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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO.:F1

BEFORE HON. LISA A. FOSTER, JUDGE

IN THE MATTER OF

MICHELE LALLY,

PETITIONER,

AND

CLIFFORD L. ROEPKE,

RESPONDENT.

CERTIFIED COPY

CASE NO.: D472021

OSC HEARING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SAN DIEGO, CALIFORNIA

JULY 13, 2009

APPEARANCES:

FOR THE PETITIONER:

LAW OFFICES OF MICHAEL F. ARMSTRONG
BY: MICHAEL F. ARMSTRONG, ESQ.
3110 CAMINO DEL RIO SOUTH
SUITE E313
SAN DIEGO, CALIFORNIA 92108

FOR THE RESPONDENT:

CLIFFORD L. ROEPKE
IN PROPRIA PERSONA

ALSO PRESENT:

MICHELE LALLY, PETITIONER

ADELA MEDINA, RPR, CSR NO. 11964
COURT REPORTER PRO TEMPORE
SAN DIEGO SUPERIOR COURT

1 SAN DIEGO, CALIFORNIA, MONDAY, JULY 13, 2009, 4:03 P.M.

2 ---0---

3 THE COURT: GOOD AFTERNOON.

4 MR. ARMSTRONG: GOOD AFTERNOON, YOUR HONOR.

5 THE COURT: MAY I HAVE APPEARANCES, PLEASE.

6 MR. ARMSTRONG: YES. GOOD AFTERNOON, YOUR HONOR.

7 MICHAEL ARMSTRONG APPEARING FOR MICHELE LALLY, PLAINTIFF --
8 I'M SORRY -- PETITIONER.

9 THE COURT: MR. ARMSTRONG, DID YOU FILE A
10 SUBSTITUTION OF ATTORNEY?

11 MR. ARMSTRONG: THERE SHOULD BE ONE IN THERE. YOU
12 KNOW, IT --

13 MS. LALLY: I HAVE A COPY.

14 MR. ARMSTRONG: YOU KNOW, I HAD A SUBSTITUTION --
15 I FILED A SUBSTITUTION FOR A LIMITED PURPOSE, ONE OF THESE
16 SITUATIONS THAT I UNDERSTAND IS PECULIAR TO FAMILY LAW. BY
17 REASON OF THAT, I RECEIVED A COPY OF YOUR EX -- OF YOUR
18 MINUTE ORDER IN THE MAIL, AND I TOLD MS. LALLY THAT I'D COME
19 TO THE HEARING WITH HER THIS AFTERNOON, SO.

20 THE COURT: WELL, WAS IT A LIMITED --

21 MR. ARMSTRONG: IT WAS A LIMITED SCOPE --

22 THE COURT: -- SCOPE?

23 MR. ARMSTRONG: -- SUBSTITUTION.

24 THE COURT: WHEN WAS IT FILED?

25 MS. LALLY: I THINK IT WAS MARCH 17TH.

26 MR. ARMSTRONG: SOMETIME IN MARCH.

27 THE COURT: IN MARCH?

28 MS. LALLY: I'M SORRY. APRIL, APRIL 22ND.

1 **MR. ARMSTRONG:** YOU KNOW, IT SHOULD BE IN THE
2 FILE. YEAH, IT WAS IN APRIL, LATE APRIL.

3 **THE COURT:** DO YOU HAVE A COPY?

4 **MS. LALLY:** I'M LOOKING.

5 **MR. ARMSTRONG:** I DON'T HAVE A CONFORMED COPY WITH
6 ME.

7 **MR. CHUCAS:** YOUR HONOR, I NEVER GOT A COPY, BUT I
8 HAVE NO OBJECTION TO COUNSEL'S REPRESENTATION.

9 **THE COURT:** CAN I JUST SEE THE LIMITED -- WHAT YOU
10 HAVE?

11 **MS. LALLY:** I'M SORRY. I'M LOOKING FOR IT.

12 **MR. ROEPKE:** I HAVE AN OBJECTION IN THE FACT THAT
13 I KNOW MR. ARMSTRONG, HIS CHILD IS IN THE SAME GRADE, PARENT
14 IN THE SAME SCHOOL.

15 **THE COURT:** I FOUND IT. IT WAS FILED ON MAY 6TH.
16 GO AHEAD. DEPUTY ROSADO. AND YOUR CONCERN IS?

17 **MR. ROEPKE:** I THINK THERE'S A LITTLE BIT OF A
18 CONFLICT OF INTEREST HERE.

19 **THE COURT:** WELL, THIS LIMITED SCOPE IS ABOUT
20 SUBPOENAED DOCUMENTS.

21 **MR. ARMSTRONG:** CORRECT.

22 **THE COURT:** SO, WE'RE NOT HERE TODAY ON SUBPOENAED
23 DOCUMENTS.

24 **MR. ARMSTRONG:** CORRECT. LIKE I TOLD YOU, YOUR
25 HONOR, I -- I RECEIVED -- BY REASON OF THAT SUBSTITUTION, I
26 RECEIVED A COPY OF YOUR ORDER IN THE MAIL, THE MINUTE ORDER,
27 AND I TOLD MS. LALLY THAT I WOULD COME DOWN WITH HER TO THIS
28 HEARING TO SEE IF WE COULD GET THIS PROBLEM STRAIGHTEN OUT.

1 THE COURT: AND --

2 MR. ARMSTRONG: I MEAN, I CAN SIGN ANOTHER ONE IF
3 THE COURT PREFERS.

4 THE COURT: I MAY NEED YOU TO DO THAT, BUT LET ME
5 ADDRESS THE POTENTIAL CONFLICT SITUATION.

6 MR. ARMSTRONG: SURE.

7 THE COURT: DO YOU KNOW --

8 MR. ARMSTRONG: I KNOW BOTH OF THEM.

9 THE COURT: -- MR. ROEPKE?

10 MR. ARMSTRONG: I KNOW THE TWO OF THEM. I KNOW
11 MS. LALLY. I KNOW HER QUITE A BIT BETTER THAN I KNOW HIM
12 FOR THE REASON THAT SHE'S AROUND THE SCHOOL. I'VE GOT
13 CUSTODY OF MY KID, WHO IS IN OLIVER, MINOR CHILD'S CLASS.
14 THEY'VE BEEN CLASSMATES SINCE FIRST GRADE, JUST RECENTLY
15 GRADUATED FROM THAT SCHOOL. IT'S A K THROUGH 8 PRIVATE
16 GRAMMAR SCHOOL. I KNOW CLIFF ROEPKE SOMEWHAT. I'M
17 ACQUAINTED WITH HIM. ESSENTIALLY IT'S, "HI, CLIFF, HOW ARE
18 YOU DOING," THAT TYPE OF THING.

19 THE COURT: ALL RIGHT. I'M GOING TO ALLOW THE
20 REPRESENTATION, MR. LALLY [SIC]. IT'S NOT REALLY A CONFLICT
21 THAT MR. ARMSTRONG HAS A CHILD THAT ATTENDS YOUR SCHOOL.
22 HE'S AN ATTORNEY. HE, I AM SURE, KNOWS THE DIFFERENCE
23 BETWEEN HIS ROLE AS AN ATTORNEY AND HE CAN'T PROVIDE ANY
24 TESTIMONY. HE CAN'T SAY ANYTHING ABOUT WHAT HE'S OBSERVED
25 AT SCHOOL BECAUSE HE'S NOT A WITNESS. HE'S ACTING AS
26 COUNSEL. AND IF THAT LINE GETS CROSSED, TRUST ME, I WILL
27 ADDRESS --

28 MR. ARMSTRONG: PUT A STOP TO IT.

1 **THE COURT:** -- THAT SITUATION. ALL RIGHT.

2 SO, LET ME TELL YOU WHAT -- WHY YOU'RE ALL HERE,
3 FIRST, AND THEN I ACTUALLY HAVE SOME QUESTIONS AND -- OF
4 BOTH PARTIES. AS THE PARTIES KNOW, THE COURT HAS BEEN FOR A
5 WHILE GRAPPLING WITH THE QUESTION OF CUSTODY AND VISITATION.
6 FOR A WHILE IS AN UNDERSTATEMENT. THERE'S BEEN -- THERE WAS
7 A CHILD CUSTODY EVALUATOR, DR. DOYNE, POINTED IN THIS CASE
8 YEARS AGO, INITIALLY BACK, IF I'M NOT MISTAKEN, IN 2003,
9 AND -- I'M SORRY, 2004, AND THEN A SUBSEQUENT REEVALUATION,
10 IF YOU WILL, IN 2006, AND THERE HAVE BEEN CONTINUING
11 PROBLEMS IN ENSURING THAT OLIVER HAS A RELATIONSHIP WITH
12 BOTH HIS PARENTS, WHICH I HASTEN TO ADD IS THE PUBLIC POLICY
13 OF THE STATE OF CALIFORNIA AS EMBODIED IN FAMILY CODE
14 SECTION 3020. MINOR'S COUNSEL HAS BEEN INVOLVED IN THIS
15 CASE ALSO FOR A LONG TIME.

16 AND WHEN THE PARTIES WERE HERE BACK IN --

17 **MS. LALLY:** I BELIEVE IT WAS APRIL.

18 **THE COURT:** IT WAS BEFORE THE END OF APRIL. IT
19 WAS THE END OF LAST YEAR. THE COURT -- IN DECEMBER, THE
20 COURT HAD ORDERED THE PARTIES TO RETURN TO DR. DOYNE BECAUSE
21 OLIVER HAD BEEN IN THERAPY, THERE HAD BEEN AN INCIDENT WHERE
22 OLIVER HAD RUNAWAY FROM DAD'S HOUSE AND CALLED THE POLICE,
23 AND THE COURT BELIEVED BECAUSE DR. DOYNE HAD SOME EXPERIENCE
24 WITH THE PARTIES THAT HE MIGHT BE ABLE TO REASSESS THE
25 SITUATION AND DETERMINE WHAT WAS HAPPENING. THE COURT DID
26 THAT AFTER MINOR'S COUNSEL'S -- AFTER RECEIVING MINOR'S
27 COUNSEL'S REPORT. AND MINOR'S COUNSEL WAS EXTREMELY
28 CONCERNED THAT OLIVER'S REACTIONS TO HIS FATHER WERE

1 BEING -- WERE AS A RESULT OF HIS MOTHER'S UNWILLINGNESS TO
2 SHARE A PARENTING RELATIONSHIP AND THAT OLIVER WAS BEING SO
3 INFLUENCED BY HIS MOTHER AND ENCOURAGED NOT TO HAVE A
4 RELATIONSHIP WITH HIS FATHER THAT IT -- HE WOULDN'T HAVE A
5 RELATIONSHIP WITH HIS FATHER.

6 UNFORTUNATELY, FOR A VARIETY OF REASONS,
7 PRINCIPALLY IN THE COURT'S VIEW, AS A RESULT OF MS. LALLY'S
8 ACTIONS, THAT SIMPLY COULDN'T HAPPEN BECAUSE DR. DOYNE
9 RESIGNED AND INDICATED THAT HE WOULD NOT, AFTER RECEIVING
10 WHAT HE DESCRIBED AS THREATS FROM MS. LALLY, CONTINUE ON IN
11 THE CASE. LEAVING THE COURT IN THE POSITION OF HAVING TO
12 CALL YOU BACK IN TO DETERMINE HOW WE'RE GOING TO PROCEED.

13 WHAT I WANT TO DO TODAY, AND AM GOING TO DO, IS I
14 WANT TO PUT BOTH PARTIES UNDER OATH AND ASK THEM A COUPLE OF
15 QUESTIONS, AND THEN I WILL HEAR FROM EVERYBODY ABOUT YOUR
16 SUGGESTIONS FOR HOW THE COURT OUGHT TO PROCEED, BUT I'M
17 GOING TO HAVE YOU BOTH STAND UP AND BE SWORN, PLEASE.

