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State of Michigan
In The Supreme Court
On Appeal from the Michigan Court of Appeals
(Shapiro, Borrello, Yates)

ANDREW PAUL SABATINE, *Plaintiff-Appellee*, V COLLEEN KNECT SABATINE, *Defendant-Appellant*.	Supreme Court No. 165279 Court of Appeals Nos. 361068; 361074 Leelanau County Circuit Court Case No. 2020-010532-DM Hon. Marian F. Kromkowski

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APPELLEE-FATHER'S SUPPLEMENTAL BRIEF FOR ORAL ARGUMENT ON THE APPLICATION

This case concerns the custody of minor children.

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STATEMENT OF JURISDICTION

Appellee-Father agrees with the Statement of Jurisdiction as presented in Appellant-Mother's Supplemental Brief.

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COUNTER-STATEMENT OF THE QUESTION INVOLVED

This Court, in its June 9, 2023 order, directed the parties to address the following questions:

First Question:

Whether the Leelanau Circuit Court and the Court of Appeals correctly determined that the children have an established custodial environment with each parent, see *Baker v Baker*, 411 Mich 567 (1981)?

Second Question:

Whether the parenting-time terms incorporated into the judgment of divorce altered a potential established custodial environment, see *Pierron v Pierron*, 486 Mich 81 (2010)?

Third Question:

Whether the Court of Appeals remand instructions are sufficiently clear to guide the circuit court on remand as to what evidentiary burden it must apply, see *Griffin v Griffin*, 323 Mich App 110, 128 (2018); but see *Butters v Butters*, 510 Mich ___ (2022) (Docket No. 164888)?

Fourth Question:

Whether in an initial judgment of divorce, a court should consider the circumstances of the parties at the time of separation or prior to their separation to determine the child's established custodial environment, see *Bofysil v Bofysil*, 332 Mich App 232, 246 (2020)?

Appellee-Father answers YES to the above-posed questions.

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COUNTER-STATEMENT OF FACTS

While Appellant-Mother has presented this Court with a largely correct procedural recitation of the current case, in order for this Court to properly consider this matter, more context is required. (Appellant's Supplemental Brief, pp. 1-3).

Relevant Background Information

The parties are the parents of two daughters, almost eight-year-old AVS and now five-year-old VLS. (06/07/2021 Recommendation, p. 1). The parties lived for the entirety of their marriage in the three-bedroom, four-bathroom home built by Appellee-Father in 2004 in Traverse City. (04/07/2021 Transcript, pp. 48-49; 06/07/2021 Recommendation, p. 3; 04/13/2021 Transcript, pp. 39-47). Prior to the parties' separation, AVS was enrolled in the Grand Traverse Area Catholic Schools ("GTACS") in a pre-K program five days a week, while VLS was at home with Appellant-Mother during the day or was cared for by a nanny. (04/13/2021 Transcript, pp. 160-162; 04/27/2021 Transcript, p. 211). The parties consistently employed a nanny, even when Appellant-Mother was not working. (05/12/2021 Transcript, p. 72).

Although Appellant-Mother was largely the "stay-at-home parent," both parties cared for the girls and collaborated when making decisions for the family and the family regularly employed a nanny to care for the girls while Appellant-Mother was at work. (04/07/2021 Transcript, pp. 66, 75, 104, 113-114; 04/13/2021 Transcript, pp. 87, 122, 161-162; 05/12/2021 Transcript, p. 88). Appellee-Father's schedule was relatively flexible and allowed him to spend time in the afternoons with the girls or attend appointments and events for the girls. (04/07/2021 Transcript, pp. 64, 68, 202). While the parties lived in the marital home, Appellee-Father was largely responsible for the parties' finances, including providing health insurance, and the up-keep on the marital home, as well as assisting Appellant-Mother with caring for the children. (04/07/2021 Transcript, pp. 104, 198-199; 04/13/2021 Transcript, p. 87; 04/27/2021 Transcript, pp. 172-174; 04/28/2021 Transcript, pp. 85, 94-95). Appellee-Father frequently involved the girls in the up-keep of the home and the large amount of land the home sits on, including several professionally

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landscaped nature trails. (04/07/2021 Transcript, p. 154; 04/13/2021 Transcript, p. 33; 05/12/2021 Transcript, pp. 78-79).

The family had a very active, well-rounded life together in Traverse City, with AVS and VLS participating in tumbling and dance, AVS participating in horseback riding lessons and soccer, where she was coached by Appellant-Mother. (04/07/2021 Transcript, pp. 154, 156; 04/13/2021 Transcript, p. 166; 04/28/2021 Transcript, pp. 77-79). Appellee-Father attended every dance recital he could and nearly every soccer game, where he would care for VLS while Appellant-Mother coached the team. (04/13/2021 Transcript, pp. 165-166; 04/27/2021 Transcript, pp. 146-147; 05/12/2021 Transcript, pp. 86-87). The family also frequently visited friends of the parties, including friends who had children the girls' ages, and went on boat trips to Power Island. (04/13/2021 Transcript, p. 167). The girls had friends in their neighborhood, as well as at school and their various pre-school programs, however, the majority of their time was spent in the marital home. (04/07/2021 Transcript, pp. 154-155; 04/13/2021 Transcript, pp. 164, 166-167). As both parties highly value education, both parties made the martial home a learning environment for the girls and the parties frequently took advantage of teachable moments in the girls' lives, including Appellant-Mother subscribing to several childhood education publications and involving the girls in enrichment activities. (04/07/2021 Transcript, pp. 154, 188-189; 04/28/2021 Transcript, pp. 69-72). The family also travelled extensively during the course of the marriage. (04/13/2021 Transcript, p. 172). Neither child has any health issues, and when the girls needed to go to the doctor or the dentist, Appellant-Mother was typically the parent to make the appointment, and Appellee-Father would usually meet Appellant-Mother at the office for the appointment. (04/07/2021 Transcript, p. 205).

Events of Fall 2020

Appellant-Mother's move to Fenton was not "based on safety concerns." (Application, p. 3). In September 2020, AVS began school at GTACS and Appellee-Father dropped her off for her first day. (04/07/2021 Transcript, p. 75). Appellant-Mother was considering accepting a part-time position with a new employer and the parties had hired a nanny to care for the girls

during Appellant-Mother's new work hours. (04/07/2021 Transcript, pp. 65-68, 71, 73; 04/28/2021 Transcript, pp. 185-187). Unbeknownst to Appellee-Father, Appellant-Mother had also recently met with an attorney in Fenton, MI, her hometown and where her parents live, to discuss filing for divorce from Appellee-Father. (04/28/2021 Transcript, pp. 20, 189-190).

On September 18, 2020, Appellant-Mother traveled to Fenton in anticipation of traveling to Pittsburgh the following day to care for her ailing grandmother. (04/07/2021 Transcript, pp. 55-56; 04/28/2021 Transcript, pp. 188, 190-191). Appellant-Mother had driven Appellee-Father's vehicle down to Fenton, had only packed a small overnight bag, and had left the girls in Traverse City with Appellee-Father, as it was going to be a very short trip. (04/07/2021 Transcript, p. 56; 04/28/2021 Transcript, p. 189). At 5 p.m. on September 18, Appellant-Mother informed Appellee-Father that she would be returning to Traverse City late that evening to pick up the girls, as she had changed her mind about taking them to Pittsburgh with her. (04/07/2021 Transcript, p. 59; 04/28/2021 Transcript, p. 195). Appellant-Mother and her father, Timothy Knecht, flew to Traverse City in Mr. Knecht's private plane and arrived at the marital home at approximately 10:30 p.m. on September 18. (04/07/2021 Transcript, pp. 59-60; 04/28/2021 Transcript, p. 193). Appellee-Father was awake in bed when they arrived, as the girls had already gone to sleep for the night, and Appellant-Mother spent the night with Appellee-Father in their room of the martial home. (04/28/2021 Transcript, pp. 196-197). The next morning, Appellant-Mother packed two small overnight bags for the girls, a few more items for herself, and a few toys and returned to the airport with her father and the girls. (04/07/2021 Transcript, pp. 59-60, 70). Appellee-Father, knowing that Appellant-Mother is a light traveler, never suspected that she would not be returning to the marital home and she did not communicate that she would never be returning. (04/07/2021 Transcript, pp. 84-85; 04/28/2021 Transcript, p. 201).

Appellant-Mother and the girls returned to Fenton from Pittsburgh on September 20. (04/07/2021 Transcript, p. 61). Appellant-Mother, who was in constant communication with Appellee-Father, told Appellee-Father that they were going to be staying in Fenton that night, as they had arrived late in the evening and Appellant-Mother did not want to drive back to Traverse

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City at such a late hour. (04/07/2021 Transcript, pp. 61, 99, 101). Appellee-Father, knowing that Appellant-Mother frequently takes the girls on trips to see her parents in Fenton, assumed that nothing was out of the ordinary. (04/07/2021 Transcript, p. 62). However, on September 21, Appellant-Mother informed Appellee-Father that she would be taking the girls to Salt Lake City, UT with her and her father to check on the renovations to her parents' condo. (04/07/2021 Transcript, p. 62; 04/28/2021 Transcript, p. 202). While the spontaneity of the trip struck Appellee-Father as odd, he did not object to Appellant-Mother bringing the girls with her. (04/07/2021 Transcript, pp. 62-63, 225-226). While in Utah, Appellant-Mother was again in constant contact with Appellee-Father, including Facetiming with him, sending him a video of her and the girls telling Appellee-Father that they missed him and couldn't wait to be home; continually signing her messages with "I love you," "xo," kissing, and heart emojis; telling Appellee-Father they would be snuggling up when she returned; and agreeing to contact the marriage counseling she had picked for her and Appellee-Father to see. (04/07/2021 Transcript, pp. 52, 91, 93, 96, 99, 226-228; 04/28/2021 Transcript, pp. 204, 206-208, 211).

