you do
12 of settling things. So when we have that trial, you two
13 still have 15 years of legal finagling that's going to come
14 here. So I don't know how big this file is going to get and
15 how many more files you folks are going to fill up and how
16 many more thousands of dollars you want to spend on your
17 attorney, and they'll be happy to bill you, but I think if
18 you probably ask them they might make due with a little less
19 money if it were less aggravation.

20 But you two are stuck with each other.
21 If you want to have a battle, and I've had cases where I
22 would say, you know, this would be round two of a 15-round
23 bout, and 15 rounds may be a short number, it's a really
24 poor way to solve disputes in the courtroom. And there's
25 very, very few things in life that are black and white. My

1 job is to decide some of those, and I will if I have to. I
2 hope that at some point before criminal charges are filed by
3 one against the other, or there is some other damage, or
4 what could easily happen is the two of you could so warp
5 your kid that you may be back here in a few years hoping
6 that the other one takes the kid, because he -- a kid learns
7 more than anything from his parents.

8 And if you want to teach him how a man
9 treats a woman and a woman treats a man, just keep going,
10 and your child will be in youth court, your child will be in
11 trouble with school, your kid will drop out, your kid may
12 have psychological problems, so you can set the groundwork
13 for that if you want to. I'm not going to tell you you've
14 got to live together, and I don't think you should live
15 together, the sparks fly, it's unfortunate that you got
16 together, it's more unfortunate that when you got together
17 you had a child, but that's where we're at. And you're
18 adults. Those are part of the ramifications of it. You're
19 going to have to learn to somehow get along at a minimal
20 level so that hopefully this son of yours can live a
21 productive life without the two of you being at each other's
22 throat.

23 So with that being said, let's see if we
24 can get through this matter today. And as I told the
25 attorneys, we had a hearing on February 27th, that was for

1 the interim parenting plan. That was the time where I was
2 going to hear a broader range of stuff. I don't want to
3 hear stuff going back years and years. What I want to know
4 is what I am going to do on a interim basis, because
5 Mr. Kidder has moved to Bozeman, and Ms. Geiss is still here
6 in Billings, and what the parenting plan situation is going
7 to be between now and October, if it's not settled before,
8 or whenever I make my decision, if and when we have a trial
9 in this matter.

10 So I'm going to be deciding if I agree
11 with Mr. Tomicich and Ms. Geiss, if I agree with Mr. Rindal
12 and Mr. Kidder, or if I do something totally different. I
13 mean if you two keep going the way you go, you know, I can
14 say neither one of you deserve the kid. I can independently
15 call the Department of Public Health and Human Services. I
16 can call Family Services and say neither one of you are
17 worth beans and you're both screwing up this kid. So with
18 that as a preface, let's get through this hearing and give
19 me what I need to have.

20 And I may be limiting evidence, the scope
21 of the evidence, because I want to know -- I don't want to
22 hear all of the bad stuff that each of you have to say about
23 each other. That's why there's a court services order. And
24 if that has to be modified because of the move, then there
25 needs to be somebody brought in that's going to give similar

1 type of information, some sort of third party that can
2 filter through some of this.

3 But you may proceed with your questioning
4 then, Mr. Tomicich.

5 MR. TOMICICH: Thanks, Your Honor.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. TOMICICH:

8 Q. Jason, would you just tell the Court what your
9 proposal would be for the summer.

10 A. Any holiday she'd like, all weekends starting
11 evening of Fridays and ending the evenings of Sunday, four
12 weekends a month.

13 Q. Okay. You work regular hours at your job?

14 A. I do.

15 Q. Could you tell the Court when you work?

16 A. I go to work at 7:30 and I get off at 5.

17 Q. Where is your job in relation to your home?

18 A. About three or four minutes away.

19 Q. And you have weekends off; is that how it
20 works?

21 A. I do. I work weekends on occasion, just
22 depending if I'm filling in for somebody. But for the most
23 part, I get weekends off.

24 MR. TOMICICH: That's all the questions I have
25 for this witness.

1 THE COURT: Do you want to cross, or do you
2 want to reserve?

3 MR. RINDAL: I'll reserve.

4 THE COURT: Okay. You may step down then.

5 Mr. Tomicich, call your next witness.

6 MR. TOMICICH: Your Honor, if I could
7 preface -- I do have a couple of witnesses out there. I
8 have instructed those witnesses to say nothing negative
9 about Jason. However, I would just ask for a little leeway.
10 I think I need to assure the Court that my client is an okay
11 mother, and I have some witnesses that would be willing to
12 testify about that.

13 THE COURT: Well, okay. You can call, and I
14 guess I'll make the ultimate decision on where we're going
15 and how here.

16 MR. RINDAL: Your Honor, are we still
17 restricting to February 27th and current, correct?

18 THE COURT: Well, I guess -- I think I know
19 where you're going and why you're doing this. If you just
20 want -- you don't have to, just for the sake of whether it's
21 figuratively trying to balance some scales of justice here,
22 put on some positive testimony. I haven't heard anything
23 about criminal actions on behalf of Ms. Geiss or physical
24 abuse or sexual abuse or DFS referrals about her. Short of
25 that, then, I heard enough in February that I made my

1 decision on primary and secondary arrangements with
2 parenting. I'm going to have to change it now. I mean --
3 so I don't think that you have to just put on something,
4 somebody or several people that will say she's a good
5 mother. I guess I -- I'm trying to control it, at the same
6 time I don't want to totally throttle the case.

7 MR. TOMICICH: Your Honor, I'm trying to dance
8 through this minefield going first. Could I put on my own
9 client and hold that matter. If the Court thinks it needs
10 to hear more, then I could ask a couple of these witnesses
11 to come in?

12 THE COURT: Yeah, I'll give you that. Let's do
13 that. So why don't you call Ms. Geiss.

14 MR. TOMICICH: The respondent calls Shondelle
15 Geiss.

16 SHONDELLE GEISS,
17 being first duly sworn to tell the truth, the whole truth
18 and nothing but the truth, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. TOMICICH:

21 Q. Shondelle, please state your name and address
22 for the record.

23 A. Shondelle Geiss, 3321 Central Avenue, apartment
24 8, Billings, Montana, 59102.

25 Q. And, Shondelle, how long have you lived at that

1 address?

2 **A.** April of 2006.

3 **Q.** And where did you live before that? Where did
4 you live at the time of the last court hearing?

5 **THE COURT:** Just the street name.

6 **THE WITNESS:** 3330 Lynn.

7 **Q.** (By Mr. Tomicich) Shondelle, what do you think
8 would be fair for the summertime?

9 **A.** I think if we switch off every week would be
10 appropriate for Kobe.

11 **Q.** If you can do some kind of parenting
12 arrangement like that -- incidentally, would that just go
13 for the summer, or in your mind would that go up to the
14 hearing date?

15 **A.** Up to the hearing date.

16 **Q.** With that kind of an arrangement, would it then
17 be okay for you to give Jason the 23 days for his wedding in
18 June?

19 **A.** Yes.

20 **Q.** And so then he'd get a couple of extra weeks?

21 **A.** Yes.

22 **Q.** Why don't you tell the Court, Shondelle, what
23 your current employment is.

24 **A.** I recently got a new job offer with a CPA firm,
25 it's called Ferro Willett & Thompson, and I work Monday

1 through Thursday, eight to five, Friday, eight to 12, and
2 I'm basically their office manager for right now.

3 Q. Now, it is summertime, so you're working full
4 time as opposed to part time?

5 A. Yes.

6 Q. And during the school year while you were
7 pursuing your studies, you were working -- how many hours
8 were you working?