18 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
19 EVIDENCE YOU SHALL GIVE IN THIS MATTER SHALL BE THE TRUTH,
20 THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH SO HELP YOU GOD?

21 MR. ROEPKE: I DO.

22 MS. LALLY: I DO.

23 THE CLERK: THANK YOU. PLEASE BE SEATED AND STATE
24 YOUR FULL NAME FOR THE RECORD ONE AT A TIME.

25 MR. ROEPKE: CLIFFORD ROEPKE.

26 MS. LALLY: MICHELE LALLY.

27 THE COURT: MR. ROEPKE, I'M GOING TO START WITH
28 YOU.

1 CURRENT ORDER PROVIDES THAT YOU AND MS. LALLY
2 SHARE PHYSICAL CUSTODY OF OLIVER OVER THE SUMMER ON A
3 ROTATING TWO WEEK ON/TWO WEEK OFF SCHEDULE.

4 MR. ROEPKE: CORRECT.

5 THE COURT: HAS THAT BEEN HAPPENING?

6 MR. ROEPKE: IT HAS BEEN HAPPENING.

7 THE COURT: AND FROM WHEN -- WHERE IS OLIVER
8 TODAY?

9 MR. ROEPKE: HE'S CURRENTLY AT MY HOUSE.

10 THE COURT: AND HOW LONG HAS HE BEEN WITH YOU?

11 MR. ROEPKE: HE'S BEEN WITH ME FOR APPROXIMATELY A
12 WEEK AND A HALF.

13 THE COURT: AND IS THIS THE FIRST TWO-WEEK BLOCK
14 THAT YOU'VE HAD SINCE THE SUMMER STARTED?

15 MR. ROEPKE: IT IS THE SECOND.

16 THE COURT: AND IN YOUR VIEW, HOW HAVE THOSE WEEKS
17 GONE?

18 MR. ROEPKE: WELL, IT'S THE SAME CONTINUING
19 PROBLEM THAT I'VE BEEN HAVING WITH MICHELE ALL ALONG;
20 CONSTANT PHONE CALLS. I GET APPROXIMATELY SIX TO EIGHT
21 PHONE CALLS ON OLIVER'S CELL PHONE CONSISTENTLY EVERY SINGLE
22 DAY, AND I CAN HEAR MORE OR LESS WHAT SHE'S SAYING TO HIM,
23 WHAT SHE'S ASKING HIM. SHE'S BASICALLY INTERROGATING HIM,
24 ASKING WHAT HE'S DOING, WHERE HE'S GOING, ALL THE REST OF
25 IT. THAT HAS BEEN A SITUATION THAT IS CONTENTIOUS. THERE'S
26 A VERY STRICT RULE ABOUT ONE PHONE CALL A DAY, AND SHE HAS
27 NOT CARED A SINGLE WIT ABOUT ABIDING BY THAT RULE. THE
28 CONSEQUENCE OF THOSE PHONE CALLS IS THE KIND OF COERCION

1 THAT WE'VE BEEN SEEING, I.E., THE LAST INCIDENT WHERE THE
2 POLICE CAME AND THE ISSUE OF WHAT WE HAVE BEFORE THE COURT,
3 WHICH WAS CLEARLY CREATED BY MICHELE THROUGH THE PHONE. SO
4 THAT'S BEEN A REAL BIG BONE OF CONTENTION WITH ME DURING
5 THIS SUMMER SCHOOL OR SUMMERTIME PERIOD.

6 SECONDLY, MICHELE, I BELIEVE, HAS ENROLLED OLIVER
7 IN A PRIVATE SCHOOL WITHOUT CONSULTING ME, WITHOUT TALKING
8 TO ME, AND THIS IS AGAIN ANOTHER ITEM THAT IS BROUGHT INTO
9 THE LEXICON OF CONVERSATION WITHOUT ANY REGARD TO MY
10 PARENTAL RIGHT.

11 THE COURT: AND WHAT YOU MEAN BY THAT IS THAT YOU
12 BELIEVE NOT ONLY THAT SHE ENROLLED OLIVER IN A PRIVATE
13 SCHOOL, BUT SHE'S TOLD OLIVER THAT HE WAS GOING TO A PRIVATE
14 SCHOOL.

15 MR. ROEPKE: WELL, YES, EXACTLY. AND ALSO I
16 BELIEVE THAT SHE HAS ENROLLED OLIVER IN THIS SCHOOL UNDER
17 THE NAME OF LALLY, WHICH SHE HAS ALSO DONE IN OTHER
18 INSTANCES ON NUMEROUS OCCASIONS NOT RESPECTING HIS TRUE
19 LEGAL NAME.

20 THE COURT: AND WHAT HAS OLIVER BEEN DOING DURING
21 THE DAY WHEN HE'S WITH YOU?

22 MR. ROEPKE: HANGING AROUND THE HOUSE, SWIMMING.
23 WE'VE GOT KIDS THAT LIVE IN OUR COMPLEX, SO HE'S BEEN
24 SPENDING A LITTLE BIT OF TIME WITH THEM. WE'VE GONE OUT A
25 COUPLE OF TIMES.

26 THE COURT: AND HOW DO YOU THINK YOUR RELATIONSHIP
27 WITH HIM IS NOW?

28 MR. ROEPKE: MY RELATIONSHIP WITH MY SON IS

1 USUALLY GOOD. IT'S VERY LOW PRESSURE. WE DO FUN THINGS,
2 LIKE I SAID, YOU KNOW, GO SWIMMING, HANGING AROUND.

3 THE PROBLEM IS THAT IF I'M, AND OLIVER,
4 CONTINUALLY BOMBARDED WITH THE NEGATIVITY THAT WE RECEIVE
5 FROM MICHELE, THE COURSE OF THE DAY, THE PATTERN OF OUR
6 RELATIONSHIP EBBS AND FLOWS DEPENDING ON WHETHER SHE'S
7 INFLUENCING OLIVER, CALLING HIM, ASKING HIM WHETHER HE'S
8 DOING THIS OR DOING THAT, AND IT'S VERY DIFFICULT TO GET
9 INTO A ROUTINE TO -- TO FEEL LIKE WE'RE -- WE'RE THERE
10 TOGETHER SPENDING TIME TOGETHER.

11 GIVE YOU AN EXAMPLE. THIS TWO-WEEK PERIOD WE
12 SPENT DOWN HERE IN SAN DIEGO, OKAY, WHICH HAS BEEN A LOT
13 MORE DIFFICULT, NOT LIKE IT'S BEEN OVERLY DIFFICULT, BUT YOU
14 KNOW, IT'S -- IF YOU JUST COMPARE THE TWO, THE FIRST TWO
15 WEEKS' STINT WE WENT TO NORTHERN CALIFORNIA, AND IN THAT
16 INSTANCE WE WENT UP TO SIERRAS, AND THERE WERE TIMES AND
17 PLACES WHERE SHE SIMPLY COULDN'T REACH HIM BY PHONE. WELL,
18 THE -- AND AS FAR AS I KNOW AND AS FAR AS MY UNDERSTANDING
19 OF THE RELATIONSHIP WITH OLIVER, THAT THAT PERIOD OF TIME
20 WAS A LOT MORE ENJOYABLE. I FELT MUCH MORE INVOLVED WITH MY
21 SON BECAUSE IT WASN'T THIS CONSTANT, YOU KNOW, BREAKING INTO
22 AND TRYING TO, YOU KNOW, UNDERMINE THE TIME BEING SPENT.
23 AND SO THIS IS AN ONGOING SITUATION. IT'S BEEN GOING ON FOR
24 YEARS, SO.

25 THE COURT: HE HAS NOT ATTEMPTED TO RUNAWAY --

26 MR. ROEPKE: NO.

27 THE COURT: -- WHILE HE'S BEEN WITH YOU?

28 MR. ROEPKE: NO.

1 **THE COURT:** AND WHEN HE'S IN MS. LALLY'S CARE, HOW
2 OFTEN DO YOU TALK TO HIM DURING?

3 **MR. ROEPKE:** I CAN'T. I CAN'T. I'LL CALL AND
4 I'LL LEAVE A MESSAGE AND I'VE TALKEN [SIC] TO DR. MILLER
5 ABOUT THIS, AND DR. MILLER SAID, "KEEP TRYING." AND I TOLD
6 DR. MILLER, IT'S LIKE, YOU KNOW, "I'M NOT AN IDIOT, YOU
7 KNOW, IF I CALL MY SON 20 TIMES AND LEAVE MESSAGES 20 TIMES,
8 20 SEPARATE DAYS, AND AFTER 20 TIMES HE DOESN'T RETURN THE
9 PHONE CALL, I'M NOT JUST GOING TO KEEP LEAVING MESSAGES."
10 AND I KNOW MICHELE HAS WRITTEN TO THAT REGARD THAT, "OH, NO,
11 HE'S OLD ENOUGH, IF HE DIDN'T WANT TO CALL BACK, I CAN'T
12 MAKE HIM CALL BACK." IT'S CLEAR. SHE HASN'T BEEN MAKING
13 THE SUGGESTION FOR HIM TO CALL BACK. AND AS A MATTER OF
14 FACT, SHE'S BEEN BEING NEGATIVE ABOUT IT, AND DR. MILLER
15 KNOWS THIS, TOO.

16 **THE COURT:** AND OLIVER IS STILL SEEING DR. MILLER?

17 **MR. ROEPKE:** HE -- DR. MILLER PULLED OUT OF THE
18 COUNSELING BECAUSE MICHELE MORE OR LESS DID THE SAME THING
19 TO DR. MILLER AS SHE DID TO DR. DOYNE. FIRST IT STARTED
20 WITH "I CAN'T AFFORD YOU," AND THEN AFTER HE PROVIDED
21 ASSISTANCE FOR, YOU KNOW, WHATEVER, A LESSER RATE, SHE THEN
22 FOLLOWED UP WITH "YOU ARE BIAS." AND HE WROTE ME A LETTER
23 TO THAT REGARD. I'VE GOT A COPY OF IT. I COULD READ IT OFF
24 TO YOU IF YOU'D LIKE. BUT HE HAS BEEN IN THE SAME POSITION
25 AS EVERYONE ELSE.

26 **THE COURT:** AND WHEN DID YOU RECEIVE A LETTER FROM
27 DR. MILLER?

28 **MR. ROEPKE:** IT'S HERE.

1 THE COURT: TAKE YOUR TIME. WHEN WAS THE LAST
2 TIME YOU SAW DR. MILLER?

3 MR. ROEPKE: LAST TIME I SAW DR. MILLER WAS
4 PROBABLY FOUR MONTHS AGO WITH OLIVER.

5 THE COURT: AND WHEN --

6 MR. ROEPKE: AND THEN AT THAT POINT AFTER OUR --
7 OUR MEETING, OUR LAST MEETING, HE CONTACTED ME, WHICH WAS
8 THIS LETTER, WHERE HE SAID, "UNFORTUNATELY, I HAVE TO PULL
9 OUT BECAUSE MICHELE IS SAYING THAT I AM -- I AM BIASED, AND
10 I CAN'T -- CAN'T CONTINUE IN THIS REGARD BECAUSE SHE'S
11 BASICALLY SAYING THAT I HAVE NO PLACE."

