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STATE OF MICHIGAN
IN THE SUPREME COURT

Andrew Paul Sabatine,

Plaintiff-Appellee,

vs.

Colleen Knecht Sabatine,

Defendant-Appellant.

Court of Appeals No. 361068

Leelanau County Circuit Court Case No. 2020-10532-DM

_____/

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APPENDIX
APPELLEE'S BRIEF ON APPEAL

Tab A. . . . . 3/29/22 Judgment of Divorce
Tab B. . . . . 11/16/21 Decision and Order after De Novo Review
Tab C. . . . . 1/7/21 Order for Temporary Custody
Tab D. . . . . 6/4/21 Referee Recommendation - signed as an Order 6/7/21

STATE OF MICHIGAN
IN THE 13TH CIRCUIT COURT FOR THE COUNTY OF LEELANAU

ANDREW PAUL SABATINE

Plaintiff,

v

COLLEEN KNECHT SABATINE,

Defendant.

CASE NO: 2020 - 10532-DM

HON. MARIAN F. KROMKOWSKI

Matthew D. Vermetten (P43425)
Melissa Baumgartner Umulis (P78582)
PEZZETTI, VERMETTEN & POPOVITS, P.C.
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600 E. Front Street
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Amy M. Swogger (P42687)
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511 Depot View Drive, Suite 19
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JUDGMENT OF DIVORCE

At a session of said Court held at the
Courthouse in the City of Suttons Bay,
County of Leelanau, State of Michigan,
on the _____ day of _____, 2022

PRESENT: HONORABLE MARIAN F. KROMKOWSKI
Circuit Court Judge – Family Division

This matter having been brought on to be heard upon the Complaint filed in this case and upon reading the Complaint and hearing the Plaintiff's testimony taken in open Court, from which it satisfactorily appears to this Court that the allegations of the Complaint for Divorce are true and the Court finding that there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved; NOW, THEREFORE, on Motion of Matthew D. Vermetten, counsel for Plaintiff, Andrew Paul Sabatine, **IT IS HEREBY ORDERED AS FOLLOWS:**

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I.
DIVORCE

IT IS HEREBY ORDERED AND ADJUDGED that the marriage between the parties shall be and the same is hereby dissolved and a divorce from the bonds of matrimony between said parties is hereby ordered. All child-related provisions herein are *not* by consent of the parties and are pursuant to the Court's *Decision and Order after De Novo Review,* dated November 17, 2021.

II.
CUSTODY & PARENTING TIME

IT IS HEREBY ORDERED that the parties shall share joint legal custody of their minor children, Aida V. Sabatine (DOB 10/27/2015) and Vera L. Sabatine (DOB 01/26/2018). Defendant is awarded primary physical custody of the minor children.

IT IS FURTHER ORDERED that the parties shall continue to exercise joint parental authority and responsibility for the health, safety, education, and general wellbeing of their minor children. This authority and responsibility shall include the maintenance and support of said children. Each party is directed to maintain communication with the other and to reasonably determine the best interests of the minor children until further Order of the Court.

IT IS FURTHER ORDERED that parenting time shall be as follows:

1. Beginning the Sunday before school begins and persisting through the first Sunday after the academic year ends (excluding holidays):

    a. Defendant will exercise parenting time except as follows in subparagraphs 1b and 1c:

    b. Plaintiff will have parenting time every other weekend, beginning at 6:30 p.m. Friday evening and ending Sunday at 3:30 p.m.

    c. Plaintiff shall have the option of exercising additional parenting time in the Fenton area one weekend day a month from 10:00 a.m. until 6:00 p.m. Plaintiff shall provide 30 days written notice of such to Defendant.

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d. Plaintiff shall also receive every Spring Break commencing at 6:30 p.m. on the day school dismisses until 3:30 p.m. on the day before school resumes.

2. Beginning the first Sunday after the academic year ends and persisting through Sunday before school begins (excluding holidays):

   a. Plaintiff will exercise parenting time except as follows in 2b and 2c:

   b. Defendant will have parenting time every other weekend, beginning at 6:30 p.m. Friday evening and ending Sunday at 3:30 p.m.

   c. Defendant will have one uninterrupted week per year for vacation time. Defendant will identify this week to Plaintiff and the Friend of the Court in writing by May 1st of each year.

3. Holidays/special days shall be as follows:

   a. The children shall spend each Mother's Day weekend with Defendant and each Father's Day weekend with Plaintiff, beginning at 6:30 p.m. on Friday and ending Sunday at 3:30 p.m.

   b. The parties shall alternate the Thanksgiving holiday with Plaintiff in even years and with Defendant in odd years. Thanksgiving shall begin at 6:30 p.m. on the day school is released and conclude at 3:30 p.m. on the Sunday after Thanksgiving.

   c. The parties shall each have one half of the winter break from school. In odd years Plaintiff shall have the first half beginning at 6:30 p.m. on the day school dismisses and in even years Defendant shall have the first half beginning at 6:30 p.m. on the day school dismisses. The second half of the winter break shall be with Defendant in odd years and with Plaintiff in even years. The second half shall begin at 6:30 p.m. in odd years and at 6:30 p.m. in even years and conclude at 3:30 p.m. on January 2nd of each year.

   d. The parties shall share or alternate such other holidays/special days only as they may mutually agree and arrange.

IT IS FURTHER ORDERED that each parent shall have liberal FaceTime with the minor children during the weeks the children are with the other parent. If the parties are unable to agree upon times, FaceTime may occur on Tuesdays and Thursdays between the hours of 9:00 a.m. and 7:00 p.m. for a duration of no more than 45 minutes.

IT IS FURTHER ORDERED that Defendant may travel with the children to her brother's

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wedding from June 9, 2022 until June 13, 2022. If any of these dates conflict with Plaintiff's parenting time, Defendant shall provide make-up time or deduct that time from her one uninterrupted week per year for vacation time.

IT IS FURTHER ORDERED that the location for all parenting time exchanges shall be a mutually agreed upon location off I-75 in Grayling, Michigan. The parties are permitted a 30-minute grace period in case of unforeseen delay.

III.
CHILD SUPPORT

IT IS FURTHER ORDERED that the provisions of the *Uniform Child Support Orders* attached hereto are incorporated by reference and made a part of this *Judgment of Divorce*. Plaintiff's monthly child support obligation for two minor children effective February 1, 2021 shall be $3,083, effective September 3, 2021 shall be $1,974 and effective January 1, 2022 shall be $2,079. Child support payments shall be made to the Michigan State Disbursement Unit (MiSDU), P.O. Box 30351, Lansing, MI 48909-7851.

IV.
HAGUE CONVENTION

IT IS FURTHER ORDERED AND ADJUDGED that parenting time shall not be exercised in a country that is not a party to the Hague convention on the civil aspects of international child abduction, unless both parents provide the Court with written consent to allow a parent to exercise parenting time in a country that is not a party to the Hague convention.

V.
DOMICILE

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IT IS FURTHER ORDERED that neither party nor their agents shall remove the domicile or residence of the minor children from the State of Michigan without prior approval of the Court.

4

VI.
LEGAL RESIDENCE

IT IS FURTHER ORDERED that MCL 722.31 does not apply, as at the time of the commencement of this action in which the custody order was issued, the children's 2 residences, one with Plaintiff in Traverse City, MI and one with Defendant in Fenton, MI, were a distance greater than 100 miles apart.

VII.
CHILD CUSTODY DISPUTES

IT IS FURTHER ORDERED that the parties shall comply with the statutory provisions of MCL 722.27(1) with respect to any child custody dispute that has been submitted to the circuit court, including but not limited to any disputes regarding relocation.

VIII.
NOTIFICATION TO FRIEND OF THE COURT

IT IS FURTHER ORDERED that each party must keep Friend of the Court advised of both the following: (1) name and address of current source(s) of income, and (2) any health insurance coverage available as a benefit of employment or that is maintained by them, including name and insurance company, health care organization or health maintenance organization; the policy, certificate or contract number; and names and birth dates of the persons for whose benefit he/she maintains health care coverage under the policy, certificate or contract provision. MCL 522.605a. Parties are required to notify Friend of the Court within 21 days, in writing, of any change of address, both residential and mailing, or change in telephone number. Both parties must notify Friend of the Court of any changes of their source(s) of income, including the name, address and telephone number. Each party shall keep Friend of the Court office advised of their respective

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occupational, driver's license and social security numbers unless exempt by law under MCL 552.603.

IX.
HEALTH INSURANCE

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff shall maintain health care coverage for the benefit of the minor children through an insurer (as defined in MCL 552.602) when that coverage is available at a reasonable cost, not to exceed 6% of Plaintiff's gross income.

X.
UNINSURED HEALTHCARE EXPENSES

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff shall be responsible for 72% of all uninsured healthcare expenses of the minor children and Defendant shall be responsible for 28% of all uninsured healthcare expenses. Uninsured expenses exceeding the annual ordinary medical amount for the year they were incurred, that have been submitted to the co-parent, that have not been paid within 28 days of a written payment request, may be enforced by Friend of the Court, provided the complaint is filed prior to the expiration of one year from when the expenses occurred. The annual ordinary medical amount is $908 for two (2) children.

XI.
MEDIATION AGREEMENT

This Court does **ORDER AND ADJUDGE** a division of the marital estate, including the division of assets and the assumption of the financial obligations of the parties, as set forth in the *Mediation Agreement* dated August 18, 2021, attached hereto as **Exhibit 1,** which is hereby incorporated and merged, into this *Judgment of Divorce*.

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XII.
SPOUSAL SUPPORT

IT IS FURTHER ORDERED that neither Plaintiff nor Defendant shall pay or be awarded

spousal support or alimony of any kind whatsoever. Spousal support, whether periodic or in gross, is forever waived and is not reserved. Each party waives their statutory right to request or seek modification of spousal support of any kind and spousal support of any kind is forever barred.

XIII.
PENSION AND RETIREMENT BENEFITS

IT IS FURTHER ORDERED, that, except as expressly provided to the contrary in the parties' *Mediation Agreement*, each party shall each hold as his or her sole and separate property, free and clear of any claim of the other party, any and all right, title, and interest in any pension, annuity, deferred compensation, tax-deferred savings plan, individual retirement accounts, or retirement benefits; any accumulated contributions to any deferred compensation, tax-deferred savings plan, individual retirement accounts, or retirement benefits; and any right or contingent right in and to any unvested pension, annuity, deferred compensation, tax-deferred savings plan, individual retirement accounts, or retirement benefits that such party has acquired as a result of his or her respective employment, free of any claim by the other party, and the rights of the other party are expressly cut-off, extinguished, and terminated.

XIV.
STATUTORY INSURANCE PROVISION

IT IS FURTHER ORDERED that, in accordance with MCL 552.101, MSA 25.131, any rights of either party to any policy or contract of life, endowment, or annuity insurance of the other, as beneficiary, are extinguished and Plaintiff and Defendant are each awarded all right, title, and interest in any and all life insurance policies on their respective lives or in their respective names, free from any claim by the other party. Notwithstanding the language above, the parties have been advised that the provision immediately above may not, in and of itself, terminate or change the beneficiary designations of his or her insurance policy or policies. Each party must affirmatively take whatever action is necessary to remove his or her spouse as a beneficiary of his or her own

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insurance policy to effectuate a valid change of beneficiary.

XV.
CONSTRUCTIVE TRUST

IT IS FURTHER ORDERED that if, due to omission or commission by either party, or the death or disability of either party prior to implementation and satisfaction of the entire terms of this Judgment, the other party does not receive an asset or other benefit that he or she was intended to receive under the terms of this Judgment, the person or entity that receives or holds that asset or benefit shall do so in a constructive trust for the benefit of the party who was the intended recipient of that asset or benefit under this Judgment. The parties intend that this clause be binding on their estates, heirs, and assigns.

XVI.
CHANGE OF BENEFICIARIES

IT IS FURTHER ORDERED that except as provided herein, the parties hereby acknowledge that they have been advised to change the beneficiaries for their retirement accounts, pensions, 401k's, IRA's, other qualified plans, and their life insurance policies.

XVII.
EXTINGUISHMENT OF PRIOR ESTATE PLANNING

IT IS FURTHER ORDERED that all rights of the parties as defined by MCL 700.2806, MSA 27.12806 of the Estates and Protected Individuals Code (EPIC) in and to the estate and property of the other party is hereby extinguished and waived, by virtue of the property settlement ordered herein; and that all benefits which would otherwise pass to either party by intestate succession or by virtue of the provisions of any estate planning document including, but not limited to, a will or trust, executed prior to this divorce, are hereby abolished, waived by each party, and forever extinguished.

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XVIII.
ATTORNEY FEES AND COSTS

IT IS FURTHER ORDERED that each party shall be responsible for their own attorney fees as to property related issues. Defendant may submit required documentation with regard to attorney fees as to child-related issues, at which time the Court shall set the matter for a hearing, as provided in the *Decision and Order after De Novo Review.*

XIX.
RELEASE OF ATTORNEYS

IT IS FURTHER ORDERED that the attorneys for the parties shall be and are hereby released as attorneys of record in post-judgment proceedings unless specifically hereinafter retained by their respective client for such post-judgment action or proceedings.

XX.
ENFORCEMENT

IT IS FURTHER ORDERED that in the event either of the parties to this Judgment defaults in the performance of any of the obligations set forth in the Judgment, and it becomes necessary to institute legal proceedings to effectuate performance of any of the provisions of this Judgment of Divorce, then in such case, the party found to be in default, shall pay all expenses, including, but not limited to, reasonable attorney fees and court costs incurred in connection with such enforcement proceedings, if a court of competent jurisdiction orders the same.

XXI.
JURISDICTION

IT IS FURTHER ORDERED that this Court specifically reserves and retains jurisdiction over this case and these parties to dispose of unknown or undisclosed assets and to enforce and interpret this Judgment.

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XXII.
EFFECTIVE DATE OF JUDGMENT

IT IS FURTHER ORDERED that this Judgment shall be effective the date it is signed

by the Court.

XXIII.
ENTIRE AGREEMENT

IT IS FURTHER ORDERED that all provisions contained in this Judgment of Divorce represent the entire agreement between the parties. All claims of either party against the other during the marital relationship, and any agreements between the parties which are not part of this Judgment, shall be null and void.

XXIV.
CASE CLOSED; LAST PENDING CLAIM

IT IS FURTHER ORDERED that this Judgment of Divorce resolves the last pending claim and closes the case, except for any matter over which this court retains continuing jurisdiction by law.

IT IS SO ORDERED.

Marian Kromkowski

03/29/2022
01:43PM

MARIAN KROMKOWSKI, FAMILY DIVISION JUDGE, P30378

HON. MARIAN F. KROMKOWSKI
Circuit Court Judge – Family Division

Approved as to form:

Angela Pelletier

03/28/2022
02:25PM

ANGELA PELLETIER, FOC CASE MANAGER
Friend of the Court

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EXHIBIT 1

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STATE OF MICHIGAN

IN THE 13TH CIRCUIT COURT FOR THE COUNTY OF LEELANAU

ANDREW PAUL SABATINE,

Plaintiff, **FILE NO. 20-010532-DM**

v **HON. MARIAN F. KROMKOWSKI**

COLLEEN K. SABATINE,

Defendant.

MATTHEW VERMETTEN (P43425)
Pezzetti, Vermetten & Popovits, PC
Attorney for Plaintiff
600 E. Front St, Ste 102
Traverse City, MI 49686-2892
(231) 929-3450

AMY M. SWOGGER (P42687)
Ryder & Swogger, PC
Attorney for Defendant
511 Depot View Dr, Suite 19
Traverse City, MI 49686
(231) 929-3933

MEDIATION AGREEMENT

The parties, having participated in mediation via Zoom with counsel present and mediator, Gerald F. Chefalo, and state that they have reached the following agreement as to property that will be incorporated into their final judgment of divorce:

1. Plaintiff is awarded the home located at 9158 S. Majestic Ridge Drive, Traverse City, MI, 49684. He shall refinance or otherwise remove Defendant's name from the mortgage no later than 90 days from today's date.

2. Plaintiff is further awarded the following free and clear of any claims of Defendant:

- 5848 Shugart Lane, Unit # 3, Traverse City, MI 49684.
- Marriot Time Share.
- Solon range Membership.

3. Plaintiff shall retain all inherited property including those held in the Andrew P.

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Sabatine Trust. This includes the following assets:

- Wells Fargo Acct (6048).
- Wells Fargo Acct (7064).
- Wells Fargo IRA Beneficiary (7550).
- Wells Fargo Acct (9000).

4. Plaintiff is awarded his mBank RSA, mBank Fidelity 401 (k), MFNC Stock, Wells Fargo IRA (7948) and mBank Change and Control Payout.

5. Defendant is awarded her TransAmerica IRA (2607), Roth IRA (2854) and Fidelity 401k.

6. Plaintiff is responsible and shall be awarded the following motor vehicles & boat:

- 2018 Mercedes (lease).
- 2017 Toyota 4Runner.
- 2005 Jeep Wrangler.
- 2004 Boston Whaler.

7. Defendant is responsible for 2020 Jeep Gladiator (lease).

8. Plaintiff is awarded the GSK Grouse Inc. 25% ownership in hunting acreage.

9. Plaintiff is awarded his interest in TC H2O investment LLC and shall be responsible for the loan through State Savings Bank.

10. Plaintiff is awarded his interest in RCS Investment Co, LLC.

11. Each party is awarded the life insurance in their own names. Plaintiff is awarded the following:

- Principal Life.
- mBank Life Insurance.
- Jackson National Life Insurance (4862).
- Metlife (499UM).

12. Each party is responsible for the debts, including but not limited to credit cards, in their own names.

13. Each party is awarded the bank accounts in their own names. The joint account shall be closed.

14. Plaintiff shall pay the sum of $125,000 within 7 days of today's date to Defendant in the form of property settlement.

15. Plaintiff shall pay an additional $400,000 to Defendant within 90 days of today's

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date.

16. Defendant may put a lien on the Plaintiff's Wells Fargo Acct (9000) to secure the unpaid portion of the property settlement that shall expire upon payment in full. Plaintiff shall cooperate and sign any documents necessary to create this lien. Defendant will timely sign a satisfaction of lien upon payment.

17. Plaintiff shall pay to Defendant via a trustee to trustee transfer the sum of $125,000 from his IRA to Defendant's IRA to be completed no later than 90 days from today's date.

18. Each party may change account beneficiaries on accounts after the terms of this deal are completed.

19. The 529 accounts for the children shall remain titled as they currently are.

20. No spousal support is awarded to either party and it is forever barred.

21. The parties shall file taxes married/separately for 2020 and shall file separately thereafter.

22. Defendant is awarded the personal property on the attached exhibit A and has 45 days from today's date to retrieve this property. Plaintiff shall retain tools owned prior to the marriage. Otherwise, the parties are awarded the personal property in their respective possession.

23. Each party shall be responsible for their own attorney fees as to property related issues. Attorney fees as to child related issues remain open.

24. The parties and respective counsel have read and reviewed this agreement and have authorized the mediator to type their names below and thus bind all parties to this agreement.

Dated: August 18, 2021

/s/ Andrew P. Sabatine
Andrew P. Sabatine, Plaintiff

Dated: August 18, 2021

/s/ Matthew Vermetten
Matthew Vermetten (P43425)
Attorney for Plaintiff

Dated: August 18, 2021

/s/ Colleen K. Sabatine
Colleen K. Sabatine, Defendant

Dated: August 18, 2021

/s/ Amy M. Swogger
Amy M. Swogger (P42687)

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Attorney for Defendant

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- Girls room rug 5 x 8
- Some black and white framed pictures
- Red chest with art supplies
- wicker basket with stuffed animals and blankets
- Electric tea kettle
- blender
- coffee pot
- Fruit bowl
- Small box of kids garage art
- Some small handheld gardening tools
- Some premarital pictures
- Brass mirror gifted from nonna
- China dish is gifted from oma
- Glider/ rocking chair
- Personal clothes, Jewelry and bathroom items
- Some girls clothes and toiletries
- Personal paperwork and files
- Passports (mine and the girls)
- Fraction of girls books and toys
- Airdyne exercise bike
- Yoga mats

Items requested from TC house in April

- Holiday decorations including but not limited to Lenox dishware, figurines and stockings
- ½ Gardening and yard tools including but not limited to electric trimmer, hand held leaf blower, ½ the hand tools/shovels/rakes
- ½ Tools including but not limited to electric drill, hammer, saw, measuring tape
- Dishware from oma and opa
- ½ serving bowls and platers
- ½ kitchen tools and accessories including but not limited wooden spoons, pizza stone and cutter
- ½ kitchen side appliances including but not limited to the toaster oven, kitchen aid with accessories
- ½ bakeware including but not limited to ruffled edge pie dish and casserole dish
- ½ baking tool including rolling pin, muffin tins, bread pan, cookie sheet
- ½ cutting boards
- ½ pots and pans including but not limited to risotto pan, paella pan, dutch oven, fry pan and roaster
- Hutch items including but not limited to ½ linens, placemats, candles
- Knife set
- 1 of 2 sets of silverware and ½ serving utensils
- ½ children's dishes

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- Miscellaneous kitchen items including but not limited to tea pot, water pitcher, mortal and pestle
- ½ dish towels and oven mitts
- Crystal including but not limited to Waterford from Oma and Opa
- ½ Drinkware including but not limited to blue rimmed glasses and multicolored glassware, waterbottles
- ½ spices
- Globe light
- Any gift from my side of the family
- Miscellaneous girls toys
- Beatrix Potter figurines
- Children's musical instruments including but not limited to the key board, ukulele, drums
- ½ Books for girls
- ½ picture books from girls
- My books
- My bin of arts and crafts
- Camping gear including but not limited to my sleeping bag, pack, stove
- ½ suitcases
- ½ outdoor kids play toys including but not limited to soccer balls
- Driftwood and blown glass vases
- ½ vases including but not limited to etched flower vase
- ½ pictures and frames including but not limited to my family pictures
- Painted kids table and drawer
- Painted toy boxes
- ½ exercise equipment including but not limited to elliptical and small weights
- ½ of each the large and small TVs
- Printer
- Bulletin board
- Composter
- Veggie troughs
- ½ planters and plants
- ½ bird feeders
- ½ Ladders
- ½ Hoses and sprinklers
- ½ extension cords
- ½ cleaning supplies including but not limited to a Vacuum, broom, duster
- Iron
- ½ towels
- ½ Beach towels
- ½ coolers

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- 2 dark brown leather chairs and ottoman
- Purple folding wagon
- Freezer chest
- Black cross bike
- Patio furniture

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STATE OF MICHIGAN 13th JUDICIAL CIRCUIT LEELANAU COUNTY	UNIFORM CHILD SUPPORT ORDER ☐ EX PARTE ☐ TEMPORARY ☑ MODIFICATION ☐ FINAL	CASE NO. and JUDGE 2020-010532-DM HON. MARIAN F. KROMKOWSKI

Court address
328 Washington Street, Ste. 200, Traverse City, MI 49684

Court telephone no.
(231) 922-4660

Plaintiff's name, address, and telephone no.		Defendant's name, address, and telephone no.
ANDREW P. SABATINE 9158 S. Majestic Ridge Traverse City, MI 49684	v	COLLEEN K. SABATINE 13307 Firestone Drive Fenton, MI 48430
Plaintiff's attorney, bar no., address, and telephone no.		**Defendant's attorney, bar no., address, and telephone no.**
Matthew D. Vermetten (P43425) Melissa Baumgartner Umulis (P78582) PEZZETTI, VERMETTEN & POPOVITS, P.C. 600 E. Front Street, Ste. 102 Traverse City, MI 49686 (231) 929-3450		Amy M. Swogger (P42687) RYDER & SWOGGER, P.C. 511 Depot View Drive, Ste. 19 Traverse City, MI 49686 (231) 929-3933
Plaintiff's source of income name, address, and telephone no.		**Defendant's source of income name, address, and telephone no.**
Nicolet National Bank		

This order is entered ☐ after hearing. ☐ after statutory review. ☐ on stipulation/consent of the parties.
☐ The friend of the court recommends child support be ordered as follows.
☐ If you disagree with this recommendation, you must file a written objection with _____ on or before **21 days** from the date this order is mailed. If you do not object, this proposed order will be presented to the court for entry.
☑ Attached are the calculations pursuant to MCL 552.505(1)(h) and MCL 552.517b.

IT IS ORDERED, unless otherwise ordered in item 11 or 12:
☐ Standard provisions have been modified (see item 11 or 12).

1. **The children who are supported under this order and the payer and payee are:**

Payer: ANDREW SABATINE	Payee: COLLEEN SABATINE
Children's names and annual overnights with payer:	
Children's names	Overnights
AIDA V. SABATINE	122
VERA L. SABATINE	122

Effective 1/1/2022, the payer shall pay a monthly child support obligation for the children named above.

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Form Instructions

Distribute form to:
Court
Plaintiff
Defendant
Friend of the court

1. **Item 1** (continued).

Children supported:	1 child	2 children	3 children	4 children	5 or more children
Base Support: (includes support plus or minus premium adjustment for health-care insurance)					
Support:	$ 1,307.00	$ 1,993.00	$	$	$
Premium adjust:	$ -36.00	$ -73.00	$	$	$
Subtotal:	$ 1,271.00	$ 1,920.00	$	$	$
Ordinary medical:	$ 27.00	$ 54.00	$	$	$
Child care:	$	$ 105.00	$	$	$
Other:	$	$	$	$	$
Benefit credit:	$	$	$	$	$
Total:	$ 1,298.00	$ 2,079.00	$	$	$

☐ Support was reduced because payer's income was reduced.

Uninsured Health-Care Expenses. All uninsured health-care expenses exceeding the annual ordinary medical amount will be paid 72 % by the plaintiff and 28 % by the defendant. Uninsured expenses exceeding the annual ordinary medical amount for the year they are incurred that are not paid within 28 days of a written payment request may be enforced by the friend of the court. The annual ordinary medical amount is $908 for 2 children.

Obligation Ends. Except for child care, or as otherwise ordered, support obligations for each child end on the last day of the month the child turns age 18.

☐ **Post-majority Support:** The following children will be attending high school on a full-time basis after turning 18 years of age. Therefore, the support obligation for each specific child ends on the last day of the month as follows, except in no case may it extend beyond the time the child reaches 19 years and 6 months of age:
(Specify name of child and date obligation ends.)

_____

_____

Child Care. The parties must notify each other of changes in child-care expenses and must additionally notify the friend of the court if the changes end those expenses. The child-care obligation for each child ends on August 31 following the child's 12th birthday, at which time the total child care obligation reduces by that child's pro rata share unless specified differently in this order.

2. **Health-Care Coverage.** For the benefit of the children, the ☑ plaintiff ☐ defendant shall maintain health-care coverage (as defined in MCL 552.602) that includes payment for hospital, dental, optical, and other health-care expenses when that coverage is accessible to the child and available at a reasonable cost. The reasonable cost is the parent's net cost of adding the children to the parent's coverage
☐ up to a maximum of $ _____ for plaintiff. ☐ up to a maximum of $ _____ for defendant.
☑ not to exceed 6% of the plaintiff's/defendant's gross income.

3. **Income Withholding.** Income withholding takes immediate effect. Payments shall be made through the Michigan State Disbursement Unit unless otherwise ordered in item 12.

4. **Qualified Medical Support Order.** This order is a qualified medical support order with immediate effect pursuant to 29 USC 1169. To qualify this order, the friend of the court shall issue a notice to enroll pursuant to MCL 552.626b. A parent may contest the notice by requesting a review or hearing concerning availability of health care at a reasonable cost.

5. **Retroactive Modification, Surcharge for Past-Due Support, and Liens for Unpaid Support.** Except as provided by MCL 552.603, support is a judgment the date it is due and is not modifiable retroactively. A surcharge may be added to past-due support. Unpaid support is a lien by operation of law and the payer's property can be encumbered or seized if an arrearage accrues in an amount greater than the periodic support payments payable for two months under the payer's support order.

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6. **Address, Employment Status, Health Insurance.** Both parties shall notify the friend of the court in writing of: a) their mailing and residential addresses and telephone numbers; b) the names, addresses, and telephone numbers of their sources of income; c) their health-maintenance or insurance companies, insurance coverage, persons insured, or contract numbers; d) their occupational or driver's licenses; and e) their social security numbers unless exempt by law pursuant to MCL 552.603. Both parties shall notify the friend of the court in writing within 21 days of any change in this information. Failure to do so may result in a fee being imposed.

7. **Foster-Care Assignment.** When a child is placed in foster care, that child's support is assigned to the Michigan Department of Health and Human Services while under the state's jurisdiction and to the funding county while placed in a county-funded program.

8. **Redirection and Abatement.** As provided by MCL 552.605d and subject to statutory procedures, the friend of the court may redirect support paid for a child to the person who is providing the actual care, support, and maintenance of that child, and shall abate support charges to zero for a child who resides on a full-time basis with the payer of support or if the payer of support will be incarcerated for 180 consecutive days or more without the ability to pay.

☐ When friend of the court becomes aware that the payer's condition meets the definition of incapacitation as defined in the current or subsequent Michigan Child Support Formula, monthly support charges shall abate and be temporarily reduced to zero effective the date that the friend of the court office provides notice of the abatement to the parties and to the court. Support charges shall be reinstated effective 60 days after the incapacitation ends. The office shall provide notice of reinstatement to the parties and to the court that specifies the date charges will be effective.

Either party may object to the abatement or reinstatement by filing a written objection with the court within 21 days following when the notice was filed, or by filing a motion. If a timely objection is received, the friend of the court shall either set the objection for hearing or complete a support review with an effective date no earlier than the date of filing of that notice.

Based on a motion by either party or a recommendation following a review by the friend of the court, the amount abated may be later corrected based on the parties' incomes or ability to pay during the abatement period.

9. **Fees.** The payer of support shall pay statutory and service fees as required by law.

10. **Review.** Each party to a support order may submit a written request to have the friend of the court review the order. The friend of the court is not required to act on more than one request received from a party each 36 months. A party may also file a motion to modify this support order.

☐ 11. **Michigan Child Support Formula Deviation.** The support provisions ordered do not follow the Michigan Child Support Formula. The attached deviation addendum (FOC 10d) provides the basis for deviation and the required findings by the court.

☐ 12. **Other:** (Attach separate sheets as needed.)

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Case No. _____

13. **Prior Orders. This order supersedes all prior child support orders and all continuing provisions are restated in this order.** Past-due amounts owed under any prior support order in this case are preserved and paid at the rate calculated using the arrearage guideline in the Michigan Child Support Formula.