9 A. 20 to 28.

10 Q. When do you graduate from college?

11 A. December of 2006.

12 Q. What is your grade point going to be?

13 A. Currently?

14 Q. Yes.

15 A. I have a 3.2.

16 Q. And you plan on then taking the CPA exam and
17 that whole route?

18 A. Yes. My employment wants me to sit for the CPA
19 exam.

20 Q. At some point, at some point, you have asked
21 Jason to take on more parenting responsibilities while you
22 were working and going to school; would that be fair to say?

23 A. Yes.

24 Q. And how was that working? How many days did
25 Jason have Kobe versus how many days did you have Kobe and

1 so on?

2 **A.** Are we talking before February and after
3 February?

4 THE COURT: Well, let's talk from the hearing.

5 THE WITNESS: Okay.

6 THE COURT: Until he moved to Bozeman and then
7 after he moved to Bozeman. So let's break it into those two
8 chunks of time.

9 THE WITNESS: Since the hearing, I was granted
10 the visitation Tuesday, Thursday nights, and then Friday,
11 Saturday, Sunday, and that worked up until he moved to
12 Bozeman. And then once he moved to Bozeman, he decided not
13 to give me the days I had in the parenting plan. So I got
14 him -- they wrote a letter offering me three weekends per
15 month until we went to trial to get a new parenting plan set
16 up.

17 Q. (By Mr. Tomicich) Jason has testified that you
18 gave your consent for the week that he took Kobe to Oregon.
19 Did you in fact tell him that he could have that time?

20 **A.** No, I don't -- I didn't.

21 Q. Did you want to make it some kind of global
22 package where the whole summer could be worked out?

23 **A.** Yes. I remember sitting in your office and we
24 called Lee, and basically they wouldn't do us any favors,
25 but they wanted it all on their terms and nothing at all --

1 or nothing at all.

2 Q. Do you have a close relationship with your son?

3 A. Yes.

4 Q. Do you think a two-week/two-week is --

5 A. I think two weeks is too long without either
6 parent.

7 Q. Now, apparently on Friday, the 19th, you had
8 asked Jason if you could have Kobe that night, and he agreed
9 to give him to you that night.

10 A. Yes. We made arrangements that that was my
11 third weekend for this month.

12 Q. Okay. So Jason brought Kobe around 7:15, 7:20
13 Friday night?

14 A. Yes.

15 Q. Tell the Court what you did and what your plan
16 was for the night.

17 A. I had been invited to a get-together with some
18 friends, girlfriends. And I had known two weeks in advance,
19 but since the parenting plan said it was more than two
20 hours, you would have to notify the other parent for the
21 right of refusal. I thought it was okay for my fiancé to
22 watch him for an hour to an hour and a half. I went to
23 the -- I went over there, we hung out. And then when
24 Jason -- my fiancé called me and told me Jason had come and
25 took my son out of my house, I left the party.

1 Q. How long had it been since Jason had dropped
2 off before your --

3 A. He dropped him off about 7:15 on Friday and
4 then picked him up 8:58, 9:00 on Friday night.

5 Q. I think this is the -- your reaction to this
6 was to call the cops, was it not?

7 A. I first proceeded to call Jason to let him come
8 back, because it was my weekend. And Jason didn't listen,
9 so I called the cops.

10 Q. So your understanding of the right of first
11 refusal, it kicks in after more than just an hour or two?

12 A. More than two hours it's stated.

13 Q. And you didn't intend to be any longer than two
14 hours?

15 A. Yes.

16 Q. Did you consume any alcoholic beverages --

17 A. I had one margarita.

18 Q. -- when you were with your friends?

19 So I mean are the police really helpful?
20 Do you think you're going to solve anything?

21 A. No, but in the situation, I wasn't sure if
22 Jason was going to bring him back for the rest of the
23 weekend.

24 Q. When did you get Kobe back?

25 A. The cop said that Jason was to bring him to me

1 at eight in the morning on Saturday.

2 Q. And did that in fact occur?

3 A. Yes.

4 Q. So then you had Kobe Saturday and Sunday?

5 A. Saturday and Sunday, and then Jason got him
6 back at six.

7 Q. Now, again, to the heart of what the Judge was
8 saying, how much of this turmoil was Kobe exposed to?

9 A. Kobe was not exposed to any of the police
10 because he was sleeping at the time.

11 Q. But he was exposed to Jason coming and getting
12 him?

13 A. Yes.

14 Q. Do you know if there were any harsh words
15 between Jason and your --

16 A. Fiancé.

17 Q. Would you please tell the Court -- you live
18 with somebody, correct?

19 A. Yes.

20 Q. And what is his name?

21 A. Nicholas Brauer.

22 Q. Okay. And so Nick was watching Kobe?

23 A. Yes.

24 Q. Do you know if there were harsh words
25 between --

1 **A.** Not that I know that Nick told me.

2 **Q.** So that was fairly amicable.

3 **A.** Mm-hmm. Yes.

4 **Q.** So Jason got his week in Oregon, correct?

5 **A.** Washington.

6 **Q.** And now he's proposing another 20 some days,
7 correct?

8 **A.** Yes.

9 **Q.** And you're supposed to get how much of the
10 summer?

11 **A.** Currently, I guess three weekends per month.

12 **Q.** You think that's fair?

13 **A.** No.

14 **Q.** Shondelle, are you capable of parenting Kobe?

15 **A.** Yes. I've been his primary caretaker since
16 birth.

17 **Q.** Well, tell the Court about it.

18 **A.** I gave birth to him. After that I did most of
19 the -- the majority of the responsibilities in parenting.
20 Jason did help out when it was necessary and did the
21 household chores. I didn't work as often at Wal-Mart, and
22 Jason convinced me to quit my job to be a stay-at-home mom
23 and just going to school.

24 **Q.** And at some point you guys split?

25 **A.** Yep.

1 Q. Decided you weren't going to live together?

2 MR. RINDAL: Objection. I don't mean to be
3 interruptive. They're going back three years or four years.

4 MR. TOMICICH: A little background, Your Honor.

5 THE COURT: I'll give you a little leeway, but
6 let's focus it in here soon.

7 MR. TOMICICH: Okay.

8 Q. (By Mr. Tomicich) So you certainly didn't
9 agree to the move to Bozeman, correct?

10 A. No.

11 Q. And you didn't have any input on when you would
12 get to see Kobe basically after that occurred, correct?

13 A. Yes.

14 Q. Would it be fair to say it was just whatever,
15 Jason said?

16 A. Yes, until we got the letter from Lee for them
17 requesting the three weekends per month.

18 Q. Do you -- you know, are you incapacitated by
19 alcohol and can't care for Kobe?

20 A. No.

21 Q. Is there truth to that allegation?

22 A. No. I drink occasionally. I've never been
23 excessive in my drinking.

24 Q. Let's talk about perspective. If -- when Kobe
25 is in Bozeman, I understand Jason will be working all day

1 and Kobe would be staying with his soon-to-be wife. If Kobe
2 were here primarily with you, what arrangements would you be
3 making? How would that make --

4 **A.** I would have to put him in day care the time I
5 would have him. I would try to get him back in the day care
6 that I had him in.

7 **Q.** Which day care is that?

8 **A.** The YWCA.

9 **Q.** Do you like it?

10 **A.** Yes. They're the ones that potty-trained him.

11 **Q.** Does he have friends there?

12 **A.** Yes.

13 **Q.** And does he have an ongoing relationship with
14 your mom?

15 **A.** Yes.

