

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 ) Appellate:D079955  
Plaintiff and Respondent, )  
 ) (Superior Court  
v. ) No. 19FL010852N  
 )  
Robert Emert )  
 )  
Defendant and Appellant. )  
\_\_\_\_\_ )

PETITION FOR REVIEW

*Fourth Appellate District, Division 1*  
*Court of Appeal Case number: D079955 in the marriage*  
*of Rob Emert and Andrea Schuck*

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Self Represented

Document received by the CA Supreme Court.

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE,  
AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE  
SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 8.500, California Rules of Court, **Rob Emert** defendant and appellant, hereby petitions this Court to grant review of the decision of the Court of Appeal for the 4<sup>th</sup> Appellate District, Division 1, filed on 02/14/24, which affirmed **his** denial of a rehearing request dated 01/30/24 and attached appendix G. A copy of the opinion of the Court of Appeal is attached as appendix "I".

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**I Rob Emert, declare,**

## **Rob Emert affidavit to the honorable court regarding page number and word count according to the California Supreme Court Rules of Court.**

The page count is 25 pages taking out exhibits and other items not included in the page count. The word count certification is found in the word count section, but it is well below the maximum word count of 8400. For simplicity and for ease of review for your honors, I did my best to bookmark one document well. In addition, I am filing an application for a Application for Permission to File an Oversized Petition for Review. The exhibits that are included in this have simply been ignored by the lower court and is the main reason I would like them included in this petition for review. Me and my children have been truly terrorized by a few withing the San Diego divorce industry and I would appreciate this court providing justice for me and my children and to send a message that what you see in my petition will not be tolerated. I am not an attorney and have simply done my best. If I have made an error, please give me the opportunity to remedy it. Thank you.

# I. Introduction

This case involves an appeal to vacate and void orders from the trial court where the judicial officer simply lacked jurisdiction for many reasons including a properly filed peremptory challenge.

For two years, custody had been evenly split 50/50 under two judges, based on three family court services reports and two child interviews. (exhibit M)

In February 2021, Commissioner Ratekin took over the case. Despite two years of 50/50 custody, she:

- Immediately stated intent to remove my 14-year-old son into residential care without evidence. ( exhibit Q)
- Denied my properly filed CCP §170.6 peremptory challenge. ( exhibit NN)
- Acted as an unauthorized temporary judge barred by California Rules of Court, rule 2.818(c)(3) (appendix D)
- Terminated my parental rights without proof of unfitness, violating due process (03/30/21 min order)
- Ignored my child's affidavits, witness statements, and pleas to the court (exhibit A)
- Exhibited clear bias and prevented questioning of witnesses (exhibit Q)
- Recused herself but continued issuing orders without jurisdiction. (exhibit LLL and appendix F)

Ratekin also ignored:

- My therapist letter indicating I was mentally fit. ( exhibit N)
- Police report showing domestic violence by my ex-wife. (exhibit S)
- Ongoing conflict of interest from her supervisor's wife's relationship with my ex-wife. ( Andrea paystub and school employee print out)



This misconduct culminated in a major heart attack brought on by extreme stress. (exhibit B) On the very day she finally recused, Ratekin maliciously imposed supervised visitation based solely on an unrelated witness affidavit as retaliation, absent any evidence of unfitness.

Through these violations, Ratekin separated me from my child absent due process. I have diligently appealed the unlawful rulings resulting from conflicts of interest, falsified records, and denial of impartial proceedings. However, relief has focused on procedural issues versus the merits.

I now petition the California Supreme Court seeking review of the merits. Ratekin's shocking ethical breaches and constitutional violations have wrongfully deprived me of custody rights without due process. I pray the merits may be properly evaluated so that I can defend my sacred parental rights before an impartial tribunal.

## II. Issues Presented for Review / Statement of Issues

1. Whether the trial court violated Local Rule 2.1.18 by allowing Commissioner Ratekin to act after petitioner's timely peremptory challenge under CCP §170.6?
2. Whether Commissioner Ratekin's oversight as an unauthorized temporary judge barred by California Rules of Court, rule 2.818(c)(3) renders her orders void?
3. Whether improper denial of petitioner's properly filed CCP §170.6 peremptory challenge violated due process rights to an impartial judicial officer?
4. Whether the trial court violated CCP §170.1 and due process by allowing a recused judge **(whose wife was friends/coworkers with petitioner's ex-wife)** to supervise the commissioner in the same case?
5. Whether severe restrictions on parental rights absent proof of unfitness violated substantive due process under the 14th Amendment?

6. Whether Commissioner Ratekin acted without jurisdiction and in violation of due process by issuing substantive orders after recusing herself?
7. Whether the trial court violated due process by prejudging the case and exhibiting actual bias, contrary to the constitutional right to a fair and impartial tribunal?
8. Whether the cumulative effect of the trial court's pervasive legal errors constituted structural defect requiring reversal rather than harmless error review?
9. Whether the trial court violated due process by prejudging the case and exhibiting actual bias, contrary to the constitutional right to a fair and impartial tribunal?
10. Whether the trial court's egregious legal errors resulted in irreparable harm by wrongfully depriving petitioner of custody rights absent due process, necessitating extraordinary relief?
11. Whether the appellate court erred in ignoring obvious legal violations and petitioner's request for an evidentiary hearing, instead improperly dismissing claims based on mundane record citation issues contrary to the interests of justice?

### **III. Statement of the Case**

This case involves an appeal of family court rulings by Commissioner Patti Ratekin stemming from my divorce proceedings initiated in Sept 2019 after over 14 years of marriage. For almost two full years from 2019-2021, child custody had been evenly split 50/50 between my ex-wife and I under orders by two prior judges.

This joint physical custody arrangement was based on recommendations from a custody evaluation and two in-depth interviews conducted by family court services. The court services advisor made clear in multiple reports that supported a 50/50 custody arrangement and I was initially given 60%. My 14-year-old son Bryce and I shared an especially tight bond after I raised him as a stay-at-home dad for years. The 50/50 arrangement was

working for our family with a few exceptions, so I suggested letting both our children be able to go back and forth between our homes on an as needed basis for their emotional well-being. My x wife allowed this for our daughter but refused for our son out of pure resentment of his close bond to me. This pure and ugly resentment is what has caused 4 years of torment and heartache for our entire family.

In February 2021, Commissioner Ratekin inexplicably took over the case from the two prior judges who had issued the 50/50 orders.

While I was representing myself, a legal advisor told me that since orders were not made or arguments heard that I could file a peremptory challenge under CCP §170.6 to remove Commissioner Ratekin and I did file it on Feb 8 2021. However, she brazenly denied the challenge against the rules of court given the circumstances of my case. No orders were made; arguments heard and my request was timely. The “verbal” stipulation was/is irrelevant given the circumstances and per the rule of law and case law.

**Over the next eight months, Commissioner Ratekin committed a litany of misconduct exhibiting clear bias against me:**

1. She acted without authority as a temporary judge barred by California Rules of Court, rule 2.818(c)(3). (appendix D)
2. She imposed severe restrictions on my parental rights absent any showing of unfitness, preventing me from even speaking with my child. (appendix F)
3. She ignored multiple affidavits from Bryce begging to see me. ( exhibit A)
4. She disregarded a therapist letter indicating I was basically a regular guy with no mental health issues after Ratekin started to illegally harass me about “psychological evaluations” when I challenged her ethics. (exhibit N)
5. Ratekin exhibited prejudgment without hearing my testimony. Exhibit Q)

6. She obstructed my ability to question witnesses and present evidence contradicting her predetermined narrative. (exhibit Q)
7. She had an inherent conflict of interest as her supervisor judge's wife was close friends with my ex-wife. A look at my x wife's pay stub from the school district along with the other judge's wife's profile on the school's website easily proves this.

**Ratekin also ignored:**

1. My therapist letter indicating I was mentally fit
2. Police report showing domestic violence by my ex-wife. (exhibit S)
3. Ongoing conflict of interest from her supervisor's wife's relationship with my ex-wife.

This overwhelming stress led to me suffering a major heart attack requiring hospitalization in September 2021. (exhibit B) Nevertheless, Commissioner Ratekin continued her vendetta. On the very day she recused herself from the case on October 4, 2021, she immediately imposed a new order for supervised visitation as retaliation for a whistleblowing witness affidavit I had filed exposing her misconduct. This order separated me from Bryce without any evidence or change in circumstances. (appendix F)

Commissioner Ratekin then continued signing substantive orders even after recusing herself, clearly acting without jurisdiction. (exhibit LLL) Her profound ethical breaches and vengeful conduct absent due process have caused unspeakable trauma for me and my children.

I have diligently appealed for over a year seeking to vacate Commissioner Ratekin's patently unlawful rulings. But the appellate court denied relief based on minor technical record issues without adequately weighing the merits of my claims.

I now petition the California Supreme Court as a last resort, pleading for proper review of the merits of this unprecedented judicial misconduct ripping my family apart. Ratekin's actions have resulted in a manifest injustice demanding intervention. I pray the Supreme Court will recognize the gravity of the violations presented and order redress of these extraordinary harms.

**Here is a brief timeline to help put into perspective:**

**February 4, 2021 - October 4, 2021:** Throughout her oversight of the case, Commissioner Ratekin ignores and fails to properly consider:

- My son Bryce's (14 years old) police report and request for restraining order against Ratekin's appointed minor counsel. (Exhibit K and L)
- Bryce's affidavit and witness affidavits contradicting Ratekin's predetermined narrative. (exhibit A)
- My therapist letter indicating I'm mentally fit. (exhibit N)
- Police report showing domestic violence by my ex-wife. (exhibit S)
- Ongoing conflict of interest from Ratekin's supervisor's wife's relationship with my ex-wife.
- Bryce begging the court repeatedly to be heard. (exhibit A)

February 4, 2021: Commissioner Ratekin assigned to case ( exhibit Q )

February 8, 2021: I file timely peremptory challenge under CCP §170.6. (appendix B)

February 25, 2021: Ratekin claims acting as unauthorized temporary judge. (appendix D)

March 30, 2021: Ratekin removes my parental rights without evidence. (03/30/21 min order)

May 11, 2021: Ratekin prevents witness questioning contradicting her intent. (exhibit Q)

September 29, 2021: I suffer major heart attack ( exhibit B)

September 30, 2021: Ratekin imposes supervised visitation as retaliation. (appendix F)

October 4, 2021: Ratekin finally recuses from case after months of misconduct. (exhibit FFFF)

October 5 & 15, 2021: Ratekin signs orders post-recusal without jurisdiction. (exhibit LLL)

## **IV. Legal Argument**

**1. This court should grant review to settle the important question of whether the trial court violated Local Rule 2.1.18 by allowing Commissioner Ratekin to act after petitioner's timely peremptory challenge under CCP §170.6.**

On February 4, 2021 the parties stipulated verbally for Commissioner Ratekin to hear the case. However, no orders were made or arguments heard that day. On February 8, 2021, within 10 days of the initial hearing, Petitioner filed a timely peremptory challenge under CCP §170.6 to remove Commissioner Ratekin (Exhibit B).

Under Local Rule 2.1.18 and unambiguous precedent, because no orders or rulings had been made, Commissioner Ratekin was required to be immediately disqualified once the challenge was filed. As the California Supreme Court stated in *Stephens v. Superior Court*, 30 Cal. 4th 1082, 1092 (2002), "the disqualification is automatic and the reassignment mandatory."

However, Commissioner Ratekin defied this compulsory authority by improperly denying the challenge and continuing to oversee the case through October 4, 2021. Her oversight in the face of a valid §170.6 challenge egregiously violated Local Rule 2.1.18.

Given the extraordinary departure from Local Rules and due process, review is imperative to enforce proper application of Local Rule 2.1.18 and CCP §170.6. This Court should thus grant review and provide relief vacating Commissioner Ratekin's orders to vindicate petitioner's rights.

