

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Cause No. DA 23-0705

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IN RE THE MARRIAGE OF:

HEATHER HANDY  
N/K/A HEATHER MILLER,  
Petitioner and Appellee,

-and-

JACOB HANDY,  
Respondent and Appellant,

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**APPELLEE'S RESPONSE BRIEF**

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On Appeal from Nineteenth Judicial District Court, Lincoln County  
District Court Cause No. DR-2021-133 Hon. Matthew J. Cuffe Presiding

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## **ISSUES PRESENTED**

1. Whether the District Court's Order granting Appellee's Motion for Contempt of the Parties' Final Stipulated Parenting Plan and amending the Parenting Plan, must be reversed?

## **STATEMENT OF THE CASE**

A Petition for Dissolution was filed by Appellee, Heather Handy ("Heather"), on August 16, 2021 (CR Doc. 1). The parties settled their divorce on July 26, 2022, and entered into a Final Stipulated Parenting Plan (CR Doc. 59). Since the entry of the Final Parenting Plan, Appellant, Jacob Handy ("Jacob"), has violated its terms and the final Decree that adopted the Final Stipulated Parenting Plan as a Court Order (CR Doc. 60). Accordingly, on October 6, 2022, Heather submitted a Motion for Contempt and Brief in Support and an Affidavit of Heather Handy (CR Doc. 61 and 62). The parties then stipulated to appointing another guardian ad litem, Joseph Raffiani. Jacob filed his response to the Motion and an affidavit in support (CR Doc. 69 and Doc. 70). Between the time of Heather's Motion for Contempt and the appointment of Joseph Raffiani, Joseph Raffiani made recommendations that impacted the parenting time and rights of the parties, however, none of his recommendations were filed until much later. The agreement to appoint Joseph Raffiani did not resolve Heather's Motion for Contempt, nor was it withdrawn in lieu of a guardian ad litem investigation. On June 22, 2023, Heather filed a motion to set a hearing on her October 6, 2022 Motion for Contempt and asked for Joseph

Raffiani to be removed as guardian and to enforce her parenting time and therefore amend the parenting plan (CR Doc. 73). It wasn't until August 15, 2023, ten months after being appointed, that the guardian ad litem filed his report (CR Doc. 87). A hearing was held on August 23, 2023, which covered Heather's Motions.

Ultimately, the Court held Jacob in contempt of court, awarded attorney's fees and made adjustments to the parties' parenting plan and denied removing Joseph Raffiani. That order was issued on November 23, 2023. Jacob now appeals.

### **FACTUAL BACKGROUND**

The parties are a divorced couple and parents of three children, Z.H., age thirteen (13), E.H., age eleven (11) and K.H., age eight (8). The terms of the parties' parenting plan (CR Doc. 59) included several provisions that are subject to the instant appeal and Heather's Motion (CR Doc. 61 and 62), including using Our Family Wizard, keeping the children in public school, facilitating parenting time, getting the children in therapy with a mutually selected provider, among other things.

The Final Stipulated Parenting Plan provides "[t]he parents shall continue to utilize Our Family Wizard until their subscription expires. At such time the parties can utilize text message or phone calls." (CR Doc. 59, page 3, ¶ 5). The parties were to set up accounts within ten (10) days. At the time of Heather's Motion for Contempt, the parties had their account, and their subscriptions had not expired (CR Doc. 62, page 5, ¶¶ 20-22). Jacob admits in his preceding pleadings that he has

‘infrequently used the Our Family Wizard app’ (CR. Doc. 70, page 2, ¶ 14, 8/23/23 Hrg. Tr. 66:14-67:20). Jacob declined to use Our Family Wizard when asked repeatedly by Heather to use the app. (8/23/23 Hrg. Tr. 75:9-77:5). Jacob presented no evidence that Heather agreed to terminate the use of the parenting application early.

The Final Stipulated Parenting Plan provides education decisions were to be made “jointly by Mother and Father except that the children shall remain in public school. Whether the children remain in public school can be reviewed after the first semester of the 2022-2023 school year.” (CR Doc. 59, page 8, ¶ 18). Despite this, Jacob did not ensure the children’s attendance in public school during his parenting time. The children regularly missed school and were actively taken from school by Jacob. The children had much better attendance and academic performance during Heather’s parenting time (CR Doc. 62, page 2, ¶¶ 6-16). Jacob admits in his pleadings and at the hearing that he pulled the children from school unilaterally. (CR Doc. 70, page 2, ¶ 12). Jacob claims that they were struggling mentally and socially and that was his rationale for pulling the children unilaterally. (8/23/23 Hrg. Tr. 274:17-277). The evidence presented showed that the children had historically done well in public school, even Z.H. The child’s former therapist, Amy Fantozzi, testified that Z.H. had stated in a session on March 31, 2022 that “she likes being at school, but would still rather be home schooled. She said that she is doing track and band.”