16 **Q.** With your sisters?

17 **A.** Yep. All their kids.

18 **Q.** Cousins.

19 So he would be exposed to the children at
20 the day care and to his extended family here in Billings?

21 **A.** Yes.

22 **Q.** Now, you would only get to see him after work
23 for how many hours?

24 **A.** I get off at 5, so it would be 5 till when he
25 goes to bed.

1 Q. And you have a weekend on the front or on the
2 back with this week to week?

3 A. Yes.

4 Q. Is that after-work time with your son at night,
5 maybe putting him to bed and things like that, is that
6 important to you?

7 A. Yes. We have a normal arrangement where we
8 read to him and then give him a bath, and he goes to bed at
9 8:30 with me.

10 Q. And what about breakfast in the morning, would
11 you fix breakfast for him?

12 A. Yes, we do.

13 Q. Tasha Neil said you used to cook for the whole
14 family.

15 A. Yes. I was the one that got home out of
16 everyone in the household, so I would cook for the whole
17 family.

18 Q. And that's when you and Jason were living
19 together?

20 A. Mm-hmm.

21 Q. And that was before the time frame, correct?

22 A. Yes.

23 Q. You believe that Jason is devoted to Kobe?

24 A. Yes.

25 Q. And that he needs a relationship with his

1 father?

2 **A.** Yes.

3 MR. TOMICICH: I'm going to leave it there
4 right now, Your Honor.

5 THE COURT: Cross.

6 MR. RINDAL: Thank you, Your Honor. As they
7 went beyond a little bit in the time line, am I also allowed
8 to do that, Your Honor?

9 THE COURT: Yeah.

10 CROSS-EXAMINATION

11 BY MR. RINDAL:

12 Q. Ms. Geiss, you indicated that you thought Jason
13 was a dedicated father. Is there any reason that you can
14 think of where Jason shouldn't continue to care for Kobe in
15 the way he's doing it now?

16 **A.** I don't agree with how he's made some decisions
17 since the last court date.

18 Q. What is that?

19 **A.** Not letting -- he says it's important for me to
20 see Kobe, but I think he's trying to get me out of the
21 picture and have his little family with Alyssa and him.

22 Q. What makes you come to that conclusion?

23 **A.** Not abiding by the parenting plan and not
24 allowing me to see him. I see him nine days now out of a
25 month, where it was 14 to 15 with the parenting plan that

1 was adopted.

2 Q. Well, let's talk about that for a minute. Are
3 you saying then that he is cutting you down by days with --
4 when he -- are you saying when he moved?

5 A. Yes.

6 Q. Did Mr. Kidder talk to you -- before his move
7 about trying to change it so you could have more time with
8 Kobe, more hours with Kobe?

9 A. We tried to make an arrangement at your office,
10 but he wanted it his way or nothing at all.

11 Q. What was his way? What did he offer?

12 A. The only thing that changed, and the parenting
13 plan that was adopted was he was going to waive child
14 support and I would get him some time in the summer.

15 Q. So he did offer you to have him during the
16 summertime?

17 A. I think you guys offered some summer.

18 Q. Do you recall --

19 A. I don't recall what the terms were, because we
20 were going through the parenting plan on the computer, and I
21 wasn't going to agree to the plan, so I left.

22 Q. You mean you had no intention of trying to
23 modify or agree to the plan?

24 A. No, I had intention of getting a better plan
25 for Kobe, but it was Jason's terms only.

1 Q. What did you ask at the meeting, the settlement
2 negotiations, what did you ask for?

3 THE COURT: Well, okay. As much as I've talked
4 to the attorneys about it, I don't think it's proper
5 evidence to talk about settlement offers.

6 MR. RINDAL: I'll restate the question.

7 Q. (By Mr. Rindal) Ms. Geiss, you had said in
8 your testimony a few moments ago that the interim parenting
9 plan that Judge Todd had ordered was for you to have Kobe on
10 every other weekend; is that correct?

11 A. Mm-hmm.

12 Q. And then also you were supposed to have him on
13 Tuesday and Thursday night after work, correct?

14 A. Correct.

15 Q. And when did you get off work before?

16 A. I didn't work on Tuesdays and Thursday, so I
17 would pick him up at four or five.

18 Q. And why did you pick him up at four or five
19 instead of in the morning?

20 A. I think in the parenting plan it said
21 commencing at five on the nights.

22 Q. So how many hours did you have him while he was
23 awake on Tuesdays and Thursday?

24 A. Three and a half.

25 Q. You also testified that you later, after Jason

1 moved, you and Jason started doing three weekends with you.

2 **A.** Yes.

3 **Q.** And did you agree to that three weekends?

4 **A.** No, but I didn't agree with the parenting plan,
5 because it's not adopted by the Court. I think we should
6 abide by the parenting plan that was adopted. But that's
7 too much car time for Kobe, so I was -- I was accepting any
8 offer that Jason was giving me extra parenting time with
9 Kobe.

10 **Q.** So did he offer you extra parenting time with
11 Kobe?

12 **A.** The three weekends, but it's not really extra
13 when nine days compared to 14 or 15 that I had before.

14 **Q.** How many hours do you spend with Kobe on the
15 three weekends as opposed to the old parenting plan?

16 **A.** More hours.

17 **Q.** Okay.

18 **A.** But he goes longer days without seeing his mom.

19 **Q.** But then you have quality time. Do you think
20 it's important to have quality time with Kobe as opposed to
21 calendar time?

22 **A.** Yes.

23 **Q.** And so I understand your answer was that you
24 actually got more time with Kobe under the three weekends
25 that you and Mr. Kidder had agreed to?

1 **A.** Yes.

2 **Q.** Mr. Kidder had just indicated that he thought
3 it would be fair, and he's willing to let you have four
4 weekends a month as an interim parenting plan. Keeping in
5 mind, if three weekends a month was more time than you got
6 under the old interim parenting plan, would four weekends a
7 month also be additional more time than the old interim
8 parenting plan?

9 **A.** More quality time hours spent with Kobe, yes.

10 **Q.** And do you think that would be interesting to
11 you? Do you think you would be interested in more quality
12 time?

13 **A.** I'd have to discuss it more.

14 **Q.** Do you think it's a fair offer?

15 **A.** Not as fair as what I'm proposing.

16 **Q.** You indicated that you were going to have to
17 put Kobe back into day care, and you were going to try to
18 get him back into YWCA, correct?

19 **A.** Correct.

20 **Q.** You stated that YWCA potty-trained him. Did
21 you receive a report from YWCA that they couldn't
22 potty-train and they asked the parents to remove Kobe into a
23 home setting to be potty-trained?

24 **A.** No. I talked to the director, Sandy, and that
25 was not discussed. She said he was doing great, and they

1 were starting to potty-train him. What we were supposed to
2 do is put him in underwear when we had him and try to teach
3 him more that way.

4 Q. You indicated that you drink occasionally, but
5 you don't drink excessively. Do you drink alcohol when
6 you're talking care of your son?

7 A. No.

8 Q. Your attorney asked you, and I think you
9 indicated that there was an incident just a week or so ago
10 on May 19th. Do you recall that weekend?

11 A. Yes.

12 Q. When you indicated that Jason went to your
13 house and picked up Kobe at 9:00, did you report it to the
14 police?

15 A. I called the police at nine, but they said they
16 would send an officer as soon as possible. But no one came,
17 and then we called at 2:00 and someone came.

18 Q. So at 2:00 someone responded?

19 A. Yes.

20 Q. And then what happened?

21 A. He looked over the parenting plan and we
22 discussed what happened, and he said, "Well, let's go to
23 Jason's and get your son."

