

IN THE
SUPREME COURT
OF THE STATE OF ARIZONA

In re: the Marriage of:

SHELLY RAE BARRON,

Petitioner/Appellants,

v.

PAUL ROGER BARRON,

Respondent/Appellee.

CASE NO. 1 CA-CV 17-0413 FC

Yuma County Superior Court Case
No. S1400DO-2015-01132

PETITION FOR REVIEW

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I. QUESTIONS PRESENTED

Does *Howell v. Howell*, 137 S.Ct. 1400 (2017), foreclose orders of indemnification under *Koelsch v. Koelsch*, 148 Ariz. 176 (1986), in the context of military retirement?

How readily may an appellate court find abuse of discretion given the superior court's broad discretion in determining the best interests of the child?

II. STATEMENT OF FACTS

Paul Roger Barron ("Husband" or "Father") and Shelly Rae Barron ("Wife" or "Mother") were married in January 2004 and have three children. RA¹ 79 (p. 2 ¶¶3, 6). Husband is an active duty U.S. Marine. He is eligible for regular retirement in February 2023. COA-Op.² ¶2; RA 79 (pp. 5-6 ¶¶11, 14).

On August 11, 2015, Mother filed a petition for dissolution of marriage in the Yuma County Superior Court. RA 3. Decree was entered May 22, 2017. RA 79.

Father appealed to the Arizona Court of Appeals ("COA"), COA-Op. ¶1, which reversed in part and affirmed in part, COA-Op. ¶52. Mother now seeks review of the decision on two issues, detailed below.

¹"RA" refers to the number of the document in the Superior Court Clerk's Index to the Record on Appeal.

²"COA-Op." refers to the Arizona Court of Appeals decision at issue herein.

A. Military Retirement Pay ("MRP")

As explained by the Court of Appeals:

As a Marine, Husband is entitled to receive military retirement benefits upon completing 20 years of service. Under federal law, state courts may treat the portion of a serviceperson's military retirement earned during marriage as community property, divisible upon divorce. Thus, and under Arizona community-property law, Wife is entitled to one-half of the military retirement benefits Husband earned during the marriage. Applying that principle, the superior court divided the community's interest in Husband's military retirement. It also ruled that if Husband voluntarily continues to serve after he becomes eligible to retire, he must pay Wife what she would have received from the government if he had retired. [RA 79 (p. 6 ¶14).]

COA-Op. ¶24.

Husband appealed the trial court's decision requiring that he indemnify Wife in the event of his continuing military service. *Id.* Relying on *Howell*, the Court of Appeals held that federal law does not permit a state court to order a military member to indemnify their former spouse in the event of voluntarily service past the member's retirement eligibility. *Id.* ¶¶30, 52.

B. Parenting Time

During divorce proceedings, Mother was in training to become a firefighter/emergency medical technician ("EMT"). COA-Op. ¶5.

Accordingly, the parties agreed to temporary orders allowing the parents approximately equal parenting time. RA 100 p. 4 ln. 25-p. 5 ln. 5; ROA 46 p. 1-

2.³ Fourteen months later, the Decree reduced Father's parenting time. COA-Op. ¶5. Father appealed, arguing that the Superior Court abused its discretion by ordering unequal parenting time. *Id.* ¶6. The Court of Appeals held that the Superior Court's findings were contrary to law and not supported by the evidence, *id.* ¶9, and reversed and remanded. *Id.* ¶¶23, 52.

III. REASONS THE PETITION SHOULD BE GRANTED

This matter presents the question of the breadth of the conflict between Arizona law and federal law in light of *Howell* and to issues beyond the specific issue raised in *Howell*. Courts and practitioners now struggle to determine the aspects of military retired pay division which have been delegated by Congress to the application of state law and which have not. The questions presented offer the opportunity to provide guidance on an issue impacting every military member or spouse whose marriage is dissolved in Arizona.

This matter also concerns the interpretation of the 2012 legislative revisions of Title 25, Chapter 4, Article 1 of the Arizona Revised Statutes concerning parenting time with minor children. Arizona law does not require a presumption that children spend equal time with both parents. However, the

³ The Court of Appeals incorrectly stated that temporary orders permitted Father greater parenting time than Mother. COP Op. ¶5. In fact, the plan provided each party approximately three and one half days per week, with Mother having four overnights each week and Father having three overnights each week. The parties and the trial court consistently referred the plan as an equal parenting time arrangement.

decision below suggests such a presumption and creates precedent suggesting that a consideration of the best interests of children is subject to a presumption of equal parenting time.

There is no Arizona decision controlling either of the questions presented. Should it stand, the decision below will have widespread detrimental effects on the rights of former spouses in Arizona to obtain an equitable division of a substantial community property interest and upon the consideration of the interests of Arizona children. Accordingly, this case presents recurring questions of exceptional importance, potentially affecting a large percentage of persons dissolving their marriages within the State.

A. *Howell* Did Not Eviscerate *Koelsch* with Respect to MRP

In *Koelsch*, this Court addressed the marital division of public retirement benefits when the employee spouse is vested but continues work, thereby delaying the former spouse's receipt of retirement payments. *Koelsch*, 148 Ariz. at 180. This Court held that the superior court may order an employee to indemnify their former spouse for amounts they would have received if the employee had retired at their first normal eligibility. *Id.* at 185. The Superior Court explicitly relied on *Koelsch* in dividing Husband's MRP. RA 79 (p. 6 ¶14); RA 79 (p. 3 ¶10) (incorporating by reference RA 67 (p. 10 ¶24)).

The Uniformed Services Former Spouses' Protection Act ("USFSPA"), 10 U.S.C. §1408, establishes that, except as otherwise provided, a state court

"may treat disposable retired pay payable to a member . . . as property of the member and his spouse in accordance with the law of the jurisdiction of such court." 10 U.S.C. §1408(c)(1).

The USFSPA defines "disposable retired pay" as "the total monthly retired pay to which a member is entitled," with four specific and enumerated exceptions. *See id.* §1408(a)(4)(A). Among the enumerated exceptions are amounts deducted because "of a waiver of retired pay required by law in order to receive" disability benefits. *Id.* §1408(a)(4)(A)(ii). In *Howell*, the United States Supreme Court determined that state courts do not have authority to order a military member who converts portions of MRP to disability benefits to indemnify a former spouse against losses occasioned by that election. The Court reasoned that the converted benefits were explicitly excluded from the statutory definition of "disposable retired pay."

In this case, however, disability benefits are not at issue. The question presented was whether Wife is entitled to MRP once Husband reaches 20 years of service regardless Husband's decision to continue service. COA-Op. ¶24; RA 79 (p. 6 ¶14). The specific enumerated statutory exception at issue in *Howell* was not implicated here and the Court of Appeals' reliance on *Howell* is misplaced. Moreover, to the extent the Court of Appeals read *Howell* to

preclude *any* indemnity-type adjustment to a community interest of MRP, COA-Op. ¶30,⁴ the Court of Appeals reads *Howell* too broadly.

"Where, as here, the question is one of statutory construction, we begin with the language of the statute." *Mansell v. Mansell*, 490 U.S. 581, 588 (1989). The premise of the USFSPA is that divisible "disposable retired pay" is "the total monthly retired pay to which a member is *entitled*," less certain enumerated exceptions. 10 U.S.C. §1408(a)(4)(A) (emphasis added). Since none of the enumerated exceptions apply, the question is whether Husband is "entitled" to MRP after 20 years of service, notwithstanding a voluntary decision to continue service.

The USFSPA does not define the word "entitled," so the ordinary meaning of the word applies. *E.g.*, *State v. Snee*, 244 Ariz. 37, ¶6, 417 P.3d 802, 803 (Ct. App. 2018); *United States v. TRW Rifle 7.62x51mm Caliber, One Model 14 Serial 593006*, 447 F.3d 686, 689 (9th Cir. 2006). In relevant part, the dictionary definition of "entitle" is "to furnish with proper grounds for seeking or claiming something." Merriam-Webster Dictionary Online, available at www.m-w.com; accord www.dictionary.com (based on the Random House Unabridged Dictionary (2018)).

⁴"Notwithstanding the prior division of authority, the question now has been resolved by *Howell*, which holds that a state court may not do indirectly what 10 U.S.C. §1408 directly forbids." COA Op. ¶30.

Clearly, then, one can be "entitled" to something regardless of whether one actually receives the thing in question. *E.g., State v. Helffrich*, 174 Ariz. 1, 5-6, 846 P.2d 151, 155-56 (Ct. App. 1992) (A statute's "[u]se of the word 'entitle' does not imply that the object is automatically given to the recipient, but only that he may receive it if he so elects." (citing Webster's New Universal Unabridged Dictionary (2d ed. 1983))).

Accordingly, in the instant case, Husband is "entitled" to MRP upon reaching 20 years of service, whether or not he opts to receive it. *Cf. United States v. Stevenson*, 65 M.J. 639 (N-M Ct. Crim. App. 2006) (a member of the temporary disability retirement list who has waived military disability retired pay in favor of disability compensation is still "entitled to pay," and thus is subject to court-martial jurisdiction pursuant to article subjecting military retirees who are entitled to pay to the Uniform Code of Military Justice), *set aside on other grounds*, 66 M.J. 15 (C.A.A.F. 2008).

Therefore, Husband's divisible "disposable retired pay" is the MRP he is *eligible* to receive rather than that which he *does in fact opt* to receive, subject to the explicit enumerated exceptions set forth in the USFSPA.

If Congress had intended USFSPA to preclude all types of *Koelsch* payments, then the statute could have been written to accomplish that sweeping result. Instead, Congress broadly defined "disposable retired pay" and then created specific, limited exceptions thereto. *See Jama v. Immigration &*

Customs Enforcement, 543 U.S. 335, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest."). The courts cannot add words to a statute under the guise of statutory construction. *See Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 270 (2010) (the court must "give the statute the effect its language suggests, however modest that may be[,] not to extend it to admirable purposes it might be used to achieve"); *Price v. City of Mesa*, 236 Ariz. 267, 269, ¶8, 339 P.3d 650, 652 (Ct. App. 2014) ("When a statute is silent on an issue, we will not read into [it] something which is not within the express manifest intention of the Legislature as gathered from the statute itself, nor will we inflate, expand, stretch or extend the statute to matters not falling within its expressed provisions." (internal quotation marks omitted)).

Accordingly, Arizona's community property law, including *Koelsch*, falls within the authority Congress reserved to the states and therefore is not preempted by 10 U.S.C. §1408 (except as specifically set forth therein, *e.g.*, *Howell*). Consequently, the Court of Appeals' decision regarding MRP in this matter constitutes legal error and must be corrected by this Court.

B. The Court of Appeals Abused Its Discretion by Vacating the Superior Court's Decision on Parenting Time

It is well-settled that the Superior Court has broad discretion in parenting time matters and, thus, the Superior Court's decision will only be altered on appeal if there is an abuse of discretion. *In re Marriage of Friedman & Roels*, 244 Ariz. 111, ¶36, 418 P.3d 884, 893 (2018).

In the instant case, the Superior Court determined that "[a] totality of the circumstances tip the scales in favor of designati[ng Mother] as primary residential parent," and cited several specific facts the court considered in reaching that conclusion. RA 67 (p. 3 ¶11). The Court of Appeals reversed that determination, holding "that the findings the [Superior Court] made in determining parenting time are contrary to law and not supported by the evidence." COA-Op. ¶9; *see also id.* ¶1.

As discussed below, the Court of Appeals usurped the Superior Court's discretionary authority in ruling on parenting time. Consequently, the Court of Appeals' decision regarding parenting time in this matter constitutes legal error and must be corrected by this Court.

1. Presumption of equal parenting time

The Court of Appeals held that the Superior Court "legally erred by applying a presumption against equal parenting time" when it presumed that

one of the parent's "homes must be the children's 'primary' residence." COA-Op. ¶10.

As an initial matter, to the extent that the Superior Court ordered that the children's primary residence be with Mother, that ruling "constitutes an order regarding physical custody as opposed to an order regarding parenting time." *Owen v. Blackhawk*, 206 Ariz. 418, 421, ¶11, 79 P.3d 667, 670 (Ct. App. 2003) ("Physical custody involves the child's residential placement, whereas parenting time is what is traditionally thought of as 'visitation.'").

Furthermore, the Court of Appeals analysis suggests, perhaps inadvertently, that Arizona law requires a presumption of equal parenting time. No such presumption exists in Arizona. It is the policy of the State of Arizona to encourage parenting time. A.R.S. §§25–103(A) (2017) (law supports strong families), 25–103(B) (“it is in a child's best interest ...[t]o have substantial, frequent, meaningful and continuing parenting time with both parents”), and 25–403.02(B) (2017) (plan that maximizes parenting time consistent with “child's best interest”). These statutes do not, however, require a presumption that parenting time be equal.

Even if there were, such presumption must be tempered by the best interests of the children. *See* A.R.S. §25-403.02(B).

Although parents have a fundamental right to exercise custody and control over their children, that right is tempered by what is in that child's best

interest. *Baker v. Meyer*, 237 Ariz. 112, 114, ¶6 (App. 2015). Here, the superior court's order thoroughly addressed each of the relevant factors set forth in §25-403 when determining what was in the best interest of Child, and this court will not re-weigh that evidence. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶12, 53 P.3d 203 (App. 2002).

Missman v. Peterson, No. 1 CA-CV 16-0323 FC, 2017 WL 930797, at *2, ¶10 (Ariz. Ct. App. filed Mar. 9, 2017) (unpublished).

The Court of Appeals took issue with the Superior Court's rationale that "Children should have a primary home" rather than "divide their . . . things . . . between two homes." COA-Op. ¶8 (¶¶G & H). The Court of Appeals asserts that "nothing in the law allows a court considering the best interests of the children to presume that one of those homes must be the children's 'primary' residence." *Id.* ¶10. On the contrary, however, when considering the best interests of children, the court must consider "all factors that are relevant to the child's physical and emotional well-being," A.R.S. §25-403(A) (emphasis added), including "[t]he child's adjustment to home." *Id.* §25-403(A)(3). The Superior Court heard evidence after the children had experienced fourteen months of an approximately equal parenting time arrangement, during which they divided time equally between two homes. The trial court's suggestion that the interests of the children were not served by that arrangement was made after hearing evidence about the children's adjustment during that period.

The Court of Appeals' asserted that "[b]y its nature, dissolution of a marriage *compels* children to divide their time between the homes of their two parents." COA-Op. ¶10 (emphasis added). That is simply not true. Indeed, nothing "compels" a dual-living arrangement after divorce. Numerous circumstances may warrant the assignment of a primary residence for the children. *E.g., Anderson v. Anderson*, 121 Ariz. 405, 407, 590 P.2d 944, 946 (Ct. App. 1979) (where evidence in marriage dissolution proceedings showed substantially more stability in life situation of husband than in that of wife, trial court did not abuse its discretion in awarding custody to husband).

2. Mother as the children's primary care provider during the marriage.

The Court of Appeals held that the Superior Court "erred by favoring parenting time for Wife over Husband based on the fact that Wife had been the children's primary caregiver during the marriage." COA-Op. ¶15.

Initially, the Court of Appeals reasoned that although this "used to be one of the factors the court was required to consider . . . the legislature removed that factor in 2012." *Id.* The 2009 version of the statute required the court to consider whether one parent had provided primary care for the child. A.R.S. §25-403 (2009). That factor was removed and replaced by a requirement that the court consider "the past, present and potential future relationship between the parent and the child." A.R.S. §25-403 (2012). This change does

not suggest that the role of primary caretaker is no longer a relevant inquiry. Rather, the legislature expanded the inquiry to include the entirety of the relationships. A primary-caregiver relationship remains a relevant consideration. A.R.S. §25-403(A)(1) (the court must consider "all factors that are relevant to the child's physical and emotional well-being," including "[t]he *past . . . relationship* between the parent and the child" (emphasis added)).

The Court of Appeals held that the Superior Court erred because it *presumed* "that the child's best interests necessarily are served by affording more parenting time to the former stay-at-home parent than to the other." COA-Op. ¶16. Yet, the Superior Court made no such presumption. The Superior Court made a factual finding that Mother had been the primary care provider and, thus, the children have historically spent more time with her than with Father. Based in part on that factual determination, the Superior Court concluded that the children would be best served by having more time with Mother than with Father or his parents in the future. *See also Principles of the Law of Family Dissolution* §2.08 (Am. Law Inst. 2002) (generally, the "court should allocate custodial responsibility so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caretaking functions for the child prior to the parents' separation") (quoted in COA-Op. ¶15 fn.4).

3. *Father's limited availability due to his military duties*

The Court of Appeals held that the Superior Court erred by limiting Father's "parenting time based on its finding that his military duties 'often make him unavailable during his parenting time resulting in the children spending too much time with the paternal grandparents.'" COA-Op. ¶18 (quoting RA 67, p. 3 ¶11.C). Notably, the Court of Appeals omitted the final phrase of the Superior Court's factual finding on this point—"spending too much time with the paternal grandparents *relative to time they could be with [Mother]*." *Id.* ¶8 (¶C) (quoting RA 67, p. 3 ¶11.C) (emphasis added). As a matter of law, parents have superior rights to the care and custody of their children when compared to third-parties such as grandparents. *Downs v. Scheffler*, 206 Ariz. 496, 502, ¶25, 80 P.3d 775, 781 (Ct. App. 2003) ("[R]ecogniz[ing] that in custody disputes between a fit legal parent and a third person, a parent's wishes concerning custody are entitled, at a minimum, to special weight as a measure of protection for the parent's constitutional right to rear the child." (citing *Troxel v. Granville*, 530 U.S. 57, 70 (2000))). Thus, the Superior Court did not err in elevating Mother's parenting time over the paternal grandparents' parenting time.⁵

To the extent that the Court of Appeals considered Mother's new career as a firefighter/EMT "may require shift work long past regular business hours,

⁵Based on the foregoing, it is irrelevant that the grandparents are fit (even good) care providers for the children. COA-Op. ¶18.

including some nights and weekends," COA-Op. ¶18, such a consideration is speculative. If that occurs, then a reassessment of parenting time could be considered under the specific circumstances at that time.⁶ *Anderson*, 121 Ariz. at 407, 590 P.2d at 946.

4. The children's adjustment to the increased time with Father during the pendency of the temporary orders and the children's desire to spend more time with Mother

The Court of Appeals held that the Superior Court "erred by denying equal parenting time based on its findings that the girls 'have not fully adjusted to equal parenting time during the pendency of the temporary orders' and that they 'want and need to spend more time with' [Mother]." COA-Op. ¶19 (quoting RA 67, p. 3 ¶11.B).

The Court of Appeals noted that, given the temporary orders and in light of Mother's training schedule, the children "naturally missed being able to spend weekends with Wife." *Id.* Nonetheless, the Superior Court is required to consider the children's expressed preference. A.R.S. §25-403(A)(4).

The Court of Appeals found the record devoid of evidence the children were not adjusting well to equal parenting time. COA-Op. ¶20 ("Wife's testimony in September 2016 that one of the girls complained of stomach pain and sleeplessness" but those problems were "getting better" by the time trial

⁶Notably, the Court of Appeals used this exact reasoning to hold that another of the Superior Court's considerations was faulty. COA-Op. ¶17.

resumed two months later); *id.* ¶21 (noting "the absence of testimony of a therapist, counselor or other expert" concerning the matter). However, witness credibility is a matter left to the trial judge. *Friedman & Roels*, 244 Ariz. at ¶ 36, 418 P.3d at 893; *Missman*, 2017 WL 930797, at *2, ¶10.

IV. CLAIM FOR ATTORNEY'S FEES


Wife requests attorney's fees pursuant to A.R.S. §25-324 and ARCAP 21(a), as well as costs pursuant to A.R.S. §12-342(A).

V. CONCLUSION

For the reasons stated, Wife respectfully requests that this Court grant the Petition for Review in this matter.

RESPECTFULLY SUBMITTED this this 29 day of August, 2018.

Mary Katherine Boyte, P.C.

By: 

Mary K. Boyte Henderson
Attorney for Appellee

VI. APPENDIX

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- 6) Court of Appeals Opinion 07/31/18

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

 In re the Marriage of:)
)
 SHELLY RAE BARRON,)
)
 Petitioner,)
)
 and) No. S1400DO201501132
)
 PAUL ROGER BARRON,)
)
 Respondent.)
 _____)

 BEFORE THE HONORABLE STEPHEN J. ROUFF
 COMMISSIONER TWO OF THE SUPERIOR COURT
 YUMA, ARIZONA

TRANSCRIPT OF PROCEEDINGS

February 26, 2016

9:01 a.m. - 10:30 a.m. and 10:46 a.m. to 12:03 p.m.

TEMPORARY ORDERS

PREPARED BY:

Julie K. Knowlton, CR, RPR, CSR(CA)
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 Yuma County Superior Court

APPENDIX A

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APPEARANCES

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S. Alan Cook, Attorney at Law, for the Respondent

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THE COURT: Good morning, everyone.

MS. BOYTE HENDERSON: Good morning.

MR. COOK: Good morning, Your Honor.

THE COURT: Court calls DO2015 number 1132, In re the Marriage of Shelly Rae Barron and Paul Roger Barron. This is the time set for each party's motion for temporary orders. Respondent father had filed first.

Are the parties prepared to proceed?

MR. COOK: Yes, Your Honor.

MS. BOYTE HENDERSON: We are, Your Honor.

THE COURT: Go ahead and proceed.

MR. COOK: Thank you, Your Honor. I'm happy to call Major Barron first.

THE COURT: Do you want to waive opening statements?

MS. BOYTE HENDERSON: I'm -- I'm not prepared to waive opening statements.

THE COURT: Okay.

MR. COOK: Well, then she can make an opening statement, I'll make one, and then I'll call my client. She can go first if she wants.

MS. BOYTE HENDERSON: Okay.

THE COURT: Okay.

MS. BOYTE HENDERSON: The issues before the Court today

1 involve -- I think the issues of parenting time are largely
2 agreed. The parties have agreed to a schedule that is set out in
3 Mr. Cook's position statement. In terms of the parenting time
4 that's set out there, that's agreeable, specifically that the
5 week is being divided.

6 My client is currently in school in the firefighter
7 training program. She's scheduled to complete that in May. And
8 so we have agreed on a schedule that, pending her completion of
9 that program, the parties will divide the week such that the
10 children are exchanged and in the care of the father beginning
11 Thursday at noon through Sunday at 7:00; and then Sunday at 7:00
12 the children will move to mother and be in her care from Sunday
13 at 7:00 through the following Thursday at noon.

14 The issues that are in contention with regard to the
15 parenting schedule is father's request to include a provision
16 which he -- he claims to be applicable to both parties but
17 preventing both parties from consuming alcohol while the children
18 are in their care.

19 My client will testify as to the reasons she opposes
20 that, and I think the Court will find that there are no objective
21 indications whatsoever that Mrs. Barron has any kind of drinking
22 problem. She will testify that she, at the request of
23 Mr. Barron, obtained an evaluation of herself for treatment and
24 was told that she had no problem.

25 MR. COOK: I'll object, Your Honor. I don't object in

1 opening statements, Your Honor, but I do object to evidence
2 that's not admissible. In this case, unless Dr. Lara is being
3 called, that's just hearsay. I think that we've asked that the
4 rules of evidence be followed.

5 THE COURT: Has Rule 2 been invoked?

6 MR. COOK: Yes.

7 MS. BOYTE HENDERSON: Rule 2 has been invoked. I don't
8 think there's any bar to my client testifying that she underwent
9 an evaluation and was not recommended to have any treatment, so I
10 don't believe that that would be something that's precluded by
11 the hearsay rule.

12 The -- the other area of dispute with regard to the
13 parenting plan is that Mr. Barron's job -- he's a pilot with the
14 military -- requires him to be away. Typically, he says that,
15 except for four months per year, he has periods of up to a week
16 at a time where he is overseas, sometimes as far away as Japan,
17 sometimes within the continental United States. During those
18 periods of time, the children have traditionally spent their time
19 with mother.

20 The evidence will be, in fact, that mother has been, in
21 fact, a stay-at-home parent with the children during the majority
22 of the marriage, almost the entirety of the marriage, and has had
23 the primary responsibility for the care of the children.

24 Mr. Barron's parents recently moved to Yuma in -- I
25 remember September of last year, but my client will testify with

1 precision as to when that happened, and I think his position is
2 that he wants his parents to care for the children if he's away
3 during his parenting time.

4 My client feels that that would be unduly disruptive to
5 the children and their routine. She certainly has no objection
6 to his parents and has never suggested that the children should
7 not spend time with them; but if Mr. Barron is away, then she --
8 she feels that the children should remain in her care.

9 The child -- we're close, I believe, on child support
10 and spousal maintenance. I believe Mr. Cook has requested an
11 order of 3,500 per month on a temporary basis through the end of
12 May, at which time the amount would automatically modify to 1,100
13 per month.

14 My -- our -- our request is 3,500 per month on a
15 temporary basis until such time as Mrs. Barron actually obtains
16 employment on a full-time basis. She is in the firefighter
17 academy now and is due to complete that training, as I said, in
18 May; however, she has not been offered a full-time job yet, and
19 there is no indication that she will be employed as of June 1st
20 automatically.

21 She has no objection to that being modified when she
22 does obtain full-time employment, and she would agree to a
23 provision that it would be modified to 1,700 per month at such
24 time that she attained full-time employment.

25 And then we've requested an order of \$475 for temporary

1 child support, which is pursuant to our child support worksheet.

2 The -- and then the other remaining issue is the issue
3 of attorneys' fees. My client has paid six -- \$6,000 for
4 temporary attorney's fees. It's unclear exactly what Mr. Barron
5 has paid, but I'm sure he'll testify. My client's outstanding
6 bill at the end of this hearing -- or total attorney's fees and
7 costs as of the end of this hearing will be in excess of \$12,000.
8 She's not able to meet that.

9 The evidence will be that in October of this past year
10 Mr. Barron took his salary, which has historically been the
11 family income, in its entirety and moved it into an account where
12 Mrs. Barron has no access. He has paid the house payment,
13 utility bills, and has bought groceries once per week, but my
14 client has been responsible for all the other expenses.

15 My client is employed on a part-time basis while she's
16 in training with Rural/Metro, but she earns less than \$400 per
17 month from that employment. Her own car payment is -- is almost
18 exactly equal to the amount of her current earnings.

19 Mr. Barron has refused any requests to provide
20 additional financial support. And Mrs. Barron has, during these
21 past months, incurred a credit card which now has a balance of
22 about \$5,000 on it.

23 So I think that covers it.

24 THE COURT: Mr. Cook.

25 MR. COOK: Yes, Your Honor. We weren't able to settle

1 this. I prepared a position statement last night and e-mailed it
2 to counsel and let her know that I was e-mailing it. I also did
3 a memorandum with respect to the spousal maintenance issue. I'd
4 like to -- may I file the original with your clerk?

5 THE COURT: Sure.

6 MR. COOK: I also have a copy for the Court if the
7 Court would like it and a hard copy for counsel.

8 Let me make sure that I'm saving one for myself here.

9 THE COURT: Thank you.

10 MR. COOK: Thank you, Your Honor.

11 Yes. Your Honor, this is about a marriage that broke
12 down two or three years ago. The divorce action was not filed
13 until July of last year. The parties were married in January of
14 2004. We're talking about a marriage at its best light being
15 eleven-and-a-half years, realistically more like nine.

16 It is true the father's employed. He's a major in the
17 United States Marine Corps. He's a pilot. He gets income of
18 \$9,912 a month, from which is withheld FICA and other things,
19 including various things that benefit the parties. Fortunately,
20 because of his position, wife, as a dependent, has a right to
21 shop at both PX and commissary, where she can realize a
22 substantial savings on food items and things like that, personal
23 items.

24 Father's position in this case has been for a long
25 time -- and the parties discussed this even before. Through the

1 filing of the case, father's principal concern with respect to
2 parenting time and custody is the fact that mother has
3 historically abused alcohol, and he would be the first to say
4 that he thinks that since hiring Miss Boyte that her alcohol
5 consumption has gone down, not ended but gone down.

6 There have been occasions when she's had to get rides
7 home from bars and leave her car and then have to get a ride back
8 to her car. There's been occasions where she's passed out from
9 drinking. There's been several occasions when father has found
10 medications left out at the home. Mother takes Adderall for
11 ADHD. He's found the Adderall left open and pills left out on
12 the counters, things he's thrown away. It doesn't happen every
13 day.

14 He thinks that this is part -- is due to the fact she
15 likes to drink, and his only concern about parenting time -- he
16 thinks she's a good mom if she's not drinking, but he thinks that
17 her judgment lapses when she does drink, and so all he's asking
18 is the parties don't drink when they have the kids. That's all.
19 That seems a reasonable request.

20 We don't agree that anything found by Dr. Lara should
21 be admitted here. We object to that because it's just hearsay,
22 and Dr. Lara is not here; but part of the issue with that, Your
23 Honor, is, as you know, in a forensic setting all Dr. Lara could
24 do in meeting with mother is base whatever findings he makes on
25 what she says to him; doesn't do any independent investigation,

1 talk to anybody else. He didn't ever talk to father. And I
2 think most people with children in the home can probably count
3 on -- with no fingers how many times they pass out drinking at
4 home and they've got children in their care. I mean, that's
5 something that doesn't happen very much. And so usually if
6 people do that it's because they've got a drinking issue. Now,
7 he's not saying that mother's a raging alcoholic, but he is
8 saying that sometimes she drinks too much. That's his only
9 concern, is care for the children.

10 It is true that his parents do live in town here now.
11 He's rented an apartment; and as soon as we have orders about
12 parenting time, his plan is to relocate to the apartment. His
13 parents are going to be there. His children will be there. He'd
14 like his children to be available and on his parenting time spend
15 time with his parents. They're here to help. They have been
16 very helpful to them.

17 There were times when the children weren't getting
18 schoolwork done, and his parents contributed to helping get it
19 done. I think it was his daughter's first spelling test, she got
20 two out of ten right. Apparently no one had been helping her
21 with her homework. Well, she ended up getting hundreds on such
22 tests when she got help.

23 So his parents have been contributors to the welfare of
24 the children, been supportive, have gotten them to school at
25 times when they needed to be getting to school and other people

1 couldn't.

2 And so father doesn't see why, because he's in the
3 service and is required to periodically travel to serve his
4 country, that his parenting time should be impaired, and we have
5 statutes that say that essentially, under ARS 25-411, to that
6 effect.

7 So, on the other hand, he knows that this is going to
8 be an awkward parenting arrangement once mother's got a full-time
9 job. So, I mean, I don't know what -- how awkward the
10 arrangements are in Yuma, but I know most places I've ever been
11 firefighters work one day on, you know, 24 hours on, and 48 hours
12 off, and so their schedule is awkward. Their sleep schedule is
13 awkward; their work schedule is awkward. Most of them work
14 additional jobs, side jobs, in addition to firefighter jobs
15 because they have so much time off.

16 In this case we have a father who's got an income,
17 who's been providing all the expenses for the marital community,
18 paying the home mortgage, the utilities, all the expense related
19 to that, buying groceries, shopping, whatever clothing, doing
20 that. And so he's been doing that pendente lite.

21 When mother left, she took 13,700-some-odd dollars
22 total, gave six of that to Miss Boyte, still had \$7,700 left
23 over. Father used about the same, \$6,000 or something, to hire
24 Miss Ramirez, who, because of issues with her pregnancy, had to
25 withdraw as counsel. So he had to hire a new lawyer, which is

1 unfortunate because it's not cheap having a lawyer from Phoenix
2 driving down here.

