

18 (Whereupon further discussion related to this matter was
19 not transcribed at the request of the ordering party)

20 THE COURT: All right. This matter is before the
21 Court pursuant to 14-10-129 on a motion to modify parenting
22 time.

23 (Whereupon further discussion related to this matter was
24 not transcribed at the request of the ordering party)

25 THE COURT: So the two issues that the Court has to

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1 determine today have to do with parenting time exchanges, the
2 location for that, and then the actual parenting time.

3 I think the parenting time exchange issues is a
4 quick and easy one for this Court to deal with. There is no
5 doubt that Mother has some difficulty getting this child to
6 parenting time exchanges on time. So the easiest thing for
7 this Court to do is to keep the curbside exchanges as it
8 relates to her picking the child up from Father's house so
9 that Father is not sitting at the fire department for 20
10 minutes to an hour. And -- but when Mom is returning the
11 child, those will be at the fire station. It is my
12 expectation, though, Ms. Magill, that you will be on time and
13 not making Father wait at the fire station for 20 minutes to
14 an hour. But I think that's the easiest way to do it. I
15 don't think that the current place is -- the current location
16 is convenient. It doesn't make sense. So let's do it at the
17 fire station. This minimizes Juliet's time in the car when
18 she's getting picked up and they can still play, do whatever.
19 Mom can text when she gets there and Juliet can go out to the
20 car.

21 All right. So the bigger issue, obviously, is the
22 parenting time issue. And what the Court has to consider is
23 what's in the best interest of the minor children. And so
24 then the Court has to look at the factors as set forth in
25 14-10-124(1.5)(a).

1 The first thing that the Court has to do is
2 determine what the wishes of the child's parents are. Mom is
3 asking that we go to a 5-2-2-5 schedule. Father is asking
4 that the Court implement as a full-time schedule the current
5 -- or the phase 3 of the current parenting plan.

6 The wishes of the child if he or she is sufficiently
7 mature to express reasoned and independent preferences as to
8 the parenting time schedule. The Court has no evidence that
9 that's the case.

10 The interaction and interrelationship of the child
11 with his or her parents, his or her siblings, and any other
12 person who may significantly affect the child's best interest.
13 The testimony that's before the Court is that she appears to
14 have good relationships with both parents. Dr. Bolocofsky
15 indicated some concerns with Mother and Juliet with
16 parentification and triangulation. The -- what the Court is
17 considering with that is, number one, that was two years ago.
18 But I think that there was some -- I agree with Mom that if
19 this is still occurring, she wouldn't have a great
20 relationship with Dad. If Mom was successful in
21 triangulating, her relationship with Dad wouldn't be as good
22 as it is, which tells me either it's not happening or it's not
23 working. I don't know. Mother tells me it's not. I have no
24 reason at this point to believe -- or disbelieve her, I should
25 say; I don't want to say believe her. But, the relationship

1 appears to be good with her and her father. Dad talked about
2 all the things they do together. Mom talked about the things
3 that she does with Juliet. And they each do different things,
4 but they do things with her. What they believe is important
5 may be different. Jiu-jitsu is not as important to Mom as it
6 is to Dad. Dad thinks swimming lessons are important. Mom
7 thinks she knows how to swim, but she does other things with
8 her. It's not like she just locks her up in the room. They
9 come up with things.

10 Any report related to domestic violence that is
11 submitted to the Court by a Child and Family Investigator, if
12 one is appointed. So what's interesting about this case is
13 that back when this case was originally filed -- or when
14 Dr. Bolocofsky was investigating this case, this 14-10-127.5
15 didn't exist. But it does now, and so the Court is
16 considering the fact -- the domestic violence factors.
17 Specifically, since the implementation of 14-127.5 (sic) there
18 is a definition of coercive control. And under the definition
19 of coercive control,

20 "The pattern of threatening, humiliating, or
21 intimidating actions including assaults or other
22 abuse that is used to harm, punish, frighten an
23 individual. It includes a pattern of behavior that
24 takes away the individual's liberty or freedom and
25 strips away the individual's sense of self,