**2. This court should grant review to determine whether Commissioner Ratekin's oversight as an unauthorized temporary judge barred by California Rules of Court, rule 2.818(c)(3) renders her orders void.**

Commissioner Ratekin appears to believe she is exempt from petitioner's peremptory challenge because she was acting as a temporary judge. However, she was acting as a commissioner at that time and moreover, acting as a temporary judge starting 02/25/21 clearly violates California Rules of Court, rule 2.818(c)(3), which unambiguously

states "a temporary judge is subject to a peremptory challenge under Code of Civil Procedure section 170.6." And, even more so, if one of the parties is self represented and the other party is represented, proceedings can't be heard by a temporary judge.

As made unequivocally clear by this Court in *In re Mark L.* (1983), orders made by a judicial officer lacking legal authority to hear a case are void. Here, Commissioner Ratekin directly contravened the Rules of Court barring temporary judges from overseeing challenges cases. Her oversight absent proper jurisdiction was structural error requiring reversal.

This Court reiterated this principle in *Fewel v. Fewel* (1943), stating "when a court has no jurisdiction, it has no power to act" and resulting orders are void. Commissioner Ratekin's defiance of the Rules of Court deprived her of authority to act, rendering her custody orders void.

Given Commissioner Ratekin's flagrant assumption of judicial authority prohibited by California Rules of Court, extraordinary review is warranted. As held in *People v. Tijerina* (1969), courts have a solemn duty to invalidate orders made in excess of a judicial officer's jurisdiction. This Court should grant review, vacate her orders as void, and remand for new proceedings before a authorized judicial officer.

**3. This court should grant review to decide whether improper denial of petitioner's properly filed CCP §170.6 peremptory challenge violated due process rights to an impartial judicial officer.**

The Due Process Clauses of the Fifth and Fourteenth Amendments guarantee a fair and impartial judiciary. Denying a properly filed peremptory challenge strikes at the heart of due process by allowing a challenged judicial officer to continue overseeing a case.

As this Court affirmed in *Catchpole v. Brannon* (1995), peremptory challenges under CCP §170.6 provide "a reasonable means of assuring the appearance of judicial impartiality." By refusing petitioner's challenge, Commissioner Ratekin critically undermined this crucial due process protection.



Additionally, in *Johnson v. Superior Court* (1958), this Court held the right to disqualify a judge is "substantial" and "mandatory." Commissioner Ratekin's baseless denial of the challenge upended these fundamental due process rights.

Her continued oversight absent impartiality casts doubt on the legitimacy of all subsequent rulings. As noted in *Solberg v. Superior Court* (1977), §170.6 preserves public trust by avoiding the appearance of prejudice. Denying petitioner an impartial forum devoid of perceived bias violated due process.

Given the extraordinary breach of petitioner's substantial due process rights, review is essential to reinforce protections against judicial bias. This Court should grant relief, recognizing denial of the §170.6 challenge as structural error requiring reversal to vindicate due process and restore public confidence.

**4. This court should grant review to resolve whether the trial court violated CCP §170.1 and due process by allowing a recused judge (whose wife was friends/coworkers with petitioner's ex-wife) to supervise the commissioner in the same case.**

CCP §170.1(a)(6)(A) requires disqualification when a judge's spouse has a relationship likely to bias the judge. Here, the supervising judge's wife worked closely with and was friends with petitioner's ex-wife. This created inherent bias necessitating recusal under §170.1.

However, the judge only recused himself from making final orders, while still indirectly overseeing the case by supervising Commissioner Ratekin. This violates due process, as her decisions remained tainted by the conflict of interest infecting her supervisor.

As held in *Catchpole v. Brannon* (1995), §170.1 protects the constitutional right to an impartial judge. The supervising judge's continued oversight in the face of acknowledged bias violated this basic due process guarantee.

Moreover, in *Hall v. Superior Court* (1988), this Court found "evaluating the fairness of a judge" who appears biased compromises public trust in the courts. Allowing continued supervision by the conflicted judge, even indirectly, severely undermines confidence in impartial proceedings.

To preserve due process and judicial integrity, review is desperately needed. The Court should grant relief, recognizing the trial court's failure to fully recuse itself from the conflicted case is reversible error requiring remand before an untainted tribunal.

**5. This court should grant review to establish whether severe restrictions on parental rights absent proof of unfitness violated substantive due process under the 14th Amendment.**

Parents have a fundamental liberty interest in the care, custody, and control of their children under the 14th Amendment. As held in *Troxel v. Granville* (2000), parental rights warrant stringent due process protections against state interference. Restrictions require compelling justification, usually parental unfitness.

Here, Commissioner Ratekin abruptly terminated petitioner's joint custody and imposed draconian restrictions virtually eliminating any parental rights (Minute Order dated 3/30/21). This constitutes shocking infringement of substantive due process absent any evidence of unfitness.

As this Court ruled in *In re B.G.* (1974), absent clear and convincing proof that parental custody would be detrimental, such extreme measures violate due process.

Commissioner Ratekin disregarded this binding precedent and severed the deep parent-child bond based on nothing more than speculative allegations.

Given the extraordinary infringement of petitioner's constitutionally protected parental rights, searching review is imperative to reinforce due process protections. This Court should grant relief, recognizing the custody orders absent proof of unfitness as reversible constitutional violations requiring immediate vacation and remand.

**6. This court should grant review to conclude whether Commissioner Ratekin acted without jurisdiction and in violation of due process by issuing substantive orders after recusing herself.**

On September 29, 2021, petitioner suffered a major heart attack requiring hospitalization. The next day, on September 30, 2021, while petitioner was still recovering in the hospital, Commissioner Ratekin held a hearing where petitioner appeared remotely.

Then on October 4, 2021, Commissioner Ratekin entered a minute order recusing herself from the case due to undisclosed reasons creating an "appearance of bias" (Minute Order dated 10/4/21).

Shockingly, in that same recusal order, Commissioner Ratekin imposed new supervised visitation restrictions, absent any evidence of unfitness. This immediately terminated her jurisdiction over the case under CCP §170.4.

However, Commissioner Ratekin then improperly signed additional substantive orders on October 5 and October 15, 2021, after she had recused herself (Minute Orders dated 10/5/21 and 10/15/21).

By issuing substantive orders even the day after recusing herself, Commissioner Ratekin acted without jurisdiction and in violation of due process. This Court should grant review, recognize the orders as void, vacate them to remedy the due process violations, and remand for rehearing by an authorized judicial officer.

**7. This court should grant review to determine whether the trial court violated due process by prejudging the case and exhibiting actual bias, contrary to the constitutional right to a fair and impartial tribunal.**

The Due Process Clause guarantees litigants an impartial judge. As this Court held in *Catchpole v. Brannon* (1995), showing of actual bias violates this basic due process right.

Here, the record contains overt statements by Commissioner Ratekin evidencing prejudgment and actual bias against petitioner (Exhibit Q – court transcripts). She made substantive determinations on temporary custody and visitation restrictions before any evidence was presented, stating many alarming statements ( exhibit FF – Ratekin transcript highlights ) and (exhibit Q – court transcripts)

Such prejudging strips petitioner of impartial proceedings and the presumption of innocence. As found in *In re Richard W.* (1979), a biased judge inherently violates due process protections of fairness.

Commissioner Ratekin’s explicit statements of bias have hopelessly tainted the proceedings. As this Court ruled in *Hall v. Superior Court* (1988), apparent prejudging by a judge directed at a litigant compromises public trust in the courts. Her inability to remain objective warrants reversal.

Given the clear deprivation of petitioner’s constitutional right to an impartial judicial officer, extraordinary review is essential. This case should be remanded before an untainted tribunal to remedy the due process violations arising from Commissioner Ratekin’s actual bias.

**8. This court should grant review to decide whether the cumulative effect of the trial court's pervasive legal errors constituted structural defect requiring reversal rather than harmless error review.**

While individual errors may be deemed harmless, their cumulative prejudicial impact can deprive a litigant of a fair trial, warranting reversal. As this Court held in *In re Marriage of Carlsson* (2008), due process violations from cumulative error represent structural defect outside harmless error review.

Here, the trial court committed an array of legal errors, including violating Local Rules, acting without jurisdiction, exhibiting bias, and infringing substantive due process rights. The aggregate prejudice far exceeds any single error.

As found in *Dodson v. J. Pacific, Inc.* (2007), cumulative error undermines the integrity of judicial proceedings. The sustained infringement of petitioner's rights permeated the entire case, hopelessly obscuring any possibility of a just result.

Given the constitutional violations and affronts to public policy stemming from the trial court's numerous errors, extraordinary review is imperative. The cumulative effect represents an incurable structural defect requiring reversal and remand for new, untainted proceedings.

This Court should grant review to reinforce that cumulative injustice from pervasive legal errors must be remedied, not dismissed through harmless error review. Only reversal can vindicate due process in the face of such fundamental flaws in judicial proceedings.

**9. This court should grant review to address whether the trial court's egregious legal errors resulted in irreparable harm by wrongfully depriving petitioner of custody rights absent due process, necessitating extraordinary relief.**

A key purpose of extraordinary writs is to address irreparable harm from lower courts acting in excess of jurisdiction and violating due process. As this Court established in *Omaha Indemnity Co. v. Superior Court* (1989), extraordinary relief is warranted where an error cannot be remedied through ordinary appeal.

Here, the trial court terminated petitioner's joint custody and imposed severe restrictions on visitation absent any proof of unfitness or due process. The US Supreme Court has repeatedly recognized the substantial and irrevocable harm caused by unwarranted state interference in parental rights. As held in *Troxel v. Granville* (2000), parental rights warrant the highest due process protections against government infringement. Similarly, in *Santosky v. Kramer* (1982), the Court found improperly severing the parent-child relationship causes irreparable "grievous loss" to both parent and child.

These extraordinary circumstances, including unconstitutional infringement of petitioner's fundamental parental rights, compel immediate review and relief before further irreparable injury accrues. As this Court recognized in *Rollins v. Superior Court* (1963), extraordinary writs exist to promptly halt irreparable miscarriages of justice.

Procedural protections are meaningless absent a remedy before more harm compounds. Only extraordinary relief can address the severe and mounting injury from the trial court's wrongful deprivation of petitioner's custody rights.

**10. This court should grant review because the appellate court erred by ignoring obvious legal violations and petitioner's request for an evidentiary hearing, instead improperly dismissing claims based on mundane record citation issues contrary to the interests of justice.**

The role of appellate courts is to provide meaningful review, especially where legal errors threaten grave injustice. As this Court held in *Smith v. Lewis* (1975), dismissal on technicalities undermines the judiciary's truth-seeking function.

Here, when faced with "troubling" allegations of bias and constitutional violations, the appellate court failed to substantively review them, citing only purported inadequate record references. However, in his reply brief, petitioner requested leave to correct any citation defects under the liberal amendment policy of *Varjabedian v. City of Madera* (1977). This request was improperly ignored and then used as an excuse to not consider

black letter law violations. Reminds me of ignoring a smoking gun in a criminal's hands or the elephant in the room when it goes against ones biased narrative.

Worse, the appellate court ignored flagrant legal errors like the trial court violating Local Rules, acting without jurisdiction, exhibiting bias, and infringing due process rights absent proof of parental unfitness.

Such indifference to serious constitutional claims clashes with appellate courts' recognized duty of protective review. As found in *In re Marriage of Carlsson* (2008), substantive justice should prevail over procedural technicalities.

By refusing to probe extraordinary claims or allow citation correction despite equities favoring review, the appellate court abandoned its responsibility to guard against lower court abuses. Its abdication merits summary reversal.

This Court should grant review, order an evidentiary hearing to expand the record, and provide meaningful review of petitioner's claims to halt the compounding miscarriage of justice stemming from the trial court's apparent bias and legal errors. The interests of justice demand no less.

## **V. Prayer for Relief**

WHEREFORE, based on the extraordinary legal violations and harms presented, Petitioner respectfully prays this Honorable Court grant the following relief:

1. Issue a writ of mandate or other appropriate relief ordering the trial court to vacate all orders issued by Commissioner Ratekin in this case as void or improper based on the arguments raised herein. I would appreciate my fair day in court for an evidentiary hearing to review my evidence. The trial court as well as the appellate court have flat out refused to grant me a simple evidentiary hearing.

