

Email: willi



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AFFIDAVIT OF WILLIAM KEEFER BRUMBACH

Personally appeared before me, the undersigned, who upon being duly sworn, deposed and stated as follows:

1. My name is William Brumbach. I am an attorney licensed in South Carolina. I am also a litigant in family court. I submit this affidavit to explain how Whitney Harrison's conduct in a recent appellate matter shows that she is not suited to be on our State's Court of Appeals.
2. My ex-wife filed an action to modify our divorce decree. A family court judge issued a temporary order modifying our divorce decree. Since the family court's order was a temporary one, the modification action remained pending in the family court.
3. While the modification action was pending in family court, I sought to challenge the temporary order at the appellate level. Among the steps I took was to file a common law petition for certiorari in the South Carolina Supreme Court. To conserve resources, I filed that petition *pro se*.
4. Ms. Harrison represented my ex-wife. Ms. Harrison filed a motion to dismiss my petition, arguing that I could not proceed *pro se* in an appellate matter while being represented by counsel in the family court. I disagreed with Ms. Harrison's position, but her position was a perfectly valid one to pursue. But the way she pursued it should disqualify her from serving on the Court of Appeals.
5. Ms. Harrison's motion to dismiss raised a discrete legal issue: whether a litigant may proceed *pro se* at the appellate level while being represented by counsel in the family courts. An attorney who understands appellate law would have examined that issue in a sober, intelligent way. But Ms. Harrison's motion was simply a personal screed against me. She combined a motion for sanctions with her motion to dismiss, and her submission was an unhinged character assassination instead of a legal brief. What's worse, at least one of the "facts" she asserted in her character assassination was a "facts" that her own client, under oath, had acknowledged was only a "guess."
6. I responded to her filing pointing out to the court what I stated in the paragraph above. Ms. Harrison did not even file a reply brief attempting to justify her misconduct, presumably because there was no justification.
7. Ms. Harrison's approach to that matter reveals two big problems. First, she fails to understand that appellate law requires dispassionate consideration of legal issues, instead of fiery personal attacks. Second, her willingness to make factual representations to the Supreme Court that her own client had disavowed under oath calls into question her integrity.
8. As for how the matter was resolved, the Supreme Court denied my petition for a writ of certiorari, denied Ms. Harrison's motion to dismiss as moot, and denied her motion for sanctions.

9. For the sake of full disclosure and transparency, I am attaching the briefs to this affidavit.

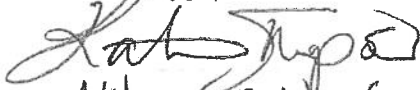
Further, the affiant sayeth not.



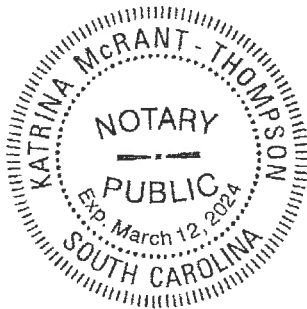
William Brumbach

Dated: 10/23/2023

Subscribed and Sworn to me on this 23rd of October 2023.
Katrina McRant Thompson



Notary Public for South Carolina
My Commission Expires: March 12, 2024.



THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Family Court

Monet S. Pincus, Family Court Judge

Case No. 2021-DR-40-1319

Heather Gallagher Respondent,

v.

William Keefer Brumbach Petitioner.

Motion to Dismiss for Hybrid Representation & Sanctions

This *pro se* matter should be dismissed because Petitioner William Brumbach is improperly utilizing hybrid representation. As discussed herein, Petitioner is represented by well-respected counsel, including Bruce Bannister, Ashby Jones, Elizabeth McCool, and Luke Burke. His counsel has previously assisted with three appellate filings related to the underlying temporary order on relocation. In the absence of counsel, Petitioner is barred from making this filing. Given the nature and number of filings on a temporary order, Respondent respectfully requests that Petitioner be sanctioned for these costly and frivolous filings, be required to pay the attorneys' fees and costs for both returns filed in this Court, and be prohibited from any further appellate filings until a final order is issued by the family court.

Background and Procedural History

This case's history is lengthy and highly contested.¹ The parties separated in March 2018. **Exhibit A.** In September 2018, the family court provided Respondent Heather Gallagher (Mother) primary custody through a temporary order. Two months later the parties entered into a final settlement agreement, which conditioned Mother's ability to relocate until May 30, 2021. After the expiration of that condition, Mother sought to relocate to North Carolina and filed the pending family court action. **Exhibit A—Return & Exhibit 2 of the Return.**

In the months that followed there were significant delays due to COVID and legislative immunity, as well as a series of hearings surrounding relocation and alleged discovery abuse. Ultimately, the family court appointed a Guardian *ad litem* and instructed the Guardian to conduct an investigation and provide a report to the court. The Guardian issued a 67 page-report and the family court held a hearing on relocation in July 2022—the eighth hearing in the matter.

In August 2022, the family court issued a temporary order through an Interim Bench Order allowing Mother to relocate with instructions for counsel to draft a more detailed order. *See Exhibit 5 of Exhibit A.* Petitioner filed a notice of appeal, along with a petition for supersedeas without providing the court of appeals with the family court's detailed instructions—thirteen pages of expressed findings and reasoning. *Id.* The court of appeals upheld the Interim Bench Order and expressly stated Petitioner could make a successive supersedeas filing once the final order was signed.² *Gallagher v. Brumbach*, Appellate Case No. 2022-001166, filed August 26, 2022.

¹ A more detailed case history is set forth in Mother's August 24, 2022 filing with the court of appeals. *See Exhibit A—Mother's Return.*

² In the August 2022 return, Mother's counsel requested that the court of appeals disallow a second filing by Petitioner after the longer temporary order was filed because of the repetitive nature of the filing—practically ensuring a second bite of the apple.

After several exchanges and edits between counsel, the proposed family court temporary order was sent for signature and filing—twenty-five days after the family court issued instructions. During the three business days that the family court had the proposed order to review, Petitioner filed a writ of mandamus with this Court. *See* Writ of Mandamus, filed September 8, 2022. Specifically, Petitioner requested this Court require the family court to issue an order. Significantly, Petitioner ignored the delay caused by counsel reviewing/revising the order, not the family court. In response, Mother’s counsel filed a return. *See* Return, filed September 10, 2022. The family court subsequently issued the order and Petitioner withdrew his writ of mandamus. Petitioner filed a second supersedeas with the court of appeals to which Mother filed a second return. *See* Petitioner’s Second Supersedeas & Mother’s Second Return. The court of appeals again denied Petitioner’s requested relief. *Gallagher v. Brumbach*, Appellate Case No. 2022-001166, Order filed November 3, 2022.

Last week Petitioner filed a writ of certiorari in this Court’s original jurisdiction as a *pro se* litigant. Surprised by this filing and Petitioner’s self-proclaimed *pro se* status, Respondent’s counsel emailed Petitioner’s counsel, who were not included in the electronic service of Petitioner’s filing. In response to this inquiry, Petitioner emailed Respondent’s counsel explaining that his counsel would continue to represent him in family court, but he should be considered *pro se* in this filing. **Exhibit B—Email Correspondence.**

Argument

This matter should be dismissed because Petitioner is prohibited from independently filing while represented by counsel in the same matter in the lower courts. Additionally, sanctions should be imposed against Petitioner given his persistent appellate filings on the same temporary order, as well as his overarching attempt to use the legal system to harass Respondent.

It is well-settled that substantive documents filed *pro se* by a party who is represented may not be accepted. *State v. Devore*, 416 S.C. 115, 120, 784 S.E.2d 690, 693 (Ct. App. 2016). Additionally, Rule 264 of the South Carolina Appellate Court Rules provides that representation by trial counsel continues at the appellate level until a motion to withdrawal is made and approved. Specifically, stating as follows: “The attorneys . . . of the respective parties in the court below shall be deemed the attorneys . . . of the same parties in the appellate court *until withdrawal is approved and notice is given* as provided in this Rule.” Rule 264(a), SCACR (emphasis added).³

Petitioner readily admits that he is represented by counsel.⁴ **Exhibit B** (“With respect to representation, *I am still represented by Bruce’s and Ashby’s firms in the matters they have previously represented me in.* However, I have filed a new case, a petition for writ of certiorari. In that matter, I am representing myself.”) (emphasis added). Moreover, this representation is evidenced by the three other appellate filings in connection with the underlying temporary order, as well as the monthly status letters sent to the court of appeals. *See* all filings on C-Track for *Gallagher v. Brumbach*, Appellate Case No. 2022-001166. Because Petitioner is represented, this filing must be dismissed.

Mother also requests that this Court prohibit any further appellate filings related to this temporary order and impose any other sanctions against the Petitioner that this Court deems

³ *See also* Comment 4 to Rule 1.3, RPC, Rule 407, SCACR (“Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client . . . [I]f a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer should consult with the client about the possibility of appeal before relinquishing responsibility for the matter.”); Rule 1.16(c), RPC, Rule 407, SCACR (“A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation.”).

⁴ There is no question that Petitioner has retained some of the most well-respected practitioners in our State.

appropriate. In so doing, Mother requests the Court consider ordering Petitioner to pay for all attorneys' fees and costs related to this filing and the writ of mandamus in full.

Petitioner's repeated filings have become frivolous and financially burdensome to Mother. Petitioner is a licensed South Carolina lawyer employed by Dominion Energy. He enjoys the benefit of a legal education, allowing him to sidestep the financial burden of these repeated filings while Mother is forced to incur unnecessary and expensive appellate costs to defend the temporary order. Four appellate filings on a single temporary order far exceeds zealous appellate advocacy and reasonable behavior.

Rather, it highlights a broader pattern of Petitioner's controlling behavior and intrusion into Mother's life by any means Petitioner can fashion. Significant evidence has been placed into the record with the family court and the court of appeals showing continued attempts by Petitioner to insert himself—raising serious concerns of harassment and manipulation. For example, discovery in the parties' initial case revealed that Petitioner secretly recorded Mother and the children for seven-and-a-half years of their fifteen-year marriage. In total, more than 800 separate recordings were produced by Petitioner in discovery—each recorded without Mother's knowledge—and many with the assistance of Petitioner's family. **Exhibit A: Exhibit 2(b)- Mother's July 21, 2021 Affidavit at 5-6** (detailing the wiretapping); **Exhibit 2(b)-Mother's Supplemental Affidavit December 15, 2021 at 4**. These recordings were initially taken out of context and provided to the family court as a basis to give Petitioner sole custody of the children. Within months the family court recognized that Petitioner had manipulated the facts and circumstances, and the court reversed its custody decision.

The family court and the court of appeals were also presented evidence detailing how Petitioner tried to assert control over Mother and the children after the divorce. This includes evidence of Petitioner showing up at Mother's house unannounced, instructing others to drive by

on his behalf, Petitioner insisting on personally delivering alimony and support checks despite Mother's requests for no-contact delivery, and Petitioner independently contacting an individual Mother was casually dating to set up a visit with the individual on two separate occasions. **Exhibit A: Exhibit 2(b)—July 21, 2021 Affidavit at 5.** Mother explained in her affidavit to the family court that Petitioner "has found literally hundreds of opportunities to present himself, usually unannounced, at my front door. When viewed in conjunction with his numerous daily walks past my house and with his parents' frequent drive-bys, these incidents make a new life impossible for me." **Exhibit A & Exhibit 2 of Exhibit A—Mother's July 21, 2021 Affidavit; Exhibit 2(b)—March 3, 2022 Supplemental Affidavit.**

In addition to impacting Mother, evidence was presented that Petitioner's controlling behavior has directly impacted the children. For example, the record contains evidence that Petitioner hired a private investigator to track Mother that resulted in the male investigator being underneath Mother's vehicle as she and the children were approaching their car after getting ice cream. **See Exhibit 10 of Exhibit A—Petitioner's Mother's Deposition** (confirming a private investigator was hired and was seen by the children and Mother). This caused fear and unsettling panic for Mother and the children as an unknown man appeared from under their car.

Petitioner has also attempted to use phone calls with the children to interrogate them. To avoid blow ups, Mother has tried to establish a routine call schedule with Petitioner. But the reality is that life can easily become hectic and thrown off schedule due to extracurricular activities running late or bad traffic on the way home from school or an event. When Petitioner's calls are not immediately answered, he begins repeatedly calling and texting. Thereby interrupting any activity that Mother and the children are engaged in at the time.