12 THE COURT: ALL RIGHT. LET ME --

13 MR. ROEPKE: WE CAN CONTINUE ON.

14 THE COURT: -- ASK MS. LALLY SOME QUESTIONS WHILE
15 I --

16 MS. LALLY, I TAKE IT YOU AGREE THAT OLIVER BEEN
17 WITH HIS FATHER FOR THIS IS NOW THIS SECOND TWO-WEEK PERIOD
18 OVER THE SUMMER?

19 MS. LALLY: YES.

20 THE COURT: AND HOW MANY TIMES A DAY ARE YOU
21 CALLING HIM?

22 MS. LALLY: I CALL HIM IN THE EVENING BETWEEN 5:30
23 AND 6:30.

24 THE COURT: ONCE A DAY?

25 MS. LALLY: YES, I DO.

26 THE COURT: THAT'S ALL?

27 MS. LALLY: UNLESS HE CALLS ME AND I MISS HIS
28 CALL, I WILL RETURN IT; OTHERWISE, I CALL HIM ONCE A DAY.

1 THE COURT: SO, IF I WERE TO ASK TO SEE OLIVER'S
2 CELL PHONE, IT WOULD SHOW ONE CALL A DAY FROM YOUR PHONE?

3 MS. LALLY: UNLESS HE CALLS ME AND I MISS HIS
4 PHONE CALL, I RETURN HIS CALL.

5 THE COURT: HOW MANY TIMES A DAY DOES HE CALL YOU
6 ON AVERAGE?

7 MS. LALLY: HE USUALLY CALLS ME IN THE MORNING AND
8 SOMETIMES HE'LL CALL ME IN THE AFTERNOON TO ASK A QUESTION
9 AND HE CALLS ME BEFORE HE GOES TO BED.

10 THE COURT: AND FROM YOUR PERSPECTIVE, HOW IS YOUR
11 TIME WITH OLIVER?

12 MS. LALLY: IT'S FINE. IT'S ALWAYS BEEN GOOD.

13 THE COURT: SO IS IT STILL YOUR BELIEF THAT THE
14 COURT SHOULD MAKE A CHANGE TO THE CUSTODY AND VISITATION
15 ORDER?

16 MS. LALLY: AS FAR AS?

17 THE COURT: HOW MUCH TIME OLIVER SPENDS WITH YOU
18 AND HOW MUCH TIME HE SPENDS WITH HIS FATHER.

19 MS. LALLY: I WANT WHAT OLIVER IS HAPPY WITH. HE
20 DOESN'T SEEM TO BE AS HAPPY WHEN HE'S THERE. HE CALLS ME
21 AND TELLS ME HE'S BORED. HE'S NOT ALLOWED TO SEE ANY OF HIS
22 FRIENDS FROM SCHOOL.

23 THE COURT: AND HAVE YOU ENROLLED OLIVER IN
24 SCHOOL?

25 MS. LALLY: WE HAVE AN AGREEMENT IN THE MSA THAT
26 OLIVER WILL GO TO PRIVATE SCHOOL.

27 THE COURT: AND WHERE IS THAT CONTAINED?

28 MS. LALLY: SO HE APPLIED TO CATHEDRAL CATHOLIC

1 HIGH SCHOOL. WE ALSO APPLIED TO HIGH TECH HIGH. IT IS IN
2 THE MARRIAGE SETTLEMENT AGREEMENT. I MADE SURE THIS WAS
3 DONE. HE IS ACCEPTED INTO CATHEDRAL CATHOLIC HIGH SCHOOL.
4 I ENROLLED HIM -- HE'S NOT ENROLLED YET -- UNDER HIS NAME,
5 LEGAL NAME LALLY-ROEPKE, AND IT IS ALSO UNDER THE IMPRESSION
6 THAT HE'S SUPPOSED TO PAY HALF OF THE TUITION. WE HAVE NOT
7 GOTTEN INTO HIGH TECH HIGH. WE ARE ON THE WAITING LIST.
8 THAT IS IN THE MARRIAGE SETTLEMENT AGREEMENT. AND AS FAR AS
9 THAT GOES, MR. ROEPKE KEEPS TAKING OLIVER BY A SCHOOL NEAR
10 HIS HOUSE AND TELLING HIM THAT'S WHERE HE'S GOING TO SCHOOL.
11 IT WAS AGREED THAT HE WAS GOING TO PRIVATE SCHOOL. HE'S
12 BEEN THROUGH CATHOLIC SCHOOL SINCE HE'S BEEN IN PRESCHOOL,
13 AND I WANTED HIM TO CONTINUE WITH A CATHOLIC EDUCATION
14 BECAUSE I BELIEVE IT PUTS GOOD MORALS IN A CHILD. HE'S DONE
15 VERY WELL.

16 THE COURT: AND TELL ME WHERE IN THE SETTLEMENT
17 AGREEMENT YOU THINK THAT IT SAYS IT WILL CONTINUE TO ATTEND.

18 MS. LALLY: I DON'T HAVE IT WITH ME, BUT I MADE
19 SURE THAT THAT WAS IN THERE. I CAN GET IT AND GO THROUGH IT
20 AND --

21 THE COURT: OH, I SEE.

22 MS. LALLY: -- PULL A PAGE OUT.

23 THE COURT: I SEE A PROVISION. HOLD ON.
24 DID YOU CONSULT WITH MR. ROEPKE ABOUT IT?

25 MS. LALLY: IT WAS DONE WHEN HE WENT TO THE
26 CATHOLIC SCHOOL, AND THAT'S WHY IT'S IN THE MARRIAGE
27 SETTLEMENT AGREEMENT.

28 THE COURT: IT WAS DONE WHEN WHO WENT TO CATHOLIC

1 SCHOOL?

2 MS. LALLY: FROM WHEN HE STARTED SCHOOL.

3 THE COURT: NO, MS. LALLY. WHEN DID --

4 MS. LALLY: THAT'S WHY IT WAS IN THE MARRIAGE
5 SETTLEMENT AGREEMENT BECAUSE --

6 THE COURT: LET ME FINISH.

7 MS. LALLY: OH.

8 THE COURT: MS. LALLY, LET ME FINISH MY QUESTION.

9 MY QUESTION IS: WHEN YOU APPLIED, YOU SUBMITTED
10 AN APPLICATION, I ASSUME --

11 MS. LALLY: UH-HUH.

12 THE COURT: -- TO CATHEDRAL?

13 MS. LALLY: UH-HUH.

14 THE COURT: IS THAT "YES"?

15 MS. LALLY: YES.

16 THE COURT: AND TO HIGH TECH HIGH?

17 MS. LALLY: CORRECT.

18 THE COURT: WHICH THE COURT WILL NOTE FOR THE
19 RECORD IS NOT A PRIVATE SCHOOL, IT'S A CHARTER SCHOOL.

20 GO AHEAD. AND ANY OTHER SCHOOLS?

21 MS. LALLY: NOPE.

22 THE COURT: DID YOU TALK TO MR. ROEPKE BEFORE YOU
23 SUBMITTED THOSE APPLICATIONS?

24 MS. LALLY: I -- I WAS UNDER ASSUMPTION SINCE HE
25 AGREED TO IT IN THE MSA THAT HE WAS AWARE THAT THAT'S WHERE
26 HE WAS GOING TO SCHOOL. IT WAS DECIDED THEN THAT HE WAS
27 GOING TO GET --

28 THE COURT: THERE'S NOTHING IN THE MSA ABOUT WHERE

1 HE'S GOING TO GO TO SCHOOL. I'LL READ YOU THE --

2 MS. LALLY: OKAY.

3 THE COURT: MS. LALLY, I'LL READ YOU THE
4 PROVISION. IT SAYS, "THE PARTIES MUTUALLY DESIRE THAT THEIR
5 CHILD ATTEND PRIVATE SCHOOL THROUGH HIGH SCHOOL GRADUATION."

6 THEN IT GOES ON TO TALK ABOUT PAYMENT, THAT
7 "MR. ROEPKE, AS ADDITIONAL CHILD SUPPORT, WILL PAY 50
8 PERCENT, NOT TO EXCEED \$3,000 A YEAR, OF PRIVATE SCHOOL
9 TUITION, BOOKS, AND REQUIRED FEES, AND WIFE SHALL PAY THE
10 REST. IF THE PARTIES CANNOT AGREE ON THE PRIVATE SCHOOL
11 CHILD WILL ATTEND, THE COURT SHALL RESERVE JURISDICTION TO
12 RESOLVE THE DISPUTE. IF THE PARTIES CANNOT AGREE ON THE
13 PRIVATE SCHOOL CHILD WILL ATTEND, THE OBLIGATIONS UNDER THIS
14 SECTION WILL CEASE." THAT MEANS YOU HAVE TO AGREE OR TRY TO
15 AGREE, AND IF YOU DIDN'T EVEN TELL HIM THAT YOU WERE
16 APPLYING TO ANY SCHOOLS, HOW IS -- HOW WOULD YOU REACH AN
17 AGREEMENT?

18 MR. ARMSTRONG: I -- I WAS UNDER THE ASSUMPTION
19 THAT HE KNEW THAT THAT'S THE CATHOLIC SCHOOL THAT'S IN THE
20 AREA, THAT THAT'S THE ONE THAT HE WAS GOING TO APPLY TO.

21 THE COURT: WELL --

22 MS. LALLY: IT'S THE ONE THAT CLOSER TO HIS HOUSE.
23 THE OTHER ONE IS DOWNTOWN. IT'S SAINTS. IT'S AN ALL-BOYS
24 SCHOOL. SO THERE'S TWO.

25 THE COURT: BUT YOU DIDN'T CALL MR. ROEPKE UP WHEN
26 IT WAS TIME FOR THE APPLICATION TO BE SUBMITTED. DIDN'T IT
27 REQUIRE HIS SIGNATURE ON THE APPLICATION?

28 MR. ARMSTRONG: NO, IT DID NOT. OLIVER WENT WITH

1 THE SCHOOL ON A FIELD TRIP TO THE TWO CATHOLIC SCHOOLS IN
2 THE AREA. HE TOOK THE TEST. HE GOT ACCEPTED. AND THAT IS
3 THE ONE THAT'S CLOSER, WHICH IS WHY WE WENT TO THAT ONE.

4 THE COURT: IS HE ENROLLED IN CATHEDRAL?

5 MS. LALLY: HE'S ACCEPTED.

6 THE COURT: HAVE YOU FILLED OUT A FORM SAYING HE'S
7 GOING?

8 MS. LALLY: IF -- IF EVERYTHING IS FINE, YEAH.

9 THE COURT: WELL, MY QUESTION WAS: HAVE YOU TOLD
10 THE SCHOOL THAT HE'S COMING IN THE FALL?

11 MS. LALLY: I WAS WAITING TO SEE ABOUT THE OTHER
12 SCHOOL ALSO. BUT I AM UNDER THE ASSUMPTION AND I BELIEVE
13 OLIVER'S UNDER THE ASSUMPTION, YES, THAT'S WHERE HE WOULD
14 LIKE TO GO TO SCHOOL. MOST OF HIS CLASSMATES FROM STELLA
15 MARIS ARE GOING THERE, IT'S A VERY GOOD SCHOOL, AND I
16 BELIEVE A CATHOLIC EDUCATION IS WHAT HE'S HAD AND IS GOOD.

17 THE COURT: I HAVE NO DOUBT ALL THAT'S TRUE. THE
18 PROBLEM, MS. LALLY, IS THAT'S NOT HOW JOINT LEGAL CUSTODY IS
19 EXERCISED, AND THAT'S NOT WHAT YOUR AGREEMENT SAYS.

