

FILED JAN 03 2020

LYNN K. McDONALD
CLERK OF COURT

TRIBAL COURT
OF THE

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

SMSC RESERVATION

STATE OF MINNESOTA

In Re the Dissolution of Marriage Of:

Court File: 867-17

Amanda Gail Gustafson,

Petitioner,

v.

James Van Nguyen,

Respondent.

MEMORANDUM OPINION AND ORDER

This matter came on for an evidentiary hearing that commenced on October 31, 2019, continued November 13, 2019, and concluded on November 26, 2019. The Petitioner Amanda Gail Gustafson appeared at all three hearings along with her Attorney Gary A. Debele, Messerli & Kramer, P.A. The Respondent James Van Nguyen appeared pro se at the hearing on October 31, 2019. He also appeared at the final two proceedings along with his Attorney Jonathan D. Miller, Meagher & Geer, P.L.L.P.¹

I. PRODECURAL HISTORY AND ISSUES PRESENTED

This matter is before the Court to resolve Petitioner Amanda Gustafson's motions to i) impose sanctions against the Respondent James Van Nguyen and ii) modify custody of the

¹ The Respondent had been represented by Adam J. Blahnik, Blahnik Law Office, PLLC. The Respondent released Mr. Blahnik from his representation after the parties failed to conclude the engagement of the Parenting Consultant. He proceeded Pro Se to the evidentiary hearing and later engaged Mr. Miller.

parties' minor child from joint custody and shared placement to sole custody and placement with the Petitioner.

The Petitioner first filed her request for sanctions on June 28, 2018.² The Court held open its consideration of this request in the Final Judgment of May 3, 2019.³ The Petitioner filed an additional request for sanctions in a post-judgment motion filed on June 7, 2019, relating to the appointment of the Parenting Consultant required in the Final Judgment.⁴

Pursuant to the provisions and time frames set forth in the Scheduling Order for the evidentiary hearing:⁵

- The Respondent filed a Motion for Denial or Deferral of Petitioner's Motion for Sanctions per Rule 62.1 (Docket #196) on October 7, 2019, along with a supporting Declaration (Docket #197) and Memorandum of Law (Docket #198);
- The Petitioner filed a Counter Motion and Motion Regarding Sanctions (Docket #208) on October 21, 2019, along with a supporting Memorandum of Law (Docket #209), the Petitioner's supporting Affidavit (Docket #209), and a Proposed Order Regarding Sanctions (Docket #211);

² See Petitioner's Notice of Motion & Motion (Docket #102) seeking attorney fees to enforce discovery demands.

³ Findings of Fact, Conclusions of Law, Order for Final Judgment, Judgment and Decree (Docket #174), at 6 ("The Court will schedule an evidentiary hearing on Petitioner's request for sanctions.")

⁴ Petitioner Amanda Gustafson's Notice of Motion and Motion (Docket #176), Par. 4 (seeking an order "that the Petitioner may raise her request for an award of attorneys' fees and costs in having to bring this motion in the evidentiary hearing on her prior sanctions motions")

⁵ Scheduling Order of September 19, 2019 (Docket #193). This Scheduling Order also dealt with a separate issue of child support which is not relevant for the purposes of this Opinion and Order. After the October 31, 2019, evidentiary hearing, the Court dismissed the Respondent's Motion for Child Support in its Order of November 5, 2019 (Docket #227), for failure to comply with the requirements of Chapter IV Section 2(n) and Chapter II Section of the Domestic Relations Code. The only remaining issues remaining to be dealt with are the Petitioner's requests for sanctions and modification of custody.

- The Petitioner filed a Pre-Hearing Memorandum of Law with Exhibit & Witness Lists Regarding Petitioner’s Request for Sanctions (Docket #213) on October 24, 2019; and
- The Respondent filed a Pre-Hearing Memorandum per Order of 9/19/10 with Exhibit & Witness List (Docket #215) on October 25, 2019.

The Court held an evidentiary hearing on October 31, 2019, as scheduled. In addition, because of circumstances described in the Court’s Order of November 5, 2019 (Docket #227) and in correspondence from the parties⁶, the Court continued the evidentiary hearing on November 13, 2019 and concluded the proceeding on November 26, 2019.

For the purposes of deciding the parties’ remaining motions in this matter, the Court considers the issues before it as they have been set forth by the parties themselves in their respective pre-evidentiary hearing submissions. Unless noted as otherwise already decided or resolved, the Court will address each of those issues in turn.

As set forth in his Pre-Hearing Memorandum per Order of 9/19/19 (Docket #215), the Respondent presents only the issue of “weather (sic) the Court can hear the issues of sanctions at this [hearing].”

As set forth in her Pre-Hearing Memorandum of Law (Docket #213), at 2, the Petitioner presents the following issues⁷:

1. Whether the Court should impose sanctions against the Respondent for failure to comply in a timely fashion with the Court’s order to vacate the Petitioner’s residence;

⁶ Letter from James Nguyen Complaining about Hearing on 10/31/19 & Service of SMSC No Trespass Notice (November 1, 2019) (Docket #226); Attorney Debele’s Letter with Attachments Responding to 11/1/19 Letter from James Nguyen with Complaints of Unfair Treatment of James Nguyen at 10/31/19 Hearing (November 5, 2019) (Docket #230).

⁷ The Court paraphrases here the Petitioner’s presentation of issues in the interest of brevity, capturing the gist of each issue that she sets forth.

2. Whether the Court should impose sanctions against the Respondent for his failure to respond in a timely fashion during the drafting of the Final Judgment and Decree;
3. Whether the Court should impose sanctions against the Respondent for his failure to timely respond to pre-trial discovery requests and Court orders related thereto;
4. Whether the Court should impose sanctions against the Respondent for his failure to cooperate and act in good faith in the selection of a Parenting Consultant;
5. Whether the Respondent should be ordered to return to the Petitioner certain personal property allegedly still in his possession⁸; and
6. Whether the Court should modify custody of the parties' minor child from joint custody and shared placement to sole custody and primary placement with the Petitioner.

II. CONTINUING AUTHORITY TO HEAR THE PETITIONER'S MOTIONS FOR SANCTIONS AND FOR MODIFICATION OF CUSTODY

The Respondent argues that this Court does not have the authority to address the Petitioner's motions seeking sanctions and modification of custody while his appeal is pending and, therefore, should deny those motions. Alternatively, he argues that the Court should defer consideration of the Petitioner's motions until his appeal is resolved.⁹

This is not the first time that the Respondent has asserted that this Court does not have the authority to address and resolve the Petitioner's motions. The Court squarely addressed, thoroughly considered, and rejected these assertions in its Opinion and Order of September 11, 2019 (Docket #190). There, the Court found that it retains jurisdiction over the Petitioner's motion for sanctions "as necessary to oversee the enforcement of its judgment." *Id.*, at 2 (citing

⁸ The Court dismissed this request for sanctions at the Hearing on November 13, 2019 for failure of the Petitioner to provide any receipts, list, or inventory of the items of personal property that establish the existence and value of these items. *See* Hearing Transcript 10/31/19, at 53; Hearing Transcript 11/13/19, at 4.