Each of these examples is independently concerning. But when considered cumulatively, these examples demonstrate a continuous effort by Petitioner to exceed the reasonable boundaries established by Mother, the settlement agreement, and the family court.

Since the issuance of the Interim Bench Order in August 2022, Petitioner has attempted to transform our appellate courts into a platform to assert control over Mother and drain her resources. The temporary order has been in place for ten months, and five months have lapsed since the court of appeals denied Petitioner's second supersedeas. The lapse in time between the court of appeals and this rogue filing demonstrates that Petitioner is not concerned with the alleged urgency of the matter, but rather is using this appellate filing to pressure Mother, emotionally and financially in the family court litigation. Mother cannot financially sustain defending this temporary order at the appellate level—a fact Petitioner is counting on. By depleting Mother's finances on this temporary order, Petitioner is effectively weakening Mother's ability to litigate this matter to a final hearing. Such tactics are egregious, especially given the financial disparity between the parties and Petitioner's independent legal knowledge and access.

Ensuring the best interest of children should be the paramount concern for our courts on every level of review. Not the policing of a displeased party with unlimited time and resources attempting to relitigate a temporary order. The filing of frivolous and successive appellate filings in the name of justice should not be condoned. These are problems and Mother's counsel cannot solve them without this Court. What Mother and her counsel have learned from this fourth filing is that Petitioner is addicted to the game of it. It should not be lost on this Court that Petitioner's lawyers, all of whom Mother's counsel greatly respect and hold in the highest regard, did not file on his behalf.

Mother requests that all deadlines be held in abeyance until the Court rules on this Motion.

Respectfully submitted,

s/ Whitney B. Harrison

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

PETITION FOR WRIT OF CERTIORARI TO RICHLAND COUNTY FAMILY COURT

Monét Pincus, Family Court Judge
Docket No. 2021-DR-40-1319

Heather Gallagher.....Respondent
v.
William Keefer Brumbach, III.....Petitioner

PETITIONER'S RETURN TO MOTION TO DISMISS AND FOR SANCTIONS

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I. INTRODUCTION

Father recently submitted a common law Petition for Writ of Certiorari (“the Petition”), asking this Court to review a temporary order that separates Father from his daughters (the “Temporary Order”). Father’s Petition argued that the Temporary Order is illegal under South Carolina law and unconstitutional under the United States Constitution. Mother seeks to discuss *anything but* the legality and constitutionality of the Temporary Order. Accordingly, Mother has asked the Court to dismiss the Petition for hybrid representation. She also seeks sanctions against Father and a prohibition against future appellate findings. This Court should deny Mother’s requests and address the merits of Father’s Petition.

In support of Mother’s motion, she submits a screed against Father, which is full of lies, but also legally irrelevant. Mother loosely ties this personal attack to her request for sanctions. She argues, approximately, that if Father is the contemptible person she claims, then he should be sanctioned. None of her arguments are legally sound. And all of her arguments seek to avoid actual analysis of the Temporary Order because the Temporary Order will crumble under that analysis.

As shown in more detail below, if Father needed counsel to sign his Petition, he has now cured that problem because counsel from the family court and related appellate matters has agreed to file and sign the Petition on Father’s behalf if the Court deems it necessary. Moreover, Mother’s personal attacks on Father are untrue and, in any event, unrelated to any issue before this Court. Finally, all of Father’s filings have been filed in good-faith and based in applicable law.

For those reasons, which are explained in more detail below, the Court should deny Mother’s motion in full.

II. PROCEDURAL HISTORY

Father’s appeal has proceeded as contemplated by this Court’s opinion in *Terry v. Terry*, 400 S.C. 453, 734 S.E. 2d 646 (2012). In *Terry*, this Court stated that a parent could obtain “an immediate

remedy from a temporary order” through (1) “a supersedeas of matters decided in the order” or (2) “a common law petition for a writ of certiorari.” *Id.*, 457 n. 2, 734 S.E. 2d at 648 n. 2 (emphasis added). Father has pursued those two avenues.

The history behind this appeal dates back to 2018 when Mother brought an action against Father for separate support and maintenance. The next year, she brought a divorce action against Father. Then, in April 2021, Mother brought a third action against Father, an action to modify the parties’ divorce decree to allow her to move with their children to Raleigh, North Carolina.

In the modification action, Mother scheduled three expedited temporary hearings, each time asking a different family court judge to modify the divorce decree, on a temporary basis, and allow Mother to move to Raleigh with the parties’ children. The first two family court judges denied Mother’s requests. Then, as was bound to happen with enough temporary hearings before enough different judges, the third judge granted Mother’s request. Specifically, the Honorable Judge Monét S. Pincus (“Judge Pincus”) issued an Interim Order on August 8, 2022, that allowed Mother to relocate with the children, but the Interim Order contained no findings or analysis. (Ex. A). She also emailed counsel instructions for a more detailed order that addressed other topics like the visitation schedule, restrictions on contact between the children and certain third parties, etc. (Ex. B). Judge Pincus’ instructions stated that the instructions “shall not be shown to or disseminated to anyone other than counsel, the Guardian, and the parties.” (*Id.*, pg. 11, ¶ 8).

With school about to begin, time was of the essence, so Father sought a writ of supersedeas. On August 26, 2022, the Court of Appeals denied Father’s petition for supersedeas, finding that the Interim Order was too barebones to analyze. Specifically, the Court of Appeals held that, “[w]ithout the benefit of the family court’s formal order, we cannot evaluate the merits of the family court’s ruling.” (Ex. C, pg. 1). The Court of Appeals also stated that “we expect the family court to issue its

form order expeditiously.” (*Id.*, pg. 1). And the Court of Appeals noted that, after the family court entered the order, Father “may seek emergency relief.” (*Id.*, pg. 2).

At that point, with time still of the essence, the pace slowed down. By September 2, 2022, the parties had agreed upon language and submitted a proposed order to the family court. But instead of signing the proposed order as instructed by the Court of Appeals, Judge Pincus emailed counsel and stated “My Interim Order and Memorandum for Order Instructions should govern and went into affect [sic] when I issued them.” (Ex. D). In other words, Judge Pincus was refusing to issue an appealable order. But she was insisting that the parties live under the rules that she laid out in *confidential, unappealable instructions*.

Father promptly sought a writ of mandamus to require Judge Pincus to follow the Court of Appeals’ directive and issue her order so that Father could seek emergency relief. Only after she faced a petition for a writ of mandamus did Judge Pincus finally issued her order (the “Temporary Order”) on Monday, September 12. (Ex. E). After Judge Pincus issued the Temporary Order, Father withdrew his petition for writ of mandamus.

As the Court of Appeals had explicitly permitted (Ex. C, pg. 2 (stating that Father “may seek emergency relief” after the family court issues its more detailed order)), Father once again asked for a writ of supersedeas, which the Court of Appeals denied. (Ex. F).

Then, as this Court’s holding in *Terry* contemplated, Father petitioned for a common law writ of certiorari. It is that Petition that Mother asks this Court to dismiss.

III. ARGUMENT AND CITATION OF AUTHORITY

A. The Court Should Not Dismiss The Petition For Hybrid Representation.

Father wishes to proceed on his own behalf but is happy with his counsel in the family court and has authorized them to represent him in this matter should the court deem it necessary. They

have agreed to represent him if the Court deems it necessary. (Statement of Luke Burke, *attached to Exhibit G*).

This Court should not dismiss Father's Petition for hybrid representation. If Rule 264 prevents Father from proceeding *pro se* while still represented below, that problem has been cured now that Father's counsel in the family court and in related appellate matters is authorized and willing to represent Father with respect his Petition if the Court deems it necessary.

Mother bases her argument for dismissal on *State v. Devore*, 416 S.C. 115, 784 S.E.2d 690 (Ct. App. 2016). But the present case is distinguishable from *Devore* in meaningful ways. In *Devore*, the issue was whether the appellant had filed a notice of appeal before the deadline. In that case, the appellant, acting on his own, sent a letter to the Court of Appeals that could arguably qualify as a notice of appeal. But the appellant was still represented in the matter below when he sent the letter. The Court found that, because the appellant was represented in the matter below when sent the letter, the appellant was legally prohibited from filing a notice of appeal on his own behalf. Thus, the letter could not serve as a notice of appeal. *Id.*, 122, 784 S.E.2d at 694. And, by the time the appellant's counsel submitted a notice of appeal, the appellant had missed the deadline for filing a notice of appeal, which deprived the appellate court of jurisdiction. *Id.*, 123-24, 784 S.E.2d 694-95. Here, by contrast, Father had no deadline to file his Petition. Thus, even if Rule 264 prevents the Court from accepting Father's *pro se* filing, the Court may simply deem it filed now that counsel is authorized and willing to represent Father if the Court deems it necessary. At the very least, Appellant should be permitted to refile his Petition, this time through counsel. And Mother's request that Father not be allowed to refile his Petition is consistent with her desire to avoid substantive review of the Temporary Order because she knows that any such review will spot the illegality and unconstitutionality of the Temporary Order.

Further, Father's Petition should not be dismissed because "hybrid representation" does not exist in the context of this case where Father is not entitled to and has not been assigned government-paid counsel.

The history of hybrid representation is rooted the procedure for submitting first appeals on behalf of indigent criminal defendants outlined in *Anders v. California*, 386 U.S. 738 (1967). The *Anders* procedure has been applied in South Carolina since the late 1960s. See, e.g., *Flood v. State*, 251 S.C. 73, 160, S.E.2d 135 (1968). The procedure details the method and procedure by which counsel for an indigent defendant can withdraw from an appeal that counsel believes is non-meritorious after counsel supplies the appellate court with an *Anders* brief and designation of matter from which the appellate court can review the case and determine whether the appeal is wholly frivolous. *Anders, supra*; see also *State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991).

The *Anders* procedure has been extended beyond criminal cases to PCR cases, *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), involuntary commitment pursuant to the Sexually Violent Predator Act, *In re McCoy*, 360 S.C. 425, 602 S.E.2d 58 (2004), and termination of parental rights, *Ex parte Canthen*, 291 S.C. 465, 354 S.E.2d 281 (1987). All of these actions are similar because they involve indigent defendants with a right to government-paid representation. Importantly, the *Anders* procedure has not been applied in any case where a party does not have a constitutional right to representation.

Against this background, the court in *State v. Devore* determined a letter filed by a *pro se* party represented by counsel in the underlying criminal action was a nullity. *Devore*, 416 S.C. at 120, 784 S.E.2d at 692. However, the court came to this determination by specifically relying upon a criminal defendant's counsel's duties to advise his client of his right to appeal and ability to follow the *Anders* procedure to file such an appeal:

Following a criminal trial, a defendant's trial counsel "must make certain the defendant is made fully aware of the right to appeal." *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). "In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in [*Anders*]." *Id.* (quoting *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008)). "After the client is convicted and sentenced, trial counsel in all cases has a duty to make certain that the client is fully aware of the right to appeal, and if the client is indigent, assist the client in filing an appeal." *Wilson v. State*, 348 S.C. 215, 218 n.3, 559 S.E.2d 581, 583 n.3 (2002). Even though an attorney is retained for purposes of trial only, "[t]he requirement [that he] take reasonable steps to protect the client requires counsel . . . to serve and file the Notice of Appeal and to continue to represent the client until relieved by [the appellate court] under Rule 235, SCACR." *In re Anonymous Member of the Bar*, 303 S.C. 306, 308, 400 S.E.2d 483, 484 (1991).

Id. at 120; 784 S.E.2d at 693-94.

Here, the circumstances are so disparate as to make them unrecognizable from *Devore*. Father is not entitled to counsel, his counsel are not paid by the government, and his counsel do not have a duty to file an appeal on Father's behalf through the *Anders* procedure or otherwise. Therefore, the concept of hybrid representation defined in *Devore* is not applicable in this case, and Mother's argument for dismissal withers even further.

In any event, the dismissal argument can be resolved entirely, if the Court deems it appropriate, by simply deeming the Petition to be filed by counsel or granting Father leave to refile through counsel.

B. Mother's False Assassination of Father's Character Has No Bearing On Any Issue Before The Court.

Mother does not like Father, which hardly puts him in a unique position among ex-husbands. But there is no legal relevance to the character assassination that Mother included in her Motion, especially since her allegations are not even true.