Appellant-Mother and the girls returned to Michigan on September 26, 2020. (04/07/2021 Transcript, p. 63; 04/28/2021 Transcript, p. 203). Although Appellee-Father consistently asked Appellant-Mother when she and the girls would be returning home, Appellant-Mother never provided a straight answer. (04/07/2021 Transcript, pp. 61-63, 70-71). In the interim, and also without Appellee-Father's knowledge or consent, Appellant-Mother had switched the girls' primary care doctor and dentist from Traverse City to local doctors in Fenton; Appellant-Mother enrolled AVS in therapy; Appellant-Mother had applied for a change of address with the Postal Service and the Secretary of State; Appellant-Mother obtained a new driver's license and voter registration; Appellant-Mother terminated the new nanny's employment; Appellant-Mother contacted GTACS, unenrolled AVS, and requested a refund of AVS' tuition; Appellant-Mother registered the girls for Kindercare in Fenton; Appellant-Mother enrolled the girls in counseling, and Appellant-Mother filed for divorce in Genesee County. (04/07/2021 Transcript, pp. 74-76, 85, 105, 191, 197-198; 04/28/2021 Transcript, pp. 134-150, 168, 219-224, 233-240). Appellee-Father was not aware of any of these changes until October 3, 2020, when Appellee-Father drove to Fenton to retrieve his vehicle and his family, or so he thought.

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(04/07/2021 Transcript, pp. 50-51; 04/28/2021 Transcript, pp. 218-219). When he arrived at Appellant-Mother's parents' home, Appellant-Mother handed Appellee-Father a note, explaining that she would not be returning to Traverse City and that she was keeping the girls with her in Fenton. (04/07/2021 Transcript, pp. 53, 77-78). Appellee-Father was extremely taken aback by this news, and as such could not respond at the time. (04/07/2021 Transcript, pp. 51-52, 77-78). Feeling he had no choice, Appellee-Father returned to Traverse City without the girls, who were confused that Appellee-Father was leaving without them. (04/07/2021 Transcript, pp. 77-79).

Upon his return, alone, to Traverse City, Appellee-Father immediately obtained counsel, filed for divorce in Leelanau County the next business day, and moved to dismiss Appellant-Mother's Genesee County action for lack of jurisdiction. (04/07/2021 Transcript, pp. 50, 80). The Genesee County Circuit Court dismissed Appellant-Mother's action In December 2020 with prejudice. (04/07/2021 Transcript, p. 87). Appellee-Father also filed several motions in the Leelanau action, including a motion to require Appellant-Mother to return with the children within 100 miles of the marital home.

Between October 2020 and January 2021 when the temporary order was entered in this matter, Appellant-Mother insisted that Appellee-Father only exercise parenting time at her parents' home in Fenton. (04/07/2021 Transcript, pp. 115, 119, 121-122; 04/27/2021 Transcript, pp. 19, 122-123). To that end, Appellant-Mother outright denied Appellee-Father's many requests to bring the children to Traverse City. (04/28/2021 Transcript, p. 215). In spite of the inconvenience of that arrangement and the numerous requests Appellee-Father made to see the children, Appellee-Father was able to make it to Fenton at least six times during that four-month period to see the girls, and Appellant-Mother allowed Appellee-Father to have an overnight visit in Traverse City with the girls during the Thanksgiving holiday. (04/07/2021 Transcript, pp. 115, 119, 176-177; 04/27/2021 Transcript, pp. 26-27, 124; 04/28/2021 Transcript, pp. 217-218). Appellant-Mother only agreed to this visit because Appellee-Father had put in writing that he would not drink during his parenting time and that he would return the girls to Appellant-Mother. (04/28/2021 Transcript, p. 30; 05/12/2021 Transcript, pp. 63-64). Additionally,

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Appellee-Father paid child and spousal support to Appellant-Mother during this time, as well as paying Appellant-Mother $7500 for attorney's fees. (04/07/2021 Transcript, p. 124; 05/12/2021 Transcript, p. 51). Once the January 7, 2021 order was entered, Appellee-Father had parenting time with the children in Traverse City every other weekend. (04/27/2021 Transcript, pp. 37-38).

During this time period, Appellant-Mother' parents purchased a home within walking distance of theirs and were renovating it for Appellant-Mother and the girls. (04/28/2021 Transcript, pp. 95-96, 103). Appellant-Mother has no ownership interest in this home and had planned to move into the home once renovations were complete. (04/28/2021 Transcript, pp. 96-97).

The Hearing on Appellee-Father's Motions

The Trial Court Referee held a hearing on Appellee-Father's various motions beginning on April 7, 2021. (04/07/2021 Transcript, p. 4).

Appellee-Father's Testimony

Appellee-Father testified that he did not have any concerns about caring for the children without Appellant-Mother, as he had cared for them their whole lives. (04/07/2021 Transcript, p. 64). Appellee-Father stated that, while AVS was enrolled in a Catholic school, the family did not regularly attend church, but he would not be opposed to the girls growing up in a church environment. (04/07/2021 Transcript, pp. 186-187). Appellee-Father confirmed that he could support the girls on his current salary, that he would continue to go above and beyond what the Trial Court ordered him to provide, and that he currently paid for 82% of the parties' bills. (04/07/2021 Transcript, pp. 200-201). Appellee-Father also confirmed that it was his intent to retain the marital home. (04/13/2021 Transcript, p. 49). Appellee-Father testified that he had no mental or physical health issues. (04/13/2021 Transcript, pp. 98-99). Appellee-Father acknowledged that Appellant-Mother had taken the lead on the girls' medical needs and scheduling appointments due to her medical background, however, Appellee-Father was always involved in the decision making, would attend

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appointments, and would take the girls on his own if that was what was needed for Appellant-Mother's schedule. (04/27/2021 Transcript, pp. 44-45). Appellee-Father also testified that Appellant-Mother had taken the lead on scheduling playdates for the girls as well as involving them in extracurricular activities, and that Appellee-Father would often take the girls on day trips, such as to the children's museum. (04/27/2021 Transcript, pp. 48-50).

Appellee-Father expressed that, after Appellant-Mother told him that she was leaving him in front of her entire family, he had felt extremely blindsided and that his next thought was how he was going to get the girls back. (04/07/2021 Transcript, pp. 78, 80). Appellee-Father stated that he was not served with Appellant-Mother's Genesee divorce complaint under October 9 and that Appellant-Mother had never discussed the retrieval of her items from the martial home. (04/07/2021 Transcript, pp. 81, 87). Appellee-Father explained that he had not been present when Appellant-Mother came to collect her belonging from the marital home, so Appellee-Father had no say in what was taken. (04/13/2021 Transcript, pp. 47-48). Appellee-Father testified that he had no idea if the move to Fenton would be temporary because, as far as he was aware, the entirety of the girls' lives was still in Traverse City. (04/07/2021 Transcript, pp. 102-103). However, once Appellant-Mother had moved to Fenton, Appellee-Father found out that "she unilaterally did as she pleased" regarding the girls, including telling the girls that the parties were getting a divorce and forced Appellee-Father to play catch-up. (04/07/2021 Transcript, pp. 105-107, 113). Despite his late start and his disagreement with the enrollments, Appellee-Father was able to contact each of the girls' new providers, including informing the school picked out by Appellant-Mother in Genesee County in writing that Appellee-Father did not agree with the girls' enrollment there. (04/07/2021 Transcript, pp. 107-108, 112). Appellee-Father recalled that the decision to enroll AVS at GTACS had been a joint decision, although Appellant-Mother likely filled out the paperwork, and that Appellant-Mother had enrolled the girls in school in Fenton after Appellee-Father had informed Appellant-Mother and her attorney that Appellee-Father did not agree to the girls being enrolled anywhere but Traverse City. (04/27/2021 Transcript, pp. 73-76).

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Appellee-Father stated that Appellant-Mother had denied Appellee-Father visitation with the children due to his filing of a divorce complaint in Leelanau County. (04/07/2021 Transcript, p. 115). Appellee-Father reported that Appellant-Mother had told him that the only way he could see the children would be if he dismissed his divorce complaint or if he signed a temporary custody agreement and that any parenting time before the January 7 order was "dictated" by Appellant-Mother. (04/07/2021 Transcript, p. 116; 04/27/2021 Transcript, pp. 12-13). Appellee-Father also reported that Appellant-Mother was restricting his FaceTimes with the children and would only allow FaceTimes if Appellee-Father scheduled them ahead of time, so Appellee-Father was FaceTiming with the girls as often as he was able. (04/07/2021 Transcript, pp. 118, 177; 04/27/2021 Transcript, p. 50). Appellee-Father absolutely denied that Appellant-Mother had been a "single parent," that he was an absentee father, and called Appellant-Mother's claims that the girls are scared of him "100% made up." (04/13/2021 Transcript, pp. 95-98). Appellee-Father also denied that Appellant-Mother was a full stay-at-home parent, as the parties had always had a nanny. (04/27/2021 Transcript, pp. 9, 117-119).

