

NO: FST-FA-15-6026880 S : SUPERIOR COURT
ROBIN HERZOG : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
GEOFF HERZOG : JANUARY 24, 2017

BEFORE THE HONORABLE THOMAS COLIN, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff:

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Representing the Defendant:

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1 THE COURT: Herzog.

2 ATTY. PLANCHER: Yes, Your Honor.

3 ATTY. JENNINGS-LAX: Yes, Your Honor.

4 ATTY. PLANCHER: Good morning, Your Honor.

5 THE COURT: What's that status of the -- oh, I
6 need counsel to introduce themselves first.

7 ATTY. JENNINGS-LAX: Attorney Leslie Jennings-
8 Lax for the defendant, Geoff Herzog, who is in the
9 courtroom, Your Honor.

10 ATTY. CUNHA: Nickola Cunha on behalf of Robin
11 Herzog.

12 THE COURT: Good morning.

13 ATTY. PLANCHER: Good morning, Your Honor. Jill
14 Plancher, I'm the guardian ad litem.

15 THE COURT: And what's the status?

16 ATTY. JENNINGS-LAX: Your Honor, that is ready
17 and it's ready to proceed and continue with the
18 hearing, Your Honor.

19 THE COURT: All right. I'll be with you
20 shortly.

21 ATTY. JENNINGS-LAX: Thank you, Your Honor.
22 (Matter passed)

23 THE COURT: Let me see counsel on Herzog. I
24 know Attorney Plancher's doing something else, but
25 that's okay. Good morning.

26 ATTY. CUNHA: Good morning, Your Honor.

27 ATTY. JENNINGS-LAX: Good morning, Your Honor.

1 THE COURT: I guess my first question of counsel
2 in Herzog is whether you -- what's the status of
3 Middletown and all that?

4 ATTY. CUNHA: So we have trial dates in --

5 ATTY. JENNINGS-LAX: May, Your Honor.

6 THE COURT: May?

7 ATTY. JENNINGS-LAX: Yes.

8 ATTY. CUNHA: Yes.

9 ATTY. JENNINGS-LAX: Your Honor, they are May
10 3rd, 4th, 5th, 8th, 9th, 10th, 11th, 12th, 22 and 23.

11 THE COURT: And you had a pretrial, special
12 masters on January 11?

13 ATTY. JENNINGS-LAX: Correct, Your Honor.

14 ATTY. CUNHA: Yes.

15 THE COURT: I see something scheduled for
16 February 1st?

17 ATTY. JENNINGS-LAX: Yes. Your Honor, at the
18 pretrial for the first time it was alleged in the
19 pleading that the plaintiff seeks to relocated with
20 the children in Canada.

21 I've indicated -- since then an amended
22 complaint has been filed. I indicated that I would
23 be filing a motion in limine to exclude evidence of
24 relation to Canada especially since the plaintiff
25 denied that in a deposition that she was seeking
26 relocation and that issue was never presented to the
27 custody evaluator for purposes of the custody

1 evaluation.

2 And so that has been scheduled, Your Honor, for
3 February 1st up in Middletown to be heard by the
4 presiding Judge who I believe would be Judge Gould.

5 THE COURT: Is that your understanding counsel?

6 ATTY. CUNHA: No. I --

7 THE COURT: Because it's unusual to have a
8 pendent lite motion scheduled in Middletown I never
9 seen that before.

10 ATTY. CUNHA: So -- so the -- there is an
11 argument scheduled in Middletown because counsel did
12 bring up that the original complaint did not allege
13 relocation. And as such she would argue that those
14 facts cannot come in at trial.

15 I don't believe that based on the statutory
16 requirements of the complaint or relocation which the
17 statute only applies to post-judgment that need to be
18 alleged.

19 But to be clear I amended the complaint anyway
20 so that's what that date is for. I do not agree with
21 counsel that my client denied a potential relocation
22 in deposition. I haven't been pointed to that
23 testimony

24 And I did not know that was the issue because in
25 fact she filed her purposed orders before I did and
26 she indicated that they anticipated that to be the
27 case. So, that's the difference of opinion.

1 ATTY. JENNINGS-LAX: Your Honor, I doubt that it
2 would come as a surprise to this Court or any other
3 Court that we have assumed all along that Ms. Herzog
4 was seeking to abscond with the children back to
5 Canada or some other country which is why all
6 throughout this process we have attempted to prevent
7 her from leaving the county. And had requested that
8 the passports be held by the guardian ad litem.

9 THE COURT: So in terms of the hearing that is
10 scheduled to resume today, that's motion 191,
11 defendant's motion for modification of custody I
12 believe.

13 ATTY. JENNINGS-LAX: That's correct, Your Honor.
14 And I note again for the record, Your Honor, that I
15 was presenting to the Court a very limited scope on
16 the motion to modify.

17 That although my client doesn't believe that
18 what we're looking for necessarily is in the best
19 interest of the children, he understands that this
20 Court has limited ability to handle a lengthy custody
21 hearing pendente lite and therefore was requesting
22 only the lifting of some of the limitations that had
23 been placed on his parenting time and increasing his
24 parenting time to include overnights, has had been
25 envisioned by this Court as being done or considered
26 it at the September 30th status conference.

27 THE COURT: So how many more witnesses do you

1 have?

2 ATTY. JENNINGS-LAX: Your Honor, I have always
3 said I only have one witness. The guardian ad litem.

4 THE COURT: All right. And how many witnesses
5 do you have counsel?

6 ATTY. CUNHA: I have subpoenaed five witnesses.
7 The guardian ad litem I believe is almost done, so
8 and then my client so that would be six.

9 THE COURT: So how long do you think your six
10 witnesses, I know you can't do it with certainty, but
11 --

12 ATTY. CUNHA: Days. Days. I have been
13 forthright with the Court from the beginning that
14 this not properly before the Court at this time.

15 It -- the counsel indicated that this was going
16 to take an hour or two hours, I don't remember the
17 exact time --

18 THE COURT: I recall that. I guess the other
19 question I have is somebody going to be calling the
20 custody evaluator?

21 ATTY. JENNINGS-LAX: I have chosen, Your Honor,
22 not to call the custody evaluator at this pendente
23 lite hearing because I believe that it would take too
24 long for that testimony to come in for the evaluation
25 to come in and I understood that if I did so that
26 Attorney Cunha would be calling the expert to testify
27 in opposition or a rebuttal and I wanted to limit the

1 scope of this hearing.

2 Otherwise I would be seeking significantly
3 different relief.

4 THE COURT: So it doesn't look like you're going
5 to be able to finish this today.

6 ATTY. CUNHA: Absolutely not. And -- and Your
7 Honor, I issued multiple subpoenas and counsel filed
8 a protective order although she didn't really have
9 the authority to do so on a subpoena issued to Mr.
10 Herzog's employer.

11 It is the recipient of the subpoena who has the
12 right to seek protection, not the -- not counsel for
13 the individual who's records I am looking for. And
14 so, I'm not sure if anyone is here from Mr. Herzog's
15 company.

16 I directed them to appear because I do not
17 believe that protective order is appropriate under
18 the circumstances.

19 The information that I am seeking is limited in
20 time and scope and is clearly relevant and issues
21 that were brought out to the Court through the
22 guardian ad litem's testimony with respect to
23 schedules and things of that nature.

24 So, I'm not really -- I don't think that the
25 motion for protection is -- is properly before the
26 Court. But I wanted to bring that to the Court's
27 attention.

1 THE COURT: So Attorney Cunha, how would you
2 suggest I -- if you were sitting here in my shoes,
3 how would you suggest -- then I'm going to ask you
4 the same question counsel, how would you suggest I
5 proceed with this hearing under these circumstances?

6 ATTY. CUNHA: Sure. Your Honor, I -- my -- in
7 going through my notes you were very clear at the
8 commencement of this hearing that you did not want to
9 piecemeal this hearing because of the complicated
10 issues and that if it was going to take longer than
11 one would normally expect on a short calendar matter
12 and you couldn't get the evidence as close in time
13 and proximity as possible, that you were going to
14 dismiss it and not go forward with it at this time.

15 So, I'm asking that it be dismissed with
16 prejudice. It's not rightfully before the Court. I
17 submit to the Court that if Your Honor looks at the
18 evidence that is before the Court thus far that the
19 allegations and the underlying motion were actually
20 not credible to this Court.

21 Counsel indicated to this Court that there were
22 no situations or instances that had occurred since I
23 believe it was August 19th or 18th of 2016.

24 But yet the guardian ad litem has testified to
25 numerous incidents involving Mr. Herzog and the minor
26 children and his questionable conduct.

27 So, on the basis of that testimony alone if the

1 Court were to find at least limited portion of
2 testimony credible by the guardian ad litem, I think
3 the Court should dismiss it.

4 THE COURT: I think I've heard you raise it
5 during this hearing, due process, at least at one
6 point. So how would that affect Mr. Herzog's right
7 to due process and to have a hearing if I just
8 dismissed his motion without it being completed?

9 ATTY. CUNHA: Well the -- the due process claim
10 actually obviously goes both ways. So the notice
11 that my client was put on was that -- and the Court
12 that was put on was that Mr. Herzog was going to
13 present evidence that there have been no incidents
14 that occurred involving him and the minor children
15 since Your Honor's enactment of the supervised
16 orders.

17 However, the evidence that's come before the
18 Court and from what counsel's represented to this
19 Court is that she has one witness and one witness
20 only contradicts what Mr. Herzog position is. So
21 there is not a due process issue because his one
22 witness has already testified.

23 And based on his one witness he's been unable to
24 support the allegations of his claims.

25 THE COURT: Counsel, what do you think I should
26 do?

27 ATTY. JENNINGS-LAX: Your Honor, I think that

1 the Court should allow the hearing to continue. If -
2 - I do take note with some of Attorney Cunha's
3 suggestions with respect to what the facts are, but
4 rather suggest they may be alternative facts, Your
5 Honor.

6 And that simply making allegations by the
7 plaintiff to the guardian ad litem and questioning
8 the guardian ad litem about allegations that the
9 plaintiff has made, does not make a fact.

10 It merely makes an allegation that I should have
11 the opportunity to rehabilitate that issue, those
12 issues and address those issues on redirect.

13 If, however, Attorney Cunha would like to close
14 the evidence following the guardian ad litem's
15 testimony I am more than happy to do so.

16 If she feels --

17 THE COURT: I'm not sure that's what she's
18 suggesting.

19 ATTY. CUNHA: Oh, no.

20 ATTY. JENNINGS-LAX: If she feels that that's --

21 THE COURT: I think it's quite the opposite.

22 ATTY. JENNINGS-LAX: -- sufficient to address
23 her client's due process rights.

24 THE COURT: Your position is I should just
25 continue with the hearing and have all the witnesses
26 testify and take it as it comes?

27 ATTY. JENNINGS-LAX: Well, Your Honor I think

1 the Court can perhaps gently guide the process such
2 that there is somewhat less leeway than was given
3 prior with respect to cross examination.

4 I note Your Honor that my direct examination of
5 Attorney Plancher took 25 pages of transcript. We
6 have been here for about seven and a half hours.
7 Most of that was on cross examination.

8 While I do not dispute or argue that counsel
9 does not have the right to engage in fair and
10 reasonable cross, I think that the delaying tactics
11 that have been utilized in this case then followed by
12 a claim or a request that this Court mistry this
13 hearing would result in substantial injustice and
14 send a message to litigants across the judicial
15 district that if they put up a strong enough fight
16 and drag things out long enough justice will be
17 denied or at least delayed.

18 THE COURT: Any response counsel? You don't
19 have to, I'm just giving you the chance.

20 ATTY. CUNHA: You know, I think I will. The
21 theatrics in this case actually are kind of amusing
22 to me frankly.

23 Your Honor, if counsel wants to proceed I am
24 well prepared to proceed. I will submit to the Court
25 that I do have a witness that I would ask the Court's
26 permission to interrupt the guardian's testimony
27 because the witness is here from out of state and

1 she's getting ready to move to another state which is
2 very far in distance and would be an economical
3 hardship for her to travel for the time of trial.

4 She's a pertinent witness and so that would be
5 my only request.

6 THE COURT: How long do you expect your direct
7 examination of that witness to take?

8 ATTY. CUNHA: Maybe -- anywhere between forty-
9 five minutes to an hour at most depending on you
10 know, objections and --

11 THE COURT: Do you know who that witness is
12 Attorney Jennings-Lax?

13 ATTY. JENNINGS-LAX: I do not, Your Honor.

14 THE COURT: Because I was going to ask you how
15 long you thought your cross is, but if you don't know
16 who it is --

17 ATTY. CUNHA: I'll disclose. It's Ellen Jones.

18 It's Mr. Herzog's landlord. The individual who's in
19 possession of the keys that belong to my client that
20 Mr. Herzog was ordered in the criminal court to
21 return to my client as part of the protective order
22 which he failed to do and Ms. Jones is present today
23 and brought the keys with her.

24 ATTY. JENNINGS-LAX: Your Honor, I don't see how
25 that testimony is relevant. And I would request that
26 the Court prohibit her from testifying.

27 THE COURT: Well I'm happy to entertain that

1 request, but then I'll ask for an offer of proof.
2 But let me figure out what's going to happen next.
3 So, I'm going to pass this case for the moment.

4 ATTY. CUNHA: Your Honor, can I just -- if
5 you're going to pass the case, do you know about
6 approximately how long? I just need to return a
7 quick email and if I can run upstairs. And if not,
8 that's fine --

9 THE COURT: Sure, go ahead. Why don't you come
10 back in ten minutes.

11 ATTY. JENNINGS-LAX: And Your Honor, before we
12 pass the case, can I just make a representation that
13 Attorney Cunha is well aware of with respect to the
14 witness that she subpoenaed with my client's
15 employment records.

16 THE COURT: That's different than this other
17 witness?

18 ATTY. JENNINGS-LAX: Yes, Your Honor. Attorney
19 Cunha served a subpoena apparently, I did not receive
20 a copy of the subpoena from Attorney Cunha, on my
21 client's employer seeking employment records, for
22 which I did file a motion to quash and for protective
23 order and that I indicated I would be requesting of
24 the Court here.

25 Counsel for my client's employer had indicated
26 in an email to both Attorney Cunha and to me and
27 actually to the guardian ad litem as well that he

1 would have the files copied and ready. But that he
2 was not going to have someone sit in the courthouse
3 while the Court entertained the rest of the case and
4 the motion. But that they would be here within
5 fifteen to twenty minutes upon receipt of a call that
6 in fact they have been ordered to come.

7 ATTY. CUNHA: So, I don't recall that email. If
8 counsel can direct it to me. It could be that I
9 missed it, but I don't -- I do recall specifically
10 indicating to the employer that absent an
11 authorization from Mr. Herzog and a stipulation by
12 his attorney that the exhibits, that what I requested
13 can come in as full exhibits that I would expect the
14 records to be here with a representative.

15 I have no problem if -- if -- you know, counsel
16 for the company represented that based on Your
17 Honor's ruling he would be here you know, in a short
18 time. I just have not reviewed that email. I have
19 no clue what the content of that is.

20 ATTY. JENNINGS-LAX: That he email was sent at
21 10:21 a.m. yesterday morning.

22 THE COURT: Is this -- this is a witness you
23 want to call on your case in chief?

24 ATTY. CUNHA: Yes.

25 THE COURT: And who, again Your Honor, I filed a
26 motion for quash and protective order and who I would
27 seek to be prevented from testifying --

1 THE COURT: We'll get to that motion when we get
2 to that witness --

3 ATTY. JENNINGS-LAX: Of course, Your Honor.

4 THE COURT: -- and not interrupt the rest of the
5 case to deal with that.

6 ATTY. JENNINGS-LAX: Of course.

7 THE COURT: All right. Why don't I pass this so
8 you can deal with that issue that you need to deal
9 with.

10 ATTY. CUNHA: Thank you, Your Honor.

11 ATTY. JENNINGS-LAX: Thank you very much, Your
12 Honor.

13 (Matter passed)

14 THE COURT: Did we resolve the issue with the
15 gentleman in the back who was subpoenaed?

16 ATTY. CUNHA: We did. We resolved one of the
17 subpoena issues, Your Honor. If we may be heard
18 briefly on the Herzog matter?

19 THE COURT: Sure.

20 ATTY. CUNHA: Attorney Cunha on behalf of Robin
21 Herzog.

22 ATTY. JENNINGS-LAX: Attorney Leslie Jennings-
23 Lax on behalf of Geoff Herzog. And I'm sorry, Your
24 Honor, I don't know what number it is on the docket.

25 THE COURT: It's -- that's okay. I'm not sure
26 either. Go ahead counsel.

27 ATTY. CUNHA: Your Honor, I had issued a

1 subpoena to Wee Care Nanny agency. Mr. Mark Lenus
2 (phonetic) has shown up and produced the documents.
3 Attorney Jennings-Lax and I have reviewed them.

4 We both spoke with Mr. Lenus jointly with
5 respect to whether or not these records would qualify
6 as business records and we have agreed that they may
7 come in as full exhibits. And I just wanted to put
8 that on the record as business records so that Mr.
9 Lenus may be excused.

10 ATTY. JENNINGS-LAX: If I may indicate what I am
11 stipulating to, Your Honor?

12 THE COURT: Sure.

13 ATTY. JENNINGS-LAX: Which is that these meet
14 the business records exception to the hearsay rule.
15 That if they are otherwise relevant and would
16 otherwise come in they would not be -- I would not
17 seek to exclude them on the grounds that they are not
18 business records and that there is not an individual
19 here who can testify as to their nature as business
20 records so as to allow them to be admissible.

21 THE COURT: So does that mean you will not be
22 raising as an objection authenticity or business or
23 failure to meet the business records exception to the
24 hearsay rule but you're reserving your right to make
25 all other objections?

26 ATTY. JENNINGS-LAX: That is correct, Your
27 Honor.

1 THE COURT: Is that your understanding counsel?

2 ATTY. CUNHA: That wasn't my understanding but I
3 am fine with that. I -- I have no issue with that.

4 THE COURT: Okay.

5 ATTY. CUNHA: So if I could just pass them up to
6 be marked for ID purposes at this time and then I
7 will refer to them accordingly or would Your Honor
8 like me to wait until --

9 THE COURT: Why don't we wait.

10 ATTY. CUNHA: Okay.

11 THE COURT: Why don't we wait. So the gentleman
12 is excused?

13 ATTY. CUNHA: He is excused.

14 THE COURT: Thank you sir. You are excused.

15 ATTY. CUNHA: Thank you very much, sir.

16 THE COURT: All right. So are we ready to
17 resume?

18 ATTY. CUNHA: I think we're waiting --

19 ATTY. PLANCHER: I'm ready, Your Honor.

20 ATTY. CUNHA: Oh, okay. So, the only other
21 issue Your Honor is whether or not Your Honor will
22 allow -- well there's two issues, is whether Your
23 Honor will allow Ellen Jones to testify out of turn.

24 THE COURT: And you object to that?

25 ATTY. JENNINGS-LAX: Yes, Your Honor.

26 THE COURT: All right. So why don't you --

27 Attorney Plancher, do you need more time or are you -

1 -

2 ATTY. PLANCHER: No thank you, Your Honor. I'm
3 all set.

4 THE COURT: Okay. Can you tell me what,
5 Attorney Cunha, what -- make a short offer of proof
6 of what this involves just so I can decide whether to
7 take it out of turn or not?

8 ATTY. CUNHA: Absolutely. So the offer of proof
9 is that Mr. Herzog resided with Ellen Jones as a
10 tenant for a period of time.

11 The guardian ad litem went over to observe the
12 home. Mr. Herzog's parents also resided in the home
13 for a period of time.

14 So, I am offering Mr. Jones to establish her
15 observations, communications with Mr. Herzog and
16 specifically directed to the concerns that have been
17 raised in this matter with his inability to control
18 his temper, with his parents inability to assert any
19 control over him as supervisors as he's intimidating,
20 which has been alleged numerous times. The concern of
21 him using electronic devices and/or computers on a
22 non-stop basis.

23 His willingness and ability to obey court orders
24 which is a specific element that the Court is
25 required to look at when making a determination on
26 modification of access.

27 And specific --

1 THE COURT: Okay. I've got a gist of it. And
2 the reason why you need to take her out of turn is
3 what?

4 ATTY. CUNHA: She is --

5 THE COURT: She is moving somewhere you said?

6 ATTY. CUNHA: She works out of state and she is
7 moving to California within a very short period of
8 time.

9 And she was able to arrange with her employer to
10 be here for today, but today is the only time she can
11 be here and she was hoping to be out of here by one
12 p.m. because of her arrangements -- she's relocating
13 for business purposes.

14 THE COURT: And the objection is what?

15 ATTY. JENNINGS-LAX: Your Honor, I am in the
16 middle of my redirect of Attorney Plancher who has
17 already been on the stand for over seven and a half
18 hours.

19 I do not anticipate to be long with Attorney
20 Plancher, maybe another 30 minutes, 45 minutes tops.
21 So certainly if Attorney Cunha wants to get Ms. Jones
22 in and out she has that ability within her control.

23 I think that disrupt the flow of testimony is
24 problematic. I also would note, Your Honor, that in
25 the offer of proof I found strikingly absent any
26 indication that the purposed witness has actually
27 seen my client with the children in which case her

1 testimony's irrelevant.

2 THE COURT: So I'm going to overrule the
3 objection, and I'll allow this non-party witness
4 who's relocating to another state to be taken out of
5 turn. All right.

6 ATTY. CUNHA: Thank you, Your Honor. I'm
7 calling Ellen Jones to the stand please. Ms. Jones,
8 if you could please take the witness stand.

9 THE COURT: All right.

10 ATTY. CUNHA: Stand to the left of the judge --

11 THE COURT: Good morning.

12 THE WITNESS: Good morning.

13 THE COURT: All right. Please raise your right
14 hand. The clerk will swear you in.

15 THE CLERK: Please raise your right hand. Do
16 you solemnly swear or solemnly and sincerely affirm
17 as the case may be that the evidence you shall give
18 concerning this case shall be the truth, the whole
19 truth and nothing but the truth so help you God or
20 upon penalty of perjury.

21 THE WITNESS: I do.

22 THE CLERK: Please state your name and address,
23 spelling your last name for the record.

24 THE WITNESS: Barbara Ellen Jones, 314 Stonehill
25 Road Pound Ridge, New York 10546.

26 THE CLERK: Thank you. Can you also spell your
27 last name please?

1 THE WITNESS: J-O-N-E-S.

2 THE COURT: Thank you. Before we start we
3 start, sir, do you have a case that needs to be
4 called before I start this examination.

5 UNIDENTIFIED PARTY: No, the attorney was -- I
6 was subpoenaed for this case.

7 THE COURT: Oh, okay. Do we -- does this
8 gentleman have to stay all day too or is this another
9 document situation?

10 ATTY. CUNHA: This is -- no it's actually a
11 little bit more than that. This is a Sergeant from
12 the Stamford Police Department.

13 THE COURT: Got it.

14 ATTY. CUNHA: May I proceed?

15 THE COURT: You may counsel.

16 ATTY. CUNHA: Thank you.
17
18

1 ELLEN JONES

2 Called as a witness, having been duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION BY ATTY. CUNHA:

5 Q Ms. Jones, are you familiar with Robin and Geoff
6 Herzog?

7 A Yes.

8 Q And how is it that you know the parties in this
9 matter?

10 A My daughter babysat for them originally a couple of
11 summers ago and then Geoff contacted me looking for a place
12 to live on a temporary basis. And he lived in my house as a
13 tenant as a roommate for a while. When I moved to a
14 different location he moved with me.

15 Q Let me just stop you right there. When you -- when
16 did Mr. Geoff, you're referring to him as Geoff Herzog
17 contact you for purposes of living with you as a tenant?

18 A I think it was last -- it was last summer. So it was
19 summer of '16.

20 Q And what did he disclose to you as a reason for
21 needing to find an alternative place to reside?

22 A He told me he needed to be a mile away from his house
23 on Knickerbocker Street.

24 Q And do you have any personal knowledge as to whether
25 or not the address where you were residing was actually a
26 mile away?

27 A Just based on what he told me.

1 Q And what exactly is the address that you were
2 residing at that Mr. Herzog joined as a tenant?

3 A 67 Overbrook Drive Stamford, Connecticut 06906.

4 Q And did you and Mr. Herzog enter into any formal
5 terms of a tenancy agreement?

6 A We entered into a verbal agreement in which he agreed
7 to pay \$1,500 a month in rent and he agreed to split
8 utilities with me.

9 Q And was there anyone else other than Mr. Herzog that
10 would be part of this agreement to reside in your home?

11 A Yes, he asked that his parents, Stan and Vivian
12 Herzog, could actually -- actually originally just Stan
13 would stay with me.

14 So I agreed that Geoff could live in one room and
15 Stan could live in a different room. When they moved in
16 indeed they took two completely different rooms, not
17 completely different.

18 Geoff moved himself into a different room that was a
19 much higher quality room and his dad moved into the room
20 that Geoff was originally going to move into.

21 And then his mom showed up with a cat and I had no
22 desire to have a cat on my property because my house was
23 being marketed for sale.