20 MS. LALLY: WE DID DISCUSS CATHOLIC HIGH SCHOOL --
21 CATHOLIC SCHOOLING EARLIER. I DIDN'T REALIZE THAT I DIDN'T
22 HAVE TO PUT THE EXACT SCHOOL THAT WAS IN THERE, BUT CATHOLIC
23 SCHOOL WAS DISCUSSED WHEN HE WAS ENROLLED IN SCHOOL SINCE
24 PRESCHOOL, THAT HE WOULD CONTINUE HIS SCHOOLING. I DIDN'T
25 WRITE THAT. IF I HAD WRITTEN THAT, I PROBABLY --

26 THE COURT: NO, YOU SIGNED IT.

27 MS. LALLY: I'M SORRY. I PROBABLY SHOULD READ
28 EVERYTHING I SIGN, AND UNFORTUNATELY, I DON'T. BUT I WAS

1 JUST UNDER THE ASSUMPTION THAT THAT IS THE SCHOOL THAT HE
2 WOULD GO TO BECAUSE I DON'T KNOW OTHER PRIVATE SCHOOLS, AND
3 HE HAS BEEN TO CATHOLIC SCHOOL, AND IT IS THE ONLY ONE IN
4 THE AREA THAT IS CLOSE TO HIS HOME AND MY HOME.

5 THE COURT: AND --

6 MS. LALLY: DOES HE HAVE A PROBLEM WITH THIS? I
7 MEAN.

8 THE COURT: MS. LALLY, THE PROBLEM IS WHAT IT
9 MEANS TO EXERCISE JOINT LEGAL CUSTODY, AND YOU HAVE
10 DEMONSTRATED REPEATEDLY TO THIS COURT THAT YOU DON'T TAKE
11 THAT RESPONSIBILITY SERIOUSLY. YOU THINK THAT YOU CAN ACT
12 UNILATERALLY, AND YOU DO, AND IT'S A PROBLEM, AND IT IS NOT
13 WHAT THE COURT EXPECTS OF PARENTS WHO CO-PARENT.

14 CO-PARENTING MEANS IN THE FALL OF OLIVER'S 8TH
15 GRADE YEAR WHEN THE QUESTION OF WHERE HE'S GOING TO GO TO
16 HIGH SCHOOL IS BEING ADDRESSED BY THE SCHOOL, YOU SIT DOWN
17 EITHER BY E-MAIL OR ON THE PHONE OR IN PERSON AND SAY TO
18 MR. ROEPKE, "WHERE DO YOU THINK WE SHOULD SEND OLIVER TO
19 HIGH SCHOOL? HERE'S MY THOUGHTS ON THE SUBJECT." AND YOU
20 HAVE A CONVERSATION ABOUT IT, AND YOU TRY TO REACH AN
21 AGREEMENT. YOU DON'T JUST APPLY. THAT'S THE PROBLEM.

22 MS. LALLY: OKAY. WELL, I HAD IT PUT IN THE
23 MARRIAGE SETTLEMENT AGREEMENT BECAUSE I WANTED TO MAKE SURE
24 HE WENT THROUGH CATHOLIC EDUCATION. I'M SORRY THAT I DIDN'T
25 HAVE THE CORRECT WORD PUT IT IN. I JUST ASSUMED THAT HE
26 KNEW.

27 THE COURT: EVEN IF IT SAYS CATHOLIC EDUCATION,
28 MS. LALLY --

1 MS. LALLY: OKAY. I'M WRONG.

2 THE COURT: MS. LALLY, IT SAYS YOU HAVE TO AGREE.

3 MS. LALLY: BUT HE DID AGREE TO THE PRIVATE
4 EDUCATION, SO WHAT DO I DO?

5 THE COURT: I JUST TOLD YOU WHAT YOU WERE SUPPOSED
6 TO DO.

7 MS. LALLY: OKAY.

8 THE COURT: ALL RIGHT. AND WHAT'S YOUR
9 UNDERSTANDING OF WHY OLIVER IS NO LONGER SEEING DR. MILLER?

10 MS. LALLY: I ACTUALLY HAD AN APPOINTMENT WITH
11 DR. MILLER. I HAD TO COME UP WITH SOME MORE FUNDS TO PAY
12 HIM. BUT OLIVER IS STILL SEEING DR. MILLER. I JUST DON'T
13 HAVE THE MONEY TO PAY RIGHT NOW. BUT I DID TALK TO
14 DR. MILLER LAST MONTH.

15 THE COURT: WHEN WAS THE LAST TIME YOU TOOK OLIVER
16 TO SEE DR. MILLER?

17 MS. LALLY: I HAVEN'T TAKEN HIM FOR A WHILE
18 BECAUSE I HAVEN'T HAD THE MONEY. BUT I DID SPEAK WITH
19 DR. MILLER AND HE IS FINE STILL SEEING OLIVER, AND I WAS
20 GOING TO TAKE OLIVER AS SOON AS I CAME UP THAT I'M EVEN WITH
21 THE PAYMENTS, WHICH I DID JUST SEND OFF. SO THERE IS NO
22 DISPUTE WITH ME WITH DR. MILLER. I'M FINE WITH DR. MILLER.
23 DR. MILLER IS FINE WITH ME. HE SENT ME AN E-MAIL ASKING HOW
24 IS OLIVER.

25 THE COURT: AND WHEN DID YOU RECEIVE THAT E-MAIL?

26 MS. LALLY: I BELIEVE IT WAS LAST MONTH.

27 THE COURT: AND HOW MUCH DOES DR. MILLER CHARGE?

28 MS. LALLY: 120 A VISIT.

1 **THE COURT:** ALL RIGHT. DID YOU FIND THE LETTER?

2 **MR. ROEPKE:** YEAH, I FOUND THE LETTER. ALSO, IF I
3 COULD, BECAUSE I KNOW -- I WANT TO MAKE SURE THAT EVERYTHING
4 IS BROUGHT TO EVERYONE'S ATTENTION, THAT IF THERE ARE
5 DECISIONS MADE TODAY REGARDING, YOU KNOW, ISSUES OF THIS
6 NATURE THAT, ONE, THE COURT WOULD HOPEFULLY LOOK AT THE
7 CHILD SUPPORT ISSUE BECAUSE AT PRESENT IT IS GROSSLY OUT OF
8 GUIDELINE. THE SAME, I WOULD ASSUME, GOES TO ANY KIND OF
9 SPLIT THAT WOULD RELATE TO MR. CHUCAS' FEES. AS IT STANDS
10 RIGHT NOW, I'M PAYING 75 PERCENT OF THOSE FEES, AND I THINK
11 THAT NEEDS TO CHANGE, AND THE SAME THING WITH ANY KIND OF
12 EVALUATION; THOUGH, MY FEELINGS IS, AND I'D LIKE TO BE VERY
13 PLAIN WITH YOU, WE DON'T NEED ANY MORE EVALUATION.

14 **THE COURT:** I WAS JUST GOING TO ASK YOU FOR YOUR
15 VIEW. OKAY.

16 **MR. ROEPKE:** I THINK WE'VE BEEN EVALUATED TO THE
17 HILT. EVERYONE UNDERSTANDS WHAT'S GOING ON. I CAN GO
18 THROUGH A LITANY OF BACKGROUND, BUT YOU'VE GOT THE FILE IN
19 FRONT OF YOU. I ASSUME YOU'VE READ DR. DOYNE'S SECOND
20 REPORT.

21 **THE COURT:** I'VE READ EVERYTHING.

22 **MR. ROEPKE:** I -- I HAPPEN TO AGREE WITH MOST OF
23 MR. CHUCAS' OPINION ON THE MATTER. I WOULD ALMOST DEFER THE
24 ISSUE TO MR. CHUCAS. AT THIS POINT IN TIME WE HAVE GIVEN
25 PLENTY OF OPPORTUNITY TO FOLLOW THROUGH AND TO DO THE RIGHT
26 THING AND TO FOLLOW THE COURSE OF THE EVALUATION, AND
27 BECAUSE THAT HAS NOT HAPPENED, WE CAN'T WISH AWAY THAT WE'RE
28 GOING TO HAVE SOME SORT OF COOPERATION BECAUSE SIMPLY

1 COOPERATION IS NOT IN THE CARDS. IT JUST NOT HAPPENING.

2 AND MY FEELING IS IS THAT MR. CHUCAS GAVE THREE
3 OPTIONS. I DON'T PARTICULARLY LIKE THE OPTION, BUT I THINK
4 THE OPTION IS NECESSARY. WE NEED TO HAVE A CHANGE IN FULL
5 CUSTODY.

6 THE COURT: AND BY THAT YOU MEAN YOU THINK THAT
7 OLIVER SHOULD COME LIVE WITH YOU FULL-TIME?

8 MR. ROEPKE: YEAH, FULL -- FULL CUSTODY, FULL
9 LEGAL CUSTODY, FULL PHYSICAL CUSTODY. FOR A LIMITED PERIOD
10 OF TIME ON THE PHYSICAL CUSTODY, I THINK MR. CHUCAS
11 SUGGESTED 60 DAYS -- WAS IT 60 DAYS? -- OF FULL PHYSICAL
12 CUSTODY AND A CHANGE OF LEGAL CUSTODY, AND THEN AFTER A
13 60-DAY PERIOD, THEN THERE WOULD BE SUPERVISED VISITATIONS,
14 AND AFTER THAT, WE COULD GO BACK.

15 MY FEELING IS IS THAT I HAVE ALWAYS WANTED 50/50
16 SHARING. I HAVE NO INTEREST IN TAKING FULL CUSTODY ON A
17 FULL-TIME BASIS. IF MICHELE COULD SOMEHOW CHANGE HER WAYS
18 AND SEE THE LIGHT, THAT -- THAT IN MY, WHATEVER, LONG-TERM
19 VISION WOULD BE THE BEST THING FOR OLIVER AND CERTAINLY BE
20 THE BEST THING FOR ME.

21 THE COURT: ALL RIGHT. AND MS. LALLY, WHAT'S
22 YOURS? FIRST, ON WHETHER THERE'S A NEED FOR ANY ADDITIONAL
23 EVALUATION, AND SECOND, ON WHETHER THE COURT SHOULD MAKE ANY
24 CHANGES TO THE CUSTODY ORDER OR VISITATION ORDER.

25 MS. LALLY: NUMBER ONE, I'M TIRED OF OLIVER COMING
26 HOME WITH BRUISES ON HIM BECAUSE HE HAS A DISAGREEMENT WITH
27 HIM. THAT'S NOT RIGHT. I DON'T STRIKE MY CHILD. I DON'T
28 PUSH MY CHILD. I DON'T THINK ANYBODY SHOULD DO THAT TO A

1 CHILD. THERE'S A NUMBER OF INSTANCES WHICH HE COMES HOMES
2 WITH BRUISES. HE HAD A BIG SCRAPE RIGHT HERE ON HIM THAT I
3 SHOWED TO MR. CHUCAS BECAUSE HE PUSHED HIM DOWN THE STAIRS
4 WHEN HE RAN AWAY AND THE POLICE BROUGHT HIM BACK. HE'S
5 RUNAWAY MORE THAN ONE TIME. THERE IS A PROBLEM. HE'S BEEN
6 ASKED TO GO TO ANGER MANAGEMENT BY TWO OR THREE PEOPLE. THE
7 FIRST TIME DR. DOYNE GAVE HIM A CHOICE OF WHAT HE WANTED TO
8 DO HE DIDN'T EVEN RESPOND TO THAT. IT WAS ANOTHER TWO OR
9 THREE YEARS WHEN THIS MSA THAT WAS COMING OFF THAT HE
10 DECIDED HE WANTED MORE TIME. I THINK THAT WOULD BE
11 EXTREMELY DETRIMENTAL TO OLIVER TO KEEP HIM FROM HIS MOTHER
12 WHO HE'S BEEN WITH SINCE HE WAS BORN. MR. ROEPKE HAS A
13 VIOLENT, HORRIBLE TEMPER. OLIVER HAD A PHONE IN HIS ROOM
14 WITH HIS OWN PHONE NUMBER ONLY IN HIS ROOM. I BELIEVE MAYBE
15 IT WAS CALLED ONE OR TWO TIMES. MR. ROEPKE'S WELCOME TO
16 CALL OLIVER WHENEVER HE WANTS. HE CAN CALL AS MANY TIMES A
17 DAY AS HE WANTS. HE DOESN'T DO THAT. I DO NOT KEEP THE
18 PHONE FROM OLIVER. HE HAS A PHONE IN HIS BED, RIGHT NEXT TO
19 THE BED. HE HAS A PHONE IN THE EXTRA ROOM. HE'S WELCOME TO
20 CALL WHENEVER HE WANTS. MR. ROEPKE HAS OLIVER'S CELL PHONE
21 NUMBER. I DON'T HOLD OLIVER'S CELL PHONE. IT'S IN HIS
22 POCKET. I DON'T EVEN HAVE HIS PHONE NEAR ME EVER. I DON'T
23 BELIEVE MR. ROEPKE EVER CALLS OLIVER. I DON'T KNOW WHY.
24 AND I WOULD NEVER KEEP HIM FROM CALLING OLIVER EVER. IF HE
25 WANTS TO GO WITH HIM ON EXTRA TIMES, THAT'S FINE. ALL HE
26 HAS TO DO IS CALL AND ASK.