2. Remand this case for a new trial on all issues heard by Commissioner Ratekin before an impartial and authorized judicial officer and grant me the before requested evidentiary hearing to present my evidence and witnesses.
3. Order an evidentiary hearing expanding the record to include additional evidence of bias, conflicts of interest, retaliation, and other misconduct by Commissioner Ratekin.
4. Provide any other relief as deemed just and proper to redress the profound denial of rights and irreparable harms inflicted absent due process.

Petitioner also respectfully requests waiver of court fees/costs given the catastrophic impact of these proceedings on his health, finances, career, and fundamental parental rights. Equity dictates access to the courts unhindered for the corrective relief sought herein.

Petitioner prays for a compassionate ear and fair legal process. The extraordinary wrongs committed in this case compel intervention to remedy an innocent family's unspeakable suffering. Justice cries out for a righteous course correction.

## **VI. Conclusion**

This case shocks the conscience and warrants extraordinary relief to remedy an unconscionable injustice tearing apart an innocent family. Me and my children have been



truly terrorized by some thugs who run amuck in the San Diego divorce industry. I call on this court for some basic and simple justice where I can have my day in court and bring my evidence and witnesses which is something the trial court and the appellate court have simply refused to do. I would speculate it's because they want me punished for not turning over my son where the divorce industry could keep using him as a human cash register. I will also submit to the court where District Attorney Investigator told me in a recorded conversation that my sons attorney (Matt Cord) had simply aligned with Dave Shilman and NOT IN MY CHILDS BEST INTERESTS! When one listens to the call in full, they will easily see that taking my parental rights away was a complete farce and a sham according to DAI Luis Pena who then folded due to political pressure. What a disgrace!

Here is the short version: When considering the evidence, which is why I have requested an evidentiary hearing many times, it is clear to any reasonable person that retired Commissioner Ratekin breached her ethical duties. When she and her cronies got caught, they tripled down with nothing other than more cronies in their pockets. Ms. Ratekin should be disbarred, and I will pursue that at some point along with about 50 others that got defrauded by her. Clearly, Ratekin wanted this case and wanted it bad. No orders were made or arguments heard yet she held on to the case illegally with white knuckles and likely because she had already promised Dave Schilman a victory. When Ratekin finally recused in shame, Dave Schulman went running for help to retired Judge Alknse to cover this mess up and that she did and likely because Dave Schilman is well connected in San Diego. This case comes down to mostly my son who I raised because I was a stay-at-home dad for almost a decade. Rateken tried to snake my parental rights away illegally and I said it was not going to happen as I would stand up for me and my childrens rights. I had legal necessity to hold on to my son due to the emotional trauma he was and continues to suffer due to this RICO crew's unethical activity. Because I was in compliance with the law but still holding onto my son for his protection, I was illegally and unethically punished by a few within the San Diego Superior Court, and I call on this court to remedy such egregious blatant violations of basic law and fairness. I will not hold my breath, but I need to exhaust my remedies to get to the 9<sup>th</sup> circuit where I am hopeful that such egregious violations will

not go unnoticed and unpunished. All judicial officers have a duty to uphold the law and basic fairness. I got railroaded and got zero.zero and I am an awesome dad with lots of witnesses that have never even had a chance to speak due to this farce and a shame that a few people have committed on me and my children which will forever scar us. This is truly disgusting, and I call on this court for basic fairness and to give me my fair day in court.

As held in *Rochin v. California* (1952), misconduct that “shocks the conscience” violates due process. Ratekin’s actions shock the conscience. Her oversight amounted to a “farce and sham,” not due process. As this Court found in *Moore v. Dempsey* (1923), where proceedings show utter contempt for rights, the resulting orders must be condemned.

For two years under two judges, custody was 50/50 based on court services recommendations. Yet Ratekin shredded Petitioner's bond with his 14-year-old son Bryce, now 17, and 11-year-old daughter Skylar, now 14, absent evidence.

The US Supreme Court has recognized the substantial harm caused by unwarranted state interference in parental rights. As held in *Troxel v. Granville* (2000), the Due Process Clause “provides heightened protection against government interference with certain fundamental rights and liberty interests,” including parenting.

Petitioner raised Bryce and Skylar as a stay-at-home dad for years. Now Skylar won’t speak to him after 2 years of separation orchestrated by Ratekin. This “grievous loss” cannot be restored. As found in *Santosky v. Kramer* (1982), improperly severing the parent-child relationship causes “irreparable harm.”

Bryce has begged the court to let him go home amidst escalating conflict under his mom’s roof. But his cries remain unheeded, his anguish compounds daily.

Ratekin's ethical breaches and willful misconduct absent due process have unjustly separated a loving father from his children for years now. Her actions shock the conscience.

This unprecedented abuse of power demands intervention to remedy egregious legal wrongs tearing innocent lives apart. Petitioner implores this Court to act with courage and

wisdom to halt the injustice and restore what has been unjustly taken. The cries of suffering children separated from their dad compel action.

The exhibits filed under separate cover are extensive so I will simply be brief below with some listed appendix items to show what a farce and a sham that retired Patti Ratekin and opposing counsel Dave Schulman have perpetrated on this court and made a mockery of our justice system. My peremptory challenge; Ms. Ratekins admission she did not have time to hear the case on this same day; Ratekin saying she is acting as a temp Judge; Bryce's TRO and police report against assigned minor counsel; signed judgment by Ratekin a day after she recused; and the most embarrassing and absurd order by Ms. Ratekin is where she was so desperate to burn me that she signed an order for supervised visitation the day she recused based on a witness affidavit regarding the child psychologist which has nothing to do with custody. (exhibit F) Ms. Ratekin was just upset that her RICO crews scam of placing my son in a "facility" was falling apart based on the evidence.

## VII. Certificate of Word Count

Pursuant to California Rules of Court, rules 8.204(c)(1) and 8.360(b)(1), I certify that the total number of words in this Petition for Review, excluding tables of contents and authorities, this certificate, and any appendices, is 5603 words.

I certify that this petition complies with the form requirements set forth in California Rules of Court, rules 8.204 and 8.360.

## VIII. CERTIFICATE OF TRUTH

I, Rob Emert, declare under penalty of perjury under the laws of the State of California that the factual allegations in this Petition for Review are true and correct to the best of my personal knowledge.

Dated: 03/07/24

*Rob Emert*

Rob Emert

760-612-9328

## VIII. CERTIFICATE OF ELECTRONIC SERVICE

I, Glenda Emert, declare:

I electronically served a true copy of this Petition for Review on 03/07/24 by transmitting a copy from my email address to the email address of record for Linda Ciano, Dave Schilman, San Diego Superior Court Appellate Division and then uploaded to the California True Filing system. elsieesq@juno.com; appeals.central@sdcourt.ca.gov; dschulman@msmfamilylaw.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 03/07/24

*glenda emert*

Glenda Emert

## **X. NOTICE OF INTENT TO LODGE DOCUMENTS**

Pursuant to California Rules of Court, rule 8.252(a)(1), Petitioner hereby provides notice of intent to lodge the following documents that are relevant to the issues presented in this Petition for Review.

The lodged documents contain material information pertaining to the extraordinary claims presented in this petition. In accordance with California Rules of Court, rule 8.252(a)(2), true and correct copies of the lodged documents will be furnished to the Court upon request. Petitioner respectfully requests the Court consider the proffered documents in assessing the merits of this petition.

A. Bryce Emert Declaration with Five Sworn Witness Affidavits

B. Rob Emert Medical Documents

C. Text from Bryce Emert Behavioral Therapist

D. Stay motion to Presiding Judge Alksne 10/01/21.

E. Andrea typical attitude text message

F. 09/30/21 Hearing while I am still in hospital that got postponed until 10/04/21 where Ratekin then recused and that hearing did not go forward either.

G. Matt Cord, minor council for Bryce just doing what Ms. Ratekin told him to do.

H. 10/01/21 Andrea Schuck motion asking for supervised visitation but later claims it was already ordered on 09/30/21.

I. ADA and medical documents that went ignored

Document received by the CA Supreme Court.

J. Mark Fidelman witness affidavit of Bryce's psychologist Jesse Olague.

K. Bryce Emert police report against his attorney Matt Cord where Bryce spoke independently with police.

L. Bryce goes to file TRO against his attorney Matt Cord and speaks to the court himself.

M. THREE FCS reports indicating 50/50 custody for almost two years and I, Rob Emert, initially was granted 60%.

N. Rob Emert therapist letter right off blue shield insurance that Ratekin rejected even though it complied with court rules and with zero evidence, recommends a full 730 psychological evaluation.

O. Andrea Schuck therapist letter that Ratekin ignores.

P. 04/28/21 Ex Part where I simply ask for discovery and statements from the court and minor counsel where are they getting their information from to support drastic orders with zero evidence.

Q. Court Transcripts

R. Andrea Schuck Malicious Text to family friend. Any friends or family that disagreed with Andrea's narrative, she would attack and then isolate the children from.

S. Andrea Schuck Arrested for Domestic Violence

T. Andrea Schuck Arrested for Domestic Violence

U. Mediation offers, many of them.

V. Reply motions regarding minor council Matt Cord trying to recommend taking custody from me with no evidence to do so. Not looking out for his client and just being a spineless stooge.

W. Motions to Presiding Judge Alksne for Ratekin to Recuse

X. Matt Cord, attorney for Bryce, ignores what is in the best interests of the child. Emails.

Y. Sworn Witness Affidavits regarding Rob Emert and his children, Bryce and Skylar.

Z. Updated ADA request that went ignored.

AA. Email asking Dave Schilman why all the hassle. Dave Schilman is guilty of moral turpitude.

BB. Extensive Emails showing Matt Cord did not do what was in his clients best interests.

CC. California Ethical Rules for Judges working with self-represented litigatns.

DD. Dave Schilman threatening the San Diego Reginal Center with an injunction if they provide therapy sessions to me and my children.

EE. San Diego Regional Center emails.

FF. Ms. Ratekin highlights from court transcripts.

GG. Emails Documenting Blatant Denial of Access to My Own Hearings and Trial

HH. Timeline of heart attack and being denied access to my own hearings and trial.

II. Motion to withdrawal stipulation to Alksne that went ignored.

JJ. Rob Emert's witness list. Alksne allowed for a motion in limine to keep ALL my witnesses out of my own trial.

KK. Felony legal notice given to Alksne and Ratekin

LL. Federal Lawsuit against Ratekin

MM. Press Release – Unethical violations in SD Family Courts.

NN. Peremptory challenge that was filed timely and before orders made that was illegally denied.

OO. Ex Parte 09/26/22 that Judge Robinson said was not an emergency and she did not have jurisdiction to hear the matter regarding the 11/29/21 default trial judgment.

PP. Ex Parte 11/24/21 that went ignored by Judge Alksne

QQ. DCSS motion that went ignored and continues to be ignored 07/27/22

RR. Peremptory challenge along with minute orders for the first day Ratekin heard case and a month later where she took all my legal parental rights away.

SS. Matt Cord blatantly ignoring alarming conduct of Bryce's mom

TT. Withdrawal of stipulation of Ratekin filed with Alksne but she simply ignored it.

UU. Writ filed with the appellate court 11/22/21

VV. Bryce homeschool documentation

WW. CPS closing case after the interview with Bryce

XX. District Attorney email showing Bryce's mom "giving" custody of Bryce to me.

YY. 05/20/21 Disqualification of Ratekin

ZZ. 06/14/21 Disqualification of Ratekin

AAA. DCSS motion filed and ignored.

BBB. Email where Bryce's mom is trying to get Bryce's IEP case manager to not comment on the fact that Bryce does not belong in a residential home.

CCC. 10/13/22 email to Luis Pena saying he can and should meet with Bryce and forwarded him lots of information already given to the prior investigator, Steve McIntosh. Both Pena and McIntosh told me that this case did not belong in criminal court.