(8/23/23 Hrg. Tr. 35:24-25- 36:1, 330:6-331:24). Prior to the parties' settlement, the children were in public school while Child Protection Services investigated Jacob and 'they did great'. (8/23/23 Hrg. Tr. 332:18-22). This also contributed to the state taking temporary legal custody of the children and placing the children with Heather in *DN-22-2*, *DN-22-3* and *DN-22-4*. Jacob presented no evidence of agreement from Heather to pull the kids from public school.

The Final Stipulated Parenting Plan provides “[n]on-emergency health care decisions will be made jointly by Mother and Father. The parties agree to employ a mutually agreeable new third party therapist and releases shall be executed with prior providers to enable the new provider to receive history and records. The parties shall consider the recommendations of the children’s therapist at all times[.]” (CR Doc. 59, page 8, ¶ 19). This provision was also ignored and Jacob unilaterally established therapy for the children with telehealth therapists without an agreement from Heather. (CR Doc. 62, page 4, ¶¶ 17-19). Jacob indicated in his pleadings that he had tried to find a neutral third-party mental health therapist, yet at the time of his pleadings, he had already established therapy with providers he unilaterally selected (CR Doc. 70, page 2, ¶ 16). He later admits that he had selected Julie Wulfekule and Athena Martell in June and August respectively without any prior notice to Heather. (CR Doc. 70, page 3, ¶¶ 19-20, 8/23/23 Hrg. Tr. 146:17-21). Julie was engaged by Jacob in June, 2022 (8/23/23 Hrg. Tr. 168:4-17). Athena apparently began seeing

Z.H. without agreement from Heather as early as August 29, 2022, after the parties' settlement. *Id.* Jacob acknowledges he did this 'without Heather's consent'. (CR Doc. 70, page 3, ¶ 21). Julie testified that she had never communicated with the previous therapist and was given no history prior to providing services to the family (8/23/23 Hrg. Tr. 180:2-15). Later, Jacob established therapy for E.H. and K.H. with another provider, Rochelle Beley, over Heather's objection. Amy Fantozzi, the children's historic therapist, who Jacob unilaterally engaged with before the Final Stipulated Parenting Plan, testified that she was never contacted by subsequent counselors to provide history or records. Never did Athena, Julie, or Rochelle or the guardian ad litem contact her. (8/23/23 Hrg. Tr. 25-27:8, 54:9-22). During Rochelle's testimony, she explained that she began seeing E.H. and K.H. at Jacob's direction via telehealth services (8/23/23 Hrg. Tr. 42:23-25). Rochelle indicated that she stopped services to the children after it became evident that Jacob was allowing the children to listen to his private discussions (8/23/23 Hrg. Tr. 44-45:18). In addition to interfering with the integrity of telehealth therapy, Jacob interfered with Heather's in-person family therapy sessions. When Jacob was notified of appointments, he would be 'out of town' and unable to facilitate the sessions (8/23/23 Hrg. Tr. 78-80:5). Jacob presented no evidence of any stipulations from Heather when involving new therapists and the evidence overwhelmingly displayed these decisions were made by Jacob alone. Heather testified in detail to the

progression of therapy since the parties' stipulation at the hearing which boiled down to Jacob not facilitating the sessions, 'being busy', or making decisions without Heather's input. (8/23/23 Hrg. Tr. 339:14-334:23).

The Final Stipulated Parenting Plan provides "[s]piritual development decisions will be made jointly by Mother and Father." (CR Doc. 59, page 8, ¶ 20). Jacob testified that he had sole religious decision-making authority and stated he was: "given that by our religion actually, not, not, by, um, anybody in this time frame or anything that has to go with, but the actual living word of God gives that, the man of the home that decision-making ability." (8/23/23 Hrg. Tr. 113 10-18). Jacob further had the children baptized without agreement from Heather. (8/23/23 Hrg. Tr. 113:20-114:7). Jacob presented no evidence that Heather was agreeable to the children being baptized.