1 including the individual's bodily integrity and
2 human right. It includes isolating the individual
3 from support, excluding the individual, depriving
4 the individual of independence, regulating the
5 individual's everyday behavior. It includes, but is
6 not limited to" -- and I'm going to Roman Numeral II
7 and III -- "monitoring, surveilling, regulating, or
8 controlling the individual's or the individual's
9 child relative finances, economic resources or
10 access to services, and monitoring, surveilling,
11 regulating, or controlling the individual's or the
12 individual's child in relative activities,
13 communications, and movements, including through
14 technology."

15 Father testified to a couple of different reasons
16 that he installed these cameras in the home. It started out
17 that he installed these cameras in the home because of safety
18 issues because of his job. I don't find that testimony to be
19 credible. I think it's very clear that the reason that he
20 installed these cameras was to monitor Mother. That was the
21 intent. He claims it was for safety reasons. I don't agree
22 with that. Father's history of monitoring Mother, just
23 throughout the course of this case, is highly unusual. And
24 what I'm talking about is documenting every single time that
25 Mother is late. Documenting what she does. That is a type of

1 control. Even Dr. Bolocofsky indicated that Father has
2 controlling behaviors. And Father indicates that he has
3 addressed these hypervigilance issues, yet he continues to do
4 it with the documentation. The only reason somebody documents
5 like this is to use it in court. And that's exactly what he's
6 doing, is he is finding every little thing that Mom can do and
7 using it against her.

8 What I was listening for when I heard that there
9 were three separate motions to restrict Mother's parenting
10 time with the arbiter with a concern of drinking. And I
11 didn't hear that, because Father never once indicated that he
12 believed Mother had been drinking. And to say these weren't
13 based on technicalities, I completely disagree with. Every
14 chance Father got to restrict Mother's parenting time, he took
15 without any regard, because I didn't hear this testimony
16 either, for how this would affect this child. Every time you
17 restrict a parent's parenting time it is a layer of trauma to
18 a child. And that's what I wanted to hear. I wanted to hear
19 some understanding of how his actions affected her. But it's
20 another layer of control.

21 The child's adjustment to his or her home, school,
22 and community. Child seems to be well adjusted. She is doing
23 well. And, you know, I find it ironic that one of the
24 arguments that was made is that Mother didn't have any
25 positive things to say about Father because the same is true

1 for Dad. He took responsibility for everything good in this
2 child's life, and couldn't find that Mother had anything to do
3 with it. She is doing well in school because of him. She is
4 going -- getting to school on time because of the -- the
5 conditions he put in place on Mother. It was all about him.
6 And, he couldn't -- he -- he claims he recognized the good
7 things that Mother was doing, but then had throw in, "Well,
8 she had a positive test." Even though he knows that she's
9 subsequently tested. She tested negative on Soberlink and she
10 took an -- ETG and tested negative.

11 I will tell you I have been doing, whether it's this
12 or criminal law, for a very long time. And to see 1800 or
13 more negative tests, I don't know that I've seen that in my
14 career, because people have slip-ups, and she hasn't had any
15 negative^(sic) tests. But he still minimized the progress that she
16 has made. I don't know if she's an alcoholic or not. I know
17 that there were concerns. I know that there were videos of
18 her drinking. I don't know if it was situational. I -- I
19 don't know. But what I do know, is that she has demonstrated
20 her sobriety.

21 The mental and physical health of all individuals
22 involved. Again, there -- Dr. Bolocofsky addressed that there
23 was some mental health issues with Mother that she needed to
24 address. Father argues it's still a concern, but there's no
25 evidence of that. There's zero evidence that Mother has

1 mental health issues that are affecting her. You know,
2 there's testimony that she has PTSD, bulimia, but the fact
3 that this child comes home and slams doors doesn't tell me
4 that Mom has untreated mental health issues. It doesn't tell
5 me anything. But, again, Father was making this connection
6 that just doesn't seem to make any sense to me, that she comes
7 home and she's angry. That can be so many things.