Marian Kromkowski 03/29/2022 01:43PM

MARIAN KROMKOWSKI, FAMILY DIVISION JUDGE, P30378

Plaintiff (if consent/stipulation) Date

Defendant (if consent/stipulation) Date

Plaintiff's attorney Date

Defendant's attorney Date

Prepared by: Melissa Baumgartner Umulis (P78582)
Name (type or print)

Angela Pelletier 03/28/2022 02:25PM

ANGELA PELLETIER, FOC CASE MANAGER

CERTIFICATE OF MAILING

I served a copy of this uniform child support order on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 3.203. ☐ I also served the Deviation Addendum (FOC 10d) with this order. I declare under the penalties of perjury that this certificate of mailing has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature

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CALCULATION RESULTS

2020-010532-DM
Calculation 1624151 completed by ANGELA PELLETIER on 11/16/2021.

Summary

ANDREW SABATINE paying COLLEEN SABATINE $1,974.00 a month.
(Note: See following pages for further detail)

Family Used for Calculation Results

Children in Common *(youngest to oldest)*

VERA SABATINE AIDA SABATINE

Calculation Between ANDREW SABATINE and COLLEEN SABATINE

Total Other Children - ***2021 MCSF 2.08(A)***

	1 Child	None 2 Children	3 Children	None 4 Children	5+ Children
Payer	ANDREW	ANDREW			
Average Overnights with Payer	122	122			
Base Support after PTO	$1,307.00	$1,993.00			
HC Premium Adjustment	-$36.00	-$73.00			
Subtotals	$1,271.00	$1,920.00			
Ordinary Medical	$27.00	$54.00			
Child Care	$0.00	$0.00			
Benefit Credit	$0.00	$0.00			
Totals	$1,298.00	**$1,974.00**			

Net Income Calculation - ***2021 MCSF 2.01(C)***	ANDREW SABATINE		COLLEEN SABATINE
Monthly Gross Income	$17,583.33		$5,630.83
Monthly Deductions and Adjustments	$5,555.73		$1,007.13
Monthly Net Income	$12,027.60		$4,623.70
Family Net Income		$16,651.30	
Share of Net Income	72.23%		27.77%
Base Support Calculation - ***2021 MCSF 3.02(A)***			
Base Support Amount	$2,522.00		$970.00
Average Overnights (Highest Tier)	122		243
Payer's Base Support Amount after PTO	$1,993.00		$0.00
Health Care Premium Allocation - ***2021 MCSF 3.05(C)***			
Monthly Insurance Premiums	$520.00		$0.00
Calculation Children Covered	2		0
Additional People Covered	2		0
Per Capita	$130.00		$0.00
Amount Attributable to Children on Calculation	$260.00		$0.00
Share of Premiums	72%		28%
Payer's Monthly Share	-$73.00		$0.00
Ordinary Medical Expense - ***2021 MCSF 3.04(B)***			
Annual Ordinary Medical Expense for 2 Children		$908.00	
Share of Medical Expense	72%		28%
Payer's Monthly Share	$54.00		$0.00
Child Care Expense Reimbursement - ***2021 MCSF 3.06(C)***			
Monthly Gross Child Care Expenses	$0.00		$0.00
Subsidies, Reimbursements, Credits	$0.00		$0.00
Monthly Net Child Care Expenses	$0.00		$0.00
Share of Child Care	72%		28%
Payer's Monthly Share	$0.00		$0.00

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CALCULATION RESULTS

2020-010532-DM
Calculation 1624151 completed by ANGELA PELLETIER on 11/16/2021.

Details

ANDREW SABATINE paying COLLEEN SABATINE $1,974.00 a month.
(Note: See following pages for further detail)

Family/Children Details - *2021 MCSF 2.08(A)*

	ANDREW SABATINE	COLLEEN SABATINE
Additional Children from Other Relationships	0	0
Children-in-Common in Other Custodial Arrangements	0	0
Total Other Children	0	0
Income Adjustment Percentage Multiplier	-	-
Provided Information For Support Calculation	Yes	Yes

Net Income Calculation - *2021 MCSF 2.01(C)*

	ANDREW SABATINE	COLLEEN SABATINE
Income Type	Employer Wages	Employer Wages
Employer Name		
Monthly Gross Income	$14,583.33	$4,630.83
Monthly Overtime	$0.00	$0.00
Monthly Shift Premium	$0.00	$0.00
Income Type	Dividends	Perks and In-Kind - From Employment
Monthly Gross Income	$3,000.00	$1,000.00
Total Monthly Gross Income	**$17,583.33**	**$5,630.83**
Filing Status	Single	Head of Household
Tax Exemptions	1	3
Child Tax Credit Children Claimed Every Year		
Child Tax Credit Children Claimed Alternating Years		
FICA Tax	$1,001.01	$354.26
Federal Tax	$3,694.25	$464.03
State Tax	$730.47	$188.84
Local Resident Tax	$0.00	$0.00
Local Non-Resident Tax	$0.00	$0.00
Additional Children Adjustment	$0.00	$0.00
Mandatory Health Insurance - Parent's Self-Coverage Portion of Premiums	$130.00	$0.00
Total Monthly Gross Deductions and Adjustments	**$5,555.73**	**$1,007.13**
Monthly Net Income	$12,027.60	$4,623.70
Family Net Income	$16,651.30	
Share of Net Income	72.23%	27.77%

Disclaimer: Unless identified as an adjusted tax amount (M), the tax amounts listed are estimates calculated by the Michigan Child Support Enforcement System. (P) Indicates Potential. (O) Indicates Omitted.

Income Comments
ANDREW SABATINE: $175,000.00 wages; $36,000.00 dividends/interest
COLLEEN SABATINE: $55,570.00 wages; $12,000.00 perks

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Base Support Calculation - *2021 MCSF 3.02(A)*

	ANDREW SABATINE	COLLEEN SABATINE
Children in Common	2	2

CALCULATION RESULTS

Children in Common on Calculation	2	2
Base Support Equation	General Care Equation - 2021 MCSF 3.02(B)	General Care Equation - 2021 MCSF 3.02(B)
Base Support Amount	$2,522.00	$970.00
Base Support Amount after PTO	$1,993.00	$0.00

Children:	VERA SABATINE	AIDA SABATINE
Obligation End Date	01/31/2036	10/31/2033
Post Majority	No	No

Parenting Time Overnights - *2021 MCSF 3.03(A)*

	ANDREW SABATINE	COLLEEN SABATINE
VERA SABATINE - 01/26/2018	122	243
AIDA SABATINE - 10/27/2015	122	243
Average Overnights (Highest Tier)	122	243

Health Care Allocations and Medical Obligations - *2021 MCSF 3.05(C), 2021 MCSF 3.04(B)*

	ANDREW SABATINE		COLLEEN SABATINE
Recommended to Provide Health Insurance	Yes		No
Health Care Coverage Type	Private Only		
Reasonable Cost of Health Care	6%		6%
Share of Health Care	72%		28%
Monthly Insurance Premiums	$520.00		$0.00
Calculation Children Covered	2		0
Additional Qualifying Children Covered	0		0
Additional People Covered	2		0
Per Capita Amount	$130.00		$0.00
Payer's Monthly Share	-$73.00		$0.00
Share of Medical Expense	72%		28%
Annual Ordinary Medical Expense per MCSF		$908.00	
Monthly Ordinary Medical Expense		$75.67	
Payer's Monthly Share	$54.00		$0.00

Child Care Obligations - *2021 MCSF 3.06(C)*

	ANDREW SABATINE		COLLEEN SABATINE
Share of Child Care	72%		28%
Monthly Child Care Expense	$0.00		$0.00
Children: (youngest to oldest)	VERA SABATINE	AIDA SABATINE	
Child Care Reimbursement End Date	08/31/2030	08/31/2028	
Subsidies, Reimbursements, Credits		$0.00	$0.00
Net Child Care Expenditures		$0.00	$0.00
Payer's Monthly Share		$0.00	$0.00

Administrative Information

Calculation ID	1624151	MCSF Year	2021
Docket	2020-010532-DM	MCSF Supplement Year	2021
County	045	Tax Year	2021

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CALCULATION RESULTS

Calculation Completed by ANGELA PELLETIER Calculation Completed Date 11/16/2021
Calculation Parties ANDREW SABATINE and COLLEEN SABATINE

Calculation Results:
ANDREW SABATINE paying COLLEEN SABATINE $1,974.00 a month.

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Circuit Court Judges
THOMAS G. POWER
KEVIN A. ELSENHEIMER

Family Division Judges
NORMAN R. HAYES
MELANIE D. STANTON
MARIAN F. KROMKOWSKI

FRIEND OF THE COURT
FOR
THE THIRTEENTH JUDICIAL CIRCUIT OF MICHIGAN

ANTRIM – GRAND TRAVERSE – LEELANAU COUNTIES
328 Washington - Suite 200
Traverse City, MI 49684
Ph. 231-922-4660 – Fax 231-922-4575
www.13thCircuitCourt.org

Friend of the Court
JEREMY C. HOGUE

Family Division Referees
MATTHEW N. HAGEN
STEVEN W. PACIORKA

December 21, 2021

Andrew Sabatine
9158 S. Majestic Ridge
Traverse City, MI 49684

RE: Andrew Sabatine vs. Colleen Sabatine
File No. 2020010532DM

Dear Andrwe:

The Court Order currently in effect with regard to child support requires that, upon written verification to the Friend of the Court that the custodial parent has work related child care costs, you are to contribute 72% of such costs after allowance is made for the child care credit allowed by the IRS. Defendant has presented verification to this office that she presently pays $94.60 per week for 37 weeks of child care costs.

Your 72% of this amount after deduction of the credit allowed by the IRS is $105.00 per month. Therefore, we are increasing monthly support charges to include this amount effective January 1, 2022, the first of the month following receipt of verification of child care charges. Your total monthly payment will now be $2,079.00.

Your obligation to contribute child care costs will cease at the end of the summer following your child's twelfth birthday. Please send us a reminder at that time that child care charges should cease.

Sincerely,

Angela Pelletier 12/21/2021 10:22AM

ANGELA PELLETIER, FOC CASE MANAGER

Angela Pelletier
Case Manager

NOTICE: If your co-parent has work-related child care expenses, you will be required to contribute your court ordered percentage of the expense. However, if you wish to dispute some aspect of this matter, you must write your Friend of the Court Case Manager to request a hearing within 14 days. We will then establish a time for you to go before the Court or Referee with your arguments.

cc: Colleen Sabatine

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FICCAJ

STATE OF MICHIGAN 13TH JUDICIAL CIRCUIT LEELANAU COUNTY	UNIFORM CHILD SUPPORT ORDER ☐ EX PARTE ☐ TEMPORARY ☒ MODIFICATION ☐ FINAL	CASE NO. 2020010532DM

Friend of the Court address
328 Washington St., Ste 200, Traverse City, MI 49684

Friend of the Court telephone
231-922-4660

Plaintiff's name, address	v	Defendant's name, address
ANDREW PAUL SABATINE 9158 S MAJESTIC RIDGE TRAVERSE CITY MI 49684		COLLEEN K. SABATINE 13084 LOG CABIN PT FENTON MI 48430
Plaintiff's attorney name, address MATTHEW VERMETTEN MELISSA BAUMGARTNER UMULIS		Defendant's attorney name, address AMY SWOGGER

This order is entered ☒ after hearing. ☐ after statutory review. ☐ on stipulation/consent of the parties.

☐ The friend of the court recommends support be ordered as follows.

☐ If you disagree with this recommendation, you must file a written objection with _____on or before **21 days** from the date this order is mailed. If you do not object, this proposed order will be presented to the court for entry.

☒ Attached are the calculations pursuant to MCL 552.505(1)(h) and MCL 552.517b.

IT IS ORDERED, unless otherwise ordered in item 11 or 12: ☐ Standard provisions have been modified (see item 11 or 12).

1. **The children who are supported under this order and the payer and payee are:**

Payer: ANDREW SABATINE	**Payee: COLLEEN SABATINE**
Children's names and annual overnights with payer: **Children's names**	**Overnights**
AIDA V. SABATINE	**122**
VERA L. SABATINE	**122**

Effective 9/3/21, the payer shall pay a monthly child support obligation for the children named above.

Children supported:	1 child	2 children	3 children	4 children	5 or more children
Base support: (includes support plus or minus premium adjustment for health-care insurance)					
Support:	$ 1,307.00	$ 1,993.00	$	$	$
Premium Adjustment:	$ -36.00	$ -73.00	$	$	$
Subtotal:	$ 1,271.00	$ 1,920.00	$	$	$
Ordinary Medical:	$ 27.00	$ 54.00	$	$	$
Child Care:	$	$	$	$	$
Other:	$	$	$	$	$
SS Benefit Credit:	$	$	$	$	$
Total:	$ 1,298.00	$ 1,974.00	$	$	$
☐ Support was reduced because payer's income was reduced.					

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(See Page 2 for the remainder of the order.)

STATE OF MICHIGAN 13TH JUDICIAL CIRCUIT LEELANAU COUNTY	UNIFORM CHILD SUPPORT ORDER ☐ EX PARTE ☐ TEMPORARY ☒ MODIFICATION ☐ FINAL	CASE NO. 2020010532DM

Friend of the Court address
328 Washington St., Ste 200, Traverse City, MI 49684

Friend of the Court telephone
231-922-4660

Plaintiff's Name	V	Defendant's Name
ANDREW PAUL SABATINE		COLLEEN K. SABATINE

1. Child Support (continued).

Uninsured Health-Care Expenses. All uninsured health-care expenses exceeding the annual ordinary medical amount will be paid 72_% by the plaintiff and 28_% by the defendant. Uninsured expenses exceeding the annual ordinary medical amount for the year they are incurred that are not paid within 28 days of a written payment request may be enforced by the friend of the court. The annual ordinary medical amount is $908.00 for 2 children.

Obligation Ends. Except for child care, or as otherwise ordered, support obligations for each child end on the last day of the month the child turns 18.

☐ **Post-majority Support:** The following children will be attending high school on a full-time basis after turning 18 years of age. Therefore, the support obligation for each specific child ends on the last day of the month as follows, except in no case may it extend beyond the time the child reaches 19 years and 6 months of age: (specify name of child and date obligation ends.)

_____.

Child Care. The parties must notify each other of changes in child-care expenses and must additionally notify the friend of the court if the changes end those expenses. The child-care obligation for each child ends on August 31 following the child's 12th birthday, at which time the total child care obligation reduces by that child's pro rata share unless specified differently in this order.

2. **Health-Care Coverage.** For the benefit of the children, the ☒ plaintiff ☐ defendant shall maintain health-care coverage through (as defined in MCL 552.602) that includes payment for hospital, dental, optical, and other health-care expenses when that coverage is accessible the the child and available at a reasonable cost. The reasonable cost is the parent's net cost of adding the children to the parent's coverage
☐ up to a maximum of $_____ for plaintiff. ☐ up to maximum of $_____ for defendant.
☒ not to exceed 6% of the plaintiff's/defendant's gross income.

3. **Income Withholding.** Income withholding takes immediate effect. Payments shall be made through the Michigan State Disbursement Unit unless otherwise ordered in item 12.

4. **Qualified Medical Support Order.** This order is a qualified medical support order with immediate effect pursuant to 29 USC 1169. To qualify this order, the friend of the court shall issue a notice to enroll pursuant to MCL 552.626b. A parent may contest the notice by requesting a review or hearing concerning availability of health care at a reasonable cost.

5. **Retroactive Modification, Surcharge for Past-Due Support, and Liens for Unpaid Support.** Except as provided by MCL 552.603, support is a judgment the date it is due and is not modifiable retroactively. A surcharge may be added to past-due support. Unpaid support is a lien by operation of law and the payer's property can be encumbered or seized if an arrearage accrues in an amount greater than the periodic support payments payable for two months under the payer's support order.

6. **Address, Employment Status, Health Insurance.** Both parties shall notify the friend of the court in writing of: a) their mailing and residential addresses and telephone numbers; b) the names, addresses, and telephone numbers of their sources of income; c) their health-maintenance or insurance companies, insurance coverage, persons insured, or contract numbers; d) their occupational or drivers' licenses; and e) their social security numbers unless exempt by law pursuant to MCL 552.603. Both parties shall notify the friend of the court in writing within 21 days of any change in this information. Failure to do so may result in a fee being imposed.

7. **Foster-Care Assignment.** When a child is placed in foster care, that child's support is assigned to the Department of Human Services while under the state's jurisdiction and to the funding county while placed in a county-funded program.

8. **Redirection and Abatement:** Subject to the statutory procedures, the friend of the court: 1) may redirect support paid for a child to the person who is providing the actual care, support, and maintenance of that child; 2) shall abate support charges for a child who resides on a full-time basis with the payer of support.

9. **Fees.** The payer of support shall pay statutory and service fees as required by law.

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(See Page 3 for the remainder of the order.)

STATE OF MICHIGAN 13TH JUDICIAL CIRCUIT LEELANAU COUNTY	UNIFORM CHILD SUPPORT ORDER ☐ EX PARTE ☐ TEMPORARY ☒ MODIFICATION ☐ FINAL	CASE NO. 2020010532DM

Friend of the Court address
328 Washington St., Ste 200, Traverse City, MI 49684

Friend of the Court telephone
231-922-4660

Plaintiff's Name	V	Defendant's Name
ANDREW PAUL SABATINE		COLLEEN K. SABATINE

10. **Review.** Each party to a support order may submit a written request to have the friend of the court review the order. The friend of the court is not required to act on more than one request received from a party each 36 months. A party may also file a motion to modify this support order.

☐ 11. **Michigan Child Support Formula Deviation.** The support provisions ordered do not follow the Michigan Child Support Formula. The attached deviation addendum (FOC 10d) provides the basis for deviation and the required findings by the court.

☐ 12. **Other:** (Attach separate sheets as needed.) _____

13. **Prior Orders. This order supersedes all prior child support orders and all continuing provisions are restated in this order.** Past-due amounts owed under any prior support order in this case are preserved and paid at the rate calculated using the arrearage guideline in the Michigan Child Support Formula.

Prepared by: Angela Pelletier

Marian Kromkowski 11/17/2021 04:06PM

MARIAN KROMKOWSKI, FAMILY DIVISION JUDGE, P30378

Judge Marian Kromkowski

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this order on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 3.203. I declare under the penalties of perjury that this certificate of mailing has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Signature

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CALCULATION RESULTS

2020-010532-DM
Calculation 1624151 completed by ANGELA PELLETIER on 11/16/2021.

Summary

ANDREW SABATINE paying COLLEEN SABATINE $1,974.00 a month.
(Note: See following pages for further detail)

Family Used for Calculation Results

Children in Common *(youngest to oldest)*

VERA SABATINE AIDA SABATINE

Calculation Between ANDREW SABATINE and COLLEEN SABATINE

Total Other Children - ***2021 MCSF 2.08(A)***

	1 Child	2 Children	3 Children	4 Children	5+ Children
	None			None	
Payer	ANDREW	ANDREW			
Average Overnights with Payer	122	122			
Base Support after PTO	$1,307.00	$1,993.00			
HC Premium Adjustment	-$36.00	-$73.00			
Subtotals	$1,271.00	$1,920.00			
Ordinary Medical	$27.00	$54.00			
Child Care	$0.00	$0.00			
Benefit Credit	$0.00	$0.00			
Totals	$1,298.00	**$1,974.00**			

Net Income Calculation - ***2021 MCSF 2.01(C)***	ANDREW SABATINE		COLLEEN SABATINE
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Family Net Income		$16,651.30	
Share of Net Income	72.23%		27.77%
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Base Support Amount	$2,522.00		$970.00
Average Overnights (Highest Tier)	122		243
Payer's Base Support Amount after PTO	$1,993.00		$0.00
Health Care Premium Allocation - ***2021 MCSF 3.05(C)***			
Monthly Insurance Premiums	$520.00		$0.00
Calculation Children Covered	2		0
Additional People Covered	2		0
Per Capita	$130.00		$0.00
Amount Attributable to Children on Calculation	$260.00		$0.00
Share of Premiums	72%		28%
Payer's Monthly Share	-$73.00		$0.00
Ordinary Medical Expense - ***2021 MCSF 3.04(B)***			
Annual Ordinary Medical Expense for 2 Children		$908.00	
Share of Medical Expense	72%		28%
Payer's Monthly Share	$54.00		$0.00
Child Care Expense Reimbursement - ***2021 MCSF 3.06(C)***			
Monthly Gross Child Care Expenses	$0.00		$0.00
Subsidies, Reimbursements, Credits	$0.00		$0.00
Monthly Net Child Care Expenses	$0.00		$0.00
Share of Child Care	72%		28%
Payer's Monthly Share	$0.00		$0.00

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CALCULATION RESULTS

2020-010532-DM
Calculation 1624151 completed by ANGELA PELLETIER on 11/16/2021.

Details

ANDREW SABATINE paying COLLEEN SABATINE $1,974.00 a month.
(Note: See following pages for further detail)

Family/Children Details - *2021 MCSF 2.08(A)*

	ANDREW SABATINE	COLLEEN SABATINE
Additional Children from Other Relationships	0	0
Children-in-Common in Other Custodial Arrangements	0	0
Total Other Children	0	0
Income Adjustment Percentage Multiplier	-	-
Provided Information For Support Calculation	Yes	Yes

Net Income Calculation - *2021 MCSF 2.01(C)*

	ANDREW SABATINE	COLLEEN SABATINE
Income Type	Employer Wages	Employer Wages
Employer Name		
Monthly Gross Income	$14,583.33	$4,630.83
Monthly Overtime	$0.00	$0.00
Monthly Shift Premium	$0.00	$0.00
Income Type	Dividends	Perks and In-Kind - From Employment
Monthly Gross Income	$3,000.00	$1,000.00
Total Monthly Gross Income	**$17,583.33**	**$5,630.83**
Filing Status	Single	Head of Household
Tax Exemptions	1	3
Child Tax Credit Children Claimed Every Year		
Child Tax Credit Children Claimed Alternating Years		
FICA Tax	$1,001.01	$354.26
Federal Tax	$3,694.25	$464.03
State Tax	$730.47	$188.84
Local Resident Tax	$0.00	$0.00
Local Non-Resident Tax	$0.00	$0.00
Additional Children Adjustment	$0.00	$0.00
Mandatory Health Insurance - Parent's Self-Coverage Portion of Premiums	$130.00	$0.00
Total Monthly Gross Deductions and Adjustments	**$5,555.73**	**$1,007.13**
Monthly Net Income	$12,027.60	$4,623.70
Family Net Income	$16,651.30	
Share of Net Income	72.23%	27.77%

Disclaimer: Unless identified as an adjusted tax amount (M), the tax amounts listed are estimates calculated by the Michigan Child Support Enforcement System. (P) Indicates Potential. (O) Indicates Omitted.

Income Comments
ANDREW SABATINE: $175,000.00 wages; $36,000.00 dividends/interest
COLLEEN SABATINE: $55,570.00 wages; $12,000.00 perks

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Base Support Calculation - *2021 MCSF 3.02(A)*

	ANDREW SABATINE	COLLEEN SABATINE
Children in Common	2	2

CALCULATION RESULTS

Children in Common on Calculation	2	2
Base Support Equation	General Care Equation - 2021 MCSF 3.02(B)	General Care Equation - 2021 MCSF 3.02(B)
Base Support Amount	$2,522.00	$970.00
Base Support Amount after PTO	$1,993.00	$0.00

Children:	VERA SABATINE	AIDA SABATINE
Obligation End Date	01/31/2036	10/31/2033
Post Majority	No	No

Parenting Time Overnights - *2021 MCSF 3.03(A)*

	ANDREW SABATINE	COLLEEN SABATINE
VERA SABATINE - 01/26/2018	122	243
AIDA SABATINE - 10/27/2015	122	243
Average Overnights (Highest Tier)	122	243

Health Care Allocations and Medical Obligations - *2021 MCSF 3.05(C), 2021 MCSF 3.04(B)*

	ANDREW SABATINE		COLLEEN SABATINE
Recommended to Provide Health Insurance	Yes		No
Health Care Coverage Type	Private Only		
Reasonable Cost of Health Care	6%		6%
Share of Health Care	72%		28%
Monthly Insurance Premiums	$520.00		$0.00
Calculation Children Covered	2		0
Additional Qualifying Children Covered	0		0
Additional People Covered	2		0
Per Capita Amount	$130.00		$0.00
Payer's Monthly Share	-$73.00		$0.00
Share of Medical Expense	72%		28%
Annual Ordinary Medical Expense per MCSF		$908.00	
Monthly Ordinary Medical Expense		$75.67	
Payer's Monthly Share	$54.00		$0.00

Child Care Obligations - *2021 MCSF 3.06(C)*

	ANDREW SABATINE		COLLEEN SABATINE
Share of Child Care	72%		28%
Monthly Child Care Expense		$0.00	$0.00

Children: (youngest to oldest)	VERA SABATINE	AIDA SABATINE
Child Care Reimbursement End Date	08/31/2030	08/31/2028

Subsidies, Reimbursements, Credits	$0.00	$0.00
Net Child Care Expenditures	$0.00	$0.00
Payer's Monthly Share	$0.00	$0.00

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Administrative Information

Calculation ID	1624151	MCSF Year	2021
Docket	2020-010532-DM	MCSF Supplement Year	2021
County	045	Tax Year	2021

CALCULATION RESULTS

Calculation Completed by ANGELA PELLETIER Calculation Completed Date 11/16/2021
Calculation Parties ANDREW SABATINE and COLLEEN SABATINE

Calculation Results:
ANDREW SABATINE paying COLLEEN SABATINE $1,974.00 a month.

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STATE OF MICHIGAN 13TH JUDICIAL CIRCUIT LEELANAU COUNTY	UNIFORM CHILD SUPPORT ORDER ☐ EX PARTE ☐ TEMPORARY ☒ MODIFICATION ☐ FINAL	CASE NO. 2020010532DM

Friend of the Court address
328 Washington St., Ste 200, Traverse City, MI 49684

Friend of the Court telephone
231-922-4660

Plaintiff's name, address	v	Defendant's name, address
ANDREW PAUL SABATINE 9158 S MAJESTIC RIDGE TRAVERSE CITY MI 49684		COLLEEN K. SABATINE 13084 LOG CABIN PT FENTON MI 48430
Plaintiff's attorney name, address		**Defendant's attorney name, address**
MATTHEW VERMETTEN MELISSA BAUMGARTNER UMULIS		AMY SWOGGER

This order is entered ☒ after hearing. ☐ after statutory review. ☐ on stipulation/consent of the parties.

☐ The friend of the court recommends support be ordered as follows.

☐ If you disagree with this recommendation, you must file a written objection with _____on or before **21 days** from the date this order is mailed. If you do not object, this proposed order will be presented to the court for entry.

☒ Attached are the calculations pursuant to MCL 552.505(1)(h) and MCL 552.517b.

IT IS ORDERED, unless otherwise ordered in item 11 or 12: ☐ Standard provisions have been modified (see item 11 or 12).

1. **The children who are supported under this order and the payer and payee are:**

Payer: ANDREW SABATINE	**Payee: COLLEEN SABATINE**
Children's names and annual overnights with payer: **Children's names**	**Overnights**
AIDA V. SABATINE	**122**
VERA L. SABATINE	**122**

Effective 2/1/21, the payer shall pay a monthly child support obligation for the children named above.

Children supported:	1 child	2 children	3 children	4 children	5 or more children
Base support: (includes support plus or minus premium adjustment for health-care insurance)					
Support:	$ 2,021.00	$ 3,071.00	$	$	$
Premium Adjustment:	$ -25.00	$ -49.00	$	$	$
Subtotal:	$ 1,996.00	$ 3,022.00	$	$	$
Ordinary Medical:	$ 31.00	$ 61.00	$	$	$
Child Care:	$	$	$	$	$
Other:	$	$	$	$	$
SS Benefit Credit:	$	$	$	$	$
Total:	$ 2,027.00	$ 3,083.00	$	$	$
☐ Support was reduced because payer's income was reduced.					

(See Page 2 for the remainder of the order.)

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STATE OF MICHIGAN 13TH JUDICIAL CIRCUIT LEELANAU COUNTY	UNIFORM CHILD SUPPORT ORDER ☐ EX PARTE ☐ TEMPORARY ☒ MODIFICATION ☐ FINAL	CASE NO. 2020010532DM

Friend of the Court address
328 Washington St., Ste 200, Traverse City, MI 49684

Friend of the Court telephone
231-922-4660

Plaintiff's Name	V	Defendant's Name
ANDREW PAUL SABATINE		COLLEEN K. SABATINE

1. Child Support (continued).

Uninsured Health-Care Expenses. All uninsured health-care expenses exceeding the annual ordinary medical amount will be paid 81 % by the plaintiff and 19 % by the defendant. Uninsured expenses exceeding the annual ordinary medical amount for the year they are incurred that are not paid within 28 days of a written payment request may be enforced by the friend of the court. The annual ordinary medical amount is $908.00 for 2 children.

Obligation Ends. Except for child care, or as otherwise ordered, support obligations for each child end on the last day of the month the child turns 18.

☐ **Post-majority Support:** The following children will be attending high school on a full-time basis after turning 18 years of age. Therefore, the support obligation for each specific child ends on the last day of the month as follows, except in no case may it extend beyond the time the child reaches 19 years and 6 months of age: (specify name of child and date obligation ends.)

_____.

Child Care. The parties must notify each other of changes in child-care expenses and must additionally notify the friend of the court if the changes end those expenses. The child-care obligation for each child ends on August 31 following the child's 12th birthday, at which time the total child care obligation reduces by that child's pro rata share unless specified differently in this order.

2. **Health-Care Coverage.** For the benefit of the children, the ☒ plaintiff ☐ defendant shall maintain health-care coverage through (as defined in MCL 552.602) that includes payment for hospital, dental, optical, and other health-care expenses when that coverage is accessible the the child and available at a reasonable cost. The reasonable cost is the parent's net cost of adding the children to the parent's coverage
☐ up to a maximum of $_____ for plaintiff. ☐ up to maximum of $_____ for defendant.
☒ not to exceed 6% of the plaintiff's/defendant's gross income.

3. **Income Withholding.** Income withholding takes immediate effect. Payments shall be made through the Michigan State Disbursement Unit unless otherwise ordered in item 12.

4. **Qualified Medical Support Order.** This order is a qualified medical support order with immediate effect pursuant to 29 USC 1169. To qualify this order, the friend of the court shall issue a notice to enroll pursuant to MCL 552.626b. A parent may contest the notice by requesting a review or hearing concerning availability of health care at a reasonable cost.

5. **Retroactive Modification, Surcharge for Past-Due Support, and Liens for Unpaid Support.** Except as provided by MCL 552.603, support is a judgment the date it is due and is not modifiable retroactively. A surcharge may be added to past-due support. Unpaid support is a lien by operation of law and the payer's property can be encumbered or seized if an arrearage accrues in an amount greater than the periodic support payments payable for two months under the payer's support order.