24 Q. Okay.

25 A. We proceeded on to Jason's house, he talked to

1 Jason, Jason somehow convinced him it wasn't my weekend.
2 But I don't know how you could tell what weekend was mine,
3 it says alternating weekends in our parenting plan. Now
4 that he moved, our parenting plan has changed. So he said
5 that he wasn't going to do anything because it was 4:00 in
6 the morning, so he said Jason would bring Kobe back at
7 eight, and I left.

8 Q. Were you present with the police officer and
9 Jason when the police officer said -- when Jason had brought
10 up the fact about your drinking, the police officer said to
11 both of you that you had been drinking but you weren't drunk
12 at that time?

13 A. No.

14 Q. You weren't present then?

15 A. No.

16 Q. Now, this is four in the morning?

17 A. I had to sit in my car while he talked. So I
18 had the windows up, I couldn't hear anything they were
19 talking about.

20 Q. And you indicated you only had one margarita,
21 this was approximately 7:30 the previous night?

22 A. Yes.

23 Q. Do you have any idea why the police --

24 MR. TOMICICH: Objection, Your Honor. It's
25 hearsay. I don't know what a police officer said.

1 THE COURT: Well, I guess we're past that,
2 unfortunately. I'll overrule that objection to that
3 question.

4 Q. (By Mr. Rindal) Do you have any idea why the
5 police officer had an indication that you had been drinking
6 at four in the morning if you only had one margarita at 7:30
7 the night before?

8 A. I don't understand your question.

9 Q. Is it your testimony that you only had one
10 margarita to drink, and that was approximately 7:30 the
11 night before?

12 A. I had one margarita at the get-together, and
13 that was on Friday night.

14 Q. Where did you go after the get-together?

15 A. I proceeded to go home, found Kobe not at my
16 house and I called the cops.

17 Q. And then what did you do, from 9:00 --

18 A. I went to bed at 11. I waited two hours for a
19 cop to come, no one came, went to bed at 11, and then at two
20 my fiancé woke me up and we proceeded to call the cops
21 again.

22 Q. Did you also call Jason or his fiancée?

23 A. Yes.

24 Q. And what time did you call them?

25 A. Probably close to two or three in the morning.

1 Q. And --

2 A. I was unsure where Jason lived since he moved
3 to Bozeman, because I was under the assumption that his
4 house had sold. So I was just making sure that we had the
5 right location if we had to come and get Kobe. That's the
6 only reason I called.

7 Q. But your testimony is that you weren't drunk.

8 A. No.

9 Q. Okay. So do you believe then that Jason had no
10 foundation in coming and picking up Kobe if you had been
11 drunk with Kobe?

12 MR. TOMICICH: Objection. I'm confused.

13 MR. RINDAL: I'm sorry.

14 THE COURT: Yeah, I'll sustain that.

15 MR. RINDAL: Let me rephrase that.

16 Q. (By Mr. Rindal) Do you think Jason had any
17 foundation or any reason to come pick up Kobe if he thought
18 you were drunk while taking care of Kobe?

19 A. But I wasn't drunk, so I don't think Jason was
20 in the right picking up Kobe that night.

21 Q. Do you recall the telephone conversation that
22 Jason had indicated regarding he called to say goodnight to
23 Kobe?

24 A. Yes.

25 Q. And he indicated that you were slurring your

1 words. Were you slurring your words?

2 **A.** No, I wasn't. There was girls all around.
3 They could say that I was not. I was not.

4 **Q.** I'm just asking --

5 **A.** One margarita does not make you drunk.

6 **Q.** I was just asking if you believed you were
7 intoxicated.

8 Had Jason asked you that night if it
9 would be okay if he dropped Kobe off in the morning because
10 you had some other place to go?

11 **A.** He called me Friday night and left a message on
12 my phone stating that they were leaving Bozeman at five and
13 going to be here at seven. But since it was late in the
14 night that he would just bring him by Saturday. Well, I
15 objected, because the more time I get to spend with Kobe,
16 the more better off it is for both of us.

17 **Q.** But was it a statement from him, or was it a
18 request to bring him by early in the morning because he
19 would be asleep by the time he would get there?

20 **A.** It was on my voicemail.

21 **Q.** And when you got Kobe, was it his bedtime when
22 you left for the party?

23 **A.** No. I don't put him to bed at 7:30 like Jason
24 does. I put him to bed at 8:30.

25 **Q.** And you indicated you were going to be back

1 home at what time?

2 **A.** I was going to be gone for an hour, hour and a
3 half.

4 **Q.** When would you have been home?

5 **A.** I got home at nine.

6 **Q.** That's when you indicated you were -- you told
7 him you were going to be home at nine?

8 **A.** When I -- Jason dropped him, it's none of his
9 business what I do with my son at my house. So they said
10 their good-byes like normal, I went to the get-together,
11 came back to find that he had taken him under the
12 less-than-two-hours right of refusal.

13 **Q.** And you said you got home at 9:00; is that
14 right?

15 **A.** Yes.

16 **Q.** And I believe you also testified that Jason
17 picked him up at 9:00. Did you guys pass each other?

18 **A.** No. I got back around nine, but I think he --
19 we weren't quite sure by the telephone calls, at the times,
20 and it was like between 8:45 and nine, and I probably got
21 back at nine, 9:05, 9:10, give or take a few minutes.

22 **Q.** Jason has requested that you have additional
23 time, more than the interim parenting time but it be on
24 weekends. Are weekends -- do you have that opportunity to
25 spend more time with Kobe on the weekends than if you just

1 have him for a couple of hours during the week?

2 **A.** I do, but I think it should be combined,
3 weekdays and weekends, not just weekends for me, where Kobe
4 gets to see his dad all week, and then there's, oh, there's
5 mommy on the weekends.

6 **Q.** Why is that not good?

7 **A.** I don't think it's equal. I think a kid should
8 see both parents equally if possible.

9 **Q.** Do you think it's better to put Kobe back into
10 day care half time, a week on, a week off, than have him
11 stay at home in Jason's home?

12 **A.** I think he'll be better off in the day care at
13 the Y than with Jason's wife.

14 **Q.** Why is that?

15 **A.** Because they taught him things stay-at-home
16 moms can't. They were -- they had like an art activity
17 every day. He always took a nap. I know sometimes they
18 don't give Kobe a nap. He's too young to go without a nap,
19 and they were awesome with him.

20 **Q.** Is there any other reasons why he's better off
21 in day care than staying at home with his fiancée?

22 **A.** No, not that I can think of right now.

23 **Q.** It's just the nap part?

24 **A.** No. Educational reasons.

25 **Q.** What's the educational reasons?

1 **A.** He's interacting with other kids, it's
2 preparing him for school. He's not around any other kids
3 with Jason's wife.

4 **Q.** Are you aware of what activities they have Kobe
5 involved in in Bozeman?

6 **A.** No.

7 **Q.** Have you asked?

8 **A.** No.

9 **Q.** Would you be surprised if he's in other group
10 activities and art education and swimming lessons also?

11 **A.** I would be surprised.

12 THE COURT: Why?

13 THE WITNESS: I don't know. I mean I -- it
14 wouldn't surprise me that Jason would put him in those, but
15 that's just excusing them to have him with his wife. I
16 still think the Y is better. He had friends there. Jason
17 put him in three different day cares in a month since we
18 went to court in February. Three. And the welfare on Kobe
19 has impacted him dramatically.

20 **Q.** (By Mr. Rindal) So you think there should be
21 consistency in Kobe's life?