27 THE COURT: MR. ARMSTRONG, ANYTHING YOU WANT TO
28 ADDRESS?

1 **MR. ARMSTRONG:** JUST BRIEFLY, YOUR HONOR. I DON'T
2 BELIEVE A CHANGE OF CUSTODY IS BEFORE THE COURT THIS
3 AFTERNOON. IT'S MY UNDERSTANDING THE PURPOSE OF THIS
4 HEARING IS TO DETERMINE WHERE WE GO FROM HERE VIS-A-VIS THE
5 CUSTODY EVALUATOR. RELATED TO THAT TOPIC, MR. CHUCAS AND I
6 HAD A CONVERSATION BEFORE THIS HEARING STARTED THIS
7 AFTERNOON THAT PERHAPS IN THE INTEREST OF SAVING FUNDS THAT
8 WE GO -- THAT THE PARTIES GO WITH THE RECOMMENDATION OF
9 DR. CHRISTOPHER MILLER, WHO IS THE CHILD'S, OLIVER'S
10 THERAPIST. I ASSUME THAT'S STILL FINE WITH MS. LALLY.

11 **THE COURT:** AND WHAT DOES THAT MEAN SINCE THE
12 COURT'S NEVER HEARD FROM DR. MILLER DIRECTLY?

13 **MR. CHUCAS:** DO YOU WANT ME TO RESPOND TO THAT,
14 YOUR HONOR?

15 **THE COURT:** CERTAINLY, MR. CHUCAS. YOU CAN CHIME
16 ON IN.

17 **MR. CHUCAS:** WELL, YOUR HONOR, THE -- WELL, I'LL
18 LET COUNSEL FINISH BECAUSE MY PRESENTATION WILL TAKE A
19 COUPLE OF MINUTES, AND I WILL ADDRESS THAT ISSUE AS PART OF
20 MY PRESENTATION.

21 **THE COURT:** IS IT YOUR SUGGESTION THAT THE COURT
22 ASK DR. MILLER FOR SOME INPUT INTO THIS?

23 **MR. ARMSTRONG:** CORRECT.

24 **THE COURT:** AND I AM LOOKING AT AN E-MAIL FROM
25 DR. MILLER THAT IS DATED BACK IN SEPTEMBER OF 2008 THAT
26 SEEMS TO INDICATE THAT DR. MILLER WAS GOING TO DISCONTINUE
27 THERAPY BECAUSE MS. LALLY DIDN'T WANT HIM TO CONTINUE. SO
28 I'M NOT SURE I KNOW WHETHER DR. MILLER IS WILLING TO DO WHAT

1 YOU ARE SUGGESTING.

2 MR. ARMSTRONG: WELL, WE'D HAVE TO INQUIRE. I
3 BELIEVE, IF I'M READING THAT CORRECTLY, IT HAS TO DO WITH
4 FINANCES, BUT.

5 THE COURT: WELL, THERE'S A LITTLE MORE THAN THAT.

6 MR. ARMSTRONG: WELL, I SAW THAT POSTSCRIPT ON
7 THERE, YEAH. THE OTHER ALTERNATIVE WOULD BE JUST, I GUESS,
8 IN LIGHT OF DR. DOYNE'S UNWILLINGNESS TO CONTINUE ON,
9 APPOINT SOMEBODY ELSE, BUT JEEZ, THAT SEEMS LIKE IT'S SAD
10 BECAUSE IT'S GOING TO BE A COSTLY PROPOSITION FOR THIS NEW
11 EVALUATOR TO GET UP TO SPEED ON THIS FILE.

12 THE COURT: I WILL TELL YOU MY INCLINATION IS NOT
13 TO DO ANOTHER CUSTODY EVALUATION, BUT LET ME -- BECAUSE I
14 THINK MR. ROEPKE IS RIGHT. THIS FAMILY'S BEEN EVALUATED UP
15 ONE SIDE AND DOWN THE OTHER.

16 MR. ARMSTRONG: I'M FINE WITH DR. MILLER. I
17 ACTUALLY SPOKE WITH DR. MILLER LAST MONTH AND THE MONTH
18 BEFORE THAT.

19 THE COURT: ALL RIGHT. LET ME HEAR FROM
20 MR. CHUCAS.

21 MR. CHUCAS: WELL, YOUR HONOR, JUST TO VERY
22 QUICKLY TAKE A STROLL DOWN MEMORY LANE. WHEN I WROTE MY
23 REPORT IN DECEMBER, I OFFERED THE COURT FOUR RECOMMEND --
24 FOUR OPTIONS.

25 ONE, GO WITH WHAT FAMILY COURT SERVICES SAID,
26 WHICH WAS JUST CONTINUE THE 50/50 PLAN, YOU KNOW, KIND OF
27 IGNORE THE FACT THAT WE HAVE THIS INCIDENT WHERE OLIVER RAN
28 AWAY, IGNORE THE FACT THAT CPS FELT THAT MOM HAD COACHED

1 OLIVER TO RUNAWAY, IGNORE THE HISTORY AND JUST LEAVE IT AS
2 IT IS BECAUSE THAT'S THE WAY IT IS.

3 SECOND OPTION I GAVE THE COURT WAS TO GIVE OLIVER
4 WHAT HE SAID THAT HE WANTED, AND HE WAS ABSOLUTELY CLEAR
5 THAT HE WANTED NO CONTACT UNDER ANY CIRCUMSTANCE AT ANY TIME
6 WITH HIS FATHER, AND HE HAD A LITANY OF REASONS WHY HE SAID
7 THAT. HIS FATHER'S BRUTAL, VIOLENT, UNFEELING. I MEAN, I
8 CAN'T REMEMBER ALL OF IT, BUT THAT WAS THE GENERAL THEME.
9 HIS FATHER WAS UNWORTHY, IF YOU WILL, OF BEING HIS FATHER.

10 THE THIRD OPTION I GAVE THE COURT TO CONSIDER WAS
11 IN VIEW OF THE HISTORY, AND SPECIFICALLY IN VIEW OF
12 DR. DOYNE'S REPORTS, WHICH AMONG OTHER THINGS, CONTAIN I
13 THINK WAS RECOMMENDATION NUMBER EIGHT IN HIS LAST REPORT,
14 WHICH WAS IF THE FALSE ALLEGATIONS CONTINUED, THEN A CHANGE
15 OF CUSTODY SHOULD BE CONSIDERED. AND I EXPANDED ON TERMS OF
16 WHAT I THOUGHT THAT WOULD LOOK LIKE WERE THE COURT TO FOLLOW
17 THAT SUGGESTION.

18 AND THE FOURTH OPTION I GAVE THE COURT, WHICH I
19 THOUGHT WAS THE BEST OPTION AT THE TIME AND WHICH I CONTINUE
20 TO THINK IS THE BEST OPTION, AND THIS IS WHERE MR. ROEPKE
21 AND I LIKE TO PART COMPANY, IS THAT THIS PROBLEM WHICH IS --

22 (PHONE RINGING.)

23 THE COURT: OFF THE RECORD FOR A MOMENT.

24 (OFF THE RECORD.)

25 THE COURT: GO AHEAD.

26 MR. CHUCAS: THIS PROBLEM HAS ALL THE EARMARKS OF
27 A MENTAL HEALTH PROBLEM, AT LEAST IN TWO ASPECTS.
28 CERTAINLY, FROM OLIVER'S VIEWPOINT, THE QUESTION IS WHAT

1 HAPPENS TO OLIVER IF WE SEVER FOR ANY PERIOD OF TIME -- 30
2 DAYS, 60 DAYS, 90 DAYS -- HIS RELATIONSHIP WITH HIS MOTHER,
3 AND WHAT HAPPENS IF MOM HAS SOME PERIOD OF REHABILITATION,
4 IF YOU WILL, TO GET BACK TO A 50/50 PLAN, OR EXPRESSED
5 ANOTHER WAY IS THE CURE WORSE THAN THE DISEASE FROM OLIVER'S
6 PERSPECTIVE? AND THAT'S WHY I WANTED MENTAL HEALTH INPUT
7 BEFORE WE DID ANYTHING AS RADICAL AS CHANGING CUSTODY.

8 THE SECOND MENTAL HEALTH ASPECT OF THE CASE FROM
9 MY PERSPECTIVE IS MOM. I MEAN, THERE IS SOMETHING
10 FUNDAMENTALLY, IN MY VIEW, UNUSUAL IN THIS CASE WITH THE
11 MOTHER, AND I THINK THAT WE SAW THAT HERE TODAY IN REFERENCE
12 TO THE QUESTIONS ABOUT SCHOOL. I MEAN, THE AGREEMENT THAT
13 THE COURT READ IS ABSOLUTELY CLEAR. NOBODY READING THAT
14 LANGUAGE WOULD BE CONFUSED AS TO WHAT IT MEANS. IT MEANS
15 CONSULT AND AGREE, AND IF YOU CAN'T AGREE AFTER CONSULTING,
16 BRING IT BACK TO THE COURT.

17 BUT MOM AS LATE AS A FEW MINUTES AGO IS EXPRESSING
18 SURPRISE THAT SUCH AN IDEA EVEN EXISTS, THAT SHE IS IN ANY
19 WAY OBLIGATED TO CONSULT WITH DAD. AND I THINK THAT HER
20 SURPRISE IS LIKELY GENUINE BECAUSE SHE FUNDAMENTALLY
21 BELIEVES SHE SHOULD NOT HAVE TO CONSULT WITH DAD FOR ANY
22 REASON BECAUSE SHE BELIEVES PASSIONATELY THAT DAD IS THIS
23 VERY AWFUL PERSON WHO SHOULD NOT HAVE A RELATIONSHIP WITH
24 OLIVER, AND SHE NO DOUBT BELIEVES PASSIONATELY THAT SHE
25 NEEDS TO CHECK IN WITH OLIVER AT ALL TIMES AND RETURN EVERY
26 CALL NO MATTER WHAT THE CLEAR INTENT OF THE COURT'S ORDER IS
27 THAT SHE SHALL HAVE ONE TELEPHONE CONVERSATION A DAY WITH
28 OLIVER. I THINK THAT'S WHAT THE LANGUAGE IS IN THE ORDER,

1 THAT SHE WILL CALL OLIVER ONCE A DAY. NOW IT MAY NOT SAY
2 YOU CAN'T RETURN A TELEPHONE CALL, BUT MOST OF US WOULD
3 INTERPRET THAT LANGUAGE AS ONE CALL A DAY.