6. **Address, Employment Status, Health Insurance**. Both parties shall notify the friend of the court in writing of: a) their mailing and residential addresses and telephone numbers; b) the names, addresses, and telephone numbers of their sources of income; c) their health-maintenance or insurance companies, insurance coverage, persons insured, or contract numbers; d) their occupational or drivers' licenses; and e) their social security numbers unless exempt by law pursuant to MCL 552.603. Both parties shall notify the friend of the court in writing within 21 days of any change in this information. Failure to do so may result in a fee being imposed.

7. **Foster-Care Assignment.** When a child is placed in foster care, that child's support is assigned to the Department of Human Services while under the state's jurisdiction and to the funding county while placed in a county-funded program.

8. **Redirection and Abatement**: Subject to the statutory procedures, the friend of the court: 1) may redirect support paid for a child to the person who is providing the actual care, support, and maintenance of that child; 2) shall abate support charges for a child who resides on a full-time basis with the payer of support.

9. **Fees.** The payer of support shall pay statutory and service fees as required by law.

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(See Page 3 for the remainder of the order.)

STATE OF MICHIGAN 13TH JUDICIAL CIRCUIT LEELANAU COUNTY	UNIFORM CHILD SUPPORT ORDER ☐ EX PARTE ☐ TEMPORARY ☒ MODIFICATION ☐ FINAL	CASE NO. 2020010532DM

Friend of the Court address
328 Washington St., Ste 200, Traverse City, MI 49684

Friend of the Court telephone
231-922-4660

Plaintiff's Name	V	Defendant's Name
ANDREW PAUL SABATINE		COLLEEN K. SABATINE

10. **Review.** Each party to a support order may submit a written request to have the friend of the court review the order. The friend of the court is not required to act on more than one request received from a party each 36 months. A party may also file a motion to modify this support order.

☐ 11. **Michigan Child Support Formula Deviation.** The support provisions ordered do not follow the Michigan Child Support Formula. The attached deviation addendum (FOC 10d) provides the basis for deviation and the required findings by the court.

☐ 12. **Other:** (Attach separate sheets as needed.) _____

13. **Prior Orders. This order supersedes all prior child support orders and all continuing provisions are restated in this order.** Past-due amounts owed under any prior support order in this case are preserved and paid at the rate calculated using the arrearage guideline in the Michigan Child Support Formula.

Prepared by: Angela Pelletier

Marian Kromkowski 11/17/2021 04:06PM

MARIAN KROMKOWSKI, FAMILY DIVISION JUDGE, P30378

Judge Marian Kromkowski

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this order on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 3.203. I declare under the penalties of perjury that this certificate of mailing has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Signature

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CALCULATION RESULTS

2020-010532-DM
Calculation 1624174 completed by ANGELA PELLETIER on 11/16/2021.

Summary

ANDREW SABATINE paying COLLEEN SABATINE $3,083.00 a month.
(Note: See following pages for further detail)

Family Used for Calculation Results

Children in Common *(youngest to oldest)*
VERA SABATINE AIDA SABATINE

Calculation Between ANDREW SABATINE and COLLEEN SABATINE

Total Other Children - ***2021 MCSF 2.08(A)***

	1 Child	None 2 Children	3 Children	None 4 Children	5+ Children
Payer	ANDREW	ANDREW			
Average Overnights with Payer	122	122			
Base Support after PTO	$2,021.00	$3,071.00			
HC Premium Adjustment	-$25.00	-$49.00			
Subtotals	$1,996.00	$3,022.00			
Ordinary Medical	$31.00	$61.00			
Child Care	$0.00	$0.00			
Benefit Credit	$0.00	$0.00			
Totals	$2,027.00	**$3,083.00**			

Net Income Calculation - ***2021 MCSF 2.01(C)***	ANDREW SABATINE		COLLEEN SABATINE
Monthly Gross Income	$30,849.66		$5,630.83
Monthly Deductions and Adjustments	$11,047.09		$1,007.13
Monthly Net Income	$19,802.57		$4,623.70
Family Net Income		$24,426.27	
Share of Net Income	81.07%		18.93%
Base Support Calculation - ***2021 MCSF 3.02(A)***			
Base Support Amount	$3,777.00		$882.00
Average Overnights (Highest Tier)	122		243
Payer's Base Support Amount after PTO	$3,071.00		$0.00
Health Care Premium Allocation - ***2021 MCSF 3.05(C)***			
Monthly Insurance Premiums	$520.00		$0.00
Calculation Children Covered	2		0
Additional People Covered	2		0
Per Capita	$130.00		$0.00
Amount Attributable to Children on Calculation	$260.00		$0.00
Share of Premiums	81%		19%
Payer's Monthly Share	-$49.00		$0.00
Ordinary Medical Expense - ***2021 MCSF 3.04(B)***			
Annual Ordinary Medical Expense for 2 Children		$908.00	
Share of Medical Expense	81%		19%
Payer's Monthly Share	$61.00		$0.00
Child Care Expense Reimbursement - ***2021 MCSF 3.06(C)***			
Monthly Gross Child Care Expenses	$0.00		$0.00
Subsidies, Reimbursements, Credits	$0.00		$0.00
Monthly Net Child Care Expenses	$0.00		$0.00
Share of Child Care	81%		19%
Payer's Monthly Share	$0.00		$0.00

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CALCULATION RESULTS

2020-010532-DM
Calculation 1624174 completed by ANGELA PELLETIER on 11/16/2021.

Details

ANDREW SABATINE paying COLLEEN SABATINE $3,083.00 a month.
(Note: See following pages for further detail)

Family/Children Details - *2021 MCSF 2.08(A)*

	ANDREW SABATINE	COLLEEN SABATINE
Additional Children from Other Relationships	0	0
Children-in-Common in Other Custodial Arrangements	0	0
Total Other Children	0	0
Income Adjustment Percentage Multiplier	-	-
Provided Information For Support Calculation	Yes	Yes

Net Income Calculation - *2021 MCSF 2.01(C)*

	ANDREW SABATINE	COLLEEN SABATINE
Income Type	Employer Wages	Employer Wages
Employer Name		
Monthly Gross Income	$27,849.66	$4,630.83
Monthly Overtime	$0.00	$0.00
Monthly Shift Premium	$0.00	$0.00
Income Type	Dividends	Perks and In-Kind - From Employment
Monthly Gross Income	$3,000.00	$1,000.00
Total Monthly Gross Income	**$30,849.66**	**$5,630.83**
Filing Status	Single	Head of Household
Tax Exemptions	1	3
Child Tax Credit Children Claimed Every Year		
Child Tax Credit Children Claimed Alternating Years		
FICA Tax	$1,312.77	$354.26
Federal Tax	$8,310.03	$464.03
State Tax	$1,294.29	$188.84
Local Resident Tax	$0.00	$0.00
Local Non-Resident Tax	$0.00	$0.00
Additional Children Adjustment	$0.00	$0.00
Mandatory Health Insurance - Parent's Self-Coverage Portion of Premiums	$130.00	$0.00
Total Monthly Gross Deductions and Adjustments	**$11,047.09**	**$1,007.13**
Monthly Net Income	$19,802.57	$4,623.70
Family Net Income	$24,426.27	
Share of Net Income	81.07%	18.93%

Disclaimer: Unless identified as an adjusted tax amount (M), the tax amounts listed are estimates calculated by the Michigan Child Support Enforcement System. (P) Indicates Potential. (O) Indicates Omitted.

Income Comments
ANDREW SABATINE: $334,195.96 wages; $36,000.00 dividends/interest
COLLEEN SABATINE: $55,570.00 wages; $12,000.00 perks

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Base Support Calculation - *2021 MCSF 3.02(A)*

	ANDREW SABATINE	COLLEEN SABATINE
Children in Common	2	2

CALCULATION RESULTS

Children in Common on Calculation	2	2
Base Support Equation	General Care Equation - 2021 MCSF 3.02(B)	General Care Equation - 2021 MCSF 3.02(B)
Base Support Amount	$3,777.00	$882.00
Base Support Amount after PTO	$3,071.00	$0.00

Children:	VERA SABATINE	AIDA SABATINE
Obligation End Date	01/31/2036	10/31/2033
Post Majority	No	No

Parenting Time Overnights - *2021 MCSF 3.03(A)*

	ANDREW SABATINE	COLLEEN SABATINE
VERA SABATINE - 01/26/2018	122	243
AIDA SABATINE - 10/27/2015	122	243
Average Overnights (Highest Tier)	122	243

Health Care Allocations and Medical Obligations - *2021 MCSF 3.05(C), 2021 MCSF 3.04(B)*

	ANDREW SABATINE		COLLEEN SABATINE
Recommended to Provide Health Insurance	Yes		No
Health Care Coverage Type	Private Only		
Reasonable Cost of Health Care	6%		6%
Share of Health Care	81%		19%
Monthly Insurance Premiums	$520.00		$0.00
Calculation Children Covered	2		0
Additional Qualifying Children Covered	0		0
Additional People Covered	2		0
Per Capita Amount	$130.00		$0.00
Payer's Monthly Share	-$49.00		$0.00
Share of Medical Expense	81%		19%
Annual Ordinary Medical Expense per MCSF		$908.00	
Monthly Ordinary Medical Expense		$75.67	
Payer's Monthly Share	$61.00		$0.00

Child Care Obligations - *2021 MCSF 3.06(C)*

	ANDREW SABATINE		COLLEEN SABATINE
Share of Child Care	81%		19%
Monthly Child Care Expense		$0.00	$0.00

Children: (youngest to oldest)	VERA SABATINE	AIDA SABATINE
Child Care Reimbursement End Date	08/31/2030	08/31/2028

Subsidies, Reimbursements, Credits	$0.00	$0.00
Net Child Care Expenditures	$0.00	$0.00
Payer's Monthly Share	$0.00	$0.00

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Administrative Information

Calculation ID	1624174	MCSF Year	2021
Docket	2020-010532-DM	MCSF Supplement Year	2021
County	045	Tax Year	2021

CALCULATION RESULTS

Calculation Completed by ANGELA PELLETIER Calculation Completed Date 11/16/2021
Calculation Parties ANDREW SABATINE and COLLEEN SABATINE

Calculation Results:
ANDREW SABATINE paying COLLEEN SABATINE $3,083.00 a month.

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

ANDREW PAUL SABATINE,

Plaintiff,

v

FILE NO: 2020-10532DM
HON. MARIAN KROMKOWSKI

COLLEEN K. SABATINE,

Defendant.

_____/

Matthew D. Vermetten, Attorney for Plaintiff
Melissa Baumgartner Umulis, Attorney for Plaintiff
Amy M. Swogger, Attorney for Defendant

_____/

Decision and Order after De Novo Review

Andrew and Colleen Sabatine have two minor children, Aida V. Sabatine, d/o/b 10/27/2015, and Vera L. Sabatine, d/o/b 01/26/2018. They married on April 22, 2013. Defendant filed for divorce in Genesee County on October 1, 2020. Plaintiff filed for divorce in Leelanau County on October 5, 2020. Plaintiff challenged the filing in Genesee County. The Genesee County action was dismissed by a Final Order Dismissing Case, dated December 15, 2020. That Order stated, in pertinent part: "[B]ecause venue is appropriate and convenient in the Leelanau County Circuit Court, this case is dismissed with prejudice."

The matter was then referred to the Friend of the Court for consideration of a Temporary Order for Custody, Support and Parenting Time. Following the parties' meeting with the Friend of the Court, an Order for Temporary Custody, Support and Parenting Time was recommended by the Friend of the Court and then entered by the court on January 7, 2021. That Order awarded the parties joint legal custody and Defendant primary physical custody, with Plaintiff awarded a specific schedule of parenting time consisting of 69 overnights, annually. Plaintiff filed a timely objection to the Temporary Order's custody, parenting times and support terms. Plaintiff also filed a variety of motions regarding the return of the children to Leelanau County,

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as well as Ex Parte requests to modify the parenting time order and motions for contempt for violation of the joint legal custody provisions in the order. All were referred to Referee Steven Paciorka for evidentiary hearings via Zoom. The hearings were conducted on April 7, 2021; April 13, 2021; April 27, 2021; April 28, 2021; May 12, 2021; May 18, 2021; and May 21, 2021. The Referee provided a recommendation to the court on June 4, 2021. It continued joint legal custody of both children with the parents. It provided Defendant with primary custody and awarded specific parenting times to Plaintiff, increasing his parenting time to approximately 117 overnights. The issue of child support was referred to the Friend of the Court. Upon review of the 24 page Referee Recommendation, this Court entered an order on June 7, 2021. On June 9, 2021 the court received and signed a child support order offered by the Friend of the Court. Plaintiff filed timely objections to the June 7, 2021 custody and parenting time order and to the June 9, 2021 child support order. The matters were then set for a De Novo review before this Court.

The court read all seven days of testimony and the parties' briefs submitted to the Referee. At a Status Conference on August 20, 2021 the parties were directed to submit briefs regarding the Referee's conclusion that an established custodial environment did not exist with either parent. Those briefs were read by the court. Plaintiff also submitted a brief regarding child support. This court indicated following the Status Conference that "neither party may introduce new evidence or call new witnesses unless relevant to a significant event or circumstance that occurred in time after May 21, 2021."

On October 13, 2021 this court heard brief additional testimony regarding custody and parenting from both parties. Testimony regarding the child support issues was presented both on October 13, 2021 and October 22, 2021. Testimony has now been received from both parties. Plaintiff called Rachel Fleming, LLMSW, Rachel Crain, Sharon Buck, Krista Allgaier, Arthur Yuncker, and Jason Bodner, CPA as witnesses. Defendant called Sarah White, Taylor VanBuskirk, Nicole Anderson, Suzanne Knecht, Linda Knecht, Patrick Knecht, M.D., Timothy Knecht and Chris Bott, CPA as witnesses. Exhibits were admitted into evidence at the Referee and the De Novo hearings. All were reviewed by this court.

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For reasons stated below the Court finds as follows:

- An established custodial environment existed and continues to exist with both parties.

- It is in the best interest of the children that the parties share joint legal custody with primary physical custody awarded to Defendant and specific parenting awarded to Plaintiff.
- The parenting time provisions in this Order do not modify the established custodial environment with both parties, despite the distance between the parental homes.
- Holiday and Transportation terms should be adjusted.
- Child support must be recalculated to reflect changes in income and overnights.

Findings of Fact and Law

Before making a custody determination, the trial court must determine whether the child has an established custodial environment with one or both parents, Kessler v Kessler, 295 Mich App 54, 61 (2011). It "is an intense factual inquiry," Foskett v Foskett, 247 Mich App 1, 6 (2001). Under MCL 722.27(c) an established custodial environment exists if:

> over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

An established custodial environment is one

> of significant duration in which a parent provides care, discipline, love, guidance, and attention that is appropriate to the age and individual needs of the child. It is both a physical and a psychological environment that fosters a relationship between custodian and child and is marked by security, stability, and permanence." Berger v Berger, 277 Mich App 700, 706 (2008).

"An established custodial environment may exist with both parents where a child looks to both parents …. for guidance, discipline, the necessities of life, and parental comfort." Id. at 707. An established custodial environment may exist in more than one home. Pierron v Pierron, 282 Mich App 222 (2009). In making this determination, it is the child's standpoint, rather than that of the parents, that is controlling. Pierron v Pierron, 486 Mich 81 (2010).

Determining a child's established custodial environment is a pivotal step in a custody trial because it dictates the applicable burden of proof. The question before the court is twofold: Is there an established custodial with both, one or neither parent; and, if any type of established custodial environment exists, has it been or will it be disrupted by the terms of the current or instant custody or parenting time order. If the terms of custody or parenting time in an Order

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disrupts an established custodial environment, it must be shown by clear and convincing evidence that the proposed change is in the child's best interests. If there is no established custodial environment or an order does not disrupt an existing established custodial environment, it may be issued if there is a preponderance of the evidence that the terms of the order are in the child's best interests. Gagnon v Glowacki, 295 Mich App 557 (2012: Pierron v Pierron, 486 Mich 81, 92 (2010). If a child has an established custodial environment with both parents, neither parent's custody may be disrupted absent clear and convincing evidence that the change is in the child's best interests. Powery v Wells, 278 Mich App 526, 529 (2008).

The court accepts as accurate a good portion of the Referee's summary of testimony. The parties resided together with their children at the same house in Traverse City, as an intact family unit, on a continuous basis, until their separation on September 18, 2020. While residing together, the parties were at all times jointly involved in and responsible for the care of their children. Their roles were different, but both important. Plaintiff was the primary earner for the family and worked outside the home, throughout the children's lives. Defendant typically worked part-time or less outside the home and was the one to manage the daily routines of the children, including their medical and educational needs and extracurricular activities. Plaintiff was described by witnesses as the more playful parent, being loud, funny and energetic with the children. Defendant was described by witnesses as an attentive, creative parent that continually provided "teachable moments" while caring for the children. The children have always been well cared and provided for. No witness disputed either parent's love for the children. The conclusion to be reached from the testimony is that the children have always had and continue to have strong ties of love and affection with both of their parents. Prior to separating, both parents had been in the home with the children on essentially a nightly basis. Throughout the history of the marriage, neither party had ever had a job, or a hobby, or a personal interest, which took him or her away from the home, for any appreciable amount of time. Although Defendant had more time with the children as she did not work full-time outside the home, Plaintiff provided for the children when Defendant did work some weekends and engaged with the children upon arriving home from work, on weekends and on vacations. Both parents attended the soccer games and were in tune with any medical, school or pre-school matters. Defendant was and continues to be the more "stay-at-home" parent. Although it may impact the terms of parenting time, it alone does not merit her being awarded the status of solely

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having an established custodial environment with the children. See Bofysil v Bofysil, 332 Mich App 232 (2020). The court finds in this case that pursuant to MCL 722.27 (c) both parents provided and continue to provide care, discipline, love, guidance, and attention that is age appropriate and meet the individual needs of Aida and Vera. Both girls naturally look to both parents, and/or the parent they are with to have these needs met. An established custodial environment is not destroyed or precluded in one parent because the other may have more hours of contact with the children. Id. It is not a contest. It is a sharing of parental responsibilities according to given and evolving circumstances of a family.

The court does not agree that with the Referee's finding that an established custodial environment ceased to exist with either parent after their separation. Could the separation have been handled more gracefully, the children better prepared for the change and Plaintiff not left caught unaware of Defendant's actual plans when she permanently left the home with the children on September 18, 2021? Of course. Michigan is a "no-fault" divorce state. Regardless of the validity of Defendant's reasons for being unhappy with the marriage, courts have no authority to judge whether parties should stay together, engage in counseling and attempt to reconcile their differences. The six month waiting period before entry of the judgment of divorce when there are minor children provide the parties with a "cooling off" period to reconsider the decision to divorce. Nor does the Court agree that the children's surprise or emotional response to the divorce, described as "grief" by the Referee and the counselor's testimony that Aida had a hard time with Plaintiff leaving after his visits, wanting to go with Plaintiff, crying a lot and experiencing difficulty with the separation destroyed a sense of "security or stability." No doubt the separation of their parents, and the establishment of a new residence in Fenton, have been major changes for these very young children. The children now experience travelling several hours back and forth every other weekend. There have been disruptions and some unpredictability in their lives, but if these divorce related transitions destroy "security, stability and permanence", an established custodial environment could never continue in any case after parents separate. New homes, new routines, new schools, new roads travelled are the baggage of the vast majority of divorces. Finally, who but their father and who but their mother do these children look to for "guidance, discipline, the necessities of life, and parental comfort" when now in that parent's sole care? Clearly, Defendant desired more from Plaintiff during the marriage with care of the children; however, there is no support then or

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now that Plaintiff has not provided for his children. Defendant concedes that no harm came to the children when cared for by Plaintiff. There is no evidence that Plaintiff ignores or mistreats Aida and Vera when they are now with him. The Court concludes that Aida and Vera continue to have a strong bond with both parents.

Both counsel cite Bowers v Bowers, 198 Mich App 320 (1993) and Baker v Baker, 411 Mich App 567 (1981) in support of their argument regarding the existence or non-existence of an established custodial environment. However, the Sabatine case differs as it is not marked with the repeated changes in custody and the significant uncertainty created by yet another custody dispute. A prolonged custody dispute and court hearings have impacted the parents, but probably not the young children. The fact that the children's primary residence has been in Defendant's home after the parties separated does not extinguish the custodial environment that existed with Plaintiff. Jack v Jack, 239 Mich App 668 (2000).

The court finds that an established custodial environment existed and continues to exist with both parties. Plaintiff acknowledged during his testimony on April 7, 2021, seven months after the separation, that he has "managed to continue that bond and that bond was strong.... It was strong, it maintains strong, and it has come through this, and you know, they are good, we are good...." Now 13 months after the separation, at the October 13th hearing Plaintiff again testified that he and his daughters have maintained a strong bond, one that is "100% consistent and strong." The court agrees with Plaintiff's assessment. Plaintiff has exercised all of his parenting time and has kept in frequent virtual contact with Aida and Vera. A change in the established custodial environment occurs "if parenting-time adjustments change whom the child naturally looks to for guidance, discipline, the necessities of life, and parental comfort." Marik v Marik, 325 Mich App 353, 361 (2018) If an order does not change an established custodial environment, the applicable standard of proof is a preponderance of the evidence. Id., Supra. Pierron v Pierron.

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Custody Factors

The best interests of the child are defined in the Child Custody Act, MCL 722.23. The court must consider each factor and make specific findings. The weight to be given each factor is ultimately left to the court's discretion. McCain v McCain, 229 Mich App 123 (1998).

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

This factor focuses on the emotional bond that exists between the parent and the child. That a parent would like to have a better relationship or spend more time with the child is not relevant under factor "a". Glover v McRipley, 159 Mich App 130 (1987).

Although there were some outliers who described Plaintiff very negatively, the majority of the witnesses indicated that both parents have strong bonds of love and affection with their children. Each parent also testified that the other loves and is bonded with the children. Plaintiff's testimony from October 13 illustrates the effort he has put into making sure he remains a part of the children's lives, despite the distance between the two homes. Defendant's testimony is that she has taken extra care since the separation to comfort the children and make the "two home" concept understandable to them. **The parties fare equally under factor a.**

(b) The capacity and disposition of the parties involved to give the child love, affection and guidance and continuation of education and religious training in a faith or creed, if any.

This factor asks the court to project the ability of a parent to foster an emotional bond in the future and to evaluate the parent's impact on other issues such as guidance, education and religious training, if any. See, McCain v McCain, 229 Mich App 123 (1998).

Multiple witnesses, including the Plaintiff, described Defendant as a "born teacher" to the children, creating "teachable moments" whenever possible. Defendant previously taught preschool, and has also taken early childhood education classes in college. She provided extensive, detailed testimony regarding the home school-like environment that she has historically created for the children. Plaintiff does not dispute that Defendant has taken the lead in educational decisions. During the marriage the decisions were discussed before being made. Since the separation, those pre-decision discussions have either not occurred or have been one way conversations. Defendant has made the post-separation educational decisions.

Aida is in Kindergarten at St. John the Evangelist in Fenton. Vera attends pre-K at the same school. Plaintiff does not challenge the quality of education at St. John's, rather the process of how it was chosen. Plaintiff has continued to pay tuition at Grand Traverse Area Catholic School despite neither child attending there at any time this school year. Both parents have chosen Catholic schools for the children. Neither testified that they attend church or have taken the children to church on any type of regular basis.

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Both Aida and Vera had previously attended various early childhood education programs. Defendant has historically taken the lead with respect to the placement of the children in these programs. Aida and Vera both attended Children's House for the 2018-2019 academic year. For the 2019-2020 academic year, Aida attended Pathfinder. Vera was primarily home with Defendant and, at times cared for by a nanny. Defendant arranged, but both parents attended parent-teacher conferences at both Children's House and Pathfinder. Defendant maintained regular communication with Aida's teacher at Pathfinder. Defendant also arranged for a home visit, when Aida was at Pathfinder. Prior to the parties' separation, Aida attended a pre-K program at GTACS, for the 2020-2021 academic year. Defendant completed Aida's enrollment forms. After the separation, Defendant enrolled both of the children in a program at KinderCare in the Fenton area. Additionally, in early 2021, Defendant enrolled both of the children in St. John Evangelist School in Fenton where they now attend. Vera is enrolled for a three day preschool, and Aida for Kindergarten.

Plaintiff has also been involved in the children's early education programming. Plaintiff attended some of the children's school meetings, and that—prior to the separation—he was involved in the decision-making regarding school placement. Since the separation, Plaintiff has not agreed with the change in residences or schools and has provided less input into these matters. Plaintiff was the parent to typically do the drop-offs at Pathfinder, but Defendant handled more at the Children's House. Plaintiff was also present for the home visit from Pathfinder that year. Plaintiff was also involved in Pathfinder fundraising activities. Plaintiff, along with Defendant, attended a GTACS open house for new parents in early 2020. It appears from the testimony that Plaintiff attended additional GTACS functions related to enrollment. Additionally, Plaintiff was involved in transporting Aida to GTACS for the brief time that she attended in September of 2020. In conclusion, both parents attended to their children's educational needs with Defendant taking more of a lead, perhaps due to her early childhood background and also from a practical point of her being more available to do school related affairs due to not working at times and only working part-time at other times.

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With respect to extracurricular activities, during the marriage Defendant arranged and scheduled these events. There was tumbling and dance for Aida and later for both Aida and Vera. There were horse-riding lessons for Aida in Maple City (and now in Fenton). There was soccer for Aida through TBAYS, which was coached by Defendant.

Plaintiff was also involved in extracurricular activities. He attended Aida's dance recitals. He attended nearly all of Aida's soccer games, where he would care for Vera while Defendant coached the team. Additionally, Plaintiff (along with Defendant) has taken Aida skiing · Plaintiff's testimony indicated that he has been involved in many outdoors activities with both of the children this past summer: going to the beach and parks, taking bike and boat rides, swimming, enjoying Chrystal Mountain and the Art Walk in Benzie County.

During the evening and on weekends, Defendant was the still the more involved of the two parents with respect to providing care, supervision, and structure for the children. Plaintiff did not consistently assist with or participate in the children's nighttime routines but he did read bedtime stories to the girls. It appears that the parties were at odds as to how structured the nighttime routine should be for the children.

In analyzing this factor, a parent's capacity and disposition should not be diminished by virtue of the fact that the parent worked more than the other parent outside the home in order to provide for the family. As the Court of Appeals has observed, "[t]he fact that the parties agreed before conceiving that one parent would stay at home to raise the child while the other would financially support the family does not equate with one parent loving the child more or having more affection for the child." Bofysil v Bofysil, 332 Mich App 232, 246 (2020). However, Plaintiff testified that the parties' work schedules was not the only reason for Defendant to take the lead on healthcare and education. She has a background in early childhood education and is a nurse. Plaintiff worked for a bank and naturally gravitated to handling household finances. Although there is no reason to conclude that Plaintiff could not complete the parenting tasks done by Defendant, when the parties were under the same roof at the same time Defendant showed a greater disposition toward these needs. Plaintiff testified that he intended to utilize a nanny to care for the children when he is at work Monday through Friday; however, he did not do so while the children were in his care this summer. It is unclear as to where the children may have been if/when Plaintiff worked this past summer but no concerns ever were raised over their supervision. Defendant continues with a desire to be with the children and to work only part-time and only the hours when the children are both in school. **This factor continues to favor Defendant.**

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(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

Defendant has been the primary parent when it comes to the children's healthcare. Plaintiff indicated that this was an agreed upon decision, due to Defendant's medical background. Defendant has taken the children to the majority of their medical appointments. Although kept apprised of medical concerns, Plaintiff has rarely taken the children to any medical appointments. It is noted that when a strep test was needed while the children were in Plaintiff's care after the separation, that appointment was itself scheduled by Defendant.

Plaintiff supported Defendant's healthcare choices for the children, up until the time of separation. After the parties' separation, Plaintiff took issue with Defendant's decision to place the children with a new primary care physician and dentist in the Fenton area, without consulting him. Plaintiff also took issue with Defendant's decision to place Aida with counselor Rachel Fleming, without informing him. Plaintiff subsequently impeded that counseling by refusing to sign a requested release. These disagreements were over how the decisions were made as opposed to any qualms about the quality of care being provided to the children in Fenton.

Plaintiff has always been the primary earner in the family. At all times during the marriage, Plaintiff has been employed as an executive with MBank, where he was a Regional President. He is now a Senior Vice President of Commercial Banking at Nicolet National Bank with a salary of $175,000. Plaintiff has managed the majority of the household finances. His work supplied and continues to supply the family with health insurance. Throughout the marriage, as well as post-separation, Plaintiff has been financially supportive of Defendant and the children. Although Plaintiff has objected to the Friend of the Court's child support calculation, he has paid all Court-ordered child support and out of pocket medical as required by the Temporary Order. There is no dispute that his salary has decreased since the entry of the Temporary Order.

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Defendant is a trained Nurse Practitioner who generally has only worked part-time since Aida's birth. From approximately January of 2016 until September of 2018, Defendant worked three 8-hour days per week, Monday, Tuesday, and Thursday, beginning at 8:00 a.m. and getting home by approximately 5:00 p.m. In September of 2018, Defendant decreased her

hours, taking a "flex" position consisting of 16-24 hours per week. In May of 2019, Defendant further decreased her hours, moving to a "contingent" position which generally consisted of two 4-hour shifts, each week. Defendant's per-separation offer of employment at Cowell Cancer Center was also for part-time work. Defendant now continues to be employed part time as a Nurse Practitioner. She now works 12 hours a week at $55 an hour, plus being on-call for Hospice and a teaching position at Purdue Global. Fulltime employment very well might be available to Defendant, but she has not looked for such work. Defendant's chosen work schedule has allowed her to be involved in the day-to-day care and supervision of the children. She has no health limitations on her ability to work full time. On October 13th she indicated that she intends to continue to work part-time until Vera is at least Kindergarten-age. Her goal is to increase her work hours to 18. There are 18 hours a week that the children are not in school that would allow for the increase in hours. Defendant's capacity and disposition in this respect have been bolstered by the support she receives from her family, who are well-off and are extremely committed to the well-being of the parties' children. It does not appear that Defendant has had any housing or daycare costs since moving to Fenton. Again, Plaintiff does not dispute that Defendant has taken the lead in medical and educational decisions. During the marriage, the decisions were discussed before being made. Since the separation, those pre-decision discussions have either not occurred or have been one way conversations.

At home, Plaintiff did the home upkeep and maintenance, including outdoor landscaping. Plaintiff did the dishes most nights, while Defendant was responsible for preparing the majority of the meals. Grocery shopping for the home was done by both parents. Clothing for the children was purchased by both parents. Laundry, general cleaning and day-to-day chores at the home were traditionally handled by Defendant, in coordination with a house cleaner who would come to the house weekly, as well as a nanny who would assist with the children when Defendant worked. Defendant took the lead on all matters related to the nanny—hiring, communicating, and scheduling. Prior to the separation Plaintiff was seen to defer to Defendant to take the lead on evening and nighttime routines and caregiving for the children.