8 The ability of the parties to encourage the sharing
9 of love, affection, and contact between the child and the
10 other party. You know, I think it's clear that -- well, I
11 shouldn't say it's clear. I don't really know from Mom,
12 because I think that Mom has been so monitored with things, my
13 guess is she's probably concerned with every step that she
14 takes, and everything she does, and what's Dad going to do
15 with it. The fact that Dad takes it on himself to say to the
16 child, "Once your mom is healthy she can see you." Or it's --
17 I forget what the actual language was, but it had to do with
18 once she's healthier it'll be better for -- let me find it
19 because it was an important statement to me.

20 (Pause)

21 THE COURT: Here it is. Father told Juliet, "That
22 once Mother got healthy she could love her better." And what
23 I find striking about that is that, as I said before, there's
24 no evidence she was drinking. No evidence that she was
25 unhealthy. Yet he is reaffirming this with this child that

1 Mother is sick, that there is something wrong with her, that
2 she needs to get better. And, that's not encouraging the love
3 and affection between this child and her mother.

4 Whether the past pattern of involvement of the
5 parties with this child reflects a system of values, time
6 commitment, and mutual support. I think these parties are
7 both very committed. They have different ideas of what's
8 important in terms of extracurriculars. I think that Mom
9 understands that getting this child to school on time is
10 important and it's an expectation that this Court has.

11 The physical proximity of the parties to each other
12 as it relates to the practical considerations of parenting
13 time. That doesn't appear to be an issue.

14 And, finally, the ability of each party to place the
15 needs of the child ahead of his or her own needs. And, I
16 think -- I think that Mom has done that. She has done
17 everything that has been asked of her. Father, on the other
18 hand, has not. And I -- I shouldn't say he hasn't, but he has
19 used every chance he had to take Mom's parenting time away
20 without telling me why it was important to restrict her
21 parenting time. I -- I think that it's clear that under the
22 technicalities of the parenting plan, and what it says is that
23 if Mom doesn't follow this, this is what happens. But tell me
24 why that's best for the child. And the reality of the
25 situation is, is that if Father had not filed those

1 restrictions based on technicalities, we would be at a 5-2-2-5
2 parenting time schedule.

3 And I have difficulty saying that it's because of
4 Mother's actions. Did she mess up and did she not fall within
5 that four hours? 100 percent. But when I'm looking at a true
6 restriction of parenting time, had these restrictions come to
7 me, I think you all know that a restriction would have been
8 denied because it doesn't meet an endangerment standard to
9 restrict a parent's parenting time. But what the arbitrator
10 was tasked to do was very different than what I would do under
11 14-10-129(4) motion. That was never presented to me. But to
12 say that we should now be getting away from a 5-2-2-5
13 parenting time schedule because of the consistency is also a
14 misrepresentation of the facts here, because this child has
15 had no consistency because every chance the Father got he took
16 it away.

17 So maybe this child has had consistency for a period
18 of time, but not for the last year and a half because every
19 six months he's filing something. And that's what this child
20 needs, is she needs consistency and that's what this Court is
21 going to give her. So the Court is going to implement the
22 5-2-2-5 parenting time schedule. Father will have parenting
23 time on Mondays and Tuesdays. Mother will have it on
24 Wednesdays and Thursdays with alternating Fridays through
25 Monday. I'm slowing down now, Ms. McFarlane because --

1 MS. MCFARLANE: I got it.

2 THE COURT: -- this is what I need you to put in the
3 order.

4 Parenting time exchanges will occur at school. If
5 school is not in session, it'll be 5:00. As I indicated
6 earlier, curbside at Father's house when Mother is picking up.
7 South Metro Fire House, South Broadway, Littleton when
8 Father's parenting time commences.

9 The Court is eliminating the provision regarding
10 school attendance from the parenting plan. That was never
11 intended to be a long-term thing. It is clear that this is
12 another -- the arbitrator never found that Mother violated
13 that provision, and it is just another tool for Father to
14 control the situation.