4 SO, YOUR HONOR, I THINK IT'S OBVIOUS THAT MOM IS
5 NOT GOING TO CHANGE. MOM IS GOING TO CONTINUE TO BEHAVE IN
6 THE WAY THAT SHE HAS HISTORICALLY BEHAVED, WHICH IS BE
7 EXTRAORDINARILY DISMISSIVE OF DAD'S ROLE IN OLIVER LIFE, BUT
8 EVEN WITH ALL THAT SAID, I AM CONCERNED ABOUT WHAT IMPACT
9 ANY RADICAL CHANGE WILL HAVE ON OLIVER, AND I WOULD ASK FOR
10 BEFORE WE DO ANYTHING RADICAL THAT WE HAVE THE INPUT OF A
11 MENTAL HEALTH PROFESSIONAL. NOW, I CERTAINLY HAVE NO
12 OBJECTION IF THAT MENTAL HEALTH PROFESSIONAL IS DR. MILLER.
13 I'M SURPRISED THAT MOM IS WILLING TO AGREE TO HIM, BUT
14 THAT'S FINE. THE OTHER PART IS I'M NOT SURE DR. MILLER
15 WANTS TO DO THIS, AND I'D BE FRANKLY VERY SURPRISED IF HE
16 WOULD AGREE, BUT IF HE WERE TO AGREE, I'M FINE WITH IT.
17 AND -- BECAUSE HE DOES KNOW OLIVER AND THAT'S A HUGE
18 ADVANTAGE IN TERMS OF ASSESSING WHAT RISK ANY RADICAL CHANGE
19 POSES TO OLIVER.

20 NOW THERE'S ANOTHER APPROACH HERE THAT'S BEEN
21 AVAILABLE FOR YEARS RATHER THAN TRAUMATIZING OLIVER, AND
22 THAT APPROACH IS FOR MOM TO CHANGE, TO GET SOME HELP IN
23 TERMS OF THERAPY, BECOME MORE REASONABLE, MORE WILLING TO
24 HAVE DAD IN OLIVER'S LIFE, PUT THE PAST BEHIND HER, DO ALL
25 OF THOSE THINGS. BUT YOUR HONOR, AGAIN, AS RECENTLY AS A
26 FEW MINUTES AGO, WOULD ANYONE LISTENING TO MOM'S ANSWERS TO
27 THIS COURT'S QUESTIONS ABOUT THE SCHOOL ISSUE CONCLUDE THAT
28 MOM HAS CHANGED? NO. BUT THAT DOESN'T MEAN SHE CAN'T

1 CHANGE. IT DOESN'T MEAN THAT SHE CAN'T GO AND GET COMPETENT
2 HELP FROM SOMEBODY WHO IS SKILLED THAT CAN LEAD HER TO THE
3 PROMISED LAND OF COOPERATION AND CIVILITY.

4 AND I'D ASK THE COURT TO MAKE THAT ORDER TODAY IN
5 ADDITION TO MAKING AN ORDER THAT OLIVER AND MOM AND DAD BE
6 EVALUATED AND THE EVALUATOR BE ASKED ONE QUESTION. WHAT
7 IMPACT WOULD THE RADICAL CHANGE OF REMOVING PHYSICAL CUSTODY
8 FROM MOM HAVE ON OLIVER? AND HOPEFULLY WE COULD HAVE THAT
9 ANSWER BACK IN A RELATIVELY BRIEF PERIOD OF TIME, AND WE
10 COULD BE BACK HERE WITH THE ANSWER. AND HOPEFULLY MOM WOULD
11 TAKE THE OFFER I'M MAKING IN THE SPIRIT THAT IT'S BEING
12 MADE, WHICH IS MY CLIENT BENEFITS IF HE HAS TWO PARENTS
13 COOPERATING AND FUNCTIONING WELL TOGETHER.

14 MY CLIENT IS BEING DESTROYED BY THIS ENDLESS
15 FIGHT, AND THE AMOUNT OF MONEY THAT HAS BEEN DRAINED AWAY
16 FROM MY CLIENT IS LIKELY IN THE HUNDREDS OF THOUSANDS OF
17 DOLLARS. I MEAN, IT NEEDS TO STOP. BUT I'M NOT OPTIMISTIC
18 AS WE HEAR -- AS WE MEET TODAY, THAT IT'S GOING TO STOP, BUT
19 I REMAIN HOPEFUL IF THIS COURT MAKES A CLEAR STATEMENT TO
20 THE MOTHER THAT, YOU KNOW, WE'RE COMING TO THE END OF THIS
21 HIGHWAY AND WE NEED SOME CHANGE, I'M HOPEFUL THAT SHE WILL
22 TAKE THE OFFER IN THE SPIRIT THAT IT'S MADE.

23 NOW, AS TO THE EVALUATOR, YOUR HONOR, IF WE
24 DON'T -- IF DR. MILLER DECLINES TO DO SO, THE OTHER NAME
25 THAT WOULD COME TO MY MIND WOULD BE DR. PARKER, WHO IS IN
26 SAN DIEGO, EAST SAN DIEGO. HE'S A VERY EXPERIENCED
27 EVALUATOR. AND I THINK THAT HE COULD DO IT REASONABLY
28 QUICKLY IN TERMS OF TIME. NOW I HAVEN'T SPOKE TO HIM ABOUT

1 THE ISSUE OR THE CASE IN ANY WAY. ANOTHER NAME WOULD BE
2 DR. VOLCANI. I THINK THAT HE COULD DO IT RELATIVELY
3 QUICKLY. AND THE THIRD NAME WOULD BE DR. GOLD. I BELIEVE
4 THAT HE COULD DO IT REASONABLY QUICKLY. SO, ANY ONE OF
5 THOSE THREE NAMES WOULD BE ACCEPTABLE TO ME.

6 DOES THE COURT HAVE ANY QUESTIONS, YOUR HONOR, FOR
7 ME?

8 THE COURT: NO.

9 MR. CHUCAS: ONE LAST HOUSEKEEPING MATTER, YOUR
10 HONOR. I DID PREPARE AN ORDER AFTER HEARING CONSISTENT WITH
11 THE COURT'S DIRECTIVE THAT I COULD BE PAID MOM'S SHARE FROM
12 THE ESCROW. I HAVE GIVEN COUNSEL AND FATHER A COPY OF THAT
13 PROPOSED ORDER, AND I'D LIKE TO BE ABLE TO SUBMIT IT TO THE
14 COURT TODAY AND HAVE IT SIGNED SO THAT I CAN BE PAID.

15 THE COURT: MR. ARMSTRONG?

16 MR. ARMSTRONG: YOUR HONOR, JUST AS AN ASIDE.
17 NOW, IT'S MY UNDERSTANDING THAT FCS RECOMMENDED THAT
18 MR. ROEPKE -- IF I'M PRONOUNCING HIS LAST NAME CORRECTLY --
19 ATTEND ANGER MANAGEMENT CLASSES, AND ACCORDING TO MS. LALLY
20 THAT HASN'T OCCURRED.

21 THE COURT: WELL, WHAT FCS RECOMMENDS AND WHAT THE
22 COURT ORDERS MAY BE TWO DIFFERENT THINGS, AND I DON'T KNOW
23 THAT THIS COURT, MEANING ME PERSONALLY, HAS EVER ORDER
24 MR. ROEPKE TO GO TO ANGER MANAGEMENT.

25 MR. ROEPKE: THERE'S NO COURT ORDER TO THAT
26 EFFECT, MA'AM.

27 THE COURT: AND I --

28 MR. ARMSTRONG: NO, I JUST JUMP --

1 THE COURT: THERE IS A FAMILY COURT SERVICES'
2 RECOMMENDATION TO THAT EFFECT. IT'S DATED NOVEMBER 14TH,
3 2008. BUT THE COURT NEVER ISSUED THAT ORDER.

4 MR. ARMSTRONG: ISSUED AN ORDER BASED ON THAT
5 REPORT.

6 YOUR HONOR, AS FAR AS -- I BELIEVE I'D LIKE TO
7 SPEAK WITH MS. LALLY FOR ABOUT FIVE MINUTES ABOUT THIS, BUT
8 IF DR. MILLER DOESN'T WORK, I'VE GOT A COUPLE THREE NAMES I
9 COULD PROPOSE.

10 THE COURT: WELL, LET ME TELL YOU WHAT MY
11 INCLINATION IS BECAUSE I DON'T WANT ANYBODY TO GO -- AND I'M
12 GOING TO GIVE YOU SOME TIME, ABOUT FIVE MINUTES, BECAUSE
13 WE'RE --

14 MR. ARMSTRONG: GETTING CLOSE.

15 THE COURT: -- GETTING CLOSE TO 5:00 O'CLOCK. I'M
16 ACTUALLY RELATIVELY PLEASED WITH THE FACT THAT OLIVER HAS
17 BEEN WITH HIS DAD FOR TWO PERIODS OF TIME, THERE HAVEN'T
18 BEEN ANY REPEAT INCIDENTS. I HAVE ENORMOUS CONCERNS ABOUT
19 MS. LALLY'S ATTITUDE IN THIS CASE BOTH WITH RESPECT TO JOINT
20 LEGAL CUSTODY AND, FRANKLY, FOR HER TO AGAIN MAKE
21 ALLEGATIONS OF PHYSICAL ABUSE WHEN THERE IS ABSOLUTELY NOT A
22 SINGLE PROFESSIONAL PERSON WHO SUBSTANTIATED THOSE
23 ALLEGATIONS, INCLUDING CPS, INCLUDING SAN DIEGO POLICE,
24 INCLUDING FCS, INCLUDING MINOR'S COUNSEL, INCLUDING
25 DR. DOYNE AND DR. MILLER, ALL OF WHOM HAVE LEGAL OBLIGATIONS
26 TO REPORT EVEN A SUSPICION OF ABUSE. THAT ATTITUDE IS
27 CONCERNING.

28 I AM LIKELY TO ORDER MS. LALLY INTO COUNSELING. I

1 AM LIKELY NOT TO MAKE ANY CHANGES TO THE ORDER, BUT I DO
2 WANT SOME COUNSELING FOR OLIVER AND HIS FATHER. I DON'T
3 WANT MS. LALLY TO PARTICIPATE IN THAT COUNSELING. I WANT IT
4 TO BE SO THAT OLIVER AND HIS FATHER, AND MY INCLINATION
5 ACTUALLY IS TO GO TO SOMEONE NEW, ALTHOUGH, I'D CONSIDER
6 DR. MILLER, BUT SO THAT OLIVER IN A THERAPEUTIC SETTING CAN
7 ADDRESS HIS CONCERNS ABOUT HIS FATHER WITH SOMEONE WHO IS
8 SKILLED AT ADDRESSING THOSE CONCERNS AND HELPING MR. ROEPKE
9 ADDRESS THOSE CONCERNS. I THINK OLIVER IS GETTING OLDER,
10 AND AS CHILDREN GET OLDER, THEY SEE THE WORLD THE WAY IT IS,
11 AND THEY ARE LESS INFLUENCED BY THEIR PRIMARY PARENT, IN
12 THIS CASE MS. LALLY, AND I SUSPECT OLIVER MAY WITH SOME HELP
13 FIGURE OUT THAT HIS DAD LOVES HIM AND IS A GOOD PERSON AND
14 SOMEONE HE NEEDS IN HIS LIFE.