24 Q And did -- was Mr. Herzog aware of the fact that your
25 house was on the market to be sold?

26 A Yes. There was a for sale sign out front.

27 Q Okay. And when you indicate that he located himself

1 in a room other than what was agreed upon, was -- where was
2 that room in proximity to your room --

3 ATTY. JENNINGS-LAX: Objection, Your Honor.
4 Relevance.

5 THE COURT: What's the relevance?

6 ATTY. CUNHA: It goes towards Mr. Herzog's
7 ability to follow through with an agreed upon
8 agreement and his credibility, Your Honor, what has
9 been a huge issue in this case is that I specifically
10 asked the guardian ad litem whether or not she
11 believed that Mr. Herzog was truthful and she said
12 yes, she did.

13 So I believe this is exactly where I'm going
14 with this testimony.

15 ATTY. JENNINGS-LAX: Your Honor, this is
16 overreaching.

17 THE COURT: How does this go to his cred -- what
18 -- how are you impeaching his credibility with this
19 testimony?

20 ATTY. CUNHA: Sure. This witness indicated that
21 they agreed upon him to take over a specific room,
22 but he helped himself to a different room without Ms.
23 Jones permission or consent to do so.

24 And is was a breach of the agreement that they
25 had entered into.

26 THE COURT: Well she already said he moved to a
27 different room.

1 ATTY. CUNHA: Right.

2 THE COURT: So it sounds like it can be
3 cumulative.

4 ATTY. CUNHA: Well I wanted to know why that was
5 an issue and that's where I'm going in terms of where
6 that room is located in prox -- with the household.
7 If Your Honor would give me a little leeway --

8 THE COURT: I'll give you a little leeway, the
9 objection is overruled. The witness may answer.

10 A Can you restate the question?

11 Q Sure, where exactly is that bedroom located in
12 proximity of house to other rooms?

13 A So it's a 6 bedroom house with five -- with the sixth
14 bedroom being a laundry room. When you walk up the stairs
15 the bedroom that I agreed that he could have was directly to
16 the right. The bedroom I agree his father could have was
17 directly across the hallway. It's a small bedroom with no
18 bathroom.

19 The bedroom as you walk up the stairs to the left and
20 around is a much larger room and it has its own private
21 sunroom. That's the room he helped himself to.

22 His dad then moved into the room that Geoff
23 originally was supposed to live in, not the small room. I
24 would have charged more rent if -- I would have agreed to a
25 different rent under those circumstances. But at the time I
26 just didn't want to argue about it.

27 Q And during the time that Mr. Herzog -- withdrawn.

1 What period of time did Mr. Herzog reside in the home -- in
2 this specific property, 67 Overbrook with you?

3 A He lived with me, I'd have to look at my phone for
4 the exact dates, I believe it was June and July and then I
5 moved the house on Palmer Street I believe it was -- it was
6 actually on July 27th and he moved out a couple weeks
7 thereafter. He found -- he located a different property.

8 Q So in July when you moved to Palmer Street Mr. Herzog
9 followed you to that address for a short period of time?

10 A That's correct.

11 Q And did he parents also follow?

12 A Yes.

13 Q And during the period of time that Mr. Herzog resided
14 in the same home with you, did you ever observe him
15 interacting with any children?

16 A Yes.

17 Q And what children did you observe him interacting
18 with?

19 A His own children and also he had a friend who would
20 come over, I had a swimming pool at the house on 67
21 Overbrook, and he had a friend who would come over and his
22 daughter would swim. And then on one occasion she brought a
23 friend with her.

24 Q And when you say he had a friend that would come over
25 and his daughter would swim, do you know who that friend is?

26 A His name was Andrew. I don't remember his last name.

27 Q And you indicated one time that Andrew had his

1 daughter and a friend over, was Mr. Herzog present?

2 A Yes.

3 Q And were Mr. Herzog's children present?

4 A I do not believe on that occasion they were present.

5 Q And do you know what activities that Mr. Herzog and
6 Andrew engaged in on that date?

7 A They had a picnic by the pool. And then they came up
8 and they were in the hot tub and playing in the pool. The
9 kids going down the slide. And then they came up to change
10 out of wet clothes.

11 Q And when you say they were in the hot tub was Mr.
12 Herzog in the hot tub --

13 ATTY. JENNINGS-LAX: Objection, Your Honor.

14 Q -- with children other than his own?

15 ATTY. JENNINGS-LAX: Relevance.

16 THE COURT: I didn't hear the end of the
17 question because the objection came too fast.

18 ATTY. JENNINGS-LAX: Sorry, Your Honor.

19 THE COURT: What?

20 ATTY. CUNHA: I asked whether or not Mr. Herzog
21 was in the hot tub with children other than his own.

22 ATTY. JENNINGS-LAX: Objection, relevance.

23 THE COURT: There was only one child I thought
24 at this point.

25 THE WITNESS: Two.

26 THE COURT: I thought it was Andrew's --

27 THE WITNESS: Daughter and a friend of hers.

1 THE COURT: And a friend of hers. Okay. And
2 your objection?

3 ATTY. JENNINGS-LAX: Relevance to this whole
4 line of questioning, Your Honor.

5 THE COURT: So what's the relevance if he's in a
6 hot tub with the father of the two children?

7 ATTY. CUNHA: So this already came out in
8 examination of the guardian ad litem and this
9 directly relates to the testimony concerning Mr.
10 Herzog's request for the children to be taken their
11 clothes off and this witness intervening because the
12 children were uncomfortable and refusing to do so.
13 She's a direct witness. She was present.

14 ATTY. JENNINGS-LAX: Your Honor, first of all --
15 from the testimony already there was another parent -
16 - a parent of one of the children present who was
17 ostensibly in charge of his own child as well as the
18 other child who was there.

19 As to the relevance of -- of this testimony to
20 Mr. Herzog's parenting, I don't see it.

21 THE COURT: Well two comments I'll make. First
22 of all the first comment is this, I'm not going to
23 continue to permit mini-trials on each evidentiary
24 objection that gets made. They're going to be
25 resolved more quickly going forward. And that's
26 number one.

27 Number two, if -- if this testimony establishes

1 that Mr. Herzog acted inappropriately with other
2 children, I can see an argument how that's relevant.

3 ATTY. JENNINGS-LAX: Okay.

4 THE COURT: The objection is overruled.

5 ATTY. JENNINGS-LAX: Thank you, Your Honor.

6 BY ATTY. CUNHA:

7 Q Did -- was Mr. Herzog in the hot tub with the two
8 other children?

9 A Yes.

10 Q And what did you observe with regard to Mr. Herzog's
11 interaction and the two young girls?

12 A I didn't spend time down there. I observed when the
13 girls came back up to the house, they were in the laundry
14 room being asked to take off their wet clothes. Geoff
15 brought in two t-shirts too big, you know, adult size t-
16 shirts for the girls to change into.

17 Andrew's daughter had no problem doing that. But the
18 other little girl absolutely did not want to take any of her
19 clothes off. She was super uncomfortable. I excused the
20 men from the room and said let me handle this.

21 Geoff -- or pardon me, Andrew's daughter indeed did
22 get changed. The other little girl absolutely did not want
23 to take her pants off so I said you don't have to take your
24 pants off but let's at least put this dry t-shirt on which
25 she agreed to do.

26 Q And did you -- do you know which adult was asking the
27 children to take their clothing off?

1 A They were both in the room -- no, I can't answer
2 that.

3 Q And when you asked the two adult men to leave the
4 room did they do so willingly?

5 A Yes.

6 Q And do you have any personal knowledge as to whether
7 or not the young girl that was not Andrew's daughter, if her
8 parents were aware that she was in a hot tub with Mr.
9 Herzog?

10 A Yes, because --

11 ATTY. JENNINGS-LAX: Objection, Your Honor.

12 Answer calls for hearsay.

13 THE COURT: Well the question was answered. The
14 answer was yes. So the objection is overruled at
15 that part.

16 Q And with respect to Mr. Herzog residing with you in
17 the home, did Mr. Herzog have access to any computers while
18 he lived with you?

19 A Yes.

20 ATTY. JENNINGS-LAX: Objection, Your Honor.

21 Relevance.

22 THE COURT: Overruled.

23 A Yes.

24 Q And was it own personal computer or did he access a
25 computer that you owned?

26 A He had a work computer and a personal computer that
27 he purchased while he was living with me.

1 Q And when you say a personal computer that he
2 purchased while he was living with you, do you know if it
3 was a laptop or a--

4 A It was a laptop.

5 Q And the -- how do you know it was a work computer?
6 Did Mr. Herzog tell it was a work computer, the other
7 device?

8 ATTY. JENNINGS-LAX: Objection, relevance.

9 THE COURT: Well it's two questions so I'm going
10 sustain the objection on that basis.

11 ATTY. CUNHA: I withdraw it. Thank you, Your
12 Honor.

13 Q How do you know that the other computer was a work
14 computer?

15 ATTY. JENNINGS-LAX: Objection, relevance.

16 THE COURT: Overruled.

17 A Because he left his backpack at home one day with his
18 computer in it. And he complained that he had forgotten his
19 backpack and computer at home that day. Because I offered
20 to bring it into New York City where he could meet me at my
21 office and he could pick it up. And he declined to do so.

22 Q And when Mr. Herzog -- during the period of time that
23 Mr. Herzog resided with you, could you tell me how often
24 would you observe him on a computer?

25 ATTY. JENNINGS-LAX: Objection, relevance.

26 THE COURT: Where's this going?

27 ATTY. CUNHA: Your Honor, one of the concerns is

1 Mr. Herzog's obsessive use of being on the internet.

2 This is extremely relevant because he has a
3 three year old daughter, a son and -- that is six --
4 five and an eight year old daughter and the testimony
5 is that these three children are extremely active and
6 need a lot of attention.

7 So if Mr. Herzog is on the computer all the
8 time, which is what has been alleged, he's not
9 capable of providing the parenting that these
10 children need.

11 THE COURT: But, are you going to be
12 establishing through this witness that she observed
13 him on the computer when his children were there?

14 ATTY. CUNHA: I'm laying a foundation. I'm
15 going there.

16 THE COURT: All right. I'll allow it.

17 Overruled.

18 BY ATTY. CUNHA:

19 Q And, ma'am, during the period of time that Mr. Herzog
20 resided in your home, did you observe him on the computer?

21 A Yes.

22 Q How often?

23 A Constantly.

24 Q And did you observe Mr. Herzog during the period of
25 time when he resided in your home with his children?

26 A Yes.

27 Q And during the period of time that you observed him

1 in your home with his children, was he on the computer?

2 A I don't remember.

3 Q And were there -- during the period of time that Mr.
4 Herzog resided in your home, were there any issues that
5 occurred that caused you concern with Mr. Herzog's conduct?

6 ATTY. JENNINGS-LAX: Objection, Your Honor.
7 Vague and is phrased irrelevant.

8 THE COURT: Overruled.

9 A One morning I came down to go to work and there was a
10 pile of -- all of his clothing laying on the kitchen floor
11 which I thought was really strange, although he did use the
12 bathroom that was off the kitchen.

13 I thought that was odd behavior for an adult man to
14 leave to leave all of his clothing on the kitchen floor. He
15 reneged on an agreement to pay for half the utilities. When
16 he moved out I was in fear and called the police.

17 Q Why were you in fear when he moved out?

18 A Because he was in my face and was yelling and
19 screaming at me.

20 Q And during the period of time that Mr. Herzog resided
21 with you, did you have an opportunity to observe him
22 interact with his parents?

23 A Yes.

24 Q And when you observed him interacting with his
25 parents, did Mr. Herzog raise his voice in his communication
26 with his parents at any time appearing to be intimidating?

27 ATTY. JENNINGS-LAX: Objection, Your Honor.

1 Relevance.

2 THE COURT: Sustained.

3 Q During the period of time --

4 ATTY. CUNHA: May I be heard on that, Your
5 Honor?

6 THE COURT: No.

7 Q During the period of time that Mr. Herzog resided in
8 your home, were there any interactions between Mr. Herzog
9 and his parents that caused you concern?

10 ATTY. JENNINGS-LAX: Objection, Your Honor.
11 Relevancy.

12 THE COURT: Overruled.

13 A At one point Mr. Herzog told me that he wanted the
14 family cats and his dad yelled at him that he couldn't take
15 care of his own three children much less two cats.

16 ATTY. JENNINGS-LAX: Objection, move to strike
17 as hearsay.

18 THE COURT: Granted.

19 ATTY. CUNHA: Was Mr. Herzog's statement to the
20 witness. It's not hearsay. He's a party to the
21 action.

22 THE COURT: The record should be clean, I
23 assume, but I may have been mistaken, that counsel is
24 referring to the statement that was allegedly made by
25 Mr. Herzog's father.

26 ATTY. JENNINGS-LAX: I was, Your Honor.

27 ATTY. CUNHA: Okay. So that portion's stricken.

1 THE COURT: Only that portion.

2 ATTY. CUNHA: Thank you.

3 THE COURT: Yes.

4 Q And did you ever have any conversations with Mr.
5 Herzog regarding the guardian ad litem in this case?

6 A Yes.

7 Q And what did Mr. Herzog disclosed to you, if you can
8 recall, with respect to the guardian ad litem?

9 A When the -- I didn't even -- he referred to the GAL,
10 G-A-L. I didn't know what that meant. The house we were
11 currently living in at 67 Overbrook Drive was on the market.
12 He asked me if he could take the sign down and hid it in the
13 garage and I agreed to that.

14 So he also wanted, I had a couple of dogs and he
15 wanted one of them specifically to be in a crate when the
16 guardian ad litem was there.

17 I -- that's really -- I would be reaching to try to
18 remember more than that.

19 Q And did he indicated to you why he wanted to remove
20 the for sale sign from the property?

21 A He didn't want me to speak of selling or renting the
22 house because he didn't want it to get back to Robin.

23 Q Okay. And during the period of time that Mr. Herzog
24 resided in the home with you, were there any activities that
25 he engaged in that you are personally aware of that
26 interrupted your peaceful enjoyment of the property?

27 ATTY. JENNINGS-LAX: Objection, Your Honor.

1 Relevancy.

2 THE COURT: Overruled.

3 A On an almost nightly basis I was woken up by the
4 headboard in the adjacent room knocking against the wall.

5 Q And can you elaborate on that please?

6 A I had to believe --

7 ATTY. JENNINGS-LAX: Objection, Your Honor. I
8 think the witness has already answered that question.

9 THE COURT: Can you elaborate on that --

10 ATTY. CUNHA: Sure.

11 THE COURT: -- it's a bit vague.

12 ATTY. CUNHA: Sure I will withdraw, Your Honor.

13 THE COURT: Okay.

14 Q And when you say that you were woken up on a nightly
15 basis from the headboard banging against the wall, what
16 exactly do you mean by that? From who's room was that noise
17 coming from?

18 A His room was directly adjacent to mine. The
19 headboard in that room was direct -- was on the wall that
20 shared a wall with my room. So the noise was coming from
21 his room and on a nightly basis I would wake up because the
22 headboard was banging against the wall.

23 Q And for what duration or period of time -- how long
24 would those episodes last for?

25 A A couple of minutes.

26 Q And were there any other noises coming from the room
27 in addition to the headboard --

1 ATTY. JENNINGS-LAX: Objection, Your Honor.
2 Relevancy.

3 THE COURT: I know you want to make your
4 objection, but I need to have the question --

5 ATTY. JENNINGS-LAX: I'm sorry, Your Honor.

6 THE COURT: -- the question finished.

7 ATTY. CUNHA: I asked whether or not there were
8 any other noises coming from the room that
9 interrupted her sleep on a nightly basis.

10 A No.

11 THE COURT: The objection would have been
12 overruled anyway.

13 ATTY. CUNHA: Sorry. I --

14 THE COURT: That's okay.

15 Q And did you ever have any conversations with Mr.
16 Herzog as to why on a nightly basis he was engaging in some
17 type of activity that was causing the headboard to cling --
18 or bang up against the wall

19 A No because it made me un --

20 ATTY. JENNINGS-LAX: Objection, Your Honor.

21 A -- uncomfortable.

22 THE COURT: I'm going to strike the answer
23 pending the objection.

24 ATTY. JENNINGS-LAX: Relevancy Your Honor. This
25 entire line of questioning is irrelevant as to my
26 client's parenting with his children.

27 THE COURT: It may be -- you may be absolutely

1 right, but I'm waiting to get to the end of the movie
2 I think.

3 So at this point I'm going to object -- I'm
4 going to overrule the objection but I'm going to give
5 you the right to move to strike it if it somehow
6 doesn't get linked up.

7 ATTY. JENNINGS-LAX: Thank you.

8 THE COURT: So overruled. The witness can
9 answer. This is the question of whether she
10 discussed the headboard with him, right?

11 ATTY. CUNHA: Yes.

12 THE COURT: Okay.

13 BY ATTY. CUNHA:

14 Q Did you ever discuss the headboard noise coming from
15 the room that was waking you up with Mr. Herzog directly?

16 A No.

17 Q And why did you not discuss it with him?

18 A Because it made me really uncomfortable.

19 Q And why did it make you uncomfortable?

20 A Because I believed it was sexual in nature.

21 Q And what made you believe it was from sexual in
22 nature?

23 ATTY. JENNINGS-LAX: Objection, Your Honor.
24 Speculative.

25 THE COURT: Overruled.

26 A Because those are the sounds that are made when
27 people are pleasuring themselves.

1 Q It was your believe that the noise that you were
2 hearing was Mr. Herzog pleasuring himself?

3 A This is my belief.

4 Q And it is your testimony that that occurred on a
5 nightly basis?

6 A Yes.

7 Q And could you tell me approximately what time of
8 night would this occur?

9 A I don't recall.

10 Q You indicated that there came a time when Mr. Herzog
11 terminated the tenancy with you, is that true?

12 A Yes.

13 Q And when Mr. Herzog left the tenancy from your home,
14 did he remove all of his personal belongings?

15 A Not at first.

16 Q And what belongings did he leave behind?

17 A He left behind cases of Balance bars that he had from
18 his prior -- previous employer. He left behind shoes, he
19 left behind a box that contained I think -- no, it had
20 contained mac and cheese, Kraft mac and cheese, a big box.
21 And also there was a set of keys in that box.

22 Q And did you reach out to Mr. Herzog as to the items
23 he left behind?

24 A We texted back and forth. I told him his parents
25 could come and get the items. He told me they were
26 uncomfortable doing that. I was not comfortable meeting
27 with him one on one.

1 So we arranged for a third party to meet with the two
2 of us for him to pick up his personal belongings and also to
3 try to negotiate the pay -- the nonpayment of utilizes.

4 Q And has Mr. Herzog honored the nonpayment of
5 utilities to this date?

6 A No.

7 ATTY. JENNINGS-LAX: Objection, Your Honor.
8 Relevancy.

9 THE COURT: Sustained.

10 Q And did Mr. Herzog remove -- did Mr. Herzog, through
11 a third party remove, all his personal belongings?

12 ATTY. JENNINGS-LAX: Objection, Your Honor.
13 Relevancy.

14 THE COURT: Sustained.

15 Q Are you in possession of any of Mr. Herzog's personal
16 belongings?

17 ATTY. JENNINGS-LAX: Objection, Your Honor.
18 Relevancy.

19 THE COURT: Sustained.

20 ATTY. CUNHA: May (indiscernible) Your Honor?

21 THE COURT: No.

22 Q And you testified that Mr. Herzog left a set of keys
23 in the home, did you have any communications with Mr. Herzog
24 as to who the keys belonged to?

25 ATTY. JENNINGS-LAX: Objection, Your Honor.
26 Relevancy.

27 THE COURT: Overruled.

1 A No. I reached out to his wife directly.

2 Q And did you speak with Ms. Herzog -- when you reached
3 out Ms. Herzog about the keys what exactly did you tell her?

4 A I took a picture of them and texted her the picture
5 and said are these yours?

6 Q And --

7 A And she said yes they were hers and that she had
8 testified --

9 ATTY. JENNINGS-LAX: Objection, Your Honor.
10 Hearsay and -- hearsay.

11 THE COURT: Sustained.

12 ATTY. CUNHA: It's not hearsay it's coming from
13 my client, Your Honor. She's a -- she's a party to
14 this action.

15 ATTY. JENNINGS-LAX: Your Honor, if I may --

16 THE COURT: Why -- she's not the opponent
17 though. Doesn't the admission exception go to the
18 opponent, not the --

19 ATTY. JENNINGS-LAX: Yes, Your Honor.

20 ATTY. CUNHA: No, any -- any conversations that
21 the witness had with a party is -- is not subject to
22 hearsay because my client is a party to the action.
23 It's a specific exception.

24 THE COURT: You're going to have to point me to
25 that exception, because I don't believe there is such
26 an exception.

27 ATTY. JENNINGS-LAX: If I may provide to the

1 Court the relevant ruling?

2 THE COURT: Sure.

3 ATTY. JENNINGS-LAX: Statement by a party
4 opponent, section 8-3 subsection 1 of our rules of
5 evidence.

6 A statement that is being offered against a
7 party and is a; that parties own statement and either
8 an individual capacity, a statement that that party
9 has approved.

10 A statement by an agent, a conspirator, or in an
11 action for debt, or a statement made by a predecessor
12 or title. It does not fit the exception, Your Honor.

13 THE COURT: Do you wish to respond?

14 A Can you ask the question again?

15 ATTY. CUNHA: No, Your Honor. I'll withdraw the
16 objection. I mean I'll withdraw the question.

17 THE COURT: All right.

18 Q And as you sit here today do you still have the keys?

19 A They are in possession today.

20 Q And have you -- during the period of time that Mr.

21 Herzog resided with you, did he communicate with you
22 directly about any -- about this pending action at all?

23 ATTY. JENNINGS-LAX: Objection, Your Honor.
24 Relevancy.

25 THE COURT: The question was whether Mr. Herzog
26 communicated, overruled.

27 A Yes.

1 Q And did Mr. Herzog disclose to you any information
2 concerning incidents that occurred between himself and Ms.
3 Herzog?

4 ATTY. JENNINGS-LAX: Objection, Your Honor.
5 Relevancy as to my client's parenting of the
6 children.

7 THE COURT: Overruled.

8 A The question again?

9 Q Yes. Did Mr. Herzog disclose to you any information
10 concerning incidents that between himself and Ms. Herzog?

11 A Yes.

12 Q And what did he disclose to you?

13 A He disclosed to me specifically on a day that they
14 were building a playset outside that he had taken -- that
15 she -- that his wife had made a big deal out of the fact
16 that he had thrown a rock at her and he indeed had told me
17 that he picked a -- I believe it was a cinder block and sort
18 of heaved it over to her. And he told me that he thought his
19 wife was being ridiculous.

20 Q So he acknowledged to you that he did in fact throw a
21 cinder block at his wife?

22 A Yes.

23 ATTY. JENNINGS-LAX: Objection, Your Honor.
24 That reclassification of the testimony is not --
25 withdrawn.

26 Q And even though he acknowledged that to you he
27 believe that it was his statement that he thought my client

1 was making a big deal out of that?

2 A He claimed that that was the basis for her disability
3 claim. And he thought it was ridiculous.

4 Q And during the time that Mr. Herzog resided with you,
5 had you ever spoke directly to the guardian ad litem?

6 A No.

7 Q And has the guardian ad litem, if you know, ever
8 tried to communicate with you?

9 A She called me and left a message at my work.

10 Q And how many times did she try to reach out to you?

11 A Once.

12 Q And did you return her call?

13 A No.

14 Q And why not?

15 A I didn't want to get involved.

16 Q And why did you not want to get involved?

17 A Because it's a messy divorce.

18 Q And when you indicated that, you called the police
19 when Mr. Herzog was moving out, could you tell me --
20 withdrawn.

21 ATTY. CUNHA: I have no further questions.

22 THE COURT: Cross examination?

23 ATTY. JENNINGS-LAX: Thank you, Your Honor.

24 CROSS EXAMINATION BY ATTY. JENNINGS-LAX:

25 Q So although you did not want to get involved when the
26 guardian ad litem called you for information you are
27 testifying here today, is that correct?

1 A Yes, that is.

2 Q When Mr. Herzog represented to you that they were
3 building a play set, he and his wife, and he heaved a rock
4 over to her was his testimony, heaving a rock over at
5 someone, he did not testify -- he did not say to you that he
6 threw a rock at her head, is that correct?

7 A That's correct.

8 Q Is it true that the only -- withdrawn. You asked Ms.
9 Herzog about the keys belonging -- to whom the keys belonged
10 and took a picture of them, is that correct?