22 **A.** Yes.

23 **Q.** You indicated you moved sometime in April to
24 your present address. How many residences have you had
25 since our hearing in February?

1 **A.** I moved -- I lived at Lynn, when we went to the
2 hearing. When my child support got taken away, I could not
3 afford my rent at Lynn, so I moved in with my brother in
4 Huntley. I was living there rent-free, but the gas got
5 outrageous. And I wanted to live in town, so I moved back
6 to Billings.

7 **Q.** So is that three places since February?

8 **A.** Yes.

9 **Q.** I want to ask you a little bit about your job
10 change. Where did you used to work during the last hearing?

11 **A.** Wal-Mart, and Able as my internship.

12 **Q.** Able Accounting?

13 **A.** Yes.

14 **Q.** And now you only have one job?

15 **A.** Yes.

16 **Q.** Ferro Willett & Thompson?

17 **A.** Yes.

18 **Q.** When did you get that job?

19 **A.** I started Monday. This Monday.

20 **Q.** Just this week?

21 **A.** Yes.

22 **Q.** Four or five days ago.

23 Did you tell Jason that you switched
24 jobs?

25 **A.** Yes.

1 Q. When did you tell him?

2 A. I told him as soon as I got the job offer and
3 what my schedule was. And then I proceeded to tell Greg and
4 asked if I needed to write a letter, and he said he would
5 take care of it.

6 Q. In the old interim parenting plan, you and
7 Jason were to share transportation of Kobe to exercise
8 visitation; is that correct?

9 A. Yes.

10 Q. Under the request, and what actually Jason is
11 doing now for your three weekends is he taking care of all
12 the transportation?

13 A. Yes, and he should because he decided to move
14 to Bozeman.

15 Q. And has he assumed that?

16 A. Yes.

17 Q. And he's not asked you to put any time or money
18 into transportation at all?

19 A. No, but he's complained.

20 Q. What do you mean by that?

21 A. He was complaining that it was a waste of his
22 time and gas to come up on Friday.

23 Q. I recall a conversation that was Tuesday,
24 Thursday. Are you possibly talking about the Tuesday,
25 Thursday coming up for just a couple hours during the week?

1 **A.** No. Friday, when he came and got Kobe, he was
2 complaining that it was a waste of his time and gas to bring
3 Kobe all the way out here and then I go to a get-together.

4 **Q.** I misunderstood your last sentence. Would you
5 say it again slower.

6 **A.** Jason told -- I think he told Nick or he told
7 me that it was not -- I lost my train of thought. I forgot
8 what we were talking about now.

9 THE COURT: Well, you were saying Jason was
10 complaining of the travel as of waste of time and gas.

11 THE WITNESS: Yeah, Jason was complaining that
12 it was a waste of time and gas that he had to bring Kobe out
13 on Friday when I just went to a get-together and I wasn't
14 even with him when he came to get Kobe.

15 **Q.** So it was specifically about the Wednesday, he
16 was complaining because he brought him early for you on
17 Friday --

18 **A.** No, he didn't bring him early. I'm supposed to
19 get Kobe on Fridays commencing at five. It was seven --
20 around 7:15, when I got Kobe, two hours later.

21 **Q.** But the complaint -- the conversation is not
22 over the whole period of time, it's about the incident that
23 happened on May 19th.

24 **A.** Yes.

25 **Q.** So it's specific to that incident that you and

1 Jason had?

2 **A.** Yeah.

3 **Q.** That makes more sense.

4 With your new work schedule, eight to
5 five and eight to 12 on Fridays, would that -- if the Court
6 was to order three weekends or four weekends a month, would
7 it still be okay if Jason brought -- with you, if Jason
8 brought Kobe up or his wife brought Kobe up still at the
9 5:00, 6:00, 7:00 time frame, because he gets off at five,
10 Jason does?

11 **A.** I would prefer at 12, but it's whatever
12 applicable to our schedules.

13 **Q.** So Friday afternoon, it would be helpful; is
14 that correct?

15 **A.** Yes.

16 **Q.** Do you feel it's better for Kobe to spend more
17 waking hours with you, or just more calendar days with you?

18 **A.** I think both. I think he needs to see his
19 mother and father during the week and the weekend.

20 **Q.** In a perfect world that would be great, but we
21 have to create a different solution. What I'm asking you is
22 would you prefer, if the Court was to order, would you
23 prefer --

24 **MR. TOMICICH:** Objection, asked and answered.

25 **MR. RINDAL:** I didn't think she answered it,

1 Your Honor. She said both.

2 THE COURT: Well, okay. It may have been, but
3 are you saying pick one or the other? I guess that hasn't
4 been asked and answered, I guess, if the question is if you
5 had to choose one or the other.

6 THE WITNESS: If I had to choose, I would pick
7 waking hours.

8 MR. RINDAL: Nothing further of this witness at
9 this time, Your Honor.

10 THE COURT: Redirect.

11 REDIRECT EXAMINATION

12 BY MR. TOMICICH:

13 Q. Shondelle, you're aware that when children are
14 in school that many times judges and courts like to see a
15 consistent routine for purposes of school, correct?

16 A. Correct.

17 Q. Kobe is not in school, is he?

18 A. Not yet.

19 Q. Is there any reason why he can't spend an equal
20 amount of time with both parents?

21 A. No.

22 Q. Do you think that in the summertime especially
23 that it's traditional for a parent to get more visitation
24 than the school year?

25 MR. RINDAL: Objection, Your Honor. Calls for

1 speculation of other cases.

2 THE COURT: Well, I'll sustain that based on
3 that question.

4 MR. TOMICICH: Nothing further, Your Honor.

5 THE COURT: Let me follow up here so I
6 understand. The job that you have been doing that just
7 started this week --

8 THE WITNESS: Yes.

9 THE COURT: -- with the accounting firm, did I
10 understand you say that you are the office manager?

11 THE WITNESS: That's my title right now.

12 THE COURT: Are you doing accounting type of
13 work?

14 THE WITNESS: Yes. I do payroll, taxes and
15 write-up.

16 THE COURT: How long will that continue?

17 THE WITNESS: The partner said I have to show
18 my skills in accounting, and there's -- the payroll manager,
19 she's in her 60s and that she might be retiring soon. But
20 depending on my skills and knowledge, they would advance me.

21 THE COURT: Well, I guess what I'm getting at
22 is, are you going to school this summer?

23 THE WITNESS: No. I have two classes left,
24 one's during the day next semester and one's at night.

25 THE COURT: So that was my follow-up. So if

1 things go as planned, you plan to continue working for the
2 accounting firm --

3 THE WITNESS: Yes.

4 THE COURT: -- and take the one daytime class
5 and nighttime class.

6 THE WITNESS: Yes.

7 THE COURT: And then graduate in December, and
8 then take the CPA exam in the winter or spring.

9 THE WITNESS: Yes.

10 THE COURT: Of '07.

11 How long have you lived with Nicholas?

12 THE WITNESS: I would say December of 2005.

13 THE COURT: And tell me his last name again.

14 THE WITNESS: Brauer, B-r-a-u-e-r.

15 THE COURT: Tell me about him.

16 THE WITNESS: We've been dating since November.

17 THE COURT: Of '05?

18 THE WITNESS: Yes. We recently got engaged,
19 but we're not getting married until 2007.

20 THE COURT: Is there a date?

21 THE WITNESS: July 7th.

22 THE COURT: What does he do for a living?

23 THE WITNESS: He works at Carquest right now.
24 He's the lead driver, representative.

25 THE COURT: Does he have any kids?

1 THE WITNESS: No.

2 THE COURT: All right. Any questions?

3 Mr. Rindal.

4 MR. RINDAL: Thank you, Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. RINDAL:

7 Q. Ms. Geiss, you indicated that you started
8 dating Nicholas in November of '05 and moved in with him
9 December of '05. Since December of '05, have there been
10 periods of time that you've broken up with him and lived
11 apart?