⁹ Respondent's Prehearing Memorandum per Order 9/19/19 (October 25, 2019) (Docket #215); Respondent's Memorandum of Law for Rule 62.1 (October 25, 2019) (Docket #215).

Bd. of Educ. of St. Louis v. State of Mo., 936 F.2d 993, 996 (8th Cir. 1991); In re Grand Jury Subpoenas Duces Tecum, 85 F.3d 372, 375-76 (8th Cir. 1992); Huey v. Sullivan, 917 F.2d 1362, 1365 (8th Cir. 1992)).

The Court also found that the Petitioner's request for sanctions falls "within this Court's authority to address matters independent, supplemental, or collateral to the appeal, such as attorney's fees." Id., at 5 (citing Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 170 (1939); Harmon v. Farmers Home Admin., 101 F.3d 574, 587 (8th Cir. 1996)).

Finally, the Court found that it "may also continue its exercise of jurisdiction as necessary to protect the best interests of the Minor child." Id., at 3 (citing Domestic Relations Code, Chapter IV, Sec. 3(a); Perry v. Perry, 749 N.W.2d 399, 403 (Minn. Ct. App. 2008)).

These rulings constitute the law of this case and are binding upon the Respondent. Under the law-of-the-case doctrine, "a court should not reopen issues decided in earlier stages of the same litigation." In re Raynor, 617 F.3d 1065, 1068 (8th Cir. 2010) (quoting Agostini v. Felton, 521 U.S. 203, 236, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997)). This well-established doctrine prevents "re-litigation of a settled issue," Id., unless the Court "is convinced that [its prior decision] is clearly erroneous and would work a manifest injustice," Pepper v. United States, 562 U.S. 476, 131 S.Ct. 1229, 1250-51, 179 L.Ed.2d 196 (2011).

The Respondent has presented no precedent or analysis to convince the Court that its Opinion and Order of September 11, 2019 (Docket #190) falls within exceptions to the law-of-the-case doctrine. His pre-hearing memorandum of law cites neither case law contrary to the precedent relied upon by the Court nor new evidence that would warrant reconsideration of the law of this case. Instead, for the first time the Respondent cites "Rule 62.1" and, without citation to or analysis of relevant interpretation or precedent, simply states:

This Issue falls under Rule 62.1 Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal. In this circumstance the Rule states when relief is pending appeal the Court may either defer considering the motion or deny the motion under 62.1(a)(1)-(2).¹⁰

The Court presumes that the Respondent references Rule 62.1 of the Federal Rules of Civil Procedure (FRCP). The Petitioner presumes the same and extensively addresses the applicability of FRCP 62.1 to her motions.¹¹

The Court finds that FRCP 62.1 does not control and is not dispositive of the Petitioner's motions as the Respondent asserts. As the Petitioner correctly asserts, the Advisory Committee Notes to FRCP 62.1 do not support the Respondent's contention that this Court is barred from considering her motions. Similarly, those notes provide no rationale for this Court to defer the exercise of its continuing authority over matters that remain within its purview, particularly regarding the best interests of a minor child pursuant to the Community's Domestic Relations Code. In relevant part, the Advisory Committee Notes provide:

Rule 62.1 does not attempt to define the circumstances in which an appeal limits or defeats the district court's authority to act in the face of a pending appeal. The rules that govern the relationship between trial courts and appellate courts may be complex, depending in part on the nature of the order and the source of appeal jurisdiction. Rule 62.1 applies only when those rules deprive the district court of authority to grant relief without appellate permission. If the district court concludes that it has authority to grant relief without appellate permission, it can act without falling back on the indicative ruling procedure.¹²

As this Court previously ruled its Opinion and Order of September 11, 2019 (Docket #190) and here again affirms, the Respondent's Notice of Appeal has not deprived this Court of its authority to rule on the Petitioner's motions for sanctions and modification of custody. As the

¹⁰ Respondent Nguyen's Memorandum of Law for Rule 62.1 (October 7, 2019) (Docket #198).

¹¹ See Petitioner Gustafson's Memorandum of Law in Support of Counter Motion Regarding Sanctions (October 21, 2019), at 4-6. (Docket #209).

¹² FRCP 62.1, Committee Notes on Rules – 2009 (accessed on December 15, 2019, at https://www.law.cornell.edu/rules/frcp/rule_62.1) (emphasis added).

Advisory Committee notes make clear, nothing in FRCP Rule 62.1 defines when an appeal “defeats the [trial] court’s authority to act in the face of a pending appeal.”¹³ And, to the extent that FRCP 62.1 may provide rationale for this Court’s discretion to defer consideration of the Petitioner’s motions pending appeal, the Court declines to exercise that discretion and chooses to fulfill its responsibilities under the Community’s Domestic Relations Code.

The Respondent has failed to show manifest errors in law or present newly discovered evidence regarding his claims about this Court’s authority to address the Petitioner’s motions pending appeal. His attempted reliance on FRCP 62.1 is misplaced and unpersuasive. The Respondent’s Motion for Denial or Deferral of Petitioner’s Motion for Sanctions per Rule 62.1 (Docket #196) is **DENIED**.

III. THE PETITIONER’S MOTIONS FOR ATTORNEY’S FEES AS SANCTIONS

This Court’s power to control its proceedings includes the power to assess attorney’s fees as a sanction for willful disobedience of a court order or when a party has acted “vexatiously, wantonly, or for oppressive reasons.” Brooks v. Corwin, 2 Shak. A.C. 5, (Aug. 4, 2008), at 3-4 (Slip Opinion). This power to award attorney’s fees for bad behavior is inherent in the Court’s power to control its courtroom and is separate from the authority to grant sanctions under Rule 11 of the Community’s Rules of Civil Procedure. Id., at 4-5 (Slip Opinion).

In addition, Rule 24 of the Community’s Rules of Civil Procedure incorporates “[t]he provisions of Rule 37 of the then-current Federal Rules of Civil Procedure (FRCP) concerning refusals to make discovery and the consequences thereof.” Throughout FRCP 37, attorney’s fees are provided as available sanctions for failure to make disclosures or to cooperate in discovery.¹⁴

¹³ FRCP 62.1, Committee Notes on Rules – 2009, supra.

¹⁴ See, e.g., FRCP 37(a)(5) (regarding motions to compel disclosure or discovery); FRCP 37(b)(2)(C) (regarding failure to comply with a court order); FRCP 37(c)(1)(A) (failures to disclose or supplement an earlier response).

Against this backdrop of its authority to impose attorney's fees as sanctions, the Court now considers each of the Petitioner's remaining requests for such sanctions.