3 His proposal has been, as set forth in the papers, that
4 he's willing to pay mother 3,000 a month in spousal maintenance
5 until she finishes the fire academy, which is supposed to be
6 early May. He believes she should have a job by June. She's
7 previously indicated to him she has connections with the fire
8 department. We don't know if she even applied for the job.

9 I'm sure the Court recalls when it was in college they
10 used to have job fairs, and college graduates started applying
11 for jobs six months before they graduated. I don't know why it
12 would be any different if you're a fireman applying for a job
13 with the fire department. And particularly, in mother's case,
14 the Yuma City website shows EMT/firefighters as -- with minimum
15 pay of thir -- three thousand four seventy a month. So that's
16 what the website says. We presume that that's where she would
17 start because she is an EMT. She's an the EMT instructor. The
18 marital community has funded her education for the purpose of
19 doing this.

20 She does have part-time work. I don't know all the
21 places she does work, but she did have positions both with the
22 fire department and with Rural/Metro. I think it was Arizona
23 Western teaching -- excuse me -- teaching EMT classes and also
24 had other available employment. In her discussions with father,
25 she had indicated she was making \$9 an hour, was going to get a

1 raise to 16, and that they were talking about getting a job at
2 \$26 an hour on a temporary basis, so he doesn't know. She
3 doesn't report to him about her income. She doesn't contribute
4 her income to him. She hasn't. She spends it how she sees fit.

5 His proposal is that she get \$3,000 a month spousal
6 maintenance for the months of March, April, May while she's still
7 in school and 1,100 a month after that. That is based upon the
8 formula discussed in the *Cullum* case. I've cited that to you.

9 I agree Yuma doesn't have spousal maintenance
10 guidelines. No county has them. Maricopa County did try them
11 for a while, never formally adopted, not used, but informally
12 used many times. And in this case father's -- this has been
13 virtually a short-term marriage.

14 Under the *Schroeder* case, Justice Feldman wrote about
15 these issues, these spousal maintenance issues. He decided in
16 the footnote the fact that authorities generally say that a short
17 marriage is 0 to 10 years; medium length, 10 to 20; and a
18 long-term marriage, more than 20. Well, this is more on the
19 short side than the long side. And so he proposes that be done
20 pendente lite. Obviously, pendente lite the orders are supposed
21 to be done without prejudice according to ARS 25-315, so the
22 Court could revisit this issue if the parties don't settle the
23 case sooner. So that's how we see this.

24 Father's proposal about parenting time is that, you
25 know, because mother's in school from Thursday until Sunday

1 evening that, well, I think what we had suggested was he'd take
2 them to school Monday morning and mom would pick them up after
3 school and have them until she goes back to class. Obviously,
4 he'd like to have a full weekend periodically. It may be we
5 could do the same schedule that Miss Boyte talked about but
6 alternate whether the kids go back to school Monday or go to
7 mother Sunday night. That would be basically 50/50 parenting
8 time. I don't think there's an issue about that.

9 I'm not aware of any issues about parenting other than
10 the issue father has raised about the alcohol abuse which is
11 indicated -- you know, come to indication sometimes because of
12 medications being left out, which he thinks is hazardous to the
13 children; and he's discussed that issue with mother, but they
14 don't seem to have an agreement that it's dangerous. He thinks
15 it's dangerous, and she thinks it's not.

16 So other than that, I think the evidence is pretty
17 straightforward here. I don't think we should take three hours
18 here. I would think we would be done in an hour and a half at
19 the most, and I'm prepared to call Major Barron.

20 His position on attorneys' fees, Your Honor, is they
21 should abide further proceedings, abide trial in the case.
22 Mother's had ample resources to pay lawyers. The parties do have
23 some other assets, almost \$90,000 between an investment account
24 and an IRA account, as well as insurance cash value people can
25 access; don't know that they want to, but they could. So

1 investment account has about \$30,000 in it. And I would
2 encourage Major Barron to agree to submit it 50/50 if the parties
3 want to use that to pay the legal fees, but right now nobody has
4 enough money, and certainly having the issue abide trial is a way
5 to get both parties prior to the table, try to get the matter
6 resolved properly.

7 Thank you, Your Honor.

8 MS. BOYTE HENDERSON: Your Honor, I have my packet of
9 the exhibits that I copied for you, which means I believe you do
10 not have them. May I --

11 THE COURT: Sure. And both counsel may freely use the
12 courtroom. You don't have to ask permission to get exhibits or
13 approach witnesses or do any of that.

14 MR. COOK: Major Barron did correct me, Your Honor.
15 The rental he has is a house, not an apartment, just so you know.
16 I called it an apartment.

17 I'd call Major Barron to the witness stand.

18 THE COURT: Please come forward and be sworn.

19 (Whereupon, the witness was sworn.)

20 MR. COOK: Major Barron, these are the exhibits, and
21 you can see on the back of each exhibit there's an exhibit tag
22 that tells you what the number of the exhibit is for reference.
23 So when you're asked to identify the number, that's where to
24 look.

25 THE WITNESS: Yes, sir.

1 MR. COOK: May I stand over here, please, Your Honor?
2 I'd rather stand when I ask questions.

3 MS. BOYTE HENDERSON: I don't object if we can move
4 that so that -- to be sure that I'm not --

5 MR. COOK: Can this be moved?

6 THE COURT: Sure.

7 MR. COOK: Okay.

8 MS. BOYTE HENDERSON: That kind of doesn't work either
9 because I can't see the judge.

10 That's better.

11 THE COURT: Okay. That's good.

12

13 PAUL ROGER BARRON,

14 called as a witness, having been first duly sworn, testified as
15 follows:

16

17 DIRECT EXAMINATION

18 BY MR. COOK:

19 Q. Would you state your name for the record please, sir.

20 A. Paul Roger Barron.

21 Q. What do you do for a living, sir?

22 A. I'm a UH-1Y pilot for the United States Marine Corps.

23 Q. And that is what kind of a vehicle?

24 A. It's a Huey helicopter.

25 Q. Are these armed helicopters or passenger helicopters?

1 A. It's a utility, so it's both.

2 Q. And what do you do in your capacity, sir, in the Marine
3 Corps?

4 A. My job is to instruct fleet instructors in the latest
5 tactics, techniques, and procedures; to ensure standardization
6 across the fleet; and to develop new tactics, techniques, and
7 procedures and conduct qualitative evaluations on new equipment.

8 Q. When you say "fleet," you're talking about the U.S.
9 Navy fleet?

10 A. I'm talking about the Fleet Marine Corps Force. These
11 are the portions of the Marine Corps that goes forward in
12 contingency operations.

13 Q. Okay. The Marine Corps is a branch of the Navy, so to
14 speak?

15 A. Yes, sir. Essentially, in somewhat more layman's
16 terms, this -- I am at the Marine Corps aviations weapons school,
17 and I lead the -- the Huey community.

18 Q. Well, sir, let's take a look first at your exhibits.
19 You have your affidavit of financial information there in front
20 of you?

21 A. The Exhibit 1?

22 Q. Pardon?

23 A. Exhibit 1?

24 Q. Exhibit 1.

25 MS. BOYTE HENDERSON: If it will speed this along,

1 Your Honor, I have no objection to Respondent's 1, 2, 3, 4, and 7
2 being admitted.

3 THE COURT: Very well. Respondent's 1, 3, 4, and 7,
4 did you say?

5 MS. BOYTE HENDERSON: 1, 2, 3, 4, and 7.

6 THE COURT: 1, 2, 3, 4, and 7 are received in evidence.

7 (Whereupon, Respondent's Exhibits Number 1, 2, 3, 4,
8 and 7 were admitted into evidence.)

9 MR. COOK: Thank you, Your Honor.

10 Q. (BY MR. COOK) Okay. So let me ask you, sir, with
11 respect to your affidavit of financial information and the
12 expenses that you set forth at section seven of that document,
13 starting on page 6 of 8, sir, do those figures accurately reflect
14 the expenses that you were paying with respect to the
15 residence -- utilities, food bills for the home, et cetera?

16 A. Let me take a look, sir.

17 Sir, I believe they're a fair approximation based on
18 the -- the date of 6 January. I keep a detailed list of bills
19 paid as well.

20 Q. Well, that's what you prepared this from, is it not?

21 A. Yes.

22 Q. The detailed list that you made?

23 A. This is the derivative of that.

24 Q. Yes. And with respect to the items, for example, such
25 as utilities, these are based upon actual payments of utilities

1 as opposed to estimates of what something would be in the future;
2 is that correct?

3 A. Yes, sir.

4 Q. And is it your understanding that you should average
5 those over 12 months rather than pick the highest month or the
6 lowest month to reflect as the cost?

7 A. I would agree.

8 Q. Yes. That's what you did, sir?

9 A. Yes.

10 Q. Okay. So with respect to that, among other things, you
11 list -- if you look at section C about food bills, is that, the
12 \$920, the total that you spent monthly for the food for the
13 household, which included you, your children, and your -- your
14 wife? The \$800, for example, for food and open household
15 supplies?

16 A. For all members of the family.

17 Q. Yes.

18 A. Yes.

19 Q. So that's not -- that's not just for you --

20 A. No.

21 Q. -- or just for the kids? That's for everyone?

22 A. No.

23 Q. Thank you. With respect to recreation and
24 entertainment on the bottom of page 7 of 8, item F9, you have an
25 asterisk. Is that reflective of what you'd like to be able to

1 have but don't currently have?

2 MS. BOYTE HENDERSON: Your Honor, I have not been
3 objecting to leading questions in the interest of time. Provided
4 I'm going to be accorded the same courtesy, I will continue that,
5 but I don't want to be in a position where that's applied
6 differently.

7 THE COURT: Okay.

8 MR. COOK: All right. Well, if I may, I'll be happy to
9 ask a direct question, Your Honor. I just thought the stuff set
10 out in the affidavit doesn't matter very much, but that's fine.
11 I'll do that. I just don't want to have substance testimony
12 given by lawyers.

13 Q. (BY MR. COOK) So tell me how you calculated what you'd
14 like to have for recreation and entertainment, sir.

15 A. I think that was an approxima -- an approximation. It
16 was not an approximation. It was more of a rough estimate
17 compared to the other numbers. So, basically, it's a -- it's a
18 \$200 value, you know, plus or minus. You know, it's -- it
19 doesn't have the same detail given to it as the other -- as the
20 other numbers.

21 Q. All right. Okay. And you also had me file an errata
22 to your affidavit of financial information, did you not?

23 A. Yes, sir.

24 Q. You have Exhibit 2 in front of you?

25 A. Yes, sir.

1 Q. Is the information set forth in this errata true and
2 correct?

3 A. Yes, sir.

4 Q. And the third page is -- that's your verification; is
5 that correct?

6 A. Yes, sir.

7 Q. Sir, has Mrs. Barron contributed anything to the life
8 insurance premiums that the preliminary injunction requires to be
9 maintained?

10 A. No.

11 Q. Has she paid anything toward the auto insurance that's
12 required to be maintained?

13 A. No.

14 Q. You've paid those out of your separate pay?

15 A. Yes, sir.

16 Q. Thank you. Item 3, that's your LES form, Leave and
17 Earnings Statement; is that correct?

18 A. Yes, sir.

19 Q. Item 4 is your tax returns; is that correct?

20 A. Yes, sir. These are my tax returns.

21 Q. Do you have Exhibit 6 in front of you?

22 A. Yes, I have Exhibit 6.

23 Q. Sir, who prepared this log?

24 A. This is my log prepared by me.

25 Q. Looking at page one, which is Bates page 00380, the

1 first entry is dated what?

2 A. Fall 2011.

3 Q. All right. And what's the source of information for
4 the information contained in this log?

5 A. This is -- this is a log. It's got multiple sources.
6 I initially started keeping this prior to 2015. It was a -- a
7 journal, really, for me. It was extemporaneous, and not all of
8 it pertains because it was for my own personal use at that point.

9 As events progressed, I reached back farther and
10 farther into my memory, so some of the dates are not exact. And
11 that's why for the first example, first entry, it's fall of 2011,
12 because I couldn't remember the exact date. For the -- the first
13 entry during the fall of 2011, summer of 2011, I was doing a
14 detailed family budget, which I actually kept all --

15 MS. BOYTE HENDERSON: Objection. Nonresponsive.

16 MR. COOK: Let me ask.

17 THE COURT: Sustained.

18 Q. (BY MR. COOK) Tell me what you did with respect to the
19 information set forth for the first entry on the log.

20 A. I kept all the family's grocery receipts for a number
21 of months, and then by the time I actually made this entry and
22 recollected, I couldn't -- I didn't have an exact value such that
23 I did in the fall of 2011.

24 Q. All right. So is this something that you discussed
25 with Shelly at the time in the fall of 2011?

1 A. Yes.

2 Q. Okay. Did she acknowledge that her wine consumption
3 had been over \$200 a month?

4 MS. BOYTE HENDERSON: Objection. Leading.

5 THE COURT: Overruled.

6 THE WITNESS: To the -- the fact that we purchased --
7 or that much wine was purchased, I'm not sure how you -- how
8 someone would refute that because I actually kept the receipts.

9 Q. (BY MR. COOK) Okay. My question was did she refute it
10 at the time when you discussed it with her?

11 A. She did not feel that that was excessive.

12 Q. Okay. So what I'm trying to find out from you is if
13 she disputed the amount. I wasn't going to ask you yet about
14 whether she thought it wasn't excessive. Did she dispute the
15 amount that had been spent?

16 A. No.

17 Q. Okay. Did she dispute whether or not it was excessive?

18 A. Yes.

19 Q. And what did she say about that?

20 A. She did not think it was excessive.

21 Q. Were you one of the persons who consumed the wine in
22 the home?

23 A. I consumed -- I did consume some of the wine, extremely
24 minimal amount.

25 Q. Okay. So tell the judge what "extremely minimal"

1 means.

2 A. Over a course of a month, less than one bottle.

3 Q. All right. In your employment are there prescriptions
4 with respect to use of alcohol and drugs?

5 A. At my work, sir?

6 Q. In your employment are there military regulations that
7 speak to when you can drink?

8 A. Absolutely.

9 Q. Okay. Tell the judge what those are, those
10 restrictions.

11 A. Free -- free and clear of the effects of alcohol within
12 12 hours of planning a flight or executing a flight as well as
13 free and clear of the effects for eight hours prior to nonflying
14 duties. Anything over a .01 blood alcohol content will require
15 some administrative actions. That's definitely a talk with a
16 colonel.

17 Q. Okay. So how does that impact your ability to have a
18 glass of wine at eight o'clock at night?

19 A. That means that I can have maybe one glass of wine, but
20 if it's prior to eight hours from when I show up to work, it's --
21 it's got to stop, and I've -- I've got to be done drinking and
22 not hungover.

23 Q. Well, how about if you have to fly the next morning?

24 A. No.

25 Q. Can you drink the night before?

1 A. No.

2 Q. So does your wife -- has wife ever told you that she
3 has a medical diagnosis?

4 A. She has a medical diagnosis for ADHD.

5 Q. Did she discuss that with you?

6 A. She -- just so much that she has it and she has
7 Adderall and she takes Adderall.

8 Q. Have you had occasion when you have found her
9 medications left out and accessible to the children?

10 A. Yes. Medications and supplements.

11 Q. And are those occasions reflected in this log?

12 A. Some, some of those instances, sir, are -- are
13 reflected. There's other occasions that aren't reflected. So
14 this would be the absolute minimal amount that's reflected in
15 this log.

16 Q. And have you discussed with her your concerns about her
17 leaving medications out?

18 A. Yes.

19 Q. Sir, how old are your children?

20 A. They're ages five, seven, and nine.

21 Q. And have you expressed to her concerns --

22 A. Yes.

23 Q. -- about the children possibly taking her medication
24 when they're left out?

25 A. Yes.

1 Q. Okay. And what was her response to you?

2 A. That it was a unsubstantiated fear and that the
3 children knew better, not to take her medication that was left
4 out.

5 Q. Do you think she's correct?

6 A. I think it is an undue risk, and I do not think it's an
7 acceptable risk to leave medication or supplements out in the
8 view of children. If they -- if the general public thought that
9 that was okay, they wouldn't have childproof locks on pill
10 bottles.

11 Q. Sir, do you have concerns with your wife's parenting
12 skills when she's not drinking?

13 A. When my wife goes for a period without drinking, her
14 parenting skills dramatically increase to the less she drinks,
15 the better mom she is.

16 Q. So my question was do you have concerns about her
17 skills when she's not drinking.

18 A. No.

19 Q. That's a yes-or-no question.

20 A. No.

21 Q. And you're not asking the judge to restrict her
22 parenting time as long as she's agreeable to not drinking when
23 she has the children?

24 A. Correct.

25 Q. She referenced a -- well, disregard.

1 Now, do you remember going to a Marine Corps ball in
2 November of 2013?

3 A. Yes.

4 Q. And was there a concern about alcohol at that time?

5 A. Yes.

6 Q. What was the concern at that time?

7 A. Shelly started drinking. She got very boisterous. I
8 had given a -- one of my co-workers a ride to the Marine Corps
9 ball. We both asked Shelly to -- or I had asked Shelly to -- to
10 leave the Marine Corps ball. She insisted on staying. Finally,
11 well past midnight I asked her to come. She said no.

12 She's a grown woman. She was -- she was there with
13 other people we knew. I left to give my co-worker a ride home.
14 The ball was in the Quechan Casino. He lived on the east side of
15 Yuma. While transiting to my co-worker's residence to drop him
16 off, I received a garbled phone call from Shelly. I couldn't
17 understand everything. I took that as that I should go pick
18 her -- as a request to come pick her up. I'm not sure exactly
19 what she said, couldn't understand the message. Dropped my
20 co-worker off. I went back to the Quechan Casino, and I found
21 Shelly passed out in a hotel room.

22 Q. You took her home?

23 A. Yes.

24 Q. Do you have another occasion November, 2013, when one
25 of your children saw Shelly drinking?

1 A. Yeah. We came home from somebody else's house, had
2 been drinking. Shelly passed out on the couch.

3 MS. BOYTE HENDERSON: Objection. Foundation.

4 Q. (BY MR. COOK) Okay. When -- when did this occur?

5 A. It was November of 2013. I believe this was actually
6 the weekend before the Marine Corps ball incident.

7 Q. And where were you living at the time?

8 A. We lived at 3855 West 37th Street, Yuma, Arizona, same
9 place I reside now.

10 Q. Same home. Okay. And where was Shelly when you got
11 home?

12 A. We had been to the friend's house together, so we had
13 come back together. So I knew her location all the time. I
14 didn't come home to find her.

15 Q. Okay.

16 A. But I came into the room. She had passed out.

17 Q. Which room?

18 A. It was the living room.

19 Q. Okay.

20 A. And the oldest daughter was saying her prayers for her
21 and doing the sign of a cross over her while she was passed out.

22 Q. How old -- what's the oldest daughter's name?

23 A. Chayton.

24 Q. She would have been six then or seven?

25 A. Seven.

1 Q. Did you discuss that with Shelly the next day?

2 A. Yes.

3 Q. What was her response?

4 A. She didn't think it was a big deal.

5 Q. Was there a similar such occasion in July of 2014 in
6 Ventura, California?

7 A. Yes, sir. It was somewhat similar. The -- we had
8 taken a family vacation. I managed to work in a business trip
9 opportunity, and it worked out good for the family. We got to
10 stay at a nice hotel in the vicinity of some extended family. We
11 even had Shelly's mom traveling with us.

12 She had started drinking early in the day, nothing too
13 excessive at first, and I thought we had all called it a night
14 and went back to the hotel room together. I woke up. The door
15 was blocked open with the door latch.

16 Q. Is that left open so that anybody could walk in the
17 room?

18 A. Yeah. Anybody could have walked into that room.

19 Q. Okay. Were the children there?

20 A. Yes. I couldn't find Shelly initially. I woke up my
21 mother-in-law at the time, told her what I was doing, that I
22 needed to go find Shelly and that I was going -- going out to
23 find her.

24 I took my cell phone, tried to contact her a number of
25 times. In one communication she said she was at a fire pit. I

1 knew exactly where that fire pit was, and so I rushed down there,
2 and there was two gentlemen there.

3 Q. Was she there? Yes or no?

4 A. No, she was not there. They had claimed they had been
5 there for 20 or 30 minutes.

6 Q. In order to move this along, when did you next see her?

7 MS. BOYTE HENDERSON: I'm going to object and move to
8 strike the hearsay testimony.

9 MR. COOK: What the man says, I don't object to that.

10 THE COURT: All right.

11 Q. (BY MR. COOK) That's why I asked you when did you next
12 see her? I mean, you saw that she was not there yourself, right?

13 A. Correct.

14 Q. That's what you said. Okay. Then when did you see
15 her?

16 A. It was 45 minutes to an hour later.

17 Q. Okay. And was she sober?

18 A. No.

19 Q. Did she come back to the hotel herself?

20 A. Yes.

21 Q. Okay. What time was it when she finally came back?

22 A. It was -- it was approximately an hour, hour and 15
23 since I first woke up. It was well after midnight. I -- I -- I
24 believe it was closer to between 1:30 and 2:00 a.m. that she
25 actually came back.

1 Q. Did you have a similar occasion on August 4th of 2014?

2 A. Yeah.

3 Q. Was that another occasion -- without going into what
4 other -- what your co-worker said, was this an occasion when she
5 had left the house after everyone was asleep, or had she been out
6 after work? What? Tell the -- just tell the judge what you
7 know.

8 A. We had a --

9 MS. BOYTE HENDERSON: Counsel, could I have the date
10 that we're talking about?

11 MR. COOK: August 4th, 2014.

12 MS. BOYTE HENDERSON: Okay. Then I don't see where
13 there would be foundation for this testimony without hearsay.

14 Q. (BY MR. COOK) Well, let me ask you a question. Did
15 you talk to Shelly about this incident?

16 A. Yes.

17 Q. Okay. So you discussed it with her?

18 A. Yes.

19 Q. The following morning?

20 A. Yep.

21 Q. And --

22 A. Actually, so that -- let me -- let me correct it,
23 correct myself. We had a six-year-old birthday -- we had a party
24 for my -- my middle daughter. After everybody was asleep, Shelly
25 left the house. I didn't know that had happened until the

1 next -- so the party was on Saturday. On or around midnight of
2 that Saturday, she left the residence. I didn't know she had
3 actually left the residence.

4 MS. BOYTE HENDERSON: Objection. Found --

5 THE WITNESS: Sorry.

6 THE COURT: What was the objection?

7 MS. BOYTE HENDERSON: Foundation.

8 THE WITNESS: So it -- it -- I'm sorry.

9 Q. (BY MR. COOK) Is this based upon what you discussed
10 with Shelly?

11 A. Yes. We have -- we have discussed this.

12 Q. Thank you.

13 MS. BOYTE HENDERSON: That's -- I hate to split hairs,
14 but it seems to me like this is testimony that he's -- that is
15 hearsay testimony, and so I want to be clear what the foundation
16 is for what he's talking about. If he's going to report what he
17 discussed with his wife, that's fine. If he's reporting what
18 somebody else told him, then my objection is continuing.

19 THE COURT: I think he's trying to relate what he had
20 the day after August 4th when he discussed this with petitioner.

21 MR. COOK: Yes.

22 THE COURT: Okay. Go ahead.

23 Q. (BY MR. COOK) Go ahead.

24 A. This was all discussed on the Monday after that
25 occurrence --

1 Q. Okay.

2 A. -- with Shelly.

3 Q. Did she say anything about a note?

4 A. She said there was a note but that, when she'd
5 returned, she had torn it up and thrown it in the trash;
6 however --

7 Q. Well, who had written the note?

8 A. She had writ -- written the note --

9 Q. Okay.

10 A. -- to me telling me she was going out, but then since
11 she tore it up and threw it away and I looked in the trash to
12 find -- find evidence of a note, there -- there was no note.

13 Q. Okay. But she admitted she had gone out after
14 midnight?

15 A. Correct.

16 Q. Okay. Well, did you have an occasion on December 28th
17 of 2014?

18 A. Sir, alls I remember about this log entry is almost
19 identically to what it says. In the afternoon she said she was
20 going to go out with some co-workers to grab a bite to eat. She
21 didn't come home until late that evening, and she did make a good
22 decision of not driving after drinking. However, the second
23 order effect of that was that she needed a ride to her car the
24 next day so that she could get to work.

25 Q. Okay. And you discussed that with her on that

1 occasion?

2 A. Yes.

3 Q. Okay. So she admitted to you she came home with a
4 co-worker because she had had too much to drink?

5 A. Yes.

6 Q. And January 25th you had a discussion with her about
7 separation; is that correct?

8 A. The -- the last week of January she stated a desire to
9 separate; and the way she said that, I remember very clearly, is,
10 "I want a separation from you."

11 Q. Okay. So my question was was drinking involved in that
12 incident?

13 A. Yeah. I remember she was actually drinking vodka at
14 the time. It's a clear drink.

15 Q. So this log reflects various incidents such as that as
16 well as incidents with respect to the Adderall that you testified
17 about earlier?

18 A. Yes, sir.

19 Q. Okay. Do you care if your wife wants to have a
20 romantic relationship with anyone else?

21 A. At this point, sir, it doesn't matter.

22 Q. Okay. What is the limit of your concern? Tell the
23 judge so he knows your concern. You're the witness.

24 A. Sir, this marriage is -- it's not repairable. From
25 where I am now, my concern is the children, primarily that while

1 they're not in my care they're in good hands. When Shelly does
2 drink, there's problems.

3 The first year we lived in Yuma, two thousand -- school
4 year 2013 to 2014, my oldest daughter had 46 tardies. I believe
5 that's either the second or third order effect of the primary
6 caregiver at the time, my wife, drinking too much. If I drink
7 too much the night before, it's hard for me to get up, probably
8 likely to have tardies. If I have a few drinks in the afternoon
9 or if a person was to have --

10 MS. BOYTE HENDERSON: Your Honor, I'm going to object.
11 This is -- I didn't object to the form of the question, though I
12 probably could have, but this is just a narrative.

13 THE COURT: Sustained.

14 Q. (BY MR. COOK) Well, let me ask another question.
15 Okay. So what is it that you want the judge to order with
16 respect to the drinking issue?

17 A. I want a restriction on drinking, and I would like an
18 evaluation of Shelly. I am not a medical professional. I'm not
19 a medical professional or a clinical psychologist. You know,
20 maybe -- maybe I am wrong. Maybe she doesn't have an alcohol
21 issue, but I think at this point it begs a -- a professional
22 to -- to make that determination. And if she does have an
23 alcohol issue, let's put her on the path to recovery, but, you
24 know, since I came down --

25 Q. You've -- you've answered that.

1 A. Oh.

2 Q. Let me ask you. And you would want to participate in
3 the evaluation to make sure that the evaluator has the
4 information that you have?

5 A. Yes, sir.

6 MS. BOYTE HENDERSON: Objection. Leading. I'll waive
7 it.

8 Q. (BY MR. COOK) With respect to your proposed position,
9 at such time as mother has full-time employment, would you like
10 to move to a more structured -- regular structured plan instead
11 of the half a week on/half a week off you're doing now?

12 A. Yes.

13 Q. The opinions -- the positions set forth in the position
14 statement, are those positions you've taken with respect to
15 the -- the issues?

16 A. The position that --

17 Q. Yes. On temporary orders.

18 A. I concur.

19 Q. Yes. And, sir, part of your offer to pay spousal
20 maintenance, is that predicated on wife paying the mortgage
21 payment?

22 A. Yes.

23 Q. Okay. Now, with respect to motor vehicles, you're
24 driving the Tacoma; is that correct?

25 A. Yes, sir.

1 Q. And she drives the Infiniti?

2 A. Yes.

3 Q. And your proposal is that you each have exclusive use
4 of those vehicles?

5 A. Yes.

6 Q. And you'll continue to pay the auto insurance for both
7 vehicles?

8 A. Uh --

9 Q. This would be a good time to say "yes."

10 A. Yes.

11 MS. BOYTE HENDERSON: Objection.

12 MR. COOK: By the way, Your Honor, I recommend this to
13 all my clients.

14 MS. BOYTE HENDERSON: That's --

15 MR. COOK: As long as both parties are liable, somebody
16 ought to make sure the insurance gets paid for all vehicles.

17 THE COURT: I think that was a leading question for
18 sure.

19 MR. COOK: It was. It was indeed, yes, Your Honor.

20 MS. BOYTE HENDERSON: It was a leading answer.

21 MR. COOK: It was a good one too.

22 Q. (BY MR. COOK) So you've also proposed to give her
23 1,100 a month after May? You'd give her 1,100 a month --

24 A. Yes.

25 Q. -- starting June 1st, correct?

1 A. Yes.

2 Q. By that time you expect her to have full-time
3 employment?

4 A. Yes.

5 Q. Do you know if she's actually applied for a job with
6 the fire department?

7 A. She actually --

8 Q. That's a yes-or-no question. Do you know if she's
9 already applied or not?

10 A. No. I don't know if she's applied for extra --

11 Q. Has she discussed with you whether or not she has
12 contacts within the fire department to help her get employed?

13 A. Yes. Both the fire department and fire marshal's
14 office.

15 Q. Okay. Has she expressed to you that that's her desire,
16 to have a career in that field?

17 A. Yes.

18 Q. And you agree that the Court should calculate child
19 support according to guidelines?

20 A. Yes.

21 MR. COOK: And, Your Honor, we'd ask that there be --
22 the Court agrees with our proposal about spousal maintenance
23 that -- a sum until she finishes school and then a different sum
24 afterwards. There would need to be two support worksheets and a
25 change in support at that point in time.

1 Q. (BY MR. COOK) And you're presently paying the dental
2 insurance for the children?

3 A. Yes.

4 Q. And the amount and cost of that is set forth in your
5 AFI; is that correct?

6 A. Yes.

7 MR. COOK: Okay. Nothing further at this time.

8 THE COURT: Cross-examination.

9 MS. BOYTE HENDERSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. BOYTE HENDERSON:

12 Q. Would you look at your affidavit of financial
13 information, Mr. Barron, Exhibit Number 1, please. And I'd like
14 you to turn to page four, if you would.

15 A. I'm there.

16 Q. Under section 4B, your net monthly income, there's a
17 section called "Income taxes and FICA"?

18 A. Yes.

19 Q. Do you see that?

20 A. Yes.

21 Q. How is that different from the expenses that you noted
22 for income taxes and so forth on your notice of errata?

23 A. I'm not completely familiar with that document. Is
24 that one of my exhibits?

25 Q. It's your Exhibit Number 2, if you need to look at it.

1 A. And I'm just actually looking at the -- the totals in
2 item one.

3 Q. I'm referring you to section -- in your affidavit of
4 financial information, section 4B, item number A, income taxes
5 and FICA.

6 A. Ma'am -- ma'am, I'm not sure if I can answer that
7 unless I -- if I look at all -- on Exhibit 2, because it has
8 federal income tax, social security tax, Medicare, and then it
9 lumps it in a bigger category in 4 -- 4B, Exhibit 1 of 14, so I
10 would have to add those totals on Exhibit 2 in there because I
11 believe from my examination -- I'm not a -- not an accountant or
12 anything, but it looks like those are lumped in.