As irrelevant as these matters are, Father feels compelled to set the record straight and correct Mother's false statements. He has done so in an affidavit attached as Ex. G, which is summarized below:

- Recordings. Father did, on the advice of counsel, record Mother abusing their daughters and programming their daughters against him. Father also discussed the recordings with a therapist, who gave him advice on how to protect his daughters from the abuse and how to counteract the programming. Father never presented any recordings out of context or misrepresented anything to any court.
- Unannounced visits to Mother's home. After their separation, Mother moved into a home on the same block as Father. She frequently asked him to come over to do yardwork, pick up the children early in the morning to take them to school, do homework with the children on the porch, etc. Father, who walks and jogs frequently, never walked or jogged past Mother's home. He only went to Mother's home when there was a valid need or when Mother invited him, which she did on an almost-daily basis.
- Having others drive or walk past Mother's home to surveil her. Mother includes these allegations in her brief to this Court even though she previously admitted that the allegations were merely "an assumption" and a "guess." (Ex. H, 243). Specifically, prior to her deposition, Mother identified Gloria Douglass and Juliet Roberts as the two individuals who supposedly surveilled her at Father's request. Both gave affidavits stating that Mother's allegations were false. (Douglass and Roberts Affidavits, *attached to* Ex. G). In fact, Ms. Douglass testified that Mother's home had been on her walking route since 1978, the year Mother was born! Mother then acknowledged that her accusation was nothing more than "an assumption" and a "guess." (Ex. H, 243). Yet she repeats those accusations to this Court. Of course, the accusations are false.
- Contacting the man she was dating. Presumably, Mother is referring to Jason McPherson. Mr. McPherson contacted Father about getting their children together to play. The children enjoyed each other's company, so Father reciprocated on several occasions. Father never

knew (and still does not know) the nature of Mother's relationship with Mr. McPherson, nor was Father interested in that information.

- Excessive phone calls. Father does not call mother or their children excessively. Mother is under a court order to produce her phone records, and she is in willful violation of that order. (Ex H, 185¹; Ex. I). Thus, she should be estopped from making factual assertions that would be disproven by the evidence she is withholding.
- Unlimited time and resources. Mother asserts that Father has unlimited time and resources. He does not. Father works a full-time job and chairs the board of transitional ministry for men in Columbia. Father has a base salary of approximately \$183,000 with a bonus target of approximately \$36,500. That income is healthy, but far from unlimited, especially since he pays \$30,000 per year in alimony. By contrast, Mother's sister is a hedge fund magnate from London who funds this litigation. Mother, not father, has unlimited time and resources.
- "Addicted to the game of it." Mother initiated the divorce. Mother later brought an action to modify the divorce decree to take the parties' children away from Father. Mother scheduled serial expedited temporary hearings. Father wants to end the litigation and has actively pursued settlement talks. Mother takes months and months to respond to settlement proposals. Thus, Mother is the party who seems addicted to litigation.

¹ The transcript reads:

Q: "Well, the order says you've got to give us the records, right?" A: "Okay."

Q: "Is that yes?" A: "Yes"

Q: "And you haven't done it, right?" A: "Right."

Q: "So we subpoenaed it to try to get it directly from the provider, right?" A: "Okay, right."

Q: "And you're trying to stop us." A: "Correct."

Q: "Okay And that violates the court order." A: "Okay."

Ms. Strom: "Object to the form."

As stated above, the legal significance of these false allegations is unclear. If Mother is arguing that Father is simply too contemptible seek a writ of certiorari, that argument, frankly, is not serious, and it calls for no serious response.

C. The Court Should Not Sanction Father.

Mother cites no clear legal basis for her request for sanctions. She seems to base her request on two arguments, neither of which is compelling.

First, Mother appears to be arguing that this Court should sanction Father because she believes he is a bad person. As explained above, the allegations that Mother makes in her effort to prove that Father is a bad person are false. But this Court need not dive into the truth or falsity of those allegations because this Court has no history of imposing sanctions based on character judgments. Thus, Mother's first argument should fail.

Second, Mother appears to be arguing that Father should be sanctioned because of the number of appellate filings he has made. That argument should also fail because, as explained above, Father has proceeded exactly as this Court's *Terry* opinion contemplated that a parent should proceed when challenging a temporary order. A more specific account follows:

When faced with an Interim Order that was illegal and unconstitutional, Father sought a supersedeas, just as this Court stated in *Terry* that a parent in that situation should do. *Terry*, at 457 n.2, 734 S.E. 2d at 648 n.2. The Court of Appeals stated that the Interim Order was too barebones to evaluate but stated that, once the family court issued the Temporary Order, Father "may seek emergency relief." (Ex. C, pg. 2). The Court of Appeals also stated that "we expect the family court to issue its form order expeditiously." (*Id.*, pg. 1).

With time still of the essence, the family court refused to sign the draft order prepared by the parties but insisted that Father abide by unappealable, confidential emailed instructions. (Ex. D). Thus, Father sought a writ of mandamus.

Facing the writ of mandamus, the family court issued the Temporary Order, so Father withdrew the petition for writ of mandamus. Since the Court of Appeals had stated that Father “may seek emergency relief,” Father sought a supersedeas, which the family court denied. (Ex. F).

Then, Father filed his Petition, just as this Court had stated in *Terry* that a parent in need of immediate relief from a temporary order could do. *Terry*, at 457 n.2, 734 S.E. 2d at 648 n.2.

Father’s filings have been precisely the filings that this Court’s *Terry* opinion contemplated. Father’s filings have raised valid legal questions. In fact, Father’s Petition raises the important and novel question of what this Court meant by the words “where warranted” when it held in *Terry* that parents could obtain “an immediate remedy from a temporary order in those circumstances where warranted.” *Terry*, 457 n. 2, 734 S.E. 2d at 648 n. 2. The bench and bar of South Carolina would benefit from having a better understanding of those words.

IV. CONCLUSION

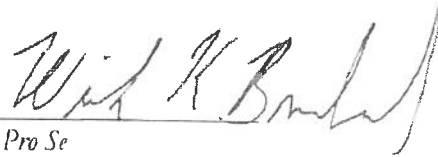
The Temporary Order was illegal and unconstitutional, and there are no serious arguments to the contrary. Thus, Mother tries to avoid the substance of this appeal. She seizes on a technical issue that has been cured, if it ever existed. And she launches a barrage of allegations that are just as false as they are irrelevant.

Thus, this Court should not dismiss Father’s Petition.

And seeking sanctions here is extraordinary. In 2018, Father was waking up each morning with his daughters, taking them to school, helping them with homework, playing with them in the yard, riding bikes with them in the neighborhood, and relishing every second he had with them. Mother decided to end the marriage. Then Mother, who Father had witnessed abuse their daughters for years, initiated subsequent litigation to virtually eliminate Father’s role in his daughters’ lives. In *Terry*, this Court laid out options for parents facing Father’s situation. Of course Father will pursue every one of those options, and he cannot imagine how any Father would not do the same.

Father should not be sanctioned for pursuing legal avenues to protect his daughters.

Respectfully submitted:


Will K. Brubaker
Pro Se

May 25, 2023

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

HEATHER GALLAGHER,
PLAINTIFF

vs.

WILLIAM KEEFER BRUMBACH, III,
DEFENDANT

IN THE FAMILY COURT
5TH JUDICIAL CIRCUIT

Docket #: 21-DR-40-1319

INTERIM ORDER

RICHLAND COUNTY
FILED
2022 AUG -8 AM 9:44
JEANETTE V. MORRIS
CLERK
FAMILY COURT

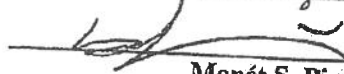
DATE OF HEARING: July 18, 2022
JUDGE: Monét S. Pincus
ATTORNEY FOR PLAINTIFF: Susan Strom, Patricia Morr
ATTORNEY FOR DEFENDANT: Ashby Jones, Bruce Bannister
GUARDIAN AD LITEM: April Gremillion

THIS MATTER was before the Court for a Supplemental Expedited Temporary Hearing. Due to the imminent start of school, the Court finds an Interim Order is necessary.

IT IS ORDERED Mother is entitled to relocate with the minor children to Raleigh, North Carolina. She is permitted to take all necessary steps to enroll the children in school for the upcoming school year and she may choose her move date.

A more detailed Supplemental Temporary Order shall follow this Interim Order and until such order is signed and filed, this Interim Order shall remain in full force and effect.

IT IS SO ORDERED this 8 day of August, 2022



Monét S. Pincus
FAMILY COURT JUDGE

EXHIBIT B



State of South Carolina
The Family Court of the Fifth Judicial Circuit

Monét S. Pincus
Judge

Post Office Box 192
1701 Main Street, Room 318
Columbia, SC 29202-0192
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mpincusj@sccourts.org

August 8, 2022

Instructions for Preparation of Supplemental Temporary Order

To: Susan Strom, Patricia Morr, Attorneys for Plaintiff ("Mother")
Ashby Jones, Bruce Bannister, Attorney for Defendant ("Father")
April Gremillion, Guardian ad Litem

From: Monét S. Pincus

Case: Gallagher v. Brumbach, 21-DR-40-1319

Hearing Date: July 18, 2022

I have carefully reviewed and considered the entire content of the Court's file and all affidavits presented, unless otherwise addressed below. I have also considered arguments of counsel and the oral and written report of the Guardian. Based on the entire record before me, I request that Ms. Strom prepare and submit a proposed order conforming to the instructions enumerated below.

Our appellate courts have repeatedly reiterated that relocation cases are very difficult. We no longer have a presumption against relocation in South Carolina and the Court's authority to prohibit a custodial parent from moving out of state should be used sparingly. The best interest of the minor children is the prevailing analysis. In this case, had Mother decided to relocate within the State, regardless of how far away from Father, she has strong statutory authority allowing her to do so, absent compelling reasons. "The Court may not issue an order, which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such a prohibition." *S.C. Code Ann.* §63-3-530(A) (30). Mother wants to relocate to Raleigh, North Carolina which is within driving distance from Columbia, South

Carolina. But because North Carolina is out of State, the Court's analysis of the law and facts is different, even though the end result could potentially be the same with an in-state move—the children move with the primary custodial parent, at a time to cause the least disruption, thereby changing schools, church, friends, and changing the time they visit with the non-custodial parent.

Preliminarily, the Court addresses certain matters raised by counsel during oral argument.

Father's request for a continuance and to delay issuing a ruling until a trial: Father is asking the Court to delay an analysis of the record and the relocation factors until after a trial. Mother is asking the Court to review the record and make a temporary decision, allowing her to relocate. The Court declines to further postpone analyzing the record until a trial. The matter is properly before the Court, the record is well developed, the Guardian's report is comprehensive and neither her report nor her recommendations have changed since its original issuance date.

Father is also asking that the Court delay its decision because Mother has failed to provide phone records and/or data and because the Guardian has filed a Motion for protection against being deposed and/or disclosing certain records. At this juncture in the case, Mother's phone records, even if they show Mother has a boyfriend, will not assist the Court with making its decision and issuing a Supplemental Temporary Order. Further, thus far, the Court finds that the Guardian has conducted an independent, balanced, and impartial investigation; the Guardian has complied with her statutory duties; the Guardian as interviewed many witnesses at the request of both parents, and met with the parents and children on more than one occasion. The Court denies Father's request for a continuance and finds Mother's right to be heard on an expedited, temporary basis, is more compelling than Father's basis for his continuance request.

Dr. Raley's Forensic Psychiatric Evaluation of Mother dated July 25, 2018 and Father's request for Psychological Evaluations in this litigation: Other than to review his recommendations, the Court did not consider Dr. Raley's report, which was dated prior to the parties' divorce--July 25, 2018. However, the Court did consider Father's concerns that Mother did not follow certain recommendations and Father also has concerns about Mother's mental health. Father has not filed a contempt action against Mother for failing to follow Dr. Raley's recommendations.

The Guardian has no concerns about Mother's mental health. The Court also reviewed Mother's therapist's Affidavit dated July 16, 2021. The Court has no concerns about Mother's mental health or her parenting since the parties' divorce. The Court finds that without anything more in the record, at this juncture, psychological evaluations will not help the Court with deciding whether Mother can move to Raleigh. The Court further finds that the issues raised in this litigation don't give rise to the need for psychological evaluations at this time. This is without prejudice if it later appears warranted to the Court.