A. Failure to Comply in a Timely Fashion with the Court's Order to Vacate The Petitioner's Residence

The parties appeared before this Court on September 19, 2018, to commence trial as a fully contested matter. After several hours of negotiations, the parties reached a settlement that obviated the need for a trial. The parties stated the key provisions of their stipulation on the record, the Court approved them, and the parties agreed to begin implementing them. They were then to cooperate in preparing and submitting to the Court proposed findings of fact, conclusions of law, and a judgment for dissolution of their marriage consistent with their stipulation.¹⁵

The parties' stipulation, as included in both the Partial Judgment and Decree and the Final Judgment and Degree, provided that certain real property located in the City of Bloomington "shall be awarded to the Wife [the Petitioner] and that the Husband [the Respondent] shall vacate these premises no later than close of business on October 17, 2018."¹⁶

It is undisputed that the Respondent failed to vacate these premises by the October 17, 2018, deadline. Petitioner sought relief from this court. The Court responded by issuing an Order dated November 7, 2018 (Docket #154). In that Order, the Court stated the following:

4. Petitioner Amanda Gustafson is title owner to a homestead located at 5511 Southwood Drive, in the City of Bloomington, State of Minnesota. This homestead is currently occupied by Respondent James Nguyen.

5. Among the terms of agreement that the parties entered into and put on the record on September 19, 2018 was that Petitioner Gustafson would retain sole ownership of this Bloomington property and that Respondent Nguyen would vacate those premises on or before October 17, 2018.

¹⁵ See Affidavit of Amanda Gustafson in Support of Notice of Motion and Motion for Emergency Hearing (November 2, 2018) (Docket #155), at 1-2; Partial Enforcement Order (November 7, 2018) (Docket #160).

¹⁶ Findings of Fact, Conclusions of Law, Order for Partial Judgment, Partial Judgment and Decree (February 13, 2019) (Docket #171), at 13; Findings of Fact, Conclusions of Law, Order for Final Judgment, Judgment and Decree (May 3, 2019) (Docket #174), at 15.

6. To date, Respondent Nguyen has refused to vacate those premises, despite entering into the agreement, placing it on the record, and with said agreement as to physical occupancy of this home having the effect of an order of this Court.

7. Therefore, this Court finds it appropriate to issue a specific order directing Respondent James Nguyen to immediately vacate the property located at 5511 Southwood Drive, in the City of Bloomington, State of Minnesota, and that if necessary, law enforcement from the City of Bloomington and Hennepin County shall be engaged to assist in his removal from these premises.

8. In the event Respondent Nguyen refuses to immediately vacate these premises, this Court will then consider appropriate additional sanctions being levied against Respondent Nguyen.

Despite the clear warning to the Respondent in paragraph 8 of this Order, he refused to obey for a second time an Order of this Court as it relates to this property. He finally vacated the premises on or about November 28, 2018, and then only after and as a consequence of the Petitioner's motion in this Court to enforce the terms of the parties' stipulation and a separate eviction action in the courts of the State of Minnesota.¹⁷ When questioned by his attorney, the Respondent admitted that he agreed at the state eviction hearing to vacate the property that same day.¹⁸

The Respondent argues that he was justified in not vacating the home on the date he agreed because he had not received the title to a GMC truck that he had been awarded. He goes on to say that he was going to use equity in the truck to relocate to an apartment.¹⁹ When questioned by his counsel as to whether receipt of the title of the truck was a condition to vacating the property, he answered no.²⁰ The Respondent clearly and undeniably knew that he was obligated to vacate the home no later than October 17, 2018, and that there were no pre-

¹⁷ Hearing Transcript 10/31/19, at 19-27; Hearing Transcript 11/26/19, at 11-12, 76-77; Petitioner Amanda Gustafson's Notice Motion and Motion (November 2, 2018) (Docket #154); Affidavit of Amanda Gustafson in Support of Notice Motion and Motion for Emergency Hearing (November 2, 2018) (Docket #155).

¹⁸ Hearing Transcript 11/26/19, at 11.

¹⁹ Hearing Transcript 11/13/19, at 68.

²⁰ *Id.*, at 72

conditions for him to do so. He intentionally and vexatiously abandoned his own stipulation and disobeyed this Court's Order, thereby resulting in costs to the Petitioner.

The Petitioner seeks sanctions equal to her attorney's fees in a total amount of \$4,035 for bringing her motion to enforce the terms of the parties' stipulation and for bringing the eviction action in state court. She seeks an award of \$3,035.00 as her attorney's fees incurred in bringing her motion in this court.²¹ She also seeks an award of \$1,000 of attorney's fees incurred in bringing the eviction action in state court.²²

“Bad faith in the conduct of the litigation, resulting in a fee award as a sanction for abuse of the judicial process, is the most familiar type of bad faith under which [attorney's] fees are awarded.” Brooks v. Corwin, 2 Shak. A.C. 5 (Aug. 4, 2008), at 4 (Slip Opinion) (quoting Shimman v. Int'l Union of Operating Eng'rs, 744 F.2d 1226, 1230 (6th Cir. 1984)). The Respondent's refusal to vacate the Bloomington property as he had agreed and affirmed to the Court, and then vacating the property only after the Petitioner sought an enforcement action in this Court and a collateral eviction action in the state court, epitomizes the type of bad faith and abuse of judicial process that warrants an award of attorney's fees. Not only did he renege on his commitment to the Petitioner. He reneged on his commitment to this Court and refused to obey a lawful Order of this Court. The Respondent should have vacated as he was required. He had no legal basis for staying in the homestead past the close of business on October 17, 2018.

The Court notes that that the Petitioner attempted informal measures, including emails from her attorney to the Respondent's attorney, to get the Respondent to vacate the premises before filing her motion in this court and seeking eviction through state court.²³ Those measures

²¹ Hearing 10/31/19, Exhibit 5, at PET 0184-0186 (Affidavit of Attorney Gary A. Debele Regarding Attorney Fees (November 7, 2018)) (Docket #161).

²² Hearing Transcript 10/31/19, at 23, 27.

²³ See Hearing Transcript 10/31/19, at 20; Exhibit 5, at PET 0148-0152.

proved unsuccessful entirely due to the Respondent's continuing gamesmanship and evasiveness. The Petitioner's efforts to seek enforcement in this Court and through state court were entirely justified.

“[T]he underlying rationale of ‘fee shifting’ is, of course, punitive, and the essential element in triggering the award of fees is therefore the existence of ‘bad faith’ on the part of the unsuccessful litigant.” Brooks v. Corwin, 5 Shak. T.C. 83 (Oct. 15, 2007), at 5 (Slip Opinion), aff'd Brooks v. Corwin, Shak. A.C. 5 (Aug. 4, 2008) (citing Hall v. Cole, 412 U.S. 1, 5 (1973)). Had the Respondent adhered to his stipulation and obeyed the Order of this Court we would not be addressing this matter. The Court finds that the amount the Petitioner seeks is both justified and reasonable.

The Petitioner's Motion (Docket #154) seeking sanctions in the form of attorney's fees in the amount of \$4,035.00 for the Respondent's failure to timely vacate the Bloomington premises as required is hereby **GRANTED**.