13 Q. All right. Well, let me ask you this: The purpose of
14 filing your notice of errata, was that to say that you believe
15 that your income tax expense was not included or accounted for at
16 all in your financial affidavit or because you contested the
17 amount that was reflected?

18 A. The -- the errata shows a much more detailed breakdown
19 compared to Exhibit 1.

20 Q. Okay. Under I, profit share -- I'm sorry -- J, life
21 insurance allotment, that reflects that \$651 is coming out of
22 your paycheck automatically to go to life insurance policies,
23 correct?

24 A. Correct. In -- sorry.

25 Q. That appears to be the exact number reflected in item

1 two of your notice of errata, correct?

2 A. Yes. In Exhibit 2, yeah. Bullet two, right?

3 Q. Okay. Your parents recently moved to Yuma; is that
4 correct?

5 A. Yes.

6 Q. When?

7 A. I believe July of last year.

8 Q. July of 2015?

9 A. Yes.

10 Q. Prior to that, where did they live?

11 A. Southwestern Oregon.

12 Q. Okay. And where are they living here in Yuma?

13 A. They live approximately two miles north of our -- our
14 home right now.

15 Q. And that --

16 A. Do you require an address?

17 Q. Is that a rental home?

18 A. Correct.

19 Q. And that's the rental home you intend to move into when
20 you leave the home with Shelly?

21 A. Yes.

22 Q. You have not left the home with Shelly because there's
23 no written parenting plan in effect; is that correct?

24 A. Correct.

25 Q. Have you paid any rent for your parents' home?

1 A. Yes. Last July -- I was anticipating moving out much
2 sooner, and I made a verbal --

3 Q. I -- I -- if you would just limit your answer to my
4 question. So you say you've paid rent. When and how much have
5 you paid?

6 A. A thousand dollars a month.

7 Q. Every month?

8 A. With the exception of the first month that the rent was
9 due because that was less than the full rent. It was prorated.

10 Q. Okay. And what's the total rent on that house?

11 A. \$1,650.

12 Q. Okay. When -- in October of this last year, you
13 removed your monthly pay from going into any joint account, and
14 you opened separate accounts in your own name; is that correct?

15 A. No. I actually believe it was the month prior.

16 Q. September. Okay.

17 A. Yeah. I would have to double-check that but --

18 Q. Okay. But you agree that since then all of your pay
19 has been going within your sole control?

20 A. Yes.

21 Q. And you have -- I believe you said that you initially
22 gave Shelly about \$800 during the first couple of months of this
23 new arrangement. Is that right?

24 A. No.

25 Q. No. Have you given her any -- have you given her

1 anything since September in cash?

2 A. I would have to double-check that -- that number, but
3 since September or October, 2015, I have not given her any cash.

4 Q. You're aware of Shelly's income?

5 A. I do not have visibility on her month-to-month income.

6 Q. I didn't ask you that. Are you aware of Shelly's
7 income?

8 A. I'm aware where she gets income but not of the amount.

9 Q. You're aware of her financial affidavit?

10 A. Yes.

11 Q. And you're aware that she's claimed her income to be
12 about 350 -- it was less than \$400. I don't remember the exact
13 amount.

14 A. Yes. I'm aware of the affidavit and that amount.

15 Q. Okay. Do you have any reason to believe that she has
16 income from any other source?

17 A. No.

18 Q. Her -- she is making her own car payment; is that
19 correct?

20 A. I don't know if she makes her car payment or not
21 because I don't have visibility on that loan. I'm not on the
22 loan.

23 Q. Well, does she still have a car?

24 A. She still has a car.

25 Q. No one's come to repossess it yet?

1 A. Correct.

2 Q. She testified that she's still making her car payment.
3 Do you have any reason to doubt that?

4 A. No.

5 Q. And how much is her car payment?

6 A. I'm not sure. I think it's around \$300 based on the --
7 I think she took out of a loan of around 1,700 [sic]. So just
8 doing rough math, for a five- or six-year loan, it's going to be
9 around 300 -- \$300 a month.

10 Q. Has she asked you for money?

11 A. Yes.

12 Q. And have you ever said yes?

13 A. Not that I can think of.

14 Q. Your prior attorney initially wrote to me and said that
15 you wanted Shelly to participate in an evaluation to determine
16 whether she needed treatment; is that correct?

17 A. Correct.

18 Q. And she has since done so; isn't that correct?

19 A. Yes.

20 Q. And you've seen the report from that evaluation; is
21 that right?

22 MR. COOK: Objection, Your Honor. Calls for hearsay.

23 MS. BOYTE HENDERSON: No, it doesn't.

24 THE COURT: I think he -- it's just a yes-or-no
25 response.

1 THE WITNESS: I -- I have seen that report.

2 Q. (BY MS. BOYTE HENDERSON) Okay. And so your complaint
3 about the report is that you were not a participant in that
4 evaluation process; is that right?

5 A. Correct.

6 Q. How many firefighter positions are open and accepting
7 applications at this time?

8 A. I don't know.

9 Q. You don't know?

10 A. No.

11 Q. Did you make any effort to check that?

12 A. No.

13 Q. But your position is that you believe Shelly will
14 automatically receive a position when she graduates?

15 A. I don't believe it's automatic, but I believe because
16 of her current position at Rural/Metro Fire Department that she
17 has an exceptionally high probability of gaining employment
18 nearly immediately.

19 Q. Wouldn't it be more fair to suggest that your spousal
20 maintenance obligation should decrease when she actually obtains
21 a job?

22 A. I'm sorry. Could you repeat the question?

23 MR. COOK: Objection. Calls for a legal conclusion.

24 THE COURT: Overruled.

25 Q. (BY MS. BOYTE HENDERSON) Wouldn't it be more fair to

1 suggest that Shelly's spousal maintenance obligations -- or your
2 spousal maintenance obligation to Shelly should decrease when she
3 actually receives a job, not simply when she graduates from the
4 academy?

5 A. No. I disagree with that. And do you want a yes-or-no
6 answer? Do you want me to --

7 Q. No. You've answered the question.

8 A. So I don't believe it's --

9 Q. You've -- you've answered the question. You had
10 answered it.

11 A. Okay. Got you.

12 Q. You're good. The -- the expenses reflected on your
13 financial affidavit, those expenses are for just the house in
14 which Shelly resides or both the house in which Shelly resides
15 and the rental home that you're paying for for your parents?

16 A. If I can just have a moment to look through it.

17 It is for both the expenses at 3855 West 37th Street as
18 well as my portion of the rent with my parents.

19 Q. Do you pay any expenses at your parents' home other
20 than the rent?

21 A. No.

22 Q. Why are you paying your parents' rent?

23 A. I'm on the -- I'm on the rental agreement.

24 Q. Well, I guess why are you on the rental agreement?

25 A. Because last summer my understanding was -- was that

1 this matter would be settled. Specifically, in the last spring
2 or early last summer we were attempting to go to mediation
3 through family counselors as well as through legal mediation, of
4 no -- Shelly refused at one point.

5 Q. If you would just limit yourself to answering my
6 question --

7 MR. COOK: Your Honor --

8 MS. BOYTE HENDERSON: -- not getting distracted by the
9 details of the prior mediations.

10 MR. COOK: Objection, Your Honor. The witness has
11 given the answer to the question that was asked about why he's
12 paying the rent, what he expected at the time.

13 THE COURT: Objection is overruled.

14 THE WITNESS: So --

15 Q. (BY MS. BOYTE HENDERSON) It -- just if you would just
16 limit yourself to answering my question, which is why are you on
17 the rental agreement with your parents' house? I mean, I didn't
18 ask you about mediations and all of that, so if you could just
19 focus on the question.

20 A. To -- why I'm on -- why am I on --

21 Q. Yes.

22 A. -- the -- because I anticipated this matter being
23 resolved in early to mid last summer.

24 Q. And, in fact, you and Shelly had met and reached an
25 agreement on most of all, if not all, of the terms of your

1 separation and divorce last summer; isn't that true?

2 A. We had discussed an agreement, yes, both in family
3 counseling and legal mediation.

4 Q. Did you have an agreement, or did you discuss an
5 agreement?

6 A. We discussed an agreement.

7 Q. But you didn't have an agreement?

8 A. No. The sticking point was not drinking around the
9 children.

10 Q. And when did that sticking point come up?

11 A. It was -- it was prior. I -- I don't know an exact
12 date on that, but it -- it was before I hired legal counsel, and
13 I'm not sure if it was before or after Shelly had got legal
14 counsel. I -- I can't remember the date or the exact sequence of
15 events there.

16 Q. Before you hired legal counsel or before you met with
17 legal counsel?

18 A. Before I hired legal counsel. I had met and had a few
19 consultations before that.

20 MS. BOYTE HENDERSON: That's all I have at this time.
21 Oh, I'm sorry. I take that back, Your Honor.

22 Q. (BY MS. BOYTE HENDERSON) How much have you paid in
23 attorneys' fees to date?

24 A. I believe my initial payment to my first lawyer was
25 7,000. I've also written another check for \$4,500. I do not

1 know what the current balance of -- of my account is today or if
2 I'll go into the red after today.

3 Q. Okay. Your attorney said that Shelly had received some
4 money, some community property money, when you separated. I
5 don't recall -- he gave the -- the figure. Do you recall the
6 figure he gave?

7 A. I don't recall the -- the total sum, but she paid your
8 attorney's fees.

9 Q. I didn't ask you that, sir. Do you remember how much
10 money Shelly received from the community when you separated the
11 bank accounts?

12 A. It was approximately -- it was over \$13,000.

13 Q. And you received an equal amount; isn't that true?

14 A. Roughly equal.

15 Q. Have you -- and where is the -- where is the money that
16 you received?

17 A. It's in an individual account.

18 Q. In your own name?

19 A. Yes.

20 Q. Is it still intact?

21 A. Not all of it. I had to spend some of it.

22 Q. And what have you spent it on?

23 A. Legal fees.

24 Q. And how much of that has gone to legal fees?

25 A. I would have to look at a breakdown of that. I still

1 have the majority of it.

2 Q. How much is left?

3 A. I -- I don't have --

4 Q. You can be approximate.

5 A. It's around \$10,000.

6 Q. Okay. So you've spent about \$3,000 of that on legal
7 fees?

8 A. Yes.

9 Q. What's the source of the remaining fees that you've
10 paid?

11 A. Source. The source of the remaining legal fees?

12 Q. Yes.

13 A. I'm not exactly -- do you mean --

14 Q. Where did -- where did you get the money to pay the
15 other portion of the legal fees? You say you spent \$3,000 from
16 the accounts that you and Shelly separated. Where did you get
17 the remaining money that you've paid to your lawyer?

18 A. Prior to hiring lawyers, I anticipated the split in our
19 marriage going more smoothly, so I had removed approximately half
20 of the money to an individual account in order to financially
21 transition to a different way of life. The money has come
22 from --

23 Q. How much -- how much of what money are we talking
24 about?

25 A. The joint accounts.

1 Q. And when did you do that?

2 A. Late July of 2015.

3 Q. Okay. Is that the same money that you're referring to
4 as being your half of the split of the -- you said you received
5 about \$13,000 and Shelly received about \$13,000 from splitting
6 bank accounts. So are we talking about the same money, or is
7 this different money?

8 A. The -- the money that I have now was originally taken
9 from the joint accounts.

10 Q. Okay. Is that the money you took in July?

11 A. Of 2015.

12 Q. Yes.

13 A. I took the money July of two thousand -- approximately
14 July, 2015, moved it to a separate account, and that is -- from
15 that fund I have paid the \$4,500. I cannot remember if -- I
16 can't remember exactly where I got the original lawyer's fees, if
17 it was from a joint account or if I had moved it from a joint
18 account to an individual account to pay the lawyer. I honestly
19 can't remember that.

20 Q. But, either way, it was money that had been accumulated
21 while -- while you and Shelly were married?

22 A. Yes.

23 MS. BOYTE HENDERSON: Okay. I think that's all I have,
24 Your Honor.

25 THE COURT: Any redirect, Mr. Cook?

1 MR. COOK: No, Your Honor. Just wait and do a
2 rebuttal, do it all at one time.

3 THE COURT: Okay. You may step down, sir.

4 THE WITNESS: Sir, do I leave these here?

5 THE COURT: I think you're talking -- you can take them
6 with you.

7 Do you have any other witnesses, Mr. Cook?

8 MR. COOK: No, Your Honor.

9 THE COURT: Miss Henderson?

10 MS. BOYTE HENDERSON: I start by calling Jessica
11 Gronbach.

12 Do we have any stipulations with regard to my exhibits?

13 THE COURT: Ma'am, would you step up to the clerk and
14 be sworn.

15 THE CLERK: Can I have your name, please.

16 THE WITNESS: Jessica Gronbach, G-r-o-n-b-a-c-h.

17 (Whereupon, the witness was sworn.)

18 MS. BOYTE HENDERSON: Your Honor, I had inquired
19 whether there might be any stipulations with regard to my
20 exhibits.

21 THE COURT: Do you have any agreements to any of the
22 petitioner's exhibits being received in evidence, Mr. Cook?

23 MR. COOK: I don't object to her 1, 2, or 3. I object
24 to 4 until we know what the actual moneys are. I object to
25 statements of witnesses who aren't present, which means I object

1 to Dr. Lara's report. Miss Gronbach can testify about whatever
2 her statement says, so the statement would be nonadmissible. And
3 I object to 7 until we lay foundation for it. And I don't object
4 to Exhibit 8, although I'd want to see a foundation for that.
5 That's what the statement was last year, you know, July 18 --
6 July 28 of '15. I don't object to Exhibit 8.

7 THE COURT: Okay. So Petitioner's 1, 2, and 3 are
8 received in evidence. I think you're --

9 MS. BOYTE HENDERSON: I didn't understand whether 8 was
10 stipulated or not stipulated.

11 THE COURT: I think he wanted a foundation for 8.

12 MR. COOK: Well, I don't object to 8, Your Honor.

13 THE COURT: 8's received in evidence.

14 And you were objecting to 5 and 6, right?

15 MR. COOK: Yes. And 4.

16 THE COURT: And 7.

17 MR. COOK: 4 because we don't know what the final
18 numbers are yet.

19 THE COURT: Okay. So 1, 2, and 3 and 8 are received in
20 evidence.

21 (Whereupon, Petitioner's Exhibits Number 1, 2, 3, and 8
22 were admitted into evidence.)

23 JESSICA GRONBACH,
24 called as a witness, having been first duly sworn, testified as
25 follows:

DIRECT EXAMINATION

1
2 BY MS. BOYTE HENDERSON:

3 Q. Good morning, Miss Gronbach. How are you?

4 A. Fine. Thank you.

5 Q. Would you state your full name for the record, please,
6 and if you would spell your last name.

7 A. Jessica Lynn Gronbach, G-r-o-n-b-a-c-h.

8 Q. And where do you work?

9 A. Hand in Hand Christian Preschool.

10 Q. And as part of your employment at Hand in Hand
11 Preschool, are you acquainted with Mr. and Mrs. Barron?

12 A. Yes.

13 Q. How do you know them?

14 A. Their children -- their youngest was in my class.

15 Q. And --

16 A. And the other one -- sorry.

17 Q. What is the youngest child's name?

18 A. Georgia.

19 Q. And how old was she when she was in your class?

20 A. Four.

21 Q. Do you -- have you continued to be acquainted with
22 Georgia?

23 A. Yes.

24 Q. How is that?

25 A. She's in the kindergarten classroom next-door to mine,

1 and sometimes I -- I bring her to the school where her other
2 sisters go.

3 Q. As part of your employment, were you acquainted with
4 Mr. and Mrs. Barron?

5 A. As part of my employment?

6 Q. Yes.

7 A. Uh-huh.

8 Q. Have you also been acquainted with them personally?

9 A. Yeah. We haven't hung out outside the school, but
10 just, you know, when I see them at the school.

11 Q. Okay. Approximately how often did you see Shelly at
12 school when you -- when you had Georgia in your class?

13 A. Every day.

14 Q. She brought her every day?

15 A. Uh-huh. Sometimes dad brings too.

16 Q. Okay. I'm assuming that by "uh-huh" you meant "yes"?

17 A. Yeah. Sorry. Yes.

18 Q. Okay. It's important that we say "yes" and "no" --

19 A. Okay.

20 Q. -- because we're keeping a record.

21 A. Sorry.

22 Q. And have you continued to see Shelly on pretty much a
23 daily basis --

24 A. Yes.

25 Q. -- since?

1 Did you write a letter in support of Shelly --

2 A. Yes.

3 Q. -- recently?

4 A. Yes, I did.

5 Q. I'm going to show you what's been marked as
6 Petitioner's Exhibit Number 5 and ask you if this is the letter
7 that you wrote.

8 A. Uh-huh. Yes.

9 Q. And that's your signature at the bottom?

10 A. Yes, it is.

11 Q. Did you say anything untrue in this letter?

12 A. No, I did not.

13 MS. BOYTE HENDERSON: I'd ask that Exhibit 5 be
14 admitted.

15 MR. COOK: Well, I object to 5 in the sense that,
16 Your Honor, that it expresses personal opinions about which I
17 have no reason to think this person's an expert. So it appears
18 to be grandiose in style. And I don't object to her being asked
19 to testify about these things, but at least now I can object to
20 some statements.

21 THE COURT: I'm going to sustain the objection.

22 Q. (BY MS. BOYTE HENDERSON) Miss Gronbach, do you -- have
23 you ever had any reason to suspect that Miss Barron is an
24 alcoholic or has a problem with alcohol?

25 A. No.

1 Q. Have you ever observed her appear at or near the school
2 grounds in any way intoxicated or appearing to have consumed --

3 A. No. I'm sorry.

4 Q. Or appearing to have consumed alcohol?

5 A. No.

6 Q. What was your impression of her as a parent to Georgia?

7 A. I think she's a great parent. She's there on time.
8 Georgia's always -- her hair's always done all cute. I always
9 get ideas for my daughters. She's very happy.

10 Q. Okay. Have you had any reason to suspect that there
11 may be abuse or neglect in Miss Barron's home?

12 A. No.

13 Q. Has -- has -- have you received any information about
14 there being any negative legal consequences to Miss Barron from
15 any involvement with alcohol?

16 A. No.

17 Q. Have you had a chance to observe Mrs. Barron and
18 Georgia together?

19 A. Yes.

20 Q. And can you describe what you've observed in terms of
21 the nature of their relationship?

22 A. Just happy, joking, hugging, loving, very loving.

23 Q. How often do you see Mr. Barron?

24 A. From time to time he brings the -- brings Georgia to
25 school.

1 Q. Are you acquainted with his parents?

2 A. No. Occasionally they'll picked up, but I haven't
3 really had any conversations with them.

4 Q. You say "occasionally." About how many times would you
5 say?

6 A. Maybe once a week, twice a week.

7 MS. BOYTE HENDERSON: Okay. That's all I have.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. COOK:

11 Q. Miss Gronbach, you agree that Miss Barron is one of
12 your closest friends? Yes or no?

13 A. Yes.

14 Q. And do you drink?

15 A. Do I drink?

16 Q. Yes.

17 A. Occasionally.

18 Q. Have you been out drinking with Shelly? Yes or no?

19 A. No, I haven't. No.

20 Q. So, then, you don't know how much she drinks when she
21 goes out and drinks, correct?

22 A. No.

23 Q. You don't know?

24 A. No. I've never been out with her.

25 Q. Okay. And do you know if she's ever passed out from

1 drinking on the couch in her own living room? Yes or no?

2 A. No.

3 Q. Do you think it's good parenting for a parent to pass
4 out from drinking and have their daughter making the sign of the
5 cross over them?

6 MS. BOYTE HENDERSON: Objection.

7 MR. COOK: It's a question.

8 MS. BOYTE HENDERSON: Objection.

9 THE COURT: What's the objection?

10 MS. BOYTE HENDERSON: Mr. Cook made a point of pointing
11 out that this person was not qualified, and it's a hypothetical
12 question.

13 MR. COOK: Well, except she's gone ahead and offered
14 her --

15 THE COURT: I think it's rhetorical too. I think you
16 made your point. I'll sustain the objection.

17 Q. (BY MR. COOK) Okay. With respect to Mr. Barron, how
18 often do you -- do you see him bring the children to school?

19 A. Lately it hasn't been very often, but he used to come --
20 I used to see him more regularly, about maybe once or twice a
21 week.

22 Q. Ma'am, would you try to speak more clearly, please?
23 You're mumbling, and I'm having a hard time hearing you.

24 A. Okay. I'm sorry. I haven't seen him lately, but last
25 year I saw him -- it was more like once or twice a week, or

1 definitely on Fridays.

2 Q. So do you check to see who brings the kids every day?
3 Yes or no.

4 A. Most of the time I see who brings her --

5 Q. Okay.

6 A. -- and picks her up.

7 Q. Ma'am, that's not my question.

8 A. Okay.

9 Q. My question is do you check to see who brings the
10 children every day? Yes or no?

11 A. No.

12 Q. So if a parent brings a child, the child shows up at
13 school, you may or may not know who actually brought the child,
14 correct?

15 A. Yes.

16 Q. And so if Mr. -- Major Barron testified that he brings
17 the kids at least once a week, do you know if that's true or
18 false?

19 A. No.

20 Q. Okay. And you already testified that you see his
21 parents pick up the children one or two times a week, correct?

22 A. Yes. I have seen them pick up.

23 Q. Pardon?

24 A. I have seen them pick up.

25 Q. And do you know if his parents also occasionally bring

1 the children to school? Yes or no?

2 A. I don't always see her get dropped off.

3 Q. Okay. Are you at the Barron home when the children are
4 doing their homework? Yes or no?

5 A. No.

6 Q. So do you actually know who helps them do their
7 homework all the time? Yes or no?

8 A. No.

9 Q. Do you leave medication open around the children at the
10 school? Yes or no?

11 MS. BOYTE HENDERSON: Objection. There's no
12 foundation, and this witness --

13 THE COURT: Sustained.

14 MR. COOK: I'm just asking her if she does it at
15 school, Your Honor. I didn't ask her about the parents' home.

16 MS. BOYTE HENDERSON: That's not relevant.

17 THE COURT: I'm going to sustain the objection.

18 MR. COOK: Okay.

19 Q. (BY MR. COOK) Do you think it's appropriate -- well,
20 let me ask you, how old are the children at your school?

21 A. Three, four, or five.

22 Q. And do you think it's appropriate to leave medications
23 open and available to children that age at your school? Yes or
24 no?

25 A. No.

1 Q. And I believe you expressed the opinion in your
2 testimony that you think she always does the right thing for her
3 children? Is that what you said? Words to that effect?

4 A. Yes, I do.

5 Q. Okay. And would you agree with me that you don't have
6 a factual basis to know what she always does?

7 A. I'm not with her every second.

8 Q. All right. So what you're speaking about is decisions
9 that you've seen you have agreed with, correct?

10 A. Yes. Everything -- everything that I've seen has been
11 an example of how good of a parent she is.

12 Q. But you agree you haven't seen everything, correct?

13 A. I'm not at their home.

14 Q. Okay. And other than the times that Mr. -- Major
15 Barron has brought the children to school or picked them up, you
16 haven't seen him parenting his children, have you?

17 A. I've seen him happy.

18 Q. Have you seen him parenting his children?

19 A. Just -- just a hug, kiss good-bye and hello.

20 Q. Okay. So you don't know how good his parenting skills
21 are, correct?

22 A. No.

23 Q. And you're not here to testify that he's not a good
24 dad, are you?

25 A. No.

1 Q. And you'd agree with me the fact that you may not have
2 seen her under the influence of alcohol doesn't mean that she
3 hasn't used alcohol to excess -- I'm talking about Mrs. Barron --
4 correct?

5 A. I'm not with her all the time.

6 Q. Okay. And, as we sit here today, you don't have an
7 opinion about how appropriate Major Barron's parents are as
8 grandparents looking after these children, correct?

9 A. No.

10 Q. Okay. Your only opinion is limited to how good a mom
11 you think Mrs. Barron is based upon the source of information
12 that you have available to you, correct?

13 A. I know she's a good mom.

14 MR. COOK: Ma'am, please -- move to strike. Answer my
15 question "yes" or "no."

16 THE WITNESS: Can you repeat the question?

17 Q. (BY MR. COOK) Yes. Your information is only based on
18 what limited personal knowledge you have, correct?

19 A. Yes. Yes. What I see.

20 Q. Yes. And you're not trained or qualified to be a
21 custody evaluator or appraiser, correct?

22 A. No, but I see a lot of parents.

23 MR. COOK: Move to strike the gratuitous comment.

24 MS. BOYTE HENDERSON: Your Honor, I'm going to object.
25 I think that this is ridiculous to badger this woman. She's the

1 children's teacher. She came to court to give the limited
2 information that she saw, and we're going to badger her because
3 she hasn't seen everything. I mean, this is completely
4 unnecessary.

5 MR. COOK: May I respond, Your Honor?

6 THE COURT: Yes. Go ahead.

7 MR. COOK: Yes. I don't want to badger this woman. I
8 mean, I think she's a nice person. She does an admirable thing.
9 She teaches children or whatever, but sometime people come to
10 court and they speak in these expansive terms when they have
11 limited knowledge, and I just want the record to be clear that
12 this is a witness who has knowledge of what she sees with the
13 children at school, but her knowledge is limited to that. She
14 doesn't have knowledge of the entire family or their entire life.
15 That's all.

16 THE COURT: Well, I think you've established that
17 point.

18 MR. COOK: Thank you. I'm finished.

19 THE COURT: Thank you.

20 MR. COOK: That's all I have.

21 THE COURT: Any redirect?

22 MS. BOYTE HENDERSON: I don't have any redirect,
23 Your Honor.

24 THE COURT: May this witness be excused?

25 MR. COOK: Yes.

1 MS. BOYTE HENDERSON: I would call Shelly Barron.

2

3

SHELLY RAE BARRON,

4 called as a witness, having been first duly sworn, testified as
5 follows:

6

7

DIRECT EXAMINATION

8

BY MS. BOYTE HENDERSON:

9

Q. Good morning, Mrs. Barron. How are you?

10

A. Pretty good. Thank you.

11

Q. Would you state your full name for the record, please.

12

A. Shelly Rae Barron.

13

Q. And you're married to Mr. Barron, who is at the table

14

with Mr. Cook, next to me; is that correct?

15

A. Yes.

16

Q. How long have you and Mr. Barron been married?

17

A. A little over 12 years.

18

Q. Okay. And when -- when were you married?

19

A. January 3rd, 2006.

20

Q. How old were you at that time?

21

A. Twenty-three years old.

22

Q. And how old was he?

23

A. Twenty-five.

24

Q. Okay. Did you have a career?

25

A. I had just -- I had just graduated college, and I took

1 an internship to be closer to him in a tiny little town; and so,
2 no, I did not.

3 Q. Okay. What was your -- what was your degree in?

4 A. Housing design and interior design.

5 Q. Did you have any other education in college?

6 A. I minored in food systems management and fermentation
7 science.

8 Q. And what is fermentation science?

9 A. Fermentation is the science of viticulture and the
10 science of wine, and some of my -- yeah. The winery -- some of
11 my professors were -- had wineries. It was the farming aspect of
12 it with the chemistry aspect of it. It was --

13 Q. So is it fair to say that wine has been a part of your
14 life for most of your life?

15 A. Yes.

16 Q. Do you have any DUIs?

17 A. No.

18 Q. Have you ever been pulled over for a DUI?

19 A. No.

20 Q. Did you work during your marriage?

21 A. I've tried. We have moved around a lot.

22 MR. COOK: Objection. Asked and answered.

23 THE WITNESS: Uh --

24 MS. BOYTE HENDERSON: Just -- if there's an objection,

25 just --

1 THE WITNESS: Uh-huh.

2 MS. BOYTE HENDERSON: I don't think that that's been
3 asked and answered, Your Honor. I just asked it the first time.

4 THE COURT: What was your objection?

5 MR. COOK: The question was, "Did you work during the
6 marriage?" And she said, "I tried." I think that's the answer.
7 Didn't ask for what she did or --

8 THE WITNESS: Yes. Very little.

9 THE COURT: Okay. Let's start off with another
10 question.

11 Q. (BY MS. BOYTE HENDERSON) Let's just take the timeline.
12 When you first married Mr. Barron, where were you living?

13 A. When we first got married, we were living in Oregon.

14 Q. How long did you live there?

15 A. When we were married?

16 Q. Yes.

17 A. One week.

18 Q. And where did you go from Oregon?

19 A. Quantico, Virginia.

20 Q. And what was the purpose of that move?

21 A. The purpose of that move was he wanted to get married,
22 and so I had to move there to be with him because he had been
23 there for three months.

24 Q. And was he in the military service at that time?

25 A. Yes, he was.

1 Q. Was that some kind of training?

2 A. Yes, it was.

3 Q. What kind of training?

4 A. It was TBS. It was basically an officer boot camp to
5 test their ability.

6 Q. Okay. And how long did you remain in Quantico,
7 Virginia?

8 A. We were there about four months.

9 Q. Did you work outside the home during that time?

10 A. Yes, I did.

11 Q. Where?

12 A. I was assistant manager at a Pier 1 at the time.

13 Q. And after four months where did you go?

14 A. We moved to Pensacola, Florida.

15 Q. How long were you in Pensacola, Florida?

16 A. Two years.

17 Q. And was that also because of Mr. Barron's military
18 service?

19 A. Yes.

20 Q. And did you work outside the home in Pensacola,
21 Florida?

22 A. Yes, I did. I was actually a manager of a -- an import
23 furniture store, and then I obtained my real estate license
24 there.

25 Q. Okay.

1 A. And I worked for a real estate company for about a year
2 as well.

3 Q. After Pensacola, where did you go?

4 A. We went to San Diego, and I was about six months
5 pregnant at the time when we moved there.

6 Q. So you became pregnant in Florida --

7 A. Uh-huh.

8 Q. -- and were pregnant when you arrived in San Diego?

9 A. Yes.

10 Q. Did you work outside the home in San Diego?

11 A. No, I did not. We were only there for about three
12 months. I can't remember the exact -- three to four months.

13 Q. Okay. My note says six months. Does that sound --

14 A. Maybe six months.

15 Q. But it was months, not years?

16 A. Definitely.

17 Q. What was the purpose of his assignment in San Diego?

18 A. He was getting trained on the actual helicopter that he
19 would be flying.

20 Q. From San Diego, where did you go?

21 A. North Carolina.

22 Q. And how long were you in North Carolina?

23 A. About five years.

24 Q. Did -- was your child born in San Diego or in North
25 Carolina?

1 A. My oldest child was born in San Diego, and we were
2 there for about six weeks; and then Paul moved to North Carolina,
3 and we joined him about three weeks later, maybe a month later,
4 Chayton and I.

5 Q. And your -- so was -- Chayton was born in San Diego?

6 A. Yes.

7 Q. Okay. And then you -- where was Audrey born?

8 A. North Carolina.

9 Q. Okay.

10 A. Uh-huh.

11 Q. So by the time you left North Carolina, all three of
12 your children had been born; is that correct?

13 A. Yes.

14 Q. When did you leave North Carolina?

15 A. We left North Carolina in two thousand -- Geor --
16 Georgia was about six months, so it was either at the end of two
17 thousand -- it was at the beginning of 2011, I think.