The Guardian's Report subject to a Protective Order: The Guardian's report is subject to a protective order issued by the Court on February 3, 2022. The Order states in part, "no party may disseminate the report nor discuss the content of it with the children or third parties, nor allow third parties to do so until further Court Order."

Despite this language, Father submitted the Guardian's report to a hired licensed psychologist, Dr. Mulchay, who submitted an Affidavit to the Court on behalf of Father and who analyzed the Guardian's report throughout his Affidavit.

The Court read, but did not consider in making its decision, this Affidavit. The Court admonishes the parties and Counsel that no further dissemination of the Guardian's report should occur without first getting leave from the Court.

Transcripts or contents of certain recordings: The Court did not consider transcripts of recordings or references to the content of recordings that were ordered *to be deleted and "not to be used for any purpose without the mutual consent of the parties."* (Final Order, Settlement Agreement, page 15). Despite this language and presumably without Mother's consent, Father wanted the Guardian to listen to the recordings, and attempted to reenact the recordings for the Guardian. The Court also notes that in her Affidavit (submitted in a prior hearing and the current hearing), Dr. Jennifer Savitz Smith discloses a description of the content of these recordings to influence the Court's decision. The parties' Final Order requires the parties to obtain these recordings from third parties, like Dr. Smith, but the Final Order goes further to state that these "recordings shall not be used for *any purpose* without the mutual consent of the parties obtained through counsel." It is of great concern to the Court that the Father's submissions to the Court reveal content of these recordings despite the prior Order. Telling the Court or Guardian what was on the recordings or describing them in detail, is no different than playing the recordings for the Court or Guardian, the end result being to use

the recordings without the consent of Mother and to prejudice Mother in this litigation.

In Camera Interview with the Children requested by Mother: The Court declines to interview the girls. The Guardian is assisting the Court with its decision through her investigation and report and has presented their preference.

Supplemental Temporary Findings: That for purposes of this Supplemental Temporary Order only, which is without prejudice to either party, I find that Mother has been an excellent custodial parent and that it would not be in the children's best interest to change the custodial arrangement from Mother to Father. Mother has been operating in the best interest of the children. Father has not filed litigation, prior to his Counterclaim in this case, alleging any problems with Mother's custodial parenting. The children are thriving in her care and the Court sees no reason in the record to indicate that would change if Mother and the children move to Raleigh, NC. I find that Mother has fostered Father's relationship with the girls since the divorce and has been consistently flexible in allowing more time and contact between the girls and Father than the Order requires. This should not be held against Mother in this litigation as a basis for denying her move. Instead of being rigid and inflexible with the current schedule so as to keep Father's time to the minimum required by the Order, Father has had much more time, nearly daily contact, which is the main basis for Father's claim in this litigation, i.e. that Mother should be not be allowed to move because it would reduce his time. Mother acted in the girls' best interest by allowing more time and remaining flexible. I find that Father has been a very involved parent since the divorce and his desire to be able to see the girls as much as he does now and with the ease of living in walking distance of the girls, is genuine.

Mother's reasons for moving and Father's reasons for opposing the move: As discussed in more detail below, I find that Mother's decision to move is not the result of alienation toward Father, nor is it a whim, as argued by Father. The parties contemplated Mother's potential relocation in their Final Order filed November 26, 2018. Mother is attempting to better the quality of life for herself and the minor children that are the subject of this action.

Mother needs to gain financial independence as her alimony is reducing and eventually ending and she believes her job opportunities are better in Raleigh. Mother has a positive family/friend support system in Raleigh and has no ties anywhere in South Carolina other than living here with Father and the children. Mother has a place to live and a job lined up. Mother wanted to move after the

divorce, but agreed not to move before May 30, 2021 with certain conditions. Mother desires more privacy from Father and no longer desires to live in such close proximity to him, where Father drops by unannounced and each can see the other's happenings. Mother has nowhere in South Carolina that she can move to that affords her the same opportunities and support network she has in Raleigh. She believes the move will better her quality of life thereby bettering the girls' lives. She is not moving to thwart Father's relationship with the girls. She is not moving on a whim. Mother has never wanted to live in Columbia. She has wanted to move for years. Raleigh is in driving distance. She discussed her decision months in advance with Father. She tried to work out a new visitation schedule. She filed a case before moving. She wanted to plan the move during the summer when the girls could transition easier. She believed that to be a good time to move since the children were virtual most of last year and Amelia was starting a new school. Mother wasn't able to get her hearing scheduled in time for the Court to consider a move during the 2021 summer break. She didn't tell the girls about her plans. They found out from Father's mother who was researching "How to Defeat a Relocation Case." Father thinks Mother is moving for a boyfriend. Father has a girlfriend. Even if Mother has a boyfriend in the area, and that was part of her motivation, this would not be a factor for the Court to prohibit a move.

Father wants to continue daily or near daily contact with the girls. He wants to live right down the street from them as he does now. He believes the girls will be negatively impacted by a move. He believes Mother is alienating him from the children. There is no evidence in the record, after 15 months of litigation, that Mother is alienating Father and her actions since the divorce show otherwise. Father's motion for parental alienation evaluations was previously denied and the Court found that such an evaluation would be harmful to the children and the Court "did not see any evidence of alienation" on the part of Mother. (Order filed May 4, 2022). Mother consistently, over the last 3.5 years, has allowed Father much more time than ordered; has fostered his relationship with the girls by not being rigid with the schedule. This is not indicative of alienation.

The quality of the relationship between the girls and Mother and Father: The Court agrees with the Guardian's assessment of the relationships. The girls are well bonded with Mother and have a wonderful, loving, relationship with her. They trust her completely. They want to live with her, wherever she may live. Father is clearly an active parent and clearly loves the girls and they love him. But their relationship is very strained, even after seeing him several times a week since the divorce.

According to the girls' counselors and previous Guardian, they were "negatively impacted, possibly traumatized, or at least permanently changed" by the parties' divorce litigation which resulted in an initial abrupt custodial switch from Mother, who was always their primary caretaker, to Father, at a temporary hearing. Custody was subsequently changed at a supplemental temporary hearing after the Court was presented with a Guardian's report and further information. The girls' relationship with Father has remained strained. The girls have been described as "highly intelligent" and their counselors agree their "voice" should be respected. As the Court must consider the preference of children, taking into consideration their age and maturity level, the Court finds that considerable weight should be given to the girls' preference.

The girls have come a long way, with the assistance of counseling, with their relationship with Father, but the relationship is still strained, despite his regular contact with the girls. It appears the girls are still being questioned by Father and grandmother in a way that continues to strain the relationship and causes the girls trauma. Sometimes, Father and grandmother separate the girls and question them separately. Amelia has described being forced to sit in a chair and answer questions about Mother. A specific example that concerns the Court is when Amelia described in detail for the Guardian, how she attempted to use skills she learned in counseling to avoid being questioned by Father and grandmother, by asking to be excused. Father and grandmother denied her request to be excused, so she left the house and Father called the police. It is concerning that this child attempted to use skills she learned in counseling, to remove herself from a situation that caused her anxiety, and her attempts were not honored by Father which caused her to run and a scene ensued. Amelia feels that she has to watch what she says around Father and his family, and their questioning causes her anxiety. Likewise, Claire is uncomfortable with the questioning sessions from Father and grandmother. She heard her grandmother say that her Mother didn't love Claire. That troubled her and she ended up feeling pressured and uncomfortable by Father about the situation.

On the other hand, the girls consistently reported to the Guardian that their parents treat each other well when the girls are around. They don't have any incidents or speak to each other badly in front of the girls. They don't hear their parents speak badly about the other when they are around a parent. They report that Father's family disparages Mother, but not Father.

It appears from the record that the girls' strained relationship with Father and his family is not the result of Mother disparaging Father or attempting to cast him in a



bad light. The strain in the relationship appears to be the result of Father and grandmother's conduct toward the girls, independent of Mother, i.e. the pressure they feel from the questioning, the pressure they feel to call Father every day or the repeated texts from him if they don't, or the uncomfortable questions he asks them about whether they feel love for him. This has gone on to the extent that Claire does not wish to be with Father alone, apart from Amelia.

Because of the trauma of the prior litigation, the children have no knowledge that Father counterclaimed for custody in this case, and they have an underlying fear of custody changing because of Mother's desire to move. The parties shall be prohibited from allowing the children to find out about the counterclaim, absent a court order dictating the terms of such disclosure.

The impact of the move on the quality of the girls' contact with Father: Mother's relocation to Raleigh, NC, a 3.25 hour drive away, will impact Father's time with the children in that he would not be able to do overnight visits during the week or visit an extra overnight on each of his weekends, unless there is a holiday or school closing. In addition to his court ordered schedule, Father also has spontaneous contact during the week with the children and this would change. Father's visitation time is precious and it is impossible for the Court to say what constitutes quality time for this family. It appears from the record however, that Father can have regular, consistent, quality time with the girls if they move.

The likelihood the move to Raleigh will improve the quality of life for Mother and the girls: Mother's quality of life will undoubtedly be improved. That improvement will have a positive impact on the girls' quality of life. Staying in Mother's primary care, wherever she may live, is in their best interest and will continue to have the impact the Court has seen since the parties' divorced—thriving children, working hard to overcome their strained relationship with Father, growing into mature young adults. The Court finds it is very likely the children's quality of life will improve with Mother's move to Raleigh.

Father is concerned about the girls' living arrangements. The Court is not. Mother can't purchase a home until she sells her home. She can't sell her home until she moves. She doesn't want to move without a ruling from the Court on modifying visitation, temporarily or otherwise. In the meantime, Mother has a lease and housing that appears suitable.

Father is concerned that Mother does not have a stable job opportunity in Raleigh or that Mother has not exhausted her search in the Columbia area. He offers that

Mother could find employment in this area. Mother has to return to the workforce given her reduction in alimony and her age. She does not want to work in the Columbia area, even if she *could* work in the area. Further, Mother is in the same conundrum with regard to employment. She has been offered employment, but she can't accept an employment offer in Raleigh, until she can move. She doesn't want to move without a ruling from the Court on whether Father's visitation schedule should be modified. Despite this, Mother has now secured employment from The Common Market, owned by an extended family member, that is willing to hold a position for Mother. Mother's job offer in Raleigh is \$50,000 as a starting salary which would be in addition to her alimony and child support income. Her anticipated income reported on her Financial Declaration dated July 18, 2022 from all sources is \$11,113/month, a significant increase.

Father argues the children are rooted in Columbia. This is not in dispute and naturally they would be. But on a temporary basis, the Court finds that this fact does not outweigh Mother's right to move and her right to remain the primary custodial parent, in the absence of a finding that Mother is not acting in the children's best interest or that they would be harmed by the move.

Finally, Mother's Affidavit dated July 19, 2021, supplemented for this hearing, is compelling. Mother's reasons, research, relocation plan and parenting plan presented in her Affidavit are thorough, well-thought out, and while the plan might not be the same plan Father would adopt, the Court finds Mother's plan demonstrates that Mother is continuing to act in the children's best interest by bettering her quality of life and expanding opportunities for the girls. In addition, Mother has chosen a pediatrician, a dentist, an orthodontist and a child psychologist specializing in pediatric ADHD and anxiety. Since this case has been pending for more than 15 months, some aspects of Mother's initial plan have changed by necessity, but Mother still presents a well-thought out plan for relocation that the Court cannot find fault with at this juncture in the case.