12 A. Yes.

13 Q. How many times?

14 A. When I lived in Huntley, he didn't live with
15 me. And then he moved like out at the Lynn place for about
16 a month.

17 Q. So two times since December of 2005, you've
18 broken up with him?

19 A. Not broken up.

20 Q. Moved out?

21 A. We were thinking that it was better we didn't
22 live together.

23 Q. Why is that?

24 A. Just because I don't think you should move in
25 that early after dating a month.

1 Q. But he lives with you now?

2 A. Yes.

3 MR. RINDAL: Nothing further, Your Honor.

4 THE COURT: Well, if I understand you
5 correctly, you were living on Lynn Avenue in December of
6 '05.

7 THE WITNESS: Yes.

8 THE COURT: And he moved in with you then.

9 THE WITNESS: Yes. We moved in, and then he
10 lived there -- I don't really know how much time it was, but
11 he lived there for about a month, and then we decided to
12 live separately for a little bit. And then when the Huntley
13 thing wasn't working out, we decided to get a place
14 together.

15 THE COURT: Okay. You can step down.

16 So you're going to hold these other folks
17 in abeyance; is that what I hear you saying, Mr. Tomicich?

18 MR. TOMICICH: Well, Your Honor, I'd stipulate,
19 if Lee is only going to call his client, maybe we can just
20 stipulate.

21 THE COURT: Well, let's deal with that for now.
22 I'll hear whatever Mr. Kidder has to say, and then we'll
23 reassess.

24 So you're still under oath. If you want
25 to call him for some more. Let's not plow any ground that's

1 already been plowed.

2 MR. RINDAL: Is he resting for now?

3 THE COURT: Yeah, for now.

4 MR. RINDAL: Preserving.

5 THE COURT: Yeah, he's preserving something
6 here.

7 MR. RINDAL: No problem.

8 I'd like to call Mr. Kidder. I'd like to
9 call Jason back to the stand. Jason you're still under
10 oath.

11 JASON T. KIDDER,
12 being previously duly sworn to tell the truth, the whole
13 truth and nothing but the truth, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. RINDAL:

16 Q. Jason, early on in this hearing it got quite
17 emotional. And, also, the Court indicated it's -- this is
18 about your -- this is about your only child; is that
19 correct?

20 A. Yeah.

21 Q. You love him dearly with no reservations?

22 A. (Nods head.) Yes, I do.

23 Q. When you indicated that you did -- everything
24 you do is trying to do with his best interests, and
25 Mr. Tomicich had made indication that it's your definition.

1 You've proposed -- after our last hearing February 27th, I
2 think it was, we had an interim parenting plan that allowed
3 for Shondelle to have Kobe alternating weekends and every
4 Tuesday, Thursday for a few hours at night, and then
5 overnight, correct?

6 **A.** Yes.

7 **Q.** When did you get the job offer for Bozeman?

8 **A.** At the end of March.

9 **Q.** And why did you take the job?

10 **A.** I've worked with these people before, Alan
11 Cothen, he used to own Montana Dodge, I worked for him for
12 almost four years. Randy Iversen, he's also part owner, I
13 worked with him at the same time. Quite literally the best
14 job I've ever had. And it was almost \$40,000 more money a
15 year.

16 **Q.** Per year?

17 **A.** Absolutely.

18 **Q.** And did you take into consideration how it
19 would affect the visitation that Kobe gets to spend with his
20 mother?

21 **A.** I did.

22 **Q.** And you decided you still thought -- or it's a
23 question. Did you think that you'd be able to still
24 facilitate as much hours as possible between Kobe and
25 Shondelle?

1 **A.** I truly did.

2 **Q.** And how did you do that at first?

3 **A.** We -- actually, at first, I drove back and
4 forth the first almost two weeks of the time.

5 **Q.** What do you mean by that?

6 **A.** I'd get up about 4:30 in the morning, and I'd
7 shower and I'd drive all the way to Bozeman and I'd work,
8 and I'd get off at five and I'd drive all the way back home.

9 **Q.** And you did that for about two weeks?

10 **A.** Yeah.

11 **Q.** And that was to make sure Kobe spent as much
12 time with Shondelle?

13 **A.** Absolutely. Just trying to maintain as much
14 normalcy as possible.

15 **Q.** Were you able to maintain that grind?

16 **A.** Yeah.

17 **Q.** Why did you then change? Why did you end up --
18 why did you decide to move to Bozeman?

19 **A.** It was wearing on me. It -- I just didn't feel
20 the whole thing was better for anybody involved.

21 **Q.** Including Kobe?

22 **A.** Absolutely.

23 **Q.** So did you notify and did you talk with,
24 discuss with Shondelle about you needing to move to Bozeman?

25 **A.** In writing and on the phone.

1 Q. Testimony has been brought out today that you
2 have a pretty antagonistic relationship with Shondelle. Do
3 you believe you can communicate with her on a calm level?

4 A. Not very often.

5 Q. And why is that? Without getting into mud, why
6 can't you stay calm when you talk to Shondelle?

7 A. I think -- I mean we are dealing with a
8 three-year-old little boy that can't care for himself, and
9 it's emotional.

10 Q. He's just turned three years old. In those
11 three years, have you done anything intentionally or
12 maliciously to prevent, especially since February 27th to
13 prevent Shondelle from not being able to have time with her
14 son?

15 A. Never.

16 Q. Do you believe it's important that Kobe spend
17 good quality time with his mother?

18 A. Absolutely.

19 Q. Before you switched with Shondelle to three
20 weekends a month, did you make that offer to her?

21 A. Yes, I did.

22 Q. Did you discuss with her that she's actually
23 getting more wake hours with him?

24 A. We've had the discussion --

25 Q. That was a yes or no.

1 **A.** Yes. Sorry.

2 **Q.** That's okay. I'm trying to keep it narrow
3 here.

4 But you said you have had discussions
5 with her. She had said in her testimony that she never
6 agreed to it, but that's what you forced on her. Is that
7 true?

8 **A.** No.

9 **Q.** Did she accept the three weekends?

10 **A.** She did.

11 **Q.** And have you been doing that?

12 **A.** Absolutely.

13 **Q.** To date, when you were on the stand earlier,
14 you had indicated to Mr. Tomicich that you'd be willing to
15 let her have four weekends a month and holidays if that was
16 necessary?

17 **A.** Absolutely.

18 **Q.** Do you think that would help maximize even more
19 time with Kobe and his mother?

20 **A.** Yes.

21 **Q.** They have requested week on, week off. Why do
22 you believe that wouldn't either work as well or wouldn't be
23 as productive or helpful for the parents or Kobe?

24 **A.** Kobe, again, would be in day care.

25 **Q.** Well, let's stop right there for a minute.

1 **A.** Okay.

2 **Q.** Why do you think Kobe shouldn't be in day care?

3 **A.** I don't think that that day care is a bad day
4 care, they were nice people, I just didn't think he had the
5 one-on-one care. We did have an issue with potty-training
6 that was resolved shortly after I took him out of that day
7 care.

8 **Q.** And Ms. Geiss indicated that YWCA never told
9 her that Kobe needed one-on-one to work on his
10 potty-training. Did you have that conversation?