The Final Stipulated Parenting Plan provides "[t]he parties shall be equally responsible for the costs of the children's extra-curricular activities, recreational, sports, music, summer camps, and other such activities that the parties mutually agree are beneficial for the children's health, education and development. The parties specifically agree that the following activities shall remain in place and be shared for equally: horse lessons and competitions and karate. Both parents will ensure the children participate in these activities as scheduled." (CR Doc. 59, page 10, ¶ 25). Jacob testified that he did not take E.H. to karate, he did not take K.H. to

karate consistently, and he discontinued Z.H.'s horse lessons. (8/23/23 Hrg. Tr. 158:9-160:13). Heather testified regarding the children's historic participation in these activities, specified how much they missed them, and pointed out that they were missing on Jacob's time primarily. (8/23/23 333:14-334:18). Jacob presented no evidence to suggest that Heather was okay with the children not attending their established activities.

The parties were also awarded specific parenting time and holiday time under the Final Stipulated Parenting Plan and subsequent recommendations by the guardian ad litem after he was appointed (CR Doc. 59, page 6, ¶ 9 and CR Doc. 73, Exhibit A – included as Exhibit 1). The parties had equal parenting time until the issues reached a boiling point and the guardian endorsed Jacob's withholding of the children. Nonetheless, Heather was awarded primary care of K.H. and alternating weekends with Z.H. and E.H. Despite these orders and directives from the guardian ad litem, Jacob withheld the children from Heather. Jacob was unwilling to facilitate parenting time between the children and Heather and claimed that it would have been impossible to facilitate it. In reality, the kids had historically, throughout the separation and divorce proceedings, had a good relationship with Heather. The children's previous therapist, Amy Fantozzi, testified that the children '[had] a good relationship with mom. . . I saw the positive with them, when they were with mom. And then when they were with dad, it would – it was all – all that positive growth

would turn negative.” (8/23/23 Hrg. Tr. 29: 16-24). Jacob was the ‘fun parent’, and Heather was the authoritarian, so it stands to reason that the kids would have a preference on who they spend time with. (8/23/23 Hrg. Tr. 36:6-20). Even in therapy sessions via telehealth, it was obvious that there was a difference in the children between households and they were more ‘attentive’ at mom’s and more ‘chaotic’ at dad’s (8/23/23 Hrg. Tr. 48-49:2). The children never expressed fear of Heather, just a dislike because “[Heather] was a sinner and . . . it was her fault the parents divorced and she left dad[.]” (8/23/23 Hrg. Tr. 51:14-22). Jacob also used various other excuses to deny Heather her parenting time including getting the children puppies to care for (8/23/23 Hrg. Tr. 59:13). Jacob failed to facilitate Heather’s parenting time more times than can be counted, but that included withholding K.H. entirely beginning in July 2023, withholding Spring Break, and Christmas (8/23/23 98:16-107, 366:7-368:13). Heather testified to the specific dates the children were withheld, and her parenting time amounted to only five and a half days with E.H. and 19 hours with Z.H.; at this point, Jacob was also withholding K.H., who was primarily with Heather up until June 28, 2023. (8/23/23 Hrg. Tr. 337:17-338:20, 350). Heather was awarded *at least* every other weekend with Z.H. and E.H., if not equal parenting time with the children during these timeframes. Jacob indicated that if she left her partner, it would be a ‘good step for [Heather’s] soul.’ (8/23/23 Hrg. Tr. 108:5-109:6). Jacob did not present any evidence that Heather was agreeable to

not having the parenting time allocated to her in their stipulation or in the subsequent guardian ad litem recommendations.

In addition to Jacob being dubbed the ‘fun parent’, he took affirmative steps to continue to drive a wedge between Heather and her children, including taking the children to Helena’s House Judiciary Hearing to testify against Child Protection Services, after lying to Heather about where they were going. (8/23/23 Hrg. Ex. 01, and Hrg. Tr. 61:2-22 and 85:5-87:25). Jacob also referred to Heather as a ‘sinner’ and referred to her partner as a ‘whoremonger’ to the children. The children confirmed this in therapy and in phone calls and texts to Heather (8/23/23 Hrg. Tr. 47-48:6). Rochelle confirmed that the children were hearing this from their dad. *Id* at 48:6. Evidence presented at the hearing also suggested that Jacob was involving the children in the proceedings. They had ‘adult information’ (8/23/23 Hrg. Tr. 53:4). E.H. in particular used ‘severe profanity’ and was disrespectful to adults; E.H. told Heather on an angry phone call that she was going to ‘burn in hell’ (8/23/23 Hrg. Tr. 57:7-10, Hrg. Exhibit 21). Jacob has further muddled the children by allowing them to use his phone and therefore allowed them access to communications Jacob and Heather shared (8/23/23 Hrg Tr. 73:17-75:8). Jacob also has discussions with the children about Heather and her partner and has taken them to church talks regarding whether or not that is sinful. (8/23/23/ Hrg. Tr. 288:2-289:9). Evidence presented showed a text message from Z.H. that read:

“Jesus told dad that he is well pleased with him, but Jesus is not well pleased with you because you divorced an innocent man to go commit adultery with another man. Your eyes have been blinded by the devil and you don’t even realize it, so I recommend that you tell God and repent that you’ve done wrong. Can come back to the house and love dad. I still love you, but I love you enough to tell you that what you’re doing is wrong. I’m sorry for my language, for adulterer and fornicators do not enter the kingdom of heaven.”

(8/23/23 Hrg. Tr. 317:5-318:3).

Jacob has also weaponized the children’s mental health as a basis for withholding parenting time despite him not taking their mental health seriously by interfering with therapy sessions and also not taking Z.H. to Pathways when referred.

(8/23/23 Hrg. Tr. 147:18-149:24). It was also very apparent that Jacob’s ‘parenting style’ was to let the children make choices themselves, and not parent them. Jacob testified:

“my style of parenting is to try to connect with their hearts, and not parent by demand. I like them to know that I love them, and I want them to know there’s right and wrong. Um, but I want them to know that, ultimately, there’s a choice and they are able to, uh, exercise that choice. And they need to choose it correctly and wisely, because it affects their life forever.”

(8/23/23 Hrg. Tr. 291:1-9).

It is also noteworthy that while Jacob affirmed in the written Stipulated Final Parenting Plan (CR Doc. 59) and his Response Brief and Affidavit (CR Docs. 69 and 70) that he voluntarily stipulated to the terms of the Stipulated Final Parenting Plan, at the hearing, Jacob testified that the plan had ‘a couple of switches from the

one we agreed to[.]” (8/23/23 Hrg. Tr. 65:21-25) to attempt to appear oblivious to the terms of the parenting plan and order.

The parties Final Stipulated Parenting Plan also permits an award of attorney’s fees in Heather’s favor and states: “[i]f either parent fails to follow the terms of this Parenting Plan, such parent shall be subject to any and all sanctions available for contempt. The noncompliant parent shall also be liable for the costs and attorney’s fees incurred by the other parent in prosecuting or defending his or her rights under this Parenting Plan. Therefore, in the event of future litigation between the parties to enforce or interpret any provision of this parenting plan, the prevailing party shall be entitled to all his or her court costs, including reasonable attorney’s fees and costs[.]” (CR. 59, page 11, ¶ 35).

The Court’s ten-page order accurately detailed the procedural history of the parties, the evidence presented during the lengthy hearing, and the Court reiterated the facts that are outlined in this brief on the topics of school, Our Family Wizard, Counselors and the children’s activities. None of the conclusions by the Court solely described any religious facts presented and were based entirely upon substantial evidence.

### **STANDARD OF REVIEW**

The instant appeal is sought under Rule 6(3)(j), M.R.App.P., and § 3-1-524(2) from the Nineteenth Judicial District Court’s November 23, 2023 Order on

Contempt and Denying Request to Replace Guardian ad Litem. This Order was entered based upon the hearing held on August 23, 2023, and the moving papers that preceded it. The Order on appeal found Appellant in contempt of court, awarded attorney's fees and costs for the willful violation of the Court's order, and entered orders amending the parties' parenting plan. This order also denied Appellee's request that the guardian ad litem be removed and replaced.

Given that the order of contempt is a discretionary tool, a review of whether the Court abused its discretion is required. A District Court abuses its discretion if it acts arbitrarily without conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. *In re Marriage of Crilly*, 2009 MT 187, ¶ 9, 351 Mont. 71, 209 P.3d 249. In family law cases, the Court reviews orders of contempt to determine whether the district court acted within its jurisdiction and whether the evidence supports the contempt. *Novak v. Novak*, 2014 MT 62, ¶ 37, 374 Mont. 182, 320 P.3d 459.