11 A Yes.

12 Q So you have no way of knowing if she was telling the
13 truth, is that correct?

14 A That's correct.

15 Q You indicated that you saw Mr. Herzog with his
16 children at 67 Overbrook, is that correct?

17 A Yes.

18 Q However, he lived with you at 67 Overbrook in June
19 and July of 2016, is that correct?

20 A Yes.

21 Q And he did not have to his children until after
22 August 19th 2016, is that correct?

23 A Yes, that is correct.

24 Q So you could not have seen him with his children at
25 Overbrook Drive, is that correct?

26 A That is absolutely correct. I am mistaken.

27 Q In fact Mr. Herzog moved out of the residence at

1 Palmer Street before the end of August, is that correct?

2 A I believe so.

3 Q On or about August 28th? Does that sound correct?

4 A I don't remember.

5 Q And Mr. Herzog first had parenting time with his
6 children on August 22nd, is that correct?

7 ATTY. CUNHA: Objection, foundation.

8 THE COURT: Overruled. It's cross examination.

9 ATTY. CUNHA: But there's no foundation that she
10 had any personal knowledge as to when he first had
11 visitation.

12 THE COURT: The objection is overruled. If
13 that's the case she'll say so.

14 A Can you ask the question again?

15 Q Mr. Herzog first had visitation -- first had
16 parenting access to his children on August 22nd, 2016. Is
17 that correct?

18 A I don't know the exact date that he had visitation
19 with his children.

20 Q Well Ms. Jones, when did you see him with his
21 children?

22 A Prior to the divorce I witnessed -- I saw him with
23 his children.

24 Q Oh but not while he was living with you?

25 A When my daughter was their babysitter.

26 Q While he was living with you you did not have the
27 opportunity to see him with his children, is that right?

1 A That is correct. I was mistaken in that testimony.

2 Q Thank you. You and Mr. Herzog parted ways with some
3 difficulty, is that correct?

4 A Yes.

5 Q Because you believed that you were owed money by Mr.
6 Herzog, is that correct?

7 A Yes.

8 Q And you feel like Mr. Herzog still owes you money as
9 you sit here today, correct?

10 A Yes.

11 Q Even though he has paid you some of the money that
12 you have requested, is that correct?

13 ATTY. CUNHA: Objection, that's not evidence
14 that's before the Court. It doesn't reflect the
15 evidence that came on direct examination.

16 THE COURT: This is cross examination.

17 Objection is overruled.

18 A No, he has not paid me any of the money that he still
19 owes me.

20 Q So your testimony is that Mr. Herzog had not paid you
21 any money that you requested for utilities, is that correct?

22 A That's correct.

23 Q You did not ask for money from Mr. Herzog prior to
24 him vacating, other than rent, prior to him vacating the
25 Palmer Street residence. Is that correct?

26 A No, that's incorrect.

27 Q You are here today and upset with Mr. Herzog because

1 you believe he still owes you money, isn't that right?

2 A I'm here today because I was subpoenaed as a witness.

3 Q But you are testifying -- withdrawn. Yu are unhappy
4 with Mr. Herzog, as you sit here today, because you believe
5 he still owes you money, is that right?

6 A That is accurate.

7 ATTY. JENNINGS-LAX: I have nothing further,
8 Your Honor.

9 THE COURT: Redirect?

10 ATTY. CUNHA: Yes, Your Honor.

11 REDIRECT EXAMINATION BY ATTY. CUNHA:

12 Q Other than the unhappy with Mr. Herzog because he
13 owes you money, are there other reasons you are unhappy with
14 Mr. Herzog?

15 A Yes.

16 Q And what are they?

17 A He asked me to do something that I regret. He asked
18 me to drive by Robin's house and take a picture of her
19 parents license plate because he was afraid that the kids
20 would be stolen in Canada and taken away to Canada. And I
21 regret doing that because it made me super uncomfortable at
22 the time.

23 Q And when did he ask you to do that?

24 A Shortly after he moved in with me on Overbrook Drive.

25 Q And other than the items that you just mentioned are
26 there any other situations that have cause you to be upset
27 with Mr. Herzog --

1 ATTY. JENNINGS-LAX: Objection, Your Honor.

2 This is asked and answered on direct.

3 THE COURT: Sustained.

4 ATTY. CUNHA: I have no further questions, Your
5 Honor.

6 THE COURT: Counsel?

7 ATTY. JENNINGS-LAX: Nothing further, Your
8 Honor. Except I would move to strike the witness's
9 testimony as being completely irrelevant as to my
10 client's parenting of the children, especially seeing
11 that she has now indicated in her testimony that she
12 is not seem my client with the children since these
13 Court's orders were entered on August 19th 2016.

14 THE COURT: I'm going to ask you to hold off on
15 that motion until I finish with a few questions that
16 I have.

17 ATTY. JENNINGS-LAX: Very good, Your Honor.

18 THE COURT: The testimony you gave earlier
19 today, ma'am, I'm going to ask you about the
20 headboard.

21 THE WITNESS: Okay.

22 THE COURT: It seems like a fair inference to
23 draw that somehow that information got to Attorney
24 Cunha otherwise she wouldn't know to ask you the
25 question.

26 THE WITNESS: That's correct.

27 THE COURT: Do you have any idea how that

1 happened?

2 THE WITNESS: Yes.

3 THE COURT: How?

4 THE WITNESS: In a conversation that I had with
5 Robin.

6 THE COURT: With Ms. Herzog?

7 THE WITNESS: Mmmm.

8 THE COURT: That's a yes?

9 THE WITNESS: That's a yes.

10 THE COURT: When was that conversation?

11 THE WITNESS: Shortly after Mr. Herzog moved out.

12 THE COURT: Who -- she called you, you called
13 her or you met in person, how did that work?

14 THE WITNESS: I called her initially to ask if
15 the keys were hers. And then we had a very long
16 conversation about her ex -- her soon to be ex-
17 husband's tenancy with me.

18 THE COURT: And you said earlier today you
19 didn't discuss that topic with Mr. Herzog because it
20 was awkward or uncomfortable.

21 THE WITNESS: Yes.

22 THE COURT: Right?

23 THE WITNESS: Yes.

24 THE COURT: So how did it come up in your
25 conversation with Ms. Herzog?

26 THE WITNESS: I don't recall how it -- how it
27 came up, I just recall that it did come up.

1 THE COURT: Do you call anything Ms. Herzog said
2 during that conversation?

3 THE WITNESS: She told me that -- yes I do. She
4 told me that the keys -- it had been testified in
5 criminal court that he was not in possession of the
6 keys so she was very upset that indeed he -- I was in
7 possession of the keys and she wanted to talk to her
8 attorney to find out how the keys should be returned
9 to her.

10 It was offered just to drive by and to just
11 bring them to her and she did not want me to do that
12 because it had been testified in criminal court that
13 he was not in possession of them.

14 THE COURT: All right. Anything else you
15 recall? About your conversation with her?

16 THE WITNESS: Yeah, I was very upset about the
17 utilities not being paid. We talked about that. I
18 talked about my personal -- my personal opinion of
19 his character. That was most of the extent of the
20 conversation.

21 THE COURT: And when was that conversation?

22 THE WITNESS: It would have been -- I believe it
23 would have been in July of last year.

24 THE COURT: And have you spoken with her since
25 then?

26 THE WITNESS: Yes.

27 THE COURT: When was the most recent?

1 THE WITNESS: To let her know that a good
2 friend's mother had died yesterday.

3 THE COURT: A friend of yours?

4 THE WITNESS: A mutual friend.

5 THE COURT: A mutual friend. Attorney Cunha, so
6 you have questions of the witness based on my
7 questions?

8 ATTY. CUNHA: I -- I do not, Your Honor. NO.

9 THE COURT: All right. Attorney Jennings-Lax,
10 do you have any questions based on my questions?

11 ATTY. JENNINGS-LAX: I'm going to let it go,
12 Your Honor.

13 THE COURT: All right. Ma'am, you're excused.

14 THE WITNESS: Thank you.

15 ATTY. JENNINGS-LAX: I do renew my motion to
16 strike the witness's testimony in toto.

17 THE COURT: Do you wish to respond?

18 ATTY. CUNHA: I do, Your Honor. I believe it's
19 clearly relevant. There was testimony with respect
20 to Mr. Herzog's direct intent to deceive the guardian
21 ad litem as to what the status was of the residence
22 that he was residing in.

23 There was testimony that supports the ongoing
24 concerns of Mr. Herzog's constant use of the
25 computers. There was testimony to support concerns
26 of Mr. Herzog's sexual activities and that's been a
27 significant ongoing concerns specifically with the

1 chat line communications that he engages in and that
2 he's acknowledge that he engages in that are graphic
3 in sexual nature.

4 And there's testimony to support Mr. Herzog's
5 specific refusal to follow a court order. He was
6 specifically ordered in the criminal court as part of
7 his protective order to return my client's keys. And
8 he misrepresented the Court that he had them and he
9 did not return them.

10 Those are all items the Court has to look at in
11 consideration of a modification. There is also
12 testimony with respect to Mr. Herzog's ability to
13 manage his temper. And to the point where this --
14 the witness was alarmed and concerned and to call the
15 police department for her protection.

16 THE COURT: Anything further, counsel?

17 ATTY. JENNINGS-LAX: Your Honor, I think that
18 none of those of issues goes to my client's
19 parenting. Specifically --

20 THE COURT: Do you think any of the testimony
21 from this witness goes to Ms. Herzog's parenting?

22 ATTY. JENNINGS-LAX: Other than, Your Honor, the
23 general -- the general line that Ms. Herzog
24 consistently engages in actions to interfere with the
25 parent/child relationship, no.

26 THE COURT: Well I'm going to deny the motion to
27 strike the witness's testimony. I think the

1 witness's testimony may be relevant to the ultimate
2 issues that the Court has to determine.

3 As I understand one of those issues is whether
4 or not Mr. Herzog's supervision with his parenting
5 time should be lifted or whether it should stay and
6 I've heard a number of various allegations over the
7 course of this case, including during this hearing
8 that seem to be the basis for Ms. Herzog's
9 justification for continued supervision and the list
10 is getting longer.

11 At this point it sounds like among the reasons
12 why Mr. Herzog should be supervised according to Ms.
13 Herzog's allegations include that he has a bad
14 temper, sexual assault claim, improper computer
15 behavior, bad diet and dairy restrictions with the
16 children, or failure to give a proper diet, body
17 order, bad television shows, possession of child
18 pornography, inappropriate or not enough diaper
19 changing and today we've added to the list that he's
20 a bad tenant and he pleasures himself on a nightly
21 basis.

22 So since those are the allegations that are
23 being made by Ms. Herzog against Mr. Herzog I think
24 this testimony is relevant. So I'm going to deny the
25 motion to strike and we're going to take a fifteen
26 minute recess.

27 (Recess)

1 THE COURT: Okay. Are we ready to resume the
2 hearing in Herzog?

3 ATTY. JENNINGS-LAX: Yes, Your Honor.

4 THE COURT: All right. Was there some police
5 officer you wanted to take out of turn also?

6 ATTY. CUNHA: No, Your Honor. It was
7 represented to me that the computers were down and he
8 was unable to produce the documents that I requested.
9 So I excused him for today's purposes.

10 THE COURT: Okay. So then I guess we'll go back
11 to Attorney Plancher. All right. Counsel, may I ask
12 you to raise your right hand.

13 Do you swear to tell the truth, the whole truth
14 and nothing but the truth so help you God or upon
15 penalty of perjury?

16 ATTY. PLANCHER: I do.

17 THE COURT: Please have a seat and state your
18 name and business address.

19 ATTY. PLANCHER: Jill Plancher, P-L-A-N-C-H-E-R,
20 20 Summer Street Stamford, Connecticut.

21 THE COURT: And I believe this redirect, is that
22 correct?

23 ATTY. JENNINGS-LAX: That is correct, Your
24 Honor.

25 THE COURT: All right.
26

1 JILL PLANCHER

2 Called as a witness, having been duly sworn, testified as
3 follows:

4 REDIRECT EXAMINATION BY ATTY. JENNINGS-LAX:

5 Q Attorney Plancher, it's been some time since we last
6 were in court, but to pick up where we left off, I believe
7 that we were discussing Abbigail's impromptu visit to the
8 doctor's office on September 22nd 2016 and that record in
9 fact was put into evidence as Plaintiff Exhibit 1 and
10 Defendant Exhibit A. On that date, September 22nd 2016,
11 where was Abbigail supposed to be per the Court's orders
12 between three o'clock and seven o'clock?

13 ATTY. CUNHA: Objection, Your Honor. This was
14 already asked and answered on direct.

15 THE COURT: Well you may be 100 percent right.
16 But the problem is, this is one of the reasons why I
17 said it, when was the last court date, December?

18 ATTY. JENNINGS-LAX: December --

19 ATTY. PLANCHER: Yes, Your Honor.

20 THE COURT: Well I have to tell you at this
21 point, I can't -- unless you have the transcript to
22 show me --

23 ATTY. CUNHA: I understand Your Honor.

24 THE COURT: -- I'm going to have to overrule it.
25 Okay.

26 A My recollection is that -- I believe it was a
27 Thursday which would have been Mr. Herzog's parenting time.

1 Q So between three and seven, Abbigail was supposed to
2 be with Mr. Herzog?

3 A Yes.

4 Q And in fact we had been in court the previous
5 Tuesday, September 20th, at which at what time counsel and
6 all parties signed a court -- signed a stipulation affirming
7 the Court's order that that was Mr. Herzog's parenting time,
8 is that correct?

9 ATTY. CUNHA: Objection, leading.

10 THE COURT: Sustained.

11 Q Were we in court on September 20th?

12 A Yes.

13 Q And that was two days prior to that, is that correct?

14 A Yes.

15 Q And what happened in court on September 20th?

16 A We were in court because of a -- well there were a
17 lot of reasons, but one of them was the request by Attorney
18 Cunha to have the Court clarify its orders with regard to
19 the supervision and so this Court and with counsel, we
20 prepared a stipulation.

21 The Court had read the transcript into the record and
22 we signed the stipulation with regard to a more clear
23 understanding I guess of what the schedule and the
24 supervision was with respect to Mr. Herzog's parenting time.

25 Q And the Plaintiff signed that stipulation, is that
26 right?

27 A Yes.

1 ATTY. CUNHA: Objection, leading. Already asked
2 -- withdraw.

3 Q Was Mr. Herzog, when we were here on September 20th,
4 enjoying his parenting time with his children without
5 interference?

6 A No. The -- well, no.

7 Q Can you please explain what happened?

8 A Ms. Herzog raised an objection to the supervision by
9 Mr. Herzog's parents. And there was discussion amongst
10 counsel with regard to whether or not the orders were clear
11 with respect to that issue.

12 And so there was interference with the parenting time
13 because when Mr. Herzog would otherwise have gotten the
14 kids, I guess Ms. Herzog had picked up Abigail from daycare
15 so that he couldn't pick her up from daycare prior to that
16 date.

17 Q Do you know whether she had tried to pick up the
18 older children from school as well?

19 A Yes, I do know.

20 Q And do you know what happened there?

21 A Yes.

22 ATTY. CUNHA: Objection. Calls for hearsay
23 evidence and there's no foundation as to how she
24 knows.

25 THE COURT: I'm going to sustain the foundation
26 objection first.

27 ATTY. JENNINGS-LAX: Very well, Your Honor.

1 Q As the guardian ad litem have you been in contact
2 with the older children's school?

3 A Yes, I have.

4 Q And have you been in contact with them with respect
5 to the parenting schedule?

6 A Yes.

7 Q And did you, as part of your investigation, have you
8 had conversations with them about the compliance with that
9 parenting schedule?

10 A Yes.

11 Q Can you -- has there come a time when compliance with
12 that parenting schedule was not had?

13 ATTY. CUNHA: I'm going to object on foundation
14 based on this witness's knowledge or some third
15 party's knowledge.

16 THE COURT: Overruled.

17 A I spoke directly with the principal --

18 ATTY. CUNHA: Objection as to anything any third
19 party said, it's hearsay.

20 THE COURT: Counsel?

21 ATTY. JENNINGS-LAX: To the extent that this is
22 information that the guardian ad litem routinely
23 relies upon in making recommendations, it is -- the
24 Court already has accepted Attorney Plancher as a --
25 as an expert guardian ad litem in prior testimony
26 before this Court which the Court has taken judicial
27 notice of and therefore it falls within hearsay

1 exception.

2 THE COURT: Any response?

3 ATTY. CUNHA: And I -- I disagree, Your Honor.
4 There's been no offer during the pendency of these
5 proceedings that Attorney Plancher be deemed an
6 expert.

7 Just because she has been appointed as the
8 guardian ad litem does not exclude the -- the
9 evidentiary finding of this Court or any other Court
10 in hearing her testimony that she be deemed an
11 expert.

12 And I would ask the Court to look at the -- just
13 one minute please, case of Johnson V Johnson, 2008,
14 959 Atlantic Second 637 wherein it specifically holds
15 that information that a guardian ad litem receives
16 from a third party does not come in as a hearsay
17 exception for purposes of the guardian ad litem's
18 foundation as to what her opinions are.

19 And that there has to be showing that the
20 guardian ad litem is an expert. And even if there is
21 a showing that the guardian ad litem is an expert it
22 doesn't necessarily still allow for the hearsay of
23 statements by third parties to come in for the Court
24 to rely on as being truthful.

25 THE COURT: All right. So the objection is
26 overruled in part and sustained in part in that the
27 witness can answer the question, but the answer is

1 admissible, not for its substantive truth, but for
2 testimony as to the basis for the recommendations of
3 the guardian ad litem.

4 So on that limited basis the answer is
5 admissible and the objection is overruled.

6 ATTY. JENNINGS-LAX: Thank you, Your Honor.

7 BY ATTY. JENNINGS-LAX:

8 A So I spoke with the principal at the school with
9 regard to the schedule and the Court's orders that had been
10 entered on August 19th. And then further clarified in
11 September.

12 The principal indicated to me that she understood the
13 Court's orders and that shew as going to release the
14 children to their father on the days that he -- you know,
15 supposed to have the kids. And that she had herself
16 contacted the police to make sure that everything went
17 appropriately.

18 She understood that there was a disagreement among --
19 between the parents and she didn't want there to be any
20 situation that resulted from it.

21 Q And in fact a situation did result, didn't Ms. Herzog
22 show up at the school?

23 ATTY. CUNHA: Objection, leading.

24 THE COURT: Sustained.

25 Q Regardless of the principal's attempts to forestall
26 any incident at the school, did one in fact occur?

27 ATTY. CUNHA: Objection, calls for hearsay.

1 THE COURT: Overruled.

2 A Both parents or actually Ms. Herzog showed up at
3 school. The children were placed in a separate room so that
4 they wouldn't have to witness any kind of conflict. Ms.
5 Herzog requested from the school that they not release the
6 children because of the supervision issue.

7 And the school did release the children.

8 Q And that was after we were in court on September
9 20th?

10 ATTY. CUNHA: Objection, leading and I'm going
11 to ask if -- that the leading questions please stop
12 because the -- the counsel is giving the answers
13 expected to this witness in each of her questions.
14 And it's not appropriate.

15 Q And was that after we were in court on September
16 20th?

17 A Yes, this occurred --

18 ATTY. CUNHA: Objection, leading.

19 A -- on September 22nd.

20 THE COURT: The objection is sustained. The
21 answer is stricken. It's cumulative because I
22 already had prior testimony that this was two days
23 later.

24 ATTY. JENNINGS-LAX: I'll move on, Your Honor.

25 THE COURT: When you said the kids were
26 released, to whom were they released?

27 ATTY. FLANCHER: I believe that day they were

1 released to the grandparents, or I'm not sure, I'd
2 have to look in my notes if actually Mr. Herzog was
3 there that day. He may have been there that day, I
4 don't remember.

5 THE COURT: It was either him or his parents?

6 ATTY. PLANCHER: Correct.

7 Q So you testified that on September 22nd when Abbigail
8 was brought to the doctor, she was supposed to be with the
9 Mr. Herzog?

10 A Correct.

11 ATTY. CUNHA: Ah --

12 THE COURT: Sustained. That's leading. Was
13 that the basis for your objection?

14 ATTY. CUNHA: Yes, thank you.

15 ATTY. JENNINGS-LAX: May I have Plaintiff
16 Exhibit 1 please.

17 THE COURT: Sure.

18 ATTY. JENNINGS-LAX: Thank you.

19 Q I'm showing you Plaintiff's Exhibit 1. Can you
20 please indicate the time on the Plaintiff Exhibit 1?

21 ATTY. CUNHA: I'm going to object. The document
22 is a full exhibit and it speaks for itself.

23 THE COURT: Is there more than one time you're
24 looking at or is it just the one?

25 ATTY. JENNINGS-LAX: It's just one, but it's
26 foundational Your Honor.

27 THE COURT: All right. I'm going to overrule it

1 because I don't have a copy so I need -- so I'm going
2 to allow the witness to do this. Go ahead.

3 A Okay. It indicates that this document was created at
4 6:48 p.m.

5 Q And that document is what?

6 A This is a note that was created by the Western
7 Connecticut Medical Group with regard to a visit -- or not a
8 visit but a telephone call by Mr. Herzog into the office,
9 the pedestrian's office.

10 Q And is this the note to which Attorney Cunha was
11 referring in her cross examination of you on November 21st
12 where she indicated that Mr. Herzog had been angry with the
13 doctor's office?

14 ATTY. CUNHA: Objection, leading.

15 THE COURT: Sustained.

16 Q Where were the children supposed to be when this --
17 at 6:48 p.m. on September 22nd?

18 A On Thursday afternoons the children are with their
19 father.

20 Q Have you been contacted by Mr. Herzog about the
21 children's mother making medical appointments for the
22 children without consulting with him first?

23 ATTY. CUNHA: Objection, relevance.

24 THE COURT: Can you repeat that question, I'm
25 sorry.

26 Q Have you been --

27 ATTY. JENNINGS-LAX: I apologize, Your Honor.

1 Q Have you been contacted by Mr. Herzog with respect to
2 the children's mother making medical appointment for the
3 children without contacting him first?

4 ATTY. CUNHA: Objection as to relevance and also
5 it goes beyond the scoop of cross examination.

6 THE COURT: Well it might go beyond the scope of
7 cross, but I don't remember. And the first objection
8 is overruled. So, I'm going to overrule the entire
9 objection.

10 A Yes. Mr. Herzog has let me know on several occasions
11 that that's been a concern of his.

12 Q And as part of his claims for relief Mr. Herzog --
13 withdrawn. Have you received a copy of Mr. Herzog's
14 purposed orders?

15 ATTY. CUNHA: I'm just going to object because
16 there's multiple purposed orders and I'm -- I would
17 like --

18 ATTY. JENNINGS-LAX: I will rephrase, Your
19 Honor.

20 Q Have you received a copy of Mr. Herzog's amended
21 purposed orders dated January 23rd 2017?

22 A Yes, I did.

23 Q And as part of those purposed orders, does Mr. Herzog
24 ask the Court for a provision that would address the concern
25 about medical appointments?

26 ATTY. CUNHA: Objection. The document speaks
27 for itself and its leading.

1 THE COURT: I'll sustain the document speaks for
2 itself.

3 Q Do you have any concern about parent making non-
4 emergent medical appointments for the children without
5 consulting the other parent?

6 ATTY. CUNHA: Objection, Your Honor. One, it
7 goes beyond the scope of direct cross and two, it is
8 broad in nature. The scope.

9 THE COURT: You mean in any case, or in this
10 case? I thought the question was do you have
11 concerns, it could be her neighbor, her other cases,
12 relatives, the Herzogs, I don't know. So I'm going
13 to sustain, it is a bit overbroad.

14 ATTY. JENNINGS-LAX:

15 Q Do you have concerns in this case about either parent
16 making non-emergent medical appointments for the children?

17 ATTY. CUNHA: Objection, leading.

18 THE COURT: Overruled.

19 A In this case and other cases where there is joint
20 legal custody there should be a process by which parents
21 notify each other when they intend to make medical
22 appointments for the children so long as that doesn't impact
23 the kids ability to get appointments made in a timely
24 manner.

25 So, yes, I have concerns if that's -- if that's being
26 done in a way that's either intended to cut one parent out
27 purposefully or just -- you know, it's an unintended

1 consequence.

2 Q Do you have any concerns in this case about the
3 children being brought to medical appointments generally by
4 their mother?

5 ATTY. CUNHA: Objection, leading.

6 THE COURT: Overruled.

7 A So my concern in this case with regard to medical
8 appointments is whether the intention is to ensure that the
9 children are healthy or whether the intention is to further
10 a case that is being made against Mr. Herzog by Ms. Herzog.
11 So that is a concern.

12 Q There was a suggestion during your cross examination
13 that the September 22nd 2016 appointment for Abbigail was a
14 routine medical appointment, is that correct?

15 ATTY. CUNHA: Objection, leading.

16 THE COURT: Overruled.

17 A That was the preface to the question, yes.

18 ATTY. JENNINGS-LAX: If I may approach, Your
19 Honor?

20 THE COURT: Sure.

21 Q Can you please identify that document?

22 A Again this is a document from Abbigail Herzog's
23 medical record dated October 3rd 2016.

24 ATTY. JENNINGS-LAX: I seek to have it admitted
25 as a full Exhibit.

26 ATTY. CUNHA: I have no objection.

27 THE COURT: Full Exhibit.

1 THE CLERK: Defendant's Exhibit B in full.

2 Q Can you please read the first line of that Exhibit
3 under history?

4 ATTY. CUNHA: Objection. The document speaks
5 for itself.

6 THE COURT: Sustained.

7 Q For what purposed did Abigail go to the doctor on
8 October 6th 2000 -- October 3rd 2016?

9 ATTY. CUNHA: Objection, the document speaks for
10 itself.

11 THE COURT: Overruled.

12 A This looks like a routine well check up.

13 Q And October 3rd 2016 was approximately one week after
14 the September 22nd date, correct?

15 A Yes.

16 Q On cross examination there was some questions posed
17 to you about a supervisor by the name of Hannah Dorsh
18 (phonetic). Do you recall that?