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Prior to separation a dynamic was in place in which one parent provided a majority of hands-on care in the home while the other parent worked outside the home to support that arrangement financially. Defendant was meeting the physical needs of the children in the home while Plaintiff was at work earning for the family. Both made contributions that were required

in order to sustain the family. Moving forward, the parties' continued income disparity suggests that Plaintiff has a superior capacity to provide for the children's material needs, even taking into account the support that Defendant receives from her family. Both parties have displayed a disposition to spend what money they have on their children. Although there is no reason to believe that Plaintiff could not provide the educational and medical needs described in factor c, and most likely does so while the children are in his care, the testimony supports a finding that Defendant was the parent more disposed to perform these parental tasks. **This factor continues to favor Defendant.**

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

Plaintiff continues to reside in the marital home in Traverse City. This was the children's primary residence until Defendant left with the children on September 18, 2020. Defendant described the prior marital home as "gorgeous." It is a 3-bedroom, 4-bathroom home consisting of approximately 4,500 square feet. It was constructed by Plaintiff prior to the marriage. The home is located in Leelanau County on several acres, and has extensive professionally-landscaped nature trails. The parties' children greatly enjoy exploring and playing in the yard at this residence. The house also has a large playroom in the basement with built-in cabinets and French doors leading to the yard, as well as a heated 3-car garage where the children play during the winter. When living at this residence the children also enjoy boating trips to Power Island. The children also enjoy riding bikes to a nearby storage area, which is also owned by the parties. Plaintiff intends to remain in the home. It has been awarded to him pursuant to the parties Property Settlement Agreement.

Defendant moved into her parents' home in Fenton after she and the children left the marital home. This is a 4-bedroom, 3-bathroom house on Lake Fenton. As with the marital home, the children are very familiar with their grandparents' home as they have been coming for extended visits with the maternal grandparents for years. Defendant still provided her parents' address at the October hearing. There was no further mention regarding the status of the plan to move into another house located in the same subdivision. Although, no one asked Defendant that specific question. Each current home, including the grandparents' home, provides a stable and satisfactory environment for the children. There is continuity in the all of residences per the parties' testimony. **The parties fair equally under factor d.**

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(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

The Plaintiff's family unit consists solely of him and the children. The Defendant's family unit also consists solely of her and children. Neither party is involved in a dating relationship at this time. Neither party has any plans to alter the existing family unit in their existing or proposed homes. There is a high degree of permanence with the family unit located at each home. **The parties fare equally under factor e.**

(f) The moral fitness of the parties involved.

The law provides the following guidance for the valuation of conduct under factor (f).

> Factor f (moral fitness), like all other statutory factors, relates to a person's fitness as a parent. To evaluate parental fitness, courts must look to the parent-child relationship and the effect that the conduct at issue will have on that relationship. Thus, the question under factor f is not "who is the morally superior adult;" the question concerns the parties' relative fitness to provide for their child, given the moral disposition of each party as demonstrated by individual conduct. We hold that in making this finding, questionable conduct is relevant to factor f only if it is a type of conduct that necessarily has a significant influence on how one will function as a parent. Fletcher v Fletcher, 447 Mich 871, 887 (1994). [Emphasis in original.]

The Michigan Supreme Court also adopted a non-exhaustive list of "morally questionable conduct" first published by Hon. John Kirkendell, in Best Interest of the Minor Child, 21 Michigan Family L J 15 (Oct, 1994). It includes: "verbal abuse, drinking problems, driving record, physical or sexual abuse of children and other illegal or offensive behaviors." Id., at 887, fn 6.

The parties dispute the description of the other's failings. Both admit that they enjoyed drinking alcohol and would do so on social events without the children and also at times when the children were present. Defendant and members of her family testified Plaintiff could be a disruptive presence in the home, becoming intoxicated and engaging in verbal abuse of Defendant. Defendant testified that Plaintiff, in front of the children, would call her names like "moron" and "bitch." Yet there were many times when Plaintiff's intoxication did not have this effect on his behavior. Plaintiff's witnesses describe him as always boisterous and never drunk to the point of not being able to function as a parent. According to Plaintiff, Defendant drank "daily" during parts of the marriage even adding alcohol to her morning coffee. Other witnesses described Defendant as acting "loopy" at times and also to being falling down drunk.

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Neither party admits to drinking since last October of 2020. Plaintiff also testified that he had observed Defendant use marijuana on and off throughout the marriage. Defendant does not deny that she used marijuana.

Plaintiff's witness Arthur Yuncker testified that Defendant also consumed cocaine with him on at least 6 and possibly as many as 9 occasions, between 2018 and 2020. As noted by the Referee, the testimony of Mr. Yuncker, who was an executive at Steelcase, before becoming a part-owner and President of Natural Gas Compression Systems, Inc., was for the most part against his interest. Defendant would only state that she did not recall using cocaine. The text messages between Mr. Yuncker and Defendant allow this court to conclude that she had used cocaine. This lack of forthrightness undercuts the credibility of the extent of Plaintiff's use of alcohol presented by Defendant. It does not call into question the reliability of *all* of her testimony as much of her other testimony was confirmed by other credible witnesses and Plaintiff more or less agreed with Defendant's description of her role in the marriage and as a parent.

Cocaine and marijuana use aside, the issue of who drank more than the other clearly was a central issue in the trial. However, the interpretation that this Court must give to factor f is whether any morally questionable conduct interferes with a party's ability to function as a parent. With respect to Defendant, there was no testimony indicating that her ability to function as a parent was routinely impeded by her use of alcohol, marijuana, or cocaine. Both Ms. Allgaier and Mr. Yuncker emphasized in their testimony that Defendant was a good parent, and that the girls were always safe in her care. It is also noted that Plaintiff never voiced any concerns regarding Defendant's use of these substances during the marriage. Nor was there any evidence that she continued use of cocaine or marijuana since their separation. With respect to Plaintiff's use of alcohol, Defendant's concern did not rise to the level that she never left the children alone with their father. She further testified that no harm had ever come to the children while under his care. Clearly drinking seemed to be the center of the parties' social activities. The use of cocaine was and continues to be illegal. Both were less than model parents when they had too much to drink. The court does not believe that these instances were every day occurrences. The court finds that the witnesses were at odds with their observations of alcohol use. Plaintiff's witnesses attested that Defendant was often "loopy" but that Plaintiff controlled his drinking. Defendant's witnesses swore that Plaintiff drank during breakfast and was

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intoxicated most of the time evidence but that Defendant only drank in moderation. From this court's review of the testimony neither party were able to convincingly prove that either's consumption of alcohol, use of cocaine or marijuana interfered with their ability to parent the children, or had a significant influence on how either functioned as a parent. **The parties fare equally poor under this factor.**

(g) The mental and physical health of the parties involved.

The court has no concerns regarding the mental or physical health of Plaintiff. Plaintiff called Defendant's mental health into question. The Defendant has been on anti-depressant medication periodically for several years. Defendant is not currently on any anti-depressant medication. Defendant characterized her depression as "situational," and largely related to her failing relationship with Plaintiff. Defendant suffered from post-partum depression after Aida's birth, and possibly also after Vera's birth as well. Rather than a factor to be used against Defendant, this court concludes that she wisely chose to address these health issues with appropriate medication. There is no evidence that she ever used the medications other than as prescribed. Defendant's mental health has not compromised her ability to parent, in any way. It should be noted that Defendant has also had hip surgery in recent years, but appears to be physically healthy at this time. **The parties fare equally under factor g.**

(h) The home, school, and community record of the child.

Since the parties separated, there have been no major concerns raised regarding the home record of either child with either parent. With respect to the school records of the children aged 3 and 5, there are no extensive school records. As noted above in the discussion under factor (b) above, the children have attended several different pre-K early childhood education programs, since 2018. There have been no concerns raised regarding the ability of either child to participate appropriately in these programs. Both parents prefer Catholic Schools. Plaintiff has not challenged the quality of education that St. John the Evangelist provides.

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With respect to the community record of the children, in Traverse City the children have historically spent their time with one or both of their parents, when not being watched by a nanny or sitter. The residence in Traverse City is in a neighborhood with few children their age. The children have either played at home, or have accompanied their parent(s) for outdoor activities or social occasions with other families. The children appeared bonded with two of

Plaintiff's witnesses, Rachel Crain (their former nanny) and her mother Sharon Buck (who has at times also provided childcare). It was also noted above that the Allgaiers have a child the same age as Aida. However, there was no testimony that the children continued contact with these family friends after the separation.

In Fenton, the children currently reside in a neighborhood with other children their age. As with the children's community record in Traverse City, their community life in Fenton revolves around activities with their parent or extended family. In Fenton, the children enjoy spending time with their maternal grandparents, as well as their cousin Taylor VanBuskirk and her two children (ages 5 and 2 ½). Defendant arranges play dates with Ms. VanBuskirk and her children about twice a month. The children also visit monthly with Defendant's aunt, Suzanne Knecht, who travels from Grand Rapids to visit. The maternal grandparents' home in Fenton is considered the "gathering place" for Defendant's family, and periodically throughout the year many of Defendant's immediate and extended family come to Fenton to visit.

The Court does not equate the paternal grandparents' residence as the children's home, then or now. Traverse City was their only home prior to separation. The children now have two homes. Homes are more than physical structures. Defendant's presence and efforts in Traverse City did, and Defendant's current residence does offer greater opportunities for socialization with other children that are the same age as Vera and Aida, as well as opportunities to spend time with extended family. **This factor slightly favors Defendant.**

(i) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

This factor is not relevant as the children are too young to be able to express a reasonable preference. The court declined to conduct an in camera interview of the parties' children, given their ages.

(j) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and other parent.

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It is an understatement that Defendant created a significant challenge for the children when she chose to move approximately 3 ½ hours away from the marital home to her home town of Fenton rather than stay in the community in which the family resided and where Plaintiff provided the primary income for the family during their marriage. For the children this has resulted in their having more time away from Plaintiff than might generally be considered

developmentally appropriate. Children benefit more from frequent contact with each parent, yet in this case that is impractical because of Defendant's decision to move so far away.

Defendant's attitude toward Plaintiff's parental role is concerning as well. Defendant testified that Plaintiff was "not even a babysitter" for the children, that he was an "absentee father" and that she was a "single parent." These assertions are contrary to the most credible evidence received by the Court and in contrast to some of the other more favorable comments by Defendant regarding Plaintiff. The parties roles were different vis a vis the children, but both are loving, concerned parents. Despite her characterizations of Plaintiff, Defendant has facilitated regular phone contact between Plaintiff and the children, and has also facilitated Plaintiff's visits to Fenton, including a special birthday visit in October. Defendant has also had the children draw pictures at their house in Fenton to bring to Plaintiff for his parenting time. These are all positive actions and attempts to make up for her move and the subsequent limitations of parenting time options. Although the court will find that Defendant's move to Fenton before she filed for divorce was not unlawful, the potential ramifications of that move had to have been realized by Defendant. But for Plaintiff's efforts to stay involved with the girls, have frequent phone calls and energetically exercise all of his parenting time, Defendant's act of moving to Fenton could have had a much more deleterious effect on the parent-child relationships. Given the impact of Defendant's action and that there was no corollary evidence that Plaintiff is impeding Defendant's bond with the children, **this factor favors Plaintiff.**

(k) The occurrence of domestic violence, regardless of whether the violence was directed against or witnessed by the child.

Neither party reported incidents of physical aggression or domestic violence as having occurred during the marriage. Defendant's testimony indicated that over the last few years of the marriage, she felt emotionally abused due to criticism from Plaintiff. Defendant's description of Plaintiff did not include threats and the issue seemed to resolve once the decision to separate had occurred. Taken together, Defendant's description of that period of the parties' marriage does not rise to the level of "abuse." **This factor is not applicable.**

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(l) Any other factor considered by the court to be relevant to the particular child custody dispute.

1) <u>The parties' ability to communicate and cooperate</u>

Plaintiff's Motion for Order to Show Cause Defendant for Failure to Comply with Order for Joint Legal Custody, and Amended Motion for Order to Show Cause Defendant for Failure

to Comply with Order for Joint Legal Custody, request the Court to find Defendant in contempt for taking unilateral actions with respect to medical care, counseling, and education for the parties' children. There is no dispute that Defendant, without consulting Plaintiff, did the following: 1) unenrolled Aida from GTACS; 2) enrolled both children in KinderCare; 3) changed the children's primary health care provider and dental provider; and 4) sought counseling for Aida with Ms. Fleming. All of these actions were part of Defendant's larger unilateral decision to move with the children to Fenton. All of these actions were taken prior to entry of the Temporary Order. The court agrees with the Referee that Defendant's pre-order actions are not subject to contempt. Defendant contends that she broached some of these topics with Plaintiff but that he refused to engage. During the marriage, it appeared that Defendant made such decisions, perhaps with more conversation, but often with the understanding between the parents that Defendant was the "go-to" parent on these matters given her early childhood and medical background. Now with the separation and divorce the ground rules have changed. Defendant will need to adjust. There will need to be more discussion about such decisions going forward, but given Defendant's move to Fenton, certain medical and educational decisions had to be made this past year regardless of cooperation or agreement between the parties.

The move to Fenton and the resulting "one-sided" decision making by Defendant and related actions have significantly complicated this family's transition from one household to two. But again, decisions needed to be made. It can also be gleaned from these proceedings that Plaintiff was not inclined to agree to matters that would involve the children's continued presence in Fenton. Whether this was just his unwillingness to accept the move, being heart-broken about the turns of events or a calculated legal strategy, or a combination, is not that important. At the October 4, 2021 hearing, the parties were unable to agree upon the children's travel with Defendant to her brother's wedding in June of 2020. This type of obstinance from either parent will lead to future conflict and perhaps unnecessary (and costly) litigation. For these reasons, Plaintiff's Amended Motion for Order to Show Cause Defendant for Failure to Comply with Order for Joint Legal Custody is denied, and the Order to Show Cause is dismissed.

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There is no easy way to divorce, but some methods prove to be more beneficial to all involved in the long run. To put it mildly, both parties have struggled to effectively communicate since September 18, 2020. Despite these challenges, the parties do not contest

joint legal custody, and the court finds that such is in the best interest of the children. Time will tell if the parties are able to re-calibrate their parenting skills and build a more cooperative co-parenting relationship. The court reminds the parties that they will most likely be together at significant future occurrences in the lives of their children, such as graduations, award banquets, sporting events, weddings and possible birth of grandchildren. The children have done nothing to warrant the experience of tension or embarrassment at these events. The parents are encouraged to work through the tough emotional fall-out of the separation and divorce, and to seek professional help to do so, if necessary.

2) Impact of MCL 722.31

Plaintiff's Motion for Return of Minor Children to Within 100 Miles of Their County of Residence argues that MCL 722.31 applies, prior to the issuance of a custody order. The Court agrees with the Referee that the case law is clear that MCL 722.31 does not apply until the issuance of a custody order. Kessler v Kessler, 295 Mich App 54, 58 (2011) states "[a]ccording to the plain language of the statute, the change-of-domicile factors specifically apply only to petitions for change of domicile situations *where there is already a custody order governing the parties' conduct."* (Emphasis added) In Eickelberg v Eicklelberg, 309 Mich App 54 (2011), the issue before that court was when Defendant had moved a second time to Marshall, MI. This move was after the entry of the judgment of divorce. A custody order was already in place and MCL 722.31 became applicable. Once that required threshold was met, the Court of Appeals rightly calculated the 100 mile distance would be from Marshall to Clinton Township, the residence at the time of the filing of the complaint for divorce. Hence, the two aspects of MCL 722.31 were satisfied: 1) a custody order was in place and 2) the miles to be calculated would be from the Marshal move from the original place of residence, Clinton County. This Court does not read Eickelberg to set the test as to only the distance between the move and the original place of residence and to ignore whether any custody order was entered. The bottom line is that there was no custody order in effect regarding the parties and children, in any court, until the Temporary Order entered on January 7, 2021.

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Plaintiff reargues the issue of whether Defendant had the statutory 10 day residence in Genesee County when she filed for divorce on October 3, 2020. Those residence/jurisdictional arguments were briefed for Genesee County Judge John Gadola. This court does not find any "tacit element" in Judge Gadola's dismissal of her complaint that the requisite 10 day residency

had not been met in that county. The hearing to dismiss the Genesee complaint was obviously heard in Genesee County. Contrary to Plaintiff's closing argument, no court has never ruled on whether the 10 day residence had been established in Fenton. The word residence or jurisdiction are not contained in that order. That order ONLY found that "venue is appropriate and convenient in Leelanau County."

Further, MCL 722.31 speaks to Defendant's possible move to a new residence in close proximity to her parents' home. MCL 722.31(3) provides that the section is inapplicable if, at the time of the commencement of the action in which the custody order is issued, the child's 2 residences were more than 100 miles apart. This action was commenced on October 5, 2020. Defendant's testimony indicated that she had effectively changed her legal residence from Traverse City to Fenton before October 5, 2020. Her last date in the marital home was September 18, 2020. Regardless of how Plaintiff viewed her texts or how deceptive she had been with him, she never returned to live the marital home. In effect, she moved to Fenton with the children on September 18, 2020. When this action was commenced on October 5, 2021 Defendant had already relocated to Fenton. As of that date Defendant had already displayed sufficient external manifestation of her intent to change legal residence. Defendant took the following actions in furtherance of this intention.

- Defendant removed the children from Traverse City on September 18, 2021;
- Defendant contacted KinderCare in Fenton for enrollment information on September 25, 2020;
- Defendant changed her address with the Secretary of State on September 30, 2020;
- Defendant changed her voter registration address on September 30, 2020;
- Defendant placed the children with a new pediatrician in the Fenton area on September 30, 2020;
- Defendant enrolled the children in KinderCare in Fenton on October 1, 2020;
- Defendant filed for divorce in Genesee County on October 1, 2021; and
- Defendant informed Plaintiff in a face to face discussion on October 3, 2021 that she and the children were not returning to Traverse City.

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Candidly, the Court looks very, very unfavorably upon the way the move to Fenton occurred and the impact it now will have on the family. This is not a case where any reasonable person would think that Plaintiff would end up with minimal parenting time. Nor is it a case

where any reasonable person would find that Defendant would be in danger by staying in Traverse City and relocating to another residence in the Grand Traverse area or that the children's needs could not adequately be met here. The move to Fenton will mandate frequent 3 and ½ hour car rides for the children winter, spring, summer and fall and just with an every other weekend schedule a combined 10,400 miles a year. Even meeting at a half-way point for the exchange, the receiving parent will have driven a total of 3 and ½ hours and still have to be fresh and ready to remain a focused parent upon arrival home with the children. This is less than ideal. Whether the ride gets easier or harder on the children, at times it will be a painful and stressful long haul. If this court could lawfully require the parties to live in the same city or each move to a new city equidistant to their current locations, it would do so in a heartbeat.

Plaintiff cites the Bill Analysis for MCL 722.31. The court agrees with policy arguments contained therein. But the language of the statute adopted by the legislature does not adopt the full measure and flavor of the Analysis. Perhaps MCL 722.31 should be amended, but it is not the court's role to amend statutes. As written, artfully or not, the current law in Michigan does not require a party to seek a court's permission to move more than 100 miles *until after the first custody order is entered.* This Court has no authority to require Defendant to move back to Traverse City or to assess her move under MCL 722.31 (4) or Rains v Rains 301 Mich App 313 (2013). Defendant did not require the court's permission to move to Fenton or now to remain with the children in Fenton.

3) Custody, Parenting Time and Transportation

The court concludes as follows: The parties fare equally under factors a, d, e, f, and g. Factors i and k are not applicable. Plaintiff prevails under factor j while Defendant prevails under factors b, c and h. Based on the foregoing and the discussion under each of the best interest factors, there is a preponderance of evidence that Defendant, rather than Plaintiff, should be awarded primary physical custody of the children. The standard is by a preponderance of the evidence as the previously recommended parenting time order and this slightly modified one has not disrupted Plaintiff's strong bond with the children. The established custodial environment with both parents that existed before separated continues. As noted above, joint legal custody is not contested, and given that the parties—prior to the separation—were able to generally cooperate and agree regarding important decisions affecting the children, joint legal custody should continue.

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Parenting time is governed by MCL 722.27a. It provides in part:

MCL 722.27a (1) Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.

MCL 722.27a (7)(e) The court may consider the inconvenience to, and burdensome impact or effect on, the child of traveling when determining the frequency, duration, and type of parenting time to be granted.

MCL 722.27a (9) A parenting time order may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of parenting time by a parent, including 1 or more of the following:

(a) Division of the responsibility to transport the child.
(b) Division of the cost of transporting the child.

Given the distance between the two homes, certain extended parenting times will be provided to Plaintiff to continue to better safeguard his strong relationship with the children. When parents live at these distances, holidays are better defined for longer period of times rather than just one day or one long weekend. Practicality requires that the parent without primary custody have extended times during the non-school months. Also, under the circumstances of this case a transportation plan shall be modeled on the fact that Defendant is not working full-time and has great availability to provide a greater share of the transportation and may have the ability to enlist the help of her parents to transport the children or by airplane as had been done in the past. Further, it was Defendant's choice to move to Fenton knowing that transportation would be a challenge. Hence, a greater share of this burden shall be her responsibility. The distance between the two homes is approximately 200 miles. The current order provides for all exchanges to be in West Branch an equidistant locale, each parent driving 100 miles to and from the exchange. Given the reasons stated above, the exchange point shall be changed to a mutually agreed upon location off an I-75 exit in Grayling, MI. A 3:30 exchange when returning to Defendant's care and a 6:30 exchange time when beginning in Plaintiff's care should allow a return to the respective home before bedtime.

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Child Support

The first child support order was entered on January 7, 2021 with an effective date of February 1, 2021. Plaintiff was ordered to pay $$2,946 a month for support of the two minor children, plus an additional $1,093 for child care for a total of $4,039 a month. Plaintiff filed an objection to that order alleging an income of $125,000 should have been imputed for Defendant and that her child care costs were inflated. Defendant did not object to the child support order. In its initial child support recommendation, the Friend of the Court utilized $198,503.50 as Plaintiff's annual salary, plus $73,546.48 in annual bonuses and incentives for a total annual gross income of $272,049.98. For Defendant, the Friend of the Court used an annual salary of $42,900 and found that Defendant incurred net monthly child care expenses of $1,313.33. (See Calculation Results, Income Comments pg. 2 of 3)

The second child support order was entered on June 9, 2021, two days after the Referee Recommendation was approved by the court. The June 7, 2021 order provided that the "issue of child support be referred to the Office of the Friend of the Court for a review, consistent with the terms of this Order." Given the wording of the order and the short turnaround time for the second child support order, it appears that all the Friend of the Court did was change the number of overnights for Plaintiff from 69 to 117. The same financial figures from the first order were used for the second order. This is confirmed again by looking at Calculation Results, Income Comments pg. 2 of 3. With the change in overnights, the June 9, 2021 order required Plaintiff to pay $2,550 a month for support of the two minor children, plus an additional $999 for child care for a total of $3,612 a month. Plaintiff objected to the June 7, 2021 child support order on the grounds that Plaintiff's income had changed and also argued that Defendant should have been imputed an income of $114,000 a year. Defendant did not object to the child support order but at the De Novo review argued that Plaintiff "failed to disclose his accurate 2020 gross income to the Friend of the Court."

At the time of a child support review, the Friend of the Court requires the parties to submit the following documents:

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- **COPIES** of your W-2s for the past three (3) years.
- **COPIES** of your Federal Income Tax returns for the past three (3) years.
- **COPIES** of your salary or wage check stubs for the last four (4) pay periods.
- **COPIES** of your current medical cards or other documentation showing health insurance coverage for yourself and your children. (i.e. IRS form 1095 or other statement verifying insurance cost).
- **COPIES** of your current Driver's License (or other picture identification)

It does not appear that any new documentation was requested of the parties in preparation of the June 9, 2021 order. There was no testimony from the Friend of the Court caseworker or any other evidence introduced to support the argument that either party failed to provide the requested documents to the Friend of the Court. It is also unlikely that either party as of January 6, 2021 had their W-2s for 2020 or would they have had their state or federal tax returns for 2020 completed by that date. Rather, the $272,049.98 used for Plaintiff mirrors his *2019* W-2 wages. Without evidence that Plaintiff failed to disclose the required documents, the only conclusion is that the Friend of the Court caseworker used 2019 W-2s and did not include any investment interest, dividends, any depreciation or any capital gains in the first or the second review. Under the facts presented herein that "error" cannot be attributed to Plaintiff, but can be cured by this De Novo review.

The January 21, 2021 order, as do all 13th Circuit Child Support Orders, provides that if there is a proper filing of an objection to a Temporary Order and after a hearing is held, the court may either increase or decrease the amount of the order retroactive to the effective date of the order. Therefore, Plaintiff's objection to the initial child support order allows this court to re-open the issue of child support and maintain, increase or decrease support back to February 1, 2021.

Under the Michigan Child Support Formula, the first step in determining the parents' support obligation is to calculate each parent's net income. Borowsky v. Borowsky, 273 Mich. App. 666, 673 (2007); 2021 MCSF 2. Income is defined under MCSF 2.01. The MCSF Manual also permits income that a parent could *potentially* earn to be imputed to the parent under some circumstances. Specifically,

> "[w]hen a parent is voluntarily unemployed or underemployed, or has an unexercised ability to earn, income includes the potential income that parent could earn, subject to that parent's actual ability." MCSF 2.01(G).
>
> "The amount of potential income imputed should be sufficient to bring that parent's income up to the level it would have been if the parent had not reduced or waived income." 2017 MCSF 2.01(G) (1).

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In the Sabatine family setting Defendant has either not worked or only worked part-time since the children were born. Prior to being a mom, she had worked full time and earned in excess of $80,000 in some years. Following the birth of Aida and the Vera she was the "house-

parent." Plaintiff has characterized Defendant as having this "luxury." Defendant herself used term "luxury" in her testimony. Luxury or not, this was an arrangement agreed to by the parties. Even if desired, such an arrangement/luxury is not available to all parents. Generally, it is reserved for households fortunate enough to have one spouse's income sufficient to pay most of the household bills or have the support of other outside sources, such as the instant maternal grandparents. There is no dispute that Plaintiff earned and continues income substantially higher than Defendant, even if Defendant were imputed the ability to work full-time and earn $55 an hour.

Defendant

Defendant agrees to the imputation of $42,900 as her income, although she is actually currently earning closer to $34,000. Defendant began working 12 hours a week at Comprehensive Rehabilitative Consultants (CRC) in January of 2021, earning $55 an hour. She also works 2-3 hours a month at Heartland Hospice earning $55 an hour. Finally, she has been a teacher through Purdue Global, earning between $1,000 and $2,500 a year, depending on the number of courses and the number of students enrolled. Defendant testified that her goal is to work 18 hours a week until Vera is "school age." Aida attends school five days a week from 7:45am until 3:20pm, Vera has the same hours but attends pre-school M-W-F. Defendant testified she asked for increased hours at CRC, but has not looked for other or alternative employment that would increase her hours to her goal of 18 hours a week. Defendant has no physical impediments to working more hours. The girls' school schedule would allow Defendant to work from approximately 8:30am until 2:30pm.

As noted above the Child Support Formula permits the use of "income that a parent could *potentially* earn to be imputed to the parent under some circumstances." Factors to consider are as follows:

(a) Prior employment experience and history, including earnings history, and reasons for any termination or changes in employment.

Exhibit E reflects that in 2013, 2014 and 2015 Defendant earned more than $80,000. She has worked at hospitals, at hospice, a clinic and has taught medical classes. Aida was born in October of 2015 and Vera in January of 2018. From Exhibit E, Defendant's reduced work hours in 2016-2018 provided an average income of $53,612. In 2019 with two young children

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in the home and while still residing with Plaintiff, Defendant became even more of a "house-parent" and only earned $14,125.

(b) Educational level, literacy, and any special skills or training.

Exhibit 2-1 is Defendant's resume. She has obtained either a license or a certificate for an Adult Nurse Practitioner, a Registered Nurse, a Basic Life Support and Advance Cardiac Life Support and a Transcultural Nurse.

(c) Physical and mental disabilities that may affect a parent's ability to work, or to obtain or maintain gainful employment.

None

(d) Availability for work (exclude periods when a parent could not work or seek work, e.g., hospitalization, incarceration, debilitating illness, etc.).

Not an issue.

(e) Availability of opportunities to work in the local geographical area.

Defendant admitted that she has not looked for work at McLaren or Genesis or other employers in the broader Genesee, Oakland, Livingston area. The Court will take judicial notice that given the current medical climate there is a shortage of nurses and hence, additional health care related work could most likely be obtained.

(f) The prevailing wage rates and number of hours of available work in the local geographical area.

Defendant's wage as a nurse is between $53 and $55 an hour. Defendant acknowledged that this is also the prevailing wage in Genesee County area.

(g) Diligence exercised in seeking appropriate employment.

Defendant has not looked for additional work other than expressing to her current employer that she would like to work 18 hours.

(h) Evidence that the parent in question is able to earn the imputed income.

Defendant has the qualifications to work as a nurse. Working full-time, Defendant could be earning approximately $114,400 a year. Working 18 hours a week, her wages as a nurse would be approximately $51,480 a year.

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(i) Personal history, including present marital status, age, health, residence, means of support, criminal record, ability to drive, and access to transportation, etc.

Defendant is capable of earning a decent wage. It also must be noted that she has received financial support from her parents. Defendant gave her parents address at the October 11, 2021. This is the address that she and the children went to at separation. Defendant she received financial help from her parents and assistance toward the purchase of a home nearby. There was no testimony that Defendant pays rent to her parents. Include under MCSF

> includes the market value of perquisites (perks) received as goods, services, or other noncash benefit for which the parent did not pay, if they reduce personal expenses, and have significant value or are received regularly. (1) Common forms of perquisites (perks) or goods and services received in-kind include, but are not limited to: housing, meals, or room and board, personal use of a company business vehicle or mileage reimbursement, including use between home and primary worksite, and other goods or services.

A causal search on Google for average rent in Fenton, MI supplies an estimate of $1,100 a month. The parties are free to contest this amount and provide information to the Friend of the Court when support is recalculated. Otherwise, the court shall value the "perk" of Defendant and the children living with her parents to be $1,000 a month.

(j) The presence of the parties' children in the parent's home and its impact on that parent's earnings.

The court finds (j) to be the most significant factor in its decision to impute an additional 6 hours or up to 18 hours of work a week for Defendant. As noted above, it was a joint decision to have Defendant be the "house-parent" after the children were born. She has not worked full-time since 2015. There is nothing in the record to suggest that prior to separation either parent seriously contemplated that Defendant would begin full-time work while the children were not yet attending school full-time. Prior to her move to Fenton, Defendant was offered and considered employment at Cowell Cancer Center at $53 an hour. However, Defendant testified that it would be one day a week and every third Wednesday. Although she did not take the job, a nanny was secured for two days a week. The parties' pre-separation plan that Defendant would continue to be the "house-parent," and remaining available for Vera on Tuesday and Thursday are still valid reasons to not be imputed a 40 hour a week wage. Once Vera is in kindergarten an increased imputation to full-time hours would be more appropriate.