B. Failure to Respond in a Timely Fashion during the Drafting of the Final Judgment and Decree

The Petitioner filed a motion on November 30, 2018, asking the Court to sanction the Respondent for his delays in responding to the draft divorce decree that her attorney was directed by the Court to draft following the placement of the comprehensive settlement agreement on the record on September 18, 2019.²⁴ She avers that her attorney provided a draft document to the Respondent and his attorney on October 22, 2018, and that a redlined response document was

²⁴ Petitioner Gustafson's Notice of Motion & Motion To Set Matter On For Trial (November 30, 2018) (Docket #164). See Petitioner's Memorandum of Law in Support of Courter Motion Regarding Sanctions (October 21, 2019) (Docket #209), at 7-8.

provided to her and her attorney on November 7, 2018.²⁵ The parties continued their interaction regarding the draft decree over the ensuing weeks, including at a hearing on December 7, 2018. As the Court noted in the Partial Judgment and Decree, “During the hearing [on December 7] the counsel for the two parties met for two hours to review the transcript of the [previous] proceeding and review the comments submitted by the Respondent and Mr. Blahnik [his attorney] to the written draft decree.”²⁶

The Court deems this aspect of the Petitioner’s sanctions claim to be less about the process of attempting to agree upon a final divorce decree document and more about the fact that the parties simply could not agree on certain provisions. Ultimately, the parties were able to reach agreement on most of the provisions of the final judgment and decree. Where the parties failed to agree, the Court decided.²⁷ Based upon this record, the Court is unable to find sufficient evidence of bad faith, vexatious conduct, or an abuse of the judicial process during the parties’ attempts to draft a final decree.

The Petitioner’s Motion (Docket #164) seeking sanctions related to the drafting of the final judgment and decree is hereby **DENIED**.

C. Failure to Timely Respond to Pre-Trial Discovery Requests and Related Court Orders

The Petitioner filed a motion on June 28, 2018, seeking enforcement of her discovery requests and asking for sanctions against the Respondent for having to bring two discovery enforcement motions.²⁸ After a July 13, 2018, hearing on this motion, the Court issued an Order

²⁵ Affidavit of Amanda Gustafson in Support of Notice Motion and Motion Setting this Matter for Trial (November 30, 2018) (Docket #165), at 4-5.

²⁶ Findings of Fact, Conclusions of Law, Order for Partial Judgment, Partial Judgment and Decree (February 13, 2019) (Docket #171), at 2.

²⁷ See Findings of Fact, Conclusions of Law, Order for Final Judgment, Judgment and Decree (Docket #174), at 2-5.

²⁸ Petitioner Gustafson’s Notice of Motion & Motion (June 28, 2018) (Docket #102).

that analyzed the Petitioner's discovery requests and the Respondent's objections to them. The Court overruled all the Respondent's objections and ordered him to provide full and complete answers to all of the disputed requests. The Court reserved its ruling on the Petitioner's request for sanctions.²⁹ She seeks attorney's fees in the amount of \$4,811.00³⁰

In now considering the Petitioner's request for sanctions related to discovery and mandatory disclosures, the Court relies upon its Order of August 17, 2018 (Docket #138) and incorporates it herein as the law of this case. The Court reiterates that it already has found that the Respondent did not comply with the Petitioner's legitimate discovery requests promulgated pursuant to Rules 21-23 of the Community's Rules of Civil Procedure, as well as with the specific mandatory disclosure requirements of Chapter IV, section 2, paragraph (n) of the Community's Domestic Relations Code. It ruled that the Petitioner's motion to compel discovery was justified and granted her motion.

The Court also reiterates its Finding of Fact 17 in the final Judgement and Decree:

During this proceeding, the parties had every opportunity to conduct formal and informal discovery and to obtain employment, income and appraisals as necessary to determine the nature, extent and value of the parties' real and personal property. The Rule of the Court clearly require disclosure from both parties that will move the case to Final Judgment. If the Rules are not adhered to and the parties are less, then (sic) forthcoming in their responses this impedes the process. Here, the Wife [the Petitioner] served the Husband [the Respondent] with Interrogatories and Requests for Production of Documents. The Husband never served the Wife with formal or informal discovery. When the Husband failed to respond the Wife sought the assistance of the Court several times in ordering the Husband to respond to those requests. The Court issued orders directing the Husband to answer specified Interrogatories and to turn over certain documents which he never fully complied with. Husband did obtain approximately 38 subpoenas upon the individuals named. Throughout this

²⁹ Order of August 17, 2018 (Docket #138).

³⁰ Affidavit of Gary A. Debele Regarding Attorney Fees (June 28, 2018) (Docket #104).

litigation the Husband has been less than candid in his requirement to disclose and failed to supplement his discovery responses.³¹

No evidence was introduced, or arguments made at the evidentiary hearings that would counter or require reconsideration of the law of this case regarding the Respondent's recurring and continuing non-compliance with discovery and disclosure requirements. In fact, his efforts to evade and elude were again apparent, as exemplified by the Respondent's answer to a question posed during his cross-examination:

Q. When was the last time you filed an income tax return?

A. I don't recall.

Q. You don't recall?

A. I don't recall.³²

The Court agrees with the Petitioner's assessment of the Respondent's approach to discovery and disclosure in this matter. As the Petitioner testified:

Q. What's your impression of what it's been like trying to get information from Mr. Nguyen in this divorce proceeding?

A. It's been very hard. He hasn't given much of anything ever throughout this proceeding. We just try and try and just, you know, ask him to give us a little bit of the information so we can move on with the proceedings and he just doesn't.³³

The Court finds that the Respondent's repeated failures to comply with discovery requirements and the Court's Orders related thereto warrant sanctions as provided in Rule 24 of the Community's Rules of Civil Procedure regarding "refusals to make discovery and the consequences thereof."³⁴ In addition, as already noted above, this Court's power to control its

³¹ Findings of Fact, Conclusions of Law, Order for Final Judgment, Judgment and Decree (Docket #174), at 10-11 (emphasis added).

³² Hearing Transcript 11/26/19, at 42.

³³ Hearing Transcript 10/31/19, at 33.

³⁴ Rule 24 incorporates the Federal Rules of Civil Procedure in this regard. See generally FRCP 37 (attorney's fees are provided as available sanctions for failure to make disclosures or to cooperate in discovery). See, e.g., FRCP 37(a)(5) (regarding motions to compel disclosure or discovery); FRCP 37(b)(2)(C) (regarding failure to comply with a court order); FRCP 37(c)(1)(A) (failures to disclose or supplement an earlier response).

proceedings includes the power to assess attorney's fees as a sanction for willful disobedience of a court order or when a party has acted "vexatiously, wantonly, or for oppressive reasons."³⁵

The Court has not in 31 years on this bench observed such blatant disregard from any litigant for the unambiguous requirements of discovery rules, Court Orders, and mandatory disclosure laws. It does not make this statement lightly but here the record is clear. When bad faith conduct as egregious as this delays the orderly process of a case, adds unnecessary costs, and wastes valuable judicial resources, attorney's fees as sanctions are justified. The amount sought by the Petitioner is reasonable.