19 A Yes.

20 Q Do you know Ms. Dorsh background?

21 ATTY. CUNHA: Objection, relevance. And it --
22 this is all going beyond the scope of -- of direct
23 and cross. And I understand that Your Honor that
24 there's been lapse of time, but it is prejudicial to
25 allow counsel now to come back and represent her case
26 that wasn't represented previously.

27 ATTY. JENNINGS-LAX: May I respond, Your Honor?

1 THE COURT: Yes.

2 ATTY. JENNINGS-LAX: Attorney Cunha made a
3 number of allegations as to how the guardian ad litem
4 defaulted in her duty when cross examined the
5 guardian ad litem, one of those was by lobbing
6 accusations that were made by third parties including
7 suggesting that she did not adequately investigate
8 claims made by certain supervisors, made by other
9 third parties, made by the plaintiff.

10 And so to the extent that the guardian ad litem
11 has reasons for considering and giving more weight to
12 one individual over another I think that that's very
13 relevant.

14 THE COURT: Well the objection's not on
15 relevance. The objection is it's beyond the scope.

16 ATTY. JENNINGS-LAX: The first objection was
17 relevance.

18 THE COURT: Oh, I'm sorry.

19 ATTY. JENNINGS-LAX: And with respect to it
20 being beyond the scope, this was a line of
21 questioning that Attorney Cunha pursued with respect
22 to Hannah Dorsh.

23 THE COURT: Well I'm going to overrule the
24 objection and this is illustrating, I think, not that
25 it needed illustration, the problem with having
26 delays between hearing dates.

27 This is exactly why I am very much opposed to

1 that. So during -- I can tell you tomorrow I'm out.
2 Thursday I'm on trial I believe in another matter,
3 but we're going to go.

4 So whatever arrangements you have to make with
5 other matters or other things are going to have to be
6 rearranged because I can't have this continue to
7 happen.

8 And reason being is I know everyone's got busy
9 schedules, I respect that. The lawyers and the
10 parties. But when the hearings over then you're
11 going to throw it in my lap and I'm going to have to
12 make a decision.

13 And I take these decisions very seriously and
14 they involve three young children. So I need to be
15 able to put myself in the best position to make these
16 decisions.

17 So, I'm going -- that's going to have take
18 priority over your other cases and your other clients
19 absent a real emergency or a good cause so I want
20 everyone to know that.

21 ATTY. CUNHA: So, Your Honor, just, if I may are
22 you -- are we going to be back here on Friday?

23 THE COURT: I'm going to look at my schedule and
24 make sure I'm here and there isn't another matter
25 with the same situation, but if there's not then you
26 will be here Frida.

27 ATTY. CUNHA: Okay. Thank you.

1 ATTY. JENNINGS-LAX: Thank you, Your Honor.

2 THE COURT: So, I'm overruling the objection.

3 BY ATTY. JENNINGS-LAX:

4 A So I would have to look at my notes. As I sit here
5 right now I don't recall the extent of Hannah's background.
6 She was working with others who were more qualified
7 supervisors.

8 My recall is that she had not been employed as a
9 supervisor, you know, for many other families. Because when
10 I spoke to her we had a full conversation about what it
11 entails and what it looks like and the types of cases that I
12 generally take and you know, she wasn't as experienced as
13 many of the other supervisors that I generally work with
14 which is why we went into that conversation.

15 But I don't recall exactly what her background is and
16 I think that was your question.

17 Q Did there come a time when Mr. Nick Sarno was used as
18 a supervisor?

19 A Yes.

20 ATTY. CUNHA: Objection, leading.

21 THE COURT: Overruled.

22 Q Do you recall why Mr. Sarno was used as a supervisor?

23 A There was a couple of reasons. Ms. Dorsh was not
24 interested in continuing as a supervisor. Mr. Herzog's pa
25 rents I believe were not available.

26 Or, I'm trying to remember, I think it went -- no,
27 that's not accurate. I want to correct that. Ms. Herzog

1 was objecting to the use of Mr. Herzog's parents and so in
2 order for Mr. Herzog to not lose parenting time even though
3 he indicated that he believed his parents were appropriate
4 supervisors, he agreed to my suggestion that we use a
5 different supervisor and so we called around to find other
6 supervisors. Mr. Sarno had availability and so we used Mr.
7 Sarno.

8 ATTY. JENNINGS-LAX: I'm going to approach the
9 witness.

10 THE COURT: Sure.

11 Q I apologize, (indiscernible) my email. Can you
12 please identify the document?

13 A This is an email from Attorney Cunha to me and --

14 Q Oh, I'm sorry. Wrong email. Here we go.

15 A Okay. This is an email from me to counsel
16 forwarding to counsel the supervision report provided to me
17 by Mr. Sarno after his supervision.

18 ATTY. JENNINGS-LAX: I'd like to have this
19 marked as a full Exhibit.

20 ATTY. CUNHA: I object to this document as
21 coming in as an Exhibit because there's been no
22 qualification for the opinions that are offered in
23 this document by Mr. Sarno.

24 And his -- his background or expertise to make
25 these opinions and it's unsigned document. So
26 there's no way to authenticate -- I've never spoken
27 with him direct whether or not in fact these were his

1 -- his opinions or somebody else's opinions.

2 And I'm not -- if it were just direct
3 observations it would be one thing, but the document
4 actually renders opinions of that -- that would
5 normally be rendered of a psychologist or a
6 psychiatrist and it is not my understanding that Mr.
7 Sarno has any of that in his background.

8 THE COURT: Counsel?

9 ATTY. JENNINGS-LAX: May I voir dire the
10 witness?

11 THE COURT: You may.

12 VOIR DIRE BY ATTY. JENNINGS-LAX:

13 Q Attorney Plancher, have you used Nick Sarno as a
14 supervisor in the past?

15 A Yes.

16 Q Approximately how many times?

17 A I think on three other occasions.

18 Q And do you have an understanding of his reputation in
19 the community?

20 ATTY. CUNHA: Objection, Your Honor. That calls
21 for hearsay upon hearsay. His -- his reputation in
22 the community.

23 THE COURT: Well this question only asks whether
24 she has an understanding of it, it doesn't ask what
25 it is. So I'm going to overrule the objection to
26 this question. It's a yes or no, or I don't know.

27 A In the community of attorney's and guardian ad

1 litems, is that the question so I can be clear.

2 Q Yes.

3 A Actually I'm not sure I have an opinion -- I have
4 knowledge of what his -- of what the opinion is in the
5 community.

6 Q Do you have an understanding of his experience?

7 A Yes.

8 Q And do you believe -- withdrawn. On the basis of
9 your work with Mr. Sarno, your discussions with Mr. Sarno
10 and your independent investigation, what is your
11 understanding of that experience?

12 A So Nick has -- Mr. Sarno, excuse me, has been doing
13 this for a long time. He has some really good skills. He's
14 got a certain character to him that is very unique. He gets
15 along extremely well with children. And he understands what
16 his obligations are.

17 He is certainly not the best writer around and you
18 know, his -- his abilities are more -- I use him in cases
19 with younger children because I think his abilities are
20 better with younger children when he's really doing you
21 know, direct observations and making sure that kids stay
22 safe.

23 So, I've never had a problem with him. He's prompt.
24 He's very good at getting back to me if I have concerns as
25 guardian in the case. So, I've used him in cases where
26 there are young kids and there are allegations around either
27 safety issues with regard to the parent being you know, with

1 regard to molestation issues, anger issues or substance
2 abuse issues.

3 Q And did you ask him to provide you with a report with
4 respect to the visitation, the parenting time, excuse me
5 that he supervised in this case?

6 A I did.

7 Q And in fact, did you see him at any of the parenting
8 time that he supervised?

9 ATTY. CUNHA: Objection, Your Honor. Leading.

10 THE COURT: Overruled.

11 A Yes, I did.

12 Q How was that?

13 A I went to visit with the kids when they were with Mr.
14 Herzog and Mr. Sarno was the supervisor that day. So, you
15 know, I had an opportunity to see Mr. Sarno although I
16 didn't really interact with him because the kids were there
17 so I was just really observing the children and the
18 interactions with Mr. Herzog and Mr. Sarno didn't
19 participate with me during that visit.

20 Q Do you recall now whether Mr. Herzog's parents were
21 around for that parenting time?

22 A I don't -- I don't -- I'm not sure. I'd really would
23 have to look at my notes to see if they were there because
24 I'd done so many visits over at Mr. Herzog's house and they
25 were there for most of them. They may have been there. I
26 just don't recall.

27 Q Would it refresh your recollection to look at the

1 report with which you were provided?

2 A Sure.

3 ATTY. CUNHA: I'm just going to object as to
4 relevance. Why is it relevant as to whether or not
5 the parents were there if she's laying a foundation
6 as to the qualifications of this supervisor to give
7 the opinions that he gave? We're kind of going far
8 off from --

9 THE COURT: Well I'm assuming we've moved off
10 topic to something else now. I don't know that this
11 inquiry is limited to the document admissibility.

12 ATTY. CUNHA: That's what I thought we were
13 doing so -- because I objected because I don't
14 believe he is qualified to make the opinions that are
15 in here, it's unsigned. And I thought that --

16 THE COURT: Understood.

17 ATTY. JENNINGS-LAX: I can bring it back to the
18 document's admissibility. I will -- I will do that.

19 THE COURT: All right. So you're withdrawing --

20 ATTY. JENNINGS-LAX: I'll withdraw that question
21 for now.

22 BY ATTY. JENNINGS-LAX:

23 Q So you indicated you asked Mr. Sarno for a report.
24 Is this the type of information upon which you regularly
25 rely when -- withdrawn.

26 Did you rely on this report in formatting your
27 recommendations in this case?

1 A It's one of the pieces of information that I used to
2 -- to form a recommendation, yes.

3 ATTY. JENNINGS-LAX: I move to have it admitted
4 as a full exhibit.

5 ATTY. CUNHA: And -- and again, I object.
6 There's been no offer as to what Mr. Sarno's
7 expertise are, what his education is --

8 THE COURT: So what's the objection?

9 ATTY. CUNHA: The objection is that there are
10 opinions in this document that Mr. Sarno is not
11 qualified to make and it's an unsigned document and
12 it's a hearsay document. And it should not come in
13 for -- for a number of those reasons.

14 THE COURT: Any response?

15 ATTY. JENNINGS-LAX: Your Honor, when a test --
16 when a witness who has been qualified as an expert,
17 which this witness has, testifies and she had relied
18 upon information, even if that information is
19 hearsay, that information may come in to the extent
20 that it has formed a basis for the expert's
21 testimony.

22 THE COURT: If it's the type of information
23 customarily relied upon by experts in that field.

24 ATTY. JENNINGS-LAX: That is correct.

25 THE COURT: I don't know that I've heard that
26 evidence yet.

27 ATTY. JENNINGS-LAX: I can ask --

1 THE COURT: But I think Attorney Cunha disputes
2 whether she's been qualified as an expert.

3 ATTY. CUNHA: I do.

4 ATTY. JENNINGS-LAX: Your Honor, on August 19th
5 2016 on page --

6 THE COURT: That's before this hearing started I
7 think, right?

8 ATTY. JENNINGS-LAX: It was but this Court took
9 judicial notice of all hearings that came prior.

10 THE COURT: All right.

11 ATTY. JENNINGS-LAX: Page eight of the
12 transcript, this Court qualified this witness as an
13 expert on November 21st 2016 if Your Honor would give
14 me a moment to find the page number of the transcript
15 where this Court took judicial notice of all
16 proceedings, I can do that.

17 ATTY. CUNHA: I agree you took judicial notice.

18 I still would like to have an opportunity to see the
19 transcript that counsel is referring to wherein Your
20 Honor deemed Attorney Plancher to be an expert.

21 THE COURT: Was that before you appeared in the
22 case?

23 ATTY. CUNHA: It -- it is, Your Honor.

24 ATTY. JENNINGS-LAX: It is, Your Honor. I mean
25 -- I only have my copy, Your Honor, but I'm happy to
26 provide --

27 THE COURT: Maybe you can just show -- point to

1 the page right now because maybe there's -- if she
2 sees this happen it's not an issue.

3 ATTY. JENNINGS-LAX: Says August 19th 2016,
4 starting on page seven; Your Honor, I would move to
5 have Attorney Plancher (indiscernible) qualified as
6 an expert guardian ad litem.

7 The Court states; I'm not sure that's necessary
8 under the current state of law but since you've made
9 the motion is there any objection. Attorney Needle
10 says no, Your Honor. The Court says all right so the
11 witness is so qualified.

12 THE COURT: Unopposed. And then I took judicial
13 notice so isn't that a done deal?

14 ATTY. CUNHA: I don't -- may I just so my
15 question Your Honor would be and I guess I would need
16 a moment to look at that unless Your Honor recalls is
17 the August 19th hearing I believe commenced
18 originally with the motions to intervene that were
19 filed by Mr. Herzog's parents and if -- and Your
20 Honor denied the -- the intervention, you did not
21 allow them to intervene.

22 And if that is the case, then Your Honor
23 qualified her as an expert in a matter that is no
24 longer before the case for which she was testifying
25 because the motion to intervene is a separate and
26 distinct action.

27 THE COURT: I don't recall having a hearing on a

1 motion to intervene. I don't know that that ever
2 happened. Maybe it was a different judge?

3 ATTY. JENNINGS-LAX: You -- there was no hearing
4 on the motion to intervene, Your Honor.

5 ATTY. CUNHA: I -- I believe that in the
6 transcript you indicate that you're not going to give
7 Mr. Herzog's parents custody so that motion is denied
8 and I believe --

9 ATTY. JENNINGS-LAX: That was the cause of my
10 request. I understand you weren't here and so I'm
11 trying to clarify the record.

12 That was because my request Your Honor as part
13 of my purposed orders, and my motion for emergency
14 custody that Mr. Herzog's parents be given custody
15 until such time as he was able to be with the
16 children given -- at that time there was a protective
17 order in place that prevented him from being in
18 contact with the children.

19 The grandparents never sought to have a hearing
20 on their motion for intervention.

21 THE COURT: So, I've heard testimony thus far
22 that the witness said that she relied on this
23 document but I don't know that I heard any evidence
24 that this is the type of information customarily
25 relied upon by experts in the field.

26 So, unless that foundation is sustained --
27 proven, I'm going to sustain the objection, but the

1 objection about expert witness and all that, that's
2 already been resolved so that part of the objection
3 is overruled.

4 ATTY. JENNINGS-LAX: Thank you.

5 ATTY. CUNHA: Thank you.

6 BY ATTY. JENNINGS-LAX:

7 Q Attorney Plancher, as a general matter do guardians
8 ad litem traditionally rely on a visitation reports from
9 supervisors when formulating impressions and recommendations
10 with respect to their wards?

11 A Absolutely.

12 Q And is this the type of visitation report upon which
13 such reliance would be had?

14 A Yes, this is. I received supervision reports from
15 all the various supervisors in this case.

16 ATTY. JENNINGS-LAX: I move to have this exhibit
17 moved as a full exhibit.

18 ATTY. CUNHA: May I canvass, Your Honor?

19 THE COURT: Sure.

20 VOIR DIRE BY ATTY. CUNHA:

21 Q Attorney Plancher, as you sit here today are you
22 aware of what Mr. Sarno's educational background is?

23 A If you're asking me whether he has a like an MSW or
24 anything like that, he does not as far as I know.

25 Q So it's your testimony that you're relying on
26 opinions offered by Mr. Sarno's and his report and you
27 customarily do so even though he doesn't have the

1 educational background to render those opinions?

2 A So that wasn't my testimony. My testimony was that I
3 rely on reports that are given to me from supervisors. What
4 weight I give to various aspects of the reports, whether
5 they're observations or opinions that wasn't asked of me.

6 Q So let me ask you this, would you agree that there's
7 a difference between an observation and an opinion?

8 A Absolutely.

9 Q And would you agree that Mr. Sarno is not qualified
10 to make the opinions that he has made in this document?

11 ATTY. JENNINGS-LAX: Your Honor, I object. I
12 believe this goes beyond the scope of voir dire.

13 THE COURT: Overruled.

14 A No, I don't think it's as black and white as that as
15 to whether or not he is qualified to render an opinion.
16 There may be appropriate opinions that a supervisor could
17 make and there may not be.

18 But I do agree that there's a difference between the
19 observations and the opinions and as a guardian I would
20 weigh them very differently and would look at them
21 carefully.

22 Q The document that was placed before you for
23 recollection would you agree that contains opinions that are
24 normally rendered an individual in the field of psychology
25 or psychiatry?

26 A Can I have a moment please?

27 Q Sure.

1 A I think there's probably one or two statements that I
2 would agree with you, Attorney Cunha, where Mr. Sarno's
3 impressions, he calls them impressions are probably ones
4 that would be more generally made by someone who has more
5 education in those areas.

6 Q And in addition to his impressions he also makes
7 recommendations that he is not qualified to make, isn't that
8 true?

9 A I'm not so sure I agree with that.

10 Q So would it be fair to say that he's made
11 recommendations for future testing, is that something that a
12 supervisor who does not have a background --

13 A So -- I'm sorry. So that's the question -- so that's
14 the statement -- I mean I'm not -- the document is not in
15 evidence so I'm trying to be careful not to testify as to
16 specifics --

17 Q I understand.

18 A So what you're referring to is the statement that I
19 was suggesting was the one of maybe two where he's gone
20 beyond.

21 When you ask me a question about a recommendation I
22 thought you were asking me about some of the parenting
23 observations that he makes recommendations about. And on
24 those issues I think you know, he's within his bounds to
25 make those kinds of recommendations.

26 Q And I don't disagree.

27 ATTY. CUNHA: So, Your Honor, I would ask that

1 if this document is going to be offered as an Exhibit
2 that any opinions related to, or recommendations
3 related to areas that this supervisor is not
4 qualified to make those opinions or recommendations
5 be redacted.

6 THE COURT: All right. The objection is
7 overruled. The document is a full exhibit based on
8 section 7-4 subsection B of the Connecticut Code of
9 Evidence which indicates that the facts need not be
10 admissible in evidence if of a type customarily
11 relied upon by experts in the particular field
12 informing opinions on the subject the facts relied
13 upon are not substantive evidence.

14 So I'm not going to allow it in for its truth,
15 but it will be allowed in for the basis of the
16 expert's opinion and even though the section uses the
17 word facts the commentary of 7-4 indicates that for
18 purposes of subsection B inadmissible facts upon
19 which experts customarily rely informing opinions
20 can be derived from sources such as conversations,
21 informal opinions, written reports and data
22 compilations.

23 So, that's a long winded way of saying the
24 objection is overruled. It's a full exhibit but for
25 the limited purpose of the basis for the guardian's
26 recommendations and not as substantive evidence.

27 ATTY. CUNHA: Thank you.

1 THE CLERK: Defendant's Exhibit C in full.

2 ATTY. JENNINGS-LAX: Thank you.

3 ATTY. CUNHA: I'm sorry, which number --

4 THE CLERK: C.

5 ATTY. CUNHA: C, thank you.

6 ATTY. JENNINGS-LAX: Would the Court like a
7 moment?

8 THE COURT: Yes. Just one moment.

9 (Pause)

10 THE COURT: All right. Next question.

11 ATTY. JENNINGS-LAX: Thank you.

12 BY ATTY. JENNINGS-LAX:

13 Q Now Mr. Sarno does indicate, does he not, that Mr.
14 Herzog has some rusty skills, is that correct?

15 A He did, yes.

16 Q Do you know what Mr. Herzog has done to address any
17 rustiness in his skills?

18 A Well, I know he's been working with a parenting coach
19 to work on those skills. In addition to just having more
20 time the kids since this report was provided.

21 Q And this visitation report was from visitation that
22 took place the weekend following September 22nd, is that
23 correct?

24 A Correct.

25 Q And were Mr. Herzog parent's there?

26 A The report indicates that they were. I was present
27 for a number of those visits so I think you know, in my head

1 without looking at my notes I'm sort of mixing them up.
2 They -- I'm sure they were there.

3 I mean I can't tell you 100 percent, but I think I'm
4 recalling that Mr. Herzog's mother was making lunch and that
5 Mr. Herzog's father was actually maybe resting. So I don't
6 know that I saw him during the time that I was there. But
7 that's my memory now that I'm thinking carefully about it.

8 Q And so why was Mr. Sarno necessary?

9 ATTY. CUNHA: Objection.

10 THE COURT: Basis?

11 ATTY. CUNHA: Foundation.

12 THE COURT: Why was Mr. Sarno for what? The
13 visit?

14 ATTY. JENNINGS-LAX: Correct. Why was it
15 necessary to have Mr. Sarno as a supervisor for the
16 visit.

17 ATTY. CUNHA: And so --

18 THE COURT: And the objection is lack of
19 foundation.

20 ATTY. CUNHA: Correct.

21 THE COURT: Sustained.

22 Q You indicated Mr. Herzog parents were present?

23 A Yes. My memory now is that they were present. I saw
24 Mr. Herzog's mother, who was preparing lunch and I believe
25 Mr. Herzog's father was resting. At the time the orders of
26 the Court were that Mr. Herzog parenting time was to be
27 supervised. And I'm understanding that your question is if

1 Mr. Herzog's parents were there why then was Mr. Sarno there
2 as well. Is that the question?

3 Q It is.

4 A My understanding of that period of time is that Ms.
5 Herzog was objecting to Mr. Herzog's parents as being
6 appropriate supervisors under the court order. And so on my
7 recommendation to ensure that Mr. Herzog had continued
8 access with the kids he agreed to use Mr. Sarno even though
9 his parents were there.

10 Q Do you know how much Mr. Sarno costs?

11 ATTY. CUNHA: Objection, relevance.

12 THE COURT: What's the relevance of that?

13 ATTY. JENNINGS-LAX: Your Honor, this Court has
14 indicated that supervision is necessary for my
15 client, at least had indicated that supervision was
16 necessary for my client.

17 That supervision comes with costs and that cost
18 is something that needs to be taken into
19 consideration by this Court when evaluating its
20 orders.

21 ATTY. CUNHA: I don't believe it's relevant,
22 Your Honor.

23 THE COURT: Are you asking for the supervision
24 to continue?

25 ATTY. CUNHA: I am.

26 THE COURT: So why wouldn't that be relevant
27 then?

1 ATTY. CUNHA: Because there's no financial
2 affidavits that have been offered to the Court so how
3 can the Court take into consideration finances or
4 costs when there -- when there's been no offer and it
5 was not an issue that was raised in the motion that
6 cost was a factor in seeking the modification so
7 there's no notice.

8 THE COURT: Any response?

9 ATTY. JENNINGS-LAX: Your Honor, my client's
10 financial affidavit is on file. Nothing's changed
11 since my client's financial affidavit last was filed
12 with this Court.

13 And cost is always an issue with respect to
14 supervision, especially when if the Court grants
15 increased parenting time for my client as it's being
16 requested, the cost of that supervision is going to
17 increase.

18 And so how that is going to be resolved is at an
19 issue that the Court necessarily will have to
20 address.

21 THE COURT: Overruled. Witness can answer.

22 BY ATTY. JENNINGS-LAX:

23 A Mr. Sarno charges between 80 and \$150 an hour
24 depending on the nature of the supervision.

25 Q And as of this time do you know if Ms. Herzog is
26 employed?

27 A I do --

1 ATTY. CUNHA: Objection, relevance.

2 THE COURT: Overruled.

3 A I do.

4 Q And is she?

5 A No.

6 Q Mr. Herzog however is employed, is that correct?

7 A Yes.

8 ATTY. CUNHA: Objection, leading.

9 THE COURT: Overruled.

10 Q Did there come a time when the cost of visitation was
11 something that was raised to you as a concern?

12 ATTY. CUNHA: Objection, leading.

13 THE COURT: I have a question, correct me if I'm
14 wrong, and I apologize for even having to ask this,
15 but didn't I order the parents to be the supervisor?

16 ATTY. JENNINGS-LAX: You did.

17 THE COURT: And I thought I did that in part
18 because of concerns about finances.

19 ATTY. JENNINGS-LAX: You did unfortunately my
20 client's parents have had to return to Canada.

21 THE COURT: Understood. All right. I was not
22 aware of that. Okay. So the question is what?

23 ATTY. JENNINGS-LAX: Did there come a time when
24 the costs of visitation was raised as a concern.

25 THE COURT: Overruled. The witness can answer.

26 A Yes.

27 Q And do you know what steps if any -- withdrawn.

1 When you commenced your testimony in court on November 21st,
2 who was supervising the visits?

3 A I believe Mr. Herzog's parents.

4 Q Do you know if anything has occurred that has
5 prevented that from continuing?

6 A Yes.

7 Q What?

8 A Mr. Herzog's -- well Canada has laws around health
9 insurance --

10 ATTY. CUNHA: So I'm going to object to -- to
11 this line of testimony because it's all hearsay. And
12 -- and obviously I'm not familiar with Canada's laws
13 and I don't know if Your Honor is but --

14 THE COURT: Well, I'm not as a general rule. I
15 have some idea, but isn't your client from Canada?

16 ATTY. CUNHA: She is but --

17 THE COURT: So maybe she can explain it to you
18 then.

19 ATTY. CUNHA: Well -- but the issue is --

20 THE COURT: If she knows, I don't know, maybe
21 she doesn't know. But I know she was a nurse and
22 she's from Canada. So I'm assume she might have a
23 general idea about that.