### **SUMMARY OF ARGUMENT**

The District Court correctly determined that Jacob violated the parties' Final Stipulated Parenting Plan. The record presented to the Court and the evidence submitted at the hearing was overwhelming to conclude that Jacob has no regard for the best interest of the children, nor any regard for the Court's orders. This conclusion was absent any religious considerations. The finding of contempt and the

accompanying orders, including the award of attorney's fees, were sound and should be affirmed.

## ARGUMENT

### **1. The District Court's orders are supported by the evidence in the record.**

The District Court has the authority to compel obedience with an official order. [A] district court has the responsibility to enforce its own orders and . . . contempt is a discretionary tool of the court to enforce compliance with its decisions. *In re the Marriage of Dirnberger*, 2007 MT 84, ¶ 30, 337 Mont. 56, 154 P.3d 1227. “Disobedience of a lawful judgment of the court *is* grounds for contempt.” *Novak* at ¶ 37. Reasonable attorney fees are permissible in a contempt action. *Id.* In addition, this Court has held that “where a parent fails to make reasonable efforts to require a recalcitrant child to attend visitation as provided for in a parenting plan, the parent has not made a good faith effort to comply with the parenting plan and a contempt order may be appropriate. *In re the Marriage of Marez and Marshall*, 2014 MT 333, ¶ 32, 377 Mont. 304, 340 P.3d 520. “The trial court determines the credibility of witnesses and the weight assigned to their respective testimony.” *Kulstad v. Maniaci*, 2009 MT 326, ¶ 52, 352 Mont. 513, 220 P.3d 595.

Here, there are a plethora of examples of Jacob's admitted disobedience under the Court's order that adopted the parties' Final Stipulated Parenting Plan. There is

substantial evidence that supports the contempt order and the District Court's findings. Jacob admitted as early as the time of his Response brief, and again reiterated at the hearing, that he did not use Our Family Wizard, which he agreed to use until his subscription expired. Jacob expressly admitted that he chose to not take the kids to public school and chose to homeschool the children instead. Jacob admitted that he only took the kids to activities that 'they wanted to go to', despite the parties' agreement to keep the children in the activities specified in their Final Stipulated Parenting Plan. Jacob did not make reasonable efforts to facilitate Heather's parenting time, and in fact was leading the divide between Heather and her children and allowing the children to alone make this choice (under his influence). Jacob claiming 'impossibility' is not supported by the record and the Court is best situated to be the fact finder and to weigh credibility and correctly concluded that Jacob was capable of following the Final Stipulated Parenting Plan and instead opted to not follow it. Jacob also specifically agreed to paying attorney's fees and costs in the event of his noncompliance.

**2. The District Court's amendment of the parties' parenting plan did not interfere with Jacob's fundamental constitutional rights.**

Both parents have a fundamental liberty interest to care and have custody of their children. *In re B.N.Y.*, 2003 MT 241, ¶ 21, 317 Mont. 291, 77 P.3d 189. This is bestowed to both parents, not just Jacob. "A government entity may not interfere

with the fundamental rights of parents to direct the upbringing, education, health care, and mental health of their children unless the government entity demonstrates that interference: (a) furthers a compelling governmental interest; and (b) is narrowly tailored and is the least restrictive means available for the furthering of the compelling governmental interest[.]” M.C.A. § 40-6-701(1). “All fundamental parental rights are exclusively reserved to the parent of a child without obstruction or interference by a government entity, including but not limited to the rights and responsibilities to do the following: (a) direct the education of the child, including the right to . . .direct the moral or religious training of the child.” *Id* at (d). All of the foregoing is within the purview of both parents and one parent does not have priority over the other, though Jacob has taken unilateral control over the children against their parenting plan. Jacob argues that the hearing was not fundamentally fair and that the Court’s statements regarding Jacob weaponizing his religious opinions was ‘discrimination’ that violated Jacob’s due process.

Jacob insinuates that because he was held in contempt and that the Court was less than impressed with Jacob’s justifications, his rights were violated. Under Jacob’s logic, he, and he alone, has the authority to control the children’s religious upbringing without regard to Heather and her fundamental parenting interests, or the best interests of the children, and without regard to their Final Stipulated Parenting Plan. The parties agreed in their parenting plan to jointly make religious decisions,

agreed to keep the kids in public school for a trial period, and agreed to mutually select a new therapist. Jacob was also required to facilitate Heather's parenting time. Jacob not doing so had nothing to do with his religious beliefs, but instead, his willful defiance of Court orders.