Supplemental Temporary Order: I do not find it appropriate to make Mother stay in Columbia, South Carolina while this litigation continues. The matter has already been pending for more than a year. There have been significant delays in getting the court ordered expedited hearings held. A 5-day final hearing has been requested but will not be scheduled in 2022. This expedited motion was ordered to be heard before the start of the 2022-23 school year. The move is close and allows consistent regular contact, albeit different contact, between Father and the minor children while the matter is pending. The Guardian will have the time to visit the children and their home in Raleigh before a final hearing is scheduled. The

children are old enough to express their preference and have done so. They want to continue to live with Mother and move to Raleigh, NC or to wherever she may move. The burden on Father's visitation rights due to the change in his schedule, does not outweigh the girls' best interest in this case. Therefore:

1. **Custody shall remain as is.** Mother's desire to move to Raleigh is not a significant change of circumstance to warrant a change of custody and her relocation was contemplated in the parties' Final Order. Mother may move to Raleigh, North Carolina with the minor children and she may pick her move date.
2. **Father's visitation schedule** shall be modified on a temporary basis per Mother's Parenting Plan Exhibit A verbatim, except with the following changes (please rewrite the Plan in the proposed order and include these changes)¹:
 - a. Paragraph 2 is modified in its entirety except for the last paragraph which shall remain as proposed. Father shall have the 2nd and 4th weekend of each school month beginning the month of September. If any of these weekends have a holiday or school closing day, this day shall be tacked on to Father's weekend. This allows for Father to visit 2 weekends per month and near equally shares the long weekends between the parents. If a holiday or workday is taken back by the school district, the parent having the girls loses that day. The parties are free to alter this schedule prior to counsel submitting the proposed order if they agree on something other than the Court's order.
 - b. Paragraph 3(A) the return is 2:00 pm the day after Christmas unless the parties agree to exchange on Christmas Day.
 - c. Paragraph 3(E), Father's first summer week begins Sunday 6/11/23.
 - d. Paragraph 4(B): This replaces the 2nd and 3rd sentences—"While this action is pending, neither parent shall remove the girls' phones from their use as a form of punishment. Private access to the other parent is in their best interest during litigation. Parents are permitted to limit the girls' use of the phones at certain times within reason, such as meal time. Father shall ensure that his mother does not have access to any of the girls' digital devices at any time." Also, remove the parenthesis around the sentence beginning "When the children."

¹ The Court considered the Wake County Public School System calendar in making its visitation Order, specifically that long weekends and/or holidays occur on 9/5, 9/26, 10/10, 11/4, 11/11, 1/16, 1/27, 2/20, 3/31, 4/21, 5/29



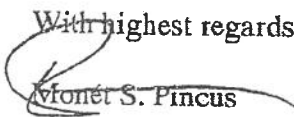
- e. Paragraph D: add this phrase to the end of this paragraph “unless specifically addressed otherwise herein.” The Court intends to allow private therapy for the girls as addressed below.
- f. The girls shall visit Father together. If, due to a medical reason or some other emergency matter, both girls cannot visit Father at the same time, the visit shall be paused and reallocated to Father by consent of the parties or subsequent Court Order. Further, the parties can mutually agree to separate visits taking into consideration the recommendations of the girls’ therapist or counselor.
3. **Co-Parenting Counseling:** Both parents put in the work and made progress in CPC with Dr. Touma. In fact, the record supports that for the most part, the parties have been very amicable in front of the girls and have been very flexible with each other regarding time and involvement with the children. Mother does not want to continue CPC during the litigation as she fears the sessions will be used against her in court. The sessions would be discoverable and Dr. Touma could be called as a witness. Mother doesn’t believe CPC would be beneficial under those circumstances. This is a reasonable concern, especially given the parties’ difficult history. The parties were allowed to seek a de-novo review of the recommendations of Dr. Touma. Mother did that. The parties are no longer ordered to engage in co-parenting counseling, during this litigation.
4. **Other Counseling for the Parents:** For the remainder of the litigation, both parties shall engage in or continue with individual counseling; however, the content of their sessions shall be private and shall not be disclosed or subject to discovery without the parent’s consent or court order. Dates of sessions, *general* topics discussed and provider names are discoverable.
5. **Counseling for the Children:** The Court shares the Guardian’s concern about private counseling for the children—that unless counseling is ordered to be for the benefit of the children alone, and not to be used in litigation, then the counseling is not going to benefit the children as anything they discuss could be used in Court. Based on the Guardian’s investigation, the Court does not believe the children will be transparent with a counselor if what they say will be used outside of the sessions. Mother shall arrange for the girls’ counseling in Raleigh and this counselor shall not become a fact witness nor shall what the girls discuss during counseling be used for litigation. If this counselor offers a family counseling component, Father and the girls shall attend family counseling either in person or virtually. These sessions shall also be private and shall not be used in this litigation. Also, the girls shall undergo psychiatric care only as recommended by their counselor/therapist and if so, the parents shall follow recommendations.

- Mother shall be involved in the counseling to the extent requested by the counselor. Dates of sessions and provider names shall be disclosed.
6. **Questioning of the Children:** The girls have repeatedly indicated that the questioning sessions from Father and grandmother traumatize them and cause them anxiety. Until further order of the Court, Father is prohibited from subjecting the girls to these sessions, either together or apart, and he shall not allow his mother to question the children about anything but normal grandmotherly topics. Father shall honor the girls' request to be excused from uncomfortable questions if they ask to be excused.
 7. **Other Modifications of the Parties' Final Order:** It should be noted that this Supplemental Temporary Order changes, or makes obsolete on a temporary basis, other portions of the parties' Final Order beginning with Paragraph IIC of Attachment A, such as: Paragraphs, C, E, F, G, IIIB, D, G, H, J, L is modified to Mother, and IVJ.
 8. **Protective Order:** Since these instructions contain statements from the children that should be protected and not used against them in any way, these instructions are subject to a protective order and shall not be shown to or disseminated to anyone other than counsel, the Guardian and the parties, and with specificity, not to Father's mother. The parties shall ensure that the children do not find and/or read these instructions. Once the Supplemental Temporary Order has been issued, these instructions remain subject to protection. The Supplemental Temporary Order shall likewise be subject to a protective order such that any statements from the girls shall not be used against them in any way, and the Order shall not be shown to, read to, or left anywhere where the girls may see it nor may the parents and/or third parties discuss the contents of this Order where the girls may hear. Neither shall the parties discuss the contents of this Order with the girls, nor allow third parties to do so, except as stated herein: in a therapeutic setting with a licensed professional as recommended by the professional and with advance notice to the other parent. Also, the girls may be told about their move and their new schedule; the girls may be told that they should not have anymore "questioning sessions" from Father or his mother and that they can be excused from these sessions if they occur; the girls can told they will always be allowed to use their phones to contact either parent, but that the parents have the right to restrict use of the phone at certain times like mealtimes; they should be told that their phones will not be taken from them as a form of punishment; and the girls can be told that they will continue with counseling. Any other disclosures not addressed herein should happen per Court order.

9. **Interim Bench Order:** Since time is of the essence, I have issued an Interim Bench Order which shall remain in place until a more detailed order is signed and filed in accordance with these instructions.
10. **Abeance:** On all other issues.

Please feel free to contact me if there are any questions about my order or if I failed to rule on any issues raised.

With highest regards,


Ronet S. Pincus

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE FAMILY COURT
5TH JUDICIAL CIRCUIT

HEATHER GALLAGHER,)
PLAINTIFF)

Docket #: 21-DR-40-1319

vs.)

INTERIM ORDER

WILLIAM KEEFER BRUMBACH, III,)
DEFENDANT)

RICHLAND COUNTY
FILED
2022 AUG -8 AM 9:44
JENASTE W. HARRIS
CLERK
FAMILY COURT

DATE OF HEARING: July 18, 2022
JUDGE: Monét S. Pincus
ATTORNEY FOR PLAINTIFF: Susan Strom, Patricia Morr
ATTORNEY FOR DEFENDANT: Ashby Jones, Bruce Bannister
GUARDIAN AD LITEM: April Gremillion

THIS MATTER was before the Court for a Supplemental Expedited Temporary Hearing. Due to the imminent start of school, the Court finds an Interim Order is necessary.

IT IS ORDERED Mother is entitled to relocate with the minor children to Raleigh, North Carolina. She is permitted to take all necessary steps to enroll the children in school for the upcoming school year and she may choose her move date.

A more detailed Supplemental Temporary Order shall follow this Interim Order and until such order is signed and filed, this Interim Order shall remain in full force and effect.

IT IS SO ORDERED this 8 day of August, 2022


Monét S. Pincus
FAMILY COURT JUDGE

EXHIBIT C

The South Carolina Court of Appeals

Heather Gallagher, Respondent,

v.

William Keefer Brumbach, III, Appellant.

Appellate Case No. 2022-001166

ORDER

Appellant has filed a petition for supersedeas from the family court's interim order allowing Respondent to relocate with the parties' minor children to Raleigh, North Carolina.

While Rule 241, SCACR, does not limit the things this court can consider in evaluating a petition for emergency stay or supersedeas, it specifically instructs that we should consider whether an order is necessary to preserve jurisdiction or prevent a contested issue from becoming moot. Neither of those things are at risk here. The family court unquestionably retains jurisdiction of the case and there is no risk of the issue becoming moot, as precedent explains temporary orders do not decide any issue with finality. *Terry v. Terry*, 400 S.C. 453, 456, 734 S.E.2d 646, 648 (2012).

As already noted, we are asked here to review an interim order. The interim order instructs that a formal temporary order will follow. No formal order has been issued. Appellant argues that the reasoning in the interim order violates binding precedent and that the interim order does not properly apply the framework for this sort of request.

Without the benefit of the family court's formal order, we cannot evaluate the merits of the family court's ruling. At this preliminary stage, we defer to the family court who considered the evidence and arguments in the first instance. Because of the sensitive issues involved, we expect the family court to issue its formal order expeditiously. While *Terry* explains temporary orders do not decide issues with

finality, it also specifically contemplates that parties may seek emergency relief from temporary orders. *Id.* at 456 n.2, 734 S.E.2d at 456 n.2.

Accordingly, after careful consideration of the filings, the petition for supersedeas is denied.



FOR THE COURT

Columbia, South Carolina

cc:

Susan Rawls Strom, Esquire
Whitney Boykin Harrison, Esquire
Bruce Wyche Bannister, Esquire
Luke Anthony Burke, Esquire
Julie Elizabeth McCool, Esquire
Ashby Lawton Jones, Esquire
April Lawhon Gremillion, Esquire

FILED

Aug. 26, 2020

EXHIBIT D

Luke Burke

From: Pincus, Monet S. <mpincusj@sccourts.org>
Sent: Friday, September 2, 2022 12:57 PM
To: Susan Strom; Pincus, Monet S. Secretary (Amanda Tharin); Bruce Bannister; Elizabeth McCool; Ashby Jones; Betty Perdue; Alyssa Iglesias; april.gremillion@gmail.com; Secretary Gremillion; Julie Caison; Sundai Hall; Patricia Morr
Subject: Re: Gallagher v. Brumbach 2021-1319 *Court's guidance requested*
Attachments: image001.png; image002.png; image003.png

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All, I'm sorry about the delay. My Interim Order and Memorandum for Order instructions should govern and went into affect when I issued them.

I would rather counsel attempt to agree on language in the proposed order if possible so I will ask Ms. McCool to send revision requests directly to Ms. Strom. If counsel cannot agree, please let me know the points of contention.

Thank you.

Judge Pincus

From: Susan Strom <Susan@stromfamilylaw.com>
Sent: Thursday, September 1, 2022 3:07:21 PM
To: Pincus, Monet S. Secretary (Amanda Tharin); Pincus, Monet S.; 'bbannister@bannisterwyatt.com'; Elizabeth McCool; Ashby Jones; Betty Perdue; Alyssa Iglesias; april.gremillion@gmail.com; Secretary Gremillion; Julie Caison; Sundai Hall; Patricia Morr
Subject: Gallagher v. Brumbach 2021-1319 *Court's guidance requested*

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *** Dear Judge Pincus:

An issue has arisen about tomorrow's visitation which needs to be addressed immediately.

I sent the attached proposed order to opposing counsel on Tuesday, August 30th. I originally gave opposing counsel until Friday (9/2) at 5pm to get back with their comments regarding the proposed order. However, there is a mountain of confusion on whether to follow Your Honor's oral ruling or the prior Order as it relates to father's visitation and exchange location. We need the Court's guidance, if possible, prior to tomorrow as to whether we should comply with the previous Order or the Court's Memorandum Order.

If Your Honor requires a conference call, we can make ourselves available. Mrs. Jones has informed us that she has an urgent family emergency -- so I do not want to suggest to the Court that either lawyer has failed to do anything that they

should have done as to their review of the proposed Order. It is my belief that they are attempting to resolve these issues on behalf of their client, just as we are on behalf of ours.

Further, the attached Court of Appeals Order language encourages the Family Court to enter an Order expeditiously. Based upon the above, I felt compelled to send the proposed Order on to the Court today. I, by no means, am suggesting that Mr. Bannister or Mrs. Jones are not entitled to send in revisions that comport with the Court's oral ruling.

We are in need of Your Honor's guidance.