18 Q. When you -- when you left North Carolina?

19 A. Uh-huh.

20 Q. Where did you go from North Carolina?

21 A. San Diego. Camp Pendleton.

22 Q. And how long did you remain in San Diego?

23 A. Three years, I want to say.

24 Q. Do you remember the year that you arrived in San Diego?

25 A. 2011.

1 Q. And you were there for approximately three years?

2 A. 2011, 2012, two thousand -- two-and-a-half years.

3 Q. Okay. And where did you go from -- from San Diego?

4 A. Yuma.

5 Q. And how long have you been in Yuma? When -- when did
6 you arrive?

7 A. My math might be off, but it will be three years in
8 June.

9 Q. Okay. Did you work outside the home when you were in
10 North Carolina?

11 A. No. I did at the beginning, trying to reestablish my
12 real estate license there, but with him being gone so much and me
13 having babies, I realized it wasn't --

14 Q. Okay.

15 A. -- a very likely -- very good option for me.

16 Q. Okay. And in San Diego did you work outside the home?

17 A. I volunteered -- I was a caseworker with Navy Marine
18 Corps Relief Society, so I did volunteer work with them.

19 Q. But no paid work?

20 A. Unpaid.

21 Q. Okay. What is your husband's current job description?

22 A. He is a Huey pilot, UH-1 -- right? -- Marine Corps
23 pilot, major.

24 Q. And does that position require significant time away
25 from home?

1 A. Yes.

2 Q. Okay. How often is he away from home?

3 A. During WTI he has -- WTI is actually a six-week period
4 for the schooling, but before WTI there's weeks where it's called
5 freeze work, first freeze, and he's gone from 6:00 in the morning
6 till eight o'clock at night a lot during those weeks. He has a
7 lot of mandatory fun nights where they have to go camping and
8 shoot guns and drink. That's kind of a mandatory fun. And
9 then -- or they have to go to the O Club and have their mandatory
10 fun, he calls it, a lot.

11 Q. Okay. Let me just back up for you and clear a couple
12 things up. First of all, when you say "WTI," that refers to
13 Weapons Training Institute that occurs here at MCAS?

14 A. Yes, ma'am.

15 Q. And how many times does that happen a year?

16 A. Twice a year.

17 Q. And it's officially for six weeks each time, correct?

18 A. Officially for six weeks, but I would go as far as
19 saying it's more --

20 MR. COOK: Objection (indiscernible - simultaneous
21 speaking).

22 THE WITNESS: -- like eight weeks.

23 THE COURT: I'm sorry. What did you say?

24 COURT REPORTER: I didn't hear the objection.

25 MR. COOK: I object. Beyond the scope of the question,

1 Your Honor.

2 THE COURT: Sustained.

3 Q. (BY MS. BOYTE HENDERSON) Is Mr. Barron's responsibility
4 limited to the six-week official period of WTI?

5 A. No.

6 Q. Okay. How -- how much time is he responsible for his
7 commitment pursuant to WTI?

8 A. At least eight weeks, at least, from my knowledge.

9 Q. So that, by my math, is about four months a year that
10 he's occupied with WTI; is that correct?

11 A. At least.

12 Q. Okay. And in the other months, does he also have to be
13 away from home?

14 A. Yes. It's called fleet support so he can keep up his
15 hours for flying and be current with all of his qualifications,
16 and they -- they need to fly. They need to practice what they do
17 at all times, I understand.

18 Q. So is there -- is there a regular period of time each
19 month that he spends away from home?

20 A. There is an average, generally around a week.

21 Q. Okay. And where does he go when he goes away for these
22 weeks?

23 A. He's gone to Okinawa. He's gone to Hawaii. He goes to
24 Pendleton quite a bit. He -- throughout this process he's
25 definitely cut back a little because he act -- he can -- to be

1 closer, definitely in the past few months, in the past, he can
2 pick and choose where he wants to go. So he goes to Pendleton
3 more now --

4 Q. Okay.

5 A. -- to do --

6 Q. Prior to the filing of this case, what kind -- where
7 was he going?

8 A. Hawaii, and that's when the Okinawa trip was there.
9 Camp Lejeune or New River, which is in North Carolina. Much more
10 distance traveling.

11 Q. Okay. During the periods that he is away for these
12 trips -- well, strike that.

13 During the course of your marriage, were there times
14 when he was also deployed?

15 A. Yes.

16 Q. How many deployments has he had?

17 A. He's has two actual overseas deployments, and then he
18 has been in Yuma for months at a time throughout the years in
19 training.

20 Q. Okay. And, just to be clear, you're talking about
21 being in Yuma when you -- you and your family were not in Yuma?

22 A. North Carolina.

23 Q. Okay. And during the deployments, how long was he away
24 from home?

25 A. Seven months.

1 THE COURT: Miss Henderson, would this be a convenient
2 time to take our morning recess?

3 MS. BOYTE HENDERSON: Yes, it would.

4 THE COURT: We'll take our morning recess at this time.

5 (Whereupon, there was a brief recess taken.)

6 THE COURT: Let's be sure and finish this thing this
7 morning. Wouldn't you agree?

8 MR. COOK: Yes, Your Honor.

9 MS. BOYTE HENDERSON: I -- I believe we can. If I can
10 get through my stuff, we'll be -- I anticipate that being no
11 problem.

12 THE COURT: And you're pretty close on time.
13 Mr. Cook's nine minutes ahead. Okay. Go ahead.

14 Q. (BY MS. BOYTE HENDERSON) When we left, we were talking
15 about sort of the history of your relationship and what your
16 roles were in the family.

17 A. Yes.

18 Q. Who would you describe as having been the children's
19 primary caretaker in the marriage?

20 A. Myself.

21 Q. Was there any period of time where there was an
22 exception to that rule?

23 A. No.

24 Q. Does that continue to today?

25 A. Yes.

1 Q. Since you and Mr. Barron have talked about separation,
2 has his role in the family changed at all, in your observation?

3 A. Yes.

4 Q. In what way?

5 A. He's cut me off completely financially.

6 Q. Okay. But I mean with regard to the children. We'll
7 get to the finances.

8 MR. COOK: Objection. Move to strike, Your Honor.

9 THE COURT: Overruled.

10 MR. COOK: As nonresponsive.

11 THE WITNESS: He's -- he's made a effort to be there
12 more, do more since this process has started.

13 Q. (BY MS. BOYTE HENDERSON) Mr. Cook made the statement
14 that you are in school now. Is that correct?

15 A. Yes.

16 Q. What are you being trained for?

17 A. I'm in the fire academy right now.

18 Q. And when did you start the fire academy?

19 A. I started in August of --

20 Q. Of what year?

21 A. -- 2014.

22 Q. When are you set to graduate?

23 A. April 31st, two thousand -- I'm sorry. 2015 was when I
24 started. April 31st, 2016, is our state testing day.

25 Q. Assuming you pass the state test, will you be eligible

1 for employment?

2 A. Eligible, yes.

3 Q. Okay. And will you be eligible as an EMT?

4 A. I am currently working as an EMT.

5 Q. Okay. Do you have a job lined up for when you
6 graduate?

7 A. It does not work like that in the fire service.

8 Q. Are there any jobs open and available through the City
9 of Yuma for firefighters at this time?

10 MR. COOK: Objection. Foundation.

11 Q. (BY MS. BOYTE HENDERSON) Have you checked to see if
12 there are any open firefighter positions?

13 A. I am up-to-date and know exactly when they are hiring,
14 and there is none.

15 Q. None at this time?

16 A. At this time.

17 MR. COOK: Objection. Move to strike as hearsay,
18 Your Honor.

19 THE COURT: Overruled.

20 Q. (BY MS. BOYTE HENDERSON) Have you -- how often do --
21 does the City typically open up positions for firefighter hiring?

22 MR. COOK: Again object, Your Honor. There's been no
23 disclosure about any of this.

24 MS. BOYTE HENDERSON: I take back my statement about
25 getting finished today.

1 THE COURT: Objection is overruled.

2 Q. (BY MS. BOYTE HENDERSON) Have you -- have you checked
3 to see -- well, are you acquainted with how often the City opens
4 up firefighter positions?

5 A. Typically, it's been every about once a year to every --
6 once every two years.

7 Q. Okay. The other options for your employment here in
8 Yuma, what would those be?

9 A. I could go Rural/Metro full-time if they were hiring at
10 the time full-time. YPG if they are hiring. MCAS if they are
11 hiring. And then the other city departments -- San Luis,
12 Somerton.

13 Q. And do these other -- other options pay more or less
14 than the City of Yuma?

15 A. Government, comparable.

16 Q. What about Rural/Metro?

17 A. Definitely less.

18 Q. What's your hourly rate of pay right now?

19 A. At Rural/Metro it is \$9 an hour, 9.10 an hour.

20 Q. Have you ever been tested for drugs or alcohol through
21 your employment?

22 A. Yes, I was.

23 Q. When was that?

24 A. In order to get hired, you have to do a physical, so
25 at that point. And then a few months ago I was going out of

1 station nine on Arizona there, and I was -- I sideswiped the
2 ambulance going out of the little gate, testing the guard rails
3 to make sure they work on the ambulance. And I -- at that point
4 you have to stop everything you're doing. Your whole crew has to
5 go down, and whoever did any kind of damage has to get drug
6 tested at that point, and I was -- in order to remain at work for
7 the rest of the shift, and I --

8 MR. COOK: Your Honor, I'd object to the line of
9 testimony.

10 THE WITNESS: -- went to work.

11 MR. COOK: These are about allegations that nobody has
12 made. Father is not claiming that mother does drugs. Knows she
13 takes Adderall but doesn't do drugs. So I object to this.

14 MS. BOYTE HENDERSON: Your Honor, I object to speaking
15 objections.

16 THE COURT: Well, I think it may have some relevance.
17 Objection is overruled.

18 Q. (BY MS. BOYTE HENDERSON) What was your test result?

19 A. Negative. And I was able to continue on my day at
20 work.

21 Q. After we received the allegation -- well, let me back
22 up just a minute. Prior to the -- the divorce papers being filed
23 with the court in this case, has your husband ever brought to
24 your attention that he believes you have a problem with alcohol
25 or are an alcoholic?

1 A. Not so much, I mean, on a -- maybe occasionally if him
2 or I both drink too much on a certain occasion, we would say,
3 "You drank too much," but --

4 Q. You've said that to him?

5 A. Definitely. Definitely.

6 Q. And he has said that to you on occasion?

7 A. Definitely.

8 Q. Have you -- has he ever told you that he believes you
9 have a problem with alcohol or it's affecting you in your life
10 prior to filing these papers?

11 A. It's been -- not that I can recall.

12 Q. Okay. I'm going to go through some of the specific
13 instances that he --

14 A. Uh-huh.

15 Q. -- alluded to in a minute, but after he brought this
16 up as part of this litigation, did you take some action to be
17 tested?

18 A. Yes, I did.

19 Q. Who did you see?

20 A. Dr. Lara.

21 Q. And as part of the evaluation, did he submit you to
22 some psychological testing?

23 A. Not at all.

24 MR. COOK: Object to any testimony about Dr. Lara.

25 He's not here. There's only hearsay with respect to this. We

1 object to the exhibit, and I don't think they can cure it by
2 having her testify about hearsay that way either. We agree that
3 we asked to have an evaluation, but he wasn't permitted to
4 participate, so we don't think it's relevant here.

5 THE COURT: Well, she hasn't asked for any hearsay yet.

6 MR. COOK: Well, she made the statement in opening
7 statement, Your Honor.

8 MS. BOYTE HENDERSON: May I have an instruction on
9 speaking objections? I would also like to finish this today, and
10 it's not going to happen if we have continuing speaking
11 objections.

12 THE COURT: Well, let's -- let's try to get done today.
13 Okay? We are going to get done today.

14 Q. (BY MS. BOYTE HENDERSON) Mrs. Barron, as part of your
15 evaluation with Dr. Lara, did you submit to some psychological
16 testing? Did you take some tests with him? Fill out some papers
17 and --

18 A. I filled out papers, and he went through his
19 psychological evaluation of me, yes.

20 Q. Okay.

21 A. Uh-huh.

22 Q. And as part of that evaluation, were you recommended to
23 take -- to have any treatment for alcohol?

24 A. No.

25 MR. COOK: Objection. Hearsay.

1 THE COURT: Sustained.

2 Q. (BY MS. BOYTE HENDERSON) Were you diagnosed with any
3 problem?

4 MR. COOK: Objection. Hearsay.

5 THE WITNESS: No.

6 THE COURT: I think it's also hearsay.

7 MS. BOYTE HENDERSON: Okay.

8 THE COURT: But, like with the kindergarten teacher,
9 you've made your point anyway.

10 Q. (BY MS. BOYTE HENDERSON) If, in fact, you had a
11 problem with drugs or alcohol, how would that affect your
12 employment?

13 A. I wouldn't be able to perform my duties.

14 Q. Have you ever been approached by anyone through either
15 your education -- education or employment to --

16 A. Never.

17 Q. With the --

18 A. Sorry.

19 Q. Let me finish the question. Have you ever been
20 approached by anyone as part of your education or employment
21 suggesting to you that you might have a problem?

22 A. No, not at all.

23 MR. COOK: Objection. Hearsay and relevance.

24 THE COURT: Overruled.

25 Q. (BY MS. BOYTE HENDERSON) You have objected to the

1 Court including a provision in your parenting plan saying that
2 neither one of you consume alcohol when you have the children in
3 your care. Do you understand that?

4 A. Yes.

5 Q. And you've objected to that provision?

6 A. Yes.

7 Q. What is the reason for your objection?

8 A. I feel I do not have a problem, and I feel it's -- and
9 still trying to control a situation that he is not going to be
10 able to control.

11 Q. Okay. Has Mr. Barron continued to drink?

12 A. Yes.

13 Q. What kind of -- what's his -- what's his pattern of
14 drinking?

15 A. Beer with his father.

16 MR. COOK: Foundation.

17 THE COURT: Overruled.

18 Q. (BY MS. BOYTE HENDERSON) Go ahead.

19 A. Definitely beer with his father or friends that I don't
20 see. I don't know what he does at work. I know drinking -- I
21 know they have alcohol in the office. He's around alcohol a lot.
22 I just don't know. I don't asked. He's never told me. I've
23 kind of been in the dark throughout the last 12 years about what
24 he does when he's away.

25 Q. One of the issues in your relationship with Mr. Barron

1 was your perception that he was keeping tabs on you; is that fair
2 to say?

3 A. Yes.

4 Q. Is that a concern that you have about this provision?

5 A. What do you mean by that question?

6 Q. Is that part of the -- your concern with the provision
7 about alcohol, that this would open up the options for you to
8 each be monitoring each other and --

9 A. Definitely. Definitely.

10 Q. And all that?

11 A. Yes.

12 Q. Let's talk about some of the things that Mr. Barron has
13 specifically said, talked about. He talked about the Marine
14 Corps ball in 2013. What happened that night?

15 A. That night -- the balls are -- that night, he was
16 actually in the ceremony that night, and he's, like -- and we
17 always usually agree either you drink or I drink, and, you know,
18 the other one will drive. That night he was, like, "I'm not
19 going to drink tonight. If you want to drink, you can drink."

20 And so one of us drinks. And he never liked how loud I
21 get. I get happy and loud when I drink. It's been -- that's
22 what it is. I don't know how to say it. He's never liked that.

23 About 30 people went back after -- when he was ready --
24 he was ready to leave, and about 30 people went back to a hotel
25 room, one of the CO's hotel rooms, because there's appetizers and

1 drinks, and everyone was collecting there.

2 And he -- he's, like, "Well, I'm leaving. If you don't
3 leave, I'm leaving."

4 I'm, like, "Okay. Well, leave."

5 I had been drinking. And he, sure enough, left. And
6 I'm -- you know, we're out at the little bonfire, in the hotel
7 room, and in the back patio. And he's gone. And I was with
8 friends as well, you know, his co-workers and wives. And when I
9 realized he was really gone, I started calling him, and I did
10 proceed to -- I was tired. I wanted to go home, and I did fall
11 asleep on -- and it wasn't -- I -- I was in more shock that he
12 was gone.

13 Q. Okay. Mr. Barron characterized that as passing out.

14 A. Yeah.

15 Q. Did you pass out after that?

16 A. I remember the whole night very well, actually.

17 Q. Have you ever had a blackout?

18 A. Not that I can recall.

19 Q. Okay.

20 A. I remember -- I remember.

21 Q. Okay.

22 A. So --

23 Q. And were the children anywhere near this incident?

24 A. No.

25 Q. Okay. Mr. Barron testified about an incident where he

1 says you passed out drunk after coming back from a friend's house
2 or something and that the children were making a sign of a cross
3 over you. Did you hear that testimony?

4 A. Yes, I did.

5 Q. Did Mr. Barron tell you that that happened after it
6 happened?

7 A. No.

8 Q. When was the first time you heard about this?

9 A. Reading -- or in our deposition.

10 Q. In the deposition we took of Mr. Barron?

11 A. Yes.

12 Q. Have you ever observed the children making the sign of
13 the cross?

14 A. Multiple times a day. Every time we say prayers.

15 Q. Okay. That's something that they do often?

16 A. Yes.

17 Q. Have you ever observed them making the sign of a cross
18 over Mr. Barron?

19 A. Yes, I have.

20 Q. And on what occasions are those?

21 A. Falls asleep, whether -- definitely when he's drinking.
22 On the floor, even in the children's room, even when he's not
23 drinking. And the kids will say a prayer because that's what we
24 do. We go to bed and do the sign of cross. I -- I'll -- quite a
25 few times.

1 Q. Okay. How many times would you say you've seen the
2 children do that over your husband?

3 A. I'm not even sure I could give a number.

4 Q. When you came home that night, were you passed out
5 drunk, or did you fall asleep somewhere?

6 A. I don't recall what night he's talking about.

7 Q. You don't recall the incident at all?

8 A. Huh-uh. Huh-uh.

9 Q. Is that a no?

10 A. No, I do not.

11 Q. July, 2014, he said that you were on a family vacation
12 and that you left the hotel room and didn't come back for a
13 while. First of all, let's establish, were the children on the
14 family vacation with you?

15 A. Yes.

16 Q. Who else went on the family vacation?

17 A. My mother.

18 Q. And was your mother with the children at the time?

19 A. Yes.

20 Q. So you at no point ever left the children alone?

21 A. No, never.

22 Q. What happened that night?

23 A. Paul was -- at the end of the night, we went -- or we
24 went and put the girls down. Paul was going to sleep too, so
25 Paul stayed with the girls. My mother and I went back down to

1 the hotel bar and had a drink, and then we went back up, and I
2 had -- I had a missed called from my sister. And I called my
3 sister, and I was walking around. And my mom went back to -- my
4 mom was already in bed, went to sleep. I was talking to my
5 sister, and he couldn't find me, and that --

6 Q. Did you leave the hotel room so that you could --

7 A. Yes.

8 Q. -- talk without disturbing people?

9 A. Yes.

10 Q. Okay. Were you down at a bar drinking?

11 A. No.

12 Q. On August 4th of last year, I think was the date he
13 gave, he said that you left the home after midnight to go
14 somewhere. Do you recall that incident?

15 A. Yes, I do.

16 Q. What happened that night?

17 A. It -- it -- and I did tell him this after he
18 confronted -- after he confronted me, that I'm always telling
19 friends, "If you are drinking and you need a ride, please call
20 me." Now, I'm -- I'm also an instructor at AWC, and I'm always
21 telling my students the same thing. And that's exactly what
22 happened that night.

23 Q. Somebody called you for a ride?

24 A. Yes.

25 Q. Who was it?

1 A. I -- I was gone for about 20 minutes. A co-worker.
2 And I was gone for about 20 minutes, and I did write a note; and
3 when I got back, I did throw away the note and went to bed. And
4 I -- yeah.

5 Q. Did you have anything to drink that night?

6 A. It had been a few hours, quite a few hours, since I
7 had. I did not have anything to consume when I went out.

8 Q. Okay. Is it common for you to have a glass of wine
9 with dinner?

10 A. In the past, yes.

11 Q. Okay. Since all this has come up, have you altered
12 that pattern?

13 A. Yes. I feel like I have to watch myself. Yes.

14 Q. He -- he testified about an entry in his log, although
15 this part wasn't in his log, that on the date that you asked him
16 to separate that you were drinking vodka at the time. Is that
17 true?

18 A. I -- I hardly drink any -- I hardly drink anything
19 other than wine at all. I don't like alcohol that much, and I
20 enjoy wine. I don't -- I can't recall that --

21 Q. Okay.

22 A. -- what he was talking about.

23 Q. So that doesn't sound like --

24 A. It's very out of character for me to drink hard
25 alcohol.

1 Q. Do you remember that particular incident happening at
2 all?

3 A. I remember telling him I wanted to separate.

4 Q. The children have had several tardies at school --

5 A. Uh-huh.

6 Q. -- in past years. How are they doing this year?

7 A. They're doing great, as in there has been maybe one
8 tardy.

9 Q. Okay.

10 A. Maybe one.

11 Q. Are they at a different school this year than they were
12 last year?

13 A. Their school was at 24th and Kennedy last year. We
14 live on 32nd and C. It's Desert View Academy. And now it's on C
15 and 16th Street, so it's about two miles from my house, where
16 before it was before town -- I mean all across town. And I am
17 not the best person, have never been the best person with time
18 management, and it would take me -- I -- I was late a lot, but as
19 in minutes late, not hours -- not obnoxiously late.

20 Q. Okay. So it's not that they were missing school
21 entirely?

22 A. Not at all. Not at all.

23 Q. Do you remember how many times that they were late last
24 year?

25 A. I don't remember the exact number.

1 Q. Okay. We asked Paul to provide us the records that he
2 said he had about this. He hasn't done that yet, has he?

3 A. Not that I can recall. Not that I know of.

4 Q. You said you've always had a problem with time
5 management?

6 A. Yes.

7 Q. How -- how long -- how long back in your lifetime does
8 that go?

9 A. Well, I mentioned this to my mother, and she kind of
10 chuckled because she did say, "Well, if that's the case, it
11 started back" --

12 MR. COOK: Objection, Your Honor.

13 THE WITNESS: -- "in high school."

14 MR. COOK: Nonresponsive.

15 THE WITNESS: "You were late to class" --

16 THE COURT: Sustained. Sustained.

17 THE WITNESS: -- "in high school almost every day too
18 once you got your license."

19 MS. BOYTE HENDERSON: Okay. When there's an objection,
20 you just need to stop.

21 THE WITNESS: Okay.

22 MS. BOYTE HENDERSON: And then I'll -- wait for the
23 next question.

24 Q. (BY MS. BOYTE HENDERSON) How far back do you remember
25 having a problem making it places exactly on time and not being a

1 few minutes late?

2 A. As soon as I was free to drive.

3 Q. The day that Mr. Barron filed his motion asking for you
4 to have an alcohol evaluation and treatment, where -- did he go
5 somewhere after that?

6 A. He did.

7 Q. Where did he go?

8 A. Two days later he left for about a week to Pendleton.

9 Q. And where were the children while he was away for a
10 week in Pendleton?

11 A. In my custody.

12 Q. In September of 2015, Mr. Barron took the -- took his
13 funds and put them in his own account; is that correct?

14 A. Yes.

15 Q. Since then, what has he been paying for?

16 MR. COOK: Asked and answered.

17 THE COURT: Overruled. She may answer.

18 THE WITNESS: What has he been paying for?

19 MS. BOYTE HENDERSON: Yes.

20 THE WITNESS: He's been paying the mortgage and the
21 household expenses.

22 Q. (BY MS. BOYTE HENDERSON) He testified that he had not
23 given you any money. Is that -- was that -- do you agree with
24 that?

25 A. He actually did. He gave me 200. He was -- at first

1 when he first initially stopped his paycheck from going into
2 our -- our mutual account, he was giving me 200 out of his
3 paycheck, and then -- for two months or for a month and a half, I
4 would have to say. And then after that, he just stopped
5 completely.

6 Q. Okay. Your house payment is \$1,700 a month; is that
7 correct?

8 A. Yes.

9 Q. And you agree that, if you receive the spousal
10 maintenance that you're asking for, you'll make that house
11 payment?

12 A. Yes.

13 Q. As well as the utility expenses?

14 A. Yes.

15 Q. How long has it been since Mr. Barron has given you any
16 money in cash?

17 A. October, I would say. At the beginning of October was
18 the last time.

19 Q. Who's been paying your car payment?

20 A. Myself.

21 Q. And how much is your car payment every month?

22 A. \$336.

23 Q. That is more than you're making every month?

24 A. It's about that.

25 Q. Okay. Has Mr. Barron been providing groceries?

1 A. Once a week he goes to the grocery store.

2 Q. Has that been sufficient?

3 A. No, it has not.

4 Q. And so have you been buying groceries as well?

5 A. Yes, I have.

6 Q. Have you had -- who's been paying for your gas?

7 A. I have.

8 Q. Any -- any other expenses that you're response --
9 you've been responsible to pay?

10 A. The -- I have had to pay my school tuition. I've had
11 to pay for Dr. Lara's fees. I've had to pay for vet bills.

12 Q. Okay. Let's talk about school tuition. Would you look
13 at Exhibit Number 8, please.

14 A. Uh-huh.

15 Q. This is your school tuition statement from July of
16 2015?

17 A. This one is for July, and then there was one in
18 December for the same amount.

19 Q. Okay. And who paid the cost in July?

20 A. I took money out of savings.

21 Q. Okay. And what about in December?

22 A. I put the money on my credit card.

23 Q. Okay.

24 A. Uh-huh.

25 Q. At the time that this action was filed, did you have

1 any outstanding credit card debt?

2 A. No.

3 Q. And what is your outstanding credit card debt now?

4 A. About 5,000.

5 Q. And is that from having to pay the expenses you've
6 talked about today?

7 A. Yes. And Christmas and -- yes.

8 Q. Did Mr. -- did Mr. Barron give you any money to buy the
9 children Christmas presents?

10 A. No.

11 Q. Would you look at Exhibit Number 4, please. This is
12 the child support worksheet that we prepared; is that correct?

13 A. I have -- I have 3 and 5 but -- oh, here we go.

14 Q. Found it?

15 A. Yes.

16 Q. Okay. This is the child support worksheet we prepared;
17 is that right?

18 A. Yes.

19 Q. The income from your husband is entered as the -- as
20 reflected on his financial affidavit and LES forms?

21 A. Yes.

22 Q. The income from you is entered from your financial
23 affidavit?

24 A. Yes.

25 Q. The child -- we have childcare expenses of 360 a month.

1 Would you explain to the Court where that comes from?

2 A. Childcare expenses. That one was --

3 Q. Is that -- is that preschool?

4 A. Yes.

5 Q. And who's been paying that up to now?

6 A. Paul.

7 Q. Okay. We have that included --

8 A. Paul, yes.

9 Q. We have that included on your side of the ledger. So
10 you understand you would be responsible for that if the Court
11 makes this order?

12 A. I see that, yes.

13 Q. We've used an essentially equal parenting time table to
14 calculate this; is that correct?

15 A. Yes.

16 Q. Okay. Mr. Cook said that you're in class from Thursday
17 evening through -- through the weekend. Is that correct?

18 A. Not exactly.

19 Q. Okay. What -- what classes do you have? What's your
20 class schedule during the week?

21 A. I have -- occasionally on Thursdays I have class from
22 6:00 to 10:00, and then I have -- I do not have class on Friday,
23 and then I have class on Saturdays and Sundays from six o'clock
24 in the morning to around 5:00 or 6:00 sometimes in the
25 afternoon -- I mean in the early evening.

1 MS. BOYTE HENDERSON: I would ask for the admission of
2 Exhibit 4.

3 MR. COOK: I object, Your Honor, because 4 doesn't --
4 we don't know what the Court's going to make with respect to
5 findings at this point.

6 THE COURT: Well --

7 MR. COOK: I mean, I don't --

8 THE COURT: -- objection is overruled. You're supposed
9 to prepare child support worksheets for these hearings.

10 MR. COOK: Well, I understand, Your Honor, but the fact
11 of the matter is I have yet to go to a hearing when the judge
12 agreed with what the parties said about all the income and
13 expenses. And so, I mean, it's nice to have something to look
14 at, but the fact is it doesn't accomplish anything.

15 THE COURT: Well, I'm certainly not -- by receiving it
16 into evidence, there's no statement by me that I agree with
17 everything that's here.

18 MR. COOK: Well, then I don't object on that basis.

19 THE COURT: Okay. Petitioner's 4 is received in
20 evidence.

21 (Whereupon, Petitioner's Exhibit Number 4 was admitted
22 into evidence.)

23 Q. (BY MS. BOYTE HENDERSON) At the -- at the time that
24 you and Mr. -- well, let's say in the summer of last year, did
25 you and Mr. Barron split up -- split up some community savings

1 account that you had?

2 A. Uh-huh.

3 Q. Is that a "yes" or "no"?

4 A. Yes.

5 Q. And did -- and were those split equally?

6 A. I am not completely -- I -- I don't know for sure. He
7 did all of that on his own doing. I --

8 Q. Okay. How much money did you receive from that
9 division?

10 A. It was only the First Command, and it was about -- I'd
11 say about seven.

12 Q. Seven thousand?

13 A. Yes.

14 Q. He testified that you'd received 13,000. Is that true?

15 A. I don't get how he got that number.

16 Q. From the First Command money that you received, the
17 \$7,000, did you pay my attorney's fees from that?

18 A. No. I paid that with our USAA savings prior to split.

19 Q. So if we add that \$6,000 -- that was \$6,000, correct?

20 A. Uh-huh. That's -- yes.

21 Q. So if we add that \$6,000 and the 7,000 that you took,
22 then that would be the 13,000?

23 A. Yes.

24 Q. Have you been able to pay any attorney's fees since
25 then? Have you had money to do that?

1 A. No.

2 Q. The -- would you look at Exhibit Number 7. You receive
3 monthly invoices from my office; is that correct?

4 A. Yes.

5 Q. And do you review those invoices?

6 A. Yes.

7 Q. This is a summary of the time entries and expense
8 entries associated -- or that have been billed to you; is that
9 correct?

10 A. Yes.

11 Q. Have you had a chance to look at this?

12 A. Yes.

13 Q. And does it appear to be true and accurate to the best
14 of your knowledge?

15 MR. COOK: Objection. Foundation.

16 THE COURT: Overruled. I think she testified she has
17 reviewed it.

18 MS. BOYTE HENDERSON: I'd ask for the admission of
19 Exhibit 7.

20 MR. COOK: Well, then I would object to that unless
21 counsel is going to make a representation that these were
22 reasonable and necessary fees and costs. I don't think this
23 witness knows how much time somebody would spend on something
24 when she's not there to see.

25 MS. BOYTE HENDERSON: I think that that representation

1 would be implicit, but if it needs to be explicit, then I would
2 so represent.

3 THE COURT: Okay. Then Petitioner's 7 is received and
4 admitted.

5 (Whereupon, Petitioner's Exhibit Number 7 was admitted
6 into evidence.)

7 Q. (BY MS. BOYTE HENDERSON) Is it your request that your
8 husband contribute some funds for you to bring your attorney's
9 fees current?

10 A. Yes.

11 Q. The only amount that has been paid so far is the 6,000?

12 A. Yes.

13 Q. Are there any extracurricular activities in which the
14 children participate?

15 A. Yes, there is.

16 Q. Any of them that are paid for by you?

17 A. Yes.

18 Q. What do they do?

19 A. Violin and piano, and which I pay for.

20 Q. And you have been paying for those expenses while this
21 case has been pending?

22 A. Yes.

23 Q. Has Mr. Barron made any contribution to those expenses?

24 A. No.

25 Q. Have there been occasions where your children have been

1 signed up for activities or events without consulting you?