15 THERE WAS A CRISIS THAT PRECIPITATED ALL OF THIS
16 FLURRY OF LITIGATION. IT -- IN THE COURT'S VIEW, CUSTODY IS
17 PLAINLY BEFORE THE COURT, AND IT'S PART OF AN EX PARTE
18 APPLICATION AND -- THAT MR. ROEPKE FILED AND A REQUEST FOR A
19 RESTRAINING ORDER THAT MS. LALLY FILED. THAT'S WHAT GOT THE
20 COURT INTO THE POSITION OF EVALUATING WHAT WAS GOING TO
21 HAPPEN. MY QUESTION, FRANKLY, IS WHETHER THE COURT SHOULD
22 GIVE MR. ROEPKE SOLE LEGAL CUSTODY SO THAT THE COUNSELING
23 RELATIONSHIP CAN OCCUR WITHOUT INTERFERENCE AND WITHOUT
24 MS. LALLY, FRANKLY, POISONING THE RELATIONSHIP, WHICH IT
25 APPEARS SHE MAY HAVE DONE WITH DR. MILLER AND PLAINLY DID
26 WITH DR. DOYNE.

27 A CHILD THAT NEEDS COUNSELING CANNOT HAVE ONE
28 PARENT WHO DOESN'T LIKE THE COUNSELING INTERFERE WITH THE

1 COUNSELING WHEN IT'S NOT IN THE CHILD'S BEST INTEREST. AND
2 THAT'S WHAT I'M AFRAID HAS HAPPENED HERE IS THAT EVERY TIME
3 THE COUNSELOR SUGGESTS THAT DOESN'T AGREE WITH MS. LALLY
4 THAT MR. ROEPKE IS A HORRIBLE FATHER AND HE'S ABUSIVE AND
5 SHOULD NEVER SEE OLIVER AGAIN, SHE THREATENS SOME KIND OF
6 ACTION THAT CAUSES THAT COUNSELOR TO SAY, "I DON'T WANT TO
7 TREAT THIS FAMILY ANYMORE." AND THE COURT IS NOT GOING TO
8 LET THAT HAPPEN, AND THE ONLY WAY THAT THE COURT KNOWS TO
9 KEEP THAT FROM HAPPENING IS TO GIVE MR. ROEPKE LEGAL CUSTODY
10 SO THAT HE CAN DECIDE WHERE OLIVER GOES TO COUNSELING
11 WITHOUT MS. LALLY AGREEING, AND THAT MAY WELL INCLUDE SCHOOL
12 ISSUES. ALTHOUGH, THERE'S CERTAINLY AN INTENTION MANIFESTED
13 IN THE MARITAL SETTLEMENT AGREEMENT THAT OLIVER IS GOING TO
14 GO TO PRIVATE SCHOOL, I -- THAT PRECISE ISSUE IS NOT BEFORE
15 ME, BUT IT'S PART AND PARCEL OF THE PROBLEM.

16 SO, THAT'S MY INCLINATION. AND FROM THE COURT'S
17 PERSPECTIVE, AS I SAID, THE REAL ISSUE IS IS DR. MILLER THE
18 PERSON WHO SHOULD CONTINUE, AND I THINK MAYBE HE SHOULD, BUT
19 I ALSO THINK MAYBE SOMEONE ELSE WOULD BE BETTER. SO I'M
20 GOING TO GIVE YOU A COUPLE MINUTES TO TALK TO MS. LALLY, BUT
21 I MEAN TWO MINUTES BECAUSE WE HAVE TO BE DONE BY 5:00
22 O'CLOCK, AND THEN I'LL HEAR FROM MR. ROEPKE AND FROM
23 MR. CHUCAS.

24 (OFF THE RECORD.)

25 THE COURT: MR. ARMSTRONG?

26 MR. ARMSTRONG: YES. YOUR HONOR, I GUESS THE
27 PARTIES ARE BOTH FINE WITH DR. CHRISTOPHER MILLER TO
28 CONTINUE WITH THE THERAPY WITH THE CHILD.

1 THE COURT: MR. ROEPKE, YOU AGREE, IF HE'S
2 WILLING.

3 MR. ROEPKE: YES, IF HE'S WILLING. IT WOULD BE
4 FOR THERAPY BUT NOT EVALUATION.

5 THE COURT: CORRECT. AND MR. CHUCAS, ON BEHALF
6 OF --

7 MR. CHUCAS: WELL, YOUR HONOR, MY UNDERSTANDING
8 WHAT THE COURT INTENDED WAS DAD AND OLIVER WOULD GO SEE
9 SOMEBODY NEW IDEALLY, THAT'S A, AND B IS THAT OLIVER
10 CONTINUE IN INDIVIDUAL THERAPY.

11 THE COURT: WELL, LET ME SAY THIS. I'M NOT -- I
12 DON'T KNOW WHETHER OLIVER NEEDS INDIVIDUAL THERAPY.

13 MR. CHUCAS: ALL RIGHT. WELL, LET ME -- WITH THAT
14 GUIDANCE, LET ME TELL YOU WHAT MY ARGUMENT WOULD BE. MY
15 ARGUMENT WOULD BE THAT WE HOLD DR. MILLER IN RESERVE IN CASE
16 OLIVER DOES NEED INDIVIDUAL THERAPY, AND THAT DAD AND OLIVER
17 START FRESH WITH DR. BREFFNI BARRETT AS A CONJOINT
18 THERAPIST, AND DR. BARRETT, AFTER MEETING WITH DAD AND
19 OLIVER, COULD DETERMINE WHETHER OR NOT HE THINKS IT WOULD BE
20 APPROPRIATE FOR OLIVER TO GO BACK TO SEE DR. MILLER.

21 I THOUGHT THAT THE COURT SOLUTION -- IF I
22 UNDERSTOOD THE COURT'S PROPOSED SOLUTION -- WAS VERY
23 ELOQUENT, AND I THINK WHAT THE COURT WAS HINTING AT NOT TOO
24 SUBTLY WAS THE 50/50 PLAN CONTINUES, THAT DAD BE GIVEN JOINT
25 SOLE LEGAL CUSTODY; I AGREE WITH THAT ELOQUENT SOLUTION.
26 THAT THE MOM BE ORDERED INTO INDIVIDUAL THERAPY WITH A PH.D.
27 LEVEL OF THERAPIST; I CERTAINLY AGREE WITH THAT. WE TALK TO
28 BOTH DR. BARRETT MY IDEA FOR A CONJOINT THERAPY, WE TALK

1 ABOUT THE BACKSTOP OF DR. MILLER FOR INDIVIDUAL THERAPY.
2 AND IF THAT IS SUBSTANTIALLY WHERE THE COURT IS GOING AND
3 SUBSTANTIALLY WHAT THE COURT ORDERS, I THINK, YOUR HONOR, MY
4 ROLE IN THE CASE IS OVER.

5 THE COURT: I AM IN AGREEMENT.

6 MR. ARMSTRONG?

7 MR. ARMSTRONG: YOUR HONOR, THAT'S FINE WITH THE
8 EXCEPTION OF SOLE LEGAL CUSTODY GOING TO MR. ROEPKE. I
9 WOULD SUBMIT THAT --

10 THE COURT: ALL RIGHT. TELL YOU WHAT I'M GOING TO
11 DO. NUMBER ONE, I'M GOING TO LEAVE THE CURRENT VISITATION
12 ORDER IN PLACE; THAT IS, THE EQUAL TIMESHARE EXACTLY AS IT
13 CURRENTLY IS PROVIDED; THAT IS, THE SUMMER IS TWO WEEKS
14 ON/TWO WEEKS OFF SCHEDULE, AND ONCE SCHOOL STARTS, IT GOES
15 BACK TO WEEK ON/WEEK OFF.

16 I THINK DR. BARRETT IS AN EXCELLENT SUGGESTION.
17 HE IS, IN THE COURT'S VIEW, PROBABLY ONE OF THE BEST
18 THERAPISTS AT ADDRESSING TROUBLED PARENT/CHILD
19 RELATIONSHIPS, AND WHETHER IT'S REUNIFICATION THERAPY, WE'RE
20 NOT QUITE THAT FAR HERE, BUT HE IS SUPERB. AND I DO AGREE
21 THAT IN THINKING ABOUT IT THAT DR. MILLER HAS SERVED AS
22 OLIVER'S PERSONAL THERAPIST AND THERE MAY COME A TIME WHERE
23 OLIVER THINKS HE NEEDS TO BE IN THERAPY SEPARATE AND APART
24 FROM THE WORK THAT HE DOES WITH HIS FATHER. SO I AM GOING
25 TO ORDER THAT MR. ROEPKE AND OLIVER BEGIN THERAPY WITH
26 DR. BARRETT.

27 MR. ROEPKE, YOU'RE TO PROVIDE DR. BARRETT WITH
28 COPIES OF MINOR'S COUNSEL'S REPORTS, AND WITH DR. MILLER'S

1 TELEPHONE NUMBER SO THAT HE CAN CONTACT DR. MILLER AND GET
2 SOME SENSE OF WHAT'S HAPPENED WITH OLIVER. IF OLIVER
3 REQUESTS ADDITIONAL INDIVIDUAL THERAPY WITH DR. MILLER, HE
4 SHOULD GO BACK INTO THERAPY. THE PARENTS SHOULD PROVIDE
5 THAT.

6 I AM GOING TO DO THE FOLLOWING WITH RESPECT TO
7 CUSTODY. I'M GOING TO MAKE -- GIVE MR. ROEPKE SOLE LEGAL
8 CUSTODY WITH RESPECT TO ALL MENTAL HEALTH ISSUES FOR OLIVER;
9 THAT IS, HE DECIDES HOW LONG -- IN CONSULTATION WITH THE
10 THERAPIST, HOW LONG THE THERAPY CONTINUES WITH DR. BARRETT.
11 I EXPECT IT WILL TAKE A LITTLE WHILE, BUT HE'S ORDERED TO
12 COOPERATE WITH DR. BARRETT AND FOLLOW HIS RECOMMENDATIONS,
13 BUT HE WILL MAKE THOSE DECISIONS.

14 WITH RESPECT TO EDUCATION, AND THE COURT IS NOT
15 GOING TO MODIFY CUSTODY AT THIS TIME, I AM ORDERING THE
16 PARENTS TO DISCUSS EITHER DIRECTLY OR VIA E-MAIL WHERE
17 OLIVER IS GOING TO SCHOOL NEXT YEAR BECAUSE IT'S YOUR JOINT
18 DECISION. IF YOU CANNOT REACH AN AGREEMENT ABOUT WHERE
19 OLIVER ATTENDS SCHOOL, THEN YOU NEED TO COME INTO COURT AND
20 ASK THE COURT TO MAKE A DECISION. BUT I WILL TELL YOU IN
21 ADVANCE THAT IF THE COURT IS ASKED TO MAKE A DECISION, THE
22 COURT IS LIKELY TO GIVE LEGAL CUSTODY TO ONE PARENT OR THE
23 OTHER BECAUSE THIS IS QUINTESENTIALLY A DECISION PARENTS
24 SHOULD BE ABLE TO MAKE FOR THEIR -- TOGETHER ABOUT THEIR
25 CHILD'S EDUCATION. THIS IS WHAT JOINT LEGAL CUSTODY IS
26 ABOUT. IT'S ABOUT MAKING FUNDAMENTAL DECISIONS ABOUT YOUR
27 CHILD'S HEALTH, EDUCATION, AND WELFARE, AND THAT MEANS YOU
28 DECIDE JOINTLY WHERE YOUR CHILD GOES TO SCHOOL, PARTICULARLY

1 AT A TIME OF TRANSITION, LIKE OLIVER HAS, BETWEEN MIDDLE
2 SCHOOL AND HIGH SCHOOL. THAT'S WHAT YOU DO. AND YOU HAVE
3 TO DECIDE THAT TOGETHER, AND YOU HAVE TO THINK ABOUT WHAT'S
4 BEST FOR OLIVER, AND YOU HAVE TO MAKE AN EFFORT TO REACH AN
5 AGREEMENT.