The Petitioner's Motion (Docket #182) seeking sanctions in the form of attorney's fees in the amount of \$4,811.00 for the Respondent's failure to comply with clear and unambiguous discovery and disclosure requirements is hereby **GRANTED**.

D. Failure to Cooperate and Act in Good Faith in the Selection of a Parenting Consultant

The Petitioner first filed a motion on June 7, 2019, seeking sanctions against the Respondent for failing to cooperate and act in good faith in the selection of the Parenting Consultant as required by the Final Judgment and Decree.³⁶ She also included this claim as part of her Counter Motion and Motion Regarding Sanctions filed on October 21, 2018.³⁷ She seeks attorney's fees in the amount of \$6,502.50 as sanctions.³⁸

The key facts regarding the parties' attempts to agree upon and engage a mutually acceptable Parenting Consultant are not in dispute. The Final Judgment and Decree, in the context of joint custody and joint placement rights, requires the parties to appoint a Parenting

³⁵ *Brooks v. Corwin*, 2 Shak. A.C. 5, (Aug. 4, 2008), at 3-4 (Slip Opinion).

³⁶ Petitioner Amanda Gustafson's Notice of Motion and Motion (June 7, 2019) (Docket #176), at 2.

³⁷ Petitioner's Notice of Counter Motion and Counter Motion Regarding Sanctions (October 21, 2019) (Docket #208), at 2.

³⁸ Hearing Transcript 10/31/19, at 47.

Consultant and “[i]f the parties fail to engage the process to select the Parenting Consultant within 30 days of the date of this Order the parties shall refer the matter to the Court.”³⁹ On June 7, 2019, the Petitioner filed a motion referring the Parenting Consultant matter to the Court and asked the Court to appoint her recommended candidate as the Parenting Consultant because the parties were unable to agree.⁴⁰ After much back-and-forth, the parties finally agreed upon a different candidate than the Petitioner had proposed in her motion. However, there is still no Parenting Consultant in place because the parties have been either unwilling or unable for a variety of alleged reasons to execute a contract with the agreed-upon candidate.⁴¹

The selection of a Parenting Consultant thus remains at a standstill. The parties have not yet engaged a Parenting Consultant and the Court has not yet appointed one. The dispute over sanctions seemingly has gotten in the way of the action that should be taken, namely getting a Parenting Consultant in place to assist the parents in the exercise of their joint custody rights and responsibilities. The Court is reluctant to grant sanctions as the record has developed. It views the Parenting Consultant issue as inherently intertwined with a multitude of co-parenting issues that plague the parties’ judgment and ability to act in the best interests of their minor child. Rather than imposing sanctions and ordering the appointment of a Parenting Consultant, the Court instead chooses to directly address the parties’ inability to functionally and realistically exercise joint custody and joint placement rights at this juncture of their young child’s life. See Section IV, *infra*.

³⁹ Findings of Fact, Conclusions of Law, Order for Final Judgment, Final Judgment and Decree (May 3, 2019) (Docket #174), at 26-27.

⁴⁰ Petitioner Amanda Gustafson’s Notice of Motion and Motion (June 7, 2019) (Docket #176); Affidavit of Amanda Gustafson (June 7, 2019) (Docket #177).

⁴¹ See Hearing Transcript of 10/31/19, at 43-46; Hearing Transcript 11/26/19, at 23-26, 61, 137-140.

The Petitioner's Motion (Docket #176) seeking the appointment of a particular Parenting Consultant and sanctions in the form of attorney's fees in the amount of \$6,502.50 for the Respondent's failure to cooperate and act in good faith in the selection of the Parenting Consultant as required by the Final Judgment and Decree is hereby **DENIED**.⁴²

IV. THE PETITIONER'S MOTION TO MODIFY CUSTODY AND PLACEMENT

The Court now turns to the Petitioner's motion seeking to modify custody and placement of the parties' minor child.⁴³ The Petitioner seeks "sole legal custody and sole physical custody of the minor child" as well as "parenting time during all of the days when the minor child is in preschool or school."⁴⁴ She seeks to limit the Respondent's parenting time "to alternating weekends, vacations, and holidays, and extended time during the summer months."⁴⁵ She alleges that the Respondent has refused to follow the parenting schedule provided in the Final Judgment and Decree and has otherwise been uncooperative in implementing a number of other provisions of the Judgment. She asserts that ongoing custody and parenting time disputes are seriously harming the parties' child.⁴⁶

The Judgment entered on May 3, 2019, provides for joint legal custody and a specific parenting plan consistent with a co-parenting arrangement.⁴⁷ This arrangement relates back to a comprehensive settlement which the parties entered on the record on September 19, 2018, the

⁴² The same request for sanctions restated in Petitioner's Notice of Counter Motion and Counter Motion Regarding Sanctions (October 21, 2019) (Docket #208) is similarly denied.

⁴³ Petitioner's Notice of Counter Motion and Counter Motion Regarding Sanctions (October 21, 2019) (Docket #208), at 2-3.

⁴⁴ *Id.*, at 2.

⁴⁵ *Id.*, at 2-3.

⁴⁶ *Id.*, at 2; Affidavit of Amanda Gustafson in Support of Counter Motion Regarding Sanctions (October 21, 2019) (Docket #210), at 4; Petitioner's Memorandum of Law in Support of Counter Motion Regarding Sanctions (October 21, 2019) (Docket #209), at 11.

⁴⁷ Findings of Fact, Conclusions of Law, Order for Final Judgment, Judgment and Decree (May 3, 2019) (Docket #174).

date on which trial was to begin.⁴⁸ The parties then embarked upon a process for drafting the findings of fact, conclusions of law, and judgment that were to incorporate their agreement.⁴⁹ The parties presented a document that resulted in the Partial Judgment and Decree entered on February 13, 2019.⁵⁰ This incorporated most of the provisions of their comprehensive settlement, including most of the joint custody co-parenting provisions, but reserved some issues for the Court to decide. The Final Judgment and Decree incorporated both the parties' stipulation and resolved the remaining matters left for the Court decide. Thus, within the context of these proceedings, the parties have been attempting to implement a co-parenting relationship and specific provisions of Court Orders related thereto since September 2018.

The Court considers Petitioner's Motion to Modify Custody technically to have been brought within one year of the entry of the Order which established the arrangement which she seeks to modify, whether that Order be viewed as the Partial Judgment of February 13, 2019 or the Final Judgment of May 3, 2019. Chapter III, Section 5 of the Community's Domestic Relations Code governs modification of custody orders. It provides that "no motion to modify a custody order may be made earlier than (1) one year after the date of a decree of dissolution" unless the parties agree in writing⁵¹ or the Court

has reason to believe that there may be persistent and willful denial or interference with visitation, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development.⁵²

The Court "shall make such determination(s) based upon the affidavits of the parties."⁵³

⁴⁸ See Discussion in Section III.A., *supra*; Partial Enforcement Order (November 7, 2018) (Docket #160).

⁴⁹ See Discussion in Section III.B., *supra*.

⁵⁰ Findings of Fact, Conclusions of Law, Order for Partial Judgment, Partial Judgment and Decree (February 13, 2019) (Docket #171).