24 ATTY. CUNHA: True. However it still is hearsay
25 one. And two, I'm just not sure if they're
26 unavailable, they're unavailable so why would this be
27 relevant?

1 THE COURT: Well you want supervision to
2 continue.

3 ATTY. CUNHA: Yes.

4 THE COURT: Your client doesn't want the parents
5 to do it is the gist that I'm getting and they're not
6 available anyway apparently --

7 ATTY. CUNHA: That is correct.

8 THE COURT: So how are they going to pay for it
9 if I order it to continue?

10 ATTY. CUNHA: Well the -- the -- that issue now
11 is I'm just being put on notice of that. That is now
12 an issue because that was not in the motion, Your
13 Honor. So --

14 THE COURT: Wouldn't that be a part of -- I
15 don't know how that would just be putting you on
16 notice now if you're asking for supervision you know
17 it's going to cost money.

18 ATTY. CUNHA: Because --

19 THE COURT: Everyone's on notice of that.

20 ATTY. CUNHA: Because my client was also ordered
21 to pay fifty percent of it and -- of the supervision.

22 And I believe that based on what Mr. Herzog's
23 earnings are that him paying fifty percent of a cost
24 of supervision I will elicit testimony that there are
25 obviously less expensive avenues to take then
26 somebody like Mr. Sarno's. So I will stipulate that
27 the information that we have is that Mr. Herzog's

1 parents at least at this time are not available.

2 THE COURT: Are you willing to accept that
3 stipulation without going into Canada's laws?

4 ATTY. JENNINGS-LAX: Most definitely, Your
5 Honor.

6 THE COURT: All right. So that's a stipulation
7 of fact. Thank you counsel. Next question.

8 BY ATTY. JENNINGS-LAX:

9 Q Because Mr. Herzog's parents are unavailable did Mr.
10 Herzog attempt to make other arrangements with respect to
11 his parenting access time?

12 A Yes. Mr. Herzog and I had a email exchange around
13 this issue just before his parents had to return to Canada
14 and I suggested that he try to procure someone who might be
15 more long term for his family so that he could have
16 parenting time with the kids and the kids could get to know
17 somebody and that they could more long term for him since it
18 looked like this was going to take us quite a while to go
19 through this pendency of this case.

20 Q And do you know what steps Mr. Herzog took to do
21 that?

22 A I do.

23 Q And what were they?

24 A He contacted various agencies in the area to find out
25 who might be available, cost and what they're backgrounds
26 were.

27 Q And did he ultimately use any specific agency?

1 A He did.

2 Q And do you recall what agency that is?

3 A No, it's a small local agency, the name escapes me at
4 the moment. If you want to refresh my recollection it will,
5 I'm sure, jog it. But it's a small nanny agency.

6 Q When Mr. Herzog first took those steps was he seeking
7 coverage for Tuesday, Thursday, Saturday and Sunday?

8 A Yes.

9 ATTY. CUNHA: Objection, foundation and leading.

10 How does this witness know what Mr. Herzog was
11 relating to these agencies?

12 THE COURT: Sustained.

13 Q Did Mr. Herzog reach out to you with respect to
14 coverall for all of his parenting time?

15 A Yes.

16 Q Did there come a time -- withdrawn. Was one of the
17 individuals that he sought to use to supervise his parenting
18 time a Ms. Jessica Bermudez, who I believe you were
19 questioned about on cross examination?

20 A Yes. So she was the first person that the nanny
21 agency provided, or the first person at least that Mr.
22 Herzog agreed to. That name was provided to me before the
23 first visit.

24 Q And is this the individual that the altercation at
25 the daycare for Abbigail occurred?

26 A Yes, this was because she didn't have a driver's
27 license or other identification when she came to pick up

1 Abbigail from the daycare.

2 Q And that would have been on Tuesday, November 29th,
3 is that correct?

4 A Yes.

5 ATTY. JENNINGS-LAX: I'm going to approach the
6 witness.

7 THE COURT: Okay.

8 Q Would you please identify this document?

9 A Yes. This is an email from Mr. Herzog copied to me
10 on the day before the visit to the daycare provider.

11 ATTY. JENNINGS-LAX: I would like to have it
12 marked as a full exhibit.

13 ATTY. CUNHA: I have no objection to this. This
14 will be D?

15 THE CLERK: Yes.

16 ATTY. CUNHA: Thank you.

17 ATTY. JENNINGS-LAX: I apologize to the witness,
18 this is my only other copy.

19 ATTY. CUNHA: If you want to let her look at
20 this copy, I have no problem as long as I get it
21 back.

22 THE CLERK: D in full.

23 Q So you were cc'd on that email, is that correct?

24 A Yes.

25 Q Did you --

26 ATTY. JENNINGS-LAX: I'm sorry. Does the Court
27 need any time to review the email?

1 THE COURT: I'm all set. TY.

2 Q Did you receive any response from Mr. Amato
3 indicating that she had any questions or concerns about what
4 was to occur?

5 A I was not contacted at all by Ms. Amato.

6 Q And yet, the following day when Ms. Bermudez and Mr.
7 Herzog went to pick Abbigail up, Ms. Amato called the
8 police, is that correct?

9 A Yes. I got a phone call from a police officer who
10 was present at the daycare and wanted to understand from me
11 what the court orders were so that he could manage the
12 situation.

13 THE COURT: Who is Kim Amato?

14 ATTY. PLANCHER: She is the provider of daycare
15 for Abbigail.

16 THE COURT: All right.

17 Q So from your understanding of the events, did Ms.
18 Amato have foreknowledge that Ms. Bermudez was going to be
19 accompanied by Mr. Herzog to pick Abbigail up?

20 ATTY. CUNHA: Objection to the form of the
21 question. There's no foundation that there's any
22 confirmation that Ms. Amato actually viewed and read
23 this email.

24 THE COURT: So I have a question about this --
25 oh I see, they were going to daycare to pick and Kim
26 Amato is the person there.

27 ATTY. PLANCHER: Correct, Your Honor.

1 THE COURT: Objection is overruled.

2 ATTY. CUNHA: I'm not sure you understand my --
3 the question is whether or not Ms. Amato did anything
4 with respect to that, but there's no foundation that
5 anyone knows if she's even seen that email before the
6 pickup.

7 THE COURT: We'll take a recess until two
8 o'clock.

9 ATTY. JENNINGS-LAX: Thank you, Your Honor.
10 (Recess)

11 THE COURT: All right. So we're going to resume
12 with Attorney Plancher?

13 ATTY. PLANCHER: I'm not sure who these other
14 gentlemen are Your Honor in the courtroom.

15 THE COURT: All right. I'm going to need, Madam
16 Reporter, if you don't mind, to play back the
17 question right before the break and then I took that
18 recess.

19 (Playback)

20 THE COURT: Did you say foreknowledge?

21 ATTY. JENNINGS-LAX: Foreknowledge. Yes, Your
22 Honor. Foreknowledge, as in knowledge beforehand.

23 THE COURT: I don't want to disparage my
24 elementary school teachers, but do you mean did she
25 have knowledge beforehand?

26 ATTY. JENNINGS-LAX: Yes, Your Honor.

27 THE COURT: Okay. And your objection is lack of

1 foundation?

2 ATTY. CUNHA: Correct.

3 THE COURT: All right. That's sustained. So
4 the objection is sustained.

5 So before the next question, I also recall that
6 there was an issue that was going to be briefed --
7 I'm doing this off memory, on the admissibility of
8 the statements made by the DCF caseworker to this
9 witness about what the child said to the DCF
10 caseworker. So did everybody do that or are you
11 withdrawing that whole effort?

12 ATTY. JENNINGS-LAX: I believe that Attorney
13 Cunha had raised the objection, was going to brief
14 the issue. I don't believe I had anything to say on
15 the issue --

16 THE COURT: Got it. So did you brief that
17 issue?

18 ATTY. CUNHA: I -- I did not brief the issue,
19 Your Honor.

20 THE COURT: All right. Well we'll cross that
21 bridge if we -- if we get to it again.

22 ATTY. CUNHA: I do have case law on it. It's a
23 simple answer, there's a supreme court case that I
24 will -- if we come across that again, I will let the
25 Court know.

26 It was based on a state of mind exception is
27 what counsel was seeking and --

1 THE COURT: Well if we get to the question, if
2 you go back there we'll deal with it, if not we don't
3 have to deal with it.

4 ATTY. CUNHA: Thank you.

5 THE COURT: All right.

6 BY ATTY. JENNINGS-LAX:

7 Q So regardless after you received the email -- or
8 excuse me that you received in which you were cc'd that was
9 sent to Ms. Amato you did not receive any further
10 correspondence from Ms. Amato with respect to that, is that
11 correct?

12 ATTY. CUNHA: Objection, leading.

13 THE COURT: Overruled.

14 A That's correct.

15 Q And have you had conversations with Ms. Amato
16 before?

17 A I spoke with --

18 ATTY. CUNHA: I'm going to object as to before -
19 - I just don't understand what that means, before
20 this incident, before --

21 ATTY. JENNINGS-LAX: I will rephrase, Your
22 Honor.

23 THE COURT: Okay.

24 Q Prior to November 28th 2016, had you had any
25 conversations or email correspondence with Ms. Amato?

26 A No, I did not.

27 Q Okay. But the first time that you heard from Ms.

1 Amato was I believe you said --

2 A Was the time that Mr. Herzog was attempting pick up
3 Abbigail I got a phone call from the daycare provider and
4 the police officer who was present at the time.

5 Q And that was Ms. -- when Ms. Bermudez was present for
6 the visitation, is that correct?

7 A That is correct.

8 Q And do you know if Ms. Bermudez continued on to be
9 present during visitations after that Tuesday of November
10 29th?

11 A If memory serves she participated twice. And then
12 she was no longer willing to participate as a supervisor
13 after that.

14 Q And do you have any understanding as to whether Mr.
15 Herzog was able to find someone else to work with him for
16 Tuesday and Thursday parenting time?

17 ATTY. CUNHA: Objection as to foundation.

18 ATTY. JENNINGS-LAX: I'm asking if she has an
19 understanding.

20 THE COURT: Well isn't a do you know question a
21 question to establish the foundation? So the
22 objection is overruled.

23 A Yes, I do know.

24 Q And what do you know about that?

25 A My understanding from speaking with Mr. Herzog and
26 also the current provider of supervision is that he was not
27 able to find someone that had availability for Tuesdays and

1 Thursdays. So he is only exercising his parenting time
2 supervised, or at all I should say, Saturday and Sunday with
3 the supervisor. A different supervisor.

4 Q So would it be fair to say that since the beginning
5 of December, 2016 Mr. Herzog has only been able to see the
6 children two days a week?

7 ATTY. CUNHA: Objection, leading.

8 THE COURT: Overruled.

9 A That is correct.

10 Q And was Mr. Herzog able to find a supervisor or
11 someone to serve as a supervisor for his Saturday and Sunday
12 parenting time?

13 A Yes, he did.

14 Q And who's that individual?

15 A Her name is Georgia, her first name is Georgia.

16 Q And have you spoken to Georgia?

17 A I have.

18 Q And have there been any specific concerns raised by
19 Georgia to you of Mr. Herzog's parenting of the children?

20 A No, none at all.

21 Q Did there -- withdrawn. Do you know whether Georgia
22 has had any communications with Ms. Herzog?

23 A I do know, yes.

24 Q And do you know whether Georgia has provided to Ms.
25 Herzog information about the children when they're with
26 their father?

27 A Yes.

1 ATTY. CUNHA: Objection. Calls for hearsay.

2 THE COURT: Overruled.

3 Q Did there come a time when -- withdrawn.

4 ATTY. JENNINGS-LAX: I'd like to approach the
5 witness.

6 Q Could you please identify that document?

7 A This is the same document that I think is in evidence
8 already. This is the --

9 Q It's not -- it's the document I provided to you
10 improperly before.

11 A Not the one that's in front of me. This is Mr.
12 Sarno's report.

13 Q Oh. Again. There we go.

14 A Yes, this is an email that Attorney Cunha provided to
15 me and to you on January 18th, 2017.

16 Q Is it an email that's provided to anyone else?

17 A Yes. It's cc'd --

18 ATTY. CUNHA: Objection, Your Honor. She's
19 testifying from a document that's not in evidence and
20 just to speed this along, I have no objection if
21 counsel is trying to offer this as a full exhibit.
22 And then I'd say the document speaks for itself.

23 ATTY. JENNINGS-LAX: That's fine.

24 THE COURT: Full Exhibit.

25 THE CLERK: Defendant's E in full.

26 ATTY. CUNHA: Thank you.

27 Q Did you have -- withdrawn. Prior to this email were

1 any concerns raised to you with respect to Georgia's working
2 with Mr. Herzog and the children?

3 THE COURT: Can you give me a minute? I want to
4 read this.

5 ATTY. JENNINGS-LAX: Oh, I'm sorry, Your Honor.
6 Of course.

7 (Pause)

8 THE COURT: All right.

9 Q Prior to this email had concerns about Georgia's
10 ability to serve in this capacity been raised to you?

11 A Yes.

12 Q And what were those concerns?

13 A When we were last in court on early December,
14 Attorney Cunha indicated to me that she had some concerns
15 that the particular -- that Georgia was not present during
16 all of Mr. Herzog's parenting time.

17 And also that she wasn't providing her client with a
18 telephone number. She wanted her client to have Georgia's
19 telephone number. That may have happened a little bit
20 later, but there were emails to that effect that she didn't
21 have her telephone number.

22 So I spoke to Mr. Herzog and to Georgia about both
23 issues and Georgia indicated that she was providing email
24 correspondence with Ms. Herzog about parenting time with the
25 children.

26 And that there were two occasions during Mr. Herzog's
27 parenting time with the kids when Abbigail fell asleep in

1 the car when they got to their destination; one I believe
2 was Stepping Stones Museum and another was I think a
3 birthday party with the other kids.

4 So she stayed for a short period of time in the car
5 with Abbigail while she slept. And Mr. Herzog went into the
6 birthday. He was also with his friend and her child and the
7 other children and went into the museum.

8 I had that conversation with both Mr. Herzog and with
9 Georgia. Indicated to both that although it seemed like the
10 right thing to do at the time, the Court's orders were clear
11 that supervision meant having eyes on all three children at
12 all --

13 Q And did Georgia understand that after that
14 conversation?

15 ATTY. CUNHA: Objection as to what Georgia
16 understood.

17 Q From your conversations with Georgia, did you feel
18 comfortable with her understanding of her role following
19 that conversation?

20 A She indicated that she understood.

21 Q And were those public places that Mr. Herzog was with
22 the children at that time?

23 A Yes.

24 Q Did you speak with Georgia following the sending of
25 this email?

26 A I did.

27 Q And did she raise any concerns to you with respect to

1 this email?

2 A Yes, she did.

3 Q And what were those concerns?

4 A She does not want -- she really loves the kids and
5 she enjoys her work, but she does not want to get involved
6 in this kind of conflict.

7 And she is hoping that I can provide -- can be the
8 person who sort of provides protection to her so that if
9 there's a concern it comes through me. If she has a concern
10 it goes through me so that she doesn't have to communicate
11 directly with counsel.

12 She has no problem providing information to Ms.
13 Merron by email. She doesn't want there to be ill will
14 between the two of them.

15 And she understood also that sometimes when you write
16 things that the person can interpret it differently. And
17 she just doesn't want there -- she doesn't want to be a -- a
18 cause for any of the conflict either between the parents.
19 So she's just trying to do her job.

20 Q Did she indicate any concerns that she may not
21 continue in this role?

22 ATTY. CUNHA: Objection, leading.

23 THE COURT: Sustained.

24 Q Has Georgia provided you with any information about
25 her continuing in her role?

26 A She has.

27 Q And what has that information been?

1 A She said that she's going to hang in there for now.
2 But that you know, she's -- she's concerned that the -- the
3 level of conflict would create enough of a problem for her
4 that she wouldn't be able to continue particularly as it
5 relates to her employment with the nanny agency.

6 Q And that nanny agency is that the same one that Mr.
7 Herzog used before?

8 A It is.

9 Q And is that nanny agency still working with him?

10 A That nanny agency has refuse to work with Mr. Herzog
11 because of other issues that happened with Ms. Bermudez.
12 And you know, being subpoenaed and contacted they've
13 indicated that they're not willing to work with this family
14 anymore.

15 Georgia continues to you know, get assignments from
16 that agency because she has a job during the week which is
17 why she can't work with the Herzog kids during the week.

18 Q You have had contact with the children's therapist,
19 Nancy Wickware, is that correct?

20 A Yes.

21 Q And has Nancy Wickware made any requests from you
22 with respect to specific appointments for the children?

23 ATTY. CUNHA: Objection. Leading.

24 THE COURT: Who's this person?

25 ATTY. PLANCHER: The children's therapist, Your
26 Honor.

27 THE COURT: Nancy who?

1 ATTY. PLANCHER: Wickware. W-I-C-K-W-A-R-E.

2 THE COURT: The objection's overruled.

3 A Yes. Ms. Wickware had reached out first to Ms.
4 Herzog to schedule an appointment with the children that
5 she's working with Asher and Mikayla. And an appointment
6 would include Mr. Herzog.

7 And she indicated to me that if she wasn't able to
8 set up with Ms. Herzog that she would let me know and see if
9 I could assist to schedule the appointment. She then got
10 back to me and indicated that Ms. Herzog was not willing to
11 set up the appointment for Mr. Herzog with the children and
12 asked if I could help.

13 Q And did -- do you know what happened thereafter?

14 A I believe -- well I know that Ms. Wickware reached
15 out to Mr. Herzog to see if they could schedule something
16 but at this point she hasn't met with the kids and Mr.
17 Herzog. And she hasn't reached back out to me, I've left
18 her a message to see if she needed me to, you know, reach
19 out to counsel or get a court order.

20 So I'm not sure actually at this point if she still
21 believes that that's an important next step in her therapy
22 with the kids. But I would just you know, this Court to
23 order if necessary that the parents comply and cooperate
24 with Ms. Wickware in any -- in scheduling appointments in
25 any manner that she thinks is appropriate.

26 Q Do you know whether Mr. Herzog in fact had tried to
27 schedule an appointment with her with the children?

1 A I'm not sure. I don't know.

2 ATTY. JENNINGS-LAX: If I may approach the
3 witness to refresh her recollection.

4 Q I'm going to show you some documents to refresh your
5 recollection. If you could review those.

6 A Okay.

7 ATTY. CUNHA: May I know what you're referring
8 her to?

9 ATTY. JENNINGS-LAX: (Inaudible).
10 (Pause)

11 A Okay.

12 Q So does that refresh your recollection with respect
13 to attempted therapy sessions with Mr. Herzog and the
14 children?

15 A Yes, it does.

16 Q So do you want to amend your testimony at all?

17 A Well the cadence of all this is I reached out to
18 counsel and let them know what was going on with Ms.
19 Wickware wanting to meet with the children. And that I
20 would provide help if necessary.

21 At that point Mr. Herzog reached out to Ms. Wickware
22 and indicated his availability to her. But that was -- and
23 that's sort of where it stalled.

24 Attorney Cunha responded that she didn't think it was
25 appropriate for the children's therapist to meet to sort of
26 also do therapy with the child and parents.

27 Q Have you been involved in cases the past where

1 parents and children have attended therapy sessions together
2 at a child's therapist request?

3 ATTY. CUNHA: Objection, relevance.

4 THE COURT: Overruled.

5 Q Yes, many times.

6 THE COURT: So I have a question. Has this
7 therapist ever met these children?

8 ATTY. PLANCHER: The therapist is working with
9 the children, Your Honor.

10 ATTY. CUNHA: This is the children -- this is
11 the children's therapist.

12 THE COURT: Has this therapist ever met the
13 mother?

14 ATTY. PLANCHER: Yes.

15 THE COURT: Ever met the father?

16 ATTY. PLANCHER: No.

17 THE COURT: How long has the child been in
18 therapy?

19 ATTY. PLANCHER: I -- well, I -- I want to stop
20 that. I think Mr. Herzog has met the therapist. I
21 don't believe Mr. Herzog has been in a session with
22 the therapist and the children -- and his children.

23 The children have been in therapy for I think
24 it's over a year.

25 THE COURT: And you're saying this therapist
26 wanted to meet with the children and the father
27 together?

1 ATTY. PLANCHER: Correct, Your Honor.

2 THE COURT: And it didn't happen why?

3 ATTY. PLANCHER: Attorney Cunha responded that
4 she didn't think it was appropriate and her client
5 apparently didn't provide permission for it to occur.

6 I don't know that her client needs to provide
7 permission.

8 THE COURT: Well that's my question.

9 ATTY. PLANCHER: And I had that conversation
10 with Ms. Wickware, but I believe child guidance is
11 not -- did not go forward and schedule the meetings
12 absent the -- both parents consent.

13 ATTY. CUNHA: So, Your Honor, I'd be happy to
14 pull up my emails to refresh the guardian ad litem's
15 recollection on this --

16 ATTY. JENNINGS-LAX: Your Honor, can I object to
17 this please?

18 THE COURT: Yes, I'll let you --

19 ATTY. JENNINGS-LAX: This is not testimony.

20 THE COURT: -- if you want to do that during
21 your recross that would be fine. But at this point
22 it's in the middle of a redirect examination.

23 ATTY. CUNHA: Okay. But -- that's fine. Thank
24 you, Your Honor.

25 ATTY. JENNINGS-LAX: Thank you.

26 BY ATTY. JENNINGS-LAX:

27 Q Part of Mr. Herzog's motion for modification seeks to

1 allow for him to use computers with the children, is that
2 correct?

3 A Yes.

4 Q Did Mr. Herzog, at any point in time, reach out to
5 you with respect to this issue?

6 A He did.

7 ATTY. CUNHA: I'm going to object Your Honor.
8 All these questions -- and I understand but --

9 THE COURT: This part I remember. He wants to
10 use the computers to do homework.

11 ATTY. JENNINGS-LAX: That's correct, Your Honor.

12 THE COURT: So he -- is that what you were going
13 to say Attorney Cunha?

14 ATTY. CUNHA: Yes, it's already been asked and
15 answered.

16 ATTY. JENNINGS-LAX: It was an issue that when
17 it was gone into on cross examination wherein
18 Attorney Cunha was badgering the witness about
19 whether (indiscernible) necessary for homework usage.

20 ATTY. CUNHA: And I'm going to object to
21 badgering. I believe I was just conducting cross
22 examination but I also believe that redirect was --
23 was followed through on those questions. So I
24 believe it's already been addressed.

25 ATTY. JENNINGS-LAX: I (indiscernible) that is
26 accurate, Your Honor.

27 THE COURT: Well what I don't recall is whether

1 the -- this came up -- I do recall the zealous cross
2 examination. I'm going to use that word since that
3 is what you are supposed to do.

4 That's what a lawyer is supposed to do. Zealous
5 cross examination, but you can go -- if you want to
6 go over that that's fine, but I don't think you need
7 to repeat the same questions from direct. He came to
8 her, he wants to use the computer, it's in his
9 proposed orders, he wants to do homework. That I
10 believe we've covered.

11 ATTY. JENNINGS-LAX: It's fine, Your Honor.

12 I'll leave it.

13 THE COURT: All right.

14 BY ATTY. JENNINGS-LAX:

15 Q Attorney Plancher, in her cross examination of you,
16 Attorney Cunha asked you about the volume of images of
17 pornographic images that allegedly had been found on the
18 family computer, is that right?

19 A That is correct.

20 Q And she used the number 1.7 million images, is that
21 right?

22 A She did, yes.

23 Q And is it your understanding that there were 1.7
24 million pornographic images that allegedly were found on the
25 computer.

26 A So after the cross examination, I read through the
27 computer report again and if my memory serves with looking

1 at the document, what they found was approximately 1.7
2 million images and of those there were something like 12 or
3 15 percent of them were pornographic images. And I believe
4 images can also include words. So.

5 Q You provided on November 21st on direct examination
6 recommendations with respect to parenting time, custody, and
7 the Court's orders regarding the same.

8 It has since been indicated that there's going to be
9 significant -- a significant number of witnesses called on
10 the Plaintiff's case.

11 At this time is your preference as guardian ad litem
12 to provide your recommendations now, at the -- what I
13 anticipate will shortly be the close of the Defendant's case
14 or to wait until all of the evidence has been heard?