2 MR. COOK: Objection. Relevance.

3 MS. BOYTE HENDERSON: Relevant to decision-making,
4 Your Honor.

5 THE COURT: Objection's overruled.

6 Q. (BY MS. BOYTE HENDERSON) I'm referring specifically to
7 your daughter's first communion.

8 A. Yes.

9 Q. What happened with that?

10 A. Well, I have learned about a meeting -- meetings and
11 activities through the first communion that I am not aware of.
12 Is that what you're asking?

13 Q. Yes. Were you aware that your daughter had -- had --
14 had had a date scheduled for her first communion initially?

15 A. I knew the date was coming up. I didn't know when it
16 was. I had to find that out.

17 Q. Okay. Was there someone else in the family that did
18 know?

19 A. Paul and his parents.

20 Q. Okay. Did they tell you about that?

21 A. No.

22 Q. How did you find out?

23 A. I asked him multiple times, and he was not -- unsure --
24 he was unsure of it. I ended up going to the office because I
25 had to switch it because it's the day of my state testing and --

1 because I wanted to be there, of course, for my daughter's first
2 communion.

3 Q. So you were not consulted about the scheduling in
4 advance?

5 A. No.

6 Q. I'm going to ask you about some things that your
7 husband has put in his position statement as far as orders he
8 wants the Court to make. One of them is the -- that each party
9 would have the first right of refusal to provide care in the
10 other party's absence. Is that something that you want to be
11 included in any parenting time plan that's adopted by the Court?

12 A. As in -- I don't want him to have the first right of
13 refusal.

14 Q. Okay. Why is it that you feel strongly about that?

15 A. Because the children need -- if he is not -- if he is
16 not here, the children need to be with me. I have been their one
17 constant throughout their whole lives.

18 Q. I don't think -- maybe I didn't phrase my question very
19 well. So what he's asking is that, if you are busy, you have to
20 let him provide childcare; and if he is busy, you get to provide
21 childcare except that he said that he can use his parents
22 instead. Is that a provision that would be okay with you?

23 A. If I am busy, we will use his parents; and if he is
24 busy, we will use his parents?

25 Q. Yes.

1 A. Yes.

2 Q. You have asked that if he's away on duty overnight or
3 participating in WTI such that he's gone all day and into the
4 evening that the children be in your home --

5 A. Yes.

6 Q. -- correct?

7 A. Yes.

8 Q. Is it your intention to request that if he goes out for
9 the evening that he has to bring the children to your home?

10 A. If I am home, I feel I should be the first person to
11 take care of my children if they are supposed to be with him.

12 Q. And so I guess what I'm asking you is is that something
13 that you're -- that you're insistent on if he just goes out for a
14 couple of hours, or is that something that you're talking about
15 that's limited to these extended duty periods when he's gone?

16 A. More so with the extended duty.

17 Q. So you're not asking to try and keep track of his every
18 move --

19 A. No.

20 Q. -- and have him bring the children to you any time he's
21 busy with anything?

22 A. No, by no means.

23 Q. Do you think that he should have that provision with
24 regard to you, that he should keep track of everything that
25 you're doing and that you should --

1 MR. COOK: Objection, Your Honor, to the argument.
2 This is inappropriate. Father's never said he's entitled to keep
3 track of everything mother does. This is just argument to the
4 Court phrased in the form of a question. I ask that counsel be
5 directed to ask direct questions.

6 MS. BOYTE HENDERSON: I'm simply trying to explain the
7 concept to my client because, clearly, she's not clear on what it
8 is that's being requested.

9 THE COURT: Go ahead and proceed.

10 Q. (BY MS. BOYTE HENDERSON) Is it your -- is it your
11 request that -- or is -- I don't remember where we left off now,
12 but you're not asking to insist that Paul bring the children over
13 if he's just gone for a little while during his parenting time?

14 A. No.

15 Q. Would you want to have to bring the children to him if
16 you're just gone for a little while?

17 A. No.

18 Q. Do you want to have to report back and forth as far as
19 what you're doing and where you're going or expect him to do the
20 same?

21 A. No.

22 Q. You agree to a joint legal decision-making plan where
23 you both would have the right to make decisions about the
24 children?

25 A. Yes.

1 Q. And I think we've talked about the alcoholic beverage
2 provision already.

3 You -- do you want to remain in the marital residence?

4 A. Yes.

5 Q. And would you like to have exclusive use and possession
6 of the residence, meaning that would be your residence and Paul
7 would only be able to come and go if you give him permission to
8 do that?

9 A. Yes.

10 Q. You have no objection to Paul continuing to pay the
11 life insurance policies?

12 A. No.

13 Q. There's another life insurance policy through Paul's
14 employment in the military; is that correct?

15 A. Yes.

16 Q. Has he recently changed the beneficiary associated with
17 that policy?

18 A. He altered all of that without my knowledge or
19 informing me at any point.

20 Q. He had agreed in his deposition to provide his
21 information about who -- when those changes were made. And has
22 he done that?

23 A. No.

24 Q. You agree to continue to pay your car payment yourself?

25 A. Yes.

1 MS. BOYTE HENDERSON: And I think we've informed the
2 Court with regard to our positions on spousal maintenance and
3 attorneys' fees. So I will pass the witness at this time.

4 THE COURT: Cross-examination.

5 MR. COOK: Yes, Your Honor.

6 THE COURT: I have Miss Henderson at about 25 minutes
7 ahead now, so --

8 MR. COOK: You mean she's used 25 more minutes than I
9 have?

10 THE COURT: Yes.

11 MR. COOK: Okay. Thank you, Your Honor. I'll try to
12 be very brief.

13 CROSS-EXAMINATION

14 BY MR. COOK:

15 Q. Mrs. Barron, I -- your lawyer asked a question of Major
16 Barron when he was on the witness stand.

17 MS. BOYTE HENDERSON: I can't hear.

18 MR. COOK: Is that better?

19 Q. (BY MR. COOK) Your lawyer asked a question of Major
20 Barron when he was on the witness stand. She asked him if --
21 about the two of you having an agreement to settle all the issues
22 and that the only thing that was the sticking point was the
23 drinking while having the children. Do you remember that
24 testimony that he gave?

25 A. Yes, sir.

1 Q. Was that true?

2 A. Yes.

3 Q. Okay. So last summer everything could have been
4 settled except for the one issue with respect to the concern that
5 he has expressed about drinking, with which you do not agree; is
6 that not true?

7 A. There was some, actually, additional points on that as
8 well that I didn't fully agree with, so it was more to -- to step
9 back. There was actually more than just the drinking, sir.

10 Q. Okay. And -- but as we sit here today, that's still
11 the sticking point with the children? In fact, that's really the
12 only sticking point with the children of significance, is the
13 fact that he thinks that both parents should be sober when they
14 have the children, and the best way to do that is to avoid
15 drinking, and you don't agree, correct?

16 MS. BOYTE HENDERSON: Objection. Argumentative.

17 THE COURT: Pardon me. What was the objection?

18 MS. BOYTE HENDERSON: Argumentative. I mean, the
19 entire question was argument. I don't even think that was a
20 question.

21 THE COURT: Sustained.

22 MR. COOK: I asked if she agreed.

23 Q. (BY MR. COOK) And you agree that that's the sticking
24 point for you; you are not willing to have any restrictions with
25 respect to alcohol use, correct?

1 MS. BOYTE HENDERSON: Objection. Asked and answered.

2 THE COURT: Overruled.

3 THE WITNESS: So do I answer?

4 MR. COOK: I can't hear you.

5 THE WITNESS: So do I answer?

6 MR. COOK: Yes. You're supposed to answer.

7 THE WITNESS: Okay. I don't feel there is a problem,
8 and it's a control issue.

9 Q. (BY MR. COOK) Okay. Ma'am --

10 A. So I will not --

11 Q. -- that's a yes-or-no question.

12 A. I will not let him control over that, so I will not
13 agree to it, sir.

14 Q. Okay. And he indicated in his testimony that you had
15 had discussions with him about his concerns about you leaving
16 your medications out and leaving the caps off your medications.
17 Did you ever have those discussions with him that he testified
18 about? Just yes or no.

19 A. Minimal, yes.

20 Q. Okay. But you agree he expressed concerns, did he not?
21 Yes or no?

22 A. Minimal, yes.

23 Q. And your position is that you don't have to worry about
24 the children using your meds, correct?

25 A. No.

1 Q. That's not your position?

2 A. No.

3 Q. Okay. You do have to worry about the children using
4 your meds?

5 A. I do not have to worry about my children using my meds.

6 Q. Okay. So, in your view, your kids are old enough to
7 know not to take your meds?

8 A. They are in a place where they would not get them.

9 Q. Well, your husband testified that you had left them
10 out.

11 A. They were on my vanity where my children do not go, and
12 they are put away other than that.

13 Q. He also testified about occasions when you had come
14 home late at night with alcohol on your breath. Do you agree
15 that that has happened? Just yes or no.

16 A. Yes.

17 Q. Okay. And your affidavit of financial information, do
18 you have it up there with you?

19 A. Which -- which exhibit, sir, is that?

20 Q. Exhibit 1.

21 A. Yes.

22 Q. You set out on pages five and six --

23 A. Uh-huh.

24 Q. -- expenses with respect to the marital residence and
25 other expenses.

1 A. Yes.

2 Q. With respect to the expenses set out in section 7A,
3 housing expenses, is that based upon bills that you have paid or
4 estimates of what your bills might be?

5 A. Are you talking repair? Yard work?

6 Q. I'm talking about -- you have four items set out there.
7 Have you actually paid any of those bills? Just yes or no.

8 MS. BOYTE HENDERSON: I guess I'd object to foundation.
9 What period of time are we talking about?

10 THE WITNESS: Yes. I have done many financial
11 estimates for Navy Marine Corps Relief Society, and when you do
12 documents like this, you factor in what it is to maintain --

13 Q. (BY MR. COOK) Please just my question --

14 A. -- on your own. So yes.

15 Q. -- ma'am.

16 A. Yes.

17 Q. What -- what records did you look at to fill out the
18 expenses you list for repair and upkeep, yard work, pool, pest
19 control, and insurance and taxes not included in the house
20 payment? What source records did you look at to fill that out
21 for this affidavit?

22 A. I went by what I know it is to maintain yards and the
23 repairs needed in the household.

24 Q. Okay. So you didn't look at any records, correct?

25 A. Correct.

1 Q. All right. And with respect to utilities, did you look
2 at what the water, sewage, and garbage bills have been for the
3 last 12 months before filling out that item? Yes or no?

4 A. Yes.

5 Q. And for electricity, did you look at what the bills
6 have been for the last 12 months before setting out that item?
7 Yes or no?

8 A. No.

9 Q. Now, Mr. -- Major Barron said that the cost for that is
10 250 a month. Did you actually average out what the bills had
11 been for the previous 12 months or not?

12 A. Yes, because I'm always in charge of them, and he was
13 not.

14 Q. Well, he's testified and I think you've testified he's
15 been paying all these bills since last August. Is that true?

16 A. Yes, because he has tied my hands and has allowed me
17 not to.

18 Q. All right. Did somebody tell you that he's required to
19 put his sole and separate income into a bank account in your
20 name?

21 MS. BOYTE HENDERSON: Objection. Hearsay.

22 THE COURT: Objection sustained.

23 THE WITNESS: I don't understand the question.

24 MS. BOYTE HENDERSON: The objection's been sustained

25 so --

1 Q. (BY MR. COOK) You've made the allegation that he has
2 not put his salary into any joint account since the divorce was
3 filed. Isn't that what you said? Or since September? That's
4 what you said, correct?

5 A. I made the allegation that he has not put his -- no.
6 He has separated --

7 Q. You were asked about ten questions about that since
8 we've been here today. He hasn't put his money in your joint
9 account? He hasn't put your money. So that what's you said,
10 isn't it, that he hasn't put his paycheck in the joint account
11 since last September?

12 A. Yes.

13 Q. Do you have reason to think that he's required to do
14 that? Yes or no?

15 MS. BOYTE HENDERSON: Objection. Foundation, hearsay.

16 THE COURT: Sustained.

17 MR. COOK: I'd like to speak to that please, Your
18 Honor. If the allegation is going to be made by them that he's
19 done something wrong by not putting his money into a joint
20 account, there should be a factual basis for that. It's improper
21 to be asking questions of a witness that have no legal or -- or
22 factual foundation. And there's no law that I'm aware of that
23 says that once somebody's filed and served process that you're
24 required to put your sole and separate earnings into any joint
25 accounts with anybody.

1 THE COURT: Well, that's probably true, but that
2 certainly doesn't make the evidence irrelevant, though. It's
3 part of the financial circumstances of the parties.

4 MR. COOK: I understand the financial circumstances
5 are relevant.

6 Q. (BY MR. COOK) You received correspondence from my
7 office about a week and a half ago with copies of checks that you
8 had written to yourself from the joint accounts, did you not?

9 A. I don't recall those.

10 Q. Did your lawyer -- does your lawyer send you the --

11 A. Yes. She sends me everything.

12 Q. Do you get the copy of correspondence that I send to
13 your lawyer?

14 A. Yes. She does.

15 Q. And, in fact, you wrote yourself several checks from
16 the joint account that aggregated over \$7,700, did you not, in
17 addition to what was paid for your lawyer? Isn't that true?

18 A. Because he told me that was the money I had to use. If
19 I needed anything, I had to take out of our savings.

20 Q. Ma'am -- ma'am, you wrote yourself those checks, did
21 you not? Yes or no?

22 A. From his instructions. Yes.

23 Q. Okay. But you had that money, correct?

24 A. Yes.

25 Q. Have you spent all of it?

1 A. No.

2 Q. Okay. So you still have some of that money. How much
3 do you have left?

4 A. About 4,000.

5 Q. Pardon?

6 A. About 4,000.

7 Q. All right. And did you use that money to pay Dr. Lara?

8 A. I put that on my credit card.

9 Q. Okay. And didn't husband give you a list of several
10 psychologists that were covered by health insurance who could
11 have done an assessment for you for free?

12 MS. BOYTE HENDERSON: Objection.

13 Q. (BY MR. COOK) Just yes or no.

14 THE COURT: What is the objection?

15 MS. BOYTE HENDERSON: Relevance. And I've not seen any
16 such list. No list was provided to me to that effect.

17 MR. COOK: I didn't say it was given to Miss Boyte,
18 Your Honor. I said he gave it to his wife.

19 THE COURT: Objection is overruled.

20 Q. (BY MR. COOK) Yes or no?

21 A. He gave me a list.

22 Q. Okay. And you chose to use Dr. Lara instead, correct?

23 A. I did go with Lara.

24 Q. All right. But that was a choice you made, correct?

25 A. Yes.

1 Q. And did you tell him the date of your appointment with
2 Dr. Lara? Yes or no?

3 A. No. No.

4 Q. Did you invite him to provide Dr. Lara whatever
5 information he had?

6 A. Of course not.

7 Q. Okay. So all Dr. Lara had was whatever information you
8 gave Dr. Lara?

9 A. Yes.

10 Q. And, as I understand your position on this alcohol
11 issue -- and just tell me if I'm wrong -- your issue is in your
12 opinion this is nothing but a control issue and, therefore, you
13 object; is that correct?

14 A. I do not have a problem, sir.

15 Q. Pardon?

16 A. I do not have a problem with alcohol.

17 Q. I understand, but will you answer my question, please,
18 ma'am? My question --

19 A. And it's a slander to my -- to myself, my behavior,
20 which eventually will affect me, and I feel like he's creating a
21 problem more than --

22 MR. COOK: I ask that the witness' comments be stricken
23 and that she be directed to answer my question.

24 THE COURT: Let's start out with a new question. Okay.

25 MR. COOK: Would you read back the question I asked the

1 witness, please?

2 (Whereupon, the reporter read the record.)

3 MR. COOK: What I objected to was the
4 extemporaneousness.

5 Q. (BY MR. COOK) What I want to know is if I was correct
6 with respect to the question I asked you. You object because it
7 is a control issue?

8 A. That is not the only reason, sir.

9 Q. Okay. And you object also because you think you don't
10 have a problem, correct?

11 A. You're right, yes.

12 Q. Okay. Your affidavit of financial information in
13 section 7 under "food items" lists a thousand dollars a month for
14 food, milk, household supplies, school lunches, and meals outside
15 the home; is that correct?

16 A. With the whole family, yes.

17 Q. Okay. That's for the whole family, correct?

18 A. Yes, sir.

19 Q. Not just for you?

20 A. Yes, sir.

21 Q. How much is it just for you?

22 A. I haven't figured that one out yet, sir.

23 Q. Would the amount just for you be less than half of
24 that?

25 A. Possibly. I do not know, sir.

1 Q. Well, do you think you eat more than anyone else in the
2 family?

3 A. I would -- before I could answer that question, I want
4 to -- I would like to try to figure that out.

5 Q. On page six you say that you spend about \$75 a month
6 for the children, correct?

7 A. At least, sir.

8 Q. Okay. And the clothing for yourself is a hundred
9 dollars a month?

10 A. Fair to say.

11 Q. And --

12 A. Give or take, sir.

13 Q. If you get a job with the fire department, are you
14 going to wear uniforms? Is that correct?

15 A. Yes, sir.

16 Q. And do you have to buy your uniforms?

17 A. No, sir.

18 Q. They provide the uniforms?

19 A. To my knowledge, that's how it works. That's how it
20 works with Rural/Metro.

21 Q. Okay. So you won't have to buy uniforms or special
22 work clothes yourself? That will be provided, correct?

23 A. Correct.

24 Q. And with respect to car insurance, do you actually know
25 how much insurance would be for your car if you insured it

1 separately?

2 A. I don't fully know, sir.

3 Q. Okay. So you just guessed at what that premium would
4 be?

5 A. Uh-huh. And, again, I went off -- I've been doing --
6 I'm trained with the relief center --

7 Q. Ma'am, please just answer --

8 A. -- and I went off a lot of what my training was in
9 filling some of these out in projecting what would be --

10 MR. COOK: Your Honor, I move to strike as
11 nonresponsive.

12 THE COURT: Overruled.

13 Q. (BY MR. COOK) Did you call -- well, do you have your
14 auto insurance with USAA?

15 A. Yes, sir.

16 Q. Did you call them for an estimate?

17 A. No, sir.

18 Q. So you don't know what the premium would actually be
19 for you, correct?

20 A. Not actually, sir. Yes.

21 Q. Okay. And you say here gas and oil of 200 a month.
22 How many miles do you drive monthly?

23 A. Yes, sir. I -- I at least spend 200. I'm not sure on
24 the total mileage, sir.

25 Q. Do you drive 2,000 miles a month?

1 A. I don't think so, but I know I do spend around that.

2 Q. So have you been charging that since August?

3 A. Yes, sir.

4 Q. So if we looked on your credit card bills, they would
5 show charges of 200 a month for gas?

6 A. Give or take.

7 Q. How much did Dr. Lara charge?

8 A. Five hundred was the total amount I paid to him.

9 Q. And you'd agree with me that the items on page six
10 under section F, items 1, 2, and 3 are all expenses related to
11 the children?

12 A. Yes, sir.

13 Q. Do you actually give -- do the children actually go to
14 church every week with you?

15 A. And that again was for the full family --

16 Q. Okay. Please --

17 A. -- estimate here.

18 Q. -- just my question.

19 A. I am in school, actually, sir, on Sundays, so I cannot
20 attend church while I'm in school.

21 Q. Okay. So what have you been paying the church
22 yourself?

23 A. Right now, nothing --

24 Q. Okay.

25 A. -- because I am in school.

1 Q. When is the last time you actually gave money to the
2 church?

3 A. Prior to him cutting off.

4 Q. Okay.

5 A. So last time I went prior to --

6 Q. Last July?

7 A. -- being cut off.

8 Q. Okay. It says "barber and beauty shop." Have you
9 actually been paying \$50 a month for the barber and beauty shop?

10 A. That is an average, sir.

11 Q. Okay. And it's got recreation/entertainment for
12 yourself, item 9. Have you been paying 100 a month for
13 recreation and entertainment?

14 A. That is an average, sir.

15 Q. And children's allowance. Have you actually been
16 giving them an allowance?

17 A. Not since he cut me off, sir.

18 Q. Has their father been giving them an allowance?

19 A. Yes.

20 Q. Do you think you should both give them an allowance?

21 A. It depends if they're doing stuff at my house with me
22 in the future and if they're doing stuff at his house with him in
23 the future. Yes.

24 Q. And it says also "union and professional dues." Are
25 you paying any union or professional dues?

1 A. If I'm taking -- I have to take continuing education
2 classes, and I do have to pay at times those. And again that's
3 an average because there are dues and classes I do have to pay
4 for at times.

5 Q. When was the last time you did that?

6 A. I don't recall, but I have done it, sir. It's just
7 something I can't think of right now.

8 Q. And you also list alcohol at \$50 a month, correct?

9 A. Yes.

10 Q. And husband testified that back in 2012 he had a
11 discussion with you about spending 200 a month on alcohol for
12 wine?

13 A. Yes, sir.

14 Q. Did you have that discussion with him?

15 A. It was actually my idea to do a budget for the family --

16 Q. Please (indiscernible - simultaneous speaking) --

17 COURT REPORTER: You're both talking. I can't take
18 both down.

19 MR. COOK: Move to strike. Nonresponsive.

20 THE COURT: I think that was responsive.

21 MR. COOK: No, Your Honor. I asked a yes-or-no
22 question, did she have a discussion with him. Yes or no. That
23 was my question.

24 THE WITNESS: And I answered, sir, yes.

25 Q. (BY MR. COOK) So you did. And is the number that he

1 spoke of correct? The number that he expressed concern about was
2 \$200 a month. Is that number correct?

3 A. Because of the amount of entertaining we did at the
4 time, it is correct, sir.

5 MR. COOK: Okay. So the answer is correct, correct.
6 Thank you.

7 I have no further questions, but I do have some
8 redirect with my client.

9 THE COURT: Do you have any redirect?

10 MS. BOYTE HENDERSON: I do, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. BOYTE HENDERSON:

13 Q. Miss Barron, I'm going to mark an Exhibit Number 9.
14 It's this one. It's my only copy.

15 MR. COOK: No. I object as not having previously been
16 disclosed.

17 MS. BOYTE HENDERSON: You can't object to me marking
18 it.

19 (Whereupon, Petitioner's Exhibit Number 9 was marked
20 for identification.)

21 MS. BOYTE HENDERSON: Thank you.

22 Q. (BY MS. BOYTE HENDERSON) Mrs. Barron, I'm going to
23 show you what's been marked as Petitioner's Exhibit Number 9.
24 This is a letter from your husband's former attorney to myself
25 four days before Christmas last year; is that correct?

1 A. Yes.

2 Q. And did you see a copy of that letter at the time it
3 was delivered to our office or shortly thereafter?

4 A. Yes.

5 Q. And that's the letter in which Miss Sardinias originally
6 suggested the idea of you having an evaluation meeting and
7 treatment?

8 MR. COOK: Objection, Your Honor. Beyond the scope of
9 cross-examination. I didn't ask anything about this letter or
10 any correspondence from Miss Ramirez and opposing counsel.

11 MS. BOYTE HENDERSON: Actually, Mr. Cook asked several
12 questions about the evaluation with Dr. Lara and why it was that
13 her husband wasn't invited to participate in the evaluation.

14 THE COURT: Objection is overruled. I think it's
15 within the scope. If it's not, I'll allow it anyway.

16 Go ahead.

17 Q. (BY MS. BOYTE HENDERSON) Is that what led to your
18 making the appointment eventually with Dr. Lara --

19 A. Yes.

20 Q. -- in part?

21 A. Yes. Yes.

22 Q. And nowhere in there does she request a forensic
23 evaluation be conducted of you, does it?

24 A. No, not at all.

25 MS. BOYTE HENDERSON: I'd ask for the admission of

1 Exhibit 9.

2 MR. COOK: Again objection. It's beyond the scope of
3 cross-examination.

4 THE COURT: Objection is overruled. I'll receive that.
5 (Whereupon, Petitioner's Exhibit Number 9 was admitted
6 into evidence.)

7 Q. (BY MS. BOYTE HENDERSON) Has -- have any of your
8 children ever taken any of your medication and ingested it?

9 A. No.

10 Q. Do you believe your children have ever been in danger
11 of ingesting any of your medication?

12 A. No, I don't.

13 Q. Do you leave the medication out where they can get to
14 it?

15 A. No. And when I do, like I have remembered, I have
16 called Paul right away and told him.

17 Q. So okay. That kind of -- that answer doesn't make any
18 sense. So has there ever been any occasion where you've left a
19 medication out where the children could get ahold of it ever?

20 A. Yes.

21 Q. Okay. And on -- when did that happen?

22 A. When -- I don't know the dates. It's when his pictures
23 were.

24 Q. Okay. And on that occasion what did you do?

25 A. What did I do? What do you mean what did I do?

1 Q. You said you had called him at some point because you
2 were --

3 A. Yeah. When I remembered I left it -- I didn't take it,
4 I left it there, "Paul, can you remove this? It's here." That
5 was a few weeks ago.

6 Q. Okay. Have you looked at the photo -- the -- the log
7 that he prepared that he testified from about you leaving
8 medications out?

9 A. Yes.

10 Q. What kind of medications did he have pictures of you
11 leaving out?

12 A. There was -- they were hard to see, first of all. I
13 saw supplements, like protein powder, I thought, and -- and
14 AMIN.O. Energy workout drinks, but they weren't -- they were in a
15 powder, and they were -- I did see my Adderall bottle, I think,
16 in one of the pictures.

17 Q. Do you remember leaving your Adderall bottle in the
18 position that he depicted it in the photograph?

19 A. It would have been in -- I couldn't really make out the
20 photograph that well, but it would have been on my vanity. I --
21 I don't recall.

22 Q. Do you believe you leave your medications out in an
23 inappropriate or unsafe manner for your children?

24 A. No.

25 Q. What was the discussion that you were going to testify

1 that you had with your husband with regard to the \$200 alcohol
2 expense in 2013?

3 A. We entertained a lot then. We've always had barbecues
4 and people over for dinner, and he was consuming, just as I was,
5 on a regular -- having people over for dinner. We did spend more
6 in alcohol then.

7 We don't enter -- we don't entertain as much now. I am
8 in school full-time. We -- it's just -- it's night and day with
9 our lifestyle changes back then.

10 MS. BOYTE HENDERSON: Okay. That's all I have.

11 THE COURT: Do you have any follow-up, Mr. Cook?

12 MR. COOK: Not with this witness, Your Honor. I would
13 just call Major Barron.

14 THE COURT: You may step down.

15 Did you have any other witnesses?

16 MS. BOYTE HENDERSON: No. Thank you, Your Honor.

17 THE COURT: There's a --

18 MS. BOYTE HENDERSON: I'm sorry?

19 THE COURT: That's not a witness in the back of the
20 courtroom?

21 MS. BOYTE HENDERSON: Not for today, no.

22 THE COURT: Okay.

23 PAUL ROGER BARRON,
24 called as a witness in rebuttal, having been previously duly
25 sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. COOK:

Q. Can you hear me, sir?

A. Yes, sir.

Q. Sir, do you take your children to school as well as
mother?

A. Yes.

Q. Do your parents sometimes take the children to school?

A. Yes.

Q. Do you pick up your children at school?

A. Sometimes.

Q. And do your parents pick up the children at school?

A. Yes.

Q. Your wife testified that you're gone at least once a
month for a week for fleet support. Do you recall that?

A. Yes, I do recall her saying that.

Q. Okay. How long are you actually gone for fleet
support?

A. A typical trip leaves on Sunday afternoon/evening. In
the past, I've waited until she comes back from the fire academy.
And typically I'm back Thursday afternoon.

Q. And how many months a year does that happen?

A. In the past three years, about six to seven months.

Q. Okay. So it's not every month?

A. No.

1 Q. And she says you typically go to Hawaii and Okinawa and
2 places like that. Is that true?

3 A. I have gone there in the past; however, the frequencies
4 of those longer-range trips has declined due to my current job as
5 the division head.

6 Q. And are you in line for a change of position presently?

7 A. Yes. I'm told to expect orders remaining on Marine
8 Corps Air Station Yuma. I'm expecting --

9 MS. BOYTE HENDERSON: Objection. Hearsay.

10 MR. COOK: He gets to testify about his own job,
11 Your Honor.

12 THE COURT: Overruled.

13 Q. (BY MR. COOK) Go ahead.

14 A. It's literally right across the street from the current
15 building I work in.

16 Q. Okay. And is that going to change your work hours?

17 A. Yes.

18 Q. And how will it change them? Tell the judge.

19 A. It will dramatically reduce the amount of time away
20 from home, and it will reduce the amount of time every day that
21 I'm at work.

22 Q. Is that going to be more like an 8:00 to 5:00 job?

23 A. Yes.

24 Q. And your wife testified about you having more parenting
25 time. What was the cause for increased parenting time that you

1 had in the last year?

2 A. I just want to clarify your question. As far as
3 parenting time, you're talking about interact with the children,
4 taking them to school, stuff like that?

5 Q. Yes. All the things you do for the kids, acting as a
6 parent.

7 A. That really didn't begin -- well, last summer or when
8 we started talking about filing. A real wake-up call was when in
9 two thousand and --

10 MS. BOYTE HENDERSON: Objection. Nonresponsive.

11 THE WITNESS: Okay. It started --

12 Q. (BY MR. COOK) When -- when did it start, sir?

13 A. It started 2013 through 2014 school year.

14 Q. What was the cause of the start?

15 A. I was receiving e-mails from the school regarding
16 excessive tardies and that, if the tardies were not curbed, there
17 was a potential for the school to contact child services.

18 Q. Okay. Now, is this the school where both parents have
19 access to the school records?

20 A. Yes.

21 Q. Okay. So any school records with respect to the
22 children's tardies are equally available to your wife as to you?

23 A. Yes. But I'm not sure they keep them after the current
24 school year.

25 Q. Okay. Your wife testified that you'd given her \$200, I

1 think, on each of two occasions back in September and October.

2 Is that true?

3 A. Yes.

4 Q. Did you provide your wife a list of counselors who
5 would have done an assessment for free?

6 A. Yes.

7 Q. They were covered by your insurance?

8 A. Yes.

9 Q. Okay. She complained that you haven't been
10 communicating with her, for example, about communions. Let's
11 talk about communion. Was there a date set for your daughter's
12 communion? Yes or no?

13 A. There was a date set.

14 Q. Who set the date?

15 A. The church.

16 Q. Did they communicate with you about setting the date,
17 or somebody just send you a notice about a date?

18 A. They sent me a brief notice; and, because it was when I
19 signed them up last summer, it was a long way in the future. So
20 I -- I knew it was between the end of March and the end of April
21 but --

22 Q. Of what year?

23 A. Of this year.

24 Q. Okay. And what did you do with the note?

25 A. I think I just threw it out.

1 Q. Okay. So you didn't say anything to anybody about the
2 note?

3 A. No. I communicated to Shelly.

4 MS. BOYTE HENDERSON: Objection. Nonresponsive.

5 THE WITNESS: I did communicate.

6 MS. BOYTE HENDERSON: Objection. Nonresponsive. Move
7 to strike.

8 Q. (BY MR. COOK) Did you talk to your wife about it?

9 MS. BOYTE HENDERSON: May I have a ruling?

10 THE COURT: I think he basically said --

11 MR. COOK: I moved on.

12 THE COURT: -- Yes.

13 Q. (BY MR. COOK) Did you talk to your wife about it?

14 A. Yes.

15 Q. What did you tell her?

16 A. That there was going to be a first communion in the
17 spring.

18 Q. Did you ever have -- did you try to keep it a secret
19 from her?

20 A. No.

21 Q. Has the communion actually occurred yet?

22 A. Nope.

23 Q. When is it supposed to happen?

24 A. I think the first Saturday of May. Shelly rescheduled
25 it. I did not oppose so that she could attend.

1 Q. Okay. So that's fine with you?

2 A. Yeah. I want my -- I want the mother of my children to
3 be at the first communion.

4 Q. Okay. Let me go into this again. Have you ever made
5 any complaint that when Shelly is not drinking that she is not a
6 good mom? Have you ever said that to anybody?