11 **A.** Absolutely. And we did have the underwear
12 conversation with them as well.

13 **Q.** When you removed him from the day care and
14 started working on one-on-one, did he get potty-trained?

15 **A.** He did.

16 **Q.** Going back to the reasons why you think
17 week-to-week is not as -- won't be as good as a
18 three-weekend or four-weekend type visitation.

19 **A.** Why do I think it's better?

20 **Q.** Yes.

21 **A.** We have him -- I agree, we need to have him in
22 interaction with other children, and we do, we have him in
23 swimming. At the end of June, there's a soccer class that's
24 available. There's a lot of different things that we do
25 together on normalcy. They come see me at my office every

1 day for lunch. We sit in there and we have lunch. I get
2 off at five, we do things together. We have a routine.

3 Q. And Shondelle had indicated that she thought
4 one of the reasons why that she's not comfortable with your
5 wife taking care of Kobe, one of the reasons, was because
6 you don't make him take a nap and he needs naps. Are you
7 aware of whether you guys make him skip naps?

8 A. On Tuesdays and Thursdays, that's when their
9 swimming lessons are, and it's right during the lunch hour,
10 so on Tuesdays and Thursdays there are no naps. On every
11 other day of the week, he has a nap, we have a normal
12 routine, from about 12 to two to 2:30. We try not to wake
13 him up, because different days -- especially like, you know,
14 on Wednesday, he's a little bit more tired because Tuesday
15 he didn't have a nap, and I do put him to bed a little bit
16 early on those days. We try between 7:30 and eight,
17 depending on the day. You know, around seven -- 6:30 or
18 seven, he's a lot like his dad, I start getting a little
19 worn out and I start getting a little tired.

20 Q. And have you noticed in Bozeman that a lot of
21 these programs for Kobe, enrichment type programs, are
22 during the weekdays?

23 A. They are. A lot of events, a lot of wonderful
24 events, Bozeman's great for that, but a lot of it is all
25 during the week.

1 Q. And is it your hope to keep him involved in as
2 many activities that he can handle and grow from?

3 A. Absolutely.

4 Q. And you've assumed all those costs and you've
5 not asked for any contribution from Shondelle, have you?

6 A. Never.

7 Q. If the Judge was to order every weekend with
8 Kobe and his mom, that means you'd pretty much have no
9 weekends. Are you going to be able to be okay with that?

10 A. We do spend quality time during the week. I
11 have a really flexible job. I left at noon yesterday,
12 that's -- you know, that's the advantage, I guess, of being
13 the boss. I try not to take advantage of it. There are
14 still times that I have options available to me that maybe
15 she wouldn't during the week.

16 Q. So since February 27th of 2006, we had the
17 interim hearing. Do you believe that the parenting plan
18 that you guys are exercising right now, it's called a de
19 facto is what you guys have been doing, has it been
20 productive and helpful for Kobe?

21 A. I believe so.

22 Q. Is it a parenting plan that you believe has
23 given Shondelle more quality time with Kobe rather than
24 less?

25 A. Absolutely.

1 Q. And is that your request that we adopt that
2 three weekends, or, if necessary, four weekends per month so
3 she can have -- when she's off of work, she'll have quality
4 time, waking time with Kobe?

5 A. I think it's better for everybody.

6 Q. How long were you at your last job?

7 A. Just barely shy of two years.

8 Q. And these are people that you worked for now
9 since February, are people you worked for for how many years
10 prior to that job?

11 A. Almost four years.

12 Q. Do you anticipate this to be a long-term job?

13 A. Absolutely.

14 MR. RINDAL: I have nothing further,
15 Your Honor.

16 THE COURT: Cross.

17 MR. TOMICICH: A few questions, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. TOMICICH:

20 Q. Have you sold your house here yet, Jason?

21 A. No, I have not.

22 Q. So whether if the Judge orders one week, one
23 week or four weekends, that's still the same amount of
24 travel for Kobe, isn't it?

25 A. It'd be --

1 Q. Same amount of travel?

2 A. Actually, I think it would be -- I think so,
3 yes.

4 Q. Okay. Let me see if I get it straight. You
5 get 23 days in a row, and then you're concerned -- when does
6 she get her visitation?

7 MR. RINDAL: Objection, Your Honor. It goes
8 beyond direct.

9 MR. TOMICICH: No, it doesn't. We've been
10 talking about this the whole hearing.

11 THE COURT: Well, no, I'll let him talk about
12 it.

13 MR. RINDAL: Well, it was asked and answered.
14 The objection also is that he had him as his first witness
15 and he went through all of that.

16 MR. TOMICICH: I'm just asking how this works.

17 THE COURT: Wait. Okay. I'll -- I need to
18 hear the full question.

19 Q. (By Mr. Tomicich) Okay. You still want the
20 Judge to give you 23 days from the 28th of May till
21 June 21st, correct?

22 A. Yes.

23 Q. And then June's almost gone.

24 A. Yes.

25 Q. So for the summer then, you'd get that whole

1 block, almost a month, and then Shondelle would just get
2 weekends for the rest of the summer and you'd have all the
3 rest of the time?

4 **A.** Out of those 23 days, I believe eight or nine
5 of those are her days. I'm more than willing to work that
6 out with her, more than willing.

7 MR. RINDAL: Objection, again, Your Honor. I
8 apologize for the interruption again, but his testimony
9 earlier under direct examination was that he was offering
10 also holidays. If we count calendar days, I think it comes
11 out she'll certainly catch up with her 13 days or so that
12 she'll have traded with Mr. Kidder.

13 Q. (By Mr. Tomicich) What holidays do we have
14 during the summer besides the 4th of July?

15 **A.** Isn't Labor Day in the summer?

16 Q. We're talking about another two or three days.
17 Is that supposed to be a trade-off?

18 **A.** There's other holidays throughout the year. I
19 don't think we necessarily need to limit it to summer.

20 Q. Okay.

21 **A.** I think a day is a day.

22 Q. Now, Shondelle's paying child support right
23 now?

24 **A.** I have not received child -- I have not
25 received child support for the month of May.

1 Q. And that child support, I think, was calculated
2 on you earning \$63,000 a year, wasn't it?

3 A. Yes.

4 Q. Do you think that that's appropriate that she
5 pay child support when you're now earning \$100,000 a year?

6 MR. RINDAL: Objection, calls for a legal
7 conclusion, I believe.

8 Q. (By Mr. Tomicich) Should it be recalculated?

9 THE COURT: Well, I guess -- in light of the
10 testimony, it will be re-calculated.

11 MR. TOMICICH: Okay.

12 MR. RINDAL: If I can interrupt you. Your
13 Honor, just to let you know, I calculated it last night, and
14 there was no difference from 63,000 to a hundred thousand.

15 THE COURT: All right. That was kind of my
16 supposition based on past history, but I guess I would --
17 what I will do is ask both counsel to submit to me guideline
18 calculations that, I guess, all the other -- well, we may
19 have another difference in variables. But you can give me
20 just that variable difference of the wage increase from
21 whatever it was up to the hundred thousand yearly amount.

22 MR. TOMICICH: We may have to.

23 THE COURT: I know there may be some day
24 difference.

25 MR. RINDAL: And her income is different, too.

1 THE COURT: Well, that's true, so we're going
2 to have --

3 THE WITNESS: May I say something?

4 THE COURT: No, you'll need to respond to your
5 attorney.

6 THE WITNESS: Okay.

7 THE COURT: Okay. Before we leave, we'll
8 get -- yes, and I was remiss on that. We'll get Ms. Geiss'
9 wage situation now as well.