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(k) Whether there has been a significant reduction in income compared to the period that preceded the filing of the initial complaint or the motion for modification.

Not applicable as Defendant's earnings increased after the filing of the complaint.

As to Defendant, she earns $34,320, plus a $1,590 for the additional 2.5 hours a month at Hospice at $53 an hour and the average stipend for teaching of $2,500 for actual income of $38,410. The court also shall impute an additional $17,160 for 6 additional hours of nurse wages at $55 an hour. This is a total of $55,570, plus the $1,000 a month "perk" for living rent free for total income of $67,570 for child support purposes.

Plaintiff

Turning to Plaintiff income, the court notes that Defendant did not file an objection to either of the child support orders. The court has already addressed the lack of support for any finding that Plaintiff intentionally failed to disclose his accurate and complete 2020 gross income to the Friend of the Court or did not provide the requested documents to the Friend of the Court. It is fairly clear that the Friend of the Court used 2019 wages but did not utilize all sources of income that would be allowed under the Child Support Formula for either the January 7 or June 9, 2021 Temporary Child Support orders.

MCR 3.217 (C) (4) provides as follows: "A temporary order must state its effective date and whether its provisions may be modified retroactively by a subsequent order." Both the January 7 and the June 9, 2021 Temporary Orders (as do all 13th Circuit FOC child support orders) contain the following statement regarding retroactivity: "If an objection is properly filed and a hearing is held, the Court may either increase or decrease the amount of this support order retroactive to the date of this Order." That guidance allows for a modification to be made retroactive to February 1, 2021.

It is now left to this court to review the exhibits and consider the testimony of the parties and their financial experts Chris Bott and Jason Bodmer regarding Plaintiff's income.

Plaintiff's W-2 for 2020 admitted into evidence indicates Plaintiff gross wage to be $334,195.96, and after certain deductions down to W-2 Wages of $291,463.54. However, the MCSF does not always correspond with IRS definitions of allowable deductions. MCSF 2.01(A) defines net income as follows:

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> The term "net income" means all income minus the deductions and adjustments *permitted by this manual.* A parent's "net income" used to calculate support will not be the same as that person's take home pay, net taxable income, or similar terms that describe income for other purposes. (Emphasis added)

Plaintiff's Group Term Life Insurance (Plus GTL) premium of $1,607.58 is not a deduction under the MCSF as it is not a premium ordered by the court. See MCSF 2.07(D). It will be added back in and considered income.

Plaintiff's $26,000 contribution to his 401(k) is no longer an allowable deduction under the MCSF. Deductions for voluntary contributions to pension or retirement plans were eliminated in 2017. Further, prior to 2017 only deductions were allowed only up to 5.5% of the employee's parent's gross income. See 2013 MCSF 2.07 (E). It will be added back in and considered income.

Contrary to the assertion by Mr. Bodmer, Plaintiff's contributions to a Flexible Spending Account (FSA), Health Savings Account (HSA) and Café totaling $18,340 are not allowable deductions under the MCSF 2.01(D)(2). FSA and HAS are not considered "perks" *only* if paid by the employer. There is no indication that mBank paid those on Plaintiff's behalf. They will be added back in and considered income. However, a percentage of these expenditures from these accounts for the children's medical expenses could be reimbursable under MCSF 3.04(A). Plaintiff testified that he pays $520 a month in health care premiums. This insurance currently covers the parties and their two children. Plaintiff will be provided credit for these payments pursuant to MCSF 2.07(F) and 3.05 (C).

The court will now address Defendant's request to include net capital gains as income. 2021 MCSF 2.01(C) (6) provides:

> Net capital gains are included as income. When attributable to a single event or year, or when cash may not be immediately available to the parent, consider them to the extent they can be used to represent income over several years. To the extent that a party proves that a portion of the capital gain was considered in the property division of the judgment of divorce between the parties, that portion should not be included as income.

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The word "net" was added 2.01(6) in the 2021 MCSF. Per the comments on page 2 in the 2021 MCSF Manual "net" was added for "clarification." The court agrees with witnesses Defendant's witness Chris Bott and Plaintiff's witness Jason Bodner that a "net" can only be realized when there is some financial consequence to a "gross." For example, "gross" income

becomes "net" income after deductions are made via taxes and the like. As explained by *both* experts, a "net capital" gain (loss) is only realized after the sale of an asset. Both experts testified that Plaintiff had no net capital gains in 2020. If or when Plaintiff sells an asset subject to capital gains/losses, and if the selling price exceeds the fair market value, there would be a net gain at that time that would be considered income under 2.01(C)(6). The questions then would be whether all the gain could be considered income and would it be for that one tax year or spread out as income over several years. The current non-existing net capital gains are not income for child support purposes. Plaintiff's Schedule D form 1040 1040 Federal Tax Summary for 2020 computes a net capital loss of $1,500.

Interest and dividend income is allowed under MCSF 2.01(C) (5). These amounts are found in Schedule B form1040 Federal Tax Summary for 2020 prepared by Chris Bott, CPA. Plaintiff's closing brief acknowledges the use of $36,000 as these values for 2020 and also prospectively. Mr. Bodner includes the same $36,000 in Plaintiff's income. (See Schedule C and E form Exhibit 6-1) These amounts will be considered income. The court concludes that Plaintiff's gross wage income for 2020 remains at $334,195.96, plus the $36,000 in interest and dividends, bringing Plaintiff's 2020 gross income to $370,195.96.

The impact of paragraph 4 of the parties Mediation Agreement as to Plaintiff's mBank Change and Control Payout is disputed. Paragraph 4 reads as follows:

> Plaintiff is awarded his mBank RSA, mBank Fidelity 401(k), MRNC Stock, Wells Fargo IRA (7948) and mBank Change and Control Payout.

The court does not determine whether a Property Settlement Agreement equally divides debts and assets. Equality is not a requirement. The court does not "fly-speck" a mediated agreement to determine whether under the court's view it is "fair and equitable." Nor does the court employ a Sparks v Sparks, 440 Mich 141 (1992) analysis regarding property division once an agreement is reached. Fair and equitable is unique to each case and if an agreement is reached these terms are self-defined by the parties. When parties reach an agreement, the decision of whether to use an asset awarded to one party also as the basis for support is also remains in their hands. Only when the court is the trier of fact, must it weigh the equities of each case to determine whether to "double-dip." See Loutts v Loutts, 298 Mich App 21 (2012).

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Here, the parties engaged in mediation with counsel present and with a court approved mediator. The agreement was signed by the parties and counsel on August 18, 2021. The court

is unaware of any urgency that an agreement be signed on that date. Either side or the mediator could have continued mediation for another session. There is no motion to set aside the mediation agreement. The court appreciates Plaintiff's objection to the admission of Exhibit I; however, the court has only used Exhibit I to note the type of information that was available at mediation. Exhibit I was provided by email from Plaintiff's law office to Defendant's law office on the date of mediation. Exhibit I has entries for mBank RSA, mBank Fidelity 401(k), MRNC Stock, Wells Fargo IRA (7948) and mBank Change and Control Payout. Of these, only the mBank Change and Control Payout (CIC) could be considered income (for child support purposes perhaps to be spread out over a number of years). Exhibit I has an entry titled "mBank change in control payouts" and assigns $673,547 to the CIC, in addition to a reference to 8,297 shares. The Mediation Agreement mirrors that title and the mBank Change in Control Payout was clearly was awarded to Plaintiff. The CIC ultimately was for $683,115.35. To include these monies for child support purposes, would also support the court's inclusion of the $900,000 awarded to Defendant as her income. Without any limiting provisos in the mediation agreement, Plaintiff keeps his $683,115.35 CIC payout and Defendant keeps her $900,000 and neither will be considered for support purposes.

In conclusion, the court finds that Plaintiff's gross income for child support purposes from February 1, 2021 until September 3, 2021 to be $370,195.96. The court also notes that neither party provided testimony or documentation as to the use of or cost of any work related child care. Plaintiff testified that he did not use a nanny or baby sitter this past summer. Defendant testified that her work hours are limited to when the children are at school or pre-school. Child care costs may be allocated between the parties per MCSF 3.06, but there have been none yet submitted and should not be be included in the child support order, absent documentation.

Beginning in September of 2021, Plaintiff began new employment. mBank was merged into Nicolet. Although still in a management position, Plaintiff's salary was reduced to $175,000. The court accepts as accurate that there might be bonuses, but none are guaranteed nor have any been received as of the last court hearing. It is also unknown as to what interest or dividend income Plaintiff may receive in 2021; however, Mr. Bodmer suggests that $36,000 would be a valid prospective amount. Further, Plaintiff's health insurance premium may

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change once the divorce is final. In further conclusion, the court finds that Plaintiff's gross income for child support purposes from beginning on September 3, 2021 to be $211,000.

Attorney Fees

Defendant requests that the court award $40,000 in attorney fees for the costs of child related litigation. This request was made in Defendant's Prayer for Relief in its May 27, 2021 Closing Statement Following Referee Hearing. The August 18, 2021 Mediation Agreement indicated that issue of attorney fees for child related matters would remain open. Attorney fees were again requested and briefed in Defendant's November 5, 2021 Closing Statement. The latter filing cites MCR 3.206 (D). It provides in pertinent part

> (D) Attorney Fees and Expenses.
>
> (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
>
> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that
>
> (a) the party is unable to bear the expense of the action, including the expense of engaging in discovery appropriate for the matter, and that the other party is able to pay….

Plaintiff has not provided a response to this request in either its initial Closing Argument or its Rebuttal to Defendant's Closing Argument.

Defendant earned $14,125 in 2019 and $4,072 in 2020. These are actual earnings and do not include imputed income. Clearly, from these two years Defendant is unable to bear the entire expense of litigation. In 2021, Defendant's projected actual income has been calculated at $38,410. That amount also does not allow her to bear the $40,000 in attorney fees. The court has imputed to Defendant a total gross income of $67,570. With taxes removed, that amount also is insufficient to cover $40,000 of attorney fees. Hence, Defendant has met her burden under MCR 3.206(D) (a).

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The court has not adopted Defendant's analysis that Plaintiff earns $891,202.83. However, it has found for reasons stated above that Plaintiff's 2020 gross income was $370,195.96 and he has 2021 projected gross earnings of $211,000. The court finds that Defendant has met the 2nd prong of her burden under MCR 3.206(D) (a) of Plaintiff's ability to pay.

This is not the final step. Defendant bears the burden of proving the reasonableness of the $40,000 fees requested. Smith v. Khouri, 481 Mich 528 (2008) In determining whether $40,000 is reasonable, the analysis begins by determining the fee customarily charged in the locality for similar legal services. In determining this number, the court uses reliable surveys or other credible evidence of the legal market. This number is then multiplied by the reasonable number of hours expended in the case. The attorney requesting fees must submit detailed billing records for the court to examine. The opposing party may contest for reasonableness. The hourly rate and the number of hours serves as base line for calculating a reasonable attorney fee. Id. At this point the court may consider other factors to determine whether there should be an increase or decrease from the base line as outlined Wood v DAIIE, 413 Mich 573 (1982)

> (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.

See also factors enumerated in Rule 1.5(a) of the Michigan Rules of Professional Conduct.

Once Defendant submits the required documentation, the court will set the matter for further hearing.

Conclusion

Plaintiff's Motion for Return of Minor Children to Within 100 Miles of Their County of Residence is denied for the reasons articulated in the analysis of MCL 722.31 above. Plaintiff's Verified Ex Parte Emergency Motion for Temporary Order Modifying Parenting Time Pursuant to MCR 3.207 is denied for the reason that the temporary relief requested was rendered moot by entry of the June 7, 2021 Order. Plaintiff's Motion to Prohibit Defendant from Further Relocating with the Minor Children is denied on the basis that Defendant resided in Fenton at the commencement of this action, and further, that Defendant is not restricted by the prohibition contained in MCL 722.31. The court admonishes that any further move that would increase the distance between Plaintiff and the children, if it impacts that established custodial environment, would have to be based on clear and convincing evidence. Plaintiff's Amended Motion for Order to Show Cause Defendant for Failure to Comply with Order for Joint Legal Custody is denied, and the Order to Show Cause is dismissed. Joint legal custody with primary care with Defendant shall continue. Parenting time and transportation terms shall be modified. Support shall be recalculated based on the parenting time schedule ordered herein and according to the

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income figures contained in the court's decision. There shall be two support calculations: From February 1, 2021 through September 3, 2021 and the second effective September 3, 2021.

Based on the foregoing, the court enters the following Order:

IT IS HEREBY ORDERED that Plaintiff's Motion for Return of Minor Children to Within 100 Miles of Their County of Residence is denied.

IT IS FURTHER ORDERED that Plaintiff's Verified Ex Parte Emergency Motion for Temporary Order Modifying Parenting Time Pursuant to MCR 3.207 is denied.

IT IS FURTHER ORDERED that Plaintiff's Motion to Prohibit Defendant from Further Relocating with the Minor Children is denied.

IT IS FURTHER ORDERED that Plaintiff's Amended Motion for Order to Show Cause Defendant for Failure to Comply with Order for Joint Legal Custody is denied.

IT IS FURTHER ORDERED that the Order to Show Cause is dismissed

IT IS FURTHER ORDERED that the parties are awarded joint legal custody of their minor children Aida V. Sabatine, d/o/b 10/27/2015, and Vera L. Sabatine, d/o/b 01/26/2018. The parties will continue to exercise joint parental authority and responsibility for the health, safety, education, and general wellbeing of their minor children. This authority and responsibility shall include the maintenance and support of said children. Each party is directed to maintain communication with the other and to reasonably determine the best interests of the minor children until further Order of the court.

IT IS FURTHER ORDERED that Defendant is awarded primary physical custody of the children.

IT IS FURTHER ORDERED that parenting time shall be as follows:

1. Beginning the Sunday before school begins and persisting through the first Sunday after the academic year ends (excluding holidays):
    a. Defendant will exercise parenting time except as follows in 1b and 1c:
    b. Plaintiff will have parenting time every other weekend, beginning at 6:30pm Friday evening and ending Sunday at 3:30pm.
    c. Plaintiff shall have the option of exercising additional parenting time in the Fenton area one weekend day a month from 10:00am until 6:00pm. Plaintiff shall provide 30 days written notice of such to Defendant.

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d. Plaintiff shall also receive every Spring Break commencing at 6:30pm on the day school dismisses until 3:30pm on the day before school resumes.

2. Beginning the first Sunday after the academic year ends and persisting through Sunday before school begins (excluding holidays):
   a. Plaintiff will exercise parenting time except as follows in 2b and 2c:
   b. Defendant will have parenting time every other weekend, beginning at 6:30pm Friday evening and ending Sunday at 3:30pm.
   c. Defendant will have one uninterrupted week per year for vacation time. Defendant will identify this week to Plaintiff and the Friend of the Court in writing by May 1st of each year.
3. Holidays/special days shall be as follows:
   a. The children shall spend each Mother's Day weekend with Defendant and each Father's Day weekend with Plaintiff, beginning at 6:30pm on Friday and ending Sunday at 3:30pm.
   b. The parties shall alternate the Thanksgiving holiday with Plaintiff in even years and with Defendant in odd years. Thanksgiving shall begin at 6:30 pm on the day school is released and conclude at 3:30 pm on the Sunday after Thanksgiving.
   c. The parties shall each have one half of the winter break from school. In odd years Plaintiff shall have the first half beginning at 6:30 pm on the day school dismisses and in even years Defendant shall have the first half beginning at 6:30 pm on the day school dismisses. The second half of the winter break shall be with Defendant in odd years and with Plaintiff in even years. The second half shall begin at 6:30pm in odd years and 6:30pm in even years and conclude at 3:30 pm on January 2nd of each year.
   d. The parties shall share or alternate such other holidays/special days only as they may mutually agree and arrange

IT IS FURTHER ORDERED that each parent shall have liberal FaceTime with the minor children during the weeks the children are with the other parent. If the parties are unable to agree upon times, FaceTime may occur on Tuesdays and Thursdays between the hours of 9:00am and 7:00pm for a duration of no more than 45 minutes.

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IT IS FURTHER ORDERED that Defendant may travel with the children to her brother's wedding from June 9, 2022 until June 13, 2022. If any of these dates conflict with Plaintiff's parenting time, Defendant shall provide make-up time or deduct that time from her one uninterrupted week per year for vacation time.

IT IS FURTHER ORDERED that the location for all parenting time exchanges shall be a mutually agreed upon location off I-75 in Grayling, Michigan. The parties are permitted a 30-minute grace period in case of unforeseen delay.

IT IS FURTHER ORDERED that Plaintiff's monthly child support obligation for two minor children effective February 1, 2021 shall be $3,083 and effective September 3, 2021 shall be $1,974. Uniform Child Support Orders will be issued.

IT IS FURTHER ORDERED that the award of attorney fees is held in abeyance as detailed in this decision.

IT IS FURTHER ORDERED that all other terms of the court's prior Orders in this case shall remain in effect until further Order of this court.

IT IS FURTHER ORDERED that Plaintiff shall present a Judgment of Divorce that comports with the terms of this decision and incorporates the August 18, 2021 Mediation Agreement. The award of attorney fees may be reserved in the Judgment.

Marian Kromkowski 11/17/2021 04:05PM

November 16, 2021

MARIAN KROMKOWSKI, FAMILY DIVISION JUDGE, P30378

Hon. Marian Kromkowski
Family Court Judge

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STATE OF MICHIGAN
IN THE CIRCUIT COURT, FAMILY DIVISION, FOR THE COUNTY OF LEELANAU

ANDREW PAUL SABATINE,
PLAINTIFF

v

COLLEEN K. SABATINE,
DEFENDANT

FILE NO. 2020010532DM

ORDER FOR TEMPORARY CUSTODY, SUPPORT AND PARENTING TIME

At a session of Court held in the Courthouse in the Township of Suttons Bay, in said County, on the 6th day of January, 2021.

PRESENT: HONORABLE MARIAN KROMKOWSKI, FAMILY DIVISION JUDGE

This action having been brought on to be heard on the Petition of Andrew Sabatine seeking an order for temporary custody, support, and parenting time, the Friend of the Court having made its investigation in respect thereto; the Plaintiff having participated and the Defendant having participated and the Court being fully advised in the premises:

CUSTODY AND PARENTING TIME

IT IS HEREBY ORDERED that the Plaintiff, Andrew Sabatine, and the Defendant, Colleen Sabatine, are temporarily, and during the pendency of this action, awarded joint legal custody of: Aida V. Sabatine, d.o.b. 10/27/15, and Vera L. Sabatine, d.o.b. 01/26/18, the minor children of the parties. The Defendant, Colleen Sabatine, shall have primary physical custody of the minor children. The Plaintiff, Andrew Sabatine, shall have the following parenting time schedule:

- Every other weekend from Friday at 6:00 p.m. until Sunday at 4:00 p.m.; parenting time exchanges for the every other weekend shall be as follows: The Defendant shall transport the minor children to the Defendant's residence on Friday and the parties shall meet at the McDonalds, in West Branch, MI on Sunday;
- In addition to the every other weekend, the Plaintiff shall also enjoy two non-consecutive weeks from Sunday at 4:00 to Sunday at 4:00 during the summer months, of his choosing, with written notification to the Defendant of which two weeks by May 15th each year. Parenting time exchanges for the two-week summer parenting time, only, shall be at the McDonald's in West Branch, MI;
- Holidays shall be alternated. The holiday schedule takes precedence over all other scheduled parenting time.

- In even numbered years the custodial parent will have: Easter; Fourth of July; Thanksgiving; Christmas Day and the child's birthday. The co-parent will have: Memorial Day; Labor Day; Halloween and Christmas Eve.

- In odd numbered years the custodial parent will have: Memorial Day; Labor Day; Halloween and Christmas Eve. The co-parent will have: Easter; Fourth of July; Thanksgiving; Christmas Day and the child's birthday.

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- The children shall spend each Mother's Day with the Mother and each Father's Day with the Father. Parenting time shall be from 9:00 a.m. until 7:00 p.m.

- [NOTE: Holiday hours are 9:00 a.m. until 7:00 p.m. for Easter, Memorial Day, Labor Day, Thanksgiving and the child's birthday. Holiday hours for Fourth of July are 9:00 a.m. July 4th to 9:00 a.m. July 5th. Christmas Eve shall be from 7:00 p.m. December 23rd to 9:00 p.m. December 24th. Christmas Day shall be from 9:00 p.m. December 24th to 9:00 p.m. December 25th. Halloween night visits shall be from 5:30 p.m. until 8:30 p.m.]

- [NOTE: If a holiday falls during a parent's regular parenting time, that parent shall have the holiday **and** the regular parenting time, and not be entitled to additional time. If a holiday falls during a time the parent would **not** have their regular parenting time, the holiday shall be spent with that parent and the regular time should resume at the conclusion of the holiday time. If a holiday immediately precedes or immediately follows regular parenting time, the parenting time shall be extended to include the holiday.]

- The children shall spend the Christmas/Holiday school break in odd numbered years with the co-parent and in even numbered years with the custodial parent. The alternating weekend schedule of parenting time shall continue during the Christmas/Holiday break.

- The children shall spend the Spring school break in odd numbered years with the co-parent and in even numbered years with the custodial parent. The alternating weekend schedule of parenting shall continue during the Spring school break, provided the parent having parenting time does not have out-of-town vacation plans for the Spring school break.

IT IS FURTHER ORDERED that the parties continue to exercise joint parental authority and responsibility for the health, safety, education, and general well being of their minor children. This authority and responsibility shall include the maintenance and support of said children. Each party is directed to maintain communication with the other and to reasonably determine the best interests of the minor children until further Order of the Court.

IT IS FURTHER ORDERED that parenting time shall not be exercised in a country that is not a party to the Hague convention on the civil aspects of international child abduction, unless both parents provide the court with written consent to allow a parent to exercise parenting time in a country that is not a party to the Hague convention.

CHILD SUPPORT

IT IS FURTHER ORDERED that the provisions of the Uniform Support Order attached hereto are incorporated by reference and made a part of this Temporary Order. Child support payments shall be made to the Michigan State Disbursement Unit (MiSDU), P.O. Box 30351, Lansing, MI 48909-7851 during the pendency of this action.

If a child is still attending high school on a full time basis while residing with the recipient of support on a full time basis when he/she turns 18, support can continue. You must provide Friend of the Court with proof of full time attendance in high school prior to the end of the month the child turns 18, otherwise you will need to file a motion to continue support.

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CHILD CARE

IT IS FURTHER ORDERED that the payer of support is required to contribute 83% of child care costs after deduction of the child care credit allowed by the IRS. The parties shall promptly inform Friend of the Court regarding any significant changes in child care.

UNINSURED MEDICAL EXPENSES

IT IS FURTHER ORDERED that uninsured expenses, that have been submitted to the co-parent, that have not been paid within 28 days of a written payment request, may be enforced by the Friend of the Court provided the complaint is filed prior to the expiration of one year from when the expense was incurred.

STATUTORY FEES

IT IS FURTHER ORDERED that the payer of support shall pay statutory and service fees as required by law.

DOMICILE

IT IS FURTHER ORDERED that neither party nor their agents remove the domicile or residence of the minor children from the State of Michigan without the approval of this Court.

01/06/2021
03:11PM

JEREMY HOGUE, FRIEND OF THE COURT
FRIEND OF THE COURT

01/07/2021
09:08AM

MARIAN KROMKOWSKI, FAMILY DIVISION JUDGE, P30378
HONORABLE MARIAN KROMKOWSKI,
FAMILY DIVISION JUDGE

NOTICE: This Temporary Order is being entered immediately upon the recommendation of the Friend of the Court and all its provisions are effective upon entry and enforceable upon service. You may move to modify or rescind this order by filing a written objection and Request for hearing with the Clerk of the Court within 21 days from the date this order is mailed. If an objection is properly filed and a hearing is held, the court may either increase or decrease the amount of this order retroactive to the effective date of this order.

cc: Andrew Sabatine
Colleen Sabatine
Matthew Vermetten, Attorney for Plaintiff
Amy Swogger, Attorney for Defendant

I certify that on this date I served a copy of this order and the attached Uniform Support Order on the parties and their attorneys by first class mail addressed to their last known addresses as defined in MCR 3.203.

Mailed:

01/07/2021
11:46AM

DANIELLE RICE, ENFORCEMENT SPECIALIST

ORTEMP

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Approved, SCAO

Original – Court
1st Copy – Plaintiff
2nd Copy- Defendant
3rd Copy – Friend of the Court

STATE OF MICHIGAN 13TH JUDICIAL CIRCUIT LEELANAU COUNTY	UNIFORM CHILD SUPPORT ORDER (PAGE 1) ☐ EX PARTE ☒ TEMPORARY ☐ MODIFICATION ☐ FINAL	CASE NO. 2020010532DM

Friend of the Court address
328 Washington St., Ste 200, Traverse City, MI 49684

Friend of the Court telephone
231-922-4660

Plaintiff's name, address, and telephone no.	Defendant's name, address, and telephone no.
ANDREW PAUL SABATINE 9158 S MAJESTIC RIDGE DR TRAVERSE CITY MI 49684	COLLEEN K. SABATINE 13084 LOG CABIN PT FENTON MI 48430
Plaintiff's attorney name, bar no., address, and telephone no.	Defendant's attorney name, bar no., address, and telephone no.

This order is entered ☐ after hearing. ☐ after statutory review. ☐ on stipulation/consent of the parties.

☒ The friend of the court recommends support be ordered as follows.
☐ If you disagree with this recommendation, you must file a written objection with _____on or before **21 days** from the date this order is mailed. If you do not object, this proposed order will be presented to the court for entry.
☒ Attached are the calculations pursuant to MCL 552.505(1)(h) and MCL 552.517b.

IT IS ORDERED, unless otherwise ordered in item 12 or 13: ☒ Standard provisions have been modified (see item 12 or 13).

1. **The children who are supported under this order and the payer and payee are:**

Payer: ANDREW SABATINE	**Payee: COLLEEN SABATINE**	
Children's names, birthdates, and annual overnights with payer: **Children's names**	**Date of Birth**	**Overnights**
AIDA V SABATINE	**10/27/15**	**69**
VERA L SABATINE	**01/26/18**	**69**

Effective 02/01/21, the payer shall pay a monthly child support obligation for the children named above.

Children supported:	1 child	2 children	3 children	4 children	5 or more children
Base support: (includes support plus or minus premium adjustment for health-care insurance)					
Support:	$ 1,962.00	$ 2,990.00	$	$	$
Premium Adjustment:	$ -22.00	$ -44.00	$	$	$
Subtotal:	$ 1,940.00	$ 2,946.00	$	$	$
Ordinary Medical:	$	$	$	$	$
Child Care:	$	$ 1,093.00	$	$	$
Other:	$	$	$	$	$
SS Benefit Credit:	$	$	$	$	$
Total:	$ 1,940.00	$ 4,039.00	$	$	$
☐ Support was reduced because payer's income was reduced.					

(See Page 2 for the remainder of the order.)

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Original – Court 2nd Copy- Defendant
Approved, SCAO 1st Copy – Plaintiff 3rd Copy – Friend of the Court

STATE OF MICHIGAN 13TH JUDICIAL CIRCUIT LEELANAU COUNTY	UNIFORM CHILD SUPPORT ORDER (PAGE 2) ☐ EX PARTE ☒ TEMPORARY ☐ MODIFICATION ☐ FINAL	CASE NO. 2020010532DM

Friend of the Court address
328 Washington St., Ste 200, Traverse City, MI 49684

Friend of the Court telephone
231-922-4660

Plaintiff's Name	V	Defendant's Name
ANDREW PAUL SABATINE		COLLEEN K. SABATINE

1. Child Support (continued).

Uninsured Health-Care Expenses. All uninsured health-care expenses exceeding the annual ordinary medical amount will be paid 83 % by the plaintiff and 17 % by the defendant. Uninsured expenses exceeding the annual ordinary medical amount for the year they are incurred that are not paid within 28 days of a written payment request may be enforced by the friend of the court. The annual ordinary medical amount is N/A

Obligation Ends. Except for child care, or as otherwise ordered, support obligations for each child end on the last day of the month the child turns 18. The child-care obligation for each child ends August 31 following the child's 12th birthday. The parties must notify each other of changes in child-care expenses and must additionally notify the friend of the court if the changes end those expenses.

☐ **Post-majority Support:** The following children will be attending high school on a full-time basis after turning 18 years of age. Therefore, the support obligation for each specific child ends on the last day of the month as follows, except in no case may it extend beyond the time the child reaches 19 years and 6 months of age: (specify name of child and date obligation ends.)

_____.

IF a child is still attending high school on a full-time basis while residing with the recipient of support on a full time basis when he/she turns 18, support can continue. You must provide Friend of the Court with proof of full-time attendance in high school prior to the end of the month the child turns 18, otherwise you will need to file a motion to continue support.

2. **Insurance.** For the benefit of the children, the ☒ plaintiff ☐ defendant shall maintain health-care coverage through an insurer (as defined in MCL 552.602) that includes payment for hospital, dental, optical, and other health-care expenses when that coverage is available at a reasonable cost, including coverage available as a benefit of employment or under an individual policy
☐ up to a maximum of $_____ for plaintiff. ☐ up to maximum of $_____ for defendant.
☒ not to exceed 6% of the plaintiff's/defendant's gross income.

3. **Income Withholding.** Income withholding takes immediate effect. Payments shall be made through the Michigan State Disbursement Unit unless otherwise ordered in item

4. **Qualified Medical Support Order.** This order is a qualified medical support order with immediate effect pursuant to 29 USC 1169. To qualify this order, the friend of the court shall issue a notice to enroll pursuant to MCL 552.626b. A parent may contest the notice by requesting a review or hearing concerning availability of health care at a reasonable cost.

5. **Retroactive Modification, Surcharge for Past-Due Support, and Liens for Unpaid Support**. Except as provided by MCL 552.603, support is a judgment the date it is due and is not modifiable retroactively. A surcharge may be added to past-due support. Unpaid support is a lien by operation of law and the payer's property can be encumbered or seized if an arrearage accrues in an amount greater than the periodic support payments payable for two months under the payer's support order.

6. **Address, Employment Status, Health Insurance**. Both parties shall notify the friend of the court in writing of: a) their mailing and residential addresses and telephone numbers; b) the names, addresses, and telephone numbers of their sources of income; c) their health-maintenance or insurance companies, insurance coverage, persons insured, or contract numbers; d) their occupational or drivers' licenses; and e) their social security numbers unless exempt by law pursuant to MCL 552.603. Both parties shall notify the friend of the court in writing within 21 days of any change in this information. Failure to do so may result in a fee being imposed.