Appellee-Father described the entire process as "devastating" and "heart wrenching" to himself and the children, noting that the children cry quite often and that Appellant-Mother had been "cold," "calculated," and "has got no emotions towards [Appellee-Father] or the kids." (04/07/2021 Transcript, pp. 120-121, 123; 04/27/2021 Transcript, pp. 126-128). Appellee-Father denied Appellant-Mother's allegation that the children are afraid of him and opined that Appellant-Mother was attempting to execute her "plan" at all costs, without consideration of what is best for the girls. (04/07/2021 Transcript, pp. 123-124). "She just wants to do what is right for [Appellant-Mother]…She doesn't care." (04/07/2021 Transcript, p. 124). Appellee-Father expressed that Appellant-Mother's unwillingness to compromise on any issues had also led to the breakdown of the marriage as "it was all about [Appellant-Mother] and her desires." (04/07/2021 Transcript, pp. 145-146). Appellee-Father stated that this was not in the children's best interests and that he no longer respected Appellant-Mother's parenting because of "her own personal selfishness." (04/07/2021 Transcript, p. 146; 04/13/2021 Transcript, p. 51). Appellee-Father expressed that he had concerns about Appellant-Mother's parenting during the marriage due to her mental health issues and drug use, however, he did

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not deny that Appellant-Mother is a loving mother. (04/07/2021 Transcript, pp. 52-58). Appellee-Father testified to his belief that Appellant-Mother was attempting to alienate the children from him and his efforts to combat that alienation, including FaceTiming with the girls regularly, driving to Fenton to see the girls whenever he could, using all of his parenting time, and requesting make-up parenting time. (04/07/2021 Transcript, pp. 130-132).

Appellee-Father gave the example of the issues surrounding his celebration of VLS' birthday. (04/07/2021 Transcript, pp. 135-136). According to the January 2021 order, Appellee-Father was allotted parenting time with VLS for her birthday in Traverse City, as the order required Appellant-Mother to bring the girls to Traverse City for all parenting times except summer parenting time. (04/07/2021 Transcript, pp. 135-136). Despite the order, Appellant-Mother unilaterally determined that Appellee-Father could only exercise parenting time in Fenton for VLS' birthday. (04/07/2021 Transcript, pp. 135-136). As Appellee-Father did not wish to exercise his birthday parenting time around Appellant-Mother's family and he wanted to follow the court order, Appellee-Father offered to meet Appellant-Mother halfway for the exchange, however she refused that as well. (04/07/2021 Transcript, pp. 137, 139, 178-180). Appellee-Father testified that Appellant-Mother had offered an additional overnight, however, she later denied that because Appellee-Father had "missed" VLS' birthday parenting time. (04/07/2021 Transcript, p. 141). Appellee-Father was officially awarded make-up parenting time after he filed a complaint with the FOC, however, Appellant-Mother had denied Appellee-Father's requests for the make-up time or had simply not shown up at the agreed upon time and location. (04/07/2021 Transcript, pp. 142-143; 04/27/2021 Transcript, p. 68).

Appellee-Father recounted that he cannot even take Appellant-Mother's phone calls any longer, as she records them despite Appellee-Father asking her not to and she continues to harass him. (04/13/2021 Transcript, p. 100). Because of this, Appellee-Father opined that Appellant-Mother had made communication "impossible." (04/13/2021 Transcript, pp. 101, 180). Despite the difficulties caused by Appellant-Mother, Appellee-Father testified that he has a willingness to foster a relationship between Appellant-Mother and the girls, that there was no reason to create a mess around this

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case, and that it was "100% selfishness" on the part of Appellant-Mother as to why so much acrimony existed in the case. (04/13/2021 Transcript, pp. 104, 183-184). Appellee-Father did not think that Appellant-Mother was willing to facilitate a relationship between him and the children. (04/13/2021 Transcript, pp. 177-178).

Appellee-Father unequivocally stated that it is against the children's best interests to be in Fenton and that the current system was simply unworkable. (04/07/2021 Transcript, pp. 124-127; 04/13/2021 Transcript, pp. 101-103). Appellee-Father requested that the Trial Court order Appellant-Mother to return to Traverse City so that the parties could share equal parenting time, however, should Appellant-Mother choose to remain in Fenton, Appellee-Father requested primary physical custody. (04/07/2021 Transcript, pp. 128-129, 175-176). Appellee-Father expressed that he was not interested in having more expanded parenting time over the summer as a way to come closer to 50/50 custody, as he could not make-up everything he missed throughout the year during the summer. (04/13/2021 Transcript, pp. 189-190). Appellee-Father acknowledged that, should he be awarded custody, he would be employing a nanny, however Appellee-Father did not see this as a negative as the girls had a nanny for the entirety of their lives. (04/27/2021 Transcript, pp. 10-11). Appellee-Father denied that he simply wanted to control Appellant-Mother or the children or that he would ever withhold parenting time from Appellant-Mother, and rather, he expressed that it would be best "that both parents are active and participate." (04/07/2021 Transcript, pp. 147-148, 176). Appellee-Father testified that Appellant-Mother had only recently begun to express concern about his parenting ability. (04/07/2021 Transcript, pp. 157-158). Appellee-Father denied that he was simply a "weekend dad," as he wanted to be involved in all aspects of the girls' lives, including the everyday events like homework and sports practices, but he also stated he would follow court orders and be the best co-parent he could be. (04/07/2021 Transcript, pp. 194-196).

Appellee-Father described the parenting time he had with the girls as the "best time ever." (04/07/2021 Transcript, p. 166). Appellee-Father stated that he had taken the week off from work, so he was able to spend the entire week with the girls for spring break, that they did many activities, as well as keeping the same routine that they had when they lived in the martial

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home. (04/07/2021 Transcript, pp. 168-169). "[W]e did all the wonderful things that a dad does with his two loving children who love him." (04/07/2021 Transcript, p. 169). Appellee-Father also testified that the current parenting time schedule of every other weekend did not offer him much time with the girls, as they usually arrived late in the evening on Friday and then had to be in the car by early afternoon on Sunday in order to make it on time to the exchange point. (04/07/2021 Transcript, pp. 169-174). Appellee-Father then would attempt to fit an entire weekend's worth of activities into the single full day of parenting time he had with the girls, including playing with the friends they still had in Traverse City. (04/07/2021 Transcript, pp. 171-172). Appellee-Father stated that the girls voice their unhappiness on Sunday afternoons, that the girls get concerned about leaving on Saturday nights, and Appellee-Father simply reassured them that he loves them and that he will see them soon. (04/07/2021 Transcript, pp. 174-175; 04/13/2021 Transcript, pp. 34-37).

Appellee-Father adamantly testified that his bond with the girls had not changed since the move to Fenton. (04/07/2021 Transcript, p. 178). Appellee-Father described his relationship with the girls as "[w]onderful. Loving, wonderful, they respect me, they love me, they look up to me." (04/07/2021 Transcript, p. 180). Appellee-Father stated that the transition had been hard on the girls and that they did not understand why they could not see him more often. (04/07/2021 Transcript, pp. 180-181). Appellee-Father described AVS as "extremely, extremely smart…very timid, very book-oriented, extremely learning, you know. She is about learning, and arts and crafts," while VLS "is more tomboyish…she is more throw down, wrestle kind of bullish girl." (04/07/2021 Transcript, pp. 181-182). Appellee-Father confirmed that both girls come to him individually for comfort, that they would come to him as much as they would go to Appellant-Mother for comfort, that the girls are always happy to see him, and that he did not dispute that the girls have a strong relationship with Appellant-Mother. (04/07/2021 Transcript, pp. 182-183). Appellee-Father readily acknowledged that Appellant-Mother cared about the girls "all the time," that she loves them and cares about them, however Appellee-Father was concerned that Appellant-Mother did not have "their best interests front and center." (04/27/2021 Transcript, p. 99). Appellee-Father testified that he did not have a reason to discipline the girls due to their age, however,

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when necessary, he would sit and talk them through things. (04/07/2021 Transcript, pp. 184-185).

Appellee-Father stated that, while VLS was too young to express a preference and AVS likely could express a preference, asking AVS to do so would likely confuse her and Appellee-Father did not want to put her through that. (04/13/2021 Transcript, pp. 175-177). "She has gone through enough already being taken from her father and moved to a different home, and I can't do that to her." (04/13/2021 Transcript, pp. 176-177). Appellee-Father acknowledged that both his parents and his brother had predeceased him, that he had not blood relatives in the Traverse City area, and that the majority of Appellant-Mother's family live in Fenton. (04/27/2021 Transcript, pp. 96-97).

Appellant-Mother's Testimony

Appellant-Mother testified that she had resided in Fenton since September 19, 2020. (04/27/2021 Transcript, p. 179). Appellant-Mother stated that she had prepared to leave Appellee-Father earlier than that, however, Appellee-Father had begged her to stay and help him, and Appellant-Mother wanted to give counseling another try. (04/28/2021 Transcript, pp. 15, 17). However, Appellee-Father's participation, according to Appellant-Mother, was not meaningful and Appellee-Father continued to disregard Appellant-Mother's requests not to drink during the week. (04/28/2021 Transcript, p. 15). Appellant-Mother described how she was fearful of Appellee-Father's "drinking rage," which she and the girls would have to hide out of fear from him. (04/28/2021 Transcript, pp. 15-16). Appellant-Mother testified that she had stayed longer than she planned to because Appellee-Father "talked her down" as he was her husband, 20 years older, and she felt as though she had an obligation to be there. (04/28/2021 Transcript, p. 18).