⁵¹ Domestic Relations Code, Chapter III, Section 5.a.

⁵² *Id.*, Chapter III, Section 5.c.

⁵³ *Id.*

The Petitioner's affidavit in support of her Motion to Modify Custody provides sufficient reason for the Court to believe that either the Respondent has consistently interfered with her parenting time or that the current state of the parties' co-parenting relationship places the child in an environment that may endanger her emotional health and development. Among other things, she avers that the Respondent has refused to cooperate in the selection of a mutually agreeable Parenting Consultant as required by both the Partial and Final Judgment. She also avers that the Respondent has refused to follow the required co-parenting schedule and to support the child's attendance at the school which the Court ordered she should attend.⁵⁴ The Court therefore finds that the Petitioner's motion is timely and properly brought in accordance with the Chapter III, Section 5.c of the Domestic Relations Code.

The Court now must consider the substance of the Petitioner's request. In doing so, it

... shall not modify a prior custody order after hearing on the motion unless it finds, upon the basis of facts that have arisen since the prior order or that were unknown to the Tribal Court at the time of the prior order, that a change has occurred in the circumstances of the child or the custodian and that the modification is necessary to serve the best interests of the child.⁵⁵

The Domestic Relations Code provides a presumption that the custodian established by the prior order shall be retained with three exceptions. The applicable exception relevant to Petitioner's motion requires the Court to find that

... the Child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.⁵⁶

⁵⁴ Affidavit of Amanda Gustafson in Support of Counter Motion Regarding Sanctions (October 21, 2019) (Docket #210), at 4.

⁵⁵ Domestic Relations Code, Chapter III, Section 5.d.

⁵⁶ *Id.*

The Domestic Relations Code further provides that “[p]roof of an unwarranted denial or interference with duly established visitation . . . may be sufficient cause for reversal of custody.”⁵⁷ This provision makes clear that, by definition, the failure to follow the requirements of a custody order and associated parenting arrangement may constitute a requisite change in circumstances that warrants a change in custody.

After listening to testimony at three hearings, reviewing the exhibits admitted into evidence, considering the previous fillings and orders of this Court, and assessing the respective credibility of each party, the Court finds that the Domestic Relations Code’s prerequisites for modifying custody in this matter have been met and that the best interests of the parties’ child require sole legal custody with the Petitioner subject to a reasonable visitation schedule with the Respondent. It is beyond doubt that the parties have an entirely dysfunctional and non-existent co-parenting relationship. This failure to fulfill the joint custody terms of the Judgment constitutes a sufficient change in circumstances to warrant a custody modification. The child currently is caught in the middle of a never-ending co-parenting tug of war. She is in a parenting environment which endangers her emotional health and impairs her emotional development. A sole custody arrangement is the appropriate and necessary remedy. The Court acknowledges that change for a child can be problematic but finds that any possible harm that might result from a change to a sole custody arrangement is outweighed by the advantages of a stable environment where there is one decisionmaker and clear boundaries between the custodial and non-custodial parents.

⁵⁷ Id., Chapter III, Section 3.d.

Each party testified extensively as to the current state of their co-parenting relationship.⁵⁸ They paint a picture of continual non-cooperation, non-communication (directly or through intermediaries), disagreement, and outright confrontational behavior on virtually all aspects of their co-parenting relationship, including exchanges at their respective parenting times, educational decisions, the choice of a Parenting Consultant, and efforts to alienate the affection of their daughter for the other parent. The Court accepts the picture of their relationship that the parties themselves have painted. It agrees that the parents agree on very little and are unlikely to agree on much more, if anything, in the future. The child is thus found in the untenable and unacceptable parental environment of constant disagreement, manipulation, anger, and conflict. She must be removed from that environment of failed co-parenting to further her best interests.

The Court finds that the child's best interests require that the Petitioner be the sole custodian. While each parent bears a degree of responsibility for this co-parenting dysfunctionality, the Court finds the Respondent bears the bulk of it.

The Petitioner at times has not followed the required parenting schedule and has exhibited behavior unbecoming of a loving parent.⁵⁹ She admits to struggles with substance dependency and mental health issues, for which she is seeking assistance and treatment.⁶⁰ These are concerning aspects for the Court to consider. However, the Court assesses the Petitioner as a basically honest individual who is willing to admit her faults and errors, who strives to overcome them, and who, most important, does her best to keep her problems from interfering with or

⁵⁸ See Hearing Transcript 10/31/19, at 57-117 [Direct Testimony of Amanda Gustafson]; Hearing Transcript 11/13/19, at 14-62 [Direct Testimony of James Nguyen]; Hearing Transcript 11/26/19, at 31-36 [Direct Testimony of James Nguyen], at 77-102 [Cross Examination Testimony of James Nguyen], at 141-160 [Cross-Examination Testimony of Amanda Gustafson], and at 160-163 [Re-Direct Examination Testimony of Amanda Gustafson]. See also Hearing Transcript 10/31/19, at 93-110 [Direct Testimony of Andrew Bui]; and Hearing Transcript 11/26/19, at 170-174 [Cross-Examination Testimony of Andrew Bui].

⁵⁹ See, e.g., Hearing Transcript 11/26/19, at 141, 155-155.

⁶⁰ See, e.g., *Id.*, at 141-142.

undermining her daughter's best interests. She professes to put her daughter's interests before her own.⁶¹ The Court finds her credibility to be high in this regard.

The Respondent also admits to not following the required parenting schedule and has exhibited inappropriate behavior as a parent.⁶² He asserts that he is the "rock" of the parental relationship with the parties' daughter and provides the type of stability and guidance that, according to him, the Petitioner cannot provide.⁶³ He too professes to put his daughter's best interests before his own.⁶⁴ However, in contrast to the Petitioner in this regard, the Court finds the Respondent's credibility to be extremely low. The Court does not come to this conclusion lightly. It does so only after observing the Respondent's demeanor on the witness stand as well as his pattern of evasive, non-compliant, and retaliatory behavior throughout this matter.

The Court concludes that the Respondent is prone to actions and behavior that place his daughter in the middle of his efforts to undermine a successful co-parenting relationship and to find ways for it to fail. For example, he admits that he unilaterally kept his daughter for extra days of "compensatory" parenting time to which he was not entitled.⁶⁵ He also fails to accept the Court's Order that the child should attend the International School of Minnesota and seeks to undermine it.⁶⁶ The Court is extremely concerned that the type of evasive, recalcitrant, non-compliant, and contemptuous behavior that the Respondent has shown throughout this matter⁶⁷

⁶¹ See, e.g., Hearing Transcript 11/26/2019, at 165-166.

⁶² See, e.g., Hearing Transcript 11/13/19, at 26, 29-30; Fn 75, *infra*, and accompanying text.

⁶³ See, e.g., Hearing Transcript 11/13/2019, at 58-62.

⁶⁴ See, e.g., *Id.*, at 59; Hearing Transcript 11/26/2019, at 34.