Respectfully,

[cid:image001.png@01D8BE14.87644B30]

SUSAN RAWLS STROM

Phone 803-988-9800

Fax 803-988-9810

Web

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<mailto:susan@stromfamilylaw.com>

6923 N. Trenholm Road, Suite 201 Columbia, SC 29206

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Due to the recommendations of the Federal and State government and in an effort to protect the safety and well-being of our staff and clients during the COVID-19 pandemic, we are primarily operating remotely. Our main office line (803) 988-9800 is operating and will be answered by our secretary or you will be directed to our voicemail. Additionally, our attorneys and staff are still available through email. We are making every effort to return calls and respond to emails as soon as possible. Thank you for your continued trust and patience in us. Please contact our office with any questions or concerns. Stay safe and stay well.

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EXHIBIT E

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

RICHLAND COUNTY  
**FILED**

IN THE FAMILY COURT  
FIFTH JUDICIAL CIRCUIT

Docket No. 2021-DR-40-1319

2021 SEP 12 PM 12:02

HEATHER GALLAGHER,

vs.

WILLIAM K. BRUMBACH,

Defendant.

JEARRENE W. McBRIDE  
CC, CP, JS  
& FAMILY COURT

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

|                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Plaintiff's Attorney:<br/>Susan R. Strom, Esq. Bar No. 69300<br/>Address: 6923 N. Trenholm Rd., Suite 201<br/>Columbia, SC 29206<br/>Phone: 803-988-9800 Fax 803-988-9810<br/>E-mail:<br/><a href="mailto:Susan@stromfamilylaw.com">Susan@stromfamilylaw.com</a>;<br/><a href="mailto:sundai@stromfamilylaw.com">sundai@stromfamilylaw.com</a></p> | <p>Defendant's Attorney:</p> <p><u>Ashby Lawton Jones, Esquire</u><br/>Address: 808 South Lake Drive<br/>Lexington, SC 29072<br/>Phone: (803) 359-1003<br/>Email: <a href="mailto:Ashby@kinardandjones.com">Ashby@kinardandjones.com</a><br/><a href="mailto:Betty@kinardandjones.com">Betty@kinardandjones.com</a></p> <p><u>Bruce W. Bannister, Esq.</u><br/>Address: 24 Cleveland St. Ste. 100<br/>PO Box 10007<br/>Greenville, SC 29603<br/>Phone: 864-0084<br/>Email: <a href="mailto:bbanister@bannisterwyatt.com">bbanister@bannisterwyatt.com</a> ;<br/><a href="mailto:Jcaison@bannisterwyatt.com">Jcaison@bannisterwyatt.com</a></p> |
| <p>Guardian <i>ad Litem</i>:<br/><u>April L. Gremillion, Esq.</u><br/>1720 Main Street, Suite 104<br/>Columbia, SC 29201<br/>Phone: (803) 543-1505<br/>Email: <a href="mailto:April.gremillion@gmail.com">April.gremillion@gmail.com</a></p>                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p><input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)<br/> <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)<br/> <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)</p>                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                              |
| Nature of Motion:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                              |
| Estimated Time Needed:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                              |
| <input type="checkbox"/> Written motion attached<br><input checked="" type="checkbox"/> Form Motion/Order : <b>Second Supplemental Temporary Order</b><br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                              |
| <u>Shan A. Jackson</u><br>Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <u>9/2</u> , 2022<br>Date submitted                                                          |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                              |
| <input type="checkbox"/> PAID – AMOUNT: \$ _____<br><input checked="" type="checkbox"/> EXEMPT: (check reason)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                              |
| <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)<br><input checked="" type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: <u>Candace Singleton-Perrin</u><br><input type="checkbox"/> Other: _____ |                                                                                              |
| <b>JUDGE'S SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                              |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | JUDGE CODE _____ Date: _____<br><br>Judge Signature: _____                                   |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                              |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED – AMOUNT DUE: \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                              |

Custodial Parent (if applicable): \_\_\_\_\_

SCCA 233F (12/2009)



STATE OF SOUTH CAROLINA  
RICHLAND COUNTY  
COUNTY OF RICHLAND

IN THE FAMILY COURT  
FOR THE FIFTH JUDICIAL CIRCUIT  
Case No. 2021-DR-40-1319

HEATHER GALLAGHER f/k/a  
HEATHER BRUMBACH, 2022 SEP 12 PM 12:02

Plaintiff  
vs.  
JEANETTE W. McBRIDE  
CC, CP, GS  
& FAMILY COURT

WILLIAM KEEFER BRUMBACH, III,  
Defendant.

**SECOND SUPPLEMENTAL  
PENDENTE LITE ORDER  
FOLLOWING  
EXPEDITED HEARING**

Date of Hearing: July 18, 2022  
Presiding Judge: The Honorable Monét S. Pincus  
Plaintiff's Attorneys: Susan R. Strom, Esquire  
Patricia Morr, Esquire  
Defendant's Attorneys: Bruce W. Bannister, Esquire and Ashby L.  
Jones, Esquire  
Court Reporter: Candace Singleton-Perrin

This matter was scheduled before the Court pursuant to Plaintiff's Motion for Expedited Relief and this Court's Order granting Expedited Supplemental Relief filed May 20, 2022, pursuant to the Supplemental Temporary Order filed on February 3, 2022, following the Expedited Temporary Hearing on December 15, 2021. Plaintiff is seeking a modification of the parties' visitation order which would then allow her to relocate to the city of Raleigh, North Carolina with the parties' two daughters prior to the start of the 2022 school year in Raleigh. Present and appearing at the appointed time and place were Plaintiff and her attorneys, Susan R. Strom, Esquire and Patricia Morr, Esquire. Defendant and his attorneys, Bruce W. Bannister, Esquire, and Ashby L. Jones, Esquire, were also present, along with the Guardian *ad Litem*, April L. Gremillion, Esquire.

The record reflects the action was commenced by Plaintiff's Summons and Complaint, submitted to the Richland County Clerk of Court on April 14, 2021, seeking a modification of the

parties' visitation agreement on an expedited basis. Plaintiff also filed a Motion for Expedited Relief and Motion to Unseal the Record. Plaintiff requested an expedited hearing because the schools in Raleigh, North Carolina are set to begin on August 23, 2021

Plaintiff's Motion for Expedited Relief was misplaced by the Clerk's office causing a delay in review of Plaintiff's Motion. The Order Granting an Expedited Hearing was executed by the Court on May 20, 2021, and it specifically stated the pleadings and allegations shall relate back to April 14, 2021, so as to not prejudice the Plaintiff. Defendant filed an Answer and Counterclaim on July 20, 2021, wherein Defendant requested the Court grant him primary physical placement and final decision-making authority for the minor children.

The parties attended an Expedited Temporary Hearing on July 20, 2021, before Honorable M. Scott Rankin. A Guardian *ad Litem* was appointed, and an expedited investigation was ordered. Following the Guardian *ad Litem*'s investigation and report, and pursuant to the Expedited Temporary Order, Mother filed a Motion for Expedited Relief on October 5, 2021. The parties attended a Supplemental Expedited Temporary Hearing on December 15, 2021, before the Honorable Huntley S. Crouch. The Supplemental Temporary Order stemming from the December 15, 2021, hearing ordered the parties to attend mediation. If the parties were unable to settle at mediation, either party was entitled to file a Motion for Supplemental Relief which was to be heard prior to August 5, 2022.

Pursuant to the Supplemental Temporary Order, Plaintiff filed this Motion on May 20, 2022, and the Motion was scheduled and heard by this Court on July 18, 2022.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

- A. Plaintiff and Defendant are citizens and residents of Richland County, South Carolina and have been so for a period of more than one (1) year prior to the institution of this action.
- B. I find Plaintiff and Defendant are formerly husband and wife, having been divorced by the Richland County Family Court by Decree of Divorce filed on August 16, 2019, bearing

docket number 2019-DR-40-1177.

C. I find that the parties are parents of two (2) minor children, namely, A.H.B. (2009) and E.C.B. (2010).

D. This Court has continuing subject matter and personal jurisdiction of this action and of these parties and venue is proper in Richland County.

I have carefully reviewed and considered the entire content of the Court's file and all the affidavits addressed below, arguments of counsel, and the oral and written report of the Guardian.

The appellate courts of South Carolina have repeatedly reiterated that relocation cases are difficult and that there is no longer a presumption against relocation in South Carolina. The Court's authority to prohibit a custodial parent from moving out of state should be used sparingly and the best interest of the minor children is the prevailing analysis.

In the case at hand, had Mother decided to relocate within the state, regardless of how far away from Father, she has strong statutory authority allowing her to do so, absent compelling reasons. *See* S.C. Code Ann. §63-3-530(A)(30) (stating, "[t]he Court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such a prohibition"). Mother wishes to relocate to Raleigh, North Carolina, which is within driving distance from Columbia, South Carolina; however, because North Carolina is out of the state, the Court's analysis of the law and facts is different, even though the end result could potentially be the same with an in-state move—the children move with the primary custodial parent, at a time to cause the least disruption, thereby changing schools, church, friends, and changing the time they visit with the non-custodial parent.

**I. PRELIMINARY MATTERS**

Preliminarily, the Court addresses certain matters raised by counsel during oral argument.

**A. Father's request for a continuance and to delay issuing a ruling until trial:**

Father is asking the Court to delay an analysis of the record and the relocation factors until after a trial. Mother is asking the Court to review the record and make a temporary decision, allowing her to relocate. The Court declines to further postpone analyzing the record until a trial. The matter is properly before the Court, the record is well developed, the Guardian's report is comprehensive and neither her report nor her recommendations have changed since its original issuance date.

Father is also asking that the Court delay its decision because Mother has failed to provide phone records and/or data and because the Guardian has filed a Motion for protection against being deposed and/or disclosing certain records. At this juncture in the case, Mother's phone records, even if they show Mother has a boyfriend, will not assist the Court with making its decision and issuing a Supplemental Temporary Order. Further, thus far, the Court finds that the Guardian has conducted an independent, balanced, and impartial investigation; the Guardian has complied with her statutory duties; the Guardian has interviewed many witnesses at the request of both parents; the Guardian has met with the parents and children on more than one occasion. Therefore, the Court denies Father's request for a continuance and finds Mother's right to be heard on an expedited, temporary basis, is more compelling than <sup>^</sup>Father's basis for his continuance request.

**B. Dr. Raley's Forensic Psychiatric Evaluation of Mother dated July 25, 2018, and Father's Request for Psychological Evaluations in this litigation**

Other than to review his recommendations, the Court did not consider Dr. Raley's report, which was dated prior to the parties' divorce (July 25, 2018); however, the Court did consider Father's concerns that Mother did not follow certain recommendations and Father also has concerns about Mother's mental health. Father has not filed a contempt action against Mother for failing to follow Dr. Raley's recommendation. The Guardian has no concerns about Mother's mental health. The Court also reviewed Mother's therapists' Affidavit dated July 16, 2021. The Court has no concerns about Mother's mental health or

her parenting since the parties' divorce. The Court finds that without anything more in the record, at this juncture, psychological evaluations will not help the Court with deciding whether Mother can move to Raleigh. The Court further finds that the issues raised in this litigation do not give rise to the need for psychological evaluations at this time. This is without prejudice if it later appears warranted to the Court.

**C. The Guardian's Report Subject to a Protective Order**

The Guardian's report is subject to a protective order issued by the Court on February 3, 2022. The Order states in part, "no party may disseminate the report nor discuss the content of it with the children or third parties, nor allow third parties to do so until further Court Order." Despite this language, Father submitted the Guardian's report to a hired licensed psychologist, Dr. Mulchay, who submitted an Affidavit to the Court on behalf of Father who analyzed the Guardian's report through his affidavit. The Court read but did not consider Dr. Mulchay's affidavit in making its decision. The Court admonishes the parties and Counsel that no further dissemination of the Guardian's report should occur without first getting leave from the Court.