Appellant-Mother testified that she had met with the family law attorney in Fenton on September 18, which is why she did not bring the girls with her as she did not want them around during that meeting. (04/28/2021 Transcript, pp. 20, 192). Appellant-Mother confirmed that, despite her "great concerns" about leaving the girls in Appellee-Father's care, she left them with Appellee-Father any way, even though she had family in Fenton who could have cared for the girls during her meeting. (04/28/2021

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Transcript, pp. 190-192). Appellant-Mother knew that she wanted to move to Fenton and tell Appellee-Father about the divorce from Fenton so she could be around her family and that she was not comfortable asking Appellee-Father for a divorce in the Traverse City home because she was afraid that Appellee-Father would be angry and unpredictable. (04/28/2021 Transcript, p. 21).

Appellant-Mother admitted that she had been communicating with Appellee-Father daily and that it was never a secret where she and the girls were. (04/28/2021 Transcript, p. 22). Appellant-Mother explained that her texts to Appellee-Father were a way of "keeping the peace" until she could complete her divorce filing. (04/28/2021 Transcript, pp. 24-25). Appellant-Mother testified that she had packed extra bags for the girls when she returned to Traverse City on September 18 while Appellee-Father was in the shower and then hid the bags in the car under a blanket so Appellee-Father wouldn't see them. (04/28/2021 Transcript, p. 22). Appellant-Mother denied that she was being sneaky and clarified that she thought she was being safe, as she did not know how Appellee-Father would react, Appellee-Father is physically superior, who has shown aggression previously, and who owns several guns. (04/28/2021 Transcript, pp. 22-23). Appellant-Mother testified that she had wanted her father around when she was leaving because Appellee-Father and her father have a good relationship and Appellee-Father "never acted out much in front of my parents." (04/28/2021 Transcript, p. 24). Appellant-Mother recalled that, when she and her father arrived at the marital home on September 18, Appellee-Father was not drunk and she assumed that Appellee-Father had fed the girls and gone through their nighttime routine with them. (04/28/2021 Transcript, pp. 196-197).

Appellant-Mother stated that her main reason for cutting back her work hours after AVS was born was because she was worried about Appellee-Father having to care for AVS alone on the weekends and Appellee-Father's drinking. (04/27/2021 Transcript, p. 184; 05/12/2021 Transcript, pp. 5-6). Appellant-Mother recalled that Appellee-Father had requested that Appellant-Mother not work weekends and that she was very concerned about his drinking, which would usually start early in the day on the weekends, although Appellee-Father would try to not drink until Appellant-Mother returned home. (04/27/2021 Transcript, pp. 186-187). Appellant-

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Mother testified that conversations about Appellee-Father's drinking were a regular occurrence in the marriage, that Appellee-Father had not stopped drinking when she became pregnant like she had expected him to, and that she was "shocked" that Appellee-Father did not know "what it would take to be a parent." (04/27/2021 Transcript, pp. 187, 199). "I think if I would have had a spouse who was willing to participate in actual childcare and share the parenting responsibilities more then it wouldn't have been an issue that I worked one weekend a month." (04/27/2021 Transcript, p. 188). Appellant-Mother stated that it "was definitely a family decision" for her not to work as much, that Appellee-Father had told her that her work schedule stressed him out, and that, after she reduced her hours, Appellee-Father told her that had helped with his stress and the situation in the household did improve a bit after that. (04/27/2021 Transcript, pp. 196, 203; 04/28/2021 Transcript, p. 6).

Appellant-Mother explained that Appellee-Father would often be rude to her in front of the children, specifically that he would become belligerent and call her names in front of the girls. (04/28/2021 Transcript, pp. 6-7). Appellant-Mother described how Appellee-Father would slam doors and walk away from her during arguments, that COVID made everything worse, and that he was teaching the girls that it was ok for men to treat women that way. (04/28/2021 Transcript, pp. 7-8, 10). Appellant-Mother testified that she had started leaving Appellee-Father notes about his behavior and that she really only took issue with it when it occurred in front of the girls, as she was afraid the girls would use the behavior as justification to treat others the same or that the girls would witness Appellee-Father battering her. (04/28/2021 Transcript, p. 8; 05/12/2021 Transcript, p. 57). Appellant-Mother later admitted that Appellee-Father had never been physical towards her. (05/12/2021 Transcript, p. 57). Appellant-Mother expressed that she was fearful of Appellee-Father when he drank as he was unpredictable and that she had asked him not to drink during the week. (05/12/2021 Transcript, pp. 34-35).

Appellant-Mother opined that Appellee-Father had an untreated anger issue and that she had suggested that Appellee-Father attend anger management, however, Appellee-Father had never voluntarily participated in nor engaged meaningfully in any kind of counseling. (04/28/2021 Transcript, pp. 116-118). Appellant-Mother admitted that she had never

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seen Appellee-Father direct any anger at the girls and that she had no proof of his anger issue, however she was very concerned about it; that the children had never been seriously harmed while in Appellee-Father's care, and that Appellee-Father did have a regular counselor that he really liked. (04/28/2021 Transcript, pp. 118, 212; 05/12/2021 Transcript, pp. 6, 58). Appellant-Mother also admitted that, in spite of her fears, she had never contacted the police or Child Protective Services, and she had never attempted to obtain a PPO against Appellee-Father. (05/12/2021 Transcript, p. 50). Appellant-Mother clarified that her fears were based on what she believed Appellee-Father was capable of, not what he had done. (05/12/2021 Transcript, p. 130).

Appellant-Mother recalled that she knew the marriage was over when she disclosed to her doctor during her routine physical in July 2020 that Appellee-Father was abusing her. (04/28/2021 Transcript, pp. 11-12). As she did not feel comfortable being in the same home as Appellee-Father, Appellant-Mother asked Appellee-Father for a separation, something they had done in the past when Appellee-Father's employment required him to work in Birmingham, Michigan. (04/28/2021 Transcript, p. 13). Appellant-Mother stated that Appellee-Father "ridiculed" her for "running away" to her parents' home in Fenton, that she had started stockpiling clothes and other items for her and the girls at her parents' home in the summer of 2020, and that she had not wanted to take the girls away at first, but Appellee-Father refused to leave the marital home, so Appellant-Mother took the girls. (04/28/2021 Transcript, pp. 13-14). Despite this, Appellant-Mother opined that Appellee-Father had handled the relocation with love and respect for her and the girls, and she could not say that she did the same. (05/12/2021 Transcript, pp. 103-105). Appellant-Mother acknowledged that, following her relocation to Fenton, she did not think to include Appellee-Father on any of the decision making and she just continued to be a single mom. (04/28/2021 Transcript, p. 242).

Appellant-Mother stated that Appellee-Father had not told her that he had filed for divorce, that he had her served with the complaint on October 9 when she came to get her things, and that "[t]o me it was just another way where I feel like [Appellee-Father] wasn't respectful of my decision for divorce." (04/28/2021 Transcript, pp. 25-26). Appellant-Mother did not think that Appellee-Father would have used the legal system against her and

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it caused her to lose faith in him. (05/12/2021 Transcript, pp. 107-108, 110). Appellant-Mother described Appellee-Father's request for full custody as "baffling." (04/26/2021 Transcript, p. 26). Appellant-Mother denied that she had denied Appellee-Father parenting time on VLS' birthday and instead blamed Appellee-Father for not getting back to her in time with his plan for parenting time. (04/28/2021 Transcript, pp. 63-64). Appellant-Mother stated that, when Appellee-Father did contact her the week of VLS' birthday and requested that Appellant-Mother bring VLS to Traverse City, Appellant-Mother declined to do so as she "did not think that that would be in the best interest of [VLS]." (04/28/2021 Transcript, pp. 64-65). Appellant-Mother further stated that she had never denied Appellee-Father's requests to see the children, although she agreed that, despite Appellee-Father's requests, she did not bring the children to Traverse City between September 18 and Thanksgiving of 2020. (04/28/2021 Transcript, pp. 215-217).

Appellant-Mother opined that the two full days of parenting time Appellee-Father was awarded was "more parenting time since this parenting time order than he ever parented the girls before." (04/27/2021 Transcript, p. 213; 05/12/2021 Transcript, p. 41). Appellant-Mother testified that Appellee-Father was never interested in parenting prior to the separation, to the point that Appellant-Mother would bring in extra care to supplement Appellee-Father's care if she was going to be gone. (04/27/2021 Transcript, pp. 213-214). Appellant-Mother stated that the only positive about Appellee-Father's parenting was his "playful relationship" with the girls and, while she was not comfortable calling herself a "single parent" like she had put in her pleadings, Appellant-Mother often felt like she was the person carrying all of the parenting responsibilities. (04/28/2021 Transcript, pp. 214-215).

Appellant-Mother recalled that Appellee-Father had told her that it was too overwhelming to care for the girls overnight, that Appellee-Father never wanted to care for the girls overnight or on his own, and that she was always worried about his drinking. (04/27/2021 Transcript, p. 214; 05/12/2021 Transcript, p. 44). Appellant-Mother stated that Appellee-Father was worried that he would not get up with the girls in the middle of the night, as that was Appellant-Mother's responsibility, and that, at one point, Appellee-Father had told Appellant-Mother he never wanted to care for the girls

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overnight again. (04/27/2021 Transcript, p. 216). Appellant-Mother described how she was very hurt by that declaration, and she did not leave the girls alone with Appellee-Father overnight for a year after that. (04/27/2021 Transcript, pp. 217-218). Appellant-Mother could not recall how the overnight care went when she did leave the girls overnight with Appellee-Father. (04/27/2021 Transcript, p. 218). Appellant-Mother stated that the parenting time schedule that was ordered by the January 7 order adequately fostered the relationship between Appellee-Father and the girls as it "reflects his overall parenting interest that were displayed before we moved to Fenton." (04/28/2021 Transcript, p. 163).