15 ATTY. CUNHA: So I'm going to object to the form
16 of the question because this witness has already
17 clearly stated what her recommendations were. So I
18 don't believe it's a proper question. She's already
19 stated to the Court what she believed was in the best
20 interest of the children.

21 THE COURT: So what's wrong with the form of the
22 question. You said there's an objection as to form.

23 ATTY. CUNHA: Because now the form is
24 essentially asking the witness if she wants to now
25 wait for the end of the evidence which is probably --
26 should have been done to begin with, to give her
27 opinion. But she's already given her opinion. So I

1 don't believe the form of the question is proper
2 under the circumstances and an opinion was already
3 rendered.

4 THE COURT: Overruled.

5 BY ATTY. JENNINGS-LAX:

6 A So my job is just to answer questions so when the
7 question was asked, I answered it. But it would be and
8 always is my preference actually to testify after all of the
9 evidence, not just one party's case so that I can take into
10 account the evidence that both parties provide to the Court
11 before making a formal recommendation to the Court.

12 So if I'm permitted that opportunity, then I would do
13 it that way.

14 Q So I'm going to ask at this time the Court's
15 permission to recall guardian ad litem at the end of the
16 evidence solely for the purpose of the guardian ad litem
17 providing recommendations.

18 THE COURT: All right. Recross?

19 ATTY. CUNHA: I -- was that counsel's last
20 question? I -- if it is I -- I'm sorry, I was trying
21 to read --

22 THE COURT: Counsel wants to reserve the right
23 to recall the guardian ad litem after the close of
24 all the other witnesses, that's what she said. Do
25 you want to address that or not?

26 ATTY. CUNHA: I would object to that, because I
27 don't believe it's a -- it's a proper protocol --

1 THE COURT: Oh, I think we should wait and see
2 because -- until the request is made. She's
3 requesting now -- she says now that she might ask
4 later to bring the witness back. Let's wait and see
5 then you can object at that point if you want.

6 ATTY. CUNHA: Okay.

7 THE COURT: All right. Recross.

8 ATTY. CUNHA: Thank you.

9 RECROSS EXAMINATION BY ATTY. CUNHA:

10 Q I'm going to try to go from where you left off
11 backwards just where we can kind of stay consistent.

12 So you just testified that you had reviewed a report,
13 would it be fair -- with respect to the computer usage.
14 Would it be fair to say you have a copy of the digital
15 forensic examination report that was prepared by T&M
16 Protection Resources?

17 A I do, yes.

18 Q And that you've reviewed that report?

19 A Yes.

20 Q And that would it also be fair to say that this
21 report is a report that you would rely upon in the normal
22 course of business in rendering an opinion as to what would
23 be in the best interest of the minor children?

24 A Yes.

25 Q And did you take this report into consideration as
26 part of what your opinions are and maybe at some later time
27 in this case?

1 A Yes.

2 ATTY. CUNHA: May I approach, Your Honor?

3 THE COURT: You may.

4 Q Could you look at this document please?

5 A Sure.

6 Q Do you recognize that document as the report that you
7 were just referring to in your testimony?

8 A Yes, I do.

9 ATTY. CUNHA: I'd like to offer this as an
10 exhibit.

11 ATTY. JENNINGS-LAX: I object, Your Honor. And
12 if necessary I will voir dire the witness about my
13 objection.

14 But my objection is raised because of the chain
15 of evidence issues concerning the drives that are the
16 question of this report.

17 THE COURT: Well do you want to voir dire on
18 admissibility or not?

19 ATTY. JENNINGS-LAX: I can voir dire on
20 admissibility. Ultimately though I think that there
21 are several steps involved there. But I will --

22 THE COURT: If you'd like to, this is the time.

23 ATTY. JENNINGS-LAX: Yes.

24 THE COURT: Go ahead.

25 VOIR DIRE BY ATTY. JENNINGS-LAX:

26 Q Attorney Plancher, have you ever had any
27 conversations with anyone from T&M Protection Resources,

1 LLC?

2 A I have not.

3 Q Other than information contained in the report, do
4 you have any other information as to how these drives came
5 into T&M's possession?

6 A My understanding is that Attorney Needle provided it
7 to them.

8 Q Specifically with respect -- withdrawn. Did you have
9 the opportunity to review the testimony of the plaintiff,
10 both from her deposition and before this Court from January
11 28th 2016?

12 A I have had an opportunity to review that testimony,
13 yes.

14 Q And did you have the opportunity to review the
15 testimony of a Mr. Phil Wood from his deposition?

16 A I did, yes.

17 Q And from that testimony do you have any concerns
18 about how these drives got into the possession of T&M?

19 ATTY. CUNHA: I'm going to object to the form of
20 the question, Your Honor. This witness is not a
21 finder of fact.

22 The Court is the finder of fact. It's not
23 appropriate question before -- for the witness to
24 determine issues of credibility and I don't believe
25 that this line of questioning with respect to chain
26 of custody is relevant line of questioning in a civil
27 case. It may be very relevant in a criminal case but

1 not in a civil case.

2 ATTY. JENNINGS-LAX: Respectfully Your Honor, to
3 the extent that Attorney Cunha would like for the
4 information contained in these reports to be
5 attributable to one individual from a collection of
6 electronic devices that were provided from another
7 adult, I think that chain of custody issue becomes
8 extremely pertinent. And the fact is that there's
9 been --

10 THE COURT: Well wouldn't the chain of custody
11 be if someone's offering into evidence the actual
12 computers and the devices?

13 This is a report that the witness says she has
14 relied on much like the other material that was put
15 in for a limited purpose on your examination.

16 ATTY. JENNINGS-LAX: Yes, Your Honor. However
17 those reports had to do with individuals with whom
18 the witness had had direct contact.

19 The witness has already testified she had no
20 direct contact with anyone from T&M, anyone who
21 prepared these reports.

22 THE COURT: So, I'm going to sustain the
23 objection because I think that last question really
24 goes to the weight to be given to this exhibit, not
25 to its admissibility. So the objection to the last
26 question is sustained.

27 ATTY. JENNINGS-LAX: Okay.

1 ATTY. CUNHA: I'm confused, Your Honor. I was
2 actually offering the report as a full exhibit based
3 on the witness's testimony that she reviewed it and
4 she relied upon it and it's a report that she would
5 rely upon in the ordinary course of her business to
6 make these recommendations. So there was no pending
7 question other than --

8 THE COURT: You objected to the question.

9 ATTY. CUNHA: Oh, to counsel's --

10 THE COURT: Yes.

11 ATTY. CUNHA: I'm sorry, thank you.

12 THE COURT: I ruled on the question --

13 ATTY. CUNHA: I lost track, I apologize, thank
14 you.

15 ATTY. JENNINGS-LAX: Would you please replay the
16 last question, I'm sorry.

17 THE COURT: The one that I sustained?

18 ATTY. JENNINGS-LAX: Yes.

19 THE COURT: Go ahead.

20 ATTY. JENNINGS-LAX: I know what it was. It was
21 about concerns that she had.

22 BY ATTY. JENNINGS-LAX:

23 Q So from your review from your testimony that was
24 provided to you, the transcript, you know that Ms. Herzog
25 initially indicated to this Court that she personally copied
26 all of the information onto the drive she provided to T&M,
27 is that correct?

1 ATTY. CUNHA: I'm going to object as to leading
2 and again, I don't believe it goes towards the issue
3 of whether or not this report comes in as a full
4 exhibit.

5 THE COURT: Sustained. That goes to weight,
6 not admissibility.

7 Q This particular report refers to a December 11th --
8 withdrawn. This particular report refers to a CD backup
9 drive plus portable drive that was provided to T&M on
10 December 11th 2015, is that right?

11 ATTY. CUNHA: Again, I'm going to object as to
12 now counsel is questioning the witness from a
13 document that she is objecting to coming in as a full
14 exhibit so that would not be appropriate.

15 THE COURT: It's asking the witness to inquire
16 about the content of a document not in evidence. As
17 a result the objection is sustained.

18 Q Attorney Plancher, with respect to this particular
19 report, have you been provided with anything else that calls
20 into question the authenticity of its contents?

21 ATTY. CUNHA: And I'm going to object to the
22 form of the question. That does not relate to the
23 admissibility of a report that this witness has
24 already testified she's relied upon and normally
25 would rely upon this type of report in the normal
26 course of her business.

27 THE COURT: Sustained. That question goes to

1 weight, not admissibility.

2 ATTY. JENNINGS-LAX: Then Your Honor, I object
3 to the admission of the report on the basis that its
4 inclusion exceeds the -- the scope of redirect
5 examination, that to the extent that we are talking
6 about -- (indiscernible) exceeds the scope of
7 redirect examination.

8 ATTY. CUNHA: Your Honor, I -- I am following up
9 on recross. Specifically based on the questions that
10 counsel asked this witness concerning whether or not
11 she had reviewed this report. So it is clearly
12 within the scope of what was asked on redirect.

13 ATTY. JENNINGS-LAX: Your Honor, this is not the
14 report to which I was referring.

15 THE COURT: The objection is overruled. The
16 document is a full exhibit for the same limited
17 admissibility as I said with other evidence. Namely
18 the basis for the witness's recommendations, not as
19 substantive evidence of the matters contained in it.

20 It's a full exhibit.

21 ATTY. CUNHA: May I approach to pass it --

22 THE COURT: Sure.

23 ATTY. CUNHA: Thank you.

24 THE CLERK: Plaintiff Exhibit 4 in full.

25 ATTY. JENNINGS-LAX: I'm sorry it's exhibit
26 what?

27 THE COURT: Four.

1 ATTY. JENNINGS-LAX: Thank you.

2 BY ATTY. CUNHA:

3 Q Attorney Jennings-Lax had asked you -- had asked you
4 questions with respect to any concerns that may have been
5 raised to you regarding Georgia, the nanny, who is
6 purportedly now providing the supervised visits, do you
7 recall that question?

8 A I do.

9 Q Do you recall receiving specific inquiries from my
10 office regarding the retention of We Care Nanny Agency
11 absent any information of that to my client?

12 A I'm not sure I understand your question. Is your
13 question that do I recall that you were concerned about the
14 use of this agency because your client wasn't consulted? Is
15 that the question?

16 Q Correct.

17 A You were concerned that -- yes, I do recall that.
18 I'm sorry that's the question, that's the answer.

19 Q And do you also recall that I specifically had
20 inquired of you on behalf of my client what information was
21 provided to this agency by Mr. Herzog with respect to his
22 request for services?

23 A I think you asked me whether or not I had provided to
24 the various supervisors any instructions with regard to what
25 their jobs would entail.

26 And I think I provided to you a letter that I wrote
27 to the nanny indicating what her job would entail and gave

1 instructions to Mr. Herzog to ensure that she had the letter
2 before she commenced work.

3 This all happened very quickly you know because of
4 the timing of everything. And I gave her my cell phone so
5 that she could call me if she had any questions.

6 Q And so as you sit here today is it your testimony
7 that you don't recall me specifically requesting the
8 information that Mr. Herzog had provided to the nanny agency
9 concerning his need for services?

10 A I'm not sure you made that request of me is what I'm
11 saying. I know what you asked me to do and what I did.
12 Whether you made a request of Attorney Jennings-Lax on --
13 for his -- her client to provide you with something.

14 If you're saying you did it, I'm going to believe you
15 that you did it. I just don't have an independent
16 recollection that there was an email to the effect. But
17 there may have been.

18 Q And with respect to Mr. Herzog's request for nanny
19 services, have you obtained copies of the nanny services
20 file to date?

21 ATTY. JENNINGS-LAX: Objection relevance.

22 THE COURT: Overruled.

23 A What I obtained from the nanny agency was a copy of
24 the resume of the various nannies and I spoke with the
25 director of the agency. But I have not asked the business
26 to provide me with its own files, no.

27 Q So would it be fair to say as you sit there today you

1 have yet to view the application, if any, that Mr. Herzog
2 had made to this agency when requesting services?

3 A I have not seen his application, no.

4 Q And is there a reason why you have not sought out to
5 seek -- to review that application prior to Mr. Herzog
6 engaging this facility?

7 A Sure.

8 Q And what is that reason?

9 A I was satisfied with the information I obtained from
10 the agency having a direct conversation with the agency
11 owner.

12 With my review of the resume, my conversation with
13 the nanny, the letter that I wrote to them providing them
14 with information, my conversation with Attorney Jennings-Lax
15 and her client with regard to the obligations of
16 supervision. And yup, I was just satisfied with what I had
17 done. I didn't think I needed to do more.

18 Q After you had reached out to the owner of the agency,
19 and was the individual that appeared here in court today,
20 Mr. Mark --

21 ATTY. JENNINGS-LAX: Your Honor, I'm going to
22 object. There's nobody who has appeared in front of
23 the Court with respect of today from the agency.

24 ATTY. CUNHA: I'll withdraw the question. I'll
25 rephrase it.

26 Q Are you aware that I subpoenaed documents from the We
27 Care Nanny Agency?

1 A I am not -- no, I wasn't aware that you subpoenaed
2 them here today. I didn't see anybody here today. I know
3 that you've issued subpoenas to that agency, because they
4 were concerned about that. But no, I didn't see anybody
5 today.

6 Q And how many times did you speak directly to the
7 agency, if you can recall?

8 A Once briefly and once more thoroughly. So twice.

9 Q And when was the first time that you spoke to them?
10 Was it before Mr. Herzog engaged their services or --

11 A It was --

12 Q -- after?

13 A I'm sorry. It was the same day I believe. I believe
14 Mr. Herzog may have engaged their services like on a Monday
15 and then had parenting time on Tuesday, something like that.
16 I know I spoke to them the same day that Ms. Bermudez was
17 meeting with the kids.

18 ATTY. CUNHA: May I approach, Your Honor.

19 THE COURT: You may.

20 Q I'd like you to look at the document that I've just
21 placed before you. And specifically if you go to the back
22 of the document is where I'll be directing you.

23 A Okay.

24 Q Do you have -- have you had a chance to look at this
25 document?

26 A I have, yes.

27 Q Does this document refresh your recollection that you

1 -- the first time that you called the agency was on December
2 5th 2016?

3 A I don't think that was the first time I spoke to
4 them, no.

5 Q So you disagree with this document -- withdrawn. Do
6 you have any notes or documentation in your file that would
7 contradict that you -- the first time you spoke with the
8 agency was on December 5th 2016?

9 A Attorney Cunha, I don't see where this indicates that
10 the first time, can you point me to that? I don't see that.

11 THE COURT: What difference does it make when
12 the witness contacted the agency for the first time?

13 ATTY. CUNHA: Because, Your Honor, I had already
14 brought out previously that there were concerns
15 raised as to what Mr. Herzog had actually relayed to
16 this agency in terms of the types of services that he
17 needed --

18 THE COURT: Right.

19 ATTY. CUNHA: And I raised those concerns on
20 behalf of my client to the guardian ad litem and the
21 -- I was seeking clarification that the agency was
22 properly informed.

23 However, it would be as an offer of proof the
24 parenting -- the supervised visits took place before
25 the guardian ad litem actually spoke with anyone to
26 ensure that that proper information was relayed. So
27 that's where I'm going with this.

1 Q I'd be happy to go there with you if you could show
2 me, I just don't see on these notes that you're showing me
3 where it indicates that date.

4 It indicates that on December 1st Mr. Herzog gave
5 them information saying by the way, Jill Plancher blah,
6 blah, blah.

7 And on December 5th it indicates my name and number
8 but it doesn't indicate that that conversation occurred
9 then. I just don't see where you're trying to get me to
10 see.

11 Q So --

12 ATTY. CUNHA: If I may just have one moment
13 please.

14 Q Is it your position that you spoke with either the
15 owner of the agency or Jessica Bermudez prior to Ms.
16 Bermudez engaging in the supervision of Mr. Herzog's
17 parenting time?

18 A I did not speak to Ms. Bermudez prior to her work. I
19 know that I had a phone call -- two phone calls.

20 One a very brief phone call with the nanny agency
21 indicating the schedule and you know, giving out my
22 information whatever, Mr. Herzog provided them with my
23 information.

24 And then a -- a more thorough when there was a
25 problem with Ms. Bermudez I then had a thorough conversation
26 with one of the two owners in which I you know, told them
27 again that I would play defense for them, if they were

1 contacted by lawyers to let me know. That I would be the
2 point person on this. That I would manage it all, etcetera,
3 etcetera. And I -- but I did provide a letter to Mr. Herzog
4 to provide with regard to what the rules of engagement were.

5 Q And when did you provide Mr. Herzog with that letter?

6 A I think it was that same week.

7 Q Was it prior to Ms. Bermudez engaging in supervised -

8 -

9 A It would not have been the first --

10 Q -- activity?

11 A No, Attorney Cunha. Because it happened literally
12 within you know, as I said it was exactly that same time.
13 In other words his parents left sooner than expected.

14 We -- Mr. Herzog and I discussed on Monday the need
15 to get a supervisor. We three counsel had communication
16 with regard to who the person would be. You agreed to it.
17 That person was then engaged.

18 I then wrote a letter and provided to Mr. Herzog. So
19 I don't think it got to Ms. Bermudez for Tuesday. I think
20 it got to the nanny for Thursday.

21 Q And as the guardian ad litem for the minor children
22 do you have an opinion as to whether or not it was
23 appropriate for Ms. Bermudez to be put in a situation where
24 she wasn't provided accurate information as to what her role
25 would be?

26 A Well I don't know that she wasn't provided accurate
27 information about what her role would be. I know that I

1 didn't provide her with a letter before she started because
2 of the timing of it, but I also know at the time that
3 everyone had agreed to the parenting going forward that day,
4 that the nanny agency was a solid agency in town.

5 And that the -- the kids were going to be with Ms.
6 Bermudez for that day. Would it have been better for me to
7 meet with her beforehand, yes? Absolutely. But --

8 Q In fact isn't it true that I had raised major
9 concerns with you because my client and I were given
10 absolutely no notice before receiving an email from you that
11 you had approved Ms. Bermudez as a supervisor?

12 A You indicated that -- well I'd have to see the email.
13 But yes, I think there were concerns and as I said before,
14 it was the timing of it all. It was happening in real time,
15 really fast because Mr. Herzog parents had to go back
16 unexpectedly quickly.

17 Q And do you have an opinion as to whether or not the
18 issues as having been presented and what you've heard and
19 reviewed to date raised concerns with respect to Mr. Herzog
20 and his interaction with the children?

21 A I'm not sure I understand the question --

22 ATTY. JENNINGS-LAX: Objection, Your Honor.

23 ATTY. CUNHA: I'll rephrase the question.

24 Q Do you have an opinion as to whether or not Mr.
25 Herzog -- withdrawn. Do you have an opinion as to whether
26 or not there's any safety concerns with respect to Mr.
27 Herzog interacting with this children?

1 A I do.

2 Q Okay. And what are those safety concerns that you
3 have?

4 A No, I have an opinion. I don't --

5 Q Could you tell me what that opinion is based on
6 everything that you've seen and heard to date?

7 A Okay. So I believe that Mr. Herzog is a loving and
8 active father. That he is not a -- as Attorney Collins
9 would say, a forty-two regular.

10 So there are things about him that are different from
11 you know, a more main stream person in the way in which he
12 conducts his sexual life.

13 But that there's no evidence before me that has been
14 presented to me that indicates that he has conducted this
15 part of his life in front of his children.

16 And I am not concerned about his ability to parent
17 appropriately the three children when they are with him.

18 I have testified before that they're a handful these
19 three. Abby is extremely active; Asher as well. And it
20 would be challenging for anyone to parent all three kids in
21 an environment like Chelsea Piers for example without the
22 help of another person.

23 That being said, I do believe that Mr. Herzog can
24 make that judgment call on his own. He can decide for him
25 as a parent that it would be helpful to have a babysitter, a
26 mother's helper if you will, with him when he parents his
27 children.

1 But that there's nothing that has been brought to my
2 attention that would require this Court to order supervised
3 access.

4 Q So that being said based on your testimony do you
5 have an opinion as to whether or not it would have been
6 important at least up to this point in time since there are
7 orders of supervision in place for Mr. Herzog to be
8 forthright and truthful in his application to any facility
9 or individual with respect to what it is that is required of
10 that individual at this time?

11 A Sure.

12 Q And --

13 ATTY. CUNHA: May I approach, Your Honor.

14 THE COURT: You may.

15 ATTY. CUNHA: Actually I think you may still
16 have the document --

17 ATTY. PLANCHER: Is this what you're referring
18 to Attorney Cunha?

19 Q Yes, I'd like you to review that document please.

20 THE COURT: Before you do that I have one
21 question to follow up on the prior question, Attorney
22 Plancher.

23 You said nothing has been brought to your
24 attention that would support a supervise -- Mr.
25 Herzog being supervised with his children, right?

26 ATTY. PLANCHER: Correct.

27 THE COURT: So my question is on what's been

1 brought to your attention, has Dr. Smith finished the
2 evaluation?

3 ATTY. PLANCHER: Yes.

4 THE COURT: And was that given to you?

5 ATTY. PLANCHER: Yes.

6 THE COURT: And did you read it?

7 ATTY. PLANCHER: Yes, I did.

8 THE COURT: All right. Let's go back to your
9 question then.

10 ATTY. CUNHA: I'd like her to review the
11 document before her.

12 THE COURT: Okay.

13 A Okay.

14 Q Is there anything in that document that would appear
15 to you based on what is -- what is before you that it was
16 disclosed to the agency that the nature of the services that
17 were needed, at least at the time of requesting them
18 involved supervision?

19 A No, it involves caring for the children. Indicates
20 involved caring for the children, child care.

21 Q And in fact would it be fair to say that is not an
22 adequate representation as to what the Court's orders are at
23 this time?

24 A I'm not sure. I'm not sure exactly how Mr. Herzog
25 could have phrased it that would have been consistent with
26 the Court's orders and also answering the question which is
27 what are their responsibilities.

1 Q I'm sorry you're not sure that Mr. Herzog could have
2 put the word that he is subject to an order of supervision
3 at this time and that is why he's seeking the services?
4 It's a yes or no.

5 A No. He could --

6 Q You're not sure he could have used that word.

7 A He could have used that word, but I'm not sure that
8 it would be responsive to -- please include the duties so
9 you're saying he should have included the duties of
10 supervising his parenting time as opposed to just child
11 care.

12 Q I'm asking --

13 A Yeah, he could have put that definitely

14 Q He could have or he should have?

15 A Well if he was being totally forthright, he should
16 have.

17 Q And --

18 ATTY. CUNHA: I'd like to offer as a full
19 exhibit.

20 ATTY. JENNINGS-LAX: No objection, Your Honor.

21 THE COURT: Full Exhibit

22 THE CLERK: Defendant Exhibit 5 in full.

23 THE COURT: What's the section you were just
24 being asked about?

25 ATTY. PLANCHER: Child care -- responsibilities
26 I think it's on the second or third page, Your Honor.

27 ATTY. JENNINGS-LAX: Your Honor I would just --

1 it may be that Attorney Plancher would prefer for her
2 number not to be included if this is an exhibit.

3 ATTY. PLANCHER: Oh, my cellphone number is on
4 there.

5 ATTY. CUNHA: Yes, it is. I have no problem
6 with that being redacted. That is probably a very
7 good --

8 THE COURT: Where is it, I'll cross it out.

9 ATTY. PLANCHER: Thank you Attorney Jennings-
10 Lax.

11 ATTY. JENNINGS-LAX: Sorry, it's on the bottom
12 of the third page, Your Honor.

13 THE COURT: Any objection if I redact that?

14 ATTY. CUNHA: No, none, Your Honor.

15 THE COURT: All right. Next question.

16 BY ATTY. CUNHA:

17 Q And would it be fair to say that Ms. Herzog should be
18 entitled to any information related to an individual that is
19 going to provide supervision of the minor children?

20 A I don't know about any information, but she should
21 certainly be provided with information.

22 Q And would it also be fair to say that information
23 that she would be entitled to would be to confirm that in
24 fact the individual that is being used is aware of what the
25 role of that individual is expected to be?

26 A Yes.

27 Q And would it also be fair to say she should be

1 provided with the contact information of that individual
2 including a phone number in case of an emergency?

3 A Well the problem with that is that Ms. McKenzie
4 doesn't want to give out her phone number so --

5 ATTY. CUNHA: I'm going to object as being --
6 have that stricken as being non-responsive. I'm not
7 asking what Ms. McKenzie. I'm asking whether or not
8 Ms. Herzog should be entitled to a care provider's
9 cell phone number.

10 A In a perfect world, definitely. It would be great
11 for both parents to have access to phone numbers and
12 information about anyone who is regularly having contact
13 with the kids at both homes.

14 Q And in fact in negotiating the use of Ms. McKenzie on
15 behalf of my client isn't it true that you agreed and
16 recommended that her phone number be provided?

17 A I don't recall whether I recommended her phone number
18 be provided.

19 I wanted them to have -- I wanted Ms. Herzog to be
20 able to have a conversation with her so that she could feel
21 comfortable with her.

22 And I understood that going forward Ms. McKenzie felt
23 comfortable with having email conversations with her.

24 Q And isn't it true that you were informed that in fact
25 there was a situation that occurred that was problematic
26 because my client did not have the present supervisor's cell
27 phone number and could not get in touch with her in

1 inclement weather to inform her appropriately of what the
2 children's responsibilities were in terms of attendance at
3 the school?