⁶⁵ See, e.g., Hearing Transcript 10/30/2019, at 71-72; Exhibit 16, at PE 476; Hearing Transcript 11/13/2019, at 16-17.

⁶⁶ See, e.g., Hearing Transcript 11/26/2019, at 91.

⁶⁷ See, e.g., Discussion in Section III.A. *supra* [Respondent's failure to timely vacate Petitioner's premises]; Discussion in Section III.C., *supra* [Respondent's blatant disregard of clear and unambiguous discovery and disclosure requirements]; Order for Contempt (December 30, 2019) (Docket #242); Transcript 11/29/2019, at 37-51 [Respondent's continuing evasiveness about his employment, income, and real estate ownership, and changing story regarding growth of marijuana on his California parcels]. In sum, the Court views the Respondent as a person who evades compliance with or seeks to circumvent requirements when he is dissatisfied with them. He also

also is evident in his role as a parent. When he does not get his way, the Respondent attempts to strike back at those he deems responsible⁶⁸ and to antagonize others into conflict situations that reflect badly on them rather than on himself as the instigator.⁶⁹ He seems to disagree for the sake of disagreeing rather than on the merits of the matter at hand.⁷⁰

In sum, the Respondent has exhibited a pattern of evading compliance with the Judgment and other Orders in this matter, as well as of hostile, manipulative, and/or abusive behavior toward the Petitioner, the minor child⁷¹, professionals involved in this case, and other people in the child's life. All of this, in the Court's view, has placed the parties' minor child in an environment that endangers her emotional health and impairs her emotional development. The Respondent consistently and repeatedly has demonstrated his inability and/or unwillingness to

remains coy and evasive about his own affairs, including his finances, who actually spends time with the child during his parenting time, and his living situation. Yet, he revels in exposing the problems and challenges of others, especially when it comes to the Petitioner and anyone else with whom he disagrees. He also is prone to lying when he simply does not want to recognize or admit the truth. See, e.g., Hearing Transcript 11/26/2109, at 76 [Respondent maintained that he moved out of Petitioner's house "voluntarily" until he was compelled to admit that he moved out only after an eviction proceeding was commenced and an eviction order was imminent].

⁶⁸ See, e.g., Order (August 17, 2018) (Docket #138), at 18 [Court found it necessary to approve the Custody Evaluator's request to withdraw because of Respondent's filings and unfounded accusations against her that undermined her ability to act as neutral]; Hearing Transcript 11/26/2019. At 63-70 [Respondent's pattern of initiating investigations, lawsuits, and other inquiries against individuals, attorneys, and other professionals involved in this and related matters]. In sum, the Court views the Respondent as a person who routinely seeks to assign blame to others when things do not go his way and who is generally unwilling to accept responsibility for his own conduct.

⁶⁹ See, e.g., Hearing Transcript 10/31/2019, at 85-89; Exhibit 20, Recordings 1.9 and 1.10; Hearing Transcript 11/26/2019, at 160-161; Exhibit 26 (Video). The Court views the Respondent as a person who gladly goads others into arguments, often records the situation, and then gloats about their reactions and behavior in an effort to make them look like the aggressors. He does not accept responsibility for any part that he played in the first place. See also Hearing Transcript 11/26/2019, at 85 [When asked if he takes any responsibility for provoking the Petitioner into the responses he talks about, the Respondent sarcastically replies, "Well, isn't this a good situation when there's no communication? There's no way for me to provoke her, right?"].

⁷⁰ Perhaps the best example of this involves the selection of the Parenting Consultant. See Discussion in Section III.D., supra.

⁷¹ The Court is especially troubled by the Respondent's recording of a conversation that he had with his daughter. There, the Respondent clearly is attempting to manipulate the child's feelings toward him and her mother, as well as to alienate his daughter's affection toward her mother. In fact, it is clear that the child is uncomfortable with what the Respondent is saying and tries to change the subject of the conversation. Exhibit 20, Recording 1.11. See also Exhibit 20, Recordings 1.14 and 1.15 [Respondent records a conversation with his daughter where he also seeks to portray her mother as "mean" and ill-willed].

co-parent and to place his daughter's health, safety, and well-being before his own desires, anger, and emotions. If a joint custodial arrangement is to meet their daughter's needs, the parents must be able and, most importantly, must want to cooperate and act like responsible adults. The Respondent's behavior and actions demonstrate neither his ability nor his willingness to do what is necessary for the current joint custody and joint placement arrangement to succeed for his daughter's benefit.

In considering the minor child's best interests, the Court has been particularly mindful of the following statutory relevant factors for determining custody: unwarranted denial or interference with duly established visitation;⁷² "the capacity and willingness of each parent to follow visitation and custody orders;"⁷³ "the capacity and willingness of the parents to place the needs of the child first and the ability to cooperate with one another for the sake of the child;"⁷⁴ "each parent's maturity and capacity and willingness to avoid conflict with one another;"⁷⁵ "each parent's willingness to accept full parenting responsibilities;"⁷⁶ and "the child's Tribal or cultural background."⁷⁷

The weight of the evidence and the assessment of each party's respective credibility support application of these criteria in favor of the Petitioner being the sole custodian. The parties' daughter needs a stable parental and home environment, especially during the school year where consistency and routine are important factors. As for the Respondent's visitation rights, the Court seeks to provide him with ample opportunity within that framework, as well as

⁷² Domestic Relations Code, Chapter III, Section 3.d.

⁷³ *Id.*, Chapter III, Section 2.a.(3).

⁷⁴ *Id.*, Chapter III, Section 2.a.(5).

⁷⁵ *Id.*, Chapter III, Section 2.a.(6).

⁷⁶ *Id.*, Chapter III, Section 2.a.(7).

⁷⁷ *Id.*, Chapter III, Section 2.a.(11). The Court notes that the Petitioner is a citizen of the Community and is well-positioned to avail herself of the Community's programs and services to aid her in addressing her personal issues as well as in exercising her parental responsibilities.

on holidays, school breaks, extended vacations, and during the summer, for him to maintain and nurture a successful parent-child relationship.

For the foregoing reasons, the Petitioner's motion (Docket #208) seeking to modify custody and placement of the parties' minor child and providing for Respondent's reasonable visitation rights is hereby **GRANTED** on the terms and conditions set forth in Paragraph 6 of the Order below.

ORDER

Based upon the foregoing Memorandum Opinion and the findings contained therein,

IT IS ORDERED:

1. Respondent's Motion for Denial or Deferral of Petitioner's Motions. The Respondent's Motion for Denial or Deferral of Petitioner's Motion for Sanctions per Rule 62.1 (Docket #196) is denied.

2. Respondent's Failure to Comply in a Timely Fashion with the Court's Order to Vacate Petitioner's Residence. The Petitioner's Motion (Docket #154) seeking sanctions against the Respondent in the form of attorney's fees in the amount of \$4,035.00 for the Respondent's failure to timely vacate the Petitioner's Bloomington premises as required is granted. Judgment in the amount of \$4,035.00 in favor of the Petitioner and against the Respondent shall be entered.