Appellant-Mother recalled that she had to leave the girls with Appellee-Father when she had hip surgery, however, she had her mother come up from Fenton as she knew that Appellee-Father could not care for the girls on his own and Appellant-Mother was going to need additional help. (04/27/2021 Transcript, p. 219). Appellant-Mother testified that Appellee-Father had not been interested in being the primary caregiver and he did not take any time off from work during her recovery, so Appellant-Mother also had her sister come for a week and had help from the nannies. (04/27/2021 Transcript, pp. 219-220). Appellant-Mother stated that, during her recovery, Appellee-Father had helped with some of the grocery shopping, however, Appellant-Mother was still providing the majority of care for the girls, including nighttime care. (04/27/2021 Transcript, p. 220). Appellant-Mother explained that she had set up a bed near the girls' room as Appellee-Father had made it clear that he was not going to assist with the nighttime care. (04/27/2021 Transcript, pp. 220-221). Appellant-Mother recalled that it had been a similar situation after VLS had been born, with Appellee-Father and her mother both caring for AVS while Appellant-Mother cared for VLS. (04/27/2021 Transcript, p. 221).

Appellant-Mother stated that she was responsible for all the day-to-day care of the girls, including doing the grocery shopping, buying clothing for the girls, cooking all the meals, disciplining, and bathing the girls. (04/27/2021 Transcript, pp. 203-204; 04/28/2021 Transcript, pp. 73-74, 81-84). Appellant-Mother testified that Appellee-Father would only ever grocery shop for himself, as he liked specialty meats and alcohol. (04/27/2021 Transcript, pp. 203-204). Appellant-Mother confirmed that she had taken the lead on enrolling the girls in extracurricular activities and

making medical appointments and that, while Appellee-Father had attended almost all of AVS' soccer games, "it was like pulling teeth to get [Appellee-Father] to come to those games sometimes. He never wanted to come, because that was disturbing his – you know, it was like all day on Saturday." (04/28/2021 Transcript, pp. 77-79, 86-87). Appellant-Mother recalled that she had arranged quasi-parent-teacher conferences with the girls' various care providers while in Traverse City and that Appellee-Father did not regularly attend or pay attention during them, even when they were in the marital home. (04/28/2021 Transcript, pp. 79-81).

Appellant-Mother explained that she was also responsible for arranging the girls' bedtime routine, that the girls went to bed at the same time every night after brushing their teeth and washing their faces, and then Appellant-Mother would read books to them in bed. (04/27/2021 Transcript, pp. 204-205). Appellant-Mother recalled that it was very difficult for her to get Appellee-Father involved in the girls' nighttime routine, as he did not understand the importance of a nighttime routine. (04/27/2021 Transcript, p. 205). Appellant-Mother testified that Appellee-Father would only be involved in the routine if she begged him and that he usually had a cocktail with him when he did. (04/27/2021 Transcript, p. 205). Appellant-Mother reiterated that Appellee-Father never took a leadership role in the nighttime routine, that he only read to the girls about half the time, and that Appellee-Father had called the routine "miserable." (04/27/2021 Transcript, pp. 206-207). Appellant-Mother opined that, since the move to Fenton, the girls were sleeping very well, had an established bed-time routine that they executed on their own, and that the girls sleep more after returning from visits with Appellee-Father. (04/28/2021 Transcript, pp. 106-108). Appellant-Mother described a similar situation with the girls' morning routine, although she did note that Appellee-Father would occasionally play with the girls while he was completing his own routine and that the nanny would simply take over care of the girls once she arrived. (04/27/2021 Transcript, pp. 207-208).

Appellant-Mother testified that the last time she needed a nanny, or a babysitter was February 2020 and that she had enrolled the girls in KinderCare in fall 2020 in Fenton for socialization and play time. (04/27/2021 Transcript, p. 212; 04/28/2021 Transcript, pp. 130, 237). Appellant-Mother stated that, going forward, her plan was to work on the

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days both girls were in school. (04/28/2021 Transcript, p. 167). Appellant-Mother opined that the girls transition schools very well and find friends and that the girls were better off without the "high stress environment" of the parties living together. (04/27/2021 Transcript, p. 213; 04/28/2021 Transcript, p. 106). Appellant-Mother stated that the girls had not been damaged by the move to Fenton, as they had virtual contact with Appellee-Father, however, Appellant-Mother also stated that, had Appellee-Father used the same tactics as Appellant-Mother had, that the girls would have been damaged. (05/12/2021 Transcript, pp. 68-69).

Appellant-Mother described the activities that the girls did in Fenton, which was limited to horseback riding, and noted that they had friends, with whom Appellant-Mother had organized play dates. (04/28/2021 Transcript, pp. 130-131; 05/12/2021 Transcript, pp. 86-87, 129). Appellant-Mother stated that, following the move to Fenton she "immediately tried to facilitate parenting time with [Appellee-Father]," noted that Appellee-Father had proposed the alternating weekend schedule, and expressed that she was not comfortable, at the time, with Appellee-Father exercising parenting time anywhere but Fenton. (04/28/2021 Transcript, pp. 29, 32-39). Appellant-Mother testified that her biggest concern was whether Appellee-Father was remaining sober. (04/28/2021 Transcript, p. 29). Appellant-Mother denied ever preventing Appellee-Father from being able to contact the girls, that Appellee-Father had honored her request to FaceTime the girls when he had them, and that, while she did not regularly FaceTime the girls when they were with Appellee-Father as she did not think it was necessary, she would like a schedule for FaceTiming. (04/28/2021 Transcript, pp. 41-42, 45, 56-59).

Appellant-Mother stated that the parties currently communicate a few times per week, however, it was only over text or FaceTime, as Appellee-Father was not comfortable having phone calls for fear of being recorded. (04/28/2021 Transcript, pp. 27-28). Appellant-Mother admitted to recording Appellee-Father's phone calls over his objection, as Appellee-Father would deny that they had conversations about issues involving the girls. (04/28/2021 Transcript, pp. 165, 170, 245-246). Appellant-Mother described the exchanges as uncomfortable and explained that she would prefer to exchange at a neutral halfway point because the girls want Appellant-Mother to come into the marital home with them. (04/28/2021

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Transcript, pp. 28, 133). Appellant-Mother testified that she has a very strong bond with the girls and that Appellee-Father also had a strong bond with the girls, however, Appellant-Mother believed that the girls would be more likely to go to her for comfort and would only go to Appellee-Father if they wanted something as "they knew that [Appellee-Father] was more of a permissive parent." (04/28/2021 Transcript, pp. 68-69). Appellant-Mother reiterated that Appellee-Father loves the girls, and the girls love him; that he is a fun, energetic dad; that girls and Appellee-Father have a good relationship; and the girls "like to have him around, they like to have him read books to them, they like to build things." (05/12/2021 Transcript, pp. 90-91, 94). Appellant-Mother explained that only Appellee-Father has the ability to support the girls on his own but critiqued Appellee-Father's providing, as Appellant-Mother believed that Appellee-Father "spoil[ed]" the girls. (04/28/2021 Transcript, p. 85; 05/12/2021 Transcript, p. 143). Appellant-Mother recalled that "[i]t was very rare for [Appellee-Father] to have the girls independently on the weekends," as Appellee-Father wanted to use the weekends to work on projects on his own and that he would usually start drinking by mid-morning on the weekends. (04/28/2021 Transcript, pp. 72-73).

Appellant-Mother did not think that the girls were old enough to express a preference or old enough to the consequences of expressing said preference. (04/28/2021 Transcript, pp. 131-132). Appellant-Mother stated that she was encouraging the relationship between Appellee-Father and the girls and agreed that communication with Appellee-Father had been difficult. (04/28/2021 Transcript, p. 132). Specifically, Appellant-Mother complained that it was difficult to get responses from Appellee-Father, but Appellant-Mother expressed that she would like to continue to communicate with Appellee-Father. (04/28/2021 Transcript, pp. 132-133). Appellant-Mother acknowledged that, under the January 7 order, she was required to communicate with Appellee-Father regarding decisions about the girls. (04/28/2021 Transcript, p. 243). Appellant-Mother explained that her family in Fenton was her parents, her grandfather for half the year, some cousins, and one of her aunts. (05/12/2021 Transcript, p. 47). Appellant-Mother noted that her parents were planning to start spending more time in Utah and that Appellee-Father had an established network of lifelong friends in Traverse City. (05/12/2021 Transcript, pp. 48-49).

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The Referee Recommendation on Custody

The Referee first found that the children's lives since the separation had "been marked with disruption and uncertainty." (06/07/2021 Recommendation, p. 6). As such, the Referee found that "the children do not yet have an established custodial environment with either parent, which physically excludes the other parent." (06/07/2021 Recommendation, p. 6). The Referee then applied the preponderance of the evidence standard to the best interest analysis. (06/07/2021 Recommendation, p. 6).