### **CONCLUSION**

For the foregoing reasons, Heather respectfully requests that this Court affirm the District Court's order of contempt against Jacob.

DATED this 25<sup>th</sup> day of March, 2024.

**GRAVIS LAW, PLLC**

  
\_\_\_\_\_  
Mary Kate Moss

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing document complies with Rule 11 of the Montana Rules of Appellate Procedure. In accordance with Rule 11(e), the required portions of this document are double-spaced and printed in proportionately-spaced, 14-point Times New Roman typeface. The total word count of this document, as calculated by the undersigned's word processing system, contains 3,880 words. This calculation excludes the Certificates of Compliance and Service and Tables of Contents and Authorities, but includes footnotes.

DATED this 25<sup>th</sup> day of March, 2024

**GRAVIS LAW, PLLC**

  
\_\_\_\_\_  
Mary Kate Moss

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 25<sup>th</sup> day of March, 2024 a true and correct copy of the foregoing document was duly served upon the following named person(s):

\_\_\_\_\_ by depositing the same in the United States mail, postage prepaid and addressed as follows;

  X   by electronic filing/service;

1.           **Bowen Greenwood**  
Clerk of the Montana Supreme Court  
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2.           **David J. Lee & Caydon C. Keller**  
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\_\_\_\_\_  
Mary Kate Moss

## INDEX OF EXHIBITS

**Exhibit 1** CR Doc. 73 Exhibit A to Motion entitled “*GAL Recommendations for Handy Children*”.

# EXHIBIT A

## GAL RECOMMENDATIONS FOR HANDY CHILDREN December 2, 2022

### I. Counseling

#### a. Children

##### i. Zillah

1. Individual counseling: Zillah should continue her therapeutic relationship with Athena. While continuing to conduct "as needed" sessions with her is fine, I believe that weekly sessions should be scheduled for the foreseeable future.
2. Psychological testing: I would like to have neuropsychological (or psychological if neuropsychological is logistically or medically unavailable) testing completed using a PhD/forensic psychologist, if possible. I would like to get this completed as soon as possible. The testing should be able to rule out any cognitive delays or barriers to education, in addition to providing a thorough, current psychological diagnosis. The local public schools' psychologist indicated that they could help facilitate the testing if needed (logistically, not performing testing.)

##### ii. Elliot

1. Individual counseling: Elliot should begin telemedicine counseling immediately. I would like to begin with him utilizing the services of Rochelle Beley.
2. Psychological testing: I would like to have neuropsychological (or psychological if neuropsychological is logistically or medically unavailable) testing completed using a PhD/forensic psychologist, if possible. I would like to get this completed as soon as possible. The testing should be able to rule out any cognitive delays or barriers to education, in addition to providing a thorough, current psychological diagnosis. The local public schools'

psychologist indicated that they could help facilitate the testing if needed (logistically, not performing testing.)

iii. Korban

1. Individual counseling: Korban should begin telemedicine counseling immediately. I would like to begin with him utilizing the services of Rochelle Beley.
2. Psychological testing: I do not believe this needs to be addressed with Korban at this time. If his individual or family therapist recommends it, testing may be completed for him, as well.

b. Parents

- i. Heather: Heather should obtain a psychological assessment, specifically to include assessments for anger management and/or chemical dependency issues. If she has received a prior such evaluation and can obtain an update addressing changes since then, that will suffice.
- ii. Jacob: Jacob should obtain a psychological assessment. If he has received a prior such evaluation and can obtain an update addressing changes since then, that will suffice.
- iii. Both parties may provide collateral information to the evaluator.

c. Parents and children

- i. Jacob: Jacob and the children have been using Julie Clark, via telemedicine, as a family therapist. I would like her to continue in this role with Jacob and the children for the foreseeable future.
- ii. Heather: Heather should obtain a family therapist for her to use with the children. As she prefers in-person to telemedicine, she should seek someone like this out; however, she should utilize telemedicine alternatives if she cannot quickly find an in-person therapist with whom to work.