15 This parenting plan is going to start once winter
16 break starts. We're in the middle of the semester. I don't
17 like to interrupt semesters. I think with as much as this
18 child has been through with parenting time abruptly starting,
19 abruptly stopping -- I shouldn't say abruptly starting -- but
20 stopping abruptly with these restrictions, I think that this
21 is the best way to do it, is to say once winter break starts
22 that's when this parenting plan will go into effect. Mother
23 will have -- well, I guess I don't know. What's the winter
24 break schedule?

25 MS. MCFARLANE: It would probably be when winter

1 break ends.

2 THE COURT: When it ends.

3 MS. MCFARLANE: Yeah, because they -- I believe they
4 sort of -- I -- yeah.

5 THE COURT: So who has the first half of winter
6 break this year?

7 MS. MCFARLANE: My client. Mom.

8 THE RESPONDENT: Yeah.

9 THE COURT: Okay. Winter break, second half, even
10 year, so Father has the second half -- or, no, hold on -- even
11 years -- looks like Mother has the second break this -- half
12 this year. Am I reading this wrong?

13 MS. MCFARLANE: Yeah, you asked first half.

14 THE COURT: Oh, sorry.

15 MS. MCFARLANE: Yeah.

16 THE COURT: In my head. Okay. So Mother has second
17 half of winter break. So the first weekend after winter break
18 will be Father's weekend. That's how it's going to start.
19 And so when does winter break end? Does anybody know?

20 THE RESPONDENT: I can tell you.

21 THE COURT: Okay.

22 MS. MCFARLANE: The first weekend after winter break
23 will be Father's weekend?

24 THE COURT: Correct.

25 MS. MCFARLANE: Okay. I just want to make sure I

1 have that right.

2 THE COURT: But -- but when --

3 THE RESPONDENT: Winter break ends on January 7th.

4 THE COURT: January 7th? Okay. So we will start
5 then. Mother will -- so Mother's parenting time with the
6 Wednesday, Thursday will start on -- on January 8th. So she
7 will have January 8th and 9th, and then Father will have the
8 weekend of the 10th, and then we'll go from there.

9 Okay. Questions regarding -- I know I've got
10 attorneys fees still. Questions regarding the parenting plan,
11 Ms. McFarlane?

12 MS. MCFARLANE: The only thing we would ask is that
13 right now Ms. Magill -- Thanksgiving, she has Thanksgiving but
14 it's under the restricted version of that. So, can she have
15 -- if the Court can modify the time, can she at least have the
16 Thanksgiving break as allocated under the parenting plan?

17 THE COURT: So the Court -- so we're -- my
18 expectation is that the holiday parenting plan that is
19 currently in place, that was intended -- I should say that was
20 intended to -- I didn't know that there was a difference in
21 the holiday schedule.

22 MS. MCFARLANE: A slight difference. I think we can
23 just say that the parties abide by the holiday and vacation
24 provisions under the 50/50 model.

25 THE COURT: Yes. That's my intent.

1 MS. MCFARLANE: Okay.

2 THE COURT: Any other questions, Ms. McFarlane?

3 MS. MCFARLANE: No, thank you.

4 THE COURT: Ms. Paille?

5 MS. PAILLE: Would you -- I mean, we can probably
6 figure out specific exchange times and the details between us.

7 MS. MCFARLANE: I think she said 5:00, but we can
8 do, like, details, yeah.

9 MS. PAILLE: Okay. I'm sorry.

10 THE COURT: If you all want to change the 5:00 --

11 MS. MCFARLANE: Yeah.

12 THE COURT: -- I'm fine with that. I just -- I
13 think I found it in something -- I was looking --

14 MS. MCFARLANE: The phase 3 --

15 THE COURT: -- at the parenting time schedule that
16 says if there's no school on Friday, 5:00. So that's where I
17 picked that from.