**D. Transcripts or Contents of Certain Recordings**

The Court did not consider transcripts of recordings or references to the content of recordings that were ordered *to be deleted and "not to be used for any purpose without the mutual consent of the parties"* (Final Order, Settlement Agreement, Page 15). Despite this language and presumably without Mother's consent, Father wanted the Guardian to listen to the recordings, and attempted to reenact the recordings for the Guardian. The Court also notes that in her affidavit (submitted in a prior hearing and the current hearing), Dr. Jennifer Savitz-Smith discloses a description of the content of these recordings to attempt to influence the Court's decision. The parties' Final Order requires the parties to obtain these recordings from third parties, like Dr. Savitz-Smith, but the Final

Order goes further to state that these "recordings shall not be used for *any purpose* without the mutual consent of the parties obtained through counsel." It is of great concern to the Court that the father's submissions to the Court reveal the content of these recordings despite the prior Order. Telling the Court or Guardian what was on the recordings, or describing them in detail, is no different than playing the recordings for the Court or Guardian, the end result being to use the recordings without the consent of Mother and to prejudice Mother in this litigation.

**E. In Camera Interview with the Children Requested by Mother**

The Court declines to interview the girls. The Guardian is assisting the Court with its decision through her investigation and report and has presented their preference.

**II. SUPPLEMENTAL TEMPORARY FINDINGS OF FACT:**

That for the purposes of this Supplemental Temporary Order only, which is without prejudice to either party, I find that Mother has been an excellent custodial parent and that it would not be in the children's best interests to change the custodial arrangement from Mother to Father. Mother has been operating in the best interest of the children. Father has not filed litigation, prior to his Counterclaim in this case alleging any problems with Mother's custodial parenting. The children are thriving in her care and the Court sees no reason in the record to indicate that would change if Mother and the children move to Raleigh, North Carolina. I find that Mother has fostered Father's relationship with the girls since the divorce and has been consistently flexible in allowing more time and contact between the girls and Father than the Order requires. This should not be held against Mother in this litigation as a basis for denying her move. Instead of being rigid and inflexible with the current schedule so as to keep Father's time to the minimum required by the Order, Father has had much more time, nearly daily contact which is the main basis for Father's claim in this litigation, i.e., that Mother should not be allowed to move because

it would reduce his time. Mother acted in the girls' best interest by allowing more time and remaining flexible. I find that Father has been a very involved parent since the divorce and his desire to be able to see the girls as much as he does now and with the ease of living in walking distance of the girls is genuine. The Court has considered the following factors:

**A. Mother's Reasons for Moving and Father's Reasons for Opposing the Move:**

As discussed in more detail below, I find that Mother's decision to move is not the result of alienation toward Father, nor is it a whim, as argued by Father. The parties contemplated Mother's potential relocation in their Final Order filed November 26, 2018. Mother is attempting to better the quality of life for herself and the minor children that are subject to this action.

Mother needs to gain financial independence as her alimony is reducing and eventually ending and she believes her job opportunities are better in Raleigh. Mother has a positive family/friend support system in Raleigh and has no ties anywhere in South Carolina other than living here with Father and the children. Mother has a place to live, and a job lined up. Mother wanted to move after the divorce, but agreed not to move before May 30, 2021, with certain conditions. Mother desires more privacy from Father and no longer desires to live in such close proximity to him, where Father drops by unannounced, and each can see the other's happenings. Mother has nowhere in South Carolina that she can move that affords her the same opportunities and support network as she has in Raleigh. She believes the move will better her quality of life thereby bettering the girls' lives. She is not moving to thwart Father's relationship with the girls. She is not moving on a whim. Mother never wanted to live in Columbia and has wanted to move for years. Raleigh is in driving distance. She discussed her decision to move months in advance with Father. She tried to work out a new visitation schedule. She filed a case before

moving. She wanted a plan to move during the summer when the girls could transition easier. She believed that to be a good time to move since the children were virtual most of last year and Amelia was starting a new school. Mother was not able to get her hearing scheduled in time for the Court to consider a move during the 2021 summer break. She did not tell the girls about her plans. The girls found out from Father's mother who was researching "How to Defeat a Relocation Case." Father thinks Mother is moving for a boyfriend. Father has a girlfriend. Even if Mother has a boyfriend in the area, and that was part of her motivation, this would not be a factor for the Court to prohibit a move.

Father wants to continue daily or near daily contact with the girls. He wants to live right down the street from them as he does now. He believes the girls will be negatively impacted by the move. He believes Mother is alienating him from the children. There is no evidence in the record, after 15 months of litigation, that Mother is alienating Father and her actions since the divorce show otherwise. Father's motion for parental alienation evaluation was previously denied and the Court found that such an evaluation would be harmful to the children and the Court "did not see any evidence of alienation" on the part of Mother (Order filed May 4, 2022). Mother consistently, over the last 3.5 years, has allowed Father much more time than ordered, and has fostered his relationship with the girls by not being rigid with the schedule. This is not indicative of alienation.

**B. The Quality of the relationship between the girls and Mother and Father:**

The Court agrees with the Guardian's assessment of the relationships. The girls are well bonded with Mother and have a wonderful, loving, relationship with her. They trust her completely. They want to live with Mother, wherever she may live. Father is clearly an active parent and clearly loves the girls and they love



him; but their relationship is very strained, even after seeing him several times per week since the divorce.

According to the girls' counselors and previous Guardian, they were "negatively impacted, possibly traumatized, or at least permanently changed" by the parties' divorce litigation which resulted in an initial abrupt custodial switch from Mother, who was always their primary caretaker, to Father, at a temporary hearing. Custody was subsequently changed at a supplemental temporary hearing after the Court was presented with a Guardian's report and further information. The girls' relationship with Father has remained strained. The girls have been described as "highly intelligent" and their counselors agree their "voice" should be respected. As the Court must consider the preference of the children, taking into consideration their age and maturity level, the Court finds that considerable weight should be given to the girls' preference.

The girls have come a long way, with the assistance of counseling, with their relationship with Father, but the relationship is still strained, despite his regular contact with the girls. It appears the girls are still being questioned by Father and paternal grandmother in a way that continues to strain the relationship and causes the girls trauma. Sometimes, Father and paternal grandmother separate the girls and question them separately. Amelia has described being forced to sit in a chair and answer questions about Mother. A specific example that concerns the Court is when Amelia described in detail for the Guardian, how she attempted to use skills she learned in counseling to avoid being questioned by Father and paternal grandmother, by asking to be excused. Father and paternal grandmother denied her request to be excused so she left the house and Father called the police. It is concerning that this child attempted to use skills she learned in counseling, to

remove herself from a situation which caused her anxiety, and her attempts were not honored by Father which caused her to run, and a scene ensued. Amelia feels that she has to watch what she says around Father and his family, and their questioning causes her anxiety. Likewise, Claire is uncomfortable with the questioning sessions from Father and paternal grandmother. Claire heard her grandmother say that Mother did not love Claire. That troubled her and she ended up feeling pressured and uncomfortable by Father about the situation. G

On the other hand, the girls consistently reported to the Guardian that their parents treat each other well when the girls are around. They do not have any incidents or speak to each other badly in front of the girls. They do not hear their parents speak badly about the other when they are around a parent. They report that Father's family disparages Mother, but not Father.

It appears from the record that the girls' strained relationship with Father and his family is not the result of Mother disparaging Father or attempting to cast him in a bad light. The strain in the relationship appears to be the result of Father's and grandmother's conduct toward the girls, independent of Mother, i.e., the pressure they feel from questioning; the pressure they feel to call Father every day or the repeated texts from him if they do not; or the uncomfortable questions he asks them about whether they feel love for him. This has gone on to the extent that Claire does not wish to be alone with Father, apart from Amelia.

Due to the trauma of prior litigation, the children have no knowledge that Father counterclaimed for custody in this case, and they have an underlying fear of custody changing because of Mother's desire to move. The parties shall be prohibited from allowing the children to find out about the counterclaim, absent a court order dictating the terms of such disclosure.

**C. The Impact of the Move on the Quality of the girls' contact with Father**

Mother's relocation to Raleigh, North Carolina, a 3.25-hour drive away, will impact Father's time with the children in that he would not be able to do overnight visits during the week or visit an extra overnight on each of his weekends unless there is a holiday or school closing. In addition to his court ordered schedule, Father also has spontaneous contact during the week with the children and this would change. Father's visitation time is precious, and it is impossible for the Court to say what constitutes quality time for this family. It appears from the record, however, that Father can have regular, consistent quality time with the girls if they move.

**D. The likelihood the move to Raleigh will improve the quality of life for Mother and the girls**

Mother's quality of life will undoubtedly be improved. That improvement will have a positive impact on the girls' quality of life. Staying in Mother's primary care, wherever she may live, is in their best interest and will continue to have the impact the Court has seen since the parties<sup>x</sup> divorced—thriving children, working hard to overcome their strained relationship with Father, growing into mature young adults. The Court finds it is very likely that the children's quality of life will improve with Mother's move to Raleigh.

Father is concerned about the girls' living arrangements. The Court is not. Mother cannot purchase a home until she sells her home. She cannot sell her home until she moves. She does not want to move without a ruling from the Court modifying visitation, temporarily or otherwise. In the meantime, Mother has a lease and house that appears suitable.

Father is concerned that Mother does not have a stable job opportunity in Raleigh or that Mother has not exhausted her search in the Columbia area. He offers that Mother could find employment in this area. Mother has to return to the

workforce given her reduction in alimony and her age. She does not want to work in the Columbia area, even if she *could* work in the area. Further, Mother is in the same conundrum with regard to employment. She has been offered employment, but she cannot accept employment in Raleigh until she can move. She does not want to move without a ruling from the Court on whether Father's visitation schedule should be modified. Despite this, Mother has now secured employment from The Common Market, owned by an extended family member that is willing to hold a position for Mother. Mother's job offer in Raleigh is \$50,000.00 as a starting salary which would be in addition to her alimony and child support income. Her anticipated income on her financial declaration dated July 18, 2022, from all sources is \$11,113.00 per month, which is a significant increase.

Father argues the children are rooted in Columbia. This is not in dispute and naturally they would be. But on a temporary basis, the Court finds that this fact does not outweigh Mother's right to move and her right to remain the primary custodial parent, in the absence of a finding that Mother is not acting in the children's best interest or that they would be harmed by the move.

Finally, Mother's affidavit dated July 19, 2021, supplemented for this hearing, is compelling. Mother's reasons, research, relocation plan and parenting plan presented in her affidavit are thorough, well-thought out, and while the plan might not be the same plan Father would adopt, the Court finds Mother's plan demonstrates that Mother is continuing to act in the children's best interests by bettering her quality of life and expanding opportunities for the girls. In addition, Mother has chosen a pediatrician, a dentist, an orthodontist, and a child psychologist specializing in pediatric ADHD and anxiety. Since this case has been pending for more than fifteen (15) months, some aspects of Mother's initial plan

have changed by necessity, but Mother still presents a well-thought-out plan for relocation that the Court cannot find fault with at this juncture in the case.

**III. BASED UPON THE ANALYSIS ABOVE, THE COURT ORDERS AS FOLLOWS:**

The Court does not find it appropriate to make Mother stay in Columbia, South Carolina while this litigation continues. The matter has already been pending for more than a year. There have been significant delays in getting the court ordered expedited hearings held. A 5-day final hearing has been requested but will not be scheduled in 2022. This expedited motion was ordered to be heard before the start of the 2022-2023 school year. The move is close and allows consistent, regular, albeit, different, contact between Father and the minor children while this matter is pending. The Guardian will have time to visit the children and their home in Raleigh before a final hearing is scheduled. The children are old enough to express their preference and have done so. They want to continue to live with Mother and move to Raleigh, North Carolina or to wherever she may move. The burden on Father's visitation rights due to the change in his schedule, does not outweigh the girls' best interests in this case. Therefore, the Court orders the following custody, visitation, and parental guidelines/restrictions:

1. **Custody:** Custody shall remain as is with the parties having joint custody with Mother as the primary custodian and Father as the secondary custodian. Mother's desire to move to Raleigh is not a significant change in circumstances to warrant a change of custody and her relocation was contemplated in the parties' Final Order. Mother may move to Raleigh, North Carolina with the minor children and she may pick her move date.
2. **Visitation:** Father's visitation shall be modified on a temporary basis as follows:
  - a. **Weekend Visitation<sup>1</sup>:** Father shall have visitation with the minor children the

<sup>1</sup> The Court considered Wake County Public School System calendar in making its visitation Order, specifically that long weekends and/or holidays occur on 9/5, 9/26, 10/10, 11/4, 11/11, 1/16, 1/27, 2/20, 3/31, 4/21, 5/29.

second (2<sup>nd</sup>) and fourth (4<sup>th</sup>) weekend of each school month beginning the month of September. If any of these weekends contain a holiday or school closing day, this day shall be added to Father's weekend. This will allow Father visitation two (2) weekends per month and nearly equal shares of the long weekends between the parents. If a holiday or workday is removed by the school district, the parent having the girls loses that day.