DDD. Email to Dave Schilman showing Bryce being abused.

EEE. Many emails detailing me being denied access to my own hearings and trial.

FFF. 04/28/21 ex parte to vacate Ratekins fraud upon the court

GGG. Reservation of federal rights.

HHH. Andrea Schuck malicious text

III. Press Release of San Diego Family Court misconduct.



JJJ. Text from Bryce's Friend's Mom, Who Is a Witness to Andrea's Alarming Behavior Towards Bryce and His Friends

KKK. DDA Balerio and Bryce Emert Transcript of Interview

LLL. Default Judgement 10/15/21

MMM. Default Judgement 11/18/21

NNN. Default Judgement 01/24/22

OOO. Ex Parte 11/29/21 for Continuance or Remote Hearings Due to Heart Attack

PPP. Ex Parte to Vacate 12/10/21 Default Judgement 11/30/21 including updated medical documents/records that simply went ignored by then Presiding Judge Alksne and the ADA coordinator.

QQQ. Judge Alana Robinson Indicating She Does Not Have Jurisdiction to Hear the Default Judgement Entered 01/24/22

RRR. Copy of the Complaint Provided to the DA, DOJ, FBI, Presiding Judge, Local Police, and More

SSS. Ex Parte 11/29/21 for Continuance or Remote Hearings Due to Heart Attack

TTT. Motion to Reconsider the Stay Stemming from 11/29/21 Trial

UUU. Appeal for 10/15/21

VVV. Appeal for 11/18/21

WWW. Andrea Schuck Email Indicating I Must Drop All My Current Motions and Appeals Before She Comes to the Negotiating Table in Bryce's Best Interests

XXX. Private Investigator's Interview with Bryce Emert

YYY. Withdrawal of Guilty Plea

ZZZ. Andrea Schuck Post Regarding My Daughter Not Wanting to See Me

AAAA. Appeal of Guilty Plea

BBBB. All Email Communications with DA's Office

CCCC. Appeal Court Conformed Documents Showing Default Trial Judgement Is Not on Appeal

DDDD. Federal Lawsuit

EEEE. 020421 court min order Ratekin leaving early due to COVID-related matter

FFFF. Transcript of court the day Ratekin recused

GGGG. Bryce transcripts of phone calls

HHHH. Department of Justice Email forwarding my investigation request to the FBI

IIII. District Attorney Email saying Andrea Schuck is giving me custody of Bryce

JJJJ. Transcript of FBI call of the "threat"

KKKK. Dave Schulman letter to minor counsel showing misrepresentation.

LLLL. Transcripts of District Attorney phone calls that prove lying; withholding evidence; and a blatant disregard for candor to the court

MMMM. Bryce letter he wrote to the court while I was illegally incarcerated

NNNN. Witness Cole, Bryce's friend who was interviewed by a private investigator

OOOO. Witness Mark Fidelman who was interviewed by a private investigator

PPPP. Witness Cortney Costello who was interviewed by a private investigator

QQQQ. Opening Brief for Court of Appeals

RRRR. Dave Schulman letter to minor counsel

SSSS. Dave Schulman replies in the Federal lawsuit where he blatantly lies to the court.

Dave Schulman states that Comm. Patti Ratekin was basing a "facility" recommendation of

Bryce on a psychological report when, in fact, Comm. Patti Ratekin said it within five minutes of meeting parties before there could have been any such report.

TTTT. Habeas Corpus ready to go so if DDA Balerio illegally incarcerates me again

UUUU. Andrea stalking two women online after she realized they are friends of mine.

## **XI. Appendix**

**A. Bryce Emert affidavit. Bryce is now almost 17 and simply wants to go home.**

## AFFIDAVIT OF BRYCE EMERT

I, Bryce Emert, declare the following under penalty of perjury:

I have personal knowledge of the facts stated in this affidavit and am competent to testify to them if the court allows me to do so. I would like to talk to the court but have been prevented from doing so, which has caused me so much hardship and pain. I am almost 17 and I don't understand why my voice is not being heard by the court. I have so many friends who have parents who are divorced, and they are heard by everyone.

1. The following letters and emails were written by me in my pleas to be heard. Those are my words in those letters and emails. They describe me being harassed and traumatized and to escape it, I asked my dad to simply live with him to escape the emotional abuse and toxic relationship I have had with my mom for lots of my life. She used me in divorce proceedings and continues to do so.
2. My Dad homeschooled me and I believe I learned more from him in that one year I lived with him than three years in the public schools.
3. My dad encouraged me to have a relationship with my mom and always has. He has even asked her to go on outings. My Dad encourages me to see the best in everyone.
4. I have spoken to the District Attorney's office, the police, CPS, school counselors, teachers and have even tried logging into court proceedings just to be shut out. I have told everyone the same thing. My mom was using me in divorce proceedings, it was horrible, and the emotional abuse continues. She holds putting me in facilities over my head. She has tried to isolate me from my dad and anyone who stands with my dad. She has shown that she hates him more than she loves me.
5. Please dismiss criminal charges from my Dad. He did not do anything wrong. He saved me per my request and he is a great dad and has always been there for me. My Dad has always encouraged me to meet new people and do my best in everything in life. Why are the courts trying to keep me from my Dad?

Please let me go home to my Dad. I will continue to work on my relationship with my mom. My dad is not the cause of my issues with my mom. Please call or face time me anytime. Please let my voice be heard in court.

This concludes my sworn testimony. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and recollection.

Executed on 11/16/23 in San Diego, CA

*BRYCE EMERT*

Bryce Emert

760-492-4289

**B. Peremptory Challenge filed timely and before any orders made or arguments heard along with the improper denial. This was Monday 02/08/21.**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Robert Emert</b> 2351 Vista Lago Terrace Escondido, CA 92029 Self Represented  TELEPHONE NO.: 760-612-9328 FAX NO (Optional): EMAIL ADDRESS (Optional): robemert@msn.com ATTORNEY FOR (Name): Self	FOR COURT USE ONLY  <div style="text-align: center;"> <b>FILED</b>          Clerk of the Superior Court  <b>FEB 08 2021</b>          By: _____       </div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input checked="" type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910	
PLAINTIFF(S)/PETITIONER(S) <b>Andrea Emert</b>	
DEFENDANT(S)/RESPONDENT(S) <b>Robert Emert</b>	JUDGE <b>Honorable Patti Ratekin</b>
IN THE MATTER OF <b>marriage of emert</b>	DEPT <b>NC 19</b>
<b>PEREMPTORY CHALLENGE</b>	CASE NUMBER <b>19FL010852N</b>

Robert Emert \_\_\_\_\_, is ☒ a party ☐ an attorney for a party in the above-entitled case and declares that Commissioner Patti C. Ratekin, the judicial officer to whom this case is assigned, is prejudiced against the party or the party's attorney or the interests of the party or the party's attorney such that the said party or parties believe(s) that a fair and impartial trial or hearing cannot be had before such judicial officer.

WHEREFORE, pursuant to the provisions of Code Civ. Proc. §170.6, I respectfully request that this court issue its order reassigning said case to another, and different, judicial officer for further proceedings.

*I also respectfully request a Judge for this and future proceedings.*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 02/08/21

*rob emert*

Signature

### ORDER

☐ GRANTED – The court finds the challenge is timely filed and the party's/attorney's above statement meets the requirements of Code of Civ. Proc. §170.6 (a)(4). The case will be reassigned and a notice will be mailed to the parties and/or counsel.

☒ DENIED *Previous stipulation to Commissioner on 2-4-21*

IT IS SO ORDERED.

Date: FEB 09 2021

*Patti Ratekin*  
 Judge/Commissioner of the Superior Court  
**PATTI RATEKIN**

Date: \_\_\_\_\_ Case is reassigned to Judge/Commissioner \_\_\_\_\_

**C. Retired Commissioner Patti Ratekin indicated in the court transcript that she did not have time to hear arguments on this case on this day she took the case. This was Thursday, 02/04/21.**



25 THE COURT: OKAY. WELL, THAT'S WHAT THE TRIAL  
26 IS GOING TO BE ABOUT. THERE'S GOING TO BE A LOT OF<sup>41</sup>  
27 THINGS THAT THE TRIAL IS ABOUT, BUT I'VE GOT TO DEAL WITH  
28 WHAT TO DO BETWEEN NOW AND THEN. AND I'VE GOT A

Peggy Tiess, CSR #7908

138

15

1 RECOMMENDATION -- I NEED TO GET THROUGH PART OF MY  
2 CALENDAR, I'M NOT READY TO DO THIS CASE RIGHT NOW, SO  
3 I'LL TRAIL YOU UNTIL THE END. I'LL GIVE YOU AS MUCH TIME  
4 AS I CAN GIVE YOU. OKAY.

5

6 -000-

7 (THE PROCEEDINGS ADJOURNED IN DEPARTMENT 19.  
8 NOTE THAT THIS CASE WAS NOT RECALLED IN  
9 DEPARTMENT 19 THIS DATE. ACCORDING TO THE  
10 MINUTES, THE CASE WAS SENT TO DEPARTMENT 16,  
11 JUDGE BROWER.)

12

-000-

**D. Retired Commissioner Patti Ratekin with no notice to me switches duties from a “commissioner” to a “temporary judge” and was already working outside of jurisdiction due to the properly filed peremptory challenge filed 02/08/21. This “temp judge” notice was slipped in on 02/25/21.**



# SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CAL NO. **00530** **5**

NUMBER 19FL010852N		REPORTER Vanessa Evans, CSR 12733		CSR# 12733		INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> <input type="checkbox"/> P <input type="checkbox"/> R	
DATE OF HEARING 02/25/2021	TIME OF HEARING 9:00 AM	DEPT N-19	JUDGE PATTI C. RATEKIN			CLERK K. HICKMAN <b>D. Catlett</b>	
PETITIONER Andrea L. Emert			<input checked="" type="checkbox"/> P <input type="checkbox"/> NP	ATTORNEY FOR PETITIONER <b>DAVID S SCHULMAN</b> DAVID S SCHULMAN			<input checked="" type="checkbox"/> P <input type="checkbox"/> NP
RESPONDENT Robert Emert			<input checked="" type="checkbox"/> P <input type="checkbox"/> NP	ATTORNEY FOR RESPONDENT <b>PRO SE</b> Robert Emert			<input type="checkbox"/> P <input type="checkbox"/> NP
ADDITIONAL PARTY			<input type="checkbox"/> P <input type="checkbox"/> NP	ADDITIONAL COUNSEL			<input type="checkbox"/> P <input type="checkbox"/> NP

**Robert Emert Request for Order Hearing:** re: CHANGE in Child Custody, Visitation Support; Spousal Support; Modify Support Retroactive to Date Motion Filed Pursuant to FC Section 3653 & 4333; FCS to Interview Bryce (Scheduled per 11/10/20 Ex Parte Order)  
Next Hearing: 3/18/2021 ☒ CONFIRMED ☐ VACATED

THE ABOVE MATTER CAME ON FOR HEARING THIS DATE WITH ABOVE APPEARANCES, AFTER HEARING THE COURT ORDERED THAT

CONSOLIDATION: ☐ CASE NO. \_\_\_\_\_ IS CONSOLIDATED WITH PRIMARY/LEAD CASE NO. \_\_\_\_\_  
 OATH: ☐ PTNR ☐ RESP SWORN AND EXAMINED ☐ AS TO JURISDICTION ☐ ADVISAL. WAIVER OF RIGHTS, STIPULATION RE: PATERNITY FILED  
 CUSTODY: LEGAL: ☐ JOINT ☐ SOLE LEGAL PTNR ☐ SOLE LEGAL RESP PHYSICAL: ☐ JOINT ☐ PRIMARY ☐ PTNR ☐ RESP  
 VISITATION: ☐ PARTIES REFERRED TO FAMILY COURT SERVICES ☐ EXTENDED MEDIATION ☐ PSYCH. EVALUATION ORDERED  
☐ FAMILY COURT SERVICES ☐ MINORS' COUNSEL RECOM. DATED \_\_\_\_\_ ADOPTED AS AN ORDER ☐ BY STIPULATION ☐ AS MODIFIED  
☐ VISITATION OF ☐ PTNR ☐ RESP ☐ SUPERVISED BY ☐ AGREED UPON 3RD PARTY ☐ PROFESSIONAL AGENCY \_\_\_\_\_