18 MS. MCFARLANE: Yeah. Okay.

19 THE COURT: If you all want to change it and put it
20 in the proposed order, I'll let you do that. I just -- I
21 picked it. So --

22 MS. MCFARLANE: Okay.

23 THE COURT: -- but I'll leave that to you guys.
24 Anything, Ms. Paille, on that issue?

25 MS. PAILLE: No, that was the only clarification

1 question.

2 THE COURT: All Right. The next issue, then, is
3 attorneys fees. Mother is requesting attorneys fees under
4 14-10-119. Father is requesting attorneys fees pursuant to
5 13-17-102. So, with respect to Mother's request for attorneys
6 fees, under 14-10-119 it's discretionary. It says that the
7 Court may, after considering the financial circumstances of
8 each of the parties, award attorneys fees.

9 The difficulty that I am having is that the
10 financial information I have from both parties is from back in
11 -- in 2023. But I also have to question Mother's claims
12 because she didn't provide me with enough information, quite
13 frankly. She claims that she's making a little bit more than
14 a thousand dollars per month. Yet at the same time, she's
15 paying her attorney a thousand dollars per month, which is --
16 is not a small amount. It's a significant amount and quite --
17 especially if it's her entire income. I understand that
18 Father makes \$14,000. Well, I think he's making more now. I
19 forget what I calculated, but he was making \$14,000 a month.
20 He indicated maybe 170 at this point in time. But I simply
21 don't have enough information to make a finding, based on the
22 parties financial circumstances, that this Court should award
23 attorneys fees to Mother pursuant to 14-10-119.

24 Under 13-17-102 there is -- I think Father's request
25 for attorneys fees had to do with -- let me go back to his

1 testimony.

2 (Pause)

3 THE COURT: He's asking for attorneys fees based on
4 Mother's bad faith representations in her filings. I'm not
5 sure what that means and I've never made any findings of bad
6 faith. He talked about false -- Mother's behavior resulted in
7 her having restricted time. I've already addressed that. And
8 false representations to the Court -- I know that one of the
9 false representations he was talking about had to do with
10 whether or not -- I think it was Dr. Florez?

11 MS. MCFARLEN: Fontes (phonetic).

12 THE COURT: Fontes. I was close. I got the F and
13 the S, but, you know, I knew it was something like that. The
14 argument whether or not she was a rebuttal witness or -- or if
15 she was just a witness. And under 13-17-102(4), the Court has
16 to find -- being as this, I think, really falls more on
17 Ms. McFarlane than the client -- I would have to find that she
18 brought or defended an action, or any part of an action, that
19 lacked substantial justification or that it was interposed for
20 delay, harassment, and -- lacking substantial justification,
21 means that it was substantially frivolous, groundless, and
22 vexatious, and I can't make that finding to issue an award of
23 -- of attorneys fees. So the request for attorneys fees under
24 13-17-102 is also denied. The Court is ordering that each
25 party pay his or her own attorneys fees.

1 I think that addresses everything. Ms. McFarlane?

2 MS. MCFARLANE: No, Your Honor.

3 THE COURT: Ms. Paille?

4 MS. PAILLE: No, thank you.

5 (Whereupon further discussion related to this matter was
6 not transcribed at the request of the ordering party)

7 THE COURT: All right. Anything else?

8 MS. MCFARLANE: No, thank you.

9 THE COURT: All right. Thank you all for your
10 appearances. Have a nice day.

11 MS. MCFARLANE: Thank you.

12 THE RESPONDENT: Thank you.

13 (Proceeding concluded at 3:22 p.m.)
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CERTIFICATE

I, Helen C. Falck, certify that I transcribed this record from the digital recording of the above-entitled matter, which was heard on October 24, 2024, before THE HONORABLE DONNA STEWART, in Division 7 of the Douglas County District Court.

I further certify that the aforementioned transcript is a complete and accurate transcript of the proceedings based upon the audio facilities of these CDs and my ability to understand them. Indiscernibles are due to microphones not working properly, excessive noises or muffled voices.

Signed this 27th day of November, 2024, in Longmont, Colorado.



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