Father shall also be entitled to additional visitation as can be agreed upon between the parties.

3. **Holidays:** The parties shall be entitled to the following Holiday visitation which shall supersede and take priority over all regularly scheduled visitation:
  - a. Christmas: In the odd-numbered years Father shall have the children from 6:00pm the day school dismisses for Christmas until 2:00pm on December 26<sup>th</sup>. Mother shall then have the children from 2:00pm on December 26<sup>th</sup> and for seven (7) days thereafter. In the even-numbered years this schedule shall reverse, and Mother shall have the children from the time school dismisses for Christmas until 2:00pm on December 26<sup>th</sup>. Father shall then have the children from 2:00pm on December 26<sup>th</sup> and for seven (7) days thereafter.
  - b. Thanksgiving: Thanksgiving shall commence at 6:00pm the day that the school releases for the holiday (as defined by the school district in which the child resides) until 3:00pm the following Sunday. Father shall have the children for Thanksgiving in the even-numbered years and Mother shall have the children in the odd-numbered years.
  - c. Spring Break Vacation: In the even years Father shall have the children for spring break and in the odd years Mother shall have the children for spring break. Spring break shall begin at 6:00pm the day the children are released from

school and shall end the following Sunday at 3:00pm.

- d. Mother's Day and Father's Day: The children shall be with Mother on Mother's Day and Father on Father's Day regardless of the normal weekend or summer rotation from Friday at 6:00pm until Sunday at 3:00pm.
- e. Summer Visitation: Regular visitation during the summer shall be suspended. The parties shall operate on a week on, week off schedule. A week shall begin Sunday at 3:00pm and shall end the following Sunday at 3:00pm. Mother shall always have the last week of summer in order to prepare the children for the start of the school year. Father's first summer week shall begin Sunday, June 11, 2023.
- f. Variation from schedule: The parties shall have the right to vary visitation as can be mutually agreed upon. In the event the parties vary from the schedule for any period of time, either party can require both to return to the use of the schedule by giving notice in writing to the other.

**4. Other Parental Guidelines, Rights, and Instructions**

- a. Contact Information: Both parents will keep the other advised as to their permanent address, e-mail address, home, cell, and work phone numbers, if applicable. Also, whenever a party is traveling out of the area of their permanent residence on an overnight basis with the children, they shall keep the other parent advised of their itinerary and contact information.
- b. Telephone/E-Mail Contact: Both parties shall have reasonable and liberal private telephone and e-mail contact with the children. While this action is pending, neither parent shall remove the girls' phones from their use as a form of punishment. Private access to the other parent is in their best interest during litigation. Parents are permitted to limit the girls' use of phones at certain times,



within reason, such as mealtime. Father shall ensure that his mother does not have any access to any of the girls' devices at any time. When the children have cell phones and electronics, Father, or anyone acting on behalf of the Father, shall not add any applications of any kind, remotely or otherwise, including tracking applications, to the devices of the children. E-mail is limited to age-appropriate use and ability to use a computer but does not require the purchase of a computer by either parent.

- c. Important Events: Both parties shall timely notify the other party of any reasonably important events occurring while the children are in their care, such as, but not limited to, extracurricular activities, baptisms, sporting events, recitals, school plays, etc. Both parents may attend all such events if it is appropriate for parents to attend. When in doubt the other parent shall be given notice.
- d. Access to Records: Both parents shall have full and complete access to all medical providers, school records, school personnel, coaches, counselors, and other professionals involved in the children's lives and shall be allowed to discuss their children's circumstances and needs with these people on a reasonable basis. Each party shall inform the other party of the identity of such people and how to contact such people. Each parent shall permit and encourage communication with teachers, administrators, health care professionals, counselors, therapists, or any other individual involved with the children, unless specifically addressed otherwise herein.
- e. Medical Emergencies: In the event of a medical emergency experienced by the children, the parent who has the children may make appropriate decisions to protect the health and welfare of the children. This is not to undermine the



custodial parent's legal authority to make appropriate decisions. The visiting parent shall make reasonable efforts to contact the custodial parent but shall have the authority to act and shall not delay in protecting the children from imminent danger. The visiting parent may sign such forms as are required by the various providers in order to address the emergency. The visiting parent shall notify the custodial parent as soon as possible as to the nature and the extent of the emergency.

- f. Failure to Pay Child Support/Denial of Visitation: The failure to pay child support does not alter this visitation and the denial of this visitation does not alter one's duty to pay child support. (Remedies such as sanctions for Contempt may apply.)
- g. Pick Up and Return of Child: Unless otherwise agreed upon, the parties shall meet at a mutually agreed upon location in Exit 1a off of Interstate 95 (South of the Border exit).
- h. Notice of Relocation: If either party moves more than fifteen (15) miles from the place where they were living at the time of the signing of an order establishing visitation, they must give at least thirty (30) days' notice of such move.
- i. Consultation Regarding Major Issues: Both parents shall consult on major issues concerning the children such as education, health, extracurricular activities and the like. The parties shall endeavor to reach agreements on these issues and shall attempt to present a united front to the children. In the event the parents are unable to reach an agreement as to issues concerning the children then Mother shall have the final decision. Neither parent, nor anyone on behalf of that parent, shall attempt to usurp the other parent's role in the event of a

disagreement.

- j. Illness: Each parent shall notify the other of any serious illness relating to a child while under their care. A serious illness is defined as one which requires the child to be absent from daycare/school or deviate from their normal schedule for more than one day. If the child requires more than one visit to a health care provider for whatever malady, the party who has the child shall notify the other of the nature of the malady and the treatment.
- k. Reference to the names of "Mother" and "Father": The parties are directed that names such as Mom, Mommy, Mother or Dad, Daddy, or Father or the like are specifically reserved for the mother and father. Neither shall permit the use of such names by the minor child for persons other than the mother or the father.
- l. Additional Visitation Guidelines: The girls shall visit Father together. If, due to a medical reason or some other emergency matter both girls cannot visit Father at the same time, the visit shall be paused and reallocated to Father by consent of the parties or subsequent Court Order. Further, the parties can mutually agree to separate visits taking into consideration the recommendations of the girls' therapists or counselor.

#### 5. Restrictions

- a. Confrontations: There shall be no form of physical or verbal confrontation between the parents in front of their children. Any communications between the parties concerning issues involving the children shall be between the parents. Third parties will not be used unless by mutual agreement of the parties. The parties will make themselves available for communications with each other as needed. When these discussions do occur, they shall be polite and confined to those discussions that are reasonably necessary for the benefit of the children


or as mutually agreed upon by the parties.

- b. Discussions: The parties shall not discuss issues relating to the child in their presence unless by mutual agreement. When discussions do take place in the presence of the child the parties shall treat each other with the dignity and respect that they are entitled to as parents of the child. The parties shall not discuss the issues of the litigation in the presence of the child or where the child may reasonably overhear such conversations and shall not allow any third party to so discuss or provide such details; provided, each parent shall be allowed to tell any child of theirs of the existence of this agreement and the need to follow it. The only exception to this restraining order is when any child of theirs is in counseling or under psychological/psychiatric care and the care provider believes it is in the minor child's therapeutic best interest to discuss the same, but this may be done only in that limited context.
- c. Transporting the Children: Neither party shall transport a child or the children by vehicle while under the influence of alcohol or illegal drugs. If either party is taking prescription medication, then each party shall follow doctor's advice as to operating a vehicle when transporting the children.
- d. Alcohol: The parties shall not excessively consume or be under the influence of alcohol or use any illegal drug or abuse any prescription drug while the child is under their care.
- e. Profanity & Disparaging Remarks: The parties shall not use profanity against the other or towards the child or make any derogatory comments about or towards the other party or allowing anyone else to do so in front of their child.
- f. School: Both parents are required to see that the child/children properly attend school.

- g. Children's Appearance: The custodial parent shall determine the children's appearance, i.e., haircuts, hair color, etc.
  - h. "X" and "R" Rated Movies: In no case shall the child be exposed to any X-rated or pornographic material.
  - i. Supervision: The minor children shall not be left alone in the presence of Father's parents, sister and/or brother-in-law.
  - j. Tape Recordings of the children: Neither parent, nor anyone on behalf of that parent, shall audio or video record the children (unless such as recording involves a child at home while practicing) or at a normal family gathering or other reasonable event that would warrant recording such as a school play or athletic event.
6. **Co-Parenting Counseling**: Both parents put in the work and made progress in co-parenting counseling with Dr. Touma. In fact, the record supports that, for the most part, the parties have been very amicable in front of the girls and have been very flexible with each other regarding time and involvement with the children. Mother does not want to continue co-parenting counseling during the litigation as she fears that the sessions will be used against her in court. The sessions would be discoverable and Dr. Touma could be called as a witness. Mother does not believe co-parenting counseling would be beneficial under those circumstances. This is a reasonable concern, especially given the parties' difficult history. The parties were allowed to seek a *de novo* review of the recommendations of Dr. Touma. Mother did that. The parties are no longer ordered to engage in co-parenting counseling during this litigation.
7. **Other Counseling for the Parents**: For the remainder of the litigation, both parties shall engage in or continue with individual counseling; however, the content of their sessions shall be private and shall not be disclosed or subject to discovery without the

parent's consent or Court Order. Date of sessions, *general* topics discussed, and provider names are discoverable.

8. **Counseling for the Children:** The Court shares the Guardian's concern about private counseling for the children—that unless counseling is ordered to be for the benefit of the children alone, and not to be used in litigation then the counseling is not going to benefit the children as anything they discuss could be used in Court. Based on the Guardian's investigation, the Court does not believe the children will be transparent with a counselor if what they say will be used outside of the sessions. Mother shall arrange for the girls' counseling in Raleigh and this counselor shall not become a fact witness, nor shall what the girls discuss during counseling be used for litigation. If this counselor offers a family counseling component, Father and the girls shall attend family counseling either in person, or virtually. These sessions shall also be private and shall not be used in this litigation. Also, the girls shall undergo psychiatric care only as recommended by their counselor/therapist and if so, the parents shall follow recommendations. Mother shall be involved in the counseling to the extent requested by the counselor. Dates of sessions and provider names shall be disclosed.
9. **Questioning of the Children:** The girls have repeatedly indicated that the questioning sessions from Father and paternal grandmother traumatize them and cause them anxiety. Until further Order of the Court, Father is prohibited from subjecting the girls to these sessions, either together or apart, and he shall not allow his mother to question the children about anything but normal grandmotherly topics. Father shall honor the girls' requests to be excused from uncomfortable questions if they ask to be excused.
10. **Other Modifications of the Parties' Final Order:** It should be noted that this Supplemental Temporary Order changes or makes obsolete on a temporary basis other portions of the parties' Final Order beginning with Paragraph IIC of Attachment A,

such as paragraphs C, E, F, G, IIB, D, G, H, J, L is modified to Mother, and IVJ. 

**11. Protective Order:** The instructions for this Order (and the Order itself) contain statements from the children that should be protected and not used against them in any way. Therefore, the instructions and Order are subject to a protective Order and shall not be shown to or disseminated to anyone other than counsel, the Guardian, and the parties, and with specificity, not to Father's mother. The parties shall ensure that the children do not find and/or read the instructions or Order. The instructions and/or Order shall not be shown to, read to, or left anywhere the girls may see it, nor may the parents and/or third parties discuss the contents of the Order where the girls may hear. Neither shall the parties discuss the contents of this Order with the girls, nor allow third parties to do so, except as stated herein:

- a. In a therapeutic setting with a licensed professional and with the advance notice to the other parent.
- b. The girls may also be told about their move and new schedule.
- c. The girls may be told they should not have anymore "questioning sessions" from Father or his mother and that they can be excused from these sessions if they occur.
- d. The girls can be told they will always be allowed to use their phones to contact either parent, but that the parents have the right to restrict use of phones at certain times like mealtimes.
- e. The girls may be told that their phones will not be taken away from them as a form of punishment; and,
- f. The girls may be told that they will continue with counseling.

Any other disclosures not addressed herein should happen pursuant to Court Order.

**12. Abeyance:** All other issues are held in abeyance.