☐ CHILDREN NOT TO BE REMOVED FROM ☐ COUNTY ☐ STATE WITHOUT WRITTEN CONSENT OF THE OTHER PARENT OR THE COURT  
☐ PARTIES NOT TO MAKE DISPARAGING REMARKS ABOUT THE OTHER PARTY OR HAVE ADULT DISCUSSIONS IN THE PRESENCE OF THE CHILDREN  
☐ PTNR ☐ RESP ORDERED NOT TO CONSUME ALCOHOL/DRUGS IN PRESENCE OF CHILDREN ☐ DURING VISITS OR W/IN 24 HRS OF VISITATION  
☐ PTNR ☐ RESP TO COMP SUBSTANCE ABUSE ASSESSMENT  
☐ PTNR ☐ RESP TO COMP. PARENTING CLASS ☐ PTNR ☐ RESP TO COMP. ANGER MGMT. CLASS ☐ PTNR ☐ RESP TO COMP. 52-WEEK DVLP  
☐ PTNR ☐ RESP STIPULATE/ORDERED TO DRUG TESTING ☐ PROOF TO ☐ COURT FILE ☐ COUNSEL BY \_\_\_\_\_  
 COURT FINDINGS (FC§ 3048): BASIS FOR JURISDICTION: ☐ HOME STATE ☐ EMERGENCY ☐ NO OTHER STATE HAS ASSUMED JURISD. & THIS IS AN APPROPRIATE FORUM ☐ PREVIOUS ORDERS MADE IN THIS COURT ☐ \_\_\_\_\_  
 MANNER NOTICE GIVEN: ☐ PERSONAL SERVICE ☐ MAIL SERVICE ☐ PERSONALLY PRESENT & HAS KNOWLEDGE OF HEARING ☐ \_\_\_\_\_  
 HABITUAL RESIDENCE OF THE CHILD(REN): ☐ SAN DIEGO CNTY, CALIFORNIA, USA ☐ \_\_\_\_\_  
☐ PARTIES ADVISED THAT VIOLATION OF THIS ORDER MAY RESULT IN CIVIL OR CRIMINAL PENALTIES, OR BOTH  
 THE COURT FINDS: CHILDREN CHILD SHARE - \_\_\_\_\_ % ☐ INTERIM ☐ FINAL CUSTODY/VISITATION ORDER  
 PTNR: ☐ SINGLE ☐ HH ☐ MARRIED ☐ JOINT ☐ FILING SEP ( ) RESP: ☐ SINGLE ☐ HH ☐ MARRIED ☐ JOINT ☐ FILING SEP ( )  
 GROSS \$ \_\_\_\_\_ NON-TAX \$ \_\_\_\_\_ ABILITY \_\_\_\_\_ GROSS \$ \_\_\_\_\_ NON-TAX \$ \_\_\_\_\_ ABILITY \_\_\_\_\_  
 DEDUCT: HEALTH\$ \_\_\_\_\_ PROP. TAX\$ \_\_\_\_\_ INTEREST\$ \_\_\_\_\_ DEDUCT: HEALTH\$ \_\_\_\_\_ PROP. TAX\$ \_\_\_\_\_ INTEREST\$ \_\_\_\_\_  
 UNION DUES\$ \_\_\_\_\_ MAND. RETIREMT\$ \_\_\_\_\_ HARSHIPS\$ \_\_\_\_\_ UNION DUES\$ \_\_\_\_\_ MAND. RETIREMT\$ \_\_\_\_\_ HARSHIPS\$ \_\_\_\_\_  
 NEW SPOUSE\$ \_\_\_\_\_ NET\$ \_\_\_\_\_ NEW SPOUSE\$ \_\_\_\_\_ NET\$ \_\_\_\_\_

THE COURT ORDERS CHILD SUPPORT OF: \$ \_\_\_\_\_ MO. EFF: \_\_\_\_\_ PAYABLE BY ☐ PTNR ☐ RESP  
☐ CHILD SUPPORT ORDERED THRU D.C.S.S.  
☐ FIRST CHILD \$ \_\_\_\_\_ SECOND CHILD \$ \_\_\_\_\_ THIRD CHILD \$ \_\_\_\_\_ FOURTH CHILD \$ \_\_\_\_\_  
☐ PTNR ☐ RESP TO PAY 1/2 OF ANY UNCOVERED MEDICAL/DENTAL/ORTHODONTIC/OPTICAL/PSYCHOLOGICAL FEES PURSUANT TO FC§4063  
☐ PTNR ☐ RESP TO PAY 1/2 OF CHILD CARE COSTS FOR EMPLOYMENT / JOB SEARCH ONLY / AUTHORIZED EDUCATIONAL PURSUITS  
☐ BILLS TO BE SUBMITTED W/IN 10/30 DAYS AND REIMBURSEMENT DUE 10/30 DAYS AFTER RECEIPT OF THE BILL  
☐ PTNR ☐ RESP TO MAINTAIN ☐ HEALTH INSURANCE AT MINIMAL OR NO COST ☐ LIFE INSURANCE  
 CHILD SUPPORT: EARNINGS ASSIGNMENT ☐ ORDERED ☐ ISSUED ☐ NOT ISSUED.

THE COURT ORDERS SPOUSAL SUPPORT OF: \$ \_\_\_\_\_ MO. EFF: \_\_\_\_\_ PAYABLE BY ☐ PTNR ☐ RESP ☐ RESERVED  
☐ TERMINATED ☐ TERM. DATE \_\_\_\_\_ ☐ THE COURT HAS CONSIDERED FC4320 FACTORS  
 SPOUSAL SUPPORT: EARNINGS ASSIGNMENT ☐ ORDERED ☐ ISSUED ☐ NOT ISSUED.

ATTY FEES \$ \_\_\_\_\_ AT \$ \_\_\_\_\_ MO. EFF. \_\_\_\_\_ BY ☐ PTNR ☐ RESP ☐ RESERVED ☐ 2 MONTH ACCELERATION CLAUSE  
☐ AS ADDTL. SUPPORT FOR ENFORCEMENT PURPOSES ☐ WAGE ASSIGNMENT AUTHORIZED  
 ARREARAGES: ☐ COURT SETS ARREARAGES AT \$ \_\_\_\_\_ AS OF \_\_\_\_\_ ☐ PTNR ☐ RESP ORDERED TO PAY \$ \_\_\_\_\_ MO EFF: \_\_\_\_\_  
 HEARING: ☐ OFF CAL ☒ CONT. TO **3-30-21** AT **1:45pm** IN DEPT. **19** BY ☐ PTNR ☐ RESP ☐ STIP ☒ COURT ☐ REISSUE  
☒ EXISTING ORDERS REMAIN IN EFFECT PENDING FURTHER HEARING, EXCEPT WHERE IN CONFLICT, THIS ORDER CONTROLS  
☐ COURT RETAINS JURISDICTION OVER \_\_\_\_\_ ☐ RETROACTIVE TO \_\_\_\_\_ ☐ RESERVED **RFO**  
☐ COURT APPTS. ATTY. \_\_\_\_\_ FOR ☐ MINOR(S) [RESERVED AS TO FEE REIMBURSEMENT] ☐ SEE ORDER APPOINTING COUNSEL

Document received by the CA Supreme Court.



Commissioner Patti C. Ratekin is a judicial officer selected by the judges of the San Diego Superior Court assigned to hear and determine Family law cases because of her experience, skill and knowledge in handling these matters.

In order to have a commissioner act as a judge in a case, all parties to the case must agree that the commissioner can act as a temporary judge. If any party does not agree, the case will be reassigned to another judicial officer for today's hearing and all future hearings.

To "stipulate" means you agree to the appointment of Commissioner Patti C. Ratekin as a judge for this hearing and all future hearings and trials in this case, including any contempt proceedings and all post-judgment matters.

**IT IS STIPULATED** by the attorneys and / or parties by phone / virtual hearing that Commissioner Patti C. Ratekin will hear and decide all present and future matters in this case as a Temporary Judge, including any contempt proceedings and all post judgment matters.

The parties present oral arguments.

**Court orders:**

- The Court appoints Attorney Matthew Cord as Minor's Counsel for the minor, Bryce.
- The Court appoints Attorney Cathryn Young as Minor's Counsel for the minor, Skylar.
- Court reserves jurisdiction over payment of Minor's Counsel fees.
- Both parties are directed to sign releases in order for Minor's Counsels to speak with the therapists. The parties shall each contact Minor's Counsel to speak with the children.
- A copy of the FCS Report shall be provided to Minor's Counsels.
- Respondent is directed to make ten (10) job contacts per week until employed full time at 40 hours per week.
- Both parties are directed to file an updated Income & Expense Declaration prior to the next hearing.
- Attorney Schulman shall provide Minor's Counsels with the parties' personal information sheets.
- **The RFO is continued to March 30, 2021 at 1:45pm in Department 19.**


-dc-

**E. Email to Ms. Ratekin's clerk that I was indeed in the ER recovering from a widow maker heart attack caused by her and her cronies terrorizing me and my children after two years of a 50/50 scenario by two judges 3 FCS reports and 2 FCS child interviews. This was on Thursday, 09/30/21.**

**Case file 19FI010852N****Rob Emert <robemert@msn.com>**

Thu 9/30/2021 1:20 PM

To: sara.armstead@sdcourt.ca.gov &lt;sara.armstead@sdcourt.ca.gov&gt;

 1 attachments (3 MB)

20210930\_131022.jpg;

I I'm in the ER due to a massive heart attack. Picture attached to document. There was an ex parte request at 8:30 this morning that is not an emergency. Commissioner Ratekin has been so biased throughout her hearing my case that she says she is going to rule on the ex parte today at 3 if I don't show up personally at court. It's not an emergency but Commissioner Ratekin wants to burn me so bad she says she will rule on this while I am in the ER right out of a massive heart attack. Yeah, no bias there.

Rob Emert

760-612-9328

Sent from my T-Mobile 5G Device

Get [Outlook for Android](#)

**F. On 10/04/21, Ms. Ratekin finally recuses but throws in an order of supervised visitation based on a witness affidavit who was simply providing testimony regarding the child psychologist. This has zero to do with child custody and everything to do with malicious retaliation of Ms. Ratekin because this witness affidavit was going against the narrative of what Ratekin had been trying to do for the prior six month of putting my son in a “facility” for profit, divorce leverage and cronyism.**

*ATTORNEY OR PARTY WITHOUT ATTORNEY (Print name, title, and address) Matthew W. Cord 204917 Andrew P. Johnson, APC 440 South Melrose Dr. Suite 260 Vista, CA 92081 TELEPHONE NO. 7606390187 FAX NO. (optional): E-MAIL ADDRESS (optional): m.cord@apjohnsonesq.com ATTORNEY FOR PARTIES Minor Child		FOR COURT USE ONLY  <div style="text-align: center;"> <b>FILED</b>          Date of the Document Filed  <b>SEP 29 2021</b>          By: _____       </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, FAMILY COURT, 1555 6TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, MADGE BRADLEY, 1409 4TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input checked="" type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 505 3RD AVE., CHULA VISTA, CA 91910		FOR HEARING APPEARANCE INFORMATION VISIT <a href="http://www.sdcourt.ca.gov">www.sdcourt.ca.gov</a>
PETITIONER(S) ANDREA EMERT  RESPONDENT(S) ROBERT EMERT		
EX PARTE APPLICATION AND ORDER FAMILY LAW		
		JUDGE/DEPT D-19 CASE NUMBER 19FL010852N

Hearing Date: 9/30/2021 Time: 8:30 ☒ a.m. ☐ p.m. ☒ Opposed ☐ Unopposed

- Type of relief requested:
  - ☐ Temporary Restraining Orders
  - ☒ Order Shortening Time
  - ☒ Other (specify): Temp Emergency Custody Orders
  - ☒ Child Custody/Violation Order
  - ☐ Order After Hearing Being Submitted for Signature
- Ex parte relief is necessary because:  
Respondent is continually exposing minor child to court proceedings and documents; his other behavior (see concurrently filed declaration of Matthew W. Cord) harm minor child.
- Name of opposing attorney/party: Robert Emert, Respondent (pro per); David Schulman, Esq.
- Did the opposing attorney/party receive notice? ☒ Yes ☐ No Date 9/29/2021 Time: 8:30 ☒ a.m. ☐ p.m.
- If notice was not given, state reason(s):
- Have evidentiary declarations been submitted? ☒ Yes ☐ No
- Has a proposed order been submitted? ☒ Yes ☐ No
- Have you appeared ex parte before for the same relief? ☐ Yes ☒ No If "yes," relief was ☐ granted ☐ denied.