10 MR. TOMICICH: With that, Your Honor, I'd be
11 happy to submit this to the Court for its decision.

12 THE COURT: Okay. I guess you can -- you can
13 redirect.

14 MR. RINDAL: Your Honor, I think with both
15 direct and redirect, I think we're finished.

16 THE COURT: Okay. You can step down.

17 Ms. Geiss, what is your wage situation
18 now at Ferro Willett & Thompson?

19 MS. GEISS: I make 9.25 an hour.

20 THE COURT: And is that for a 36-hour week?

21 THE WITNESS: It's 36, yeah. We close at 12 on
22 Fridays.

23 THE COURT: And do you anticipate continuing
24 that not only through the summer, but the same in the school
25 year; is that right?

1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 MS. GEISS: It might be a little less due to my
4 college class during the day.

5 MR. RINDAL: Your Honor, do we impute the other
6 four hours as ARMs require, or do you want us to skip it and
7 just put it at 36 hours?

8 THE COURT: Well, I haven't read those
9 imputations. I'm going to say do it the 36 hours at the
10 9.25 an hour, so both of you tell me that.

11 MR. RINDAL: Okay.

12 THE COURT: I'm going to take about a five- or
13 ten-minute break, and then I'll come back out.

14 (Whereupon, a brief recess was taken at
15 11:29 a.m. and reconvened at 11:44 a.m.)

16 THE COURT: Court's in session. You may be
17 seated.

18 Let me tell you folks, frequently what my
19 policy is regarding interim parenting plans is that very,
20 very frequently they are not what the final plan is. They
21 are tests of both people. And you can say all you want
22 positively about yourself or negatively about the other
23 person, but your actions speak louder than words here.

24 So, Mr. Kidder, I understand what your
25 offer is, and I think in a lot of respects it's generous and

1 it would give Ms. Geiss a lot more time, waking hours with
2 your son. But you're going to have some rope and we're
3 going to see if you're going to hang yourself with it,
4 Ms. Geiss, so be careful what you wish for.

5 So what I'm going to do is I'm going to
6 amend the interim parenting plan. Am I correct that Kobe is
7 here in Billings now?

8 MR. KIDDER: Yes, he is.

9 THE COURT: So he will go with mother now, he
10 shall return, you know -- what was the plan?

11 MR. KIDDER: Sunday morning.

12 THE COURT: So what arrangements, what was the
13 plan on when he was going to return on the 28th? That's
14 Sunday.

15 MS. GEISS: Are you talking about the days he
16 requested?

17 THE COURT: No, I'm talking about this Sunday,
18 if this was a specific discussion.

19 MS. GEISS: I didn't have him this week.

20 THE COURT: Well, you're going to have him this
21 weekend, and you will return him to Bozeman by noon on
22 Sunday, the 28th.

23 MR. RINDAL: Your Honor, I'm sorry to
24 interrupt. They're flying out Sunday here, Billings. It's
25 cheaper than flying from Bozeman. So this time we can pick

1 him up.

2 THE COURT: Okay. When are you flying out?

3 MR. KIDDER: We have to be at the airport at
4 five, and have to be on the plane at six.

5 THE COURT: Make the exchange at noon on
6 Sunday, the 28th of May. Kobe will be with Mr. Kidder
7 June 21st.

8 MR. RINDAL: Am I misunderstanding? His flight
9 has to be 6 a.m.

10 THE COURT: Oh. I thought I said that. I
11 understood 6 p.m.

12 MR. RINDAL: I'm sorry. She had him last
13 night, we were just going to leave him here.

14 THE COURT: He'll be returned then Saturday
15 night, tomorrow night, at 7 p.m.

16 Then when are you back in Montana? When
17 are you back? Did I hear June 21st?

18 MR. KIDDER: Yes, June 21st.

19 THE COURT: Well, then starting June 23rd of
20 2006, Ms. Geiss, you shall pick up Kobe in Bozeman at 3 p.m.
21 at a place you two can agree upon, and you'll have him for
22 one week. And then, Jason, you can pick him up at 5 p.m.,
23 the next Friday, June 30th at a specific -- well, what did I
24 say? Did I say five?

25 MR. RINDAL: You did say 5 p.m.

1 THE COURT: If you work till five, make it 7 --

2 MR. KIDDER: Okay.

3 THE COURT: -- 7 p.m., the next Friday, at a
4 specific place in Billings. You two can agree on the place.
5 So we'll alternate weeks like that. Friday to Friday, each
6 of you will get to make a roundtrip. The two attorneys will
7 submit me child support calculations based on the changed
8 income of both parties, of the change in days, and I guess
9 any other variables that we have changed.

10 The other thing that needs to be
11 discussed is that we have a court services order now that
12 certainly was needed and would work when both of you were in
13 town. The two attorneys are to speak with the court
14 services people and see if they can still do that with
15 Mr. Kidder now being in Bozeman. If they can, great. If
16 they can't, you folks need to search out somebody else that
17 can give a comparable type of report. Because if this
18 matter is not settled, I'm going to hear from a variety of
19 witnesses from both sides. But I want to hear from some
20 third-party professional that's had a chance to talk with
21 both parties, see the child in the home of both parties,
22 talk with some references, investigate other aspects and
23 give me some input. So that will be a further task then of
24 the attorneys.

25 So, Mr. Tomicich, draft me an order to

1 that effect. I guess leave a blank on the child support.

2 MR. TOMICICH: Yes, Your Honor.

3 THE COURT: Because I'm assuming there will be
4 some change there, and I don't know what that will be. I
5 guess leave a blank on the amount and the effective date.

6 MR. TOMICICH: Thank you, Your Honor.

7 THE COURT: All right. It would not break my
8 heart if you folks were able to settle something. We had a
9 very emotional morning, each of you did, and I did. Just
10 like the two of you are stuck with each other, both of you
11 are stuck with me for the life of this case. That's not a
12 threat, that's just a promise, that's a fact of life, and I
13 will render a decision. And as I said previously, you have
14 some hints about what can irritate me, what can make your
15 case better, what can make your case worse. And if you
16 can't settle it, that's why I'm here. I've tried uglier
17 cases than this, and I'm sure I will in the future. But I
18 urge the two of you to -- and you will have to do that if
19 you go through court services anyway. There will be a
20 specific settlement posture, but there's also the mandate of
21 my court order, even if you don't go through court services,
22 that there will be a mediation requirement. And both of you
23 need to go into that with your eyes wide open and with your
24 mind open. And I know that both of you, like virtually
25 every parent, wants the best for your child. What that

1 means for the two of you is different, and that's
2 understandable. If you agreed on things, you might still be
3 together. So we're going to pick up the pieces from here.
4 You've got some hints on my thinking. I've got more than
5 some hints on your thinking. So we both know each other a
6 little bit better. I hope you can settle it. If you can't,
7 we've got a trial date in October. So good luck.

8 We're in adjournment.

9 (Whereupon, the Court adjourned at 11:55 a.m.)

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REPORTER'S CERTIFICATE

I, REBECCA M. OROZCO, Registered Professional Reporter and one of the duly-appointed, qualified and acting Official Court Reporters in and for the Thirteenth Judicial District of the State of Montana, DO HEREBY CERTIFY that the foregoing 80 pages were reduced to typewritten form using computer-assisted transcription and constitute a full, true and correct transcript of my original shorthand notes, as they purport to contain, of the proceedings had and taken in the above-entitled cause at the time and place hereinbefore mentioned.

DATED at Billings, Montana, this 7th day of July, 2008.

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