II. School

a. Zillah and Elliot

- i. Zillah and Elliot should continue homeschooling with Jacob for the foreseeable future.
- ii. Zillah and Elliot should be tested to confirm their education level as soon as possible. I would like arrangements to be made for the public schools to test both children as extensively as possible. I would also like Jacob to identify and arrange testing using a homeschooling program of his choosing to do so.
- iii. Information regarding their education should be shared with Heather.

b. Korban

- i. Korban should continue public schooling for the foreseeable future.
- ii. Information regarding his education should be shared with Jacob.
- iii. Korban's public schooling may be supplemented by additional educational materials, like homeschooling materials purchased by Jacob for him.

III. Custody

- a. Zillah and Elliot: Zillah and Elliot should continue to primarily reside with Jacob, per the parties' agreement.
- b. Korban: Korban should continue to primarily reside with Heather, per the parties' agreement.
- c. Exchanges:
  - i. The children should spend alternating weekends in the care of their parents, per the parties' agreement.
  - ii. Both parents should encourage the children to spend this time in the care of their other parent.
- d. Changes to this schedule: The parties may agree to make changes to this schedule if the agreement is memorialized in writing (text or email shall suffice.)
- e. Church: For the foreseeable future, the children shall continue to attend church with their respective care providers. Requests by the non-custodial parent to bring children to their church's services should be honored if reasonable.
- f. Communication:
  - i. The children should be encouraged to maintain regular communication with the non-custodial parent, and reasonable

accommodations should be made to allow for each parent to contact children when not in their care.

- ii. The parents shall not:
  1. Disparage or threaten the other parent, particularly in the presence of children;
  2. Disparage any form of education or religion to or in front of the children;
  3. Utilize law enforcement in a way that is open or obvious to the children. While the parents and children are not restrained from contacting law enforcement by this provision, they should be mindful of the negative effects on the children if they are exposed to law enforcement officers;
  4. Use third parties to collaterally attack the other parent in a way that would violate these provisions if undertaken by that parent personally; and,
  5. The parents shall not confront or record (audio or video) the other parent in a way that is open or obvious to the children.

It is my intention to use this opportunity to “baseline” the children, the parents, their relationships, and schooling. I believe that “forcing” these children to do things that they don’t want to do will be difficult, at best, and potentially counter-productive, at worst. I believe we need the insights individual and family therapists can provide to help determine whether schooling or custody should change, and if so, with what goal in mind, and then ultimately their insights can help guide how we transition from where the kids are to where we think they should be. That is, I believe we need to find ways to “lead” the children to what we decide are the right answers rather than attempting to impose any particular solution on them. While I am opposed to “allowing children to make parenting decisions”, I have seen evidence that these children (particularly Zillah and Elliot) will defy any such proclamations with which they disagree. We risk setting everyone up for failure if we were to make changes that do not take the stock of everyone’s realities into account.

I would like this weekend (December 2, 2022) for the children to spend time with Heather, as the last several weekends did not go as planned and the children have more recently spent a disproportionate amount of time in Jacob’s care. After this weekend, the parties should resume their prior, alternating-weekend plan (which I understand to also be Heather’s weekend.) I realize that the children may not abide by these dictates, but these are my expectations of the parents, and their willingness and ability to follow through will weigh on future recommendations. As I am unaware of the parties’ prior or current holiday traditions, I will leave it to the parties and their attorneys to make arrangements for that time, if necessary.

# EXHIBIT 1

While the children are in the parents' care, they should be the priority. For the reasonably foreseeable future, I believe that both parents should refrain from including any other significant others during their time with the children. As for church, I struggle coming up with a good solution, so I will refer back to the fact that the parties, when together, approved of the church to which Jacob takes them. For the foreseeable future, I believe that Zillah and Elliot should primarily attend church with Jacob, unless the parties agree otherwise. I will leave it to the parties to determine the best way to accomplish this. I hope to have the children's individual counselors offer their insights as to how to address this issue going forward.

Once we have operative information from the various therapists, evaluators, and school testing, I intend to incorporate that into future recommendations. To the degree feasible, the parties should endeavor to allow for releases of information that will allow this information to be shared between the parties, therapist, and evaluators. I would like there to be as much transparency as possible during this process.

I am sure everyone has critiques and concerns regarding these recommendations, and I am open to receiving them. I want this to be a collaborative process that includes a feedback loop with the parties as well as the various service providers. With luck, the parties may even agree on future goals and how to achieve them.

**EXHIBIT 1**

## CERTIFICATE OF SERVICE

I, Mary Kate Moss, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-25-2024:

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Electronically signed by Destini Townsend on behalf of Mary Kate Moss

Dated: 03-25-2024