7. **Foster-Care Assignment.** When a child is placed in foster care, that child's support is assigned to the Department of Human Services while under the state's jurisdiction and to the funding county while placed in a county-funded program.

8. **Redirection and Abatement**: Subject to the statutory procedures, the friend of the court: 1) may redirect support paid for a child to the person who is providing the actual care, support, and maintenance of that child; 2) shall abate support charges for a child who resides on a full-time basis with the payer of support.

9. **Fees.** The payer of support shall pay statutory and service fees as required by law. **(See Page 3 for the remainder of the order.**

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Approved, SCAO

Original – Court
1st Copy – Plaintiff
2nd Copy- Defendant
3rd Copy – Friend of the Court

STATE OF MICHIGAN 13TH JUDICIAL CIRCUIT LEELANAU COUNTY	UNIFORM CHILD SUPPORT ORDER (PAGE 3) ☐ EX PARTE ☒ TEMPORARY ☐ MODIFICATION ☐ FINAL	CASE NO. 2020010532DM

Friend of the Court address
328 Washington St., Ste 200, Traverse City, MI 49684

Friend of the Court telephone
231-922-4660

Plaintiff's Name
ANDREW PAUL SABATINE

v

Defendant's Name
COLLEEN K. SABATINE

10. **Review.** Each party to a support order may submit a written request to have the friend of the court review the order. The friend of the court is not required to act on more than one request received from a party each 36 months. A party may also file a motion to modify this support order.

11. **Prior Orders. This order supersedes all prior child-support orders and all continuing provisions are restated in this order.** Past-due amounts owed under any prior support order are preserved and paid at the rate calculated using the arrearage guideline in the Michigan Child Support Formula.

☐ 12. **Michigan Child Support Formula Deviation.** The support provisions ordered do not follow the Michigan Child Support Formula. The attached deviation addendum (FOC 10d) provides the basis for deviation and the required findings by the court.

☒ 13. **Other:** (Attach separate sheets as needed.) THE PLAINTIFF IS NOT ORDERED TO CONTRIBUTE ORDINDARY HEALTH CARE COSTS AS THE PLAINTIFF PROVIDES PRIVATE HEALTH INSURANCE FOR THE MINOR CHILDREN.

Health-Care Coverage. For the benefit of the children, the ☐ plaintiff ☐ defendant shall maintain health-care coverage (as defined in MCL 552.602) that includes payment for hospital, dental, optical, and other health-care expenses when that coverage is accessible to the child and available at a reasonable cost, not to exceed 6% of the plaintiff's/defendant's gross income.

Angela Pelletier 01/06/2021 02:28PM
ANGELA PELLETIER, FOC CASE MANAGER

Prepared by: Angela Pelletier

Marian Kromkowski 01/07/2021 09:08AM
MARIAN KROMKOWSKI, FAMILY DIVISION JUDGE, P30378

Judge Marian Kromkowski

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this order on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 3.203.

Danielle Rice 01/07/2021 11:46AM
DANIELLE RICE, ENFORCEMENT SPECIALIST

Signature

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CALCULATION RESULTS

Calculation 1557213 completed by ANGELA PELLETIER on 01/06/2021.

Summary

ANDREW SABATINE paying COLLEEN SABATINE $4,102.00 a month.
(Note: See following pages for further detail)

Family Used for Calculation Results

Children in Common *(youngest to oldest)*

VERA SABATINE AIDA SABATINE

Calculation Between ANDREW SABATINE and COLLEEN SABATINE

Total Other Children - ***2021 MCSF 2.08(A)***

	1 Child	None 2 Children	3 Children	None 4 Children	5+ Children
Payer	ANDREW	ANDREW			
Average Overnights with Payer	69	69			
Base Support after PTO	$1,962.00	$2,990.00			
HC Premium Adjustment	-$22.00	-$44.00			
Subtotals	$1,940.00	$2,946.00			
Ordinary Medical	$31.00	$63.00			
Child Care	$0.00	$1,093.00			
Benefit Credit	$0.00	$0.00			
Totals	$1,971.00	**$4,102.00**			

Net Income Calculation - ***2021 MCSF 2.01(C)***	ANDREW SABATINE		COLLEEN SABATINE
Monthly Gross Income	$22,670.83		$3,575.00
Monthly Deductions and Adjustments	$7,644.70		$592.29
Monthly Net Income	$15,026.13		$2,982.71
Family Net Income		$18,008.84	
Share of Net Income	83.44%		16.56%
Base Support Calculation - ***2021 MCSF 3.02(A)***			
Base Support Amount	$3,084.00		$612.00
Average Overnights (Highest Tier)	69		296
Payer's Base Support Amount after PTO	$2,990.00		$0.00
Health Care Premium Allocation - ***2021 MCSF 3.05(C)***			
Monthly Insurance Premiums	$520.00		$0.00
Calculation Children Covered	2		0
Additional People Covered	2		0
Per Capita	$130.00		$0.00
Amount Attributable to Children on Calculation	$260.00		$0.00
Share of Premiums	83%		17%
Payer's Monthly Share	-$44.00		$0.00
Ordinary Medical Expense - ***2021 MCSF 3.04(B)***			
Annual Ordinary Medical Expense for 2 Children		$908.00	
Share of Medical Expense	83%		17%
Payer's Monthly Share	$63.00		$0.00
Child Care Expense Reimbursement - ***2021 MCSF 3.06(C)***			
Monthly Gross Child Care Expenses	$0.00		$1,421.33
Subsidies, Reimbursements, Credits	$0.00		$105.00
Monthly Net Child Care Expenses	$0.00		$1,316.33
Share of Child Care	83%		17%
Payer's Monthly Share	$1,093.00		$0.00

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CALCULATION RESULTS

Calculation 1557213 completed by ANGELA PELLETIER on 01/06/2021.

Details

ANDREW SABATINE paying COLLEEN SABATINE $4,102.00 a month.
(Note: See following pages for further detail)

Family/Children Details - *2021 MCSF 2.08(A)*

	ANDREW SABATINE	COLLEEN SABATINE
Additional Children from Other Relationships	0	0
Children-in-Common in Other Custodial Arrangements	0	0
Total Other Children	0	0
Income Adjustment Percentage Multiplier	-	-
Provided Information For Support Calculation	Yes	Yes

Net Income Calculation - *2021 MCSF 2.01(C)*

	ANDREW SABATINE	COLLEEN SABATINE
Income Type	Employer Wages	Employer Wages
Employer Name		
Monthly Gross Income	$16,541.96	$3,575.00
Monthly Overtime	$0.00	$0.00
Monthly Shift Premium	$0.00	$0.00
Income Type	Bonuses / Commissions / Profit Sharing	None
Monthly Gross Income	$6,128.87	None
Total Monthly Gross Income	**$22,670.83**	**$3,575.00**
IRS Filing Status	Single	Head of Household
IRS Exemptions	1	3
FICA Tax	$1,120.57	$273.49
Federal Tax	$5,447.44	$217.33
State Tax	$946.69	$101.47
Local Resident Tax	$0.00	$0.00
Local Non-Resident Tax	$0.00	$0.00
Additional Children Adjustment	$0.00	$0.00
Mandatory Health Insurance - Parent's Self-Coverage Portion of Premiums	$130.00	$0.00
Total Monthly Gross Deductions and Adjustments	**$7,644.70**	**$592.29**
Monthly Net Income	$15,026.13	$2,982.71
Family Net Income	$18,008.84	
Share of Net Income	83.44%	16.56%

Disclaimer: Unless identified as an adjusted tax amount (M), the tax amounts listed are estimates calculated by the Michigan Child Support Enforcement System. (P) Indicates Potential. (O) Indicates Omitted.

Income Comments
ANDREW SABATINE: $198,503.50 annual salary + $73,546.48 annual bonus & incentive
COLLEEN SABATINE: $42,900.00 annually

Base Support Calculation - *2021 MCSF 3.02(A)*

	ANDREW SABATINE	COLLEEN SABATINE
Children in Common	2	2
Children in Common on Calculation	2	2

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CALCULATION RESULTS

	Base Support Equation	General Care Equation - 2021 MCSF 3.02(B)	General Care Equation - 2021 MCSF 3.02(B)
Base Support Amount		$3,084.00	$612.00
Base Support Amount after PTO		$2,990.00	$0.00

Parenting Time Overnights - *2021 MCSF 3.03(A)*

	ANDREW SABATINE	COLLEEN SABATINE
VERA SABATINE - 01/26/2018	69	296
AIDA SABATINE - 10/27/2015	69	296
Average Overnights (Highest Tier)	69	296

Health Care Allocations and Medical Obligations - *2021 MCSF 3.05(C), 2021 MCSF 3.04(B)*

	ANDREW SABATINE		COLLEEN SABATINE
Recommended to Provide Health Insurance	Yes		No
Health Care Coverage Type	Private Only		
Reasonable Cost of Health Care	6%		6%
Share of Health Care	83%		17%
Monthly Insurance Premiums	$520.00		$0.00
Calculation Children Covered	2		0
Additional Qualifying Children Covered	0		0
Additional People Covered	2		0
Per Capita Amount	$130.00		$0.00
Payer's Monthly Share	-$44.00		$0.00
Share of Medical Expense	83%		17%
Annual Ordinary Medical Expense per MCSF		$908.00	
Monthly Ordinary Medical Expense		$75.67	
Payer's Monthly Share	$63.00		$0.00

Child Care Obligations - *2021 MCSF 3.06(C)*

	ANDREW SABATINE	COLLEEN SABATINE	
Share of Child Care	83%	17%	
Monthly Child Care Expense	$0.00	$1,421.33	
All	$0.00	$1,421.33	/ 12

Children: (youngest to oldest)	VERA SABATINE	AIDA SABATINE
Child Care Reimbursement End Date	08/31/2030	08/31/2028

Subsidies, Reimbursements, Credits	$0.00	$105.00
Net Child Care Expenditures	$0.00	$1,316.33
Payer's Monthly Share	$1,093.00	$0.00

Administrative Information

Calculation ID	1557213	MCSF Year	2021
Docket		MCSF Supplement Year	2021
County	005	Tax Year	2021
Calculation Completed by	ANGELA PELLETIER	Calculation Completed Date	01/06/2021
Calculation Parties	ANDREW SABATINE and COLLEEN SABATINE		

Calculation Results:
ANDREW SABATINE paying COLLEEN SABATINE $4,102.00 a month.

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STATE OF MICHIGAN 13th CIRCUIT COURT LEELANAU	ALTERNATIVE DISPUTE RESOLUTION SUMMARY REPORT FOR: ☐ CONSENT ORDER ☒ RECOMMENDED ORDER	CASE NO. and JUDGE 2020010532DM MARIAN KROMKOWSKI

Friend of the court address
328 Washington St, Ste 200 Traverse City MI 49684

Telephone
231-922-4

Plaintiff's name ANDREW PAUL SABATINE	v	Defendant's name COLLEEN K. SABATINE

Use note: Upon completion of the alternative dispute resolution process, a copy of this report should be sent to the judge together with the proposed order, if applicable. This report is not to be placed in the court file.

1. This report is being submitted following a
   ☒ facilitative and information-gathering conference. ☐ joint meeting.
2. The parties met with a friend of the court alternative dispute resolution provider on 1/5/21. (Date)
3. The parties ☐ were able ☒ were unable to reach an agreement.
4. The friend of the court alternative dispute resolution provider:
   - ☐ will take no further action
   - ☒ will provide a recommended order to the court.
   - ☐ will serve a recommended order on the parties.
   - ☐ recommends the following action to resolve the remaining contested issues: _____
   - ☐ has identified the following contested issues that might require the court's immediate attention: _____
   - ☐ Other: _____
5. The parties have agreed to the following: Joint legal custody
6. The parties do not agree to the following: Physical custody, parenting time, child support
7. The child(ren) currently reside(s) with ☐ plaintiff. ☒ defendant. ☐ both parties.
8. The child(ren) currently attend the following school(s): KinderCare
9. The parties' work schedules are:
   Plaintiff: Monday - Friday; 8:00 am - 5:00 pm
   Defendant: Tuesday, Thursday, Saturday - 5 hours each day

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Case No. 2020010532DM

10. a. The plaintiff has had the following contact with the children:

    b. The defendant has had the following contact with the children:

11. After proper screening and completion of a friend of the court alternative dispute resolution session the following issues were or were not raised:

Substance abuse issues	☒ yes ☐ no	Domestic abuse issues	☐ yes ☒ no
Child abuse issues	☐ yes ☒ no	Mental health issues	☒ yes ☐ no

☐ 12. Other issues the court should be aware of and/or action for consideration:

_____

☒ 13. Attached to the recommended order is the support calculation.

Case No. 2020010532DM

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14. Following friend of the court alternative dispute resolution, the child custody factors and established custodial environment summary is as follows:

a. Established custodial environment:

Definition: The custodial environment of a child is established if over an appreciable time the child naturally looks to the parent or parents in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the parent or parents and the child as to permanency of the relationship shall also be considered.

☐ This factor does not appear to be in dispute.
☒ This factor appears to be in dispute.

b. Child custody factors:

Factor A. The love, affection, and other emotional ties existing between the parties involved and the child.

☐ This factor does not appear to be in dispute.
☒ This factor appears to be in dispute.

Factor B. The capacity and disposition of the parties involved to give the child love, affection, and guidance and the continuation of the education and raising of the child in his or her religion or creed, if any.

☐ This factor does not appear to be in dispute.
☒ This factor appears to be in dispute.

Factor C. The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

☐ This factor does not appear to be in dispute.
☒ This factor appears to be in dispute.

Factor D. The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

☐ This factor does not appear to be in dispute.
☒ This factor appears to be in dispute.

Factor E. The permanence, as a family unit, of the existing or proposed custodial home or homes.

☐ This factor does not appear to be in dispute.
☒ This factor appears to be in dispute.

Factor F. The moral fitness of the parties involved.

☐ This factor does not appear to be in dispute.
☒ This factor appears to be in dispute.

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Factor G. The mental and physical health of the parties involved.
- ☐ This factor does not appear to be in dispute.
- ☒ This factor appears to be in dispute.

Factor H. The home, school, and community record of the child.
- ☐ This factor does not appear to be in dispute.
- ☐ This factor appears to be in dispute.
- ☒ N/A

Factor I. The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- ☐ This factor does not appear to be in dispute.
- ☐ This factor appears to be in dispute.
- ☒ N/A

Factor J. The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.
- ☐ This factor does not appear to be in dispute.
- ☒ This factor appears to be in dispute.

Factor K. Domestic violence, regardless of whether the violence was directed at or witnessed by the child.
- ☒ This factor does not appear to be in dispute.
- ☐ This factor appears to be in dispute.

Factor L. Any other factor considered by the court to be of relevance to a particular child custody dispute.
- ☒ This factor does not appear to be in dispute.
- ☐ This factor appears to be in dispute.

Angela Pelletier 01/06/2021 02:27PM
ANGELA PELLETIER, FOC CASE MANAGER
Angela Pelletier, Case Manager

MAILED: Danielle Rice 01/07/2021 11:47AM
DANIELLE RICE, ENFORCEMENT SPECIALIST

CC: ANDREW PAUL SABATINE
COLLEEN K. SABATINE
MATTHEW VERMETTEN, ATTORNEY FOR PLAINTIFF
AMY SWOGGER, ATTORNEY FOR DEFENDANT

CNADR

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

ANDREW PAUL SABATINE,

Plaintiff,

v

FILE NO: 2020010532DM
HON. MARIAN KROMKOWSKI

COLLEEN K. SABATINE,

Defendant.
/

REFEREE RECOMMENDATION AND ORDER

Legal History

The parties to this action have two minor children, Aida V. Sabatine, d/o/b 10/27/2015, and Vera L. Sabatine, d/o/b 01/26/2018. The parties married on April 22, 2013. Defendant filed for divorce in Genesee County on October 1, 2020. Plaintiff filed for divorce in Leelanau County on October 5, 2020. The Genesee County action was dismissed by a Final Order Dismissing Case, dated December 15, 2020. That Order stated, in pertinent part: "[B]ecause venue is appropriate and convenient in the Leelanau County Circuit Court, this case is dismissed with prejudice."

Following the parties' meeting with the Friend of the Court, an Order for Temporary Custody, Support and Parenting Time was entered on January 7, 2021. That Order awarded the parties joint legal custody and Defendant primary physical custody, with Plaintiff awarded a specific schedule of parenting time consisting of 69 overnights, annually.

Plaintiff filed a Motion for Return of Minor Children to Within 100 Miles of Their County of Residence on or about January 5, 2021. Plaintiff filed an Objection to the Temporary Order on or about January 21, 2021. Plaintiff filed a Verified Ex Parte Emergency Motion for Temporary Order Modifying Parenting Time Pursuant to MCR 3.207 on or about February 26, 2021. That Motion was denied on an ex parte basis on March 1, 2021. Plaintiff filed a Motion to Prohibit Defendant from Further Relocating with the Minor Children on or about March 17,

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2021. Plaintiff filed a Motion for Order to Show Cause Defendant for Failure to Comply with Order for Joint Legal Custody on or about March 17, 2021. An Order to Show Cause was subsequently entered on March 26, 2021. Plaintiff filed an Amended Motion for Order to Show Cause Defendant for Failure to Comply with Order for Joint Legal Custody on or about March 25, 2021. All of the foregoing were referred to the assigned Referee for evidentiary hearing via Zoom. The hearing was conducted over the course of April 7, 2021; April 13, 2021; April 27, 2021; April 28, 2021; May 12, 2021; May 18, 2021; and May 21, 2021. The parties appeared with their respective counsel for each hearing date. The Referee heard oral argument from counsel and testimony from the parties, as well as testimony from Plaintiff's witnesses Rachel Fleming, LLMSW, Rachel Crain, Sharon Buck, Krista Allgaier and Arthur Yuncker; and Defendant's witnesses Sarah White, Taylor VanBuskirk, Nicole Anderson, Suzanne Knecht, Linda Knecht, Patric Knecht, M.D., and Timothy Knecht. Several exhibits were admitted into evidence. At the close of proofs, the Referee took the matter under advisement. Written closing arguments were received from both parties by May 28, 2021. The Referee has reviewed relevant portions of the court file, his bench notes and admitted exhibits, and is prepared to make his recommendation.

Findings of Fact and Law

An initial Order for Custody, Support and Parenting Time issued without an evidentiary hearing is not a "previous judgment or order," thus no change of circumstances need be shown to justify a permanent custody arrangement differing from that in the initial Order. Instead, the test will be whether a differing custody arrangement is in the best interests of the child. MCL 722.27(1); *Thompson v Thompson*, 261 Mich App 353 (2004).

A Court cannot enter a new custody order or amend an existing order without first determining if there is an established custodial environment. MCL 722.27(1)(c). Under MCL 722.27(c) an established custodial environment exists if:

> over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

An established custodial environment is one

> of significant duration in which a parent provides care, discipline, love, guidance, and attention that is appropriate to the age and individual needs of the child. It is both a

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> physical and a psychological environment that fosters a relationship between custodian and child that is marked by security, stability, and permanence.

Berger v Berger, 277 Mich App 700, 706 (2008).

Whether there is an established custodial environment is a factual question to be determined by the circumstances of each case. An established custodial environment is not presumed solely by reference to the custody order in effect at the time of the hearing. *Wealton v Wealton*, 120 Mich App 406 (1982). In making this determination, it is the child's standpoint, rather than that of the parents, that is controlling. *Pierron v Pierron*, 486 Mich 81 (2010).

If a proposed change would modify an established custodial environment, it must be shown by clear and convincing evidence that the proposed change is in the child's best interests. If there is no established custodial environment, a new order may be issued if there is a preponderance of the evidence that the proposed change is in the child's best interests. *Id.*, at 92-93.

In this case, the parties resided together with their children at the same house in Traverse City, as an intact family unit, on a continuous basis, until their separation. While residing together, the parties were at all times jointly involved in and responsible for the care of their children. Plaintiff was the primary earner for the family and worked outside the home, throughout the children's lives. Defendant typically worked part-time or less outside the home and, of the two parties, provided a greater amount of direct care for the children. The children have always been well cared for, and well provided for. The children have always had strong ties of love and affection with both of their parents. Prior to separating, both parents had been in the home with the children on essentially a nightly basis. Throughout the history of the marriage, neither party had ever had a job, or a hobby, or a personal interest, which took him or her away from the home, for any appreciable amount of time. There is no question that, prior to the separation, the children had an established custodial environment with their parents together at their home in Traverse City.

The children were abruptly moved by Defendant from Traverse City to Fenton, Michigan on September 18, 2020. The children do not appear to have been informed ahead of time of the move. The children do not appear to have been informed ahead of time that their parents were separating or that this move was coinciding with their parents' separation. It does not appear that the children had any awareness of the actual nature or consequences of the move, at the time that it was occurring. The move itself, at the time that it was occurring, had the appearance of a

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normal vacation. Plaintiff, for his part, was unaware of Defendant's plan to separate, on the day that she left with the children. At the time the children were taken from Traverse City, their closet (as the children shared a room) was left full of their clothes and personal items. All of their toys, their bikes, their books, their arts and crafts supplies, their bedroom and playroom furnishings—essentially all of their things—were left behind at the Traverse City house, on the day that they left. Defendant's testimony suggested that she packed her vehicle's trunk full of clothing, and perhaps some minor personal items, on the day that she left with the children. Aida had been enrolled in and had attended the pre-K program at GTACS for approximately 9 days, prior to being removed by Defendant.

Not long thereafter, Defendant told the children that their parents were going to create "two separate homes." In October, Defendant made calendars for the children, depicting that they would see Plaintiff every other weekend. In the months leading up to entry of the Temporary Order, the children lived with Defendant at a home that they shared with the maternal grandparents, in Fenton. They were enrolled in an early childhood education program in that area. During that time, they saw Plaintiff several times in Fenton. These were fairly brief daytime visits. For some time, Defendant would not permit Plaintiff to overnight with the children away from Fenton, for fear that he might refuse to return the children. The children did not return to their prior residence in Traverse City until Thanksgiving, for an overnight visit with Plaintiff. In the interim, Defendant did return to pick up additional clothing, toys, and personal items for the children. Nonetheless, it appears that a significant amount of their things remained behind, at their old house in Traverse City.

There is evidence that Aida experienced a significant amount of grief during the course of the separation. Plaintiff came to Fenton to visit the children on Aida's birthday in October. The counseling notes of Aida's therapist, Rachel Fleming, LLMSW (redacted copy admitted as Ex. 16), indicated that, per Defendant's reporting, Aida had a hard time with Plaintiff leaving after this visit, wanting to go with Plaintiff, and crying a lot. The counseling notes indicate that the child continued to experience difficulty with the separation over the ensuing months. In February of this year, Ms. Fleming reported to Defendant that Aida missed Plaintiff and wished to see him more often. Defendant asked for additional coping skills to handle sadness. Ms. Fleming recommended having pictures of both parents at each house to look at and talk to. Eventually, Aida did show improvement. By April 5th of this year, Ms. Fleming determined that

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counseling appointments could be moved to a monthly basis. This determination coincided with the observation that "Aida did great today and there are not any concerns. Aida shows to be very happy."

Since entry of the Temporary Order on January 7, 2021, Defendant has had primary physical custody of the children. Plaintiff has had parenting time every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.[1] Parenting time exchanges have consisted of Defendant transporting the children to Plaintiff's residence on Friday, and with the parties meeting at the McDonald's in West Branch on Sunday. Plaintiff has continued to reside at the marital home in Traverse City. Defendant has continued to reside with her parents in Fenton. During the course of this divorce case, Defendant's parents have purchased another home in their subdivision, for Defendant and the children. Defendant and the children have yet to move into this home. This home is still being renovated. The home is within walking distance of Defendant's parents' home. Defendant and the children have visited their future home. The children are aware that they will be moving into this new residence. In the meantime, the children have been sharing a bedroom next to Defendant's bedroom, at the maternal grandparent's residence. When with Defendant, Defendant has been the primary caregiver for the children. Defendant has worked outside the home periodically, and when necessary, Defendant's parents have provided childcare. The children have been attending a pre-K program at a local KinderCare, for three days each week. Prior to the separation, the children had attended pre-K programs in the Traverse City area (though it does not appear that either Vera or Aida attended any one program for more than one year—the parties utilized Children's House, Pathfinder, and—briefly—GTACS, alternately, over the last 2-3 years).

The separation of their parents, and the establishment of a new primary residence in Fenton, have been major changes for these young children. The current Fenton residence itself has been revealed to the children to be temporary. Another significant change for the children has been the adjustment to travelling several hours, every other weekend, to see their other parent. Ms. Fleming's notes indicate that Aida has pointed to travel as the "hardest part" of the separation. The testimony from the parties indicated that diapers and pull-ups have been utilized

[1] The Temporary Order also provided for alternating holidays and alternating Winter and Spring school breaks, as well as two additional non-consecutive weeks of parenting time for Plaintiff during the summer.

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for Vera, and even for Aida, due to the deadlines and distances involved in the long distance every-other-weekend exchanges.

Plaintiff and Defendant are each requesting an award of primary physical custody of their minor children. On the basis of the foregoing, the Referee concludes there has not been an appreciable time during which the children have looked to either Plaintiff or Defendant alone in their respective custodial environments, for guidance, discipline, the necessities of life, and parental comfort. The relationship with each parent since the separation has been marked with disruption and uncertainty. Accordingly, the Referee finds that the children do not yet have an established custodial environment with either parent, which physically excludes the other parent. Accordingly, the applicable burden of proof for each parent is the "preponderance of the evidence" standard, that his or her requested award of physical custody is in the children's best interest.

Custody Factors

The best interests of the child are defined in the Child Custody Act, MCL 722.23. The Referee must consider each factor and make specific findings. The weight to be given each factor is ultimately left to the court's discretion. *McCain v McCain*, 229 Mich App 123 (1998).

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

This factor focuses on the emotional bond that already exists between the parent and the child. That a parent would like to have a better relationship or spend more time with the child is not relevant under factor "a". *See*, *Glover v McRipley*, 159 Mich App 130; 406 NW2d 246 (1987).

The testimony indicated that both parents have strong bonds of love and affection with their children. Each parent testified that the other loves and is bonded with the children. This factor is equal.

(b) The capacity and disposition of the parties involved to give the child love, affection and guidance and continuation of education and religious training in a faith or creed, if any.

This factor asks the court to project the ability of a parent to foster an emotional bond in the future and to evaluate the parent's impact on other issues such as guidance, education and religious training, if any. See, *McCain v McCain*, 229 Mich App 123; 580 NW2d 485 (1998).

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The testimony from multiple witnesses, including the Plaintiff, established that Defendant is a "born teacher" to the children. Defendant previously taught preschool, and has also taken education classes in college. She provided extensive, detailed testimony regarding the homeschool-like environment that she has historically created for the children. As noted above in relation to the discussion of the established custodial environment, Defendant (who has been a Nurse Practitioner throughout the marriage) has generally only worked part-time, since Aida's birth. From approximately January of 2016 until September of 2018, Defendant generally worked three 8-hour days per week, Monday, Tuesday, and Thursday, beginning at 8:00 a.m. and getting home by approximately 5:00 p.m. In September of 2018, Defendant decreased her hours, taking a "flex" position consisting of 16-24 hours per week. In May of 2019, Defendant further decreased her hours, moving to a "contingent" position which generally consisted of two 4-hour shifts, each week. Since moving to Fenton, Defendant has generally worked approximately 15 hours per week (three 5-hour days per week). Defendant's work schedule has allowed her to be deeply involved in the day-to-day care and supervision of the children.

Aida is on track to enter Kindergarten this Fall. Both Aida and Vera have previously attended various early childhood education programs. Defendant has historically taken the lead with respect to the placement of the children in these programs. Aida and Vera both attended Children's House for the 2018-2019 academic year. Children's House was located by Defendant's work, and Defendant was typically the parent to do drop-offs and pick-ups. For the 2019-2020 academic year, Aida was placed at Pathfinder. Vera was primarily home with Defendant and, at times, a nanny, during that year. Defendant arranged and attended parent-teacher conferences at both Children's House and Pathfinder. Defendant maintained regular communication with Aida's teacher at Pathfinder. Defendant also arranged for a home visit, when Aida was at Pathfinder. Prior to the parties' separation, Aida was placed in a pre-K program at GTACS, for the 2020-2021 academic year. Defendant managed Aida's enrollment and attended multiple meetings, during this process. Defendant was also involved in transportation, during the brief time that Aida attended GTACS. After the separation, as noted above, Defendant enrolled both of the children in a program at KinderCare in the Fenton area. Additionally, in early 2021, Defendant enrolled both of the children in St. John Elementary School in Fenton, for the upcoming 2021-2022 academic year. Vera was enrolled for ¾ preschool, and Aida for Kindergarten. Defendant's preferred plan is for Vera to attend preschool

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on Monday, Wednesday, and Friday, while she works. Defendant would then be off on Tuesday and Thursday.

Plaintiff has also been involved in the children's early education programming. Defendant's testimony indicated that Plaintiff attended some of the children's school meetings, and that—prior to the separation—he was involved in the decision-making regarding school placement. Plaintiff was the parent to typically do drop-offs at Pathfinder. Plaintiff was also present for the home visit from Pathfinder that year. Plaintiff was also involved in Pathfinder fundraising activities. Plaintiff, along with Defendant, attended a GTACS open house for new parents, in early 2020. It appears from the testimony that Plaintiff attended additional GTACS functions, related to enrollment. Additionally, Plaintiff was involved in transporting Aida to GTACS, for the brief time that she attended last September. Most recently, Plaintiff has enrolled both of the children in GTACS, for the upcoming 2021-2022 academic year.

With respect to extracurricular activities, Defendant has historically taken the lead with respect to arranging and scheduling these matters. There was tumbling and dance for Aida and later for both Aida and Vera. There were horse-riding lessons for Aida in Maple City (and now in Fenton). There was soccer for Aida through TBAYS, which was coached by Defendant.

Plaintiff was also involved in extracurricular activities. He attended Aida's dance recitals. He attended nearly all of Aida's soccer games, where he would care for Vera while Defendant coached the team. Additionally, Plaintiff (along with Defendant) has taken Aida skiing at Hickory Hills. Plaintiff's testimony indicated that he has been involved in many outdoors activities, with both of the children.

During those times when both parents were in the home together (primarily evenings and weekends), the evidence suggested that Defendant was the more involved of the two parents with respect to providing care, supervision, and structure for the children. Plaintiff did not consistently assist with or participate in the children's nighttime routines. It appears that Defendant was considered the person responsible for performing these duties. At times, Plaintiff would disparage or frustrate Defendant's attempts to enforce a consistent, structured nighttime routine for the children. On weekends, Plaintiff would often work on projects for the first half of the day, leaving Defendant responsible for the children's care and supervision. There was also evidence that, on evenings and weekends, Plaintiff would on occasion be a disruptive presence in the home, becoming intoxicated and engaging in verbal abuse of Defendant. Defendant testified

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that Plaintiff, in front of the children, would call her names like "moron" and "bitch." According to Defendant, over time the children—particularly Aida—began to pick up on Plaintiff's language and attitude, and began to mimic it, in interactions with Defendant, and with other children.