7 A. No. When she's -- when she's not drinking --

8 MS. BOYTE HENDERSON: Objection. Beyond the scope.

9 THE COURT: Overruled.

10 THE WITNESS: When she's not drinking as much, she's a
11 much better parent.

12 Q. (BY MR. COOK) Okay. And at this point what you want
13 to have is an assessment where whoever does the assessment has
14 complete input before they make a conclusion about whether or not
15 there's an issue or potential issue; is that correct?

16 A. Correct.

17 Q. Okay. You're not saying that she should never be able
18 to drink again? You've not said that, have you?

19 A. No.

20 Q. You've never said that you should get to follow her to
21 bars and see if she's drinking too much, have you?

22 A. No.

23 Q. You're asking for a commitment by both parents that
24 they're not going to do this until this issue is resolved; is
25 that correct?

1 A. Yes, sir.

2 Q. And if there -- it turns out there's an issue, you want
3 the issue dealt with; is that correct?

4 A. Yes.

5 Q. Do you think it's unreasonable to want that?

6 A. No, sir. What's good for the goose is good for the
7 gander.

8 Q. And because you're making the same commitment yourself,
9 are you not?

10 A. Yes. Yes, sir.

11 Q. And Shelly has testified now that there was at least
12 one occasion where she called you to say she left her medication
13 out, correct?

14 A. There's one occasion.

15 Q. And have there been other occasions --

16 A. No.

17 Q. -- when she's left the medication out other places?

18 A. Yes. She has left the medications and supplements out
19 multiple times.

20 Q. Okay. And has it only been on her vanity, or has it
21 been other places?

22 A. Other places.

23 Q. What other places?

24 A. I think I can recall an island counter as well as a --

25 Q. Is that in the kitchen?

1 A. Yes, sir.

2 Q. Okay.

3 A. And then also on what -- it's a little wood box I made
4 that's used as a bench for the piano in my bedroom.

5 Q. Okay. And Shelly testified that the kids frequently
6 make the sign of the cross over you when you're sleeping. Have
7 you ever heard that before?

8 A. Nope.

9 Q. Is this the first time you've ever heard that?

10 A. Yes.

11 Q. Okay. And do they typically make the sign of the cross
12 over their mother when she's sleeping?

13 A. I -- I've never -- I can't recall seeing them make the
14 sign of the cross over her another time.

15 Q. Okay. This was the only occasion that you know of?

16 A. The -- the incident --

17 Q. That you testified about earlier?

18 A. Correct.

19 Q. When she was passed out?

20 A. Correct.

21 MR. COOK: Okay. Nothing further.

22 Can we have five minutes each for argument, Your Honor?

23 THE COURT: Sure.

24 MS. BOYTE HENDERSON: I have a couple of questions.

25 THE COURT: Yes. Go ahead and proceed.

CROSS-EXAMINATION

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BY MS. BOYTE HENDERSON:

Q. You have not made any disclosure about this new change to your job or position or hours prior to testifying on rebuttal right now, have you?

A. As --

Q. That's a yes-or-no question, sir. Do you under -- do you understand the question?

A. No.

Q. Okay. "Disclosure," when I say that, I mean has anybody on your team told anybody on our team that your job was changing and that your hours were not going to be the same as you testified that they were in your deposition?

A. I've discussed multiple times with Shelly about the job change.

Q. When was that?

A. Since last fall, I've been trying -- I've been communicating --

Q. When did you have the -- when did you have the discussion with Shelly that your job was going to have the hours you've testified to right now?

A. The first time I talked to her was probably last fall, continuing -- I think the last time we talked about the potential to move to the -- the squadron across the street -- I think the last time we talked about it was either last week or this week,

1 so it's been an ongoing conversation.

2 Q. So if Shelly were to get on the stand and testify that
3 she had no knowledge of any of this, she would be lying?

4 A. Whether she -- she heard me when I was talking, I don't
5 know, but I have definitely communicated to her about a upcoming
6 move to VMX-22.

7 Q. Let me ask you, when you communicate something, if you
8 just say it in a room with someone and they don't hear it, do you
9 feel you've communicated it? Is that what you're saying?

10 A. Depending on how well she pays attention. I mean,
11 I can't guarantee that she's going to remember all the
12 conversations.

13 Q. Well, your children's school has never been contacted --
14 or none of your children's schools have ever contacted child
15 services, have they?

16 A. No.

17 Q. You were asked in your deposition to provide records
18 about the tardies that you said you had in your possession. Do
19 you remember that?

20 A. I don't recall exactly that conversation, but if it's
21 in the deposition, I believe it happened.

22 Q. And do you, in fact, have them in your possession?

23 A. I do have a record of tardies electronically.

24 Q. And why is it that you have not provided that?

25 A. I'm not sure of all the legal process. It could be an

1 oversight if I did not give it to my --

2 Q. Have you seen the judge's order that required you to
3 provide the materials agreed upon in your deposition by Wednesday
4 of last week?

5 A. I have seen that; however, my understanding is that I
6 give my materials to my lawyer and then they come to you via a
7 process which I am not very familiar with. I can provide that
8 list of tardies from 2013 electronically.

9 Q. So in your deposition also you were asked the following
10 question. This is on, for the record, page 33:

11 "Just to make sure I'm understanding your answer,
12 you're gone for a week a month every month except for four months
13 out of the year?

14 "Answer: Correct. And when I say I'm gone for a week,
15 it's not typically a full week."

16 Was that testimony truthful at the time?

17 A. It was truthful. It's an approximate -- approximation.

18 MS. BOYTE HENDERSON: Okay. That's all I have.

19 THE WITNESS: Four months --

20 MS. BOYTE HENDERSON: You've answered the question.

21 Thank you.

22 That's all I have.

23 THE COURT: Okay. You may step down, sir.

24 THE WITNESS: Yes, sir.

25 MR. COOK: Thank you, Your Honor. Can we argue?

1 THE COURT: Yes. Go ahead and argue at this time.

2 MR. COOK: Thank you, Your Honor.

3 THE COURT: I'm going to let you go first because
4 Miss Boyte's already used up more than half the time.

5 MR. COOK: I'll be quick, Your Honor.

6 I've given you the position statement. I think
7 mother's testimony --

8 THE COURT: Sorry to interrupt you. One thing I -- I'm
9 not sure on. Both -- neither party has any specific
10 recommendation for parenting time after the petitioner returns to
11 school [sic]? This is something you're intending to work out?

12 MR. COOK: Well, we asked five/two/two/five once she's
13 finished with school, and so that's what we asked for in our
14 position statement, Your Honor. But we're amenable to anything
15 else that works out that's going to be essentially a 50/50
16 parenting schedule.

17 THE COURT: And -- and what's the mother's position
18 when she's goes back to work?

19 MS. BOYTE HENDERSON: We -- we haven't taken a
20 particular position because we don't know what the schedules are
21 going to be, and it seems to make sense to do that once we know
22 where everyone's going to be.

23 THE COURT: Okay. Okay. Go ahead, Mr. Cook.

24 MR. COOK: Thank you, Your Honor.

25 First, with respect to the concerns father has

1 expressed about drinking, I think mother's testimony essentially
2 corroborated what father had to say and some of the concerns.
3 For example, he doesn't know if it's because of her ADHD or
4 whatever, but there are occasions when she leaves her medications
5 out, and even mother agreed on one occasion she called father to
6 say, "I left my meds out." So at least she seems to confirm what
7 he -- he testified about from his journal.

8 And she seemed to confirm what he testified about from
9 his -- about the drinking issues, although she doesn't think it's
10 a problem. And father just thinks when you're not going to have
11 two parents in the household anymore, you're going to have one
12 parent, you know, it's pretty important to be alert and awake and
13 not be drinking.

14 And so I think if there's an assessment that's done
15 where -- I mean, no -- I don't know what anybody said to
16 Dr. Lara, and -- but I'm pretty sure he didn't have this
17 information, obviously, so -- with respect to that.

18 We think that there's no reason to think that mother
19 shouldn't be fully employable when she finishes the fire academy.
20 The City of Phoenix publishes what they're currently paying on
21 their employment website, and we've given -- that exhibit's in
22 evidence. It's thirty-four seventy for an EMT paramedic, and
23 that's what her training is. She teaches EMT training and all
24 that. So, I mean, I -- I don't think it's reasonable to think
25 that she won't get a job or shouldn't be expected to get a job,

1 but she certainly shouldn't have free rein to decide to get a job
2 maybe later sometime and do nothing.

3 So what we proposed is, I think, reasonable based upon
4 the circumstances. And, you know, mother testified on -- under
5 cross-examination, you know, a substantial portion of the
6 expenses that she lists in her AFI include expenses for the
7 entire family, when they're going to be split. Father's going to
8 have a separate household. For example, the food bill would be
9 one example. So, plainly, her expense statement is inflated.
10 And spousal maintenance is for her, not for the kids. It's child
11 support for the children, and that takes care of the children's
12 needs.

13 There's no disagreement about the marital residence.

14 Father's going to continue to pay the insurance for the
15 children, and that's on his pay stub. I think it's \$38 a month
16 for that, so he will be paying that.

17 Father's been paying the preschool, but there isn't any
18 other child care, and he will continue to pay that. Mother says
19 she wants to, but there's no reason father shouldn't continue to
20 pay it.

21 They've agreed on the vehicles they're going to have.

22 Father's proposal for spousal maintenance, which, you
23 know, this is a relatively short marriage, Your Honor -- we're
24 talking about 11 years, basically -- and he's offering to give
25 her \$3,000 a month for -- until she gets a job, and then she's

1 going to have that plus another 1,100 that he's proposing to give
2 her. That would be about \$4,600 a month just for her own
3 support, and -- and that's, plainly, enough, if you look at her
4 AFI, to meet all -- all the needs that she has expressed in her
5 AFI. And, plus, she's going to get child support on top of that.
6 And most of these fire jobs, as you know, are like two days a
7 week most of the time, and firemen often have other jobs and
8 things they do. And mother's testified about all the other
9 things she can do, including selling real estate and managing
10 stores and all that. She's plainly employable.

11 I don't disagree that she's followed father. I mean,
12 that's how it is. You choose to marry somebody in the military,
13 that's part of the program that you buy into, so that's
14 understandable. But it shouldn't be a financial milk run either.
15 I mean, reasonable needs is one thing. A financial milk run is
16 something else.

17 Should father have given her more money? You could
18 argue, but, then again, he was also paying all of her expenses,
19 including life insurance and life insurance for him that's for
20 her benefit and things like that, or benefit of their children,
21 at least, his family's benefit. So I don't see that he's been
22 unreasonable in that regard. And she's still got money left over
23 from the money that she took, and she seems to be able to meet
24 her needs.

25 And father proposes that, you know, let the attorneys'

1 fees issue abide trial. Maybe it would be appropriate to make an
2 award then.

3 THE COURT: Let's give Miss Henderson a couple minutes
4 to argue.

5 MR. COOK: Thank you.

6 MS. BOYTE HENDERSON: First of all, I have an objection
7 to this ongoing reference to my client taking money. There was a
8 community account. It was divided. She got her half and was
9 told that she was expected to live on her half and pay
10 anything -- any out-of-pocket expenses with -- with her share of
11 the community money while, of course, father retained his
12 \$10,000-a-month income to do as he pleased with. So she hasn't
13 taken anything. She didn't do anything improper, and I don't
14 think it should be phrased in that way.

15 You know, it's very easy to say, well, father thinks
16 there's a problem and wants this provision in the parenting plan
17 that says nobody drinks. Why in the world won't everybody agree
18 to this? And the answer is quite simple, because my client
19 doesn't want to have any problems. If there were a problem, if
20 there were any objective indication even to me that there was a
21 problem, I would suggest my client address it. And when the
22 allegation was made, my client addressed the problem. In the
23 manner that was requested that it be addressed, she addressed the
24 problem.

25 What -- what is being requested is an opening for

1 somebody to come in and nitpick; and, oh, there's this
2 allegation; or the children said you were drinking that night;
3 or, oh, this happened here. And if there were any indication
4 that there were a problem going on here, that would be an
5 appropriate risk to take. But to ask my client to subject
6 herself to the continuing monitoring and grilling the children
7 and supervision of her husband, where clearly there's been an
8 issue of that in the relationship, unless there's a reason to
9 think that there's a real problem here, there -- that's -- it's
10 just not reasonable to do that.

11 Obviously, these are two people who have consumed
12 alcohol in their marriage. There's no evidence that either one
13 of them has done so in an inappropriate way. There's no evidence
14 that any of this has affected the children in any way. I mean,
15 the best we have is that my client supposedly leaves her
16 medication out. There's no reason to believe that that has
17 anything to do with -- if it happened, with alcohol consumption.
18 At best, it's carelessness. And by "at best," I mean, you know,
19 the most persuasive bit of that evidence would be that it is
20 carelessness. And the children have never actually been affected
21 by it in any way.

22 And then this -- this idea that my client came home and
23 fell asleep and the kids did the sign of a cross, as she
24 testified, that's something that they do all the time. There's
25 no evidence here that the children are affected by this, that

1 their parenting has been affected.

2 And the tardies simply are explained, I think, by my
3 client in terms of the distance between school. And now that
4 school is right next-door, there's no tardies.

5 THE COURT: Okay. Well, I don't want to get in trouble
6 with the clerk's office.

7 MS. BOYTE HENDERSON: Okay.

8 THE COURT: So we're going to -- I'm going to take the
9 issues under advisement and issue a written order.

10 MS. BOYTE HENDERSON: Thank you, Your Honor.

11 MR. COOK: Thank you, Your Honor.

12 (Whereupon, the proceedings concluded.)
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

In re the Marriage of:)	Case No.: S1400-DO-2015-01132
)	
SHELLY RAE BARRON,)	
Petitioner,)	
	)	TEMPORARY ORDERS
and)	
	)	Commissioner Two
PAUL ROGER BARRON,)	
Respondent.	)	(Under Advisement 2/26/16)
)	
)	
)	

IT HAVING APPEARED TO THE COURT following the hearing upon the petition and motion for temporary orders filed by the parties held on Friday, February 26, 2016; and the parties appeared with counsel; and the court considered all testimony and other evidence presented; and the court took all issues under advisement at the conclusion of the hearing; and for good cause shown; and

THE COURT FINDS, CONCLUDES AND ORDERS AS FOLLOWS:

1. It is in the best interests of the children that the parties be awarded joint legal decision-making; and the parties agreed to joint legal decision-making. The parties also agreed to the equal parenting time which will remain

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1 in effect until the petitioner completes her training and
2 obtains employment.

3 2. Both parties are likely to provide meaningful, frequent and
4 continuing contact between the children and the other
5 parent.

6 3. The court has considered all provisions of ARS 25-403.

7 4. The parties have a commendable and adequate ability to
8 communicate and act reasonably thereby making joint legal
9 decision-making feasible and desirable.

10 5. There has been no domestic violence.

11 6. There has been no adequate evidence of alcohol or other
12 substance abuse which would adversely affect legal
13 decision-making or parenting time.

14 7. The past, present and future interrelationship between the
15 parents and children facilitates joint legal decision-
16 making.

17 8. The children are adjusted to home, school and community
18 with joint legal decision-making.

19 9. The mental and physical health of the parents and children
20 are consistent with joint legal decision-making.

21 10. All of the above findings regarding joint legal decision-
22 making are also applicable and result in the parenting time
23 hereafter ordered.

24 10. Effective March 1, 2016, the child support obligation of
25 the respondent shall be \$523.00 per month payable by
26 assignment of earnings. The court hereby incorporates the

1 attached child support worksheet which was calculated by
2 the court and was determined consistent with the Arizona
3 Child Support Guidelines. Uncovered or uninsured health
4 expenses of the children are divided and the tax exemptions
5 are allocated as set forth in the worksheet.

6 The asterisks at the bottom of the worksheet explain the
7 referenced calculations.

8 11. The parties agreed that the petitioner qualifies for
9 temporary spousal maintenance; but disagreed to the amounts
10 applicable before and after the petitioner becomes
11 employed. Quite frankly, insufficient evidence was
12 presented by either party to persuade the court the other
13 party's amount should not be adopted. The respondent's AFI
14 did not reflect his prospective financial circumstances
15 when he leaves the community residence. The petitioner's
16 AFI was inflated. Since adopting either party's support
17 amounts was plausible, the court elects to average the
18 values; that is, until the petitioner obtains employment
19 consistent with her EMT and Firefighter training, and
20 effective March 1, 2016, the respondent shall pay \$3,250
21 per month which shall decrease to \$1,400 per month when the
22 petitioner becomes so employed.

23 12. The petitioner is ordered to exercise diligence in
24 seeking employment consistent with her training.

25 13. The court is not structuring a division of parenting time
26 effective when the petitioner becomes employed since the

1 working shifts of a firefighter or EMT are so variable. If
2 the parties cannot agree to parenting time, then the issue
3 can be submitted informally. The court has no difficulty
4 with the parties agreeing to equal parenting time.
5 However, the court believes equal time sharing is more
6 appropriate for timeshares than for children.

7 14. Until the petitioner becomes employed, the court believes
8 the agreed parenting time is the father having parenting
9 time from noon on Thursday until Sunday at 7:00 P.M.; and
10 the mother would have the remainder of the week.

11 15. There is insufficient evidence of alcohol abuse by the
12 petitioner to require an order that neither party consume
13 any alcohol while having parenting time. If this was
14 really a problem, one would expect corroboration or
15 objective evidence such as law enforcement contact or
16 neutral witness testimony of abuse.

17 16. The court does find from the testimony of the respondent
18 good cause for an evaluation of the petitioner under Rule
19 63 to determine if any alcohol problem should affect her
20 parenting circumstances. The respondent may seek an
21 evaluation of the petitioner under Rule 63 by his selected
22 qualified expert at his expense and both parties should be
23 able to present information to the evaluator. The
24 petitioner should also have the right to present expert
25 testimony.

26

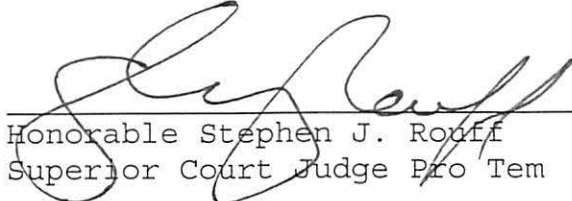
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17. Both parties shall keep any medications or other substances harmful to children in a locked container. Neither party shall be impaired while exercising parenting time; and shall not drive a vehicle containing the children after consuming any alcohol.

18. All other issues including the request by the petitioner for attorney fees is reserved for future ruling.

19. Counsel for the petitioner shall prepare the order.

DATED this 29th day of February, 2016



Honorable Stephen J. Rouff
Superior Court Judge Pro Tem

Copies of the foregoing placed/mailed
In the boxes this 3rd day of ~~February~~, 2016, to:
March

✓ Mary Boyte Henderson
Attorney for Petitioner

S. Alan Cook
Attorney for Respondent
4646 E. Greenway Road
Suite 100
Phoenix, AZ 85032

LYNN FAZZ, Clerk of the Superior Court
By MAURINE BENBOW
Deputy Clerk



PARENT'S CHILD SUPPORT GUIDELINE WORKSHEET

Parties: In Re Marriage Barron Case No. DC - 2015 - 1132

	<u>FATHER</u>	<u>MOTHER</u>	<u>COMBINED</u>
<u>GROSS MONTHLY INCOME</u>	* <u>10,009</u>	<u>326</u>	<u>10,335</u>
Court Ordered Spousal Support	<u>- 3,250</u>	<u>+ 3,250</u>	
Child Support			
Support of Other Children			
<u>ADJUSTED GROSS INCOME</u>	<u>6,759</u>	<u>3,576</u>	<u>10,335</u>
<u>BASIC CHILD SUPPORT FOR CHILD(REN)</u>			<u>1,990</u>
<u>ADJUSTMENTS</u>			
1. Insurance	<u>** 26</u>		<u>26</u>
2. Child Care or Child Care with Tax Credit		<u>360</u>	<u>360</u>
3. Education Expenses/Extraordinary Child			
4. Older Child Adjustment			
<u>TOTAL CHILD SUPPORT</u>			<u>2,376</u>
<u>PERCENTAGE: SALARY/TOTAL INCOME</u>	<u>65 %</u>	<u>35 %</u>	
<small>(Same % for payment of uncovered medical expenses)</small>			
<u>PARENTAL SUPPORT OBLIGATION</u>	<u>1,544</u>	<u>832</u>	
Visitation Adjustment			
Medical Insurance Adjustment	<u>- 26</u>	<u>- 360</u>	
Non-Custodial Child Care			
<u>PRELIMINARY CHILD SUPPORT</u>	<u>1,518</u>	<u>472</u>	
<u>SELF-SUPPORT RESERVE TEST</u>	Adjusted Gross Income _____ - \$903.00 = _____		
<u>CHILD SUPPORT TO BE PAID BY:</u>	<u>** \$ 523</u>		

TAX DEDUCTIONS: oldest and youngest child - Responder/Father; middle child - Petitioner/Mother

DEVIATION: Yes No _____

OTHER: * R-3, 1/2016 LES, rounded
** 34.68 x .75 = 26, rounded

*** Para. 12: unequal incomes & Equal Parenting Time: (1,518 - 472) ÷ 2 =

Stephen J. Rouff STEPHEN J. ROUFF 523

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LYNN FAZZ
CLERK OF SUPERIOR COURT
YUMA ARIZONA 85364

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

9	In re the Marriage of:	)	Case No.: S1400-DO-2015-01132
)	
10	SHELLY RAE BARRON,)	
	Petitioner,)	
11		)	FINDINGS, CONCLUSIONS AND
	and	)	ORDERS
12)	
	PAUL ROGER BARRON,	)	Commissioner Two
13	Respondent.)	
		)	(Under Advisement 11/30/16)
14)	
15)	

IT HAVING APPEARED TO THE COURT following trial held on September 4, 2016, and November 10, 2016, and concluded on November 16, 2016; and the parties appeared with counsel; and the court considered all testimony and other evidence presented; and the court took all issues under advisement On November 30, 2016, following the filing of affidavits by the parties regarding respective claims for attorney fees and costs; and for good cause shown.

THE COURT FINDS, CONCLUDES AND ORDERS AS FOLLOWS:

- 1 1. It is in the best interests of the children that the
2 parties be awarded joint legal decision-making; and the
3 parties agreed to joint legal decision-making.
- 4 2. Both parties are likely to provide meaningful, frequent and
5 continuing contact between the children and the other
6 parent.
- 7 3. The court has considered all provisions of ARS 25-403 and
8 ARS 25-403.01.
- 9 4. The parties have a commendable and adequate ability to
10 communicate and act reasonably thereby making joint legal
11 decision-making feasible and desirable.
- 12 5. There has been no domestic violence.
- 13 6. There has been no adequate evidence of alcohol or other
14 substance abuse which would adversely affect legal
15 decision-making or parenting time.
- 16 7. The past, present and future interrelationship between the
17 parents and children facilitates joint legal decision-
18 making.
- 19 8. The children are adjusted to home, school and community
20 with joint legal decision-making. Parental joint legal
21 decision-making has governed the children their entire
22 lives.
- 23 9. The mental and physical health of the parents and children
24 are consistent with joint legal decision-making.
- 25 10. The most difficult decision in this case is whether equal
26 parenting time is appropriate. The difficulty is the

1 emotional impact upon the parents, and not the effect upon
2 the children since the court feels the ensuing parenting
3 time division is in the best interests of the children.
4 The primary focus concerning parenting time is the best
5 interest of the children and not the parents. If the
6 interests of parents are more important than children, then
7 children, like timeshares, would always be equally time-
8 shared.

9 11. A totality of circumstances tip the scales in favor of
10 designation of the mother as primary residential parent.

11 A. The mother has been the primary care provider for the
12 children prior to this action. The children have
13 historically spent more time with the mother than the
14 father since their birth.

15 B. The children have not fully adjusted to equal parenting
16 time during the pendency of the temporary orders. The
17 court finds the children want and need to spend more time
18 with the mother.

19 C. The military duties of the father often make him
20 unavailable during his parenting time resulting in the
21 children spending too much time with the paternal
22 grandparents relative to time they could be with their
23 mother.

24 D. The children are girls who naturally will gravitate more
25 to the mother as they mature.
26

1 E. The experience during the temporary orders has been
2 unreasonable occasionally. The parties have insisted
3 upon equal reciprocal parenting time or other equal
4 benefit when addressing parenting time trades or other
5 concessions as the respective plans and activities of the
6 parents naturally change. The court finds the father has
7 been comparatively more unreasonable and inflexible than
8 the mother in this regard. In particular, the father has
9 placed his interest over the best interest of the
10 children in not allowing more frequent weekend parenting
11 time by the mother regardless of the strict terms of the
12 stipulated temporary order.

13 F. It is unlikely the parties will both reside in Yuma
14 during the minority of all the children. Significant
15 geographical separation of the parties precludes equal
16 parenting time. Changing equal parenting time now would
17 be less disruptive than in the future.

18 G. Children should have a primary home and bedroom where
19 special items like collections, posters and private
20 things are maintained as opposed to forcing children to
21 equally divide their time and things and clothes equally
22 between two homes.

23 H. A primary residence promotes stability and continuity for
24 children.

1 12. The mother should be designated the primary residential
2 parent. The court adopts the Mother's Proposed Parenting
3 Plan, Petitioner's Exhibit 1, with the following changes.

4 A. Paragraph III B is deleted, and the father shall have
5 thirty continuous days of parenting time during the
6 summer school break each year. The father shall
7 designate his thirty day period in writing by March 1st of
8 each year. If the father fails to timely designate his
9 thirty days, then the mother shall have the right to
10 designate in writing the father's continuous thirty day
11 period by designating before April 1st.

12 B. Paragraph III C 2 is deleted and the spring or Easter
13 break will be divided with the father having the entire
14 approximate nine day period in all years. The period
15 shall begin after school on the last day of school before
16 Easter and end on Easter Sunday at 7:00 p.m. The mother
17 shall have the weekends before and after this period if
18 the father's parenting time includes two weekends.

19 C. In the event the residences of the parties are separated
20 greater than 100 miles, the exchange of the children
21 during the Christmas vacation period shall be on December
22 26th.

23 D. Neither parent shall criticize the other parent in the
24 presence of the children. Each parent shall encourage
25 the children to have a healthy and meaningful
26 relationship with both parents.

1 E. Each parent shall be reasonable and flexible and
2 empathetic concerning the other parent. In any future
3 litigation concerning any modification of legal decision-
4 making, parenting time or other issues concerning the
5 children, the parent who is henceforth more reasonable,
6 flexible and empathetic will have a distinct advantage.

7 13. Effective December 1, 2016, the child support obligation
8 of the father shall be \$489.00 per month; and the child
9 support shall increase to \$775 per month on April 1, 2017.
10 The court hereby incorporates the attached two child
11 support worksheets which were calculated by the court and
12 determined consistent with the Arizona Child Support
13 Guidelines. Uncovered or uninsured health expenses of the
14 children are divided and the tax exemptions are allocated
15 as set forth in the worksheets.

16 14. The court finds the mother has not exercised diligent
17 efforts to obtain full-time employment. The mother has
18 been more motivated to spend time with the children. The
19 court cannot find that the mother should have already
20 obtained a full-time firefighter/EMT position with a
21 government employer or employer other than Rural Metro.
22 There is no evidence that the mother has avoided or not
23 reasonably sought employment with earnings similar to the
24 amount the father seeks to attribute to the mother.

25 15. The Guidelines contemplate full-time employment, and
26 sufficient time has passed for the mother to acquire such

1 employment. Consequently, the court attributes forty hours
2 of weekly employment with 10 hours at A.W.C. at \$26.50 per
3 hour and 30 hours at Rural Metro at \$9.60 per hour. This
4 results in weekly gross earnings of \$553 which is \$2,395
5 gross per month.

6
7 16. The parties agree that the petitioner qualifies for
8 spousal maintenance; but disagree to the amount. Both
9 parties urge a duration of four years.

10 17. Independent of the agreement for some spousal
11 maintenance, the court finds that the wife qualifies for an
12 award of spousal maintenance under sections A1 and A2 of
13 ARS 25-319. The wife cannot support herself in any
14 standard of living approaching the standard of the marriage
15 without spousal maintenance. The wife has no income
16 property or source of income other than her currently
17 insufficient earnings to provide for her support. The
18 husband can easily pay the spousal maintenance ordered by
19 the court.

20 18. The court has considered all provisions of ARS 25-319 B,
21 and the duration and amount of spousal maintenance
22 determined by the court is appropriate after considering
23 all said provisions. The most appropriate provisions
24 include the duration of the marriage, and the career
25 sacrifices of the wife caused by the six changes of
26 residence during the marriage due to the military career of

1 the husband. The wife also interrupted her career to birth
2 and raise three children. Given the education and
3 intelligence of the wife, it is reasonable to assume that
4 she could have acquired significant current earnings if she
5 was able to maintain a long-term relationship with an
6 employer without interruptions for significant changes of
7 residences and to raise young children.

8 19. The evidence demonstrates the husband is easily able to
9 pay the spousal maintenance ordered by the court.

10 20. The maintenance should be structured at the current level
11 until April 1, 2017, to enable time for the disposition of
12 the residence and for the wife to obtain more lucrative
13 employment.

14 21. The community residence is treated independently from the
15 division of other property. The property was not
16 appraised, so the court averages the values of the parties
17 for a fair market value of \$307,500. The principal owing at
18 the termination of the community was \$293,616 which results
19 in an equity of \$13,884. The mother shall have until April
20 1, 2017, to refinance or otherwise remove the liability of
21 the husband for the secured indebtedness for the residence
22 exclusive of taxes and impounds, and to pay the husband
23 \$6,942 for his half of the equity. If the wife fails to
24 timely refinance and pay the husband, the husband shall
25 have from April 1, 2017, to June 30, 2017, to refinance and
26 pay the wife under the same terms. If neither party timely

1 refinances, then the residence shall be listed on multiple
2 listing with a broker agreeable to the parties, and the net
3 sales proceeds shall be equally divided. The court
4 reserves jurisdiction to resolve any disputes and issue any
5 orders reasonably necessary to facilitate the refinancing
6 or sale of the residence.

7 22. The wife may reside in the residence until April 1, 2017,
8 unless she timely refinances and pays the husband; and in
9 such events, the wife shall own the residence as her
10 separate property. The wife will be responsible for the
11 monthly payments for the residence until April 1, 2017, and
12 thereafter if she timely refinances. If the wife does not
13 timely refinance, the husband shall have the right of
14 possession of the residence effective April 1, 2017, and he
15 shall be responsible for the monthly payments until the
16 residence is sold, or until he timely refinances and
17 thereafter. The court reserves jurisdiction to resolve any
18 disputes.