The Referee found that the majority of the best interest factors were equal between the parties. (06/07/2021 Recommendation, pp. 6-20). The Referee found that factors (b) and (c) favored Appellant-Mother, that factor (h) slightly favored Appellant-Mother, that factor (j) favored Appellee-Father, and factor (l) slightly favored Appellee-Father. (06/07/2021 Recommendation, pp. 6-20). The Referee recommended that the parties be awarded joint legal custody, with Appellant-Mother being awarded primary physical custody. (06/07/2021 Recommendation, pp. 22-23). Appellee-Father objected to the Referee recommendation, which was then set for de novo review. (10/11/2021 Transcript, p. 4).

The De Novo Review Hearing

Appellee-Father testified that, although the Referee recommendation had noted that there was housing insecurity regarding the marital home, since the recommendation had been entered, Appellee-Father had been awarded the home as part of the mediation agreement and he intended to continue to reside there. (10/11/2021 Transcript, pp. 25-28). Appellee-Father recounted that he had been the primary care giver for the girls over the summer, as he had not hired a nanny, and that the girls had very quickly fallen into a routine over the summer. (10/11/2021 Transcript, pp. 31-32). Appellee-Father described the various activities they had participated in over the summer, including going to the beach and trips to Wisconsin to see Appellee-Father's family. (10/11/2021 Transcript, pp. 34-35). Appellee-Father stated that the girls have always looked to him as a father, they have always come to him for comfort and love, and that he has maintained a strong bond with the girls such that their relationship remains consistent.

(10/11/2021 Transcript, p. 35). Appellee-Father did not note any issues with potty training over the summer. (10/11/2021 Transcript, p. 55).

Appellee-Father opined that both parties had been following the parenting time order and that he had made some concessions for Appellant-Mother, such as allowing the girls to stay with Appellant-Mother for an extra week to attend horse camp and visit with their cousins from California. (10/11/2021 Transcript, pp. 37, 41-42). Appellee-Father stated that he had been very, very flexible and that he "continue[d] to do what I believe is in the best interest of my children." (10/11/2021 Transcript, p. 43). Appellee-Father confirmed that he had simply started his summer parenting time a week late and had not complained, and that he had not travelled to Fenton to attend any of the girls' events since the Referee hearing as he was not aware that the girls were involved in anything. (10/11/2021 Transcript, pp. 43-44, 46).

Appellant-Mother testified that she had seen some regression with VLS' potty training over the summer and that VLS had been crying more, as well as acting cowardly and scared. (10/11/2021 Transcript, pp. 47-48). Appellant-Mother stated that when she had asked Appellee-Father about these issues, she had not gotten much of a response. (10/11/2021 Transcript, pp. 48-49). Appellant-Mother noted that the communication issues between the parties had continued and that they had been unable to coordinate on setting coparenting goals for the children because of Appellee-Father's lack of response. (10/11/2021 Transcript, pp. 49-50). Appellant-Mother stated that there had also been difficulties setting her week-long summer parenting time, as Appellant-Mother had requested July 4 weekend when her family would be in town. (10/11/2021 Transcript, pp. 50-51). When Appellee-Father denied that weekend based on it being his holiday under the parenting time order, Appellant-Mother went to the FOC and was awarded her week for later in the summer. (10/11/2021 Transcript, pp. 50-51). Appellant-Mother did not think it was fair that Appellee-Father had the ability to veto her choice of summer parenting time, as he had vetoed two different weeks. (10/11/2021 Transcript, p. 51). Appellant-Mother also expressed concerns as to whether Appellee-Father had consistently given the girls their sleeping aids they use while in Appellant-Mother's care, as she could not get a straight answer from Appellee-Father. (10/11/2021 Transcript, pp. 51-52).

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Regarding the issue of July 4, Appellee-Father clarified that Appellant-Mother had waited until July to submit her request and that Appellant-Mother's request was for nine days of uninterrupted time, rather than the seven she was granted in the order. (10/11/2021 Transcript, pp. 55-56). Appellee-Father had asked Appellant-Mother to pick a different date or for Appellant-Mother to alter the request such that the girls could still see Appellant-Mother's family, however, Appellant-Mother had refused and requested all or nothing. (10/11/2021 Transcript, p. 56). Appellee-Father explained that, after Appellant-Mother took the issue to the FOC without his knowledge, the FOC agreed with Appellee-Father and denied Appellant-Mother's request, on the basis that she was requesting nine days of parenting time rather than seven. (10/11/2021 Transcript, p. 57).

The Trial Court issued its decision on Appellee-Father's objections on November 17, 2021. (11/17/2021 Opinion). The Trial Court found that the children had an established custodial environment with both parents and applied the preponderance of the evidence standard to the best interest determination. (11/17/2021 Opinion, p. 6).

The Trial Court found that factors (b) and (c) continued to favor Appellant-Mother, based on her level of involvement in and taking the lead on the children's medical and educational decisions, despite the finding that both parties attended to those needs. (11/17/2021 Opinion, pp. 7-12). Factor (h) also continued to slightly favor Appellant-Mother, based on the greater opportunities for socialization for the children at Appellant-Mother's residence. (11/17/2021 Opinion, pp. 15-16). Factor (j) continued to favor Appellee-Father, based on the fact that "[b]ut for [Appellee-Father]'s efforts to stay involved with the girls, have frequent phone calls and energetically exercise all of his parenting time, [Appellant-Mother]'s act of moving to Fenton could have had a much more deleterious effect on the parent-child relationships." (11/17/2021 Opinion, pp. 16-17). The Trial Court found all other factors to be equal or unapplicable. (11/17/2021 Opinion, pp. 6-22).

The Trial Court went on to note:

> [c]andidly, 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

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> person would think that Plaintiff would end up with minimal parenting time. Nor it is 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 care 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.

(11/17/2021 Opinion, pp. 20-21). The Trial Court determined that the parties were not contesting joint legal custody, that Appellant-Mother should be awarded primary physical custody, and, due to her choice to move to Fenton, that Appellant-Mother should bear more of the transportation burden. (11/17/2021 Opinion, pp. 21-22).

Following the incorporation of the Trial Court's November 17, 2021 custody ruling into the Judgment of Divorce and the entry of the Judgment. (03/29/2022 Judgment; 03/24/2022 Transcript, pp. 18-19).

The Parties' Appeals and the December 15, 2022 Court of Appeals Opinion

Both parties filed appeals from the Judgment of Divorce. (COA Docket Nos. 361068; 361074). Despite filing her own appeal and attempting to improperly raise several arguments to the best interest factors in her Appellee's Brief in Docket No. 361068, Appellant-Mother did not appeal

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any issues related to custody, including the Trial Court's determination of the ECE. (12/15/2022 COA Opinion, pp. 1, 5).

The Court of Appeals affirmed the Trial Court's determinations regarding the best interest factors and the Trial Court's child support related rulings. (12/15/2022 COA Opinion, pp. 3-5, 9-13). Regarding the children's established custodial environment, the Court of Appeals noted the Trial Court had applied the preponderance of the evidence standard "indicating that the established custodial environment was with both parents at all times" and that the joint established custodial environment had continued post-separation. (12/15/2022 COA Opinion, p. 6). The Court of Appeals, relying on the *Bofysil v Bofysil*, 332 Mich App 232; 956 NW2d 544 (2020) case, was not persuaded by Appellant-Mother's argument that the Trial Court should have looked only post-separation to address the children's ECE. (12/15/2022 COA Opinion, p. 6).

Next, the Court of Appeals addressed the Trial Court's conclusion that the custody award would not change the established custodial environment because the children would continue to look to both parents for guidance, discipline, and the necessities of life. (12/15/2022 COA Opinion, p. 6). The Court of Appeals held, even if this was the case, based on the opinion in *Liebermann v Orr*, 319 Mich App 68; 900 NW2d 130 (2017), because the custody award changed the nature of Appellee-Father's interaction with the children, as well as a substantial reduction in overnights from the situation prior to the separation, the trial Court should have applied the clear and convincing burden. (12/15/2022 COA Opinion, pp. 6-8). As such, the Court of Appeals ordered a remand to the Trial Court to address the best interest factors under the clear and convincing standard. (12/15/2022 COA Opinion, pp. 8-9, 13).

This appeal follows.

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STANDARD OF REVIEW

Appellee-Father agrees that the standard of review as reiterated in Appellant-Mother's supplemental brief appears to be complete and correct. Appellee-Father does not agree that the Court of Appeals "substituted its own judgment" for that of the Trial Court.

ARGUMENT

I. This Court should deny Appellant-Mother's application for leave because the Court of Appeals' decision does not violate case law and does not violate the intent of the Legislature as the Court of Appeals' decision only requires the Trial Court to apply the correct burden of proof in the event a parenting time schedule, as the one present here, modifies the ECE.

A. The Trial Court and Court of Appeals correctly decided the children have an established custodial environment with both parents.

A child's right to maintain a custodial relationship with his or her parents is at the center of the Child Custody Act. MCL 722.27(1)(c) prevents courts from modifying a child's established custodial environment without clear and convincing evidence that doing so is in the best interests of that child. It was the Legislature's intent to "minimize the prospect of unwarranted and disruptive change of custody orders and to erect a barrier against removal of a child from an established custodial environment, except in the most compelling cases." *Baker v Baker*, 411 Mich 567, 577; 309 NW2d 532 (1981). The established custodial environment depends

> upon a custodial relationship of significant duration in which [the child] was provided the parental care, discipline, love, guidance and attention appropriate to his age and individual needs; an environment **in both the physical and psychological sense** in which the relationship between the custodian and the child is marked by qualities of security, stability and permanence.