6 MS. LALLY: MAY I ASK WHAT OTHER SCHOOL HE WAS
7 MAYBE CONSIDERING BECAUSE I DIDN'T REALLY KNOW ANOTHER ONE.
8 I MEAN, THAT'S WHY IT WAS IN THE THING.

9 THE COURT: WELL, I'M NOT GOING TO HAVE THAT
10 DISCUSSION HERE.

11 MS. LALLY: OKAY.

12 THE COURT: YOU NEED TO TALK TO MR. ROEPKE.
13 THAT'S WHAT IT MEANS TO HAVE JOINT LEGAL CUSTODY.

14 MS. LALLY: OKAY. I JUST -- I MEAN, I ASSUME THAT
15 WAS THE ONLY SCHOOL, BUT IF HE HAS OTHER RECOMMENDATIONS,
16 GIVE IT TO ME.

17 THE COURT: WITH RESPECT TO MR. CHUCAS, I AM GOING
18 TO RELIEVE MR. CHUCAS ONCE THE ORDERS FROM TODAY ARE
19 PREPARED AS MINOR'S COUNSEL IN THIS CASE.

20 WITH RESPECT TO, MR. ROEPKE, YOUR CONCERN ABOUT
21 COST, I NEED CURRENT INCOME AND EXPENSE DECLARATIONS FROM
22 BOTH PARTIES. I --

23 MR. ROEPKE: THEY'RE FILED. THEY'RE WITHIN A
24 MONTH OR TWO.

25 MS. LALLY: I JUST FILED ONE, BUT I CAN FILE
26 ANOTHER ONE.

27 THE COURT: WELL, HOLD ON. LET ME SEE WHAT I
28 HAVE. I DO. ACTUALLY, YOU'RE RIGHT. ALL RIGHT. I WILL

1 REVIEW THOSE TO MAKE A DETERMINATION ABOUT REPAYMENT OF
2 MR. CHUCAS' FEES.

3 MR. ROEPKE, IF YOU WANT TO MODIFY CHILD SUPPORT,
4 YOU HAVE TO FILE A MOTION. I CAN'T DO THAT WITHOUT GIVING
5 MS. LALLY NOTICE.

6 MR. ROEPKE: THE ISSUE OF THE PORTION OF THE
7 COUNSELOR'S FEES IS UNDER SUBMISSION.

8 THE COURT: IT'S BEEN APPORTIONED, BUT BECAUSE I
9 AM RELIEVING MR. CHUCAS, THE QUESTION IS WHETHER THAT
10 APPORTIONMENT WILL CONTINUE IS ALWAYS BEFORE THE COURT. I
11 NEED YOU TO BOTH -- ACTUALLY, THEY'RE ALREADY UNDER ORDERS
12 TO REPAY. SO I DON'T --

13 THE CLERK: THERE'S NEW MINOR'S COUNSEL FORMS, AND
14 I NEED TO HAVE THEM FILL IT OUT.

15 THE COURT: ALL RIGHT. WE'RE GOING TO HAVE YOU
16 FILL OUT SOME NEW FORMS THAT WE NEED, AND THEN I WILL KEEP
17 THE QUESTION OF THE PROPORTION OF REALLOCATION, I WILL TAKE
18 UNDER SUBMISSION AND LET YOU KNOW ONCE I'VE REVIEWED IT.

19 MR. CHUCAS: YOUR HONOR, JUST FOR THE COURT'S
20 INFORMATION, WITH A SIGNING OF THIS ORDER TODAY, WHICH
21 AUTHORIZES THE ESCROW TO RELEASE MONIES HELD IN ESCROW, I
22 WILL HAVE BEEN PAID IN FULL BY THE MOTHER AFTER I GET THE
23 MONIES PURSUANT TO THIS ORDER. THROUGH TODAY, DAD, WHO'S
24 PAID ALL OF HIS PAYMENTS PURSUANT TO UNDERLYING ORDER, STILL
25 OWES \$5,587.50.

26 THE COURT: AND THAT'S BASED ON THE
27 TWO-THIRDS/ONE-THIRD ALLOCATION?

28 MR. CHUCAS: I THINK IT WAS

1 ONE-QUARTER/THREE-QUARTERS AS I RECALL.

2 MR. ROEPKE: YES, ONE-QUARTER/THREE-QUARTERS.

3 THE COURT: ALL RIGHT.

4 MR. CHUCAS: THAT'S CORRECT, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. CHUCAS: AND THAT'S ALL THE TIME. I BILLED
7 FOR TODAY'S HEARING, I BILLED ONE HOUR TIME FOR THAT
8 HEARING -- FOR THIS HEARING.

9 MR. ROEPKE: MA'AM, BEING THAT THAT PAYMENT
10 SCHEDULE THAT I WOULD HAVE TO CONTINUE TO THE PAY EVERY
11 SINGLE MONTH, IT SEEMS TO ME THAT WE'RE CONTINUALLY
12 RELEASING FUNDS OUT OF ESCROW IN ORDER TO HELP MICHELE. I
13 DON'T SEE ANY REASON WHY THE COURT CAN'T RELEASE FUNDS TO
14 PAY FOR MY HALF, FOR MY PORTION.

15 THE COURT: I COULD FROM YOUR SHARE, IF YOU WANT
16 ME TO.

17 MR. ROEPKE: YES, PLEASE. THE BURDEN OF ALL THIS
18 COST IS KILLING ME.

19 THE COURT: THAT'S FINE.

20 MR. CHUCAS: I'LL PREPARE AN ORDER, YOUR HONOR,
21 AND OF COURSE, I'M DELIGHTED WITH THAT.

22 THE COURT: I'M SURE YOU ARE. THAT'S FINE.

23 MR. ROEPKE: NOW THE REALLOCATION --

24 THE COURT: I WILL ADDRESS THAT QUESTION. SO WHEN
25 MR. CHUCAS SUBMITS HIS ORDER, I WILL MAKE A MODIFICATION IF
26 I DECIDE THAT IT SHOULD BE REALLOCATED. I KNOW WHAT THE
27 BALANCE IS AND I HAVE MR. CHUCAS' BILL, SO I KNOW HOW MUCH
28 IN TOTAL.

1 MR. ROEPKE: GREAT.

2 MR. ARMSTRONG: YOUR HONOR, JUST SO I'M CLEAR ON
3 THIS, THE CURRENT CUSTODY ORDER REMAINS IN EFFECT WITH THE
4 EXCEPTION OF THE --

5 THE COURT: ALL OF THE DECISIONS REGARDING HIS
6 MENTAL HEALTH.

7 MR. ARMSTRONG: -- DECISIONS FOR MENTAL HEALTH.

8 THE COURT: CORRECT.

9 MR. ARMSTRONG: MR. ROEPKE HAS SOLE
10 DECISION-MAKING ABILITY --

11 THE COURT: CORRECT.

12 MR. ARMSTRONG: -- IN THAT RESPECT.

13 THE COURT: CORRECT.

14 MR. ARMSTRONG: VERY WELL.

15 MR. CHUCAS: AND YOUR HONOR, WHO DOES THE COURT
16 WANT TO PREPARE THIS ORDER?

17 THE COURT: YOU ARE, MR. CHUCAS.

18 MR. CHUCAS: I THOUGHT YOU SAID THAT. I'LL BE
19 HAPPY TO. SO I'LL SUBMIT IT TO COUNSEL FOR SIGNATURE, AND
20 CAN I THEN SUBMIT IT TO THE COURT?

21 THE COURT: YES. AND LET ME JUST SAY WITH RESPECT
22 TO MS. LALLY, THAT THE COURT IS FINDING UNDER -- IT'S
23 LATE -- I'M NOT GOING TO GIVE YOU THE CODE SITE, BUT UNDER
24 THE FAMILY CODE THAT MS. LALLY NEEDS MENTAL HEALTH
25 COUNSELING TO ADDRESS THE ISSUES OF MR. ROEPKE'S
26 RELATIONSHIP WITH OLIVER. THE COURT IS FINDING THAT SHE HAS
27 TO UNDERSTAND AND BE SUPPORTIVE OF MR. ROEPKE'S RELATIONSHIP
28 WITH OLIVER AND THAT IN THE COURT'S VIEW COUNSELING MAY HELP

1 HER ADDRESS THOSE QUESTIONS.

2 HER -- THE COUNSELOR CAN BE A COUNSELOR OF HER
3 CHOOSING. SHE'S TO REMAIN IN COUNSELING AS LONG AS THE
4 COUNSELOR DEEMS IT APPROPRIATE, UP TO ONE YEAR, WHICH IS THE
5 LENGTH OF THE COURT'S AUTHORITY TO ORDER COUNSELING FOR A
6 PARENT, AND THAT COUNSELOR IS ALSO TO RECEIVE A COPY OF ALL
7 OF THE MINOR'S COUNSEL'S REPORTS SO THE COUNSELOR HAS AN
8 UNDERSTANDING WHY THE COURT HAS ORDERED COUNSELING FOR
9 MS. LALLY.

10 MR. CHUCAS: IS THERE A FREQUENCY, YOUR HONOR, TO
11 THE COUNSELING?

12 THE COURT: I KNOW THAT MONEY IS AN ISSUE FOR
13 MS. LALLY, SO I'M NOT GOING TO ORDER ANYTHING OTHER THAN AT
14 LEAST ONCE A MONTH, AND MORE OFTEN IF SHE'S ABLE TO DO THAT
15 AND THE COUNSELOR RECOMMENDS IT.

16 MR. CHUCAS: AND THE EDUCATIONAL LEVEL OF THE
17 COUNSELOR, YOUR HONOR?

18 THE COURT: IT NEEDS TO BE A LICENSED MENTAL
19 HEALTH PROFESSIONAL. THAT MEANS SOMEONE WITH A LICENSE FROM
20 THE STATE OF CALIFORNIA.

21 MR. ARMSTRONG: PH.D.

22 THE COURT: ALL RIGHT.

23 MR. CHUCAS: THANK YOU VERY MUCH, YOUR HONOR.

24 THE COURT: YOU'RE WELCOME.

25 MR. ARMSTRONG: THANK YOU.

26 THE COURT: I AM NOT SETTING ANY FURTHER REVIEW
27 HEARING. YOU ALL KNOW WHERE TO FIND ME IF YOU NEED ME.
28 GOOD LUCK.

1 MR. ARMSTRONG: THANK YOU, YOUR HONOR.

2 (THE PROCEEDINGS CONCLUDED AT 5:08 P.M.)

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1 STATE OF CALIFORNIA }
2 COUNTY OF SAN DIEGO } SS.
3

4 I, ADELA MEDINA, CSR NO. 11964, REPORTER IN THE
5 SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE
6 COUNTY OF SAN DIEGO, HEREBY CERTIFY:

7 THAT I REPORTED IN MACHINE SHORTHAND THE PROCEEDINGS
8 HAD IN THE WITHIN CASE, AND THAT THE FOREGOING TRANSCRIPT,
9 CONSISTING OF PAGES NUMBERED 1 THROUGH 39, INCLUSIVE, IS A
10 FULL, TRUE, AND CORRECT TRANSCRIPT OF THE SAID PROCEEDINGS.
11

12 DATED AT SAN DIEGO, CALIFORNIA, THIS 30TH DAY OF
13 AUGUST, 2009.
14

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19 ADELA MEDINA, RPR, CSR 11964
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