19 23. If either party desires, the above \$6.942 due after
20 refinancing shall be adjusted with each party receiving
21 credit for any principal reduction caused by any monthly
22 residence payments made by either party after September 1,
23 2015. The court is not considering the impound account as
24 an asset because it should correspond to an off-setting
25 liability.
26

1 24. The court concludes that Koelsch vs. Koelsch, 148 Ariz.
2 176, 713 P.2d 1234 (1986) is applicable to a military
3 retirement. The court is constrained to apply Koelsch in
4 the absence of any binding appellate authority to restrict
5 Koelsch to retirements other than military retirements.
6 Any limitation of Koelsch should come from a higher pay
7 grade. Applying Koelsch does not divide any military
8 retirement prior to the time of actual distribution of
9 payments and imposes no burden on the military or
10 administrator-payor. Koelsch only provides equitable
11 protection against dilution of the share of the
12 nonparticipant spouse for a unilateral decision by the
13 participant to continue active duty after a normal
14 retirement date. This is conceptually analogous to the
15 protection provided in In Re Marriage of Howell, 238 Ariz.
16 407.

17 25. Each party should be awarded half of the community
18 interest in any future monthly retirement of the husband
19 with the community interest calculated with a fraction with
20 the numerator being the months and fraction of a month from
21 the date of the marriage of January 3, 2004, until the
22 termination of the community on August 17, 2015. The court
23 finds the denominator should commence on February 13, 2003,
24 Block 66, AFADBD, Respondent's LES, Respondent's Exhibit 4,
25 and end on attaining twenty years of active service on
26 February 13, 2023, and extended only if the military

1 refuses to allow the husband to retire for reasons other
2 than an election by the husband.

3 26. The court does not find any arrearages in support for the
4 support ordered in the temporary orders. The dispute of
5 the parties is one of timing and the payment of the support
6 by the military near the end of a month. The court does
7 not make any finding that the husband is current or in
8 arrears at any given time. This problem can be resolved by
9 the stipulation suggested by counsel for the husband. In
10 the absence of a stipulation the issue should be resolved
11 at the end of the support period by the final payment by
12 the military after the period terminates.

13 27. If the parties elect to remain married until after
14 December 31, 2016, in order to file joint income tax
15 returns, any refunds or liabilities should be divided with
16 equal division for the portion attributable to the year
17 until August 17, 2016, and proportional division for the
18 remainder of the year; that is, .625 of any refund or
19 liability should be equally divided, and the remainder
20 should be divided according to the ratio of individual
21 gross incomes to combined gross income.

22 28. The court is not going to award an equalization judgment
23 to either party. The husband seeks a retroactive
24 accounting of most all joint or community debts from the
25 date of community termination including a significant
26 period of cohabitation of the community residence. The

1 husband's proposal is unfair due to the great disparity of
2 the respective incomes of the parties and the historical
3 role of the husband as primary economic provider. Also, in
4 fairness, implementing the husband's proposal would require
5 that the court make some equitable retroactive application
6 of the temporary support order to the termination of the
7 community. The court finds the financial benefits provided
8 by the husband to the wife prior to the effective date of
9 the temporary order satisfies any claim of retroactive
10 support arrears.

11 29. The Invesco accounts for the children shall continue to
12 be managed and held in trust for the children by the
13 parties as held and managed in the past. The Invesco
14 account #470 has been equally divided by stipulation of the
15 parties. The husband has no TSP account subject to
16 division, Item 3 on Petitioner's Exhibit 26. Item 10 of
17 Exhibit 26 has already been divided.

18 30. The remaining items of property are divided in kind
19 according to the "Party Awarded" column in Petitioner's
20 Exhibit 26. The vehicle values are resolved according to
21 the agreement of the parties in Respondent's Exhibit 31.
22 The furnishings are valued as set forth in Petitioner's
23 Exhibit 26.

24 31. The Wife is awarded her Roth account at a value of
25 \$42,358, the cash value of her life insurance at a value of
26

1 \$6,319 and furnishings at a value of \$5,275, for a total
2 value of \$53,952.

3 32. The husband is awarded his Roth account, the cash value
4 of his life insurance and furnishings at respective values
5 of \$59,843, \$12,500 and \$1,830, for a total value of
6 \$74,173. The discrepancy in value is \$20,221 which would
7 result in an equalization payment of \$10,110.50 payable to
8 the wife. This payment should be reduced \$3,560.55 for the
9 stipulation regarding the vehicles, Respondent's Exhibit
10 31.

11 33. The court is not awarding any equalization judgment in
12 favor of the wife for several reasons. The Roth accounts
13 were valued at face value and their present cash value is
14 approximately seventy percent of face value. The values
15 for furnishings were not addressed and are speculative at
16 best. The husband paid numerous community debts with his
17 post-service separate earnings. The court finds the joint,
18 common and community property has been equitably divided.

19 34. The court confirms the respective separate property of
20 the parties pursuant to the schedules in Petitioner's
21 Exhibit 26. Each party shall pay and hold the other
22 harmless for any secured indebtedness for their respective
23 vehicles. Each party shall pay and hold the other harmless
24 for his or her respective credit cards and any other
25 unsecured debts.
26

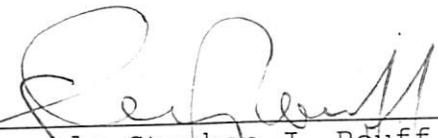
1 35. The court finds that neither party made any claims or
2 maintained any position which should result in any
3 unreasonable conduct supporting an award of attorney fees
4 under ARS 25-324. Consequently, attorney fees should be
5 allocated according to the comparative ability of the
6 parties to pay attorney fees. The best measure of
7 comparative ability is the ratio of individual earnings to
8 combined earnings. The respective incomes during most of
9 the time of the effective duration of this order is 67
10 percent and 33 percent of the husband and wife
11 respectively.

12 36. The court finds that \$175 and \$150 an hour for paralegal
13 time is unreasonable and without sufficient evidence of
14 local practice. Such a rate approximates three times the
15 hourly rate of a judge. The court is going to reduce the
16 hourly rate to \$50 per hour. Many lawyers do not charge
17 anything for so-called paralegal time and secretarial time.

18 37. Adjusting the total claims of the parties with only
19 reducing paralegal time to \$50 per hour results in a total
20 claim of the wife of \$30,704 rounded and the husband of
21 \$43,295 rounded. The wife should pay 33 percent of the fees
22 and costs of the husband and the husband should pay 67
23 percent of the fees and costs of the wife. The arithmetic
24 results in a net award to the wife of \$6,284 for partial
25 attorney fees and costs.

26 38. Counsel for the petitioner shall prepare the decree.

DATED this 5th day of December, 2016


Honorable Stephen J. Rouff
Superior Court Judge Pro Tem

Copies of the foregoing placed/mailed
In the boxes this 6th day of December, 2016, to:

Mary Boyte Henderson
Attorney for Petitioner

S. Alan Cook
Attorney for Respondent
4646 E. Greenway Road
Suite 100
Phoenix, AZ 85032

LYNN FAZZ, Clerk of the Superior Court
By MAURINE BENBOW

Deputy Clerk



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(11/17 To 3/31/17)
PARENT'S CHILD SUPPORT GUIDELINE WORKSHEET

CASE NO.: S1400DO 2015-1132 ATLAS NO.:

NCP: _____ CP: _____

Number of Children: 3 Date(s) of Birth: _____

	<u>FATHER</u>	<u>MOTHER</u>	<u>COMBINED</u>
<u>GROSS MONTHLY INCOME:</u>	<u>10,009</u>	<u>*2,395</u>	<u>12,404</u>
Court Ordered Spousal Support	<u>- 3,250</u>	<u>+ 3,250</u>	_____
Child Support	_____	_____	_____
Support of Other Children	_____	_____	_____
<u>ADJUSTED GROSS INCOME:</u>	<u>6,759</u>	<u>5,645</u>	<u>12,404</u>
<u>BASIC CHILD SUPPORT FOR 3 CHILDREN</u>	_____	_____	<u>2,167</u>

ADJUSTMENTS:

1) Insurance	<u>35</u>	_____	<u>35</u>
2) Child Care or Child Care w/ Tax Credit	<u>0</u>	<u>0</u>	_____
3) Education Expenses/Extraordinary Child	_____	_____	_____
4) Older Child Adjustment	_____	_____	<u>-</u>
<u>TOTAL CHILD SUPPORT:</u>	<u>54%</u>	<u>45%</u>	<u>2,202</u>

PERCENTAGE: Salary/Total Income
 (same % for payment of uncovered medical expenses)

PARENTAL SUPPORT OBLIGATION:
 Visitation Adjustment (30.7 %) / 143-152 DAYS
 Medical Insurance _____
 Non-Custodial Child Care _____

<u>1,189</u>	_____
<u>665</u>	_____
<u>35</u>	_____
<u>489</u>	_____

PRELIMINARY CHILD SUPPORT:
SELF SUPPORT RESERVE TEST:
 Adjusted Gross Income _____ - \$1115 = OK

CHILD SUPPORT TO BE PAID BY: _____

Deviation: Yes No Other: _____
* (8553)(52) ÷ 12 = * 2,395 rounded
 Division of Tax Exemptions addressed in 4/1/17 Formid worksheet

Date: _____ Name: Stephen J. Rouff
 STEPHEN J. ROUFF

4/1/17 Forward

PARENT'S CHILD SUPPORT GUIDELINE WORKSHEET

CASE NO.: SI400DO 2015-1132 ATLAS NO.:

NCP: CP:

Number of Children: 3 Date(s) of Birth:

	FATHER	MOTHER	COMBINED
<u>GROSS MONTHLY INCOME:</u>	<u>10,009</u>	<u>2,395</u>	<u>12,404</u>
Court Ordered Spousal Support	<u>-1,700</u>	<u>+1,700</u>	
Child Support			
Support of Other Children			
<u>ADJUSTED GROSS INCOME:</u>	<u>8,309</u>	<u>4,095</u>	<u>12,404</u>
BASIC CHILD SUPPORT FOR _____ CHILDREN			<u>2,167</u>

ADJUSTMENTS:

1) Insurance	<u>35</u>	<u>35</u>	<u>35</u>
2) Child Care or Child Care w/ Tax Credit	<u>0</u>	<u>0</u>	
3) Education Expenses/Extraordinary Child			
4) Older Child Adjustment			

TOTAL CHILD SUPPORT:

	<u>67%</u>	<u>33%</u>	<u>2,202</u>
--	------------	------------	--------------

PERCENTAGE: Salary/Total Income (same % for payment of uncovered medical expenses)

PARENTAL SUPPORT OBLIGATION:

Visitation Adjustment (30.7 %) / 143-152 DAYS

	<u>1,475</u>	
	<u>665</u>	
	<u>35</u>	

Medical Insurance

Non-Custodial Child Care

	<u>775</u>	
--	------------	--

PRELIMINARY CHILD SUPPORT:

SELF SUPPORT RESERVE TEST:
Adjusted Gross Income _____ - \$1115 = OK

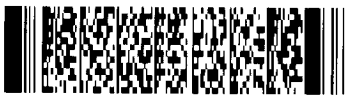
CHILD SUPPORT TO BE PAID BY:

Deviation: ___ Yes ___ No Other: _____ STEPHEN J. ROUFF

* Tax Exemptions - Every year Beginning 2016: Father - youngest and oldest child, Mother - middle child

Date: _____ Name: _____

* Parties may elect to file a joint 2016 Return IF still married on 12/31/16



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LYNN FAZZ
CLERK OF SUPERIOR COURT
YUMA ARIZONA 85364

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

In re the Marriage of:)	Case No.: S1400-DO-2015-01132
)	
SHELLY RAE BARRON,)	
Petitioner,)	
	)	ORDER RE OBJECTION TO FORM OF
and	)	DECREE AND MOTIONS FOR NEW
	)	TRIAL AND RECONSIDERATION
PAUL ROGER BARRON,)	
Respondent.)	
	)	Commissioner Two
)	
)	

The court has reviewed the Respondent's Objection to the Form of the Decree and his Motion for Reconsideration and Motion for a New Trial, and the Reply of the Petitioner.

The gender of the children and the parties was a very minor factor in the totality of circumstances analysis resulting in the mother receiving primary residential parenting time. The more important factors include the mother's historical relationship with the children and the problems of adjustment of the children to the pretrial equal parenting time arrangement.

1 The court incorporates its Findings, Conclusions and Orders
2 filed on December 6, 2016. The court gave this case considerable
3 time and thought.

4 With the following exceptions, the Motions for New Trial and
5 for Reconsideration are denied and the Objections to the Form of
6 Decree are over-ruled.

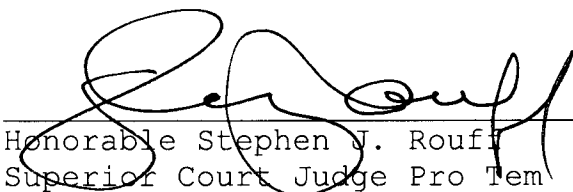
7 Paragraph 13 on page 6 of the decree should be deleted because
8 the SBP and any effort to seek life insurance were not addressed in
9 the pleadings or evidence. The right to elect an SBP in the future
10 is not omitted property. The court considers an SBP election to be
11 prohibitively expensive and would not have required the husband to
12 elect an SBP for the wife. The court might have required
13 cooperation in obtaining life insurance at the expense of the wife
14 if this had been addressed at trial.

15 The deadline for election of the summer parenting time period
16 should be changed to April 1st.

17 Language should be added that the mother timely advise the
18 father of any remarriage.

19 The omitted dining room table should be added and the
20 termination date of the community should be corrected.


21 DATED this 21st day of April, 2017

22
23 
24 Honorable Stephen J. Rouff
25 Superior Court Judge Pro Tem

26 Copies of the foregoing placed/mailed
In the boxes this 25th day of April, 2017, to:

1 Mary Boyte Henderson
2 Attorney for Petitioner

3 S. Alan Cook
4 Attorney for Respondent
4 4646 E. Greenway Road
Suite 100
5 Phoenix, AZ 85032

6 LYNN FAZZ, Clerk of the Superior Court
7 By 
Deputy Clerk

8 MAURINE BENBOW

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YUMA ARIZONA 85364

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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF YUMA**

12 In re: the Marriage of:) CAUSE NO: S1400DO-2015-01132
13 SHELLY RAE BARRON,) *Assigned to Hon. Stephen J. Rouff*
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18 The above entitled matter having come regularly for trial before this Court on September 4,
19 2016, November 10, 2016 and November 16, 2016, the parties having appeared in person with
20 their respective counsel, this Court having heard evidence and testimony and this Court having
21 issued its Findings and Orders on December 6, 2016;

22 THIS COURT FINDS all of the following facts:

- 23 1. At the time this action was filed, both parties were domiciled in Yuma County and
24 said domicile had been maintained for a period exceeding ninety (90) days.

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By *[Signature]*

1 2. The conciliation provisions of A.R.S. § 25-381.09 have been met, waived or do not
2 apply.

3 3. The parties were married on January 3, 2004 in Coos County, Oregon and they
4 remain husband and wife.

5 4. The parties' marriage is not a covenant marriage.

6 5. The parties' marriage is irretrievably broken and there is no reasonable prospect for
7 reconciliation.

8 6. Petitioner is not now pregnant but there are the following minor child common to
9 the parties:

10 a. CHAYTON BARRON, born June 7, 2006;

11 b. AUDREY BARRON, born July 31, 2008; and,

12 c. GEORGIA BARRON, born May 11, 2010.

13 7. To the extent it has jurisdiction to do so, the Court has considered, approved and
14 made provisions for the legal decision-making authority, parenting time and support of the natural
15 or adopted children common to the parties, the maintenance of either spouse and the disposition
16 of property and debt.

17 8. For the purposes of 10 U.S.C. §1408 et. seq. and 10 U.S.C. § 1447 et. seq., the
18 Court finds that the Respondent, PAUL ROGER BARRON, born March 28, 1978, whose social
19 security number is set forth on the Sensitive Data Form previously filed herein is an active duty
20 member of the United States Marine Corps. Respondent has been a domiciliary of this State and
21 meets all requirements for exercise of personal jurisdiction by this state. The Court has personal
22 jurisdiction over the Respondent and subject matter jurisdiction over all issues raised in this
23 matter. Respondent was duly served with process herein and both parties have appeared and
24 defended in this action. As applicable, Respondent's rights under the Soldier's & Sailor's Civil

1 Relief Act of 1940, as amended, and the Service Member's Civil Relief Act of 2003, as amended,
2 have been fully met in this action. This Decree is intended to be a full and final disposition of the
3 marital relationship and apportions Respondent's Military Retired Pay (hereafter "MRP") as a
4 partial division of marital property. The parties have been married in excess of ten (10) years
5 consecutively prior to the entry of this Decree, during which time the Respondent was engaged in
6 active duty military service.

7 9. Assuming that Respondent is not involuntarily required to extend his military
8 service past February 13, 2023, the community property portion of Respondent's MRP is fifty-
9 eight percent (58%) and that Petitioner is therefore entitled to an award of (29%) of Respondent's
10 MRP. In the event Respondent is not permitted to retire and is required to continue in military
11 service beyond February 13, 2023, for reasons other than an election made by Respondent, the
12 community interest in his MRP will be calculated pursuant to a fraction with the numerator being
13 Respondent's period of service between the date of the marriage on January 3, 2004, and the
14 termination of the community on August 14, 2015 and the denominator being the period of
15 service between February 13, 2003 and the date upon which Respondent would be permitted to
16 elect to retire.

17 10. The findings of this court as stated in the Findings and Orders filed December 6,
18 2016 are incorporated as though fully set forth herein.

19 11. This Decree constitutes a final judgment and order and it fully resolves all issues
20 pled or before the Court in this matter. Any relief requested previously requested herein that is
21 not addressed herein is deemed denied.

22 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

23 **Dissolution of Marriage:**

24 1. The marriage formerly existing between the parties is dissolved;

1 2. Wife IS NOT restored to her former surname.

2 **Spousal Maintenance:**

3 3. In accordance with the temporary orders previously issued herein,
4 Respondent/Husband shall continue the payment of spousal maintenance to Wife in the amount of
5 \$3,250.00 per month for the period beginning March 1, 2016 and continuing through March 31,
6 2017.

7 4. Effective April 1, 2017, Husband shall pay to Wife spousal maintenance in the
8 amount of \$1,700.00 per month for a period of forty-eight (48) months.

9 5. Amended Income Withholding Orders shall issue as necessary to implement these
10 spousal maintenance orders and all amounts shall be paid through the Arizona Support Payment
11 Clearinghouse. Wife shall promptly notify Husband in the event she remarries.

12 **Legal Decision Making, Parenting Time and Support:**

13 6. The parties' rights of legal decision making authority (joint legal custody) and
14 parenting time of their minor child are set forth in the ADOPTED AND COURT-ORDERED
15 PARENTING PLAN signed and filed contemporaneously with this Decree.

16 7. Effective December 1, 2016, Father shall pay to Mother the sum of \$489.00 per
17 month as and for the support of the minor children. Effective April 1, 2017, Father shall pay to
18 Mother the sum of \$775.00 per month as and for the support of the minor children. These
19 amounts are in accordance with the Arizona Child Support Guidelines and the child support
20 worksheets attached to the Findings and Orders filed December 6, 2016 and incorporated herein
21 by reference. Amended income withholding orders shall issue in these amounts and all payments
22 of support shall be made through the Arizona Support Payment Clearinghouse, together with the
23 monthly statutory handling fee.

24 8. Respondent/Father shall continue to provide medical insurance for the minor child

1 and pay the premium costs for such coverage. Uninsured medical, dental and prescription vision
2 expenses shall be paid sixty-seven percent (67%) by Respondent/Father and thirty-three percent
3 (33%) by Petitioner/Mother.

4 9. Mother may claim the dependent child tax deduction associated with AUDREY
5 BARRON in all tax years, beginning with tax year 2016 in the event the parties elect to file
6 separate income tax returns for tax year 2016. Father may claim the dependent child tax
7 deduction associated with CHAYTON and GEORGIA BARRON in all tax years, beginning with
8 tax year 2016 in the event the parties elect to file separate income tax returns for tax year 2016.
9 Father's right to claim the dependent child deduction is conditional upon his payment in full of all
10 child support payments court ordered arrears/past support payments, if any, which became due in
11 the tax year for which the deduction is to be claimed on or before January 31st of the following
12 year.

13 **2016 Income Tax Filing:**

14 10. If the parties elect to file joint income tax returns for tax year 2016, any refunds or
15 liabilities should be divided with equal division for the portion attributable to the year until
16 August 17, 2016, and proportional division for the remainder of the year; that is, .625 of any
17 refund or liability should be equally divided, and the remainder should be divided according to
18 the ratio of individual gross incomes to combined gross income.

19 **Husband's Military Retired Pay (MRP):**

20 11. Petitioner, SHELLY RAE BARRON, born May 22, 1980, whose social security
21 number and current address are reflected on the Sensitive Data Form previously filed herein, is
22 awarded twenty-nine percent (29%) of Respondent's disposable military retired pay, commencing
23 with the first installment issued to or for the benefit of Respondent following the entry of this
24 Decree unless Respondent is not permitted to retire and is required to continue in military service

1 beyond February 13, 2023 for reasons other than an election made by Respondent. In the event
2 Respondent is not permitted to retire for a reason other than his own election on or about February
3 13, 2023, Petitioner's award shall be one-half of the community interest in Respondent's MRP as
4 calculated pursuant to the formula set forth on page 3, paragraph 9, above.

5 12. Petitioner's share of Respondent's MRP **shall** include a proportionate share of any
6 cost of living or other post-retirement increases.

7 13. Respondent shall not be required to elect to provide a SBP survivor annuity for
8 Petitioner. In the event Respondent elects a SBP survivor annuity in favor of any other person,
9 such election shall not reduce Petitioner's interest in Respondent's MRP.

10 14. In the event the Respondent elects to continue in military or other service beyond
11 February 23, 2023 such that his receipt of MRP is delayed, Respondent shall pay to Petitioner
12 directly a sum equal to the twenty-nine percent (29%) portion of the MRP she would have
13 received had he retired on or about February 23, 2023. All sums received by Petitioner pursuant
14 to this paragraph shall be taxable to her. Petitioner's award of MRP shall take precedence over
15 any order of assignment for ongoing child support and/or spousal maintenance as well as any
16 child support or spousal maintenance arrears garnishment, whether issued by a court herein or
17 prior or subsequent hereto.

18 15. Respondent/Husband has not yet attained fifteen (15) years of military service. In
19 the event Respondent elects to receive retirement benefits pursuant to the Military Reform Act of
20 1986 (commonly referred to as the REDUX Retirement Plan) and receives a Career Status Bonus
21 (CSB) under the National Defense Authorization Act (NDAA), Petitioner is hereby awarded a
22 portion of said benefits, which shall be computed by multiplying 50% times a fraction, the
23 numerator of which is the total number of months of marriage during the Member's creditable
24 military service, divided by 240 months. Respondent shall be paid her portion of the CSB directly

1 by the Designated Agent if allowable by applicable regulations or directly by Respondent within
2 10 days of receipt if Designated Agent is unauthorized to make direct payment to Respondent.

3 16. This Court reserves jurisdiction to make additional findings or orders in furtherance
4 of the division of Respondent's MRP.

5 **Residence and Real Property:**

6 17. The parties' own a jointly titled residence and real property located at 3855 W. 37th
7 Street in Yuma, Arizona ("the home"), which is legally described as follows:

8 Lot D, LIVINGSTON RANCH PHASE 1 LOT TIE/SPLIT NO. 3,
9 recorded in the office of the County Recorder of Yuma County, Arizona,
10 recorded December 14, 2012 in Book 26 of Plats, Page 53, being a Lot Tie
11 of Lots 111, 112, 113, 114 and 115 of AMENDED PLAT OF
12 LIVINGSTON RANCH PHASE 1 according to the plat of record in the
13 office of the County Recorder of Yuma County, Arizona, recorded in Book
14 24, Pages 83 and 84.

15 18. The home will be awarded to Petitioner/Wife provided that she is able to refinance
16 or otherwise remove the liability of Respondent for the secured indebtedness associated with the
17 home, exclusive of taxes and impounds, and to pay Respondent the sum of \$6,942.00 as and for
18 his half of the equity in the home by April 1, 2017.

19 19. If Petitioner is unable or unwilling to fulfill the conditions set forth in paragraph 17,
20 above, Respondent shall have the period between April 1, 2017 and June 30, 2017 in which to
21 refinance or otherwise remove the liability of Respondent for the secured indebtedness associated
22 with the home, exclusive of taxes and impounds, and to pay Petitioner the sum of \$6,942.00 as
23 and for her half of the equity in the home.

24 20. If neither party is able or willing to timely fulfill the conditions of paragraphs 17
and 18, above, then the residence shall be listed on multiple listing with a broker agreeable to the
parties, and the net sales proceeds shall be equally divided.

21. Petitioner/Wife may reside in the residence until April 1, 2017 unless she timely

1 refinances and pays Husband pursuant to paragraph 17, above; in which case Petitioner shall own
2 the residence as her separate property. Petitioner will be responsible for the monthly payments
3 for the residence until April 1, 2017, and thereafter if she timely refinances. If Petitioner does not
4 timely fulfill the conditions of paragraph 17, above, Respondent shall have the right of
5 possession of the residence effective April 1, 2017, and he shall be responsible for the monthly
6 payments until the residence is sold, or until he timely refinances and thereafter.

7 22. If either party desires, the above \$6,942 due after refinancing shall be adjusted with
8 each party receiving credit for any principal reduction caused by any monthly residence payments
9 made by either party after September 1, 2015.

10 23. The court reserves jurisdiction to resolve any disputes and issue any orders
11 reasonably necessary to facilitate the refinance or sale of the home.

12 **Invesco IRA and Investment Accounts**

13 24. Respondent is awarded the management and control of the Invesco account ending
14 #939 for the benefit of Georgia Barron. Petitioner is awarded the management and control of the
15 Invesco accounts ending #109 and 438 for the benefit of Audrey and Chayton Barron,
16 respectively.

17 25. Petitioner is awarded the management and control of the USAA accounts ending
18 #739, #315 and #447 for the benefit of Chayton, Audrey and Georgia Barron respectively.

19 26. Invesco Account ending #470 was equally divided during the course of litigation by
20 agreement of the parties.

21 27. Respondent is awarded all right, title and interest in the Invesco IRA ending #943
22 in his name.

23 28. Petitioner is awarded all right, title and interest in the Invesco IRA ending #471 in
24 her name.

1 **Miscellaneous Property**

2 29. Petitioner/Wife is awarded all right, title and interest in the following property as
3 her sole and separate property:

- 4 a. Globe Life Insurance Policies insuring the life of Wife;
- 5 b. 2013 Infinity XJ35, VIN #5N1AL0MM8DC334379;
- 6 c. Large wine cabinet and Pier One wine cabinet table;
- 7 d. Antique trunk;
- 8 e. Beige fabric chairs;
- 9 f. Corinthian column;
- 10 g. Circular metal table;
- 11 h. Large piano;
- 12 i. Outdoor table and chairs;
- 13 j. Desk and rolling chair;
- 14 k. Matching bar stools;
- 15 l. Toshiba laptop;
- 16 m. Vitamix blender;
- 17 n. Roomba;
- 18 o. King-size pillows and linens;
- 19 p. Armoire with mirror;
- 20 q. Television mount;
- 21 r. Washer/dryer;
- 22 s. Water softener;
- 23 t. Weed-wacker and lawnmower;
- 24 u. Flat-screen television and Wi-Fi electronics;
- v. Children's outdoor furniture;
- w. Pool box with children's pool toys;
- x. White filing cabinet;
- y. Fabric-topped trunk;
- z. Matching bar stools;
- aa. Cordless phone set;
- bb. Antique fabric chair;
- cc. 3 children's beds and bedding;
- dd. Nectar surfboard;
- ee. Framed pictures;
- ff. White entertainment center;
- gg. Leather couch;
- hh. Armoire without mirror;
- ii. Stained wood horse and rocking chair;
- jj. All checking, savings or other depository accounts in Petitioner's name,
either alone or with any third party.

23 30. Respondent/Husband is awarded all right, title and interest in the following property
24 as his sole and separate property:

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- a. Globe Life Insurance policies insuring the life of Respondent;
- b. 2002 Toyota Tacoma;
- c. Six (6) dining room chairs;
- d. Power tools;
- e. Henkel cookware;
- f. Pictures of Husband and extended family;
- g. Framed painting of girl;
- h. Small piano;
- i. Tile-topped console table;
- j. Small homemade bookcase and homemade bookcases and shelves;
- k. End tables that resemble books;
- l. iPad;
- m. Dyson vacuum;
- n. Homemade shelving in garage;
- o. Children's dressers;
- p. Queen comforters and linens;
- q. Small television;
- r. Children's small, white table and chairs;
- s. Easel and whiteboard;
- t. Pendleton wool blanket;
- u. Children's sleeping bags;
- v. Children's white rocking chairs (3);
- w. Items made by or painted by Charlie Vincent or Husband's family; and,
- x. All checking, savings or other depository accounts in Respondent's name, either alone or with any third party.

31. Each party shall pay, keep current and hold the other harmless from any and all community debts and obligations that party has incurred without the express consent and co-signature of the other. Wife shall pay the USAA Auto Loan secured by a lien on the vehicle awarded to her herein.

32. Respondent shall pay to Petitioner the sum of \$6,284.00 as and for partial payment of Petitioner's attorney's fees and costs incurred herein. Petitioner is awarded judgment in this amount, to accrue interest at the legal rate for support judgments until paid in full.

DATED this 2nd day of May, 2017.

STEPHEN J. ROUFF

Hon. Stephen J. Rouff
Judge of the Superior Court, Pro Tem

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Marriage of:

SHELLY RAE BARRON, *Petitioner/Appellee*,

v.

PAUL ROGER BARRON, *Respondent/Appellant*.

No. 1 CA-CV 17-0413 FC
FILED 7-31-2018

Appeal from the Superior Court in Yuma County
No. S1400DO201501132
The Honorable Stephen J. Rouff, Judge *Pro Tempore*

**AFFIRMED IN PART; REVERSED AND VACATED
AND REMANDED IN PART**

COUNSEL

Mary Katherine Boyte, PC, Yuma
By Mary K. Boyte Henderson
Counsel for Petitioner/Appellee

S. Alan Cook, PC, Phoenix
By S. Alan Cook, Sharon Ottenberg
Counsel for Respondent/Appellant

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OPINION

Presiding Judge Diane M. Johnsen delivered the opinion of the Court, in which Judge Paul J. McMurdie and Judge David D. Weinzwieg joined.

J O H N S E N, Judge:

¶1 Paul Roger Barron appeals from the dissolution decree ending his marriage to Shelly Rae Barron. We reverse and remand the decree's parenting-time provisions because they are the product of impermissible presumptions about equal parenting time and gender. We also reverse portions of the decree that violate federal law governing military retirement pay and vacate and remand the attorney's fees award. In all other respects, we affirm the decree.