In analyzing this factor, the Plaintiff's capacity and disposition is not diminished by virtue of the fact that he worked more than Defendant outside the home in order to provide for the family. As the Court of Appeals observed in another case, "[t]he fact that the parties agreed before conceiving that one parent would stay at home to raise the child while the other would financially support the family does not equate with one parent loving the child more or having more affection for the child." *Bofysil v Bofysil*, 332 Mich App 232, 246 (2020). However, Plaintiff testified that the parties' work schedules did not have a lot to do with their decision for Defendant to take the lead on healthcare and education, and for Plaintiff to take the lead on things like home upkeep and household finances. Moreover, when the parties have been similarly situated, i.e. both at home with the children, the Referee was persuaded that Defendant displayed a greater capacity and disposition under this factor. Furthermore, on a going-forward basis, Plaintiff intends to utilize a nanny to care for the children when he is at work Monday through Friday, while Defendant intends to only work part time, on Monday, Wednesday, and Friday. For the upcoming school year, Defendant's work schedule would correspond to Vera's part-time school schedule. During the summer, it is presumed that the maternal grandparents would provide childcare on these days, for both children.

This factor favors Defendant.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

As noted above, the Defendant has historically taken the lead on all matters pertaining to the children's healthcare. Plaintiff's testimony indicated that this was an agreed upon decision, due to Defendant's medical background. Defendant has historically taken the children to the majority of their medical appointments. Plaintiff has, on his own, only ever taken the children to one medical appointment, which was itself scheduled by Defendant.

Plaintiff supported Defendant's healthcare choices for the children, up until the time of separation. After the parties' separation, Plaintiff took issue with Defendant's decision to place

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the children with a new primary care physician and dentist in the Fenton area, without consulting him. Plaintiff also took issue with Defendant's decision to place Aida with counselor Rachel Fleming, without informing him. Plaintiff subsequently impeded that counseling by refusing to sign a requested release. Aida's last play therapy session with Ms. Fleming was in April of this year. No further sessions are contemplated, absent Plaintiff's consent. Plaintiff will not provide Defendant his reasoning for withdrawing his consent. Plaintiff's position on the matter is curious, in light of the fact that Plaintiff himself offered the counselor's notes into evidence. Given the demonstrable improvement in Aida's emotional health over the course of the counseling, the therapy appears to be helpful for the child. Yet, Plaintiff prevents it from continuing.

As noted above, Plaintiff has always been the primary earner in the family. At all times during the marriage, Plaintiff has been employed as an executive with MBank, where he is currently a Regional President. Plaintiff has always taken the lead with respect to managing the majority of the household finances. Plaintiff has always been the parent to supply the family with health insurance. Throughout the marriage, as well as post-separation, Plaintiff has been financially supportive of Defendant and the children. Defendant unenrolled Aida from GTACS in September of 2020 and received a tuition refund of $7,500.00. Plaintiff did not object to Defendant retaining these funds. Plaintiff has paid all Court-ordered child support and out of pocket medical as required by the Temporary Order. Plaintiff's monthly gross income was calculated by the Friend of the Court in the Temporary Order to be $22,670.83.

Defendant continues to be employed part time as a Nurse Practitioner. Defendant's monthly gross income was calculated in the Temporary Order to be $3,575.00. This amount is based on Defendant's current work schedule of approximately 15 hours per week. It appears Defendant could work fulltime, at $55.00/hr, if she chose to do so. Fulltime employment appears available to Defendant. However, Defendant's testimony indicated that she intends to continue to work part-time until Vera is at least Kindergarten-age, and possibly beyond. Defendant's capacity and disposition in this respect have been bolstered by the support she receives from her family, who are well-off and are extremely committed to the well-being of the parties' children.

At home, Plaintiff was historically responsible for home upkeep and maintenance, including outdoor landscaping. Plaintiff also did the dishes most nights, while Defendant was

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responsible for preparing the majority of the meals. Grocery shopping for the home was done by both parents. Clothing for the children was purchased by both parents. Laundry, general cleaning and day-to-day chores at the home were traditionally handled by Defendant, in coordination with a house cleaner who would come to the house weekly, as well as a nanny who would assist with the children when Defendant worked. Defendant took the lead on all matters related to the nanny—hiring, communicating, scheduling, and payment. Defendant paid the nanny out of her own income. Defendant also appears to have taken the lead with respect to general remedial care for the children (clipping nails, drawing baths, washing hair, etc.). A substantial amount of this remedial care would have occurred as a part of the evening routines discussed in factor (b) above. Again, when similarly situated, Plaintiff historically deferred to Defendant to take the lead on evening and nighttime routines and caregiving for the children. While not a recent example, the Referee finds illustrative the Defendant's testimony indicating that Plaintiff rarely got up with either child at night to feed bottles or change diapers.

Under this factor, as with factor (b), there has historically been a dynamic in place in which one parent provided a majority of hands-on care in the home while the other parent worked outside the home to support that arrangement financially. To the extent that Defendant was meeting the physical needs of the children in the home while Plaintiff was at work earning for the family, neither party is favored because the contributions of both parties were required in order to sustain the arrangement. Moving forward, the parties' income disparity suggests that Plaintiff has a superior capacity to provide for the children's material needs, even taking into account the support that Defendant receives from her family. Both parties have a disposition to spend what money they have on their children. Beyond that, Defendant appears to have an overall greater disposition under this factor, based on the findings that Defendant historically took the lead on all matters pertaining to healthcare, and took the lead on evening and nighttime routines and remedial care for the children. Additionally, the Plaintiff has recently taken a stance regarding Aida's counseling, which is not supported by the evidence and may be contrary to her best interest.

This factor slightly favors Defendant.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

Plaintiff continues to reside in the marital home in Traverse City. This was the children's primary residence until being removed by Defendant last September. Defendant testified that

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this is a "gorgeous" home. It is a 3-bedroom, 4-bathroom home consisting of approximately 4,500 square feet. It was constructed by Plaintiff prior to the marriage. The home is located in Leelanau County on several acres, and has extensive professionally-landscaped nature trails. The parties' children greatly enjoy exploring and playing in the yard at this residence. The house also has a large playroom in the basement with built-in cabinets and French doors leading to the yard, as well as a heated 3-car garage where the children play during the winter. When living at this residence the children also enjoy boating trips to Power Island. The children also enjoy riding bikes to a nearby storage area, which is also owned by the parties. Plaintiff testified that it is his intent to retain the home in the divorce; however, Plaintiff did acknowledge that he may be forced to sell the home, and that the parties have yet to begin property negotiations.

Defendant continues to reside at her parent's home in Fenton. This is a 4-bedroom, 3-bathroom house on Lake Fenton. Defendant has resided at this home since moving out of the marital home last September. The children have been coming to this home for extended visits with the maternal grandparents for years, and are very familiar with the home. Soon, Defendant will be moving into another house located in the same subdivision, which was recently purchased for her by her parents. The house will be within walking distance of the maternal grandparents. The house is in the process of being renovated, and the parties' children have already picked out paint for their bedroom, as well as a new outdoor playset. Defendant testified that there are several children in the neighborhood who will be attending her proposed school, including two children that will be in Kindergarten. Defendant has no other plans for relocation, and there was no evidence to call into question Defendant's permanency at her soon-to-be new residence.

Each party's residence provides a stable environment for the children. Between the marital home and the home recently purchased for Defendant by her parents, the marital home appears to be the more satisfactory environment, due to the children's historic connection with this home as well as the quality of the built environment. However, given the uncertainty regarding the disposition of this home in the pending divorce case, there is not a preponderance of evidence to favor one party over the other with respect to this factor.

This factor is equal.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

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The Plaintiff's family unit consists solely of him and the children. The Defendant's family unit likewise (upon her move into her new home) will consist solely of her and children. In the interim, Defendant's family unit also includes her parents. Neither party is involved in a dating relationship at this time. Neither party has any plans to alter the existing family unit in their existing or proposed homes. There is a high degree of permanence with the family unit located at each home.

This factor is equal.

(f) The moral fitness of the parties involved.

Determining moral fitness of any party is a difficult task. The law provides the following guidance for the valuation of conduct under factor (f).

> Factor f (moral fitness), like all other statutory factors, relates to a person's fitness as a parent. To evaluate parental fitness, courts must look to the parent-child relationship and the effect that the conduct at issue will have on that relationship. Thus, the question under factor f is not "who is the morally superior adult;" the question concerns the parties' relative fitness to provide for their child, given the moral disposition of each party as demonstrated by individual conduct. We hold that in making this finding, questionable conduct is relevant to factor f only if it is a type of conduct that necessarily has a significant influence on how one will function as a parent. *Fletcher v Fletcher*, 447 Mich 871, 887 (1994). [Emphasis in original.]

The Michigan Supreme Court also adopted a non-exhaustive list of "morally questionable conduct" first published by Hon. John Kirkendell, in Best Interest of the Minor Child, 21 Michigan Family L J 15 (Oct, 1994). It includes: "verbal abuse, drinking problems, driving record, physical or sexual abuse of children and other illegal or offensive behaviors." *Id.*, at 887, fn 6.

There was evidence that both parties drank on a regular basis, during the marriage. Defendant's testimony indicated that Plaintiff would not normally go for more than a few days at a time, without drinking. According to Defendant she drank "weekly" during parts of the marriage. Excluded from these periods of consumption were Defendant's pregnancy; her early months of breastfeeding; one month in 2019; and several months in 2020. According to Plaintiff, Defendant actually drank "daily" during parts of the marriage. Neither party admits to drinking since last October. Defendant and several of her witnesses testified observing Plaintiff drink to the point of intoxication. As noted above in discussion of factor (b), Defendant's testimony indicated that Plaintiff would at times become intoxicated and speak poorly to her, in front of the children. Defendant's witnesses Suzanne Knecht and Linda Knecht also testified as

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to instances in which Plaintiff became intoxicated and insulting to Defendant. Yet it also appears from the evidence that there were many times when Plaintiff's intoxication did not have this effect on his behavior. There was also testimony from Plaintiff and his witnesses regarding observation of Defendant while intoxicated. Plaintiff also testified that he had observed Defendant use marijuana on and off throughout the marriage, and had observed Defendant use cocaine while on an adults-only vacation in 2016.

Plaintiff's witness Krista Allgaier testified that at a social gathering at her house in June of 2020, she observed Defendant spike her White Claw (hard seltzer) with Vodka, after which Defendant became visibly impaired. According to the witness, on that occasion Defendant needed her assistance in order to clean up Vera, who had wet her pants. Ms. Allgaier testified as to another occasion in June of 2019—her son's birthday party—when she observed Defendant "falling down" drunk. According to the witness, she and her family would get together with the Sabatine family every 2-3 months, and on the vast majority of those occasions, Defendant would be either "drunk or headed in that direction." It is noted that the Allgaiers have two children--ages 5 and 12--and that when the two families gathered, the Sabatine children would also be included. Allgaier's testimony indicated that Plaintiff would tend to moderate his drinking, when Defendant became intoxicated.

There was also testimony from Plaintiff's witness Arthur Yuncker that Defendant not only drank to the point of intoxication, but also consumed cocaine with him on at least 6 and possibly as many as 9 occasions, between 2018 and 2020. The testimony of Mr. Yuncker—who was an executive at Steelcase, before becoming a part-owner and President of Natural Gas Compression Systems, Inc.—was for the most part against his interest, and considered credible by the Referee. With respect to alcohol consumption, the witness' testimony indicated that both parties would drink to intoxication, when socializing. Mr. Yuncker and his wife and children—ages 18 and 12—would socialize jointly with the Sabatines and their children. The witness observed Defendant intoxicated around the parties' children. On one occasion, he observed Defendant fall while intoxicated, after Aida and Vera had been put to bed at the Yuncker residence. With respect to cocaine consumption, based on the observation of the witness, it occurred at both the Yuncker residence and the Sabatine residence. It is also noted that on two occasions, Mr. Yuncker provided Defendant with a "cylinder" of cocaine (approximately the size of a small makeup container), for her own personal use. On the social occasions, the cocaine

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would be hidden in a location within either home that only Mr. Yuncker and Defendant were privy to. There does not appear to have ever been a risk that it would be discovered by a child. For example, there was a birthday party for one of the Sabatine girls, where Mr. Yuncker brought cocaine. Defendant asked the witness on that occasion if he had any. Defendant provided cocaine to Defendant at the birthday party, by placing it underneath a trash can bag. Mr. Yuncker testified that the last time that Defendant did cocaine with him was when the two families got together in either late Summer or early Fall of 2020.

Cocaine and marijuana use aside, over time the issue of alcohol clearly became the wedge issue in the parties' relationship. Defendant wanted to elevate the issue and for both parties to make a conscious effort to moderate their drinking. Plaintiff was unwilling to adhere to any strict schedule regarding consumption. Plaintiff testified that the issue became an "obsession" of the Defendant. Defendant testified that she enrolled in Checkup and Choices—a substance use awareness program—in the Spring of 2019. Defendant testified she did so in hopes that both of them could work on their drinking habits. According to Defendant this coincided with her roughly one-month period of abstinence that year. Defendant testified that later, during the summer of 2020, she tried to get Plaintiff to agree to abstain from drinking from Monday through Thursday. She testified that she herself abstained for approximately a month, last July. Plaintiff however would not agree to Defendant's request. Defendant eventually stopped drinking altogether at the end of last August.

Notwithstanding these actions taken by Defendant, the credibility of her stated concerns regarding Plaintiff's alcohol consumption were somewhat undercut by the testimony of Ms. Allgaier and Mr. Yuncker. There was also testimony regarding other actions taken by Defendant that do not square with her stated concerns regarding alcohol. For example, on Easter 2020 Defendant placed an order for a case of wine from Black Star Farms. Defendant indicated the purpose of the order was to keep the house stocked, in the event of guests. Yet if Defendant were as gravely concerned by Plaintiff's consumption of alcohol at home as she now claims, one would expect Defendant not to stock the house with it. Similarly, for a "date night" in August of 2020, Defendant chose TC Whiskey Company, where she and Plaintiff proceeded to purchase and consume whiskey together—this choice is simply irreconcilable with Defendant's stated concerns about Plaintiff's alcohol consumption.

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The ultimate issue under this factor is whether morally questionable conduct interferes with a party's ability to function as a parent. With respect to Defendant, there was no testimony indicating that her ability to function as a parent was routinely impeded by her use of alcohol, marijuana, or cocaine. It is noted that both Ms. Allgaier and Mr. Yuncker emphasized in their testimony that Defendant was a good parent, and that Aida and Vera were always safe in her care. It is also noted that Plaintiff never voiced any concerns regarding Defendant's use of these substances. With respect to Plaintiff, the Referee was left with the impression that his use of alcohol was more of an issue between him and the Defendant; and that there was not a preponderance of the evidence to show that his consumption of alcohol, per se, interfered with his ability to parent the children, or had a significant influence on how Plaintiff functions as a parent.

This factor is equal.

(g) The mental and physical health of the parties involved.

The evidence did not reveal any concerns regarding the mental or physical health of Plaintiff. Plaintiff called Defendant's mental health into question. The Defendant has been on anti-depressant medication periodically for several years. Defendant is not currently on any anti-depressant medication. Defendant characterized her depression as "situational," and largely related to her failing relationship with Plaintiff. Defendant also appears to have suffered from post-partum depression after Aida's birth, and possibly also after Vera's birth as well. The Referee was not persuaded that Defendant's mental health has ever compromised her ability to parent, in any way. It should be noted that Defendant has also had hip surgery in recent years, but appears to be physically healthy at this time.

This factor is equal.

(h) The home, school, and community record of the child.

There were no concerns raised regarding the behavior of the children at the marital home when the parties resided together, except for the concerns voiced by Defendant and addressed under factor (b) above. Since the parties separated, there were no major concerns raised regarding the home record of either child with either parent. With respect to the school records of the children, it is noted that the children are ages 3 and 5, respectively, and do not have extensive school records. As noted above in the discussion under factor (b) above, the children have attended several different pre-K early childhood education programs, since 2018. There

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have been no concerns raised regarding the ability of either child to participate appropriately in these programs. The Referee was unable to discern a distinction in quality between the parties' respective proposals for school placement. Both parties are proposing that the children attend a parochial school.

With respect to the community record of the children, in Traverse City the children have historically spent their time with one or both of their parents, when not being watched by a nanny or sitter. The residence in Traverse City is in a neighborhood with few children their age. The children have historically either played at home, or have accompanied their parent(s) for outdoor activities or social occasions with other families. The children appeared bonded with two of Plaintiff's witnesses, Rachel Crain (their former nanny) and her mother Sharon Buck (who has at times also provided childcare). It was also noted above that the Allgaiers have a child the same age as Aida. When residing in Traverse City the children have enjoyed a plethora of outdoor activities with their parent(s)—hiking, boating, skiing, horseback riding and soccer, to name a few—and have routinely visited local museums, libraries, and farmers' markets. In Fenton, the children currently reside in a neighborhood with other children their age, although no close friendships appear to have formed, as of yet. As with the children's community record in Traverse City, their community life in Fenton revolves around activities with their parent. In Fenton, the children enjoy spending time with their maternal grandparents, as well as their cousin Taylor VanBuskirk and her two children (ages 5 and 2 ½). Defendant arranges play dates with Ms. VanBuskirk and her children about twice a month. The children also visit monthly with Defendant's aunt, Suzanne Knecht, who travels from Grand Rapids to visit. The maternal grandparents' home in Fenton is considered the "gathering place" for Defendant's family, and periodically throughout the year many of Defendant's immediate and extended family come to Fenton to visit. Defendant has also engaged the children in outdoor activities in Fenton. Defendant's subdivision has woods and trails, and ample opportunities for outdoor play. As noted above, Defendant has placed Aida in horseback riding lessons in Fenton.

The testimony indicated that Defendant would take the lead on play dates. Defendant would be the parent to take the children on play dates to see Ms. Crain (who has two young children of her own). Unless Plaintiff were to re-hire Ms. Crain as nanny, based on the evidence the children would be unlikely to see her or her children, during Plaintiff's parenting time. As to Ms. Buck, her testimony indicated that Defendant was the parent to invite her to visit with the

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girls for social occasions. This suggests the children will also be unlikely to see her during Plaintiff's parenting time, unless she is actively providing childcare in the home. While Plaintiff's residence appears to offer a greater range of outdoor opportunities, Defendant's residence appears to offer greater opportunities for socialization with other children that are the same age as Vera and Aida, as well as opportunities to spend time with family.

This factor slightly favors Defendant.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

This factor is not relevant as to the children in this case, as they are is too young to be able to express a reasonable preference. The Referee declined to conduct an in camera interview of the parties' children, given their ages.

(j) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and other parent.

Defendant created a significant challenge for the children when she chose to move approximately 3 ½ hours away from the marital home to her home town of Fenton rather than stay in the community in which the family resided and where Plaintiff provided the primary income for the family during their marriage. For the children this has resulted in their having more time away from Plaintiff than might generally be considered developmentally appropriate. Presently it is forcing a decision where one parent will see very little of Aida and Vera during the school year and the other parent will see very little of Aida and Vera during the summer. Again, this is likely not optimal for a young child's development. Children benefit more from frequent contact with each parent, yet in this case that is impracticable because of Defendant's decision to move so far away.

Defendant's attitude toward Plaintiff's parental role is concerning as well. Defendant testified that the Temporary Order reflects Plaintiff's "historic level of interest" in the parties' children. Defendant testified that Plaintiff was "not even a babysitter" for the children. She testified that Plaintiff was an "absentee father." She testified that she was a "single parent." These assertions are contrary to the most credible evidence received by the Court. Since the separation, Defendant has facilitated regular phone contact between Plaintiff and the children, and has also facilitated Plaintiff's visits to Fenton, including a special birthday visit in October. Defendant has also had the children draw pictures at their house in Fenton to bring to Plaintiff

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for his parenting time. These are all positive actions. However, there seems to be a disconnect between the quality and quantity of contact that Defendant finds sufficient, and that which would actually be sufficient, in order to facilitate and encourage a close and continuing parent-child relationship between Plaintiff and the children.

This factor favors Plaintiff.

(k) The occurrence of domestic violence, regardless of whether the violence was directed against or witnessed by the child.

Neither party reported incidents of physical aggression or domestic violence as having occurred during the marriage. Defendant's testimony indicated that over the last few years of the marriage, she felt emotionally abused due to criticism from Plaintiff. Defendant's description of Plaintiff did not include threats and the issue seemed to resolve once the decision to separate had occurred. Taken together, Defendant's description of that period of the parties' marriage did not seem to rise to the level of "abuse."

This factor is equal.

(l) Any other factor considered by the court to be relevant to the particular child custody dispute.

MCL 722.26a:

(1)(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

Plaintiff's Motion for Order to Show Cause Defendant for Failure to Comply with Order for Joint Legal Custody, and Amended Motion for Order to Show Cause Defendant for Failure to Comply with Order for Joint Legal Custody, request the Court to find Defendant in contempt for taking unilateral actions with respect to medical care, counseling, and education for the parties' children. There is no dispute that Defendant, without consulting Plaintiff, did the following: 1) unenrolled Aida from GTACS; 2) enrolled both children in KinderCare; 3) changed the children's primary health care provider and dental provider; and 4) sought counseling for Aida with Ms. Fleming. All of these actions were part of Defendant's larger unilateral decision to move with the children to Fenton. All of these actions were taken prior to entry of the Temporary Order. Defendant can therefore not be held in contempt of Court, for taking these actions. However, these actions do illustrate an unwillingness to seek cooperation or agreement regarding important decisions concerning the children.

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After entry of the Temporary Order on January 7, 2021, there was a controversy regarding Defendant's enrollment of the children in St. John's for the 2021-2022 academic year. In February, prior to enrolling the children, Defendant did contact Plaintiff to discuss the matter. During the course of a conversation, the parties discussed dual enrollment, pending resolution of the custody proceeding. Plaintiff initially agreed for Defendant to enroll the children in St. John's. However, when Defendant refused to agree to also enroll the children in GTACS, he withdrew his consent. Defendant disregarded Plaintiff's withdrawal of consent, and enrolled the children in St. John's over his objections. Plaintiff then went ahead and enrolled the children in GTACS.

The Temporary Order states: "Each party is directed to maintain communication with the other and to reasonably determine the best interests of the minor children until further Order of the Court." Defendant (and Plaintiff) minimally satisfied this provision by discussing the enrollment issue, prior to taking action. The Referee declines to find Defendant (or Plaintiff) in contempt for violating the Temporary Order on this record. Furthermore, there was good cause for each party to enroll the children in the parochial school of his or her choice at the time they did so, in order to reserve a spot for the 2021-2022 academic year, while the disposition of the pending custody dispute was unknown.

Analysis under this factor encompasses examination of the willingness and ability of the parties to effectively communicate. There is evidence that both parties have struggled to effectively communicate. However, of the two parties, the Defendant appears to have done more to mismanage the communication issue, primarily by repeatedly recording her conversations with Plaintiff--even after the Plaintiff asked her, in mid-conversation, to stop recording them. Several of these recordings were offered by Defendant into evidence. Plaintiff's testimony indicated that Defendant's recording habits have had a chilling effect on the parties' communication.

This factor slightly favors Plaintiff.

MCL 722.31

Plaintiff's Motion for Return of Minor Children to Within 100 Miles of Their County of Residence argues that MCL 722.31 applies, prior to the issuance of a custody order. The caselaw is clear that MCL 722.31 does not apply until the issuance of a custody order. *Kessler v Kessler*, 295 Mich App 54, 58 (2011)("[a]ccording to the plain language of the statute, the

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change-of-domicile factors specifically apply only to petitions for change of domicile situations where there is already a custody order governing the parties' conduct.") There was no custody order in effect regarding the parties and children, in any Court, until the Temporary Order entered on January 7, 2021. Defendant's testimony indicated that she had effectively changed her legal residence from Traverse City to Fenton by this time (see below). Accordingly, Defendant is not required to seek the permission of the Court to remain with the children in Fenton. It also follows that Defendant was not required to seek the permission of either this Court, or any other Court, in order to change her legal residence with the children from Traverse City to Fenton, because there was no custody order in effect at that time that she effectuated this change.

The question is whether MCL 722.31 applies to any subsequent moves in this action. For the reasons stated herein, the Referee finds that it does not. MCL 722.31(3) provides that the section is inapplicable if, at the time of the commencement of the action in which the custody order is issued, the child's 2 residences were more than 100 miles apart. This action was commenced on October 5, 2020. The Referee finds that Defendant had, by that date, displayed sufficient external manifestation of her stated in intent to change legal residence so as to have effectuated that change. Cf. *Bradfield v Bradfield*, 154 Mich 115, 116 (1908). It should be noted that the Genesee County Court did not reach this issue in its Final Order Dismissing Case—that Order on its face dismissed on the basis of venue. The issue remains ripe for a ruling by this Court. Prior to this action being filed, Defendant took the following actions in furtherance of her intention to change legal residence:

- Defendant removed the children from Traverse City on September 18, 2021;
- Defendant contacted KinderCare in Fenton for enrollment information on September 25, 2020;
- Defendant changed her address with the Secretary of State on September 30, 2020;
- Defendant changed her voter registration address on September 30, 2020;
- Defendant placed the children with a new pediatrician in the Fenton area on September 30, 2020;
- Defendant enrolled the children in KinderCare in Fenton on October 1, 2020;
- Defendant filed for divorce in Genesee County on October 1, 2021; and

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- Defendant informed Plaintiff in a face to face discussion on October 3, 2021 that she and the children were not returning to Traverse City.

Additionally, contemporaneously with the Leelanau filing on October 5, 2020, Defendant unenrolled Aida from GTACS. It is unclear whether this occurred prior to the filing on that date. It was undisputed that Defendant was unaware of Plaintiff filing the Leelanau action, on October 5, 2020. Defendant's filing of the Genesee County action illustrates the requisite nexus between person and place of such permanence as to control the creation of legal relations and responsibilities. See e.g., *Kar v Nanda*, 291 Mich App 284, 293 (2011).

The Referee finds that Defendant was a legal resident of Fenton, Michigan at time of filing of this action.

Conclusion

Based on the foregoing, Defendant has met her burden by a preponderance of the evidence that she should be awarded primary physical custody of the children. Joint legal custody is not contested, and given that the parties—prior to the separation—were able to generally cooperate and agree regarding important decisions affecting the children, joint legal custody should continue. As to Defendant's request regarding parenting time, given how close this case was under the best interest factors, the Referee finds that it is in the best interest of the parties' children to provide Plaintiff with a more expansive schedule than that proposed by Defendant. The recommended schedule is provided below. Given the distance between the parties, holiday parenting time will have to be substantially reduced and/or modified. Plaintiff's Motion for Return of Minor Children to Within 100 Miles of Their County of Residence should be denied for the reasons articulated in the analysis of MCL 722.31 above. Plaintiff's Verified Ex Parte Emergency Motion for Temporary Order Modifying Parenting Time Pursuant to MCR 3.207 should be denied for the reason that the temporary relief requested is rendered moot by the recommended immediate effect of this Order. Plaintiff's Motion to Prohibit Defendant from Further Relocating with the Minor Children should be denied on the basis that Defendant currently resides in Fenton and intends to remain in Fenton; and further, that Defendant is not restricted by the prohibition contained in MCL 722.31. Plaintiff's Amended Motion for Order to Show Cause Defendant for Failure to Comply with Order for Joint Legal Custody should be denied, and the Order to Show Cause should be dismissed, for the reasons articulated in the analysis of MCL 722.26a(1)(b) above.

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Referee Recommendation

Based on the foregoing, it is the recommendation of the Referee that the Court enter the following Order:

IT IS HEREBY ORDERED that Plaintiff's Motion for Return of Minor Children to Within 100 Miles of Their County of Residence is denied.

IT IS FURTHER ORDERED that Plaintiff's Verified Ex Parte Emergency Motion for Temporary Order Modifying Parenting Time Pursuant to MCR 3.207 is denied.

IT IS FURTHER ORDERED that Plaintiff's Motion to Prohibit Defendant from Further Relocating with the Minor Children is denied.

IT IS FURTHER ORDERED that Plaintiff's Amended Motion for Order to Show Cause Defendant for Failure to Comply with Order for Joint Legal Custody is denied.

IT IS FURTHER ORDERED that the Order to Show Cause is dismissed.

CHILD CUSTODY AND PARENTING TIME

IT IS FURTHER ORDERED that the parties are awarded joint legal custody of their minor children Aida V. Sabatine, d/o/b 10/27/2015, and Vera L. Sabatine, d/o/b 01/26/2018. The parties will continue to exercise joint parental authority and responsibility for the health, safety, education, and general well being of their minor children. This authority and responsibility shall include the maintenance and support of said children. Each party is directed to maintain communication with the other and to reasonably determine the best interests of the minor children until further Order of the Court.

IT IS FURTHER ORDERED that Defendant is awarded primary physical custody of the children.

IT IS FURTHER ORDERED that parenting time shall be as follows:

1. Beginning the Sunday before school begins and persisting through the first Sunday after the academic year ends (excluding holidays):
    a. Defendant will exercise parenting time except as follows in 1b and 1c:
    b. Plaintiff will have parenting time every other weekend, beginning at 6:30pm Friday evening and ending Sunday at 3:30pm.
    c. Plaintiff shall also receive every Spring Break commencing at 6:30pm on the day school dismisses until 3:30pm on the day before school resumes.

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2. Beginning the first Sunday after the academic year ends and persisting through Sunday before school begins (excluding holidays):
    a. Plaintiff will exercise parenting time except as follows in 2b and 2c:
    b. Defendant will have parenting time every other weekend, beginning at 6:30pm Friday evening and ending Sunday at 3:30pm.
    c. Defendant will have one uninterrupted week for vacation time. Defendant will identify this week to Plaintiff by May 1st of each year.
3. Holidays/special days shall be as follows:
    a. The children shall spend each Mother's Day weekend with Defendant and each Father's Day weekend with Plaintiff, beginning at 6:30pm on Friday and ending Sunday at 3:30pm.
    b. The children shall spend the Christmas holiday with Plaintiff in odd numbered years, and with Defendant in even numbered years, from December 22nd at 6:30pm until December 26th at 3:30 pm.
    c. The parties shall share or alternate such other holidays/special days as they may mutually agree and arrange

IT IS FURTHER ORDERED that the exchange location for all parenting time exchanges shall be a mutually agreed upon location in West Branch, Michigan. The parties are permitted a 30-minute grace period in case of unforeseen delay.

IT IS FURTHER ORDERED that the issue of child support shall be referred to the Office of the Friend of the Court for a review, consistent the terms of this Order. The effective date for modification of support shall be June 7, 2021.