I declare under penalty of perjury under the laws of the State of California that the above information and all attachments are true and correct.

Date 9-28-21

*[Signature]*  
Signature

#### ORDER

IT IS SO ORDERED:

The requested relief is ☐ DENIED ☒ GRANTED as follows:

*see attached*

- ☐ Continued on attachment  
☐ Petitioner ☐ Respondent to prepare formal order.

Date:

9/30/21

*[Signature]* PATTI C. RATEKIN  
Judge/Commissioner of the Superior Court

ES50 OAS (Rev. 1/17)

CSB  
Clerk of the Court

EX PARTE APPLICATION AND ORDER - FAMILY LAW

Emert



The court grants a mistrial except for the termination of marital status.

This is set for a one day trial on November 29, 2021, it will not finish and this court does not have a date available.

Pursuant to CRC 5.82 (C)(5) For dissolution, legal separation, and nullity cases initially filed on or after January 1, 2014, the goals of any family centered case resolution process should be to finalize dispositions as follows:

- (A) At least 20 percent are disposed within 6 months from the date the petition was filed;
- (B) At least 75 percent are disposed within 12 months from the date the petition was filed; and
- (C) At least 90 percent are disposed within 18 months from the date the petition was filed.

The matter is set for a two day trial on November 29, 2021 and November 30, 2021 at 9:00 a.m. in the Presiding Department of this case with Judge Lorna Alksne. D-1001

Pending a hearing on October 4, 2021 at 9:00 a.m. the minor child Bryce shall be in the care of Andrea Emert. Father stated during the initial ex parte hearing in the morning he was in the emergency room and had been there since the notice of the ex parte hearing on September 29, 2021. He later stated that he had been in the hospital prior to the ex parte notice, the court ordered him to turn the child over to mother, he said that he was going to pick up the child later, then said he was in his doctors office. The court trailed the matter to 3:30 p.m. so father could appear. The court revoked Mr. Emert's ability to appear by Teams.

At 3:30 p.m., father appeared on the phone and represented he had a heart attack and was in the hospital. Father is ordered to turn over the minor to his mother forthwith. This is not a change of custody but merely a continuance to give father the ability to present his case.

The court finds an emergency to supervised fathers visits pursuant to CRC 5.151 based upon the declaration of Mark Fidelman filed September 15, 2021 by father.

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**From:** Lantz, Kristin <Kristin.Lantz@SDCourt.CA.Gov>

**Sent:** Tuesday, October 5, 2021 4:37 PM

**To:** Dave Schulman (dschulman@msmfamilylaw.com) <dschulman@msmfamilylaw.com>; robemert@msn.com <robemert@msn.com>; mcord@apjohnsonesq.com <mcord@apjohnsonesq.com>; catie@gylfamilylaw.com <catie@gylfamilylaw.com>

**Cc:** Husted, Adelina <Adelina.Husted@SDCourt.CA.Gov>

**Subject:** Minute Order re: Recusal, reassignment, and RFO date on 10/7/21 at 10am

Good afternoon,

Please note that Minor's Counsel's RFO has been set on **10/7/21 at 10:00 am in the Presiding Department (1002)**. Judge Alksne has ordered all parties and counsel to appear IN PERSON.

Thank you,

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Robert Emert</b> <b>2351 Vista Lago Terrace</b> <b>Escondido, CA 92029</b>  TELEPHONE NO.: 760-612-9328 FAX NO. (Optional): N/A E-MAIL ADDRESS (Optional): robemert@msn.com ATTORNEY FOR (Name): pro se	FOR COURT USE ONLY  FILED 2021 SEP 15 P 3:13 JUDGE SAN FRANCISCO
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego</b> STREET ADDRESS: 325 S. Melrose Dr. MAILING ADDRESS: 325 S. Melrose Dr. CITY AND ZIP CODE: Vista, CA 92081 BRANCH NAME: Vista, CA 92081	
PLAINTIFF/PETITIONER: Andrea Emert DEFENDANT/RESPONDENT: Robert Emert	
<b>DECLARATION</b>	CASE NUMBER: 19FL010852N

I, Mark Fidelman, being age of majority and not under any legal disability, make the following declaration of my own free will, and of my own personal knowledge and belief.

I am an acquaintance of Robert Emerts. Mr. Emert explained to me and others his issues with his divorce. He asked me and others to listen to the conversation he was going to have with his son's Psychologist, Dr. Olague. I agreed and listened to two conversations on different days while on speakerphone with Mr. Emert. On 08/12/21, I listened to Mr. Emert and Dr. Olague speak about both of their concerns for Bryce Emert.

On 08/26/21, I listened in as Mr. Emert, Dr. Olague and Mr. Emerts ex-wife spoke about concerns for Bryce.

What was very clear in both conversations was that at separate times, both Dr. Olague and Mr. Emerts X wife indicated very clearly and several times that Dr. Olague would not be involved or pulled into any court related matters so the focus could be solely on the minor, Bryce Emert. It was very apparent that Dr. Olague tried to make it clear to Mr. Emert that he wanted to generally get his take on where his son was at and the challenges he faced so that he could help his sons parents moving forward in helping their son.

I have read what Dr. Olague has now indicated about Mr. Emert. What is very concerning about Dr. Olague is the deceptive manner in which he said anything they talked about would not be shared with the court and that anything they discussed would not draw him into anything court, divorce or custody related. Most of all Dr. Olagues claims are misrepresentations and mis-characterizations of what was actually said and discussed in regards to Mr. Emert.

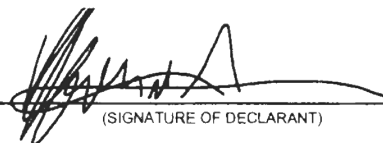
I'd be happy to discuss the matter under penalty of perjury with the court if so asked.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 9/14/2021

Mark Fidelman

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

☐ Attorney for    ☐ Plaintiff    ☐ Petitioner    ☐ Defendant  
☐ Respondent    ☒ Other (Specify): Witness

## **G. Appellate court denial of rehearing motion**

## COURT OF APPEAL, FOURTH APPELLATE DISTRICT

## DIVISION ONE

## STATE OF CALIFORNIA

Court of Appeal  
Fourth Appellate District

**FILED ELECTRONICALLY**

**02/26/2024**

Brandon L. Henson, Clerk  
By: Rita Rodriguez

In re the Marriage of ANDREA L.  
SCHUCK and ROBERT EMERT.

ANDREA L. SCHUCK,

Respondent,

v.

ROBERT EMERT,

Appellant.

D079955

(Super. Ct. No. 19FL010852N

ORDER DENYING REHEARING

THE COURT:

The petition for rehearing is denied.

O'ROURKE, Acting P. J.

Copies to: All parties

Document received by the CA Supreme Court.

## **H. Conformed copy of motion to rehear.**

Please note that this was removed as it is already part of the record.

## **I. Denial opinion of rehearing**

Filed 1/30/24

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**COURT OF APPEAL, FOURTH APPELLATE DISTRICT**

**DIVISION ONE**

**STATE OF CALIFORNIA**

In re the Marriage of ANDREA L.  
SCHUCK and ROBERT EMERT.

D079955

ANDREA L. SCHUCK,

Respondent,

(Super. Ct. No. 19FL010852N

v.

ROBERT EMERT,

Appellant.

APPEAL from a judgment of the Superior Court of San Diego County,  
Patti Ratekin, Commissioner and Lorna Alknse, Judge. Affirmed.

Robert Emert, in pro. per., for Appellant.

Law Office of Linda Cianciolo and Linda Cianciolo for Respondent.

Self-represented litigant Robert Emert (Robert) appeals a family court judgment entered against him by a family court commissioner, Patti Ratekin, arguing it is “void” or “required to be set aside and or vacated due to [Commissioner Ratekin’s] egregious violations of state and federal laws/rules that govern our courts basic due process, basic service, and ethical conduct”

Document received by the CA Supreme Court.

and also because “she entered the judgments [*sic*] after she recused . . . .”<sup>1</sup> Robert also appeals from rulings by Judge Lorna Alknse, who he claims, “kept me, my evidence, my witnesses and my [American Disability Act] coordinators out of my own trial even though I simply requested a continuance and or remote hearings due to a heart attack.” Finally, he claims, with no citation to the record, that Judge Alana Robinson refused to hear his challenge to Commissioner Ratekin’s rulings.

Respondent Andrea L. Schuck (formerly Emert (Andrea)) points out Robert has failed to cite to the record and provide cogent arguments or sound legal analysis and therefore has not presented sufficient grounds for reversal. We agree and affirm.

## DISCUSSION

“Every brief must support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.” (Cal. Rules of Court, rule 8.204(a)(1)(C).) . . . If a party fails to support an argument with the necessary citations to the record, the argument will be deemed waived.” (*LA Investments, LLC v. Spix* (2022) 75 Cal.App.5th 1044, 1061; accord, *In re S.C.* (2006) 138 Cal.App.4th 396, 408.)

Further, it is an appellant’s burden to provide an adequate record establishing error. (*Parker v. Harbert* (2012) 212 Cal.App.4th 1172, 1178.)

<sup>1</sup> As respondent points out, one of Robert’s notices of appeal states the appeal is from Commissioner Ratekin’s October 15, 2021 order, but that is the date the commissioner filed her June 24, 2021 order. We construe the appeal as taken from the June 24, 2021 order. We liberally construe notices of appeal “ ‘so as to protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.’ ” (*In re Joshua S.* (2007) 41 Cal.4th 261, 272; accord, Cal. Rules of Court, rule 8.100(a)(2).) Robert’s second notice of appeal states it is from Judge Alksne’s November 18, 2021 order.



Generally, an appellant must include in the record either a reporter's transcript or a settled statement. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187; *Gonzalez v. Rebollo* (2014) 226 Cal.App.4th 969, 977 ["Without a complete record, we are unable to determine whether substantial evidence supported the implied findings underlying the trial court's order"].) " 'Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' " (*Foust*, at p. 187.) These rules of appellate procedure apply regardless of whether an appellant is represented by counsel or is self-represented. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.)

Any ambiguity in the record is resolved in favor of the judgment. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608.) On appeal, this court starts with a presumption that the judgment or order being appealed is correct; the burden is on the appellant to affirmatively show error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [" 'All intendments and presumptions are indulged to support [the judgment or order] on matters as to which the record is silent, and error must be affirmatively shown' "].)

As an appellant, Robert is further obligated to demonstrate how the rulings he challenges prejudiced him. (See *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800-802; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105-106 ["[O]ur duty to examine the entire cause arises when and only when the appellant has fulfilled his duty to tender a proper prejudice argument. Because of the need to consider the particulars of the given case, rather than the type of error, the appellant bears the duty of spelling out in his brief exactly how the error caused a miscarriage of justice"]; *Vaughn v. Jonas* (1948) 31 Cal.2d 586, 601 ["[t]o presume in favor of error or prejudice would be directly contrary to the policy of this state"].)