FACTS AND PROCEDURAL BACKGROUND

¶2 The parties ("Husband" and "Wife," respectively) were married in 2004 and have three children, all girls, born in 2006, 2008 and 2010, respectively. The family moved to Arizona in 2013, when Husband, a helicopter pilot on active duty with the United States Marine Corps, was transferred to Yuma. Wife filed a petition for dissolution in August 2015, but the couple remained together in the marital home until shortly after the superior court issued temporary orders in March 2016.

¶3 Following a three-day trial, the superior court entered a decree of dissolution in May 2017. Relevant to this appeal, the decree continued joint legal decision-making but reduced Husband's parenting time to 130 days a year, plus specified holidays and a summer vacation, and divided the community's interest in Husband's military retirement. The court declined both parties' requests for equalization payments and awarded attorney's fees to Wife.

¶4 We have jurisdiction of Husband's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2018) and -2101(A)(1) (2018).¹

¹ Absent material change after the relevant date, we cite the current version of applicable statutes.

DISCUSSION

A. Parenting Time.

¶5 By agreement, the temporary orders had allowed Husband more parenting time than Wife because Wife was in training to become a firefighter/emergency medical technician. The parties shared joint legal decision-making, but temporary orders granted Husband parenting time every Thursday through Sunday until Wife finished her training and "bec[ame] employed." Wife completed her training within a few months but did not take a full-time job and did not petition the court for weekend parenting time. The dissolution decree, entered 14 months after issuance of temporary orders, reduced Husband's parenting time to one overnight a week plus every other weekend from Friday afternoon through Monday morning.

¶6 On appeal, Husband argues the superior court abused its discretion in failing to order equal parenting time. We review a parenting-time order for an abuse of discretion. *Nold v. Nold*, 232 Ariz. 270, 273, ¶ 11 (App. 2013). An abuse of discretion occurs when the court commits legal error, *Arpaio v. Figueroa*, 229 Ariz. 444, 447, ¶ 7 (App. 2012), or "when the record, viewed in the light most favorable to upholding the trial court's decision, is 'devoid of competent evidence to support' the decision," *Little v. Little*, 193 Ariz. 518, 520, ¶ 5 (1999) (quoting *Fought v. Fought*, 94 Ariz. 187, 188 (1963)).

¶7 As relevant here, A.R.S. § 25-403.02(B) (2018) requires the superior court to adopt a parenting plan that is "[c]onsistent with the child's best interests in § 25-403" and that "maximizes [each parent's] respective parenting time." Section 25-403 (A) (2018) requires the court to determine parenting time "in accordance with the best interests of the child." Further, § 25-403(A) states:

The court shall consider all factors that are relevant to the child's physical and emotional well-being, including:

1. The past, present and potential future relationship between the parent and the child.
2. The interaction and interrelationship of the child with the child's parent or parents
3. The child's adjustment to home, school and community.

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4. If the child is of a suitable age and maturity, the wishes of the child as to legal decision-making and parenting time.
5. The mental and physical health of all individuals involved.

¶8 In findings and conclusions issued in support of the decree's parenting-time provisions, the superior court stated:

The primary focus concerning parenting time is the best interest of the children and not the parents. If the interests of parents are more important than children, then children, like timeshares, would always be equally time-shared.

A totality of circumstances tip the scales in favor of designation of [Wife] as primary residential parent.

A. [Wife] has been the primary care provider for the children prior to this action. The children have historically spent more time with [Wife] than [Husband] since their birth.

B. The children have not fully adjusted to equal parenting time during the pendency of the temporary orders. The court finds the children want and need to spend more time with [Wife].

C. The military duties of [Husband] often make him unavailable during his parenting time resulting in the children spending too much time with the paternal grandparents relative to time they could be with [Wife].

D. The children are girls who naturally will gravitate more to [Wife] as they mature.

E. The experience during the temporary orders has been unreasonable occasionally. . . . The court finds [Husband] has been comparatively more unreasonable and inflexible than [Wife] [in agreeing to trade parenting time]. In particular, [Husband] has placed his interest over the best interest of the children in not allowing more frequent weekend parenting time by [Wife] regardless of the strict terms of the stipulated temporary order.

F. It is unlikely the parties will both reside in Yuma during the minority of all the children. Significant

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geographical separation of the parties precludes equal parenting time. Changing equal parenting time now would be less disruptive than in the future.

G. Children should have a primary home and bedroom where special items like collections, posters and private things are maintained as opposed to forcing children to equally divide their time and things and clothes equally between two homes.

H. A primary residence promotes stability and continuity for children.

¶9 With one exception, we agree with Husband that the findings the court made in determining parenting time are contrary to law and not supported by the evidence.

¶10 First, the court legally erred by applying a presumption against equal parenting time. Nearly all of the court's findings disregarded the statute's starting point, which is that, when consistent with a child's best interests, each party's parenting time should be maximized. A.R.S. § 25-403.02(B). Wife offers no legal argument in defense of the court's broad generalization that "[c]hildren should have a primary home and bedroom . . . as opposed to forcing children to equally divide their time and things and clothes equally between two homes." And no evidence in the record supports application of that principle here. By its nature, dissolution of a marriage compels children to divide their time between the homes of their two parents. That being the case, nothing in the law allows a court considering the best interests of the children to presume that one of those homes must be the children's "primary" residence.

¶11 At trial, Wife rejected the notion of equal parenting time, protesting without offering specifics that her "children need more consistency of staying in one place." But the court's broad finding that "[a] primary residence promotes stability and continuity for children" is supported neither by the law nor the evidence in the record. When each parent can provide a safe, loving and appropriate home for the children, there is no place in a parenting-time order for a presumption that "stability and continuity" require the children to spend more time in one home than the other. Here, Wife offered no evidence that Husband is not a good parent, nor that his home is inappropriate for the children. To the contrary, she testified Husband has the girls' best interests at heart, and, when asked to describe his strengths as a parent, she testified he is "very loving," plays

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with the girls and is good "at discipline." She also testified the girls enjoy spending time at Husband's home.

¶12 Second, the court erred by basing parenting time on its finding that the parties' three girls "naturally will gravitate more to [Wife] as they mature." The implicit premise of this finding is that, as a general proposition, girls need to spend more time with their mother than their father. Nothing in the law nor the record supports that proposition.

¶13 Under the Equal Protection Clause of the Fourteenth Amendment, gender-based presumptions by the government require an "exceedingly persuasive justification." *United States v. Virginia*, 518 U.S. 515, 531 (1996). In this inquiry, "overbroad generalizations about the different talents, capacities, or preferences of males and females" cannot suffice. *Id.* at 533. The Arizona legislature has recognized this principle by mandating that in determining parenting time, a "court shall not prefer a parent's proposed plan because of the parent's or child's gender." A.R.S. § 25-403.02(B).²

¶14 Wife argues it was "reasonable for the court to anticipate that the children's needs for a stable maternal influence would increase rather than decrease as they entered puberty." She cites no factual or legal authority, however, for that proposition. Nor does she offer any explanation for why an equal parenting-time plan would not allow her to maintain a "stable maternal influence" over her girls. Wife also argues the finding is supported by § 25-403(A)(2), which directs a court considering best interests to take into account "[t]he interaction and interrelationship of the child with the child's parent or parents." But there was no evidence before the court that Wife's relationship or interaction with the children was better than Husband's. By Wife's logic, all things being equal, the gender of the children necessarily would drive parenting time, a governing

² Arizona law once required a presumption in favor of women with respect to the custody of young children. See A.R.S. § 14-846(B) (1956) ("[O]ther things being equal, if the child is of tender years, it shall be given to the mother. If the child is of an age requiring education and preparation for labor or business, then to the father."). See *Dunbar v. Dunbar*, 102 Ariz. 352, 354 (1967) (applying "tender years" statute as "the declared policy of this state"). The legislature repealed the statute in 1973. 1973 Ariz. Sess. Laws, ch. 75, § 3.

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principle flatly inconsistent with principles of gender equality and § 25-403.02(B).³

¶15 Third, the court erred by favoring parenting time for Wife over Husband based on the fact that Wife had been the children's primary caregiver during the marriage. Whether one or the other parent was the primary caregiver during the marriage used to be one of the factors the court was required to consider in deciding parenting time. *See* A.R.S. § 25-403(A)(7) (2005) ("Whether one parent, both parents or neither parent has provided primary care of the child."). But the legislature removed that factor in 2012 when it substantially revised the decision-making and parenting-time statutes. 2012 Ariz. Sess. Laws, Ch. 309, § 5 (2d Reg. Sess.).⁴

¶16 Dissolution necessarily will disrupt the family dynamic whenever one parent has been the primary earner while the other has stayed home to care for the children. Upon dissolution, the wage earner usually must find child care and the stay-at-home parent must find work. To be sure, each parent's relationship with a child before dissolution is one of the factors a court must consider in determining parenting time. *See* A.R.S. § 25-403(A)(1) (court shall consider "past, present and potential future relationship between the parent and the child"). Absent evidence in the record that a parent will be unable to properly care for a child, however, the superior court errs when it presumes – as the court did here – that the child's best interests necessarily are served by affording more parenting time to the former stay-at-home parent than to the other.

¶17 Fourth, the court also erred by basing its parenting-time determination on a finding that, given it was unlikely that Husband and Wife would remain in Yuma until the children were grown, "[c]hanging

³ When Father moved for reconsideration of the parenting-time order based in part on this finding, the court denied the motion, stating that "[t]he gender of the children and the parties was a very minor factor in the totality of circumstances." On the record presented and given the court's other erroneous findings, we cannot determine that its parenting-time ruling was unaffected by its improper gender-based presumption.

⁴ *Cf.* Principles of the Law of Family Dissolution § 2.08 (American Law Institute 2002) (as a general matter, "court should allocate custodial responsibility so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caretaking functions for the child prior to the parents' separation").

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equal parenting time now would be less disruptive than in the future." Over their 11-year marriage, Husband's various reassignments as a Marine required the couple to relocate a half-dozen times. Although the court did not err by implicitly finding that Husband may be reassigned again, no evidence in the record supports the pronouncement that it would be less disruptive to the children to reduce their time with their father now than to do so later. Indeed, as Husband argues, it belies logic to limit a military member's parenting time simply because he or she may be deployed in the future. If and when Husband is reassigned, A.R.S. §§ 25-408 (2018) and - 411 (2018) will govern how parenting time is to be altered under the circumstances then presented.

¶18 Fifth, the court erred by limiting Husband's parenting time based on its finding that his military duties "often make him unavailable during his parenting time resulting in the children spending too much time with the paternal grandparents." Husband's parents sold their house in Oregon and moved to Yuma shortly before Wife petitioned for dissolution, and they now share a home with Husband so that they may care for the children when he is unable to do so. During the marriage, Husband's job took him away from home during a pair of seven-month overseas deployments and on training missions for a few weeks at a time. Husband testified, however, that since June 2016, his assignment in Yuma had allowed him to work "[b]anker's hours." At the same time, Wife testified that her work as a firefighter/emergency medical technician may require shift work long past regular business hours, including some nights and weekends. In short, both parents' jobs will require extended periods of child care, and Husband's parents have agreed to care for the children whenever *either* parent is unable to do so. Further, Father's proposed parenting plan included a "first right of refusal" under which each parent would offer the other the opportunity to care for the children when the first parent is unavailable for a period of four hours or longer. Mother, meanwhile, offered no criticism of the girls' grandparents as care providers, and in fact testified that she would be fine with them watching the girls after school in the afternoons if her work did not allow her to do so. Under these circumstances, the superior court abused its discretion when it found that Husband's use of his parents for child care weighed against his request for equal parenting time.

¶19 Sixth, the court also erred by denying equal parenting time based on its findings that the girls "have not fully adjusted to equal parenting time during the pendency of the temporary orders" and that they "want and need to spend more time with" Wife. Crafted to accommodate the demands of Wife's school and training regimes, the stipulated

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temporary orders granted Husband parenting time over what became a four-day weekend, from noon on Thursday through Sunday evening, week in, week out. On that schedule, the girls naturally missed being able to spend weekends with Wife. Although Wife testified the girls said they wanted to spend weekends with her, she acknowledged that was because they had been with Husband every weekend under the temporary orders.

¶20 The only other evidence supporting the court's finding that the children had "not fully adjusted" to equal parenting time during temporary orders was Wife's testimony in September 2016 that one of the girls complained of stomach pain and sleeplessness, issues Wife attributed to the child's unwillingness to leave Wife's home for Husband's. But by the time trial resumed two months later, Wife testified the girl's problems with sleeping were "getting better now." Further, both parents testified the girls were doing well in school.

¶21 On this record – and in the absence of testimony of a therapist, counselor or other expert – the evidence was entirely insufficient to support the court's implicit finding that the children would not be able to "adjust" to an equal parenting time schedule that afforded a fair measure of weekends to Wife.

¶22 As for the court's lone remaining finding in support of its parenting-time determination, Husband argues there was no evidence that he was more unreasonable and inflexible than Wife in negotiating trades of parenting time before trial. Husband contends he offered Wife additional parenting time on four occasions during the period of temporary orders even though Wife had more parenting time overall. He also contends Wife was more unreasonable regarding a summer vacation dispute and never responded to the equal parenting plan he offered in settlement. For her part, Wife testified Husband did not offer *additional* parenting time, but only offered weekend parenting time in *exchange* for an equal amount of her parenting time. She also recounted several instances in which Husband refused to allow her to pick up the children from school when he was working or take them overnight when he traveled. Although Husband was strictly following the temporary orders in these instances, the court properly could view his conduct as unreasonably inflexible. *See* A.R.S. § 25-403(A)(6) ("Which parent is more likely to allow the child frequent, meaningful and continuing contact with the other parent.").

¶23 We generally defer to the weight the superior court gives to conflicting testimony. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, 347-48, ¶ 13 (App. 1998). Although not every error in a parenting-time decision

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warrants a new hearing, given the several errors noted above, we reverse the parenting-time order and remand for a new hearing consistent with § 25-403(A). See *Little*, 193 Ariz. at 520, ¶ 5; *Hart v. Hart*, 220 Ariz. 183, 188, ¶ 19 (App. 2009) (vacating parenting-time determination when court's order showed it had applied incorrect legal standard).

B. Military Retirement Pay.

¶24 As a Marine, Husband is entitled to receive military retirement benefits upon completing 20 years of service. See *Howell v. Howell*, 137 S. Ct. 1400, 1402-03 (2017). Under federal law, state courts may treat the portion of a serviceperson's military retirement earned during marriage as community property, divisible upon divorce. See 10 U.S.C. § 1408(c)(1) (2018); see also *Edsall v. Superior Court*, 143 Ariz. 240, 241-42 (1984). Thus, and under Arizona community-property law, Wife is entitled to one-half of the military retirement benefits Husband earned during the marriage. Applying that principle, the superior court divided the community's interest in Husband's military retirement. It also ruled that if Husband voluntarily continues to serve after he becomes eligible to retire, he must pay Wife what she would have received from the government if he had retired. On appeal, Husband argues the court erred by effectively ordering him to indemnify Wife against a choice he might make to work more than 20 years. He also argues the court made other errors in addressing his military retirement.

¶25 The court has broad discretion in apportioning community property. *Boncoskey v. Boncoskey*, 216 Ariz. 448, 451, ¶ 13 (App. 2007). We review the allocation for an abuse of discretion, view the evidence in the light most favorable to upholding the court's ruling and will affirm the allocation if reasonable evidence supports it. *Id.*

1. Mandatory payment to Wife at 20 years.

¶26 In *Howell*, issued just a week before the decree in this case, the Supreme Court held that state courts may not employ equitable principles to reach results that are inconsistent with federal statutes governing military retirement. 137 S. Ct. at 1405-06. The retired military member in *Howell* waived a portion of his retirement pay in exchange for disability benefits. *Id.* at 1402. Although the waiver garnered a tax advantage for the retired military member, it reduced his former spouse's monthly benefit, which was calculated based on his retirement pay. *Id.* at 1403-04. The Arizona Supreme Court upheld a superior court order requiring the military member to indemnify his former spouse for the consequences of

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his waiver. *Id.* The United States Supreme Court reversed, holding the superior court's order was inconsistent with 10 U.S.C. § 1408(c), which allows division of military retirement pay but not disability benefits. *Howell*, 137 S. Ct. at 1403, 1405 (citing *Mansell v. Mansell*, 490 U.S. 581, 589 (1989)). By its ruling, the Court rejected the state court's exercise of its equitable powers to grant the former spouse an interest that federal law did not allow. 137 S. Ct. at 1405-06.

¶27 Here, the same federal statute supports Husband's argument that, when a military spouse chooses not to retire after 20 years, a state court may not order him to indemnify his former spouse against the financial consequences of his decision to postpone retirement. Although § 1408(c)(3) allows state courts to treat retirement pay as community property in a dissolution, the statute specifically states that it "does not authorize any court to order a [military] member to apply for retirement or retire at a particular time in order to effectuate any payment under this section." Wife argues the superior court did not compel Husband to retire, but the order requiring Husband to pay Wife what she would receive from the government upon Husband's retirement is no different in principle from the equitable remedy *Howell* disapproved.

¶28 Wife nevertheless argues the superior court order is proper under *Koelsch v. Koelsch*, 148 Ariz. 176 (1986). In that case, the Arizona Supreme Court addressed the division of a community property interest in public retirement benefits when the employee is vested but wants to continue working, thereby delaying the former spouse's receipt of retirement pay. *Id.* at 180. The court held that in such a situation, the superior court may order the employee to indemnify the former spouse for what the former spouse would have received from the community's share of the retirement. *Id.* at 185.

¶29 But *Koelsch* did not address the division of military retirement pay, a matter exclusively governed by federal law. Pre-*Howell* cases were divided in addressing whether a military spouse who wants to keep working may be ordered to indemnify the former spouse. Compare *In re Marriage of Castle*, 225 Cal. Rptr. 382, 387 (Cal. App. 1986), and *Wilder v. Wilder*, 534 P.2d 1355, 1359 (Wash. 1975) (upholding indemnification), with *Alvino v. Alvino*, 659 S.W. 2d 266, 271-72 (Mo. App. 1983); *Longo v. Longo*, 663 N.W. 2d 604, 609, 610 (Neb. 2003); and *Kendrick v. Kendrick*, 902 S.W. 2d

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918, 929 (Tenn. App. 1994) (military retirement is payable to non-military spouse only upon the military spouse's retirement).⁵

¶30 Notwithstanding the prior division of authority, the question now has been resolved by *Howell*, which holds that a state court may not do indirectly what 10 U.S.C. § 1408 directly forbids. The superior court here had no authority to order Husband to indemnify Wife in the event he does not decide to retire when eligible at 20 years. Although federal law allows a state court to award a former spouse a share of a military member's retirement benefits, it does not allow the court to order the military member to indemnify his former spouse if he decides to continue working past the date on which he could retire.⁶

2. Survivor benefit premium.

¶31 The superior court also erred in ordering that Wife's share of the community's interest in Husband's military retirement cannot be reduced by payments he might make to buy a survivor benefit for a future spouse.

¶32 Pursuant to § 1408, the amount of military retirement pay that may be divided as community property does not include amounts "deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section." 10 U.S.C. § 1408(a)(4)(A)(iv), (c)(1). The annuity the statute

⁵ See also Maj. Michael H. Gilbert, *A Family Law Practitioner's Road Map to the Uniformed Services Former Spouses Protection Act*, 32 Santa Clara L. Rev. 61, 77-78 (1992) (as a practical matter, such orders force a military spouse to retire).

⁶ The ratio by which to derive the community's share of Husband's military retirement is (1) the number of months Husband and Wife were married while Husband was in the service divided by (2) the number of Husband's months in service for retirement purposes, as determined by the military. The amount of military retirement pay due a serviceperson (i.e., the number to which the ratio is applied) is a matter for the military to determine. Therefore, and because we reverse the superior court's order that Husband must indemnify Wife if he does not retire after 20 years of service, we will not address the parties' respective contentions about the specifics of the amount Wife ultimately may receive as her share of the community's interest in Husband's retirement.

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references is the Survivor Benefit Plan, which will make monthly payments to the surviving spouse of a military member to help make up for the loss of retirement benefits upon the member's death. *See* 10 U.S.C. §§ 1447, 1448 (2018). When a military member buys the annuity for "a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order," the price of the annuity is deducted from the amount of his or her retirement pay subject to division as community property. *See* 10 U.S.C. § 1408(a)(4)(A)(iv).

¶33 The decree adopts language Wife proposed that is contrary to the federal statute's treatment of survivor's annuity premiums. The decree states, "In the event [Husband] elects a . . . survivor annuity in favor of *any other person*, such election shall *not* reduce" Wife's share of Husband's retirement pay. (Emphasis added.) By mandating that Wife's share of Husband's retirement pay will not be reduced by the cost of any survivor's annuity Husband might purchase, the decree disregards the statutory mandate that retirement pay subject to division as community property *shall be reduced* by amounts deducted for an annuity in favor of "a spouse or former spouse to whom payment of a portion [of military retirement] is being made pursuant to a court order."

¶34 Wife's defense of the decree's treatment of survivor-annuity premiums is based on its application to an annuity Husband might purchase for a new spouse if he remarries. Wife argues the statute mandates that the cost of an annuity for a current or former spouse shall be deducted from retirement pay only if the annuity is court-ordered. Thus, under her interpretation of the statute, if Husband were to remarry and voluntarily buy an annuity for his new spouse, Wife's interest in his retirement pay would not be reduced by the cost of that annuity.

¶35 We do not interpret the statute that way. In the normal case, there is no need for a court order requiring a military member to purchase an annuity for his or her current spouse – generally speaking, only payments on behalf of a *former* spouse require a court order. The text of the statute is consistent with that principle. The provision at issue applies when one receives a portion of a military member's retirement pay "pursuant to a court order *under this section*." 10 U.S.C. § 1408(a)(4)(A)(iv) (emphasis added). The "section" to which the text refers, of course, is § 1408 – which was enacted specifically to grant state courts the power to apply state law to divide military retirement pay upon dissolution of a military member's marriage. *See* 10 U.S.C. § 1408(a)(2) ("'court order' means a final decree of divorce, dissolution, annulment or legal separation . . ."); *Howell*, 137 S. Ct. at 1403 (describing § 1408 as Congress's response to *McCarty v. McCarty*,

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453 U.S. 210 (1981), which had held that federal law preempted community-property treatment of military retirement). The statute has nothing to say about an intact marriage; contrary to Wife's argument, its reference to one who receives a distribution of retirement pay "pursuant to a court order under this section" logically cannot refer to a *current* spouse because "this section" only applies in proceedings to dissolve or otherwise effectively end a marriage.⁷

¶36 Accordingly, under § 1408(a)(4)(A)(iv), military retirement pay subject to division by a state court as community property is reduced by amounts a serviceperson pays for an annuity to (1) a spouse or (2) a former spouse when the payment to the former spouse is mandated by a court order. The decree here violates that provision by ordering that Wife's interest in Husband's retirement shall not be reduced by Husband's purchase of an annuity for "any other person."

3. Cost-of-living increases and REDUX/career status bonus.

¶37 Husband argues the superior court erred by awarding Wife a proportionate share "of any cost of living or other post-retirement" increase in his military retirement pay. Husband acknowledges that § 1408(a)(4)(B) allows division of certain specified cost-of-living increases, but argues the decree goes beyond the statute in dividing any "other post-retirement" increases. Husband is correct. Pursuant to § 1408(a)(4)(B), military retirement pay subject to division as community property includes expressly defined cost-of-living increases; the statute makes no reference to any other increases. On remand, the superior court shall remove the reference to "other post-retirement increases" from the decree.

¶38 The decree also provides that in the event Husband elects to receive retirement benefits pursuant to the Military Reform Act of 1986 ("REDUX benefits") and receives a Career Status Bonus ("CSB"), Wife shall be entitled to a proportionate share of these benefits. Husband contends

⁷ Cases interpreting the statute to the contrary do not address the significance of the provision's use of the phrase "under this section." See *Fricks v. Fricks*, 771 So. 2d 790, 793 (La. App. 2000); *Neese v. Neese*, 669 S.W. 2d 388, 391 (Tex. App. 1984).

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the superior court erred in dividing these benefits because Wife did not make any claim to them in her pretrial statement or at trial.⁸

¶39 Wife indeed did not ask the superior court to allocate these benefits, and the record contains no evidence as to how they are calculated. Nonetheless, because we are remanding the military retirement provisions of the decree, and REDUX and CSB may be retirement-type benefits in which the community is entitled to share, the superior court on remand shall determine how to allocate these benefits should Husband elect to receive them.

C. Equalization Payment.

¶40 The superior court denied Husband's request for an equalization payment based on \$36,539 in community expenses (mainly the mortgage, utilities and groceries) he paid after Wife served the dissolution petition. Husband paid more than \$30,000 of the expenses at issue during the several months leading up to entry of temporary orders, when he was working but Wife had no full-time job and was without temporary spousal maintenance, and when he continued to live with her in the marital home. The superior court reasoned that, "in fairness," it could not grant Husband's request for an equalization payment without also retroactively modifying temporary orders, implying that, under the circumstances, Wife had an equitable right to financial assistance from Husband during the applicable period. At the same time, the court also denied Wife's request for an equalization payment for an additional \$20,000 in property and private retirement savings accounts Husband received under the decree.

¶41 Husband argues the court erred as matter of law, citing *Bobrow v. Bobrow*, 241 Ariz. 592, 596, ¶¶ 15, 19 (App. 2017), in which we held a spouse's post-petition payment of community expenses is not presumed to be a gift of sole funds to the community. Wife argues *Bobrow* is

⁸ These benefits are similar to military retirement benefits that might be available to Husband after 15 years of service. See 37 U.S.C. § 354 (2018); *Boedeker v. Larson*, 605 S.E. 2d 764, 771 (Va. App. 2004). After 15 years of service, servicepersons who entered the military after July 31, 1986 can opt for the CSB and REDUX retirement plan, under which a member is eligible to receive a \$30,000 bonus upon reaching his or her fifteenth year of active service. If the member makes that election, however, his or her retirement is calculated at a reduced rate. See <https://www.dfas.mil/retiredmilitary/plan/estimate/csbredux.html> (last visited June 19, 2018).

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distinguishable, and, in any event, the overall property allocation was equitable.

¶42 The parties in *Bobrow* had a premarital agreement that Husband would not be obligated to pay community expenses after either party filed a petition for dissolution. 241 Ariz. at 594, 595-96, ¶¶ 5, 14. On that basis, the superior court found the husband's post-petition payments were voluntary and presumed to be a gift to the community. *Id.* at 594, ¶ 5. On appeal, this court held the presumption that a spouse intends a gift to the community when he or she uses separate funds to pay community expenses does not apply to post-petition expenditures. *Id.* at 596, ¶ 15.

¶43 In eliminating the gift presumption, *Bobrow* instructed courts to account for post-petition payments made from separate property in equitably dividing community property. *Id.* at 596, ¶ 19. The superior court here did not apply a gift presumption and otherwise did not abuse its discretion in denying both parties' requests for equalization payments. Given the financial disparity between Husband and Wife at the time, the superior court had discretion to retroactively grant temporary spousal maintenance. See A.R.S. § 25-318 (2018); *Maximov v. Maximov*, 220 Ariz. 299, 301, ¶ 7 (App. 2009) (citing Ariz. R. Fam. Law P. 81(A) (authorizing court to direct entry of judgment *nunc pro tunc* as justice may require)). The court's implicit finding that Wife would have been unable to share the expenses at issue absent spousal maintenance is supported by the record.

¶44 Because the overall property allocation was equitable, we affirm the court's denial of Husband's request for reimbursement.

D. Attorney's Fees Award.

¶45 In awarding attorney's fees to Wife, the court found neither party was unreasonable, but because of the disparity in their incomes, Husband should pay a proportionate share of Wife's fees. See A.R.S. § 25-324(A) (2018). Based on their comparative earnings, the court found that Husband should bear 67 percent of the attorney's fees incurred in the case; Wife, 33 percent. But in applying those ratios to the parties' respective fees, the court reduced both parties' paralegal rates to \$50 an hour (from \$150 charged by Wife's lawyer and \$175 charged by Husband's lawyer).

¶46 In moving for reconsideration, Husband's counsel, whose office is in Phoenix, argued that his paralegal had more than 20 years' experience in family law and avowed that an hourly rate of \$175 is reasonable in most counties in the state. He repeats those arguments on appeal, and Wife, represented by Yuma counsel, does not argue to the

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contrary. We review an award of attorney's fees for an abuse of discretion. *Magee v. Magee*, 206 Ariz. 589, 590, ¶ 6 (App. 2004).

¶47 Neither party objected to the other's paralegal rates nor the amount of time their respective paralegals incurred. Nevertheless, in reducing the rates, the superior court stated:

The court finds that \$175 and \$150 an hour for paralegal time is unreasonable and without sufficient evidence of local practice. Such a rate approximates three times the hourly rate of a judge. . . . Many lawyers do not charge anything for so-called paralegal time and secretarial time.

¶48 The court abused its discretion by *sua sponte* reducing the paralegal charges to \$50 an hour. The \$150 rate charged by Wife's Yuma counsel, and her failure to object to Husband's \$175 rate, belies the court's finding that the parties had offered no evidence of rates charged by Yuma practitioners for work done by paralegals. More broadly, the court's pronouncement that "[m]any lawyers do not charge anything for so-called paralegal time" is demonstrably incorrect. To the contrary, trained, experienced paralegals can be invaluable in providing efficient legal services to the clients of a law firm. See *Ahwatukee Custom Estates Mgmt. Ass'n v. Bach*, 193 Ariz. 401, 403, ¶ 9 (1999) ("[L]egal assistant and law clerk services may properly be included as elements in attorneys' fees applications and awards because these individuals typically have acquired legal training and knowledge sufficient to permit them to contribute substantively to an attorney's analysis and preparation of a particular legal matter." (quotation omitted)). And the court's reference to a judge's "hourly rate" is simply inapplicable. The effective hourly rates of judges - like those of public defenders, prosecutors and other government lawyers - are not evidence of a reasonable hourly rate in private practice.

¶49 As he did in the superior court, Husband also argues the court erred by finding that Wife did not act unreasonably in the litigation. He contends Wife was unreasonable in failing to make or respond to settlement offers and by providing untimely discovery responses. Wife, on the other hand, contends Husband failed to follow through with a settlement agreement reached early in the litigation and failed to provide requested discovery. The superior court was in the best position to consider these competing allegations of unreasonableness. See *Gutierrez*, 193 Ariz. at 347, ¶ 13. The record supports the court's conclusion that attorney's fees were not warranted based on unreasonable conduct.

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¶50 Husband does not dispute the superior court's finding that disparity in the parties' finances warranted an award of fees to Wife. We affirm that finding, but, for the reasons stated, reverse and remand the award because the court abused its discretion in reducing the parties' paralegal rates.

E. Attorney's Fees and Costs on Appeal.

¶51 Wife requests an award of attorney's fees and costs on appeal pursuant to A.R.S. § 25-324. In the exercise of our discretion, we decline to award attorney's fees to Wife. Husband did not take unreasonable positions on appeal and, after the award of spousal maintenance, the financial disparity between the parties is not great. We award Husband his costs on appeal pursuant to A.R.S. § 12-342 (2018).

CONCLUSION

¶52 We reverse the parenting-time provisions in the decree and remand for a new hearing on parenting time. We reverse the decree's provisions concerning Husband's military retirement and the order awarding attorney's fees to Wife and remand for further proceedings consistent with this opinion. In all other respects, we affirm the decree.



AMY M. WOOD • Clerk of the Court
FILED: AA