4 A So I think what you're referring to is you described
5 -- you just -- Attorney Cunha, you described to me that
6 there was a Girl Scout event that had been cancelled.

7 Ms. Herzog provided the information to Mr. Herzog but
8 he didn't respond to her. So she didn't know whether or not
9 he had been told or he understood that it had been
10 cancelled.

11 So she also wanted to get in touch with Ms. McKenzie
12 who was also with the kids and she didn't have her phone
13 number. Is that correct?

14 Q Yes. And did you address -- and in fact you were
15 informed that because of that my client was caused to go out
16 in the snowstorm at the request of the Girl Scout leaders
17 that were in charge of this function.

18 A That's what you told me.

19 Q And did you discuss that scenario with Ms. McKenzie?

20 A I didn't know that scenario when I had a conversation
21 with Ms. McKenzie the last time I spoke with her. But I
22 discussed the idea of having a phone -- having a
23 conversation with Ms. Herzog. She's not opposed to having a
24 face to face conversation with Ms. Herzog.

25 Q And let me ask you this, when was the last time you
26 spoke to Ms. McKenzie?

27 A Last week.

1 Q So you don't recall that I disclosed this to you on
2 January 11th and asked you to look into it?

3 A I don't remember that it was January 11th.

4 Q And do you recall that that was the same day that I
5 disclosed to you that there were concerns that Ms. McKenzie
6 was staying in the car while Abbigail was sleeping and Mr.
7 Herzog was being left unattended with both Mikayla and Asher
8 for periods of time?

9 A I think those disclosures to me happened on different
10 days. I agree with you that in early January you had a
11 discussion with me about the fact that you were concerned
12 that Ms. McKenzie wasn't with all three kids all the time.
13 And so I looked into that. And this other concern that you
14 raised was raised much later. I think maybe last week.

15 Q And what about the concern with respect to Mr. Herzog
16 using the internet with the minor children and observing
17 films?

18 A And overserving films?

19 Q Movies. You recall that that was raised -- that that
20 issue was raised to you that Ms. McKenzie apparently is not
21 aware that Mr. Herzog is not supposed to be accessing the
22 internet with his children because he's been watching
23 Netflix with them on -- on electronic devices, do you recall
24 that?

25 A So I'm not sure when you made a concern about that
26 known to me, whether it was January 11th or earlier. I do
27 know that in the original letter that I wrote to whoever it

1 was going to act as supervisor, it indicated what the
2 Court's orders were with regard to use of devices.

3 Q So even though that concern was raised to you after
4 the issuance of that letter you haven't looked into that
5 matter?

6 A I have looked into that matter. I discussed with Ms.
7 McKenzie the type's things that the kids were watching and
8 she described them to me, child centered.

9 Q And what is your understanding with respect to Mr.
10 Herzog's access of the internet when he's parenting the
11 children?

12 A What are the Court orders with respect to that?

13 Q What's your understanding, yes.

14 A My understanding is that -- that the children are not
15 to access any devices when they're with Mr. Herzog. That
16 Mr. Herzog is not allowed to engage in any of the chatroom
17 type activity when the children are with him. I think
18 those are the court orders.

19 Q And the last time we were in court you indicated that
20 you inquired into Mr. Herzog's passwords of his electronic
21 devices one time. And that you were not in the field of
22 expertise to determine whether or not in fact he's been
23 obeying the court orders with respect to the chatrooms, do
24 you recall that testimony?

25 ATTY. JENNINGS-LAX: Objection, Your Honor.

26 This goes beyond the scope of redirect.

27 ATTY. CUNHA: I don't believe it does, Your

1 Honor. Specifically there were questions regarding
2 Mr. Herzog's internet use. We brought in counsel
3 discussed the report, the forensic report.

4 ATTY. JENNINGS-LAX: That was on recross, Your
5 Honor. Not on redirect.

6 THE COURT: I thought you objected to the
7 inquiry about computer use because it was asked and
8 answered on a prior court date?

9 ATTY. CUNHA: With respect to homework, yes.
10 Only with the homework issue. This is not homework.
11 This is actual issues that were raised concerning --
12 and counsel --

13 THE COURT: All right. I'm going to overrule
14 the objection. This is a perfect example of what
15 happens when these cases are stretched out then the
16 trial becomes about everything that's happened
17 between the last two court dates.

18 ATTY. PLANCHER: Yes.

19 THE COURT: So I'm going to deal with that as
20 well. We're going to put an end date on evidence.
21 So there will be no evidence introduced in anything
22 that happens between the next court dates absent good
23 cause shown.

24 BY ATTY. CUNHA:

25 Q The email that counsel offered into evidence amongst
26 myself, you and counsel specifically sets forth what my
27 understanding is of the concerns and the orders in this

1 case, would you agree with that?

2 A That is what you wrote in your email, yes.

3 Q And you recall the response to my email by Attorney
4 Jennings-Lax was that my email did not adequately reflect
5 the facts in this case and constituted liable, do you recall
6 that?

7 A Yes, I do.

8 Q Did -- and you chose not to respond at all. And is
9 there a reason why you did not take a position as to what
10 orders Mr. Herzog is subject to with respect to the
11 discrepancies apparently between Attorney Jennings-Lax and
12 myself?

13 A Well there are two ways I can answer this, both are
14 true. The first is that I had a really bad cold and was not
15 on my computer for several days and pretty sick all over the
16 weekend.

17 Q Sorry to hear that.

18 A And the second is that the court orders are what the
19 court orders are and I didn't think it was appropriate for
20 me to engage in a battle royale between two counsel with
21 regard to this issue and that if it had to come up in court
22 it would come up in court and we would deal with it there.

23 Q Following --

24 THE COURT: Who accused who of liable?

25 ATTY. JENNINGS-LAX: That would be --

26 THE COURT: Something about liable?

27 ATTY. PLANCHER: Yes, Your Honor. Attorney

1 Jennings-Lax in response to -- I'm not sure which
2 exhibit number this is --

3 ATTY. CUNHA: E.

4 ATTY. PLANCHER: In response to Exhibit E
5 responded to Attorney Cunha that she had liabled her
6 client.

7 Q Following receipt of this email did you discuss the
8 contents of this email with Georgia at all?

9 A I had a conversation with Georgia. We didn't discuss
10 the contents of the email.

11 Q Following the exchange of emails with respect to what
12 Georgia's roles may or may not be, did you discuss with
13 Georgia the entitlement that my client has to forward me
14 communications that she has with Georgia?

15 A So why don't I just tell you what I discussed with
16 Georgia rather than --

17 THE COURT: What's the relevance of that?

18 ATTY. CUNHA: Sure, so the relevance is is the
19 reason that this email was issued as a showing -- as
20 an offer of proof is my client had reached out Ms.
21 McKenzie inquiring about some issues and the
22 children.

23 And she had forwarded me Ms. McKenzie had
24 noticed that my client had forwarded me the
25 communication. And Ms. McKenzie was very upset that
26 my client was sharing information from Ms. McKenzie
27 to me and took the position that she would not be

1 exchanging any more information because of that.

2 And that's what the ripple effect was with
3 respect to the email exchange amongst counsel. So
4 that's why I believe it's relevant.

5 THE COURT: One moment. Which custody factor
6 does that go to?

7 ATTY. CUNHA: The --

8 THE COURT: Under 46b-56.

9 ATTY. CUNHA: The --

10 THE COURT: Because we seem to be getting far
11 afield here.

12 ATTY. CUNHA: No, I think Your Honor without
13 looking at the statute to just refer to all the
14 elements, it refers to multiple one is the care
15 provider who's supposed to be a supervisor refusing
16 to communicate with the mother of the children as to
17 what is or may not be going on while in the care of
18 Mr. Herzog one.

19 Two, it has to do with whether or not there's
20 actually supervision going on and this care provider
21 has been provided the appropriate information to
22 protect the children's physical and emotional well
23 beings and --

24 THE COURT: All right. I hear you. I'll
25 overrule the objection, but you're going to need to
26 finish up this examination because I think each side
27 has had an adequate opportunity to examine this

1 witness. So it's coming to an end.

2 ATTY. CUNHA: I'm almost done, Your Honor.

3 BY ATTY. CUNHA:

4 A Is there a question that I'm supposed to be
5 answering?

6 Q No. I don't remember.

7 A Okay.

8 Q If there was, I'll withdraw it.

9 ATTY. JENNINGS-LAX: If I may clarify, I believe
10 the witness was going to discuss what she actually
11 discussed with Ms. McKenzie on to which, Your Honor,
12 I have no objection.

13 THE COURT: You may not have an objection, but I
14 do. I may have an objection because section 4-3 of
15 the evidence code says even if the evidence is
16 relevant, I can still exclude it after considerations
17 of prejudice, surprise, confusion of the issues,
18 undue delay, waste of time or a needless presentation
19 of cumulative evidence.

20 But I'm going to allow it.

21 Q I don't think that was the question, but if Your
22 Honor wants that information then I -- you know, please let
23 me know or let the Court know what is exactly that you
24 discussed with Ms. McKenzie?

25 A I just thought it would make it go faster because you
26 were asking me a lot of question and I was saying I didn't
27 talk to her about that, or I didn't -- I just reached out to

1 her because I knew that this receiving an email like that
2 might have caused her not to want to maintain her work with
3 the Herzog children.

4 My understanding is the children like her very much.
5 And that this is working out for the family so I wanted to
6 preserve the relationships.

7 I reached out to her and asked her if there was
8 anything I could do to assist her. And she said yes, if --
9 if she could be excused from having to have conversations
10 with lawyers, that would make her very happy.

11 And I told her that I would do my best to be the
12 point person so if there was any communication that counsel
13 feels needs to go to the supervisor, please do it through
14 me. That was my conversation with her.

15 We discussed very briefly that she thought otherwise
16 things were going very well. She thought she had a nice
17 relationship with Ms. Herzog prior to this incident. In
18 that she was providing Ms. Herzog with information and that
19 she didn't think that you know, she didn't understand why it
20 had gotten to this place and I -- and that was the extent of
21 it.

22 Q Would it be fair to say that my client in fact was
23 supportive of Georgia continuing on as the supervisor/nanny
24 in December even though the initial engagement of the
25 services was challenged as to the way it took place?

26 A I think that's correct.

27 Q And wouldn't it also be fair to say that the reason

1 that Mr. Herzog is not seeing his children on Tuesday and
2 Thursdays is also because Mr. Herzog does not get out of
3 work before 5:30 in the evening?

4 A My understanding is that his work hours are nine to
5 five so that he could be present for the children however
6 long it takes him to get from work to where he meets the
7 kids.

8 Q So 5:30 would not be a unreasonable estimate, is that
9 fair to say?

10 A I think that's fair to say. I think the problem with
11 the visits on Tuesday and Thursdays for the supervisors is
12 that it's a very short block of time them and they're not
13 going to make themselves available to only get paid for an
14 hour and a half and also the travel in Fairfield County
15 during that period of time is rather difficult if they don't
16 come from around here.

17 So, it became just impossible to make that happen
18 given the confines of the Court's orders.

19 Q And quickly with respect to the first supervisor that
20 was engaged through We Care Nannies, her services were first
21 engaged on a Tuesday, is that fair to say?

22 A I think they -- yeah, I think it was Monday, Tuesday.
23 Again, it happened in real-time quickly to get it going so
24 there wasn't an interruption in parenting time.

25 Q And do you recall one of the first questions that I
26 had with you upon receipt of receiving your email approving
27 this individual was whether or not Mr. Herzog was going to

1 be present during this time because the children were not
2 familiar with this person and had never met her before?

3 A Yes. And my understanding was that he was going to
4 be present for the pickups, yes.

5 Q So in fact Mr. Herzog was only available for the
6 pickups and then left the children alone with this
7 individual that they did not know, isn't that true?

8 A I think that's right. There was a period of time
9 after he met the kids, introduced them to Ms. Bermudez, went
10 home and then he went back to work for an hour I think,
11 something like that.

12 Q And --

13 THE COURT: Wait a second. Tell me about that
14 again?

15 ATTY. PLANCHER: I think on that Tuesday
16 following Mr. Herzog's parents departure to Canada
17 when they engaged this supervisor, she went with Mr.
18 Herzog to the schools and to you know, to the daycare
19 and to the school to pick up the kids and they all
20 went back to Mr. Herzog's home after they had met
21 her. And then he left for an hour to go back to work
22 before returning home to exercise the rest of his
23 parenting time. Because he can't -- he's not
24 supposed to leave work before five o'clock.

25 THE COURT: So the children were visiting with
26 the supervisor?

27 ATTY. PLANCHER: The children were with the

1 supervisor for an hour, yes.

2 Q And you say for about an hour, but you have no real
3 information from Mr. Herzog's employer as to when exactly he
4 got out of work on that day, isn't that fair to say?

5 A But that's not what I'm basing it on. I'm basing it
6 on my conversation with Mr. Herzog and my knowledge of the
7 timing of the pickup. It might have been an hour and twenty
8 minutes.

9 THE COURT: So he's paying -- he's paying
10 someone or they're paying someone to supervise the
11 children with the father when the father's not there?

12 ATTY. PLANCHER: I mean, this only happened that
13 one time I think. Because Mr. Herzog's parents had
14 been parenting the kids during the Court's ordered
15 parenting times when Mr. Herzog was at work.

16 THE COURT: So this was a onetime thing.

17 ATTY. PLANCHER: This happened one time with
18 her, yes.

19 Q However, if the Court were to adopt your original
20 recommendations which included Tuesdays and Thursdays
21 parenting time then Mr. Herzog would have to engage a third
22 party to care for his children on those days because he is
23 not home from work, isn't that true?

24 A That is true and I have discussed that with him and
25 you know, what would make sense if the children were going
26 to be parented by Mr. Herzog after school would be that -- I
27 mean Abby's already in daycare until five o'clock. So that

1 wouldn't be an issue with regard to Abbigail.

2 But with regard to Mikayla and Asher that they would
3 be engaged in an afterschool program so they could do their
4 homework and then he could pick them up directly from after
5 school. The benefit of something like that is so that the
6 kids don't have to go from school to a parent and then to
7 the other parent. It's just less transitions for the kids.

8 THE COURT: I want to take a recess for fifteen
9 minutes.

10 (Recess)

11 THE COURT: You may have a seat. Any further
12 questions?

13 ATTY. CUNHA: Just a few, Your Honor.

14 BY ATTY. CUNHA:

15 Q On redirect you were asked a specific questions
16 regarding my client lack of notifying Mr. Herzog of the
17 minor children's medical appointments, do you recall those
18 questions?

19 A Yes.

20 Q In fact there was specific questions that my client
21 did not notify Mr. Herzog of the minor child's appointments
22 in September of this year, do you recall that testimony?

23 A You mean the one in which she took Abby to the
24 doctor?

25 Q Correct.

26 A I'm not sure if she asked me whether that was one of
27 them, but I do remember that one.

1 Q Okay. And you -- as you testified before the parties
2 both are supposed to be going on OurFamilyWizard and
3 exchanging information regarding the children, is that fair
4 to say?

5 A I'm not sure there's a court order about
6 OurFamilyWizard. There might be. But they are supposed to
7 be exchanging information.

8 Q And before testifying today as to whether my client
9 has notified Mr. Herzog with respect to the children's
10 appointments, did you look through any of OurFamilyWizard
11 to refresh your recollection?

12 A No. I know that, I think the question was as Mr.
13 Herzog raised it as a concern and he has. I believe the
14 issue is not whether it's ever done, but sort of the timing
15 of it. I think there are notifications come the day of sort
16 of thing.

17 ATTY. CUNHA: May I approach, Your Honor.

18 THE COURT: sure.

19 ATTY. PLANCHER: Thank you.

20 Q Based on the OurFamilyWizard messages before you
21 would it be fair to say that my client in fact has been
22 communicating with Mr. Herzog regarding the minor children's
23 medical appointments?

24 A Are you asking me to look at both because I only
25 looked at the one.

26 Q Yes, I'm sorry. Yes, please.

27 A I'm sorry, one minute please. Okay. So the question

1 is has Ms. Herzog been providing Mr. Herzog with information
2 about some doctor's appointments based on these
3 communications, is that the question?

4 Q Correct.

5 A Yes, based on these communications there have been
6 some Ms. Herzog has informed Mr. Herzog about some scheduled
7 appointments for the kids.

8 Q Okay. And were you aware that Mr. Herzog had
9 indicated to Ms. Herzog that he was just requesting an
10 update of what was occurring at the doctor's visits?

11 A Was I aware that he had just been asking --

12 Q That he had communicated that to Ms. Herzog on
13 OurFamilyWizard?

14 A I'm not sure I understand the question. He has asked
15 her for updates after the doctor's appointments.

16 Q Okay.

17 ATTY. CUNHA: May I approach, Your Honor.

18 THE COURT: You may.

19 A Okay. I read this one.

20 Q Do you see where Mr. Herzog on October 7th --

21 ATTY. JENNINGS-LAX: Objection, Your Honor.

22 Counsel's testifying from a document.

23 ATTY. CUNHA: I'll withdraw the question.

24 Q The OurFamilyWizard communication between the
25 parties, are those types of communications that you as the
26 guardian ad litem would normally would view in the course of
27 your involvement of a custody matter?

1 A I think I testified before that I don't routinely go
2 OurFamilyWizard because I don't have the time to do.

3 And then I have too many cases where the families are
4 on OurFamilyWizard. So if the parents want me to look at
5 something specifically they need to point it out to me or
6 bring it to my attention.

7 If this were brought to my attention it certainly
8 would be relevant from my understanding of how the parties
9 communicate.

10 Q Okay. However, would it be fair to say that prior to
11 Mr. Herzog's attorney eliciting information from you
12 attempting to reflect that my client was not communicating
13 with Mr. Herzog regarding medical appointments, that you had
14 not communicated that to my client previously before today's
15 court date?

16 A I don't think I've had a discussion, I think that's
17 fair to say that I have not had a discussion with Ms. Herzog
18 with regard to Mr. Herzog's concerns that there were
19 doctor's appointments made without his knowledge.

20 ATTY. CUNHA: Your Honor, I'd like to offer all
21 three of these as one exhibit.

22 THE COURT: Any objection?

23 ATTY. JENNINGS-LAX: They're fine, Your Honor.
24 I don't really think they're appropriate coming
25 through this witness given her testimony, but it's
26 fine at this point.

27 THE COURT: All right. Full Exhibit.

1 THE CLERK: Plaintiff Exhibit 6.

2 ATTY. CUNHA: Thank you.

3 BY ATTY. CUNHA:

4 Q And there was some testimony on redirect with respect
5 to the different types of supervisors that you relied upon
6 in terms of some of the information -- withdrawn.

7 In redirect you had testified that there was a number
8 of paid supervisors who's information you relied upon in
9 making your opinions in this case, do you recall that?

10 A Yes.

11 Q And one of those supervisors was Hannah Dorst, do you
12 recall that?

13 A That is true.

14 Q And Ms. Dorst provided you with a specific written
15 communication for visits that occurred on September 30th and
16 sorry -- on August 30th 2016 and September 1st 2016, did she
17 not?

18 A She did.

19 ATTY. CUNHA: May I approach, Your Honor.

20 THE COURT: You may.

21 Q And you provided a copy of this communication from
22 Ms. Dorst to counsel of record, did you not?

23 ATTY. JENNINGS-LAX: Your Honor, to speed things
24 up, so long as I have a quick moment to compare this
25 with what I have of my own, I will have no objection
26 to it coming in.

27 If I could just have a quick moment and then

1 there's likely no objection to it coming in as an
2 exhibit.

3 THE COURT: All right. I'm not sure that this
4 is speeding things up but that's okay.

5 ATTY. JENNINGS-LAX: What?

6 THE COURT: I said --

7 ATTY. CUNHA: If it helps counsel, I just
8 printed this off of my email from Attorney Plancher
9 upstairs, but.

10 ATTY. JENNINGS-LAX: It's fine, Your Honor. I
11 have no objection. I just want to try to speed
12 things --

13 THE COURT: Sure. Full Exhibit.

14 ATTY. CUNHA: And then I believe I have one last
15 question. Would you like me to wait a moment or can
16 I proceed?

17 THE COURT: Let's have the Exhibit marked here.

18 ATTY. JENNINGS-LAX: What number is this, I'm
19 sorry?

20 THE CLERK: Plaintiff Exhibit 7 in full.

21 THE COURT: You can proceed.

22 BY ATTY. CUNHA:

23 Q In follow up to the Court's question of you regarding
24 Linda Smith's report, would it be fair to say that Ms.
25 Smith's report was completed prior to the orders entered on
26 August 19th 2016?

27 A That's true.

1 Q And would it also be fair to say that the -- a
2 significant amount of the information that's been offered to
3 this Court are concerning events that have occurred since
4 Ms. Smith has offered -- has rendered her opinion in this
5 matter?

6 ATTY. JENNINGS-LAX: I'm sorry. Could counsel
7 repeat the question? I didn't quite understand that.

8 Q Sure. Would it be fair to say that a number of the
9 concerns -- withdrawn.

10 Would it be fair to say that there have been a
11 number of concerns that have been raised with respect to Mr.
12 Herzog since Ms. Smith has rendered her -- issued her
13 report?

14 A That statement is true. The other question was
15 different. But that is true, yes.

16 THE COURT: What's true? I missed --

17 ATTY. PLANCHER: The question for me Your Honor
18 was since Dr. Smith issued her report has Ms. Herzog
19 raised a number of concerns with regard to Mr.
20 Herzog's parenting of the children.

21 THE COURT: Are these concerns different than
22 what she raised beforehand?

23 ATTY. PLANCHER: These are new concerns since
24 Dr. Smith issued her report, which the report was
25 issued in July of 2016, Your Honor. So yes, in the
26 past six months there have been more concerns raised.

27 Q And in addition to concerns raised by Ms. Herzog

1 since Ms. Smith had issued her report, there have been
2 concerns raised by third parties with respect to Mr.
3 Herzog's conduct, isn't that fair to say?

4 A By the various supervisors that provided me with
5 information, is that who you're referring to?

6 Q The vvarious supervisors, Mr. Herzog's landlord and
7 the marshal who Mr. Herzog --

8 A I didn't have any -- I haven't had a conversation
9 with the marshal. So I don't know and I don't believe the
10 marshal had any contact with Mr. Herzog and the children.
11 And I don't think that the witness who testified today had
12 any contact with Mr. Herzog and the kids. Was the question
13 about his parenting; is that what you're asking?

14 Q No, the question was about Mr. Herzog conduct.

15 A Oh, just generally --

16 Q Correct.

17 A -- about his conduct.

18 ATTY. JENNINGS-LAX: Objection, Your Honor.

19 This -- this exceeds the scope of redirect.

20 THE COURT: Well I asked the question about Dr.
21 Smith.

22 ATTY. JENNINGS-LAX: Yes, that is true.

23 THE COURT: So this is --

24 ATTY. JENNINGS-LAX: Okay. I'll withdraw.

25 THE COURT: Go ahead counsel.

26 A Yes there have been many -- there have been more
27 concerns raised since Dr. Smith issued her report.

1 Q And was Dr. Smith aware of the fact that Mr. Herzog
2 acknowledged to a third party that he threw a cinder block
3 at my client?

4 ATTY. JENNINGS-LAX: Objection, Your Honor.
5 Mischaracterizes the testimony.

6 ATTY. CUNHA: Heaved is the word I think she
7 used. So if --

8 A I don't think I can testify to what -- what Dr. Smith
9 -- what information she had. I know that she had
10 information regarding that incident. But --

11 THE COURT: This is what I hear from the other
12 witness. Your client claims that he threw a cinder
13 block at her head?

14 ATTY. CUNHA: My -- yes. And the other witness
15 testified that he acknowledged that he heaved the
16 cinder block at her but when asked on redirect
17 whether or not he acknowledged that he heaved it at
18 her head, the witness said no, he just acknowledged
19 that he heaved it at her and that she was making a
20 bigger deal out of it than he thought needed to be
21 made.

22 THE COURT: When did this supposedly occur?

23 ATTY. JENNINGS-LAX: July of 2015, Your Honor.

24 THE COURT: So this must have been brought to
25 Dr. Smith's attention --

26 ATTY. PLANCHER: Yes, it was, Your Honor.

27 ATTY. CUNHA: But this was my question was

1 whether or not Dr. Smith was aware that Mr. Herzog
2 has acknowledged this conduct to some extent.

3 ATTY. JENNINGS-LAX: Your Honor, this is --

4 ATTY. PLANCHER: Actually -- Actually I can
5 answer that.

6 THE COURT: Overruled.

7 ATTY. PLANCHER: I can answer that. Mr. Herzog
8 had conversations with Dr. Smith about the manner in
9 which this occurred. They both did, both parents
10 did.

11 They have a different recalling of the event.
12 So according to Mr. Herzog that -- the parents were
13 building a playset for the children.

14 Ms. Herzog needed this cinderblock. Mr. Herzog,
15 I'll use the word heaved, passed, gave, you know, it
16 to her.

17 Ms. Herzog, from my conversations with her,
18 initially indicated that hit her foot. That was my
19 initial understanding of the injury that Ms. Herzog's
20 indicated occurred.