Based on the above principles and Robert's deficient briefing, we are unable to conduct a meaningful review of his assertions of error and must resolve this appeal in favor of the judgment. Robert has forfeited his claims because he has not set forth the portion of the courts' rulings he disagrees with or made cogent arguments assigning error based on the applicable law. The presentation of an appeal is not merely a rehash of arguments unsuccessful at trial, but instead is a careful assertion of *legal* error and resulting prejudice. (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.)

At the outset of his opening brief, Robert acknowledges his brief lacked proper citation to legal authority: "In the interest of clarity and readability, this brief focuses on the application of key authorities, those that are most essential to the arguments presented in this case. Although the tenor of the entire brief reflects the principles set out by a broad range of authorities as referenced below, the document does not explicitly cite every authority on every page. The table of authorities that accompanies this brief provides a comprehensive list of all the cases, statutes, and other sources that significantly influenced the positions taken in this brief. [¶] The lack of page numbers provided in the table of authorities that are supposed to correspond to those sections where the authorities are explicitly invoked and discussed is not necessary as all the table of authorities are paramount in describing this scenario. It should be understood that the principles drawn from these authorities permeate the entirety of the arguments, even if not expressly cited on every page. [¶] This approach ensures that the brief remains cogent, while still acknowledging the breadth of authority underpinning the argument." (Some capitalization omitted.) "By failing to provide an adequate record, [Robert] cannot meet his burden to show error and we must resolve

any challenge . . . against him.” (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.)

We also decline to address Robert’s arguments raised for the first time in the reply brief, including his request for judicial notice.<sup>2</sup> “For obvious reasons of fairness, points raised for the first time in a reply brief will ordinarily not be considered.” (*Rubinstein v. Fakheri* (2020) 49 Cal.App.5th 797, 809.) This includes his request for an evidentiary hearing. “Although appellate courts are authorized to make findings of fact on appeal . . . the authority should be exercised sparingly. [Citation.] Absent exceptional circumstances, no such findings should be made.” (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.)

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<sup>2</sup> After filing his reply brief, Robert filed in this court a motion requesting we take judicial notice of unspecified “undisputed factual matters in the record of this case.” He also requested an evidentiary hearing “in order to present additional evidence related to the timeline and events stated below, which establish that the trial court lacked jurisdiction when it recorded the November 29, 2021 default judgment on [January 24, 2022] due to the automatic stays triggered by [his] previously filed appeals[.]” We denied the request for judicial notice by separate order.

## DISPOSITION

The judgment is affirmed.

O'ROURKE, Acting P. J.

WE CONCUR:

IRION, J.

BRANDON L. HENSON, Clerk of the Court of Appeal,  
Fourth Appellate District, State of California, does hereby  
Certify that the preceding is a true and correct copy of the  
Original of this document/order/opinion filed in this Court,  
as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

DATO, J.



**01/30/2024**

BRANDON L. HENSON, CLERK

By Lisa Rodriguez  
Deputy Clerk

Document received by the CA Supreme Court.

**J. 03/30/21 hearing where all my parental legal rights are snaked away with zero clear and convincing evidence of unfitness.**



**SUPERIOR COURT - CALIFORNIA, COUNTY OF SAN DIEGO** 00586 7

NUMBER 19FL010852N			REPORTER CSR# Shannon Riddell, CSR #13893 <input type="checkbox"/> NOT REQUESTED <input type="checkbox"/> NOT REPORTED		INTERPRETER <input type="checkbox"/> SPANISH <input type="checkbox"/> <input type="checkbox"/> P <input type="checkbox"/> R	
DATE OF HEARING 03/30/2021	TIME OF HEARING 1:45 PM	DEPT N-19	JUDGE PATTI C. RATEKIN		CLERK <del>K. HICKMAN</del> <b>D. Catlett</b>	
PETITIONER Andrea L. Emert			<input checked="" type="checkbox"/> P <input type="checkbox"/> NP	ATTORNEY FOR PETITIONER <b>DAVID S SCHULMAN</b> DAVID S SCHULMAN <b>&amp; Sarah Bear</b>		<input checked="" type="checkbox"/> P <input type="checkbox"/> NP
RESPONDENT Robert Emert			<input checked="" type="checkbox"/> P <input type="checkbox"/> NP	ATTORNEY FOR RESPONDENT <b>PRO SE</b> Robert Emert <b>Jack Barrett</b>		<input checked="" type="checkbox"/> P <input type="checkbox"/> NP
ADDITIONAL PARTY MINOR'S COUNSEL			<input type="checkbox"/> P <input type="checkbox"/> NP	ADDITIONAL COUNSEL <b>MATTHEW W CORD</b> MATTHEW W CORD & <b>Cathryn Young</b>		<input checked="" type="checkbox"/> P <input type="checkbox"/> NP

**Robert Emert Request for Order Hearing:** CHANGE in Child Custody, Visitation Support; Spousal Support; Modify Support Retroactive to Date Motion Filed Pursuant to FC Section 3653 & 4333; FCS to Interview Bryce (Scheduled per 11/10/20 Ex Parte Order)  
Next Hearing: 5/11/2021 ☒ CONFIRMED ☐ VACATED

THE ABOVE MATTER CAME ON FOR HEARING THIS DATE WITH ABOVE APPEARANCES, AFTER HEARING THE COURT ORDERED THAT

**CONSOLIDATION:** ☐ CASE NO. \_\_\_\_\_ IS CONSOLIDATED WITH PRIMARY/LEAD CASE NO. \_\_\_\_\_  
**OATH:** ☐ PTNR ☐ RESP SWORN AND EXAMINED ☐ AS TO JURISDICTION ☐ ADVISAL, WAIVER OF RIGHTS, STIPULATION RE: PATERNITY FILED  
**CUSTODY:** **LEGAL:** ☐ JOINT ☐ SOLE LEGAL PTNR ☐ SOLE LEGAL RESP **PHYSICAL:** ☐ JOINT ☐ PRIMARY ☐ PTNR ☐ RESP  
**VISITATION:** ☐ PARTIES REFERRED TO FAMILY COURT SERVICES ☐ EXTENDED MEDIATION ☐ PSYCH. EVALUATION ORDERED  
☐ FAMILY COURT SERVICES ☐ MINORS' COUNSEL RECOM. DATED \_\_\_\_\_ ADOPTED AS AN ORDER ☐ BY STIPULATION ☐ AS MODIFIED  
☐ VISITATION OF ☐ PTNR ☐ RESP ☐ SUPERVISED BY ☐ AGREED UPON 3RD PARTY ☐ PROFESSIONAL AGENCY \_\_\_\_\_

☐ CHILDREN NOT TO BE REMOVED FROM ☐ COUNTY ☐ STATE WITHOUT WRITTEN CONSENT OF THE OTHER PARENT OR THE COURT  
☐ PARTIES NOT TO MAKE DISPARAGING REMARKS ABOUT THE OTHER PARTY OR HAVE ADULT DISCUSSIONS IN THE PRESENCE OF THE CHILDREN  
☐ PTNR ☐ RESP ORDERED NOT TO CONSUME ALCOHOL/DRUGS IN PRESENCE OF CHILDREN ☐ DURING VISITS OR W/IN 24 HRS OF VISITATION  
☐ PTNR ☐ RESP TO COMP SUBSTANCE ABUSE ASSESSMENT  
☐ PTNR ☐ RESP TO COMP. PARENTING CLASS ☐ PTNR ☐ RESP TO COMP. ANGER MGMT. CLASS ☐ PTNR ☐ RESP TO COMP. 52-WEEK DV  
☐ PTNR ☐ RESP STIPULATE/ORDERED TO DRUG TESTING ☐ PROOF TO ☐ COURT FILE ☐ COUNSEL BY \_\_\_\_\_  
**COURT FINDINGS (FC§ 3048):** BASIS FOR JURISDICTION: ☐ HOME STATE ☐ EMERGENCY ☐ NO OTHER STATE HAS ASSUMED JURISD. & THIS IS AN APPROPRIATE FORUM ☐ PREVIOUS ORDERS MADE IN THIS COURT ☐ \_\_\_\_\_  
**MANNER NOTICE GIVEN:** ☐ PERSONAL SERVICE ☐ MAIL SERVICE ☐ PERSONALLY PRESENT & HAS KNOWLEDGE OF HEARING ☐ \_\_\_\_\_  
**HABITUAL RESIDENCE OF THE CHILD(REN):** ☐ SAN DIEGO CNTY, CALIFORNIA, USA ☐ \_\_\_\_\_  
☐ PARTIES ADVISED THAT VIOLATION OF THIS ORDER MAY RESULT IN CIVIL OR CRIMINAL PENALTIES, OR BOTH

**THE COURT FINDS:** CHILDREN CHILD SHARE - \_\_\_\_\_ % ☐ INTERIM ☐ FINAL CUSTODY/VISITATION ORDER  

PTNR: <input type="checkbox"/> SINGLE <input type="checkbox"/> HH <input type="checkbox"/> MARRIED <input type="checkbox"/> JOINT <input type="checkbox"/> FILING SEP ( ) GROSS \$ _____ <input type="checkbox"/> NON-TAX \$ _____ <input type="checkbox"/> ABILITY DEDUCT: HEALTH\$ _____ PROP. TAX\$ _____ INTEREST\$ _____ UNION DUES\$ _____ MAND. RETIREMT\$ _____ HARSHIPS\$ _____ NEW SPOUSES\$ _____ NET\$ _____	RESP: <input type="checkbox"/> SINGLE <input type="checkbox"/> HH <input type="checkbox"/> MARRIED <input type="checkbox"/> JOINT <input type="checkbox"/> FILING SEP ( ) GROSS \$ _____ <input type="checkbox"/> NON-TAX \$ _____ <input type="checkbox"/> ABILITY DEDUCT: HEALTH\$ _____ PROP. TAX\$ _____ INTEREST\$ _____ UNION DUES\$ _____ MAND. RETIREMT\$ _____ HARSHIPS\$ _____ NEW SPOUSES\$ _____ NET\$ _____
--	--

**THE COURT ORDERS CHILD SUPPORT OF:** \$ \_\_\_\_\_ MO. EFF: \_\_\_\_\_ PAYABLE BY ☐ PTNR ☐ RESP  
☐ CHILD SUPPORT ORDERED THRU D.C.S.S.  
☐ FIRST CHILD \$ \_\_\_\_\_ SECOND CHILD \$ \_\_\_\_\_ THIRD CHILD \$ \_\_\_\_\_ FOURTH CHILD \$ \_\_\_\_\_  
☐ PTNR ☐ RESP TO PAY 1/2 OF ANY UNCOVERED MEDICAL/DENTAL/ORTHODONTIC/OPTICAL/PSYCHOLOGICAL FEES PURSUANT TO FC§4063  
☐ PTNR ☐ RESP TO PAY 1/2 OF CHILD CARE COSTS FOR EMPLOYMENT / JOB SEARCH ONLY / AUTHORIZED EDUCATIONAL PURSUITS  
☐ BILLS TO BE SUBMITTED W/IN 10/30 DAYS AND REIMBURSEMENT DUE 10/30 DAYS AFTER RECEIPT OF THE BILL  
☐ PTNR ☐ RESP TO MAINTAIN ☐ HEALTH INSURANCE AT MINIMAL OR NO COST ☐ LIFE INSURANCE  
**CHILD SUPPORT: EARNINGS ASSIGNMENT** ☐ ORDERED ☐ ISSUED ☐ NOT ISSUED.

**THE COURT ORDERS SPOUSAL SUPPORT OF:** \$ \_\_\_\_\_ MO. EFF: \_\_\_\_\_ PAYABLE BY ☐ PTNR ☐ RESP ☐ RESERVED  
☐ TERMINATED ☐ TERM. DATE \_\_\_\_\_ ☐ THE COURT HAS CONSIDERED FC4320 FACTORS  
**SPOUSAL SUPPORT: EARNINGS ASSIGNMENT** ☐ ORDERED ☐ ISSUED ☐ NOT ISSUED.