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Id. at 579-580 (emphasis added). Michigan law has long established that a child may have an established custodial environment with both parents, even where parenting time, or parental contributions, are not necessarily equal. *Jack v Jack*, 239 Mich App 668, 671; 610 NW2d 231 (2000).

The Trial Court determined the girls have an established custodial environment with both parents based on (1) the environment in the home in Traverse City prior to Appellant-Mother's move to Fenton and (2) Appellee-Father's efforts to maintain his relationship with the girls after Appellant-Mother's move. (11/17/2021 Opinion, p. 6). Prior to Appellant-Mother's move, the parties split parenting responsibilities. (11/17/2021 Opinion, pp. 20-21). The only person who has ever claimed that Appellee-Father was not an involved parent is Appellant-Mother, and the Trial Court did not find Appellant-Mother's claims to be credible. (11/17/2021 Opinion, pp. 5-12, 17). In fact, the Trial Court found very little of Appellant-Mother's testimony to be credible, including her claims of domestic violence or coercive control. (11/17/2021 Opinion, pp. 5-12, 17). After Appellant-Mother's move, Appellee-Father continued to foster his relationship with the girls through frequent phone calls and exercising any parenting time he was allowed. (11/17/2021 Opinion, pp. 16-17). Appellee-Father also is the girls' primary caregiver for the majority of the summer months and is the only caregiver for the girls during his parenting time throughout the school year. (11/17/2021 Opinion, pp. 34-35). Through his efforts, the girls continue to look to Appellee-Father for guidance, comfort, and the necessities of life, particularly during Appellee-Father's parenting time. (11/17/2021 Opinion, pp. 16-17). Appellant-Mother did not appeal this determination, despite filing her own appeal independent of Father's.

The Court of Appeals affirmed this finding, however, with a focus on the environment prior to Appellant-Mother's move. (12/15/2022 COA Opinion, p. 6). The Child Custody Act was created to prevent unwarranted and disruptive changes of custody; the difficulty in this case is that the unwarranted and disruptive change of custody occurred prior to a court order. (11/17/2021 Opinion, pp. 20-21). As such, the Court of Appeals was correct to affirm the Trial Court's findings based on the last stable established custodial environment the children had, which was the environment in the marital home. (12/15/2022 COA Opinion, pp. 6-8). However, even if the Court of Appeals' focus on the pre-separation

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environment was erroneous, given that Appellee-Father was able to maintain his relationship with the children despite Appellant-Mother's attempts to destroy this relationship, the Court of Appeals' overall decision on the established custodial environment was correct. *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 502 Mich 695, 736; 918 NW2d 756 (2018) (citing *People v Brownridge*, 459 Mich 456, 462; 591 NW2d 26 (1999)) ("This Court frequently affirms lower court decisions on exactly that basis, that they have reached the right result for the wrong reason;" internal quote marks omitted).

Appellant-Mother's approach to the established custodial environment, which she considers to be a mere matter of "semantics" is not consistent with the law nor the facts. (Appellant's Supplemental Brief, pp. 5-10). The question is not whose environment is superior, but rather, whether an environment exists at all and whether that environment would be modified in some way by the Trial Court's order. *Berger v Berger*, 277 Mich App 700, 706-707; 747 NW2d 336 (2008); *Pierron v Pierron*, 486 Mich 81, 92; 782 NW2d 480 (2010). Appellant-Mother's approach not only strips the term "joint established custodial environment" of any legal meaning where the parties do not exercise equal parenting time, but it also prevents the application of the clear and convincing burden of proof to a potential change of custody if the moving party does not exercise more than half of the parenting time. In other words, under Appellant-Mother's reading of the law, the clear and convincing burden would only apply to requests from those parents whose parenting time, whether rightly or wrongly, is not "weighted." The law contemplates application of the clear and convincing burden when a request would modify **any** established custodial environment. *Pierron*, 486 Mich at 92. Any other application would simply place those children whose parents do not exercise equal parenting time at risk of having their established custodial environment disrupted on the basis of the preponderance of the evidence, which is clearly not what the Legislature intended when enacting the Child Custody Act. *See* MCL 722.27(1)(c).

Based on the facts of this case, whether before or after the separation, the girls clearly have an established custodial environment with both parents. This Court should affirm and deny Appellant-Mother's application.

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B. The parenting-time terms incorporated into the judgment of divorce altered a potential established custodial environment.

The parenting time schedule incorporated into the judgment of divorce altered Appellee-Father's established custodial environment with the girls, particularly given the girls' ages at the time the judgment was entered and based on the relevant pre-separation environment. (11/17/2021 Opinion, pp. 16-17; 12/15/2022 COA Opinion, pp. 6-8). While previously, the girls and Appellee-Father's environment was able to be maintained despite the distance, as the girls get older and become more involved in things like school and extracurriculars, Appellee-Father's relationship, and thus his established custodial environment, with the girls will be altered in a way that would not happen but for the fact that Appellant-Mother chose to relocate to Fenton before an order was entered. (11/17/2021 Opinion, pp. 20-21).

Based on the parenting time schedule, the girls would not be able to look to Appellee-Father for those needs moving forward, simply because the girls' needs are going to change as they become older. While the arrangement pre-judgment continued to foster the relationship between Appellee-Father and the girls, given their regular contact and parenting time and the girls' minimal involvement in activities outside of the home, the fact that Appellee-Father will not be able to attend things like recitals, school activities during the week, etc., all things that will occur post-judgment as the girls get older, is going to negatively affect his ability to maintain the established custodial environment with the girls he currently has. This is not to mention the difficulties of traveling over 10,000 miles per year to exercise parenting time the girls will be forced to cope with. (11/17/2021 Opinion, pp. 20-21).

As such, the Court of Appeals decision that the Trial Court should have applied the clear and convincing burden before entering the parenting time schedule was correct and this Court should affirm.

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C. The Court of Appeals remand instructions are sufficiently clear to guide the circuit court on remand as to what evidentiary burden it must apply.

The mandate of *Fletcher v Fletcher*, 447 Mich 871, 889; 526 NW2d 889 (1994), as reiterated in *Butters v Butters*, 510 Mich 1096, 1096-1097; 982 NW2d 173 (2022), to consider up-to-date evidence on remand, as it is a mandate, does not need to be explicitly stated in order for courts to be required to follow it, as trial courts are presumed to know and understand applicable law. *See, e.g. Charles A Murray Trust v Futrell*, 303 Mich App 28, 44; 840 NW2d 775 (2013); *see also In re Archer*, 277 Mich App 71, 84; 744 NW2d 1 (2007). There is nothing in the Court of Appeals' opinion in this case that would prevent the Trial Court from considering up-to-date evidence on remand. (12/15/2022 COA Opinion). The Court of Appeals remand instructions in this matter were thus sufficiently clear. (12/15/2022 COA Opinion, pp. 8-9) ("Accordingly, the trial court should have applied a clear-and-convincing evidence standard, and a remand is warranted.... A remand is warranted so that the trial court can reassess its decision using the proper standard.") Indeed, the Court of Appeals has used extremely similar instructions consistently, even in published opinions:

- *Berman v Berman*, 84 Mich App 740, 747-748; 270 NW2d 680 (1978) ("The custody order was permanent, not temporary, and the proper evidentiary standard which should have been applied is that of clear and convincing evidence.... We find it the simplest and most practical solution to remand the case to the trial court. The judge is to consider his previous custody order as permanent in nature. He must therefore weigh his decision as to which parent should have custody according to the clear and convincing evidence standard of § 7(a); that is, custody can be changed from plaintiff to defendant only if the court is convinced by clear and convincing evidence that it is in the best interests of the child to do so.")

- *Lyons v Lyons*, 125 Mich App 626, 632-633; 336 NW2d 844 (1983) ("The trial court's custody order is vacated. The case is remanded for reconsideration of custody under the correct evidentiary standard of clear and convincing proof.")

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- *Jack v Jack*, 239 Mich App at 671 ("we hold that the case must be remanded to determine whether there was clear and convincing evidence that a change in custody was in the best interests of the children.")

- *Reilly v Downs*, unpublished[1] per curiam opinion of the Court of Appeals, issued December 1, 2000 (Docket No. 224314) ("We reverse the trial court's finding that no established custodial environment existed with defendant, as the evidence clearly preponderates in the other direction. We also reverse the trial court's findings of fact with respect to statutory best interest factors b, d and e, and affirm the findings of fact regarding factors a, f and i. Finally, we remand for reconsideration of the change of custody motion under the proper standard of proof, clear and convincing evidence.")

- *Foskett v Foskett*, 247 Mich App 1, 8, 13; 634 NW2d 363 (2001) ("The trial court thus abused its discretion on two levels. First, the trial court failed to find an established custodial environment in and through both homes. Second, the trial court failed to apply the appropriate evidentiary standard in accord therewith....we also find that the trial court abused its discretion by changing the children's custodial environment without the attendant clear and convincing evidence presented to justify the substance of the trial court's ultimate decision and disposition. Reversed and remanded for further proceedings consistent with this opinion.")

- *Deboe v Deboe*, unpublished per curiam opinion of the Court of Appeals, issued September 18, 2003 (Docket Nos. 246083; 246410) ("The trial court's erroneous factual finding to the contrary resulted in the custody decision being made without the appropriate evidentiary standard being applied, i.e., clear and convincing

[1] While Appellee-Father notes the above cited unpublished cases are not precedentially binding, MCR 7.215(C)(1), Appellee-Father cites them not for their precedential value but to utilize them to illustrate the consistency of Court of Appeals remand instructions where a trial court applies the incorrect burden of proof to a request that modifies a child's established custodial environment.