3. Respondent's Alleged Failure to Respond in a Timely Fashion during the Drafting of the Final Judgment and Decree. The Petitioner's Motion (Docket #164) seeking sanctions against the Respondent related to the drafting of the final judgment and decree is denied.

4. Respondent's Failure to Timely Respond to Pre-Trial Discovery Requests and Related Court Orders. The Petitioner's Motion (Docket #182) seeking sanctions against the

Respondent in the form of attorney's fees in the amount of \$4,811.00 for the Respondent's failure to comply with clear and unambiguous discovery and disclosure requirements is granted. Judgment in the amount of \$4,811.00 in favor of the Petitioner and against the Respondent shall be entered.

5. Respondent's Alleged Failure to Cooperate and Act in Good Faith in the Selection of a Parenting Consultant. The Petitioner's Motion (Docket #176) seeking the appointment of a particular Parenting Consultant and sanctions against the Respondent in the form of attorney's fees in the amount of \$6,502.50 for the Respondent's alleged failure to cooperate and act in good faith in the selection of the Parenting Consultant as required by the Final Judgment and Decree is denied.

6. Petitioner's Motion Seeking to Modify Custody and Placement of the Parties' Minor Child. The Petitioner's Motion (Docket #208) seeking to modify custody and placement of the parties' minor child and to provide reasonable visitation rights is granted as follows.

a. Custody and Placement. The Petitioner Amanda Gail Gustafson shall have sole legal custody and sole physical custody of the parties' minor child Adelyn Jade Nguyen. Sole legal custody means that the Petitioner shall have the sole authority to make all major parental decisions in the best interests of the minor child, including but not limited to the areas of education, religion, health, consent to marry as a minor, and consent to enter military service as a minor. Sole physical custody means that the minor child shall reside with the Petitioner at all times except when the Respondent may exercise visitation rights as provided in this order.

b. Child's Relationship with Parents. Neither parent shall do any act which may estrange or alienate the child from the other parent or which may hamper the natural

development of the love and affection of the child for each parent. The parents shall facilitate and encourage a close and continuing parent-child relationship between the child and the other parent. The parents shall place the needs of the child first in implementing the terms of this Order.

- c. Access to Records Regarding the Child.** Unless otherwise ordered by the Court or specifically allowed by Community law , the Respondent may access the child's records relating to health care, school, and protection services only with the consent of the Petitioner who shall have sole authority regarding those records and whose consent shall not be unreasonably withheld. "Health Care" shall include medical care, dental care and orthodontics, optical care, and counseling or mental health care.
- d. Role of Parents in Child's Life, Communication, and Compliance with No-Contact or Restraining Orders.** The parents shall undertake their parental relationship on the basis of good faith regarding their minor child's best interests consistent with the Petitioner's rights and responsibilities as sole legal custodian. The parents shall conduct themselves in a manner that provides a sound moral, social, economic, and educational environment for the child. They shall endeavor to keep themselves informed of their child's social, cultural, and educational activities so that they might support their child and participate where possible and appropriate. The non-custodial parent is authorized to consent to emergency medical care to the minor child at the time the child is with that parent and the other parent is not reasonably accessible to give such consent.

All communication and interactions between parents as well as all arrangements for effectuating the Respondent's visitation rights shall take place without violating

any restraining or no-contact order that may affect the parties. When they are unable to speak directly with each other either for legal or for practical reasons, the parents shall communicate through a third party, such as a relative, friend, or other trusted intermediary, to facilitate their communication as necessary. Neither party shall engage in harassing communications or behavior toward the other.

e. Parenting Time/Father's Visitation Rights. Consistent with the Petitioner's sole legal custody and physical custody rights, the Petitioner shall have placement of the parties' minor child at all times not specifically awarded to the Respondent as visitation rights as provided in the following schedule:

1) Every Other Weekend. The Respondent shall have visitation every other weekend from no later than 5:00 p.m. on Friday until no later than 5:00 p.m. on Sunday. This schedule shall begin on the weekend of Friday, January 10 to Sunday, January 12, 2020, and shall continue every other weekend after that until the end of the child's 2020 school year. At the start of each school year after that, the parties shall work out in good faith the schedule and sequencing of these alternating weekend visitations for the coming school year.

2) Holiday and School Release Schedule. The Respondent shall have visitation as provided in the holiday and school release schedule contained in the final Judgment and Decree (Conclusion of Law #8.b). This holiday schedule is specifically incorporated herein as if fully set forth in its entirety. It shall supersede the Respondent's every-other weekend visitation schedule.

3) Summer Break. Starting the first Friday after the school year ends, the Respondent shall have visitation every third week during the summer from Friday

at 5:30 p.m. until the following Friday at 5:30 p.m. This schedule shall continue until the third day before the next school year begins, at which time the Petitioner shall have physical custody for the remaining portion of the summer break. The Respondent's regular visitation schedule of every other weekend as provided above shall resume once the new school year has begun.

- 4) **Extended Vacation Schedule.** Each party shall have three non-consecutive weeks of vacation time with the minor child, which shall supersede the alternating weekend visitation schedule but shall not disrupt the above holiday schedule. Said vacation time shall be selected and mutually agreed upon no later than April 1 of each year for the following 12 months until March 31 of the following year. The child shall not be removed from school for the purposes of an extended vacation without the Petitioner's consent.
- 5) **Visitation at Other Times.** The Respondent's visitation schedule set forth above shall constitute a minimum visitation arrangement and does not prevent the parties from arranging visitation at other mutually agreeable times.
- 6) **Logistics and Arrangements for Visitation.** Unless the parents otherwise agree in advance, all exchanges for visitation shall take place at a neutral site. Each shall provide the other with sufficient advance notice of the proposed exchange site to afford sufficient opportunity to make plans and to accomplish the exchange at the required time. Only the parties, their family members, or persons acting in their official or professional capacity (such as law enforcement officers, protective services personnel, and teachers) shall be allowed to do the pick-ups and drop-offs without prior approval of the other parent. Close friends of the

parties may also be allowed to do pick-ups and drop-offs if they are mutually agreed to by the parties. Transportation and other costs associated with transferring placement shall be paid by the parent who incurs them.

7) Childcare. The parents may use family members or other trusted individuals to provide daycare during their respective physical custody and visitation times. The costs of such care shall be paid by the parent seeking the service.

f. Parenting Consultant. The Petitioner may, but shall not be required to, engage a Parenting Consultant to assist her in the exercise of her sole legal custody and sole placement rights.

7. Monetary Judgment. This Order provides for a monetary judgment in the total amount of \$8,846.00 in favor of the Petitioner and against the Respondent as sanctions in the form of attorney's fees. Such amount shall be paid to Petitioner no later than 30 days from the entry of this Order.

8. Relationship to Previous Orders. To the extent not inconsistent with this Order and in all other respects, all previous Orders of this Court shall remain in full force and effect.

Date: January 6, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read 'H. Buffalo Jr.', written over a horizontal line.

Henry M. Buffalo Jr., Judge
Shakopee Mdewakanton Sioux
Community Tribal Court