21 Based on the conversation I had with Ms. Herzog
22 in her prior counsel's office. I didn't hear -- I
23 don't believe Ms. Herzog indicated to Dr. Smith that
24 it was thrown at her head, although that may be part
25 of what she said to Dr. Smith. I'm not sure.

26 BY ATTY. CUNHA:

27 Q You had an opportunity to review the application for

1 restraining orders in this matter, did you not?

2 A I have, yes.

3 Q And in the application for the restraining order my
4 client alleged that the cinder block was thrown past my
5 client's head and struck her foot, does that refresh your
6 recollection?

7 A Maybe. My understanding from speaking with Ms.
8 Herzog was not about her head, but about her foot. But
9 that's my recollection.

10 Q And would it also be fair to say that Dr. Smith would
11 not have been privy to the information that Mr. Herzog in
12 fact was in possession of Ms. Herzog's keys to her car?

13 ATTY. JENNINGS-LAX: Objection, Your Honor.

14 Assumes facts not in evidence.

15 ATTY. CUNHA: I believe it is in evidence --

16 THE COURT: It may be in evidence, but you know,
17 at this point, it's cumulative; it's needless
18 presentation of evidence. It's --

19 ATTY. CUNHA: That's fine, Your Honor.

20 THE COURT: -- unnecessary.

21 ATTY. CUNHA: I'll -- at this time I will rest
22 with respect to this witness. No further questions.

23 THE COURT: Do you have any more questions?

24 ATTY. JENNINGS-LAX: Very briefly, Your Honor.

25 Sorry.

26 THE COURT: No apology necessary.

27 ATTY. PLANCHER: I think she's apologizing to

1 me, Your Honor.

2 THE COURT: Oh, that is necessary.

3 BY ATTY. JENNINGS-LAX:

4 Q With respect to the T&M report that has now been
5 admitted as I believe Plaintiff 4, did you in fact receive
6 anything -- withdrawn. Do you have any concerns about the
7 validity of the data that is involved with that report?

8 ATTY. CUNHA: I'm going to object to the form of
9 the question as it is leading and two this witness
10 has already testified that she is not qualified in
11 the field of computer forensics so she would not be
12 qualified to testify as to whether or not she
13 challenges the information in the report.

14 THE COURT: So a leading question is defined as
15 a question that suggests a desired answer. How is
16 that a leading question?

17 ATTY. CUNHA: Because I believe that she -- if
18 the Court were to listen to it back, I believe it --
19 it suggests --

20 THE COURT: Do you have concerns about the
21 validity of the data. That is the question. How
22 does that suggest the desired answer?

23 ATTY. CUNHA: That there's an issue with the
24 data and I believe --

25 THE COURT: I don't know what the answer is
26 going to be.

27 ATTY. CUNHA: -- the more appropriate question

1 would be do you have any concerns with the report and
2 then the witness can indicate yes, the concerns are
3 A, B and C but to say the validity of the data is
4 putting words in the witness's mouth what her
5 concerns are.

6 I mean -- that's how I --

7 THE COURT: I respectfully disagree, the
8 objection is overruled.

9 BY ATTY. JENNINGS-LAX:

10 A So the concerns I have are really based on the fact
11 that the information was taken off the computer by a third
12 party who is not an expert appointed by the Court to do a
13 forensic analysis of the computer.

14 That the information was apparently not cared for in
15 a way that could ensure that the chain of command was --
16 chain of custody, excuse me, was not otherwise tampered with
17 in any way, the information was left unguarded.

18 It wasn't in the possession of a law enforcement for
19 any period of time. So I mean it's possible you know, again
20 that there were problems with the way in which the data was
21 accumulated.

22 Ms. Herzog had access to the computer after Mr.
23 Herzog was out of the house. So all of those are you know,
24 basic concerns.

25 Q And in fact weren't you provided with an allegation
26 that some of those files may have been modified?

27 A Yes.

1 Q Since Dr. Smith concluded her report, have there been
2 other concerns that have been raised about the plaintiff's
3 parenting?

4 ATTY. CUNHA: Objection, relevance.

5 ATTY. JENNINGS-LAX: Your Honor --

6 ATTY. CUNHA: There's no allegations in the
7 motion to modify that there are issues with the
8 plaintiff's parenting abilities.

9 The motion to modify specifically puts this
10 Court and myself on notice that there have been no
11 incidents since the August 19th court order and that
12 the Court envisioned that it would be a temporary
13 order of supervision and as such the supervision
14 should be lifted.

15 THE COURT: Overruled.

16 ATTY. CUNHA: Objection

17 A Yes, the concerns are with regard to the mother's
18 ability to foster a relationship between the children and
19 their father?

20 Q Okay. And have those been raised by people other
21 than my client?

22 A Yes.

23 ATTY. CUNHA: Objection.

24 ATTY. JENNINGS-LAX: I have nothing further.

25 ATTY. CUNHA: Goes beyond the scope of redirect.
26 She already answered it.

27 ATTY. JENNINGS-LAX: Nothing further, Your

1 Honor.

2 ATTY. CUNHA: I just have one follow up
3 question, Your Honor.

4 THE COURT: Okay.

5 BY ATTY. CUNHA:

6 Q Isn't it true that he admitted that he was the Linda
7 24 and Sarah P?

8 ATTY. JENNINGS-LAX: Objection, Your Honor.
9 Exceeds the scope of everything really. Exceeds the
10 scope of redirect.

11 ATTY. CUNHA: Actually it does not, Your Honor.

12 THE COURT: Doesn't this have something to do
13 with the computer report --

14 ATTY. CUNHA: Yes.

15 THE COURT: -- that was just asked about?

16 ATTY. CUNHA: Yes.

17 ATTY. JENNINGS-LAX: Your Honor, there is a
18 difference between talking about the validity of the
19 data and talking about specific identifies. That was
20 not something that was gone into. That was not
21 something that was discussed.

22 What was discussed on redirect was whether the
23 data could have been compromised and possibly was
24 compromised since it left any possible possession of
25 my client.

26 THE COURT: So, the report came in by Attorney
27 Cunha -- through Attorney Cunha's cross examination.

1 Then on one of the directs, redirect, re-redirect or
2 re in the third power direct, I don't know, that
3 you're trying to undermine the credibility of that
4 report.

5 This is an attempt, I believe, to bolster the
6 credibility of the report by saying well Mr. Herzog
7 admitted to such and such and so and so.

8 But to me that's fair game now, the door has
9 been opened. The objection's overruled.

10 ATTY. JENNINGS-LAX: That's fine.

11 BY ATTY. CUNHA:

12 A So my memory of the deposition is that he admitted to
13 using certain names but didn't admit to the specific
14 content, chats or whatever.

15 Q However, isn't it true in fact he did admit to
16 specific chat specifically relating to the incestuous
17 communication wherein he posed as a sixteen year old and --
18 sixteen year old female engaging in communication with
19 another adult individual who was role playing as a sixteen
20 year old girl's father?

21 A I recall the chat you're referring to; I don't recall
22 the depo testimony. If you could show it to me where he
23 admits to that specific chat.

24 Q And then this is the last question, do you recall
25 that the forensic evaluator actually took the entire
26 computer from the Herzog home and duplicated it. It was the
27 hard drives that were taken and put into a third party's

1 hands, not the actual physical computer?

2 A So --

3 THE COURT: Can you repeat that question?

4 ATTY. CUNHA: Sure.

5 Q Do you recall that the actual computer itself and the
6 information contained on it was given directly to the
7 forensic evaluator's from the Herzog's home?

8 A I believe, if I know this, if I'm stating this
9 correctly. I believe there were several devices that were
10 analyzed by T&M.

11 There was the computer; there were all of the hard
12 drives. The question with regard to the authenticity issue
13 is still somewhat of a concern because Mr. Herzog had
14 already left the house at the time they were taken into
15 possession and the time Attorney Needle provided them to
16 T&M.

17 But you know, that's not for me to decide. That's
18 for a court to decide, you're asking me if I had concerns,
19 I'm raising those concerns, that's all.

20 ATTY. CUNHA: I have no further questions.

21 ATTY. JENNINGS-LAX: Nothing further, Your Honor

22 THE COURT: Thank you. You may step down
23 counsel.

24 ATTY. PLANCHER: Thank you.

25 THE COURT: Next witness.

26 ATTY. JENNINGS-LAX: Your Honor, the defendant
27 rests.

1 THE COURT: First witness.

2 ATTY. CUNHA: Your Honor, I actually had reached
3 out to Mr. Herzog's employer and asked the employer
4 to be here at two o'clock so that we could address
5 the motion to quash.

6 Attorney Jennings-Lax reached out to that
7 individual indicating that she was still in the
8 middle of redirect and that it would not be for some
9 time until Your Honor got to that issue so directly
10 interfering with the witness's appearance in court.

11 ATTY. JENNINGS-LAX: Respectfully I disagree
12 with that, Your Honor. I indicated to the witness
13 that --

14 THE COURT: I don't know --

15 ATTY. JENNINGS-LAX: -- if you were called today
16 it would four o'clock.

17 THE COURT: All I asked is who's the next
18 witness.

19 ATTY. CUNHA: That would have been my next
20 witness but for --

21 THE COURT: Who's the next witness?

22 ATTY. CUNHA: So then I would call Mr. Herzog to
23 the stand.

24 THE COURT: All right.

25 ATTY. JENNINGS-LAX: Your Honor, could be
26 perhaps deal with my motion to quash since her next
27 witness would have been my client's employer?

1 THE COURT: We can deal with it when --

2 ATTY. JENNINGS-LAX: So you're requiring the
3 employer to be here in order for us to deal with my
4 motion to quash the protective order?

5 THE COURT: I'm not requiring anything. I'm not
6 requiring anything. I'm just saying we need to get
7 to this testimony -- we need to get through the
8 witnesses.

9 ATTY. JENNINGS-LAX: I understand that Your
10 Honor. But to the extent that Attorney Cunha has
11 indicated --

12 THE COURT: I'm happy to address it at the
13 beginning of the next court date. How's that?

14 ATTY. JENNINGS-LAX: Very good. Thank you, Your
15 Honor.

16 THE COURT: All right. So Mr. Herzog's going to
17 take the stand. Swear him in.

18 THE CLERK: Do you solemnly swear or solemnly
19 and sincerely affirm as the case may be that the
20 evidence you shall give concerning this case shall be
21 the truth, the whole truth and nothing but the truth
22 so help you God or upon penalty of perjury?

23 THE WITNESS: I do.

24 THE CLERK: Please state your name and address?

25 THE WITNESS: My name is Geoff Herzog. I
26 currently reside at 58 Columbus Place, Stamford,
27 Connecticut 06907.

28

1 GEOFF HERZOG

2 Called as a witness, having been duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION BY ATTY. CUNHA:

5 Q Mr. Herzog, you were served in hand subpoena duces
6 tecum to produce documents for today's court appearance, is
7 that fair to say?

8 A Yes.

9 Q And I had requested of your counsel in your presence
10 whether or not in fact you have produced the documents
11 pursuant to the subpoena, do you recall that?

12 A I don't recall you asking my lawyer but I have.

13 Q Have you had an opportunity -- do you have the
14 subpoena with you, sir?

15 A No.

16 Q Have you had an opportunity to review the subpoena?

17 A Yes.

18 Q And did you -- not asking what your lawyer said or
19 what you've said to your lawyer did you provide a copy of
20 the subpoena to your lawyer?

21 A Yes.

22 Q And have you provided the items that were requested
23 of you on the subpoena?

24 A I think so, yes.

25 Q With respect to information concerning -- well let me
26 ask you this, do you have those records with you today?

27 A Yes.

1 ATTY. CUNHA: Your Honor, may I approach?

2 THE COURT: Sure.

3 Q May I have the records that I subpoenaed please?

4 A Should I just give it to you on mass or do it one by
5 one?

6 Q No, I'd like to see what you produced.

7 A Sure.

8 Q Thank you. And so you've handed me a -- what appears
9 to be a blue flash drive --

10 THE COURT: You have to answer out loud sir.

11 A Yes.

12 Q And could you tell me what is contained -- what is
13 your understanding that -- as the information that's
14 contained on this flash drive?

15 A My Facebook social profile.

16 Q And does this flash drive contain any and all of the
17 chat line communications that may have occurred during the
18 period of time that I requested in the subpoena?

19 A On Facebook, yes.

20 Q And is it -- you've only provided information on
21 Facebook. Is it your testimony that you have not engaged in
22 any other social media chat line communications?

23 A You didn't ask for that.

24 THE COURT: How is this relevant to me to have
25 to sit and listen to an inquiry about what's on a
26 flash drive? This is not a discovery, we're in a
27 trial.

1 ATTY. CUNHA: Well, Your Honor --

2 THE COURT: This is not a deposition about
3 discovery.

4 ATTY. CUNHA: It's not, however, I had inquired
5 of the --

6 THE COURT: At a subpoena -- at a trial
7 subpoenas are not really supposed to be used as a
8 discovery device. There's case law on that I
9 believe.

10 ATTY. CUNHA: I understand that Your Honor and
11 that was not the purpose of it. The purpose was it -
12 - was to -- for rebuttal purposes of information that
13 came in during the defendant's case in chief.

14 And that's what I relied upon and I relied upon
15 a specific narrow period of time based on the
16 guardian ad litem's testimony and what I believed the
17 court orders to be concerning --

18 THE COURT: I'm happy to listen to relevant
19 testimony but in terms of whether a document has been
20 produced and I'm not going to listen to that.

21 ATTY. CUNHA: Okay.

22 BY ATTY. CUNHA:

23 Q Mr. Herzog, could you tell me what -- what social
24 media networks have you accessed since August 19th 2016?

25 ATTY. JENNINGS-LAX: Objection, relevance.

26 THE COURT: Sustained.

27 Q Could you tell me, have you accessed any social media

1 networks during your parenting time with the minor children?

2 A No.

3 Q And have you engaged in any internet use during your
4 parenting time with the minor children since August 19th
5 2016?

6 ATTY. JENNINGS-LAX: Objection, relevance.

7 THE COURT: Overruled.

8 A Yes.

9 Q And could you tell me exactly what internet access
10 have you engaged in since August 19th 2016 specifically when
11 during the periods of times that you were providing
12 parenting time. So the Tuesdays and Thursdays from after
13 school until seven and then the times that you were given on
14 the weekends?

15 A Primarily Pandora, Maps and instant message.

16 Q And would it be fair to say that you've also accessed
17 the internet to view Netflix media during your parenting
18 time with the minor children?

19 A That would not be correct.

20 Q And with respect to your employment you are scheduled
21 -- would it be fair to say you're scheduled to work Monday
22 through Friday each of the -- during the week that you're
23 scheduled to work Monday through Friday?

24 A Yes.

25 Q And that the earliest time that you are scheduled to
26 be released from work is five p.m.?

27 A Yes.

1 Q However there are times that you actually get out of
2 work a little bit later than five p.m.?

3 A Sure Monday, Wednesday and Fridays.

4 Q Is it your testimony that you have not gotten out of
5 work later than five pm on any of the Tuesdays and Thursdays
6 when you were allowed parenting time with the children?

7 A When I had parenting time with the kids, I tried to
8 get out at five o'clock and I made that arrangement with my
9 boss.

10 Q Okay. But the question was have there been times on
11 Tuesdays and Thursdays that you've worked past five o'clock
12 --

13 A I guess it's around five, so it might have been a
14 little bit after.

15 Q And when you're at your job do you punch in and punch
16 out?

17 A No.

18 Q And have there been times since August 19th 2016 that
19 you have been unavailable to exercise your parenting time
20 with the minor children because you were required to travel
21 for work purposes?

22 A Yes.

23 Q And with respect to -- withdrawn. What is your
24 understanding of the current court orders and your access to
25 the minor children as you sit here today?

26 A I have access to them on Tuesdays and Thursdays from
27 afterschool or three p.m. whichever happens first or

1 whichever matters, so if they have school, it's after
2 school.

3 And then on the weekends, the original orders were I
4 think between ten and four on Saturdays and twelve to six on
5 Sundays. But we modified the Saturdays.

6 Q And when you say the original orders, did you work
7 out an arrangement with your wife to modify the time change
8 to coordinate activities for the children?

9 A Yes.

10 Q And with respect to the period of time that you spent
11 with the children on Saturdays and Sundays would it be fair
12 to say that you enrolled the minor children in activities on
13 both Saturdays and Sundays at Chelsea Piers in August of
14 2016?

15 A No, that would not be correct.

16 Q At what time did you enroll the children in
17 activities in Chelsea Piers?

18 A They are enrolled on Thursdays and Saturdays. That
19 ended and now they're only enrolled on Saturdays.

20 Q And the Thursdays and Saturday enrollment would it be
21 fair to say that my client was not in agreement for the
22 children to engage in activities on a school nights --

23 ATTY. JENNINGS-LAX: Objection. This line of
24 questioning I have a lot -- do we have to go through
25 this. She's very leading. This is a direct
26 examination, Your Honor.

27 ATTY. CUNHA: It's an adversarial witness. I'm

1 --

2 THE COURT: It's the opposing party.

3 ATTY. JENNINGS-LAX: I understand that, Your
4 Honor. But they are still leading questions and she
5 did call him on direct. It's fine, Your Honor. I'll
6 withdraw my objection.

7 ATTY. CUNHA: The rules of practice allow me to
8 ask leading questions of an opposing party.

9 THE COURT: I've always thought so.

10 ATTY. JENNINGS-LAX: Once the witness has been
11 classified and qualified as an adversarial witness.
12 But that's fine, Your Honor.

13 THE COURT: Well if there's ever a case where
14 this is an adversarial witness, this is it.

15 ATTY. JENNINGS-LAX: It's fine, Your Honor. It
16 will make things go faster.

17 THE COURT: All right. Go ahead.

18 BY ATTY. CUNHA:

19 Q Sir, wouldn't it be fair to say that you enrolled the
20 children in these activities on a week night over my
21 client's objection for you to do so?

22 A That would be incorrect.

23 Q That would be incorrect, I'm sorry?

24 A Yes.

25 Q Okay. Is your testimony that my client did not raise
26 an issue with the children attending activities on school
27 nights?

1 A She did after the fact. So when I enrolled them,
2 that was not the case, but after the fact she did indicate
3 she had some concerns and I addressed those concerns so that
4 at the end of the semester the -- they're only going to be
5 attending on Saturdays.

6 Q So sir, isn't it true that you had put out a request
7 to my client inquiring as to whether or not she had any
8 input on you enrolling the children in the activities and
9 you enrolled them before my client responded to you?

10 A I don't remember. But the challenge I have is that
11 Robin often waits days if not weeks to respond back and so
12 if I would have missed an enrollment period, than I probably
13 would have done it.

14 ATTY. CUNHA: Your Honor, I'm going to ask to
15 have portion stricken as being unresponsive to the
16 specific question asked of the witness.

17 THE COURT: I'll need to have it all played back
18 if you want me to rule on that. So why don't we play
19 back the answer and the question.

20 (Playback)

21 THE COURT: All right. Everything after I don't
22 remember is stricken.

23 ATTY. CUNHA: Thank you.

24 (Case passed)

25 THE COURT: I think we'll break now for this
26 case since it's about twenty of five. So sir, why
27 don't you step down.

1 Just some housekeeping, I was looking at the
2 court file, I need to give you another GAL statutory
3 review date. The last one was December 8th, supposed
4 to be within 90 days so the next one's going to be
5 March 8th.

6 ATTY. JENNINGS-LAX: Your Honor, since you have
7 it in front of you and I don't have it in front of
8 me, indicate when Attorney Plancher's appointment
9 expires because I believe we had had it set at one
10 thing based on our belief about when --

11 THE COURT: Yes, I checked that out too. So it
12 said something like it expired in March subject to it
13 being extended by Middletown.

14 Now that you have dates in Middletown --

15 ATTY. PLANCHER: In May.

16 THE COURT: I'm going to make the purposed GAL
17 completion date May 23rd which is your last trial
18 date in Middletown and then the trial judge there can
19 reschedule.

20 So when you come back on March 8th for the
21 review date, we'll need another one of those forms
22 filled out.

23 ATTY. PLANCHER: Yes, Your Honor.

24 THE COURT: Okay. The next date for this
25 hearing is Friday, January 27th.

26 ATTY. CUNHA: Do I get Your Honor to give me a
27 benefit for the ethics education class I'll be

1 missing.

2 THE COURT: I have a short matter in the morning
3 so we'll have you come here at 10:30 on Friday,
4 January 27th. I'm sorry counsel you were saying?

5 ATTY. CUNHA: I was being silly, Your Honor. I
6 was scheduled to appear for an ethics continued
7 education requirement that we now all have to do so
8 many hours by the end of the year for Friday from one
9 to two but --

10 THE COURT: Is it local?

11 ATTY. CUNHA: It's in New Haven and so no, it's
12 not local, but I'm not asking for -- it's only one
13 hour and I could make that up.

14 THE COURT: Okay.

15 ATTY. CUNHA: I would rather complete this.

16 ATTY. PLANCHER: Your Honor, may I ask for an
17 accommodation on that Friday that we end by about
18 3:30. I have to make a four o'clock train.

19 THE COURT: Well let me ask this question and
20 this is part of the GAL referral legislation anyway,
21 do we -- what's everyone's position on whether
22 Attorney Plancher should sit through the remainder of
23 this trial?

24 ATTY. JENNINGS-LAX: Your Honor, unfortunately
25 because this is a modification of custody hearing,
26 and I fear that she needs to sit through the rest of
27 it.

1 ATTY. CUNHA: And my position would be that
2 counsel chose the avenue in which she wanted to
3 present her case. She's already presented Attorney
4 Plancher.

5 We've had I believe two and a half days of
6 testimony with Attorney Plancher who has given her
7 opinion based on the allegations in the motion that
8 were specifically asked of Attorney Plancher Your
9 Honor indicated that you were limiting the evidence
10 to nothing further than what has occurred up to
11 today's date, so there would be no new facts that
12 would be submitted --

13 THE COURT: Absent good cause shown I said.

14 ATTY. CUNHA: Right and I understand that. So
15 based on that, I don't believe that it would be fair
16 to Attorney Plancher to have to sit through the
17 trial.

18 She's already given her opinion and I don't
19 think it would be fair to my client or the Court for
20 Attorney Plancher to be put back on the stand based
21 on evidence that comes in after her testimony when
22 she's already indicated that she was able to give her
23 opinion.

24 THE COURT: Attorney Plancher do you have a view
25 on this topic since you're the one involved?

26 ATTY. PLANCHER: Thank you, Your Honor. It
27 makes me extremely uncomfortable not to participate

1 in a hearing on custody with regard to my role as
2 GAL. I have never done that before.

3 I think that the provision the new statute that
4 the Court is referring to certainly permits the
5 parties and that guardian to agree that my presence
6 wouldn't be necessary for certain things like maybe a
7 deposition where I could read a transcript to avoid
8 unnecessary fees.

9 I am concerned about not participating in this
10 hearing because it could be, Your Honor that there is
11 some evidence that would change my recommendations.
12 I know that I've made them but this Court is well
13 aware, having been in my position before, that you
14 know, nothing is static.

15 The case evolves and I would be uncomfortable
16 not to be here. I don't think it would appropriate.

17 THE COURT: Based upon the allegations of the
18 case, in this case, and the evidence I've heard so
19 far I think it's necessary for the guardian ad litem
20 to remain throughout the course of the custody
21 proceeding. So we will adjourn and what time do you
22 need to --

23 ATTY. PLANCHER: If we adjourn by 3:30 I can
24 make a four o'clock train no problem. So that would
25 be great, Your Honor. Thank you.

26 THE COURT: So we'll see you -- I guess maybe we
27 can even go later and get you a transcript of what

1 you missed --

2 ATTY. PLANCHER: That's true, Your Honor.

3 THE COURT: -- of one hour. Maybe just one
4 hour. Let's cross that bridge --

5 ATTY. CUNHA: Please Your Honor because at that
6 point it kind of doesn't make sense for me to miss
7 the ethics course if I'm only going to be here for an
8 hour beyond because it was between one and two.

9 So if I know that we're going to be allotted the
10 day, then I'm comfortable with waiving it and trying
11 to make that hour up somewhere else. Do you
12 understand?

13 THE COURT: To get there by one, you're going to
14 have leave here by twelve.

15 ATTY. CUNHA: You're right. I wasn't thinking
16 the commute through. That's fair to say.

17 THE COURT: All right. We'll see you on Friday.

18 ATTY. JENNINGS-LAX: Thank you, Your Honor.

19 ATTY. CUNHA: Thank you, Your Honor.

20 ATTY. PLANCHER: Thank you, Your Honor.

21 * * * *

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NO: FST-FA-15-6026880 S : SUPERIOR COURT
ROBIN HERZOG : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
GEOFF HERZOG : JANUARY 24, 2017

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Thomas Colin, Judge, on the 24th day of January, 2017.

Dated this 3rd day of May, 2017 in Stamford,
Connecticut.



Susan Burgess
Court Recording Monitor