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evidence. The custody decision was therefore an abuse of discretion. On remand, the trial court shall reconsider the custody issue on the basis of the evidence that was properly presented to it and apply the appropriate evidentiary standard when deciding the issue of joint custody. It should also consider up-to-date information.")

- *Parkyn v Parkyn*, unpublished per curiam opinion of the Court of Appeals, issued February 17, 2005 (Docket No. 256800) ("We therefore remand to the trial court for reevaluation of its custody award based on the existence of a joint custodial environment and the appropriate burden of proof, that being clear and convincing evidence. The trial court should also consider any new evidence relevant to the statutory best interest factors that has arisen since entry of the judgment of divorce.")

- *Rays v Rocheleau*, unpublished per curiam opinion of the Court of Appeals issued August 10, 2006 (Docket No. 267789) ("We vacate the trial court's custody order and remand for reevaluation thereof on the basis of up-to-date information under the proper burden of proof, clear and convincing evidence.")

- *Earl v Earl*, unpublished per curiam opinion of the Court of Appeals, issued November 15, 2007 (Docket No. 276049) ("instead of applying the clear and convincing evidence standard, as is required when a custodial environment exists, the trial court applied the preponderance of the evidence standard.... Because the trial court committed clear legal error, reversal and remand for application of the correct burden of proof is necessary.")

- *Maxam v Niemi*, unpublished per curiam opinion of the Court of Appeals, issued March 26, 2009 (Docket No. 280827) ("On remand, the referee and trial court must review the record and determine whether plaintiff proved modification of the custody order was in the child's best interest by clear and convincing evidence.")

- *Lyons v Cottrell*, unpublished per curiam opinion of the Court of Appeals, issued March 22, 2011 (Docket No. 298058) ("Because the trial court used the wrong standard in deciding plaintiff's custody request, we reverse the trial court's order and remand for a new

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decision in which the trial court utilizes the clear and convincing standard.")

- *Kagen v Kagen*, unpublished per cuiram opinion of the Court of Appeals, issued December 18, 2014 (Docket No. 318459) ("Accordingly, we vacate the circuit court's June 27, 2013 opinion and order and remand for a continued hearing. At the hearing, the court must declare that its decision will not affect the children's custodial environment and therefore apply the preponderance of the evidence standard. The court must then consider and expressly state whether each best interest factor of MCL 722.23 is relevant in this case, and then must analyze on the record the substance of any relevant best interest factors.")

- *Shimel v McKinley*, unpublished per curiam opinion of the Court of Appeals issued February 23, 2016 (Docket No. 329144) ("we remand for the trial court to determine if plaintiff, as the party seeking to change MS's school, established, by clear and convincing evidence, that the change—and resultant modification of parenting time—was in the child's best interest, utilizing the factors set forth in MCL 722.23.")

- *Griffin v Griffin*, 323 Mich App 110, 123-125, 128; 916 NW2d 292 (2018) ("we conclude that the trial court erred by applying a preponderance-of-the-evidence standard when weighing the best-interest factors in MCL 722.23. Therefore, we reverse the court's order awarding custody to Rebekah and remand for further proceedings. On remand, the trial court shall conduct a new best-interest hearing, during which it must consider all relevant, up-to-date information.")

- *Kuebler v Kuebler*, ____ Mich App ____ (2023), slip op p. 22 ("the trial court committed clear legal error by failing to apply a clear-and-convincing-evidence standard to plaintiff's motion to modify defendant's sole legal custody... On remand, before making any further changes, the trial court shall apply the correct standard.")

While this list is non-exhaustive, it demonstrates a clear consistency in the remand instructions from the Court of Appeals when the harmful error

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needing correction is the application of the incorrect burden of proof. Appellant-Mother argues *Griffin* is inapplicable due to her belief that the children only have an established custodial environment with her, given that Appellant-Mother's conclusion is not consistent with the law, as discussed above, this Court should not find it persuasive. (Appellant's Supplemental Brief, p. 11).

Further, the error in this case is markedly different from that in *Butters*, as the Court of Appeals in *Butters* overturned the established custodial environment finding, made a new finding as to the established custodial environment finding, and then directed the Trial Court to follow the Court of Appeals established custodial environment findings. *Butters v Butters*, ____ Mich App ____ (2022), slip op p. 12-13. The Court of Appeals in this case affirmed the Trial Court's established custodial environment finding, however, overturned the Trial Court's determination that Appellant-Mother should only have to meet the preponderance of the evidence burden. (12/15/2022 COA Opinion, pp. 6-8). As the parenting time schedule would modify the established custodial environment with Appellee-Father, the Trial Court should have applied the clear and convincing standard before enacting it, as the Court of Appeals directed. (12/15/2022 COA Opinion, pp. 6-8). Indeed, if the Trial Court were to now find on remand the children only had an established custodial environment with Appellant-Mother, clearly the parenting time arrangement of the judgment modified the established custodial environment. (11/17/2021 Opinion, p. 6).

This Court should affirm and deny Appellant-Mother's application.

D. A court should consider the circumstances of the parties at the time of separation or prior to their separation to determine the child's established custodial environment when determining custody pursuant to an initial judgment of divorce.

The circumstances of parents and children in a divorce action when living as an intact family are always going to be relevant to child custody determinations. The division of parenting responsibilities, as well as how each parent interacted with the children, as an intact family informs the

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determination of whether the established custodial environment will be or has been modified. *See Baker*, 411 Mich at 479-480. The amount of emphasis that is placed on the lives of the children pre-separation is going to vary on a case-by-case basis, depending on how the children's lives post-separation look. For example, if the parents' separation does not vastly alter the children's lives from what their reality was pre-separation, the pre-separation environment can be reflective and informative of the child's established custodial environment going forward.

This type of analysis and consideration of both the pre- and post-separation environments is exactly what the Court of Appeals undertook in *Bofysil*. In *Bofysil*, despite one parent being largely the "stay-at-home" parent before and after the separation, the Court of Appeals found that, when the parties lived as an intact family and post-separation, the child could look to each of her parents to fulfill different needs, and thus the child had an established custodial environment with both parties. *Bofysil*, *supra*, at 243-244. This Court did not disturb that finding. *Bofysil v Bofysil*, 507 Mich 1020; 961 NW2d 204 (2021) (order denying application for leave).

In this case, the girls' have always been accustomed to an established custodial environment with both parents. (11/17/2021 Opinion, pp. 16-17; 12/15/2022 COA Opinion, pp. 6-8). This was created pre-separation by the parties' division of parental responsibilities and the parties' respective levels of involvement with the children. (11/17/2021 Opinion, pp. 16-17; 12/15/2022 COA Opinion, pp. 6-8). This Court should note that throughout the entirety of this matter, no one has disputed that the children have an established custodial environment with Appellant-Mother and Appellant-Mother is the only person who has disputed Appellee-Father's established custodial environment and relationship with the children. (12/15/2022 COA Opinion, pp. 6-8). Appellant-Mother has consistently and unrelentingly attempted to devalue Appellee-Father's contributions as a parent, something the Trial Court admonished Appellant-Mother for and something that negatively affected Appellant-Mother's credibility. (11/17/2021 Opinion, pp. 5-12, 17). Appellee-Father continually requested to see his children or have them returned to him; he exercised his parenting time to the greatest extent possible, both before and after the entry of a court order; he maintained almost constant contact with the children; and he continued to foster his relationship with the girls as much as he could, even

in the face of direct opposition from Appellant-Mother. (04/07/2021 Transcript, pp. 130-132, 178, 180; 11/17/2021 Opinion, p. 17). Post-separation, Appellee-Father's environment, and his ability to continue to foster this environment moving forward, was affected by the Trial Court's parenting time schedule, as it affects Appellee-Father's interaction with the children moving forward. Clear and convincing evidence should have been necessary before that environment could be altered.

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CONCLUSION AND RELIEF REQUESTED

The only losers in this situation, and the only people this situation is unfair to, are, and have always been, the children. As the Trial Court noted in its opinion on custody, this was not a situation where anyone would have thought the parents would not have split time with the children equally. However, because of the choices made by Appellant-Mother, not for the benefit of the children, but for the benefit of herself, the children have now found themselves in a situation where they are going to have to spend hundreds of hours in a car every year. Appellee-Father is of the belief that none of what has occurred since Appellant-Mother left with the children has been in their best interests.

The parenting time schedule imposed by the judgment certainly modified the established custodial environment Appellee-Father shares with the girls as the girls become older. This is because, as the girls get older and become more involved, the parenting time schedule established by the judgment is going to severely limit the girls' ability to look to Appellee-Father for guidance. Appellee-Father's established custodial environment will never be completely destroyed, as he has and will continue to make every effort to be involved with the girls, however, the environment will be modified as the girls age under the current parenting time schedule. Because of this, the Trial Court should have applied the clear and convincing standard, and the Court of Appeals' decision should be affirmed.

Appellee-Father, Andrew Sabatine, respectfully requests this Court deny Appellant-Mother's January 26, 2023 Application for Leave to Appeal and affirm the December 15, 2022 Court of Appeals opinion.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in MCR 7.312(A) and MCR 7.212(B). I certify that this document contains 12,724 countable words. The document is set in Georgia Pro, and the text is in 12-point type with 1.5 line spacing and 12 points of spacing between paragraphs.

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