**ATTY FEES \$ \_\_\_\_\_ AT \$ \_\_\_\_\_ MO. EFF. \_\_\_\_\_ BY** ☐ PTNR ☐ RESP ☐ RESERVED ☐ 2 MONTH ACCELERATION CLAUSE  
☐ AS ADDTL. SUPPORT FOR ENFORCEMENT PURPOSES ☐ WAGE ASSIGNMENT AUTHORIZED  
**ARREARAGES:** ☐ COURT SETS ARREARAGES AT \$ \_\_\_\_\_ AS OF 5-11-21 ☐ PTNR ☐ RESP ORDERED TO PAY \$ \_\_\_\_\_ MO EFF: \_\_\_\_\_  
**HEARING:** ☐ OFF CAL ☒ CONT. TO 5-11-21 AT 9:00 AM IN DEPT. 19 BY ☐ PTNR ☐ RESP ☒ STIP ☒ COURT ☐ REISSUE  
☒ EXISTING ORDERS REMAIN IN EFFECT PENDING FURTHER HEARING, EXCEPT WHERE IN CONFLICT, THIS ORDER CONTROLS **RFO**  
☐ COURT RETAINS JURISDICTION OVER \_\_\_\_\_ ☐ RETROACTIVE TO \_\_\_\_\_ ☐ RESERVED  
☐ COURT APPTS. ATTY. \_\_\_\_\_ FOR ☐ MINOR(S) [RESERVED AS TO FEE REIMBURSEMENT] ☐ SEE ORDER APPOINTING COUNSEL



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO CAL. NO.

NUMBER  
19FL010852NDATE OF HEARING  
03/30/2021

THE ABOVE MATTER CAME ON FOR HEARING THIS DATE WITH ABOVE APPEARANCES, AFTER HEARING THE COURT ORDERED THAT

EMPLOYMENT: ☐PTNR ☐RESP ADMONISHED PURSUANT TO FC§4330 ☐PTNR ☐RESP TO MAKE \_\_\_\_\_ JOB CONTACTS PER WEEK AND  
SUBMIT THE DETAILS TO OPPOSING COUNSEL/PARTY \_\_\_\_\_PAYMENTS: ☐PETITIONER  
☐RESPONDENTPOSSESSIONS: ☐PETITIONER  
☐RESPONDENTRESTRAINING ORDERS: ☐PTNR ☐RESP MOTION FOR RESTRAINING ORDER ☐GRANTED ☐DENIED PURSUANT TO TEMPORARY ORDER  
☐EXCEPTION FOR COURT ORDERED VISITATION EXCHANGES ☐PROTECTED PARTY MAY RECORD COMMUNICATION FROM RESTRAINED PARTY  
☐WITH MODIFICATIONS (\_\_\_\_\_ YDS) TO EXPIRE: ☐3 YEARS ☐\_\_\_\_\_ ☐FC6389 FIREARMS ADVISAL  
☐PC§29825 FIREARMS NOTICE TO RESTRAINED PARTY ☐RESTRAINED PARTY IN MILITARY- BRANCH: \_\_\_\_\_ RANK: \_\_\_\_\_  
☐RESTRAINED PARTY TO PICK UP PERSONAL PROPERTY WITH PEACE OFFICER PRESENT ON \_\_\_\_\_MOTIONS: ☐PTNR ☐RESP MOTION \_\_\_\_\_ ☐GRANTED ☐DENIEDSTIPULATION: ☐PART/FULL ☐SUBMITTED/RECITED BY COUNSEL ☐PARTIES AGREE TO BE BOUND ☐COUNSEL AUTH. ☐ADOPTED AS ORDERJUDGMENT: ☐GRANTED EFF. \_\_\_\_\_ ☐INCPOR STIP. ☐DISSOLUTION ☐STATUS ONLY ☐LEGAL SEP ☐NULLITY ☐PATERNITYWAIVER: ☐PTNR ☐RESP WAIVES FILING OF FINAL DECLARATION OF DISCLOSUREDISMISSAL: ☐AFTER PROPER NOTICE TO PARTIES, CASE DISMISSED WITHOUT PREJUDICE DUE TO INACTIVITYORDER AFTER HEARING: ☐PTNR ☒RESP ☐MINORS ATTY. TO PREPARE ☒SEND TO OPPOSING COUNSEL FOR APPROVAL ☐SUBMIT DIRECTLY☐PTNR ☐RESP REFERRED TO FLF FOR PREPARATION OF ☐FOAH ☐ROAH-CLETS ☐JUDGMENT ☐OTHER \_\_\_\_\_  
AND FLF TO PREPARE AND SUBMIT DIRECTLY TO THE COURT. ☐PTNR ☐RESP TO SERVE COURT-STAMPED COPY ON THE OTHER PARTY.☐STATUS CONFERENCE PROCESSED BY FAMILY LAW FACILITATOR'S OFFICE ☐NOT REPORTED

OTHER:

Counsel present oral argument.

The Court adopts the FCS recommendations dated January 13, 2021 as modified and attached as Exhibit A.

The One-Day Trial scheduled on May 11, 2021 is confirmed. Trial briefs shall be served on opposing party and filed with the court seven (7) days prior to trial.

The Court finds the parties have not filed updated Income &amp; Expense Declarations. Respondent's Motion for Support is Denied.

Respondent is directed to continue making job contacts as previously ordered.

The Court continues the RFO to May 11, 2021 at 9:00am in Department 19.

-dc-

RECOMMENDATIONS FOR THE PARENTING PLAN OF:

Bryce Emert, DOB: 06/11/07 (Age 13 years)  
 Skylar Emert, DOB: 06/06/09 (Age 11 years)

Mother: Andrea Emert  
 Father: Robert Emert

1. **LEGAL CUSTODY**

**As a temporary order without prejudice**

- A. Andrea Emert *shall have sole legal custody as to the children's counseling and the father shall not have any contact with the children's therapist under any circumstances by phone, e-mail, text or messages passed through the children. Mother shall immediately arrange for Behavioral therapy for Bryce. The parties shall share joint legal custody, which means that Andrea Emert and Robert Emert shall share the right and responsibility to make decisions relating to the health, education, and welfare of their children and consult each other regarding enrollment and disenrollment in school, beginning/ending mental health services and selection or changes of a doctor, dentist or other health professional. **Mother shall have the final say if there is any dispute.***
- B. Each parent shall have access to medical and school records pertaining to the children and may consult with any professionals involved with the children. It is each parent's responsibility to request school calendars, progress reports, report cards and parent-teacher conferences directly from the school.
- C. Each parent may obtain emergency health care for the children without the consent of the other parent. Each parent is to notify the other parent as soon as reasonably possible of any illness requiring medical attention or any emergency involving the children.
- D. **Family Code section 3048 findings.**

2. **PHYSICAL CUSTODY**

- A. The children *shall reside primarily with mother.*
- B. *The children shall spend time with father:*
  - i) *Father shall spend time with Bryce on Monday 9:00 a.m. through Thursday at 6:00 p.m.*
  - ii) *Father shall spend time with Skylar Thursday 6:00 p.m. to Sunday 6:00 p.m.*

Exhibit A



- iii) *Father is admonished that at the time of trial this court receives competent evidence that father continues to discuss adult issues with the children the court will likely implement a professionally supervised visitation order for both children.*

### 3. HOLIDAYS/SPECIAL DAYS/SCHOOL VACATIONS

**Special Days/holiday** schedules shall take precedence over the regular parenting schedule, which shall resume after the holiday is over. Unless noted, all single-day holidays shall be from 8 AM to 8 PM. In absence of other agreement by the parents, specific holiday schedules shall be as follows:

HOLIDAY	TIME	EVERY YEAR	EVEN YEARS	ODD YEARS
Christmas Eve/Christmas Day	9 AM, 12/24 until 9 AM, 12/25		Mother	Father
Christmas Day/Day after Christmas	9 AM, 12/25 until 6 PM, 12/26		Father	Mother
New Year's Eve/Day	Eve 6 PM - Day 6 PM		Mother	Father
Easter Day	8 AM - 8 PM		Father	Mother
Mother's Day	8 AM - 8 PM	Mother		
Father's Day	8 AM - 8 PM	Father		
July 4th	8 AM - until 10 AM July 5		Mother	Father
Halloween	4 PM - 8 PM		Father	Mother
Thanksgiving Day	8 AM - 8 PM		Mother	Father
Children's Birthdays	8 AM - 8 PM; or if a school day from 6 PM to 8 PM		Father	Mother

**Three-day weekends** not specified in the chart above shall be spent with the parent who would normally have that weekend and the weekend shall be extended by 24 hours.

### 4. EXCHANGES/TRANSPORTATION

- A. Exchanges of the children, when they do not take place at school/childcare shall be at the sending parent's residence.

- B. The children shall be exchanged at the designated times, with a 15-minute grace period. Should a longer delay be necessary, the other parent shall be notified immediately or that parenting time shall be considered canceled.

5. **TELEPHONE/COMMUNICATION**

- A. There shall be telephone contact between the children and the parents when in the other parent's care. ***There shall be one phone call which shall last no more than 15 minutes. If the children calls the parent they shall not respond. The purpose of the phone call shall be to communicate with the children. All other business between the parents shall be discussed at another time.***
- B. ***There shall be NO RECORDING of the children under any circumstances.***
- C. Email communication: The parties shall use a co-parenting email system, such as Our Family Wizard or TalkingParents.com for all non-emergency communication. The parties shall each establish a parent account, and enroll in the program within 21 days of this order and annually thereafter, to conduct all communications regarding custody or visitation matters, information-sharing matters, schedule alterations and reimbursable-expense matters on the website. The parties shall not telephone, e-mail or text each other regarding issues related to the child except in an unanticipated or emergency situation where response is required in less than 24 hours. Each party shall respond to the other party's request or notification within 48 hours of the posting, if a response is either requested or appropriate. Each party shall allow "professional access" to any licensed legal or mental health professional.

6. **CONDUCT/SAFETY**

- A. Neither parent shall make negative statements about the other in the presence or hearing of the children or question the children about the other parent. The parents shall communicate directly with each other in matters concerning the children and shall not use the children as a messenger between them. The children shall not be exposed to court papers or disputes between the parents, and each parent shall make every possible effort to ensure that other people comply with this order.

7. **NOTIFICATION**

- A. When either parent wishes to travel with the children outside the County of San Diego for overnight or longer during their parenting time, the other parent must be given 24 hours' prior notice of date and time, destination and an emergency telephone number.
- B. Each parent shall always keep the other informed of his/her address and telephone numbers and shall notify the other parent within 24 hours of any changes. Neither parent may use such information for the purpose of harassing, annoying, disturbing the peace of the other or invading the other's privacy.
- C. If the children participate in an AM/PM program, camp or cared for routinely by a childcare provider, the parents shall keep one another informed of those programs, addresses and telephone numbers.
- D. Neither parent shall schedule activities for the children during the other parent's scheduled parenting time without the other parent's prior agreement.
- E. At least 24 hours' notice of any schedule change shall be given to the other parent. The parent requesting the change shall be responsible for any additional child care that results from the change.
- F. Neither parent shall move the residence of the children out of San Diego County without giving the other parent a 45-day advance written notice and obtaining the other parent's written permission prior to the move or an order of the Court granting the move.

8. **CLASSES/PROGRAMS**

- A. Robert Emert and Andrea Emert shall enroll in and successfully complete an in-person high conflict co-parenting course. The course shall be completed by 4/1/2021.
- B. ***There shall be psychological evaluation of father by a licensed psychologist to provide the court with a DSM V diagnosis of father.***
- C. ***Father and Skylar shall enter into conjoint therapy to address the issue that she feels unimportant due to the amount of attention which is expended on Bryce.***
- D. The children shall participate in counseling with a licensed mental health practitioner until released by the therapist. Issues to be addressed include: exposure to

high level of co-parenting conflict, sibling relationship, and any other mental health issues that arise.

- E. Possible resources include: private insurance; call 211 from any phone; or a Program Resource List may be obtained at Family Court Services or on the San Diego Superior Court website [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).