IT IS FURTHER ORDERED that all other terms of the Court's prior Orders in this case shall remain in effect until further Order of this Court.

06/04/2021 04:51PM

STEVEN W. PACIORKA, FAMILY DIVISION REFEREE, P72125

STEVEN W. PACIORKA (P72125)
Referee

06/07/2021 11:49AM

MARIAN KROMKOWSKI, FAMILY DIVISION JUDGE, P30378

HON. MARIAN KROMKOWSKI
Family Division Judge

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NOTICE OF RIGHT TO JUDICIAL REVIEW:
Either party has the right to request a judicial hearing by filing a written objection *with the Court Clerk* within 21 days after this recommendation is served. The objection must include a clear and concise statement of the specific findings or application of law to which an objection is made. Objections regarding the accuracy or completeness of the recommendation must state with specificity the inaccuracy or omission. The party requesting a judicial hearing must serve the objection on the other party and file a proof of service thereof. A hearing or conference will be scheduled with the Judge.

NOTICE OF INTERIM EFFECT OF ORDER:
Pursuant to MCR 3.215, the Referee's recommended order will take immediate effect on an interim basis pending judicial hearing.

CERTIFICATE OF SERVICE

I, Stacy M. Osborne, Circuit Court Specialist, certifies that on the date below, I served a copy of the Referee Recommendation and Order via US Mail or email on:

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06/07/2021
11:54AM

STACY OSBORNE, CIRCUIT COURT SPECIALIST

Stacy M. Osborne,
Circuit Court Specialist

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STATE OF MICHIGAN
IN THE SUPREME COURT

Andrew Paul Sabatine,

Plaintiff-Appellee,

vs.

Colleen Knecht Sabatine,

Defendant-Appellant.

_____/

Michigan Supreme Court No. 165279
Court of Appeals No. 361068
Consolidated COA Appeal 361074

Leelanau County Circuit Court Case No. 2020-10532-DM

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Appendix II

Tab E . . . . . 12/15/22 Court of Appeals Decision - *Sabatine v Sabatine*
Tab F . . . . . *Butters v Butters*, __ Mich __ (2022)

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

ANDREW PAUL SABATINE, Plaintiff-Appellant, v COLLEEN KNECHT SABATINE, Defendant-Appellee.	UNPUBLISHED December 15, 2022 No. 361068 Leelanau Circuit Court LC No. 2020-010532-DM
ANDREW PAUL SABATINE, Plaintiff-Appellee, v COLLEEN KNECHT SABATINE, Defendant-Appellant.	No. 361074 Leelanau Circuit Court LC No. 2020-010532-DM

Before: SHAPIRO, P.J., and BORRELLO and YATES, JJ.

PER CURIAM.

In Docket No. 361068, plaintiff, Andrew Paul Sabatine, appeals as of right a judgment of divorce, specifically that portion of the judgment pertaining to custody of the minor children. In Docket No. 361074, defendant, Colleen Knecht Sabatine, appeals as of right the same judgment, specifically that portion of the judgment dealing with child-support calculations. In Docket No. 361074, we affirm. In Docket No. 361068, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

The parties were married on April 22, 2013, and had two girls together. During a majority of the marriage, the family lived together in Traverse City. Both plaintiff and defendant were in high-paying professions, although defendant chose to work far fewer hours than plaintiff, in order to care for the children. In September 2020, defendant abruptly moved the children to her parents'

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home in Fenton, to be near defendant's family and childhood friends. She did not discuss the move with plaintiff ahead of time. Although the trial court was troubled by the way defendant handled the move to Fenton, it ultimately awarded primary physical custody to defendant, with liberal parenting time to plaintiff.

I. DOCKET NO. 361068

Plaintiff contends that the trial court erred in analyzing several best-interests factors and argues that the custody decision should be overturned. He also takes issues with the court's findings regarding the girls' established custodial environment (ECE).

A. STANDARDS OF REVIEW

MCL 722.28 states:

> To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.

As stated by this Court in *Vodvarka v Grasmeyer*, 259 Mich App 499, 507-508; 675 NW2d 847 (2003):

> [This Court] appl[ies] three standards of review in custody cases. The great weight of the evidence standard applies to all findings of fact. A trial court's findings regarding the existence of an established custodial environment and regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. An abuse of discretion standard applies to the trial court's discretionary rulings such as custody decisions. Questions of law are reviewed for clear legal error. A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law. [Quotation marks and citations omitted.]

B. BEST-INTERESTS FACTORS

MCL 722.23 states:

> As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:
>
> (a) The love, affection, and other emotional ties existing between the parties involved and the child.
>
> (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

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(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(*l*) Any other factor considered by the court to be relevant to a particular child custody dispute.

Plaintiff argues that the court should not have concluded that defendant was favored with respect to factors (b) and (c) and instead should have concluded that the parties were equal. But the evidence did not clearly preponderate in the opposite direction with regard to these factors. *Vodvarka*, 259 Mich App at 507. Importantly, plaintiff himself stated that the couple had split the family duties based on their skills and that he handled finances and home maintenance and defendant primarily handled the medical and educational scheduling for the children. Defendant testified she had always "taken the lead" on "pretty much all aspects of the day-to-day life of the kids," including extracurricular activities. Defendant said that she was "involved and in charge of all the care of the kids" and would buy diapers and clothes for them, as well as groceries. She said that she did "all of their baths." She stated that it was difficult to get plaintiff to be involved in the girls' bedtime routines and that she would have to plead with him to read books for them. Defendant stated that sometimes plaintiff was "all into it" but other times was not. She averred that plaintiff had his own routine in the mornings and that she took care of the girls then. She stated that, one time when plaintiff had the girls overnight by himself because defendant had a family obligation, he expressed that it was too overwhelming for him and told her that he would not do it (i.e., care for the girls by himself, overnight) again.

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The parties produced various family and friends to testify regarding each other's parenting abilities. From our review we glean that witnesses testified in accord with the party that called them to the stand. While testimony revealed that the parties have faults, it also revealed that both tried to be, and from the testimony were good parents. Hence, it is difficult to conclude that the evidence clearly preponderated in the opposition direction from the trial court's findings that defendant was favored under factors (b) and (c). Plaintiff contends that the trial court punished him for being the primary breadwinner and worker for the family. See, e.g., *Bofysil v Bofysil*, 332 Mich App 232, 246; 956 NW2d 544 (2020) ("Despite treating Bridget as a less viable parent because she chose to work outside the home, the court declined to credit Bridget for her ability and willingness to earn an income and provide health insurance for her child."). But the trial court expressly cited *Bofysil* and noted it was finding that defendant was favored for reasons other than her being with the children for more of the time than plaintiff. It stated that defendant took the lead on medical and educational issues *because of her educational background* and stated that even when the parties were together, she had a greater disposition to care for the children's needs. Testimony indicated that plaintiff took the lead on the children's care even when both parents were present in the home.

Plaintiff also argues that the trial court should not have credited defendant's testimony for factors (b) and (c) because, at another point in its opinion, the court concluded that defendant had offered testimony that was not credible. It is true that, at one point, the trial court stated that it did not find credible defendant's assertions that plaintiff was an "absentee father" and that she was essentially a "single parent." Instead, the trial court stated that the parties had different roles within the family but that both were "loving, concerned" parents. The trial court, as the finder of fact, was allowed to conclude that even though defendant exaggerated in some aspects of her testimony, she was credible in other aspects. Given the applicable standard of review, we discern no record evidence to serve as a basis for overturning the trial court's findings regarding factors (b) and (c).

Next, plaintiff argues that the trial court should not have found that the parties were equal with regard to factor (d) but instead should have found that plaintiff was favored. The children had a stable, satisfactory environment in the Traverse City home, where they lived since birth. Plaintiff relies on this fact in his argument on appeal, and for good reason: it certainly was a consideration for the trial court to consider. However, factor (d) refers to "[t]he length of time the child has lived in a stable, satisfactory *environment, and the desirability of maintaining continuity*[.]" MCL 722.23 (emphasis added). There was ample record evidence from which the trial court could find that the children were in a warm, loving atmosphere in Fenton. Defendant noted that the girls had known their grandparents' home in Fenton "as a place of stability, and fun times, and family." Also, and significantly, AS's therapist had moved her to a schedule with fewer appointments because AS was doing so well and was "consistently reporting happy with each session." Plaintiff speaks about the fact that defendant may be moving into a different home within walking distance of her parents' home in Fenton, but factor (d) speaks to the "environment," not just to the physical structure of a home. The evidence did not clearly preponderate in the opposite direction from the trial court's finding that the parties were equal on factor (d), because from all accounts the children would have been equally happy in *either* environment, even if the Fenton environment had been the girls' primary home base for a shorter period.

Next, plaintiff contends that the trial court erred by finding that defendant was slightly favored under factor (h) and that the court should have found that he was favored under it or that

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the parties were equal with respect to it. In finding that defendant was slightly favored under this factor, the trial court emphasized that the children had more opportunities for socialization with friends and family—in essence, more of a "community"—in Fenton. The evidence did not clearly preponderate in the opposite direction from the trial court's finding. The Traverse City neighborhood did not contain many children and plaintiff said that the girls did a lot of activities with adults in Traverse City. Defendant stated that there were multiple children around the girls' ages who lived in the Fenton neighborhood. Defendant's grandfather lived nearby, as did her grandmother's sister and some cousins. Defendant had been scheduling playdates for the girls with their young cousins and young friends. Once again, a reversal of the trial court's finding regarding this factor is not warranted in light of the applicable standard of review.

Plaintiff next contends that the trial court should have made a finding under factor (*l)* and should have concluded that he was favored under this factor. He mentions defendant's greater ability to provide transportation. But the trial court took this into account by ordering that the exchange point be considerably closer to plaintiff's residence than to defendant's. He also contends that defendant violated a temporary January custody order but does not elaborate upon this contention. As stated in *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998):

> It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. [Quotation marks and citation omitted.]

Here, plaintiff appears to be arguing that defendant violated the January order by enrolling the girls in schools in Fenton without his consent. But plaintiff also enrolled the girls in schools in Traverse City without defendant's consent, and no contempt order was issued in connection with defendant's actions. Plaintiff also, in connection with factor (*l*), mentions defendant's unilateral move to Fenton. But the trial court took this into account in its analysis of factor (j).

In her appeal, defendant attempts to argue that some of the best-interest factors should have favored her. However, In *Truel v City of Dearborn*, 291 Mich App 125; 804 NW2d 744 (2010), this Court stated, "Although an appellee need not file a cross-appeal to argue an alternative basis for affirming the trial court's decision, an appellee cannot obtain a decision more favorable than the decision rendered by the trial court." Defendant's arguments concerning the best-interests factors pertain to "alternative bas[e]s for affirming" the ultimate custody decision. *Id*. Defendant also argues, however, that there was no basis for plaintiff to even revisit the January 2021 temporary order or the referee's custody decision initially adopted by the court. By making this argument, defendant is seeking a decision "more favorable than the decision rendered by the trial court," *id*., because those earlier orders gave plaintiff fewer visitation rights than the order ultimately entered. Defendant has failed to file a cross-appeal, and consequently, her arguments in this latter regard need not be addressed.

C. ESTABLISHED CUSTODIAL ENVIRONMENT

A parent seeking a custody change, to be successful, must show that the change is in the child's best interests. MCL 722.27(1)(c). MCL 722.27(1)(c) states, in part, "The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the

established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child." The custody award in this case was a "new order" because the January temporary order was issued without an evidentiary hearing. See *Thompson v Thompson*, 261 Mich App 353, 359-363; 683 NW2d 250 (2004).

If a proposed change would not change the ECE, the parent seeking that change must "establish, by a preponderance of the evidence, that the change is in the child's best interests." See *Pierron v Pierron*, 486 Mich 81, 93; 782 NW2d 480 (2010), and *Shade v Wright*, 291 Mich App 17, 23; 805 NW2d 1 (2010). "If a child has an established custodial environment with both parents, neither parent's custody may be disrupted absent clear and convincing evidence that the change is in the child's best interest." *Bofysil*, 332 Mich App at 243.

The trial court in the present case applied a preponderance-of-the-evidence standard, indicating that the ECE was with both parents at all times and that "the [ECE] with both parents that existed before separat[ion] continues."

MCL 722.27(1)(c) explains that "[t]he custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort." It adds that "[t]he age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered." MCL 722.27(1)(c).

Defendant suggests that to determine the ECE, the court needed to look at the circumstances that existed after the move to Fenton. The *Bofysil* case is instructive on this point. In *Bofysil*, 332 Mich App at 236-237, Bridget and Sarah Bofysil lived together with their child near Ypsilanti. Sarah left and moved in with her parents in Montague, near Muskegon. *Id*. at 238. Also, "Bridget moved to Redford Township, more than two hours away from Sarah and [the child]. Bridget asserted that she could not move closer to Sarah's new home because she continued to work in Ypsilanti." *Id*. The trial court found that an ECE with Sarah existed, relying in part on the fact that the child had been mostly with Sarah since the separation. *Id*. at 239. Bridget argued, "in part, that the evidence established that [the child] had resided primarily with Sarah since the separation only because Sarah had withheld and alienated [the child] from her." *Id*. at 241. This Court stated, "The evidence preponderates against the circuit court's established-custodial-environment finding. Both parties agreed that from [the child's] January 2016 birth until Sarah left the home with [the child] in the middle of June 2018, both parents shared in the care of [the child]." *Id*. at 243. The importance of *Bofysil* is the Court's emphasis on the child-rearing situation before Sarah's departure. Similarly, then, what is important here is the child-rearing situation for the girls before defendant's departure. Ample evidence indicates that the ECE at that point was with both parents; the parties lived together as a family and both parents cared for the children.

The trial court concluded that its custody award would not change the ECE because the children would still be looking to both parents for guidance, discipline, comfort, and the necessities of life. However, caselaw indicates that even if this is the case, a drastic change in the number of overnights with a child effectuates a change in the ECE.

In *Lieberman v Orr*, 319 Mich App 68, 84; 900 NW2d 130 (2017), this Court explained that if a proposed parenting-time change "alters the established custodial environment, the

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proposal is essentially a change in custody," and certain standards for revisiting a prior custody order as set forth in *Vodvarka* govern.[1] In *Lieberman*, *id*. at 73, the defendant mother had primary physical custody of the parties' two children, and the parties had joint legal custody. The parties had stipulated to a parenting-time schedule that gave plaintiff 140 overnights a year and defendant 225 overnights a year. *Id*. at 72. The plaintiff filed a motion to modify parenting time and change the children's schools. *Id*. at 74. He requested "essentially that the parties swap the current parenting time schedule." *Id*. (quotation marks omitted). The plaintiff argued that the parties had joint physical custody, that the swap would not materially change the amount of time the children spent in each home, and that "both parents would continue to share in providing love, support, and guidance of the minor children[.]" *Id*. at 75 (quotation marks omitted).

The defendant disagreed with the plaintiff's position that the parties had joint physical custody and disagreed with the plaintiff's position that the proposed change in parenting time would not materially change the amount of time the children would spend in each parent's household. *Id*. She argued that the plaintiff's proposed modifications would change the ECE and that his request was actually a motion to change custody, "notwithstanding its label[.]" *Id*.

The trial court agreed with the plaintiff's arguments. *Id*. It analyzed the best-interests factors of MCL 722.23 under the preponderance-of-the-evidence standard. *Id*. It granted the plaintiff's motion, ultimately awarding plaintiff 225 overnights a year and defendant 140 overnights a year. *Id*. This was an 85-night increase in the plaintiff's parenting time. *Id*.

This Court considered whether the trial court applied the proper standards to the plaintiff's motion, and it found that, despite the label the plaintiff had given to his motion, his "proposed modifications to parenting time effectively changed physical custody of the children from defendant to plaintiff." *Id*. at 85. It explained:

> The parties' judgment of divorce awarded legal custody to both parents, but physical custody of the children to defendant; the judgment did not award the parties joint physical custody. As noted, an award of physical custody primarily or solely to one party typically entails a situation in which the children receive physical care and supervision primarily from the parent awarded that status. That is the case here. In accordance with the parties' agreement that defendant would be the children's primary physical custodian, the children in the case at bar have resided with and been cared for and supervised primarily by defendant since entry of the judgment of divorce. Thus, it defies the plain meaning of the word "primary," as well as rudimentary mathematics, to say that reducing the primary custodian's overnights with the children from 225, or nearly 62% of the calendar year, to 140, or approximately 38% of the calendar year, does not change primary physical

[1] The standards relate to when "proper cause . . . or . . . change of circumstances" for revisiting a prior custody order exists. See MCL 722.27(1)(c). Such revisiting of a prior order is not at issue in the present case, which involved the initial determination of custody following an evidentiary hearing. See *Thompson v Thompson*, 261 Mich App 353, 359-363; 683 NW2d 250 (2004). However, the *Lieberman* decision is instructive on the issue of the ECE.

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> custody. By proposing a reduction in the number of overnights the children spend with defendant to a distinct minority of the year, plaintiff was proposing a change in custody, regardless of the label he gave his motion. Accordingly, the proper legal standard under which to review his motion was the more burdensome and restrictive standard set forth in *Vodvarka*. . . .
>
> Even if we were to accept plaintiff's characterization of his motion as one simply to modify parenting time and change schools, *we nevertheless would hold that the trial court committed error requiring reversal by finding, against the great weight of the evidence, that plaintiff's proposed change would not affect the established custodial environment the children share with defendant* and by not analyzing the motion under the applicable legal framework set forth in *Vodvarka*. [*Lieberman*, 319 Mich App at 85-86 (footnotes omitted; emphasis added).]

The *Lieberman* Court stated that while "minor modifications that leave a party's parenting time essentially intact do not change a child's established custodial environment, significant changes do." *Id*. at 89-90 (citation omitted). Examples provided by the *Lieberman* Court of such significant changes include a substantial reduction in the amount of time a parent was to spend with a child, see *Rains v Rains*, 301 Mich App 313, 323-324; 836 NW2d 709 (2013), a modification that changed a parent equally active in a child's life to a "weekend parent," see *Powery v Wells*, 278 Mich App 526, 528; 752 NW2d 47 (2008), and a change from year-round near equality of parenting time to one parent having parenting time during the school year and the other having parenting time during the summer, see *Brown v Loveman*, 260 Mich App 576, 596; 680 NW2d 432 (2004). *Lieberman*, 319 Mich App at 90.

Moreover, in *Lieberman*, *id*. at 72, the "children . . . live[d] with defendant during the school year, and plaintiff received parenting time three weekends a month during the school year and all but the first and last weeks of the children's summer vacation." The defendant had 140 overnights and the plaintiff had 225. *Id*. The plaintiff sought to "swap" this schedule. *Id*. at 74. Significantly, the Court stated:

> [C]entral to the children's established custodial environment with defendant was the support and guidance defendant gave and the material needs she met relative to the children's school attendance. *Plaintiff's proposed modification of parenting time would not only substantially reduce the time defendant would spend with the children, it would also change the character of her interaction with the children. Therefore, the proposal significantly alters the children's established custodial environment with defendant*. [*Id*. at 91-92 (emphasis added).]

While *Lieberman* was concerned with the issue regarding whether "proper cause . . . or . . . change of circumstances" for revisiting a prior custody order existed, see MCL 722.27(1)(c), we see no reason why its analysis *regarding the ECE* would not apply here. Both parents had the children for 365 overnights a year in Traverse City, and the custody order entered by the court was not only giving plaintiff significantly fewer overnights, it was also substantially changing the nature of his interaction with the children. Accordingly, the trial court should have applied a clear-and-convincing evidence standard, and a remand is warranted. Obviously, in most divorce situations, a child's overnights with a parent will *necessarily* be reduced or even halved, and such

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changes will not necessarily amount to a change in the ECE. But here, plaintiff is receiving substantially less than 50% of the parenting time and is becoming a weekend parent. As stated in *Powery*, 278 Mich App at 528:

> Here, the evidence presented at the motion hearing showed that if plaintiff moved to Traverse City, either she or defendant would be relegated to the role of a "weekend" parent. Conversely, when both parties lived in Ludington, they were equally active in their daughter's life. Because any modification of "parenting time" based on this move *would amount to a change in the established custodial environment*, an "analysis under the best interest factor framework" was required. Therefore, the trial court properly held an evidentiary hearing. [Citation omitted.]

A remand is warranted so that the trial court can reassess its decision using the proper standard.

II. DOCKET NO. 361074

Defendant contends that the trial court made errors in computing the parties' incomes for purposes of calculating child support.

A. STANDARDS OF REVIEW

As this Court stated in *Peterson v Peterson*, 272 Mich App 511, 515-516; 727 NW2d 393 (2006):

> Child support orders and the modification of such orders are reviewed for an abuse of discretion. Whether a trial court properly operated within the statutory framework relative to child support calculations and any deviation from the child support formula are reviewed de novo as questions of law. [Citations omitted.]

But "factual findings of a trial court in a divorce case are to be reviewed for clear error." *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). Also, this Court "review[s] for an abuse of discretion a trial court's decision whether to impute income to a party." *Loutts v Loutts*, 298 Mich App 21, 25-26; 826 NW2d 152 (2012).

As summarized in *Ewald v Ewald*, 292 Mich App 706, 714-715; 810 NW2d 396 (2011):

> A trial court must presumptively follow the MCSF when determining the child support obligation of parents. This Court reviews de novo as a question of law whether the trial court has properly applied the MCSF. The trial court's factual findings underlying its determination regarding child support are reviewed for clear error. The trial court's discretionary rulings permitted by statute and the MCSF are reviewed for an abuse of that discretion. An abuse of discretion occurs when a court selects an outcome that is outside the range of reasonable and principled outcomes. A trial court abuses its discretion when it relies on a legally improper reason for departing from the MCSF in establishing a parent's child support obligation. [Citations omitted.]

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The last issue raised by defendant on appeal involves a motion for reconsideration. "We review a trial court's decision on a motion for reconsideration for an abuse of discretion." *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008).

B. CAPITAL GAINS

MCL 552.605(2) states, in pertinent part, "Except as otherwise provided in this section, the court shall order child support in an amount determined by application of the child support formula developed by the state friend of the court bureau as required in section 19 of the friend of the court act, MCL 552.519."

Defendant refers to the following provisions from the Michigan Child Support Formula (MCSF):

> 2.01(A) The term "net income" means all income minus the deductions and adjustments permitted by this manual. A parent's "net income" used to calculate support will not be the same as that person's take home pay, net taxable income, or similar terms that describe income for other purposes.
>
> 2.01(B) The objective of determining net income is to establish, as accurately as possible, how much money a parent should have available for support. All relevant aspects of a parent's financial status are open for consideration when determining support.
>
> 2.01(C) Income includes, but is not limited to, the following:
>
> * * *
>
> (6) Net capital gains are included as income. When attributable to a single event or year, or when cash may not be immediately available to the parent, consider them to the extent they can be used to represent income over several years. To the extent that a party proves that a portion of the capital gain was considered in the property division of the judgment of divorce between the parties, that portion should not be included as income.
>
> 2.01(H) Interest earned or potentially earned on inheritances and gifts (§2.05(B)) should be considered as income. Impute a reasonable rate when determining the potential investment return that could be earned. [2021 MCSF 2.01(A), (B), (C)(6), and (H).]

Defendant contends that the trial court erred by not considering plaintiff's inheritance money when calculating his income for purposes of child support. However, the record reveals that the trial court did take plaintiff's inheritance into account. Jason Bodmer, an income-assessment expert, was asked about "interest income, dividends and capital gains" related to "a number of Wells Fargo accounts." They were related to plaintiff's separate property. Bodmer took the income from these accounts into account when determining plaintiff's three-year average income for child-support purposes. The average total of the "interest income, dividend income,

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and net capital gains was [approximately] $35,700" a year. He said that there was no need to impute any income on investments in this case because the amount was known. See 2021 MCSF 2.01(H). As evidenced by the record, the trial court *took the amount into account* when computing plaintiff's income.

Defendant also argues that the MCSF speaks of "net capital gains" as income, see 2021 MCSF 2.01(C)(6). She argues that the trial court should have included "unrealized" capital gains associated with the inheritances as part of plaintiff's income. But the financial experts clearly explained the nature of capital gains.

Chris Bott, defendant's expert, stated that plaintiff had had no realized capital gains for tax year 2020. He stated, "Unrealized gains, which would be representative of the growth and the value of the investments over their basis are not reported in a given year until there's a taxable event, i.e., they are sold." He indicated that unrealized capital gains fluctuate continually. The measurement date for the amount would be "the date that you sold it." And Bodmer stated:

> [C]apital gains do not include the change in value of capital assets. It seems silly to say this, but the very definition of a capital gain is such that a capital gain can only be realized if a . . . capital asset is sold for a gain. I say that because it would be impossible to assign income associated with a change in value of a capital asset and also include income associated with capital gains. Those two concepts are mutually exclusive, you can't include both, right? If you were to include both, you would in effect be double counting value.

Bodmer also said that "the change in value of an investment doesn't actually represent cash income" and is "not an amount that an individual has access to." He explained that "net capital gains" means "capital assets that are sold at a gain, as well as capital assets that are sold at a loss, the net number of those two." He said that one does not look at the beginning value of a brokerage account at a certain date and compare it to the value at another date and impute the difference as income, "because when the asset is actually sold it will trigger an actual capital gain, which would capture that change in value." Bodmer explained that it would be an "absolute nightmare" to try to continuously capture the value of a brokerage account and use it for imputation of income. He said that investment accounts "change in value constantly" and added:

> I don't think anybody would suggest that the individual should be paid back if their investment in Apple stock decreased in value. Rather the way it's handled in the child support formula is to capture the income when the asset is actually sold in the form of a capital gain or capital loss.

Bodmer explained that if one were to look at "unrealized capital gains in addition to net capital gains . . . you will by definition be capturing the same dollar point." He stated, "To include both would be such that you would be capturing the increase in value as it occurs and then recapturing it when they sell it." Importantly, he explained that "net capital gains . . . *by definition can only occur when a capital asset is sold for a gain*." (Emphasis added.) Bodmer explained that calculating unrealized gains would be nearly impossible because of the continuously changing nature of large numbers of "investments and equities." He further explained that the number on

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an account pertaining to an unrealized capital gain referred to the gain over the entire life of the investment and was *not* an annual amount.

Given the commonsense notion of "capital gain" as testified to by the expert witnesses, the trial court properly concluded that no capital gains were to be included in plaintiff's income.

C. CHANGE-IN-CONTROL PAYMENT

When plaintiff's company merged with another, he received a change-in-control payment (CICP) of $683,015.35. Defendant contends that the court should have taken this payment into account when calculating plaintiff's income for purposes of child support.

In *Loutts*, 298 Mich App at 26-31, this Court concluded that the lower court had discretion to impute income, for spousal-support purposes, in connection with a business whose value had been divided between the parties. In the present case, however, an income-producing business is not at issue. What is at issue is a *lump-sum payment*. Also, in *Loutts*, *id*. at 26, 29-31, the court had made the property division and had awarded one-half of the value of the company to each party, and this Court emphasized the wide discretion afforded the trial court in making its property-division and spousal-support awards. Here, the *mediation agreement* stated that plaintiff was taking the CICP, inclusive of company stock. Under the agreement, plaintiff, to balance the property-settlement monies, was to pay defendant $125,000 within seven days and an additional $400,000 within 90 days. "Property settlement provisions in a divorce judgment typically are final and cannot be modified by the court." *Baker v Baker*, 268 Mich App 578, 585-586; 710 NW2d 555 (2005). Nothing in the mediation agreement specifies that the CICP would be used to impute income for purposes of child support.

The trial court noted that if it were to impute income to plaintiff on the basis of the CICP, then it should logically impute income to defendant on the basis of the substantial amount of monies given to her by way of the property settlement.[2] The trial court's reasoning was sound and no abuse of discretion is apparent with regard to its conclusion that the CICP would not be used to increase the amount of plaintiff's income for purposes of child support. Thus, the trial court properly concluded that the parties had chosen to treat the CICP as an asset to be divided in the property settlement.

D. DEFENDANT'S LIVING SITUATION

Under the MCSF, the court imputed $1,000 a month to defendant on the basis of savings associated with her living with her parents. See 2021 MCSF 2.05(C). Defendant contends that the trial court should have granted her motion for reconsideration and removed this imputation because she is no longer living with her parents.

[2] The court indicated that defendant had received $900,000.

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The trial court, in denying the motion for consideration, stated, in pertinent part, that there was no record evidence that defendant was actually living on her own and no longer receiving free housing from her parents.

MCR 2.119(F)(3) states:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. *The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error*. [Emphasis added.]

In light of the record, which provides no proof of defendant living apart from her parents and paying for her own housing, defendant showed no palpable error in connection with the trial court's ruling.[3]

We affirm in Docket No. 361074. In Docket No. 361068, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs are awarded to either party. MCR 7.219(A).

/s/ Douglas B. Shapiro
/s/ Stephen L. Borrello
/s/ Christopher P. Yates

[3] We note that MCL 552.517 allows for review of child-support orders by the Friend of the Court.

Order

Michigan Supreme Court
Lansing, Michigan

December 9, 2022

Elizabeth T. Clement
Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

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164888

RACHEL ANNE BUTTERS,
Plaintiff-Appellee,

v

SC: 164888
COA: 359665
Kent CC: 15-000548-DM

PATRICK LEE BUTTERS,
Defendant-Appellant.
_____/

On order of the Court, the application for leave to appeal the July 28, 2022 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE in part the judgment of the Court of Appeals. The Court of Appeals correctly explained that, on remand, the trial court " 'should consider up-to date information, including the children's current and reasonable preferences' " when determining whether a modification of the previous custody order is warranted. *Butters v Butters*, ___ Mich App ___, ___ (2022); slip op at 6, quoting *Fletcher v Fletcher*, 447 Mich 871, 889 (1994). However, the Court of Appeals erred by instructing the Kent Circuit Court on remand to apply the best-interest factors under the clear-and-convincing-evidence standard without regard to any changed circumstances that might have occurred during the pendency of this appeal. When nonharmless errors occur in child custody cases that necessitate a remand to the circuit court for reevaluation, those courts should address the circumstances of the child as they exist at the time of remand. See *O'Brien v D'Annunzio*, 507 Mich 976 (2021); *Fletcher*, 447 Mich at 889; *Dempsey v Dempsey*, 409 Mich 495, 496 (1980).

On remand, when addressing the issues remanded by the Court of Appeals, we DIRECT the Kent Circuit Court to reevaluate the children's established custodial environments based upon up-to-date information in existence at the time of the evidentiary hearing. If the circuit court concludes that the children have established custodial environments with plaintiff or with both parents at the time of the hearing on remand, then "[t]he court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child." MCL 722.27(1)(c). See also *Foskett v Foskett*, 247 Mich App 1, 5-6 (2001). We further direct the circuit court to expedite its consideration and resolution of this case.

We do not retain jurisdiction.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 9, 2022

Clerk